

MEMORANDUM

November 8, 2019

TO: MEMBERS, PORT COMMISSION
Hon. Kimberly Brandon, President
Hon. Willie Adams, Vice President
Hon. Gail Gilman
Hon. Victor Makras
Hon. Doreen Woo Ho

FROM: Elaine Forbes
Executive Director

SUBJECT: Request authorization to execute a Memorandum of Understanding in partnership with the San Francisco Parks Alliance for the proposed Crane Cove Park Fundraising Campaign

DIRECTOR'S RECOMMENDATION: Approve Attached Resolution No. 19-45

EXECUTIVE SUMMARY

On September 24, 2019 the Port Commission received an informational update on the proposed Crane Cove Park Fundraising Campaign ("Campaign")¹. Port staff presented a proposed partnership with the San Francisco Parks Alliance ("Parks Alliance") to fundraise for the remaining components of the Crane Cove Park Project ("Project") that are outside the current Project budget, including the children's playground, the dog run, and restoring the two historic crane tops. Since that hearing, Port staff and the Parks Alliance have further refined a shared understanding of the proposed Crane Cove Fundraising Campaign and have set a target to raise \$6.4 million to complete the Project. Port staff and the Parks Alliance have memorialized terms of this understanding in a draft Memorandum of Understanding ("MOU"), attached as Exhibit A of this staff report.

The Parks Alliance's extensive experience and long-standing commitment to leveraging private investment for public parks are a major asset to the Port in raising these critical dollars and realizing the full scope of the Project.

THIS PRINT COVERS CALENDAR ITEM NO. 11B

¹ See September 2019 Staff Report:
https://sfport.com/sites/default/files/Documents/Item%207B%20Crane%20Cove%20Park%20Informational_SFPA_final_0.pdf

This staff report provides a summary of the following:

1. Project Background and Status
2. Strategic Plan Alignment
3. Partner History and Experience
4. Key Terms of the MOU
5. Next Steps

Port Staff is seeking:

- Guidance and feedback on the proposed Crane Cove Fundraising Campaign; and
- Approval of the attached resolution, authorizing the execution of the proposed MOU with the Parks Alliance

PROJECT BACKGROUND & STATUS

The Crane Cove Park site is located within the Pier 70 area and, upon completion, the Park will be one of the signature new parks of the Blue Greenway and within the City's park system. The Park has long been envisioned by the Port and was recognized initially in the adoption of the Port's Waterfront Land Use Plan in 1997 and was also identified in the Port's 2010 Pier 70 Preferred Master Plan and 2012 Blue Greenway Planning and Design Guidelines. Since 2011, the Project has gone through a significant community planning process, design review and has received all its necessary permits. Crane Cove Park is currently funded primarily through the 2008 and 2012 Park General Obligation Bonds, Port Capital funds, and grants.

The Port Commission has approved the Park Master Plan and Schematic Design. The Project has been divided into five contracts: Site Preparation and Surcharging, Hazardous Materials Abatement, Park Improvements and 19th St Parking Lot, Building 49, and 19th and Georgia Street Roadway Improvements. All the contracts have been completed or are under construction with the exception of Building 49 and the Roadway Improvements. The Park Improvements and 19th St Parking Lot contract, which will allow for the Park to open to the public, are anticipated to be complete in Spring 2020. To date, the Port has spent \$16 million on the Park, and has a total budget of \$36.6 million to complete the Park, the surrounding roadways and the parking lot.

Through the Park planning, design and entitlement process, the Project has been vetted through significant community outreach, including to the Port's Central Waterfront Advisory Group(CWAG), Southern Waterfront Advisory Committee (SWAC), Waterfront Design Advisory Committee (WDAC), Bay Conservation Development Commission, Design Review Board (BCDC-DRB), Dogpatch Neighborhood Association, Potrero Boosters, Eastern Neighborhoods CAC, Hunters Point Shipyard CAC, Mission Bay CAC, Bay Trail and Bay Area Water Trail CACs, Port, City Planning Commission, and the San Francisco Bay Conservation and Development Commission. In total, the Project has benefited from more than 60 public meetings or hearings.

STRATEGIC PLAN ALIGNMENT

This Project supports the goals of the Port's Strategic Plan as follows:

Evolution:

3. Improve Port open spaces to provide publicly desired amenities and activities.
 - a. Deliver Crane Cove Park on time and budget
 - i. Open to the public with Park activation programs by 2020
 - ii. Raise private funds for historic crane caps and the children's playground by 2020

Stability:

2. Grow capital funding with external sources.

PARTNER HISTORY AND EXPERIENCE

Since 1972, San Francisco Parks Alliance has leveraged public and private resources to improve parks and public spaces throughout the City. The Parks Alliance champions, transforms, and activates parks and public spaces throughout our city through innovative partnerships with community groups, city government and local business. The Parks Alliance believes that building these partnerships to support parks and open spaces leads to stronger, more cohesive communities, greater physical and mental wellness, and a more sustainable, equitable urban environment. The Parks Alliance is a nonprofit organization (under Internal Revenue Code Section 501(c)(3)) that for 50 years has supported parks and open space in San Francisco.

The Parks Alliance expertise has afforded them an illustrious reputation among the donor community, which has allowed the organization to successfully raise over \$100 million dedicated to rehabilitating and developing parks and open spaces throughout San Francisco. The organization has worked with more than 200 community groups improving their local spaces through beautification, community driven programming, and special events. They are often showcased as a model for successful public private partnerships.

The Parks Alliance initiated and continues to lead the advocacy for the Blue Greenway project. Additionally, the Parks Alliance led the campaigns in support of both the 2008 and 2012 Parks General Obligation Bonds, which have provided significant funding for both the Blue Greenway and other waterfront parks.

Through the Let'sPlaySF! Initiative, launched in 2016 with the San Francisco Recreation and Parks Department, the Parks Alliance is supporting the renovation of the City's 13 playgrounds most in need of investment, and to date has raised over \$15 million.

PROPOSED MOU

OVERVIEW

The proposed MOU with the Parks Alliance is designed to serve as a roadmap of general terms for collaborating on the Campaign to receive private contributions and

support through the Parks Alliance, and the SFPA’s award of grants of funds or in-kind services or materials to the Port as integral part of the Campaign. Under the proposed arrangement, Port staff will bring each Grant Agreement to the Port Commission for approval of Grants from the Parks Alliance to the Port for delivery of Project Components. The MOU also contains commitments by the Port and SFPA on how the parties will collaborate on and communicate during the Campaign.

The MOU will include general City requirements for project partnership arrangements with non-profit agencies, regarding insurance, indemnification and other requirements applicable to private parties that provide services on City property. As to indemnification, the Parks Alliance requests a “mutual indemnification” provision that commits each party to indemnify the other for claims and losses arising from its own respective or proportionate joint negligence in performing the MOU except for the sole negligence or willful misconduct of the indemnitee (the party benefiting from the indemnity commitment), the City’s Risk Management Office has approved the mutual indemnity structure of the MOU.

Overall, the MOU will formalize the mutual commitment of both the Port and Parks Alliance to jointly pursue the Crane Cove Park Fundraising Campaign. Below is a summary of the Key Terms of the MOU.

CAMPAIGN BUDGET

The Crane Cove Park Fundraising Campaign aims to raise approximately \$6.4 million to fund the completion of the following park components, including the children’s playground and the crane tops, as previously identified at the September 11, 2018 Port Commission² meeting and adding the Dog Run, contingency and campaign costs. The anticipated amounts are as follows:

Component	Amount	% of Budget
Children’s Playground (Riggers Yard & Tot Lot)	\$ 700,000	11%
Dog Run	\$ 240,000	4%
Crane Tops	\$ 4,000,000	62%
Project Management	\$ 111,657	2%
Contingency	\$ 643,343	10%
Campaign Costs	\$ 705,000	11%
TOTAL	\$ 6,400,000	100%

Although the goal of this fundraising initiative is to raise approximately \$6.4 million to complete the Crane Cove Project, there is an 11% allowance of all monies raised to be retained by the Parks Alliance for campaign costs.

² See September 2018 Staff Report:
<https://sfport.com/sites/default/files/Commission/Documents/Item%2012B%20Crane%20Cove%20Park%20Informational.pdf>

SUMMARY OF KEY MOU TERMS

Provision	Terms
Term	5 years from the Effective Date (the “ Term ”), with 3 options to extend the Term for one year per option
Budget	\$6,400,000
Roles and Responsibilities	<p>Port</p> <ul style="list-style-type: none"> • Port shall ensure that all funds raised through the Campaign are spent only on Crane Cove Park expenditures • Port staff shall be responsible for presenting information about the Campaign status and progress to the Port Commission and for seeking any Port Commission and City approvals that are required • Port will assign a project manager to oversee any campaign work covered in the MOU <p>Parks Alliance</p> <ul style="list-style-type: none"> • Parks Alliance shall secure third-party donations, contributions, and grants in the form of cash, and in-kind services and materials, in a value up to \$6.4 million • Parks Alliance may provide for varying methods of collaboration with the Port in order to deliver the Project (“Project Delivery”), may include but is not limited to: <ul style="list-style-type: none"> ○ Cash Grants to the Port, subject to Chapter 10 of the San Francisco Administrative Code ○ In-kind grants of Design Services ○ In-kind grants of fully designed and delivered project components ○ Other in-kind contributions as further detailed in Section 5.2 B of the MOU • Parks Alliance shall retain 11% of cash contributions raised for Campaign (administrative) costs <p>Joint Responsibilities</p> <p>Both Port and Parks Alliance (the “Parties”) shall maintain regular communication with each other. Parties shall regularly review the assignment of roles and responsibilities for the entire Campaign. Parties shall ensure timely submittal and review of all necessary reporting as detailed in Section 5.3 C of the MOU.</p>
Ownership of Improvements	Any and all equipment, structures, fixtures, and related materials, used to construct or deliver the remaining

	Project components shall become permanent fixtures of Crane Cove Park, held in exclusive ownership by the Port. The Parks Alliance will relinquish any claim of ownership or title to such Project equipment, structures, fixtures, and related materials.
Indemnification	Mutual Indemnification: Each party shall indemnify the other for claims and losses arising from its own respective or proportionate joint negligence in performing the MOU, except for the sole negligence or willful misconduct of the indemnitee (the party benefiting from the indemnity commitment).
Communications	Parties shall use all good faith efforts to cooperate on the matters of public relations and media responses related to the Campaign. Neither Party shall contact the media for the purposes of the Campaign without the agreement of both Parties, nor shall either party issue a press release regarding the MOU or the Campaign, without providing prior written notice to the other Party. All media inquiries to the Port shall be directed to the Port's Director of Communications. Either Party may hold Campaign events at the Park or elsewhere, Parties shall make good faith efforts to participate on equal basis at such events.

MOU APPROVAL PROCESS

Through the proposed MOU, Port staff and SFPA envision a successful Campaign partnership that will generate funds and services of \$6.4 million in value, that will be disbursed to the Port in the form of grants from the Parks Alliance to the Port for funds or in-kind services or materials to complete the remaining components of the Project.

Section 9.118 of the City Charter provides that contracts entered into by a department or commission having anticipated revenue to the City of \$1 million or more shall be subject to approval by the Board of Supervisors by resolution. Additionally, Section 10.170-1 of the City Administrative Code requires approval by the Board of Supervisors for a City department to accept and expend grant funds of \$100,000 or more. Accordingly, upon Port Commission approval of the proposed MOU and resolution authorizing this Campaign partnership, Port staff will introduce a resolution to the Board of Supervisors for approval to execute the proposed MOU with SFPA, and to accept and expend future grants from SFPA pursuant to the MOU.

OTHER PORT ACTIVITIES RELATING TO THE PARK

Port staff also notes these related efforts that are intended to combine with the Campaign to ensure delivery of a park the Port and its stakeholders can be proud of.

PARK OPERATIONS & MAINTENANCE

Port staff have prepared an estimated budget for maintenance cost and an operations staffing plan for the completed Park. Maintenance will be funded through the Pier 70 Community Facilities District (CFD) funding generated from the Historic Core, Parcel K and future development opportunities along 19th Street. The CFD will fund an annual operating and maintenance budget of approximately \$650,000, and the work will be performed by Port Maintenance Staff.

PARK PROGRAMMING & ACTIVATION

Additionally, Port Staff will further develop a strategy to collaborate with the Office of Economic Development and Workforce Development (OEWD) and the Parks Alliance or another newly formed non-profit entity for a partnership to assist the Port in park programming and activation for Crane Cove Park and a number of other Blue Greenway parks. This non-profit entity collaboration is currently envisioned by Port staff to facilitate a range of functions beyond basic park operations and maintenance, potentially including establishment of community stewardship and volunteer programs and management of special events or arts within the park. If successful, Port staff will return to the Port Commission for further discussion and consideration of that partnership.

CONCLUSION:

Staff now requests that the Port Commission adopt the attached resolution authorizing staff to seek approval from the Board of Supervisors and, if so approved, enter into a Memorandum of Understanding in partnership with San Francisco Parks Alliance to conduct the Crane Cove Park Fundraising Campaign, with the goal to raise approximately \$6.4 million in the form of cash contributions and in-kind services and materials, to fund and complete of the remaining Project Components of the Project.

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**PORT COMMISSION
CITY AND COUNTY OF SAN FRANCISCO**

RESOLUTION NO. 19-45

- WHEREAS, The Port manages the San Francisco waterfront within its jurisdictional boundaries as the gateway to a world-class city, and advances environmentally and financially sustainable maritime, recreational and economic opportunities to serve the City, Bay Area, and California; and
- WHEREAS, The Port delivers vibrant and diverse waterfront experiences that enrich the City and San Francisco Bay Area; and
- WHEREAS, The Port is currently completing the construction of Crane Cove Park, which will be a new 7-acre park on Port property, located in the Central Waterfront generally between 19th Street and Mariposa Streets east of Illinois Street, and is slated for opening in the Spring of 2020; and
- WHEREAS, Crane Cove Park will be a major new public open space that preserves historic maritime resources, provides public access to and recreation opportunities along the Bay, and contributes to a vibrant new Pier 70 neighborhood, and expands the Port's necklace of public open spaces; and
- WHEREAS, The Crane Cove Park Project (Project) is a long-standing project of the Port, and was first identified as a project in the Port's Waterfront Land Use Plan adopted in 1997, and further articulated in the Port's Pier 70 Preferred Master Plan, which was endorsed by the Port Commission in 2010; and
- WHEREAS, On June 14, 2011, the Port Commission authorized award of a contract for planning, design and engineering services for the Project to AECOM Technical Services, Inc., with sub consultants including: Architectural Resource Group, AGS Engineers, Ajmani & Pamidi Engineers and Martin Lee Corporation Cost Estimators (Resolution No. 11- 44); and
- WHEREAS, On September 12, 2016 the Port Commission authorized the award of Construction Contract No. 2740, Crane Cove Park Site Preparation and Surcharge Project, to Shimmick Construction Company, Inc. (Resolution 16-37); and
- WHEREAS, On November 13, 2018 the Port Commission authorized the award of Construction Contract No. 2812, Crane Cove Park: Park Improvements and 19th Street Parking Lot Project, to Gordon N. Ball, Inc. (Resolution 18-61);

WHEREAS, Upon awarding Construction Contract No. 2812, cost control measures were implemented to remove components of the Project to keep the scope within budget, and to also advertise for and accept competitive re-bids for the amended Crane Cove Park: Park Improvements and 19th Street Parking Lot phase of the Project, and in November of 2018 the Commission authorized Port staff to award the contract, thereby deferring the construction of the removed project components until future phases; and

WHEREAS, The Port released the 2019-2023 Strategic Plan and set objectives to improve Port open spaces to provide publicly desired amenities and activities; and specifically set objectives to deliver Crane Cove Park on time and budget, and to raise private funds for historic crane cabs and the children's playground by 2020; and

WHEREAS, The Port has thus far committed \$36.6 million to the Project, and estimates that approximately \$6.4 million is required to fund the remaining components of work; and

WHEREAS, SFPA and the Port agree to partner on the Crane Cove Park Fundraising Campaign dedicated to raising private funds and in-kind contributions to complete remaining Project components including the children's playground, dog run, and restoring the two historic crane tops, all on terms as described in the Memorandum of Understanding as described in and attached as Exhibit A to the staff memorandum accompanying this resolution (the "MOU"); and

WHEREAS, That the Port Commission has reviewed the essential terms of the MOU; now therefore be it resolved that

RESOLVED, That, subject to approval by the Board of Supervisors, the Port Commission hereby authorizes the Executive Director to enter into a Memorandum of Understanding in partnership with San Francisco Parks Alliance to conduct the Crane Cove Park Fundraising Campaign, with the goal to raise approximately \$6.4 million in funds and in-kind contributions for the completion of the remaining project components of the park Project, as described above and upon the terms and conditions substantially in the form of the proposed MOU; and be it further.

RESOLVED, That the San Francisco Port Commission hereby authorizes Port staff to introduce a resolution to the Board of Supervisors seeking approval, pursuant to San Francisco Charter Section 9.118 and pursuant to Administrative Code Section 10.170-1, to execute the proposed MOU in partnership with SFPA, to accept and expend grant funds and in-kind contributions in the amount or value of \$100,000 or more but not exceeding \$6.4 million in the aggregate, upon the terms and conditions described above and in the accompanying staff memorandum; and be it further

RESOLVED, That the Port Commission authorizes the Port Executive Director to enter into any modifications to the MOU that the Port Executive Director determines, in consultation with the City Attorney, are in the best interests of the Port and do not materially increase the obligations or liabilities of the Port, are necessary or advisable to effectuate the purposes of the MOU of this Resolution, and are in compliance with all applicable laws, including the City's Charter.

I hereby certify that the Port Commission at its meeting of November 12, 2019 adopted the foregoing Resolution.

A. Quesada

Secretary

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE PORT OF SAN FRANCISCO
AND THE SAN FRANCISCO PARKS ALLIANCE**

This Memorandum of Understanding (“**MOU**”) is made and entered into as of _____, 2019 (the “**Effective Date**”), by and between the Port of San Francisco (the “**Port**”), acting by and through the Port Executive Director, and the San Francisco Parks Alliance, a California non-profit benefit corporation (the “**SFPA**”). For purposes of this MOU, “Party” means Port or SFPA, as a party to this MOU; and “Parties” means both Port and SFPA, as parties to this MOU.

RECITALS

- A. WHEREAS, the Port manages the San Francisco waterfront as the gateway to a world-class city, and advances environmentally and financially sustainable maritime, recreational and economic opportunities to serve the City, Bay Area, and California; and
- B. WHEREAS, the Port delivers vibrant and diverse waterfront experiences that enrich the City and San Francisco Bay Area; and
- C. WHEREAS, the Port is currently completing construction of Crane Cove Park which will be a new 7-acre park of the Port, located in the Central Waterfront generally between 19th Street and Mariposa Streets east of Illinois Street, and is slated for opening in the Spring of 2020; and
- D. WHEREAS, Crane Cove Park will be a major new public open space that preserves historic maritime resources, provides public access and recreation opportunities to the Bay, and contributes to a vibrant new Pier 70 neighborhood, and expands the Port’s necklace of public open spaces; and
- E. WHEREAS, the Crane Cove Park Project (the “**Project**”) is a long-standing project of the Port, and was first identified as a project in the Port’s Waterfront Land Use Plan adopted in 1997, and further articulated in the Port’s Pier 70 Preferred Master Plan, which was endorsed by the Port Commission in 2010; and
- F. WHEREAS, on June 14, 2011, the Port Commission authorized award of a contract for planning, design and engineering services for the Project to AECOM Technical Services, Inc., with sub consultants including: Architectural Resource Group, AGS Engineers, Ajmani & Pamidi Engineers and Martin Lee Corporation Cost Estimators (Resolution No. 11- 44); and
- G. WHEREAS, on September 12, 2016 the Port Commission authorized the award of Construction Contract No. 2740, Crane Cove Park Site Preparation and Surcharge Project, to Shimmick Construction Company, Inc. (Resolution 16-37); and

H. WHEREAS, On November 13, 2018 the Port Commission authorized the award of Construction Contract No. 2812, Crane Cove Park: Park Improvements and 19th Street Parking Lot Project, to Gordon N. Ball, Inc. (Resolution 18-61); and

I. WHEREAS, upon the Port Commission's award of Construction Contract No. 2812, the Port implemented cost control measures to remove components of the Project to keep the Project scope within budget, and the Port also advertised for competitive re-bids for the amended Crane Cove Park: Park Improvements and 19th Street Parking Lot phase of the Project, and in November of 2018 the Commission authorized Port staff to award the contract, thereby deferring completion of the removed components until future phases; and

J. WHEREAS, the Port released its 2019-2023 Strategic Plan and set objectives to improve Port open spaces to provide publicly desired amenities and activities; and specifically set objectives to deliver Crane Cove Park on time and budget, and to raise private funds for historic crane cabs, the children's playground, and dog run by 2020, components that were removed from the scope of Construction Contract No. 2812 (the "**Removed Components**"); and

K. WHEREAS, the Port has thus far committed \$36.6 million to the Project, and estimates that approximately \$6.4 million is required to fund the remaining components of work; SFPA and the Port agree to partner on the Crane Cove Park Fundraising Campaign dedicated to raising private funds to fund the Removed Components;

L. WHEREAS, the Port intends to seek Board of Supervisors approval to accept grants from SFPA totaling up to \$6.4 million in cash and in-kind contributions for use on the Park; and

M. WHEREAS, subject to the foregoing Board of Supervisors approval, the Parties wish to memorialize their general working relationship on the Crane Cove Park Fundraising Campaign, with the understanding that the specific terms of delivery of project components will be developed separately;

NOW, THEREFORE, effective upon the execution of this MOU by both Parties (the "**Effective Date**"), the Parties agree as follows:

1. **Term of MOU.** This MOU shall become effective upon execution of this MOU, (the "**Effective Date**") and shall expire, unless otherwise earlier terminated by mutual agreement of the parties, 5 years from the Effective Date (the "**Term**"), with 3 options to extend the Term for one year per option.

2. Definitions.

2.1 The Campaign— The Campaign shall consist of all efforts by the Parties to fundraise for equipment, structures, fixtures, materials, and supporting services related to the delivery of the Removed Components of Crane Cove Park.

2.2 Accept and Expend Grant Agreements – The Parties anticipate that, through the Campaign, the Parks Alliance will collect funds and contributions and ultimately transfer collected funds and contributions to the Port for completion of the Project. The Parks Alliance will transfer funds and contributions to the Port through future grant awards (“**Grant Agreements**”) from the Parks Alliance to the Port. Each Grant Agreement will incorporate the terms of this MOU by reference, and in the event of conflict, the terms of the separate Grant Agreement shall govern. Each separate Grant Agreement shall be subject to approval by the Port Commission.

2.3 Project Components— Project Components shall include the Removed Components from the original scope of work and any new Project Component that may be resourced through funds or contributions from the Campaign.

3. Schedule. The Parties agree to work together to develop a Campaign schedule based on the Port’s construction schedule of Crane Cove Park.

4. Budget. The Parties agree to fund the Campaign based on the Campaign Budget (“Budget”) attached to this MOU as Exhibit A. Changes to the Campaign Budget shall be reviewed and agreed upon by the Parties provided, however, that the Port shall have final authority for the expenditure of Campaign funds in compliance with all applicable laws, rules, regulations and policies. Any unexpended Campaign funds shall be used to fund work or other activities at Crane Cove Park at the conclusion of the Campaign.

5. Roles and Responsibilities.

5.1. PORT

A. Use of Funds. The Port shall ensure that all funds raised through the Campaign are spent on Crane Cove Park, and that these funds may not be spent on other parks or open spaces, or other expenses not related to the Project.

- B. Approvals.** The Port shall be responsible for securing all City and other required approvals in order to complete any Removed Components funded by the Campaign. These approvals shall include, but are not limited to, environmental review, building permits, compliance with disability access laws and internal Port and Commission reviews and all other departments and agencies as needed.
- C. Project Management.** The Port will designate a project manager to oversee any work related to the delivery of any removed component for the Project that will be funded through the Campaign. The role of the project manager may include, but is not limited to, day-to-day coordination, oversight of design, permitting, and construction processes related specifically to delivery of that Project Component. The role of the project manager, shall be further articulated in each Grant Award or related agreement executed pursuant to this MOU.
- D. Maintenance and Operation.** The Port shall be responsible for maintaining and operating the Park upon completion of particular Removed Components or the Project as a whole.

5.2 SFPA

- A. Funding.** SFPA, in partnership with Port, shall attempt to secure third-party donations, funds, and grants in the form of cash, and in-kind services and materials, in an aggregate value up to \$6.4 million to ensure the delivery of Project Components identified in the Preliminary Budget attached as Exhibit A. SFPA shall accept and track all private funds and in-kind contributions for the Campaign and shall provide the Port monthly updates on Campaign revenue, expenses, and balances. Contributions to the Campaign may include, but are not limited to cash grants or in-kind contributions of services or materials. For the avoidance of doubt, the SFPA does not hereby commit or guaranty that sufficient funds shall be secured for the Campaign or that any individual Grant Agreements will be entered into.
- B. Project Delivery.** The Parties anticipate that the future Grant Agreements to the Port may provide for varying methods of collaboration between the Parties. The following illustrative examples provide a starting point for describing this collaboration and will be further refined by mutual agreement in subsequent Grant Agreements.
 - (1) Cash Grants.** SFPA may deliver cash grants to the Port necessary

for the completion of a given Removed Component to prior to the bidding of a contract for completion of the applicable Project component.

- (2) In-Kind Grants of Design Services.** SFPA may enter into a contract with a design professional to privately design a Project Component. SFPA shall ensure that any design professional responsible for design a Project Component conforms to the budget developed and approved by the Parties. For all such Project Component designs, SFPA shall ensure that submittals adhere to Port permitting procedures.
- (3) In-Kind Contributions of fully Designed and Delivered Projects.** SFPA may enter into a contract with a third-party contractor to construct a Project Component. Prior to the commencement of any construction SFPA shall certify to the Port that it has in place all funds necessary to complete construction of the applicable Project Component. Upon such certification, the Port shall issue a Notice to Proceed to SFPA. Final Acceptance and Transfer of Ownership of improvements of such projects shall be addressed in future Grant Agreements as necessary.
- (4) Other Contributions.** In the event other contributions are made to the Campaign that fall outside of the above defined Project Delivery methods, the Port and SFPA shall mutually define the most efficient Project Delivery method for that contribution.

5.3 Joint Responsibilities.

- A. Regular Communications.** The Parties shall maintain regular communication with each other and appropriate project consultants regarding project milestones, highlights, challenges, budgets, and schedules.
- B. Assignment of Responsibilities.** The Parties shall regularly review the roles and responsibilities for the entire Campaign. In particular, at the execution of a Grant Agreement for delivery of a Project Component, the Parties shall review and redistribute roles and responsibilities related to public outreach and engagement as appropriate given Campaign budget and staffing constraints.
- C. Reporting and Review.** Parties shall ensure timely submittal and review of all necessary reporting subject to this subsection.

- (1) **Campaign Progress Reporting.** The Parties agree to provide annual Campaign Progress Reports (“**Progress Reports**”) to the Port Commission. Progress Reports shall include, but is not limited to, the following information: milestones, highlights, challenges, schedules, summary of all revenue and contributions, and summary of all expenditures and uses.
- (2) **Financial Reporting and Books and Record Keeping.** The Parties shall review monthly Campaign revenue, expenditures, and cash flow monthly and shall decide whether to approve proposed changes to the overall Campaign budget and schedule. SFPA shall give commercially reasonable access to Port during the Term following commercially reasonable notice to its books and records regarding the Campaign, and shall use good faith efforts to maintain books and records with respect to the Campaign that contain all information required to allow the Port, at its discretion, to verify Campaign contributions and expenditures in accordance with this MOU and with generally accepted accounting practices consistently applied and shall retain such books and records for a period of the later of (i) four (4) years after the end of each calendar year to which such Books and Records apply or, (ii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the campaign contributions payable hereunder, until such audit or controversy is terminated (the “**Audit Period**”).

6. **Ownership of Improvements.** The Parties mutually agree that any and all equipment, structures, fixtures, and related materials, used to construct or deliver the remaining Project Components (as defined in Section 2.3 of this MOU) shall become permanent fixtures and part of the Crane Cove Park, to be held in exclusive ownership by the Port. SFPA agrees to, and does hereby, relinquish any claim of ownership or title to such equipment, structures, fixtures, and related materials, used to construct or deliver the remaining Project Components.
7. **Insurance.** Without in any way limiting SFPA’s liability pursuant to the “Indemnification” section of this Agreement, SFPA must maintain in force, during the full term of this Agreement, insurance in the amounts and coverages specified in Exhibit B, and shall name as an additional insured the Port of San Francisco, City and County of San Francisco, and their Officers, Agents, and Employees.
8. **Indemnification.** Subject to any provision in this MOU or in any subsequent agreement entered into hereunder to the contrary, each party agrees to waive claims against and indemnify the other party as follows:

To the extent allowable by law, SFPA agrees to defend, indemnify and hold harmless the Port, its officers, employees and agents (“Port Indemnitees”) from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of SFPA, their officers, employees and agents in connection with this MOU, except those arising by reason of the intentional act of the Port Indemnitees.

To the extent allowable by law, City agrees to defend, indemnify and hold harmless SFPA, its officers, directors, employees and agents, from any and all acts, claims, omissions, liabilities and losses asserted by any third party arising out of acts or omissions of City, its officers, employees and agents in connection with this MOU, except those arising by reason of the sole negligence or willful misconduct of SFPA, its officers, directors, employees and agents.

In the event of concurrent negligence of the City Port, its officers, employees and agents, and SFPA and/or the Friends, their officers, directors, employees and agents, the Parties agree that any joint liability for any and all claims for injuries or damages to persons and/or property shall be apportioned under the California theory of comparative negligence as presently established or as may hereafter be modified.

The indemnity obligations described in this Section shall survive expiration of this Agreement.

- 9. Communications.** The Port and the SFPA shall use good faith efforts to cooperate on matters of public relations and media responses related to the Crane Cove Park Fundraising Campaign. To the fullest extent possible all print and electronic communications regarding the Project or any of the individual playgrounds as they pertain to the Campaign shall refer to Crane Cove Park Fundraising Campaign and include the SFPA and Port logos.

The Port and SFPA shall use good faith efforts to cooperate with any inquiry by the other Party or by the public in regard to the Project. Any report or memorandum between the Parties shall be subject to the disclosure requirements of the City’s Sunshine Ordinance and the California Public Records Act.

Neither Party shall contact the media for the purposes of promoting the Campaign or any individual Project Component without the agreement of both Parties. Neither the Port nor SFPA shall issue a press release in regard to this MOU or the Campaign or the Project or a Project Component without providing prior written notice to the other Party.

Any response by either Party to an inquiry by a news or community organization in reference to the Project shall include a recommendation to contact the other Party. All

media contacts to the Port will be directed to the Director of Policy and Public Affairs at the address provided for the Department in Section 10.3 below. All media contacts to the SFPA will be directed to the Director of External Affairs at the address provided for the SFPA in Section 9.3 below.

At a time and in a format to be determined later by the Parties, the Port and the SFPA may conduct events, such as groundbreakings and openings to promote and celebrate the Project. The timing, general format and budget for such events shall be reviewed and approved by the Parties. The Parties shall make good faith efforts to participate on an equal basis at such events.

Nothing in this MOU shall prohibit the SFPA or the Port from discussing this MOU in response to inquiries from the public or the press.

10. Donor Recognition. If requested by the SFPA in connection with the Campaign or any individual Removed Component, the Parties will work together to develop a donor recognition program (which may include naming rights). Upon mutual agreement with respect to a donor recognition program, Port Staff shall present for Port Commission approval, any such donor recognition program.

11. Miscellaneous.

10.1. Entire MOU. This MOU, including the exhibits hereto, which are made a part of this MOU, contains the entire understanding between the Parties and supersedes all other oral or written agreements, with the exception of duly executed and approved Grant Agreements.

10.2. Amendment. This MOU may be amended only by the mutual written consent of the Parties, executed in the same manner as the original MOU.

10.3. Notices. All notices under this MOU shall be sufficiently given if hand delivered or mailed by registered or certified mail, postage prepaid, or by overnight express delivery, cost prepaid, to:

Port:	SFPA:
Elaine Forbes Executive Director Port of San Francisco Pier 1, The Embarcadero San Francisco, CA 94111	Drew Betcher CEO San Francisco Parks Alliance 1074 Folsom Street San Francisco, California 94103

Randy Quezada Director of Communications Port of San Francisco Pier 1, The Embarcadero San Francisco, CA 94111	Sonia Gonzalez Banks Director of External Affairs San Francisco Parks Alliance 1074 Folsom Street San Francisco, California 94103
<i>with a copy to:</i> Office of the City Attorney Attn: Port General Counsel Port of San Francisco Pier 1, The Embarcadero San Francisco, California 94111	<i>with a copy to:</i> Pillsbury Winthrop Shaw Pittman LLP Four Embarcadero Center, 22nd Floor San Francisco CA 94111

10.4. Governing Law. This MOU shall be construed and enforced in accordance with the laws of the State of California and the City of San Francisco Charter.

10.5. Approvals. All Port approvals required under the agreements contemplated shall be given by the Port Executive Director, or his or her designee in his or her reasonable discretion, except as otherwise specified herein or in the City Charter, or the S.F. Municipal Code.

10.6. Independent Relationship of the Parties. The Port shall not be liable for any act of the SFPA and the SFPA shall not be liable for any act of the Port, and nothing herein contained shall be construed as creating the relationship of employer and employee between the Port and the SFPA or any of their respective agents or employees. The SFPA shall at all times be deemed an independent contractor and shall be wholly responsible for the manner in which it performs the duties required of it by the terms of this MOU. The SFPA has and hereby retains the right to exercise full control and supervision of its duties and full control of employment, direction, compensation and discharge of all persons assisting it in the performance this MOU. The SFPA agrees to be solely responsible for all matters relating to payment and employment of employees, including compliance with social security, withholding and all other regulations governing such matters. Nothing set forth in this MOU shall be deemed to render the Port a partner in the SFPA’s business, or joint venture or member in any joint enterprise with the SFPA.

10.7. No Third Party Beneficiaries. Except as expressly provided, nothing contained in this Agreement shall create or justify any claim against the Port or the SFPA by any third person with respect to the performance of any duties or other projects being undertaken by the SFPA or the Port. The provisions of this MOU are not intended to benefit any third party, and no third party may rely hereon.

IN WITNESS WHEREOF, the parties hereto have executed this MOU:

<p>Port of San Francisco</p> <p>By: _____ Elaine Forbes, Executive Director Port of San Francisco</p> <p>DATE: _____</p>	<p>SFPA</p> <p>By: _____ Drew Betcher, CEO San Francisco Parks Alliance</p> <p>DATE: _____</p>
<p>APPROVED AS TO FORM:</p> <p>DENNIS J. HERRERA City Attorney</p> <p>By: _____ Timothy Yoshida Deputy City Attorney</p>	

Exhibit A

**PRELIMINARY BUDGET
TO BE FUNDED AS PART OF THE
CRANE COVE PARK FUNDRAISING CAMPAIGN**

The Port shall operate and maintain Crane Cove Park, real property owned by the City and County of San Francisco acting through the Port of San Francisco. The Parties acknowledge and agree that the following components will compromise the total scope of improvements or work to be funded through the Crane Cove Park Fundraising Campaign.

Feature	Amount	% of Budget
Riggers Yard	\$ 700,000	11%
Dog Run	\$ 240,000	4%
Crane Tops	\$ 4,000,000	62%
Project Management	\$ 111,657	2%
Contingency	\$ 643,343	10%
Campaign Costs*	\$ 705,000	11%
TOTAL	\$ 6,400,000	100%

*11% of all cash contributions will be retained by SPPA for Campaign Costs

EXHIBIT B

SFPA Insurance Requirements

1. The SFPA must maintain in force, during the full term of this Agreement, insurance in the following amounts and coverage:
 - a. General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for Contractual Liability, Personal Injury, Independent Contractors, Explosion, Collapse and Underground (XCU) as applicable, Broadform Property Damage, Sudden and Accidental Pollution as applicable, Products Liability and Completed Operations; and
 - b. Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including coverages for owned, non-owned and hired automobiles, as applicable.
2. Delivery of Certificates. Prior to the commencement date of this Agreement, the SFPA shall deliver to the City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to the City, evidencing the coverages required from the SFPA, together with complete copies of the policies at the City's request. Prior to the date any contractor commences work on the Property, the SFPA shall deliver to the City certificates of insurance and additional insured policy endorsements from insurers in a form satisfactory to the City, evidencing the coverages required from the contractor, together with complete copies of the policies at the City's request.
3. No Limitation of Obligations. The SFPA's compliance with the provisions of this section shall in no way relieve or decrease the SFPA's indemnification obligation under this Agreement or any of the SFPA's other obligations hereunder.