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Title: Authorizing the Mayor and City Clerk to execute an Annual Performance Contract with Overture Center Foundation, Inc. for the 2013 operations of the Overture Center, and providing for a grant from the City.

Sponsors: Mark Clear, Michael E. Verveer

Indexes:

Code sections:

Attachments: 1. Draft Annual Performance Contract

Date	Ver.	Action By	Action	Result
12/11/2012	1	COMMON COUNCIL	Adopt	Pass
12/3/2012	1	BOARD OF ESTIMATES (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
11/27/2012	1	COMMON COUNCIL	Refer	Pass
11/19/2012	1	Attorney's Office	Referred for Introduction	

Fiscal Note

The 2013 adopted budget authorizes \$1.75 million in payments to the Overture Center Foundation consistent with the proposed annual performance contract. This proposed contract also moves the date of the first of two payments from March 1st to January 2nd. This should have minimal impact on city cash flows and investment earnings.

Title

Authorizing the Mayor and City Clerk to execute an Annual Performance Contract with Overture Center Foundation, Inc. for the 2013 operations of the Overture Center, and providing for a grant from the City.

Body

Preamble

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 grants. 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. 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. The City and OCF entered into the first annual performance contract for calendar year 2012. The 2012 Contract required OCF to submit its 2013 grant request to the City on or before August 1, 2012. OCF submitted a request for \$2,000,000. Representatives of the City and OCF have met to negotiate the terms of the 2013 Annual Performance Contract. A copy of the draft 2013 Annual Performance Contract is attached to this Legistar file.

NOW THEREFORE, BE IT 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 2013. 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 shall provide a Grant to OCF in the amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000). The Grant will be disbursed to OCF in two equal payments of Eight Hundred Seventy Five Thousand Dollars (\$875,000) each on January 2, 2013 and September 1, 2013. 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, 2013; a fundraising plan on or before October 15, 2013; and an institutional marketing plan on or before October 15, 2013.

4. Performance Terms. OCF shall prepare an annual report within 90 days of its fiscal year (July 1, 2012 to June 30, 2013), and invite the public to a meeting on the report, encouraging community input. The annual 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. The data identified in this annual report shall be used as a baseline for the City to establish goals for OCF and to measure its performance in subsequent years. OCF shall prepare performance projections for 2013-14 based on the most recent ODC annual report.

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 create a capital reserve fund of \$5 million. From July 1, 2012 through June 30, 2014, OCF will use its best efforts to accumulate a capital reserve fund in the amount of \$1 million, with the balance of the capital reserve fund to be accumulated on or before June 30, 2017.

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.

BE IT FURTHER RESOLVED that the Common Council authorizes a Grant in the amount of \$1,750,000 to be disbursed to Overture Center Foundation, Inc. pursuant to the terms of the 2013 Annual Performance Contract.