



MINISTER OF TRANSPORTATION
AND GOVERNMENT SERVICES

Room 203
Legislative Building
Winnipeg, Manitoba, CANADA
R3C 0V8

His Worship Mayor Glen Murray
Council Building
Civic Centre
510 Main Street
Winnipeg, Manitoba
R3B 1B9

December 11, 2002

Dear Mayor Murray:

CONDITIONS OF AUTHORITY
Respecting Image Capturing Enforcement Systems

I am writing further to my November 22, 2002 communication regarding conditions of authority respecting image capturing enforcement systems. The conditions outlined in this letter supercede those identified in that document.

Section 257.1(1) of *The Highway Traffic Act* (the "HTA") states, in part, that municipalities and peace officers acting on behalf of municipalities or the government, may use image capturing enforcement systems only if they are authorized to do so by regulations.

The intent of the photo enforcement legislation is to improve traffic safety through reduction of red light and speeding violations, and injury collisions associated with these high-risk driving behaviors. The safety orientation of this legislation is emphasized by s. 257.1(3) of the HTA which states that "if a municipality's fine revenue from convictions based on evidence from image capturing enforcement systems exceeds its costs of acquiring and using the systems, the municipality must use the surplus revenue for safety or policing purposes." The Province is considering the enactment of a regulation to authorize the City of Winnipeg and the Winnipeg Police Service (the "City") to implement image capturing enforcement systems ("photo enforcement"). To prepare for the implementation of photo enforcement, the Province has entered into an agreement with the City and ACS Public Sector Solutions Inc. ("ACS") dated May 31, 2002 (the "information access agreement"). The information access agreement recognizes ACS as the photo enforcement service provider and provides ACS access to registered vehicle owner's information maintained by the Manitoba Division of Driver and Vehicle Licensing.

In further preparation for the enactment of a regulation authorizing the City to implement photo enforcement and, in consideration of costs incurred by the Province for the purpose of implementing photo enforcement, the sum of one (1.00) dollar paid by each party to the other and all other good and valuable consideration the receipt and sufficiency of which the parties hereby acknowledge, the parties agree to the following:

1. **Purpose**

The purpose of this letter is to outline terms and conditions to which the City's authority to use photo enforcement shall be subject. The Province and the City understand and agree that the terms and conditions set out in this letter are intended to be in addition to those prescribed by legislation and regulation and that in the event of any inconsistencies between the terms of this letter and those prescribed in legislation or regulation, the terms and conditions prescribed in legislation or regulation shall prevail.

2. **Compliance with the legislation**

The City shall comply with all applicable laws and regulations including, without limitation, the HTA and any regulations enacted thereunder. Consistent with this obligation and the requirements of the HTA, the City shall use surplus fine revenue from convictions based on evidence from photo enforcement for safety or policing purposes.

3. **Erection of photo enforcement warning signs**

The City shall:

- (a) Erect permanent signs advising that traffic laws may be photo enforced on primary access roads entering the City of Winnipeg and at other entry points including the international airport, the bus terminal, and the train station located in the City of Winnipeg;
- (b) Erect permanent signs advising of photo radar use on the primary streets of the City of Winnipeg which are frequently monitored by photo radar. Temporary signage is not required to identify specific deployment locations; and
- (c) Erect permanent signs at approaches to intersections monitored by intersection safety cameras.

4. **Warning notice period**

The City shall begin issuing warning notices at least two months prior to issuing photo enforcement tickets (the "warning notice period"). The City shall base the issuance of warning notices on offences detected from a full range of locations and enforcement devices (intersection safety cameras and photo radar units).

5. Public awareness campaigns

The City shall be responsible for public awareness campaigns addressing photo enforcement initiatives within the City of Winnipeg. Namely:

- (a) The City shall commence a multi-media public awareness campaign to coincide with the warning notice period and for at least one month following the commencement of the issuance of photo enforcement tickets.
- (b) The City shall maintain post-implementation public awareness campaigns on a continuous basis.
- (c) The City shall inform the public of locations where photo enforcement devices are deployed through the media and the Winnipeg Police Service's website on a continuous basis:
 - (i) With respect to intersection safety cameras, the City shall identify the specific locations where these devices are deployed; and
 - (ii) With respect to mobile photo radar units, the City shall identify the general areas of the city where these devices are deployed.

6. Annual report

The City shall submit an annual report to the Province outlining the status and effectiveness of photo enforcement by no later than April 1 each year, unless the parties otherwise agree. The annual report shall be in writing and shall include, without limitation, the following information:

- (a) Amount of surplus fine revenue derived from the use of photo enforcement, and the specific purposes for which the surplus revenue has been used; and
- (b) Effectiveness of the photo enforcement initiatives:
 - (i) Program Outputs:
 - (A) Locations deployed by photo enforcement units;
 - (B) Deployment criterion;
 - (C) Hours in which photo enforcement units operate at each location;
 - (D) Number of photo enforcement offences;
 - (E) Number of not guilty pleas, acquittals or stays of guilty pleas, and convictions for photo enforcement offences;
 - (F) Number of offence notices issued for speeding and red light violations detected by conventional means; and
 - (G) All measures taken to achieve and maintain public awareness of photo enforcement.
 - (ii) Program Outcomes:
 - (A) A controlled study evaluating the impact of the photo enforcement on speed and red light violations in the municipality, including:
 - 1) Average speeds at locations with and without photo enforcement deployment;

- 2) 85th percentile speeds at locations with and without photo enforcement deployment;
 - 3) Proportion of speeding vehicles by speed range; and
 - 4) Speed adjustments resulting from data analysis of the impact of photo radar on speed.
- (B) An analysis of the effect of the photo enforcement on traffic safety in the municipality, including annual statistics and year to year variances in:
- 1) Traffic collisions;
 - 2) Traffic injuries; and
 - 3) Collision severity.

7. Termination

- (a) Without limiting any other rights which may be available, the Province may revoke the authority of the City to use photo enforcement and terminate the terms of this letter at any time, without cause, by notice in writing, effective 6 months following the date of the notice. In relation to this provision, the Province acknowledges that the City has entered into a contractual arrangement with a photo enforcement supplier (the "photo enforcement contract") and that the City does not have the authority to terminate the photo enforcement contract without cause. The Province further acknowledges that the Province's termination of the terms of this letter without cause may result in costs to the City under the photo enforcement contract. In the event that the Province terminates this letter without cause, the Province agrees to enter into good faith negotiations with the City to determine what, if any, compensation the Province should pay to the City to compensate the City for costs incurred under its existing photo enforcement contract as a result of the Province's termination of this letter under this subsection. If the Province and the City are unable to reach a resolution in relation to the amount of compensation, if any, to be paid by the Province to the City under this subsection then the issue of compensation shall be referred to arbitration under section 11 of this letter.
- (b) If the Province is reasonably of the opinion that the City is in breach or default of any term or condition set out in this letter, the Province shall give the City written notice of the breach or default. If the City fails to remedy the breach or default to the satisfaction of the Province within 30 days of receiving the notice or, in the event the breach or default is such that it cannot be remedied within 30 days, has failed to provide the Province within 30 days of receiving the notice, a plan acceptable to the Province, for remedying the breach or default within a reasonable period of time, the Province may do any one or combination of the following:
- (i) terminate the information access agreement;
 - (ii) revoke the authority of the City to use photo enforcement;
 - (iii) terminate the terms of this letter.

8. Cessation of photo enforcement

On revocation of the authority of the City to use photo enforcement and termination of this letter under section 7, the City shall take all actions necessary to give effect to Province's decision, including, without limitation:

- (a) Cessation of all use of photo enforcement devices;
- (b) Removal of photo enforcement devices from the deployed locations;
- (c) Removal of warning signs with respect to photo enforcement;
- (d) Cessation of offence notices issuance;
- (e) Annulment of any offence notice issued as of the effective date of the revocation; and
- (f) Communication to the public advising of the revocation through the media, the Winnipeg Police Service's website and the City's publications.

9. Indemnities and Liabilities

- (a) The Province shall not be liable for any injury, damage or loss caused by or in any way related to this Agreement or the use of image capturing enforcement systems by the City, its officers, employees or agents unless the injury, damage or loss is caused by the wrongful or negligent act of an officer or employee of the Province while acting within the scope of their employment.
 - (b) The City shall be solely responsible for:
 - (i) any injury to persons (including death), damage or loss to property or infringement of rights caused by, or related to the performance of this Agreement or the breach of any term or condition of this Agreement by the City or any of its officers, employees or agents; and
 - (ii) any omission or wrongful or negligent act of the City, or any of its officers, employees or agents;
- and shall save harmless and indemnify the Province, its officers, employees and agents from and against all claims, liabilities and demands with respect to clauses (i) and (ii).

10. Notice

Any notice or other communication given or required under this Agreement shall be in writing and shall be delivered personally or sent by registered mail, postage pre-paid, or by way of facsimile transmission, as follows:

To the Province:

Department of Transportation and Government Services
203 - 450 Broadway
Winnipeg MB R3C 0V8

Attention: Minister of Transportation and Government Services
Fax No.: (204) 945-7610

To the City:

Council Building
Civic Centre
510 Main Street
Winnipeg, Manitoba
R3B 1B9

Attention: The Mayor
Fax No.: (204) 949-0566

Any notice given in accordance with the terms set out in this section shall be deemed to have been received by the addressee:

- (i) on the day delivered, if delivered personally;
- (ii) on the fifth business day after the date of mailing, if sent by prepaid registered mail; or
- (iii) on the date of transmission shown on the sender's confirmation of transmission notice, if sent by facsimile transmission.

If mail service is disrupted by labour controversy, notice shall be delivered personally or by facsimile transmission.

Either party may change the address and other information set out in this notice provision by giving notice in writing to the other party.

11. Arbitration

In the event that the Province and the City are unable to resolve the issue concerning the amount of compensation, if any, to be paid by the Province to the City under subsection 7(a), then such dispute shall be determined by arbitration in accordance with the following terms and conditions:

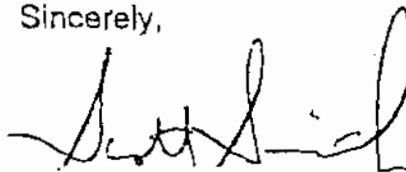
- (a) the party desiring to refer a dispute for arbitration shall notify the other party in writing of the details of the nature and extent of dispute;
- (b) within 7 Business Days of receipt of such notice, the opposite party shall by written notice advise the party so desiring to refer the dispute to arbitration of all matters referred to in the initial notice except those for which any notified party admits responsibility and proposes to take remedial action, and such party failing to respond shall be deemed to dispute everything set out in the notice of arbitrate;
- (c) the terms of reference for arbitration shall be those areas of dispute referred to in the initial notice which remain in dispute or those areas deemed to be in dispute hereunder;
- (d) the parties hereto shall, within 7 Business Days of the establishment of the terms of the reference pursuant to (c) above, jointly appoint a single arbitrator. If the parties cannot agree on an arbitrator, then the parties or either one of them may apply to a Justice of the Court of Queen's Bench of Manitoba to have the arbitrator appointed;
- (e) within 30 days of the appointment of the arbitrator, or such further period as may be agreed upon by the parties, the arbitrator shall resolve all matters and disputes recorded in the terms of reference;
- (f) the decision of the arbitrator shall be binding and final upon the parties hereto;
- (g) the costs of the arbitrator shall be borne by the parties as determined by the arbitrator;
- (h) except as hereby modified, the provisions of *The Arbitration Act* (Manitoba) shall apply to the arbitration procedure;
- (i) the arbitrator shall not alter, amend or change the terms or conditions of the Agreement; and
- (j) all arbitration proceedings hereunder shall be conducted in Winnipeg, Manitoba.

12. **General**


Nothing in this letter shall affect the Province's right to update, amend or rescind any provincial legislation, including the HTA and any regulation thereunder.

If you agree with the terms and conditions set out herein please sign a copy of this letter in the space provided below and return a signed copy of this letter to the sender.

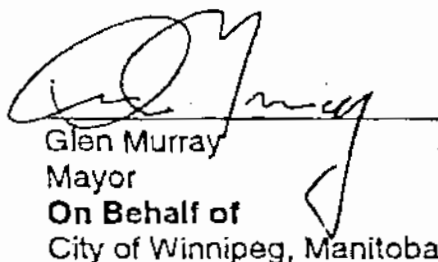
Sincerely,



Scott Smith
Minister
Transportation and
Government Services
On Behalf Of
Government of Manitoba

DECEMBER 11 

TERMS AND CONDITIONS HEREIN ACCEPTED ON ~~DECEMBER 12~~, 2002, BY



Glen Murray
Mayor
On Behalf of
City of Winnipeg, Manitoba

Attachments:

1. Photo enforcement legislation
 2. Draft - supporting regulation currently under review by the Cabinet
- c. Honourable Gord Mackintosh (Minister of Justice)
Honourable Jean Friesen (Minister of Intergovernmental Affairs)
Andrew Horosko (Deputy Minister, Transportation) ✓
Bruce MacFarlane (Deputy Minister, Justice)
Marie Elliott (Deputy Minister, Intergovernmental Affairs)
Eugene Kostyra (Secretary, Community and Economic Development Committee of Cabinet)
Gail Stephens (Chief Administrative Officer, City of Winnipeg)