

CITY OF MADISON, WISCONSIN

A RESOLUTION _____

PRESENTED
REFERRED

November 22, 2021
Finance Committee
(11/28/22)
Common Council
(12/6/22)

Authorizing the Mayor and City Clerk to execute an Amendment to the Structural Agreement with Overture Center Foundation, Inc. and an Annual Performance Contract for the 2023 operations of the Overture Center, and providing for a grant from the City.

Drafted by: Michael Haas

Date: November 15, 2022

SPONSORS:

Whereas, on December 14, 2010, the Common Council adopted Resolution No. RES-10-00996, File No. 20248, (the “2010 Resolution”) acknowledging private ownership and operation of the Overture Center, establishing a City commitment to future grants to Overture subject to annual appropriation, and setting forth the terms and conditions for such grant, and

Whereas, the 2010 Resolution also authorized the City to enter into a long-term Structural Agreement with Overture Center Foundation, Inc. (“OCF”), formerly known as 201 State Foundation, Inc. with the term of the Structural Agreement being ten years, ending on December 31, 2020 with automatic renewal for five-year terms unless the Agreement is terminated, and

Whereas, in December 2020 and December 2021, the Common Council authorized the Mayor and City Clerk to execute Amendments to the Structural Agreement with OCF renewing the original term of the Agreement for additional terms one year, and thereafter retaining automatic renewal terms of five years unless the Agreement is terminated, and

Whereas, the current Amendment to the Structural Agreement expires on December 31, 2022, and the City and OCF agree that it is in their mutual best interests to renew the Structural Agreement for a term of ten years, ending on December 31, 2032, and

Whereas, the Structural Agreement anticipated that the City would provide an annual grant to OCF, subject to appropriation and subject to the parties entering into an annual performance contract that would establish measurable performance standards for OCF, and

Whereas, the City and OCF entered into the first annual performance contract for calendar year 2012 and have entered into subsequent annual agreements in every successive year, and

Whereas, the OCF grant is being funded through room tax revenues as designated by the Room Tax Commission, with the amount of the grant for 2023 being established as Two Million Ninety-Five Thousand Dollars (\$2,095,000).

NOW THEREFORE, BE IT RESOLVED, that the Common Council authorizes the Mayor and City

Clerk to execute an Amendment to the Structural Agreement with OCF renewing the original term of the Agreement for a period of ten years ending on December 31, 2032 and thereafter retaining automatic renewal terms of five years unless the Agreement is terminated, and

BE IT FURTHER RESOLVED, that the Common Council authorizes the Mayor and City Clerk to execute an Annual Performance Contract with Overture Center Foundation, Inc., in a final form to be approved by the City Attorney, containing the following terms and conditions:

1. Term. The Annual Performance Contract will be in effect during calendar year 2023. Either party may terminate the Contract upon an event of default by the other party. The Contract shall automatically terminate if the City does not provide the Grant.

2. Grant. The City, through room tax revenues as approved by the Room Tax Commission, shall provide a Grant to OCF in the amount of Two Million Ninety-Five Thousand Dollars (\$2,095,000). The Grant will be disbursed to OCF in four equal payments of \$400,000 on January 6, 2023, April 7, 2023, July 7, 2023, and October 6, 2023. The Grant shall be used by OCF solely to support the operations and capital expenditures of the Overture Center.

3. Plan Preparation. OCF shall prepare and submit to the City the following updated plans on the following dates: a strategic plan on or before June 30, 2023; a fundraising plan on or before October 15, 2023 and an institutional marketing plan on or before October 15, 2023.

4. Performance Terms. OCF shall prepare an Annual Community report and an Annual Commitment to Arts, Educational and Community Budget report (budget report) within 90 days of its fiscal year (July 1, 2022 to June 30, 2023), and invite the public to a meeting on the report, encouraging community input. The Annual Commitment to Arts, Educational and Community Budget report shall include data identifying OCF's commitment to educational and community planning, including: the number of programs delivered and the people served; the number of free or reduced cost programs, the number of people served by these programs and the associated dollar value; the number of City of Madison residents served by ticketed events; and the total dollar value of rent subsidies provided to local arts organizations. This data identified in this budget report shall be provided to the Madison Arts Commission (MAC) on or before September 30, 2023, and a representative of OCF will appear and consult with the MAC on meeting its goals and objectives, and any changes needed for the 2024 contract. OCF shall prepare performance projections for 2023-24 based on the most recent OCF budget report. OCF will include in its report information on its efforts to engage with Madison's communities of color. To the extent some of this information is not available by September 30, 2023, OCF will provide the information in the first quarter of 2024. OCF commits to attending meetings of and reporting to the MAC at least two (2) times in calendar 2023. OCF will also provide time for MAC representatives to make a presentation at one of its regular meetings at least once during calendar 2023. In addition, to the extent data provided to MAC by OCF during 2022 is incomplete, OCF shall provide all available data requested by Spring 2023. All reports provided to the MAC will also be provided to the Mayor, the Common Council and the Room Tax Commission.

5. Financial Performance. OCF will abide by certain financial performance standards to ensure it is operating the Overture Center in a financially sound manner. OCF shall generate sufficient earned and contributed revenue, and will provide to the City for review audited financial statements showing positive unrestricted net assets, as adjusted, and a carry-forward operating deficit less than 5% of expendable net assets.

6. Capital Reserve. OCF will continue efforts to create a capital reserve fund of \$5 million. From 2012 through June 30, 2022, OCF designated the aggregate amount of \$_____ in a Board Designated Reserve that could be used for this purpose. In addition, since January 1, 2012, OCF has expended \$_____ for capital improvements for the Overture Center.

Unrestricted net assets that could be used as a capital reserve total \$_____. OCF intends to embark on a capital campaign to, among other things, meet the capital reserve fund requirement.

7. City Ordinances. OCF shall abide by all applicable provisions of the City's ordinances concerning living wage, affirmative action, workforce utilization, equal benefits, nondiscrimination and accessibility.

8. City Study. If the City performs a study regarding performing arts venues in the greater Madison area and their needs, OCF shall provide its cooperation to the City and any agents or contractors it may have engaged.

9. Use of City Grant. The Grant is required to be used solely to support the operations and capital expenditures of the Overture Center. The parties shall work cooperatively to establish language for future Annual Performance Contracts under which OCF would identify and report on the use of and establish goals and objectives for a portion of the Grant for local Madison arts, educational and community programming purposes, and to report on measuring performance standards. During 2023, OCF shall maintain segregated accounting to keep track of any amounts received from the City, shall keep a record of where those amounts are spent, and shall provide information to the City demonstrating that the City grant was used for operations and capital expenses as required by the Structural Agreement.

BE IT FURTHER RESOLVED that the Common Council authorizes a Grant in the amount of \$2,090,000 to be disbursed to Overture Center Foundation, Inc. pursuant to the terms of this Resolution and the 2023 Annual Performance Contract.