1973

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Ontario

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CHAPTER 201

An Act respecting
the City of Peterborough

Assented to May 18th, 1973
Session Prorogued March 5th, 1974

WHEREAS The Corporation of the City of Peterborough hereby represents that on the 23rd day of October, 1972, the council of The Corporation of the City of Peterborough gave first and second readings to By-law Number 1972-116, entitled "A by-law to authorize The Corporation of the City of Peterborough to enter into an agreement with Border Transit Limited granting to Border Transit Limited the exclusive right to operate buses for the conveyance of passengers within the limits of the City of Peterborough for a period of five years from the 1st day of January, 1974, and obligating the Corporation to pay annually to Border Transit Limited such amount of money as may be necessary to provide Border Transit Limited with a profit in the operation of such buses to the extent set forth in the said agreement"; that the by-law has been assented to by the municipal electors for the City of Peterborough; 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. The council of The Corporation of the City of Peterborough is hereby authorized to give third reading to and finally pass By-law Number 1972-116, as set forth in the Schedule hereto, and to enter into the agreement forming part of the by-law.

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

3. This Act may be cited as The City of Peterborough Act, Short title 1973.
SCHEDULE

BY-LAW NUMBER 1972-116

A By-law to authorize The Corporation of the City of Peterborough to enter into an agreement with Border Transit Limited granting to Border Transit Limited the exclusive right to operate buses for the conveyance of passengers within the limits of the City of Peterborough for a period of five years from the 1st day of January, 1974 and obligating the Corporation to pay annually to Border Transit Limited such amount of money as may be necessary to provide Border Transit Limited with a profit in the operation of such buses to the extent set forth in the said agreement.

The Corporation of the City of Peterborough by the Council thereof enacts as follows:

1. That The Corporation of the City of Peterborough enter into the agreement with Border Transit Limited set forth as a schedule to this by-law and the Mayor and Clerk are hereby authorized and directed to sign and affix the seal of the Corporation thereto.

READ A FIRST AND SECOND TIME this 23rd day of October, 1972.

P. D. GALVIN,  
Mayor.

S. HENDRY,  
Clerk.

READ A THIRD TIME and finally passed this day of 1973.

Mayor.

Clerk.

Schedule

THIS AGREEMENT made in duplicate this 24th day of October, 1972.

BETWEEN:

THE CORPORATION OF THE CITY OF PETERBOROUGH,  
hereinafter called the Corporation

OF THE FIRST PART

— and —

BORDER TRANSIT LIMITED,  
hereinafter called the Company

OF THE SECOND PART

WHEREAS the parties hereto entered into an Agreement dated the 5th day of May, 1969 relating to the conveyance of passengers by bus which Agreement expires on the 31st day of December, 1973.
AND WHEREAS the parties hereto are desirous of entering into a further agreement upon the terms and conditions hereinafter set forth;

NOW THEREFORE THIS AGREEMENT WITNESSETH that in consideration of the premises and other good and valuable consideration, the parties hereto hereby agree as follows:

1. In this agreement,

(a) "deficit", "depreciation", "net profit" and "capital assets" are used with reference only to the maintenance and operation of buses by the Company for the conveyance of passengers within the limits of the City of Peterborough in accordance with the terms of this agreement and other operations presently carried on by the Company within the limits of the City of Peterborough,

(b) "capital assets" does not include motor vehicles other than buses and service trucks,

(c) "undepreciated capital cost" means the original capital cost less the accumulated depreciation allowed under this agreement.

2. Subject to the due performance by the Company of its obligations under this agreement, the Corporation hereby grants to the Company the exclusive right to maintain and operate buses for the conveyance of passengers within the limits of the City of Peterborough for a period of five years from and including the first day of January, 1974 to and including the thirty-first day of December, 1978. The franchise hereby granted relates only to the picking up, conveyance and discharge of passengers within the limits of the City of Peterborough and does not extend or apply to the operation of buses operating between any point within the City of Peterborough and points outside the City of Peterborough where passengers are not conveyed from one point within the City of Peterborough to another and does not apply to passengers conveyed within the City of Peterborough by taxicab or ambulance. Without restricting the generality of the foregoing, it is understood and agreed that the Company shall have the exclusive right to pick up, convey and discharge students within the limits of the City of Peterborough and the exclusive right to enter into any contract for the conveyance of students within the limits of the said City of Peterborough, provided however, that the Peterborough County Board of Education and the Peterborough-Victoria-Northumberland and Durham County Roman Catholic Separate School Board shall have the right to pick up, convey and discharge students within the City of Peterborough 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.

3. During the period of this agreement the Company shall maintain and operate an adequate number of buses for the conveyance of passengers within the City of Peterborough on such routes and at such times as the Corporation shall by resolution determine and in the meantime on such routes and at such times as are set forth in the schedule presently on file with the Clerk of the Corporation and initialled by both parties. All buses so used shall be kept at all times in a good and sufficient state of repair, shall be kept clean inside and out and shall be lighted and heated at such hours and at such periods of the year as may be necessary. All buses shall be of reasonably modern design and type as may be agreed upon by the Corporation and the Company. The Corporation agrees to consult with the Company 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 Company reasonable notice of any changes in routes and schedules and the Company shall cause any such changes to be properly advertised and posted.
4. During the term of this Agreement the Company shall pay to the Corporation an annual licence fee of $100.00 on the 1st day of January in each year. The Company shall maintain such licences and permits as may be necessary to carry out its obligations under this Agreement.

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

- Adult Fare—20¢ cash or 3 tickets for 50¢
- Senior Citizens—20¢ cash or 5 tickets for 50¢
- Blind—no charge
- Children under 58 inches in height—10¢ cash or 6 tickets for 50¢

Such fares shall not be changed, altered or otherwise varied by the Company without the consent of the Council of the Corporation as expressed by resolution.

6. During each of the years 1974, 1975, 1976, 1977 and 1978, the Corporation will pay the Company a subsidy sufficient in amount to provide the Company with a net profit in each of such years after payment of Federal and Ontario corporation income taxes of $18,500.00. The Company's auditor will prepare quarterly statements of profit and loss for each of the first three quarters in each of such years and the Corporation will make payments to the Company on account of the said subsidy in the amount of any deficit incurred during any of the said quarter-yearly periods, the payments to be made not later than 45 days following the receipt of the statements. The final annual payments on account of the subsidy, if necessary, will be made within 30 days of the receipt of the Corporation of complete financial statements for the year prepared by the Company's auditors. If the payments by the Corporation to the Company on account of the subsidy result in the Company making a net profit in any year after payment of Federal and Ontario corporation income taxes of more than $18,500.00 the Company shall forthwith pay the Corporation a sum equal to the difference between the amount of such net profit and the sum of $18,500.00. For the purpose of calculating net profit the Company may claim all reasonable and proper expenses including a depreciation allowance on its capital assets in the amount actually allowed by the Department of National Revenue in calculating Federal corporation income taxes subject to the proviso that the depreciation allowance for motor vehicles shall not exceed 20% per annum calculated on the declining balance. No allowance shall be made for corporation income tax payable by the Company with respect to the recapture of depreciation and no allowance shall be made for any amount paid for the full time manager's salary and expenses in excess of $13,000.00 or executive salaries and expenses (including directors' and officers' remuneration) in excess of $7,000.00 per annum without the consent of the Council of the Corporation as expressed by resolution. The Corporation's auditors shall have the right at all reasonable times during the currency of this agreement to examine and verify such of the Company's books of account, vouchers and records as are related to the performance of the Company's obligation under this Agreement.

7. No profitable revenue producing operation presently carried on by the Company within the limits of the City of Peterborough shall be discontinued without the consent of the Council of the Corporation as expressed by resolution.

8. The Company shall not be entitled to purchase a capital asset of any kind at a cost in excess of $2,000.00 and less than $5,000.00 without the consent of the City Administrator or at a cost in excess of $5,000.00 without the consent of the Council of the Corporation as expressed by resolution.
9. 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 case of a cessation of service for reasons other than a strike or act of God within 72 hours of the receipt of the demand, the other party may forthwith terminate this Agreement by giving the defaulting party a notice in writing to this effect. Such notice may be personally served or delivered by registered mail to the Corporation at the City Hall, Peterborough, or the Company at 38 Hunter Street East, Peterborough. In the event this Agreement is so terminated on a date other than the 31st day of December in any year, the amount of the subsidy referred to in paragraph 6 hereof for the year in which the termination occurs shall be reduced proportionately and in such event the amount of net profit where referred to in paragraph 6 hereof shall be reduced by the proportion that the period of the year remaining after the date of termination bears to the whole of the year and any amount payable by either the Corporation or the Company thereunder shall be adjusted accordingly.

10. The Company may apply in writing to the Council of the Corporation for a further renewal or extension of the franchise granted hereunder and such application shall be filed with the Clerk of the Corporation on or before the 1st day of June, 1977.

11. The Company will indemnify and save harmless the Corporation from any and all claims or demands made or brought against the Corporation by any person or persons for damages arising out of the maintenance and operation of buses by the Company for the conveyance of passengers within the limits of the City of Peterborough or other operations carried on by the Company within the limits of the City of Peterborough. The Company shall maintain public liability insurance coverage in the minimum amount of $1,000,000.00 for any one occurrence and shall file proof of such insurance with the Clerk of the Corporation.

12. The Corporation shall during the said term by by-law provide sufficient bus stops as the Company may require to conduct its business of carrying passengers as may be agreed upon between the parties hereto and the Company shall adequately mark and maintain said bus stops at its expense. The Company shall post such signs and notices at bus stops as shall be required by the Corporation or as shall be mutually agreed upon.

13. The Corporation shall during said term by by-law regulate traffic in the City of Peterborough to enable the Company to operate its buses efficiently.

14. Upon the expiration of this Agreement or upon the termination of this Agreement by either party pursuant to clause 9 hereof, the Corporation shall for a period of two months thereafter have the sole, irrevocable and exclusive option to purchase all the capital assets of the Company free of encumbrances at a price to be agreed upon by the parties or upon their failure to agree, at a price to be determined under the provisions of The Arbitrations Act. It is agreed that in determining the price to be paid to the Company:

(a) nothing shall be taken into account or allowed for the franchise hereby granted;

(b) the price of buses and service trucks shall be the undepreciated capital cost thereof and the parties agree the undepreciated capital cost of buses and service trucks on December 31, 1971 was $90,000.00;

(c) the price of all other capital assets of the Company shall be the actual market value thereof at the date of exercise of the option;
The said option may be exercised by the Corporation giving written notice of such to the Company delivered by registered mail at its place of business in the City of Peterborough and upon the exercise of such option all the capital assets of the Company shall forthwith become the property of the Corporation and the Company agrees to execute all such instruments and assurances as may be necessary to effectively transfer title in the said capital assets to the Corporation. Upon the price being determined as aforesaid it shall immediately become due and payable by the Corporation to the Company together with interest thereon at the rate of six per cent per annum calculated from the date of the exercise of the option. In the event the Corporation fails to exercise the option within the said period of two months, then the Corporation will immediately buy from the Company and the Company will immediately sell to the Corporation all buses and service trucks then being used by the Company in connection with its operations in the City of Peterborough, at the undepreciated capital cost thereof.

15. The Company shall not be liable for damages arising out of the cessation or interruption of the bus service herein caused by fire, flood, act of God, strike or other circumstance beyond the control of the Company.

16. The Company shall not assign this Agreement and/or sell its capital assets to any person or corporation without the express consent of the Council of the Corporation as expressed by resolution provided, however, that such consent of the Corporation shall not be unreasonably withheld, and provided also that upon being advised by the Company of its intention to assign this Agreement and/or sell its said capital assets the Corporation shall immediately become entitled to the sole, irrevocable and exclusive option for a period of two months thereafter to purchase all the said capital assets of the Company at the price and upon the terms and conditions set forth in clause 14 hereof and upon the exercise of such option by the Corporation the franchise hereby granted shall immediately be terminated.

17. 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 a Judge of any County of the Province of Ontario and to be appointed by the parties hereto 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 hereto their successors and assigns, and shall not be subject to appeal to any Court or Courts.

18. Matters relating to routes, rates and the efficient operation of the Company requiring a policy decision shall be referred to a standing committee of Council.

19. This agreement shall ensue to the benefit of and be binding upon the parties hereto, their respective successors and assigns.
In Witness Whereof the said parties hereto have hereunto affixed their Corporate seals attested by the hands of their proper signing officers in that behalf.

The Corporation of the City of Peterborough:

Mayor.

Clerk.

Border Transit Limited:

President.

Secretary.