

MEMORANDUM OF UNDERSTANDING

Between the City of Richmond and Pogo Park

THIS MEMORANDUM OF UNDERSTANDING (this "MOU") is made and entered into as of the 11/26/2025 day of 11/26/2025, 2025 (the "Effective Date"), by and between the **CITY OF RICHMOND**, a California municipal corporation ("City"), and **POGO PARK**, a California nonprofit public benefit corporation ("Pogo," and together with City, the "Parties," and each, a "Party").

RECITALS

WHEREAS, the City of Richmond is home to a diverse population and provides a full range of municipal services, including police and fire protection; maintenance of streets and infrastructure; library services; storm water and municipal sewer systems; port; and economic and community development. The City owns and operates numerous parks and community facilities and administers recreational activities and cultural events; and

WHEREAS, City owns fee title to certain park, open-space, and recreation properties located in the Iron Triangle neighborhood of Richmond, California, including, without limitation, Harbour-8 Park, Harbour Hall, the Harbour-8 Commercial Kitchen, Elm Playlot, and the improvements along 8th Street from Barret Avenue to Pennsylvania Avenue known collectively as the Yellow Brick Road (each individually, a "Facility," and collectively, the "Facilities"); and

WHEREAS, Pogo, founded in 2007, is a community development corporation and 501(c)3 nonprofit based in Richmond, California, with a mission to transform under-utilized Richmond city parks into safe, beautiful, and green public spaces for children to play and the community to come together; and

WHEREAS, since 2007, Pogo has planned, designed, improved, programmed, and operated the Facilities, serving as the steward of the Facilities and providing vital community services and programs for the benefit of Richmond residents; and

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

WHEREAS, the City and Pogo (together, the "Parties") desire to formalize their successful public/private partnership by setting forth their respective rights and obligations for the continued operation, programming, staffing, maintenance, capital improvement, fundraising, and stewardship of the Facilities, and to establish clear processes for coordination, dispute resolution, reporting, and termination; and

WHEREAS, the Parties are committed to ensuring that the Facilities remain accessible, safe, and welcoming to all residents, prioritizing the needs of underserved communities, and thereby contributing to the City's goals of equity, diversity, and inclusion; and

WHEREAS, the collaboration between the Parties exemplifies a model of innovative partnership that can serve as a blueprint for similar initiatives; and

WHEREAS, the Parties share the common objectives of providing the highest quality parks and open spaces and ensuring access to free and low-cost events and public programs in Richmond, CA; and

WHEREAS, the Parties want to formalize the relationship between the City and Pogo by setting forth a series of mutual expectations.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **PURPOSE.** The purpose of this MOU is to provide a comprehensive framework that enables the Parties to collaborate efficiently and transparently in order to (a) maintain the Facilities in a safe, clean, and fully operational condition; (b) deliver equitable, community-driven programs and services; and (c) leverage public and private resources to enhance neighborhood resiliency and quality of life. The MOU will assist in defining the relationship between the Parties in order to ensure that the goals of each are accomplished in a mutually supportive way.
2. **DEFINITIONS.** Capitalized terms not otherwise defined have the meanings set forth below:
 - a. **"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 One Thousand Dollars (\$5,000).
 - b. **"FF&E"** means movable furniture, fixtures, and equipment purchased or installed by Pogo or its partners that are not permanently affixed to real property.
 - c. **"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.
 - d. **"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 Facility cleanup, and landscape maintenance (e.g., weeding, watering, trimming, etc.).
 - e. **"Minor Repairs"** means individual repairs and/or equipment replacements that cost less than One Thousand Dollars (\$1,000) per occurrence. Pogo is responsible for paying for Minor Repairs as described in Section 5. The Parties
 - f. **"Major Repairs"** means individual repairs and/or equipment replacements that cost equal to or greater than One Thousand Dollars (\$1,000) per occurrence. City is responsible for paying for Major Repairs as described in Section 5.

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

3. GENERAL AGREEMENTS

- a. The City reserves sole authority to make all final decisions regarding the Facilities, but will exercise this authority in the spirit of good faith cooperation with Pogo, as resources allow.
- b. The Parties are committed to promoting equitable access to the Facilities, cognizant of geographic, socioeconomic, demographic, cultural, physical ability and population density realities.
- c. The Parties acknowledge and agree that 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.
- d. Any personnel employed by or volunteering on behalf of Pogo will be deemed "employees" or "volunteers" respectively of Pogo and will not be deemed employees or volunteers of the City. Pogo will remain responsible for the supervision, management, and control of such employees and volunteers and any payroll, taxation or other employment obligation incident to their work. Any personnel employed by the City will be deemed "employees" of the City and will not be deemed employees or volunteers of Pogo.

4. TERM AND RENEWAL.

- a. **Initial Term.** The term of this MOU ("Term") shall commence on the Effective Date and continue for three (3) years, ending on _____, 2028, unless as otherwise provided below.
- b. **Renewal.** The Term may renew for two additional one-year periods (each, a "Renewal Term") upon mutual written agreement by City and Pogo.
- c. **Termination.** Either Party may terminate this MOU upon ninety (90) days prior written notice to the other party.
- d. **Performance Review.** City's decision whether to renew the Term of this MOU will take into consideration Pogo's performance against the metrics in Exhibit A.

- 5. **OWNERSHIP.** The City shall retain fee title to the Facilities and all real property improvements located thereon. Title to any Capital Improvements funded solely by Pogo shall automatically vest in the City upon substantial completion of such improvements.

6. OPERATIONS, PROGRAMMING, AND MAINTENANCE.

a. **Pogo Responsibilities.** Pogo shall:

- i. Provide staffing to open and close the Facilities during operating hours as set forth in Exhibit A, provide programs and services at the Facilities, and manage rentals and concessions.
- ii. Provide keys, access codes, etc., to City personnel to the Facilities listed within this MOU.
- iii. Perform routine landscaping, janitorial services, and trash consolidation (collecting trash and recycling into designated receptacles to be picked up by City waste management services).
- iv. Compile Facility operating documentation/manuals and train City staff on using operating equipment (e.g., HVAC control system) on an as-needed basis.
- v. Pay for Pogo Operating Costs directly.
- vi. Perform all Minor Repairs and cover the associated costs.
- vii. Manage Major Repairs in coordination with City staff as follows:
 1. Pogo shall notify designated City staff in writing of any Major Repair that needs to be performed.
 2. Upon receipt of such notice, the City shall inform Pogo within ten (10) business days whether (a) the City will manage and coordinate the repair work independently, or (b) the City wishes for Pogo to carry out the repair work at the City's expense (i.e., on a time-and-materials basis).
 3. If the City elects for Pogo to perform the work, Pogo shall provide a written cost estimate. The City shall then issue a formal work order or other authorization for Pogo to proceed.
 4. If the City opts to coordinate the repair independently, City shall provide Pogo with a schedule for when the work will be completed.
 5. If the City elects for Pogo to manage one or more third-parties to perform the work, Pogo shall get pricing from an appropriate vendor or subcontractor and provide the cost estimate to the City, including a 15% markup to Pogo to manage the work. City shall then issue a formal work order or other authorization for Pogo to proceed.
 6. 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.
- viii. Comply with all applicable laws, permits, and grant conditions.
- ix. Continue to seek private and public funding for operating, maintaining, improving, and delivering programs and services for the community at the Facilities.

- b. **City Responsibilities.** City shall:
- i. Pay for City Operating Costs directly.
 - ii. Reimburse Pogo 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.
 - iii. Provide refuse collection and standard municipal services to the Facilities.
 - iv. Work with public safety agencies to ensure that public safety remains a high priority at the Facilities.
 - v. Work with Pogo 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.
 - vi. Waive appropriate permitting and usage fees associated with public programming of the Facilities that benefits the Richmond community, as determined by City staff. 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.
- c. **Pogo and City Joint Responsibilities.** Pogo and City shall work collaboratively to support the ongoing success, safety, and effectiveness of the Facilities. To this end, Pogo 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 Pogo and the City.

7. FINANCIAL RESPONSIBILITIES.

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

- d. **Fundraising and Gifts.** Pogo 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. Pogo 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. Pogo will provide the City with a summary report of gifts received upon request.
- e. **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.
- f. **Coordination.** Pogo 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. 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.

8. FILING, AUDITS AND REPORTING.

- a. Pogo 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.
- b. Upon request, Pogo will supply the City with an annual set of relevant summary financial statements for the most recently ended fiscal year.
- c. Upon request, Pogo agrees to provide the City, annually, an annual report and a list of Pogo's governing board, officers, and advisors.

9. GENERATED REVENUE.

- a. Pogo may retain Generated Revenue, provided that: (a) such revenue is used exclusively for operations, maintenance, programs or Capital Improvements at the Facilities; and (b) Pogo provides the City with a quarterly report detailing all such income.
- b. In tandem with submission of Pogo's annual budget, Pogo will provide the City with a fee schedule for programming and/or facility rentals annually, annually for City's review and approval, which shall be at City's sole discretion. Fees should remain reasonable to encourage community use.

10. INSURANCE AND INDEMNIFICATION.

- a. **Insurance Provisions.** Please see Exhibit C: Insurance Requirements.

- b. **Indemnification.** 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 MOU or failure to comply with any of its obligations under this MOU 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 MOU are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this MOU. This indemnification obligation shall survive this MOU and shall not be limited by any term of any insurance policy required under this MOU.

11. COMPLIANCE WITH LAWS. Pogo shall comply with all applicable federal, state, and local laws, regulations, and ordinances in consultation with the City.

12. CAPITAL IMPROVEMENTS.

a. **Ownership of FF&E.**

- i. Non-permanently affixed improvements or easily removable improvements: FF&E purchased by Pogo without City funds shall remain Pogo property unless reimbursed by City.
- ii. Permanently affixed improvements or non-easily removable improvements: If FF&E is installed without City funds but is permanently affixed to City property and/or removal would cause major damage to the facility or area, the property shall remain in place and part of the City’s property.

- b. 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.

13. INTELLECTUAL PROPERTY. Pogo shall retain all ownership rights to any and all trademarks, curricula, photographs, and other intellectual property developed by Pogo, its contractors, or its partners in connection with the operation and maintenance of the Facilities. Pogo hereby grants the City a royalty-free, non-exclusive license to use such materials throughout the Term and within the City of Richmond for non-commercial municipal purposes, provided that the City gives appropriate attribution to Pogo in any public use or display of such materials.

14. DISPUTE RESOLUTION. The Parties shall first confer and negotiate in good faith to resolve any dispute, claim, or controversy arising out of or relating to this MOU. If the

dispute is not resolved within thirty (30) days after written notice of the dispute, the matter shall be settled exclusively by binding arbitration administered by the American Arbitration Association ("AAA") in accordance with its Commercial Arbitration Rules then in effect, and judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. The prevailing Party shall be awarded its attorneys' fees and expenses, and the Parties shall share equally the arbitrator's fees and costs, unless the arbitrator determines otherwise.

15. DEFAULTS AND REMEDIES.

- a. **Default Defined.** A "Default" occurs if a Party materially breaches this MOU and fails to cure such breach within thirty (30) days after written notice (or such longer period as reasonably necessary so long as diligent efforts are pursued).
- b. **Remedies.** Upon Default, the non-defaulting Party may (i) suspend performance; (ii) seek specific performance, injunctive relief, or damages; and/or (iii) terminate this MOU.

16. TERMINATION. Either Party may terminate for Default pursuant to Section 15.

17. EXIT PLAN. Upon termination or expiration of this MOU, the Parties shall cooperate to ensure an orderly transition of services, including (a) transfer of keys and security codes; (b) turnover of maintenance records; (c) public notification; and (d) physical removal of Pogo-owned FF&E within thirty (30) days.

18. NOTICES. All notices shall be in writing and deemed given when delivered (a) in person, (b) by certified U.S. mail, return receipt requested, postage prepaid, or (c) by nationally recognized overnight courier, addressed as follows (or such other address a Party may designate in writing):

- (i) City: Daniel Chavarria, Director of Public Works or their designee, City of Richmond, 450 Civic Center Plaza, Richmond, CA 94804
- (ii) Pogo: Toody Maher, Pogo Park, 2604 Roosevelt Avenue, Richmond, CA 94804.

The City shall designate a liaison to coordinate with Pogo and facilitate timely communication, reporting review, and approvals under this MOU.

19. FORCE MAJEURE. Neither Party shall be liable for delay or failure to perform caused by events beyond its reasonable control (e.g., acts of God, pandemic, war, emergency, or governmental order), provided that the affected Party gives prompt notice and resumes performance as soon as practicable.

20. AMENDMENTS. This MOU may be amended only by a written instrument executed by authorized representatives of both Parties.

21. ENTIRE AGREEMENT. This MOU, together with its exhibits, constitutes the entire agreement of the Parties with respect to its subject matter and supersedes all prior or contemporaneous oral or written agreements.

22. GOVERNING LAW; VENUE. This MOU shall be governed by, and construed in accordance with, the laws of the State of California without regard to conflict-of-laws principles. Venue for any action shall lie exclusively in the state or federal courts located in Contra Costa County, California.

23. COUNTERPARTS; ELECTRONIC SIGNATURES. This MOU may be executed in counterparts, each of which shall be deemed an original, and all of which together constitute one and the same instrument. Signatures delivered electronically (e.g., via DocuSign or PDF) shall be deemed original.

[SIGNATURE PAGE FOLLOWS]

EXHIBIT A – PERFORMANCE METRICS & 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 the City’s performance reviews under Section 4 (“Term and Renewal”).

1. OPERATING HOURS

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

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 B – FACILITY RENTALS

This Exhibit outlines the policies and procedures governing rentals 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 Facilities 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.**

- a. **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.
- b. **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.

7. **DISPUTE RESOLUTION.** Any disputes regarding rental denials, fee waivers, or City scheduling shall be resolved in accordance with the Dispute Resolution provisions in the MOU (Section 14).

EXHIBIT C – INSURANCE REQUIREMENTS

In all instances where a CONTRACTOR or its representatives will be conducting business and/or providing services, the City requires the following MINIMUM insurance requirements and limits.

CONTRACTOR shall procure and maintain for the duration of the contract, agreement, or other order for work, services or supplies, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the CONTRACTOR, its agents, representatives, employees or subcontractors.

Maintenance of proper insurance coverage is a material element of the contract. Failure to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of contract.

CONTRACTOR agrees that in the event of loss due to any of the perils for which it has agreed to provide Commercial General Liability insurance, CONTRACTOR shall look solely to its insurance for recovery. CONTRACTOR hereby grants to CITY, on behalf of any insurer providing Commercial General Liability insurance to either CONTRACTOR or CITY with respect to the services of CONSULTANT herein, a waiver of any right to subrogation which any such insurer of said CONTRACTOR may acquire against the CITY by virtue of the payment of any loss under such insurance.

Original, signed certificates and original, separate policy endorsements, naming the City as an additional insured for general liability, as well as a waiver of subrogation for Workers' Compensation insurance, shall be received and approved by the City **before any work may begin**. However, failure to do so shall not operate as a waiver of these insurance requirements.

City reserves the right to modify or require additional coverages for specific risk exposures depending on scope of CONTRACTORS work.

Minimum coverage is detailed below. The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated herein shall not serve to reduce the policy limits of coverage of CONTRACTOR.

Minimum Scope of Insurance – the following forms shall be provided and coverage shall be at least as broad as the following:	
1.	Insurance Services Office Commercial General Liability coverage (ISO Occurrence Form CG 0001)
2.	Insurance Services Office Automobile Liability coverage (ISO Form CA 0001, Code 1, Any Auto)
3.	Original and Separate Additional Insured Endorsements for General Liability (ISO Form CG 20 10 11/85 or its equivalent) with primary and non-contributory language.
4.	Workers' Compensation Insurance as required by the State of California including Employer's Liability coverage.
5.	Original and Separate Waiver of Subrogation for Workers' Compensation and Builder's Risk/ Course of Construction Insurance.
6.	Sexual Molestation Liability (SML coverage) or Sexual Abuse & Molestation Insurance (or SAM coverage) – A minimum of \$1,000,000 or in an amount stipulated by City depending upon scope of contract.
7.	Fidelity Bond/Crime Coverage –A minimum of \$1,000,000 or in an amount stipulated by City depending upon scope of contract.

Required Coverage	Minimum Limits
Workers' Compensation and Employers' Liability	Statutory limits as required by the State of California including \$1,000,000 Employers' Liability per accident, per employee for bodily injury or disease. If CONTRACTOR is self-insured, provide a certificate of Permission to Self-Insure, signed by the California Department of Industrial Relations and Self-Insurance. If contractor is a sole proprietor (has no employees) than contractor must sign "Contractor Release of Liability" found at: http://www.ci.richmond.ca.us/index.aspx?nid=61 .
General Liability (primary and excess limits combined)	\$2,000,000 per occurrence for bodily injury, personal injury and property damage. If the policy includes a general aggregate, either the general aggregate shall apply separately to this project, service or location or the minimum required aggregate limit shall be twice the per occurrence limit (\$4 million aggregate) . Policy shall also include coverage for liability arising out of the use and operation of any City-owned or City-furnished equipment used or operated by the CONTRACTOR, its personnel, agents or subcontractors. Policy shall be endorsed to name the City of Richmond as an additional insured per the conditions detailed below.

Automobile Liability	\$1,000,000 per occurrence for bodily injury and property damage.
Sexual Molestation Liability (SML coverage) or Sexual Abuse & Molestation Insurance (or SAM coverage)	A minimum of \$1,000,000 or in an amount stipulated by City depending upon the scope of the Contract.
Fidelity Bond/Crime Coverage	A minimum of \$1,000,000 of in an amount stipulated by the City depending upon the scope of the Contract. <i>(Usually based upon the amount of money the Contractor is handling that could be embezzled over a period of time.)</i>
Required Policy Conditions	
Additional Insured Endorsement	<p>Applicable to General Liability Coverage.</p> <p>The City of Richmond, its officers, officials, employees, agents and volunteers are to be named as additional insureds for all liability arising out of the operations by or on behalf of the named insured, including but not limited to bodily injury, deaths and property damage or destruction arising in any respect directly or indirectly in the performance of this contract.</p> <p><i>ISO form CG 20 10 (11/85) or its equivalent is required. The endorsement <u>must not</u> exclude products and completed operations coverage. If it does, then CG 20 37 (10/01) is also required. SAMPLE Endorsements can be found at http://www.ci.richmond.ca.us/index.aspx?nid=61</i></p> <p>When Excess and/or Umbrella insurance is provided, the policy shall be endorsed to name the City of Richmond as an additional insured.</p>
Primary and Noncontributory	The contractor's insurance coverage must be primary coverage as it pertains to the City, its officers, officials, employees, agents and volunteers. Any insurance or self insurance maintained by the City is wholly separate from the insurance of the contractor and in no way relieves the contractor from its responsibility to provide insurance.
Waiver of Subrogation Endorsement Form	<p>Contractor's insurer will provide a Waiver of Subrogation in favor of the City for Workers Compensation and General Liability during the life of this contract.</p> <p>SAMPLE Endorsements can be found at http://www.ci.richmond.ca.us/index.aspx?nid=61</p>
A. M. Best Rating	A:VII or Better. If the A.M. Best Rating falls below the required rating, CONTRACTOR must replace coverage immediately and provide notice to City.
Deductibles and Self-Insured Retentions	<p>Any deductible or self-insured retention must be declared to and approved by the City. At the option of the City either the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City or the CONTRACTOR shall procure a financial guarantee in an amount equal to the deductible or self-insured retention guaranteeing payment of losses and related investigations, claims administration and defense expenses.</p> <p>Contractor is responsible for satisfaction of the deductible and/or self-insured retention for each loss.</p>

Umbrella/Excess Liability Policies

If an Umbrella or Excess Liability Policy is used to meet the liability limits, coverage shall be as broad as specified for underlying coverages and cover those insured in the underlying policies.

Subcontractors

CONTRACTOR shall include all subcontractors as insured under its policies or shall furnish to the City for review and approval, separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

CONTRACTOR agrees to defend and indemnify the City of Richmond for any damage resulting to it from failure of either CONTRACTOR or any subcontractor to take out or maintain the required insurance policies. The fact that insurance is obtained by CONTRACTOR, and/or CONTRACTOR's subcontractors, will not be deemed to release or diminish the liability of CONTRACTOR, including, without limitation, liability under the indemnity provisions of this contract. Damages recoverable by CITY from CONTRACTOR or any third party will not be limited by the amount of the required insurance coverage.

Verification of Coverage

All original certificates and endorsements shall be received and approved by the City **before work may begin**. The City of Richmond reserves the right to require complete, certified copies of all required insurance policies including endorsements affecting the coverage at any time.

Original insurance certificates and required policy endorsements shall be mailed, emailed, or delivered to the Designated Project Manager for the City of Richmond.

Continuous Coverage

CONTRACTOR shall maintain the required insurance for the life of the contract. Should the CONTRACTOR cease to have insurance as required during this time, all work by the CONTRACTOR pursuant to this agreement shall cease until insurance acceptable to the City is provided. In the event that CONTRACTOR fails to comply with the City's insurance requirements, the City may take such action as it deems necessary to protect the City's interests. Such action may include but is not limited to termination of the contract, withholding of payments, or other actions as the City deems appropriate.

If services or the scope of work extend beyond the expiration dates of the required insurance policies initially approved by the City, CONTRACTOR must provide updated certificates and endorsements indicating that the required coverage, terms and conditions are still in place.

Cancellation

CONTRACTOR shall ensure that coverage shall not be cancelled, reduced or otherwise materially changed except after thirty (30) days' prior written notice has been given to the City.

Reporting Requirements

Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City, its officers, officials, employees or volunteers.

Consistent with Public Policy

The insuring provisions, insofar as they may be judged to be against public policy shall be void and unenforceable only to the minimum extent necessary so that the remaining terms and provisions herein may be consistent with public policy and thus enforceable.

