



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Adopt Resolution Approving the Agreement Between the City of Lodi and Spare Time, Inc., dba Twin Arbors Athletic Club, for the Summer Swim League Program  
**MEETING DATE:** May 7, 2014  
**PREPARED BY:** Parks, Recreation and Cultural Services Director

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**RECOMMENDED ACTION:** Adopt resolution approving the agreement between the City of Lodi and Spare Time, Inc., dba Twin Arbors Athletic Club, for the Summer Swim League Program.

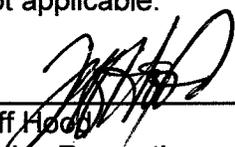
**BACKGROUND INFORMATION:** The Parks, Recreation and Cultural Services Department currently provides a summer swim league program to more than 400 children. This City has had a contract for the use of the Twin Arbors Athletic Club ("TAAC") pool since 2003.

As a way of accommodating facility needs, staff has partnered with TAAC to gain access to its pools. In exchange, TAAC is allowed to organize its own team and participate in the City-sponsored Summer Swim League. The benefits of the public/private partnership are twofold: (1) It provides the City use of aquatic facilities that the City does not have; and, (2) It creates another program offering for TAAC which has resulted in the expansion of the Summer Swim League.

Staff recommends approval of the agreement, which will enable the swimming pools at TAAC to be used for swim meets and allow for a team composed of TAAC members to participate in the league. Meets will be held on select Friday nights in June and July 2014. The term of this agreement is May 27, 2014 to July 18, 2014.

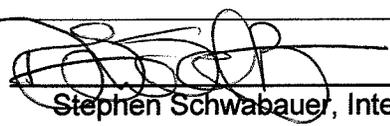
**FISCAL IMPACT:** No funds will be exchanged. This is an in-kind trade. The use of multiple pools (TAAC, Tokay High School, Lodi High School and Blakely Pool) will enhance scheduling efficiency, allow for Friday night versus Saturday meets, and thus save operation and maintenance costs at Blakely Pool.

**FUNDING AVAILABLE:** Not applicable.

  
\_\_\_\_\_  
Jeff Hood  
Parks, Recreation and Cultural Services Director

JMR:tl  
Attachments  
cc: City Attorney

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**APPROVED:**   
\_\_\_\_\_  
Stephen Schwabauer, Interim City Manager

**MEMORANDUM OF UNDERSTANDING  
(Summer Swim League)**

THIS Memorandum of Understanding ("Agreement") is entered into as of this \_\_\_\_ day of \_\_\_\_\_, 2014, by Spare Time Incorporated, d.b.a. Twin Arbors Athletic Club, ("TAAC") and the CITY OF LODI, a municipal corporation ("City").

Background

A. City's Parks, Recreational and Cultural Services Department operates a six week summer swim league at the City owned Enze Pool, Lodi High School Pool and Tokay High School Pool. Currently, the City has four teams, each comprised of approximately 100 participants, TAAC also operates swimming programs at its privately owned pool facilities at 2040 W. Cochran Rd, Lodi, and 1900 S Hutchins St, Lodi, CA.

B. TAAC again desires to organize a team to participate in the summer swim league. City is willing to permit TAAC to do so during the City's 2014 summer swim league. However, in order to accommodate the fourth team, City requires the use of one or both of TAAC's pool facilities.

C. Accordingly, the parties enter into this Agreement on the terms and conditions set forth below.

Agreement

In consideration of their mutual covenants, the Parties agree as follows:

1. Participation. TAAC and City agree that TAAC will establish an additional team named the "Dolphins" comprised of the members of its club to participate in the City's summer swim league.

2. Administration. Generally, the Dolphins team and its members will be treated identically to the City teams, and the Dolphins will practice at TAAC's facilities. Dolphins team members will register with and pay the City's Parks and Recreation program fees. City will pay the Dolphins coach the same stipend paid to the City coaches. City shall have the right to oversee and supervise the Dolphin's coach and program, including all appropriate background checks of Dolphins' staff (whether paid or volunteer) and monitoring practices and swim meets to ensure compliance with all applicable laws, regulations, and City standards. TAAC shall cooperate with City's efforts to perform background checks and monitoring.

3. Fees/Recruiting Prohibited. No fees, other than those referred to in paragraph 2 of this Agreement and TAAC's standard membership fee shall be charged to any Dolphin team member. Members must be an active member of TAAC as of May 1<sup>st</sup> of the current year. However, TAAC like other teams may accept donations and have fundraisers to solicit sponsorships. TAAC shall not engage in any efforts to recruit memberships during swim meets. TAAC shall not recruit members of City teams and TAAC members who wish to retain their affiliation with a City team must not be pressured to join the TAAC team. However, TAAC will be permitted to inform its members that it is establishing a team to compete in the City's 2014 summer swim league, and that TAAC members may join TAAC's team by signing up through the City's Parks and Recreation Department subject to being an active member of TAAC as of May 1<sup>st</sup> of the current year.

4. Use of Facilities. During the term of this Agreement, TAAC agrees to allow the use of its facilities, including but not limited to the showers, dressing areas, bathrooms, and spectator areas for Dolphins practice and for swim meets between any teams in the summer swim league Monday through Thursday. No fees shall be charged to (1) the City for use TAAC's facilities; or (2) any child or spectator for any purpose, including but not limited to entry fees, or shower fees, during the swim meets. TAAC shall have the right to designate which of its Lodi pool facilities will be used for practices on whatever notice it deems appropriate and shall also have the right to designate which of its Lodi pool facilities will be used for swim meets on at least 30 days written notice to City, as long as practices are consistent with above times. The meets held at TAAC pools will involve the Dolphins and a City team. At no time will two City teams use TAAC pool for swim meets. Swim meets may be held on the following Friday evenings from 4:30 p.m. to 8:30 p.m. at the TAAC pool: June 20, 27 and July 11, 2014.

5. Term. The term of this Agreement shall be from May 27, 2014 to July 18, 2014, unless otherwise terminated as provided herein.

6. Maintenance. TAAC shall, at its own expense, maintain its Lodi premises and pool facilities and any buildings and or equipment on or attached to the premises in a safe condition, in good repair and in a manner suitable to City. City shall be entitled to inspect TAAC's pool facilities upon demand to ensure compliance with this paragraph.

7. Utilities. TAAC shall provide utility service to the premises at its sole cost and expense.

8. Attorney Fees. In any action between the parties arising out of or related to this contract, the prevailing party shall be entitled to all expenses incurred therefor, including reasonable attorney fees.

9. Optional Termination. Either party may terminate this Agreement in writing upon at least 48 hours prior written notice. In the event of an early termination, the City, in its sole discretion, will determine which one of the following options to give to the entire Dolphins team:

- a. Join another of the teams in the City's 2014 summer swim league;
- b. Continue on the Dolphins team for the remainder of the season with a coach to be supplied by the City without the use of the TAAC facilities; or
- c. Terminate their participation in the league and receive a pro-rated refund of the fees paid to the City's Parks, Recreational and Cultural Services Department.

10. Indemnity and Insurance.

a. Indemnification by City: Except to the extent caused by the negligence or intentional misconduct of TAAC or of any agent, servant or employee of TAAC, City ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless TAAC and all associated, affiliated, allied and subsidiary entities of TAAC, now existing or hereinafter created, and their respective officers, boards, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

- i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of City, its personnel, employees, agents, contractors or subcontractors on the Premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of

any person, firm or corporation, to the extent arising out of or resulting from the operation and/or maintenance of the summer swim league or City's failure to comply with any applicable federal, state or local statute, ordinance or regulation.

b. Indemnification by TAAC: Except to the extent caused by the negligence or intentional misconduct of City or of any agent, servant or employee of City, TAAC ("Indemnitor") shall, at its sole cost and expense, indemnify and hold harmless City and all associated, affiliated, allied and subsidiary entities of City, now existing or hereinafter created, and their respective officers, boards, commissions, employees, agents, attorneys, and contractors (hereinafter referred to as "Indemnitees"), from and against:

i. Any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted against the Indemnitees by reason of any act or omission of TAAC, its personnel, employees, agents, contractors or subcontractors on the TAAC premises, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of or destruction of tangible or intangible property, or any other right of any person, firm or corporation.

c. Defense of Indemnitees: In the event any action or proceeding shall be brought against the Indemnitees by reason of any matter for which the Indemnitees are indemnified hereunder, Indemnitor shall, upon reasonable prior written notice from any of the Indemnitees, at Indemnitor's sole cost and expense, resist and defend the same with legal counsel mutually selected by the parties; provided however, that the parties must not admit liability in any such matter without written consent, which consent must not be unreasonably withheld, conditioned or delayed, nor enter into any compromise or settlement of, any claim for which they are indemnified hereunder, without prior written consent. The indemnifying party's duty to defend shall begin upon receipt of a written notice identifying with specificity the allegations that give rise to this duty to defend and shall be co-extensive with the indemnifying party's indemnification obligation.

d. Notice, Cooperation and Expenses: Each party must give the other prompt written notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this paragraph. Nothing herein shall be deemed to prevent either party from cooperating with the other and participating in the defense of any litigation by its own counsel. However, Indemnitor shall pay all reasonable expenses incurred by Indemnitees in response to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as reasonable attorney fees and shall also include the reasonable value of any services rendered by Indemnitees' attorney, and the actual reasonable expenses of Indemnitees' agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitees in connection with such suits, actions or proceedings but shall not include attorneys' fees for services that are unnecessarily duplicative of services provided Indemnitees by Indemnitor.

If Indemnitor requests Indemnitee to assist it in such defense, then Indemnitor shall pay all reasonable expenses incurred by Indemnitee in response thereto, including defending itself with regard to any such actions, suits or proceedings. These expenses shall include all reasonable out-of-pocket expenses such as attorney fees and shall also include the reasonable costs of any services rendered by Indemnitee's attorney, and the actual reasonable expenses of Indemnitee's agents, employees or expert witnesses, and disbursements and liabilities assumed by Indemnitee in connection with such suits, actions or proceedings.

e. Insurance: During the term of the Agreement, both parties must maintain, or cause to be maintained, in full force and effect and at their sole cost and expense, the types and limits of insurance as set forth in Exhibit A, attached hereto and made a part hereof.

f. Evidence of Insurance: TAAC shall file certificates of insurance for each insurance policy required to be obtained in compliance with this paragraph, along with written evidence of payment of required premiums with the City annually during the term of the Agreement. City shall immediately advise TAAC in writing of any claim or litigation that may result in liability to TAAC. TAAC shall immediately advise City in writing of any claim or litigation that may result in liability to City.

g. Self-Insurance: The City's insurance requirements set forth herein may be satisfied by a self insurance program that complies with all laws and regulations governing self insurance.

13. Notices. Except as otherwise provided for in this Agreement to the contrary, all notices, demands and other communications required or contemplated to be given under this Agreement shall be in writing and shall be delivered either by (i) postage prepaid, Returned Receipt Requested, Registered or Certified Mail, (ii) local or air courier messenger service, (iii) personal delivery, or (iv) facsimile addressed to the party or parties for whom intended at the address shown below or such other address as the intended recipient previously shall have designated by written notice from time to time (provided, however, notice of a change of address or facsimile number shall be effective only upon receipt):

To City: Parks, Recreation & Cultural Services  
P. O. Box 3006  
221 W. Pine Street  
Lodi, CA 94240  
Fax: (209) 333-0162  
Attn: Jeff Hood, Director

To TAAC: Twin Arbors Athletic Club  
1900 S Hutchins Street  
Lodi, CA 95242  
Phone: (209) 334-4897  
Attn: Dennis Kauffman, General Manager

14. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, personal representatives and assigns.

15. Non-Waiver. Failure of either party to insist on strict performance of any of the conditions, covenants, terms or provisions of this Agreement or to exercise any of its rights here under shall not waive such rights, but either party shall have the right to enforce such rights at any time and take such action as might be lawful or authorized hereunder, either in law or equity.

16. Miscellaneous.

a. TAAC and City represent that each, respectively, has full right, power, and authority to execute this Agreement.

b. This Agreement constitutes the entire agreement and understanding of the parties and supersedes all offers, negotiations, and other agreements of any kind. There are no

representations or understandings of any kind not set forth herein. Any modification of or amendment to this Agreement must be in writing and executed by both parties.

c. This Agreement shall be construed in accordance with the laws of the State of California.

This Agreement was executed as of the date first set forth above and effective as of the date set forth in introduction above.

City of Lodi, a municipal corporation

Spare Time Incorporated,  
dba Twin Arbors Athletic Club

By \_\_\_\_\_  
Stephen Schwabauer  
Interim City Manager

By \_\_\_\_\_  
  
Dennis Kaufman  
General Manager

Attest:

\_\_\_\_\_  
Randi Johl-Olson  
City Clerk

Dated: \_\_\_\_\_

Approve as to Form:

\_\_\_\_\_  
Janice D. Magdich  
Interim City Attorney 



**Insurance Requirements for Contractor** The Contractor shall take out and maintain during the life of this Agreement, insurance coverage as listed below. These insurance policies shall protect Contractor and any subcontractor performing work covered by this Agreement from claims for damages for personal injury, including accidental death, as well as from claims for property damages, which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, or by any subcontractor, or by anyone directly or indirectly employed by either of them, and the amount of such insurance shall be as follows:

1. **COMPREHENSIVE GENERAL LIABILITY**  
 \$1,000,000 Each Occurrence  
 \$2,000,000 General Aggregate
  
2. **COMPREHENSIVE AUTOMOBILE LIABILITY**  
 \$1,000,000 Combined Single Limit  
 Such insurance shall cover liability arising out of any vehicle (including, owned, hired and non-hired vehicles) operated in performing any and all services pursuant to this Agreement. Coverage shall be written on ISO form CA 00 01 12 90, or a later version of this form, or an equivalent form providing equivalent liability coverage.

All limits are to be designated strictly for the City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers. All deductibles or self-insured retentions (SIR) must be disclosed to City's Risk Manager for approval and shall not reduce the limits of liability set forth hereinabove. Insurance policies containing any deductible or SIR provision shall provide, or be endorsed to provide, that the deductible or SIR may be satisfied by either the Named Insured(s) or the City of Lodi.

It is required that any available insurance proceeds broader than or in excess of the specified minimum insurance coverage requirements and/or limits set forth above, shall be available to City as an additional insured. Furthermore, the requirements for coverage and limits shall be (i) the minimum coverage and limits specified in these insurance requirements; or (ii) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the Contractor; whichever is greater.

Contractor agrees and stipulates that any insurance coverage provided to the City of Lodi shall provide for a claims period following termination of coverage which is at least consistent with the claims period or statutes of limitations found in the California Tort Claims Act (California Government Code Section 810 et seq.).

A copy of the certificate(s) of insurance with the following endorsements shall be furnished to the City:

- (a) **Additional Named Insured Endorsement**  
 Pursuant to a separate endorsement (ISO form CG 2010 (11/85) or equivalent form) such insurance as is afforded by this policy shall also apply to the City of Lodi, its elected and appointed boards, commissions, officers, agents, employees, and volunteers as additional named insureds.
  
- (b) **Primary and Non-Contributory Insurance Endorsement**  
 Additional insurance coverage under the Contractor's policy shall be "primary and non-contributory" and will not seek contribution from City's insurance or self-insurance and shall be at least as broad as ISO form CG 20 01 04 13.

**NOTE:** (1) The street address of the **CITY OF LODI** must be shown along with (a) and (b) above: 221 West Pine Street, Lodi, California, 95241-1910; (2) The insurance certificate must state, on its face or as an endorsement, a description of the project that it is insuring.

**Insurance Requirements for Contractor** (continued)

- (c) **Limits of Coverage**  
The limits of insurance coverage required may be satisfied by a combination of primary and umbrella or excess insurance. Any umbrella or excess insurance of Contractor shall contain, or be endorsed to contain, a provision that such coverage shall also apply on a primary and non-contributory basis for the benefit of the City before the City's own insurance or self-insurance shall be called upon to protect the City as a named insured.
- (d) **Severability of Interest Clause**  
The term "insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limit of the company's liability.
- (e) **Notice of Cancellation or Change in Coverage Endorsement**  
This policy may not be canceled nor the coverage reduced by the company without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 West Pine St., Lodi, CA 95240.
- (f) **Continuity of Coverage**  
All policies shall be in effect on or before the first day of the Term of this Agreement. At least thirty (30) days prior to the expiration of each insurance policy, Contractor shall furnish a certificate(s) showing that a new or extended policy has been obtained which meets the minimum requirements of this Agreement. Contractor shall provide proof of continuing insurance on at least an annual basis during the Term. If Contractor's insurance lapses or is discontinued for any reason, Contractor shall immediately notify the City and immediately obtain replacement insurance.
- (g) **Failure to Comply**  
If Contractor fails or refuses to obtain and maintain the required insurance, or fails to provide proof of coverage, the City may obtain the insurance. Contractor shall reimburse the City for premiums paid, with interest on the premium paid by the City at the maximum allowable legal rate then in effect in California. The City shall notify Contractor of such payment of premiums within thirty (30) days of payment stating the amount paid, the name(s) of the insurer(s), and rate of interest. Contractor shall pay such reimbursement and interest on the first (1<sup>st</sup>) day of the month following the City's notice. Notwithstanding and other provision of this Agreement, if Contractor fails or refuses to obtain or maintain insurance as required by this agreement, or fails to provide proof of insurance, the City may terminate this Agreement upon such breach. Upon such termination, Contractor shall immediately cease use of the Site or facilities and commence and diligently pursue the removal of any and all of its personal property from the site or facilities.
- (h) **Qualified Insurer(s)**  
All insurance required by the terms of this Agreement must be provided by insurers licensed to do business in the State of California which are rated at least "A-, VI" by the AM Best Ratings Guide, and which are acceptable to the City. Non-admitted surplus lines carriers may be accepted provided they are included on the most recent list of California eligible surplus lines insurers (LESLI list) and otherwise meet City requirements.

**Workers Compensation Insurance** The Contractor shall take out and maintain during the life of this Agreement, Worker's Compensation Insurance for all of Contractor's employees employed at the site of the project and, if any work is sublet, Contractor shall require the subcontractor similarly to provide Worker's Compensation Insurance for all of the latter's employees unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in hazardous work under this Agreement at the site of the project is not protected under the Worker's Compensation Statute, the Contractor shall provide and shall cause each subcontractor to provide insurance for the protection of said employees. A waiver of subrogation is required for workers compensation insurance. This policy may not be canceled nor the coverage reduced without 30 days' prior written notice of such cancellation or reduction in coverage to the Risk Manager, City of Lodi, 221 West Pine St., Lodi, CA 95240.

**NOTE: The City reserves the right to obtain a full certified copy of any insurance policy or endorsements required. Failure to exercise this right shall not constitute a waiver of the City's right to exercise after the effective date.**

RESOLUTION NO. 2014-65

A RESOLUTION OF THE LODI CITY COUNCIL  
APPROVING AGREEMENT BETWEEN THE CITY  
OF LODI AND SPARE TIME, INC., dba TWIN  
ARBORS ATHLETIC CLUB, FOR USE OF POOLS  
AT TWIN ARBORS ATHLETIC CLUB FACILITIES

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WHEREAS, the Parks, Recreation and Cultural Services Department currently provides a summer swim league program to more than 400 children; and

WHEREAS, this program continues to grow, with no additional facilities available to expand the program; and

WHEREAS, over the years, City staff has partnered with Twin Arbors Athletic Club to gain access to its pools in order to expand the program; and

WHEREAS, the benefits of the public/private partnership have been twofold: 1) it has provided the City use of aquatics facilities that it does not currently have; and 2) it has created another program offering for Twin Arbors Athletic Club, which has resulted in the expansion of the Summer Swim League; and

WHEREAS, staff therefore recommends that the City Council approve the agreement, which would allow the swimming pools at Twin Arbors Athletic Club to be used for swim meets, practices, and allow a team comprised of Twin Arbors members to participate in the league.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the agreement between the City of Lodi and Spare Time, Inc., dba Twin Arbors Athletic Club, for use of pools at Twin Arbors Athletic Club facilities for the period May 27, 2014 to July 18, 2014.

Dated: May 7, 2014

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I hereby certify that Resolution No. 2014-65 was passed and adopted by the City Council of the City of Lodi in a regular meeting held May 7, 2014, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Johnson, Mounce, and  
Mayor Katzakian

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – Nakanishi

ABSTAIN: COUNCIL MEMBERS – None



RANDI JOHL-OLSON  
City Clerk