

Vol. 1. Stonebone

# MODIFIED AGREEMENT

BETWEEN

The City Council of Bendigo, the Borough Council of Eaglehawk, and  
the Shire Council of Marong, and the Bendigo  
Tramway Company.

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**This Indenture** made the third day of September One thousand eight hundred and ninety one  
Between PETER EVEREST STEWART COOPER of Bendigo in the Colony of Victoria Liquidator of the SANDHURST  
AND EAGLEHAWK ELECTRIC TRAMWAY COMPANY LIMITED a company duly incorporated under the Companies' Statute 1864  
and now in course of being voluntarily liquidated and wound up under the provisions of the Companies' Act 1890  
(hereinafter called the liquidator) of the first part THE MAYOR COUNCILLORS AND CITIZENS OF THE  
CITY OF BENDIGO (formerly the City of Sandhurst) THE MAYOR COUNCILLORS AND BURGESSES  
OF THE BOROUGH OF EAGLEHAWK and THE PRESIDENT COUNCILLORS AND RATEPAYERS  
OF THE SHIRE OF MARONG (hereinafter called the Councils) of the second part and CHARLES FREDERICK  
KENNEDY of Albion Chambers View Street in the City of Bendigo in the said colony Solicitor of the third part.  
Whereas under and by virtue of a certain Indenture bearing date the first day of August One thousand eight hundred  
and eighty nine made between John Booth and Lawrence Hugh Sims Ellson (herein described and therein and herein-  
after called the Vendors) of the first part The Mayor Councillors and Citizens of the City of Sandhurst The Mayor  
Councillors and Burgesses of the Borough of Eaglehawk and The President Councillors and Ratepayers of the Shire  
of Marong of the second part and the Sandhurst and Eaglehawk Electric Tramway Company Limited (therein and  
hereinafter called the Company) of the third part. After reciting that the Company had contracted with the Vendors *date*  
for the purchase of all the Vendors' right title and interest property claim and demand in and to the concession to  
construct a Tramway in the Municipal District of the City of Sandhurst in the Borough of Eaglehawk and in the  
Shire of Marong subject to the approval of the Governor of the Colony of Victoria conferred on them by and all  
privileges rights and benefits derivable under an Agreement dated the fifth day of October One thousand eight hun-  
dred and eighty eight and made between the Councils of the one part and the Vendors of the other part. And that  
the Governor of the Colony of Victoria acting by and with the advice of the Executive Council and in pursuance of  
the provisions of the Local Government Act Amendment Act 1883 on the twenty fourth day of September One thou-  
sand eight hundred and eighty eight made an order that the Councils of the Municipalities of the City of Sandhurst  
and Borough of Eaglehawk should be and were thereby authorised to construct Tramways in the Municipal District  
of the City of Sandhurst and the Municipal District of the Borough of Eaglehawk in the manner and upon the terms  
and subject to the conditions contained in such order. And that the Governor of the Colony of Victoria acting by  
and with the advice of the Executive Council and in pursuance of the provisions of the said Local Government Act  
Amendment Act 1883 on the twenty first day of May One thousand eight hundred and eighty nine made an order  
that the Council of the Municipality of the Shire of Marong should be and was thereby authorised to construct Tram-  
ways in the Municipal District of the Shire of Marong in the manner and upon the terms and subject to the conditions  
contained in such order. And that the said Councils by the said agreement of the fifth day of October one thousand  
eight hundred and eighty eight agreed to delegate to the said John Booth and Lawrence Hugh Sims Ellson the  
authority conferred by the said recited orders to construct maintain and manage for thirty years the said Tramways  
subject to the rental and on the terms and conditions contained in the said agreement. And that the said Councils  
had in exercise of the powers conferred by the said recited Act by an agreement bearing even date with the now  
reciting Indenture delegated to the said John Booth and Lawrence Hugh Sims Ellson the authority conferred upon  
the said Councils by the said Orders in Council to construct maintain and manage the said Tramways subject to the

observance and performance by the said John Booth and Lawrence Hugh Sims Ellson of all the powers conditions obligations and stipulations contained in the said Orders in Council and subject also to all the terms conditions and stipulations not inconsistent with any of the conditions and stipulations in such orders as are contained in the said Agreement dated the fifth day of October One thousand eight hundred and eighty eight and made between the said Councils and the said John Booth and Lawrence Hugh Sims Ellson. And that by the said Agreement of the fifth day of October One thousand eight hundred and eighty eight it was provided that the said John Booth and Lawrence Hugh Sims Ellson should be at liberty to assign the said Agreement or any powers rights or privileges derivable thereunder to the said Company. It was witnessed that in pursuance of the said agreement and in consideration of the sum of six thousand pounds paid by the Company to the Australasian Electric Tramway Company Limited at the request of the Vendors and of five thousand shares of the Company (party thereto) paid up to 15s. each delivered to the said Australasian Electric Tramway Company Limited at the request of the vendors the receipt of which sum and shares was respectively acknowledged at the foot of the now reciting Indenture. The Vendors so far as they lawfully could did thereby with the consent and the concurrence of the said Councils so far as they lawfully could give the same and of the said Governor give grant and assign unto the Company and its authorised assigns the like full power license and authority as was and is conferred on them by the said Councils under the aforesaid agreement of the fifth day of October one thousand eight hundred and eighty eight to enter into and upon and under the public highways streets and roads of which the Councils have the care management or control within the City of Sandhurst the Borough of Eaglehawk and Shire of Marong aforesaid particularly described in the first schedule to the said agreement of the fifth day of October one thousand eight hundred and eighty eight and therein and thereon construct and during the term granted by the aforesaid Agreement to maintain and manage tramways with the like power and subject to the like obligations and provisions as are conferred or imposed on the Vendors by the said Councils under the said Agreement to break dig and take up such parts of the same public highways streets and roads as may be necessary or convenient for such construction or maintenance or for examining relaying or repairing the same during the said term and to enclose the said parts of the said public highways streets and roads during such construction relaying or repairing as aforesaid. And also power licence and authority to run tram-cars on such Tramways or any part or parts section or sections when the same shall have been completed or shall be in a fit state and condition for the running of tram-cars thereon and generally full power to do all acts and things necessary or convenient for the purposes aforesaid. And also all other powers rights privileges licenses and authorities contained in the hereinbefore mentioned Orders-in-Council of the twenty fourth day of September One thousand eight hundred and eighty eight and the twenty first day of May One thousand eight hundred and eighty nine respectively for the construction of Tramways within the said City of Sandhurst the Borough of Eaglehawk and Shire of Marong To hold the powers licenses and authorities and premises thereinbefore expressed to be thereby given granted or assigned unto the Company and its authorised assigns for the term of thirty years to be computed from the fifth day of October One thousand eight hundred and eighty eight at the rentals reserved by and subject to the covenants by the Vendors their executors administrators and assigns and the provisions conditions agreements and stipulations contained in the said agreement of the fifth day of October One thousand eight hundred and eighty eight and the conditions stipulations and provisions contained in the said Orders-in-Council and henceforth respectively to be performed and observed. And whereas at a meeting of the Sandhurst and Eaglehawk Electric Tramway Company Limited held at Phair's Hotel Collins Street in the City of Melbourne in the said colony on the fourth day of May One thousand eight hundred and ninety one the said Company passed a special resolution requiring the said Company to be wound up voluntarily and a resolution that the said Peter Everest Stewart Cooper be appointed liquidator thereof and such resolutions were confirmed on the twentieth day of May One thousand eight hundred and ninety one and such first-mentioned resolution was duly advertised in the Government Gazette of the twenty ninth day of May One thousand eight hundred and ninety one in accordance with the provisions of the said Companies' Act 1890. And whereas the said liquidator called for tenders for the purchase of (inter alia) such rights powers and privileges as were assignable or which the liquidator had power or authority to transfer as were conferred on the said Company by the said agreement of the fifth day of October One thousand eight hundred and eighty eight and by the hereinbefore recited Indenture of the first day of August One thousand eight hundred and eighty nine. And whereas the tender of the said Charles Frederick Kennedy for the sum of Four thousand pounds being the highest tender for the purchase of (inter alia) the said rights powers and privileges was accepted by the said liquidator on the sixteenth day of June One thousand eight hundred and ninety one. And whereas the said Councils so far as they do so have consented to an assignment by the said liquidator to the said Charles Frederick Kennedy (as they do respectively hereby admit and acknowledge) the like full power license and authority as was and is conferred on the said John Booth and Lawrence Hugh Sims Ellson by the said agreement of the fifth day of October One thousand eight hundred and eighty eight and on the Company by the hereinbefore recited Indenture of the first day of August One thousand eight hundred and eighty nine and also to apply for the concurrence of the Governor-in-Council thereto. And whereas the said Charles Frederick Kennedy has applied to the said Councils to modify vary and alter certain of the conditions contained in the said agreement of the fifth day of October One thousand eight hundred and eighty eight in manner hereinafter mentioned and which the said Councils have consented and agreed to do testified by their being parties to and executing these presents. Now this Indenture Witnesseth that in pursuance of the said agreement and in consideration of the sum of Four thousand pounds paid by the said Charles Frederick Kennedy to the liquidator on or before the execution hereof (the receipt whereof he doth hereby acknowledge) the liquidator so far as he lawfully can doth hereby (with the consent and the concurrence of the said

Councils so far as they can lawfully give the same and of the said Governor) give grant and assign unto the said Charles Frederick Kennedy his executors administrators and assigns such of the powers licenses and authorities as were conferred on the said Company under and by virtue of the hereinbefore recited Indenture of the first day of August One thousand eight hundred and eighty nine as are now subsisting and capable of taking effect or vested in him as such liquidator as aforesaid and which are assignable by him and all the estate and interest of the said liquidator or the said Company into and upon the same premises. To have and to hold the powers licenses authorities and premises hereinbefore expressed to be given granted or assigned unto the said Charles Frederick Kennedy his executors administrators and assigns for the residue of the said term of Thirty years yet to come and unexpired at the rentals reserved by and subject to the covenants by the said Councils and the provisions conditions agreements and stipulations contained in the said agreement of the fifth day of October One thousand eight hundred and eighty eight or such of them as are now subsisting or capable of taking effect and in the said Orders-in-Council and henceforth to be respectively performed and observed by the said Charles Frederick Kennedy his executors administrators and assigns save and except however so far as the same several provisions conditions agreements and stipulations are altered or modified and other concessions made given or granted in lieu thereof or in addition thereto by the covenants on the part of the said Councils and the said Charles Frederick Kennedy hereinafter appearing and the liquidator doth hereby covenant with the said Charles Frederick Kennedy his executors administrators and assigns that he has not done omitted committed or knowingly suffered or been party or privy to anything whereby the said premises hereinbefore expressed to be hereby given granted or assigned are or may be impeached affected or encumbered or whereby he is hindered or prevented from assigning the same in manner aforesaid and further that the liquidator and every person having or claiming any estate right title or interest in or to the said premises through or in trust for him will at all times during the said term at the cost of the said Charles Frederick Kennedy his executors administrators and assigns execute and do every such assurance and thing for the further or more perfectly assuring all or any of the said premises unto the said Charles Frederick Kennedy his executors administrators or assigns for the said term as by him or them shall be reasonably required and the said Charles Frederick Kennedy doth hereby for himself his executors administrators and assigns covenant with the liquidator his executors administrators or assigns that he the said Charles Frederick Kennedy his executors administrators or assigns will from the said sixteenth day of June One thousand eight hundred and ninety one and henceforth pay the rent reserved by and will perform and observe all the covenants provisions conditions and stipulations by the Vendors contained in the said recited agreement (save as hereinafter altered or modified) as if he the said Charles Frederick Kennedy had been a party to such agreement and keep the liquidator his executors and administrators indemnified against all actions suits proceedings costs damages claims and demands and liabilities for non-payment of the said rent or breach or non-performance or non-observance of the said covenants agreements duties liabilities or responsibilities or any of them henceforth to be paid observed fulfilled and performed by or under the said agreement or arising thereout. And this Indenture further witnesseth that in further pursuance of the said agreement and in consideration of the covenants on the part of the said Charles Frederick Kennedy hereinafter contained and also in consideration of the premises the said Councils severally and respectively so far as they lawfully can do hereby covenant and agree with the said Charles Frederick Kennedy his executors administrators and assigns in manner following that is to say:—

1.—That the rent payable under the hereinbefore recited agreement of the fifth day of October One thousand eight hundred and eighty eight shall be and is hereby reduced to the sum of One hundred pounds per annum and shall commence when the said Charles Frederick Kennedy his executors administrators or assigns shall run tramcars regularly and charge fares for the conveyance of passengers on any of the tramways authorised by the said agreement but such rent shall commence not later than six months from the day of the date of these presents. The said rent shall be payable half-yearly the first of such payments to be made at the expiration of Six calendar months from the time when the said rent shall commence as hereinbefore mentioned.

2.—That the words "provided that the nett profits of same will shew eight per cent. on the cost of the line" contained in clause six of the said agreement of the fifth day of October one thousand eight hundred and eighty eight shall be and the same are hereby revoked or annulled and the following shall be and is hereby substituted in lieu thereof. "But the said Councils shall not require such first mentioned track to be added until the said line from Sandhurst Railway Station to Eaglehawk shall have paid a dividend of eight per cent. for a period of two successive years."

3.—That clause nine of the said agreement of the fifth day of October one thousand eight hundred and eighty eight is hereby revoked and annulled and in lieu thereof the following shall be substituted:—The said Charles Frederick Kennedy his executors administrators or assigns shall commence a section of the line from White Hills to Kangaroo Flat starting at or near the Gas Works in Bridge-street and terminating at or near to Beech-street Golden Square within two years from the time when the said Charles Frederick Kennedy his executors administrators or assigns shall run tram cars regularly and charge fares for the conveyance of passengers on any of the said tramways and shall complete the same with all reasonable speed and shall commence and complete with all reasonable speed another section of the said line from Beech-street aforesaid to Kangaroo Flat when and so soon as the said first mentioned section has paid a dividend on the moneys expended on the construction and equipment thereof or incidental thereto over and above its working expenses of Ten pounds per centum per annum for two successive years.

4.—That clauses eleven and twenty three of the said agreement shall be and the same are hereby revoked and annulled and the Councils hereby give to the said Charles Frederick Kennedy his executors administrators and assigns the right and liberty to use such means or modes of traction as he or they may consider desirable and proper. But such means or mode of traction if it be other than horse electric Baldwin's or Kittson's Steam Motor must first be submitted to and approved of by the Councils. Provided that horse traction shall not in any case be used for a longer period than four years.

5.—That clause twelve of the said agreement of the fifth day of October One thousand eight hundred and eighty eight shall be and it is hereby revoked and the following substituted therefor :—That the tram cars used on the said lines or any of them shall be of such size shape and pattern as shall be most advantageous and convenient for the public subject at all times to the inspection and approval of the Councils.

6.—That clause sixteen of the said agreement of the fifth day of October One thousand eight hundred and eighty eight shall be so far altered as to read "fifteen minutes" in lieu and stead of "ten minutes" whenever the same occurs in such clause.

7.—That clause twenty four of the said agreement of the fifth day of October One thousand eight hundred and eighty eight shall be so far modified as to substitute "Five pounds" in lieu and stead of "Ten pounds" as the penalty for not working the said Tramways as provided by the said Contract.

8.—That clause twenty six of the said agreement of the fifth day of October one thousand eight hundred and eighty eight shall be so far modified as to substitute five hundred pounds in lieu and stead of one thousand pounds in every place in such clause where one thousand pounds appears therein.

9.—That notwithstanding anything in the said agreement of the fifth day of October One thousand eight hundred and eighty eight contained to the contrary the said Charles Frederick Kennedy his executors administrators and assigns shall not be compelled to run cars on the said line between the Railway Station Bendigo and the present terminus at Eaglehawk until after the expiration of six months from the day of the date of the execution of these presents.

10.—That the said Charles Frederick Kennedy his executors administrators and assigns shall have full power and be at liberty at any time to assign these presents or any powers rights or privileges vested derivable or conceded given or granted hereunder or under the said agreement of the fifth day of October one thousand eight hundred and eighty eight and the said Tramways or any part or parts of such Tramways to such person or persons corporation or corporations as he or they may think fit or consider advisable.

11.—That the hours of labor of all employes on the said Tramways shall be eight hours per day or forty-eight hours per week of six days and in all other respects the Councils and the said Charles Frederick Kennedy hereby ratify and confirm the said agreement of the fifth day of October one thousand eight hundred and eighty eight and the said Charles Frederick Kennedy for himself his executors administrators and assigns hereby covenants with the Councils that he the said Charles Frederick Kennedy his executors administrators and assigns will henceforth pay the rents reserved by and will perform and observe all the covenants conditions and provisoes contained in the said agreement of the fifth day of October one thousand eight hundred and eighty eight and in the Agreement and Indenture of the first day of August one thousand eight hundred and eighty nine respectively subject to such alterations and modifications thereof and additions thereto as are herein contained. In Witness whereof the said Peter Everest Stewart Cooper and Charles Frederick Kennedy have hereunto set their hands and seals and the said Corporation have hereunto set their common seals this third day of September one thousand eight hundred and ninety one.

Signed Sealed and Delivered by the said PETER EVEREST STEWART COOPER in the presence of

JOHN F. GLEESON, Clerk to CRABBE, COHEN AND KIRBY, Solicitors, Bendigo.

P. E. S. COOPER.



The Common Seal of the Corporation styled the Mayor Councillors and Citizens of the City of Bendigo was affixed hereto in the presence of

J. H. ABBOTT, MAYOR.  
D. B. LAZARUS,  
JOHN ROBERTS HOSKINS, } Councillors.

W. D. C. DENOVAN,  
TOWN CLERK.



The Common Seal of the Corporation styled the Mayor Councillors and Burgesses of the Borough of Eaglehawk was affixed hereto in the presence of

WILLIAM JAMES, MAYOR.  
W. V. KNEEBONE, }  
HAY KIRKWOOD, } COUNCILLORS.

WM. COOK, TOWN CLERK.



The Common Seal of the Corporation styled the President, Councillors and Ratepayers of the Shire of Marong was affixed hereto in the presence of

WILLIAM GLEN, PRESIDENT.  
JOHN ILLINGWORTH, }  
ADDISON NICHOLL, } COUNCILLORS.

THOS. S. STEWART,  
SHIRE SECRETARY.



Signed Sealed and Delivered by the said CHARLES FREDERICK KENNEDY in the presence of

H. FEARN, Clerk to Mr. C. FRED. KENNEDY, Solicitor,  
Bendigo.

C. FRED. KENNEDY,



STAMP.

Received on or before the execution of the above written Indenture from the above named Charles Frederick Kennedy the sum of Four thousand pounds being the consideration money above expressed to be paid by him to me.

P. E. S COOPER

£4,000.

WITNESS—

JOHN F. GLEESON.