Agenda – Council – April 25, 2012

Report – Standing Policy Committee on Protection and Community Services – April 2, 2012

Item No. 1 Nuisance Mosquito Fogging Services Through 2016

STANDING COMMITTEE RECOMMENDATION:

On April 11, 2012, 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 "Service Purchase Agreement for Nuisance Fogging through 2016" be approved for the Rural Municipalities of West St. Paul and East St. Paul for a renewable term of 5 years, and the Chief Administrative Officer be authorized to negotiate and finalize the service sharing agreements.

2. That the Chief Administrative Officer be delegated the authority to negotiate and finalize agreements with any additional municipalities interested in multi-year agreements for "Service Purchase Agreement for Nuisance Fogging."

3. That the Proper Officers of the City do all things necessary to implement the intent of the foregoing.

Report – Standing Policy Committee on Protection and Community Services – April 2, 2012

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On April 11, 2012, 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 April 2, 2012, 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

Title: **NUISANCE MOSQUITO FOGGING SERVICES THROUGH 2016**

Critical Path: **STANDING POLICY COMMITTEE ON PROTECTION AND COMMUNITY SERVICES, EXECUTIVE POLICY COMMITTEE, & COUNCIL**

AUTHORIZATION

Author	Department Head	CFO	CAO
D. Domke, Manager, Parks and Open Space	B.W. Sacher, P.Eng. Director of Public Works	M. Ruta	D. Joshi, COO

RECOMMENDATIONS

- That Council approve the "Service Purchase Agreement for Nuisance Fogging through 2016" for the Rural Municipalities of West and East St. Paul for a renewable term of 5 years, and authorize the CAO to negotiate and finalize the service sharing agreements.
- That Council delegate the authority to the CAO to negotiate and finalize any additional municipalities interested in multi-year agreements for "Service Purchase Agreement for Nuisance Fogging."
- That the Proper Officers of the City do all things necessary to affect the intent of the foregoing.

REASON FOR THE REPORT

- Since this is a multi-year agreement with a regional municipality, the Public Service is recommending that Council approve the agreement.

IMPLICATIONS OF THE RECOMMENDATIONS

- The sale of these services would need to be delivered in a manner that does not compromise the City of Winnipeg's ability to meet the City of Winnipeg's own fogging requirements as a first priority.
- The control of mosquitoes in rural municipalities is beneficial to residents in Winnipeg because it will likely reduce mosquito migration into the city.

HISTORY

- In 2005, the InterMunicipal Shared Services Initiative (IMSS) was approved by Council. Under this agreement, Council delegated authority to the CAO to enter into agreements with Capital Regional Municipalities.
- Since 2008, the Public Works Department has been providing yearly monitoring and nuisance fogging services to interested Capital Region municipalities such as East and West St. Paul.
- In 2011, the Rural Municipalities of West and East St. Paul both requested five year agreements with the City of Winnipeg instead of a one year term.
- Since this is a multi-year agreement, the Public Service recommends that Council approve the agreement with the RMs of West and East St. Paul.
- Other Capital Region Municipalities may also be interested in multi-year nuisance mosquito control services including Headingley, Macdonald, Ritchot, Rosser, Springfield, St. Clements and Tache.
- Council should consider delegating authority to the CAO to enter into these multi-year agreements with other Rural Municipalities as they become interested.

FINANCIAL IMPACT

Financial Impact Statement **Date:** February 21, 2012

Project Name: **First Year of Program** **2012**

NUISANCE MOSQUITO FOGGING SERVICES THROUGH 2016

	2012	2013	2014	2015	2016
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	$ 4,625	$ 4,741	$ 4,860	$ 4,982	$ 5,107
Less: Incremental Revenue/Recovery	13,650	13,991	14,341	14,700	15,068
Net Cost/(Benefit)	$ (9,025)	$ (9,250)	$ (9,481)	$ (9,718)	$ (9,961)
Less: Existing Budget Amounts	(9,025)	(9,250)	(9,481)	(9,718)	(9,961)
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments: Assumes a total of 2 New Jersey Light Traps and 25 hours of fogging services provided per year. The fees and charges shall be increased annually by 2.5%. Associated revenues and expenses are included in the proposed 2012 to 2014 operating budgets.

"Original Signed by D. Stewart, CA"
Manager of Finance & Administration

CONSULTATION

In preparing this report there was consultation with:

Legal Services

SUBMITTED BY

Department: Public Works
Division: Parks and Open Space – Insect Control Branch
Prepared by: D. Domke/T. Stuart, City Entomologist
Date: February 23, 2012 (r)

Attachment:
Attachment #1 – East St Paul "Service Purchase Agreement for Nuisance Fogging through 2016"
Attachment #2 – West St. Paul "Service Purchase Agreement for Nuisance Fogging through 2016"

Attachment #1

SERVICE PURCHASE AGREEMENT
NUISANCE MOSQUITO FOGGING
THROUGH 2016

Dated this _____ day of _____, 2012.

BETWEEN:

THE CITY OF WINNIPEG

(called "Winnipeg")

OF THE FIRST PART

- and –

THE RURAL MUNICIPALITY OF EAST ST PAUL.

(called "the Municipality")

OF THE SECOND PART

WHEREAS the Municipality wishes to purchase the service of mosquito adulticiding to control the population of nuisance mosquitoes at particular urban locations within the Municipality as a benefit for the residents of the Municipality;

AND WHEREAS Winnipeg has the capacity to provide nuisance mosquito adulticiding at urban locations within the boundaries of the Municipality;

AND WHEREAS the provision of nuisance mosquito adulticiding on the terms and conditions set out in this Agreement is consistent with the principles of the InterMunicipal Shared Services Initiative for the Capital Region approved by the Council of the City of Winnipeg in December 2005, namely:

- Government to government;
- Consistent with Winnipeg's existing and future capacity to provide the service; and
- Founded on a strong business case to ensure the efficient delivery of the services in the region;

NOW THEREFORE Winnipeg and the Municipality agree as follows:

Section 1 –Definitions and Interpretation

1(1) In this Agreement,

"AFA Guidelines" means the Adulticiding Factor Analysis Guidelines set out in Schedule B;

"AFA rating" means the total points accumulated under the AFA Guidelines when the conditions identified in the AFA Guidelines are analyzed in respect of a particular location at a particular time;

"buffer zone" means the area adjacent and within 100 metres of an objector's property within which fogging is prohibited by the terms of a Pesticide Use Permit;

"fogging" means the use of Ultra Low Volume (ULV) spray equipment in order to apply Malathion® 95 ULV that has been approved for application within the Municipality under a Pesticide Use Permit;

"Municipal Representative" means the individual identified in section 11 as the representative for the Municipality;

"objector" means a person who is recognized by the Municipality as having validly objected to fogging taking place in the area adjacent and within 100 metres of his or her property under the terms of the Pesticide Use Permit obtained by the Municipality;

"Pesticide Use Permit" means a permit issued to the Municipality by Manitoba Conservation authorizing the application of a pesticide that is designed to control the adult mosquito population in an area;

"urban location" means an area within the boundaries of the Municipality identified on the map set out in Schedule A as an urban location within which fogging may take place;

"Winnipeg Representative" means the employee of the City of Winnipeg identified in section 11 as the representative of Winnipeg.

1(2) Whenever the context so requires, the use of the singular in this Agreement includes the plural and the use of the masculine includes the feminine or neuter.

Section 2 – Winnipeg's Responsibility

2(1) Subject to the terms of this agreement, Winnipeg shall provide nuisance mosquito fogging services

(a) at the urban locations within the Municipality set out in Schedule A to this Agreement,

(b) as often as is authorized in writing by the Municipal Representative, and

(c) using Ultra Low Volume (ULV) spray equipment discharging Malathion® 95 ULV or other approved ULV product that the Municipality has been authorized to apply within the Municipality pursuant to a Pesticide Use Permit.

2(2) The parties agree that Winnipeg's obligation under subsection (1) does not include an obligation to conduct fogging operations

(a) until 24 hours have elapsed after the Municipal Representative has communicated to the City in writing the Municipality's authorization to conduct fogging within one or more of the urban locations;

(b) on private property unless directed in writing by the Municipal Representative to do so;

(c) except between 9:30 p.m. and 6:30 a.m.

2(3) The parties further agree that Winnipeg must comply with the terms and conditions of the Pesticide Use Permit obtained by the Municipality that authorizes the application of Malathion® 95 ULV or other approved ULV product. In particular, the parties agree that Winnipeg will not fog

(a) until and unless the AFA rating determined in accordance with the AFA Guidelines set out in Schedule B for the urban location for which fogging has been authorized is determined by Winnipeg to be "High";

(b) within buffer zones around objectors' properties;

(c) more frequently than permitted by the Pesticide Use Permit;

2(3) Winnipeg has the sole responsibility to determine the AFA rating for any urban location in accordance with the AFA Guidelines set out in Schedule B.

2(4) Winnipeg represents and warrants that:

(a) it shall provide its employees, agents or representatives with supervision, training, equipment (including adequately insured motor vehicles), protective clothing, supplies, materials, chemical agents, and administrative support and shall take all other steps necessary for the proper performance of the fogging services referred to in this Agreement; and

(b) it shall supply competent personnel to perform the fogging services and, in particular, shall ensure that no person is employed by Winnipeg to perform the fogging services unless he or she has received a Province of Manitoba pesticide licence in Core and Mosquito and Biting Fly classifications.

2(5) Winnipeg agrees to monitor each New Jersey Light Trap located in the municipality and to count the numbers of mosquitoes in each trap daily. Winnipeg further agrees to provide to

the Municipality on a daily basis the New Jersey Light Trap counts and the AFA rating for that day for each urban location.

2(6) Winnipeg agrees to provide to the Municipality, within 24 hours after conducting fogging operations, data concerning the locations in which fogging was conducted within the Municipality.

2(7) Winnipeg agrees that, after receiving this information from the Municipality, it will enter into its database the names and addresses, telephone numbers and e-mail addresses of any individuals who wish to register as objectors and wish to have the buffer zone referred to in the Pesticide Use Permit around their properties observed. Winnipeg further agrees that it will observe these buffer zones while conducting fogging operations once 24 hours have elapsed after receiving this information from the Municipality.

Section 3 – Municipality's Responsibility

3(1) The Municipality agrees to provide one New Jersey Light Trap for each urban location identified in Schedule A. If the Municipality lacks sufficient New Jersey Light Traps, it will purchase the necessary Light Traps from Winnipeg.

3(2) The Municipality represents and warrants that it will ensure the provision of all legally-required notices of the fogging program as well as of specific fogging operations to residents of the urban locations in which fogging will take place. The Municipality agrees that Winnipeg is not responsible for providing any notice to any person for any fogging that takes place pursuant to this Agreement and is not responsible for ensuring that proper notice has been provided. In particular, the Municipality agrees that it will not authorize Winnipeg to engage in fogging in the municipality until and unless notice has been provided to residents of the urban locations in which fogging will take place.

3(3) The Municipality agrees to take sole responsibility for obtaining the name, address, telephone number and e-mail address of objectors who wish to have a buffer zone around their property observed and to provide this information to Winnipeg at fax number 986-2121 or by e-mail at icbclerks@winnipeg.ca.

3(4) The Municipality agrees to accept all responsibility for dealing with property owners or residents who have questions or comments about the fogging services as well as media inquiries.

Section 4 – Payments

4(1) If the Municipality purchases one or more New Jersey Light Traps from Winnipeg as required by subsection 3(1), it agrees to pay an annual fee of $3075.00 for each Light Trap, subject to an inflationary increase of 2.5% per year as per subsection 4(4). Payment of the fee must be made by June 15, 2012 and annually each year thereafter up to and including June 15, 2016. This fee is for the purchase price as well as the costs of surveillance and monitoring of the Light Trap by Winnipeg.

4(2) In addition to the payment referred to in subsection (1), the Municipality agrees to pay Winnipeg $300 per hour for each hour that a vehicle equipped with ULV fogging equipment is used to provide fogging services pursuant to this Agreement. Regardless of the actual travel time spent by each vehicle, this hourly rate includes, for each fogging operation, the time it would reasonably have taken for the vehicle to travel to and from the urban location and Winnipeg's facility at 3 Grey Street in the City of Winnipeg.

4(3) Winnipeg agrees to provide to the Municipality a mid-term estimate of the total payments owed to the end of July and a final invoice for all payments owed under this Agreement by October 31, 2012 and each year thereafter up to and including 2016. The Municipality agrees to pay the invoice in full within 30 days of the invoice being sent to the Municipality pursuant to this Agreement.

4(4) The Municipality agrees that the fees and charges referred to in this agreement shall be increased annually by 2.5% per year over the 5 year term of this agreement.

Section 5 – Information and Data

5(1) All information and data acquired by either the Municipality or Winnipeg in the performance of this agreement, and all copyright therein (including moral rights), is the exclusive property of the Municipality. The parties agree that the Municipality is responsible for complying with *The Freedom of Information and Protection of Privacy Act* in respect of this information.

5(2) Notwithstanding subsection (2), the parties agree that Winnipeg has the right to retain such information and data acquired by it for such time as is necessary to comply with the requirements of the Pesticide Use Permit.

Section 6 – Indemnification

6(1) Subject to subsection (2), Winnipeg agrees to indemnify and save harmless the Municipality from and against all claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs, expenses (including all legal fees and disbursements) or amounts required to be paid by law that the Municipality suffers or incurs as a consequence of Winnipeg's failure to carry out its responsibilities and obligations set out in this Agreement.

6(2) The Municipality agrees to indemnify and save harmless Winnipeg from and against all claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs, expenses (including all legal fees and disbursements) or amounts required to be paid by law that Winnipeg suffers or incurs as a consequence of the Municipality's failure to carry out its responsibilities and obligations set out in this Agreement.

Section 7 – Term of Agreement, Termination or Extension

7(1) This Agreement is effective upon execution by both parties and continues until October 31, 2016 unless terminated earlier under subsection (2).

7(2) This agreement may be terminated by either Winnipeg or the Municipality 15 days after providing written notice to the other party of its intention to do so.

7(3) This Agreement may only be extended by written agreement between Winnipeg and the Municipality.

Section 8 – No Assignment of Agreement

8 Neither party shall assign or transfer this Agreement or any of its rights or responsibilities under this agreement, or subcontract any of its responsibilities or obligations, without the express written approval of the other party.

Section 9 – Independent Contractor

9(1) For the purposes of this Agreement, Winnipeg is an independent contractor and this Agreement does not create the relationship of employer and employee or of principal and agent between the Municipality and Winnipeg or any officer, employee or agent of Winnipeg.

9(2) Winnipeg agrees not to incur any expenses or debts on behalf of or make any commitment for the Municipality without the written authorization of the Municipality.

9(3) Winnipeg is responsible for any deductions or remittances required by law.

Section 10 – Entire Agreement

10 This document and the attached Schedules A and B constitute the entire agreement between the parties. There are no undertakings, representations or promises, expressed or implied, other than those contained in this Agreement.

Section 11 – Representatives and Notices

11(1) The following individuals are hereby named as Representatives of Winnipeg and the Municipality:

For Winnipeg:

Taz Stuart
City of Winnipeg Entomologist
Public Works Department
1539 Waverley Street
Winnipeg, MB R3T 4V7
Phone (204) 986-3794
Fax (204) 986-4050

For the Municipality:

Lawrence Morris
Mayor, East St Paul
3021 Birds Hill Road
East St. Paul, MB, R2E 1A7
Fax (204) 654-3798

11(2) Notices and communication by one of the parties to the other must be in writing and either delivered personally, sent by registered mail (postage prepaid) or faxed to the Representative for the other party at the address set out in subsection (1)

11(3) Either party may designate in writing another person as its Representative or may change its address for receiving notices under this Agreement by providing written notice to the other party of this designation. The re-designation or address change takes place as soon as the notice has been received by the other party.

Miscellaneous

12(1) An amendment, change or modification to this Agreement is valid only if it is in writing and signed by both parties.

12(2) This Agreement shall be interpreted, performed and enforced in accordance with the laws of the Province of Manitoba.

12(3) Time is of the essence of this Agreement.

Signed and sealed this _____ day of _____, 2012

For the Municipality:

_____ _____
Mayor Witness

For the City of Winnipeg:

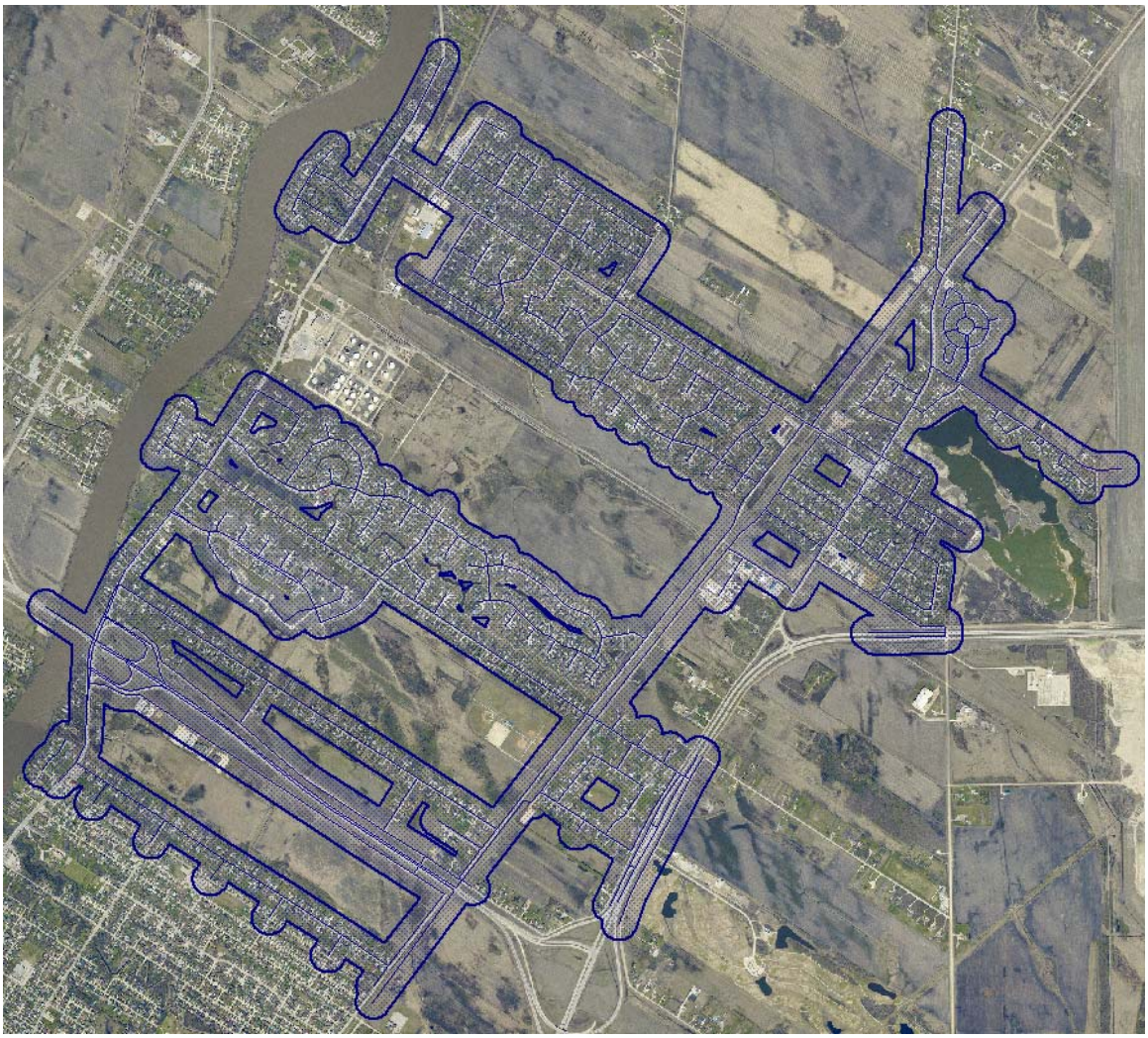
_____ _____
Mayor City Clerk

Approved as to content: Certified as to form:

_____ _____
Director of Public Works Director of Legal Services
and City Solicitor

SCHEDULE A — URBAN LOCATIONS

The locations include the urban areas of Birds Hill and Pritchard Farm within the RM of East St. Paul.



Based on Aerial Photos from 2009.

SCHEDULE B — Adulticiding Factor Analysis Guidelines (AFA)

To define each level of the AFA, the following conditions will be assessed by an Entomologist (not inclusive).

AFA Low—(Total Range is from 6-9)	**Value**
Soil and precipitation conditions have resulted in a cumulative total of less than 2.5 cm of rain and soil saturation is not occurring over the past 7 day period	1
Nuisance mosquito percentages are stable and numbers average 25 or less in the New Jersey Light Traps for 3 consecutive days, from the New Jersey Light Trap located in the urbanized area of the Rural Municipality	1
Average life span of actively feeding nuisance mosquito adults is decreasing	1
Degree Day model (base 14.3 degrees Celsius) threshold is equal to or less than 110	1
Monitoring of the larval development sites indicate less than 25% of mosquitoes at the 1st to 4th stage of larval development and no pupae are present in water bodies	1
Probability of nuisance adult mosquito emergence in 7 days is small	1
AFA Medium—(Total Range is from 10-14)	**Value**
Soil and precipitation conditions have resulted in a cumulative total of between 2.5 cm and 7.5 cm of rain and soil saturation is beginning to occur over the past 7 day period	2
Nuisance mosquito percentages are increasing and numbers average more than 25 in the New Jersey Light Traps for 3 consecutive days, from the New Jersey Light Trap located in the urbanized area of the Rural Municipality	2
Average life span of actively feeding nuisance mosquito adults is increasing	2
Degree Day model (base 14.3 degrees Celsius) threshold is between 110 and 200	2
Monitoring of the larval development sites indicate 25-50% of mosquitoes at the 1st to 4th stage of larval development and pupae are present in water bodies	2
Probability of nuisance adult mosquito emergence in less than 7 days is increasing	2
* A combination of other factors, including but not limited to conditions from outside of the urbanized area of the Rural Municipality, which have resulted in a local substantial adult mosquito population within the urbanized area of the Rural Municipality	2*
AFA High—(Total Range is from 15-18)	**Value**
Soil and precipitation conditions have resulted in a cumulative total of greater than 7.5 cm of rain and soil saturation has occurred over the past 7 day period	3
Nuisance mosquito percentages are high and are substantially greater than the average of 25 female adults, collected using the standard New Jersey Light Traps with 25 watt incandescent bulbs, for 3 consecutive nights, from the New Jersey Light Trap located in the urbanized area of the Rural Municipality	3

Average life-span of actively feeding nuisance mosquito adults is from a recent emergence or a new generation has emerged	3
Degree Day model (base 14.3 degrees Celsius) threshold is greater than 200	3
Monitoring of the larval development sites indicate that more than 50% of mosquitoes at the 1st to 4th stage of larval development and many pupae are present in water bodies	3
Probability of nuisance adult mosquito emergence in less than 3 days is imminent	3
* A combination of other factors, including but not limited to conditions from outside of the urbanized area of the Rural Municipality, which have resulted in a substantial adult mosquito population within the urbanized area of the Rural Municipality	3*

*This factor will only be considered when there is a substantial adult mosquito population within the urbanized areas of the Rural Municipality that is due to a combination of other factors, including but not limited to conditions outside of the urbanized area of the Rural Municipality such as high winds, extensive rainfall or larval sampling that indicates large mosquito populations existing outside of the urbanized area of the Rural Municipality.

Attachment #2

SERVICE PURCHASE AGREEMENT
NUISANCE MOSQUITO FOGGING
THROUGH 2016

Dated this _____ day of _____, 2012.

BETWEEN:

THE CITY OF WINNIPEG

(called "Winnipeg")

OF THE FIRST PART

- and –

THE RURAL MUNICIPALITY OF WEST ST PAUL.

(called "the Municipality")

OF THE SECOND PART

WHEREAS the Municipality wishes to purchase the service of mosquito adulticiding to control the population of nuisance mosquitoes at particular urban locations within the Municipality as a benefit for the residents of the Municipality;

AND WHEREAS Winnipeg has the capacity to provide nuisance mosquito adulticiding at urban locations within the boundaries of the Municipality;

AND WHEREAS the provision of nuisance mosquito adulticiding on the terms and conditions set out in this Agreement is consistent with the principles of the InterMunicipal Shared Services Initiative for the Capital Region approved by the Council of the City of Winnipeg in December 2005, namely:

- Government to government;
- Consistent with Winnipeg's existing and future capacity to provide the service; and
- Founded on a strong business case to ensure the efficient delivery of the services in the region;

NOW THEREFORE Winnipeg and the Municipality agree as follows:

Section 1 –Definitions and Interpretation

1(1) In this Agreement,

"AFA Guidelines" means the Adulticiding Factor Analysis Guidelines set out in Schedule B;

"AFA rating" means the total points accumulated under the AFA Guidelines when the conditions identified in the AFA Guidelines are analyzed in respect of a particular location at a particular time;

"buffer zone" means the area adjacent and within 100 metres of an objector's property within which fogging is prohibited by the terms of a Pesticide Use Permit;

"fogging" means the use of Ultra Low Volume (ULV) spray equipment in order to apply Malathion® 95 ULV that has been approved for application within the Municipality under a Pesticide Use Permit;

"Municipal Representative" means the individual identified in section 11 as the representative for the Municipality;

"objector" means a person who is recognized by the Municipality as having validly objected to fogging taking place in the area adjacent and within 100 metres of his or her property under the terms of the Pesticide Use Permit obtained by the Municipality;

"Pesticide Use Permit" means a permit issued to the Municipality by Manitoba Conservation authorizing the application of a pesticide that is designed to control the adult mosquito population in an area;

"urban location" means an area within the boundaries of the Municipality identified on the map set out in Schedule A as an urban location within which fogging may take place;

"Winnipeg Representative" means the employee of the City of Winnipeg identified in section 11 as the representative of Winnipeg.

1(2) Whenever the context so requires, the use of the singular in this Agreement includes the plural and the use of the masculine includes the feminine or neuter.

Section 2 – Winnipeg's Responsibility

2(1) Subject to the terms of this agreement, Winnipeg shall provide nuisance mosquito fogging services

(a) at the urban locations within the Municipality set out in Schedule A to this Agreement,

(b) as often as is authorized in writing by the Municipal Representative, and

(c) using Ultra Low Volume (ULV) spray equipment discharging Malathion® 95 ULV or other approved ULV product that the Municipality has been authorized to apply within the Municipality pursuant to a Pesticide Use Permit.

2(2) The parties agree that Winnipeg's obligation under subsection (1) does not include an obligation to conduct fogging operations

(a) until 24 hours have elapsed after the Municipal Representative has communicated to the City in writing the Municipality's authorization to conduct fogging within one or more of the urban locations;

(b) on private property unless directed in writing by the Municipal Representative to do so;

(c) except between 9:30 p.m. and 6:30 a.m.

2(3) The parties further agree that Winnipeg must comply with the terms and conditions of the Pesticide Use Permit obtained by the Municipality that authorizes the application of Malathion® 95 ULV or other approved ULV product. In particular, the parties agree that Winnipeg will not fog

(a) until and unless the AFA rating determined in accordance with the AFA Guidelines set out in Schedule B for the urban location for which fogging has been authorized is determined by Winnipeg to be "High";

(b) within buffer zones around objectors' properties;

(c) more frequently than permitted by the Pesticide Use Permit;

2(3) Winnipeg has the sole responsibility to determine the AFA rating for any urban location in accordance with the AFA Guidelines set out in Schedule B.

2(4) Winnipeg represents and warrants that:

(a) it shall provide its employees, agents or representatives with supervision, training, equipment (including adequately insured motor vehicles), protective clothing, supplies, materials, chemical agents, and administrative support and shall take all other steps necessary for the proper performance of the fogging services referred to in this Agreement; and

(b) it shall supply competent personnel to perform the fogging services and, in particular, shall ensure that no person is employed by Winnipeg to perform the fogging services unless he or she has received a Province of Manitoba pesticide licence in Core and Mosquito and Biting Fly classifications.

2(5) Winnipeg agrees to monitor each New Jersey Light Trap located in the municipality and to count the numbers of mosquitoes in each trap daily. Winnipeg further agrees to provide to the Municipality on a daily basis the New Jersey Light Trap counts and the AFA rating for that day for each urban location.

2(6) Winnipeg agrees to provide to the Municipality, within 24 hours after conducting fogging operations, data concerning the locations in which fogging was conducted within the Municipality.

2(7) Winnipeg agrees that, after receiving this information from the Municipality, it will enter into its database the names and addresses, telephone numbers and e-mail addresses of any individuals who wish to register as objectors and wish to have the buffer zone referred to in the Pesticide Use Permit around their properties observed. Winnipeg further agrees that it will observe these buffer zones while conducting fogging operations once 24 hours have elapsed after receiving this information from the Municipality.

Section 3 – Municipality's Responsibility

3(1) The Municipality agrees to provide one New Jersey Light Trap for each urban location identified in Schedule A. If the Municipality lacks sufficient New Jersey Light Traps, it will purchase the necessary Light Traps from Winnipeg.

3(2) The Municipality represents and warrants that it will ensure the provision of all legally-required notices of the fogging program as well as of specific fogging operations to residents of the urban locations in which fogging will take place. The Municipality agrees that Winnipeg is not responsible for providing any notice to any person for any fogging that takes place pursuant to this Agreement and is not responsible for ensuring that proper notice has been provided. In particular, the Municipality agrees that it will not authorize Winnipeg to engage in fogging in the municipality until and unless notice has been provided to residents of the urban locations in which fogging will take place.

3(3) The Municipality agrees to take sole responsibility for obtaining the name, address, telephone number and e-mail address of objectors who wish to have a buffer zone around their property observed and to provide this information to Winnipeg at fax number 986-2121 or by e-mail at icbclerks@winnipeg.ca.

3(4) The Municipality agrees to accept all responsibility for dealing with property owners or residents who have questions or comments about the fogging services as well as media inquiries.

Section 4 – Payments

4(1) If the Municipality purchases one or more New Jersey Light Traps from Winnipeg as required by subsection 3(1), it agrees to pay an annual fee of $3075.00 for each Light Trap, subject to an inflationary increase of 2.5% per year as per subsection 4(4). Payment of the fee must be made by June 15, 2012 and annually each year thereafter up to and including June

15, 2016. This fee is for the purchase price as well as the costs of surveillance and monitoring of the Light Trap by Winnipeg.

4(2) In addition to the payment referred to in subsection (1), the Municipality agrees to pay Winnipeg $300 per hour for each hour that a vehicle equipped with ULV fogging equipment is used to provide fogging services pursuant to this Agreement. Regardless of the actual travel time spent by each vehicle, this hourly rate includes, for each fogging operation, the time it would reasonably have taken for the vehicle to travel to and from the urban location and Winnipeg's facility at 3 Grey Street in the City of Winnipeg.

4(3) Winnipeg agrees to provide to the Municipality a mid-term estimate of the total payments owed to the end of July and a final invoice for all payments owed under this Agreement by October 31, 2012 and each year thereafter up to and including 2016. The Municipality agrees to pay the invoice in full within 30 days of the invoice being sent to the Municipality pursuant to this Agreement.

4(4) The Municipality agrees that the fees and charges referred to in this section shall be increased annually by 2.5% per year over the 5 year term of this agreement.

Section 5 – Information and Data

5(1) All information and data acquired by either the Municipality or Winnipeg in the performance of this agreement, and all copyright therein (including moral rights), is the exclusive property of the Municipality. The parties agree that the Municipality is responsible for complying with *The Freedom of Information and Protection of Privacy Act* in respect of this information.

5(2) Notwithstanding subsection (2), the parties agree that Winnipeg has the right to retain such information and data acquired by it for such time as is necessary to comply with the requirements of the Pesticide Use Permit.

Section 6 – Indemnification

6(1) Subject to subsection (2), Winnipeg agrees to indemnify and save harmless the Municipality from and against all claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs, expenses (including all legal fees and disbursements) or amounts required to be paid by law that the Municipality suffers or incurs as a consequence of Winnipeg's failure to carry out its responsibilities and obligations set out in this Agreement.

6(2) The Municipality agrees to indemnify and save harmless Winnipeg from and against all claims, demands, proceedings, losses, damages, liabilities, deficiencies, costs, expenses (including all legal fees and disbursements) or amounts required to be paid by law that Winnipeg suffers or incurs as a consequence of the Municipality's failure to carry out its responsibilities and obligations set out in this Agreement.

Section 7 – Term of Agreement, Termination or Extension

7(1) This Agreement is effective upon execution by both parties and continues until October 31, 2016 unless terminated earlier under subsection (2).

7(2) This agreement may be terminated by either Winnipeg or the Municipality 15 days after providing written notice to the other party of its intention to do so.

7(3) This Agreement may only be extended by written agreement between Winnipeg and the Municipality.

Section 8 – No Assignment of Agreement

8 Neither party shall assign or transfer this Agreement or any of its rights or responsibilities under this agreement, or subcontract any of its responsibilities or obligations, without the express written approval of the other party.

Section 9 – Independent Contractor

9(1) For the purposes of this Agreement, Winnipeg is an independent contractor and this Agreement does not create the relationship of employer and employee or of principal and agent between the Municipality and Winnipeg or any officer, employee or agent of Winnipeg.

9(2) Winnipeg agrees not to incur any expenses or debts on behalf of or make any commitment for the Municipality without the written authorization of the Municipality.

9(3) Winnipeg is responsible for any deductions or remittances required by law.

Section 10 – Entire Agreement

10 This document and the attached Schedules A and B constitute the entire agreement between the parties. There are no undertakings, representations or promises, expressed or implied, other than those contained in this Agreement.

Section 11 – Representatives and Notices

11(1) The following individuals are hereby named as Representatives of Winnipeg and the Municipality:

For Winnipeg:

Taz Stuart
City of Winnipeg Entomologist
Public Works Department
1539 Waverley Street
Winnipeg, MB R3T 4V7
Phone (204) 986-3794
Fax (204) 986-4050

For the Municipality:

Bruce Henley
Mayor, West St Paul
3550 Main St
West St. Paul, MB, R4A 5A3
Fax (204) 334-9362

11(2) Notices and communication by one of the parties to the other must be in writing and either delivered personally, sent by registered mail (postage prepaid) or faxed to the Representative for the other party at the address set out in subsection (1)

11(3) Either party may designate in writing another person as its Representative or may change its address for receiving notices under this Agreement by providing written notice to the other party of this designation. The re-designation or address change takes place as soon as the notice has been received by the other party.

Miscellaneous

12(1) An amendment, change or modification to this Agreement is valid only if it is in writing and signed by both parties.

12(2) This Agreement shall be interpreted, performed and enforced in accordance with the laws of the Province of Manitoba.

12(3) Time is of the essence of this Agreement.

Signed and sealed this _____ day of _____, 2012

For the Municipality:

_____ _____
Mayor Witness

For the City of Winnipeg:

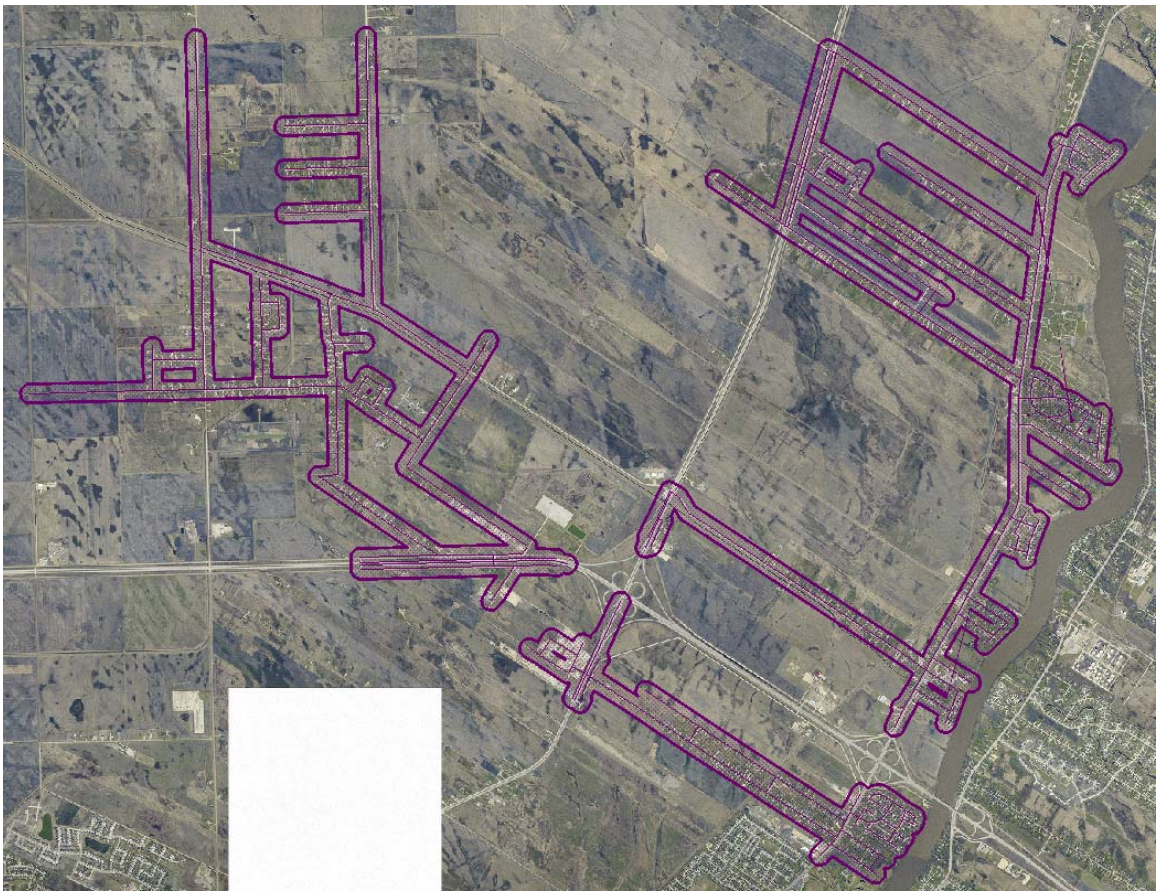
_____ _____
Mayor City Clerk

Approved as to content: Certified as to form:

_____ _____
Director of Public Works Director of Legal Services
and City Solicitor

SCHEDULE A — URBAN LOCATIONS

The locations include the urban areas of Emesville, Riverside, Rivercrest, Middlechurch, Lister Rapids, and Riverdale within the RM of West St. Paul.



Based on Aerial Photos from 2009.

SCHEDULE B — Adulticiding Factor Analysis Guidelines (AFA)

To define each level of the AFA, the following conditions will be assessed by an Entomologist (not inclusive).

AFA Low—(Total Range is from 6-9)	**Value**
Soil and precipitation conditions have resulted in a cumulative total of less than 2.5 cm of rain and soil saturation is not occurring over the past 7 day period	1
Nuisance mosquito percentages are stable and numbers average 25 or less in the New Jersey Light Traps for 3 consecutive days, from the New Jersey Light Trap located in the urbanized area of the Rural Municipality	1
Average life span of actively feeding nuisance mosquito adults is decreasing	1
Degree Day model (base 14.3 degrees Celsius) threshold is equal to or less than 110	1
Monitoring of the larval development sites indicate less than 25% of mosquitoes at the 1st to 4th stage of larval development and no pupae are present in water bodies	1
Probability of nuisance adult mosquito emergence in 7 days is small	1
AFA Medium—(Total Range is from 10-14)	**Value**
Soil and precipitation conditions have resulted in a cumulative total of between 2.5 cm and 7.5 cm of rain and soil saturation is beginning to occur over the past 7 day period	2
Nuisance mosquito percentages are increasing and numbers average more than 25 in the New Jersey Light Traps for 3 consecutive days, from the New Jersey Light Trap located in the urbanized area of the Rural Municipality	2
Average life span of actively feeding nuisance mosquito adults is increasing	2
Degree Day model (base 14.3 degrees Celsius) threshold is between 110 and 200	2
Monitoring of the larval development sites indicate 25-50% of mosquitoes at the 1st to 4th stage of larval development and pupae are present in water bodies	2
Probability of nuisance adult mosquito emergence in less than 7 days is increasing	2
* A combination of other factors, including but not limited to conditions from outside of the urbanized area of the Rural Municipality, which have resulted in a local substantial adult mosquito population within the urbanized area of the Rural Municipality	2*
AFA High—(Total Range is from 15-18)	**Value**
Soil and precipitation conditions have resulted in a cumulative total of greater than 7.5 cm of rain and soil saturation has occurred over the past 7 day period	3
Nuisance mosquito percentages are high and are substantially greater than the average of 25 female adults, collected using the standard New Jersey Light Traps with 25 watt incandescent bulbs, for 3 consecutive nights, from the New Jersey Light Trap located in the urbanized area of the Rural Municipality	3

Average life-span of actively feeding nuisance mosquito adults is from a recent emergence or a new generation has emerged	3
Degree Day model (base 14.3 degrees Celsius) threshold is greater than 200	3
Monitoring of the larval development sites indicate that more than 50% of mosquitoes at the 1st to 4th stage of larval development and many pupae are present in water bodies	3
Probability of nuisance adult mosquito emergence in less than 3 days is imminent	3
* A combination of other factors, including but not limited to conditions from outside of the urbanized area of the Rural Municipality, which have resulted in a substantial adult mosquito population within the urbanized area of the Rural Municipality	3*

*This factor will only be considered when there is a substantial adult mosquito population within the urbanized areas of the Rural Municipality that is due to a combination of other factors, including but not limited to conditions outside of the urbanized area of the Rural Municipality such as high winds, extensive rainfall or larval sampling that indicates large mosquito populations existing outside of the urbanized area of the Rural Municipality.