



## Legislation Text

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**File #:** 36131, **Version:** 2

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### **Fiscal Note**

The 2015 adopted budget authorizes \$1.75 million in payments to the Overture Center Foundation consistent with the proposed annual performance contract. See attached comparison of Overture Center Foundation, Inc., 2013-14 financial statement with Annual Performance Contract provisions for more background information.

### **Title**

**SUBSTITUTE.** Authorizing the Mayor and City Clerk to execute an Annual Performance Contract with Overture Center Foundation, Inc. for the 2015 operations of the Overture Center, and providing for a grant from the City.

### **Body**

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 2014 Contract required OCF to submit its 2015 grant request to the City on or before August 1, 2014. OCF submitted a request for \$1,750,000. Representatives of the City and OCF have met to negotiate the terms of the 2015 Annual Performance Contract.

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 2015. 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 and Fifty Thousand Dollars (\$1,750,000). The Grant will be disbursed to OCF in two equal payments of Eight Hundred and Seventy-Five Thousand Dollars (\$875,000) each on January 2, 2015 and September 1, 2015. 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, 2015; a fundraising plan on or before October 15, 2015; and an institutional marketing plan on or before October 15, 2015.
4. **Performance Terms.** OCF shall prepare an annual report within 90 days of its fiscal year ( July 1, 2014 to June 30, 2015), 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 2015-16 based on the most recent OCF 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 on or before June 30, 2017. From July 1, 2012 through June 30, 2014, OCF designated the aggregate amount of \$700,000 in a Board Designated Reserve that could be used for this purpose. In addition, since January 1, 2012, OCF has expended \$1,182,396.00 for capital improvements for the Overture Center.

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 arts, educational and community programming purposes, and to report on measuring performance standards.

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 this Resolution and the 2015 Annual Performance Contract.