1977

c 75 The City of Chatham Act, 1977

Ontario
CHAPTER 75

An Act respecting the City of Chatham

Assented to November 25th, 1977

WHEREAS The Corporation of the City of Chatham, herein called the Corporation, hereby represents that on the 1st day of November, 1976 the council of the Corporation gave first and second readings to By-law Number 6890 of the Corporation entitled “A By-law to grant to J. I. DeNure (Chatham) Limited an exclusive franchise to operate buses for the conveyance of passengers within the limits of the City of Chatham for a period of ten years from the 1st day of January, 1978, to authorize the execution of an Agreement setting forth the terms and conditions upon which such franchise is to be granted and to obligate The Corporation of the City of Chatham to pay annually to J. I. DeNure (Chatham) Limited such amount of money as may be necessary to provide J. I. DeNure (Chatham) Limited with the profit in the exercise of such franchise to the extent set forth in the Agreement”; that the said by-law has been assented to by the municipal electors for the City of Chatham; that the council of the Corporation gave third reading to and finally passed the said by-law on the 13th day of December, 1976; and whereas the Corporation hereby applies for special legislation in respect of the matter hereinafter set forth; and whereas it is expedient to grant the application;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. Notwithstanding section 248 of The Municipal Act, section 64 of The Ontario Municipal Board Act, and subsection 3 of section 2 of The City of Chatham Act, 1958, By-law Number 6890 of the Corporation set forth in the Schedule hereto, and the agreement annexed as Schedule “X” to the said By-law, are hereby declared to be valid and binding upon the Corporation, and the ratepayers and inhabitants of the City of Chatham and upon J. I. DeNure (Chatham) Limited.
2. The by-law and agreement referred to in section 1 do not affect,

(a) any licence granted under The Public Vehicles Act;

(b) the right of a school board to,

(i) provide, operate and maintain vehicles for the transportation of pupils,

(ii) enter into agreements for the provision of transportation of pupils; or

(c) the right of any person to provide, operate and maintain vehicles for the transportation of pupils pursuant to an agreement entered into under sub-clause ii of clause b.

3. This Act comes into force on the day it receives Royal Assent.

4. The short title of this Act is The City of Chatham Act, 1977.
A By-law to grant to J. I. DeNure (Chatham) Limited an exclusive franchise to operate buses for the conveyance of passengers within the limits of the City of Chatham for a period of ten years from the 1st day of January, 1978, to authorize the execution of an Agreement setting forth the terms and conditions upon which such franchise is to be granted and to obligate The Corporation of the City of Chatham to pay annually to J. I. DeNure (Chatham) Limited such amount of money as may be necessary to provide J. I. DeNure (Chatham) Limited with the profit in the exercise of such franchise to the extent set forth in the Agreement.

Finally passed the 13th day of December, A.D. 1976.
1st day of January, 1978 to and inclusive of the 31st day of December, 1987 in, over and upon the streets or highways within the limits of the City of Chatham upon the terms and conditions as set forth in the Agreement, a copy of which is annexed hereto and marked Schedule "X".

2. That the Mayor and Clerk of The Corporation of the City of Chatham be and they are hereby authorized to execute the said Agreement annexed hereto as Schedule "X" on behalf of The Corporation of the City of Chatham and to affix the corporate seal thereto.

This By-law shall come into full force and effect upon the final passing thereof and when the Agreement annexed hereto as Schedule "X" has been executed by the parties thereto.

READ A FIRST AND SECOND TIME this 1st day of November, 1976.

D. G. Allin, Mayor.

Wm. L. Foreman, Clerk.

SCHEDULE "X"

TO BY-LAW 6890

THIS AGREEMENT made in duplicate this 1st day of January, 1978.

BETWEEN:

THE CORPORATION OF THE CITY OF CHATHAM,
hereinafter called the "Corporation",

OF THE FIRST PART,

—and—

J. L. DeNure (Chatham) Limited,
hereinafter called the "Contractor",

OF THE SECOND PART.

WHEREAS the Contractor has been operating a bus transportation system for the Corporation from the year 1948 and is currently operating such bus transportation system pursuant to the terms of an Agreement between the Corporation and the Contractor dated the 13th of October, 1966, which Agreement and the Franchise granted pursuant thereto terminate on the 31st of December, 1977.

AND WHEREAS the parties hereto are desirous of entering into a further agreement to provide for the continuation of the exclusive Franchise granted to the Contractor by the Corporation on the terms and conditions hereinafter set forth.

WITNESSETH THAT in consideration of the premises and the covenants and agreements hereinafter contained and other good and valuable consideration, the parties hereto agree as follows:—
1. Subject to the due performance by the Contractor of its obligations under this Agreement, the Corporation hereby grants to the Contractor the exclusive right, franchise and privilege to maintain and operate buses for the conveyance of passengers within the limits of the City of Chatham for a period of 10 years from and including the 1st day of January, 1978 to and inclusive of the 31st day of December, 1987 and for such purpose to maintain, lease, own and operate buses and other vehicles operated by gasoline or other power together with any rolling stock and equipment necessary and incidental thereto, but upon the terms mentioned in and authorized hereby and further for such purpose to use, keep and operate such buses and vehicles upon the streets of the City of Chatham. The Franchise hereby granted relates only to the picking up, conveyance and discharge of passengers within the limits of the City of Chatham and does not extend or apply to the operation of buses operating between any point within the City of Chatham and points outside the City of Chatham where passengers are not conveyed from one point within the City of Chatham to another and does not apply to passengers conveyed within the City of Chatham by taxicab or ambulance. Without restricting the generality of the foregoing, it is understood and agreed that the Contractor shall have the exclusive right to pick up, convey and discharge students within the limits of the City of Chatham and the right to enter into any contract for the conveyance of students within the limits of the said City of Chatham, provided however, that The Kent County Board of Education and the Kent County Roman Catholic Separate School Board each shall have the right to pick up, convey and discharge students within the City of Chatham who are in attendance at their schools on buses owned, operated or subcontracted for by the said Boards on condition that it is done without charge to such students.

2. During the period of this Agreement, the Contractor covenants and agrees to maintain and operate a transportation service as required by the Corporation from time to time upon such streets and upon such routes and upon such schedule as to days of the week, daily service, frequency of service, stopping places and fares as required by the Corporation, and as the Corporation shall by resolution determine and in the meantime, on such streets, upon such routes and upon such schedule as are set forth in the schedule presently on file with the Clerk of the Corporation and initialled by both parties; provided that the Contractor shall not be required to accept routes over unpaved streets for more than a period of one year and provided that the mileage per day shall not be reduced below what will average 125 miles per bus per day and further provided that the minimum requirements set forth in Paragraph 14 hereof shall be maintained and satisfied. The Contractor shall also provide and operate special buses at a frequency of service and at a cost to the Corporation to be mutually agreed upon and failing agreement, to be settled by arbitration to be provided for by Section 20 hereof. The Corporation agrees to consult with the Contractor with respect to proposed changes in routes and schedules but the decision of the Corporation in this regard shall be final. The Corporation will give the Contractor reasonable notice of any changes in routes and schedules and the Corporation shall cause any such changes to be properly advertised and posted at its expense.

3. All vehicles used or operated under the authority of this Agreement shall be at all times fully equipped with approved safety devices and shall be kept and maintained in first class, serviceable condition and present at all times a good appearance and all vehicles while in operation shall be kept in a clean, sanitary condition. Notwithstanding the generality of the foregoing, such buses shall be lighted and heated at such hours and at such periods of the year as may be necessary.

4. The Contractor shall before operating any vehicles under the authority of this Agreement, obtain from the Board of Commissioners of
Police for the City of Chatham, a license for each vehicle and shall pay the
requisite fee for such license or licenses. The Contractor shall maintain such
licenses and permits as may be necessary to carry out its obligations under
this Agreement.

5. The Contractor will indemnify and save harmless the Corporation from
any and all claims or demands made or brought against the Cor-
poration by any person or persons for damages arising out of the mainte-
ance and operation of buses by the Contractor for the conveyance of passengers
within the limits of the City of Chatham or other operations carried on by
the Contractor within the limits of the City of Chatham, save and except
those claims or demands which arise from the negligence of the Corporation,
its servants and agents. The Contractor shall maintain public liability
insurance and property damage coverage, inclusive in the minimum amount of
$5,000,000.00 for any one occurrence and shall file proof of such insurance
with the Clerk of the Corporation, provided however, that the amount of
such insurance coverage shall be reviewed annually by the parties and shall
be subject to increase as may be mutually agreed upon to provide reasonable
coverage for the parties.

6. The Corporation agrees to pass such by-laws as the Corporation in
its sole and untrammelled opinion and discretion deems to be essential to
conduct a proper transportation system in, over and upon the streets or
highways within the limits of the City of Chatham.

7. The Corporation shall during the terms of this Agreement by by-law
provide sufficient bus stops as the Contractor may require to conduct its
business of carrying passengers as may be agreed upon between the parties
herein and the Corporation shall adequately mark and maintain said bus
stops at its expense. The Corporation shall provide for the reservation of
such bus stops for the use of the buses of the Contractor during scheduled
hours and shall prohibit parking on such reserved spaces during the said
scheduled hours. The Corporation shall post such signs and notices at bus
stops as shall be required by the Corporation or as shall be mutually agreed
upon.

8. The Corporation shall during the term of this Agreement by by-law
regulate traffic in the City of Chatham to enable the Contractor to operate
its buses efficiently. The Corporation agrees to assist the Contractor in
preventing railroads from blocking streets or highways for periods of over 5
minutes at one time except as permitted by law.

9. The Corporation agrees to keep all streets and highways upon which
the Contractor is operating regular routes under the terms hereof in a reason-
ably good state of repair at all times and if by reason of unusual weather con-
ditions or other circumstances, any of such streets or highways become
impassable, then in such event, the Corporation agree to act as promptly
as is possible in making such streets or highway passable. Until such con-
dition as caused by unusual weather conditions or other circumstances is
remedied, the Contractor may on notice to the City Manager of the Cor-
poration, re-route its buses over such other streets or highways in the City
of Chatham as in the opinion of the Contractor may be deemed advisable.

10. During the term of this Agreement or until the termination thereof
the Corporation shall not in any way depreciate the right, privilege or
franchise hereby granted, and shall not grant or permit to be granted to any
other person, partnership, firm or corporation, any right, privilege, license
or franchise to construct, maintain, use or operate any lines of railway
for local passenger trips, or any bus, jitney or other similar vehicles for the
purpose of transporting passengers for gain or hire, the operation of which
will come into competition with the transportation system of the Contractor.
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CHATHAM (CITY)  
Chap. 75  
575

Provided that any such grant to operate a bus or jitney or other similar vehicle between any points in the City and any locality outside of the City not served by the transportation system of the Contractor shall not be deemed to depreciate the said right, privilege or franchise. In no case shall any bus, jitney or similar vehicle be permitted to take on passengers within the City and discharge the said passengers within the City. Provided further that this section shall not apply to any ordinary cabs or taxicabs kept for hire and used for transportation not over a fixed route, at fares fixed by the Board of Police Commissioners of the City of Chatham. In the event of any transportation of passengers over which the Corporation has no power or control, then the Corporation is not to be held liable for any loss or damage sustained by the Contractor by reason thereof.

11. The rate of fares for conveyance of passengers shall be:

(a) Adult Fare—.30¢ cash or 4 tickets for $1.00.

(b) Children being transported to and from Elementary and Secondary Schools on school days only—.20¢ cash or 6 tickets for $1.00.

(c) Children under 12 years in age, at all times—.20¢ cash or 6 tickets for $1.00.

(d) Senior Citizens at all times—.20¢ cash or 6 tickets for $1.00.

(e) Children under 5 years of age—free when accompanied by an adult person.

For the purposes of this Agreement, a Senior Citizen is one who has attained the age of 65 years and who produces an identification card identifying him as such a person.

The Contractor shall collect the fares in accordance with the foregoing schedule on behalf of the Corporation and all revenue collected for transportation provided pursuant to the terms of this Agreement shall be the property of the Corporation and delivery of such revenue shall be made when and where the Corporation may require.

The fares in accordance with the foregoing shall not be changed, altered or otherwise varied by the parties hereto except by Council of the Corporation as expressed by resolution.

12. The Corporation covenants to pay to the Contractor, a price for each mile its buses are operated in providing the transportation service required hereunder (excluding mileage for special buses and chartered trips within the City) determined as hereinafter set forth. The mileage to be paid for shall be determined on a basis whereby the distances of the routes travelled are logged by both parties and in default of agreement to be settled by arbitration as hereinafter set forth. The total number of trips over such routes are counted and the mileage shall be determined by multiplying the mileage distance of the routes by the number of trips made over each of such routes. Payments on account of the price per mile shall be made every two weeks according to the mileage logged during the immediately preceding two weeks.

The price per mile shall be determined by January 1 and July 1 of each year by adding to the cost as determined by audited statements dated December 31 and June 30, immediately preceding based on the cost factors listed under Column "Item" in Schedule "A" hereto, 3.3¢ per mile, provided however, that in lieu of the actual cost of wages as set forth in such schedule,
the estimated actual cost of wages for the succeeding six month period shall be used in the determination of the price per mile. When the audited statement at the end of each six months has been prepared and released, an adjustment shall be made so as to bring the payments made over the previous six months to the actual cost per mile plus 3.3¢ per mile. Any payment due to either party on such adjustment shall be made within thirty days after demand therefor. Semi-annual auditor's statements of the Contractor's operations under this Agreement shall be furnished to the Corporation within thirty days from the end of the six month period immediately preceding and all business records of the Contractor pertaining to operations by the Contractor under the terms of this Agreement shall be made available if requested, by the Corporation to the Corporation or its auditors.

The operating costs and depreciation charges in respect of the special buses referred to in Paragraph 2 of this Agreement shall be excluded in calculating operating costs per mile, but these costs and charges shall be billed to and paid by the Corporation as may be mutually agreed upon.

If after the payments of the stipulated price per mile is made to the Contractor as herein provided there then remains a surplus of receipts from fares in any calendar year. The surplus up to what would amount to 3¢ per mile of operation (in respect of the amount of mileage upon which the Contractor is being paid as set forth in this paragraph) in such calendar year shall be and remain the property of the Corporation and should there be any surplus over the amount as is reserved to the Corporation, such additional surplus shall be divided equally between the parties.

13. The Contractor covenants and agrees that prior to entering into any new employment contract with its employees which might affect the terms of this Agreement or the payments to be made by the Corporation to the Contractor hereunder, the Contractor will obtain the approval of the Corporation to the terms of such new employment contract. The Contractor further covenants and agrees that salaries for management which might affect the terms of this Agreement or the payments to be made by the Corporation to the Contractor hereunder, shall not be changed except in accordance with Paragraph 21 hereof.

14. The Contractor covenants and agrees to put in service a minimum of seven modern buses in good condition and to have ready at all times for service, three spare buses also in good condition; the Contractor covenants and agrees to expand and extend its service to meet all requirements of a passenger transportation system within the limits of the City of Chatham from time to time and for this purpose to obtain such further new buses subject to an allowance of reasonable time to obtain delivery thereof.

15. The performance under this Agreement by the Contractor as to the service to be provided by it shall be excused during such time as performance may be rendered impossible by strike, disaster, act of God, or act of the Corporation or other cause beyond the control of the Contractor.

16. The Contractor shall not assign this Agreement and/or sell its capital assets which are required for the due performance of its obligations hereunder to any person, corporation or entity without the express consent of the Corporation as expressed by resolution of Council.

17. In the event that either party does not fully perform its obligations hereunder and fails to correct the default within 10 days of receiving a written demand to do so or in the event that the Contractor fails to operate the passenger transportation system and fails to correct that default within 72 hours of receiving a written demand to do so and provided that any such default as herein set out is not exonerated by virtue of Paragraph 15 hereof
then the other party may forthwith terminate this Agreement by giving the
defaulting party a notice in writing to this effect.

18. Either Party may terminate its obligations under this Agreement
after December 31st, 1978 or any December 31st thereafter upon giving at
least six months’ notice in writing to the other Party prior to the December
31st of the year in which the Agreement is to be terminated. If this Agree­
ment is terminated by the Corporation prior to December 31st, 1987,
except where terminated by reason of default of the Contractor, the Cor­
poration shall, if requested by the Contractor, purchase all buses owned by
the Contractor, used in the City service under this Agreement, at their
then book value as established by the auditors’ records prepared for the
Contractor at the time. The Contractor agrees that in its accounting, its
buses shall be depreciated ten percent of cost per annum for a period of ten
years from the date of purchase of each bus, and that when, in respect of each
bus, the ten-year period has expired, no charge for depreciation of such
bus shall thereafter be included in its operating costs.

19. The Corporation agrees to apply to the Province of Ontario for such
powers as will enable it to do, perform and carry out each and every of the
Agreements and covenants on its part as herein contained.

20. If at any time during or after the term of the Agreement any
dispute, difference or question shall arise between the parties hereto, or any of
their representatives, touching this Agreement, or any part thereof, or the
construction, meaning or effect of this Agreement or any part thereof, or
anything herein contained, or the rights or liabilities of the parties, or their
representatives, under this Agreement or otherwise, in relation to the premises,
and if said matter cannot be settled by the parties hereto by negotiation, then
every such dispute, difference or question shall be referred to a single
arbitrator, if the parties agree upon one, otherwise to three arbitrators, one
to be appointed by each party to the reference, and the third arbitrator to be
appointed by the other two arbitrators, in writing before they enter upon the
business of the reference. If either party shall refuse, or neglect to appoint an
arbitrator within thirty days after the other party shall have appointed an
arbitrator, and shall have served a written notice upon the first mentioned
party requiring such party to make such appointment, then the arbitrator
first appointed shall, at the request of the party appointing him, proceed to
hear and determine the matter in difference as if he were a single arbitrator
appointed by both parties for the purpose and the award or determination
which shall be final and binding on the parties herein, their successors and
assigns, and shall not be subject to appeal to any Court or Courts.

21. The parties agree that the percentages and the allocation for
management provided in Schedule “A” hereto may be changed by mutual
agreement, and in the event that either party desires a change in any of
such percentage figures or allocation to which the other party does not
agree, the proposed change in the percentage or allocation shall be sub­
mitted to and settled by arbitration as provided for in Section 20 hereof.
The allowance (which is set at 3.3¢ per mile as set forth on Schedule “A”
and referred to in Paragraph 12 hereof) may be changed by the mutual
agreement of the parties hereto but it is not an item which may be submitted
to arbitration in default of agreement thereon.

22. The Corporation and the Contractor agree that the Contractor,
its servants, agents and employees shall under no circumstances be deemed
agents or representatives of the Corporation and except as the Corporation
may specifically authorize in writing shall have no right to enter into any
contracts or commitments in the name of or on behalf of the Corporation
or to bind the Corporation in any respect whatsoever.
23. This Agreement shall be governed in accordance with the laws of
the Province of Ontario.

24. Any notice required or permitted to be given under this Agreement
shall be in writing and shall be given by any means reasonably calculated
to reach the other party, including without limiting the generality of the
foregoing, telegram, cablegram or prepaid mail addressed at its address.
Such notice if given by telegram or cablegram shall be deemed to have
been received on the day following the dispatch thereof and the notice
given as aforesaid by prepaid mail shall be deemed to have been received
not later than the second day following the mailing thereof. For the purpose
of this Agreement, the address of the Corporation shall be as follows:

City Hall,
P.O. Box 640,
Chatham, Ontario.

and the address of the Contractor shall be as follows:

165 King Street East,
Chatham, Ontario.

Either party by notice in writing given as hereinbefore provided may change
its address for notice hereunder and such address as so changed shall be
deemed to be the address of such party for the purposes of notice hereunder.

25. The Contractor shall not be prohibited by this Agreement from
conducting its operations by way of charter bus operation within the
City of Chatham, provided however, that such charter bus operation shall
not in any way affect or be in competition with any services to be provided
by the Contractor under this Agreement.

26. This Agreement shall be binding upon and enure to the benefit of
the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF the parties hereto have hereunto affixed their
 corporate seals duly attested by the hands of their proper officers.

SIGNED, SEALED AND DELIVERED in the presence of

THE CORPORATION OF THE CITY OF

CHATHAM

Mayor

Clerk

J. I. DENURE (CHATHAM) LIMITED


## SCHEDULE "A"

**STATEMENT OF OPERATING COSTS CHARGED TO CITY RUNS**

**PERIOD OF SIX MONTHS ENDED**

<table>
<thead>
<tr>
<th>ITEM</th>
<th>BASIS OF CALCULATION</th>
<th>AMOUNT CHARGED</th>
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</thead>
<tbody>
<tr>
<td>Bus sundry expense</td>
<td>20%</td>
<td>Actual Cost</td>
</tr>
<tr>
<td>Garage supplies &amp; expenses</td>
<td>20%</td>
<td>Actual Cost</td>
</tr>
<tr>
<td>Gasoline or diesel fuel</td>
<td>Actual Cost</td>
<td></td>
</tr>
<tr>
<td>Grease &amp; oil</td>
<td>20%</td>
<td>Actual Cost</td>
</tr>
<tr>
<td>Insurance—buses—fire, theft &amp; liability (liability—public liability and property damage up to $5,000,000.00 inclusive)</td>
<td>Actual Cost</td>
<td></td>
</tr>
<tr>
<td>Licences</td>
<td>Actual Cost</td>
<td></td>
</tr>
<tr>
<td>Bus repairs, parts</td>
<td>20%</td>
<td>Actual Cost</td>
</tr>
<tr>
<td>Bus repairs, tires</td>
<td>1¢ per mile travelled</td>
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</tr>
<tr>
<td>Taxes property and business</td>
<td>20%</td>
<td>Actual Cost</td>
</tr>
<tr>
<td>Unemployment insurance</td>
<td>Actual Cost</td>
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<tr>
<td>Uniforms</td>
<td>60%</td>
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<tr>
<td>Wages</td>
<td>Actual Cost</td>
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<td>Water</td>
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<td>Actual Cost</td>
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<td>Depreciation provisions</td>
<td></td>
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</tr>
<tr>
<td>Building—10% of depreciated value (declining balance method)</td>
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</tr>
<tr>
<td>Buses—10% of cost price to contractor (straight line method)</td>
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</tr>
<tr>
<td>Service truck—50% of depreciation based on 20% of depreciated value (declining balance method)</td>
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</tr>
<tr>
<td>Radios—10% of cost price to contractor (straight line method)</td>
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<td>Management</td>
<td>40%</td>
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<td>Accounting</td>
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<td>General Expense</td>
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<tr>
<td>Group insurance, OHIP and compensation</td>
<td>Actual Cost</td>
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</tr>
<tr>
<td>Light and heat</td>
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<tr>
<td>Office expense</td>
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<tr>
<td>Pension Fund</td>
<td>5% of wages</td>
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<tr>
<td>Parking Lot rent</td>
<td>20%</td>
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</tr>
<tr>
<td>Stationery and printing</td>
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</tr>
<tr>
<td>Telephone</td>
<td>20%</td>
<td>Actual Cost</td>
</tr>
<tr>
<td>Insurance on buildings</td>
<td>20%</td>
<td>Actual Cost</td>
</tr>
<tr>
<td>Body shop labour</td>
<td>Actual Cost</td>
<td></td>
</tr>
</tbody>
</table>

**TOTAL**

Calculation of price per mile:

(a) Miles travelled in City operations

(b) Charged to City operations

(c) Cost per mile—City operations

\[(d) = \frac{(c) + (d)}{(a)}\]

(d) Allowance

3.3¢

Price per mile is (c) plus (d)