Minutes – Executive Policy Committee – October 18, 2017

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – October 10, 2017

Item No. 9 Amendment to the Lease Agreement between the City of Winnipeg and NRG Athletes Therapy Fitness Inc. at 745 Kingsbury Avenue and Proposed Amendment to the Grant Agreement between the City of Winnipeg and Garden City Community Centre

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development and submitted the following to Council:

1. That the proposed terms and conditions attached as Schedule A to amend the Lease Agreement between NRG and the City dated November 10, 2015 in favour of NRG for the purpose of increasing the leased area as shown on Misc. Plan No. 12815/6, attached as Schedule C, be approved.

2. Subject to approval of Recommendation No. 1 above, that an amendment of the Grant Agreement between GCCC and the City dated April 11, 2017 to reflect the increase of the lease area and lease revenue as proposed in Recommendation No. 1 be approved.

3. That the City enter into, execute and deliver a Lease Amending Agreement with NRG and a Grant Amending Agreement with GCCC and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

4. That authority be delegated to the Chief Administrative Officer to negotiate and approve the final terms and conditions of the Lease Amending Agreement, Grant Amending Agreement and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

5. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report – Standing Policy Committee on Property and Development, Heritage and Downtown Development – October 10, 2017

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

That the recommendation of the Standing Policy Committee on Property and Development, Heritage and Downtown Development be concurred in and forwarded to Council.

Carried

STANDING COMMITTEE RECOMMENDATION:

On October 10, 2017, the Standing Policy Committee on Property and Development, Heritage and Downtown Development concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

Title: **Amendment to the Lease Agreement between the City of Winnipeg and NRG Athletes Therapy Fitness Inc. at 745 Kingsbury Avenue and Proposed Amendment to the Grant Agreement between the City of Winnipeg and Garden City Community Centre**.

Critical Path: **Standing Policy Committee on Property and Development, Heritage and Downtown Development - Executive Policy Committee - Council**

AUTHORIZATION

Author	Department Head	CFO	CAO
B. Erickson	J. Kiernan	B. D'Avignon A/CFO	M. Jack A/CAO

EXECUTIVE SUMMARY

This report requests approval to amend an existing Lease Agreement between NRG Athletes Therapy Fitness Inc. ("NRG") and the City of Winnipeg ("City") for the purpose of increasing NRG's current lease area. NRG requires the additional area in order to satisfy the growing demand for a sport medical doctor within the northern part of Winnipeg.

This report also requests approval to amend a Grant Agreement between the Garden City Community Centre ("GCCC") and the City that enables GCCC to act as an agent for the City in the collection and retention of lease revenues in order to reflect the increase in lease area and lease revenue from the amendment of the Lease Agreement.

RECOMMENDATIONS

1. That the proposed terms and conditions attached as Schedule A to amend the Lease Agreement between NRG and the City dated November 10, 2015 in favour of NRG for the purpose of increasing the leased area as shown on Misc. Plan No. 12815/6, attached as Schedule C, be approved.

2. Subject to approval of Recommendation No. 1 above, that an amendment of the Grant Agreement between GCCC and the City dated April 11, 2017 to reflect the increase of the lease area and lease revenue as proposed in Recommendation No. 1 be approved.

3. That the City enter into, execute and deliver a Lease Amending Agreement with NRG and a Grant Amending Agreement with GCCC and such other agreements as determined necessary by the City Solicitor/Director of Legal Services to implement the intent of the foregoing (the "Ancillary Agreements").

4. That authority be delegated to the Chief Administrative Officer to negotiate and approve the final terms and conditions of the Lease Amending Agreement, Grant Amending Agreement and the Ancillary Agreements, in accordance with this report and such other terms and conditions deemed necessary by the City Solicitor/Director of Legal Services to protect the interests of the City.

5. That the proper officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

REASON FOR THE REPORT

In accordance with the Council Order of July 18, 1979, the Standing Policy Committee on Property and Development shall authorize the leasing or rental of City property for which the Director of Planning, Property and Development has no authority. In this regard, the Department has negotiated for a lease amending agreement for GCCC. This report seeks the approval of the lease as negotiated.

Council approval is required for all grants.

IMPLICATIONS OF THE RECOMMENDATIONS

The Department has determined that there is no general, policy, regulatory, environmental or human resource implications to entering into a Lease Amending Agreement for the area outlined on Schedule C.

The proposed amendment will increase the existing “Leased Area” as outlined on Misc. Plan No. 12815/6 from 5,657 sq. ft. to 6,023.73 sq. ft. This will automatically decrease GCCC’s heated square footage, thereby decreasing the Universal Funding Formula (“UFF”) rate awarded to the GCCC.

In addition, the proposed amendment to the Grant Agreement will allow the GCCC to receive additional lease revenues generated from NRG, to help offset operating costs within the facility.

HISTORY/DISCUSSION

On March 26, 2014, Council approved the proposal to develop the multi-pad arena development at the Garden City Community Centre: “The Seven Oaks Arena Project” (“SOAP”).

On June 27, 2014, the City entered into a funding agreement with GCCC setting out the terms and conditions pursuant to which City and Province of Manitoba funding is to be provided to the GCCC for the construction of the SOAP. Included in the funding agreement was a provision that the GCCC receive, among other revenues, lease revenues.

In October 2014, NRG expressed an interest in leasing a portion of the completed arena located at 745 Kingsbury Avenue, as referenced on Misc. Plan No. 12815/4, attached as Schedule B for the purpose of a fitness centre.

The Public Service negotiated proposed terms and conditions for a Lease Agreement in favour of NRG for use of the property, which were approved by Council on July 15, 2015. The July 15, 2015 Council decision was amended by Council on December 9, 2015, to include the authority for GCCC to act as the City's agent to collect and retain the lease revenues for the purpose of offsetting operational costs at the facility.

On February 7, 2017, NRG contacted the City and requested an increase in lease area, to enable them to meet the demand for both training and therapy services within the community. The additional lease area will be renovated and used for the purpose of a medical clinic.

The proposed amendment to the Lease Agreement with NRG and the amendment to the Grant Agreement with the GCCC are recommended for approval in accordance with the proposed terms and conditions as outlined herein.

FINANCIAL IMPACT

Financial Impact Statement

Date: September 1, 2017

Project Name:

First Year of Program 2017

Proposed Amendment to the Lease Agreement between the City of Winnipeg and NRG Athletes Therapy Fitness Inc. at 745 Kingsbury Avenue and Proposed Amendment to the Grant Agreement between the City of Winnipeg and Garden City Community Centre

	2017	2018	2019	2020	2021
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ 554	$ 3,395	$ 3,487	$ 877	$ -
Less: Incremental Revenue/Recovery	2,024	3,395	3,487	877	-
Net Cost/(Benefit)	$ (1,470)	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	(1,470)	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Incremental revenues in 2017 represent lease payments for the incremental 366.73 s.f. of leased area effective November 1, 2017 + a one-time document preparation fee. Revenues from 2018 to the end of the 5-year term on March 31, 2020 represent incremental lease payments only. Incremental lease payments are offset by equivalent grants to the Garden City Community Centre. Municipal taxes and any other fees that arise from this amending agreement are not material and have been excluded from this analysis.

"Original signed by"
Mike McGinn, CPA, CA
Manager of Finance

CONSULTATION

This Report has been prepared in consultation with:

Legal Services Department (as to legal issues)
Risk Management, Corporate Finance
Community Services Department

OURWINNIPEG POLICY ALIGNMENT

Section 01-5- Recreation

Direction 1: Promote and enable opportunities for all age groups to be active as part of their daily lives

Direction 6: Plan for sustainable and connected recreation and leisure infrastructure through maximizing the use of existing facilities.

SUBMITTED BY

Department:	Planning, Property and Development
Division:	Municipal Accommodations
Prepared by:	Charles Osondu, Property Administrator
Date:	Sept 12, 2017
File No:	MA2017-180

Attachments:

Schedule 'A'	Proposed Terms and Conditions
Schedule 'B'	Misc. Plan No. 12815/4
Schedule 'C'	Misc. Plan No. 12815/6

o:\reports directive\municipal accommodations\leases\2017\ma2017-180 - proposed amendment to lease btwn cow & nrg athletes therapy fitness inc. at 745 kingsbury ave & proposed amendment to grant agrmnt btwn cow and garden city cc.docx

SCHEDULE A

PROPOSED TERMS AND CONDITIONS TO AMEND THE LEASE AGREEMENT FOR 745 KINGSBURY AVENUE BETWEEN THE CITY OF WINNIPEG AND NRG ATHLETES THERAPY FITNESS INC.

Landlord: 1. The City of Winnipeg (the "City")

Tenant: 2. NRG Athletes Therapy Fitness Inc. (the "Tenant")

Purpose 3. To amend the original Lease Agreement between the City of Winnipeg and the Tenant dated November 10, 2015 (hereinafter referred to as the "Principal Agreement").

Effective Amendment Date: 4. The first day of the month following approval from Council or its delegated authority or such other date as mutually agreed upon and approved by the Director of Planning, Property and Development, whichever is later.

Special Conditions: To amend the Principal Agreement as follows:

5. To amend the definition of "Leased Premises" as defined in the Principal Agreement, to replace Misc. Plan No. 12815/4 attached to the Principal Agreement (attached hereto as Schedule "B") with Misc. Plan No. 12815/6 (attached hereto as Schedule "C"), and to amend the annual and monthly rental rate.

6. To strike out the following words, add the underlined and bolded words and amend the second paragraph of the preamble as follows:

*AND WHEREAS the Tenant has applied to the City to lease a portion of the Building on the Land, as shown ~~shaded in grey and identified as "Lease Area 5657 square feet - Fitness Tenant at 745 Kingsbury Avenue" on Misc. Plan No. 12815/4~~ **outlined in a solid line and identified as "Total Lease Area: 6,023.73 ft²" on Misc. Plan No. 12815/6,** attached hereto as Schedule "A", to be used for the purposes of the operation of a fitness facility for the training and rehabilitation of citizens and athletes (hereinafter referred to as the "Leased Premises");*

7. The following is added after Sub-Section 1.00(e):

*(e.1) **"Effective Amendment Date"** means the first date of the*

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month following approval from Council or its delegated authority of the terms and conditions of the Lease Amending Agreement, or such other date as mutually agreed upon and approved by the Director, whichever is the latter.

8. To strike out the following words, add the underlined and bolded words and amend Section 1.00(l) as follows:

*"Leased Premises" means that portion of the Land of approximately ~~5,657~~**6,023.73** square feet of space on the second floor shown ~~shaded in grey and identified as "Lease Area 5657 square feet - Fitness Tenant at 745 Kingsbury Avenue, as shown on Misc. Plan No. 12815/4~~ **outlined in a solid line and identified as "Total Lease Area: 6,023.73 ft² on Misc. Plan No. 12815/6,** attached hereto as Schedule "A";*

9. To strike out the following words, add the underlined and bolded words and amend Section 2.01(a) as follows:

*Schedule "A" - Misc. Plan No. ~~12815/4~~**12815/6** of the Leased Premises.*

10. Sub-Sections 3.06(c), 3.06(d) and 3.06(e) are replaced with the following, respectively:

3.06(c) Year Three: $9.07/ square foot, $51,308.99 per annum plus GST, payable in monthly installments of $4,275.75 plus GST, beginning on April 1, 2017; and

> *(ii) Beginning on the Effective Amendment Date, the Tenant shall pay an additional $3,326.24 per annum plus GST for Year Three, payable in additional monthly installments of $277.18 plus GST (for a total of $54,635.23 per annum plus GST, payable in monthly installments of $4,552.93 plus GST beginning on the Effective Amendment Date);*

3.06(d) Year Four: $9.32/ square foot, $56,141.16 per annum plus GST, payable in monthly installments of $4,678.43, plus GST, beginning on April 1, 2018; and

3.06(e) Year Five: $9.57/ square foot, $57,647.09 per annum plus GST, payable in monthly installments of $4,803.92, plus

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GST, beginning on April 1, 2019.

11. All other terms and conditions of the Principal Agreement to remain unchanged.

Document Preparation Fee:

12. The Tenant will pay a one-time Document Preparation Fee in the amount of $1,470.00 plus GST, payable within 30 days of the approval of these terms and conditions and only payable in the event that the Tenant does not meet the criteria set out in the Non-Monetary Grant Policy.

Other:

13. The Tenant shall enter into a formal agreement with the City embodying the foregoing Proposed Terms and Conditions and such other Terms and Conditions as the Director of Legal Services deems necessary and in a form satisfactory to the Director of Legal Services

14. **The proposed terms and conditions of the proposed Lease Amending Agreement contained herein, are subject to the approval of Council, or its delegated authority, and are not binding until such time as that approval is obtained.**

I, Scott Miller, am duly authorized to act on behalf of NRG Athletes Therapy Fitness Inc., and hereby agree that NRG Athletes Therapy Fitness Inc., will enter into a Lease Amending Agreement with the City of Winnipeg for the use of the property identified as "Total Lease Area – 6,023.73 ft^2" on the attached Misc. Plan No. 12815/6 and in accordance with the proposed terms and conditions as outlined herein.

SIGNATURE	**DATE** Aug 9, 2017
Scott Miller **NAME(Please print)**	**POSITION**
SIGNATURE	**DATE**
NAME(Please print)	**POSITION**

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Please provide the following tenant contact information:

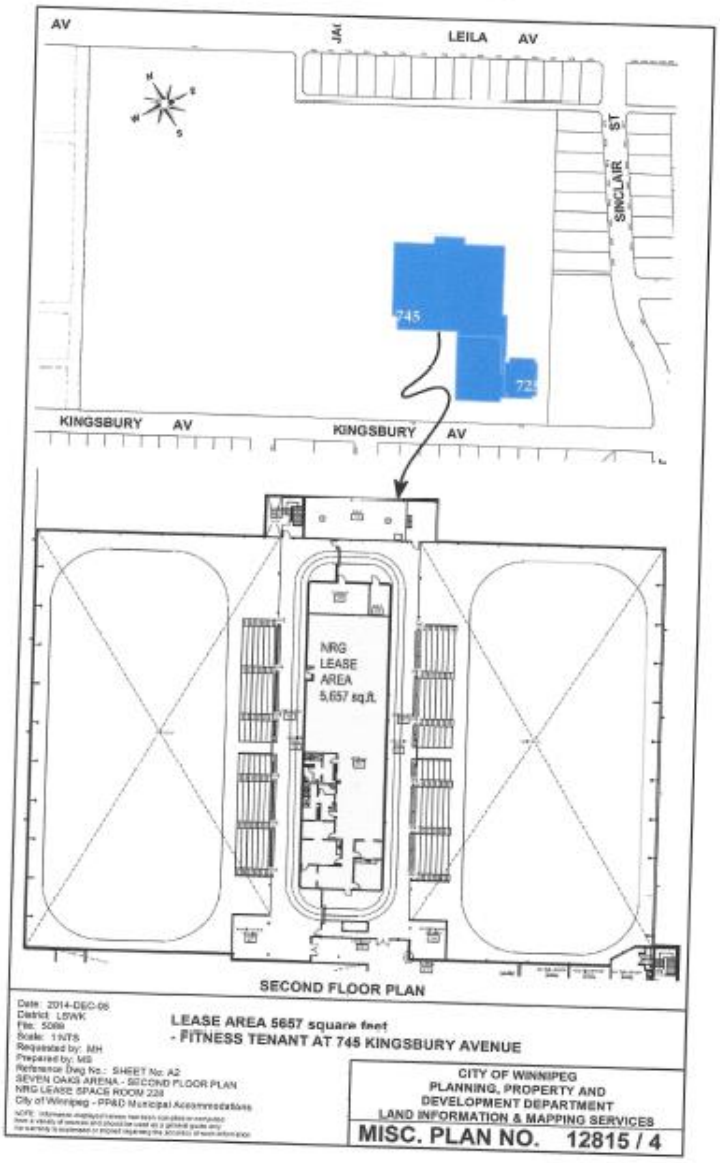
Contact Person: Scott Miller

Daytime: 9AM - 4pm Phone No.: 204-783-9578

After Hours: 4pm - 10pm Phone No.: 204-479-7943

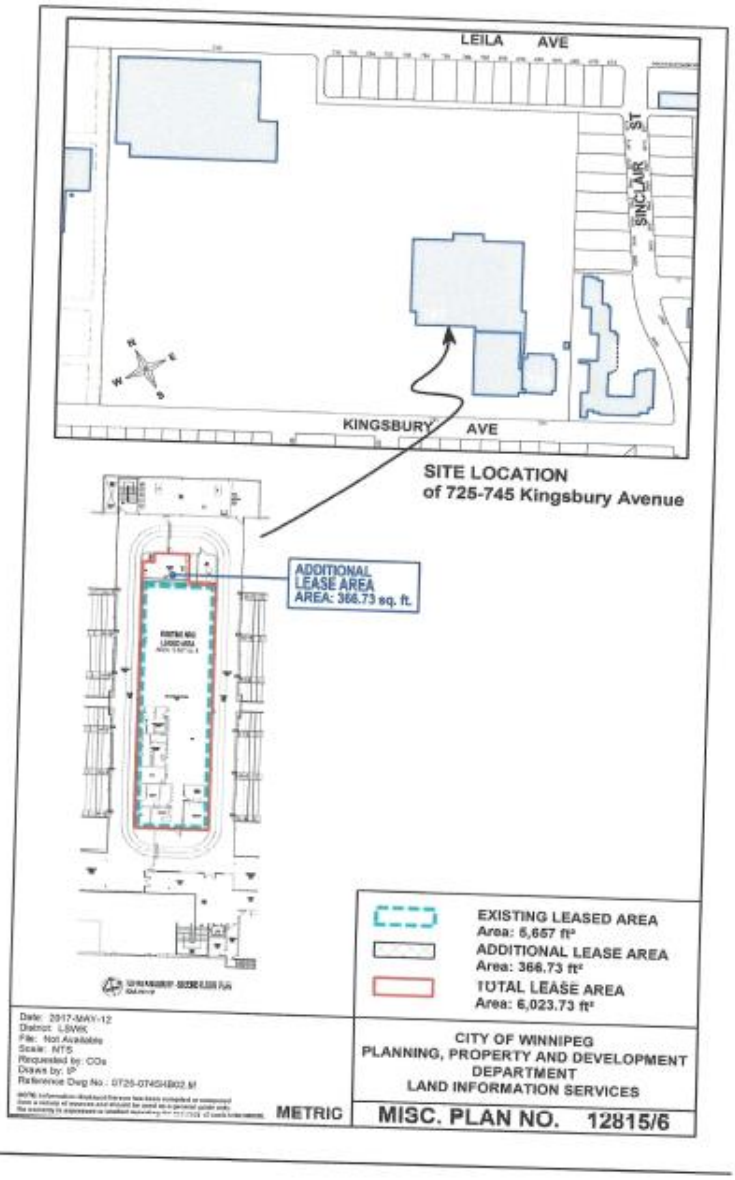
E-mail Address: Scott@nrgathletes.ca

SCHEDULE B



Initials

SCHEDULE C



Initials