



## Legislation Details (With Text)

**File #:** 22440      **Version:** 1      **Name:** Overture\Annual Performance Contract Resolution-050911.docx

**Type:** Resolution      **Status:** Passed

**File created:** 5/9/2011      **In control:** COMMON COUNCIL ORGANIZATIONAL COMMITTEE (ended 4/2017)

**On agenda:** 7/19/2011      **Final action:** 7/19/2011

**Enactment date:** 7/28/2011      **Enactment #:** RES-11-00661

**Title:** Authorizing the Mayor and City Clerk to execute an Annual Performance Contract with Overture Center Foundation, Inc. for the 2012 operations of the Overture Center, and providing for a grant from the City

**Sponsors:** Shiva Bidar, Mark Clear, Michael E. Verveer, Chris Schmidt, Lauren Chare

### Indexes:

### Code sections:

**Attachments:** 1. Structural Agreement-051711.pdf, 2. Draft Annual Performance Contract 051711.pdf, 3. Letter from Overture Employees submitted to Common Council 7-19-11.pdf, 4. Registration Forms 7-19-2011.pdf

Date	Ver.	Action By	Action	Result
7/19/2011	1	COMMON COUNCIL	Adopt	Pass
7/5/2011	1	COMMON COUNCIL ORGANIZATIONAL COMMITTEE (ended 4/2017)	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
6/27/2011	1	MADISON ARTS COMMISSION	Return to Lead with the Recommendation for Approval	Pass
6/13/2011	1	BOARD OF ESTIMATES (ended 4/2017)	Return to Lead with the Recommendation for Approval	Pass
5/23/2011	1	BOARD OF ESTIMATES (ended 4/2017)	Refer	Pass
5/17/2011	1	COMMON COUNCIL ORGANIZATIONAL COMMITTEE (ended 4/2017)	Refer	
5/17/2011	1	COMMON COUNCIL ORGANIZATIONAL COMMITTEE (ended 4/2017)	Refer	
5/17/2011	1	COMMON COUNCIL	Referred	
5/9/2011	1	Attorney's Office	Referred for Introduction	

### Fiscal Note

Under the terms of this proposed agreement, and consistent with the resolution adopted in December of 2010, the City would provide an annual grant of \$2,000,000 to Overture Center Foundation, Inc. in support of the continuing operation and capital improvement of the Overture Center beginning in 2012. This grant would be subject to appropriation by the Common Council as part of the annual City operating budget process and, in subsequent years, contingent upon fulfillment of the performance standards set forth in this agreement.

### Title

Authorizing the Mayor and City Clerk to execute an Annual Performance Contract with Overture Center Foundation, Inc. for the 2012 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 201 State Foundation, Inc., ("201"). The Structural Agreement provides that the Overture Center will continue to be privately owned, but that effective January 1, 2012, 201 would operate and maintain the Overture Center using its own staff. The Structural Agreement sets forth various transactions to occur during the transition year of 2011, including treatment of City staff currently working in the facility, the governance structure of 201's Board, and the creation of several other boards to advise on the operations of the facility. An executed copy of the Structural Agreement is attached to this Legistar file.

The Structural Agreement anticipated that the City would provide a grant to 201 in the amount of Two Million Dollars, subject to annual appropriation and subject to the parties entering into an annual performance contract that would establish measurable performance standards for 201. Representatives of the City and Overture Center Foundation, Inc. ("OCF") have met to negotiate the terms of the annual performance contract. (In February of 2011, 201 changed its name to Overture Center Foundation, Inc.). A copy of the draft Annual Performance Contract is attached to this Legistar file.

NOW THEREFORE, BE IT THEREFORE 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 2012. Either party may terminate the Contract upon an event of default by the other party.
2. Grant. OCF will apply to the City for a subsidy in an amount not to exceed Two Million Dollars (the "Grant") on or before August 1, 2011. The Grant will be subject to appropriation by the Council, and if approved in the 2012 operating budget, will be disbursed to OCF in two equal payments of One Million Dollars each on March 1, 2012 and September 1, 2012. The Grant may 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 a strategic plan, a fundraising plan, and an institutional marketing plan on or before October 15, 2011.
4. Performance Terms. OCF shall prepare an annual report within 90 days of its first fiscal year (which will run from 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 2012 based on the most recent ODC annual report.
5. Financial Performance. Effective July 1, 2012, 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. 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 expectation of creating a total capital reserve fund of \$5 million on or before June 30, 2017.
6. City Ordinances. OCF shall abide by all applicable provisions of the City's ordinances concerning living wage, prevailing wage, affirmative action, workforce utilization, nondiscrimination and accessibility.
7. 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.