

**CITY OF BOULDER  
PARKS AND RECREATION ADVISORY BOARD AGENDA ITEM**

**MEETING DATE: August 22, 2016**

**AGENDA TITLE:** Public Hearing and Consideration of a Motion to Approve a Service Agreement with Kinesis Dance Company to Provide Dance Programs at City of Boulder Facilities.

**PRESENTERS:**

Yvette Bowden, Director, Parks and Recreation  
Alison Rhodes, Deputy Director  
Dean Rummel, Recreation Manager, Programs and Partnerships

**EXECUTIVE SUMMARY:**

This item seeks the Parks and Recreation Advisory Board's (PRAB) review and considered approval of a multi-year Service Agreement with Kinesis Dance, LLC (KDC) from January 1, 2017 through December 31, 2019.

In May 2014, the Parks and Recreation Department (department) and KDC entered into a three-year pilot service agreement to provide dance programs at City of Boulder (city) facilities. The agreement with KDC will expire on May 31, 2017 and the department seeks to amend the current agreement and continue to provide the community with high quality dance programming with a new contract agreement effective January 1, 2017.

Key elements of the proposed service agreement include:

- Term of the agreement is three-years with a renewal option;
- Department will provide the facilities for the operation of the dance program;
- KDC is responsible for inclusion services;
- KDC is responsible for scholarship opportunities;
- KDC is responsible for the registration process and all associated fees/expenses resulting in the following compensation payments to the department with zero direct expenses;
  - 2017 = 25% of revenue collected
  - 2018 = 25% of revenue collected
  - 2019 = 30% of revenue collected
- KDC is responsible for all staffing costs associated with instruction of dance classes; and

- KDC is responsible for developing all performance benchmarks (including customer service expectations) that guarantee consistent levels of service for dance programming.

The attached service agreement (**Attachment A**) describes the relationship between KDC and the department.

**BACKGROUND:**

The 2014 Parks and Recreation Master Plan recommends offering parks and recreation programs through partnerships and contracting as a way to provide specialized services while decreasing department expenses. Partnerships are intended to maximize program offerings, increase service reach and make department programs and facilities more efficient and financially viable.

In May 2014, the department entered into a three-year pilot agreement with KDC for the coordination and provision of the city's dance program. At the November 2014 PRAB meeting, questions and concerns about the dance program partnership were discussed. The department, in working with KDC and community members, took responsive action to address the issues raised. Since that time, KDC has met established programmatic performance expectations and has measured and evaluated customer feedback.

In anticipation of the expiration of the three-year pilot agreement, on April 25, 2016 staff issued an open Request for Proposal (RFP) seeking a contractor to provide the city's dance programming services. One proposal was received by the May 9th deadline. Based on the quality of the proposal and the company's past experiences in offering dance programming for the city, staff awarded the contract to KDC.

**ANALYSIS:**

KDC has provided the department's dance programming since May 2014 and, in doing so, have served community members of varying ages and abilities.

As set forth through the 2014 contractual performance benchmarks, Kinesis Dance has provided a consistent level of service for dance programming. Not only has a similar proportion of recreational dance classes been maintained, but additional classes have been added to portfolio offerings including a Spanish speaking parent/child class and the expansion of the EXPAND music class into the dance concert series. Additionally, over the past year, sixty-nine scholarship registration opportunities have been granted to dance program participants through the financial assistance program.

Both KDC and the department are interested in cost-effectively providing residents' access to dance experiences while managing available resources. With this in mind, both parties have agreed to decrease city registration expenses while increasing the shared percentage of collected revenue. These fiscal changes will reduce the department's programmatic subsidy while allowing for the reallocation of funding for facility space and staff time.

**COMMUNITY FEEDBACK:**

As part of their program management requirements, in 2016 KDC conducted an annual survey. Survey results indicated that:

- 90% rating of the program as “satisfied” to “very satisfied”;
- 56% of participants found the most important benefit of participating in dance programming was having fun while technique, social interaction, and trying something new were closely spread out around 38%;
- 97% of participants felt staff and instructors provided a safe and enjoyable experience;
- 90% of participants would recommend their class to a friend and/or take the class again; and
- 84% of respondents stated that dance is the one activity they would least likely give up.

The department and the City Attorney’s Office negotiated in good faith with representatives from KDC to develop the attached agreement.

**STAFF RECOMMENDATION:**

Staff recommends that the PRAB approve the service agreement and authorize the City Manager to make minor amendments prior to or during the term of this agreement in order to ensure that dance programming is provided in a manner that is consistent with applicable laws and the policies and regulations of the City of Boulder.

**Suggested Motion Language:**

Staff requests PRAB’s consideration of this matter and action in the form of the following motion:

Motion to approve the Service Agreement for a Recreation Program between the City of Boulder Parks and Recreation and Kinesis Dance Company and authorize the City Manager to make minor amendments prior to or during the term of this agreement in order to ensure that dance programming is provided in a manner that is consistent with applicable laws and the policies and regulations of the City of Boulder.

**NEXT STEPS:**

Staff will consider the PRAB and public’s feedback and make any necessary revisions to the proposed agreement. If approved, staff will present KDC with a final version of the Service Agreement for an anticipated January 1, 2017 start date.

**ATTACHMENTS:**

**Attachment A:** Services Agreement with Kinesis Dance Company to provide Dance Programming Services for the City of Boulder.

**CITY OF BOULDER  
SERVICES CONTRACT FOR A RECREATION PROGRAM  
CITY OF BOULDER PARKS AND RECREATION**

THIS CONTRACT made and entered into this 1st day of January, 2017, by and between the CITY OF BOULDER, (“City”), and Kinesis Dance, LLC, a Colorado limited liability company (“Contractor”).

**RECITALS:**

The City, desirous of contracting for services associated with the operation of a recreation program to provide dance programming and instruction at various locations on behalf of City of Boulder Parks and Recreation, completed an open RFP process (RFP 49-2016) soliciting interest in the provision of said programming services for the period from January 1, 2017 to December 31, 2019 (the “Recreation Program”).

Contractor, having interest in performing dance instruction services as the Recreation Program submitted a responsive proposal which was the lowest and most inclusive bid for said services and agrees to perform the Services as set forth in this Contract. The Contractor is fully qualified to perform the services needed by the City in connection with the Recreation Program.

**COVENANTS**

In consideration of the terms, conditions and covenants herein stated, the parties agree as follows:

1. SCOPE OF WORK

1.1 The City agrees to use the Contractor's services in connection with the Recreation Program for the period from January 1, 2017 to December 31, 2019, inclusive, and the Contractor covenants and agrees to provide said services as required and requested by the City during said period. The City reserves the right to extend the Contract for up to two (2) additional one-year terms as mutually agreeable by both parties in writing with conditions remaining constant. Contract renewals shall be in writing and signed by both parties.

1.2 The City will provide the facility for the operation of the Recreation Program, which facility may include the East Boulder Community Center, 5660 Sioux Dr., Iris Studio, 3198 N. Broadway, North Boulder Recreation Center, 3170 N. Broadway, and the South Boulder Recreation Center, 1360 Gillaspie Dr. (“Facility”). The City is responsible for maintaining the flooring, stereos, barres and mirrors. Contractor is responsible for maintaining the Facility in a clean and orderly fashion, including proper use of barres, mirrors and flooring, cleaning up after classes and notifying Facility Manager of any maintenance or cleanliness issues. Facility space will be provided by the City based on historical use for the Recreation Program. Additional space needed for the Recreation Program will be approved by the Program Manager as identified in paragraph 1.6 below.

1.3. In connection with the Recreation Program, the Contractor shall undertake the duties and responsibilities and provide the services described in **Appendix A**, “Scope of Work”, the Contractor’s Proposal dated May 9, 2016 and City RFP # 49-2016.

It is agreed that the request for bids, the Contractor’s proposal, and the Appendix A and B, incorporated herein by reference, are hereby made a part of this Contract, and each of the parties agrees to carry out and perform all of the provisions of said documents. In the event of conflicts or inconsistencies between this Contract and its exhibits or attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- A) The Contract;
- B) Appendix A, B, and C to the Contract;
- C) The request for bids - RFP No. 49-2016; and
- D) The Contractor’s proposal.

1.4 Contractor is responsible for providing inclusion services in accordance to the federal requirements of the American with Disabilities Act (ADA). If a participant in the Recreation Program requests an accommodation, Contractor is responsible for providing any such accommodation. By way of example, accommodations may include: hands on teaching techniques in addition to verbal instructions, one-on-one staffing assistance, two-on-one staffing assistance, interpreter services, etc. Contractor is responsible for all costs associated with providing the accommodation. Contractor shall contact the City’s EXPAND program at 303-441-4933, for additional information or training regarding accommodations and the inclusion process.

1.5 In addition to those duties outlined in Appendix A, Contractor shall provide adequate supervision at all times. Contractor shall maintain at least a 1:12 staff to child ratio. Contractor, at its own cost, shall obtain a background check on each employee prior to working with any of the Program participants. The background check shall be in accordance with Section 12 CCR 2509-8 and Section 7.701.33 of the Social Services Rules (Staff Manual Volume 7; Child Welfare, Child Care Facilities). The City will perform a background check on the Contractor if the Contractor is an individual and will be working directly with program participants. All background check information, as well as CPR Certificates, can be audited by the City of Boulder at any time.

1.6 As a general matter, the Contractor will communicate with the City about the Recreation Program only through Dean Rummel, who has been assigned by the City as the Program Manager.

1.7 Contractor shall not offer recreational dance programs, as provided by the City historically, outside of the City contract. The City will not offer competition dance programs during the term of this Contract.

1.8 The City hereby reserves the right to decide all questions arising as to the proper performance of said services, and as to the quality of the materials used. In the event that the City will determine that the services are not being performed in accordance with the terms of this

Contract, or, if the services be wholly, or in part, negligently, or unsatisfactorily, then written notice of such defect or defects will be given to the Contractor.

2. COMPENSATION.

2.1 The parties will cooperate to set fees that will be charged to the participants. However, city shall have final authority on price set. The Contractor will pay the City on the basis of fees collected from program participants.

2.2 Payments to the City are based on the amount of revenues collected by the Recreation Program. Such revenues are calculated from the data generated by the Contractor's registration software. This data includes both the number of program participants and the amount of revenue collected year to date for the Recreation Program and is set forth in a revenue report generated by the Contractor ("Revenue Reports"). City will be paid the agreed percentages, as listed below, of the revenue collected by the Recreation Program on a quarterly schedule set between City and Contractor.

- A) 2017 = 25% of revenue collected
- B) 2018 = 25% of revenue collected
- C) 2019 = 30% of revenue collected

2.3 The Contractor agrees to provide City with an initial invoice and a copy of Revenue Reports within 30 days of the conclusion of the Recreation Program session. It is the responsibility of the City to review this information and to submit a final invoice to the Contractor for payment. Subject to final City approval, Contractor shall pay the final invoice within 30 days of receipt. The City shall only pay expenses associated with the operation of the Recreation Program as set forth on **Appendix A.**

2.4 The Contractor will provide the City with program registration information prior to the first class. Upon reasonable, advance request, the City may inspect and copy any or all records of the Contractor which would bear on any amounts charged to the City pursuant to this Contract. Parties will share any information collected including registration information, addresses and emails of participants.

2.3 If the Contractor is unable to meet its obligations under this Contract, and any participant requests a refund, the Contractor may refund all or a portion of the course fee to the participant and withhold such amount from the payment to the City. If payment to the City has already been made, the Contractor will bill the City for the amount to be reimbursed, and the City will pay that amount to the Contractor within two (2) weeks of the date of such bill. If a participant chooses to drop out of a scheduled class, the attached City's refund policy will be adhered to; see **Appendix C.**

3. INSURANCE.

3.1 Contractor agrees to procure and maintain in force during the term of this Agreement, at its own cost, the following minimum coverages:

- A. Workers' Compensation and Employers' Liability
  - i. State of Colorado: Statutory
  
- B. General Liability
  - i. General Aggregate Limit: \$2,000,000
  - ii. Per Occurrence: \$1,000,000

Coverage provided should be at least as broad as found in Insurance Services Office (ISO) form CG0001.

- C. Insurance shall:
  - i. Provide primary coverage;
  - ii. Include the City of Boulder and its officials and employees as additional insureds as their interest may appear (except for Worker's Compensation and Professional Liability). Additional insured endorsement should be at least as broad as ISO form CG2010 for General Liability coverage and similar forms for auto liability;
  - iii. Include a waiver of subrogation for General Liability coverage;
  - iv. Issue from a company licensed to do business in Colorado having an AM Best rating of at least A-VI; and
  - v. Be procured and maintained in full force and effect for duration of work.

D. Certificates of Insurance evidencing the coverages described herein, shall be forwarded to the Program Manager. Certificate Holder shall be: City of Boulder, 1777 Broadway, Boulder, CO 80306.

E. Within twenty-one days after receiving insurer's notice of cancellation or reduction in coverage, Contractor, or its insurance broker, shall notify the City. In either such case, Contractor shall promptly obtain and submit proof of substitute insurance complying with the City's insurance requirements.

3.2 The Contractor agrees to indemnify and save harmless the City against any and all damages to property or injuries to or death of any person or persons arising from its performance of this Contract, including property and employees or agents of the City and shall defend, indemnify and save harmless the City from any and all claims, demands, suits, actions or proceedings of any kind or nature, including without limitation Worker's Compensation claims, of or by anyone whomsoever in any way resulting from or arising out of the Contractor's operations in connection with this Contract, including operations of sub-contractors and acts or admissions of employees or agents of the Contractor or its sub-contractor.

3.3 Notwithstanding any other provision of this Contract to the contrary, no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, Section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of

negligence of the City, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of Section 24-10-101 *et seq.*, C.R.S., as now or hereafter amended.

4. MISCELLANEOUS.

4.1 The relationship between the Contractor and the City is that of an independent contractor. The Contractor shall supply all personnel, equipment, materials and supplies at its own expense, except as specifically set forth herein. The Contractor shall not be deemed to be, nor shall it represent itself as, an employee, partner, or joint venturer of the City. No employee or officer of the City shall supervise the Contractor. **The Contractor is not entitled to worker's compensation benefits and is obligated to directly pay federal and state income tax on money earned under this Contract.**

4.2 The Contractor shall not assign this Contract without the written consent of the City, which it may withhold at its sole discretion.

4.3 This Contract shall be subject to the provisions of the Charter, Municipal Code and Ordinances of the City of Boulder.

4.4 The Contract may be terminated by either party if it has been materially breached by the other party and written notification is tendered. If either party materially defaults and does not substantially cure such default within 30 days after receiving written notice of such default, then the non-defaulting party may terminate this agreement by providing 10 days written notice of termination to the defaulting party.

The City hereby reserves the right to decide all questions arising as to the proper performance of said services, and as to the quality of the materials used. In the event that the City shall determine that the services are not being performed in accordance with the terms of this Contract, or, if the services be wholly, or in part, negligently, or unsatisfactorily performed, then written notice of such defect or defects shall be given to the Contractor in the manner set forth above.

The City may, at any time, terminate this Contract, in whole or in part, for its own convenience if 120 days written notice is tendered. City shall pay Contractor for work satisfactorily completed, to the date of termination. The City shall determine the portion of work completed. If the City terminates this Contract for convenience, accommodation will be allowed to allow Contractor to deliver services for which participants have registered in good faith up to the date of termination.

4.5 It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Contractor. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the City and the Contractor that any such party or entity, other than the City or the Contractor, receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

4.6 The waiver of any breach of a term, provision, or requirement of this Contract shall not be construed or deemed as waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision, or requirement.

4.7 This Contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent notation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved by the City pursuant to City rules.

4.8 The Contractor certifies that the Contractor shall comply with the provisions of Section 8-17.5-101 *et seq.*, C.R.S. The Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this contract.

The Contractor represents, warrants, and agrees: (i) that it has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this contract through participation in either the E-Verify or the Department Program; (ii) that the Contractor is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed; and (iii) if the Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the contractor shall be required to:

- A. Notify the subcontractor and the contracting state agency or political subdivision within three (3) days that the contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
- B. Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to Section 8-17.5-102(2)(b)(III)(A) the subcontractor does not stop employing or contracting with the illegal alien; except that the contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

The Contractor further agrees that it shall comply with all reasonable requests made in the course of an investigation under Section 8-17.5-102(5), C.R.S. by the Colorado Department of Labor and Employment. If the Contractor fails to comply with any requirement of this provision or Section 8-17.5-101 I., C.R.S. the City may terminate this contract for breach, and the Contractor shall be liable for actual and consequential damages to the City.

4.9 Contractor warrants that the individual executing this Contract is properly authorized to bind the Contractor to this Contract.

*[Signature Page Follows]*



## **Appendix A SCOPE OF WORK**

### **A. Specific Program Information:**

1. Contractor agrees to provide dance instruction and programming as set forth in City of Boulder RFP # 49-2016 and Contractor's proposal dated May 9, 2016
2. Each dance class shall have a minimum of six participants and the maximum number of participants will be based on Facility capacity as set by the City.
3. Programs will be scheduled by Kinesis Dance and approved by the City based on Facility availability, conditions and capacity limits. The parties will cooperate to schedule programming throughout the year. Contractor agrees that there will be some Boulder Parks and Recreation Department priority scheduling needs incorporated into program scheduling.
4. Recreational class fees will be set by the City and the Contractor and based on factors such as market value and cost recovery.

### **B. The City of Boulder agrees to provide the following services for the program specified above:**

1. Facility and location: Dance studios at East Boulder Community Center, 5660 Sioux Dr., Iris Studio, 3198 N. Broadway, North Boulder Recreation Center, 3170 N. Broadway, and the South Boulder Recreation Center, 1360 Gillaspie Dr.
2. Equipment: stereos, floors, attached barres and mirrors in all facilities.
3. Advertise the course in the seasonal City of Boulder Parks & Recreation Guide, Website, E-mail blast, Promotional Flyers, and additional marketing efforts as they present themselves.
4. Provide inclusion training for the Contractor as needed.
5. Provide Contractor Orientation on City policies and procedures as needed.

### **C. Contractor shall comply with the following standard City of Boulder requirements:**

1. **TRAININGS**. Prior to the start of the Recreation Program, Contractor agrees to participate in City trainings as follows:
  - a. Contractor and/or staff will participate in pre-program training on City of Boulder policies and procedures and facility use.
  - b. Contractor and staff will attend staff training both before the start of the

Recreation Program and as necessary to provide all Recreation Program services.

- c. Contractor and staff will attend inclusion training by City of Boulder Expand as needed.

2. **RECREATION PROGRAM OPERATION.** Contractor will schedule and supervise all recreation program activities and participants with approval from Program Manager, such duties include but are not limited to the following:

- a. Contractor will hire, supervise and pay all staff and independent contractors of the Recreation Program.
- b. Contractor will brand the City of Boulder Parks and Recreation Department through marketing materials, staff uniforms, banners, etc. consistent with all City of Boulder Parks and Recreation regulations for branding.
- c. Contractor will submit all promotional materials to the Program Manager for use in the Parks & Recreation Guide in a timeframe determined by the Program Manager.
- d. Contractor will collect City Risk and Release forms from each participant, the first day of each Recreation Program and return to City of Boulder staff by the second day of each Recreation Program.
- e. Contractor will keep accurate records and provide complete and timely information for required reports on activities including “check-in and check-out” procedures, incident and accident reports and injury log.
- f. Contractor will collect all participants’ information for promotional materials (i.e. name, e-mail, address, phone number) and provide to the Program Manager on or before the conclusion of the program.
- g. Contractor will meet with the Program Manager on a quarterly basis to report on the Recreation Program.
- h. Contractor will submit incident or accident forms within 24 hours of such incident/accident. The forms will be provided to the Contractor and should be emailed or turned into the Program Manager.
- i. Contractor will maintain an injury log—the log will be provided and kept at the facility’s front desk.

3. **MASTER PLAN GOALS.** Contractor will align with the Park’s and Recreation Master Plan goals to meet community needs, including, but not limited to the following:

- a. Contractor will provide a scholarship program for participants who are determined eligible for financial assistance. Contractor is responsible for all costs associated with providing the assistance.
  - b. In conjunction with a scholarship program, Contractor will conduct community outreach to underserved populations of the community.
  - c. Contractor will set program plans to broaden the scope of offerings for a wide range of community opportunities.
  - d. Contractor agrees to participate in a minimum of one City special event and appropriate “guest appearances” within current City programming and outreach efforts.
  - e. Contractor will work with Program Manager to maximize facility use while exploring creative ways to use available spaces.
4. **REPORTING OBLIGATIONS.** The Contractor shall submit a Lifecycle Management and Delivery Model Report to the Program Manager on or before November 1 of each contract year. The Report will be generated on form provided by the City. The purpose of the report is to assist the City in the evaluation of the Recreation Program and the development of future programming and space allocation.

## **Appendix B**

### **PERFORMANCE BENCHMARKS**

In order for the City to guarantee consistent levels of service for dance programming, the City has established the following performance benchmarks as goals for the Contractor. These benchmarks are based on similar levels of service offered by other recreation programmers contracted by the City of Boulder. A pattern of continued failure by the Contractor to meet these benchmarks may be considered a material breach and the City may exercise its right to terminate this Contract in accordance with Section 4.

The performance benchmarks are as follows:

- Offer a similar proportion dance programming for the levels, ages and demographics that were offered in 2016.
- Expand opportunities and offer other dance programs that may increase revenue without affecting general facility use by the public as mutually agreed upon by the Contractor and Program Manager.
- Contractor should conduct an annual (at minimum) participant satisfaction evaluations. Results should indicate they are fully or partially satisfied with offerings with respondents indicating a satisfaction of at a minimum of 75% in 2017.
  - In 2018 and 2019, an average of 80% of respondents should indicate they are fully or partially satisfied with program offerings and/or instruction on program participation evaluations.
  - In 2017, 2018 and 2019, increase the number of participants from 2016 by 2% each year.
- Partner with Boulder Parks and Recreation Department to assist in programming community events. These events may include but are not limited to Boulder Community Day, Summer Festival, GreenStreets, Snow Much Fun, etc.
- Maintain a scholarship program. Assist the City of Boulder's efforts to target low income participants.
- Attain an annual score of at least 50 on the Boulder Parks and Recreation's Recreation Priority Index (RPI). RPI criteria and scoresheets will be provided by the City.

## **Appendix C Refund Policy**

### Camps:

- |  |             |
|--|-------------|
| • Two weeks before camp begins                     | \$15.00 fee |
| • Within two weeks of first day or after first day | No refund   |

### Programs:

- |                       |             |
|-----------------------|-------------|
| • Before second class | \$15.00 fee |
| • After second class  | No Refund   |