



City of Madison

City of Madison
Madison, WI 53703
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Master

File Number: 20248

File ID: 20248

File Type: Resolution

Status: Passed

Version: 3

Reference:

Controlling Body: COMMON COUNCIL

Lead Referral:

File Created Date : 10/13/2010

File Name: Acceptance of deed for Overture Center

Final Action: 12/14/2010

Title: SUBSTITUTE ALTERNATE Acknowledging private ownership and operation of the Overture Center, establishing a City commitment to future grants to Overture subject to annual appropriation, and setting terms and conditions for such grants.

Notes: Coming back to the 11/9/2010 Common Council Meeting.

CC Agenda Date: 12/14/2010

Agenda Number:

Enactment Date:

Sponsors: Mark Clear, Lauren Cnare, Michael Schumacher, Joseph R. Clausius, David J. Cieslewicz, Michael E. Verveer, Judy Compton and Satya V. Rhodes-Conway

Enactment Number: RES-10-00996

Attachments: 11/4/10 City-201 State Foundation Term Sheet, Budget Impacts - 2010 Overture Agreement.pdf, Overture Capital Outlays and Debt Service 110510.pdf, 11/4/10 CC Discussion: Overture Center Visioning Statements, 11/9/10 CCOC Registrants: 20248, Registration Forms 11-9-2010.pdf, Alternate Resolution Overture Center 11/18/10, 11/18/10 CCOC Registrants: 20248, Council Statements at 11/18/10 CCOC Meeting, Common Council Amendments to 20248, Updated Common Council Amendments to 20248, Registration Forms 11-30-2010.pdf, Registration Forms(2) 11-30-2010.pdf, 11/29/10 MPM Legal Memo On Amendments to Alternate, Expanded 12/7/10 Overture Resolution Version 4, Original Resolution, Alternate Resolution, Compare Document Version 5 v Version 4, DRAFT SUBSTITUTE ALTERNATE (Version 4), DRAFT SUBSTITUTE ALTERNATE (Version 5), Budget Impacts - 2010 Overture Agreement (Version 5).pdf

Author: Michael May

Hearing Date:

Entered by: phustad@cityofmadison.com

Published Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
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1	Attorney's Office	10/13/2010	Referred for Introduction					
	Action Text:	This Resolution was Referred for Introduction						
	Notes:	Common Council Meeting of 11/9/2010						
1	COMMON COUNCIL	10/19/2010	Referred	COMMON COUNCIL	11/09/2010	12/14/2010		
	Action Text:	This Resolution was Referred to the COMMON COUNCIL due back on 11/9/2010						
	Notes:	Additional Referrals to: Board of Estimates, Common Council Organizational Committee						
1	COMMON COUNCIL	10/19/2010	Refer	BOARD OF ESTIMATES		11/22/2010		
	Action Text:	This Resolution was Refer to the BOARD OF ESTIMATES						
	Notes:							
1	COMMON COUNCIL	10/19/2010	Refer	COMMON COUNCIL ORGANIZATIONAL COMMITTEE		11/18/2010		
	Action Text:	This Resolution was Refer to the COMMON COUNCIL ORGANIZATIONAL COMMITTEE						
	Notes:							
1	COMMON COUNCIL ORGANIZATIONAL COMMITTEE	11/09/2010	Re-refer	COMMON COUNCIL ORGANIZATIONAL COMMITTEE	11/18/2010	11/18/2010	Pass	

Action Text: Registrations:

Jay Young, Town of Cross Plains: Spoke/Neither Supported or Opposed
Davin Pickell, 17 Merrill Crest, AFSCME Local 60, IATSE Local 251: Spoke/Opposed

Jay Young spoke neither in support or opposition. He stated that he wanted to add a "tidbit" about the 201 State Foundation Board. His experience with other performing art organization boards were that they are set up similar to the 201 State Foundation Board with board members main function being fundraising and running the business was secondary.

Davin Pickell spoke in opposition. He supported having separate boards for fundraising and operations, performance standards should be done now rather than later, didn't have an opinion on board makeup but having board members on MCAD and 201 State Foundation has resulted in the current deficit. He supported setting up a privately funded pre-paid performance bond to cover the transition expenses. He stated that there appeared to be ethics violations with the forbearance agreement.

Ald. Shiva Bidar-Sielaff moved to refer without a recommendation to the 11/30/10 Common Council meeting, seconded by Ald. Lauren Cnare.

Ald. Mark Clear asked if there was a motion to go into closed session or if the members wished to stay in open session. Members indicated that they would stay in open session. Karl van Lith (City Organizational Development & Training) was present to facilitate the conversation and ideas on potential changes to the agreement. Agreed focus area to discuss would be capital expenses.

Ald. Cnare asked City Comptroller Dean Brasser a question about the attached capital outlay graph (produced by Andrew Statz). She noted that as the City planned it's 5 year projection they would have to borrow for every single year. She asked if the city start some sort of savings plan to take care of the spikes. Mr. Brasser noted that there are three outlays: estimated operator's capital outlay, estimated owner's capital outlay and the owner's projected annual debt service (see attachments). Mr. Brasser noted that in 2012 there would be no budget impact, in 2013 the budget impact would be approximately \$56,000 and purchases for each year would increase and peaks 15 years out at \$816,000 (interest and repayment of the principal with average being \$412,900).

Ald. Cnare asked if this would affect the City's bond rating. Mr. Brasser stated that the operating budget has \$25 - \$30M of debt service besides this and would represent some percentage increase in debt service. Ald. Cnare asked how much this would affect taxpayers. Mr. Brasser stated that it would be \$13/\$100,000 of levy (and applied not just to this expense but would be everything in the operating budget).

Ald. Judy Compton expressed concern about the interest rate used and increases of future interest rates. Mr. Brasser stated that he used a 5% annual interest rate as the long-term projection. During his career they have had a high of 7% and 3% is now far more common and 5% is a more conservative estimate over the next couple of years.

Ald. Michael Schumacher asked how these numbers compare to the maintenance and debt service for Monona Terrace. Mr. Brasser stated that he didn't have anything off the top of his head but stated although they were different facilities they have some of the same spikes in costs (e.g. Monona Terrace roof, carpet replacement- but the Overture Center is larger so the numbers would be larger).

Ald. Thuy Pham-Remmele questioned whether the city could afford this agreement and that you cannot be sure that the interest rates would stay the same.

Ald. Brian Solomon asked if the goal was to try to achieve an agreement where maintenance costs would fall equally on each party. City Attorney May stated that there are divided maintenance costs and they have been negotiating on the "gray areas". He believed that the city's maintenance costs were now slightly lower (confirmed by Andrew Statz). Ald. Solomon stated that he was concerned that the estimates may be off and would like to see in the term sheet some protection for both parties that would ensure some protection between the differences of costs. He used an example: 20% over a 5 year period in total maintenance costs would be the responsibility of the other party to make up that cost (to be in place over the length of the agreement).

Mr. Brasser stated that operator's 15 year piece was \$9.09M and the City's was \$7.8M.

Ald. Shiva Bidar-Sielaff moved to recess and reconvene the CCOC meeting until after the 11/9/10

Common Council meeting in Room 201, CCB, seconded by Ald. Michael Schumacher. Motion was approved. Meeting was recessed at 6:17 p.m.

The CCOC meeting reconvened at 11:50 p.m.

A motion was made by Ald. Lauren Cnare, seconded by Ald. Marsha Rummel, to Rerefer to a special meeting of the COMMON COUNCIL ORGANIZATIONAL COMMITTEE, due back on 11/18/2010. The motion passed by voice vote/other.

Notes:

1	COMMON COUNCIL	11/09/2010	Re-refer	BOARD OF ESTIMATES	11/30/2010	11/22/2010	Pass
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Action Text: A motion was made by Ald. Cnare, seconded by Ald. Verveer, to Rerefer to the BOARD OF ESTIMATES and should be returned by 11/30/2010. The motion passed by voice vote/other.

Notes: Additional Referrals to: Common Council Organizational Committee

1	COMMON COUNCIL	11/09/2010	Re-refer	COMMON COUNCIL ORGANIZATIONAL COMMITTEE	11/30/2010	11/18/2010	
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Action Text: This Resolution was Rerefer to the COMMON COUNCIL ORGANIZATIONAL COMMITTEE due back on 11/30/2010

Notes:

1	COMMON COUNCIL ORGANIZATIONAL COMMITTEE	11/18/2010	Return to Lead with the Following Recommendation(s)	BOARD OF ESTIMATES		11/22/2010	Pass
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Action Text: Bonnie Lincicum spoke in support. Overture provides a community ticketing voucher program that provides low-income families with opportunities to attend Overture events.

Jay Young spoke in opposition. Concerned with what the alternate resolution will do to employees (disenfranchise) and user groups (higher costs).

Anne Connor spoke in support. She is the owner of Driftless Studio on State Street. Overture Center has a positive and direct impact on her business.

Rosemary Lee spoke neither in support or opposition. She supports the arts as a patron. She found flaws in the entire process: appointment of chair to Overture Ad Hoc Committee, treatment of employees.

Tom Carto spoke in support. Reviewed Prof. Underclofer's report and agreed with his observations in Chapter 1. He was looking forward to solution for Overture's success.

John Neis spoke in opposition (Local 60 representative). Local 60 remains opposed to the privatization of Overture Center.

Stan Woodward spoke in support (Lussier Community Education Center). He has had several opportunities to interact with the Overture Center. He asked the city to use caution when dealing with Overture Center employees for the best outcome. He supported the Overture community ticketing voucher program that brings children to the center that otherwise could not attend.

Amanda Larson spoke in support (Boys and Girls Club of Dane County). She supported the Overture community ticketing voucher program and the Kids in the Rotunda events because it was cost-efficient for them and a wonderful opportunity for the kids.

The following individuals registered as available to answer questions:

Joe Sensenbrenner
Lori Kief, Opposed (Local 60)
Susan Crofton (Overture Center staff)
Paul Soglin, Supported with amendments
Deirdre Garton

The following individuals registered and did not wish to speak:

Tom Campbell, Opposed (Local 60)
Jeff Porter, Opposed
Kathleen Rideout, Opposed
Sheila Sims (Opposed)

Ald. Bridget Maniaci asked Joe Sensenbrenner if he supported the proposed alternate resolution. Mr. Sensenbrenner stated that there hadn't been much on the record about people's reaction to the alternate but he understood they were comfortable with this approach. He noted that the proposal seemed straight-forward.

Ald. Marsha Rummel asked Mr. Sensenbrenner what the future of MCAD would be in this model.

Mr. Sensenbrenner indicated that MCAD and 201 State Foundation have a meeting scheduled on Tuesday to discuss what that new entity would be if this proposal was approved.

Ald. Marsha Rummel asked if the question of complying with open meetings law would still be unresolved. Mr. Sensenbrenner noted that it would not apply to a not-for-profit organization but new entity would adopt bylaws to allow for openness of meetings.

Ald. Judy Compton asked if there was a difference between "subsidy" and "grant". Ald. Clear noted they were different words but not functionally different. Ald. Compton asked Mr. Sensenbrenner if the city was removed from managing the Overture Center. Mr. Sensenbrenner stated that under the current draft the city would not be responsible for managing the Overture Center.

Ald. Clear noted that there was one late registration that wanted to speak.

Roger Buffett spoke in support. He stated that the Overture Center was a vital asset to the community and if it went dark no one would have a job.

Ald. Schumacher asked Paul Soglin his first impressions were of the alternate resolution. Mr. Soglin stated that he had originally supported a public owner/private management model but now supported a private ownership/private management model but didn't believe this was a long-range solution. He stated a better planning process should have been used when developing the Overture Center similar to a charrette process which involved artists, performers, resident companies, other organizations that would be impacted, audiences and the people who paid for it. He believed that resident companies were not involved in the development of the Focus Model. He supported amendments to the proposal to maintain all of the employees remain as they are and create an endowment fund.

Ald. Shiva Bidar-Sielaff asked Mr. Soglin to clarify the model he supported. Mr. Soglin stated that the model he supported would be a private entity but MCAD would still need to exist to employ the public employees.

Joe Sensenbrenner indicated that he supported public ownership of the Overture Center but could also support the alternate resolution proposed by Ald. Clear and Ald. Cnare if it could get them to where they needed to go. Mr. Soglin concurred that most people may be in support of public ownership if they went through a charrette process with non-profit management (but not one that resembles the current board makeup).

Ald. Schumacher asked Mr. Sensenbrenner why the city should own the Overture Center. Mr. Sensenbrenner stated that in the 70's it was determined that a civic center and art facility were needed in our community and that was the starting point for the discussion and construction of the Civic Center & Art Center.

Ald. Tim Bruer asked Mr. Sensenbrenner why the Council should have any confidence that either of the resolutions before them would not fail (referenced Amended Second Substitute Resolution 57,619, ID# 28007). Mr. Sensenbrenner stated that it was the will of the donors, support by the resident companies and interest from the citizenry that have been focused and organized around saving the Overture and making it a success.

Mr. Soglin stated that if the Focus Model failed the city would end up with the Overture if it failed and the non-profit operator could walk away.

Ald. Marsha Rummel asked why the bank can't just write off the \$28 M debt. Mr. Sensenbrenner stated that the donors want to see this succeed and given the choice of a deadline and target or giving the entity 2-3 years to come up with a plan, it was decided that the latter would be unsuccessful. He stated that the Overture needed to raise a lot of money either from fundraising or the city and basically needs to restructure its financial house. Mr. Soglin stated that the debt needed to be paid off.

Ald. Julia Kerr asked City Comptroller Dean Brassler asked him if he had a chance to look at the alternate resolution and what does that mean for taxes on the average house. Mr. Brassler stated that \$2M on the levy would mean \$22-\$23 for average home. Ald. Kerr asked if this would affect the ERP (for example, would you need to find \$2 M to cut in the budget). Mr. Brassler stated this could become a constraint in the future but not right now.

Ald. Schumacher asked City Attorney Michael May if the alternate resolution were adopted would the city need to have additional contracts or agreements. City Attorney May stated that the outside parties pay off the debt and there may be some legal documents that need to be executed (waivers, etc.) and the winding down of MCAD but the resolution could stand on its own.

Ald. Cnare asked if a separate contract should be done every year to ensure that certain things are done (e.g. programming standards). City Attorney May stated that the operator would need to enter into an agreement every year. Ald. Clear asked if this would have an effect on the alternate resolution. City Attorney May stated that it would but you would want to have an agreement that asks what they would be spending the money on.

Ald. Maniaci asked why the city owning the building an issue and what was stopping the non-profit from owning the building. City Attorney stated that the alternate proposes that the non-profit own the building and the city would give them a "grant".

Ald. Bruer asked what the capital responsibilities would be in the alternate resolution. Mr. Brassler stated that there would not be any responsibilities other than providing an annual \$2 M contribution

which then the operator would use for both operating and capital expenses.

Ald. Clear asked members of the CCOC and the Council that were present to go around the table and express their thoughts on the alternate resolution.

Ald. Julia Kerr

Acceptance by the City Council of financial audit prior to disbursing funds
System to make employees whole on their retirement benefits
Community programs agreement that quantifies the existing community programs and escalates them by the CIP methodology and ERP
Acceptance/agreement by operating entity of capital needs projections
Citizen representation on the Board & the five (5) person Executive Committee
Annual plan that also includes a summary of the resident company contracts
Public-private model is too risky for the taxpayers

Ald. Brian Solomon

Prefers public-private model vs. private-private model
Governance: Six (6) three-year terms (vs. three (3) five-year terms)
Staffing – 3-year study period regarding staffing (and subsequent 3-year study periods)
Resident companies are offered affordable rental rates
Language about resident companies to offer free or reduced cost functions, especially if they are related to public engagement
Create a resident company committee
In addition to annual reports request reports on financial shortfalls in real time (not wait for them)

Ald. Michael Schumacher

Can't support Focus Model (too many issues associated with this model)
Focus on the alternate resolution and supported the cleanest proposal (doesn't want to deal with staffing or performance issues)

Ald. Joe Clausius

Supported alternate resolution (private-private model)

Ald. Bridget Maniaci

Community board-City operating board – Not-For-Profit (NFP)
City Side = Vision + Community (booking)
NFP Side = Profit + Paid Programming
Spending caps
Capital Plan
Compliance with Capital Plan
Greater City role
Transparency – open records and financials
Ald. Chris Schmidt
Supported resolving the debt right away and keep working on a solution
Arts are important to community but are not critical (considered water, police and fire services critical)

Ald. Mark Clear

Supported the alternate resolution – conditions on the grant would be subject to appropriation every year during the budget process and does not obligate future councils to contributions
Every year the Overture provides the Council with their annual plan and the Council bases their decision on the plan (what it is worth)

Ald. Shiva Bidar-Sielaff

Concerned about governance
Citizen representation on the board
Some defined number of city appointments
Clarification of the level of transparency of board meetings and decisions
Staffing still her biggest issues
Concrete minimum benchmarks
Not in favor of general performance standards without specific measures

Ald. Lauren Cnare

Alternate resolution provides another level of assurance – supported a contract
Need a shared conversation on vision for the arts in Madison

Ald. Marsha Rummel
Not owning the Overture for \$1 is the only thing that was the different in the alternate resolution
Wants to wait for Prof. Undercofler's report back to Council

Ald. Tim Bruer
Doesn't want to place the city's core services in jeopardy
Spending caps are important
Develop a framework for maintenance schedule (similar to Monona Terrace)
Financial commitment that reinforces the liability associated with the agreement (specifically they need some more "skin in the game")
Transparency is an issue
Board collective needs to be diverse and representative of the city

Ald. Mike Verveer
Need for greater transparency (less use of closed meetings)
Prefers the Focus Model (public ownership of the Overture Center)
Staffing is a concern – 1 year is not acceptable (December 31, 2011 deadline)

Ald. Satya Rhodes-Conway
Transitional model with public process
What do you get for \$2M - question needs to be answered
Council set priorities:
1. Sense of ownership
2. Fair & equitable treatment for all employees
3. Transparency (differs if public/private vs. private/private) and if private/private what information is public
4. Increased fundraising
5. Resident company participation
6. Achieve financial stability
7. Increase surrounding community support of the Overture Center

Ald. Steve King
Need to foster a sense of ownership (the need and the value of the Overture has to be communicated)
Fair & equitable treatment of employees needs to be achieved

The members discussed possible amendments and how to deal with them. The amendment process was incorporated into the main motion.

A motion was made by Ald. Michael Schumacher, seconded by Ald. Tim Bruer, to Return to Lead with the Following Recommendation(s) to the BOARD OF ESTIMATES: Recommend adoption of the ALTERNATE RESOLUTION and request Common Council member amendments to the alternate resolution be sent to the Council Administrative Assistant by 2:00 p.m. on Tuesday, November 23, 2010. The motion passed by the following vote:

Notes: The motion passed by the following vote: 5:1:2 (AYE: Aids. Clear, Cnare, Schmidt, Schumacher, Bruer; NO: Ald. Rummel; EXCUSED: Aids. Bidar-Sielaff, Eagon)
Excused: 2 Bryon A. Eagon and Shiva Bidar-Sielaff
Ayes: 5 Mark Clear; Lauren Cnare; Chris Schmidt; Michael Schumacher and Tim Bruer
Noes: 1 Marsha A. Rummel

1 11/22/2010 RECOMMEND TO
COUNCIL WITH
THE FOLLOWING
RECOMMENDATIO
NS - REPORT OF
OFFICER

Action Text: The motion passed by the following vote:
Notes: Adopt and request Common Council member amendments to the alternate resolution be sent to the Council Administrative Assistant, due Tuesday, Nov. 23, 2010. The motion passed by the following vote: 4:2: (AYE: Clear, Bruer, Clausius, Sanborn; NO: Rhodes-Conway, Verveer).

2	BOARD OF ESTIMATES	11/22/2010	RECOMMEND TO COUNCIL WITH THE FOLLOWING RECOMMENDATIONS - REPORT OF OFFICER	Pass
	Action Text:	A motion was made by Bruer, seconded by Clausius, to RECOMMEND TO COUNCIL WITH THE FOLLOWING RECOMMENDATIONS - REPORT OF OFFICER. Adopt and request Common Council member amendments to the alternate resolution be sent to the Council Administrative Assistant, due Tuesday, Nov. 23, 2010. The motion passed by the following vote:		
	Notes:	Adopt and request Common Council member amendments to the alternate resolution be sent to the Council Administrative Assistant, due Tuesday, Nov. 23, 2010. The motion passed by the following vote: 4:2: (AYE: Clear, Bruer, Sanborn, Clausius; NO: Verveer, Rhodes-Conway). Absent: 1 David J. Cieslewicz Ayes: 4 Tim Bruer; Jed Sanborn; Joseph R. Clausius and Mark Clear Noes: 2 Michael E. Verveer and Satya V. Rhodes-Conway		
2		11/30/2010		
	Notes:			
2	COMMON COUNCIL	11/30/2010	Convene into Committee of the Whole	Pass
	Action Text:	A motion was made by Ald. Rhodes-Conway, seconded by Ald. Kerr, to Convene into Committee of the Whole at 1:15 am. The motion passed by voice vote/other.		
	Notes:			
2	COMMON COUNCIL	11/30/2010	Recommend to Council as Committee of the Whole:	Fail
	Action Text:	A motion was made by Ald. Solomon, seconded by Ald. Cnare, to Recommend to Council as Committee of the Whole: That we form a council delegation with 3-4 alders on it to meet with reps from the mayor's office, reps from 201 State, and donors to decide on an alternative amendment to bring before us at our next mtg that addresses all the comments and amendments that have been discussed prior to and including the November 30 Council meeting. The primary issues that need to be addressed, under some form of owner / operator model, would be: * Staffing * Governance * Public Input * Resident Company Input * Public Subsidy * Performance Measures The motion FAILED by voice vote/other.		
	Notes:			
2	COMMON COUNCIL	11/30/2010	Recommend to Council as Committee of the Whole:	Pass

Action Text: A motion was made by Ald. Rhodes-Conway, seconded by Ald. Kerr, to Recommend to Council as Committee of the Whole:
1. That the Council President and President Pro Tem and up to two volunteer Alders, along with the City Attorney and a representative of the Mayor's office if the Mayor so chooses, to meet with representatives of 201 State and MCAD to discuss:
a. The identified objections to the Version 3 resolution and how those objections might be overcome,
b. The objections to the 21 offered amendments to Version 2 and how they might be overcome,
c. To develop a possible new (5th) Version that would gain support from Overture and the Council that would reflect and be based on the Council discussion.
2. That the Council President and President Pro Tem and Alder Bidar-Sielaff shall redraft the pending amendments to Version 2 and group them into five categories for consideration, articulating options.
3. That the Comptroller and Overture representatives meet to respond to the concerns and questions on the budget projections under the Version 3, especially as it relates to fund-raising.
4. That the Council President and President Pro Tem and up to two volunteer Alders seek to meet with the Overture donors to determine what options exist. The motion passed by voice vote/other. The motion passed by voice vote/other.

Notes:

2	COMMON COUNCIL	11/30/2010	Accept the Recommendation of the Committee of the Whole	Pass
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Action Text: A motion was made by Ald. Rhodes-Conway, seconded by Ald. King, to Accept the Recommendation of the Committee of the Whole . The motion passed by voice vote/other.

Notes:

2	COMMON COUNCIL - DISCUSSION	12/09/2010		
3	COMMON COUNCIL	12/14/2010	Adopt the Following Friendly Amendment(s)	Pass

Action Text: A motion was made by Ald. Verveer, seconded by Ald. Bidar-Sielaff, to Adopt the Following Friendly Amendment(s) and make it part of the main motion. See attachment for Amendment. The motion passed by voice vote/other.

Notes:

3	COMMON COUNCIL	12/14/2010		
3	COMMON COUNCIL	12/14/2010		
3	COMMON COUNCIL	12/14/2010		
3	COMMON COUNCIL	12/14/2010		
2	COMMON COUNCIL	12/14/2010	Adopt	Pass

Action Text: A motion was made by Ald. Clear, seconded by Ald. Cnare, to Adopt . The motion passed by voice vote/other.

Notes:

Text of Legislative File 20248

Fiscal Note

Based on the terms of this Substitute Alternate resolution (originally presented to the Common Council on December 14, 2010 and commonly referred to as "Version 5") the City would acknowledge transfer of ownership of the Overture Center facility to a private nonprofit organization and would commit to an annual subsidy of \$2,000,000 beginning in 2012, contingent upon the satisfaction of all past debt obligations associated with the facility's construction and refinancing. The subsidy would be for both operating and capital costs associated with the facility. This annual support level represents an increase of approximately \$700,000 per year when compared to the \$1,297,473 budgeted in 2011 for Overture. In future years, the amount of financial support would be adjusted for inflation.

Additional costs associated with the payout of accrued employee benefits to current City

employees working at Overture Center would be incurred by the City in 2011, 2012 and future years, as employees move from City positions to positions with the new Overture Center owner. Based on the agreement, at least \$163,000 of costs associated with prior pension liability, accrued vacation and comp time benefits would be incurred by the City in 2012. The amount and timing of any additional costs related to the payout of accrued sick leave and future pensions would be determined as a result of required negotiations between the City and Local 60. Additional costs associated with those negotiations cannot be predicted at this time.

The proposed agreement also acknowledges that the new owner of Overture Center may request the City to provide a loan to assist in the financing of future capital maintenance costs. It is anticipated that, if the City agrees to such an arrangement, the loan repayment terms could be structured so that the City's cost of funds could be fully recovered.

Title

SUBSTITUTE ALTERNATE Acknowledging private ownership and operation of the Overture Center, establishing a City commitment to future grants to Overture subject to annual appropriation, and setting terms and conditions for such grants.

Body

Whereas, a group of generous community members have come forward and reached an agreement with the Overture Center's lenders to resolve the Center's remaining debt, and,

Whereas, under that agreement, the 201 State Foundation or the Overture Development Corporation ("ODC"), or their successors, will become the owner ~~and/or operator and/or both~~ of the Overture Center facility upon payment to the Overture lenders before December 30, 2010, and,

Whereas, the City has been informed that the debt will be paid, which payment also will release the City from any potential liability on its limited pledge guaranty related to the Overture debt, and,

Whereas, an interest in the long-term success of the Overture Center is shared by everyone in our community, and City support for the arts serves a public purpose through increased cultural education and economic development.

Now therefore be it resolved that the city of Madison thanks the donors for their extraordinary generosity in supporting Overture as a vital community asset, and,

Be it further resolved that the city acknowledges the ownership change of the facility, and, contingent upon the debt on the Overture Facility being fully paid, waives and releases its option to purchase the facility for one dollar, and,

Be it further resolved that the city pledges its financial support for Overture in the form of a grant to 201 State Foundation, Inc., or its successors or assigns ("201"), subject to annual appropriation, starting at ~~\$2.5 Million (Two Million Five Hundred Thousand Dollars)~~ \$2.0 Million (Two Million Dollars) per year in 2012 and adjusted by the change in Consumer Price Index methodology in the State's Expenditure Restraint Program each year thereafter, the purpose of the grant being to support the Overture Arts Facility in an amount approximately equal to the former City subsidy (\$1.3 million per year) and an amount for long-term capital maintenance costs (\$700,000 per year), and,

Be it further resolved that as conditions of the grant, 201 shall provide the following to the city:

- ~~1. An annual payment in lieu of taxes (PILOT), starting at \$500,000 per year in 2012 and~~

~~adjusted annually by the same method as the grant described above. In the event that the City grant falls short of the full amount as described above, 201 may reduce the amount of the PILOT by an amount equivalent to the shortfall.~~

2. 1. An annual audit, performed by an independent CPA selected by 201 and conducted in accordance with GAAP.

2. An annual plan with objectives with respect to fund-raising, paid attendance, non-paid or reduced price attendance, seats sold, community programs and program diversity.

3. An annual report to the community comparing actual results of the objectives described in the annual plan, the causes of any failures to meet those objectives, and strategies to meet objectives in the future.

4. The other terms and conditions set forth on Exhibit A to this resolution.

Be it further resolved that the city intends to end its operation and cooperation agreement with the Madison Cultural Arts District as of ~~June 30, 2012~~, January 1, 2012, with current employees staying under that agreement until that date, after which 201 State Foundation or Overture Development Corporation or their successors shall be the employer of any personnel working at Overture, and,

Be it further resolved, the City may negotiate MOUs with Local 60 to allow for bumping into City employment at any time during the transition period, and may negotiate a limit on applicants to Local 60 vacancies to Local 60 employees, and

Be it further resolved, the City may determine to make further payments to City employees who transfer to 201 to make up for lost accrued benefits such as sick leave with the directions to the Mayor for such negotiations set out in Exhibit B to this Resolution, and,

Be it further resolved, that in future years, if 201 needs additional financial assistance for capital maintenance costs, 201 may request and the City will consider, subject to appropriation and approval of the Common Council, to make a loan or loan(s) to 201. Any such loan will be secured by a mortgage on the facility owned by 201, and repayment of the loan may be by a reduction in future grants from the City to 201, ~~if payment is made by a reduction in grants, such reduction will not allow 201 to reduce its PILOT payment.~~

Be it finally resolved that the Mayor and city clerk are authorized to execute any and all documents with 201 State Foundation, Overture Development Corporation and the Madison Cultural Arts District, all in a form approved by the city attorney, as shall be necessary to accomplish the purposes of this resolution.

EXHIBIT A TO SUBSTITUTE ALTERNATE OVERTURE RESOLUTION

1. The City and 201 State Foundation Inc., or its successors or assigns ("201") will enter into two contracts. The first is a Long-Term Structural Contract further describing the terms and conditions of City support for Overture. The second will be an Annual Performance Contract containing terms that may change from year to year, but will establish measurable standards of performance for 201, as set forth herein.

2. Annual Performance Contract: 201 and the City will annually enter into a contract that sets

forth the City financial support for 201, and establishes measurable performance standards for 201, as the City does with other grant recipients from the City. The Performance Contract may incorporate some or all of the annual plan prepared by 201, and shall include other terms, such as the following elements:

- a. 201's commitment to develop and revise a strategic plan.
- b. 201's commitment to educational and community programming, including free or reduced programs and outreach, with measurable objectives for meeting its goals.
- c. Goals for fund-raising from outside sources.
- d. A commitment to create an endowment or capital reserve fund and estimated times and amounts to be raised for the fund.
- e. Standards for financial viability.
- f. Creation of an institutional marketing plan and annual measurable objectives toward meeting that plan.

On at least an annual basis, City staff and 201 staff will review progress toward the goals, objectives and standards set out in the agreement, and may modify the agreement on an annual basis as needed. The Annual Contract shall be presented to the Common Council for approval prior to consideration of the City's Operating Budget.

3. Long-Term Structural Contract: The Structural Contract will contain the following terms and conditions:

- A. The transition date to operations by 201 will be January 1, 2012.
- B. The City and 201 recognize the likely use of a condominium project to allow MMoCA to own its museum as unit 1, with 201 owning the unit 2.
- C. The City agrees to and acknowledges the naming rights limitations applicable to the Overture Center, and will not challenge those rights in the future.
- D. The City will be granted a right of first refusal to purchase the unit 2 at the price agreed to by either 201 or ODC should either ever seek to sell the facility in the future to a third party. Transfers of the property between ODC and 201 shall not trigger the City's right of first refusal.
- E. 201 will adopt a governance model that includes a Board of Directors consisting of not less than 20 nor more than 25 directors, with a number of public representatives chosen by the City of Madison that is proportionate to the City's net financial contribution to the total expenditures made for the operation of the Overture Center, provided, however, that the number of public representatives chosen by the City shall be at least three (3). One of those public representatives would be the Mayor or the Mayor's designee. The remaining number of public representatives would be appointed by the Mayor and confirmed by the Common Council. One of the public representatives, chosen by the City, would serve on the Executive Committee of the Board.
- F. 201 will adopt bylaws that reflect its commitment to a public meeting policy, substantially on the following terms: As a private corporation, 201 is not subject to the Wisconsin Open Meetings Law. Nonetheless, 201 agrees to adopt a public meeting

policy to provide transparency and public access to its decision-making. Meetings of the 201 Board of Directors and Executive Committee will be open to attendance by the public unless otherwise determined by 201, pursuant to the terms of its Bylaws for closing meetings. 201 also shall post on its website the time and location of its Board and Committee meetings.

G. 201 will establish a Community Advisory Board (CAB) broadly representing the community in terms of culture, ethnicity, geography, age and socio-economic level. The CAB will meet at least quarterly to advise and make recommendations to 201 regarding free programming and educational outreach efforts, and such other matters related to the operation of Overture as the CAB determines. Recommendations from the CAB will be considered by the 201 Board at a public meeting. The CAB membership shall include forty-five percent (45%) public membership appointed by the Mayor of Madison and confirmed by the Common Council.

H. 201 will maintain its Resident Company Advisory Board (RCAB). The RCAB may consider and make recommendations to 201 on all matters that impact the resident companies. Recommendations from the RCAB will be considered by the 201 Board at a public meeting.

I. 201 agrees that it will not enter into any exclusive agreement with any locally-based promoter of events that restricts the promoter's use of other Madison venues in order to program activity at the Overture Center, nor shall 201 enter into any agreement with a locally-based promoter that gives the promoter the exclusive right to use one of the venues at Overture.

J. 201 acknowledges the accuracy of the report on the physical status of the Overture facility prepared by Andrew Statz and dated September 16, 2010 and the Mortenson Construction Report of November 5, 2010, and will use those reports as a baseline for an initial capital maintenance plan.

K. 201 agrees to the following with respect to the treatment of City employees currently working at Overture:

Staffing and Related Contracts: Except as provided in this Exhibit and in the final Agreement between the City and 201, 201 shall recruit, train and employ its own staff. The existing City Collective Bargaining Agreements ("CBA") for any employees hired by 201 shall not be assumed or transferred to 201. 201 will negotiate the terms and provisions for any CBA directly with the related union or unions.

1. There shall be a 12-month transition period, from 1/1/11 to 1/1/12 unless completed earlier by mutual agreement, during which the current operations by MCAD with City employees continues unchanged, as does City's subsidy, etc., with current agreements remaining in effect. The transition period may be modified by mutual agreement of the parties.

2. Effective 1/1/12, 201 is the new manager. The City and MCAD will terminate the existing Operation and Cooperation Agreement as of that date. As of that date, no City employees will work for 201 or at Overture.

3. 201 will make an offer of employment, to be effective 01/01/12, to all permanent (full and part-time) employees (represented and non-represented) at or below the pay grade of 18-10 of the City working at the Overture Center as of 09/01/11. This is subject to them maintaining their

employment status with the City until the date of transition. Every effort will be made to act similarly with respect to employees who are not permanent (hourly) employees, subject to staffing needs.

4. 201 reserves the right to establish initial terms and conditions of employment and to bargain terms and conditions of contracts, provided that any continuing City employee that is offered and that accepts employment with 201 will be hired at not less than that employee's wage rate from the City in effect on 1/1/12. City employees who retire from the City and then accept employment from 201 shall not be considered to be a "continuing City employee" for purposes of this Resolution.

5. During the transition period, 201 will prepare job descriptions, number of persons to be hired at various positions, and establish initial terms and conditions of employment (including health and retirement benefits) ("Employment Terms"), for positions with 201 at Overture. 201 shall complete these Employment Terms and communicate them to City employees working at Overture no later than March 1, 2011. No later than July 1, 2011, 201 shall make job offers to permanent City employees at Overture for employment with 201. City employees shall have until 9/1/11 to accept such offer of employment by 201. In the event any such offer is not accepted by such date, 201 shall be free to hire a different person for the position offered to the City employee who did not accept the offer. Those City employees who are offered jobs with 201 will move to those jobs effective 01/1/2012, subject to the terms and conditions of such offer. The benefit package to be offered by 201 to continuing City employees shall include substantially similar categories of benefits now applicable to the City employees.

6. Any represented City employee offered a position with 201 may 1) accept the position, or 2) subject to any bumping or contractual rights as established by the City, determine to remain as a City employee by bumping into a City position not at Overture. Subject to negotiations between the City and the represented employees, represented employees shall have until September 1, 2011, to make this election.

7. The City will work with non-represented City employees who wish to remain City employees to determine if suitable positions are available at the City for application by the employee(s). Non-represented employees offered a position with 201 shall have until September 1, 2011, to accept such position.

8. 201 agrees to recognize IATSE Local 251 as the bargaining unit for all Stagehands, and may engage in bargaining at any time the law may allow. 201 will seek to complete bargaining by April 1, 2011.

9. 201 agrees to recognize AFSCME (or whatever other union the employees determine or that the law may require) as the bargaining unit for all positions currently represented by Local 60, and may engage in bargaining at any time the law may allow. 201 will seek to complete bargaining by April 1, 2011.

10. During the Transition Phase, the City and 201 will work together to resolve issues involving the transition of City employees including sick leave, compensatory time, and other issues as they may present themselves. The City and 201 agree to share these liabilities as follows:

i. Unfunded Prior Pension Liability: The City has borrowed funds to fund an unfunded liability to the Wisconsin Retirement System for all City employees. MCAD's share of this liability is approximately \$385,000. 201 agrees to become liable for fifty percent (50%) of this liability (approximately \$192,500) upon entry of the contract made pursuant to this resolution. 201's

obligation to pay this liability will be spread over a ten (10) year period in equal annual installments, with the first installment due no later than December 30, 2012.

ii. Accrued Vacation and Comp Time: These liabilities are approximately \$150,000. City employees are entitled to a payout of these amounts on leaving City employment. All such accrued comp time will be paid out in the normal manner, and said payout will be the responsibility of the City. In the case of vacation payouts, for continuing City employees hired by 201, 201 will be responsible for fifty percent (50%) of the payout, up to a maximum of \$57,500. This liability, once finally liquidated, shall be payable over the same ten (10) year period as the unfunded pension liability payment referenced above.

11. Nothing in this Agreement is intended to or does change any employee rights under existing agreements with the City or under City ordinances.

L. The following other provisions in the original Termsheet will be included in the General Contract between the City and 201:

1. Personal Property: All personal property necessary for or associated with the operation of Overture, including all personal property of MCAD held at 1/1/12, will be transferred to 201. This includes existing operating systems, IT, temporary fixtures, furniture and equipment. If 201 determines that it will dispose of personal property of material monetary value without replacement, 201 shall inform the City of such disposition.

2. Accounting. The parties agree that, upon 201 undertaking operation of Overture pursuant to this Agreement, a final accounting and settlement of liabilities between the City and MCAD shall be made. 201 and the City agree to negotiate whether and to what extent 201 will be responsible to the City for such liabilities, upon terms to be agreed upon.

3. Default and Remedies: In the event either party defaults in its obligations under this Agreement, the other party may give a notice of default. The defaulting party shall have the right to remedy the default. The parties shall agree upon details of default provisions in the final agreement, which may include the concepts set out in this paragraph. The remedy and cure period shall be defined to be a specific period that is related to the nature of the default. By way of illustration and not limitation, failure to provide insurance coverage must be cured within 10 days; failure to provide a copy of an audit shall be cured within 45 days. If not remedied within that time, the other party may pursue any and all legal remedies, including termination of this Agreement. If no other time is established for remedy of a default, the default must be remedied within 60 days. Failure to remedy a default provides the non-defaulting party with the right to pursue all legal remedies, including termination of this Agreement.

4. City Ordinance Requirements: 201 shall be subject to the normal conditions on grant recipients of the City, such as the applicability of Living Wage, Prevailing Wage, Non-discrimination, Sweatshop and Affirmative Action requirements of City's ordinances, according to their terms.

5. Indemnification: Each party agrees to indemnify, defend, and hold harmless the other party and its respective affiliates, officers, directors, employees and agents from and against all claims, damages or losses incurred or suffered by an Indemnified Party arising from or related to: any inaccuracy or breach of any representation or warranty made by the indemnifying party in this Agreement, any Schedule to this Agreement or any document contemplated by this Agreement; and any breach by an indemnifying party of any of its covenants, obligations, and agreements contained in this Agreement, and any wrongful or negligent acts of its own officers.

directors, employees or agents. Upon completion of the transition period, the City's standard provisions on indemnification for grant recipients will apply.

6. Insurance: 201 State will be required to show evidence of insurance pursuant to the usual terms established by the City's risk manager for grant recipients.

7. City Access to Records. Upon reasonable notice, the City may inspect any records of 201 related to the operation of Overture, and may, at the City's expense, conduct an operational or performance audit of 201.

8. Assignment. The Structural Contract may not be assigned by either party without the written consent of the other party, provided that the City is providing financial support to 201. Such consent is not to be unreasonably withheld.

9. Financial Reporting. An annual financial audit, performed by an independent CPA selected by 201 and conducted in accordance with GAAP, will be provided to the City as such final audit report is approved by the 201 Board, but no later than 90 days after the end of 201's fiscal year. 201 agrees to make available for inspection by the City, upon request, all records and work papers supporting the audit.

10. No Waiver; Approvals; The failure by one party to require performance of any provision of this Agreement will not affect that party's right to require performance of any provision of this Agreement at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

11. Governing Law. This Agreement is being delivered and accepted within the State of Wisconsin, and shall be deemed to be a contract governed by the laws of the State of Wisconsin and shall be interpreted, construed, and enforced in accordance with the laws of the State of Wisconsin without regard to the principles of conflicts of laws.

12. Jurisdiction. The parties hereby consent to the exclusive jurisdiction of any state or federal court situated in Dane County, Wisconsin, and waive any objection based on forum non conveniens, with regard to any actions, claims, disputes or proceedings relating to this agreement, the collateral, any other document, or any transactions arising therefrom, or enforcement and/or interpretation of any of the foregoing.

13. Waiver of Jury Trial. The parties hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to the agreement and related documents, the obligations thereunder or any transaction arising therefrom or connected thereto. The parties each represents to the other that this waiver is knowingly, willingly and voluntarily given.

14. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

15. Entire Agreement; Amendments. This Agreement, the Exhibits attached hereto, and the Related Documents contain the entire understanding of the parties with respect to the subject

matter hereof, and supersede all other understandings, oral or written, with respect to the subject matter hereof. No amendment, modification, alteration, or waiver of the terms of this Agreement or consent required under the terms of this Agreement shall be effective unless made in a writing, which makes specific reference to this Agreement and which has been signed by the party against which enforcement thereof is sought. Any such amendment, modification, alteration, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

16. Counterparts; Headings. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but such counterparts shall together constitute but one and the same agreement. The descriptive headings in this Agreement are inserted for convenience of reference only and shall not affect the construction of this Agreement. All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

17. Notices. All communications or notices required under this Agreement shall be deemed to have been given on the date when deposited in the United States mail, postage prepaid, and addressed as follow (unless and until any of such parties advises the other in writing of a change in such address): (a) if to the 201, with the full name and address as shown in this Agreement below; and (b) if to the City, with the full name and address of the City as shown in this Agreement below, to the attention of the officer of the City executing the form of acceptance of this Agreement.

201 State Foundation, Inc.: [list address]

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City of Madison: [list address]

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EXHIBIT B TO ALTERNATE OVERTURE RESOLUTION

At the direction of the Mayor, the HR Director shall negotiate an MOU with Local 60 that applies to current Overture employees and covers the following issues related to the transition of the Overture Center to private ownership on 1/1/2012:

1. A potential sick leave payout beyond what is currently dictated by City ordinance for City employees who choose to move to employment with the 201 State Foundation.
2. A potential payout that recognizes the lost value of future state pension benefits for City employees who choose to move to employment with the 201 State Foundation.
3. Ways in which the City can increase the likelihood that employees who wish to stay with the City will find acceptable placement in a position that minimizes negative impacts on other City employees.

It is the Mayor's intent and desire that any provisions agreed to in an MOU with AFSCME Local 60 will also apply to non-represented Overture employees.

The HR Director will brief alders on the progress of negotiations before an agreement is

reached.