

**STRUCTURAL AGREEMENT BY AND BETWEEN THE CITY OF MADISON AND 201 STATE
FOUNDATION, INC.**

This Structural Agreement (this "Agreement") is entered into as of this 31st day of December, 2010, by and between the CITY OF MADISON, a municipal corporation (the "City") and 201 State Foundation, Inc., a Wisconsin non-profit corporation ("201 State").

WITNESSETH:

WHEREAS, the Overture Development Corporation ("ODC") and Madison Cultural Arts District ("MCAD") are parties to a Project Lease that is recorded in the Office of the Dane County Register of Deeds as Document No. 3340283, recorded on June 28, 2001, whereby MCAD is the tenant and is the operator of the Overture Center for the Arts (the "Overture Center") as amended by Amendment to Project Lease, dated December 1, 2005, and as amended and restated by Amended And Restated Project Lease, dated January 5, 2007; and

WHEREAS, MCAD and the City are parties to an Operation and Cooperation Agreement as of June 28, 2001, as amended by the First Amendment as of December 1, 2005, and the Second Amendment of even date with this Agreement; and

WHEREAS, the City and ODC entered into an Option Agreement, dated as of June 28, 2001, which was recorded in the Office of the Dane County Register of Deeds on July 12, 2001, as Document Number 3346759, and as amended by First Amendment To Option Agreement, dated December 1, 2005, and recorded in the Office of the Dane County Register of Deeds on July 12, 2001, as Document Number 4143597 (the "Option"); and

WHEREAS, the Option will be terminated under the terms and provisions of a separate document; and

WHEREAS, an agreement was entered into between and among ODC, MCAD, 201 State and lenders on June 22, 2010, related to financial obligations associated with the Overture Center; and

WHEREAS, 201 State or its successors or assigns may become the owner and will become the operator of the Overture Center facility; and

WHEREAS, a plat and declaration of condominium project are likely to be prepared to allow MMoCA to own its museum facility as a unit, with ODC or 201 State owning the remaining unit (referred to hereafter as the "Overture Unit"); and

WHEREAS, the interest of the long-term success of the Overture Center is shared by ODC, MCAD, 201 State, the City and residents of Madison; and

WHEREAS, the City adopted Resolution RES-10-00996, Legislative File No. 20248 on December 14, 2010, authorizing the City and 201 State or its successors or assigns to enter into two contracts: the first being a Long-Term Structural Contract further describing the terms and conditions of City support for Overture; and, the second being an Annual Performance Contract containing terms that may change from year to year;

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 LONG-TERM STRUCTURAL AGREEMENT

The Structural Agreement between the City and 201 State is subject to the following terms and conditions:

1. Term of Agreement: This Agreement shall commence and become effective as of the 1st day of January, 2011 (the "Commencement Date"), and shall continue in effect for an initial ten (10) year term ending on the 31st day of December, 2020 (the "Initial Term"). This Agreement shall then automatically renew for successive five- (5) year periods (the "Renewal Term(s)") (the Initial Term and all Renewal Terms are referred to herein as the "Term"), unless otherwise terminated as provided in this Agreement.

2. City Grant: The City commits to an annual grant to 201 State in an amount of Two Million and no/100's Dollars (\$2,000,000.00), subject to annual appropriation by the City and subject to the Parties entering into an Annual Performance Contract as set forth in Article II of this Agreement (the "Grant"). The Grant shall be adjusted annually by the change in the Consumer Price Index methodology in the State's Expenditure Restraint Program ("ERP"). The initial City Grant shall be made in calendar year 2012.

3. Transition Date: The transition date for the transfer of operations to 201 State will be January 1, 2012. The period from the Commencement Date to January 1, 2012 is referred to herein as the "Transition Phase."

4. Restrictions: The City agrees to and acknowledges the naming rights limitations and recorded restrictions applicable to the Overture Center, and will not challenge those rights in the future.

5. Right of First Refusal: The City will be granted a right of first refusal to purchase the Overture Unit that will be used and occupied by 201 State under the terms and provisions of a recorded Right of First Refusal. Transfers of the property between ODC, MCAD or 201 State shall not trigger the City's right of first refusal.

6. Governance During The Term Of This Agreement; Board of Directors: During the Term, the Board of Directors of 201 State (the "Board") will consist of not less than 20 nor more than 25 directors, including directors appointed by the City as provided herein, provided, however, that the adoption of amended Bylaws to increase the size of the Board and the appointment of directors by the City may occur during the Transition Phase and may not be complete prior to the Commencement Date hereof. The City may appoint a number of directors proportionate to the City's net financial contribution to the total annual expenditures made for the operation of the Overture Center, provided, however, that the number of directors appointed by the City shall be at least three (3). One of the directors appointed by the City will be the Mayor or the Mayor's designee. The remaining directors appointed by the City will be appointed by the Mayor and confirmed by the Common Council. The City may designate one of the directors appointed by the City to serve on the Executive Committee of the Board. A vacancy among the directors appointed by the City shall not be counted for the purpose of determining a quorum of the Board or a quorum of the Executive Committee.

7. Bylaws and Meetings: As a private corporation, 201 State is not subject to the Wisconsin Open Meetings Law. Nonetheless, 201 State agrees to adopt a meeting policy in substantially the following form:

Meetings of the 201 State Board of Directors will be open to attendance by the public unless otherwise determined by 201 State. The Board of Directors may conduct all or any portion of a meeting at which the public is not permitted to attend in the event the subject matter of that meeting or portion of the meeting includes deliberation concerning any judicial or quasi-judicial trial, hearing or proceeding; relates to personnel matters, including but not limited to dismissal, demotion, discipline, compensation, performance evaluation or employment; negotiations or collective bargaining deliberations; deliberating or negotiating on the purchase of any property whenever competitive or bargaining reasons so require; consideration of unemployment or worker's compensation matters; consideration of any matters in which private personal information, such as financial, medical, social or personal histories, or discipline or other privacy rights may be at issue; conferring with counsel who is rendering advice; considering any matters related to business activities, fund-raising, donors and donor relations, contracts or acts which, if discussed publically, could adversely affect the business of 201 State or negotiations or strategy. Nothing herein is intended to subject 201 State to any open meetings law.

201 State also shall post on its website the time and location of its Board and Committee meetings.

8. Community Advisory Board: 201 State will establish a Community Advisory Board (the "CAB") broadly representing the community in terms of culture, ethnicity, geography, age and socio-economic level. The CAB will meet at least quarterly to advise and make recommendations to 201 State regarding free programming and educational outreach efforts, and such other matters related to the operation of Overture as the CAB determines. Recommendations from the CAB will be considered by the 201 State Board at a public meeting.

The CAB membership will include forty-five percent (45%) public membership appointed by the Mayor of Madison and confirmed by the Common Council provided that any vacancies on the CAB shall not be counted for the purpose of determining any quorum requirements that may apply to the CAB.

9. Resident Company Advisory Board: 201 will maintain its Resident Company Advisory Board (the "RCAB"). The RCAB may consider and make recommendations to 201 State on all matters that impact the resident companies. Recommendations from the RCAB will be considered by the 201 State Board at a public meeting.

10. Promoter Contracts: 201 State agrees that it will not enter into any exclusive agreement with any locally-based promoter of events that restricts the promoter's use of other Madison venues in order to program activity at the Overture Center, nor shall 201 State enter into any agreement with a locally-based promoter that gives the promoter the exclusive right to use one of the venues at Overture.

11. Facility Status: 201 State acknowledges the accuracy of the report on the physical status of the Overture facility prepared by Andrew Statz, dated September 16, 2010, and the Mortenson Construction Report of November 5, 2010. 201 State will develop an initial capital maintenance plan using those reports as a baseline.

12. Employee Matters: 201 State agrees to the following with respect to the treatment of City employees currently working at Overture:

- A. Staffing and Related Contracts: Except as provided herein, 201 State shall recruit, train and employ its own staff. The existing City Collective Bargaining Agreements ("CBA") for any employees hired by 201 State shall not be assumed or transferred to 201 State. 201 State will negotiate the terms and provisions for any CBA directly with the related union or unions.
- B. There shall be a 12-month Transition Phase, from January 1, 2011 to January 1, 2012, unless completed earlier by mutual agreement, during which the current operations by MCAD with City employees continues unchanged, as does the City's subsidy, with current agreements remaining in effect. The Transition Phase may be modified by mutual agreement of the parties, and with the written consent of MCAD.
- C. Effective January 1, 2012, 201 State is the new operator. The existing Operation and Cooperation Agreement between the City and MCAD will terminate as of that date. As of that date, no City employees will work for 201 State or at Overture.
- D. 201 State reserves the right to establish initial terms and conditions of employment, provided, however, and without otherwise limiting this right, any continuing City

AFSCME and/or non-represented employee that is offered and that accepts employment with 201 State will be hired at not less than that employee's wage rate from the City in effect on January 1, 2012. City employees who retire from the City and then accept employment from 201 State shall not be considered to be a "continuing City AFSCME and/or non-represented employee" for purposes of this Agreement.

- E. Employment Offers: 201 will make an offer of employment, to be effective January 1, 2012, to all permanent (full and part-time) employees (represented and non-represented), who are at or below the pay grade of 18-10 of the City working at the Overture Center as of September 1, 2011. Such offers of employment are subject to each such employee maintaining his or her employment status with the City until the date of transition. 201 State will make every reasonable effort to act similarly with respect to employees who are not permanent (hourly) employees, subject to staffing needs.
- F. During the Transition Phase, 201 State 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) (the "Employment Terms"), for positions with 201 State at Overture. 201 State shall complete these Employment Terms and communicate them to City employees working at Overture no later than March 1, 2011. No later than July 1, 2011, 201 State shall make job offers to permanent City employees at Overture for employment with 201 State. City employees shall have until September 1, 2011 to accept such offer of employment by 201 State. In the event any such offer is not accepted by such date, 201 State shall be free to hire a different person for the position offered to the City employee who did not accept the offer. Those City employees who are offered jobs with 201 State will move to those jobs effective January 1, 2012, subject to the terms and conditions of such offer. The benefit package to be offered by 201 State to continuing City employees shall include substantially similar categories of benefits now applicable to the City employees.
- G. Any represented City employee offered a position with 201 State 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. Subject to negotiations between the City and the represented employees, represented employees shall have until September 1, 2011, 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 State shall have until September 1, 2011, to accept such position.

- I. Consistent with applicable law, 201 State agrees to recognize IATSE Local 251 (or such other union as the employees may select) as the bargaining unit for all Stagehands, and may engage in bargaining at any time the law may allow. 201 State will seek to complete bargaining by April 1, 2011.
- J. Consistent with applicable law, 201 State agrees to recognize AFSCME (or such other union as the employees may select) as the bargaining unit for all positions currently represented by AFSCME Local 60, and may engage in bargaining at any time the law may allow. 201 State will seek to complete bargaining by April 1, 2011.

13. Cooperation Regarding Resolution Of Other Issues: During the Transition Phase, the City and 201 State 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. The City and 201 State agree to share these liabilities as follows:

- A. 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 State agrees to become liable for fifty percent (50%) of this liability (approximately \$192,500) upon entry of this contract. 201 State's obligation to pay this liability will be spread over a ten- (10) year period in equal annual installments, with the first installment due no later than December 30, 2012.
- B. Accrued Vacation and Comp Time: These liabilities are approximately \$150,000. City employees are entitled to a payout of these amounts upon 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, for continuing City employees hired by 201 State, 201 State will be responsible for fifty percent (50%) of the payout, up to a maximum of \$57,500. This liability, once finally liquidated, shall be payable over the same ten- (10) year period as the unfunded pension liability payment referenced above.

14. No Change to Employee Rights: Nothing in this Agreement is intended to nor does it change any employee rights under existing agreements with the City or under City ordinances.

15. Personal Property: All personal property necessary for or associated with the operation of Overture, including all personal property of MCAD held at January 1, 2012, will be transferred to 201 State. This includes existing operating systems, IT, temporary fixtures, furniture and equipment. If 201 State determines that it will dispose of personal property of material monetary value without replacement, 201 State shall inform the City of such disposition.

16. Accounting: The parties agree that, upon 201 State undertaking operation of Overture on January 1, 2012, pursuant to this Agreement, a final accounting and settlement of liabilities between the City and MCAD shall be made. At that time, 201 State and the City agree to negotiate whether and to what extent 201 State will be responsible to the City for such liabilities, upon terms to be agreed upon.

17. Financial Reporting: An annual financial audit, performed by an independent CPA selected by 201 State, and conducted in accordance with GAAP, will be provided to the City as such final audit report is approved by the 201 State Board, but no later than 90 days after the end of 201 State's fiscal year. 201 State agrees to make available for inspection by the City, upon request, all records and work papers supporting the audit.

18. City Ordinance Requirements: During the Term, 201 State shall be subject to and agrees to abide by the City's non-discrimination, City's affirmative action, prevailing wage, living wage and sweatshop-free requirements, as they may be applicable, from time to time, to 201 State as a recipient of a City grant. The current provisions are as follows:

Nondiscrimination. In the performance of its obligations under this Agreement, 201 State 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, political beliefs, or student status. 201 State 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 or national origin.

19. Insurance: 201 State will provide the City with evidence of insurance pursuant to the usual terms established by the City's risk manager for grant recipients.

20. Indemnification: Each party agrees to indemnify, defend, and hold harmless the other party and its respective affiliates, officers, directors, employees and agents from and against all claims, damages or losses incurred or suffered by an Indemnified Party arising from or related to: any inaccuracy or breach of any representation or warranty made by the indemnifying party in this Agreement, any Schedule to this Agreement or any document contemplated by this Agreement; and any breach by an indemnifying party of any of its covenants, obligations, and agreements contained in this Agreement, and any wrongful or negligent acts of its own officers, directors, employees or agents. Upon completion of the Transition Phase, the City's standard provisions on indemnification for grant recipients will apply.

21. City Access to Records. Upon reasonable notice, the City may inspect any records of 201 State related to the operation of Overture, and may, at the City's expense, conduct an operational or performance audit of 201 State. The access to records shall not subject 201 State to the Wisconsin Open Records Law.

22. Assignment. The Structural Contract may not be assigned by either party without the written consent of the other party, provided that the City is providing financial support to 201 State. Such consent is not to be unreasonably withheld.

23. Default and Remedies: In the event either party defaults in its obligations under this Agreement, the other party may give a notice of default. The defaulting party shall have the right to remedy the default. The failure of the City to make the Grant on or before the first business day of January of each year shall constitute an automatic event of default and no notice of such default shall be required ("Grant Default"). A Grant Default may only be cured by the payment of the Grant amount as determined under Paragraph 2, above. Upon the failure to cure a Grant Default within fifteen (15) days, 201 State shall be permitted but not required to immediately terminate this Agreement. Except as provided herein and in the Annual Performance Contract, within fifteen (15) days of the receipt of a notice of default, other than a Grant Default, the parties shall enter into discussions regarding a method of curing the default. If no method is agreed upon within thirty (30) days of the receipt of the notice of default, the defaulting party shall have an additional thirty (30) days to cure the default.

In addition, the parties shall agree upon details of default provisions to be included in the Annual Performance Contract set forth in Article II of this Agreement. If no other time is established for remedy of a default under Article II, the default must be remedied within 60 days. Failure to remedy a default within the sixty (60) day period described above shall provide the non-defaulting party with the right to pursue all legal remedies, including termination of this Agreement without further notice.

ARTICLE II ANNUAL PERFORMANCE CONTRACT

1. Annual Performance Contract: 201 State and the City will annually enter into a contract (the "Annual Performance Contract") that sets forth the City's financial support for 201 State, and that establishes measurable performance standards for 201 State, as the City does with other grant recipients from the City. The first grant will be for calendar year 2012. 201 State will apply for a grant on or before August 1, 2011 and on or before August 1 for each subsequent calendar year. The Annual Performance Contract will be attached to the grant request. The City and 201 State shall meet to negotiate and finalize the terms of the Annual Performance Contract on or before March 1, 2011, to establish the terms of the initial Annual Performance Contract.

2. Annual Performance Contract Terms: The Annual Performance Contract may incorporate some or all of the annual plan prepared by 201 State, and shall include other terms mutually agreed between the parties, such as the following:

- A. 201 State's commitment to develop and revise a strategic plan;
- B. 201's commitment to educational and community programming, including free or reduced cost programs and outreach, with measurable objectives for meeting its goals;
- C. Goals for fund-raising from non-ticket revenues;
- D. A commitment to create an endowment or capital reserve fund and estimated times and amounts to be raised for the fund;
- E. Standards for financial viability;
- F. Creation of an institutional marketing plan and annual measurable objectives toward meeting that plan.
- G. Provisions related to default, notice of default and cure.

3. Annual Review: On at least an annual basis, City staff and 201 State staff will review progress toward the goals, objectives and standards set out in the Annual Performance Contract, and may modify the Annual Performance Contract on an annual basis as needed. The Annual Performance Contract shall be presented to the Common Council for approval prior to consideration of the City's Operating Budget.

ARTICLE III MISCELLANEOUS PROVISIONS

1. Early Termination. This Agreement shall automatically terminate upon the failure of the parties to enter into an Annual Performance Contract as provided in Article II or upon the failure of the City to provide the Grant.

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, the Exhibits attached hereto, and the Related Documents 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 several counterparts, each of which shall be deemed to be an original, but such counterparts shall together constitute but one and the same agreement. A duplicate copy of this Agreement, signed by all parties shall be valid and binding as if one original of the Agreement was signed by all parties. A photographic, facsimile (fax), or carbon 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 follow (unless and until any of such parties advises the other in writing of a change in such address): (a) if to the 201, 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.

201 State Foundation, Inc.:

201 State Foundation, Inc.
c/o Overture Center for the Arts
201 State Street
Madison, WI 53703

With a copy to:

James D. Sweet
Murphy Desmond S.C. 33 E. Main Street, Ste 500
Madison, WI 53701-2038

City of Madison:

Comptroller
City of Madison
210 Martin Luther King Jr. Blvd., Room 403
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.

Signatures on next pages continued.

[Signature page to
Structural Agreement Between
201 State Foundation, Inc.
and the City of Madison]

CITY OF MADISON

By: 
~~David J. Cieslewicz, Mayor.~~
Mark Clear, Acting

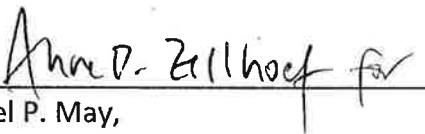
Attest: 
Maribeth Witzel-Behl, Clerk

Approved:



Dean Brassler,
City Comptroller

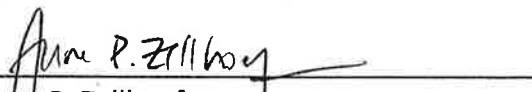
Approved as to Form:



Michael P. May,
City Attorney


AUTHENTICATION

Signatures of Mark Clear, Common Council President, and Maribeth Witzel-Behl, Clerk,
authenticated this 28th day of December, 2010.


Anne P. Zellhoefer
Member, State Bar of Wisconsin

Execution of this Structural Agreement by the Mayor and Clerk was authorized by Enactment
Number RES-10-00996 adopted on December 14, 2010.


201 STATE FOUNDATION, INC.

By: 
Carol Toussaint, Secretary

CONSENT

Madison Cultural Arts District hereby approves and consents to the terms and provisions of the foregoing Structural Agreement By And Between The City Of Madison And 201 State Foundation, Inc., and agrees to be bound thereby.

MADISON CULTURAL ARTS DISTRICT

By: 
Linda Baldwin-O'Hern, Chair