

File No. 210351

Committee Item No. 3

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

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Date: Nov. 18, 2021

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Prepared by: John Carroll

Date: Nov. 12, 2021

Prepared by: John Carroll

Date: _____


Prepared by: John Carroll

Date: _____

CITY AND COUNTY OF SAN FRANCISCO
BOARD OF SUPERVISORS

BUDGET AND LEGISLATIVE ANALYST
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Policy Analysis Report

To: Supervisor Connie Chan
From: Budget and Legislative Analyst's Office 
Re: Relations between Recreation and Parks Department and San Francisco Parks Alliance
Date: November 12, 2021

Summary of Requested Action

Your office requested that the Budget and Legislative Analyst conduct an analysis of contractual relationships between the Recreation and Parks Department and the San Francisco Parks Alliance.

For further information about this report, contact Fred Brousseau, Director of Policy Analysis, at the Budget and Legislative Analyst's Office.

Executive Summary

- Since at least 2003, the Recreation and Parks Department has entered into multiple contractual relationships with the San Francisco Parks Alliance (SFPA), a *Friends of* organization.¹ The Department has also had less formal arrangements over the years with the Alliance for certain functions and funding arrangements. Through grants to the Department provided by the Alliance, this relationship has enabled the Recreation and Parks Department (RPD) to provide park improvements and programs that would otherwise not be available. However, adequate controls against the possibility of corruption and financial transparency were found lacking in our review of key agreements between the two organizations from recent years.
- The San Francisco Controller issued a preliminary assessment report in 2020 on public integrity matters pertaining to non-City organizations controlled by and/or benefitting City departments, including *Friends of* organizations such as the San

¹ According to the Controller's Office Public Integrity Review Report from Sept. 24, 2020, *Preliminary Assessment: Gifts to Departments Through Non-City Organizations Lack Transparency and Create "Pay-to-Play" Risk*, *Friends of* organizations are "generally distinguished by the fact that they are intended to financially support the department with which they are associated and charitable donations are their primary revenue source, and thus are spent on the City."

Francisco Parks Alliance (SFPA). The Controller's report includes ten preliminary recommendations intended to improve transparency, reduce the risk of fraud, and safeguard public funds for City departments interacting with *Friends of* organizations. Many of these recommendations are relevant for establishing controls to guard against the potential for unethical or corrupt activities between RPD and SFPA, as detailed in this report, particularly since the SFPA both provides grants and gifts to RPD through donations and in-kind services, and receives funding from the Department as a licensee operating the Conservatory of Flowers under contract. RPD reports that the SFPA also has contractual and financial relationships with other City departments.

- On the heels of the Controller's report and public corruption indictments of City officials, some of which involved relationships between City departments and non-City organizations, the Mayor issued a directive in 2020 requiring all City departments to establish memoranda of understanding with non-City organizations that receive donations on their behalf.
- RPD entered into a master Memorandum of Understanding (MOU) with SFPA in May 2021 that addresses, among other matters: (1) how SFPA provides annual support for ongoing Department operations, (2) grant or use permit agreements for special projects, (3) conflicts of interest, and (4) anonymous donations to SFPA. This master MOU between RPD and SFPA provides a number of necessary controls to guard against the risk of real or perceived corruption. It also sheds light on areas where prior agreements between the two organizations were deficient, such as: a) budgeting and reporting requirement for Annual Support contributions to RPD, b) prohibition of anonymous donations in excess of \$100, c) conflict of interest provisions, and d) insurance requirements. Though the master MOU adds needed controls to the relationship between the two organizations, we conclude that the conflict of interest provisions and prevailing wage requirements for contractors hired by SFPA to provide in-kind services to RPD should be strengthened.
- The City's Sunshine Ordinance requires that the sources of gifts to departments with a value of \$100 or more be disclosed as a public record and be made available on the department's website. Donations from SFPA to RPD amounted to approximately \$1.9 million between Fiscal Years 2016-17 and 2019-20, which the Department has disclosed. However, during the same approximate time period, SFPA reports receiving anonymous donations ranging from \$1.5 to \$3 million. Because the donors of these funds are not identified by SFPA, the original source of donations to RPD cannot be fully determined by simply reporting the source as SFPA, raising questions about potential conflicts of interest during this time period. The new May 2021 master MOU specifies that SFPA will no longer accept

anonymous donations from a single source aggregating more than \$100 for their Annual Support and Special Project Support for RPD.

- We reviewed a number of agreements between RPD and SFPA in place in recent years and found that they generally: (1) lacked specific budget details that, if included, would have enhanced transparency related to cost-sharing between SFPA and the Department at the outset and for the duration of each special project partnership, and (2) did not include specifics related to the manner in which SFPA and RPD officers and employees would disclose and avoid financial conflicts of interest. The May 2021 master MOU now requires RPD and SFPA to jointly develop proposed budgets and includes a conflict of interest provision, although, as mentioned above, we believe it should be strengthened. Further, we believe more detailed budgets should be included in the agreements and used as a baseline for reporting the comparison to actual revenues and expenditures to parties such as the Recreation and Park Commission.

- Key issues identified in our review of agreements between RPD and SFPA are summarized in Exhibit 1.

Exhibit 1: Summary of Key Issues Identified in RPD-SFPA Partnership Agreements

	Agreement between RPD and SFPA	Issues
1.	Let’sPlaySF! Program: Umbrella MOU for which SFPA agreed to contribute up to \$15 million to bolster City funding for improvements to 13 City playgrounds.	<p>There are no methods for resolving disputes between the two organizations concerning projects funded by SFPA.</p> <p>There are no conflict of interest prohibitions or provisions.</p> <p>The agreement does not include requirements to better ensure compliance with prevailing wage requirements by SFPA’s contractors and subcontractors that provide in-kind services to RPD.</p> <p>There are no requirements governing how SFPA selects its contractors to provide in-kind services on the projects, such as a request for qualification process to ensure</p>

		value and reduce opportunities for conflicts of interest.
2.	<p>Richmond Playground Improvements: Agreement for approximately \$2.6 million in funding and in-kind services provided to RPD by SFPA (part of the Let'sPlaySF! Initiative) to combined with \$485,000 in Department funding.</p>	<p>The agreement does not specify how the total funding for the project will be allocated. RPD reports that a more detailed budget was developed subsequently but it is not codified in the agreement or used for complete reporting of budgeted to actual revenues and expenditures.</p> <p>There are no contractor selection process requirements for firms retained by SFPA such as the already selected design firm for this project. RPD notes that SFPA issued a request for qualifications for this project, a practice that, if standardized, could reduce the potential for conflicts of interest in SFPA's contractor selection process and provide greater assurance of the price benefits of competitive biddings.</p> <p>There are no methods identified for resolving disputes between the two organizations.</p> <p>There are no provisions defining and prohibiting conflicts of interest between the two organizations.</p>
3.	<p>Golden Gate Park 150th Anniversary Celebration use permit (never issued): Covered the community day event planned for April 4, 2020 and subsequent events to celebrate Golden Gate Park's</p>	<p>A budget and allocation of costs was not established for the celebration or codified in an agreement. Given that RPD identified itself as an event partner and was contributing financially to the event, we conclude that this was not like other use permits issued by the Department and the details of the financial obligations of both parties should have been codified and disclosed to the RPD Commission.</p>

	<p>150th Anniversary (GGP150).</p>	<p><i>The San Francisco Examiner</i> reported that the cost of the Golden Gate Park 150th Anniversary Celebration would be approximately \$1.9 million. Details on this budget were not disclosed to the Recreation and Park Commission when approval to issue the use permit was requested by the Department.</p>
<p>4.</p>	<p>Observation wheel use permit agreements with SkyStar Wheel, LLC for installation and operation of an observation wheel (ferris wheel) in Golden Gate Park starting in March 2020.</p>	<p>The vendor was selected on a sole source basis for a one-year term because competitive bidding was considered impractical and/or impossible by RPD due to the limited time between deciding to include an observation wheel (in July 2019) and a community event date in April 2020 that was part of the Golden Gate Park 150th Anniversary Celebration (GGP150).</p> <p>The original agreement called for between five and six percent of ticket sales, or an amount we estimate to be between \$300,000 and \$500,000 to be allocated to SFPA to cover a portion of GGP150 costs, with the remainder retained by the vendor (with no funding going to RPD). Initially, RPD had reported that SFPA would be covering all GGP150 costs, but \$300,000 to \$500,000 in revenue provided to SFPA from funds that would otherwise go to RPD represents significant support for GGP150 event costs. Further, there was no provision for a minimum guaranteed amount to be provided to RPD, as is customary in City concession agreements. RPD states that the terms of this agreement reflect standard industry pricing for observation wheels.</p>

		<p>The agreement was subsequently amended to limit the amount allocated to SFPA to \$200,000, with the remainder allocated to RPD up to \$900,000. The term was changed to up to five years total instead of the original one year.</p> <p>Without a competitive bidding process, it is difficult to assess whether this was a good financial deal for the City and SFPA.</p>
5.	<p>Conservatory of Flowers Agreement: Covers operations, fundraising, and marketing of the facility.</p>	<p>RPD established a formal agreement with SFPA for these services in 2003. The agreement expired in 2012 but has remained in place in holdover status for the subsequent nine years through the present and has not been updated during that time.</p> <p>There is no provision for a minimum guaranteed amount of Conservatory revenues collected by SFPA to be allocated to RPD in the agreement.</p> <p>The agreement allows for RPD to cover SFPA’s costs if Conservatory revenues are insufficient, an unusual provision for a City contract. The Department reports that this provision has never been triggered.</p>

Policy Options

The Board of Supervisors should:

1. Request that the Recreation and Parks Department report back to the Board of Supervisors disclosing originally budgeted and actual revenues and expenditures associated with the Golden Gate Park 150th Anniversary Celebration, including transactions stemming from the observation wheel agreement.
2. Request that the Recreation and Parks Department adopt the practice of including detailed project revenue and expenditure budgets beyond what is now required in the May 2021 master MOU in agreements with the San Francisco Parks Alliance for

special projects or, if not finalized at the time the agreement is adopted, made public and reported to the Recreation and Park Commission when they are finalized, along with periodic update reports of actual revenues and expenditures compared to the originally budgeted amounts.

3. Request that the Recreation and Parks Department amend its master Memorandum of Understanding with the San Francisco Parks Alliance to specifically prohibit selection of contractors by the Parks Alliance for in-kind services to the Recreation and Parks Department based on contractor donations to the Department or the Parks Alliance and/or their personal relationships with employees and officers of either organization.
4. Request that the Recreation and Parks Department amend its master Memorandum of Understanding with the San Francisco Parks Alliance to strengthen its requirements pertaining to payment of prevailing wages by the Alliance's contractors and subcontractors by requiring compliance with City Administrative Code and State law prevailing wage requirements, where applicable, including: a) payment of prevailing wages by contractors and subcontractors, b) requiring that notices of these requirements be posted at contractor and subcontractor job sites, c) requiring that detailed payroll records be retained and made available to the Office of Labor Standards Enforcement as needed, and 4) detailing remedies in the event that prevailing wages are not paid.
5. Request that the Recreation and Parks Department add a requirement that the San Francisco Parks Alliance solicit contractors for in-kind services provided to the Department through a Request for Qualifications process to better ensure that contractors selected are the most qualified at the most reasonable price and to consider financial disclosure requirements to reduce the potential for conflicts of interest in the contractor selection process.
6. Request that the Recreation and Parks Department report back to the Board of Supervisors on the results of establishing a new agreement with SFPA for operation of the Conservatory of Flowers.

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<i>Project Staff: Fred Brousseau, Rashi Kesarwani</i>
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Introduction

Our office was asked to review aspects of the financial and operational relationship between the Recreation and Parks Department (RPD) and the San Francisco Parks Alliance (SFPA), a *Friends of* non-profit organization that provides philanthropic and operational support that furthers the Department’s goals and initiatives. SFPA also operates, markets, and fundraises for the Conservatory of Flowers under a license agreement with RPD. We reviewed documentation of this relationship from recent years including agreements and Department reports related to the Let’sPlaySF! Initiative, the Golden Gate Park 150th Anniversary Celebration and operation of the Conservatory of Flowers—two initiatives that involved philanthropic and/or operational support from SFPA and one agreement for SFPA to provide services to the Department. We found that the documents, including partnership agreements, use permits, and reports for the Recreation and Park Commission, lacked: (1) specific budget details relating to expenditures and cost-sharing between SFPA and the Department as well as, (2) specific details on the manner in which SFPA officers and employees would avoid financial conflicts of interest with RPD. In the case of the license agreement with SFPA to operate and provide services for the Conservatory of Flowers, we found that the agreement has not been updated since 2003.

Agreements entered into by RPD with philanthropic partners, such as SFPA, are not subject to the same Administrative Code standards as contractual agreements for the receipt of public funds.

The new master Memorandum of Understanding (MOU) entered into on May 24, 2021 by and between SFPA and RPD addresses many of the deficiencies that we identify in prior agreements between SFPA and RPD. Philanthropic support from SFPA provides a significant benefit of allowing the Department to do more than it otherwise could using only public resources. However, without adequate controls—some of which are now specified in the master MOU—this benefit of philanthropic support risks being overshadowed by the possibility of corruption.

Controller’s Recommendations and Mayoral Directive Seek to Limit Risk Associated with Gifts to Departments from Non-City Organizations

Controller’s Public Integrity Review Recommends Greater Transparency to Reduce “Pay-to-Play” Risk

In response to federal public corruption charges against the former Public Works Director, Mayor London Breed requested in 2020 that the City Attorney and the Controller design and conduct a “thorough and independent review of any implicated City contracts or other decisions, investigate any suspected violations of the law or City guidelines, and develop recommendations

on how to protect the integrity of City processes and decisions.”² The Controller’s Office issued a preliminary assessment report in September 2020 on non-City organizations controlled by and/or benefitting City departments, including *Friends of organizations*.³ The report includes ten preliminary recommendations intended to improve transparency, reduce the risk of fraud, and safeguard public funds, as briefly described in Exhibit 1.⁴

Since the Recreation and Parks Department’s ongoing relationship with the non-City San Francisco Parks Alliance, a non-profit *Friends of organization*, benefits the Department by providing funding and in-kind services to support the Department, the Controller’s recommendations provide a useful framework for this analysis. The organization also has another relationship with the Department as a licensee, or contractor, operating and marketing the Conservatory of Flowers in Golden Gate Park. With these relationships and flow of funds, the organizations are vulnerable to unethical behavior without sufficient anti-corruption controls and processes. Outside of its relationship with RPD, the Department reports that SFPA also has contractual relationships with other City departments.

² Office of the Mayor San Francisco, Executive Directive 20-02, Sept. 24, 2020, “Compliance with Gift Regulations and Increasing Transparency in City Department Relationships with Non-City Organizations,” https://sfmayor.org/sites/default/files/Executive%20Directive%2020_02_Gifts%20to%20Departments%20Through%20Non-City%20Organizations%20-%20Final%20for%20Website.pdf

³ According to the Controller’s Office report, *Friends of organizations* are “generally distinguished by the fact that they are intended to financially support the department with which they are associated and charitable donations are their primary revenue source, and thus are spent on the City.”

⁴ SF Controller’s Office, Sept. 24, 2020, “Preliminary Assessment: Gifts to Departments Through Non-City Organizations Lack Transparency and Create ‘Pay-to-Play’ Risk,” <https://sfcontroller.org/gifts-departments-through-non-city-organizations-lack-transparency-and-create-%E2%80%9Cpay-play%E2%80%9D-risk>

**Exhibit 1: SF Controller’s Preliminary Recommendations from Controller to Limit Risk
Associated with Gifts to Departments from Non-City Organizations**

	Recommendations
1	Prohibit non-elected department heads and employees from soliciting donations from “interested parties” of their department, unless specifically authorized by Board of Supervisors
2	SF Ethics Commission should expand definition of “interested party” to include city contractors ⁵
3	Require departments and non-city organizations to formalize their relationships through memoranda of understanding that are posted to departmental websites
4	Departments should comply with Administrative Code Section 10.100-305 on San Francisco Gift Funds, including requirements for gifts greater than \$10,000 and explicit authorization for uses of funds for employee recognition and appreciation
5	Require annual certification from department heads that all gifts of goods, services, and funds have been approved by the Board of Supervisors and reported on time
6	Make it easier for departments to use City funds for employee recognition and appreciation events and provide explicit (line-item) appropriations for this purpose
7	Annually audit (on a sample basis) organizations that both give gifts to the City and have a financial interest with the City, such as a contract
8	Departments should not accept any donation through anonymous donors or for which they cannot identify the true source pursuant to the Sunshine Ordinance Section 67.29-6
9	Amend the Sunshine Ordinance Section 67.29-6 to align with the City’s updated “interested party” definition that includes city contractors
10	Review and strengthen consequences for non-compliance of reporting requirements

Source: Controller

As discussed in more detail below, the Controller’s recommendations are relevant to the relationship between RPD and SFPA. SFPA both provides gifts to RPD through donations and in-kind services and is a licensee to the Department (operating and providing services for the Conservatory of Flowers under a separate contract) and thus would be covered under the expanded definition of an interested party as defined by the Controller.

⁵ An “interested party” is a person who is a party, participant or agent of a party or participant to certain types of proceedings before the official in question, according to the SF Ethics Commission.

The Sunshine Ordinance Section 67.29-6 already forbids City officials and employees from accepting funds or goods or services worth more than \$100 for any City function unless the amount and source is disclosed, as explained further in the nearby sidebar.

The Controller’s Public Integrity Review identified behested payments solicited by non-elected department heads and employees as a risk area. A behested payment is a payment made to a third party such as a non-profit *Friends of* organization at the request of a “city officer,” which has traditionally included City elected officials and members of boards and commissions.

As of a September 2020 Mayoral Executive Directive, department heads are now required to follow behested payment reporting requirements.⁶ Behested payments are principally made for legislative, governmental, or charitable purposes, rather than for personal or campaign purposes, according to the San

Francisco Ethics Commission. A risk associated with behested payments is that the requestor, such as a City department head, could request that contractors make contributions to third party organizations such as non-profits in exchange for favorable treatment in contract selection decisions. The non-profits could in turn make gifts or grants to the City department or individuals such as the department head.

City officers, which now include department heads, are required to report behested payments made by interested parties that meet or exceed \$1,000 in the aggregate in a calendar year, according to the SF Ethics Commission. Once a single source has made a behested payment of \$5,000 or more during the calendar year, then all subsequent payments of any amount from that source must be reported.

*“The Sunshine Ordinance, Section 67.29-6, states that **no ‘official or employee or agent of the City shall accept, allow to be collected, or direct or influence the spending of, any money, or any goods or services worth more than one hundred dollars in aggregate, for the purpose of carrying out or assisting any City function unless the amount and source of all such funds is disclosed...**” City departments must disclose donor names and whether the donor has a financial interest with the City. According to the City Attorney, a financial interest is any contract, grant, lease, or request for license, permit, or other entitlement with or pending before the City. Changes to this section of the Sunshine Ordinance require voter approval.”*
—Controller’s Public Integrity Review
(emphasis added)

⁶ City & County of San Francisco Ethics Commission, Behested payments – City Officers, <https://sfethics.org/compliance/behested-payments/behested-payments-city-officers>

Behested payment disclosure reports from January 2019 to the present available from the San Francisco Ethics Commission do not indicate that RPD officers have sought behested payments from third parties for SFPA.⁷ The review period does not cover the RPD department head (General Manager) since there was no requirement for department heads to disclose behested payments during that time, so there are no City records available indicating whether behested payments to SFPA were requested by the General Manager.

An ordinance was introduced to the Board of Supervisors on March 16, 2021 that initially proposed to amend the Campaign and Governmental Conduct Code to expand the definition of interested parties, to include City contractors and persons seeking to influence City officers and employees, and to prohibit appointed department heads, commissioners, and designated employees from soliciting behested payments from interested parties (File No. 20-1132). Final action on this proposed ordinance was pending as of the writing of this report.

Financial Findings from Controller's Public Integrity Review

The Controller's Office reviewed a total of 19 *Friends of* organizations, finding the following financial relationships between these organizations and the City over the five-year period from July 1, 2015 through June 30, 2020:

- Three organizations each received in excess of \$5 million in City funding, including the San Francisco Parks Alliance (\$11.9 million), San Francisco Public Health Foundation (\$9.7 million), and Friends of the Urban Forest (\$7.6 million);
- Seven organizations received amounts ranging from \$11,525 to \$485,381 over the five-year period; and
- Nine other organizations did not receive City funding during the time period.

To our knowledge, there is no requirement for *Friends of* organizations to disclose to any City department or body the amount of funding they receive from the City and County of San Francisco and for what purpose(s). In practice, many non-profit organizations, including the San Francisco Parks Alliance, produce annual reports that include their financial performance for the year, but not details on the amount of funding they have received from the City and County of San Francisco. The City has records of the amounts provided to SFPA but this is not summarized and reported to the Board of Supervisors or in other public forums. RPD reports that the vast majority of funds provided to SFPA by the City and County of San Francisco were provided by departments other than RPD.

⁷ Behested payment filings by elected officials, board and commission members, and department heads, <https://sfethics.org/disclosures/city-officer-disclosure/payments-made-at-the-behest-of-an-elected-officer/behested-payment-filings-by-elected-officials-and-board-and-commission-members>

Mayoral Executive Directive Effectuates Some Controller Recommendations

In addition to requiring department heads to be subject to behested payment reporting requirements, the Mayoral 2020 directive requires all City departments to formalize through a memorandum of understanding any relationship the department has with any non-City organization that “receives donations on behalf of the department,” if such an agreement does not already exist. The memoranda of understanding are required to be approved by the City Attorney, Controller, and if applicable, the department’s board or commission and posted on the department’s website. Further, the directive reiterates the requirement for all departments to comply with Administrative Code Section 10.100-305 on San Francisco Gift Funds, requiring: reporting of gifts to the Controller; Board of Supervisors approval for gifts greater than \$10,000; and reporting of gifts by departments to the Board of Supervisors.

RPD Executed a Master MOU with SFPA in May 2021 that Highlights Many Concerns about Previous Agreements between the Organizations

In accordance with the Mayor’s Executive Directive, SFPA and RPD entered into a new master MOU in May 2021 covering their relationship—in which RPD receives cash and in-kind service grants from SFPA for operations and various projects as well as its agreement with RPD to operate and provide services related to the Conservatory of Flowers. Previously, during the period between 2016 and 2020 that we reviewed, SFPA provided approximately \$1.9 million in cash and in-kind contributions to RPD. The non-profit organization’s role as a licensee to the Department, operating the Conservatory of Flowers since 2003, is covered under a separate agreement discussed further below. During the period we reviewed and until May 2021, the Department and SFPA did not have an MOU in place detailing the nature of their working relationship and establishing controls and procedures regarding financial transactions, conflicts of interest, as well as recordkeeping, disclosure, and reporting requirements. As required by City code, the Department did report funds received from SFPA to the Controller and received Board of Supervisors approval for receipt of all grant funds received from SFPA for at least the Let’s PlaySF! initiative.

The key elements of the new master MOU that establishes controls on the risk of real or perceived corruption are detailed below. The MOU specifies two types of support that SFPA provides to RPD: (1) Annual Support for operating and maintenance costs of facilities, and (2) Special Project Support for specific capital projects, fundraising projects, programs, and events.

- **Permit and/or Grant Agreements.** When SFPA provides support for special projects, the MOU requires separate detailed permit and/or grant agreements that specify: proposed expenditures, roles and responsibilities, and compliance with all applicable City requirements for disclosure and recordkeeping, project delivery, park access, donor recognition, contracting, approvals, insurance, and indemnity.

- **Roles and Responsibilities.** The MOU specifies the following key requirements:
 - **Proposed Budget.** RPD will submit a written summary to SFPA of the proposed uses of Annual Support funds.
 - **Conflicts of Interest.** The MOU states that SFPA: 1) does not know of any fact which constitutes a financial conflict of interest pursuant to the City's Charter as well as City and State code; 2) agrees to promptly notify RPD of any conflict of interest identified; and 3) agrees that donors' support of RPD shall have no bearing on future contracting decisions by RPD.

The MOU does not expressly prohibit conflicts of interest nor does it place restrictions on contractors being selected for in-kind services to RPD based on their donations to SFPA or RPD. The MOU states that a donor's contributions to SFPA will not affect RPD's contracting decisions about the donor but does not address the possibility of instances in which *SFPA selects contractors* for in-kind services to RPD based on their donations to SFPA.

- **Statement of Incompatible Activities.** SFPA agrees that it will not knowingly cause RPD staff to violate the Department's Statement of Incompatible Activities, that no employee or officer of RPD is a member of the SFPA board of directors or otherwise holds a fiduciary position with SFPA, and that no employee or officer of RPD and no member of an RPD employee or officer's immediate family receives income from SFPA. Such prohibitions were not included in the previous agreements between RPD and SFPA reviewed for this report.
- **Anonymous Donations.** To comply with the Sunshine Ordinance and maximize transparency, SFPA will not accept anonymous donations from a single source aggregating more than \$100 for purposes covered under the MOU. This provision effectively mitigates the pay-to-play risk associated with anonymous donations identified by the Controller's September 2020 report and discussed further in the next section. The MOU requires disclosure of behested payments consistent with any such requirements by law. These provisions were not specified in the agreements between RPD and SFPA reviewed for this report.

Risk Created by San Francisco Parks Alliance Acceptance of Anonymous Donations

The San Francisco Parks Alliance seeks to enhance parks and public spaces through donations and partnerships. The San Francisco Parks Alliance (SFPA) “champions, transforms, and activates” parks and public spaces in San Francisco, according to their June 2020 audited financial statements.⁸ The organization reported net assets of \$17.2 million in 2020 and \$28.8 million in 2021. They report partnering with more than 200 neighborhood groups to improve their local open space through physical and programming improvements. RPD reports that, as of September 2021, SFPA has open grant contracts with a number of City departments, such as the City Administrator; Department of Children, Youth & Their Families; and the Mayor’s Office of Housing and Community Development.

“The [San Francisco Parks Alliance] envisions a city where every park and public space is beautiful, welcoming, and inspiring regardless of where it is located, from Pacific Heights to the Bayview, from Lands End to Little Hollywood.”
—June 30, 2020 Audited Financial Statements

Major Programs

- **Fiscal Sponsorship “Partner Program.”** The SFPA supports partner organizations by providing: financial oversight, initial cashflow to be later reimbursed by grant funding, project management expertise, and insurance coverage. Let’sPlaySF! is a partner program between SFPA and RPD. Another notable partner program is with the Tennis Coalition SF for the upgrade of tennis courts at Golden Gate Park, which was completed in 2021. The SFPA also provides financial support to RPD for general support of the Department's operating and maintenance costs.
- **Policy and Planning.** The SFPA tracks and researches planning that impacts parks Citywide, such as the redevelopment of the Hunters Point Shipyard, Pier 70 (a Port project), and the Blue Greenway (a 13-mile walking and biking trail that will connect new and existing waterfront parks from Candlestick Point to Oracle Park). Activities include attending key meetings, reviewing and commenting on Environmental Impact Reports and other documents, and community engagement.

⁸ San Francisco Parks Alliance, Financial Statements, June 30, 2020, <https://sanfranciscoparksalliance.org/wp-content/uploads/2021/05/SFPA-Audit-Report-Jun20AR.pdf>

- **Philanthropy.** The SFPA operates the McLaren Fund for donations that are not designated for a specific purpose. Allocations from the McLaren Fund must be approved by the SFPA Board of Directors and are used to fund park improvement projects, such as equipment and capital purchases. The organization also hosts an annual gala, with the last two years’ events benefitting the Let’sPlaySF! playground initiative.
- **Conservatory of Flowers Operations.** The SFPA conducts fundraising and provides marketing, merchandising, docent, and educational programming services, serves as fiscal agent, and provides certain other services at the Conservatory of Flowers at Golden Gate Park. The details of the partnership are specified in a licensing agreement with RPD executed in 2003, expired in 2012, and remaining in a month-to-month holdover status for the past nine years through the present, according to RPD staff. Under the terms of the expired but held over contract, the Director of the Conservatory is an RPD employee who oversees SFPA employees who serve as staff at the facility (the contract for this service is covered in more detail in a separate section at the end of this report).
- **Conservatory of Flowers Finances.** More than 150,000 individuals visit the Conservatory of Flowers each year to view the collection of roughly 1,750 species of plants. During FY 2019-20, the Conservatory of Flowers earned \$2,057,935 in revenue and accumulated \$3,435,465 in expenses, with net assets of -\$1,209,925, according to SFPA’s audited financial statement for FY 2019-20.

Over the last five years, RPD has accepted nearly \$2 million in cash and in-kind donations from SFPA, as displayed in Exhibit 2 below. There is a lack of transparency associated with the anonymous donations accepted by SFPA that could be funneled in whole or in part to RPD. This appears to be a violation of the spirit of the Sunshine Ordinance codified in Administrative Code Section 67.29-6, which forbids City officials and employees from accepting donations in excess of \$100 for any City function unless the amount and source is disclosed. Though RPD discloses SFPA as a source, it could not disclose the identity of anonymous donors giving to SFPA. This raises a “pay-to-play” risk of a behested payment solicited by an RPD official from an anonymous SFPA donor that has business before RPD. For this reason, we are in agreement with the terms of the new master MOU that ban anonymous donations in excess of \$100 to SFPA for Annual Support and Special Projects benefitting RPD.

Exhibit 2: Recreation and Parks Department Accepted Nearly \$2 Million from SFPA between FYs 2016-17 and 2019-20

	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20	Total
Cash	\$26,236	\$292,100	\$1,118,431	\$284,999	\$1,721,766
In-Kind	\$84,574	\$8,500	\$4,453	\$121,852	\$219,379
Total	\$110,810	\$300,600	\$1,122,884	\$406,851	\$1,941,145

Source: RPD

Until May 2021, the San Francisco Parks Alliance Had No Rule Against Accepting Anonymous Donations and Providing those Funds to the Recreation and Parks Department

Our analysis of SFPA Impact Reports from 2016 through 2020 found a total of 72 anonymous donors giving an estimated total of anywhere from \$1.5 million to \$3 million or more, which represents 3 to 7 percent of all contributions received by SFPA of approximately \$44 million, as displayed in Exhibit 3. Our high estimate of \$3 million and low estimate of \$1.5 million are based on SFPA reporting the number of anonymous donations by donation range, rather than exact amounts. This range of possible funds suggests that anonymous donations posed a pay-to-play risk for RPD, and the Department acted appropriately in banning this SFPA practice for donations in excess of \$100 from a single source, codified in the new master MOU between RPD and SFPA.

Exhibit 3: San Francisco Parks Alliance Accepted Roughly \$1.5 to \$3 Million or More in Anonymous Donations Over the Last Five Years

Donation Range	2016	2017	2018	2019	2020	Total
\$250 to \$499	3	3	-	-	-	6
\$500 to \$999	2	3	-	-	-	5
\$1,000 to \$2,499	1	4	3	2	4	14
\$2,500 to \$4,999	5	1	2	-	1	9
\$5,000 to \$9,999	2	4	4	2	-	12
\$10,000 to \$24,999	2	3	5	3	3	16
\$25,000 to \$49,999	3	-	-	1	-	4
\$50,000 to \$99,999	-	-	-	1	-	1
\$100,00 to \$249,999	-	-	-	-	1	1
\$250,000 and above	-	2	1	1	-	4
Total Low Estimate	\$120,250	\$558,750	\$328,000	\$367,000	\$136,500	\$1,510,500
Total High Estimate	\$250,982	\$1,134,482	\$682,486	\$749,991	\$339,991	\$3,157,932
Total Contributions Received*	\$6,145,362	\$10,430,823	\$11,174,194	\$10,803,431	\$5,433,834	\$43,987,644

Source: SFPA Impact Reports, 2016-2020, <https://sanfranciscoparksalliance.org/reports-and-financials/>

*Note: Contributions received as reported in audited financial statements. Ranges are based on donation amount ranges in SFPA reports.

Let'sPlaySF! Playground Initiative

In 2012, San Francisco voters approved a \$195 million general obligation bond known as the 2012 San Francisco Clean and Safe Neighborhood Parks Bond, which included \$15.5 million to renovate dilapidated playgrounds. With more than 135 playgrounds Citywide, a task force was appointed by the Recreation and Park Commission to develop criteria and select a limited number of playgrounds for renovation.

After much deliberation at six meetings from April to November 2014, the task force settled on four factors used to prioritize playgrounds for renovation: (1) the presence of Chromated Copper Arsenate (CCA) Pressure Treated Wood, (2) low Household Median Income, (3) high Youth Density and (4) low Parks Alliance Playground Report Card Grades. The task force ultimately selected 13 playgrounds, and the Department reports that they prioritized the playgrounds into “Tier 1” to be renovated with bond proceeds and “Tier 2” to be renovated with philanthropic support.⁹ The RPD website notes that renovation of nine of the 13 highest-need playgrounds have been completed, as displayed below.¹⁰

Exhibit 4: Status of Playground Renovations Planned or Completed under the Let’sPlaySF! Program as of October 2021

Playground Renovation Complete	Playgrounds Still To be Renovated
Alice Chalmers Playground	Buchanan Street Mall
Golden Gate Heights Park	Herz Playground
Juri Commons	Richmond Playground
McLaren Park Playground & Group Picnic Area	Stern Grove Playground
Merced Heights Playground	
Panhandle Playground	
Sergeant John Macaulay Park	
Washington Square	
West Portal Playground	

Source: RPD

Umbrella MOU between RPD and SFPA for Let’sPlaySF! Program

Approximately \$15.5 million was allocated from the \$195 million bond issuance for playground improvements. Additional funding was added to this effort when RPD entered into an umbrella MOU with SFPA in 2017 for the non-profit organization to provide up to \$15 million more in cash grants and in-kind donations to enable renovation of all thirteen of the highest-need playgrounds identified by the the task force. This agreement resulted in a near doubling of the budget for restoration of these playgrounds, and enabled RPD to renovate more playgrounds than they otherwise would have been able to with bond proceeds alone.

⁹ The Richmond Playground agreement specified that \$485,000 was to be funded by bond proceeds.

¹⁰ Let’sPlaySF! Initiative, San Francisco Recreation & Parks, <https://sfrecpark.org/1124/LetsPlaySF-Initiative>

The MOU established that SFPA contributions between \$10.75 and \$15 million would potentially be contributed to the \$35 million maximum total budget for the program over the eight-year term of the agreement. The contributions could be made in the form of cash grants, in-kind grants of services such as design and construction, in-kind grants of materials and supplies, and in-kind grants of fully designed and delivered projects.

The MOU between RPD and SFPA provides an overall, or “umbrella” set of terms and conditions for how the two entities will execute Let’sPlaySF! projects but specifies that separate “related agreements” will be entered into for individual park projects, subject to approval by the Recreation and Park Commission.

The umbrella MOU includes a high-level preliminary budget for the Let’sPlaySF! initiative in its entirety, outlines the roles and responsibilities of each organization, details terms for how in-kind services will be provided by SFPA, identifies insurance, indemnification, and performance bond requirements for SFPA as well as their contractors and architects who provide in-kind services.

Some of the key points in the Let’s PlaySF! program umbrella MOU include:

- **Project Management.** RPD is to provide a project manager for each project to coordinate City and other approvals required, ensure all design and construction work comports with City requirements, and to manage or assist with community outreach and meetings. RPD is responsible for assisting with obtaining all required City approvals such as environmental review, disability access laws, and RPD and Commission reviews.
- **Monitoring Project Budgets and Schedules.** The two parties are required to agree to a standard project budget reporting format, review monthly project status reports, issue joint quarterly Cost Control Reports for review by the two parties, and are to review all requests for changes in the project budget amounting to 2.5 percent or more within one month to resolve such requests.
- **Contractor Prevailing Wages.** Contractors and subcontractors used for in-kind services are required to pay prevailing wages, though SFPA is explicitly *not* required to monitor compliance with this requirement. Instead, SFPA is required to notify their contractors of prevailing wage requirements. RPD reports that a contractor involved in a prevailing wage dispute would receive follow up from the San Francisco Office of Labor Standards Enforcement.
- **Contractor Warranties.** Contracts for in-kind services are to include warranties and guarantees that all materials and equipment will be new and “first class” in quality, that the work will be free from defects and of the quality specified, and that the work will conform to the requirements of the contract document.

- **Architect Drawings and Specifications.** The MOU specifies project milestones at which point architect or design service professionals providing in-kind services must furnish drawings and technical specifications to RPD and SFPA.
- **Ongoing Maintenance.** RPD is responsible for ongoing maintenance and operations of the renovated parks.

Concerns regarding the Let'sPlaySF! Umbrella Program MOU between RPD and SFPA

While the MOU covers many important elements of the partnership between RPD and SFPA, it also leaves certain issues unaddressed, as follows:

1. ***Responsibility for budget changes unclear:*** The MOU calls for regularly monitoring expenditures and project schedules, and a provision that any requested change in budget with a value of more than 2.5 percent of the original budget will be reviewed by RPD and SFPA within one month to resolve such requests. However, the MOU does not explicitly state who is responsible for ensuring adherence to the original project budget and schedule or, if changes are needed, if one party or the other has decision-making authority. RPD contends that authority for approving budget changes ultimately rests with the Department but that is not explicitly stated in the MOU.
2. ***Methods for resolving disputes not specified:*** The agreement does not specify how disputes for substandard or incomplete work will be resolved between RPD and SFPA and/or SFPA contractors such as through arbitration.
3. ***Methods for enforcement of prevailing wages not specified:*** As stated above, in-kind service contractors and subcontractors provided by SFPA are required to provide prevailing wages but neither SFPA nor RPD is required to monitor compliance. RPD staff report that this is the role of the City's Office of Labor Standards Enforcement (OLSE). While the requirement for SFPA is clear in the MOU, the effectiveness of the requirement could be improved by adding language consistent with what the City requires in its contracts to ensure compliance with City and State law: a) payment of prevailing wages by contractors and subcontractors for public work and improvement and other applicable contracts, b) requiring that notices of these requirements be posted at contractor and subcontractor job sites, c) requiring that detailed payroll records be retained and made available to the Office of Labor Standards Enforcement as needed, and 4) detailing remedies in the event that prevailing wages are not paid.
4. ***In-kind service contractor selection process requirements not included:*** The agreement does not include any requirements for how contractors are selected. The services provided by SFPA are funded by private philanthropy, not public dollars, and are therefore not subject to the same government procurement standards as when RPD

spends public funds for contract services. For example, for City-funded “public works projects,” a competitive solicitation and payment of prevailing wages are required by State and local law. The financial and service quality benefits of competitive bidding could be incorporated in the umbrella MOU by requiring that SFPA solicit multiple bids or statements of qualifications for contractors that it retains to provide in-kind services to RPD.

5. **Absence of conflict of interest provisions:** The agreement has no provisions to ensure that SFPA and RPD do not have financial conflicts of interest either between themselves, or with contractors selected by SFPA for in-kind services to RPD. Examples of how conflicts of interest could occur in this situation include: contractors being selected by SFPA to provide Let’sPlaySF! services because they have made contributions to SFPA at the request of RPD officials or SFPA personnel; or because of their personal relationships with RPD or SFPA employees or officials.

The new master MOU between RPD and SFPA executed in May 2021 and governing the overall relationship between the two organizations does include provisions addressing conflicts of interest by:

1. Stating that SFPA is not aware of any conflicts of interest as defined in state and local law;
2. Requiring SFPA to report any conflicts of interest within their organization to RPD; and
3. States that SFPA’s and its donors’ support will not affect contracting, leasing, or permitting decisions by RPD.

As discussed above, the new master MOU conflict of interest provisions are lacking because they do not state that conflicts of interest are prohibited or that there will be any consequences if conflicts of interest occur. They state that a donor’s contributions to SFPA will not affect its contracting opportunities with RPD, but do not impose the same restriction on a donor’s contracting opportunities with SFPA for in-kind services to be provided to RPD.

Richmond Playground Project and Agreement

As discussed above, the umbrella MOU between RPD and SFPA governing the Let’sPlaySF! initiative calls for “related agreements” for each individual project. One such agreement reviewed for this report for the Richmond Playground improvements was entered into by RPD and SFPA in 2019. The agreement contains a detailed description of the scope of services to be provided, prepared by a design services contractor already selected by SFPA, the project term (the life of the project, estimated to be 37 months), a high-level preliminary budget, and the roles and responsibilities of RPD and SFPA. The scope of services detail provides for selection of a separate construction contractor to do the work designed by SFPA’s already selected design

services contractor who is to provide “in-kind” services under contract to SFPA. The agreement also includes insurance and indemnification requirements for SFPA and its design services contractor.

The preliminary project budget in the agreement is \$3,050,000, but it does not provide details on these costs other than stating that hard costs (not defined but presumably materials and construction) will amount to \$1,900,000 and soft costs (assumed to be services such as those provided by architects and engineers) will be \$1,150,000. The preliminary project budget in the agreement shows that \$2,565,000 of the project costs will be covered by SFPA and \$485,000 by RPD from the 2012 Clean and Safe Neighborhood Parks Bond proceeds.

A detailed scope of services attachment to the agreement shows that the non-construction elements of the service provided by SFPA’s selected design services contractor will include, among other tasks, community engagement and planning sessions, preparation of concept development and design development plans and cost estimates for the playground, preparation of construction documents to be used by a construction contractor, assistance with the Department’s solicitation process for a construction contractor, and design revisions and support while the construction phase is underway.

Under the terms of this agreement, RPD is responsible for: preparing a topographical survey, an arborist report, and other technical studies; designating a project manager to coordinate all permits and City approvals; administering the construction contract for the project; and providing construction management services. Costs for these services are not detailed in the agreement.

Concerns regarding the agreement between RPD and SFPA for Richmond Playground

1. ***Lack of clarity on project budget:*** The preliminary project budget in the agreement does not specify how much of the funding will be provided to: the already selected design firm, the construction contractor, SFPA and RPD (if any) though the identification of the preliminary hard costs budget in the agreement (\$1.9 million) may serve as an indicator of the amount to be awarded to the construction contractor. The agreement does not include a provision for how the project will be funded in the event that SFPA does not raise the \$2,565,000 specified in the preliminary project budget.

RPD staff points out that there are numerous public reports on actual expenditures for the project provided to the Recreation and Park Commission, the Citizens’ General Obligation Bond Committee, and detailed information recorded in the City’s financial system. Our review of a sample of these documents shows that they lacked transparency in that they do not include a comparison of original revenue and expenditure budgets approved in the project

- agreement against actual sources and uses for the project, including whether the actual public fund contribution was more than the amount originally budgeted in the agreement.
2. **Responsibility for budget changes unclear:** There is no indication if the agreement between SFPA and its design services firm is for a fixed “not to exceed” amount or whether the contractor’s fees can be increased by SFPA and if so, if such a change would be subject to approval by RPD. The Department points out that any change in the project budget of 2.5 percent or more is subject to resolution by the two parties, as provided for in the Let’s PlaySF! umbrella agreement. However, the budget in the agreement does not provide detail on the level of funding for SFPA’s design contractor or other individual project costs so there is no baseline in the agreement for assessing change of line-item costs. The Department and RPD may maintain a less formal detailed internal budget but such information is not included in the agreement.
 3. **In-kind service contractor selection process requirements not included:** There are no requirements in the agreement for how SFPA selects its design services contractors. While the funds expended by SFPA are not public dollars and are not subject to City procurement procedures, the services acquired by SFPA will be used for a public purpose and there are no guarantees in the agreement that SFPA will conduct outreach and select the most qualified firm available. RPD staff reports that SFPA in fact conducted a Request for Qualifications process for the landscape architect for the Richmond Playground. While this is a best practice, it is not required in the agreement though such a requirement would be in the best interests of RPD.
 4. **Methods for resolving disputes not specified:** There is no language governing how disputes between the contractors, SFPA, and RPD will be resolved.
 5. **Absence of conflict of interest provisions:** The agreement does not include any conflict of interest prohibitions or requirements such as affidavits to be provided by the design services firm indicating that it has no financial or personal relationship with RPD staff or officials or SFPA personnel that could influence SFPA’s contractor selection decisions and that it has not made donations to SFPA—either at the request of either organization (or their staffs and officers) or on its own volition—in the interest of being awarded a contract.

Recreation and Parks Department Work and Finances Related to the 150th Anniversary Celebration of Golden Gate Park Lacked Transparency

The Recreation and Parks Department (RPD) worked in partnership with the SF Parks Alliance during much of 2019 and early 2020 to produce the 150th Anniversary Celebration for Golden Gate Park, with a community day event scheduled for April 4, 2020 and other events and activities to occur throughout the succeeding year. The installation and operation of a temporary

observation wheel (ferris wheel) for one year was one such activity planned for the period before and after the April 4, 2020 celebration.

In December 2019, the Department sought and received approval from the Recreation and Park Commission to:

- (1) Proceed with issuing a use permit to the SF Parks Alliance to produce a community day celebration of the 150th Anniversary of Golden Gate Park on April 4, 2020; and
- (2) Proceed with issuing a use permit to SkyStar Wheel, LLC for the temporary installation (not to exceed one year) of an observation wheel, or ferris wheel, on the eastern side of the music concourse.

These plans were upended by the Covid-19 global pandemic, which led to the cancellation of the April 4 community day celebration though other activities and events did occur throughout the succeeding year. The use permit for the April 4, 2020 community day event was never issued by RPD to SFPA, although other event permits were issued related to the anniversary celebration. The use permit for the observation wheel, however, was issued in March 2020 for a one-year term.

RPD staff have stated that the planned Golden Gate Park 150th anniversary celebration (GGP150) was comparable to other civic public events such as the Chinese New Year Parade, San Francisco Pride, and Fleet Week. Further, the Department reports the use permit they planned to issue to SFPA for the Golden Gate Park celebration events was not unlike use permits the Department regularly issues to community groups or private entities to use RPD facilities for events such as Outside Lands and Hardly Strictly Bluegrass, both of which use space in Golden Gate Park. However, we conclude that this event was different because RPD was partnering with SFPA to produce the GGP150 events. Further, the Department was making financial contributions to the event in the form of waived permit fees and by redirecting concession revenues to SFPA amounting to hundreds of thousands of dollars that the Department would have otherwise received from the operation of a temporary observation wheel in Golden Gate Park (operating under a separate agreement, discussed further below).

“Because the Department is partnering with the San Francisco Parks Alliance to produce the event, no permit fees will be paid. The Parks Alliance will raise the majority of the funds to produce the celebration and, as part of the event, will reimburse the Department for its out of pocket expenses.”

—Financial Impact specified in the December 19, 2019 Recreation and Park Commission Agenda Item for the Golden Gate Park 150th Anniversary Celebration Event

At the December 2019 Recreation and Park Commission meeting, the RPD Director of Partnerships described the event as “truly a partnership with the San Francisco Parks Alliance.” Further, at the December 2019 Recreation and Park Commission meeting, RPD staff stated, “Because the Department is partnering with the San Francisco Parks Alliance to produce the event, no permit fees will be paid. The Parks Alliance will raise the majority of the funds to produce the celebration and, as part of the event, will reimburse the Department for its out of pocket expenses.”

Given the nature of SFPA as a *Friends of* organization that sometimes receives City funding and that RPD was making financial contributions to GGP150, we believe that a more specific written agreement between RPD and SFPA executed in advance of the event would have been more appropriate than a standard use permit agreement. Such an agreement could have specified proposed revenues and expenditures, and that RPD would not be financially liable for the event beyond its out-of-pocket expenses, which include overtime for event park rangers and ground regeneration materials. The master MOU executed in May 2021 requires a use permit for any future special project to incorporate proposed expenditures and specification of roles and responsibilities. RPD was planning to issue a use permit to SFPA for GGP150 but that did not occur before the onset of the Covid-19 pandemic and the cancellation of the celebration event. Even if it had, the use permit would not have included a detailed event budget which we believe would have been appropriate given RPD’s financial commitments and partnership role in the events.

A detailed official budget for GGP150 was not presented to the Recreation and Park Commission or to the Department in advance of the celebration outlining total costs and who was responsible for covering which costs. Specifically, the Department’s financial and operational involvement consisted of the following:

- Staff time and oversight in the year leading up to the Commission meeting in December 2019;
- Waiver of permit fees for the SF Parks Alliance, which would typically be substantial for an event of this size and scale at Golden Gate Park due to ground regeneration costs and Park Staff and Park Rangers for park protection and public safety; and
- Provision of a use permit issued by RPD for an observation wheel in Golden Gate Park to enhance the event and raise an amount that we estimate to be between \$300,000 to \$500,000 in revenue (under the terms of the original use permit) that would be directed to the SF Parks Alliance by RPD to help cover SFPA’s GGP150 celebration costs.

A March 3, 2021 article in the *San Francisco Examiner* reported that the budget for the celebration events was an estimated \$1.9 million as of Spring 2021, attributed to a spokesperson for RPD. A written agreement would have ensured that the celebration budget was codified and

agreed to by both parties, which we think is important in a case where the permittee is a *Friends of* organization that also receives grants of public funds and has a separate contractual relationship with the Department for operating the Conservatory of Flowers that generates income for SFPA. The anticipated observation wheel revenue to be diverted to SFPA (pursuant to a separate agreement governing the observation wheel, discussed below) would have been appropriate to reference in an agreement between the two organizations, along with a requirement for regular disclosure to RPD's management and Commission of actual observation wheel revenues diverted to SFPA.

There is no section of the Administrative Code that establishes disclosure requirements and minimum operating standards for *Friends of* organizations that fund, in whole or in part, events or other services in the public interest in collaboration with a City department, as is the case here between the SF Parks Alliance and RPD. However, we believe that the City's standards could be clarified to cover non-profit *Friends of* organizations, so departments are required to disclose proposed and actual revenues and expenditures when funds are expected to be transferred between the *Friends of* organization and a department for a specific event, service, or activity, or if the *Friends of* organization is fundraising for a specific event, service, or activity on behalf of the department, such as GGP150 or Let'sPlaySF!. For the 150th anniversary celebration, such a budget, codified in a written agreement, would have facilitated public disclosure of the amount that the Parks Alliance and RPD each proposed to spend and for what purposes, as discussed above. The new master MOU between RPD and SFPA executed in May 2021 now requires special project and event agreements to define proposed expenditures.

Gifts made by *Friends of* organizations to departments are already subject to disclosure and, when exceeding \$10,000, require approval by the Board of Supervisors.

SkyStar Agreement Approved Without Competitive Bidding

The Recreation and Parks Department received approval from the Recreation and Park Commission to proceed with its initial one-year use permit agreement with SkyStar Wheel, LLC for an observation wheel in December 2019. At that meeting, the Department presented a Summary of Terms with SkyStar and related term sheet to the Recreation and Park Commission, which was described as "a preliminary statement of [the] City's general intentions." Disclosure of the full agreement would have provided a greater level of transparency, which is particularly relevant in this case because the Department did not conduct a fair, open and competitive solicitation prior to awarding the contract to SkyStar. The actual use permit was executed in February 2020 and amended in March 2021.

The Commission unanimously authorized the Department to enter into a use permit with SkyStar in February 2020, which had the effect of authorizing the Department to execute the use-permit agreement on a sole-source procurement basis. Consistent with City policy, the Department is

generally required to conduct procurement through a fair, open and competitive bidding process in order to assure that government contracts are awarded to the most qualified firms at the most competitive financial terms available pursuant to Chapter 21 of the Administrative Code. However, in this case, a competitive solicitation was not conducted because it was found to be “impractical or impossible,” according to the Department—an exception afforded to lease and concession agreements in Section 2.6-1 of the Administrative Code. However, RPD staff noted at their December 2019 Commission meeting that the Department had partnered with the SF Parks Alliance for “more than a year” prior to December 2019. While this timeline suggests that there may have been sufficient time to have conducted a competitive solicitation for the observation wheel, RPD staff reports that this element of GGP150 was not considered until late in the planning stages, thus ruling out the time needed for competitive bidding.

In the absence of a fair, open, and competitive solicitation, it is not possible for us to assess whether the City received the best financial terms from the most qualified firm. Further, there is an inherent risk associated with a closed sole-source process that such a contract has been awarded improperly, which can give rise to actual or perceived corruption. Specifically, the risk is that the selected vendor could have a relationship with RPD officials or staff or SFPA staff that is the basis of their selection.

Department representatives stated that they conducted a survey and the financial terms of the agreement with SkyStar were comparable to agreements made by other cities but, again, it’s unclear if other firms would have offered more preferable terms. Documentation of the survey is not available from RPD. The Department staff also noted that an RFP process was not initiated because the agreement was temporary, for just one year; however, this explanation does not align with the requirements for competitive bidding set forth in the Administrative Code.

We estimate that the original SkyStar Use Permit Agreement finalized in February 2020 would have awarded between \$300,000 and \$500,000 to SF Parks Alliance, a significant departure from the financial impact described in December 2019

The initial use permit agreement that RPD executed with SkyStar on February 28, 2020 specified revenue-sharing terms that required SkyStar to pay the SF Parks Alliance a monthly permit fee to help fund the anniversary celebration. The fee was equal to:

- \$1.00 per every \$18.00 general admission ticket sold or provided as part of any sponsorship or in-kind exchange, excluding tickets provided to media partners
- \$0.75 per every \$12.00 senior and/or children’s ticket sold or provided as part of any sponsorship or in-kind exchange, excluding tickets provided to media partners
- 6 percent of \$50.00 VIP Experience tickets sold or gross receipts received from any sponsorship or other revenue received, excluding tickets provided to media partners

- 5 percent of gross receipts received from customers for all food and beverage concession revenues but in the event that a third party provides the service, the Department will receive 10 percent of the amount received by SkyStar

There was no cap on the amount to be paid to SFPA and no revenue would have been received by RPD under the terms of this original use permit. In a Recreation and Park Commission agenda item a year later from February 18, 2021 (see Item 10, “Music Concourse Observation Wheel Extension Staff Report”), the Department reported that the wheel was expected to accommodate 500,000 rides during the originally planned one year permit term. With a revenue-sharing requirement to pay \$1.00 per every general admission adult ticket and 75 cents for every child and senior ticket to SFPA, we have deduced that the Department expected the Parks Alliance to receive between \$300,000 to \$500,000 from Skystar ticket sales in its originally intended one year of operations.¹¹ This estimated payment represented a significant share of the total reported \$1.9 million cost of the GGP150 celebration, leading us to find that the actual financial arrangement between RPD and the Parks Alliance was different than what was originally described at the December 2019 RPD Commission meeting. At that meeting, the financial impact statement read: “The Parks Alliance will raise the majority of the funds to produce the celebration and, as part of the event, will reimburse the Department for its out of pocket expenses.” This description implies that the Department would incur limited costs for the celebration. In fact, the source of up to 26 percent of the cost was being generated by the Department’s own original agreement with SkyStar—between \$300,000 to \$500,000 of revenue that the Department would have otherwise received from the observation wheel operator on park property was planned to be transferred to the Parks Alliance. While it is correct to say that SFPA would have provided the majority of funds for the celebration, RPD’s contribution was not insignificant and should have been more clearly disclosed.

RPD’s revenue-sharing arrangement with SkyStar and our estimated \$300,000 to \$500,000 to be directed to SFPA is based on assumed observation wheel ticket sales. The revenue to be collected in permit fees would amount to 5.6 percent of each adult ticket sold (\$1 out of each \$18 adult ticket), 6.3 percent of each senior ticket (\$0.75 out of each \$12 senior/youth ticket), and, as stated above, five and six percent of VIP ticket and food and beverage sales revenue, respectively. These are low percentages compared to many concession agreements in place throughout the City. It should also be noted that the agreement did not provide for payment of a minimum guaranteed amount, which is a standard feature of City concession agreements. RPD, however, reports that they researched agreements elsewhere and this type of financial arrangement is standard for observation wheels and represents standard industry practices. Further, they point out that the vendor incurred costs moving their apparatus and equipment cross country and installing it in

¹¹ The maximum amount of \$500,000 assumes all rides would be charged the full adult ticket price. In reality, many tickets would be sold for less than that, such as tickets for children and seniors, which is why we assume a range from \$300,000 to \$500,000.

Golden Gate Park. The absence of competitive bidding for the observation wheel unfortunately means that there is no comparison or basis for determining if the arrangements in the use permit represent the best financial deal for the City and SFPA.

Amended SkyStar Use Permit Agreement from March 2021 Caps Revenues Directed to SFPA to \$200,000 and Extended Term by Four Years but Lacked Transparency

Ultimately, the observation wheel was only able to accommodate approximately 13 percent of anticipated rides, or 65,693 rides, through February 18, 2021 because of the Covid-19 pandemic. At the February 18, 2021 Recreation and Park Commission meeting, the Department sought and received approval to extend the SkyStar use permit agreement for four years in order to fulfill the original expectations of operations and support the City's economic recovery, according to RPD. However, the amended use permit agreement was not finalized until a little over a week after the Commission meeting on the matter, and the agenda materials for the February 18, 2021 Commission meeting did not specify the financial terms in the amended use agreement, which set a maximum of \$200,000 in permit fees to be directed to SFPA rather than the unlimited revenues (possibly amounting to as much as \$500,000) that would have been directed to SFPA under the original use permit to be used "solely to reimburse the Parks Alliance for its costs related to the 150th Anniversary of Golden Gate Park." Under the amended use permit, the first \$200,000 in permit fee revenue was provided to SFPA (after \$200,000 was used to cover the costs of a replacement generator for SkyStar). Beyond that, any further permit fee revenue generated through ticket sales would be provided to RPD up to a maximum of \$900,000.

Given that these financial terms were not specified in writing (although they were presented at the February 18, 2021 Commission meeting), the amended agreement lacked appropriate transparency. Further, the actual costs incurred by the Parks Alliance prior to the cancellation of the event were not and have not been publicly disclosed. In departmental correspondence shared with us, these expenses were described as follows: "...a graphic designer to develop the GGP150 logo, an event coordinator and a marketing team for about nine months of work planning the event, graphic designers were paid to develop event signage, banners were printed and hung, and deposits were paid to numerous small businesses set to run activations on April 4th."

The payment of \$200,000 to SFPA from revenue that would otherwise benefit the Department has been treated like a grant of public funds on a sole-source basis. (The Department reports that the full \$200,000 was paid to SFPA as of September 2021.) We therefore conclude, again, that it would have been appropriate and advisable for the Department to enter into a written contractual agreement with the Parks Alliance for the anniversary celebration in order to clearly spell out the roles and responsibilities of the non-profit, and any financial assistance it would receive from the Department and for what purposes.

Significantly, an ordinance (File No. 20-1089) unanimously passed by the Board of Supervisors on July 20, 2021 sets standards for the City's grant award process, requiring, among other things, a competitive solicitation. In the case of a department seeking to award a grant without a competitive process, the ordinance requires a department under the jurisdiction of a commission to seek the commission's approval for the justification of the sole source and the grant award. In the case of RPD's amended use-permit agreement with SkyStar, which incorporated what could be understood as a sole-source grant of \$200,000 to the Parks Alliance, the Department sought and received Commission approval for the amended use-permit agreement on February 18, 2021, but—as we have noted—the financial terms were never made explicit in any written agenda materials, although the amount was mentioned during the staff presentation. Moving forward, the ordinance would require the department to provide justification of a sole-source grant award and seek the commission's approval in the form of an adopted resolution.

Recreation and Parks Department Agreement with SF Parks Alliance for Operation of Conservatory of Flowers is Outdated

The Recreation and Parks Department entered into a three-year license agreement with the SF Parks Alliance for the operation of the Conservatory of Flowers on August 7, 2003. This contract incorporated two three-year extension terms, which expired in 2012 but the agreement has remained in a holdover month-to-month status for the past nine fiscal years. The Department could not answer our questions related to the financial terms and other specifics of the agreement, stating that there was no longer any staff person with the Department who could speak to the negotiation of terms executed in 2003.

Other concerns about the agreement originally executed in 2003 and not amended include:

1. **Unclear Selection Process.** The agreement recitals do not state how Friends of Recreation and Parks (now San Francisco Parks Alliance) was selected for this arrangement such as through a competitive bid. Further, there are no requirements for how concessionaire Service Systems Associates was selected.
2. **No Minimum Annual Guarantee.** There is no minimum annual guarantee for the City from required license fees, or from the concessionaire.
3. **City Potentially On the Hook for Costs.** The City could end up covering Friends' (SFPA's) costs if their revenues are insufficient to cover their operating costs. The Department reports that this provision has never been triggered.
4. **Budget Details Missing.** The agreement states that the operating budget is to cover upgrading certain agreed upon City positions, but no detail is provided about what positions or how payments are to be made for salary upgrades.

The agreement allows SFPA to make contributions to dedicated accounts for specific purposes and to transfer funds from these accounts back to the operating accounts in accordance with

approved budgets for the Conservatory or as agreed to by the parties, raising the question of how these transfers are documented and reported. The Department reports that they are working on an entirely new agreement and expect to have it in place within six months from the writing of this report.

Policy Options

The Board of Supervisors should:

1. Request that the Recreation and Parks Department report back to the Board of Supervisors disclosing originally budgeted and actual revenues and expenditures associated with the Golden Gate Park 150th Anniversary Celebration, including transactions stemming from the observation wheel agreement.
2. Request that the Recreation and Parks Department adopt the practice of including detailed project revenue and expenditure budgets beyond what is now required in the May 2021 master MOU in agreements with the San Francisco Parks Alliance for special projects or, if not finalized at the time the agreement is adopted, made public and reported to the Recreation and Park Commission when they are finalized, along with periodic update reports of actual revenues and expenditures compared to the originally budgeted amounts.
3. Request that the Recreation and Parks Department amend its master Memorandum of Understanding with the San Francisco Parks Alliance to specifically prohibit selection of contractors by the Parks Alliance for in-kind services to Recreation and Parks Department based on contractor donations to the Department or the Parks Alliance and/or their personal relationships with employees and officers of either organizations.
4. Request that the Recreation and Parks Department amend its master Memorandum of Understanding with the San Francisco Parks Alliance to strengthen its requirements pertaining to payment of prevailing wages by the Alliance's contractors and subcontractors by requiring compliance with City Administrative Code and State law prevailing wage requirements, where applicable, including: a) payment of prevailing wages by contractors and subcontractors, b) requiring that notices of these requirements be posted at contractor and subcontractor job sites, c) requiring that detailed payroll records be retained and made available to the Office of Labor Standards Enforcement as needed, and 4) detailing remedies in the event that prevailing wages are not paid.
5. Request that the Recreation and Parks Department add a requirement that the San Francisco Parks Alliance solicit contractors for in-kind services provided to the

Department through a Request for Qualifications process to better ensure that contractors selected are the most qualified at the most reasonable price and to consider financial disclosure requirements to reduce the potential for conflicts of interest in the contractor selection process.

6. Request that the Recreation and Parks Department report back to the Board of Supervisors on the results of establishing a new agreement with SFPA for operation of the Conservatory of Flowers.

BOARD of SUPERVISORS



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MEMORANDUM

TO: Phil Ginsburg, General Manager, Recreation and Parks Department
Ben Rosenfield, City Controller
Harvey Rose, Budget and Legislative Analyst

FROM: John Carroll, Assistant Clerk, Government Audit and Oversight
Committee, Board of Supervisors

DATE: April 14, 2021

SUBJECT: LEGISLATION INTRODUCED

The Board of Supervisors' Government Audit and Oversight Committee has received the following hearing request, introduced by Supervisor Chan on April 6, 2021:

File No. 210351

Hearing to discuss the SF Parks Alliance, with a specific focus on reviewing the Golden Gate Park 150th Anniversary agreement between SF Parks Alliance and Recreation and Park Department, to determine whether the terms of this agreement have been incorrectly categorized as a permit when they substantially resemble a contract, which has different public oversight and approval processes; and requesting the Recreation and Park Department, Controller's Office, and Budget and Legislative Analyst to report.

If you have any comments or reports to be included with the file, please forward them to me at the Board of Supervisors, City Hall, Room 244, 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102.

c: Offices of Chair Preston and Supervisor Chan
Sarah Madland, Recreation and Parks Department
Todd Rydstrom, Office of the Controller
Peg Stevenson, Office of the Controller
Severin Campbell, Office of the Budget and Legislative Analyst
Menard Nicholas, Office of the Budget and Legislative Analyst

Introduction Form

By a Member of the Board of Supervisors or Mayor

Time stamp
or meeting date

I hereby submit the following item for introduction (select only one):

- 1. For reference to Committee. (An Ordinance, Resolution, Motion or Charter Amendment).
- 2. Request for next printed agenda Without Reference to Committee.
- 3. Request for hearing on a subject matter at Committee.
- 4. Request for letter beginning : "Supervisor inquiries"
- 5. City Attorney Request.
- 6. Call File No. from Committee.
- 7. Budget Analyst request (attached written motion).
- 8. Substitute Legislation File No.
- 9. Reactivate File No.
- 10. Topic submitted for Mayoral Appearance before the BOS on

Please check the appropriate boxes. The proposed legislation should be forwarded to the following:

- Small Business Commission
- Youth Commission
- Ethics Commission
- Planning Commission
- Building Inspection Commission

Note: For the Imperative Agenda (a resolution not on the printed agenda), use the Imperative Form.

Sponsor(s):

Subject:

The text is listed:

Signature of Sponsoring Supervisor: