



## STAFF REPORT

DATE: May 1, 2018

**REGULAR**

ITEM #: 12

**MOTION**

**TO:** City Council  
**FROM:** Ben Prchal, City Planner  
**AGENDA ITEM:** Tennis Camp  
**REVIEWED BY:** Emily Becker, Planning Director

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### **BACKGROUND:**

The City of Lake Elmo has been approached by Alex Krol a member of the Professional Tennis Registry and certified tennis instructor. Alex is also the owner of Minnesota Tennis Camps and has approached the City with the idea of a public/private partnership. After discussing the proposal at the March 19<sup>th</sup> and April 16<sup>th</sup> Parks Commission meeting staff was able to incorporate comments into the proposal.

### **ISSUE BEFORE CITY COUNCIL:**

How would City Council like to proceed with allowing the reservation of tennis courts for a tennis camp?

- Allow the camp
- Not allow the camp

### **PROPOSAL:**

The City would allow Alex Krol to host a tennis camp in one or more of the Lake Elmo parks. Some of the more important details of the camp are outlined below.

- The camp would run from 12 – 5 PM
- Be ran out of Pebble Park with Alex having the right to use 2 of the 3 courts from 12 – 5. The possibility to expand into Tablyn may be discussed further if there is a need.
- The City would accept 21% before expenses are accounted for
- Alex must submit to the City background checks for all instructors that will be affiliated with the camp in Lake Elmo
- We would be placed on the Minnesota Tennis Camps insurance policy

The City would allow the tennis camp to have our public courts reserved for specific times during the day throughout the summer. Alex is proposing that the hours of the camp range from 12:00 to 5:00 PM with children 10 and over practicing for 5 hours and children 9 and under practicing for 3 hours. The camp will run Monday through Friday and last for 12 weeks during the summer.

### **Involvement:**

City involvement is intended to be very limited, and advertising by the city would be done through the fresh, City Facebook page, or newsletter if timing allows.

### **Impact to Users:**

The courts would be reserved to facilitate the needs of the camp from the currently proposed hours of 12:00 - 5:00 PM. It is possible that residents would like to use the courts at that time. Though, keep in mind that there are several locations for users to play. Such as Tablyn, Pebble, and Oak Land Park Jr. High. However, the school courts do have a restriction on them. Fortunately staff had a chance to speak with the

Schools Manager of facilities/Site operations and they indicated that residents could not use the courts when school activities were being held. The number of times the school would need the courts during the summer is severely less than during the regular school year. Currently there is a 3m tennis group that will be reserving those courts starting at 5:00 PM for 3 nights a week. As stated before Alex is proposing that it run for 5 days a week.

**FISCAL IMPACT:**

Beyond legal counsel there have been nor there be a negative financial impact. After communication with the City's insurance provider, they indicate that rates would not change due to the program.

**RECOMMENDATION FROM PARKS COMMISSION AND STAFF:**

Staff feels that this would be a good opportunity for the City to expand its parks program by providing an opportunity for local youth to be involved in an activity while using Lake Elmo facilities. Staff also does not necessarily see that there is a huge difference between this proposed use and how ball fields are used for youth baseball. Also, the proposed contract would only be established to run for one year (season). This way if there did happen to be issues the City could easily opt out or make the appropriate adjustments.

Staff recommends approval of the presented proposal.

**Parks Commission:**

The parks commission has recommended approval of the proposal as it has been presented. The outcome of the voting for the plan was 7 – 0. There was also an added amendment to the proposal relating to the intake of funds. The parks commission also voted to recommend that all funds received in relation to the camp would go into the general park dedication fund. This also passed 7-0.

***“Motion to approve the contract for a tennis camp as it has been proposed”***

**OPTIONS:**

- 1) Approve proposed for the tennis camp.
- 2) Deny the proposed tennis camp.
- 3) Approve the tennis camp proposal with amendments.

**ATTACHMENTS:**

- Court Use Agreement

## **TENNIS COURT USE AGREEMENT**

This Tennis Court Use Agreement (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018 (the “Effective Date”), by and between the City of Lake Elmo, a Minnesota municipal corporation (the “City”), and Alexander Krol, a single person, d/b/a Minnesota Tennis Camps (the “Instructor”). The City and the Instructor may be collectively referred to herein as the “Parties”.

### **RECITALS**

**WHEREAS**, the Instructor is a certified tennis instructor and a member of the Professional Tennis Registry; and

**WHEREAS**, in order to promote and provide the City’s youth with additional fitness and recreational opportunities, the City wishes to provide the Instructor with the exclusive right to use certain City-owned tennis courts for the purpose of operating a 12-week youth tennis camp (the “Tennis Camp”); and

**WHEREAS**, the Instructor represents that he has the necessary equipment, skill, and personnel to operate the Tennis Camp; and

**WHEREAS**, the Parties desire to enter into this Agreement for the purpose of formally memorializing their rights and obligations associated with said Tennis Camp.

**NOW, THEREFORE**, in consideration of the promises and the mutual obligations of the Parties hereto, each of them does hereby covenant and agree with the other as follows:

### **AGREEMENT**

**1.0 CITY RESPONSIBILITIES.** The City hereby agrees to provide the Instructor with the exclusive use of two outdoor tennis courts at Pebble Park, located at 8160 Lake Jane Trail (the “Courts”), Monday through Friday between the hours of 12:00 p.m. and 5:00 p.m., for the sole purpose of operating the Tennis Camp. Said use shall be limited to a mutually agreeable 12-week period during the initial term of the Agreement. The City makes no warranties to the Instructor, whether express or implied, as to the suitability of the Courts for the Tennis Camp. The Instructor has inspected the Courts and has determined that the Courts are adequate and acceptable for his intended use.

### **2.0 INSTRUCTOR RESPONSIBILITIES.**

**2.1** The Instructor shall be solely responsible for operating the Tennis Camp, including, but not limited to, registering all students, scheduling lessons and other camp activities, and providing and paying for all instructors and tennis equipment.

**2.2** The Instructor shall conduct background checks, in a format and manner that meets the satisfaction of the City, on all Tennis Camp instructors or any other person

affiliated with the Tennis Camp that will be physically present during the Tennis Camp. Copies of said background checks shall be provided to the City before said individuals be allowed to provide instruction or otherwise participate in the Tennis Camp.

**2.3** The Instructor shall establish a list of camp leaders, at least one of which must be present at all times during the Tennis Camp. The Instructor shall further provide the City with the names and contact information for said camp leaders.

**2.4** During the Tennis Camp, the Instructor, or its designated camp leaders, shall report to law enforcement any suspicious activity or unauthorized park use, including both emergency and non-emergency situations.

**3.0 COMPENSATION.** The Instructor agrees to pay the City 21% of the Tennis Camp's registration fees. The Instructor agrees to pay said amounts to the City within 14 days of the Tennis Camp's registration deadline. The Instructor shall provide the City with information as to the registration fee charged, the number of Tennis Camps offered, and the number of registrants for each camp in order for the City to be able to ensure that it is being paid its share of the Tennis Camp's registration fees.

**4.0 DAMAGE TO CITY FACILITIES.** Any damage to City-owned facilities, including the Courts, that is caused by the Instructor, his employees or students, shall be solely the responsibility of the Instructor. This section shall not apply to normal wear and tear of the Courts which is understood by the Parties to be a reasonable impact of the Tennis Camp.

**5.0 TERM.** This Agreement shall commence on the Effective Date and automatically terminate on October 1, 2018, unless terminated earlier in accordance with the provisions of this section. This Agreement may be terminated for any reason by either party upon providing 30 days' written notice to the other party. Additionally, the City may immediately terminate this Agreement, upon written notice to the Instructor, for any breach of any term or condition contained in this Agreement. The Instructor's indemnification obligations shall survive the termination of this Agreement.

**6.0 NO EMPLOYEE RELATIONSHIP.** Nothing herein is intended or should be construed in any manner as creating or establishing the relationship of co-partners or a joint venture between the Parties or as constituting one of the Parties as an agent, representative or employee of the other for any purpose or in any manner whatsoever. Neither the Instructor, nor any individual hired by the Instructor, shall be considered a temporary or permanent employee of the City for any purpose whatsoever. As such, the Instructor and those hired by the Instructor shall not be entitled to any employee rights or benefits from the City, including, but not limited to, income tax withholding, workers' compensation, unemployment compensation, FICA taxes, employee benefits, or any other right or benefit that a City employee might otherwise be entitled to.

**7.0 INSURANCE.** During the entire term of this Agreement, the Instructor must maintain workers' compensation insurance (to the extent required by law) and commercial general liability insurance for both bodily injury and property damage with a limit of no less than \$1,000,000 per occurrence and \$2,000,000 aggregate. The Instructor shall provide the City with a current

certificate of liability insurance for all insurance coverage referenced above prior to operating the Tennis Camp. Such certificate of liability insurance shall list the City as an additional insured and contain a statement that such policies of insurance shall not be canceled or amended unless 10 days' written notice is provided to the City.

**8.0 INDEMNIFICATION.** To the fullest extent permitted by law, the Instructor agrees to protect, defend, save, and hold harmless the City, its officers, agents, and employees from all claims, suits, or actions of any kind, nature, or character, and the costs, disbursements, and expenses of defending the same including, but not limited to, attorneys' fees, professional services, and other technical, administrative, or professional assistance resulting from or arising out of the alleged negligence, breach of contract, or willful misconduct of the Instructor, its subcontractors, agents, or employees related to or arising out of its provision of the Tennis Camp. Nothing herein shall be construed as a limitation on or waiver of any immunities or limitations on liability otherwise available to the City.

**9.0 DATA PRACTICES ACT COMPLIANCE.** Data provided, produced, or obtained under this Agreement shall be administered in accordance with the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13. The Instructor will immediately report to the City any requests from third parties for information relating to this Agreement. The Instructor agrees to promptly respond to inquiries from the City concerning data requests. The Instructor agrees to defend and indemnify the City from any claim, liability, damage or loss asserted against the City as a result of the Instructor's failure to comply with the requirements of this paragraph; provided that the Instructor shall have no duty to defend or indemnify where the Instructor has acted in conformance with the City's written directions.

**10.0 AUDIT DISCLOSURE.** The Instructor must allow the City, or its duly authorized agents, and the state auditor or legislative auditor reasonable access to the Instructor's books, records, documents, and accounting procedures and practices that are pertinent to all services provided under this Agreement for a minimum of six years from the termination of this Agreement.

**11.0 COMPLIANCE; EQUAL OPPORTUNITY.** During the performance of this Agreement, the Instructor must abide by all applicable laws, statutes, ordinances, rules, and regulations. The Instructor shall not discriminate against any student, employee or applicant for employment because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, disability, or age.

**12.0 NOTICES.** Any notices permitted or required by this Agreement shall be deemed given when personally delivered or upon deposit in the United States mail, first class and postage fully prepaid, and addressed to:

The City:	The City of Lake Elmo 3880 Laverne Avenue North Lake Elmo, MN 55042 Attn: City Administrator
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The Instructor:	Minnesota Tennis Camps
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C/O Alexander Krol  
6228 Russell Avenue South  
Richfield, MN 55423

Or such other address as either party may provide to the other by notice given in accordance with this provision.

**13.0 APPLICABLE LAW.** The execution, interpretation, and performance of this Agreement will, in all respects, be controlled and governed by the laws of Minnesota.

**14.0 ASSIGNMENT.** The Instructor may not assign this Agreement without first obtaining the express written consent of the City.

**15.0 ENTIRE AGREEMENT; AMENDMENTS.** This Agreement constitutes the entire Agreement between the Parties, and no other agreement prior to or contemporaneous with this Agreement shall be effective, except as expressly set forth or incorporated herein. Any purported amendment to this Agreement is not effective unless it is in writing and executed by both Parties.

**16.0 WAIVERS.** By entering into this Agreement, the City does not waive its entitlement to any immunities under statute or common law. Any waiver by either party of a breach of any provision of this Agreement will not affect, in any respect, the validity of the remainder of this Agreement.

**17.0 SEVERABILITY.** The provisions of this Agreement are severable. If any portion of this Agreement is, for any reason, held by a court of competent jurisdiction to be contrary to law, such decision will not affect the remaining provisions of the Agreement.

**18.0 HEADINGS.** The headings contained in this Agreement have been inserted for convenience of reference only and shall in no way define, limit, or affect the scope and intent of this Agreement.

[signature page to follow]

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

**CITY OF LAKE ELMO:**

By: \_\_\_\_\_  
Mike Pearson  
Its: Mayor

By: \_\_\_\_\_  
Julie Johnson  
Its: City Clerk

**INSTRUCTOR:**

By: \_\_\_\_\_  
Alexander Krol