Legislation Details (With Text)

File #:	80825	**Version:**	1	**Name:**	Overture 2024 Performance Contract
Type:	Resolution			**Status:**	Passed
File created:	11/14/2023			**In control:**	Attorney's Office
On agenda:	12/5/2023			**Final action:**	12/5/2023
Enactment date:	12/13/2023			**Enactment #:**	RES-23-00779

Title: Authorizing the Mayor and City Clerk to execute an Annual Performance Contract for the 2024 operations of the Overture Center, and providing for a grant from the City (District 4).

Sponsors: Satya V. Rhodes-Conway, Michael E. Verveer

Indexes:

Code sections:

Attachments: 1. Annual Performance Contract 2024, 2. OCF Financial Statements 2023 memo (002), 3. FY2023 Overture Center for the Arts Annual Performance Contract Report, 4. Appendix A OV Report To Community FY23, 5. Appendix B Audited Financial Statements, 6. Appendix C Education and Engagement Budget Report, 7. Appendix D Res Company and Local Arts Subsidy Report, 8. Appendix E FY2023 Overture Artist Roster, 9. Appendix F FY2023 Overture Community Ticket Program Partners

Date	Ver.	Action By	Action	Result
12/5/2023	1	COMMON COUNCIL	Adopt	Pass
11/27/2023	1	FINANCE COMMITTEE	RECOMMEND TO COUNCIL TO ADOPT - REPORT OF OFFICER	Pass
11/21/2023	1	COMMON COUNCIL	Refer	Pass
11/14/2023	1	Attorney's Office	Referred for Introduction	

Fiscal Note

The proposed resolution authorizes the 2024 contract between the City of Madison and the Overture Center. The 2024 budget includes $2,180,000 as the City's subsidy to support Overture operations, an $85,000 increase from the $2,095,000 subsidy provided in 2023. The City's contribution is authorized by the Room Tax Commission and fully funded through the Room Tax Fund.

Title

Authorizing the Mayor and City Clerk to execute an Annual Performance Contract for the 2024 operations of the Overture Center, and providing for a grant from the City (District 4).

Body

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Authorizing the Mayor and City Clerk to execute an Annual Performance Contract for the 2024 operations of the Overture Center, and providing for a grant from the City (District 4).

Body

Whereas, 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 grant, and

Whereas, 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. with the term of the Structural

Agreement being ten years, ending on December 31, 2020 with automatic renewal for five-year terms unless the Agreement is terminated, and

Whereas, on December 6, 2022, the Common Council adopted Resolution No. RES-22-00833, which authorized the Mayor and City Clerk to execute a Restated Structural Agreement with OCF renewing the original term of the Agreement for a period of ten years ending on December 31, 2032 and thereafter retaining automatic renewal terms of five years unless the Agreement is terminated, and

Whereas, the original Structural Agreement and the Restated Structural Agreement anticipate that the City will 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, and the City and OCF have executed such contracts for each year since 2012, and

Whereas, the OCF grant is being funded through room tax revenues as designated by the Room Tax Commission, with the amount of the grant for 2024 being established as Two Million One Hundred Eighty Thousand Dollars ($2,180,000).

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 2024. 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, through room tax revenues as approved by the Room Tax Commission, shall provide a Grant to OCF in the amount of Two Million One Hundred Eighty Thousand Dollars ($2,180,000). The Grant will be disbursed to OCF in four equal payments of $545,000 on January 5, 2024, April 5, 2024, July 5, 2024, and October 4, 2024. The Grant shall be used by OCF solely to support the operations and capital expenditures of the Overture Center.

4. Performance Terms. OCF shall provide to the City an updated Strategic Plan within 90 days of such plan being updated. OCF shall also provide to the City an Annual Community Report on or before September 30, 2024, and will invite the public to a meeting on the Report, encouraging community input. OCF's commitment to arts, educational and community programming, including free or reduced cost programs and outreach, will be measured as set forth in the Annual Community Report. As further described in the Annual Performance Contract, the Annual Community Report shall include a listing of community partnerships; the total value of rent subsidies provided to local arts organization or artists for the use of the Overture Center; goals for total budgeted arts, educational and community programming in 2023-24 along with actual results; progress on financial goals; information describing OCF's efforts to promote diversity, equity and inclusion within its population of performers, community and promotional outlets and audiences; a list of Madison and Dane County-based artists and the amount spent; and a progress update on OCF's organizational goals as they relate to the Strategic Plan. The Annual Performance Contract may be presented to the Common Council for approval prior to consideration of the City's 2025 Operating Budget. A representative of OCF will appear at meetings of the Madison Arts Commission at least two times in 2024, including the meeting immediately following OCF's annual reporting to the City.

5. Financial Performance. OCF will shall maintain segregated accounting to keep track of funds 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 Amended Structural Agreement. OCF will operate the Overture Center in a financially sound manner. OCF shall provide an annual financial audit to the City no later than 90 days after the end of OCF's fiscal year. 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.

6. Capital Reserve. 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.

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. Future Contract Terms. 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 OCF's commitment to arts, educational and community programming.

BE IT FURTHER RESOLVED that the Common Council authorizes a Grant in the amount of $2,180,000 to be disbursed to Overture Center Foundation, Inc. pursuant to the terms of this Resolution and the 2024 Annual Performance Contract.

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