

City of Cincinnati



Yvette Simpson
Councilmember

201601462

November 1, 2016

MOTION

WE DIRECT the Administration to cease all meetings with the Cincinnati Parks Foundation including those regarding the initiation of a Memorandum of Understanding, unless and until directed by City Council.

WE FURTHER DIRECT the Administration to release all communications, electronic and otherwise, between the City Administration and Cincinnati Parks Foundation to City Council.

Yvette P. Simpson, Esq.

Councilmember Yvette Simpson

STATEMENT

On Friday October 28, 2016, City Council received a copy of a letter from the Cincinnati Board of Park Commissioners sent to City Manager Harry Black (Attachment A). The letter stated that the Board of Park Commissioners will not be entering into the Memorandum of Understanding (MOU) proposed by the City Administration, which would transfer management and control of the Park endowments to the City. First, City Council was not alerted and did not direct communication between the City Administration and the Parks Foundation. Second, City Council did not direct the Administration to assume control of the endowment accounts from the Parks Foundation. The Charter provides that the Foundation is a separate entity and, as such, is not subject to outside political influence by the City. All communications should cease until Council understands the full nature of the recent interactions between the Parks Foundation and the City Administration.



October 26, 2016

Harry Black
City Manager
801 Plum Street
Cincinnati Ohio, 45202

BOARD OF PARK

COMMISSIONERS

Dear Mr. Black,

Otto M. Budig, Jr.
President

Merrl Gaither Smith
Vice President

Robert D.H. Anning

Susan F. Castellini

Dianne M. Rosenberg

Marian J. Lindberg
President Emerita

Roscoe A. Fultz
*Commissioner Emeritus
Posthumously*

Wilhe F. Carden, Jr.
Director

James H. Burkhardt
*Superintendent
Operations*

Steven L. Schuckman
*Superintendent
Planning & Design*

Jackie Binford
*Manager
Business Services*

Marijane E. Klug
*Manager
Financial Services*

On Tuesday, October 25, 2016, the Board of Park Commissioners held its monthly public meeting and addressed a number of issues on our agenda. One of the issues addressed during the Commissioner's discussion of the meeting was the email received from you, dated September 9, 2016 and the accompanying proposed Memorandum of Understanding (see attachment A), as well as the subsequently received email and MOU later received from the City Solicitor. This MOU proposes a transfer of the management and control of the endowments from the Board of Park Commissioners to the control of the City.

The Board of Park Commissioners had a vigorous discussion which included brief comments and a request from the Deputy City Solicitor, Terry Nestor, to hold the MOU. Please note while the Foundation was incorporated into the MOU, there was no discussion of the Foundation as it is a separate 501(c)(3) entity.

First, it is important to state that we are all in agreement that transparency is paramount in everything the Park Board does and the Park Board in its August 18, 2016 Board report, unanimously approved the implementation of the five (5) *observations for potential enhancement* received from Crowe Horwath. In summary, the Commissioner's discussion focused on the City Charter and the entrusted responsibility given to them by way of the trusts, wills and bequests that comprise the endowments.

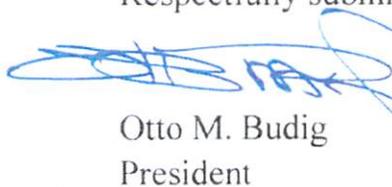
As I am sure you know, in 1906, there was a change to the City Charter that entrusted the Board of Park Commissioners with exclusive authority to manage its employees, Parks and fiscal responsibilities.

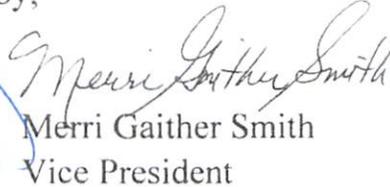


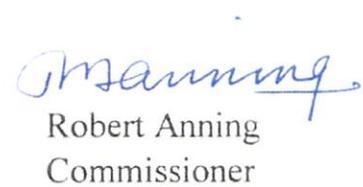
The Commissioners also noted that despite the fact that every two (2) years for the past twenty years, the Park Board has engaged an outside firm to complete a Procedures audit to verify endowment practices and accounting procedures, there were two fiscal reviews and a city-wide audit through the State of Ohio's Auditor's office. Neither of these fiscal reviews issued any findings or recommendations to change the Park Board's endowment fiscal procedures or control. In fact, the Crowe Horwath report made observations for potential enhancement, to be distinguished from findings or recommendations.

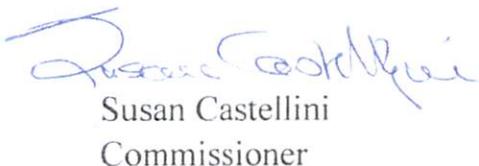
As a result, a Motion (see attachment B) was made, seconded and unanimously approved that the Board of Park Commissioners would not enter into the proposed MOU. As stated earlier, the Board remains committed to transparency, but the paramount concern is that such a transfer is not transparent. Instead, the Board is being asked to relinquish the very responsibility entrusted in it by the Charter and those individuals who entrusted the endowments to the Park Board.

Respectfully submitted by,


Otto M. Budig
President


Merri Gaither Smith
Vice President


Robert Anning
Commissioner


Susan Castellini
Commissioner


Dianne Rosenberg
Commissioner

Cc: Mayor John Cranley and Member of City Council
John Neyer, President Cincinnati Parks Foundation
Cathy Caldemeyer, Vice President Cincinnati Parks Foundation
Jennifer Spieser, Executive Director, Cincinnati Parks Foundation

Attachment A – the MOU
Attachment B – the Motion

Otto Budig

From: Boggs Muething, Paula <Paula.BoggsMuething@cincinnati-oh.gov>
Sent: Tuesday, October 18, 2016 3:30 PM
To: george.vincent@dinsmore.com; Otto Budig; Dianne Rosenberg
Subject: Parks/City MOU
Attachments: MOU City Parks Board Parks Foundation.docx

Attached please find a revised draft of the MOU between the City, Board of Park Commissioners, and the Foundation. Upon your review and approval I will share with the Foundation. Please let me know if you have any comments or questions. Thanks, Paula



Paula Boggs Muething
City Solicitor
Law Department
513/352-3320 (o) | 513/352-1515 (f)
paula.boggsmuething@cincinnati-oh.gov

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September 9, 2016

To: Cincinnati Board of Parks Commissioners
From: Harry Black, City Manager
Copy: Willie F. Carden, Jr., Director, Parks Department
Subject: Endowment Fund Accounting Procedures

In accordance with the recent audit completed by Crowe Horwath LLP, new procedures are being established to account for endowment funds received for the purpose of providing financial support to City parks. These new procedures shall become effective January 1, 2017.

The endowment funds may include trust funds, bequests and donation funds. Below is a list of the known trust funds and bequests:

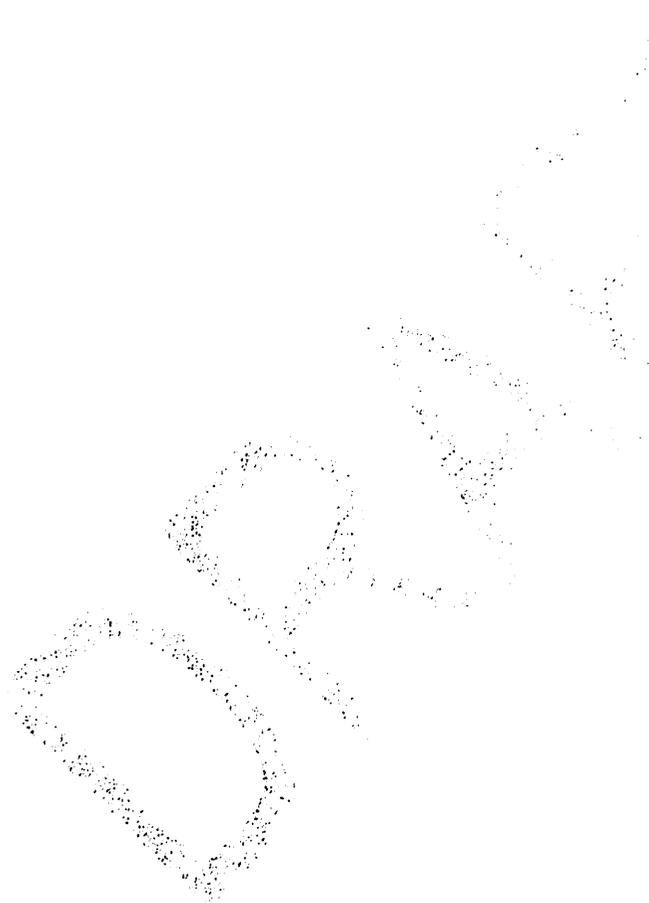
- Fleischmann Gardens
- Fleischmann Endowment
- Drabner
- Geier
- Miles-Edwards
- Levy Clock
- Bettman Nature Center

The trust funds will continue to be held and managed by the current servicing agents. Currently, the City accounts annually for these trust funds through Schedules of Revenue, Expenditures and Changes in Fund Balance in the City's Comprehensive Annual Financial Report (CAFR). Moving forward the City will record all trust fund transactions monthly into the financial system. The funds will be classified as permanent funds. Permanent Funds are a governmental fund account type used to report resources that are legally restricted to the extent that only earnings, and not principal, may be used for purposes that support the reporting government's programs.

Currently, donation funds, bequests and the earnings generated from the trust funds defined above are controlled by the Park Board and maintained in operating accounts at PNC Bank. These accounts are managed by Park Department employees and tracked separately outside the City's financial system. To ensure internal controls and transparency, the operating accounts at PNC Bank shall be closed and all funds transferred to the City into a Special Revenue Fund(s) by January 1, 2017. A Special Revenue Fund is a governmental fund type used to account for the proceeds of specific revenue sources that are legally restricted to expenditures for specified purposes. This type of fund will allow the Park Board to continue to oversee the expenditures to make certain all revenue received from the endowments is spent appropriately.

Once all endowment revenue is on deposit in a Special Revenue Fund(s) with the City, all revenue and expenditures will be accounted for in the City's Financial System and therefore be subject to all applicable City, State, and Federal accounting, budgeting and procurement laws, rules, and procedures.

The Parks Department shall identify all endowments currently benefitting City parks. Copies of all endowment agreements benefitting City Parks shall be forwarded to the Finance Department to be placed in the City's permanent files.



Otto Budig

From: Boggs Muething, Paula <Paula.BoggsMuething@cincinnati-oh.gov>
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Paula Boggs Muething
City Solicitor
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**Memorandum of Understanding between the City of Cincinnati, the
Cincinnati Parks Foundation and the Cincinnati Board of Parks
Commissioners**

THIS AGREEMENT is made by and between the City of Cincinnati ("City"), the Cincinnati Parks Foundation ("Foundation"), and the Cincinnati Board of Parks Commissioners ("Park Board") (jointly, the "Parties").

Recitals:

WHEREAS, providing the residents and visitors of the City with a system of vibrant and well-maintained parks requires a significant, on-going flow of public and private support; and

WHEREAS, the City supports the capable leadership of the Park Board and the critical fundraising activities of the Foundation which jointly serve to promote a viable and sustainable parks system in the City ("Cincinnati Parks"); and

WHEREAS, this Memorandum of Understanding ("Agreement") is intended to establish and implement the required financial protocols for expenditure of funds on behalf of, or for the benefit of, the City of Cincinnati Parks Department ("Parks Department"); any City official or employee; or any Cincinnati Parks asset, program, or event, regardless of the source of such funds; and

WHEREAS, the Parties are committed to operating with full transparency within their designated roles and consistent with the reasonable expectations of the public and, toward that end, adopt this Agreement which shall serve as the governing document over the financial relationship among and between the parties and in particular, the expenditure of funds on behalf or, for the benefit of, the Parks Department; any City official or employee; or any Cincinnati Parks asset, program, or event; and

WHEREAS, this Agreement is consistent with the recommendation contained within the July 26, 2016 Crowe Horwath Fiscal Review of the Park Board, Foundation, and the Parks Department to establish a governing document defining the responsibilities of each of the reviewed entities and to ensure accountability regarding the financial transactions by and between those entities on behalf or, for the benefit of, the Parks Department; any City official or employee; or any Cincinnati Parks asset, program, or event; now, therefore:

Based on the foregoing, the Parties enter into the following Agreement:

Section 1. Responsibilities of the Foundation.

The Foundation represents and acknowledges the following with regard to its operation, creation and purpose:

- A. The Foundation has been established for the purpose of raising, receiving, and distributing funds in support of the Park Board's mission and goals and the work of the Foundation shall be compatible with the mission and goals of the Park Board.
- B. The Foundation shall operate as a private legal entity separate from the City and the Park Board.
- C. The Foundation shall use sound fiscal and auditing procedures for its internal operations.
- D. The Foundation shall maintain its current status as a tax-exempt, 501(c)(3) charitable organization under state and federal income tax laws to ensure that gifts and bequests to the Foundation may qualify as deductible, charitable contributions for the donors.
- E. The Foundation shall maintain books in accordance with generally accepted accounting principles, and will be audited annually by a firm of certified public accountants at the Foundation's expense. Copies of the audited financial statement and a current list of Foundation officers, directors, or trustees shall be made available to the City upon request.
- F. The Foundation shall fully comply with all financial protocols established in this Agreement with respect to the expenditure of funds on behalf of, for the benefit of, the Parks Department; any City official or employee; or any Cincinnati Parks asset, program, or event, regardless of the source of such funds. The Foundation shall continue to serve in a fundraising capacity on behalf of the Park Board and the Cincinnati Parks but shall not serve as project or activity manager for any contract related to any Cincinnati Parks asset, program, or event.
- G. Consistent with Section 4 of this Agreement, upon the appropriation of funds by the Foundation for expenditures intended to benefit the Parks Department; any City official or employee; or any Cincinnati Parks asset, program, or event, regardless of the source of such funds, the Foundation shall timely transfer to City of Cincinnati Fund 325 all such funds in order to ensure that City financial controls and procurement requirements are implemented and followed for these expenditures.

Section 2. Responsibilities of the Park Board.

- A. Per the Charter of the City of Cincinnati, the Park Board and the Parks Department are constituent entities of the City of Cincinnati. The Charter provides that the Park Board is the sole appointing authority for all Parks Department employees and that the Park Board has control and management of all City property designated as parks and parkways. Accordingly, the Park Board is responsible for ensuring the proper use and protection of park property. Many of the activities available or associated with the parks generate revenue through entrance or program fees, concessions, rentals, sponsorships, and special events held by or on behalf of the Park Board. Consistent with the City's policies and the tax exempt status of this type of public property, the City's parks system is to be used for the benefit of the public. In order to ensure transparency and a complete accounting of all Park Board and Parks Department expenditures, the Park Board agrees to ensure that Parks Department employees comply with all City of Cincinnati fiscal accountability procedures, including but not limited to, the procedures outlined in Sections 4 and 5 of this Agreement.
- B. All revenue generated by fees or charges associated with attendance at City parks, or events and programs held in the City's parks and park facilities constitutes public money, regardless of the source of funds used to pay for or support the relevant attendance, event, or program. Except as provided in Section C below regarding fundraising by the Foundation to directly benefit the Foundation, all revenue generated by or associated with the City's parks shall be deposited into the appropriate City account. While all City parks and park facility rental fees constitute public money that must be deposited into the appropriate City accounts, this section B does not apply to non-public money generated by unaffiliated third party rental and use of parks property or facilities where such third party has paid the published rental fee for said property or facilities.
- C. The Park Board may support the mission of the Foundation by charging the Foundation a reduced rental fee or no rental fee for the use of a City park or facility for purposes of holding a fundraising event or contributor recognition event. These Foundation events should not replace opportunities for the facility or park to be used to generate revenue for the Parks Department and City. Public events, such as the Butterfly Show and other events at Krohn Conservatory and at Smale Riverfront Park, shall not be used as fundraising events for the Foundation. Money raised by the Foundation utilizing a City park or park facility in compliance with this agreement and not intended for use on behalf or, for the benefit of, the Parks Department; any City official or employee; or any Cincinnati Parks asset, program, or event, may be appropriately be deposited directly into the Foundation's accounts without accounting and oversight by the City. As a private non-profit, the Foundation is not required to comply with the City's procurement processes and policies when spending funds for its own internal operations.

D. Any staff time provided by Cincinnati Parks Department employees in support of any Foundation activities or operations shall be billed to the Foundation by the Park Board at the applicable hourly rate of the particular employee(s). All such staff time shall be approved by the Park Board in advance and pursuant to its review of a written description of the staff services requested by the Foundation. Such staff time provided to the Foundation by Cincinnati Parks Department employees may not include supervision of Foundation employees, authorization of contracts, project management, or other day-to-day operational activities of the Foundation.

E. The Park Board shall take all appropriate steps to ensure that a Parks Department employee serves as project manager for all contracts related to Cincinnati Parks assets, programs, or events. In lieu of a Parks Department employee, the Park Board may also request the City Manager designate another City of Cincinnati employee to provide oversight for a specific contract.

Only the City, through the City Manager or, City Council, may take title to real property, through purchase, donation, or otherwise, including property designated for use as a park. All such Park Board or Park Department requests shall be submitted to the City Manager and shall include a general description of the property, an accounting of any encumbrances upon the property, and an appraisal if purchase is requested.

Section 3. Responsibilities of the City of Cincinnati.

Consistent with good stewardship of public assets, the City is responsible for ensuring that appropriate financial protocols that comply with all applicable state, federal, and public accounting principles are in place and are consistently used for all public or private funds gifted to the Park Board by any source, transferred to the Park Board by the Foundation, and/or used by the Park Board in support of any Parks asset, program, or event. Such gifts, transfers, and expenditures must be in accordance with all applicable state laws and City ordinances, regulations, and policies as further described below.

The City is further responsible for ensuring that all City departments and City employees act in accordance with all state laws and City ordinances, policies, and procedures, including but not limited to the provisions expressly listed in this Agreement.

Section 4. Required Financial Procedures for Expenditures Related to Parks Assets, Programs, or Events.

Restricted Fund 325 - The Foundation shall timely transfer to City of Cincinnati Fund 325 all Foundation-generated funds intended to be expended by the Foundation on behalf or, for the benefit of, the Parks Department; any City official or employee; or any Cincinnati Parks asset, program, or event. The City shall use Fund 325 to receive all transfers of funds from the

Foundation on behalf of or for the benefit of the Park Board. Such funds shall also include any amounts intended to be expended for travel, training, or other expenditures incurred on behalf of any City official or employee. All Foundation-related fund revenue and expenditures intended to be expended by the Foundation on behalf of or for the benefit of the Park Board or the Cincinnati Parks or any City official or employee shall be deposited into and expended from such City operating funds within the Cincinnati Financial System, with any such expenditures requiring prior written authorization from the Park Board.

Special Revenue Fund(s) to be Established by City Regarding Endowment Funds or Bequests – The Park Board and Parks Department shall take all appropriate steps to promptly transfer to the designated City Special Revenue Fund(s) all disbursements from any Cincinnati Parks endowments or bequests received by or distributed to the Parks Board or Parks Department. All disbursements intended to be expended on behalf of, for the benefit of, the Parks Department; any City official or employee; or any Cincinnati Parks asset, program, or event, shall be transferred directly to the appropriate designated City Special Revenue Fund, regardless of the source. Under no circumstances shall disbursements from any Cincinnati Parks endowment or bequest be made available to the Parks Department, or any of its employees, or the Parks Board, or any of its members, without first being transferred to the designated City Special Revenue Fund(s). The principal from any Cincinnati Parks endowments or bequests shall continue to be held and managed by the current servicing agents in accordance with the terms of the original grant of funds. Once any disbursement funds from such endowments or bequests are deposited into the designated City of Cincinnati Special Revenue Fund(s) in accordance with this Section, such funds may only be expended upon written authorization of the Park Board.

Section 5. Procurement

Contracting: Any public or private funds intended to be used on behalf of, for the benefit of, the Parks Department; any City official or employee; or any Cincinnati Parks asset, program, or event, regardless of the source, must be expended in compliance with all applicable contracting requirements of the State of Ohio and the City as further described below.

A. The Park Board shall comply with all applicable State of Ohio and City of Cincinnati requirements, including all State of Ohio prevailing wage and ethics requirements and all procurement and economic inclusion provisions contained in Cincinnati Municipal Code (“CMC”) Chapters 321, 323, and 324 and all administrative regulations of the City regarding contracting for supplies, equipment, construction, services, or professional services to be paid for by funds received from any source, including, without limitation, the funds received from the Parks Foundation or private endowment funds or bequests. Such contracting requirements include, but are not limited to, the following:

1. **Compliance with All Applicable Procurement Requirements:** The Parks Board shall comply with all applicable federal, local, and state laws, rules, and guidance relating to the procurement of contracts including, without limitation, the provisions of the most current versions of the City’s

procurement manuals and the procurement related Administrative Regulations issued by the City Manager. These requirements shall likewise be applicable to any improvements constructed on property owned by the City of Cincinnati and managed by the Park Board, regardless of the source of the funds used for such improvements.

2. **Approval of Contracts:** The Parks Board shall not issue or execute any contract or enter into a binding agreement for supplies, equipment, construction, services, or professional services. Only the City Manager, or in specific situations, as delineated in the CMC, the Chief Procurement Officer/City Purchasing Agent, may sign such contracts that bind the City. This is inclusive of any items or documents that change the scope, schedule, and budget terms of contracts, such as: amendments, change orders, options, extension or renewal letters, equipment rental or lease agreements, forward purchases, purchase orders, task orders, work orders, statement of works or similar items that modify the scope, schedule, and budget terms of a contract.

3. **Economic Inclusion and Prevailing Wage Requirements:** The Parks Board shall comply with all applicable federal, local, and state economic inclusion and prevailing wage requirements laws, rules, and guidance relating to, contracts, including without limitation, the provisions of CMC Chapters 323 and 324 and the State of Ohio's prevailing wage laws.

B. **Credit Cards:** Employees of the Parks Board shall not utilize any credit card/procurement card ("P-Card") issued by any source other than the City's P-Card program, which is managed and administered by the City's Chief Procurement Officer/City Purchasing Agent. The issuance, limits, and use of the City's P-Card by Parks Board employees shall comply with the policies and procedures promulgated in the most current version of the City's P-Card Manual.

C. **Provisions Subject to Change.** The applicable federal, local, and state laws, rules, and guidance relating to the procurement of contracts and the use of City-issued credit cards in this Agreement are subject to change. The parties agree that the most recent of these requirements shall govern this Agreement at any particular time.

Section 6. Necessary Steps for Implementation.

The Parties hereby agree to take all reasonable steps to implement the provisions of this Agreement within their respective agencies, including the execution of additional agreements regarding City of Cincinnati financial protocols to the extent necessary.

This Agreement is hereby executed by the duly authorized representatives of the Parties as of _____, 2016.

Attachment - B

My Fellow Commissioners:

We all have received City Manager Harry Black's email, dated September 9, 2016, and the subsequent email dated October 18, 2016, but received October 21, 2016, in which the City Administration presents a proposed Endowment Fund process that transfers the management and control of the endowments to the control of the City. After reviewing his request, I am deeply concerned by Mr. Black's request of the Park Board.

The legacy of the Board of Park Commissioners began in 1906, through the authority of the City Charter. There are also endowment trusts that go back to the 1930s.

The wills, bequests and the endowment language are all very specific and clear and entrust the Board of Park Commissioners with the fiscal authority, management and control of the funds left to the Board for the benefit of the Parks. Moreover, our City's forefathers and mothers specifically amended the City Charter in 1906 so that the Park Board had exclusive authority to manage the parks, its employees, and fiscal responsibilities.

The Park Board, every two years, for the last 20 years, has had an outside audit firm complete a Procedures Audit that verifies endowment practices and accounting procedures, including internal controls, bank balances, revenues, and expenses. In fiscal year 2016, a Procedures Audit of our endowment practices and accounting procedures was conducted by an outside audit firm. In addition, in 2016, the Park Board's financial procedures and internal controls, including the endowments were audited as part of the city-wide audit by the State of Ohio Auditor's office.

Most recently, a Financial Review mutually agreed upon by the Park Board and the Mayor was completed by Crowe Horwath and presented to the City and the Board in August 2016. It is important to note that there were no fiscal concerns, but rather five (5) observations for potential enhancement. The Park Board has committed itself to transparency and to the five observations as of the Board Report approved unanimously at the August 18, 2016 Board meeting.

Having spent my entire career in finance, it is important for me to distinguish the difference between a financial finding/recommendation versus an observation. In the financial field, a financial finding/recommendation would need to have action taken to resolve the finding/recommendation. If left unaddressed it could have further financial ramifications. However, an observation is a suggestion that can be addressed but if left unaddressed will not have any effect on the organization financially.

The language of the endowment trusts were specific if not in their language but in their intent that the monies entrusted to the Board of Park Commissioners were in fact that, entrusted. It is a violation of this trust to transfer that control to the City. WE are committed to transparency, but this is not transparency. This is relinquishing the very responsibility entrusted in us. In light of language of the endowment trusts being very specific, with the will and direction of the donor, our continued high marks received through fiscal reviews and audits, and due to the Charter authority provided to the Park Board in 1906, I object to the transitioning of our endowments to the City Administration. Currently, the Park Board shares all the endowment statements with the City's Finance Department and has no objection sharing that information with the City Manager's Office. Moreover, it should be noted that the Board already submits all monthly endowment statements to the City's Finance Department so that they are included in the City's Annual Financial Report (CAFR)

Therefore, I am opposed to transferring the management and control of the Board of Park Commissioners endowment funds to the control of the City Administration. I would move that the Board of Park Commissioners not enter into this MOU with the City and through the authority of the City Charter, the Board of Park Commissioners has chosen to retain its endowments and fiscal controls along with our high standard of public fiscal management within the Park Board.

Sincerely,



Robert Anning, Commissioner