

DRAFT SUBSTITUTE ALTERNATE OVERTURE RESOLUTION: Version 4

File 20248

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.

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,

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) 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. 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.
5. 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, 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 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, 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.

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 VERION 4

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. **Long-Term Structural Contract:** The Structural Contract will contain the following terms and conditions:
 - a. The transition date to operations by 201 will be June 30, 2012, and the City grant will be pro-rated for that year.
 - 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 201 should 201 ever seek to sell the facility in the future.
 - e. 201 will adopt a governance model as recommended by Professor Undercofler at pages 2-3 of his report of November 24, 2010.
 - f. 201 will be subject 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 a public meeting policy in order 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. The Board shall establish in its bylaws the method and circumstances for holding meetings that are not open to the public for the following reasons: in the event the subject matter of that meeting or portion of the meeting includes deliberation concerning any judicial or quasi-judicial trial; hearing or proceeding, relates to personnel matters including but not limited to dismissal, demotion, discipline, compensation, performance evaluation or employment; negotiations or collective bargaining; deliberating or negotiating on the purchase of any property or entry into other contracts whenever competitive or bargaining reasons so require; consideration of unemployment or

worker's compensation matters; consideration of any matters in which private personal information such as financial, medical, social or personal histories or discipline or other privacy rights may be at issue, including discussion of donors or potential donors; or conferring with counsel who is rendering legal advice. 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 shall include 2 members recommended by the Mayor of Madison and 1 member from the resident companies.
- h. 201 will maintain its Resident Company Advisory Board (RCAB). The RCAB shall consider and make recommendations to 201 on all matters that impact the resident companies, including leases, rental rates, scheduling, and community benefit programs. 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 agreement with any locally-based promoter of events that restricts the promoter from scheduling events at facilities other than Overture.
- j. 201 accepts the reports on the physical status of the Overture facility prepared by City staff and the Mortenson group, and will use those reports as an initial capital maintenance plan.
- k. 201 will adopt those matters set forth in Paragraph 7 of the original Termsheet dated November 4, 2010, negotiated between 201 and City staff for treatment of City employees currently working at Overture, with the following changes: paragraph 7(e) related to custodial and maintenance shall not apply but those employees will be treated like other City employees at Overture; references to City ownership of the facility shall not apply; only subs (i) and (iii) of paragraph 7(k) shall apply; 201 shall provide a benefit plan substantially similar to that now applicable to the employees; and the wage rates referenced in paragraph 7(d) shall be at the level as of January 1, 2012.
- l. The following other provisions in the original Termsheet will be included in the General Contract: paragraph 8 on personal property; paragraph 11 on financial reporting; paragraph 12.b on final accounting; paragraphs 17-18 on default, remedies and city ordinance requirements, paragraph 20 on indemnification and

paragraphs 23-33 on standard terms and conditions. 201 State will be required to show evidence of insurance pursuant to the usual terms established by the City's risk manager.

3. **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. The Performance Contract may incorporate some or all of the annual plan prepared by 201, and will include at least the following elements:
 - a. 201's commitment to develop and revise a strategic plan.
 - b. 201's commitment to community programming including free or reduced programs, with measurable objectives for meeting its goals.
 - c. Goals for fund-raising from outside sources.
 - d. Goals for community outreach and educational programming with measurable objectives.
 - e. A commitment to create an endowment fund and estimated times and amounts to be raised for the fund.
 - f. Standards for financial viability modeled on those suggested by Professor Undercofler at page 4 of his Report of November 24, 2010, or as set out in paragraph 21(b)(ii) of the original Termsheet of November 4, 2010.
 - g. 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.