Agenda – Council – November 25, 2009

Report – Standing Policy Committee on Protection and Community Services – November 9, 2009

Item No. 1 Memorandum of Understanding between the Manitoba Public Insurance Corporation and the City of Winnipeg – Winnipeg Police Service 2009 RoadWatch Program
eFile GF-2

STANDING COMMITTEE RECOMMENDATION:

On November 18, 2009, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submits the following to Council:

1. That the City of Winnipeg enter into a Memorandum of Understanding with Manitoba Public Insurance Corporation, allowing the 2009 RoadWatch Program to proceed.

2. 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 Protection and Community Services – November 9, 2009

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On November 18, 2009, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Protection and Community Services and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On November 9, 2009, the Standing Policy Committee on Protection and Community Services concurred in the recommendation of the Winnipeg Public Service and submitted the matter to the Executive Policy Committee and Council.

ADMINISTRATIVE REPORT

ISSUE: **MOU between the Manitoba Public Insurance Corporation and the City of Winnipeg for the Winnipeg Police Service 2009 RoadWatch Program**

Critical Path: **Standing Policy Committee on Protection and Community Services**

Executive Policy Committee
Council

AUTHORIZATION

Author	Department Head	CFO	CAO
M. Musgrove	Chief K. McCaskill	n/a	A. Robinson Deputy CAO

RECOMMENDATIONS

That the City of Winnipeg enters into the Memorandum of Understanding (MOU) with Manitoba Public Insurance Corporation (MPI), allowing the 2009 RoadWatch Program to proceed.

IMPLICATIONS OF THE RECOMMENDATIONS

Manitoba Public Insurance will fund the WPS officers required to establish the highly visible checkstop events. No cost will be incurred by the WPS for this program.

HISTORY

Since the late 1990s, the City of Winnipeg has entered into agreements with the Manitoba Public Insurance Corporation (MPI) to fund the Winnipeg Police Service (WPS) RoadWatch initiatives.

A Memorandum of Understanding (MOU) has been written to address the respective obligations of Manitoba Public Insurance (MPI) and the Winnipeg Police Service in anticipation of the 2009 RoadWatch Program. During the initiative that runs from May 1, 2009 until November 30, 2009, throughout Winnipeg, 8 (eight) RoadWatch checkstop events (*Traditional High Visibility Operation*) and eighteen (18) checkstop vehicle events (*Area Saturation Operation*) will occur.

On the designated campaign days, WPS members involved in RoadWatch will be stopping motorists of interest to confirm compliance with applicable laws – particularly impaired driving, speeding and seatbelt usage. As stated in the MOU, the joint effort "will benefit the citizens of Manitoba and the customers of Manitoba Public Insurance by:

- Reducing the number of collisions, injuries, and deaths attributed from these driving offences,
- Increasing the visibility and public awareness of random roadside sobriety checks and,
- Increasing the perceived risk of apprehension for various driving infractions."

As addressed in the MOU, no cost of the initiative will be incurred by the Service. Funding from MPI will provide for deployment of off-duty members to highly visible locations throughout Winnipeg, with the benefit of supplementing the current level of traffic enforcement.

FINANCIAL IMPACT

Financial Impact Statement

Date: August 25, 2009

Project Name: MPI Roadwatch

First Year of Program 2009

	2009	2010	2011	2012	2013
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	$ 67,628	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	67,628	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: There is no financial impact associated with this project as all costs are fully recoverable for 26 days

original signed by Ron Smolik Aug 25/09
Controller/Manager of Finance

CONSULTATION

In preparing this Report there was consultation with:

SUBMITTED BY

Department:	Winnipeg Police Service
Division:	Organizational Development, Division 32
Prepared by:	M. Musgrove, Research Analyst
Date:	October 30, 2009
File No.	ODS 09 – 092



RoadWatch MOU

Manitoba Public Insurance

This Service Agreement made as of the 1st day of May, 2009.

BETWEEN:

THE MANITOBA PUBLIC INSURANCE CORPORATION

(called "Manitoba Public Insurance")

- and -

THE CITY OF WINNIPEG

(called the "City")

WHEREAS:

A. The City operates the Winnipeg Police Service ("WPS");

B. Manitoba Public Insurance and the City, through WPS, each wish to increase public road safety and reduce insurance costs for the public by reducing the incidence of Criminal Code and Highway Traffic Act offences;

C. The parties believe that increased enforcement of existing laws against impaired driving, speeding, and seatbelt usage using "RoadWatch" random roadside checkstops, will benefit the citizens of Manitoba and the customers of Manitoba Public Insurance by:

   (a) reducing the number of collisions, injuries, and deaths attributed from these driving offences;

   (b) increasing the visibility and public awareness of random roadside sobriety checks; and,

   (c) increasing the perceived risk of apprehension for various driving infractions;

D. The City and WPS, with funding from Manitoba Public Insurance to cover the overtime portion of wage costs of trained police personnel from WPS and its partners, will be able to provide additional checkstops in the area, meeting the stated goals of both parties.

THE PARTIES THEREFORE AGREE AS FOLLOWS:

1.0 TERM

1.1 The term of this Agreement ("the Term") shall commence on May 1, 2009 and shall end on November 30, 2009.

2.0 ROADWATCH SERVICES

2.1 In this Agreement, "RoadWatch" means an organized enforcement activity coordinated by WPS to detect infractions – particularly of impaired driving, speeding and seatbelts usage laws - by drivers of motor vehicles, to the satisfaction of Manitoba Public Insurance. The enforcement activity shall take place at specific locations where "checkstops" shall be set up by WPS where motorists of interest shall be stopped to confirm compliance with applicable laws.

2.2 The City shall cause WPS to conduct a total of eight (8) RoadWatch checkstop events *(a Traditional High Visibility Operation)* on the following dates in 2009: July 1st to July 3rd (inclusive), July 31st to August 2nd (inclusive) and September 4th to September 5th (inclusive). Each checkstop event shall be ten (10) hours in duration. For each checkstop event, the City shall cause WPS to deploy eight (8) constables, who will each be deployed for an eight (8) hour period during each event, and one (1) sergeant, who will be deployed for the full ten (10) hours of each event. The City shall cause WPS to position the checkstop vehicles in high visibility locations, and the officers shall stop and check vehicles on mass by forming the "traditional line of officers". The checkstop vehicles will be relocated throughout a given Roadwatch checkstop event during which time some area saturation enforcement will take place between the setting up of locations.

2.3 In addition to the number of RoadWatch checkstop events referred to in Section 2.2, the City shall cause WPS to deploy two (2) constables and one (1) sergeant to be assigned to a checkstop vehicle *(an Area Saturation Operation)* for eighteen (18) events on the following dates in 2009: August 12th to August 16th (inclusive), August 26th to August 31st (inclusive), September 9th to September 12th (inclusive) and September 23rd to September 26th (inclusive). The constables shall each be deployed

for an eight (8) hour period on each of the above dates, and the sergeant shall be deployed for a ten (10) hour period on each of the above dates. The constables and the sergeant shall conduct "area saturation" enforcement and shall be available to encourage and assist patrol officers with detection, apprehension and processing of impaired drivers.

2.4 The City shall cause WPS to supplement their current level of traffic enforcement with RoadWatch checkstops using off-duty officers and deploying those officers to high visibility locations throughout Winnipeg, to the reasonable satisfaction of Manitoba Public Insurance.

2.5 At least one officer at a given RoadWatch checkstop location shall be trained in using the breath testing equipment that is being used at the said checkstop. In addition, the City and WPS shall supply such patrol cars, checkstop vans, alcohol breath testing equipment and other equipment as is reasonably necessary to adequately perform RoadWatch checkstop services.

2.6 The City and WPS shall be responsible for the appropriate staffing of the RoadWatch checkstops.

2.7 While performing Roadwatch checkstop duties, officers shall distribute educational material of Manitoba Public Insurance's choosing to motorists, in a manner that shall not compromise the safety of the said officers or of the general public.

2.8 The WPS Public Information Officer will notify the public of RoadWatch activities and provide updated media releases as WPS deems fit. Where WPS wishes to make a statement or release materials that references Manitoba Public Insurance's participation in RoadWatch, WPS shall first consult Manitoba Public Insurance and obtain Manitoba Public Insurance's approval of the proposed content of such statements or materials prior to releasing same to the public.

3.0 CALCULATION AND TIMING OF PAYMENTS

3.1 For Roadwatch services satisfactorily completed, Manitoba Public Insurance will pay the City an amount equal to the overtime (time and a half) portion of wages paid to officers, as a result of working hours spent by such officers on the RoadWatch program. For the purposes of this clause and for greater certainty, the time and a half hourly rate for a constable is $57.47 and the time and a half hourly rate for a sergeant is $63.68.

3.2 For the purposes of clause 3.1 the following criteria shall apply:

(a) "working hours" shall include reasonable time spent by officers setting up and taking down RoadWatch checkstops, including time spent moving a RoadWatch checkstop from one location to another during a particular shift, and all normal breaks to which the officers would otherwise be entitled;

(b) "working hours" shall not include:

(i) time spent by officers reassigned from a RoadWatch checkstop to other tasks; or
(ii) time spent by the officers on investigations unrelated to the RoadWatch program; or
(iii) court appearances relating to RoadWatch activity.

(c) If a WPS officer participates in the RoadWatch checkstop of another participating police agency, the city shall cause WPS to notify Manitoba Public Insurance. In such notification, WPS shall provide the WPS officer's name and hours worked, so as to ensure that WPS members are paid from the WPS RoadWatch budget;

(d) From time to time, WPS may invite non-WPS officers to assist WPS in conducting WPS Roadwatch checkstops. WPS will notify Manitoba Public Insurance of the names of, and amounts due to, the non-WPS officers, along with the name of the police agencies of the said officers.

(e) Where the non-WPS officer is from a police service that is not a participating Roadwatch police service, upon verification, Manitoba Public Insurance will arrange for separate payment for services provided.

(f) Where the non-WPS officer is from a different participating Roadwatch police service, the payment will be made from the said police service's Roadwatch budget.

(g) WPS shall include the Manitoba Public Insurance payments to non-WPS officers in the reconciliation of the WPS RoadWatch budget.

3.3 Notwithstanding any other provision of this Agreement, the maximum amount payable by Manitoba Public Insurance to the City for RoadWatch services provided during the term of this Agreement shall be Sixty-Eight Thousand ($68,000.00) Dollars.

3.4 The City shall cause WPS to submit monthly invoices to Manitoba Public Insurance, supported by such supporting documents, vouchers, statements and receipts as may be requested by Manitoba Public Insurance acting reasonably. Without limiting the generality of the foregoing the WPS monthly invoices shall include:

(a) the dates and times of the RoadWatch checkstops during the preceding month;

(b) the dollar amounts claimed for the said month; and

(c) any other information which the City and WPS has agreed to provide to Manitoba Public Insurance.

3.5 Manitoba Public Insurance will pay all invoices within thirty (30) days after receipt. Those invoiced amounts not paid by Manitoba Public Insurance within thirty (30) days of receipt and approval, shall bear interest from the thirty-first (31st) day at the prime rate in effect on that day at the Winnipeg main branch of the Bank of Montreal.

3.6 The City and WPS undertake to submit all invoices by no later than December 31, 2009. Invoices may be faxed or mailed to Manitoba Public Insurance at the following fax number or address:

RoadWatch Coordinator
Manitoba Public Insurance Road Safety Department
P.O. Box 6300
802-234 Donald Street
Winnipeg, MB R3C 4A4

Telephone - (204) 985-8001
Facsimile - (204) 985-7652

3.7 Manitoba Public Insurance shall not be responsible for payment of any other expenses incurred by the City or WPS in the performance of this Agreement.

3.8 Where not tax-exempt, Manitoba Public Insurance shall also pay all applicable sales and use taxes including Provincial Retail Sales Tax and Goods and Services Tax. Where tax-exempt, Manitoba Public Insurance shall provide the City with the applicable exemption number and/or certificate, as required.

3.9 Manitoba Public Insurance shall only be obligated to pay the City for RoadWatch services rendered up to and including the effective date of termination.

4.0 DATA COLLECTION FORMS

4.1 The City shall cause WPS to complete the RoadWatch Reporting Forms, in a format agreed upon by the parties, within seven (7) calendar days after each RoadWatch event. The forms may be faxed or mailed to Manitoba Public Insurance at the facsimile number or address set out in Section 3.6.

5.0 REPRESENTATIONS OF THE CITY

5.1 The City represents and warrants that it has the necessary power and authority to enter into this Agreement and to carry out all of the obligations set out in this Agreement.

5.2 The City represents and warrants that it shall obtain all necessary resolutions, approvals, and ratifications in order to be legally bound by every term and condition of this Agreement.

5.3 The City agrees to perform any further acts and execute and deliver any documents that may be reasonably necessary in order to fully carry out the provisions of the Agreement and to be legally bound by its terms.

6.0 INDEMNIFICATION OF MANITOBA PUBLIC INSURANCE

6.1 The City covenants and agrees to indemnify and save Manitoba Public Insurance harmless of and from any and all losses, claims, damages, causes of action, demands or liabilities arising by virtue of

(a) the breach or default of the City (including a breach or default by WPS) of any term of this Agreement; or

(b) any negligent or willful act or omission of the City or WPS or any of its officers, employees, partners, subcontractors, agents or volunteers; or

(c) any claim resulting from any officer(s), employee(s), partner(s) sub-contractor(s), agent(s), or volunteer(s) of the City or WPS; or

(d) any claim resulting from any member of the public arising out of the performance of this Agreement.

The above includes all costs and expenses associated therewith, including reasonable solicitors' fees.

7.0 DISCLOSURE OF INFORMATION

7.1 The City acknowledges that *The Freedom of Information and Protection of Privacy Act* (Manitoba) ("**FIPPA**") and *The Personal Health Information Act* (Manitoba) ("**PHIA**") each impose obligations on MPI to hold "personal information" and "personal health information", as those terms are defined in FIPPA and PHIA respectively, in the strictest of confidence.

7.2 The City acknowledges that FIPPA prohibits MPI from collecting, using, or disclosing "personal information" except in accordance with FIPPA, and that PHIA prohibits MPI from collecting, using, or disclosing "personal health information" except in accordance with PHIA.

7.3 Subject to any other allowable disclosures under this Agreement, MPI will not disclose any documents supplied by the City to MPI to third parties, unless such disclosure is compelled by the terms of FIPPA, PHIA, other applicable legislation, by order of a court of competent jurisdiction, or by other valid legal process (a "**Permitted Disclosure**").

7.4 The City acknowledges that MPI may make a Permitted Disclosure, and also acknowledges that this Agreement, or any provision(s) of this Agreement may form part of a Permitted Disclosure.

7.5 In no event will MPI or its directors, officers, partners, employees, subcontractors, agents or any other representatives be liable for any losses, claims, damages, costs, causes of action, demands or liabilities arising in any way out of, or in any way relating to a Permitted Disclosure.

8.0 TERMINATION

8.1 Either party may terminate this Agreement at any time by giving fourteen (14) days' prior notice in writing to the other party.

9.0 DISPUTE RESOLUTION

9.1 In the case of any dispute between Manitoba Public Insurance and the City, including WPS, as to their respective rights and obligations under this Agreement, the parties shall appoint a single arbitrator to arbitrate the matter in dispute and the decision of the said arbitrator shall be binding and final on the parties. All such disputes shall be governed in accordance with the provisions of *The Arbitration Act* (Manitoba), as may

be amended from time to time, in so far as the said Act is not inconsistent with the provisions of this Agreement.

9.2 If the parties are unable to agree upon one arbitrator, each of the parties shall appoint an arbitrator and each arbitrator so selected shall jointly elect a third arbitrator and they shall hear the matter in dispute and deliver a decision, which decision shall be binding upon the parties.

9.3 If written notice of arbitration is given by one party to the other, naming an arbitrator, and the other party shall fail to agree to the arbitrator or shall fail to name its arbitrator within fifteen (15) days of notice, the arbitrator first named shall be empowered to hear the matter in dispute and deliver a decision which decision shall be final and binding on the parties.

9.4 All costs with respect to the arbitration shall be borne equally between the parties.

10.0 SURVIVAL OF TERMS

10.1 The terms and conditions contained in the Agreement that by their sense and context are intended to survive the performance of the Agreement by the parties shall so survive the completion and performance or termination of the Agreement. Without limiting the generality of the foregoing, the terms and conditions of Section 4.1 shall so survive the performance and termination of this Agreement.

11.0 NO ASSIGNMENT OF AGREEMENT

11.1 Neither party shall assign or transfer this Agreement or any of the rights or obligations under this Agreement without first obtaining written permission from the other.

11.2 No assignment or transfer of this Agreement shall relieve either party of any obligations under this Agreement, except to the extent they are properly performed by such party's permitted assigns.

11.3 This Agreement shall be binding upon the executors, administrators, heirs, successors and any permitted assigns of the parties.

12.0 TIME OF ESSENCE

12.1 Time shall be of the essence of this Agreement.

13.0 ENTIRE AGREEMENT

13.1 This Agreement, including the recitals, contains the entire agreement between the parties with respect to the subject matter hereof. There are no undertakings, representations, or promises, express or implied, other than those contained in this Agreement and none have been relied on.

14.0 AMENDMENTS

14.1 No amendment or change to, or modification of, this Agreement shall be valid unless it is in writing and signed by both parties.

15.0 SEVERABILITY

15.1 If any provision of this Agreement is for any reason invalid, that provision shall be considered separate and severable from this Agreement, and the other provisions of this Agreement shall remain in force and continue to be binding upon the parties as though the invalid provision had never been included in the Agreement.

16.0 APPLICABLE LAW

16.1 This Agreement shall be interpreted, performed and enforced in accordance with the laws of Manitoba. The parties hereby irrevocably and unconditionally attorn to the exclusive jurisdiction of the courts of the Province of Manitoba and all courts competent to hear appeals therefrom.

17.0 FORCE MAJEURE

17.1 Neither party shall be responsible for any failure to comply with or for any delay in performance of the terms of this Agreement where such failure or delay is directly or indirectly caused by or results from events of force majeure beyond the control of either party. These events shall include, but not be limited to fire, flood, earthquake, accident, civil disturbances, acts of terrorism, pandemic, war, rationing, embargoes, strikes or lockouts, delays in transportation, inability to secure necessary materials, parts or components, delay or failure of performance of any supplier or subcontractor, acts of God, or acts of government.

18.0 WAIVER

18.1 Any failure or delay by either party to exercise or partially exercise any right, power or privilege hereunder shall not be deemed a waiver of any of the rights, powers or privileges under this Agreement. The waiver by either party of a breach of any term, condition or provision of the Agreement shall not operate as, or be construed as, a waiver of any subsequent breach thereof.

19.0 REMEDIES

19.1 Except as otherwise provided for in the Agreement, no remedy conferred by any of the specific provisions of the Agreement or available to a party is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given under the Agreement, now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies by either party shall not constitute a waiver of the right to pursue other available remedies.

20.0 HEADINGS

20.1 Paragraph headings used herein are for convenience only, and shall not be deemed to be part of the Agreement.

21.0 INTERPRETATION

21.1 In this Agreement, unless the context clearly otherwise requires:

(a) person includes individuals, firms or corporations;

(b) the singular includes the plural and vice versa;

(c) the male gender includes the female gender and vice versa, and each includes the neuter gender and the neuter gender includes both the male and female genders.

21.2 Should any provision of this Agreement require judicial interpretation, mediation or arbitration, it is agreed that the court, mediator or arbitrator interpreting or construing same shall not apply a presumption that the terms of this Agreement shall be more strictly construed against one party by reason of the rule of construction that a document is to be construed

more strictly against the party who itself or through its agent prepared the Agreement.

22.0 NOTICES

22.1 Any notice or other communication to the City or WPS under this Agreement shall be in writing and shall be delivered personally to the City or WPS or an officer or employee of the City or WPS or sent by registered mail, postage prepaid, to:

Attention: Impaired Countermeasures Coordinator
Winnipeg Police Service
151 Princess Street
Winnipeg, Manitoba R3B 1L1

22.2 Any notice or other communication to Manitoba Public Insurance under this Agreement shall be in writing and shall be delivered or sent by registered mail, postage prepaid to:

Attention: RoadWatch Coordinator
Manitoba Public Insurance
P.O. Box 6300,
802 - 234 Donald Street
Winnipeg, Manitoba R3C 4A4

22.3 Any notice or communication sent by registered mail shall be deemed to have been received on the third business day following the date of mailing. If mail service is disrupted by labour controversy, notice shall be delivered personally.

This Agreement has been executed on behalf of The Manitoba Public Insurance Corporation and by the City of Winnipeg (by its duly authorized representatives).

for **THE MANITOBA PUBLIC INSURANCE CORPORATION**

Per: _____
Marilyn McLaren
President and CEO

Per: _____
Wilf Bedard
Vice-President, Claims Operations & Service Delivery

for **THE CITY OF WINNIPEG**

Per:_____
Mayor

Per:_____
City Clerk

Approved as to details:

_____
Chief of Police

Certified as to form:

_____
City Solicitor/Manager of
Legal Services