ANNUAL PERFORMANCE CONTRACT BY AND BETWEEN THE CITY OF MADISON AND OVERTURE CENTER FOUNDATION, INC.

This Annual Performance Agreement (this "Agreement") is entered into as of this _____ day of December, 2022, by and between the CITY OF MADISON, a municipal corporation (the "City") and OVERTURE CENTER FOUNDATION, INC., a Wisconsin non-profit corporation ("OCF").

WITNESSETH:

WHEREAS, Overture Development Corporation ("ODC") is the owner of Overture Center for the Arts (the "Overture Center") and leases Overture Center to OCF; and

WHEREAS, OCF may become the owner and is the operator of the Overture Center facility; and

WHEREAS, the interest of the long-term success of Overture Center is shared by ODC, OCF, the City and residents of Madison and Dane County; and

WHEREAS, the City and OCF entered into an Amended and Restated Structural Agreement dated as of December 30, 2022 and effective as of January 1, 2023, which sets forth the terms and conditions regarding the governance structure of Overture Center and City support for Overture Center (both in terms of operations and capital expenditures); and

WHEREAS, the fiscal year for the City is from January 1 through December 31 of each year and the fiscal year for OCF is from July 1 through June 30 of each year; and

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the covenants and agreements contained in this Agreement, it is hereby agreed as follows:

ARTICLE I
ANNUAL PERFORMANCE TERMS

1. Annual Performance Contract: Subject to the terms and conditions hereof and the terms of the Structural Agreement, OCF and the City enter into this annual contract that sets forth the City's financial support for OCF (the "Grant"), and that establishes measurable performance standards for OCF aligning with OCF's strategic plan. The City's Grant shall be used solely for the operations and capital expenditures of Overture Center. The Grant will be for calendar year 2024 ("Grant Period") subject to annual appropriation by the City. OCF applied for a Grant on or before August 1, 2023 and will do so on or before August 1 for each subsequent calendar year. This Annual Performance Contract will be attached to the Grant request. Unless terminated earlier as provided herein, this Agreement shall automatically terminate effective December 31, 2024.

2. Performance Terms and Reporting: OCF agrees to abide by the following terms and conditions and provide the following documentation to the City:

(a) OCF has established a strategic plan ("Strategic Plan"), which has been provided to the City (whenever this Agreement states that OCF is to provide something to the City, it will be provided to the Mayor's Office, the Common Council, the Room Tax Commission, and the Madison Arts Commission (MAC)). OCF shall update its Strategic Plan every 3-6 years, and will provide the City with an updated plan within 90 days of the close of its fiscal year in which the plan is generated. The Strategic Plan shall align with the Structural Agreement, this Agreement and OCF's mission.

(b) OCF will prepare an Annual Community Report within 90 days of the close of its fiscal year, and will invite the public to a meeting on the report, encouraging community input. OCF will prepare performance projections for 2024 based on the most recent Strategic Plan, OCF Annual Community Report and OCF's Annual Commitment to Arts, Educational and Community Budget Report (whenever this Agreement states "Annual Community Arts Budget Report," it is referring to OCF's Commitment to Arts, Educational and Community Budget Report). The baseline for establishing goals and measuring performance of OCF shall be based on the Strategic Plan and, with respect to free or reduced cost programs and outreach, the Annual Community Arts Budget Report for OCF's fiscal year 2023-2024, as set forth in Section (2)(f) herein.

(c) During 2024, 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.

(d) OCF will operate Overture Center in a financially sound manner. An annual financial audit, performed by an Independent CPA selected by OCF, and conducted in accordance with GAAP, will be provided to the City as such final audit report is approved by the OCF Board of Directors, but no later than 90 days after the end of OCF's fiscal year. OCF will prepare balance sheets and audited financial statements in accordance with GAAP within 90 days of the closing of its fiscal year and will provide copies to the City in a timely manner. OCF agrees to make available for inspection by the City, upon request, all records and work papers supporting the audit. OCF and the City will jointly determine the financial status of the Overture Center each year, including positive net assets (expendable net assets, which exclude assets and liabilities associated with capital assets) and operating balance relative to expendable net assets or the Overture Center current year budget. This review may result in the OCF providing a plan to the City to remedy any financial issues and regular status updates on implementing that plan.

(e) OCF's commitment to create a capital reserve fund will be measured as follows:

(i) Pursuant to the Structural Agreement and under the initial Annual Performance Contract, OCF agreed to use its best efforts to accumulate a capital reserve fund of $1,000,000 by June 30, 2014. OCF will continue efforts to create a capital reserve fund of $5,000,000 by June 30, 2027.

(ii) OCF will continue efforts to create a capital reserve fund of $5 million. From 2012 through June 30, 2023, OCF designated the aggregate amount of $2,170,000 in a Board Designated Reserve that could be used for this purpose. In addition, since January 1, 2012, OCF has

expended $10,817,980 for capital improvements for the Overture Center. Unrestricted net assets that could be used as a capital reserve total $18,856,259. OCF intends to embark on a capital campaign to, among other things, meet the capital reserve fund requirement.

(iii) OCF has used its best efforts to meet its obligations for a capital reserve fund.

(iv) OCF will continue to use its best efforts to fully fund the Board Designated Reserve as a capital reserve fund in the amount of $5,000,000. To that end, OCF intends to embark on a capital campaign, the Overture Forever Campaign, tentatively scheduled from September 2024 through September 2027 to, among other things, meet this requirement.

(f) Historically, Forty Percent (40%) of OCF's total arts experiences are through OCF's free or reduced cost programs. OCF is working hard to build back to that level after the pandemic restrictions eased. OCF's commitment to arts, educational and community programming, including free or reduced cost programs and outreach, will be measured as set forth in this paragraph (recognizing that in some cases it may not be feasible to obtain such information, and some data cannot be generated at all, e.g. for attendees at non-ticketed events, group ticketing or all resident company programs). OCF's Annual Community Report submitted to the City on or before September 30 of each year shall include data on the following:

1) Annual Community Report:

a) Listing of community partnerships
   i) Total artistic experiences with high-level breakdown
   ii) Community ticket partners/E&I outreach ticket program partners, including a list of the total number of tickets distributed and the sponsorship value
   iii) Free/low-cost program descriptions; # of experiences provided
   iv) Diversity, Equity, and Innovation (DEI) workshops and # of participants

b) Total value of rent subsidies provided to local arts organizations (including resident companies) or artists for the use of the Overture Center, including a breakdown of events sponsored by resident and nonresident companies, the identity of the company and event, date of event and the value of the subsidy for each event.

c) Goals for total budgeted arts, educational, and community programming for 2023-2024, along with actual results compared to budgeted amounts

d) Progress on financial goals – Restoration of cash reserves and Overture Forever Campaign progress to build capital reserve fund and endowment

e) Data and information describing OCF's efforts to promote DEI within its population of performers, community and promotional outlets, and audiences

f) List of Madison and Dane County-based artists presented and the amount spent

g) Annual progress update on Overture's Organizational Goals as they relate to the Strategic Plan

(g) Upon 10 business days' prior notice, the City may inspect any records of OCF related to the operation of Overture, and may, at the City's expense, conduct an operational or performance audit of OCF. The access to records shall not subject OCF to the State of Wisconsin Public Records Law.

3. Annual Review: On at least an annual basis, the Madison Arts Commission, City staff and OCF staff will review progress toward the goals, objectives and standards set out in this Annual Performance Contract and subject to the terms of the Structural Agreement, and may modify the Annual Performance Contract on an annual basis as needed. The Annual Performance Contract may be presented to the Common Council for approval prior to consideration of the City's Operating Budget. To accomplish this annual review, OCF commits to attending meetings of and reporting to the MAC Board or MAC representatives at least two (2) times per calendar year, including attending the MAC meeting immediately following OCF's Annual Meeting and annual reporting to the City, and on one other occasion upon MAC's request and with 10 days' prior notice to OCF. At MAC's request, OCF will provide time for the MAC representatives to make a presentation at one of OCF's regular meetings.

4. Grant Payments: Subject to appropriation by the Common Council, and provided OCF is not in default hereunder, the City shall provide a Grant to OCF in the amount of Two Million One Hundred Eighty Thousand Dollars ($2,180,000). The Grant shall be disbursed to OCF in four payments: one of $545,000 on January 5, 2024; one of $523,750 on April 5, 2024; one of $523,750 on July 5, 2024; and one of $523,750 on October 4, 2024. OCF shall use the Grant solely to support the operations and capital expenditures of Overture Center. The funds for this 2024 Grant were approved by the City's Room Tax Commission.

5. Community Advisory Council: In accordance with the Structural Agreement, OCF has established and will maintain a Community Advisory Council (the "CAC"). The CAC currently consists of not less than 10 nor more than 20 members. The CAC will broadly represent the community in terms of culture, ethnicity, geography, age and socio-economic level. The CAC will meet at least quarterly to facilitate outreach efforts and to advise and make recommendations to OCF regarding free programming and educational outreach efforts and such other matters related to CAC's mission. Recommendations from the CAC will be considered by the OCF Board at the public portion of an OCF Board meeting. The CAC membership will include a number of members proportionate to the City Percentage appointed by the Mayor of Madison and confirmed by the Common Council, provided, however, that the number of members appointed by the City shall be at least two (2). A vacancy among the members of the CAC appointed by the City shall not be counted for the purpose of determining any quorum requirements that may apply to the CAC. As established in the Structural Agreement, the City Percentage is defined as the proportion of the City's net financial contribution to the total annual operating expenses of the Overture Center.

6. Resident Company Advisory Council: In accordance with the Structural Agreement, OCF has established and will maintain its Resident Community Advisory Council (the "RCAC"). The RCAC may consider and make recommendations to OCF on all matters that impact the resident companies. Recommendations from the RCAC will be considered by the OCF Board at the public portion of an OCF Board meeting.

7. Study of Performing Arts Venues: The City may perform a study of performing arts venues in the greater Madison area and the needs of promoters, performance companies, individual artists, arts educators and audiences. Should the City perform such a study or studies, OCF agrees to provide its cooperation to the City and any agents or contractors the City has engaged, and the City agrees to share the study or studies with OCF.

8. Future Contract Terms: On an ongoing basis, the parties shall cooperatively work together to create language for each succeeding Annual Performance Agreement in keeping with the terms of the Structural Agreement regarding establishing goals and measurable objectives for OCF's commitment to arts, educational and community programming, including free or reduced cost programs and educational outreach, and addressing within its annual report the results of its efforts, including identifying, adding to or modifying the performance terms in 2.(f) herein. Subject to the terms and conditions of the Structural Agreement and this Agreement, and recognizing that the Grant provides support for all aspects of operations and capital expenditures, OCF will identify the impact of the City's Grant on arts, educational and community programming, the number of Madison citizens and artists involved in OCF programs, goals for reaching underserved populations of participants and artists, and allocating resources among the goals.

9. Roles of the City, OCF, Room Tax Commission and MAC: Since 2017, the State of Wisconsin phased in new rules for the use of room tax funds collected by the City. Those room tax funds have, in part, supported the City's annual Grant to OCF under this Agreement in the past. Since 2017, a large portion of the room tax revenue is controlled by the City's Room Tax Commission. As OCF is an eligible recipient of room tax revenue, the City intends that available room tax revenue funds controlled by the Room Tax Commission be the first source for the OCF Grant each year. The following describes the roles of the various bodies:

(a) Subject to the terms and conditions hereof and the terms of the Structural Agreement, the City of Madison will continue to appropriate funds for a Grant to OCF in its annual budget process, and will continue to be the party entering into the Annual Performance Agreement with OCF. The Annual Performance Agreement is approved by the Common Council.

(b) The City intends that the first source of funds to be appropriated for the OCF Grant come from available room tax funds controlled by the Room Tax Commission of the City of Madison. Since the City does not control this designation by the Room Tax Commission, that portion of the Grant will be determined by the Room Tax Commission. The balance of the City's Grant shall be subject to appropriation by the Common Council and may be sourced from any other available City funds. Regardless of the source of funds, the ultimate responsibility for the City Grant remains with the Common Council in its annual budget process under the terms and conditions of this Agreement and the Structural Agreement.

(c) OCF will continue to report to the Madison Arts Commission (MAC) as its primary contact at the City. All written reports, including the annual audit, should be shared with the Common Council, the Mayor's office, the Finance Department and the Room Tax Commission. Per the Structural Agreement, OCF's Board of Directors has one (1) mayoral designee, and two (2) additional mayoral appointees (confirmed by the Common Council), one of which City appointees may be designated by the City to serve on the Executive Committee of the OCF Board. In addition, at least two (2) members of the CAC consists of mayoral appointees

(confirmed by the Common Council). Therefore, City input and oversight is imbedded within OCF's governance structure.

10. Meetings and Records. As a private corporation, OCF is not subject to Wisconsin Open Meetings Law. The terms of the Structural Agreement and this Agreement shall not subject OCF to the Wisconsin Open Meetings Law.

ARTICLE II
INSURANCE AND INDEMNIFICATION

1. Indemnification. OCF shall be liable to and hereby agrees to indemnify, defend and hold harmless the City, its officers, officials, agents and employees against all loss or expense (including liability costs and reasonable attorney's fees) by reason of any and all claims, demands, liabilities and causes of action of whatsoever kind or nature related to Overture Center, its financing, operation, administration, repair or maintenance occasioned in whole or in part by any act or omission of OCF and/or its tenants, agents, contractors, subcontractors, invitees or employees, which may now or hereafter be made against them, whether caused by or contributed to by the City or its agents or employees.

2. Insurance. On or before January 1, 2024, OCF shall insure against the following risks to the extent stated below. OCF shall not allow any contractor or subcontractor to commence work funded by this Agreement until the insurance required below has been obtained and corresponding certificates of insurance have been submitted to and approved by the City's Risk Manager.

Commercial General Liability

OCF shall procure and maintain during the life of this Agreement, Commercial General Liability insurance including, but not limited to bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than $1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. OCF's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds. OCF shall require all its contractors funded by this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the City of Madison, its officers, officials, agents and employees as additional insureds.

Worker's Compensation

OCF shall procure and maintain during the life of this Agreement statutory Workers' Compensation insurance as required by the State of Wisconsin. OCF shall also carry Employers Liability limits of at least $100,000 Each Accident, $100,000 Disease – Each Employee, and $500,000 Disease – Policy Limit. Contractor shall require all contractors and subcontractors funded by this Agreement (if any) to procure and maintain such insurance, covering each contractor and subcontractor.

Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.

Proof of Insurance, Approval. OCF shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to the effective date of this Agreement. OCF shall provide the certificate(s) to the City's representative upon execution of the Agreement, or sooner, for approval by the City Risk Manager. OCF shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.

OCF shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.

3. Governmental Immunity and Limits of Liability. The provisions of this Article II shall not be deemed to waive or limit in any waive the City's governmental immunity or limits of liability.

ARTICLE III
DEFAULT AND REMEDIES

1. Events of Default. Any one or more of the following is an Event of Default hereunder:

(a) Failure by the City to pay any portion of the Grant, and the nonpayment continues for thirty (30) days after the City receives written notice of such nonpayment;

(b) Nonperformance or breach by any party of any covenant, term or condition in this Agreement and any addendum or amendment hereto and such nonperformance or breach continues for a period of thirty(30) days after the defaulting party receives written notice of such nonperformance or breach;

(c) The sale, lease for a term of more than five (5) years, or other transfer of any kind or nature of Overture Center, or any part thereof, without the prior written approval of the City;

(d) OCF becomes insolvent or the subject of state insolvency proceedings, fails generally to pay its debts as they become due or makes an assignment for the benefit of creditors; or a receiver, trustee, custodian or other similar official is appointed for, or takes possession of any substantial part of the property of OCF; or

(e) The Structural Agreement between the City and OCF is terminated for any reason.

2. Remedies. Upon the occurrence of an Event of Default, the nondefaulting party may, at its option and in addition to all other rights and remedies which it may have at law or in equity, including the specific performance hereof, have the cumulative right to immediately terminate this Agreement and all rights of the defaulting party hereunder. No remedy conferred upon or reserved by either party is intended to be exclusive of any other available remedy or remedies, but shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute.

ARTICLE IV
CITY ORDINANCES

1. Nondiscrimination. In the performance of its obligations under this Agreement, OCF agrees not to discriminate against any employee or applicant because of race, religion, marital status, age, color, sex, handicap, national origin or ancestry, income level or source of income, arrest record or conviction record, less than honorable discharge, physical appearance, sexual orientation, gender identity, political beliefs, or student status. OCF further agrees not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin.

2. Workforce Utilization. OCF agrees that, within thirty (30) days after the effective date of this Agreement, OCF will provide to the City of Madison Affirmative Action Division certain workforce utilization statistics, using a form to be furnished by the City.

If the Agreement is still in effect, or if the City enters into a new agreement with OCF within one year after the date on which the form was required to be provided, OCF will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the City Affirmative Action Division no later than one year after the date on which the first form was required to be provided.

OCF further agrees that, during the term of this Agreement, for at least twelve (12) months after the effective date of the Agreement, it will notify the City of Madison Affirmative Action Division of each of its job openings at facilities in Dane County for which applicants not already employees of OCF are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. OCF agrees to interview and consider candidates referred by the Affirmative Action Division if the candidate meets the minimum qualification standards established by OCF, and if the referral is timely. A referral is timely if it is received by OCF on or before the date stated in the notice.

3. Affirmative Action. OCF shall comply with the Affirmative Action Articles of Agreement attached hereto as **Exhibit B**.

4. Living Wage. If at any time during the term of this Agreement OCF either: (a) loses its non-profit status or converts to a for-profit entity; or (b) passes any of the Grant in an amount exceeding $100,000 through to a for-profit entity, OCF shall ensure that all OCF employees and any employees employed by a contractor of OCF who work at least twenty hours a week at Overture Center are paid a living wage as defined in Section 4.20, Madison General Ordinances. The living wage rate for 2024 is $15.87 per hour.

5. Equal Benefits. Subject to the provisions of any collective bargaining agreement, OCF shall comply with the provisions of **Exhibit C** attached hereto and shall ensure that its employees are provided equal benefits in accordance with the applicable provisions of Section 39.07, Madison General Ordinances.

6. Accessibility. OCF shall comply with the provisions of **Exhibit A** attached hereto and shall ensure that Overture Center will be accessible to persons with physical disabilities, and that Overture Center is in compliance with Madison General Ordinance Section 39.05 and the American with Disabilities Act, where applicable.

ARTICLE V
MISCELLANEOUS PROVISIONS

1. Early Termination. This Agreement shall automatically terminate upon the failure of the City to provide the Grant or upon the termination of the Structural Agreement.

2. No Waiver; Approvals. The failure by one party to require performance of any provision of this Agreement will not affect that party's right to require performance of any provision of this Agreement at any time thereafter, nor shall a waiver of any breach or default of this Agreement constitute a waiver of any subsequent breach or default or a waiver of the provision itself.

3. Governing Law. This Agreement is being delivered and accepted within the State of Wisconsin, and shall be deemed to be a contract governed by the laws of the State of Wisconsin and shall be interpreted, construed, and enforced in accordance with the laws of the State of Wisconsin without regard to the principles of conflicts of laws.

4. Jurisdiction. The parties hereby consent to the exclusive jurisdiction of any state or federal court situated in Dane County, Wisconsin, and waive any objection based on *forum non conveniens*, with regard to any actions, claims, disputes or proceedings relating to this agreement, the collateral, any other document, or any transactions arising therefrom, or enforcement and/or interpretation of any of the foregoing.

5. Waiver of Jury Trial. The parties hereby jointly and severally waive any and all right to trial by jury in any action or proceeding relating to the agreement and related documents, the obligations thereunder or any transaction arising therefrom or connected thereto. The parties each represent to the other that this waiver is knowingly, willingly and voluntarily given.

6. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7. Entire Agreement; Amendments. This Agreement and the Exhibits attached hereto and the Structural Agreement contain the entire understanding of the parties with respect to the subject matter hereof, and supersede all other understandings, oral or written, with respect to the subject matter hereof. No amendment, modification, alteration, or waiver of the terms of this Agreement or consent required under the terms of this Agreement shall be effective unless made in a writing, which makes specific reference to this Agreement and which has been signed by the party against which enforcement thereof is sought. Any such amendment, modification, alteration, waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

8. Counterparts; Headings. This Agreement may be executed in any number of counterparts, including via facsimile and portable data format (.pdf), all of which shall, when taken together, be deemed to constitute one and the same instrument. A photographic, facsimile or portable data format (.pdf) copy of the signature(s) of the undersigned will be deemed to be equivalent to the original hereof and/or may be used as a duplicate original. The descriptive headings in this Agreement are inserted for convenience of reference only and shall not affect the construction of this Agreement. All

pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons may require.

9. Notices. All communications or notices required under this Agreement shall be deemed to have been given on the date when deposited in the United States mail, postage prepaid, and addressed as follows (unless and until any of such parties advises the other in writing of a change in such address): (a) if to the OCF, with the full name and address as shown in this Agreement below; and (b) if to the City, with the full name and address of the City as shown in this Agreement below, to the attention of the officer of the City executing the form of acceptance of this Agreement.

Overture Center Foundation, Inc.:
Attn: President and CEO
Overture Center Foundation, Inc.
c/o Overture Center for the Arts
201 State Street
Madison, WI 53703

With a copy to:
Attorney Laura S. Peck
Axley Brynelson, LLP
P.O. Box 1767
Madison, WI 53701-1767

City of Madison:
Finance Director
City of Madison
210 Martin Luther King Jr. Blvd., Room 406
Madison, WI 53703

With a copy to:
City Attorney
City of Madison
210 Martin Luther King Jr. Blvd., Room 401
Madison, WI 53703

Dated as of the first day above written.

CITY OF MADISON

By:_____
Satya Rhodes-Conway, Mayor

Attest:_____
Maribeth Witzel-Behl, Clerk

Approved:

_____
David P. Schmiedicke, Finance Director

Approved as to Form:

_____
Michael Haas, City Attorney

OVERTURE CENTER FOUNDATION, INC.

By:_____
Chris Vogel, Chief Financial Officer & Chief Business Officer

Execution of this Annual Performance Contract by the Mayor and Clerk was authorized by File No. _____ , Enactment Number RES-23-_____ , adopted on _____, 2023.

EXHIBIT A
Nondiscrimination Based on Disability

NONDISCRIMINATION BASED ON DISABILITY.

OCF hereby makes the following assurances to the City:

OCF assures and certifies that it will comply with section 39.05 of the Madison General Ordinances, "Nondiscrimination Based on Disability in City Facilities and City-Assisted Programs and Activities," and agrees to ensure that any subcontractor who performs any part of this Agreement complies with Sec. 39.05, where applicable. This includes but is not limited to assuring compliance by OCF and any subcontractor with section 39.05(4) of the Madison General Ordinances, "Discriminatory Actions Prohibited."

OCF may not, in providing any aid, benefit or service, directly or through contractual, licensing or other arrangements, violate the prohibitions in Section 39.05(4), listed below:

Discriminatory Actions Prohibited: OCF assures that, in providing any aid, benefit, or service, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

1. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;
2. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;
3. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
4. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
5. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
6. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
7. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

OCF shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison General Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA Sec 2000e-10).

EXHIBIT B
Affirmative Action Articles of Agreement

For the purposes of this Exhibit B, the word "Contractor" shall mean OCF, its contractors and subcontractors.

ARTICLE I

Contractor shall take affirmative action in accordance with the provisions of this Agreement to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of the contractor. Contractor agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

ARTICLE II

Contractor shall in all solicitations or advertisements for employees placed by or on behalf of the Contractor state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex, sexual orientation, gender identity or national origin.

ARTICLE III

Contractor shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of the Contractor's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV
(This Article applies to non-public works contracts.)

Contractor agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance requirements. Contractor warrants and certifies that, of the following two paragraphs, paragraph A or B is true (check one):

A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No, 4, 41 CFR part 60-2, as established by 43 CFR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council _____.
B. Within thirty (30) days after the effective date of this Agreement, it will complete an affirmative action plan that meets the format requirements of

Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 CFR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council _____.

ARTICLE V

(This Article applies only to public works contracts.)

ARTICLE VI

Contractor will maintain records as required by Section 39.05(9)(f) of the Madison General Ordinances and will provide the City's Affirmative Action Officer with access to such records and to persons who have relevant and necessary information, as provided in Section 39.05(9)(f). The City shall keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of Contractor's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this contract or Sections 39.02 and 39.05 of the Madison General Ordinances, it is agreed that the Issuer at its option may do any or all of the following:

A. Cancel, terminate or suspend the Agreement in whole or in part.

B. Declare the Contractor ineligible for further Issuer contracts until the Affirmative Action requirements are met.

C. Recover on behalf of the Issuer from the prime contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars ($5,000), whichever is less. Under public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

ARTICLE IX

Contractor shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this Agreement. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

Exhibit C
Equal Benefits Requirement

Subject to the terms and provisions of any existing collective bargaining agreement, for the duration of this Agreement, OCF agrees to offer and provide benefits to employees with domestic partners that are equal to the benefits offered and provided to married employees with spouses, and to comply with all provisions of Sec.39.07, Madison General Ordinances as applicable. If a benefit would be available to the spouse of a married employee, or to the employee based on his or her status as a spouse, the benefit shall also be made available to a domestic partner of an employee, or to the employee based on his or her status as a domestic partner. "Benefits" include any plan, program or policy provided or offered to employees as part of the employer's total compensation package, including but not limited to, bereavement leave, family medical leave, sick leave, health insurance or other health benefits, dental insurance or other dental benefits, disability insurance, life insurance, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits.

Cash Equivalent. If after making a reasonable effort to provide an equal benefit for a domestic partner of an employee, OCF is unable to provide the benefit, OCF shall provide the employee with the cash equivalent of the benefit.

Proof of Domestic Partner Status. OCF may require an employee to provide proof of domestic partnership status as a prerequisite to providing the equal benefits. Any such requirement of proof shall comply with Sec. 39.07(4), MGO.

Notice Posting, Compliance. OCF shall post a notice informing all employees of the equal benefits requirements of this Agreement and the complaint procedure. OCF agrees to produce records upon request of the City, as required by Sec. 39.07, MGO.

Subcontractors. This provision also applies to employees of contractors hired by OCF who expend at least twenty (20) hours a week at Overture Center for the Arts. This provision is not applicable to employees of touring companies or organizations, individual artists (local or otherwise) and resident performing companies performing in Overture Center.