

**EMPLOYMENT AGREEMENT
BETWEEN
THE CITY OF MADISON
AND
THOMAS CARTO**

This agreement made this ___ day of _____, 2006 by and between the City of Madison, a municipal corporation of Dane County, Wisconsin (hereafter, the "CITY") and Thomas Carto, a natural person (hereafter, the "DIRECTOR").

WITNESSETH:

WHEREAS, the City desires to hire the Director as an employee of the City of Madison to perform the services described herein on its sole behalf as the Overture Center Director, and;

WHEREAS, the Director represents that the Director possesses the necessary knowledge, skills, and experience to perform such services and is willing to perform such services as the Overture Center Director, and;

WHEREAS, the Director has been duly selected and has been confirmed for appointment to the position of Overture Center Director by the Common Council of the City of Madison on _____, 2006 and;

WHEREAS, the Common Council of the City has authorized the execution of this Agreement between the City and Director by Resolution on _____, 2006, Resolution No. _____ and;

WHEREAS, the Overture Center Director may also use the title of Overture Center President and Chief Executive Officer (CEO).

NOW, THEREFORE, in consideration of the mutual covenants, terms and agreements contained in this document, the receipt and sufficiency of which is mutually acknowledged, the parties do agree as follows:

I. DIRECTOR HIRED

The Director is hereby hired as a non-civil service employee of the City, holding the position of Overture Center Director pursuant to the terms, conditions and provisions of this Agreement. The Director shall have and exercise full authority and discretion as a division head within the City's organizational structure and act as Appointing Authority for employees serving the Overture Center, in accordance with all appropriate City Ordinances and Mayor's Administrative Procedure Memoranda.

II. FUNCTIONS, DUTIES AND RESPONSIBILITIES OF THE DIRECTOR

A. The Director has significant responsibility for the development and coordination of City interests relative to the Overture Project (a major downtown arts district development), including the operation of the Overture Center pursuant to and subject to agreements between the City and the Madison Cultural Arts District (MCAD). The work involves overseeing the development and management of related resources, facilities and programs. The work is characterized by the considerable independent judgment and discretion. Work is performed under the general direction of the Mayor.

B. The Director's duties and responsibilities shall be to:

Manage a professional, technical, clerical and maintenance staff in the development and implementation of the operations and activities of the Overture Center. Oversee and participate in the management or other departmental units, as appropriate. Direct the development and operation of program activities relating to the identification and solicitation of outside financial support including donations, grant funds and the development and administration of a foundation.

Plan and manage all programming activities for the Overture Center, both directly and through subordinates. Negotiate all performance contracts.

Plan, develop, recommend and coordinate departmental policies relative to such issues as fee structures; space allocation; staff and service levels, facility program development, public relations/marketing, and labor and vendor contracts. Hire, train, manage, evaluate and discipline staff.

Represent the interests of the Overture Center to City officials, various policy bodies, the community and the public. Maintain liaison with a diverse group of elected officials (City, County, State and federal) and administrators. Plan and direct a continuous program of public information and outreach. Plan and direct promotional programs. Provide managerial assistance and advice to all user groups and their staff.

Prepare and present periodic reports on departmental activities and financial status. Support and serve on various boards and commissions, and provide liaison and coordination as required.

Represent the City in the design, development and construction of the Overture Project and facilitate the transition into new expanded facilities including work related to governance and financials development.

Maintain communication among units, and between units and the Mayor and Common Council. Facilitate cooperation and collaboration between operating units relative to such issues as sharing equipment, personnel and space where appropriate.

Coordinate special projects as assigned by the Mayor, including various festivals and celebrations. Serve as a team leader and/or participate on external committees, providing special liaison and/or contact with the community, Mayor's office, etc.

Coordinate the development and administration of annual capital and operating budgets for the Overture Center. Provide direction, leadership and coordination relative to the budget development process. Plan, develop, coordinate, manage and develop revenue streams for the operations, programs and facilities of the Overture Center.

Provide such other advice and assistance as requested by MCAD in the operation and development of the Overture Center.

Perform related work as required.

- C. The Director agrees to perform such functions and duties at a professional level of competence and efficiency. He shall abide by all requirements of the laws of the State of Wisconsin and of the ordinances, resolutions, regulations, rules and practices of the City which may exist at the time of execution of this Agreement or which may, hereafter, be enacted or amended by the State of Wisconsin or the City in the exercise of their lawful authority. In the event a provision of this Agreement directly conflicts with any City ordinance, resolution, regulation, rule or policy, the provision of the Agreement shall apply, except that nothing herein shall be interpreted as modifying the obligations or terms of sec. 3.47, Madison General Ordinances.
- D. The Director shall devote full time to the duties and responsibilities provided herein and shall engage in no pursuit which interferes with them. The Mayor, however, may approve the Director's reasonable time away from the regular duties and responsibilities, provided such time is approved in advance and taken as vacation leave or absence without pay. Further, the Mayor may authorize other limited outside professional activities on City time provided that they are determined to be of benefit to the City and the Director is not compensated for such activities. Nothing herein limits the Director from performing outside services for compensation, provided such outside services have been approved by the MCAD Board Chair and Mayor, are not done on City time, and otherwise comply with City ordinances and rules. The City expressly consents to the Director also serving as an employee or officer or both of the 201 State Foundation, a separate foundation and fund-raising arm for the Overture Center, which services are found to be complementary and consistent with his position as Overture Center Director. Director may receive additional compensation from 201 State Foundation pursuant to an agreement between Director and 201 State Foundation; a copy of any such agreement will be provided to the City.

- E. The standard City workweek is 38.75 hours. However, the Director shall have reasonable flexibility from this standard to accommodate additional time expended outside regular working hours required by attendance at meetings and the like. Such flexibility is not intended to provide or be used as additional vacation or other paid leave.
- F. The Director shall have no right to make contracts or commitments for or on behalf of the City except as pre-authorized by statute, ordinance or express written consent of the City.
- G. The Director shall be subject to the City's residency requirement. The Director agrees to establish residency in the City of Madison within six (6) months of the date of confirmation of this agreement.
- H. The Director is subject to any requirements or limitations set out in any agreements between the City and MCAD.

III. COMPENSATION AND BENEFITS

- A. The Director's annual salary base shall be \$113,364.00, which shall be paid in approximately equal bi-weekly payments according to regular City payroll practices. Annual salary adjustments including 2007 and thereafter during the term of this Agreement may be made at the Mayor's discretion, subject to approval of the Common Council, as provided in the City's established managerial pay plan, sec. 3.38(6), MGO. The Director shall not be entitled to receive any additional overtime compensation, compensatory time off or bonuses.
- B. The Director shall, in addition to the compensation provided in Paragraph A above, be entitled to the following benefits:
 - 1. In addition to the monetary compensation set forth above and except as otherwise set forth in this Agreement, the Director shall receive the same benefits as all other non-represented employees as may be provided by the Madison General Ordinances, resolution of the Common Council, Administrative Procedures Memoranda, or other official City action.
 - 2. In addition to the monetary compensation and benefits provided in paragraph 1, the Director shall be entitled to twenty (20) days of vacation in each year of this agreement. Credited but unused vacation in excess of ten (10) days may be carried forward to the succeeding year with the approval of the Mayor. Except as otherwise provided, the Director shall be paid in full for credited but unused vacation existing at the expiration of this Agreement or upon the Director's retirement, when qualified for receipt of Wisconsin Retirement Fund benefits. In the event the Director leaves employment with the City, but does not retire, the Director shall be

entitled to payment for one-half (50%) of any unused sick leave to which the Manager would otherwise be entitled.

3. The Director shall be eligible to participate at City expense in professional seminars, conferences, workshops, and related meetings consistent with the role as Director and according to applicable Administrative Procedure Memoranda.
4. The Director shall be reimbursed for relevant professional association dues.
5. The Director shall be provided with a leased parking space in the Overture Center parking ramp and with standard mileage reimbursement for business use of a personal vehicle.
6. The Director will be reimbursed for relocation expenses for the Director's relocation to the City of Madison. The Director is responsible for obtaining two (2) bids for the move and submitting same to the City for authorization. Relocation expenses include: Commercial carrier expenses, personal transportation expense, temporary housing, and temporary storage of household items.

If the Director resigns during the first twelve (12) months, the City shall be reimbursed for the relocation expenses; up to twenty-four (24) months, the Director shall repay 50% of said total relocation expenses.

- C. The Director shall be evaluated at least annually by the Mayor to assess work performance. This feedback shall include the establishment of goals and assessment of challenges and accomplishments.

IV. TERM: RENEWAL OPPORTUNITY; NON-RENEWAL

- A. This Agreement shall take effect upon January 15, 2007, and shall expire on January 14, 2012, unless sooner terminated as provided herein.
- B. For a period of two (2) years from the effective date of this Agreement, the Director shall serve a probationary period. During the probationary period, the Director serves at the pleasure of the Mayor and may be removed at will by the Mayor. The Mayor will give the Director ninety (90) days notice of removal. In the event that the Mayor elects to provide a ninety (90) day notice of removal, then the provisions of IV. E. of this agreement shall be followed as if this agreement expired at the end of the ninety (90) day notice provided. Following the probationary period, and for any renewal of this Agreement, the Director may only be removed as otherwise provided herein.

- C. The Mayor, in his/her sole discretion, may offer renewal of this Agreement to the Director. The Mayor shall notify the Director of the intent to renew the Agreement at least ninety (90) calendar days before the expiration of this Agreement. Failure to so notify the Director shall extend the term of this Agreement by the time of the delay in actual notification (but in no event for more than ninety (90) days) without change in the Director's anniversary date, and shall not act as a full renewal of the Agreement. Renewal of the Agreement and of its provisions shall be subject to the approval of the Common Council. In the event the Common Council does not renew this Agreement, this Agreement will remain in effect for ninety (90) days following the non-renewal action by the Common Council.
- D. The Mayor, in his/her sole discretion, may elect not to offer renewal of this Agreement to the Director. In such event, the Mayor shall notify the Director of the intent not to renew the contract at least ninety (90) calendar days before the expiration of this Agreement. Failure to so notify shall extend the terms of this Agreement by the time of the delay in actual notification (but in no event for more than ninety (90) days) and shall not act as a renewal of the Agreement. At the expiration of the Agreement, the parties' rights, duties, responsibilities and obligations shall end. However, after the first renewal of this Agreement, the Director will, at the sole discretion of the Mayor, be eligible to take a voluntary demotion into any vacant or newly created position for which the Director is qualified.
- E. In the event of non-renewal of this Agreement, under either Paragraphs C or D above, the Mayor may, in his/her sole discretion, terminate this Agreement at any earlier date within ninety (90) days of the expiration of this Agreement, as determined by the Mayor. The early termination is to be accomplished by (a) notifying Director of the date of early termination, and (b) committing to buy out the balance of this Agreement in a lump sum, including salary and leave benefits (vacation, floating holiday, paid leave, sick leave) earned or to be earned through the original term of this Agreement, together with payment of the City's share of any health insurance premiums or the provision for such payment through the original term of this Agreement. The buy-out may be for the full period left on this Agreement, or any portion of the final ninety (90) days thereof. If this Agreement is terminated early through the provisions of this buy-out clause, Director's employment with the City ends as of the date of early termination.

V. PERSONNEL ACTIONS

The Director is subject to the Mayor's supervision and is, during the term of this Agreement, subject to the Mayor's authority to impose discipline on or to discharge the Director as is provided in Sec. 3.35(16) of the Madison General Ordinances, or as may be renumbered or amended hereafter. The Director shall be entitled to the procedural appeal and provisions contained in such subsection or as may be provided other non-represented employees at the time of imposition of suspension or discharge.

VI. CITY OBLIGATIONS AND RIGHTS

The City shall provide staff, equipment, supplies and space which it deems reasonable in its sole discretion for the conduct of the work of the Director and the Overture Center. The City retains the sole right to determine the organizational structure and overall functioning of the Overture Center, subject to any agreements between the City and MCAD.

VII. REOPENING THE AGREEMENT

Either party may request that the Agreement be reopened for re-negotiation if or when the Director's duties or responsibilities change significantly. A "significant" change in the Director's duties is defined as that degree of change in duties and responsibilities which would qualify a civil service position for reclassification pursuant to standard City personnel practices.

Factors which may be considered include the addition or deletion of duties, changes in Unit services or the addition or deletion of programs. If there is no agreement, the original Agreement shall control and not be reopened. Agreement changes, if any, and any resulting reclassification of the position shall not be deemed the creation of a new position so as to require competition.

VIII. LIABILITY PROTECTION

The City shall defend and indemnify the Director against and for any and all demands, claims, suits, actions and legal proceedings brought against him in his official capacity or personally for acts performed within the scope of his employment to the extent, and only to the extent authorized by the Wisconsin Statutes in effect at the time of the act complained of and as may be provided by any City insurance coverage for employees at such time.

IX. DISCLOSURE OF ECONOMIC INTERESTS

Pursuant to Madison General Ordinance 3.47, the Director shall file a Statement of Economic Interests with the City Clerk's Office within 14 days of his appointment. Each person required to file a Statement of Economic Interests shall annually file with the Clerk's Office an updated Statement no later than April 30 of each year.

X. APPEARANCE BEFORE ANY CITY ENTITY FOLLOWING SEPARATION FROM EMPLOYMENT

The Manager shall be subject to the provisions of Madison General Ordinance 3.47.

XI. DOCUMENTS AND MATERIALS PROPERTY OF THE CITY

All of the documents, materials, files, reports, data and the like which the Director prepares or receives while this Agreement is in effect are the sole property of the City of Madison. The Director will not publish any such materials or use them for any research or publication

without attribution to the City other than as work performed pursuant to the terms of this Agreement.

XII. TERMINATION OF AGREEMENT

- A. The Director may unilaterally terminate this Agreement during its term. If the Director unilaterally terminates this Agreement on less than ninety (90) calendar days notice in writing to the Mayor, the Director shall forfeit all rights to recover the cash equivalent of accumulated sick leave, unused vacation leave, and all other future benefits. These forfeiture provisions shall not apply if the Director resigns the position and qualifies for receipt of benefits pursuant to the Wisconsin Retirement Fund requirements.
- B. The Director's discharge during the term of this Agreement shall be deemed a breach of material provision of the Agreement. In the event of a discharge or other breach of a material provision of the Agreement by the Director, the Director shall forfeit all compensation and benefits from the date of notification of the breach by the City. In the event of a breach of a material provision of this Agreement by the City, the Director shall notify the Mayor in writing within thirty (30) working days, which shall be followed by a meeting of the parties to resolve the alleged breach. In the event the issue is not resolved, the Director may pursue contract remedies. In the event of a breach of a material provision of this Agreement by the Director, the City shall notify the Director of any such breach in writing within thirty (30) working days, which shall be followed by a meeting of the parties to resolve the alleged breach. In the event the issue is not resolved, the City may pursue contract remedies.
- C. The City retains the right in its sole discretion to abolish the position of Overture Center Director or to reorganize as it deems in the best interest of the City. In the event the City abolishes the position of the Overture Center Director or reorganizes the Overture Center to the extent that the position of Director is no longer required, this Agreement shall terminate and all rights, duties and obligations of the parties shall mutually end without recourse ninety (90) calendar days after final approval of such abolishment of position or reorganization by the Common Council.
- D. The City of Madison's obligations under this agreement shall cease at such time as the employees of the Overture Center, including the Director, cease to be employees of the City of Madison.

XIII. NO ASSIGNMENT OR SUBCONTRACT

The Director shall not assign or subcontract any interest or obligation under this Agreement. The City may assign this contract to MCAD in the event MCAD becomes the employer of Overture Center employees, pursuant to the terms of the Operation and Cooperation Agreement between the City and MCAD dated June 28, 2001, or any successor agreement.

XIV. AMENDMENT

This Agreement shall be amended only by written Addendum to Agreement of the parties involved and authorized for execution in the same fashion as this original Agreement.

XV. NO WAIVER

No failure to exercise and no delay in exercising any right, power or remedy on either party's part shall operate as a waiver thereof, no shall any single or partial exercise of any right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

XVI. ENTIRE AGREEMENT

No agreements, oral or written, express or implied, have been made by either party hereto, except as expressly provided herein. All prior agreements and negotiations are superseded hereby. This Agreement and any duly executed addenda or amendments thereto constitute the entire Agreement between the parties hereto.

XVII. SEVERABILITY

In the event any provisions of this Agreement are determined by any court of law to be unconstitutional, illegal or unenforceable, it is the intention of the parties that all other provisions of this Agreement shall remain in full force and effect.

XVIII. GOVERNING INTENT AND LAW

This Agreement shall be interpreted in the first instance in accordance with the spirit and intent of the Substitute Report of the Human Resources Committee Report approved by the Common Council on August 2, 1988 and shall be controlled, construed and enforced in accordance with the laws of the State of Wisconsin.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the day and year first written above.

WITNESS:

CITY OF MADISON
A Municipal Corporation

David J. Cieslewicz, Mayor

WITNESS:

City Clerk

WITNESS:

Thomas Carto

APPROVED:

APPROVED AS TO FORM:

Dean Brassler, City Comptroller

Michael P. May, City Attorney