

# Folsom City Council Staff Report

<b>MEETING DATE:</b>	12/14/2021
<b>AGENDA SECTION:</b>	Consent Calendar
<b>SUBJECT:</b>	Resolution No. 10757 – A Resolution Authorizing the City Manager to Execute a Lease Agreement Between the City of Folsom and Kelli Vaccaro, a Sole Proprietor Doing Business as Kid’s Inc., for Lease of City Property Located at 405 Natoma Station Drive
<b>FROM:</b>	Parks and Recreation Department

## **RECOMMENDATION / CITY COUNCIL ACTION**

The Parks and Recreation Department recommends that the City Council pass and adopt Resolution No. 10757- A Resolution Authorizing the City Manager to Execute a Lease Agreement Between the City of Folsom and Kelli Vaccaro, a Sole Proprietor Doing Business as Kid’s Inc., for Lease of City Property Located at 405 Natoma Station Drive.

## **BACKGROUND / ISSUE**

On April 23, 2021, the City released a Request for Proposal (RFP) to lease the city-owned building space at 405 Natoma Station Drive. One proposal was received and was deemed non-responsive. On June 22, 2021 City Council approved Resolution No. 10654-A Resolution Rejecting all Bids for Short or Long Term Lease at 405 Natoma Station Drive. Staff received direction to re-issue the RFP and include additional advertising venues to expand the reach. On July 12, 2021, the RFP was re-issued with proposals being due on August 31, 2021.

## **POLICY / RULE**

A city may lease property owned, held, or controlled by it for a period not to exceed 55 years. Government Code Section 37380.

## **ANALYSIS**

On August 31, 2021 one proposal was received from Kid's Inc. Staff assembled a team of seven reviewers; six (6) were city staff and one (1) person was from the Folsom Greater Partnership. Staff reviewed the proposal and had several follow-up questions regarding obtaining full-year financial information, repayment terms for their Paycheck Protection Program (PPP) loan, estimated value of tenant improvements, clarification about a sub-lease clause, and confirmation that the applicant would be paying for the interior Americans with Disabilities Act (ADA) improvements.

There were a few additional requests and terms that required further direction from City Council. Those items were discussed at closed session on November 9 and staff received the direction needed to proceed with creating the Lease Agreement in Attachment 2. Kid's Inc. has reviewed and commented on the attached lease and is prepared to sign the agreement should City Council approve this Resolution.

Below are the major terms of the proposed lease:

- 10-year lease with option to renew the lease for two additional terms of 5 years each, for a potential total term of 20 years
- Lease term would begin April 1, 2022 and end March 31, 2032 (initial 10 years)
- City to waive up to \$4,500 in City-imposed building permit fees for tenant improvements
- Lessee is solely responsible for all interior improvements necessary to comply with the Americans with Disabilities Act (ADA)
- Lessee will be allowed to enter the premises on December 20, 2021 through March 31, 2022 without payment of rent to construct and install tenant improvements
- Lessee shall pay \$2.00 per square foot in rent (the building is 10,000 square feet). Annual escalator will be 3%.

## **FINANCIAL IMPACT**

In year 1, monthly revenue will be \$20,000 or \$240,000 annually. By year 10, monthly revenue will be \$26,095 or \$313,140 annually. City is responsible to complete exterior ADA improvements which are estimated to be approximately \$120,000 and other landscape and irrigation repairs estimated at approximately \$20,000. Sufficient funds are available in the General Fund in the Facilities Budget (Fund 010).

## **ENVIRONMENTAL REVIEW**

The proposed lease of an existing public facility is exempt from environmental review under the California Environmental Quality Act (CEQA) pursuant to Section 15301 of the CEQA Guidelines.

**ATTACHMENTS**

1. Resolution No. 10757 - A Resolution Authorizing the City Manager to Execute a Lease Agreement Between the City of Folsom and Kelli Vaccaro, a Sole Proprietor Doing Business as Kid's Inc., for Lease of City Property Located at 405 Natoma Station Drive
2. Proposed Lease Agreement between the City of Folsom and Kelli Vaccaro, Sole Proprietor Doing Business as Kid's Inc.

Submitted,

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Lorraine Poggione, Director of Parks and Recreation

ATTACHMENT NO. 1

**RESOLUTION NO. 10757**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE A LEASE AGREEMENT BETWEEN THE CITY OF FOLSOM AND KELLI VACCARO, A SOLE PROPRIETOR DOING BUSINESS AS KID'S INC., FOR LEASE OF CITY PROPERTY LOCATED AT 405 NATOMA STATION DRIVE**

**WHEREAS**, the City Council desires to lease the City-owned building at 405 Natoma Station Drive; and

**WHEREAS**, a Request for Proposal (RFP) was released on April 23, 2021 with one non-responsive submittal; and

**WHEREAS**, City Council directed staff to re-issue RFP on June 22, 2021; and

**WHEREAS**, the RFP was re-issued on July 12, 2021, and one proposal was received on August 31, 2021 which was deemed to be responsive; and

**WHEREAS**, the City desires to enter into a lease agreement with Kelli Vaccaro, a sole proprietor doing business as Kid's Inc. for the lease of City-owned building at 405 Natoma Station Drive.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Folsom that the City Manager is hereby authorized to execute a lease agreement, in a form to be approved by the City Attorney, between the City of Folsom and Kelli Vaccaro, a sole proprietor doing business as Kid's Inc., for the lease of City-owned building at 405 Natoma Station Drive.

**PASSED AND ADOPTED** this 14th day of December 2021, by the following roll-call vote:

**AYES:** Councilmember(s):  
**NOES:** Councilmember(s):  
**ABSENT:** Councilmember(s):  
**ABSTAIN:** Councilmember(s):

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Michael D. Kozlowski, MAYOR

ATTEST:

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Christa Freemantle, CITY CLERK

ATTACHMENT NO. 2

## LEASE AGREEMENT

This Lease Agreement is made and entered into as of this \_\_\_ day of December, 2021 between the City of Folsom (“Lessor”) and Kelli Vaccaro, a sole proprietor doing business as Kids Inc. (“Lessee”).

WHEREAS, Lessor owns of the former Brighton School building located at 405 Natoma Station Drive in Folsom, California, comprising approximately 10,314 square feet of building area (the “Facility”), described more fully in Exhibit A attached hereto and incorporated herein by reference.

WHEREAS, Lessor hereby leases to Lessee and Lessee leases from Lessor for the term, at the rental, and upon all the conditions set forth herein the Facility, together with all improvements thereon and appurtenances thereto, and subject to the conditions set forth below, the continuous and uninterrupted right of Lessee and its officers, employees, business invitees, customers and patrons, of access to and from Facility.

NOW, THEREFORE, the parties hereto, in consideration of the mutual promises, covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and agreed, do hereby agree as follows:

1. TERM. The term of this Lease shall be ten (10) years, commencing April 1, 2022 and ending on March 31, 2032, unless sooner terminated pursuant to any provisions hereof. Lessee has the option to renew the Lease for two additional terms of 5 years each upon giving Lessor not less than 180 days prior written notice of Lessee’s exercise of said option prior to the expiration of the initial or subsequent extended term. Failure to provide notice within the time herein provided to exercise the first option shall cause both options to terminate. Rent during the option term(s) shall be the then-prevailing market rent as determined by the Lessor at Lessor’s reasonable discretion following consultation with the Lessee.

2. RENT. Lessee shall pay to Lessor as rent for use of the Facility at the rates shown in Exhibit B attached hereto and incorporated herein by reference. This Lease is net of taxes, utilities, and insurance.

3. USE. During the term of this Lease, and any renewal hereof, Lessee shall use the Facility only as a preschool and childcare center, including afterschool programs, and for no other use. Included in this Lease is the non-exclusive license to Lessee for Lessee to use up to 83 parking spaces in the parking lot and up to 5 (non-ADA stalls) designated parking stalls for transport vans for purposes associated with this Lease. Lessee shall not permit any act or acts in or on the Facility or use the Facility or suffer it to be used in any manner which will cause a cancellation of any fire, liability, or other insurance policy covering the Facility or any part thereof.

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4. REPAIRS, MAINTENANCE, AND UTILITIES.

a. Lessor hereby grants Lessee a temporary license to enter into the Facility to construct and install Lessee's tenant improvements from December 20, 2021 through March 31, 2022 without payment of rent. Lessee shall bear all risks of loss, including but not limited to personal injury and property damage, while operating under this license.

b. Lessor agrees to waive up to \$4,500 in City-imposed building permit fees for tenant-improvements to the Facility desired by Lessee. Lessee shall comply with all City requirements for project submittal, plan review, plan check, inspection, and pay all fees (including non-City fees) applicable to Lessee's improvements except for the amount waived above. Subject to the foregoing, Lessee is solely responsible for all interior improvements necessary to comply with the Americans with Disabilities Act (ADA) at Lessee's sole cost and expense.

c. Lessor warrants that all operating systems in the Facility, including without limitation, HVAC, plumbing, electrical, and lighting shall be in good working order for the first 6 months of the Lease term. Except for warranty defects, Lessee shall maintain repair and replace all operating systems, including without limitation, HVAC, plumbing, electrical, and lighting, and shall procure an HVAC maintenance contractor to service and maintain HVAC.

d. Lessee shall provide and pay for maintenance and repair of the exterior area of the Facility, including, but not limited to, the exterior roof, mechanical units, and exterior side walls; provided that Lessee shall not be responsible for maintenance or repair attributable to exterior landscaping and irrigation of the Facility.

e. The Lessee shall pay the total cost of the water, sewer, electricity, gas, telephone, internet, communication services, alarm services, and other utility services inside the Facility.

f. The Lessee shall provide, perform, and pay for maintenance, repair, and janitorial services for the Facility.

5. ALTERATIONS AND IMPROVEMENTS. Lessee shall have the right to make alterations and improvements to the Facility subject to the following terms and conditions:

a. No alterations or improvements made by Lessee shall in any way impair the structural stability of the building or diminish the value of the property.

b. All alterations or improvements (except for interior painting, and hanging of pictures or similar objects) shall be first approved in writing by the Lessor, but said approval shall not be unreasonably withheld by Lessor.

c. Lessee shall keep the Facility and every part of the Facility free and clear of any mechanics' liens or other liens arising out of the construction of any such alterations or improvements.

d. All alterations and improvements made to the Facility shall become the property of the Lessor and shall remain on and be surrendered with the Facility at the expiration or sooner termination of this Lease or any renewal or extension of this Lease.

e. Lessee's personal property and its trade fixtures, including machinery, equipment, and furnishings, shall remain the property of Lessee and may be removed by Lessee. Any personal property, trade fixtures, or equipment not removed by Lessee within thirty (30) days after the termination of this Lease or any extension thereof, shall automatically become the property of the Lessor. Lessee shall repair any damage to the Facility caused by Lessee's removal of its personal property, trade fixtures, or equipment, but Lessee shall have no obligation to remove such items from the Facility at any time.

6. ENTRY AND INSPECTION. Lessee shall permit Lessor or Lessor's agents to enter the Facility at all reasonable times and upon reasonable notice for the purpose of inspecting the Facility, and shall permit Lessor, at any time within sixty (60) days prior to the expiration of this Lease to place upon the Facility any usual "To Let" or "For Lease" signs, and permit persons desiring to lease the Facility to inspect the Facility at reasonable times.

7. HAZARDOUS MATERIALS. Lessee shall not use, store, or dispose of any hazardous substances upon the Facility, except the use and storage of such substances that are customarily used in Lessee's business, and are in compliance with all environmental laws. Hazardous substances means any hazardous waste, substance, or toxic materials defined or regulated under any law or regulations.

8. MECHANICS LIENS. Lessee agrees to keep the Facility from any and all claims of claims of persons or firms or corporations who, at the request of Lessee or its employees or contractors, furnish labor or materials to or for the benefits of the Facility and Lessee further agrees to hold Lessor harmless from any and all claims.

9. DAMAGE/DESTRUCTION. If the Facility is damaged or destroyed in whole or in part by fire other casualty strictly unrelated to Lessee's actions, inactions, or operations, Lessor shall repair and restore the Facility to a good tenantable condition. Rent shall abate wholly if the entire Facility is untenable, or shall abate pro rata for the portion rendered untenable in case only a portion of the Facility is untenable, until the Facility is restored to a tenantable condition. Lessor shall commence and complete all work required to be done under this Section with reasonable promptness and diligence, but Lessor shall not in default in any required performance if delay in performance results from, flood, storm, labor disputes, shortage of materials or transportation facilities, governmental regulations, war, act of God or other causes beyond Lessor's reasonable control. If Lessor shall not commence such repair or restoration within thirty (30) days after such damage or destruction shall occur or if repair or restoration will require more than one hundred twenty (120) days to complete, Lessor or Lessee may thereafter, at its option, terminate this Lease by giving written notice of its election to do so at any time prior to the commencement of such repair or restoration. In that event, this Lease shall terminate as of the date such notice is received by the intended recipient of the notice.

Notwithstanding any other provisions to the contrary, Lessee shall insure and shall be solely responsible for repairing and restoring Lessee's trade fixtures and personal property located in or on the Facility in the event of damage or destruction of the Facility.

10. FIRE INSURANCE. Lessee shall maintain, during the term of this Lease and any renewal hereof, coverage against loss or damage to the Facility in the amount of not less than ninety (90) percent of its full insurable value, against perils included within the classifications of fire, extended coverage, vandalism, malicious mischief, and special extended perils.

11. INSURANCE. Lessee, at its sole cost, shall maintain liability and property damage insurance during the entire term of this Lease as required in Exhibit C attached hereto and incorporated herein by reference.

12. SIGNS. Any and all signs or advertisements of any nature extending into, on, or located over the Facility, shall conform to all City of Folsom zoning and building codes and shall be approved by Lessor in writing prior to construction, use, or erection thereof.

13. TAXES. The terms of this Lease may result in the creation of a possessory interest. If such possessory interest is vested in a private party to this Lease, the private party may be subjected to payment of personal property taxes levied on such interest. Lessee shall be solely responsible for the payment of, and shall pay before they become delinquent, all taxes, assessments and fees assessed or levied upon Lessee or the Facility, or any interest therein, including, but not limited to, buildings, structures, fixtures, equipment or other property installed, or constructed thereon. Lessee further agrees not to allow such taxes, assessments or fees to become delinquent and as such to become a lien against the Facility or any improvement thereto. Nothing herein contained shall be deemed to prevent or prohibit Lessee from contesting the validity or amount of any such tax, assessment or fee in the manner authorized by law. The obligation to make any payments pursuant to this Section shall survive the expiration of the term of this Lease.

Unless otherwise provided by this Section, Lessee shall pay Lessor any other taxes, assessments, or fees, which the Lessor may become obligated to pay in connection with the ownership or maintenance of the Facility.

14. ASSIGNMENT AND SUBLETTING. Lessee shall not encumber, assign, sublet, or otherwise transfer this Lease, any right or interest in this Lease, or any right or interest in the Facility, without the prior written consent of Lessor, which may be withheld at Lessor's sole and complete discretion. A consent of Lessor to one assignment, subletting, or occupation and use by another person shall not be deemed to be a consent to any subsequent assignment, subletting, or occupation and use by another person. Any encumbrance, assignment, transfer, or subletting in violation of this requirements hereof, whether it be voluntary or involuntary, by operation of law, or otherwise, is void and shall, at the option of Lessor, terminate this Lease.

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15. TERMINATION OF LEASE.

a. In the event the Lessee determines in good faith that it no longer practicably, economically, or operationally can do business from the Facility, upon making a reasonable showing of same to Lessor, Lessee shall have the right to terminate this Lease upon giving ninety (90) days prior written notice to Lessor.

b. It is understood and agreed by the parties hereto that Lessor shall and hereby does reserve the right to cancel or terminate this Lease prior to expiration of the term or renewed or extended term hereof as follows:

- (i) If the Lessee is in default or breach of this Lease, as specified in Section 18 of this Lease or as otherwise provided by law; or,
- (ii) Upon 365 days notice without cause.

16. RIGHTS AFTER TERMINATION. In the event of termination for default or unsatisfactory performance by the Lessee, the Lessor shall have the right (unless otherwise specified in the termination notice), at once and without further notice to the Lessee, or surety, to enter and take possession of the Facility occupied by the Lessee, and expel, oust and remove any and all parties who may occupy any portion of the Facility covered by this Lease, and any and all goods and chattels belonging to the Lessee or his associates which may be found in or upon same, without being liable for prosecution or to any claim for damages therefor. Upon such termination by the Lessor, all rights, powers and privileges of the Lessee shall cease, and the Lessee shall immediately vacate any and all space occupied by Lessee under this Lease, and shall make no claims of any kind whatsoever against the Lessor, its agents or representatives, by reason of such termination, or any act incident thereto.

17. COMPLIANCE WITH LAWS. During the term of this Lease and any renewals hereof, Lessee shall promptly execute and comply with all Federal, State, County, and City statutes, ordinances, regulations, laws, or other requirements applicable to the occupancy of the Facility, and the operation of the Facility as a preschool and childcare center.

18. DEFAULTS/REMEDIES.

LESSEE:

The occurrence of any one or more of the following events constitutes a material default and breach of this Lease by Lessee:

a. The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due, where the failure continuous for a period of twenty (20) calendar days after written notice thereof from Lessor to Lessee.

b. The failure by Lessee to observe or perform any of the covenants, conditions, or provisions of this Lease to be observed or performed by Lessee, other than those described in

Subsection a., above, where the failure continues for a period of thirty (30) calendar days after notice thereof from Lessor to Lessee; provided, however, that if the nature of Lessee's default is such that more than thirty (30) calendar days are reasonably required for its cure, then Lessee shall not be deemed in default if Lessee commences such cure within the thirty (30) day period and thereafter diligently completes the cure.

c. The appointment of a receiver or the making of any general assignment, or general arrangement for the benefit of creditors.

d. The filing of a petition in bankruptcy by or against Lessee.

e. The judicial declaration of Lessee as bankrupt.

f. The appointment of a trustee or receiver to take possession of substantially all Lessee's assets located at the Facility or of Lessee's interest in this Lease, if possession is not restored within thirty (30) calendar days.

g. The attachment, execution or other judicial seizure of substantially all Lessee's assets located at the Facility or of Lessee's interest in this Lease, if the seizure is not discharged within thirty (30) calendar days.

In the event of any such default or breach with the exception of bankruptcy or receivership, by Lessee, Lessor may, after giving written notice as provided above, pursue those remedies available to Lessor under the laws or judicial decisions of the State of California. In the event of bankruptcy or receivership, this Lease shall immediately terminate and possession of the Facility shall immediately return to Lessor.

If Lessee breaches this Lease or is in default, as provided above, the Lessor may terminate this Lease upon written notice as provided herein. On such termination, the Lessor may recover from Lessee:

- (i) The worth at the time of award of the unpaid rent which has been earned at the time of termination;
- (ii) The worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss that Lessee proved could have been unreasonably avoided;
- (iii) The worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for such period that Lessee proves could be reasonably avoided; and
- (iv) Any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform his obligations under

this Lease, or which in the ordinary course of things would likely to result therefrom.

The "worth at the time of award" of the amounts referred to in Subsections (i) and (ii) hereinabove is computed by allowing interest at the legal rate. The worth at the time of award of the amount referred to in paragraph (iii) of this Subsection is computed by discounting such amount at the legal rate of interest.

Even though Lessee breaches this Lease or is in default, as provided above, this Lease continues in effect for so long as the Lessor does not terminate Lessee's right of possession; and the Lessor may enforce all its rights and remedies under this Lease, including the right to recover the rent as it becomes due under this Lease, unless the breach by Lessee constitutes a breach and abandonment of the Lease, in which case the Lessor may enforce all its rights and remedies except its right to recover rent as it becomes due.

The rights of the Lessor under this Lease shall be cumulative to all other rights or remedies now or hereafter given to Lessor by law. Nothing in this Lease affects the right of Lessor to equitable relief where such relief is appropriate.

Nothing in this Lease affects the rights of the parties under statutory provisions relating to actions for unlawful detainer, forcible entry, and forcible detainer. If Lessor brings an action in unlawful detainer, and possession of the property is no longer an issue because possession of the property is delivered to Lessor before trial or, if there is no trial, before judgment is entered, unless Lessor amends the complaint to state a claim for damages not recoverable in the unlawful detainer proceeding, the bringing of an unlawful detainer, forcible entry, or forcible detainer action as described hereinabove does not affect Lessor's right to bring a separate action for relief on termination, or in equity; but no relief shall be requested and no damages shall be recovered in the subsequent action for any detriment for which claim for damages was made and determined on the merits in the previous action.

Efforts by the Lessor to mitigate the damages caused by Lessee's breach of this Lease do not waive the Lessor's right to recover damages under this Section.

Nothing in this Section affects the right of the Lessor to indemnification for liability arising prior to the termination of this Lease for personal injuries or property damage as provided in Section 25 of this Lease.

#### 19. DEFAULTS/REMEDIES.

##### LESSOR:

Lessor shall not be in default unless Lessor fails to perform obligations required of it within a reasonable time, but in no event later than thirty (30) days after written notice by Lessee to Lessor; provided that if the nature of Lessor's obligation is such that more than thirty (30) days are reasonably required for performance, then Lessor shall not be in default if Lessor

commences performance within the thirty (30) day period and thereafter diligently complete performance.

If Lessor defaults in the performance of any of the obligations or conditions required to be performed by Lessor under this Lease, Lessee may, after giving notice as provided above elect to terminate this Lease upon giving thirty (30) days written notice to Lessor of its intention to do so. In that event, this Lease shall terminate upon the date specified in the notice, unless Lessor has meanwhile cured the default. The foregoing shall be Lessee's sole remedy in the event of a breach or default by Lessor.

20. CONDEMNATION. If all of the Facility or any portion thereof is taken under the power of eminent domain, solely under the threat of the exercise of said power, or disposed of to satisfy federal requirements (all of which are herein called "condemnation"), this Lease shall automatically terminate as of the date the condemning authority takes title possession, whichever occurs first.

Any award or payment made upon condemnation of all or any part of the Facility shall be the property of Lessor, whether such award or payment is made as compensation for the taking of the fee or as severance damages; provided Lessee shall be entitled to the portion of any such award or payment for loss of or damage to Lessee's trade fixture or removable personal property.

21. WAIVER. In the event that either Lessor or Lessee shall at any time or times waive any breach of this Lease by the other, such waiver shall not constitute a waiver of any other or succeeding breach of this Lease, whether of the same or any other covenant, condition or obligation. Waiver shall not be deemed effective until and unless signed by the waiving party.

22. BINDING EFFECT. This Lease shall be binding upon the parties hereto, their heirs, personal representatives, administrators, successors and assigns.

23. ASSUMPTION OF NEW OWNER. In the event Lessor transfers any interest in the Facility to any other party or entity, this Lease shall remain in full force and effect, with the new owner assuming the role of Lessor with all the rights and duties specified in this Lease.

24. SURRENDER. Lessee agrees to take good care of the Facility and to commit no waste, and suffer no injury to be done to the same, and to return the possession of the same to Lessor at the expiration of the term, in as good condition as at the commencement of this Lease, normal and wear tear, unavoidable accidents and damage by casualty excepted.

If Lessee fails to surrender the Facility upon the expiration or termination of this Lease, Lessee shall indemnify and hold the Lessor harmless from all liability and expense resulting from the delay or failure to surrender, including, without limitation, claims made by any succeeding tenant founded on or resulting from Lessee's failure to surrender.

25. INDEMNITY. Lessee shall indemnify, protect, defend, save and hold Lessor, its officers, employees, and agents, harmless from any and all claims or causes of action for death or injury to persons, or damage to property resulting from intentional or negligent acts, errors, or

omissions of Lessee or Lessee's officers, employees, volunteers, and agents during performance of this Lease, or from any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct, negligent acts, or omissions of Lessee or its employees, subcontractors, or agents, or by the quality or character of Lessee's work, or resulting from the negligence of the Lessor, its officers, employees, volunteers and agents, except for loss caused solely by the gross negligence of the Lessor. It is understood that the duty of Lessee to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by Lessor of insurance certificates and endorsements required under this Lease does not relieve Lessee from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall survive the termination of this Lease and shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Lease, Lessee acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

26. NOTICES. All notices and other communications contemplated shall be in writing and shall be deemed given when personally delivered or received by mail, and shall be personally delivered or mailed by certified mail, return receipt requested, with postage and fees paid, as follows:

Lessor: City of Folsom  
Attn: City Manager  
50 Natoma Street  
Folsom, California 95630

Lessee: Kids Inc.  
c/o Kelli Vaccaro  
139 Stonington Way  
Folsom, California 95630

27. ENTIRE AGREEMENT. All preliminary and contemporaneous agreements and understandings are merged and incorporated into this Lease which contains the entire agreement between the parties. This Lease may not be modified or amended in any manner except by an instrument in writing executed by the parties hereto.

28. VENUE. This Lease and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Lease shall be held exclusively in a state court in the County of Sacramento

29. ATTACHMENTS, HEADINGS, TERMS. All attachments referred to herein are hereby incorporated by reference into this Lease. The headings and underscoring contained herein are for convenience purposes only and shall not be used to interpret nor be deemed to extend or limit the specific sections. The work or words enclosed in quotation marks shall be construed as defined terms for purposes of this Lease. The terms "Lessor" and Lessee" shall be

construed to mean, when required by the context, the directors, officers, employees, invitees, contractors, materialmen, servants and agents of Lessor and Lessee.

30. ATTORNEY'S FEES. If either party named herein brings an action to enforce the terms of this Lease or to declare rights hereunder, the prevailing party in any such action, on trial or appeal, shall be entitled to reasonable attorney's fees to be paid by losing party as fixed by the Court.

31. EXECUTION AND DELIVERY. This Lease shall not be binding nor confer any rights upon either party unless and until executed and mutually delivered by and between both parties.

32. RELATIONSHIP OF PARTIES. This Lease does not create the relationship of principal and agent or a partnership or joint venture, or of any association other than that of Lessor and Lessee.

33. TIME OF ESSENCE. Time and specific performance are each of the essence of this Lease.

34. AUTHORITY TO EXECUTE. The person or persons executing this Lease on behalf of the parties hereto warrants and represents that he/she/they has/have the authority to execute this Lease on behalf of their entity and has/have the authority to bind their party to the performance of its obligations hereunder.

35. COUNTERPARTS. This Lease may be executed in one or more counterparts with each counterpart being deemed an original. No counterpart shall be deemed to be an original or presumed delivered unless and until the counterparts executed by the other parties hereto are in the physical possession of the party or parties seeking enforcement thereof.

[END OF DOCUMENT – SIGNATURE PAGE FOLLOWS]

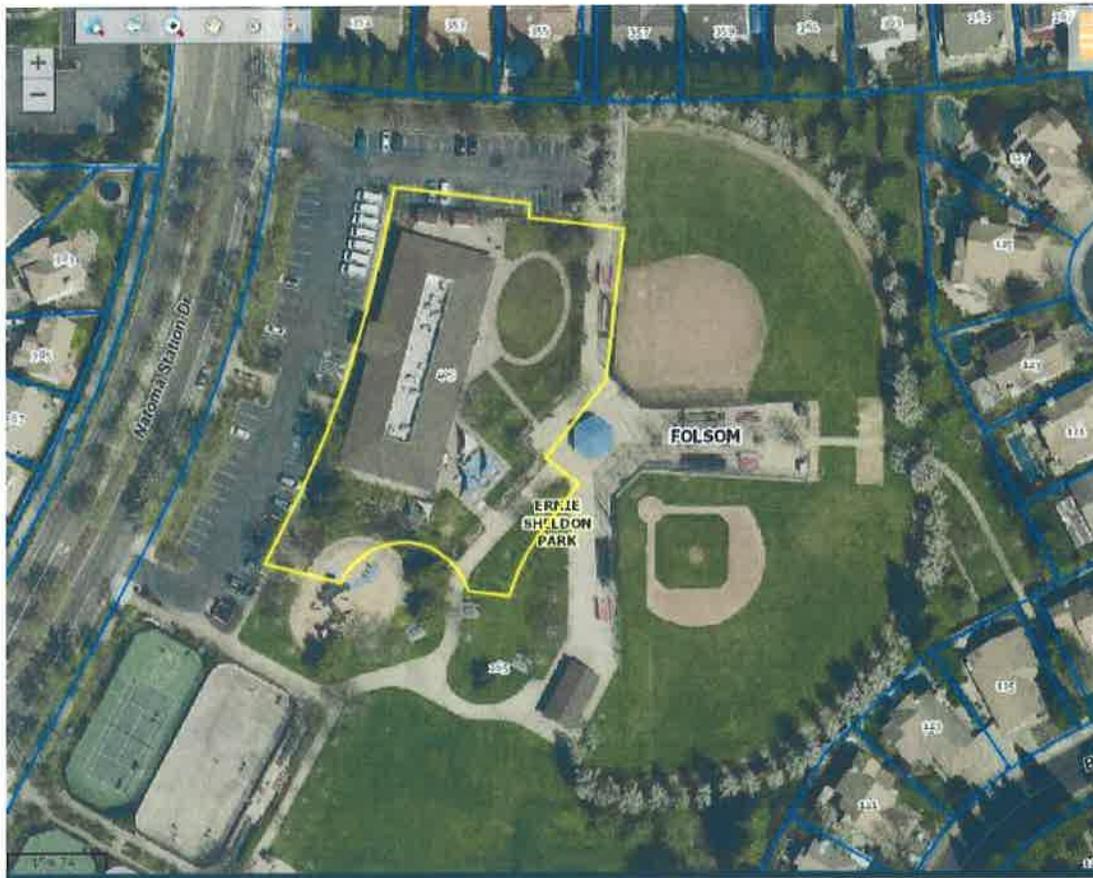


**EXHIBIT A**  
**PROJECT DESCRIPTION**

APN: 072-0850-029

ADDRESS: 405 NATOMA STATON DRIVE

LOCATION: WITHIN ERNIE SHELDON YOUTH COMPLEX



**EXHIBIT B**  
**FACILITY LEASE RATES for**  
**405 NATOMA STATION DRIVE**

Time Period	\$/RSF/MO		\$ /MONTH	
December 20, 2021 - March 31, 2022	No Rent		No Rent	
April 1, 2022 - March 31, 2023	\$ 2.00	/ RSF	\$ 20,000	plus NNN
April 1, 2023- March 31, 2024	\$ 2.06	/RSF	\$ 20,600	plus NNN
April 1, 2024 - March 31, 2025	\$ 2.12	/ RSF	\$ 21,218	plus NNN
April 1, 2025- March 31, 2026	\$ 2.19	/ RSF	\$ 21,855	plus NNN
April 1, 2026 - March 31, 2027	\$ 2.25	/ RSF	\$ 22,510	plus NNN
April 1, 2027- March 31, 2028	\$ 2.32	/ RSF	\$ 23,185	plus NNN
April 1, 2028 - March 31, 2029	\$ 2.39	/ RSF	\$ 23,881	plus NNN
April 1, 2029- March 31, 2030	\$ 2.46	/ RSF	\$ 24,597	plus NNN
April 1, 2030 - March 31, 2031	\$ 2.53	/ RSF	\$ 25,335	plus NNN
April 1, 2031- March 31, 2032	\$ 2.61	/ RSF	\$ 26,095	plus NNN

(Escalation is based on 3% per year)

## **EXHIBIT C INSURANCE**

NOTE: The word "Consultant" in this Exhibit refers to either "Consultant" or "Contractor" as the term is used in the Agreement/Contract to which this Exhibit is attached.

- A. During the term of this Agreement, Consultant shall maintain in full force and effect at all times during the term of the contract, at its sole cost and expense, policies of insurance as set forth herein:

General Liability:

- a. General liability insurance including, but not limited to, protection for claims of bodily injury and property damage liability, personal and advertising injury liability and product and completed operations liability.
- b. Coverage shall be at least as broad as Insurance Services Office Commercial General Liability coverage form CG 0001 (occurrence).
- c. Claims-made coverage is not acceptable.
- d. The limits of liability shall not be less than:
  - Each occurrence: One Million Dollars (\$1,000,000)
  - Products & Completed Operations: One Million Dollars (\$1,000,000)
  - Personal & Advertising Injury: One Million Dollars (\$1,000,000)
- e. If a general aggregate limit of liability is used, the minimum general aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the general aggregate limit shall apply separately to the project that is the subject of the contract.
- f. If a products and completed operations aggregate limit of liability is used, the minimum products and completed operation aggregate shall be twice the 'each occurrence' limit or the policy shall contain an endorsement stating that the products and completed operations aggregate limit shall apply separately to the project which is the subject of the contract.
- g. If the Consultant maintains higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by the Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

Automobile Liability:

- h. Automobile liability insurance providing protection against claims of bodily injury and property damage arising out of ownership, operation, maintenance, or use of owned, hired, and non-owned automobiles.
- i. Coverage shall be at least as broad as Insurance Services Office Automobile Liability coverage form CA 0001, symbol 1 (any auto).
- j. The limits of liability per accident shall not be less than:

Combined Single Limit

One Million Dollars (\$1,000,000)

- k. If Automobile Liability coverage, as required above, is provided by the Commercial General Liability form, the General Liability policy shall include an endorsement providing automobile liability as required above.

Workers' Compensation

- l. Workers' Compensation Insurance, with coverage as required by the State of California (unless the Consultant is a qualified self-insurer with the State of California), and Employer's Liability coverage.
- m. Employer's Liability Coverage with a limit not less than \$1,000,000 per accident for bodily injury and disease.
- n. Consultant shall sign and file with the City department responsible for this Agreement/Contract the Worker's Compensation Certificate contained in the Project Manual.

Insurance Required in the Supplementary Conditions: Consultant shall be required to comply with all conditions as stipulated in the Standard Construction Specifications, any supplementary conditions and any special provisions as applicable.

Professional Liability Insurance

If required, errors and omissions, malpractice or professional liability insurance with coverage of not less than \$1,000,000 per claim.

Other Insurance Provisions:

- o. The Consultant's General Liability and Automobile Liability policies shall contain, or be endorsed to contain, the following provisions:
  - i. The City, its officials, employees, agents and volunteers shall be covered and specifically named as additional insureds on a separate endorsement as respects liability arising out of activities performed by or on behalf of the Consultant, products and completed operations of the Consultant, premises owned, occupied, or used by the Consultant, or automobiles owned, leased, hired, or borrowed by the Consultant in a form acceptable to the City Attorney.
  - ii. The Endorsement requirement may be satisfied with express provisions in the insurance policy(ies) which identifies any person or entity required to be included as an insured under the policy. A copy of the declarations page identifying the policy number, and pertinent provisions in the policy providing additional insured coverage shall be provided to the City.
  - iii. The policy shall contain no special limitations on the scope of coverage afforded to the City, its officials, employees, agents or volunteers.
- p. For any claims related to the project, the Consultant's General Liability and Automobile insurance coverage shall be primary insurance in their coverage of the City and its officers, officials, employees, agents, or volunteers, and any insurance or self-insurance maintained by the City, its officers, officials, employees, agents or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.
- q. Any failure to comply with reporting or other provisions of the policies on the

part of the Consultant, including breaches of warranties, shall not affect coverage provided to the City, its officers, officials, employees, agents or volunteers.

- r. The Consultant's Workers Compensation and Employer's Liability policies shall contain an endorsement that waives any rights of subrogation against the City, its officers, officials, employees, agents, and volunteers.
- s. Each insurance policy shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, non-renewed, or materially changed except after **30 days prior written notice** by certified mail has been given to the City. Ten days prior written notice by certified mail shall be given to the City in the event of cancellation due to nonpayment of premium.

Acceptability of Insurers: Insurance is to be placed with insurers with a **Bests' rating of no less than A:VII.**

The Consultant shall furnish the City with Certificates of Insurance and endorsements or insurance binders, signed by a person authorized by the insurer to bind coverage on its behalf, evidencing the coverage required by this section, the Standard Specifications, Special Provisions and/or any Supplementary Conditions. **The Consultant shall furnish complete, certified copies of all required insurance policies, including original endorsements specifically required hereunder if requested.**

The Consultant shall report, by telephone to the Project Manager within 24 hours, and also report in writing to the City within 48 hours, after Consultant or any Subcontractors or agents have knowledge of, any accident or occurrence involving death of or serious injury to any person or persons, or damage in excess of Ten Thousand Dollars (\$10,000) to property of the City or others, arising out of any work done by or on behalf of the Consultant as part of the contract.

Such report shall contain:

- t. the date and time of the occurrence,
- u. the names and addresses of all persons involved, and
- v. a description of the accident or occurrence and the nature and extent of the injury or damage.

The City, at its discretion, may increase the amounts and types of insurance coverage required hereunder at any time during the term of the contract by giving 30 days written notice.

If the Consultant fails to procure or maintain insurance as required by this section, the Standard Specifications, and any Supplementary Conditions, or fails to furnish the City with proof of such insurance, the City, at its discretion, may procure any or all such insurance. Premiums for such insurance procured by the City shall be deducted and retained from any sums due the Consultant under the contract.

Failure of the City to obtain such insurance shall in no way relieve the Consultant from any of its responsibilities under the contract.

The making of progress payments to the Consultant shall not be construed as relieving the Consultant or its Subcontractors of responsibility for loss or direct physical loss, damage, or destruction occurring prior to final acceptance by the City.

The failure of the City to enforce in a timely manner any of the provisions of this section shall not act as a waiver to enforcement of any of these provisions at any time during the term of the contract.

In the event Consultant carries Excess Liability Coverage, the Excess Liability Coverage shall apply to any and all claims related to the project on a primary and non-contributory basis, and the City's insurance or self-insurance coverage shall be excess to the Consultant's Excess Liability Coverage.

EXHIBIT C  
[INSURANCE REQUIREMENT]

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