

COOPERATION AND COORDINATION AGREEMENT
Between Olbrich Botanical Society and the City of Madison

THIS AGREEMENT, entered into by and between the Olbrich Botanical Society, Inc., a Wisconsin non-stock corporation (“OBS”), and the City of Madison, Wisconsin, a municipal corporation (“City”), is effective as of _____, 2016.

WITNESSETH:

WHEREAS, the City, through the Madison Parks Division (“Parks”), owns and operates Olbrich Botanical Gardens (“Gardens”) on property acquired by the City from Michael Olbrich in 1921 and from OBS in 1998; and,

WHEREAS, OBS was formed as a non-profit charitable corporation in 1979 to aid and support the Gardens, to help advance the science of horticulture, promote the art of gardening and promote educational activities related to horticulture and gardening, and has worked cooperatively with the City since that time to operate and improve the Gardens; and,

WHEREAS, the only written indication of this unique and successful cooperative relationship is a resolution of the Madison Common Council adopted on November 3, 1998 setting forth the “Principles of Partnership” between the City and OBS, a copy of which is attached to this Agreement as Attachment 1; and,

WHEREAS, the City and OBS both desire to describe and formalize this successful relationship by entering into this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby mutually acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this Cooperation and Coordination Agreement (“Agreement”) is to formally establish the relationship between OBS and the City and to set forth the roles and responsibilities of the City and OBS, all so that both parties may continue the mutually beneficial relationship that makes the Gardens successful.
2. Principles of Operation. The City shall be responsible for maintaining the Gardens, buildings and other structures on the property, and providing the leadership for outdoor garden design and maintenance, and for conservatory management and maintenance. These responsibilities include, but are not limited to, funding and providing for building operations, administrative functions, horticulture maintenance, volunteer coordination, and general parks maintenance for buildings, grounds and parking. OBS shall conduct capital campaigns to expand and enhance the Gardens and its facilities, provide staff support for garden maintenance, special events, educational programs, development and membership, marketing, public relations, and gift shop management. All horticulturists at the Gardens, whether employed by the City or by OBS, shall continue to provide the detailed maintenance required by a public garden of Olbrich’s stature.

3. Relationship of Parties. OBS is a legal entity separate from the City, and no partnership, agency, or other legal relationship other than the contractual relationship as set forth herein is created by this Agreement. Nothing in this Agreement shall be deemed to have established a dealership as that relationship is described in Wis. Stat. Ch. 135.
4. Olbrich Botanical Society Governance. OBS is governed by its Board of Directors and its bylaws. These bylaws will establish the composition and terms of the Board of Directors. However, within these bylaws, OBS shall afford a minimum of the following board positions: one Alder to be appointed by the Mayor, one representative from a neighborhood association nearby Olbrich Gardens, and the Parks Superintendent.
5. The Olbrich Botanical Society Foundation. OBS has established the Olbrich Botanical Society Foundation (“the Foundation”) to manage endowment funds. By approval of this Agreement, the City finds that any City officials on the OBS board or the Foundation’s Board are there as City representatives under the City’s Ethics Code, sec. 3.35, MGO.
6. OBS Employees.
 - a. Executive Director. The City shall appoint an Olbrich Garden Director, who shall be a City employee (the “Director”). OBS agrees that this person shall also serve as OBS’s Executive Director. The OBS Board shall participate in the selection process for the Director. By approval of this Agreement, the Madison Common Council also approves the fundraising activities of the Director, and approves the Director’s position on the Foundation Board as a representative of the City.
 - b. Employees. All employees of OBS that work at the Gardens shall remain employees of OBS. The Director and or appropriate supervisor shall be responsible for the supervision and direction of the OBS employees. OBS shall maintain an employee manual and establish work rules for its employees that are consistent with City work rules and policies. Employees of OBS shall sign a statement when they start employment with OBS recognizing their status as OBS employees. OBS employees will have the primary responsibility for education including library, development and membership, public relations and marketing, Gift Shop, and horticultural maintenance of the Bolz Conservatory and outdoor gardens.
7. Garden Volunteers. Volunteers provide assistance to the Gardens in every aspect of the operations. The volunteer program is supervised by a city staff member (the Volunteer Services Manager) and supported by OBS funds for incidentals, including recognition. Unpaid volunteers are subject to specific policies as developed by the Volunteer Services Manager that are in line with existing work rules and policies followed by both City and OBS employees.
8. In-Kind Contributions. The City will provide to OBS space to operate on behalf of the Gardens. Space includes but is not limited to offices for OBS Employees, space for the Schumacher Horticultural Library, space for events, fundraising activities, education programs, storage for garden-related materials, and Gift Shop operations. The exact amount of space and locations may be modified by agreement of OBS and the Director of

the Gardens. The City shall not charge OBS rent or utilities for this space. The City will also provide IT and computer support as may be agreed upon. OBS will provide contributions in the form of programs and activities for the benefit of the general public, garden visitors, members, donors, as well as to City staff, as set forth in Section 10 of this Agreement. The parties agree that the exchange of services and in-kind contributions provides a net cash benefit to the City of Madison.

9. Cooperation. The City and OBS will cooperate in the operation of the Gardens and, to that end, may agree to administrative changes in operations without an amendment of this Agreement, provided that no such changes may modify this Agreement. As necessary, those administrative changes in operations may be reduced to writing.
10. OBS's Responsibility to the Olbrich Botanical Gardens.

Subject to available funding, OBS will:

- a. Provide support for the general operations of Olbrich Botanical Gardens;
- b. Provide public programming and educational opportunities;
- c. Provide development and membership coordination;
- d. Provide the continuation of gift shop operations;
- e. Accept, acknowledge, and manage in-kind gifts to the Gardens;
- f. Ensure that OBS employees abide by the City's rules relating to use of City equipment and information technology resources, as well attend any human resources training required of City employees at the Gardens;
- g. Provide financial coordination for garden revenue received by OBS and designated for the City; and,
- h. Provide additional garden support as needed.

11. The City's Responsibility to the Olbrich Botanical Gardens.

Subject to available funding and appropriation by the Common Council, the City will:

- a. Provide facilities for Olbrich Botanical Society to conduct operations on behalf of the Gardens and its users;
- b. Appoint and compensate an Olbrich Garden Director, who serves as Executive Director of OBS;
- c. Provide the Gardens with appropriate building maintenance staff, horticulture and conservatory supervision and gardeners in order to continue maintenance of the gardens, both outdoor and indoor;
- d. Provide staff to lead the Olbrich Volunteer Program;

- e. Provide OBS with telephone and internet service, information technology services, basic office supplies, and the use of office equipment;
 - f. Provide any required training to OBS employees in the same manner that such training is provided to City employees;
 - g. Provide financial coordination of garden revenue received by the City designated for OBS.
 - h. Provide capital contributions and investments in conjunction with the City of Madison's Capital Budget deliberations.
12. Contributions to the City. OBS provides financial assistance to the City to support the operations of the Gardens. Accordingly, pursuant to this Agreement, OBS may make, and the City may accept, financial contributions to the City for the Gardens without obtaining further approval of the Madison Common Council. These contributions may be in the form of in-kind assistance set out above, funds for projects or operations, funds for the purchase of capital assets, or capital assets purchased by OBS and contributed to the City for the Gardens. The City shall keep records of such contributions and provide a report thereon for the Board of Park Commissioners. OBS may not make any contribution of improvements to the City for the Gardens that would amount to public construction subject to the public works bidding requirements of Wis. Stat. Sec. 62.15. Any such improvements may be funded, or partially funded, by OBS, but the City will be responsible for any work associated therewith. The parties agree that the receipt of the services and other contributions by the City from OBS provides a net cash benefit to the City.
13. Annual Report and Accepting Improvements.
- a. OBS shall compile an annual report for the Board of Park Commissioners that highlights past and future operational and financial activities at the Gardens.
 - b. The report shall detail all improvements to the Gardens made by OBS in the prior year, and improvements planned for the forth coming year. Improvements or assets with a value of greater than ten thousand dollars (\$10,000) shall be considered by the Board of Parks Commissioners, who may accept them on behalf of the City. If the improvement is not accepted by the Board of Parks Commissioners, it shall be removed from the Gardens by OBS within a reasonable amount of time.
14. Finance and Accounting. The City and OBS shall adhere, to the extent practicable, to the recommendations related to finance and accounting contained in the Report of the City of Madison Office of the Comptroller, dated May 11, 2004, attached hereto as Attachment 2.
15. Term. The initial term of this Agreement shall end on December 31, 2036. In the final year of the Agreement, or any subsequent renewal periods, the Parties may mutually agree to renew the agreement for an additional twenty years, subject to the approval of the Board of Parks Commissioners. At the time of renewal, the Parties shall discuss any

changes to the Agreement that may be necessary and amend the agreement as necessary. If no substantive changes are necessary, then the Agreement shall renew for an additional twenty-year term. Substantive changes to this Agreement will require separate Common Council approval. Notwithstanding the above, either party may terminate this agreement at any time by giving the other party two years notice of the termination. If this Agreement is not renewed or is terminated, OBS will vacate any space in the Gardens, and shall no longer provide assistance through volunteers or OBS employees to the Gardens.

16. Default. In the event either party defaults in any of the terms of this Agreement, and any such default shall continue unremedied for a period of thirty (30) days after written notice thereof to the other party, the non-defaulting party may, at its option and in addition to all other rights and remedies which it may have at law or in equity, including expressly the specific enforcement of this Agreement, have the right to immediately terminate this Agreement.
17. Assignment. The roles and responsibilities of OBS as set forth in this Agreement may not be assigned to any other party without the City's prior written approval. The roles and responsibilities of the City as set forth in this Agreement may not be assigned to any other party without OBS's prior written approval.
18. Nondiscrimination. In the performance of this Agreement, the City and OBS agree 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, gender identity, political beliefs, or student status. The City and OBS further agree not to discriminate against any subcontractor or person who offers to subcontract on this Agreement because of race, religion, color, age, disability, sex, sexual orientation, gender identity or national origin. OBS shall include APM 3-5 as part of the employee manual.
19. Nondiscrimination Based on Disability. OBS shall comply with Section 39.05, Madison General Ordinances, "Nondiscrimination Based on Disability in City-Assisted Programs and Activities." Under Section 39.05(7) of the Madison General Ordinances, no City financial assistance shall be granted unless an Assurance of Compliance with Sec. 39.05 is provided by the applicant or recipient, prior to the granting of the City financial assistance. Under Section 39.05(3)(b)4, "City financial assistance" includes any arrangement by which the City provides or otherwise makes available assistance in the form of the lease of, and the permission to use, City property.

OBS assures that, in providing any service at the Gardens, it shall not, directly or through contractual, licensing, or other arrangements, on the basis of disability:

- a. Deny a qualified person with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

- b. Afford a qualified person with a disability an opportunity to participate in or benefit from the aid, benefit, or service, or the City facility, that is not equal to that afforded others;
- c. Provide a qualified person with a disability with a City facility or an aid, benefit, or service that is not as effective as that provided to others;
- d. Provide different or separate City facilities, or aid, benefits, or services to persons with a disability or to any class of persons with disabilities unless such action is necessary to provide qualified persons with a disability with City facilities, aid, benefits, or services that are as effective as those provided to others;
- e. Aid or perpetuate discrimination against a qualified person with a disability by providing significant assistance to any agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, or service to beneficiaries of the recipient's program;
- f. Deny a qualified person with a disability the opportunity to participate as a member of planning or advisory boards; or
- g. Otherwise limit a qualified person with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving an aid, benefit, or service from a recipient, or by others using City facilities.

OBS or the City shall post notices in an accessible format to applicants, beneficiaries, and other persons, describing the applicable provisions of Sec. 39.05 of the Madison General Ordinances, in the manner prescribed by section 711 of the Civil Rights Act of 1964 (42 USCA Sec 2000e-10).

20. Equal Benefits Requirement. For the duration of this Agreement, OBS agrees to offer and provide benefits to employees with domestic partners that are equal to the benefits offered and provided to married employees with spouses, and to comply with all provisions of Sec. 39.07, Madison General Ordinances (MGO). If a benefit would be available to the spouse of a married employee, or to the employee based on his or her status as a spouse, the benefit shall also be made available to a domestic partner of an employee, or to the employee based on his or her status as a domestic partner. "Benefits" include any plan, program or policy provided or offered to employees as part of the employer's total compensation package, including but not limited to, bereavement leave, family medical leave, sick leave, health insurance or other health benefits, dental insurance or other dental benefits, disability insurance, life insurance, membership or membership discounts, moving expenses, pension and retirement benefits, and travel benefits.

Cash Equivalent. If after making a reasonable effort to provide an equal benefit for a domestic partner of an employee, OBS is unable to provide the benefit, OBS shall provide the employee with the cash equivalent of the benefit.

Proof of Domestic Partner Status. OBS may require an employee to provide proof of domestic partnership status as a prerequisite to providing the equal benefits. Any such requirement of proof shall comply with Sec. 39.07(4), MGO.

Notice Posting, Compliance. OBS shall post a notice informing all employees of the equal benefit requirements of this Agreement, the complaint procedure, and agrees to produce records upon request of the City, as required by Sec. 39.07, MGO.

Subcontractors. This requirement also applies to employees of contractors hired by OBS who expend at least twenty (20) hours a week at the project site funded by City financial assistance.

Subcontractors. OBS shall require all subcontractors, the value of whose work is twenty-five thousand dollars (\$25,000) or more, to provide equal benefits in compliance with Sec. 39.07, MGO.

21. Indemnification. Each party shall be responsible for its own acts, errors or omissions and for the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions, and shall be responsible for any losses, claims, and liabilities that are attributable to such acts, errors, or omissions including providing its own defense, arising out of this Agreement. In situations involving joint liability, each party shall only be responsible for such losses, claims, and liabilities that are attributable to its own acts, errors, or omissions and the acts, errors or omissions of its employees, officers, officials, agents, boards, committees and commissions. It is not the intent of either party to waive, limit or otherwise modify the protections and limitations of liability found in Wis. Stat. 893.80 or any other protections available to the parties by law. This paragraph shall survive the termination or expiration of this agreement.

22. Insurance.

a. Required Insurance. OBS will insure, as indicated, against the following risks to the extent stated below.

(1) Commercial General Liability. OBS shall procure and maintain during the life of this contract, Commercial General Liability insurance including, but not limited to bodily injury, property damage, personal injury, and products and completed operations (unless determined to be inapplicable by the Risk Manager) in an amount not less than \$1,000,000 per occurrence. This policy shall also provide contractual liability in the same amount. OBS's coverage shall be primary and list the City of Madison, its officers, officials, agents and employees as additional insureds.

(2) Automobile Liability. Business Automobile Liability insurance covering owned, non-owned and hired automobiles with limits of not less than \$1,000,000 combined single limit per accident. OBS shall require all subcontractors under this Agreement (if any) to procure and maintain insurance covering each subcontractor and meeting the above criteria. This insurance shall be required for the full term of the lease and the renewal period.

- (3) Worker's Compensation. OBS shall procure and maintain during the life of this Agreement statutory Workers' Compensation insurance as required by the State of Wisconsin. OBS shall also carry Employers Liability limits of at least \$100,000 Each Accident, \$100,000 Disease – Each Employee, and \$500,000 Disease – Policy Limit.
- b. Acceptability of Insurers. The above-required insurance is to be placed with insurers who have an A.M. Best rating of no less than A- (A minus) and a Financial Category rating of no less than VII.
- c. Proof of Insurance, Approval. OBS shall provide the City with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates, and expiration dates of required policies prior to commencing work under this Agreement. OBS shall provide the certificate(s) to the City's representative upon execution of the contract, or sooner, for approval by the City Risk Manager. OBS shall provide copies of additional insured endorsements or insurance policies, if requested by the City Risk Manager.
- d. Notice of Change in Policy. OBS and/or its Insurer shall give the City thirty (30) days advance written notice of cancellation, non-renewal or material changes to any of the above-required policies during the term of this Agreement.
- e. Insufficient Coverage. In the event of expiration, material change, or cancellation of insurance required by this Agreement, OBS shall immediately cease use of Olbrich Gardens and the provision of the services under this Agreement until such time as proof of the required insurance is provided to the City Risk Manager consistent with the requirements of this Section.
- f. Risk Manager. All information required to be provided to the Risk Manager should be addressed as follows:

City of Madison
Attention: Risk Manager
210 Martin Luther King Jr. Blvd., Room 406
Madison, WI 53703-3345

23. Affirmative Action.

- a. The following language applies to OBS if OBS employs fifteen (15) or more employees (MGO 39.02(9)(c).):

OBS agrees that, within thirty (30) days after the effective date of this Agreement, OBS will provide to the City of Madison Department of Civil Rights (the "Department"), certain workforce utilization statistics, using a form provided by the City.

If the Agreement is still in effect, or if the City enters into a new Agreement with OBS, within one year after the date on which the form was required to be

provided, OBS will provide updated workforce information using a second form, also to be furnished by the City. The second form will be submitted to the Department no later than one year after the date on which the first form was required to be provided.

OBS further agrees that, for at least twelve (12) months after the effective date of this Agreement, it will notify the Department of each of its job openings at facilities in Dane County for which applicants not already employees of OBS are to be considered. The notice will include a job description, classification, qualifications, and application procedures and deadlines. OBS agrees to interview and consider candidates referred by the Department if the candidate meets the minimum qualification standards established by OBS, and if the referral is timely. A referral is timely if it is received by OBS on or before the date stated in the notice.

The Department will determine if OBS is exempt from this Subsection at the time the Request for Exemption in Subsection b. is made.

b. Articles of Agreement, Request for Exemption, and Release of Payment.

These “ARTICLES OF AGREEMENT” apply to all parties who enter into leases, contracts or agreements with the City, unless determined to be exempt under the following table and procedures or as otherwise provided for by City ordinance:

NUMBER OF EMPLOYEES	LESS THAN \$25,000 Aggregate Annual Business with the City*	\$25,000 OR MORE Aggregate Annual Business with the City*
14 or less	Exempt**	Exempt**
15 or more	Exempt**	Not Exempt

* As determined by the City Comptroller

** As determined by the Department of Civil Rights

REQUEST FOR EXEMPTION: (MGO 39.02(9)(a)2.) If OBS believes it is Exempt from the Articles of Agreement according to the table above, it shall submit a Request for Exemption on a form provided by the Department of Civil Rights (“Department”), within thirty (30) days of the effective date of this Agreement. The Department makes the final determination as to whether a party is exempt from the Articles of Agreement. In the event OBS is not exempt, the Articles of Agreement shall apply. **IF OBS HAS 15 OR MORE EMPLOYEES IT WILL LOSE THIS EXEMPTION AND BECOME SUBJECT TO THE ARTICLES OF AGREEMENT UPON REACHING \$25,000 OR MORE ANNUAL AGGREGATE BUSINESS WITH THE CITY WITHIN THE CALENDAR YEAR.**

RELEASE OF PAYMENT: (MGO 39.02(9)(e)1.b.) Within thirty (30) days from the effective date of this Agreement, and prior to release of payment by the City, all non-exempt contractors are required to have on file with the Department, an Affirmative Action plan meeting the requirements of Article IV below. Additionally, parties that are exempt from the Articles of Agreement under the Table shown above must have a Request for Exemption form on-file with the Department, prior to release of payment by the City.

ARTICLES OF AGREEMENT

ARTICLE I

OBS shall take affirmative action in accordance with the provisions of this contract to insure that applicants are employed, and that employees are treated during employment without regard to race, religion, color, age, marital status, disability, sex or national origin and that the employer shall provide harassment-free work environment for the realization of the potential of each employee. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training including apprenticeship insofar as it is within the control of OBS. OBS agrees to post in conspicuous places available to employees and applicants notices to be provided by the City setting out the provisions of the nondiscrimination clauses in this contract.

ARTICLE II

OBS shall in all solicitations or advertisements for employees placed by or on behalf of OBSs state that all qualified or qualifiable applicants will be employed without regard to race, religion, color, age, marital status, disability, sex or national origin.

ARTICLE III

OBS shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by the City advising the labor union or workers representative of OBS's equal employment opportunity and affirmative action commitments. Such notices shall be posted in conspicuous places available to employees and applicants for employment.

ARTICLE IV

OBS agrees that it will comply with all provisions of the Affirmative Action Ordinance of the City of Madison including the contract compliance

requirements. OBS warrants and certifies that, of the following two paragraphs, paragraph A or B is true (check one):

- A. It has prepared and has on file an affirmative action plan that meets the format requirements of Federal Revised Order No, 4, 41 CFR part 60-2, as established by 43 FR 51400 November 3, 1978, including appendices required by City of Madison ordinances or it has prepared and has on file a model affirmative action plan approved by the Madison Common Council _____.
- B. Within thirty (30) days after the effective date of this contract, it will complete an affirmative action plan that meets the format requirements of Federal Revised Order No. 4, 41 CFR Part 60-2, as established by 43 FR 51400, November 3, 1978, including appendices required by City of Madison ordinance or within thirty (30) days after the effective date of this contract, it will complete a model affirmative action plan approved by the Madison Common Council _____.

ARTICLE V

(This Article applies only to public works contracts.)

ARTICLE VI

OBS will maintain records as required by Section 39.02(9)(f) of the Madison General Ordinances and will provide the City's Department of Affirmative Action with access to such records and to persons who have relevant and necessary information, as provided in Section 39.02(9)(f). The City agrees to keep all such records confidential, except to the extent that public inspection is required by law.

ARTICLE VII

In the event of OBS's or subcontractor's failure to comply with the Equal Employment Opportunity and Affirmative Action provisions of this contract or Sections 39.03 and 39.02 of the Madison General Ordinances, it is agreed that the City at its option may do any or all of the following:

- A. Cancel, terminate or suspend this contract in whole or in part.
- B. Declare OBS ineligible for further City contracts until the Affirmative Action requirements are met.
- C. Recover on behalf of the City from the prime Contractor 0.5 percent of the contract award price for each week that such party fails or refuses to comply, in the nature of liquidated damages, but not to exceed a total of five percent (5%) of the contract price, or five thousand dollars (\$5,000), whichever is less. Under

public works contracts, if a subcontractor is in noncompliance, the City may recover liquidated damages from the prime Contractor in the manner described above. The preceding sentence shall not be construed to prohibit a prime Contractor from recovering the amount of such damage from the noncomplying subcontractor.

ARTICLE VIII

(This Article applies to public works contracts only.)

ARTICLE IX

OBS shall allow the maximum feasible opportunity to small business enterprises to compete for any subcontracts entered into pursuant to this contract. (In federally funded contracts the terms "DBE, MBE, and WBE" shall be substituted for the term "small business" in this Article.)

24. Ban the Box - Arrest and Criminal Background Checks.

a. Definitions. For purposes of this section:

“Arrest and Conviction Record” includes, but is not limited to, information indicating that a person has been questioned, apprehended, taken into custody or detention, held for investigation, arrested, charged with, indicted or tried for any felony, misdemeanor or other offense pursuant to any law enforcement or military authority.

“Conviction record” includes, but is not limited to, information indicating that a person has been convicted of a felony, misdemeanor or other offense, placed on probation, fined, imprisoned or paroled pursuant to any law enforcement or military authority.

“Background Check” means the process of checking an applicant’s arrest and conviction record, through any means.

b. Requirements. For the duration of this Contract, OBS (OBS) shall:

- (1) Remove from all job application forms any questions, check boxes, or other inquiries regarding an applicant’s arrest and conviction record, as defined herein.
- (2) Refrain from asking an applicant in any manner about their arrest or conviction record until after conditional offer of employment is made to the applicant in question.
- (3) Refrain from conducting a formal or informal background check or making any other inquiry using any privately or publicly available means of obtaining the arrest or conviction record of an applicant until after a conditional offer of employment is made to the applicant in question.
- (4) Make information about this ordinance available to applicants and existing employees, and post notices in prominent locations at the workplace with

information about the ordinance and complaint procedure using language provided by the City.

- (5) Comply with all other provisions of Sec. 39.08, MGO.

c. Exemptions. This section does not apply when:

- (1) Hiring for a position where certain convictions or violations are a bar to employment in that position under applicable law, or
- (2) Hiring a position for which information about criminal or arrest record, or a background check is required by law to be performed at a time or in a manner that would otherwise be prohibited by this ordinance, including a licensed trade or profession where the licensing authority explicitly authorizes or requires the inquiry in question.

To be exempt under sec. c. 1. or 2. above, Contractor must demonstrate to the City that there is a law or regulation that requires the hiring practice in question. If so, OBS is exempt from this section for the position(s) in question.

- 25. Notice. Any notice or offer or demand required to be sent hereunder shall be sent by registered or certified United States mail, return receipt requested, at the Parties' respective addresses set forth below. Each notice shall be deemed to have been received on the earlier to occur of actual delivery or the date on which delivery is refused, or three (3) days after notice is deposited in the mail. Any party may, at any time, change its notice address by giving the other party written notice of the new address.

Name

Address

OBS

Olbrich Botanical Society, Inc.
Attn: Executive Director
3330 Atwood Avenue
Madison, WI 53704

The City

City of Madison Parks Division
Attn. Parks Superintendent
210 Martin Luther King Jr., Blvd., Room 103
Madison WI 53703

- 26. Construction. The Parties acknowledge that this Agreement is the product of negotiations between the Parties and that, prior to the execution hereof, each Party has had full and adequate opportunity to have this Agreement reviewed by, and to obtain the advice of, its own legal counsel with respect hereto. Nothing in this Agreement shall be construed more strictly for or against, any Party because that Party's attorney drafted this Agreement or any part hereof.

- 27. Final Agreement. This Agreement constitutes the entire agreement of the Parties and may only be modified or supplemented by an additional writing between the Parties.

This Agreement shall be governed by, construed, interpreted, and enforced in accordance with the laws of the State of Wisconsin.

28. Miscellaneous.

- a. The invalidity of any provision of this Agreement shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Agreement.
- b. No third parties are intended to benefit from this Agreement, and no third party beneficiary rights shall be implied from anything contained in this Agreement.
- c. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one and the same Agreement.
- d. All addendums and exhibits attached to this Agreement shall be considered part of this Agreement and the terms and conditions in such addendums and exhibits shall be binding upon all parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their proper officers on the day and year first above written.

FOR THE OLBRICH BOTANICAL SOCIETY, INC.

Kevin Hess, President

Date

Execution of this Agreement by the Olbrich Botanical Society, Inc. was authorized by the Board of Directors of the Olbrich Botanical Society on September 20, 2016.

FOR THE CITY OF MADISON

Paul Soglin, Mayor

Date

Maribeth Witzel-Behl, City Clerk

Date

Approved as to form:

David P. Schmiedicke, Finance Director

Date

Michael P. May, City Attorney

Date

Eric Veum, Risk Manager

Date

Execution of this Agreement by the City is authorized by Resolution Enactment No. RES __ - ____, ID No. _____, adopted by the Common Council of the City of Madison on _____, 20__.

Attachment 1
Principles of Partnership
Res. No. 55,681 (Adopted Nov. 3, 1998)

AGENDA # _____

City of Madison, Wisconsin

A RESOLUTION _____

Expressing support and appreciation for Olbrich Botanical Society and adopting principles of partnership.

Drafted By: Mayor Susan J.M. Bauman

Date: October 22, 1998

Fiscal Note: No funds required

Presented November 3, 1998
Referred Parks Commission

Rereferred _____

Reported Back _____

Adopted POF _____

Rules Suspended _____

Public Hearing _____

**APPROVAL OF FISCAL NOTE IS NEEDED
BY THE COMPTROLLER'S OFFICE**

Approved By

Tim Fellek

Comptroller's Office

RESOLUTION NUMBER 55681
ID NUMBER 24528

SPONSORS: Mayor Susan J.M. Bauman, Napoleon Smith, Mike Verveer, Gary Poulson, Dorothy Borchardt, Steve Holtzman, Susan Hamblin, Ken Golden, Jean MacCubbin, Jake Alwegg, Linda Bellman, Dave Schneider, Tim Bruer, Santiago Rosas, Judy Olson

WHEREAS, Olbrich Botanical Gardens was first created in 1921 when Michael Olbrich donated 3,600 feet of shoreline bordering Starkweather Creek to the City of Madison; and

WHEREAS, in 1979 a formalized "friends" group, the non-profit Olbrich Botanical Society was formed to support the Gardens through fundraising and volunteer efforts; and

WHEREAS, fundraising by the Society over the next eighteen years resulted in an expanded Rose Garden, new Herb Garden, new Rock Garden, expanded Perennial Garden, new Sunken Garden, new Donors Arbor, new Wildflower Garden, and a 4.6 million dollar Bolz Conservatory and Botanical Center; and

WHEREAS, the number of visitors to the Gardens has increased from an estimated 25,000 annually in 1973 to 203,000 (counted) in 1997, including visitors from foreign countries; and

WHEREAS, the city and the Society have been partners in staffing the Gardens and in capital investments, with the Society often taking the lead role in developing proposals and securing major private resources and then turning all capital investments over to the city; and

WHEREAS, capital expansion projects taken during this tenure period included the Conservatory and Botanical Center (\$3,600,000.00 Society, \$1,100,000.00 City), the Garden for the Future (\$888,743.00 Society) and the twenty three acre expansion project including the Garver Feed Mill acquisition (\$700,000.00 Society, \$450,000.00 City);

NOW THEREFORE BE IT RESOLVED that the Mayor and the Common Council express their support and appreciation for the work done by the Olbrich Botanical Society over the years and express a desire to continue this partnership; and

BE IT FURTHER RESOLVED that the Madison Common Council adopts the following principles for partnership:

Because the Gardens are publicly owned, the city has primary responsibility for maintaining the Gardens and buildings, thereby protecting the investment that generations have made in this unique community resource. These responsibilities include the following:

- Funding building operations, maintenance, administrative and volunteer coordination support.
- Funding general parks maintenance for grounds and parking and sharing in future capital investments.

At the same time, the Society recognizes that it is in a unique position to assist the Gardens with financial, staff and volunteer support. The Society will continue supporting the Gardens through:

- Capital campaigns to expand and enhance the Gardens and its facilities.
- Staff support for more generalized gardens maintenance.
- Primary responsibility for special events, educational programs, development and gift shop management.

STATEMENT OF PARTNERSHIP

Executive Summary

September 1998

Partnership between Olbrich Botanical Society, Inc. and the City of Madison

The Olbrich Botanical Gardens is a special community resource. Over the past twenty years, this outstanding botanical center has flourished and benefited from a unique operating partnership between the City of Madison and the Olbrich Botanical Society. The challenge that lies ahead is how to preserve and support this community investment for the benefit of present and future generations.

Due to a new City administration, a turnover of aldermanic seats, and the upcoming retirement of the parks superintendent, the Society believes that it is time to memorialize the Society's basic understanding of the historical relationship between the Society and the City. The Society was created to promote and support the Gardens. The purpose of this memorandum is to describe how the Society views its role vis-à-vis the City in supporting the Gardens.

Specifically, the question is: *With dual operating revenue and expense sources, what is the proper role in supporting the Gardens for both the Society and the City?*

To this end, the Society offers the following Principles for Partnership:

Because the Gardens are publicly owned, the City has primary responsibility for maintaining the Gardens and buildings, thereby protecting the investment that generations have made in this unique community resource. These responsibilities include the following:

- Funding building operations, maintenance, administrative and volunteer coordination support.
- Funding general parks maintenance for grounds and parking and sharing in future capital investments.

At the same time, the Society recognizes that it is in a unique position to assist the Gardens with financial, staff and volunteer support. The Society will continue supporting the Gardens through:

- Capital campaigns to expand and enhance the Gardens and its facilities.
- Staff support for more specialized gardens maintenance.
- Primary responsibility for special events, educational programs, development, and gift shop management.

Attachment 2

Report of the City of Madison Office of the Comptroller, dated May 11, 2004



Office of the Comptroller

Dean Brasser, City Comptroller

City-County Building, Room 406
210 Martin Luther King, Jr. Boulevard
Madison, Wisconsin 53703
(Phone) 608 266 4671
(FAX) 608 267 8705

May 11, 2004

TO: Mayor Dave Cieslewicz and Members of the Common Council

FROM: Debra Simon, Craig Franklin, and Kathy Kuritz
Budget and Audit Section, Comptroller's Office

SUBJECT: Olbrich Botanical Gardens Review

At the request of several Common Council members and the Superintendent of Parks, we conducted a review of the operation and financial procedures of Olbrich Botanical Gardens. The Gardens are operated through a unique partnership between the City of Madison and Olbrich Botanical Society (OBS), a not-for-profit charitable corporation. The City and OBS provide dual sources of funding, and both City-funded and OBS-funded employees staff the Gardens. Our review included the relationship between the City of Madison and OBS. During our fieldwork, we met with most members of the Olbrich Botanical Gardens staff. We found that while there is not a clear delineation of functions and funding, the City and OBS work together for the benefit of the Gardens.

Our report includes recommendations for improving budgeting and purchasing practices, as well as accounting for capital assets, and catering and conservatory admission revenues. We also include recommendations to clarify practices for OBS-funded staff and volunteers at the Gardens, vending permits, and the Thai Pavilion.

Our fieldwork was conducted in late 2002 and early 2003. Although the final report is just now being issued, our draft report including our findings and recommendations was submitted to the Parks Division in late June 2003. Since then, we have had discussions with Parks staff, and most of our findings have already been addressed. We have attached a response from the Parks Superintendent. We appreciate the cooperation and courtesy extended to us by Parks Division and OBS staff.

c: Board of Park Commissioners
Olbrich Botanical Society Board of Directors

Olbrich Botanical Gardens Review

Olbrich Botanical Gardens is named for Michael Olbrich, who acquired land along Lake Monona in the interest of preserving public access to Lake Monona. The City of Madison purchased this land at cost and took title to the parkland in 1921. Today, Olbrich Botanical Gardens consists of the indoor Olbrich Botanical Center, 16 acres of public display outdoor gardens, and 22 acres north of the railroad and bike bath including the Garver Feed Mill and Cottage. The Botanical Center houses the Bolz Conservatory, production greenhouses, staff offices, library, meeting rooms available for rental and a gift shop. The Bolz Conservatory, built in 1991, is a 55-foot high glass pyramid filled with tropical plants and wildlife. Admission to the Bolz Conservatory is \$1 per person except that children under age 6 and Olbrich Botanical Society members do not pay the fee. Admission is free to everyone on Wednesday and Saturday mornings from 10 a.m. to noon. The outdoor specialty gardens include the Sunken Garden, Eunice Fisher Hosta Garden, Meadow Garden, Rock Garden, Wildflower Garden, Herb Garden, Perennial Garden, Rose Garden, Atrium Shade Garden, Serenity Garden, and the Thai Garden and Pavilion. Admission to the outdoor gardens is free. More than 250,000 people visit the Gardens annually.

Olbrich Gardens generates a great amount of community support and interest. This interest was formally organized in 1979 when the Olbrich Botanical Society (OBS) was created and registered with the State of Wisconsin as a not-for-profit charitable corporation. Its purpose is to aid and support Olbrich Gardens, help advance the science of horticulture, promote the art of gardening and promote educational activities related to horticulture and gardening. Funding is derived from donor support, membership dues, class fees, gift shop revenue, special events and investment income. OBS has approximately 4,700 memberships, encompassing 7,600 members.

Governance of OBS is provided by the Olbrich Botanical Society Board, which consists of 6 ex-officio board members and up to 15 elected members. According to the by-laws, the 6 ex-officio members include the President of the Madison Board of Park Commissioners, Alderperson of the 6th District, President of the Atwood Neighborhood Association, Director of the Olbrich Botanical Gardens, Superintendent of Parks, and the President of the Olbrich Garden Club. Each ex-officio board member has the option to appoint a designee. The remaining members are nominated and elected by the board.

In 2000 the Olbrich Botanical Society Foundation was created. The purpose of the Foundation is to provide an opportunity for donors to contribute to an endowment fund and to manage assets for the support of the Gardens. Bequests and endowment funds are invested by the Foundation. A portion of the Foundation assets is transferred back to OBS to provide educational opportunities and help offset maintenance costs on new and existing gardens. A nine-member board directs the Foundation. Four of these members are ex-officio and include the Director of the Gardens, President, Past President and Treasurer from the OBS board. The remaining five members are nominated and elected by the Foundation Board.

Partnership Between the City and Olbrich Botanical Society

The formation of Olbrich Botanical Society has culminated in a unique partnership between the City of Madison and OBS to operate Olbrich Botanical Gardens. This partnership was formalized in a resolution adopted by the Common Council on November 3, 1998. The resolution expressed support and appreciation for OBS and adopted principles of partnership. These principles state that because the Gardens are publicly owned, the City has primary responsibility for maintaining the property and

buildings. Specifically, this includes funding building operations, maintenance, administration, volunteer support, general parks maintenance for grounds and parking, and sharing in future capital investments. OBS supports the Gardens through capital campaigns to expand and enhance the gardens and facilities, provides staff support for specialized garden maintenance and bears primary responsibility for special events, educational programs, development and gift shop management.

The City and OBS work together for the benefit of the Gardens and provide dual sources of funding. They share a common goal of developing, enhancing and maintaining the Gardens. While the principles of partnership describe a general division of responsibilities, we found that, in practice, there is not a clear delineation of functions and funding. For example, OBS receives all of the revenue for the Gift Shop but does not pay rent to the City for the space in the building owned by the City. The City also pays other administrative costs on behalf of OBS-funded employees (e.g., telephone and computer costs). Conversely, an OBS-funded employee is responsible for the revenue function that includes summarizing and remitting revenues collected on behalf of the City. These examples and others are described in later sections of the report.

During 2002, the City provided approximately \$935,000 in operating funds to Olbrich Botanical Gardens. This amount is substantially different than the \$1,448,770 budget amount shown in the 2002 Adopted Operating Budget. This difference is largely a result of how Parks Division administrative costs were allocated among the 8 unique Parks services contained within the budget. Administrative costs include the salaries and benefits of administrative office staff, in addition to supply and purchased service items such as postage and telephone.

We performed an analysis of the process used for apportioning administrative costs and determined that these costs were significantly over attributed to the Olbrich budget. This over allocation was especially noticeable in the areas of permanent salaries and benefits. Generally, too large of a share of management and support salaries, ranging from top-level management to support staff, was assigned to the Olbrich budget service. In addition, a few non-salary administrative expenses such as postage were incorrectly budgeted across services. At our request, the Parks Administrative Services Manager surveyed administrative office staff in order to develop a more accurate set of allocation percentages for salary and non-salary administrative expenses. The 2003 Operating Budget was recast using the new methodology, and City support for Olbrich should be stated as \$992,270 as opposed to the \$1,479,287 listed in the 2003 Adopted Operating Budget.

Recasting the administrative costs distribution does not have an impact on the Parks Division overall budget. Rather, the reallocation of administrative support costs indicates only that the budget for the Olbrich service has been overestimated in previous years, and the budget for the remaining 7 Parks services has been underestimated by an equal and offsetting amount. **We recommend Parks Administration utilize the new allocation percentages when preparing the 2004 Operating Budget.**

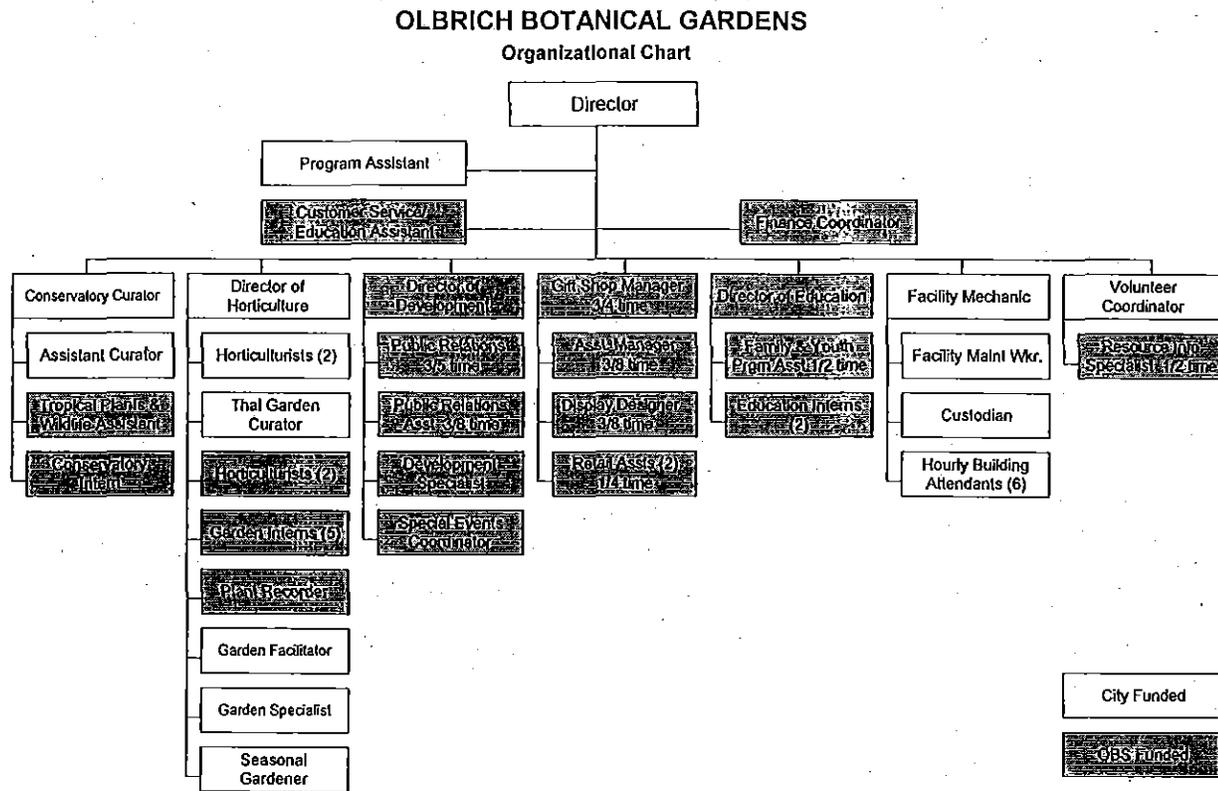
We found that the Gardens Director has little involvement in developing or reviewing the Parks Division budget related to Olbrich Gardens. In contrast, the Director is responsible for developing and overseeing the OBS budget. We believe it is important that the Director has knowledge of and responsibility for all funding for the Gardens. **We recommend the Gardens Director assist in developing the Parks Division budget for Olbrich and take responsibility for managing the budget.**

During 2002, OBS expended \$1,221,648 to carry out its purpose. Of that amount, \$476,777 represented costs incurred for garden and conservatory development, with about \$253,000 of this amount contributed

to the City in the form of capital assets and improvements. OBS spent the remaining \$744,871 on program services (\$455,566 for education, annual events, public relations, and volunteers) and supporting services (\$289,305 for general administration, fundraising/development, and membership development).

Personnel/Employees

The organizational structure for Olbrich Botanical Gardens intertwines both City employees and OBS employees to accomplish the goals of the organization. The City of Madison has 22 total positions (14 full time equivalent positions and 8 seasonal/hourly positions). OBS has 25 total positions (12 full time equivalent positions and 8 seasonal/hourly positions). All employees ultimately report to the Director who is a City of Madison employee.



Olbrich is organized into 8 units: Administration, Conservatory, Horticulture, Development, Gift Shop, Education, Facility Maintenance and Volunteer Coordination. OBS has the responsibility of managing the Development, Gift Shop and Education operations. The City of Madison is responsible for all Facility Maintenance functions. The Administration, Conservatory, Horticulture, and Volunteer units are comprised of both City and OBS-funded employees.

As part of our audit, we met with most members of the Olbrich Botanical Gardens staff. The Gardens employees appear to have a tremendous interest in the gardens. A large majority of employees indicated that the relationship between the City and OBS works well. City support and a very active OBS Board of Directors were cited as reasons for the success and growth experienced by the Gardens over the past years. This relationship is well perceived and in most cases, the public is not aware of the unique relationship that exists at the Gardens.

Gardens staff stated that they work well together regardless of whether they are City or OBS-funded employees. We heard numerous examples of employees working together to meet deadlines. For example, OBS organizes many special event programs every year including a dinner dance fundraiser, several family oriented events and various plant shows and sales. Both City and OBS-funded employees are involved in the preparation for special events. Some of the events require staff to work significant amounts of overtime.

A large number of employees commented on the structure of the horticulture section. OBS employs two horticulturists who work alongside two City horticulturist (gardener) positions. Employees indicated all horticulturists have the same job responsibilities and duties but due to their different employers, their compensation and benefits are not equal. Employees stated this situation has, in some cases, created an awkward or resentful relationship between employees. The OBS Board has identified pay equity as an area of focus.

Administration and Financial Coordination

Both City and OBS-funded employees have office space in the Botanical Center. The City does not charge OBS for space in the Botanical Center for offices, the library and the gift shop. OBS also utilizes phone and computer systems that are part of the City's network and are maintained and supported by the City of Madison's Information Services Department. The City pays for phone usage, computer replacement (OBS buys the original computers), and copier expenses. In addition, when the OBS-funded receptionist, who answers the primary telephone line, is on vacation, the City provides clerical support through its citywide clerical pool. In the past, a Parks Division employee also provided services while an OBS support position was vacant.

OBS-funded staff, volunteers and City employees collect revenue on behalf of the City. Revenue categories include room rentals, conservatory admissions, catering commissions and vending and photo permits. Volunteers collect admission fees to the conservatory and process miscellaneous sales including bottled water and ice cream. A cash register is used to track all receipts. A financial assistant volunteer reconciles the register and prepares a deposit tally sheet that facilitates the bank deposit. The tally sheet provides revenue category detail that supports reimbursement to the City. The Financial Coordinator, an OBS-funded employee, supervises this process. At month-end, the Financial Coordinator determines the amount due to the City and remits one check for the net amount owed. We selected the month of July 2002 to test the tally sheets and recalculate the amount of revenue due to the City. From the information provided on the daily tally sheets and from the cash register tapes, we were able to recalculate the July 2002 reimbursement without exception.

OBS maintains two checking accounts that are reconciled monthly by the Financial Coordinator. The general account tracks the operations of OBS. Operating deposits and disbursements are processed through this account. Two signatures are required on all checks. Cash disbursement forms are prepared by staff and forwarded to the Financial Coordinator for processing. An account number is assigned and checks are prepared for signature. Checks and supporting documentation are provided to the check signers for review and signature. The second checking account is used exclusively for the Olbrich gift shop. Sales receipts and merchandise disbursements are processed through this account. The Gift Shop Manager reviews invoices, prepares checks for signatures and prepares deposits.

The Financial Coordinator prepares monthly financial reports from a packaged accounting system. The Financial Coordinator also prepares payroll information for OBS-funded employees. Total hours worked

are documented on the payroll time sheet summary and then faxed to a third party payroll processor. City of Madison employees' completed timesheets are forwarded to the Parks Division's Administrative Office for processing.

Ethics

The unique organizational structure at Olbrich has presented some issues in the past concerning acceptable practices by City and OBS-funded staff. An Assistant City Attorney met with Olbrich managers in late 2002 to discuss appropriate practices concerning equipment use, product endorsement, training (attending and conducting), volunteers, and disposal of surplus items. All City of Madison employees are required to follow the City's code of ethics as it appears in the Madison General Ordinances. In addition, the Director of Olbrich Gardens requires OBS-funded employees to abide by the same code of ethics. This practice has included distributing the ethics code to all employees and posting it for reference. It appears the OBS Board has not officially adopted this practice. **We recommend the OBS Board adopt this practice and the expectation that OBS employees abide by the City of Madison's code of ethics.**

Volunteers

The volunteer program is critical to managing the Gardens' workload and accomplishing the goals. In 2002, 562 volunteers contributed more than 23,000 hours to all areas of the operation. Gardens staff indicated they are very appreciative of these efforts and believe it is a beneficial program.

OBS maintains the volunteer program that is managed by the Volunteer Coordinator, a City of Madison employee. Prospective volunteers complete an enrollment form that collects contact information along with areas of interest. The Volunteer Coordinator then interviews the applicants and matches their interests with specific jobs. Work rules and policies including workplace harassment, violence and drugs are provided to each volunteer. During the orientation process, the Volunteer Coordinator also expresses the requirement that volunteers abide by the City of Madison's ethics code with an exception made for the allowance of a volunteer recognition program. It appears the OBS Board has not officially adopted this practice. **We recommend the OBS Board adopt this practice and the expectation that volunteers abide by the City of Madison's code of ethics with an exception made for the allowance of a volunteer recognition program.**

Purchasing and Capital Assets

Since funding for the Gardens originates from two separate entities, the purchasing method sometimes differs. City-funded purchase requests are prepared by Parks Administration staff and processed through the Purchasing section of the Comptroller's Office. Depending on the purchase, the Purchasing Supervisor determines the number of quotes that should be obtained or whether the purchase should be let for bid. Large capital projects are processed through the Board of Public Works.

OBS-funded purchases may or may not be processed through the City's purchasing system. OBS utilizes the City of Madison's Purchasing Division when beneficial. OBS also utilizes City established vendors and discounts. Examples include printing and advertising services. Large projects utilize the City of Madison's public works process for letting contracts. The Director has a fiduciary duty to spend donated funds in the most efficient manner. When the Director believes savings could be obtained using the City's purchasing process, the purchase is made through the City. OBS then reimburses the City for the

expense. When the City's purchasing system is not used, the Director requests that staff obtain at least two bids for goods or services greater than \$1,000. Formal OBS purchasing procedures do not exist. **We recommend the Director develop formal purchasing procedures. We also recommend the OBS Board of Directors review and adopt these procedures.**

One method used by OBS-funded staff to procure goods and services is with a credit card. We reviewed card limits and procedures, and it appears adequate controls are in place regarding the review and approval of credit card purchases; however, formal credit card usage procedures do not exist. Prior to the issuance of an OBS credit card, employees should become familiar with and sign a statement indicating they have read and understand the policy. **We recommend the Director develop written credit card procedures that outline appropriate use. We also recommend the OBS Board of Directors review and adopt these procedures.**

OBS donates assets to the City. We attempted to verify that these donated assets were accepted by the City of Madison and identified in our capital asset system. However, asset information is currently not provided by OBS to the City of Madison. Capital asset safeguards should include identification and tracking through an inventory system. In addition, the market value of the assets should be disclosed in the City's financial statements. **We recommend the Parks Division and Comptroller's Office staff work with Olbrich staff to develop a reporting mechanism to ensure donated asset information is captured by OBS and reported to the City.** This information should then be capitalized according to the City's capitalization policy and maintained in the City's capital asset system.

OBS recently renovated the Garver Cottage building to create more office space for the horticulture staff. We reviewed the records related to this project to determine funding contributions and total cost. Funding for this project was shared between OBS and the City with the majority of funding provided by OBS. The renovation contract was bid and let through the City's public works process. Renovation contract payments relating to the Garver Cottage totaled \$177,688. We verified that OBS reimbursed the City for all of these payments. In addition to contract payments, numerous miscellaneous costs were incurred. Costs included chimney repair, installation of a boiler, heating system and other building supplies. The City's 2001 and 2002 capital budgets provided \$11,000 and \$45,000 respectively for the Garver property planning, grading and repair.

We were unable to calculate the full cost of this project due to inconsistent and incorrect account coding within the City's capital project accounts. We also noted that reimbursements were credited to expense accounts. Both of these practices are not in accordance with generally accepted accounting principles. **We recommend Parks Division and Comptroller's Office staff more closely monitor disbursement requisitions to classify expenditures in relation to their actual project and follow generally accepted accounting principles. We further recommend that Parks Division and Comptroller's Office staff work together to determine the true cost of the Garver Cottage renovation and determine if any additional reimbursement is due from/to OBS.**

Facility Rentals and Catering

Olbrich Botanical Center has three rooms of varying size available for rental to the public for meetings, banquets, wedding receptions, and other social activities. All facility rentals include tables and chairs, and City employees provide all setup needed to support the event. Revenues from room rentals are remitted to the City of Madison. OBS, area garden clubs and plant societies are given free facility use and reservation preference. It is Olbrich's policy to support these groups with free rentals because the

Botanical Center was built and funded to promote the art, science and knowledge of plants, which is consistent with the horticultural mission of these groups. Other groups receiving free facility use include the City of Madison Parks Division and the City of Madison Clerk for use as a polling location. We reviewed the 2002 Summary Reservation Schedule and calculated the number of paying vs. non-paying reservations. Paying customers accounted for approximately 33% of room rentals, while 67% of room reservations were for non-paying groups. Of the non-paying room rentals, 12% were for staff and OBS meetings that would have been bumped if a paying customer had requested the space.

The Olbrich Rental Coordinator (City program assistant) is responsible for the facility rental reservation process. The Rental Coordinator works with customers to schedule room rentals and process rental agreements. Payment is due in full within two weeks; if payment is not received in the allotted time, the renter is notified that the room will be open to other interested parties.

Renters have the option of arranging food service through local approved caterers. The Olbrich Rental Coordinator gives the renter a list of approved food caterers with instructions to choose and contact a caterer. An exclusive vendor holds the liquor license for the Olbrich Botanical Gardens. Renters must use this vendor if alcohol is served but may select another approved vendor for food. In order to become approved, a food caterer must complete and sign an application which specifies guidelines that should be followed by the caterer. The signed application serves as the formal agreement with the City. The agreement requires caterers to pay a percentage fee to the City of Madison, and submit a copy of the customer invoice along with the remittance. The user fee for food caterers is equal to 12% of food sales and should be remitted within 14 days of the event. The sole alcohol vendor has a contract with the City of Madison with a tiered fee schedule, ranging from 26% to 31% of gross sales. Payment is due to the City of Madison on or before the 15th day of the following month, and a 1.5% interest penalty should be assessed if the City does not receive commission payments on the 20th day of the following month. For 3 fundraising events sponsored by OBS, the primary alcohol vendor pays OBS a flat 40% of gross alcohol receipts. The Olbrich Rental Coordinator tracks and receives the catering commission payments.

We tested catering revenues for events from April 2002 through October 2002 to determine if the percentage fee was calculated correctly and if remittances were paid on a timely basis. Of the 24 catered events tested, the percentage fee on 2 remittances was calculated incorrectly, and the fee for 2 events could not be calculated because the caterer did not include a copy of the customer invoice with the remittance. Twenty-two commission payments were not paid on time. Interest charges were not assessed for these late payments. We also noted during our review that the current method of tracking outstanding catering commissions does not ensure that non-payment will be detected. **We recommend the Olbrich Director and Olbrich Rental Coordinator develop a system to ensure catering revenues are received for all events, calculated accurately, and received on a timely basis.**

The application completed by approved caterers indicates a security deposit is required to offset any damages or costs incurred to the Gardens while catering services are being provided. The caterer has 14 days to submit the \$200 security deposit or forfeit approval. Currently, the security deposit balance is held by OBS and recorded as a liability on the OBS Balance Sheet. Since the catering application is an agreement with the City of Madison, the City receives catering revenues, and any damage would be to City property, we recommend the security deposit balance be transferred to the City and future deposits be made payable to the City of Madison.

Vending Permits

Numerous selling events are held in the Olbrich Botanical Center throughout the year. Many of these events are sponsored by area plant societies. Madison General Ordinance 8.17 states a City of Madison vendor permit is required if sales are to occur on City of Madison Parks property. At the time of our testing, annual permits were sold to nonprofit vendors for \$120 and \$570 for all other vendors. Olbrich Botanical Gardens has its own special event vending permit for \$10 per event.

Vendors are also required to have adequate liability insurance in force. The permit holder should have liability insurance including product liability coverage and naming the City of Madison as additional insured. Alternatively, vendors may purchase insurance through OBS for \$75. The City of Madison Risk Manager reviewed the OBS umbrella policy to determine if it is adequate. OBS has a blanket policy that includes liability coverage. The Risk Manager concluded the policy is adequate.

The Olbrich Rental Coordinator is responsible for the issuance of the selling permits. To determine whether vending permits were acquired from all selling vendors, we compiled a list of selling events held in 2002 using the special events calendar on the Olbrich website. We reviewed a folder containing the vending permit application, receipt for the permit fee, and proof of insurance coverage. We found one event where a vending permit was not acquired and proof of insurance coverage was not obtained.

OBS organizes musical concerts at various times during the year. Some of the performers sell their recordings. During 2002, none of the performers purchased a City of Madison Parks vending permit. OBS also sponsors a number of annual selling events such as the Spectacular Spring Plant sale and Cocoa Bean Mulch sale, and operates the *Growing Gifts* shop, which is open 6 hours a day, 7 days a week. OBS has not been required to purchase a City of Madison Parks vending permit.

The City of Madison Common Council adopted a resolution to amend Madison General Ordinance 8.17 on January 7, 2003. The amendment made a variety of changes to the Parks Vending ordinance. One of the modifications allows the Park Commission to set the fees for various parks vending permits. Prior to the amendment, the dollar amount for each permit was set forth by ordinance and the ordinance had to be amended each year when the Park Commission voted to change the fees. The amendment also raised the minimum liability insurance requirements for parks vendors from \$500,000 to \$1,000,000 and clarified that the Olbrich Gardens Special Event Vending Permits are administered through the Olbrich Botanical Gardens and not the Parks Division offices. The amendment includes a new paragraph that states the procedures for application and issuance of an Olbrich Gardens Special Event vending permit shall be determined by the Executive Director of the Olbrich Botanical Gardens, or designee. A Parks Division manager has indicated the intent of the new paragraph is to give the Olbrich Director authorization to decide who is required to purchase an Olbrich Special Events vending permit. An Assistant City Attorney stated the paragraph allows the Olbrich Director to determine only the administrative procedures used for processing vending permit applications. We noted the ordinance does not give authority for any exceptions. **We recommend the Olbrich Director ensure vending permits are obtained for all applicable events, including concerts where performers sell recordings and OBS-sponsored selling events and the gift shop.**

Education

OBS offers a large selection of educational programming for all ages including lectures, workshops, yoga classes and garden walks. The Olbrich Explorer Program is a hands-on education program for elementary

school children. The curriculum includes lessons in the Bolz Conservatory, a walk through the outdoor gardens and a hands-on activity center. The cost of the Explorer program is \$2 per student. During 2002, the explorer program attracted 31 school groups from 6 Wisconsin counties.

We traced a check received from a group attending the Explorer Program and noted the entire payment was credited to OBS. Since the program includes a tour of the conservatory, we expected to see a portion of the revenue allocated to the City. **We recommend OBS remit all conservatory admission revenue to the City.**

The OBS-funded Director of Education determines the schedule of classes to be offered. A brochure catalog is created semiannually which gives an overview of each class, the date(s) classes are offered, and the cost. Two prices are listed for each class. OBS members pay approximately 20 to 30% less than non-members. All revenue from the education program goes to OBS. The brochure is distributed to all OBS members, as well as non-members who have previously taken classes at Olbrich. There is currently a database of over 2,000 non-members who receive the education brochure. OBS pays a bulk mail pre-sort company to send out the brochures.

Many of the classes utilize professional instructors/speakers that are compensated by OBS. Olbrich horticulture employees (both OBS and City) are also asked to conduct workshops and garden walks. Most of the program classes are scheduled at night or on weekends. When City staff members give lectures, they record the instructional hours as overtime on their time card. OBS then reimburses the City of Madison for the overtime. An Assistant City Attorney worked with the Olbrich Leadership Team to establish the proper procedure for paying City of Madison staff who teach for the OBS Education program. The OBS-funded Director of Education sent an email to the Olbrich horticulture staff to explain the procedure, but a written policy was not created. **We recommend the OBS Board adopt a written policy for compensating horticulture staff who teach classes for OBS.**

Thai Pavilion and Gardens

The newest addition to the outdoor gardens is the Thai Pavilion, a structure given to the City of Madison by the University of Wisconsin-Madison. The Pavilion was donated to the UW-Madison by the Thai government and the University's Thai Alumni Association. Under an agreement with UW-Madison, the UW will commit more than \$2.6 million dollars to the project including up-front installation costs and endowed funds for preservation maintenance. Income generated from the endowed funds will offset future major renovations and repairs. In addition, the UW agrees to be directly responsible for the costs of staff to provide curatorial and interpretive services totaling \$60,000 per year, plus annual cost of living adjustments. The City hired a full-time Thai Garden Curator responsible for the day-to-day curatorial functions, interpretive services, and educational interpretation of the Thai Pavilion and Garden. The position also provides support in other areas of the gardens such as designing and constructing the flower exhibits for various shows sponsored by OBS. In Spring 2003, the Thai Garden Curator was the coordinator of the Spring Flower Fest, and incurred a large amount of overtime. According to the Director of Horticulture, this arrangement does not conflict with the UW agreement. Olbrich horticulture employees work on a team approach, and other staff frequently assist with the Thai Gardens.

The agreement also states the City's liability insurance will apply to the Thai Pavilion, and the City will generate revenues from Pavilion rental user fees to use for general maintenance expenses of the Pavilion. In February 2003, the City of Madison Board of Park Commissioners reported \$30,000 would be needed to cover general maintenance expenses and decided the Pavilion will not be available for weddings. In

order to raise the \$30,000, the UW Alumni Association agreed to develop an annual fundraising event for the purpose of celebrating the Pavilion; however, no event was held in 2003. **We recommend the Board of Park Commissioners examine the budgetary impact on the City if revenues are not generated from facility user fees.**



Department of Public Works
Parks Division

Madison Municipal Building, Room 120
215 Martin Luther King, Jr. Boulevard
P.O. Box 2987
Madison, Wisconsin 53701-2987
PH: 608 266 4711
TDD: 608 267 4980
FAX: 608 267 1162

To: Debra Simon, Comptroller's Office
From: Jim Morgan, Parks Division
Date: May 5, 2004
Re: Responses to Olbrich Botanical Gardens Audit

The following summarizes our responses for the 14 recommendations in the Olbrich audit:

Recommendation #1: "We recommend Parks Administration utilize the new allocation percentages when preparing the 2004 Operating Budget."

Parks has complied with this recommendation, and the percentages are again being updated for use in preparation of the Parks 2005 Operating Budget.

Recommendation #2: "We recommend the Gardens Director assist in developing the Parks Division budget for Olbrich and take responsibility for managing the budget."

Response: All parks sections (responsibility centers), including Olbrich, will be made a part of the budget allocation process. Having worked with the City Comptroller's Office, a special report format was developed that summarizes Parks expenditures and revenues by Parks responsibility centers--which include Olbrich. This new report facilitates access to current accounts by month.

With this improved information available, the budget process will be significantly enhanced and improved.

Recommendation #3: "We recommend the OBS Board adopt this practice (Ethics – OBS Employees) and the expectation that OBS employees abide by the City of Madison's code of ethics."

Response: Although this recommendation is beyond the direct control of the Division, we can report that the OBS Board did adopt a code of ethics package at their December, 2003 meeting.

Recommendation #4: "We recommend the OBS Board adopt this practice (Ethics - Volunteers) and the expectation that volunteers abide by the City of Madison's code of ethics with an exception made for the allowance of a volunteer recognition program."

Response: the OBS Board did adopt a code of ethics for volunteers at their December, 2003 meeting.

Recommendation #5: "We recommend the OBS Director develop formal purchasing procedures. We also recommend the OBS Board of Directors review and adopt these procedures."

Response: The OBS Director has developed formal purchasing procedures, closely patterned after those employed by the City. The approval process was completed on January 20, 2004.

Recommendation #6: "We recommend the OBS Director develop written credit card procedures that outline appropriate use. We also recommend the OBS Board of Directors review and adopt these procedures."

Response: The OBS Director has developed credit card procedures, similar to those procedures in the City's P-Card system. The approval process was completed on January 20, 2004.

Recommendation #7: "We recommend the Parks Division and Comptroller's Office staff work with Olbrich staff to develop a reporting mechanism to ensure donated asset information is captured by OBS and reported to the City."

Response: On March 3, 2004, Superintendent James Morgan sent a memorandum to Barbara Tensfeldt, OBS Chairperson (see below) that addresses and clarifies a new reporting system which will ensure the donated asset information is properly captured and reported. The City's new Capitalization Policy will be employed.

March 3, 2004

To: Barbara Tensfeldt, Olbrich Botanical Society
From: James P. Morgan, Superintendent of Parks
Re: Olbrich Botanical Gardens Audit

The Parks Division is making good progress in addressing and achieving compliance with the City's audit conducted in 2003. One requirement for compliance will involve the need to formalize some new procedures. Specifically, one new procedure for capturing required information on donated assets is now required under Recommendation #7 from the audit.

"Recommendation #7: We recommend that the parks Division and the Controller's Office staff work with Olbrich staff to develop a reporting mechanism to ensure donated asset information is captured by the Society and reported to the City."

Our response to this recommendation spells out the new procedure. Because the City of Madison now requires that certain asset items be inventoried; an item description, the original cost value, plus information regarding expected usable life and maintenance costs will need to be reported.

Consequently, for all future gifts from OBS, a formal letter requesting ownership transfer will be required. The city shall have the opportunity to accept or reject any gift(s). Upon acceptance, the City shall notify OBS of the acceptance and indicate appropriate appreciation for the gift(s).

The new equipment will be placed in the city inventory listing and capitalized as per GASB (Government Accounting Standards) guidelines. In the absence of formal acceptance, the City will not assume any obligation to repair, insure, or replace any property.

I wish to express my heartfelt appreciation to you and OBS for your continuing contributions and cooperation in making Olbrich what it is, and will be.

Recommendation #8: (Garver Cottage) "We recommend Parks Division and Comptroller's Office staff more closely monitor disbursement requisitions to classify expenditures in relation to their actual project and follow generally accepted accounting principles. We further recommend that Parks Division and Comptroller's Office staff work together to determine the true cost of the Garver Cottage renovation and determine if any additional reimbursement is due from/to OBS."

Response: Parks Division staff agrees with this recommendation. Parks Division staff have already contacted the Comptroller's Office, to begin work on this effort. Upon completion, findings, conclusions, and new procedures shall be formalized.

Recommendation #9: "We recommend the Olbrich Director and the Olbrich Rental Coordinator develop a system to ensure catering revenues are received for all events, calculated accurately and received on a timely basis."

Response: The Parks Division concurs with this recommendation. Upon development and completion the new system, a report shall be forwarded to the Comptroller's Office.

Recommendation #10: (Catering Security Deposits) "We recommend the security deposit balance be transferred to the City and future deposits be made payable to the City of Madison."

Response: The security deposit balance has been transferred to the City and future deposits will be make payable to "The City of Madison".

Recommendation #11: (Special Vending Permits) "We recommend the Olbrich Director ensure vending permits are obtained for all applicable events, including concerts where performers sell recordings and OBS-sponsored selling events and the gift shop."

Response: We concur that all external vendors must obtain a City vending permit. Since the auditing process was initiated in 2002, the Olbrich Director has insured that all special event vendors obtain a vending permit in accordance with MGO 8.17. This includes all external sales transactions by vendors at Olbrich Gardens. The Parks Division will pursue an exemption for Olbrich Botanical Society events and the gift shop.

Recommendation #12: "We recommend OBS remit all conservatory admission revenue to the City."

Response: The partnership agreement with OBS indicates that all conservatory revenue is to be deposited with the City of Madison. The issue discussed in the audit report relates to youth education classes (\$2.00 per student fee) that include a tour of the gardens and conservatory, the society underwrites its educational programming to a sum in excess of \$ 85,000 annually in non-tax funding. The audit recommends that the student fee be split between OBS and the City with the City recovering \$ 1.00 of the fee as conservatory admission revenue. Increasing the fee to \$3.00 per student so OBS captures enough revenue to partially support the education class may cause student groups to eliminate Olbrich from its list of activities. However, until a policy change is negotiated between OBS and the City, \$ 1.00 form the student fee must be turned over to the City. The process to change the standing policy has been initiated and will be reviewed by the Park Commission at its February meeting.

Recommendation # 13: "We recommend the OBS Board adopt a written policy for compensating horticulture staff who teach classes for OBS."

Response: A written policy will be created by the Gardens Director that fully reflects our obligations under the Fair Labor Standards Act, the Agreement with Local 60 of ASFCME and current modification contained in the Memorandum of Understanding relating to Overtime Compensation with Local 60. With the assistance of the City Labor Relations staff, this document was finalized and adopted on January 22, 2004.

Recommendation #14: "We recommend the Board of Park Commissioners examine the budgetary impact on the City if revenues are not generated from facility user fees." (Thai Pavilion).

Response: Initially, the Madison Parks Commission had taken the position that special revenue-generating event(s) might be scheduled to cover the operational and maintenance expenditures of the Thai Pavilion. However, further examination led the Park Commission to alter its position. Largely due to the Thai Pavilion's costly and intricate design, it was determined that group events would be inappropriate. Furthermore, having experienced two seasons of operation; it has been determined that additional revenue generation has not been required.

At the end of the calendar year of 2002, there was a net expense of \$ 10,575. However, there had been a landscaping expense of \$24,616, which was largely a one-time start-up expense. At the end of the calendar year of 2003, there was a net-revenue of \$ 3,409.

Furthermore, it will remain the intention of the Madison Park Commission to address the budgetary impact, should the need arise.