

File No. 210877

Committee Item No. 1

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Gov. Audit and Oversight Comm.

Date May 19, 2022

Board of Supervisors Meeting

Date _____

Cmte Board

- Motion
- Resolution
- Ordinance
- Legislative Digest
- Budget and Legislative Analyst Report
- Youth Commission Report
- Introduction Form
- Department/Agency Cover Letter and/or Report
- Memorandum of Understanding (MOU)
- Grant Information Form
- Grant Budget
- Subcontract Budget
- Contract/Agreement
- Form 126 - Ethics Commission
- Award Letter
- Application
- Form 700
- Information/Vacancies (Boards/Commissions)
- Public Correspondence

OTHER (Use back side if additional space is needed)

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Completed by: Victor Young Date May 13, 2022

Completed by: _____ Date _____

1 [Memorandum of Understanding - Accept and Expend Grants - San Francisco Parks Alliance
2 - Crane Cove Park - Up to \$7,000,000]

3 **Resolution authorizing the Port of San Francisco to execute a Memorandum of**
4 **Understanding and accept and expend grants from the San Francisco Parks Alliance of**
5 **up to \$7,000,000 to fund the completion of certain project components of Crane Cove**
6 **Park for the period of November 2021 to October 2029.**

7
8 WHEREAS, The Port manages the San Francisco waterfront within its jurisdictional
9 boundaries as the gateway to a world-class city, and advances environmentally and financially
10 sustainable maritime, recreational and economic opportunities to serve the City, Bay Area,
11 and California; and

12 WHEREAS, The Port delivers vibrant and diverse waterfront experiences that enrich
13 the City and San Francisco Bay Area; and

14 WHEREAS, The Port is currently completing the construction of Crane Cove Park,
15 which will be a new 7-acre park on Port property, located in the Central Waterfront generally
16 between 19th Street and Mariposa Streets east of Illinois Street, and opened in September
17 of 2020; and

18 WHEREAS, Crane Cove Park will be a major new public open space that preserves
19 historic maritime resources, provides public access to and recreation opportunities along the
20 Bay, and contributes to a vibrant new Pier 70 neighborhood, and expands the Port's necklace
21 of public open spaces; and

22 WHEREAS, The Crane Cove Park Project (Project) is a long-standing project of the
23 Port, and was first identified as a project in the Port's Waterfront Land Use Plan adopted
24 in 1997, and further articulated in the Port's Pier 70 Preferred Master Plan, which was
25 endorsed by the Port Commission in 2010; and

1 WHEREAS, The Port has thus far committed \$36.6 million to the Project, and
2 estimates that approximately \$6.122 million is required to fund the remaining components of
3 work; and

4 WHEREAS, San Francisco Parks Alliance (SFPA) and the Port have negotiated a
5 Memorandum of Understanding (the "MOU") under which they will partner on a Crane Cove
6 Park Fundraising Campaign to raise private funds and in-kind contributions over the next five
7 to eight years to complete remaining Project components including the children's playground,
8 dog run, and restoring the two historic crane tops, all on terms as described in the MOU; and

9 WHEREAS, SFPA intends to provide such private support in the form of cash and in-
10 kind contributions with a total value of up to \$7 million; and

11 WHEREAS, Pursuant to the MOU, each specific gift and grant will be governed by a
12 specific separate grant agreement subject to approval by the Port Commission; and

13 WHEREAS, The Port proposes to maximize use of available grant funds on project
14 expenditures by not including indirect costs in the grant budget; and

15 WHEREAS, On November 12, 2019, the Port Commission voted, by Resolution
16 No. 19-45, to approve the MOU and authorize Port staff to seek Board of Supervisors'
17 approval of the MOU and to accept and expend grant funds and in-kind contributions made in
18 connection with the Crane Cove Park Fundraising Campaign; and

19 WHEREAS, Since the Port Commission Approval further budget refinements were
20 made and therefore the fundraising goal has increased to \$7 million; the Port Commission will
21 approve any increased amounts raised through approval of each grant agreement; and

22 WHEREAS, On September 24, 2020, the Office of the Controller conducted a Public
23 Integrity Review to examine gifts made to departments through non-city organizations; the
24 preliminary assessment resulted in several recommendations, one of which was to require
25 departments and non-city organizations to formalize their relationships through

1 Memorandums of Understanding that are posted to department websites and include: a.) A
2 requirement to adhere to city law on the acceptance of gifts, including the Administrative
3 Code, Section 10.100-305, or other sections that apply to the department. b) an agreement to
4 comply with the Sunshine Ordinance, Section 67.29-6. c) a clause granting the Controller
5 audit authority and access to the organization's records. d) regular public reporting on these
6 funds to occur not less than annually, at the donor or payee recipient level, and posted on the
7 recipient department's website. e) a requirement to report donations, including grants, on the
8 organization's website. f) clearly defined roles regarding expenditures, including prohibitions
9 against spending directed or controlled by the recipient; and

10 WHEREAS, Requirements outlined in the Public Integrity Report have been
11 incorporated into the MOU; now, therefore, be it

12 RESOLVED, That the Board of Supervisors approves the MOU pursuant to Charter,
13 Section 9.118, and authorizes the Executive Director of the Port to accept and expend up to a
14 total value of \$7 million in grant funds, in-kind contributions and other donations from the San
15 Francisco Park Alliance from the Crane Cove Park Fundraising Campaign to fund the
16 completion certain project components of Crane Cove Park over the next five to eight years
17 subject to the terms and conditions of specific grant agreements approved by the Port
18 Commission; and, be it

19 FURTHER RESOLVED, That the Board of Supervisors hereby waives inclusion of
20 indirect costs in the grant budget; and, be it

21 FURTHER RESOLVED, That the Board of Supervisors authorizes the Port Executive
22 Director to enter into any modifications to the MOU and to execute such other agreements
23 related thereto including specific grant agreements approved by the Port Commission that the
24 Port Executive Director determines, in consultation with the City Attorney, are in the best
25 interests of the City, do not materially increase the obligations or liabilities of the City, are

1 necessary or advisable to effectuate the purposes of this Resolution, and are in compliance
2 with all applicable laws, including the City's Charter; and, be it

3 FURTHER RESOLVED, That within thirty (30) days of the MOU being fully executed by
4 all parties, the Port shall provide the final MOU to the Clerk of the Board for inclusion into the
5 official file.

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9 Recommended:

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12 /s/
13 Executive Director, Port of San Francisco

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15

16 Approved:

Approved:

17
18
19

20 /s/
21 Mayor

/s/
Controller

22 *Approved as to MOU Audit and Financial Reporting*
23 *Inclusion and Accept and Expend Provisions*

24
25

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

CRANE COVE PARK FUNDRAISING CAMPAIGN

This Memorandum of Understanding (“**MOU**” or this “**Agreement**”) is made and entered into as of _____, 2021 (the “**Effective Date**”), by and between the City and County of San Francisco (the “**City**”) acting by and through the Port of San Francisco (the “**Port**” or “**Department**”), and the San Francisco Parks Alliance, a California non-profit benefit corporation (the “**SFPA**” or “**Friends**”). For purposes of this MOU, “**Party**” means the 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
- 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 certain 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 "**Project Components**"); and

K. WHEREAS, the Port has thus far committed \$36.6 million to the Project, and estimates that approximately \$6.122 million is required to fund the Project Components; under this MOU, SFPA and the Port agree to partner on a fundraising campaign dedicated to raising private funds to fund the Project Components and such additional components to enhance Crane Cove Park as the Parties may mutually agree (as more fully described in Section 2.1 below, the "**Campaign**") and SFPA has already secured commitments of significant funds for the Campaign; and

L. WHEREAS, on November 12, 2019, the Port Commission voted, by Resolution No. 19-45, to approve this MOU and authorize Port staff to seek Board of Supervisors' approval of the MOU and to accept and expend grant funds and in-kind contributions made in connection with the Campaign; and

M. WHEREAS, on XX, 2021, the City's Board of Supervisors voted, by Resolution No. XX-XX, to approve this MOU and to accept and expend grant funds and in-kind contributions made in connection with the Campaign totaling up to \$7 million to fund the Project Components; and

N. 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 each donation will be documented and approved by the Port Commission pursuant to separate grant agreements;

NOW, THEREFORE, effective upon the execution of this MOU by both Parties, the Parties agree

as follows:

1. **Term of MOU.** This MOU shall become effective on the date on which it has been executed by both of the Parties (the “**Effective Date**”) and shall expire, unless otherwise earlier terminated, on the date that is 5 years after the Effective Date (the “**Term**”). There shall be 3 options to extend the Term for one year per each option with the mutual written agreement of the Parties. Either Party shall have the option, in its sole discretion, to terminate this Agreement at any time for convenience and without cause by giving written notice that specifies the effective date of such termination to the other Party. If this Agreement is terminated, the Parties will work together to take necessary actions to effectuate the termination of this Agreement.

2. **The Campaign/Grant Agreements Required.**

2.1 **The Campaign.** The Campaign shall consist of all efforts by the Parties to fundraise for equipment, structures, fixtures (collectively, “**Fixtures**”), cash, materials, and supporting services related to the delivery and installation of the Project Components to and in Crane Cove Park.

2.2 **Future Grant Agreements.** The Parties anticipate that, through the Campaign, the SFPA will collect through third-party donations, funds, contributions and grants in the form of cash, in-kind services and materials (“**Campaign Funds**”) and ultimately transfer them to the Port for completion of the Project through future grant agreements (“**Grant Agreements**”). Each Grant Agreement shall incorporate the terms of this MOU by reference, and will include further provisions as applicable to ensure compliance with City requirements on matters such as project delivery, access to the Park, donor recognition, contracting requirements, transfer of ownership and conditions thereof, approvals, insurance, and indemnity. In the event of a conflict between this Agreement and any Grant Agreement, the terms of the separate Grant Agreement shall govern. Each separate Grant Agreement shall be subject to approval by the Port Commission. For the avoidance of doubt, the Parties agree that this MOU does not commit or guaranty that any individual Grant Agreement(s) will be executed; execution of such Grant Agreement(s) shall be in the sole discretion of SFPA and the Port Commission.

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

4. **Budget.** The Parties agree to seek Campaign Funds based on the preliminary Campaign Budget ("**Budget**") attached to this MOU as Exhibit A. All Campaign Funds will be donated to the Port in accordance with this MOU and the applicable Grant Agreements. Port acknowledges that, like all non-profits, SFPA must use a portion of the funds it raises to fund its own administrative expenses. The parties agree that, for this Campaign, SFPA may retain eleven percent (11%) of any cash contributions it raises for the Campaign to reimburse itself for its administrative expenses related to the Campaign ("**Campaign Costs**"). For purposes of this MOU, references to the Budget and to Campaign Funds do not include Campaign Costs which are retained by SFPA from incoming donations. SFPA must disclose the 11% administrative fee to all potential donors to the Campaign. Campaign Costs are subject to audit by the City as provided in this MOU. Changes to the Campaign Budget shall be reviewed and agreed in writing by the Parties. Subject to the terms of the Grant Agreements, any unexpended Campaign Funds shall be used by Port to fund work or other activities at Crane Cove Park at the conclusion of the Campaign.

5. **Use of Funds.** Campaign Funds raised shall only be expended in accordance with the Grant Agreement as approved by the Port Commission authorizing the use of funds for a specific purpose. Upon expiration of this MOU, Port shall set aside and use any accepted, but unexpended funds, for ongoing maintenance and repair of improvements at Crane Cove Park.

6. **Roles and Responsibilities.**

6.1. PORT

- A. **Use of Funds.** The Port shall have final authority to expend Campaign Funds received from SFPA in compliance with each Grant Agreement, and all applicable laws, rules, regulations and policies. The Port shall ensure that all funds raised through the Campaign are spent on Crane Cove Park, and that the funds are not spent on other parks or open spaces, or other expenses not related to the Project.

- B. Approvals.** Unless as otherwise specified in any Grant Agreement, the Port shall be responsible for securing all City and other required approvals in order to complete any Project 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 approvals by 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 Project Component 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 may be further articulated in each Grant Agreement executed pursuant to this MOU.
- D. Maintenance and Operation.** The Port shall maintain and operate Crane Cove Park. Once accepted by the Port, the Port shall be responsible for maintaining and operating the Fixtures delivered to Port for later installation at Crane Cove Park or installed in Crane Cove Park under a Grant Agreement. Donated Fixtures shall remain in Crane Cove Park for their useful life, in Port's sole discretion.
- E. Port Funds.** Except as explicitly and affirmatively specified in this Agreement, (i) Port shall not expend any Campaign Funds received under this Agreement, (ii) Port is not required to commit any Port or City funds to the Project and (iii) Port shall have no obligation to fund the Project Components or make up any funding shortfall.
- F. Non-Exclusive.** Port reserves the right to directly receive contributions for Crane Cove Park from other sources.

6.2. SFPA

- A. Funding.** SFPA, in partnership with Port, shall attempt to secure Campaign Funds in an aggregate value up to \$7 million to ensure the delivery of Project Components in accordance with the Budget. 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 (including Campaign Costs) 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 executed and SFPA has no obligation to fund the Project Components or make up any funding shortfall. Without affecting any other term of this MOU and at SFPA's risk if this MOU is never executed or if any particular Grant Agreement is not executed by Port, the Parties agree that funds raised by SFPA since November 12, 2019 for the Campaign shall be included and subject to the terms of this MOU, including for the purposes of determining Campaign Costs.

- B. Compliance with Laws.** Each Party shall keep itself fully informed of City's Charter, codes, ordinances and regulations and all state, and federal laws, rules and regulations affecting the performance of its respective obligations under this Agreement and shall at all times comply with such Charter codes, ordinances, and regulations, rules and laws including without limitation, the requirements of SF Administrative Code §10.100.205 et seq. and Section 67.29-6 of the City's Sunshine Ordinance.
- C. Project Delivery.** The Parties anticipate that the future Grant Agreements 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 Project Component 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 design a Project Component ("**Design Services**"). SFPA shall ensure that any design professional responsible for designing 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 design guidelines and the Port Building Code and can be permitted by Port
 - (3) In-Kind Contributions of fully Designed and Delivered Fixtures.** SFPA may enter into a contract with a third-party contractor to fabricate, construct and/or install a Fixture ("**Delivered Fixture**"). Prior to the commencement of any fabrication, construction and/or installation, SFPA shall certify to the Port that it has in

place all funds necessary to complete such fabrication, construction and/or installation. Upon such certification, the Port shall issue a notice to proceed to SFPA. Final acceptance and transfer of ownership of such Fixtures shall be addressed in future Grant Agreements as necessary.

- (4) **Intellectual Property License.** For any Design Services and Delivered Fixtures, SFPA shall and shall request the design professional or third-party contractor, as applicable, grant to Port all necessary licenses and rights, including intellectual property rights to enable Port to use “works for hire, “drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, construction documents and/or designs developed for each Fixture. If the design professional or third-party contractor does not grant such licenses, Port has the right in its sole discretion to reject the specific donation.
- (5) **Other Contributions.** In the event other contributions are made to the Campaign that fall outside of the above delivery methods, the Port and SFPA shall mutually define the most efficient delivery method for that contribution.

6.3. **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. Upon the reasonable request of SFPA, the Port will disclose such non-confidential information as may be necessary or advisable in connection with the conduct of the Campaign.
- B. Assignment of Responsibilities.** The Parties shall regularly review the roles and responsibilities for the entire Campaign. In particular, upon execution of each Grant Agreement for delivery of a Project Component, the Parties shall review roles and responsibilities related to public outreach and engagement as appropriate given the Campaign budget and staffing constraints.
- C. Reporting and Review.** The 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 not less than annually. Progress Reports shall include, without limitation, the following information: milestones, highlights, challenges, schedules, and information about the

source of all revenue and contributions at the donor level, of all expenditures and uses as well as Campaign Costs.

- (2) **Campaign Budget.** The Parties shall review monthly Campaign revenue, expenditures, and cash flow on a monthly basis and shall jointly decide whether to approve proposed changes to the overall Campaign budget and schedule.
- (3) **Financial Reporting and Audit Provisions.** The parties shall comply with the additional provisions regarding financial reporting and auditing attached hereto as Exhibit C which are fully incorporated herein. The provisions of Exhibit C shall survive the expiration of this Agreement with respect to reporting and auditing in connection with this Agreement.

7. **Ownership of Fixtures.** As further defined in each Grant Agreement, (i) the Parties agree that any and all Fixtures delivered to Port for later installation at Crane Cove Park or installed in Crane Cove Park shall, upon acceptance by Port under a Grant Agreement, become property of the Port; and (ii) SFPA agrees to relinquish any claim of ownership or title to such Fixtures.

8. **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. The parties acknowledge that subsequent Grant Agreement(s) may impose additional requirements on SFPA and/or their contractors as needed.

9. **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 City, Port, and their 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, or their respective officers, employees and agents, and SFPA or its 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.

10. 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.

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 12.3 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 12.3 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.

This MOU and the obligations under this Section are subject to and shall be in compliance with the City's Sunshine Ordinance, the California Public Records Act and other laws applicable to disclosure of information to the public.

11. Donor Recognition. If requested by the SFPA in connection with the Campaign or any individual Project Component, the Parties will work together to develop a donor recognition program (which may include naming rights). Any donor recognition program will be subject

to approval by the Port Commission and may be subject to approval by the Board of Supervisors. Upon mutual agreement with respect to a donor recognition program, the staff of the Port department shall present the program for Port Commission approval and take other steps to implement the program.

12. Miscellaneous.

- 12.1. **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.
- 12.2. **Amendment.** This MOU may be amended only by the mutual written consent of the Parties, executed in the same manner as the original MOU.
- 12.3. **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

- 12.4. **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.

- 12.5. **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.
- 12.6. **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 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.
- 12.7. **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.

[Signatures on Next Page]

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>CONTROLLER DEEMED APPROVED AS TO MOU AUDIT AND FINANCIAL REPORTING INCLUSION</p>	
<p>APPROVED AS TO FORM:</p> <p>DENNIS J. HERRERA City Attorney</p> <p>By: _____ Rona H. Sandler Deputy City Attorney</p>	

Port Commission Reso. 19-45
BoS Reso. xx-xx

Exhibit A

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

The Parties acknowledge and agree that the following Preliminary Budget is an estimate of costs to deliver Project Components to be funded through the Crane Cove Park Fundraising Campaign.

Grant Budget	Project Cost
Tot Lot	\$ 717,567
Riggers Yard	\$ 80,853
Dog Run	\$ 655,763
Crane Tops	\$ 4,000,000
Project Management	\$ 111,656
Contingency	\$ 556,584
TOTAL	\$ 6,122,423

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 Effective 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.

Exhibit C
Disclosure Obligations; Recordkeeping and Auditing

- A. **Acknowledgment of Disclosure Obligations under City Law.** San Francisco Administrative Code Section 67.29-6 requires the Department to disclose on its website the amount and source of all money, goods or services worth more than \$100 in the aggregate for the purpose of carrying out or assisting any City function. For all gifts, grants, and other donations received under this MOU, the disclosure must identify Friends as the contributor, the amounts contributed, and a statement as to any financial interest Friends has involving the City, including a contract, grant, lease, or request for license, permit, or other entitlement for use. Under the Administrative Code, the Department must post this information on its website within 30 days of the date of any such donation. If required by City law, the Department must also disclose this or other information about donations from Friends in any related resolution or ordinance submitted to the Board of Supervisors for approval.
- B. **Friends' Reporting & Disclosure Obligations.**
1. **Donor and Grant Information.** Friends agrees to comply with San Francisco Administrative Code Section 67.29-6 by posting on its website the names of all individuals or organizations that contribute \$100 or more to Friends, by gift, grants, or other instruments, in the form of money, goods, or services, for the purpose of carrying out or assisting the Department's performance of its City functions; the amounts contributed; and a statement as to any financial interest the donor contributing to the Friends has involving the City, including any donor's contract, grant, lease, or request for license, permit, or other entitlement for use. Friends will post this information on its website within 30 days of receipt of any gift, grant or other instrument, and will also provide this information to the Department each year by no later than July 15 for the preceding fiscal year. Friends will maintain this donor information on its website until at least the end of the fifth fiscal year after the donation. To ensure compliance with this requirement and to maximize public transparency, Friends will not accept anonymous donations from a single source aggregating more than \$100 for purposes covered under this MOU. These provisions shall also apply to any grants received by Friends, if those grant funds are transferred to the City for the purpose of carrying out or assisting any City function.
 2. **Financial Reports.** Friends will provide to the Department and the Department will upload a PDF (searchable text) copy of the Friends' annual audited financial report and IRS Form 990 annual tax return into the City's financial system as part of the MOU documentation and prior to City's execution of this MOU. The annual audited financial report filings provided by the Friends must include detailed information about the Friends' total sources and uses of funds and also the sources and uses of funds dedicated to support the Department covered under this MOU, the names of the Friends' Board of Directors and Officers, and the names of any and all payees of Funds covered by this MOU, including consultants, contractors and subcontractors and any current or past City

employees paid and any funds provided directly to the City Department to support the Department's functions including but not limited to employee recognition and public events. Additionally, Friends will post its audited financial report and its IRS Form 990 and all related tax return schedules on its website annually within 60 days of the completion of each.

3. **Links to Friends Website.** The Department will provide a link on its website to Friends' website for the public to readily access the information required under this MOU. Friends will also post this MOU on its website along with copies of any other copies of Grant Awards or other City Contracts and MOU Agreements with any City Department including the Department covered by this MOU.
4. **Friends' Supplier Registration.** As part of the MOU Agreement execution, the Friends must register and submit an IRS Form W-9 through the SF City Partner portal, a complete copy of their most recent IRS Form 990 tax return and complete their Approved Supplier set up through the Controller's Supplier Management Unit.
5. **Friends' Invoices through SF City Partner Online (eSettlements) site.** If the MOU Agreement includes invoicing by Friends to the City Department, all invoices must be submitted online with any/all required supporting documentation through the SF City Partner portal's Online eSettlements site.

C. Recordkeeping and Auditing.

1. **Recordkeeping.** Friends will maintain books and records relating to this MOU, in accordance with generally accepted accounting practices consistently applied, that contain all information required to allow the Department and/or the City's Controller, at their discretion, to audit Friends' records and to verify contributions and expenditures in accordance with this MOU.
2. **Auditing.** Friends shall make such books and records relating to this MOU available to the Department and/or the City's Controller (or their representatives) upon commercially reasonable prior written notice, but in no event more than ten (10) days after such notice is provided to conduct an audit. Friends shall retain and shall allow the Department and/or the City's Controller to access such books and records for a period of the later of (i) five (5) years after the end of each year to which such books and records apply, (ii) five (5) years after the issuance date of the Friends' audited financial statement or the IRS Form 990 annual tax return to which such books and records apply, or (iii) if an audit is commenced or if a controversy should arise between the parties hereto regarding the contributions or expenditures hereunder, until such audit or controversy is terminated.

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

The Parties acknowledge and agree that the following Preliminary Budget is an estimate of costs to deliver Project Components to be funded through the Crane Cove Park Fundraising Campaign.

Grant Budget	Project Cost
Tot Lot	\$ 717,567
Riggers Yard	\$ 80,853
Dog Run	\$ 655,763
Crane Tops	\$ 4,000,000
Project Management	\$ 111,656
Contingency	\$ 556,584
TOTAL	\$ 6,122,423

CITY AND COUNTY OF SAN FRANCISCO

BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST

1390 Market Street, Suite 1150, San Francisco, CA 94102 (415) 552-9292
FAX (415) 252-0461

October 12, 2021


TO: Government Audit and Oversight Committee
FROM: Budget and Legislative Analyst 
SUBJECT: October 18, 2021 Government Audit and Oversight Committee Meeting

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Item	File	Page
6	21-0877 Memorandum of Understanding - Accept and Expend Grants - San Francisco Parks Alliance - Crane Cove Park - Up to \$7,000,000	1

<p>Item 6 File 21-0877</p>	<p>Department: Port</p>
<p>EXECUTIVE SUMMARY</p>	
<p style="text-align: center;">Legislative Objectives</p> <ul style="list-style-type: none"> • The proposed resolution would (1) approve a Memorandum of Understanding (MOU) between the Port and the Parks Alliance, (2) authorize the Port to accept and expend up to \$7 million in grant funds, in-kind donations, and other donations from the Parks Alliance Crane Cove Park Fundraising Campaign, (3) waive the inclusion of indirect cost recovery from the grant budget, and (4) allow the Port to modify the MOU so long as such modifications do not increase the liability of the City. <p style="text-align: center;">Key Points</p> <ul style="list-style-type: none"> • Crane Cove Park is a new nine-acre coastal public park under construction near Pier 70, on Illinois Street between Mariposa Street and 19th Street. The new park will include landscaping, a pier, restoration of historic cranes and buildings, and new pathways. The park development budget of \$36.7 million is funded by General Obligation bond proceeds, Port Infrastructure Financing District bond proceeds, and grants. The open space portion of the park is complete and open to the public. The remaining project, restoring Building 49 at the center of the park, is expected to be complete by the end of 2021. • Under the proposed MOU, the Parks Alliance would provide to the Port grant funds, and in-kind and other donations for Crane Cove Park projects with a value up to \$7 million, including two children’s play areas, a dog run, and preservation of two historic cranes. The purpose of the proposed MOU is to govern the activities of the Port and the Parks Alliance, a non-profit, in their efforts to raise private money to fund Crane Cove Park expenses for park furniture, fixtures, and amenities. The MOU defines the responsibilities of the Port and the Parks Alliance over the five-year term of the MOU. <p style="text-align: center;">Fiscal Impact</p> <ul style="list-style-type: none"> • The Parks Alliance grant would pay (either through direct grants or in-kind services) for historic restoration of two cranes (\$4.0 million), two children’s play areas (approximately \$900,000), a dog run (approximately \$656,000), and project management, contingencies, and Parks Alliance fee. • According to the Port, \$3.25 million has been raised by the Parks Alliance for the Crane Cove Park project since November 2019, provided in the form of cash donations. <p style="text-align: center;">Policy Consideration</p> <ul style="list-style-type: none"> • The September 24, 2020 Public Integrity Assessment issued by the Controller’s Office and the City Attorney’s Office recommended that City Departments formalize their relationships with outside “friends of” organizations such as the Parks Alliance through memoranda of understanding. Because the proposed MOU is consistent with the recommendations of the Public Integrity Assessment report and provides funding for public park improvements, we recommend approval of the proposed resolution. <p style="text-align: center;">Recommendation</p> <ul style="list-style-type: none"> • Approve the proposed resolution. 	

MANDATE STATEMENT

City Administrative Code Section 10.170-1 states that accepting Federal, State, or third-party grant funds in the amount of \$100,000 or more, including any City matching funds required by the grant, is subject to Board of Supervisors approval. The Code Section also requires that grants include indirect cost recovery, unless waived by the Board of Supervisors.

City Charter Section 9.118(a) states that contracts entered into by a department, board, or commission that (i) have anticipated revenues of \$1 million or more are subject to Board of Supervisors approval.

BACKGROUND

Crane Cove Park

Crane Cove Park is a new nine-acre coastal public park under construction near Pier 70, on Illinois Street between Mariposa Street and 19th Street. As shown below in Exhibit 2, the new park will include landscaping, a pier, restoration of historic cranes and buildings, and new pathways. The park development budget is summarized in Exhibit 1 below, which shows the total available sources of funding and actual and projected spending. According to Port staff, the open space portion of the park is complete and open to the public. The remaining project, restoring Building 49 at the center of the park, is expected to be complete by the end of 2021.

Exhibit 1: Funding Sources and Actual Spending on Crane Cove Park Development

Sources	
2008 and 2012 GO Bonds	\$25,855,454
Port IFD Bond	9,295,655
EDA Federal Grant	517,441
MTC Federal Grant	1,000,000
Total Sources	\$ 36,668,549
Actual Spending	
Project Management	\$664,738
Design	4,701,445
Construction Management & Permits	1,325,997
Site Preparation	4,789,793
Hazmat Abatement	227,055
Park Improvements and 19th St Parking Lot	19,516,190
Roadway Improvements	2,870,452
Building 49	2,067,560
Total Uses	\$36,163,230

Source: Port

Notes: GO bonds refer to General Obligation bonds. Port IFD Bond refers to Port bonds secured by the Port’s infrastructure financing district revenues. EDA refers to the federal Economic Development Administration. MTC refers to the Metropolitan Transportation Commission.

Exhibit 2: Crane Cove Park Architectural Rendering

Source: Port

DETAILS OF PROPOSED LEGISLATION

The proposed resolution would (1) approve a Memorandum of Understanding (MOU) between the Port and the Parks Alliance, (2) authorize the Port to accept and expend up to \$7 million in grant funds, in-kind donations, and other donations from the Parks Alliance Crane Cove Park Fundraising Campaign, (3) waive the inclusion of indirect cost recovery from the grant budget, and (4) allow the Port to modify the MOU so long as such modifications do not increase the liability of the City.

Memorandum of Understanding (MOU)

The purpose of the proposed MOU is to govern the activities of the Port and the Parks Alliance, a non-profit, in their efforts to raise private money to fund Crane Cove Park expenses for park

furniture, fixtures, and amenities. The MOU has a five-year term and contains the following provisions summarized in Exhibit 3.

Exhibit 3: Summary of Proposed MOU Terms

Term	Five years
Parks Alliance Role	Fundraise up to \$7 million in cash or in-kind grants for Crane Cove Park project
Port Role	Approve use of funds, design project components, deliver park
Budget	Up to \$7 million in fundraising
Parks Alliance Fee	11% of funds raised
Ownership	Port will retain ownership of all fixtures funded through the grant, and be responsible for all maintenance and operations of Crane Cove Park.
Donors	Parks Alliance will post on its website and report to City any donors contributing more than \$100. Funds may not be contributed anonymously.
Reporting	Parks Alliance will provide the City monthly fundraising status reports and the organization's audited financial statements.
Naming Rights	Port and Parks Alliance may work together to develop donor recognition program, including naming rights, subject to Port Commission approval.
Indemnification	Port and Parks Alliance indemnify one another against claims by third parties related to the MOU.

Source: Proposed Memorandum of Understanding

According to the proposed MOU, the Port and the Parks Alliance may enter into future grant agreements governing cash grants and in-kind contributions for design services, including for the Parks Alliance to hire professional service contractors to design improvements of the park. According to the Port, certain park improvements that are expected to be funded by private donations have not yet been designed and would therefore benefit from in-kind donations of design firms. The proposed MOU provides the ability for the Port to approve and monitor the provision of such in-kind donations.

FISCAL IMPACT

Exhibit 4 summarizes the allowable uses of the funds to be granted to the City by the Parks Alliance.

Exhibit 4: Use of Funds

Tot Lot	717,567
Rigger Yard	80,853
Dog Run	655,763
Crane Tops	4,000,000
Project Management	111,656
Contingency (10%)	556,584
Total	6,122,423

Source: Proposed Memorandum of Understanding

Notes: Tot Lot refers to a children’s playground. Riggers Yard refers to an area of the park with structures of varying heights. Crane Tops are the rehabilitation of two cranes that have historic designation.

According to the Port, \$3.25 million has been raised by the Parks Alliance for the Crane Cove Park project since November 2019, all of which has been provided in the form of cash donations. The proposed MOU allows the Parks Alliance to raise up to \$7 million for the Crane Cove Park project. Any funds above the \$6.1 million amount in Exhibit 4 above may be used for any element of the Crane Cove Park project.

POLICY CONSIDERATION

According to the September 24, 2020 Public Integrity Assessment issued by the Controller’s Office and the City Attorney’s Office regarding gifts to City Departments, the former Director of Public Works, now indicted by the U.S. Attorney’s Office on public corruption charges, solicited donations to accounts held by the Parks Alliance and directed spending from those accounts. The report recommended that City Departments formalize their relationships with outside “friends of” organizations such as the Parks Alliance through memoranda of understanding that include compliance with donor naming requirements in the Administrative Code, the Sunshine Ordinance, providing the Controller audit authority, regular reporting, reporting donations on the contractors’ website, and clearly defining the City’s control over spending. Because the proposed MOU is consistent with these recommendations and would provide funding for public park improvements, we recommend approval of the proposed resolution.

RECOMMENDATION

Approve the proposed resolution.

File Number: 210877
(Provided by Clerk of Board of Supervisors)

Grant Information Form
(Effective March 2005)

Purpose: Accompanies proposed Board of Supervisors resolutions authorizing a Department to accept and expend grant funds.

The following describes the grant referred to in the accompanying resolution:

1. Grant Title: Crane Cove Park Fundraising Initiative
2. Department: Port of San Francisco
3. Contact Person: Crezia Tano-Lee Telephone: 415-653-9517
4. Grant Approval Status (check one):
 Approved by funding agency Not yet approved
5. Amount of Grant Funding Approved or Applied for: \$7,000,000
- 6a. Matching Funds Required: \$0
b. Source(s) of matching funds (if applicable): n/a
- 7a. Grant Source Agency: San Francisco Parks Alliance
b. Grant Pass-Through Agency (if applicable): n/a
8. Proposed Grant Project Summary: The San Francisco Parks Alliance is partnering with the Port of San Francisco to provide private funds and in-kind contributions over the next five to eight years to complete remaining project components including the children's playground, dog run, and restoring the two historic crane tops.
9. Grant Project Schedule, as allowed in approval documents, or as proposed:
Start-Date: April 1, 2020 End-Date: March 31, 2028
- 10a. Amount budgeted for contractual services: TBD Based on funds raised
b. Will contractual services be put out to bid?
If funds are raised, Port Contract Procurement Process will be implemented
- c. If so, will contract services help to further the goals of the department's MBE/WBE requirements? Yes
- d. Is this likely to be a one-time or ongoing request for contracting out? One-time
- 11a. Does the budget include indirect costs? Yes No
b1. If yes, how much? \$ n/a
b2. How was the amount calculated? n/a

c. If no, why are indirect costs not included?

Not allowed by granting agency

To maximize use of grant funds on direct services

Other (please explain):

c2. If no indirect costs are included, what would have been the indirect costs?

Department and Division Indirect Costs

12. Any other significant grant requirements or comments:

Design for the components will undergo further review (e.g. ADA, CEQA, etc.) at the time funding is raised.

****Disability Access Checklist****

13. This Grant is intended for activities at (check all that apply):

Existing Site(s)

Existing Structure(s)

Existing Program(s) or Service(s)

Rehabilitated Site(s)

Rehabilitated Structure(s)

New Program(s) or Service(s)

New Site(s)

New Structure(s)

14. The Departmental ADA Coordinator and/or the Mayor's Office on Disability have reviewed the proposal and concluded that the project as proposed will be in compliance with the Americans with Disabilities Act and all other Federal, State and local access laws and regulations and will allow the full inclusion of persons with disabilities, or will require unreasonable hardship exceptions, as described in the comments section:

Comments: Design for the components will undergo further review (e.g. ADA, CEQA, etc.) at the time funding is raised.

Departmental or Mayor's Office of Disability Reviewer: Wendy Proctor *W. Proctor*
(Name)

Date Reviewed: 7/30/2021

Department Approval: Elaine Forbes Port Executive Director
(Name) (Title)
Elaine Forbes
(Signature)

File Number: _____
(Provided by Clerk of Board of Supervisors)

Grant Information Form
(Effective March 2005)

Purpose: Accompanies proposed Board of Supervisors resolutions authorizing a Department to accept and expend grant funds.

The following describes the grant referred to in the accompanying resolution:

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- 6a. Matching Funds Required: \$0
b. Source(s) of matching funds (if applicable): n/a
- 7a. Grant Source Agency: San Francisco Parks Alliance
b. Grant Pass-Through Agency (if applicable): n/a
8. Proposed Grant Project Summary: The San Francisco Parks Alliance is partnering with the Port of San Francisco to provide private funds and in-kind contributions over the next five to eight years to complete remaining project components including the children's playground, dog run, and restoring the two historic crane tops.
9. Grant Project Schedule, as allowed in approval documents, or as proposed:
Start-Date: November 1, 2021 End-Date: March 31, 2028
- 10a. Amount budgeted for contractual services: TBD Based on funds raised
b. Will contractual services be put out to bid?
If funds are raised, Port Contract Procurement Process will be implemented
c. If so, will contract services help to further the goals of the department's MBE/WBE requirements? Yes
d. Is this likely to be a one-time or ongoing request for contracting out? One-time
- 11a. Does the budget include indirect costs? Yes No
b1. If yes, how much? \$ n/a
b2. How was the amount calculated? n/a

c. If no, why are indirect costs not included?

Not allowed by granting agency

To maximize use of grant funds on direct services

Other (please explain):

c2. If no indirect costs are included, what would have been the indirect costs?

Department and Division Indirect Costs

12. Any other significant grant requirements or comments:

Design for the components will undergo further review (e.g. ADA, CEQA, etc.) at the time funding is raised.

****Disability Access Checklist****

13. This Grant is intended for activities at (check all that apply):

Existing Site(s)

Existing Structure(s)

Existing Program(s) or Service(s)

Rehabilitated Site(s)

Rehabilitated Structure(s)

New Program(s) or Service(s)

New Site(s)

New Structure(s)


14. The Departmental ADA Coordinator and/or the Mayor's Office on Disability have reviewed the proposal and concluded that the project as proposed will be in compliance with the Americans with Disabilities Act and all other Federal, State and local access laws and regulations and will allow the full inclusion of persons with disabilities, or will require unreasonable hardship exceptions, as described in the comments section:

Comments:

Departmental or Mayor's Office of Disability Reviewer: W. Proctor
(Name)

Date Reviewed: 9/16/2021

Department Approval: Elaine Forbes Executive Director
(Name) (Title)

(Signature) 

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.

Prepared by: Crezia Tano-Lee, Manager
Business Strategy & Optimization
Real Estate and Development

David Beaupre
Senior Project Manager
Real Estate and Development

Erica Peterson
Project Manager
Engineering

Prepared for: Byron Rhett
Chief Operating Officer

**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.