



# City of Madison

City of Madison  
Madison, WI 53703  
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## Master

**File Number: 20248**

**File ID:** 20248

**File Type:** Resolution

**Status:** Items Referred

**Version:** 2

**Reference:**

**Controlling Body:** BOARD OF ESTIMATES

**File Created Date :** 10/13/2010

**File Name:** Acceptance of deed for Overture Center

**Final Action:**

**Title:** 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.

**Sponsors:** Mark Clear, Lauren Cnare, Tim Bruer, Michael Schumacher and Joseph R. Clausius

**Enactment Date:**

**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, Resolution Version 1, 11/18/10 CCOC Registrants: 20248

**Enactment Number:**

**Author:** Michael May

**Hearing Date:**

**Entered by:** phustad@cityofmadison.com

**Published Date:**

### History of Legislative File

Version:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Attorney's Office	10/13/2010	Referred for Introduction				
	<b>Action Text:</b>		This Resolution was Referred for Introduction				
	<b>Notes:</b>		Common Council Meeting of 11/9/2010				
1	COMMON COUNCIL	10/19/2010	Referred	COMMON COUNCIL	11/09/2010		
	<b>Action Text:</b>		This Resolution was Referred to the COMMON COUNCIL due back on 11/9/2010				
	<b>Notes:</b>		Additional Referrals to: Board of Estimates, Common Council Organizational Committee				
1	COMMON COUNCIL	10/19/2010	Refer	BOARD OF ESTIMATES			
	<b>Action Text:</b>		This Resolution was Refer to the BOARD OF ESTIMATES				
	<b>Notes:</b>						
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	Rerefer	COMMON COUNCIL ORGANIZATIONA L COMMITTEE	11/18/2010	11/18/2010	Pass
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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 Rerefer BOARD OF ESTIMATES 11/30/2010 Pass

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 Rerefer COMMON COUNCIL ORGANIZATIONAL COMMITTEE 11/30/2010 11/18/2010

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 Pass

Action Text: 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 BOARD OF ESTIMATES 11/22/2010

**Text of Legislative File 20248**

**Fiscal Note**

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.

**Title**

**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

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, 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.

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.

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 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.