

**Legislative File No. 20248 – Alternate Resolution
Proposed Amendments**
(Updated to include Ald. Kerr’s amendment language 11/30/10)

November 24, 2010

Amendment No. 1

Sponsor: Ald. Satya Rhodes-Conway

Amend language:

“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 **at this time, but reserves the right of first refusal should 201 State Foundation, Inc. wish to sell the facility in the future,** and,”

Amendment No. 2

Sponsor: Ald. Thuy Pham-Remmele

Amend language:

“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 Million (Two Million)** 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 approximate equal to the former City subsidy and an amount for capital costs, and,”

Amendment No. 3

Sponsor: Ald. Thuy Pham-Remmele

Amend language:

“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.**”
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Amendment No. 4

Sponsor: Ald. Satya Rhodes-Conway

Amend language:

Replace conditions #3 & #4 with new condition #3 located in: "BE IT FURTHER RESOLVED, that as conditions of the grant, 201 shall provide the following to the city..."

- ~~3. 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.~~
- ~~4. 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."~~

- "3. An annual report that details Overture's progress on the following metrics:**
- I. Number of free events held and attendance at them**
 - II. Number of free/reduced tickets distributed**
 - III. Range of ticket prices for shows produced by Overture**
 - IV. An institutional marketing program focused on increasing a sense of community ownership**
 - V. Policies and programs that encourage more "informal" use of Overture**
 - VI. Detailed information about fundraising, including copies of the current fundraising plan and a report on progress implementing the plan**
 - VII. Amount of capital endowment increase"**

Amendment No. 5

Sponsor: Ald. Lauren Cnare

Add language after "BE IT FURTHER RESOLVED, that as conditions of the grant, 201 shall provide the following to the city..." clause:

"BE IT FURTHER RESOLVED, that to protect the interests of employees, benefit packages (health insurance options and retirement plan options) offered to employees shall be equally available for all fulltime employees, regardless of position or salary, excepting stipulations in any union contracts.

BE IT FURTHER RESOLVED, that to increase community engagement in Overture and its programs, 201 State Foundation or the Overture Development Corporation, or their successors shall establish and maintain a Community Advisory Board comprised initially of Madison residents broadly representing the community in terms of culture, ethnicity, geography, age and socio-economic level. The board will meet at least quarterly to advise on free programming and educational outreach efforts. Upon review, the membership may expand to residents of other communities, and shall expand if/when other municipalities make financial contribution to Overture.

BE IT FURTHER RESOLVED, that to increase community engagement, the Board shall accept 2 members recommended by the Mayor and 1 member representing the resident companies.

BE IT FURTHER RESOLVED, that the city and the 201 State Foundation or the Overture Development Corporation, or their successors shall execute an annual contract requiring these conditions:

Amendment No. 5 (continued)

- **A contribution to a building trust fund of \$250,000 until a \$2 million level is reached. Contributions may be discontinued at the \$2 million level, but must be reinstated if the value falls below the \$2 million. Contributions may be made to exceed the \$2 million based on management discretion.**
- **X number of educational/outreach events. (Average of last 3 years' programs.)**
- **Presentation of free xx community programs for free or reduced prices. (Average of last 3 years' programs.)**
- **Successful fundraising equal to or greater than one half of the city's annual contribution.**
- **Development of a 5-year strategic plan.**
- **Written notification when stated annual fundraising projections will fall short by more than 25% of goal."**

Explanation: Based on the terms of this Alternate resolution (originally presented to the Common Council Organizational Committee on November 18, 2010) the City would relinquish its existing reversionary right to purchase the Overture Center property for a nominal amount, contingent upon the satisfaction of all past debt obligations associated with the facility's construction and refinancing. The City would also pledge to provide annual funding to Overture at a net level of \$2,000,000 per year beginning in 2012 to support both operating and capital costs. 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 accrued employee benefits of current City employees working at Overture Center may be incurred by the City in 2011, 2012 or future years, depending on the specific timing of any changes in employment status resulting from this agreement. Additional information about any such changes is needed before the employee benefit costs can be estimated.

Amendment No. 6

Sponsors: Ald. Satya Rhodes-Conway

Amend language:

"BE IT FURTHER RESOLVED, that the City intends to end its operation and cooperation agreement with the Madison Cultural Arts District as of December 31, ~~2014~~ 2012, with current employees staying under that agreement until that date..."

Amendment No. 7

Sponsors: Ald. Brian Solomon and Ald. Mike Verveer

Delete and add replacement language:

~~BE IT FURTHER RESOLVED, that the city intends to end its operation and cooperation agreement with the Madison Cultural Arts District as of December 31, 2011, 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, that the city intends to end its operation and cooperation agreement with the Madison Cultural Arts District as of June 30, 2013, with current employees staying under that agreement until that date. Prior to that date, 201 State Foundation, Overture Development Corporation, or their successors shall develop a staffing plan for any personnel working at Overture.

The new staffing plan shall keep Overture personnel as City employees or offer other alternatives if those alternatives clearly demonstrate better opportunities for long term operational success. If alternatives are offered, they must include a clear plan for transitioning employees from City employment, including financial recognition for benefits negotiated in good faith through the collective bargaining process. Final staffing plan recommendations must be approved by the Madison Common Council. Failure to approve final plan will automatically initiate an additional three year cycle at the end of which alternatives can again be presented for final approval by the Madison Common Council.

To ensure a smooth transition of staff during the transition period, all future Local 60 vacancies shall be limited to Local 60 members unless no Local 60 member applies.

Additionally, 201 shall be subject to the Living Wage, Prevailing Wage, Sweatshop, Non-discrimination and Affirmative Action requirements of City’s ordinances, according to their terms.”

Amendment No. 8

Sponsors: Ald. Shiva Bidar-Sielaff & Ald. Chris Schmidt

Add language following “BE IT FURTHER RESOLVED, that as conditions of the grant, 201 shall provide the following to the city...” clause:

“BE IT FURTHER RESOLVED that, annual City appropriation shall be subject to a contract that sets forth specific performance standards and measures. These performance standards and measures shall be developed by March 30, 2011 by a Common Council Working Group on the Overture Center’s Future. The President of the Common Council shall create the Working Group by December 15, 2010.”

Amendment No. 9

Sponsors: Ald. Shiva Bidar-Sielaff & Ald. Chris Schmidt

Add language following “BE IT FURTHER RESOLVED, that as conditions of the grant, 201 shall provide the following to the city...” clause:

“BE IT FURTHER RESOLVED, that,

- **201 State or its successor shall create an Overture endowment fund by July 1, 2011 containing a minimum of \$500,000**
- **City of Madison appropriation shall be subject to the endowment fund reaching \$100,000,000 by July 1, 2021.**
- **Annual fund growth expectation shall be set by the Common Council Working Group on the Overture Center’s Future.**
- **The President of the Common Council shall create the Working Group by December 15, 2010.**
- **Only interest and investment earnings of this fund shall be used to cover Overture Center capital and operating expenses.**
- **Investments of this fund shall be consistent with the City’s investment policies.”**

Amendment No. 10

Sponsors: Ald. Shiva Bidar-Sielaff & Ald. Chris Schmidt

Add language following “BE IT FURTHER RESOLVED, that as conditions of the grant, 201 shall provide the following to the city...” clause:

“BE IT FURTHER RESOLVED, that the City of Madison shall have auditing authority of finances of the Overture Center’s owner and operator.”

Amendment No.11

Sponsors: Ald. Shiva Bidar-Sielaff & Ald. Chris Schmidt

Add language after last “BE IT FURTHER RESOLVED” clause:

“BE IT FURTHER RESOLVED, that the Board of 201 State or its successor will consist of 25 members that reflect the diversity of the City of Madison and engage the community by including, but not limited to:

- **6 City of Madison mayoral appointments, including at least 2 alders, one of which will be the Alder representing the area in which Overture is located,**
- **Individuals with significant fundraising expertise,**
- **Citizens with no connection to performing arts organizations, and**
- **Individuals from the resident organizations.”**

Amendment No. 12

Sponsors: Ald. Shiva Bidar-Sielaff & Ald. Chris Schmidt

Add language after last “BE IT FURTHER RESOLVED” clause:

“BE IT FURTHER RESOLVED, that 201 State or its successor will follow Wisconsin open law requirements. Budget deliberations and votes shall not be conducted in closed session.”

Amendment No. 13

Sponsors: Ald. Brian Solomon and Ald. Mike Verveer

Add language after last “BE IT FURTHER RESOLVED” clause:

“BE IT FURTHER RESOLVED that the following terms and conditions will apply regarding resident companies:

- **201 State shall form a Resident Company Committee in which each committee will maintain one vote. Recommendations passed by simple majority must be addressed by full 201 State Board in open session.**
 - **All negotiated leases and agreements shall provide stability to each of the resident organizations. Rental rates must remain affordable for resident organizations.**
 - **Any increases in rental rates must be brought before the Resident Company Committee before action by the full 201 State Board in open session.**
 - **To the extent financially feasible, 201 shall allow and encourage free or reduced cost functions by resident companies. Resident organizations shall be charged reduced or free rates for events benefitting the community in this manner.**
 - **Resident Company Committee shall develop priority scheduling plans (up to 2-4 years out) that supports programming needs. Plans and recommendations shall be brought before 201 State for consideration in open session.”**
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Amendment No. 14

Sponsor’s: Ald. Brian Solomon and Ald. Mike Verveer

Add language after last “BE IT FURTHER RESOLVED” clause:

“BE IT FURTHER RESOLVED that the following terms and conditions will apply regarding the formation and operation of a Community Input Committee:

- **201 shall create and maintain a Community Input Committee made up of an equal number of appointees from 201 and the City. The City appointments will be made by the Mayor with confirmation by the Common Council. At least two members must serve as minority representatives, one each from the City appointee side and from the 201 State side.**
- **Each member will be awarded one vote on this Committee.**
- **Recommendations passed by simple majority shall be acted on by the full 201 State Board in open session.**

Amendment No. 14 (continued)

- The Community Input Committee will oversee a public charette process that speaks with artists, donors, and a diverse array of members of the general public. Final recommendations must be acted upon by the 201 full Board in open session and must be submitted for approval to the Madison Common Council by December 31, 2012. Additionally, 201 State must determine ways to incorporate recommendations into overall operations.
- The Community Input Committee shall conduct reviews and provide recommendations on the following areas:
 - Access to galleries
 - Allocation of MCF funds
 - Facility main area activity planning
 - Ways in which Overture can support and engage and encourage participation of and by non-resident art companies and art organizations
 - Ways in which Overture can develop and maintain stronger relationships to communities of color”

Amendment No. 15

Sponsors: Ald. Brian Solomon and Ald. Mike Verveer

Add language after last “BE IT FURTHER RESOLVED” clause

“BE IT FURTHER RESOLVED that the following terms and conditions will apply regarding governance:

- **At least 20% of any 201 State Board and Executive Committee will be comprised of appointments made by the Mayor and confirmed by the Common Council.**
- **The Executive Committee must include at least one member with substantial experience in fundraising and financial management in the performing arts arena.**
- **Board meetings will be open to attendance by the public unless otherwise determined by 201. The Board shall establish in its bylaws the method and circumstances for holding meetings that are not open to the public. However, recommendations passed by simple majority of both the Resident Company Committee and Community Input Committee must be acted upon by full Board in open session.”**

Amendment No. 16

Sponsor: Ald. Julia Kerr

Amendment to maintain current level of community programs and escalate annual using formula consistent with the calculation of the city subsidy *(Note: Ald. Kerr will be providing formal amendment language)*

Kerr Amendment to ALTERNATE Resolution sponsored by Ald. Clear and Ald. Cnare: New clause:

Amendment No. 16 (continued)

WHEREAS, 201 will continue to provide local artist subsidies, free and low-cost programming and mission-based programming and adjust annually by the change in Consumer Price Index methodology in the State's Expenditure Restraint Program each year thereafter as calculated from a base as follows: Local Artist Rental Subsidy \$367,100; Free and Low-Cost Programming \$726,000; Mission-Based Programming \$315,500.

Amendment No. 17

Sponsor: Ald. Julia Kerr

Amendment to maintain city three board members on operating entity and one on executive board to be nominated by the Mayor and confirmed by the City Council *(Note: Ald. Kerr will be providing formal amendment language)*

Kerr Amendment to ALTERNATE Resolution sponsored by Ald. Clear and Ald. Cnare: New clause:

WHEREAS, the Mayor will nominate and the Common Council will confirm three board members (city board members) to the 201 State Foundation or its successors or assigns. One City Board Member will be designated as a member of the five-person Executive Committee.

Amendment No. 18

Sponsor: Ald. Julia Kerr

Amendment requiring acceptance by 201 State Foundation and MCAD of the capital needs projections prepared by the City of Madison (Andrew Statz' report) *(Note: Ald. Kerr will be providing formal amendment language)*

Kerr Amendment to ALTERNATE Resolution sponsored by Ald. Clear and Ald. Cnare: New clause:

WHEREAS, 201 State accepts the city-prepared Schedule of Capital Projects, dated November 5, 2010 as reasonable.

Amendment No. 19

Sponsor: Ald. Julia Kerr

Amendment to require acceptance of annual audit by the City Council as a condition to releasing of operating subsidy. (Note: Ald. Kerr will be providing formal amendment language)

Kerr Amendment to ALTERNATE Resolution sponsored by Ald. Clear and Ald. Cnare: On page 2, conditions of grant, item number 2:

Acceptance by the Common Council of an annual audit, performed by an independent CPA selected by 201 and conducted in accordance with GAAP.

Amendment No. 20

Sponsor: Ald. Julia Kerr

Amendment establishing, by the City of Madison, retirement benefits consistent with existing benefits for eligible employees moving from city employment to private entity. (Note: Ald. Kerr will be providing formal amendment language)

Kerr Amendment to ALTERNATE Resolution sponsored by Ald. Clear and Ald. Cnare: New clause:

The City of Madison will establish and maintain a fund to provide retirement benefits equal to existing retirement benefits for those city employees moving from city employment to employment with 201.

Amendment No. 21

Sponsor: Ald. Marsha Rummel

A SUBSTITUTE ALTERNATE RESOLUTION

Establishing a City commitment to future grants to Overture subject to annual appropriation and annual reporting, and setting terms and conditions for such grants; and establishing a Madison Commission on Overture to make a recommendation on a sustainable model for Overture.

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, or their successors, will become the owner and operator 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,

Amendment No. 21 (continued)

WHEREAS, an interest in the long-term success of the Overture Center is shared by everyone in our community, and,

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) 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 approximate equal to the former City subsidy and an amount for capital costs, 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. An annual audit, performed by an independent CPA selected by 201 and conducted in accordance with GAAP.
3. 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.
4. 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. **The report is due within 60 days of the close of the fiscal year.**
5. **The City's support pledged herein is on an interim basis. Future support of 201 State or other owner or operator of the Overture Center is dependent upon a study, engaging the Madison community, being completed no later than October 1, 2011, making recommendations on the future ownership, operation, staffing and financial support of Overture. To obtain that study, the Mayor shall appoint and the Council shall confirm members of a Madison Overture Commission, with representation from City government, 201 State Foundation, prospective donors, Overture resident companies, members of the arts community with no direct association with Overture, and citizens with no allegiance to any specific arts organization or Overture. In addressing the ownership, operation, staffing and financial support of Overture, the report should also address the potential for long term private giving that will lead to a building endowment fund, an independent examination of the building and its financial needs, and an inventory of Madison's artistic needs. The City will take appropriate action on the report in its 2012 Budget and thereafter. Current operations with MCAD and City employees shall remain unchanged until December 30, 2012, except for the change in the City's grant as set forth above.**

Amendment No. 21 (continued)

BE IT FURTHER RESOLVED, that the city intends to end its operation and cooperation agreement with the Madison Cultural Arts District as of December 31, 2012, with current employees staying under that agreement until that date, and,

BE 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.