

12/03/10 Council Working Group Meeting
Grouping of Amendments/Alternates/Nov 4 Draft Term Sheet
By Ald. Shiva Bidar-Sielaff

Board composition

Undercoffler recommendation:

I suggest a board of 25 persons, 21 "civilians," and 4 ex officio (voting) public officials. The Mayor would be a member, and he would appoint another person, who would not have to be an elected official. The Mayor, h/herself, could send a proxy to meetings, but the proxy would not have voting rights.

The President of the Common Council, in consultation with the Mayor, would appoint 2 Alders to the Board. The Alders could not send proxies to meetings. One of the 4 ex officio members would serve on the Board's Executive Committee. This person would be chosen by the Mayor, in consultation with the President of the Common Council. One of the 4 ex officio members would serve on the Board's Nominating Committee. Again, this person would be chosen in the same manner as the Executive Committee representative.

It will be especially important for ex officio members to serve on the board as advocates for Overture Center's success, not as watchdogs (in the negative sense of this word).

The Board Chair could not be filled by an ex officio representative.

Board terms, for all members, would be 3 years + 3 years (if the Nominating Committee chooses to re-nominate) + one year off.

A standing committee on Nominations should include members of the community, who are not Board members. However, the majority of the Nominating Committee should be Board members.

The Board should have the following standing committees: Executive, Nominating, Finance, Development, and Audit. The Executive Committee should be empowered to only take action when necessary between board meetings. And, when doing so, should seek as much input from a broad range of board members as possible. The Audit Committee must have the freedom to confer and make recommendations independently.

The Advisory Council should be appointed by the Board, with input from its Nominating Committee. It should contain 15 members, with a Chair chosen by the Board's Nominating Committee and approved by the full board. Advisory Council terms should follow the same policy as the Board's. The Advisory Council must provide a broad range of individuals who represent the demography of the City of Madison.

Amendment #5 (Cnare)

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.

Amendment #11 (Bidar-Sielaff & 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 #15 (Solomon and 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 # 17 (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.

Term Sheet 11/04/10

Governance: 201 will operate under a Board of Directors and an Executive Committee. There will be 21 Directors. The Executive Committee shall consist of 5 members of the Board of Directors. The City of Madison shall have the right to appoint 3 members of the Board, which appointments shall be made by the Mayor and confirmed by the Common Council. The Mayor shall consult with 201 prior to making the appointments. 201 shall consult with the Mayor prior to naming the other members of the Board. One of the City appointments shall serve on the Executive Committee. 201 shall create or maintain advisory committees of the Board for resident companies and for community engagement including a Community Advisory Board. Representatives of such committees shall be invited to attend Board meetings and to regularly report to the Board on their recommendations. Meetings of the 201 Board of Directors will be open to attendance by the public unless otherwise determined by 201. The Board may establish in its bylaws the method and circumstances for holding meetings that are not open to the public. Nothing herein is intended to subject 201 to any open meetings law.

Open meetings

Amendment #12 (Bidar-Sielaff & 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 #13 (Solomon & 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."

Amendment #15 (Solomon & 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."

Version 3 Substitute (Schmidt, Bidar-Sielaff, Rummel)

The MCAD Board shall have oversight over Overture's budget, and budget decisions shall not be made during closed sessions, except as required by state statute

Community Engagement

Amendment #5 (Cnare)

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.

Amendment #13 (Solomon & Verveer)

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."

Amendment #14 (Solomon & Verveer)

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.
- 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 #15 (Solomon & Verveer)

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

Version 3 Substitute (Schmidt, Bidar-Sielaff, Rummel)

The Mayor shall appoint and the Council shall confirm by February 1, 2011, members of a Madison Overture Commission, which, shall be charged to work with a consultant to conduct a study and making a report on the future ownership, operation, staffing and financial support of the Overture Center. The report, which shall be completed by October 30, 2011, shall 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 members of the Commission shall be composed of representatives from City government, MCAD Board, 201 State Foundation, Overture represented and non-represented staff, 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. The City will take appropriate action on the Commission's report in the 2011 budget.

Endowment

Amendment #4 (Rhodes-Conway)

3. An annual report that details Overture's progress on the following metrics:

<snip>

VII. Amount of capital endowment increase

Amendment #5 (Cnare)

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:

- 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.

<snip>

Amendment #9 (Bidar-Sielaff & 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."

Reporting

Amendment #4 (Rhodes-Conway)

"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 #5 (Cnare)

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:

- 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."

Amendment #8 (Bidar-Sielaff & 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 #10 (Bidar-Sielaff & 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 #19 (Kerr)

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.

Version 3 Substitute (Schmidt, Bidar-Sielaff, Rummel)

MCAD provides an annual report is provided to the community comparing actual results of the objectives described in the annual plan and identifying causes of any failures to meet those objectives and strategies to meet those objectives in the future.

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21. Public Accountability and Performance Standards.

a. It is mutually agreed that a successful Overture Center for the Arts, consistent with industry practice, is financially sound; hosts a high-quality and diverse array of local, regional, national, and international programming; supports the activity of its resident companies; attracts significant community support through paid attendance and contributed income; and ensures broad-based community access through inclusive planning and affordable program options.

b. Operate in a financially sound manner:

i. 201 will generate both earned and contributed revenue which together with the agreed City subsidy will result in sound financial operations, as detailed below.

ii. The annual audited financial statements, prepared in accordance with GAAP, shall contain an unqualified opinion as to going concern status. The annual audited financial statements shall contain positive unrestricted

net assets when adjusted for the amount invested in capital assets (also called expendable net assets, i.e., excluding the assets and liabilities associated with capital assets). If either condition is not satisfied in any

material amount, 201 will present a plan to the City to remedy the condition within two fiscal years.

Failure to make substantial progress on that plan in the first year will constitute a default by 201. Failure to satisfy the plan after the second year will constitute a default by 201, and 201 will be given 90 days to remedy the default.

iii. 201 is to operate in a financially sound manner to assure that the City Subsidy will not increase beyond that contained in the Agreement unless otherwise mutually agreed between the City and 201.

c. Host a high-quality and diverse array of local, regional, national, and international programming:

i. 201 will present or co-present a minimum of 35 performances per year (including Broadway at Overture), on a three-year rolling average, to increase based on market conditions and opportunities. 201 will make reasonable efforts to attract promoter and co-promotion activity in all venues.

ii. 201 shall not require any local promoter to enter into an exclusive agreement that restricts their use of other Madison venues in order to program activity at the Overture Center.

d. Support the activity of resident companies:

i. 201 will continue to provide primary performance venues to arts organizations designated as "resident companies". 201 will continue its cooperation and partnering with resident companies to deliver education

and outreach to the community.

e. Attract significant community support through paid attendance and contributed income:

i. 201 will operate its own presentations in a financially sound manner.

ii. 201 will meet the revenue generation requirements identified in the City Contributions section of this agreement.

f. Ensure broad-based community access through inclusive planning and affordable program options:

i. The Community Based Advisory Committee will be 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. The

City may seek input from the Madison Arts Commission on its appointees.

- ii. The Community Based Advisory Committee shall meet on a regular basis with staff on programming diversity, audience development, and community engagement activities.
- iii. This committee shall make regular committee reports to the 201 Board.
- iv. 201 shall continue to cooperate with the Madison Community Foundation (MCF) with regard to the Civic Center Foundation Fund administered by MCF for support of such programs.
- v. 201 shall continue to provide community rental subsidy programs.
- vi. 201 will continue or implement free or reduced cost programs.
- vii. 201 will continue to provide free access to public galleries.
- viii. 201 will annually identify anticipated funds from MCF, subsidies or other sources to be used to meet the obligations for community based activities and will review recommendations from the Community Based Advisory Committee on how such funds should be allocated.

g. To ensure public accountability to the standards above:

- i. 201 will maintain books and records of its operations and expenses in accordance with generally accepted accounting principles.
- ii. Such records will be available for City review as described elsewhere in this agreement.
- iii. 201 will seek comment and input from its advisory committees and the public prior to adopting its annual budget.
- iv. 201 will prepare an annual "Report to the Community" within 90 days of the close of the fiscal year, documenting items b through f above, and will invite the public to a meeting on the report, encouraging community input.

An example of this report, including measurable objectives is attached hereto as Exhibit ____.

- v. 201 will prepare and submit to the City no later than December 1, 2011, a strategic plan, which will be updated and submitted at least every three (3) years.
- vi. 201 will submit to the City an annual plan with objectives with respect to fund-raising, paid attendance, non-paid or reduced price attendance, seats sold, and the other performance standards set out in subparagraphs b-f of this Paragraph 21. In 201's annual report to the Community, 201 will compare actual results to determine if they materially differ from the plan. 201 will share with the City the causes of failure to meet the objectives, and provide strategies to meet objectives in the future. The City may declare a default in the event of the repeated failure to meet the objectives, subject to the right of 201 to cure such default within one year.

h. The terms above may be modified by mutual agreement, and are contingent on continuity of the city's contribution as described in this Agreement.

Possible Combined language:

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 that will guide the City's negotiations with the 201 State Foundation or the Overture Development Corporation, or their successors. These parties shall execute an annual contract requiring these conditions:

- 1) 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.
- 2) X number of educational/outreach events, where X is the average of last 3 years' programs.

- 3) Presentation of free xx community programs for free or reduced prices, where xx is the average of last 3 years' programs.
- 4) Successful fundraising equal to or greater than one half of the city's annual contribution.
- 5) Development of a 5-year strategic plan.
- 6) Written notification when stated annual fundraising projections will fall short by more than 25% of goal.
- 7) Acceptance by the Common Council of an annual audit, performed by an independent CPA selected by 201 and conducted in accordance with GAAP.
- 8) Acceptance by the Common Council of 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

Employees

Amendment #5 (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.

<snip>

Amendment #7 (Solomon & 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 #20 (Kerr)

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.

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7. Staffing and Related Contracts: Except as provided in this Term Sheet and in the final Lease and Operating Agreement, 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.

a. There shall be a eighteen month transition period, from 1/1/11 to 6/30/2012 unless completed earlier by mutual agreement, during which the current operations by MCAD with City employees continues unchanged, as does City's subsidy, etc. Leave current agreements in effect. Since City will take ownership as of January

1, 2011, an eighteen month lease with MCAD will be needed automatically terminable at the termination of the Transition Phase. The transition period may be modified by mutual agreement of the parties.

b. Effective 7/1/12, 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, except as set forth in Paragraph 7.e. hereof.

c. 201 will make an offer of employment, to be effective 07/01/12, to all permanent (full and part-time) employees (represented and non-represented) 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.

d. Although 201 will retain the right to establish initial terms and conditions of employment, wage rates for current employees transferring from the City shall be at a level not less than the level in effect on 01/01/11.

e. The parties have discussed their mutual interest in the maintenance of the Overture Center's facility and the fact that it will continue to be owned by the City following the transition to 201 as the operator. For this reason, the City shall retain as City employees the Maintenance and Custodial staff, including supervision. 201 will contract with the City to maintain the facility to the standards established in a separate agreement (including headcount) and will make an annual payment of \$818,801, adjusted by ERP, for such service. The payment for such service shall be payable in two (2) semi-annual installments payable within 7 days of receipt of the semi-annual contributions from the City. 201 is responsible for the costs of cleaning and maintenance supplies. The City is responsible for the costs of the cleaning and maintenance equipment. The City may withhold some or all of its subsidy to cover the costs of custodial and maintenance services. The agreement to provide custodial and maintenance services shall have an initial term of 5 years and, at the end of the initial 5-year term of this Agreement, the parties may renew or renegotiate the terms of the custodial and maintenance agreement.

f. 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

September 1, 2011. No later than January 1, 2012, 201 shall make job offers to permanent City employees at Overture for employment with 201. Those City employees who are offered jobs with 201 will move to those jobs effective 07/1/2012, subject to the terms and conditions of such offer.

g. 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. Represented employees shall have until March 31, 2012 to make this election.

h. 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 March 31, 2012, to accept such position.

i. 201 agrees to recognize IATSE Local 251 as the bargaining unit for all stagehands and may engage in bargaining at any time after January 1, 2011. 201 will seek to complete bargaining by August 1, 2011.

j. 201 agrees to recognize AFSCME as the bargaining unit for all positions currently represented by Local 60 and may engage in bargaining at any time after January 1, 2011. 201 will seek to complete bargaining by August 1, 2011.

k. 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. A number of these matters are liabilities of MCAD and, pursuant to Paragraph 12.b. of this Agreement, will become liabilities of 201. The City and 201 agree to treat 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 be responsible for fifty percent (50%) of this liability (\$192,500). 201 may pay this liability over a ten (10) year period in equal installments with the first installment due no later than December 30, 2013.

ii. **Accrued Sick Leave:** City employees who are 55 and eligible for retirement are entitled to a payout or transfer to a post-employment health plan of the value of their accrued sick leave. As a further accommodation to existing City employees working at the Overture Center, any employee age 52 or older and working at Overture as a City employee as of June 30, 2012, will be eligible for this payout, subject to any limitations in the applicable post-employment health plans. Any City employees exercising their right to retire prior to July 1, 2012, shall be entitled to the payout or transfer and neither MCAD nor 201 shall be responsible for the costs thereof. 201 agrees that any City employee who accepts employment at 201 and is not entitled to the payout described herein will be given a bank of sick leave time of ten (10) days. 201 may determine how such sick leave is to be taken by its employees.

iii. **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, 201 will be responsible for fifty percent (50%) of the payout, up to a maximum of

\$57,500, payable over the same ten (10) year period as the unfunded pension liability payment referenced above, subject to the credit to 201 for vacation carried over to 201 as described herein. As a further accommodation, 201 agrees to grant those former City employees, accepting a position with 201, credit for their service time with the City for future vacation accrual purposes under 201's terms of employment. These new employees may also elect to forego some or all of the above vacation payout from the City and carry up to four (4) weeks of accrued vacation to 201. (Said vacation carryover to be taken within four (4) years from the date of hire.) 201 will be given credit for fifty percent (50%) of the value of this carryover vacation in determining the amount owed to the City herein.

iv. Stagehand WRS Dispute: The City and Stagehands have a dispute over past contributions to the WRS. Any liability for this dispute rests with the City, and neither MCAD nor 201 have any liability for such costs.

v. Current and Accrued MCAD Deficit: Any other accrued deficit of MCAD existing on June 30, 2012, shall be responsibility of MCAD or 201.

vi. The City and 201 may adjust these allocations during the transition period by mutual agreement.

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

Miscellaneous

Amendment#1 (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 #2 (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 #3 (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.~~

Amendment 18 (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.