

OPERATING AND MANAGEMENT AGREEMENT

This OPERATING AND MANAGEMENT AGREEMENT (“**Agreement**”) is made and entered into as of May 1st, 2026 (the “**Effective Date**”), by and between the CITY OF RICHMOND, a California municipal corporation (“**City**”), and POGO PARK, a California nonprofit public benefit corporation (“**Operator**” or “**Pogo**”). This Agreement incorporates Exhibits (A) Description of Park Facilities, (B) Permitted Uses and Rates, (C) Performance Metrics and Operating Hours, (D) Insurance Provisions, (E) Maintenance Standards, (F) Assets Furnished by City, and (G) Sanctuary City Compliance Form as fully set forth within this Agreement.

W I T N E S S E T H:

WHEREAS, the City is home to a diverse population and provides a full range of municipal services, including police and fire protection; maintenance of streets and public infrastructure; library services; storm water and municipal sewer systems; port operations; and economic and community development, and owns and operates numerous parks, open space, and community facilities for the benefit of the public; and

WHEREAS, the City owns fee title to certain park, open-space, and recreation properties located within the Iron Triangle neighborhood of Richmond, California, including, without limitation, Harbour-8 Park, Harbour Hall, the Harbour-8 Commercial Kitchen, Elm Playlot, and improvements along 8th Street commonly known as the Yellow Brick Road (collectively, the “**Park Facilities**”), as shown in **Exhibit A**, attached hereto; and

WHEREAS, Pogo is a California nonprofit public benefit corporation founded in 2007 with a mission to transform under-utilized City parks into safe, vibrant, and welcoming public spaces that serve children, families, and the broader Richmond community; and

WHEREAS, since 2007, Pogo has planned, designed, improved, programmed, operated, and stewarded City-owned park facilities, including Elm Park and Harbour-8 Park, providing vital community services and programs for the benefit of Richmond residents; and

WHEREAS, the Park Facilities form a critical component of Contra Costa County’s first Community Resilience Center, serving as gathering points during emergencies and providing essential public-safety, food-service, shelter, and recovery functions; and

WHEREAS, on July 1, 2020, the City of Richmond and Pogo Park entered into a Contract governing the Harbour-8 Park Expansion Project (“**Harbor-8 Park Contract**”); and

WHEREAS, on or about September 2023, Pogo Park, submitted a Community Resiliency Centers (“**CRC**”) grant application seeking funding for the Harbour Hall Community Resilience Center; and

WHEREAS, on or about August 1, 2022, the City of Richmond and Pogo Park executed a first amendment modifying the term and compensation limits of the Harbour-8 Park Contract; and

WHEREAS, on or about June 5, 2023 the City of Richmond and Pogo Park executed a second amendment further modifying the term and compensation limits of the Harbour-8 Park contract; and

WHEREAS, in 2024, the State of California and Pogo Park entered into that certain CRC grant agreement to fund the Harbour Hall Community Resilience Center; and

WHEREAS, on June 17, 2025, the Richmond City Council approved the allocation of \$3,000,000 for the Harbour-8 Park Expansion Project, subject to certain enumerated conditions, including the execution of a memorandum of understanding; and

WHEREAS, on November 26, 2025, the City of Richmond and Pogo Park entered into that Memorandum of Understanding establishing the framework for Pogo Park's stewardship and operation of City-owned park facilities; and

WHEREAS, the City and Pogo desire to consolidate, supersede, and formalize their long-standing public-private partnership through a comprehensive Operating and Management Agreement governing the management, operation, programming, staffing, maintenance, security, financial administration, and stewardship of Harbour-8 Park and Harbour Hall; and

WHEREAS, the Parties intend that this Agreement reflect professional municipal facility management standards, protect the City's interests, ensure public accountability, promote equitable community access, and support the long-term sustainability of the Park Facilities;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the Parties agree as follows:

ARTICLE 1

DEFINITIONS

1.1. Definitions. All capitalized terms referenced or used in this Agreement and not specifically defined herein shall have the definition provided below or a reasonable definition assigned from the colloquial use of the term. In the event of any conflicting or unclear term definitions, City may, at their option, formally define the term in writing without amendment to this Agreement. Any definition assigned to a term in writing must reasonably align with the colloquial use of the term.

1.2. Defined Terms. Notwithstanding section 1.1 above, the following term definitions apply to this agreement.

"Park Facilities" means the grounds, improvements, equipment, property, and facilities on or within the Harbour-8 Park, Harbour Hall, the Harbour-8 Commercial Kitchen, Elm Playlot, and improvements along 8th Street commonly known as the Yellow Brick Road.

"Capital Improvement" means any alteration, addition, or improvement to a Facility that has a useful life of more than five (5) years and a cost exceeding Five Thousand Dollars (\$5,000).

"FF&E" means movable furniture, fixtures, and equipment purchased or installed by

Pogo or its partners that are not permanently affixed to real property.

"City Operating Costs" means ongoing costs that City will pay to keep a Facility open and safe for public use, including but not limited to utilities (water, electrical, and sewer), waste/recycling/green pickup, ongoing subscriptions related to Facility operations (fire/burglary alarm services, HVAC control systems, etc.), periodic maintenance per Facility operating manuals (e.g., changing HVAC filters), weekly janitorial services, and janitorial supplies necessary to keep a Facility open and safe for public use.

"Pogo Operating Costs" means ongoing costs that Pogo will pay to deliver programs and services for the community, including ongoing subscriptions related to delivering programs and services (software related to program management, etc.), daily Park Facility cleanup, and landscape maintenance (e.g., weeding, watering, trimming, etc.), and all other services outlined in **Exhibit B**.

"Minor Repairs" means individual repairs and/or equipment replacements that cost less than Five Thousand Dollars (\$5,000) per occurrence. Pogo is responsible for paying for Minor Repairs as described in Article 5.

"Major Repairs" means individual repairs and/or equipment replacements that cost equal to or greater than Five Thousand Dollars (\$5,000) per occurrence. City is responsible for paying for Major Repairs as described in Article 5.

"Generated Revenue" means revenue derived from Facility rentals, fees, concessions, services, or other on-site activities.

ARTICLE 2

APPOINTMENT AND TERM

2.1. Appointment. City hereby retains, engages and appoints Operator to perform the Management Services (as defined in Section 3.1) during the Term, as more fully described herein, and Operator hereby accepts said appointment upon and subject to the terms hereof.

2.2. Term. This Agreement shall be effective as of the Effective Date, but the term (the **"Term"**) for performance of the Management Services under this Agreement shall begin on May 1, 2026 (the **"Commencement Date"**) and unless sooner terminated as provided in Article 9 below, shall terminate on May 1, 2029 (the **"Termination Date"**).

2.3. Extension. The Term of this Agreement may be extended for up two, one-year periods (**"Extended Period"**) upon mutual written agreement by the City and Pogo. Any renewal thereafter will take into consideration Operator's performance against the metrics outlined in **Exhibit C**, Performance Metrics and Operating Hours.

2.4. Cooperation Upon Termination. Upon termination or expiration of this Agreement, the Parties shall cooperate to ensure an orderly transition of services, including (a) the transfer of

keys and security codes; (b) the turnover of maintenance records; (c) Operator to issue appropriate public notifications; and (d) physical removal of any Pogo-owned FF&E within thirty (30) days after any such termination.

ARTICLE 3

MANAGEMENT SERVICES

3.1. Management of the Park Facilities and Property. During the Term, Operator shall perform the management services described in this Article 3 in order to supervise, manage, direct and operate the Park Facilities and the Property on behalf of and for the account of City (collectively, the “**Management Services**”), subject to the terms of this Agreement and consistent with the budgets approved by City. Subject to the foregoing, City hereby delegates to Operator, subject to the terms and conditions set forth herein and applicable Governing Law, the discretion and authority to determine operating policies and procedures, standards of operation, house rules, standards of service and maintenance, pricing, and other policies, rules, and regulations affecting the Park Facilities or the Property or the operation thereof, to implement all of the foregoing, and to perform any act on behalf of City deemed by Operator to be necessary or desirable for the operation and maintenance of the Park Facilities and the Property. All Park Facilities remain subject to Richmond municipal code rules, regulations and ordinances, and State and Federal law (“**Governing Law**”).

3.2. Use of the Property. City hereby grants to Operator the right to use and occupy the Property during the Term for the purposes set forth herein. Operator shall, upon the expiration or prior termination of the Term, vacate and surrender the Park Facilities and Property to City in accordance with Section 2.4.

3.3. Scope of Services.

3.3.1. City/Contractor Representative. City shall designate a representative to monitor Operator's operation (“**City Representative**”). This representative will be the direct liaison between City and Operator, who shall designate its own representative as the liaison between the Operate and City (“**General Manager**”). The General Manager shall be Operator's representative and ensure Park Facilities are open to the public in accordance with Exhibit C, Performance Metrics and Operating Hours, attached hereto. The General Manager shall designate an Operator employee, if not themselves, to be on site at each of the Park Facilities at times provided within **Exhibit C** as the responsible person in charge of operations (“**Operator Employee**”).

3.3.2. Administration Services. Operator shall oversee, supervise and direct the administration of all Park Facilities operations, including but not limited to, the timely operation, completion and/or provision of the following:

- Public engagement, marketing and collaboration with local economic development organizations.
- The secure and accurate collection, deposit and reporting of

revenue as provided within **Exhibit C**;

- The procurement of and payment authorization for materials and services needed to operate Park Facilities;
- Food and beverage operation, room rental, catering and banquets, provision of meeting space;
- General supervision of the Park Facilities and the preparation of grounds for public use;
- Custodial services, preventative maintenance and repairs to the buildings, equipment and Park Facilities;
- Perform routine landscaping, janitorial services, and trash consolidation (collecting trash and recycling into designated receptacles to be picked up by City waste management services).
- Compile Park Facility standard operating documentation/manuals and train City staff on using operating equipment (e.g., HVAC control system) on an as-needed basis.
- Pay for Pogo Operating Costs directly
- Perform all Minor Repairs and cover the associated costs
- Planning and preparing for meetings;
- Monitoring utility usage; and
- Any incidental services in accordance with the detailed specifications described herein.

3.3.3. Service Standards. As part of the Services hereunder, Operator shall do the following:

3.3.3.1. Respond within three (3) business days to reasonable requests from City and its agents or counsel.

3.3.3.2. Manage, operate, and maintain the Park Facilities in accordance with the Operating Standards as set forth in Section 3.3.3.8 below and **Exhibit B**, Permitted Uses and Rates. Ensure that the Park Facilities are kept clean, safe, secure and in good working order.

3.3.3.3. Protect City's capital investments through quality maintenance, supervision of repairs and recommendations to City on capital expenditures, provided adequate funding for maintenance and repairs is available from City in the annual budget.

3.3.3.4. Effectively involve, as much as is practical, all sectors of the local community in business and employment opportunities that may become available as a direct or indirect consequence of the operation of Park Facilities.

3.3.3.5. Maximize and overall utilization of the Park Facilities with a goal of maximizing community-wide economic impact generation and maintaining a

park facility in a manner financially feasible.

3.3.3.6. Maintain a system of communication that encourages linkage and collaborative effort between and among other segments of the hospitality industry within the community.

3.3.3.7. Maintain an open, clear, and responsive reporting system to the City Representative that enhances all facility operations and public perception of the Park Facilities.

3.3.3.8. Maintain and operate the Park Facilities in accordance with the Operating Standards. "**Operating Standards**" means the operation of the Park Facilities in a manner consistent with (i) other municipally owned public Park Facilities of similar age, condition and with comparable operating and capital budgets as City Park Facilities; (ii) current prudent business and management practices applicable to the operation, repair, maintenance and management of park facilities of similar age, condition and with comparable operating and capital budgets as City Park Facilities, including compliance with Legal Requirements and Governing Law; and; (iii) at a minimum, the standards applicable to other comparable municipally owned public Park Facilities operated by Operator or an affiliate of Operator of similar age, condition and with comparable operating and capital budgets, with; (iv) keeping the Park Facilities in a clean, safe, sanitary and attractive condition and in good working order; and (v) reasonably calculated to protect and preserve the assets and City's investment in the Park Facilities.

3.3.3.9. Operate the Park Facilities in compliance with Legal Requirements. "Legal Requirements" means all laws, statutes, ordinances, rules, regulations, permits, licenses, and requirements of all governments or regulatory authorities, that now or hereafter may be applicable to the Park Facilities and the operation thereof, including those relating to employees, zoning, building, health, safety and environmental matters, and accessibility of public Park Facilities. "Legal Requirements" also includes intellectual rights of third parties, including copyright.

3.3.3.10. Manage, in an efficient and cost-effective manner, all aspects of Park Facilities operations such as grounds-keeping, custodial and maintenance services, security, marketing, event services including event set-up/tear down, food service, scheduling, sponsorship and promotional services and financial/administrative services including accounting, budgeting, purchasing, human resources/personnel and contracting.

3.3.3.11. Continuously operate the Park Facilities and comply with Operator's obligations under the Agreement in accordance with the Operating Standards; not abandon the Park Facilities; and act in good faith to maximize Generated Revenues at the Park Facilities to the greatest extent possible consistent with City's objective to maximize economic impact, in accordance with this Agreement.

3.3.3.12. Administer all utility and other contracts required in the ordinary course of business in operating Park Facilities, and if necessary or requested by City, participate in the solicitation of, and negotiations with, competing service providers.

3.3.3.13. Provide, or cause to be provided, all incidental services required in connection with Park Facilities or its events and provided services.

3.3.3.14. Maintain an adequate staff of courteous and efficient employees on duty at Park Facilities and provide appropriate supervision of such employees.

3.3.3.15. Manage Major Repairs in coordination with City staff as follows:

- Operator shall notify designated City staff in writing of any Major Repair that needs to be performed.
- Upon receipt of such notice, the City shall inform Operator within ten (10) business days whether (a) the City will manage and coordinate the repair work independently, or (b) the City wishes for Operator to carry out the repair work at the City's expense (i.e., on a time-and-materials basis).
- If the City elects for Operator to perform the work, Operator shall provide a written cost estimate and, if agreeable to City, City shall issue a formal work order or other authorization for Operator to proceed.
- If City opts to coordinate the repair independently, City shall provide Operator with a schedule for when the work will be completed.
- If the City elects for Operator to manage one or more third-parties to perform the work, Operator shall get pricing from an appropriate vendor or subcontractor and provide the cost estimate to the City, including a 15% markup to Operator to manage the work. City shall then issue a formal work order or other authorization for Operator to proceed.
- The parties shall make good faith efforts to ensure that Major Repairs are completed in a timely manner to minimize disruptions to programs, services, and facility rentals.

3.3.3.16. Develop, establish and follow, to the extent reasonably practicable, policies and procedures related to the operation of Park Facilities, as requested by the City.

3.3.3.17. Provide administrative oversight of and properly trained staff to meet the needs in all key operating areas such as childcare services, food and beverage operations and Park Facilities maintenance. Operator will provide this administrative oversight and staffing as needed to ensure that the facility is operated to the Operating Standards described at subsection 3.3.3.8 above and in accordance with the terms of this Agreement.

3.3.3.18. Maintain all utilities and pay for utilities such as electric,

water, natural gas, phone, computer connectivity, or any other utilities to support the Park Facilities.

3.3.4. Fees and Prices

3.3.4.1. Operator shall recommend annually a fee schedule, including room rental fees during the annual budget process which will be based upon current fees, existing market conditions and offsetting expenses for the City to consider and approve in its sole discretion pursuant to section 3.3.4.2, below.

3.3.4.2. When reviewing and approving the annual budget for the Park Facilities, City shall review and approve the fee schedule setting forth the maximum fees to be charged at Park Facilities.

3.3.4.3. During the annual budget process, Operator may request permission, in writing, from City to enable Operator to charge fees lower than the approved minimum during certain times in order to maximize use and to generate additional or increased revenues. Such requests shall contain at a minimum the following:

- The fees proposed for reduction;
- Proposed time period for reductions to be in effect;
- Justification for proposed fee reductions;

City may require additional information or justification it deems necessary prior to authorizing any fee reductions.

3.3.4.4. Operator and City shall work collaboratively to support the ongoing success, safety, and effectiveness of the Park Facilities. To this end, Operator and City shall meet at least once annually to review and discuss matters related to facility operations, public safety, programming effectiveness, community feedback, the monetary threshold for Major Repairs, and any other issues that may impact the success of the Facilities. These meetings shall serve as a forum for shared learning, problem-solving, and strengthening the partnership between Operator and the City.

3.3.5. The City reserves sole authority to make all final decisions regarding the Park Facilities, but will exercise this authority in the spirit of good faith cooperation with Operator, as resources allow.

3.4. Financial Terms and Reporting Requirements

3.4.1. Operator shall manage and maintain a current and up to date computerized system that identifies the various categories of fees, a comprehensive tally of all fees, sales, food and beverage sales, classes and events. All revenue collection, customer processing and revenue reporting shall conform to applicable policies and procedures of Operator and generally accepted accounting practices.

3.4.2. Operator shall collect all revenues generated through the operation of Park Facilities and document and spend all monies approved by the City as necessary (through the budgeting process or otherwise) for the proper management, operation, maintenance, and supervision of the Park Facilities.

3.4.3. Operator may provide such advice and assistance in relation to the operation, management, maintenance and supervision of Park Facilities, including, but not limited to, recommending potential changes to sources of revenue, partnerships, prices and policies and other such practices that could potentially improve the financial success and community involvement of the facility.

3.4.4. Operator shall provide written reports to City in accordance to the reporting requirements within **Exhibit C**, attached hereto.

3.4.5. All budgets and plans shall be prepared based on what Operator believes to be reasonable assumptions and projections. Operator shall not be deemed to have made any guarantee or warranty in connection with the results of operations or performance set forth in the budgets or plans and the parties acknowledge that such budgets and plans are based solely upon Operator's judgment, and the facts and circumstances known by Operator at the time of preparation.

3.5. Buildings

3.5.1. Operator shall provide routine cleaning and routine building maintenance services in accordance with maintenance standards attached hereto as **Exhibit E** ("**Maintenance Standards**").

3.5.2. Operator shall not make any changes to any of the buildings without the prior written consent of City.

3.5.3. Operator shall provide routine systems preventative maintenance services in accordance with the Maintenance Standards. Operator shall conduct facility audits on a bi-annual basis and submit their findings with recommended repairs and changes to City. Subject to City funding through the enterprise fund revenues, the capital improvements budget, or grants, Operator shall make the necessary repairs or implement recommended changes in a timely fashion.

3.5.4. The City currently has and shall retain fee title to the Park Facilities and all real property improvements located thereon. Title to any Capital Improvements funded solely by Operator shall automatically vest in the City upon substantial completion of such

improvements. Nothing in this Agreement shall be interpreted to provide Operator any ownership interest in Park Facilities.

3.5.5. Non-permanently affixed improvements or easily removable improvements: FF&E purchased by Operator without City funds shall remain Operator property unless reimbursed by City.

3.5.6. Permanently affixed improvements or non-easily removable improvements installed without City funds but permanently affixed to City property and/or FF&E the removal of which would cause damage to any building or structure within Park Facilities or related area, shall remain in place and part of the City's property upon termination of this Agreement.

3.5.7. Any project undertaken by Pogo on City property will be subject to review and approval by the City and will be designed and completed to the City's satisfaction

3.6. Marketing.

3.6.1. Operator shall develop and implement an active marketing program designed to increase use.

3.6.2. Operator shall promote a wide variety of events and programs. These should include camps, and other events. Operator shall target all age and gender groups and this availability shall be advertised throughout the City by a variety of means.

3.6.3. Operator shall conduct marketing for youth programs to be hosted at Park Facilities.

3.6.4. Operator shall develop and implement programs, along with associated marketing and advertising, to serve the surrounding Richmond community.

3.6.5. Operator shall develop and implement marketing plan for events, weddings, rentals, meetings, etc.

3.6.6. Operator will use reasonable efforts to develop partnerships to leverage marketing efforts.

3.6.7. Operator shall work with City to develop a list, at least annually, of public programming activities that will occur at the Facilities and/or other City-owned properties, to ensure those activities are known by both parties, with proper permits acquired and sufficiently marketed to City residents.

3.6.8. City may, in its sole discretion, waive certain permitting and usage fees associated with public programming of the Park Facilities that benefits the Richmond community, as determined by the City Manager or their designee. Public programming may consist of events that are designed to engage, inform, educate, entertain and/or foster engagement free of charge to the community. Any private usage and/or fundraising events shall adhere to the City's permit process and usage fees, and any other applicable fees, unless agreed to by the City Manager or his/her designee in their sole discretion.

3.6.9. Operator shall work with the City staff to ensure that public safety remains a high priority at the Park Facilities prior to the marketing and commencement of any large event.

3.7. Personnel

3.7.1. Operator shall provide staffing to open and close Park Facilities during operating hours as set forth in **Exhibit C**, and sufficient to provide programs and services at the Park Facilities, and manage rentals and concessions, as set forth in **Exhibit B**.

3.7.2. Any keys, access codes, or any other device provided to Operator personnel that is necessary to access and enter Park Facilities shall also be provided to City personnel to access and enter Park Facilities as needed.

3.7.3. All of the employees of the Park Facilities shall be employees of Operator. Operator shall (i) determine personnel requirements, recruitment, schedules, and compensation levels, (ii) furnish job descriptions, performance appraisal procedures, employee benefit programs, and operational and procedural manuals for all personnel, and (iii) establish forms and procedures for employee compensation and Park Facilities incentive programs. Operator shall hire, promote, discharge, and supervise all employees performing services in and about the Park Facilities.

3.7.4. Persons employed by Operator in the performance of services pursuant to this Contract shall not be considered employees of City, shall be independent thereof and shall have no claim against City as to pension, workers compensation, unemployment compensation, insurance, salary, wages, or other employee rights or privileges granted by operation of law or by Operator.

3.7.5. The City shall have the right to approve the individual(s) Operator intends to hire to fill the positions of General Manager. Such approval shall not be unreasonably withheld. City may request a change in the personnel if the individual(s) are not performing up to the standards expected in their contract or this Agreement, including related Performance Metrics within **Exhibit C**.

3.8. Security

3.8.1. Operator shall be responsible for the security and protection of Park Facilities, and any and all current inventory and equipment, including any items hereafter placed on, or installed in, or stored at the facility.

3.8.2. Operator shall be responsible for the security and protection of all revenue, receipt books, cash funds and check books at Park Facilities. Operator shall properly secure these items.

3.8.3. Operator shall be responsible for preventing unauthorized access to the Park Facilities and its support facilities.

3.8.4. Operator shall designate primary response available on a twenty-four (24) hour basis, backup response and support staff to answer alarms and respond to emergencies. Operator shall provide this information to the City Representative and any

other secondary staff contact provided by the City to receive this information.

3.8.5. Operator shall timely provide to City a list of all personnel who have keys to Park Facilities and/or personnel who are privy to security code access and/or safe combinations at Park Facilities. Any subsequent changes in personnel shall be provided to City the following business day.

3.8.6. Operator shall be responsible for keeping any security systems operational during all times the Park Facilities are not supervised by Operator's staff.

3.8.7. Operator shall be responsible for maintaining appropriate procedures for employees regarding the security of Park Facilities. Operator shall provide and maintain a list of those employees with approved access.

3.8.8. Operator shall routinely evaluate security and make recommendations for improvement.

3.9. Equipment Inventory

3.9.1. City shall furnish certain City assets as described in **Exhibit F** for Operator's use for operating, managing, and maintaining Park Facilities. Additional/replacement assets will be added on an annual basis in the City's sole discretion. At the end of the Agreement, or any subsequent extensions, Operator shall return said assets to City in the same condition as received, normal wear excepted.

3.9.2. Operator shall conduct, at least annually, a physical inventory to verify that all assets are present at Park Facilities. Operator is responsible for the replacement of all assets as described in **Exhibit F** (and all replacements and additions thereto). Except for repair and maintenance of inventory or per the standard operating procedures including, without limitation, removal of assets being replaced, Operator shall not otherwise remove any assets from Park Facilities without prior written approval from the City Representative. The repair, maintenance, and/or replacement of all such assets shall be Operating Expenses of the Park Facilities subject to reimbursement by Operator to the extent of its indemnification obligations pursuant to Article 7 ("Operator's Indemnification Obligations").

3.9.3. City may upgrade all equipment and facilities at Park Facilities as required to meet current standards and changes as mandated by federal, state and local laws, subject to budgetary constraints.

3.10. Work Hours \ Safety

3.10.1. Scheduling of work hours to accomplish maintenance services shall conform to the maintenance requirements of Operator, along with Governing Law.

3.10.2. Two (2) weeks prior to performing any maintenance work, Operator shall provide to City its monthly maintenance project schedules. In addition, Operator shall furnish to City an annual master scheduling plan setting forth the proposed work/project schedule for the upcoming year.

3.10.3. The working schedule shall be rotated so that an appropriate Operator employee shall be on the Park Facilities while any structure, building, or event is open and

occurring.

3.10.4. Operator shall be responsible for instructing its employees in appropriate safety measures and shall not permit them to leave tools, materials and other equipment in traffic lanes, paths, or other locations in such a manner as to create safety hazards.

3.10.5. Operator's personnel shall be required to interrupt performance of their work, as necessary, to allow passage of vehicle and pedestrian traffic.

3.10.6. Operator shall conduct monthly safety meetings for all maintenance staff working at the facility.

3.10.7. All maintenance work shall be done in conjunction with community use and shall not interrupt community use unless partial or complete interruption of community use is planned in advance and approved by City in writing.

3.11. Operator Evaluation Of Operations/Equipment

3.11.1. At the end of the first ninety (90) days following the Commencement Date, Operator shall submit a formal report to City representative outlining recommendations which will improve the quality of service and assist in effecting future cost savings. Operator shall also submit an equipment replacement plan listing the current equipment inventory, replacement schedule and estimated cost of replacement.

3.11.2. On an annual basis, during the budget process, Operator shall submit to City any recommended changes to maintenance equipment inventory.

3.12. Emergency Maintenance Provision. In the event that City, at any time, in its reasonable discretion exercised in good faith, determines that any portion of the Park Facilities is in immediate jeopardy of sustaining serious harm due to a failure on the part of Operator, the City may use any means to perform such tasks as are necessary to prevent such serious harm from taking place. The incremental cost of such preventative maintenance (i.e., beyond cost that would have been incurred in the absence of failure by Operator) incurred by City shall be itemized by City and submitted to Operator for payment and/or credit against Operator. To the extent that the foregoing arises as a result of an Event of Default by Operator under Section 8.1 "Events of Default", then City retains the remedies set forth in Section 8.2 ("City's Remedies").

3.13. Equipment, Materials and Supplies. Operator is authorized to access available storage areas and office space for Operator's use within Park Facilities. City may negotiate the purchase of maintenance equipment owned by Operator at the termination of the Agreement. This will be at the sole discretion of City.

3.14. Hours Of Operation. Park Facilities shall operate in accordance to the schedules provided within **Exhibit C**, attached hereto and entitled Performance Metrics and Operating Hours. Any changes to the operating hours shall be approved by the City in writing.

3.15. Evaluation Of Operations

3.15.1. City may at their discretion exercised in good faith, inspect some or all of the Park Facilities for purposes of ensuring Operator's compliance with applicable performance metrics within **Exhibit C**. In conducting such inspection and evaluation, the

City Representative may promptly thereafter provide Operator with inspection reports, including any unsatisfactory findings. The City shall act reasonably and in good faith in making the determination of whether Operator has met the standards of the applicable areas being evaluated as identified in the Scope of Work/Services. Any evaluation forms created for this purpose must be agreed upon by both parties prior to use.

3.15.2. The inspection reports shall be rated as "Satisfactory" or Better, "Needs Improvement", or "Unacceptable" (or other agreed upon rating system). An overall rating using the same scale shall also be determined. The City representative rating of an item as "Unacceptable" shall constitute a Notice of Deficiency with respect to the deficient item(s).

3.15.3. Within one (1) week after receipt of an inspection report, City and the General Manager shall meet to review the deficiency item(s), review the corrective actions Operator intends to take to correct the deficiency item(s) and review the time schedule for completion of corrective action. The proposed corrective action and time schedule shall be reasonably approved by City. When a deficient item has been satisfactorily corrected, Operator shall notify City.

3.16. Construction, Remodeling / Special Projects. Any change in the physical characteristics of any area of the Park Facilities such as addition or removal of any installation, renovation, painting, equipment, native or existing vegetation or the modification of any portion of the Park Facilities or the buildings shall be approved in advance, in writing, by City. The Parties acknowledge and agree that, in the event of a prospective special project, they will adopt procedures and enter into additional agreements as necessary, which will assign clear responsibilities for each Party. Such additional agreements may include, but are not limited to, funding allocation agreements, programming agreements, design and construction agreements, and donor recognition and naming rights agreements. The City will draft and, with appropriate approval from Richmond City Council, execute additional agreements and/or amendments to this Agreement that are in furtherance of the terms and conditions contained herein to the extent consistent with the City laws, and all other applicable laws or regulations.

3.17. Permits/Licenses

3.17.1. Operator shall obtain, maintain current and fully comply with any and all permits, licenses and other governmental authorizations, however designated, as may be required at any time, by any federal, state or local governmental entity or any court of law having jurisdiction over Operator or Operator's operations and activities, for any activity of Operator's conducted at Park Facilities. Operator shall provide to City, upon written request, certified copies of all permits and licenses. Operator's breach of this Section shall be considered a material breach of this Agreement.

3.17.2. Operator shall provide payment for all permits and licenses required by City for Operator's obligations hereunder.

3.18. Safety Regulations

3.18.1. Operator shall conduct its operations and activities in a safe manner, shall comply with all safety regulations of Operator and safety standards imposed by Governing Law. Operator shall require the observance thereof by all employees, contractors, business

invitees and all other persons transacting business with or for Operator resulting from, or in any way related to, the conduct of Operator's business at Park Facilities.

3.18.2. Operator shall maintain fire prevention and extinguishing devices, at Operator's expense, and shall at all times be familiar with and comply with the fire regulations and orders of the City's Fire Department and any other fire control agency with jurisdiction at the Park Facilities. Operator, nor employee or any person working for or on behalf of Operator, shall not require any personnel engaged in the performance of Operator's operations to work in surroundings which are unsanitary, hazardous, or dangerous to his or her health or safety.

3.19. Environmental And Natural Resource Laws, Regulations And Permits

3.19.1. It shall be the responsibility of Operator to be knowledgeable of any and all federal, state, regional and local government laws, ordinances, regulations, orders and rules, without limitation, which govern the operations of Park Facilities.

3.19.2. Operator shall acknowledge and understand that its operations may involve the generation, processing, handling, storing, transporting and disposal of certain hazardous and/or toxic materials which are, or may be, subject to regulation by federal, state or local law, ordinance, regulations, rules, orders, or other governmental rules and requirements

3.19.3. Provisions shall be made by Operator to have an accurate inventory list (including quantities) of all such hazardous, toxic and other contaminated or polluted materials, whether stored, disposed of or recycled, available at all times for inspection by City, including fire department officials, for implementation of proper storage, handling and disposal procedures.

3.19.4. In case of any spill, leak or other emergency situation involving hazardous, toxic, flammable and/or other pollutant/contaminated materials, Operator shall immediately notify the City and appropriate health officials.

3.19.5. Operator shall be liable for, and shall assume all responsibility for, all citations, fines, environmental controls and monitoring, clean-up and disposal, restoration and corrective measures resulting from Operator's use regardless of negligence in connection with the handling, storage, and/or disposal of all pollutants or contaminated materials, as defined by law, regardless of whether or not a default notice has been issued and notwithstanding any other obligations imposed upon Operator. Operator shall be responsible for the proper storage and security of all pollutants and contaminated materials located at Park Facilities.

3.20. Inspections. The authorized employees and representatives of the City and any applicable federal, state and local entity having jurisdiction hereof shall have the right of access to Park Facilities at all reasonable times for the purposes of inspection for compliance with the provisions of this Agreement.

3.21. Service Requests. From time to time, City may submit service requests to Operator. Operator shall provide a response to these service requests shall be within three (3) business days.

3.22. Operator And Customer Data. Any data generated, secured, and/or received in connection with the operations at Park Facilities, to include customer names or any other personal identifiable information shall be kept confidential by Operator.

3.23. Contracts. Operator shall negotiate, consummate, enter into, and perform such agreements as Operator may deem necessary or advisable for the furnishing of all utilities, concessions, entertainment, operating supplies, equipment, repairs and other materials and services as Operator determines are needed from time to time for the management and operation of the Park Facilities. Notwithstanding the above, any contract that requires Five Thousand Dollars (\$5,000) or more in total payments over the term of such contract or which has a term of over one (1) year shall require the prior written consent of City, which consent shall be deemed to have been given if City neither consents nor disapproves in writing within ten (10) business days after Operator's written request for approval.

3.24. Legal Action. Operator may not institute any legal action by or on behalf of City or the Park Facilities without the prior written consent of City. In the event Operator becomes named in any legal suit related to its operation of Park Facilities, Operator shall in writing promptly notify City of such action. Nothing in this Section shall require City participation in any legal action involving Operator.

3.25. Insurance. Insurance for the Property shall be as set forth in **Exhibit D** "Insurance Provisions" attached hereto.

ARTICLE 4 INTENTIONALLY OMITTED.

4.1 Intentionally omitted.

ARTICLE 5 FEES, EXPENSES, AND BUDGET

5.0 Out-of-Pocket-Expenses Incurred by City. To the extent the City incurs out-of-pocket expenses on behalf of Operator in connection with the operation, management, or maintenance of the Park, such expenses shall be satisfied from Generated Income. The City may draw down from Generated Income, or offset against amounts earned by Park Facility above Operating Expenses, to recover such expenses satisfied by City on behalf of Operator ("**Generated Income**"). Operator shall cooperate with the City to ensure proper accounting and reconciliation of all such amounts within thirty (30) days of City's written notice.

5.1 Operator Responsibility for Expenses. Except as expressly provided in this Agreement, Operator shall be solely responsible for all costs and expenses incurred in connection with its performance under this Agreement. In no event shall the City be obligated to reimburse Operator for any such costs or expenses.

5.2 Reimbursement to City. If the City pays or incurs any cost or expense that is not

expressly allocated to the City under this Agreement, the City shall have the right to seek reimbursement from Operator for such amounts in accordance with this Article. The City may recover such amounts by invoice, by offset against Generated Income or other amounts payable to Operator, or by any other remedy available under this Agreement or at law.

5.3 Fund Management. Operator shall follow Generally Accepted Accounting Principles for nonprofit corporations and will enact prudent governance policies with regard to any invested funds. The City will follow Generally Accepted Accounting Principles for local government jurisdictions.

5.4 Annual Operating Budget. By a mutually agreed-upon date, and consistent with the City's annual budget process, Operator and City shall jointly develop annual operating and capital budgets for the Park Facilities for each fiscal year. Both Parties will share Park Facility-related budgets (i.e. to include sources and uses of funds), as appropriate, to assist with budget development.

5.5 City Funding. Subject to annual appropriation and in accordance with the approved City budget, the City shall cover City Operating Costs, Major Repairs, and approved Capital Improvements. This language does not in any way obligate the City to appropriate any funds in its budget for such purposes.

5.6 Fundraising. Operator agrees to coordinate with the City regarding funding goals, grants, programs or campaigns that provide funding for community programs delivered at the Facilities or Capital Improvements. Operator will advise donors of the necessary approvals of the City. Pogo agrees, before it begins to accept gifts, to confer with the Director of Public Works or their designee. Operator will provide the City with a summary report of gifts received upon City request.

5.7 Grants. Both Parties agree to collaborate on grants that mutually benefit both parties and the Facilities. The Parties will work to streamline internal processes to ensure prompt and relevant support for each other's fundraising efforts to further mutual effectiveness.

5.8 Grant Coordination. Operator may solicit grants or donations for programs and Capital Improvements. All proposed grants for Capital Improvements shall be (1) shared with the City once a grant opportunity is identified, (2) discussed with the City during the grant development phase to ensure feasibility, and (3) submitted to the City prior to submission for review by the granting authority. Any awarded grants should be shared with the City upon award notification, grant-related reports and documents shared with the City in a timely manner, and approval received prior to commencement of construction.

5.9 Generated Revenue. Operator may retain Generated Revenue, provided that: (a) such revenue is used exclusively for operations, maintenance, programs or Capital Improvements at the Park Facilities; and (b) Operator provides the City with a quarterly report detailing all such income. Operator shall provide the City with a fee schedule for programming and/or facility rentals annually for City's review and approval, which shall be at City's sole discretion and in accordance with section 3.3.4 of this Agreement. Fees should remain reasonable to encourage community use.

5.10 Audits and Reporting. Operator will file all reports and other documents required by law in a timely and comprehensive manner, including but not limited to those required by the State of California and the United States Internal Revenue Code and shall provide the City with copies of such reports upon request. Upon request, Pogo will supply the City with an annual set of

relevant summary financial statements for the most recently ended fiscal year. Upon request, Operator agrees to provide the City, annually, an annual report and a list of Operator's governing board, officers, and advisors.

ARTICLE 6

COVENANTS AND REPRESENTATIONS

6.1 City's Covenants and Representations. City makes the following covenants and representations to Operator, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

6.1.1 Corporate Status. City is a city duly organized, validly existing, and in good standing under the laws of California, and authorized to transact business in California, with full municipal corporate and charter authority to enter into this Agreement.

6.1.2 Authorization. The making, execution, delivery, and performance of this Agreement by City has been duly authorized and approved by all requisite action, and this Agreement has been duly executed and delivered by City and constitutes a valid and binding obligation of City, enforceable in accordance with its terms.

6.1.3 No Litigation. There are no actions, suits or proceedings pending, or to the best of City's knowledge, threatened against City that may adversely affect the Park Facilities, the Property or the City in connection with the operations of the Park Facilities.

6.1.4 No Violation. There is no existing violation or breach of any ordinance, code, law, rule, requirement or regulation applicable to the Park Facilities or the Property, and City is not aware of the basis for any such violation or breach.

6.1.5 Hazardous Material. City is not aware of the presence of any Hazardous Material in, on or under the Property in a quantity sufficient to require remediation or reporting under any Environmental Law, and City has not received notice of any violation or alleged violation of any Environmental Law with respect to the Property.

6.1.6 Documentation. If necessary to carry out the intent of this Agreement, City agrees to execute and provide to Operator, on or after the Commencement Date, any and all other instruments, documents, conveyances, assignments, and agreements which Operator may reasonably request in connection with the operation of the Park Facilities.

6.2 Operator's Covenants and Representations. Operator makes the following covenants and representations to City, which covenants and representations shall, unless otherwise stated herein, survive the execution and delivery of this Agreement:

6.2.1 Corporate Status. Operator is a non-profit corporation duly organized, validly existing, and in good standing under the laws of California, and authorized to transact business in California, with full corporate power to enter into this Agreement and execute all documents required hereunder.

6.2.2 Authorization. The making, execution, delivery, and performance of this Agreement by Operator has been duly authorized and approved by all requisite action and this Agreement has been duly executed and delivered by Operator and constitutes a valid and binding obligation of Operator, enforceable in accordance with its terms.

6.2.3 Effect of Agreement. Neither the execution and delivery of this Agreement by Operator nor Operator's performance of any obligation hereunder (i) will constitute a violation of any law, ruling, regulation, or order to which Operator is subject, or (ii) shall constitute a default of any term or provision or shall cause an acceleration of the performance required under any other agreement or document to which Operator is a party or is otherwise bound.

ARTICLE 7

INDEMNIFICATION

7.1 Operator's Indemnification Obligations. To the fullest extent permitted by law, Pogo shall indemnify, defend (with counsel acceptable to the City) and hold harmless the City, its City Council, boards, commissions, officials, employees, agents and volunteers ("**Indemnitees**") from and against any and all loss, damages, liability, obligations, claims, suits, judgments, costs and expenses whatsoever, including attorney's fees and costs of litigation ("**Claims**"), arising from or in any manner connected to Pogo's performance of its obligations under this Agreement or failure to comply with any of its obligations under this Agreement or out of the operations conducted by Pogo even if the City is found to have been negligent. If the Claims filed against Indemnitees allege negligence, recklessness or willful misconduct on the part of Pogo, Pogo shall have no right of reimbursement against Indemnitees for the costs of defense even if negligence, recklessness or willful misconduct is not found on the part of Pogo. Pogo shall not have any obligations to indemnify Indemnitees if the loss or damage is found to have resulted solely from the negligence or the willful misconduct of the City. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this agreement. This indemnification obligation shall survive this Agreement and shall not be limited by any term of any insurance policy required under this Agreement

7.2 Survival. The defense and indemnification obligations contained in this Article 7 shall survive the expiration or termination of this Agreement for any reason.

ARTICLE 8

REMEDIES

8.1 Events of Default. The occurrence of any one or more of the following events which is not cured within the specified cure period, if any, shall constitute a default under this Agreement (hereinafter referred to as an "**Event of Default**"):

- (i) Failure to Pay Sums Due. Either Party's failure to pay any uncontested sums payable under this Agreement when and as the same shall become due and

payable and such failure shall continue for a period of ten (10) days after written notice (specifying the item not paid) thereof from the other Party to the defaulting Party;

- (ii) Failure to Comply. Either Party's material failure to comply with any of the terms or conditions of this Agreement, and such failure shall continue for a period of thirty (30) days after written notice thereof from the other Party to the defaulting Party specifying in detail the nature of such failure. Notwithstanding the foregoing, in the event any such failure cannot with due diligence be cured within such 30-day period, if the defaulting Party proceeds promptly and diligently to cure the same and thereafter diligently prosecutes the curing of such failure, the time within which the failure may be cured shall be extended for such period as may be necessary for the defaulting Party to cure the failure, continuing only until such time as cure becomes unreasonable;
- (iii) Bankruptcy. If either Party (i) applies for or consents to the appointment of a receiver, trustee, or liquidator of itself or any of its property, (ii) is unable to pay its debts as they mature or admits in writing its inability to pay its debts as they mature, (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated as bankrupt or insolvent, or (v) files a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors, or taking advantage of any bankruptcy, reorganization, insolvency, readjustment of debt, dissolution or liquidation law or statute, or admits the material allegations of a petition filed against it in any proceedings under any such law, or if any action shall be taken by said party for the purpose of effecting any of the foregoing (collectively, an "**Insolvency Proceeding**"); and
- (iv) Reorganization; Receiver. An order, judgment, or decree is entered without the application, approval, or consent of either Party by any court of competent jurisdiction approving a petition seeking reorganization of said Party or appointing a receiver, trustee, or liquidator of said Party, or of all or a substantial part of any of the assets of said Party, and such order, judgment, or decree remains unstayed and in effect for a period of ninety (90) days from the date of entry thereof.

8.2 City's Remedies. Upon the occurrence of an Event of Default by Operator, City may: (i) seek specific performance of Operator's obligations or injunctive relief, as applicable; (ii) demand and receive payment of all amounts due City under the terms of this Agreement and the payment of all costs, damages, and expenses of City arising due to Operator's Event of Default; (iii) proceed to remedy the Event of Default. All sums so expended or obligations incurred by City in connection therewith shall be paid by Operator to City, upon demand by City, and on failure of such reimbursement, City may, at City's option, deduct all costs and expenses incurred in connection with remedying the Event of Default from the next sums becoming due to Operator from City under the terms of this Agreement; and (iv) terminate this Agreement by written notice of termination to Operator. Upon proper termination of this Agreement, Operator shall surrender occupancy of the Property to City.

No remedy granted to City is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given

hereunder or now or hereafter existing at law, in equity, or by statute, including a suit for money damages. No delay or omission by City to exercise any right accruing upon an Event of Default shall impair City's exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence thereto.

8.3 Operator's Remedies. Upon the occurrence of an Event of Default by City, Operator may:

(i) seek specific performance of City's obligations or injunctive relief, as applicable; (ii) demand and receive payment of all amounts due Operator under the terms of this Agreement and the payment of all costs, damages and expenses of Operator due to City's Event of Default; (iii) proceed to remedy the Event of Default. All sums so expended or obligations incurred by Operator in connection therewith shall be paid by City to Operator, upon demand by Operator, and on failure of such reimbursement, Operator may, at Operator's option, deduct all costs and expenses incurred in connection with remedying the Event of Default from the next sums, if any, becoming due to City from Operator under the terms of this Agreement; and (iv) terminate this Agreement by Operator's written notice of termination to City. In such event, City shall pay to Operator within thirty (30) days of termination an amount equal to the total undisputed, unpaid fees due to Operator for services rendered to the date of termination.

No remedy granted to Operator is intended to be exclusive of any other remedy herein or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law, in equity, or by statute, including a suit for money damages. No delay or omission by Operator to exercise any right accruing upon an Event of Default shall impair Operator's exercise of any right or shall be construed to be a waiver of any Event of Default or acquiescence thereto.

ARTICLE 9

TERMINATION

9.1 Events of Termination. This Agreement shall terminate upon the occurrence of any of the events set forth below:

- (i) An Event of Default by Operator, and City sends to Operator a notice of termination for cause (after the expiration of any applicable cure period);
- (ii) An Event of Default by City, and Operator sends to City a notice of termination for cause (after the expiration of any applicable cure period);
- (iii) Both Parties agree in writing to terminate this Agreement;
- (iv) Upon the expiration or termination of this Agreement according to its terms.

9.2 Employee and Other Obligations Upon Termination. Upon a termination of this Agreement for any reason, Operator shall remain responsible for payment of obligations connected with the Agreement rendered through the effective date of termination (including all Operating Expenses and other expenses). Additionally, Operator shall be responsible for the payment of any earned and accrued vacation owed or due to the terminated staff as a result of the termination as well as any manual adjustments of wages and any unclaimed wages due the

terminated staff accruing prior to the termination date and shall, if requested by City, reimburse City for any such payments made by City. Any amounts owed to City pursuant to this Section shall be paid to City within thirty (30) days of written request therefore.

9.3 Other Payments Upon Termination. Upon expiration or termination of this Agreement, all sums owed by either Party to the other shall be paid within thirty (30) days of the effective date of such termination.

ARTICLE 10

NOTICES

10.1 Notices. Any notices or other communications required or permitted hereunder shall be sufficiently given if in writing and (i) delivered personally, (ii) sent by certified mail, return receipt requested, postage prepaid (“**Mail**”), or sent by nationally-recognized overnight mail or courier service (“**Overnight Courier**”), addressed as shown below, or to such other address as the Party concerned may substitute by written notice to the other. Any notice will be deemed received (A) upon the date personal delivery is made, (B) three (3) business days after the date it is deposited in the Mail, (C) one (1) business day after it is deposited with an Overnight Courier, or (D) the date upon which attempted delivery of such notice, whether by Mail, Overnight Courier or personal delivery, if refused or rejected.

If to City:

City of Richmond:

Daniel Chavarria,
Director of Public
City of Richmond, 450 Civic Center Plaza
Richmond, CA 94804

If to Operator:

Pogo Park

Toody Maher
Pogo Park, 2604 Roosevelt Avenue
Richmond, CA 94804.

10.2 Changes. The addresses and addressees may be changed by giving notice of such change in the manner provided herein for giving notice. Unless and until such written notice is received, the last address and addressee given shall be deemed to continue in effect for all purposes.

ARTICLE 11

MISCELLANEOUS

11.1 Exhibits. All Exhibits attached hereto are incorporated herein by this reference as if fully set forth herein. If any Exhibits are subsequently changed by the mutual written agreement of the Parties, the Exhibits shall be modified to reflect such change or changes and dated and

initialed by the Parties.

11.2 Entire Agreement. This Agreement and the Exhibits hereto embody the entire agreement and understanding of the Parties relating to the subject matter hereof and supersede all prior representations, agreements, and understandings, oral or written, relating to such subject matter.

11.3 Amendment and Waiver. This Agreement may not be amended or modified in any way except by an instrument in writing executed by all Parties hereto; provided, however, either Party may, in writing, (i) extend the time for performance of any of the obligations of the other, (ii) waive any inaccuracies and representations by the other contained in this Agreement, (iii) waive compliance by the other with any of the covenants contained in this Agreement, and (iv) waive the satisfaction of any condition that is precedent to the performance by the Party so waiving of any of its obligations under this Agreement.

11.4 Proprietary Information. Operator shall be permitted to use the trade names, trademarks and logos of City (collectively, “**City Marks**”) in connection with the performance of the services provided under this Agreement and as otherwise provided in this Agreement or as agreed upon by City; provided, however, that City agrees that Operator may use the City Marks in its marketing and promotional materials related to the Park Facilities as managed by Operator. All specifically identifiable information developed by Operator for City at the expense of City shall be the property of the City and such information may continue to be used by City at the Park Facilities beyond any expiration or termination of this Agreement; provided, however, that City may not use or grant others the right to use such information at any other location nor disclose or grant any rights to such information to any third party. All of Operator’s proprietary information, including (i) trade names, trademarks and logos as well as programs that have been or may be developed by Operator, and (ii) software and technology, shall remain the exclusive property of Operator and neither City nor any of its affiliates or successors may use or disclose such proprietary information without the advance written consent of Operator, unless otherwise specified within this Agreement. This provision will not limit City’s future use of programming for patrons, facility or equipment use policies, financial reporting documents or other concepts implemented by Operator during its management of the Park Facilities. The obligations and restrictions contained in this Section, and the City’s right to use the implemented management concepts shall survive the expiration or termination of this Agreement for any reason.

11.5 No Partnership or Joint Venture. Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of (i) a partnership, or (ii) a joint venture between the Parties hereto; it being understood and agreed that neither any provisions contained herein, nor any acts of the Parties hereto shall be deemed to create any relationship between the Parties hereto other than the relationship of independent contractor.

11.6 Assignment; Successors and Assigns. This Agreement may not be assigned by either Party hereto without the express written consent of the other Party. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, legal representatives, and permitted assigns.

11.7 Severability. Except as expressly provided to the contrary herein, each section, part, term, or provision of this Agreement shall be considered severable, and if for any reason any

section, part, term, or provision herein is determined to be invalid and contrary to or in conflict with any existing or future law or regulation by a court or governmental agency having valid jurisdiction, such determination shall not impair the operation of or have any other effect on other sections, parts, terms, or provisions of this Agreement as may remain otherwise intelligible, and the latter shall continue to be given full force and effect and bind the Parties hereto, and said invalid sections, parts, terms, or provisions shall not be deemed to be a part of this Agreement.

11.8 Survival. All covenants, agreements, representations, and warranties made herein shall survive the execution and delivery of (i) this Agreement, and (ii) all other documents and instruments to be executed and delivered in accordance herewith and shall continue in full force and effect.

11.9 Construction and Interpretation of Agreement. This Agreement shall be governed by and construed under the laws of the State of California, without regard to conflicts of laws principles. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule or conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same. It is agreed and stipulated that all Parties hereto have equally participated in the preparation of this Agreement and that legal counsel was consulted by each Party before the execution of this Agreement.

11.10 Captions. Captions, titles to sections, and paragraph headings used herein are for convenience of reference and shall not be deemed to limit or alter any provision hereof.

11.11 Governing Document. This Agreement shall govern in the event of any inconsistency between this Agreement and any other document or instrument executed or delivered pursuant hereto or in connection herewith.

11.12 Outside Businesses. Nothing contained in this Agreement shall be construed to restrict or prevent, in any manner, any Party or any Party's affiliates, parent corporations, or representatives or principals from engaging in any other businesses or investments, nor shall City or Operator have any right to share or participate in any such other businesses or investments of the other Party.

11.13 Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed one and the same Agreement. Facsimile signature or scanned and e-mailed signature shall be as effective as an original signature.

11.14 Unavoidable Delays. The provisions of this Section shall be applicable if there shall occur during the Term any (i) strikes, lockouts, or labor disputes, (ii) inability to obtain labor or materials, or reasonable substitutes therefor, (iii) acts of God, governmental restrictions, regulations or controls, enemy or hostile governmental action, civil commotion, fire, or other casualty, or (iv) other conditions beyond the reasonable control of the Party obligated to perform. If either Party shall, as the result of any of the above-described events, fail punctually to perform any obligation on its part to be performed under this Agreement, then such failure shall be excused and not be a breach of this Agreement by the Party claiming an unavoidable delay (an

“Unavoidable Delay”), but only to the extent the delay is occasioned by such event. If any right or option of either Party to take any action under or with respect to the Term is conditioned upon the same being exercised within any prescribed period of time or at or before a named date, then such prescribed period of time or such named date shall be deemed to be extended or delayed, as the case may be, upon written notice, as provided above, for a time equal to the period of the Unavoidable Delay. Notwithstanding anything contained herein to the contrary, the provisions of this Section shall not be applicable to either Party’s obligation to pay any sums, monies, costs, charges, or expenses required to be paid pursuant to the terms of this Agreement.

11.15 No Third-Party Beneficiaries. Nothing herein contained shall be deemed to establish any rights of third parties against the Parties hereto; it being the intent that the rights and obligations set forth herein are those of the Parties hereto alone, with no third party beneficiary rights intended.

11.16 Certain Services Excluded. Notwithstanding anything else contained in this Agreement to the contrary, Operator’s services are limited to those specifically noted in the Agreement and do not include, among others and without limitation, architectural, engineering, design or general contracting services, facility planning services, accounting or tax-related assistance or advice, legal advice or services, expert witness services, cost report preparation, data processing or information services, or feasibility studies. Operator’s services will not constitute an audit, review or compilation or any other type of financial statement reporting or consulting engagement subject to special or proprietary regulations. Operator will not be expressing any professional opinions and makes no representations or warranties in conjunction with this engagement.

11.17 Anti-Discrimination Clause. Operator shall not engage in discrimination, harassment, or retaliation in employment against its employees, applicants, contractors, or subcontractors on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, pregnancy, childbirth or related medical condition, age, sexual orientation, military or veteran status, or any other classification protected by law (“**Protected Class**”), except as permitted by law.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date first written above.

POGO PARK.

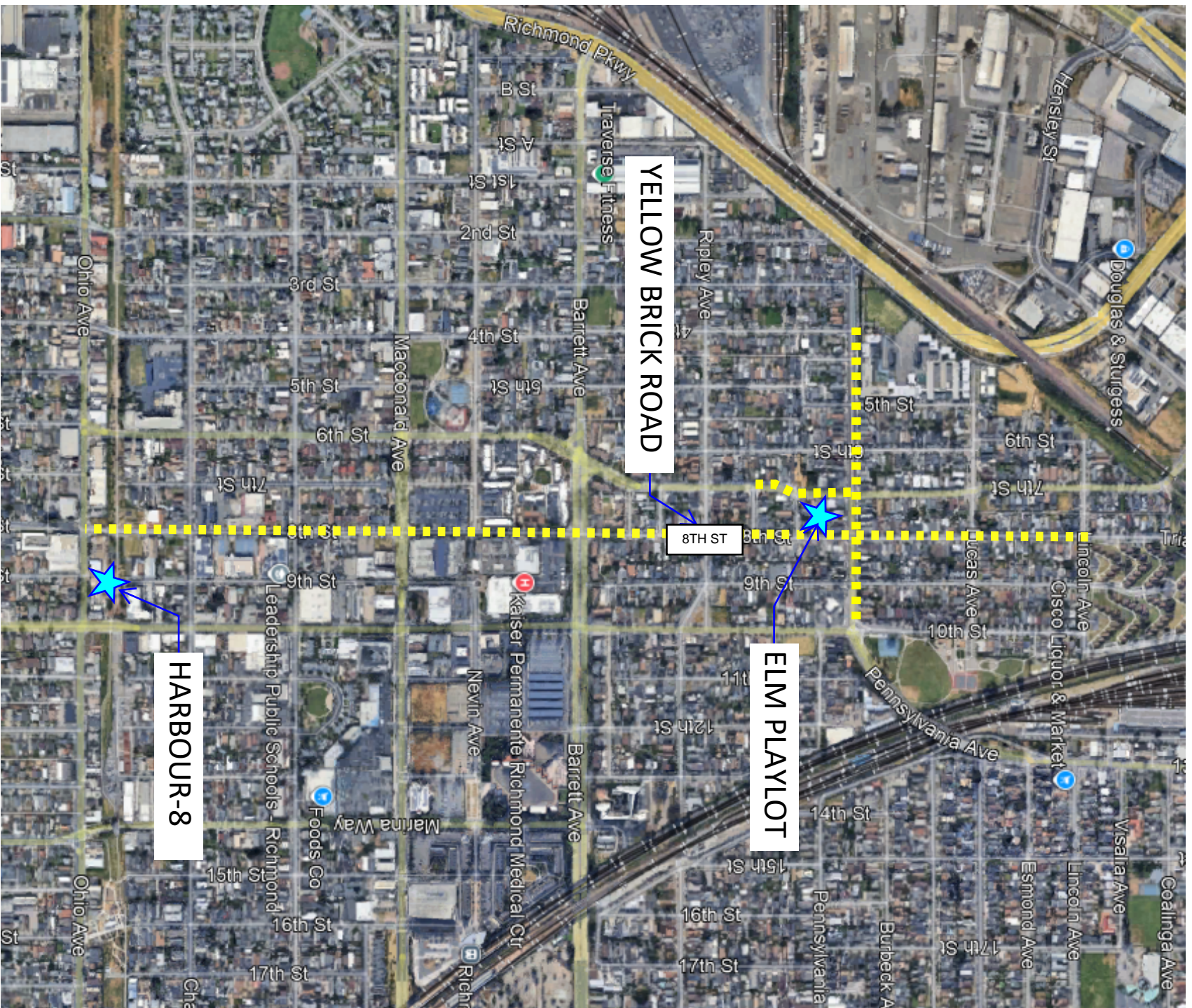
CITY OF RICHMOND

By: _____
[name]
[title]

By: _____
Eduardo Martinez
Mayor

EXHIBIT A

DESCRIPTION OF PARK FACILITIES



YELLOW BRICK ROAD



**HARBOUR-8 PARK, HARBOUR HALL,
HARBOUR-8 COMMERCIAL KITCHEN**



ELM PLAYLOT

EXHIBIT A

DESCRIPTION OF PARK FACILITIES



EXHIBIT B

PERMITTED USES AND RATES

This Exhibit governs permitted uses and rates applicable to the use of Harbour Hall, Elm Playlot, Harbour-8 Park's Commercial Kitchen, and any other City-owned Facilities operated by Pogo under this MOU.

1. **RENTAL MANAGEMENT.** Pogo shall have sole responsibility for managing all rental-related activities for the Park Facilities, as described herein. To avoid scheduling conflicts or duplicative efforts, the City shall not schedule or authorize use of any Facility without prior written coordination with, and acknowledgment by, Pogo. Rental management responsibilities shall include, but are not limited to:
 - a. Marketing and promotion of rental opportunities
 - b. Booking, scheduling, and confirming reservations
 - c. Collection and administration of rental fees and security deposits
 - d. On-site staffing and event management and oversight
 - e. Facility inspections, pre-rental and post-rental reporting

2. **PERMITTED USES.** Permitted uses include, but are not limited to:
 - a. Private events, including but not limited to weddings, birthday parties, quinceañeras, baby showers, memorials, and other special occasions
 - b. Community classes and programs (e.g., fitness, art, cooking)
 - c. Public meetings, town halls, voting, and educational workshops
 - d. Cultural or recreational programs (e.g., bingo night, movies night, etc.)
 - e. Nonprofit fundraising events
 - f. Performing arts
 - g. Pop-up shops, art galleries, and temporary exhibitions
 - h. Emergency preparedness training and response

3. **PROHIBITED USES.** Pogo reserves the right to deny any rental application inconsistent with community values, public safety, or the intended use of the Facilities. The uses below are expressly prohibited:
 - a. Events involving illegal activity or controlled substances
 - b. Political campaign events (unless permitted under equal access guidelines)
 - c. Events exceeding occupancy or violate fire code or other safety regulations
 - d. Any use that the City or Pogo reasonably determines poses a threat to the safety of participants, the integrity of the Facilities, or community trust

4. **CITY USE OF FACILITIES.** If the City desires to use any Facility for its own governmental or ceremonial purposes, the following shall apply:

- a. The City shall provide Pogo with at least thirty (30) days' written notice.
- b. The City shall either (a) furnish its own staff and cleaning crew, or (b) reimburse Pogo for staffing and related costs based on Pogo's published rate schedule.
- c. City use shall not displace or interfere with previously confirmed community bookings unless mutually agreed upon in writing.

5. **RENTAL RATES.**

- d. **Published Rental Rates.** Pogo will set Facility rental rates for private individuals, groups, and corporations, which will be published annually and submitted to the City for review and approval. These fees may be adjusted as needed to reflect market conditions, community needs, or operational requirements.
- e. **Discounts and Fee Waivers.** Pogo and City shall jointly develop and maintain a published schedule of eligibility criteria for discounted rental rates (e.g., for Richmond residents) and full fee waivers (e.g., for mission-aligned community groups). The Parties shall review and update the schedule periodically to ensure alignment with community needs and equity goals.

6. **OTHER RENTAL TERMS.**

- a. **Security Deposits.** All renters shall provide a refundable security deposit in an amount set by Pogo's rental policy. Deposit may be withheld in the event of damage, excessive cleaning, or policy violations.
- b. **Cancellation & Refund Policy.** Pogo shall publish a cancellation and refund policy outlining deadlines and refund amounts. In general, cancellations made at least 14 days in advance shall be eligible for a full refund.
- c. **Insurance Requirements.** Pogo and City will determine appropriate insurance requirements for events.
- d. **Noise, Hours, and Conduct.** All rentals must comply with City ordinances related to noise and hours of operation. Consistent with the City's community center rental policies, events/music must end by 9:00 PM with breakdown/cleanup allowed until 10:00 PM, unless otherwise approved in writing. Renters are responsible for guest behavior and for returning the facility to its pre-use condition.
- e. **Alcohol Use.** Alcohol may be served or consumed at the Facility only with prior

written approval from Pogo and in compliance with all applicable laws and regulations, including any temporary alcohol license or permit required from the California Department of Alcoholic Beverage Control (ABC) and provide a copy to Pogo at least five (5) business days prior to the event. All alcohol service must comply with ABC rules and be conducted by individuals legally authorized to serve alcohol. Pogo reserves the right to require security personnel and impose additional conditions, including but not limited to event insurance, for any event involving the service or consumption of alcohol.

- f. **Equipment and Furniture.** Use of Pogo-owned equipment or FF&E may be included in the rental fee or subject to additional charges. No permanent alterations may be made to the facilities.

EXHIBIT C

PERFORMANCE METRICS AND OPERATING HOURS

This Exhibit sets forth the agreed-upon operating hours and performance metrics that will be used to evaluate Pogo’s operations under this MOU. These metrics shall serve as the basis for any performance reviews under Section 2.3 (“Extension”).

1. OPERATING HOURS

Park Facility	Minimum Weekly Hours Open to Public	Notes
Harbour Hall	40 hours per week	Includes evenings and weekends; exclude City holidays*
Elm Playlot	40 hours per week	Includes evenings and weekends; exclude City holidays*
Harbour-8 Park	40 hours per week	Includes evenings and weekends; exclude City holidays*
Commercial Kitchen	Varies	Based on bookings and programs
* Weekly minimum hours will be proportionally reduced by 1/5 for each City holiday that occurs during that week on Monday – Friday. City of Richmond Holiday Schedule Website https://www.ci.richmond.ca.us/2078/Holiday-Schedule		

2. PROGRAM DELIVERY METRICS

Metric	Target	Reporting Frequency
Community events hosted	4 events per year	Annually
Park programs / activities (e.g., dance; art; food; child and youth development, etc.)	400 programs / activities per year	Annually

3. COMMUNITY ENGAGEMENT & FEEDBACK

Metric	Target	Reporting Frequency
Community feedback sessions held	1 per year	Annually

City notified of community concerns	Within 10 business days of receipt	As needed
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4. REPORTING DELIVERABLES

Report	Due Date
Program & Engagement Report	Within 30 days after end of each calendar year
Annual Budget	60 days prior to the start of each fiscal year
Maintenance/Repair Summary	Within 30 days after end of each calendar year
Public Usage & Participation Data	Within 30 days after end of each calendar year

5. FLEXIBILITY CLAUSE

Pogo and the City acknowledge that unforeseen circumstances (e.g., extreme weather, health orders, emergency response deployment) may temporarily affect service delivery. In such cases, Pogo shall notify the City and propose reasonable modifications to metrics. The City shall not unreasonably withhold approval of such adjustments.

EXHIBIT D
INSURANCE PROVISIONS

EXHIBIT E

MAINTENANCE STANDARDS

Park Facility Maintenance

Operator shall provide routine cleaning services in accordance with the following minimum specifications. At a minimum, work frequencies shall comply with the specifications, however, they shall in no way limit the Operator responsibility to maintain a clean, sanitary and visually pleasing facility. Areas of service include the entire interior of the Harbour 8 Park Facility and restrooms. Exterior areas include entrances and within fifty (50) feet of all buildings.

Clean and Disinfect Fixtures

Operator shall use spray bottles of germicidal detergent solution, sponges, clean cloths, scrub pads or creme cleanser to remove all soil, streaks, smudges, algae, etc., from all interior fixtures; including the orifices and drains.

Vandalism

Vandalism and Graffiti shall be reported and repaired immediately in accordance with Operator's best practices.

Maintenance

Preventative maintenance checks shall be performed on all Systems on a regular basis per the Operating Standards as set forth in Section 3.3.3.8 of the Agreement.

Submittals/Minor Repairs

On a bi-annual basis, preventative maintenance checklists will be sent to the City, indicating that all Systems have been inspected per the appropriate schedule and any necessary repairs have been made.

Major Repairs/Replacements

If major repairs or replacements are necessary or if a System should be scheduled for replacement, the Operator shall notify the City Representative in a timely fashion to determine whether the City will repair or instruct Operator to repair. Where Operator repairs, City shall reimburse Operator within 45 days for Major Repairs. The City will pay invoice(s) within 45 days after receipt of invoices for services rendered to the City's satisfaction. The City shall not pay late fees or interest.

Special Projects

Projects identified by the Operator which will improve the quality of service and assist in effecting future cost savings will be evaluated by the City to determine if they are necessary, if funding exists for the work, and how the Operator should go about initiating such projects. Depending on the scope of work, City may utilize

outside Operators, or reimburse Operator for subcontracted work, labor and any materials which will be billed at Operator's cost.

Traffic

Operator shall to the extent reasonable ensure safe and controlled traffic patterns around Park Facilities during events.

Park Facilities Accessories

Operator shall be responsible for maintaining all drainage, sewer, and electric utilities in good working order, and kept in good appearance.

Facility

Facility shall be properly secured at the end of the day. Surrounding areas shall be kept in a neat and sanitary condition.

EXHIBITS F

Assets to be Furnished by City

Pursuant to Section 3.9.1, City shall furnish the following assets for Operator's use for operating, managing and maintaining the Park Facilities:

EXHIBIT G

Sanctuary City Compliance Form