

Dated 10<sup>th</sup> July 1907.

*Contract Register #12*

The City of Edmonton,

-and-

Joseph Hoslyn.

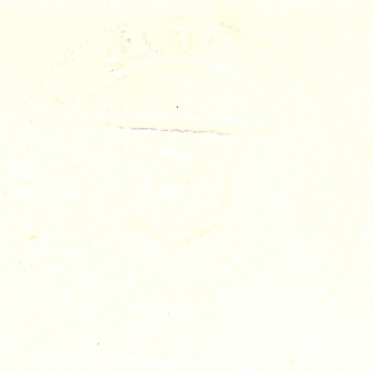
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MEMORANDUM OF AGREEMENT.

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BRICK EMERY NEWELL & BOLTON.

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MEMORANDUM OF AGREEMENT entered into this 10<sup>th</sup> day of July  
A. D. 1907.

BETWEEN:-

The City of Edmonton, hereinafter called the "City".

OF THE FIRST PART.

-and-

Joseph Hostyn, of the City of Edmonton in  
the Province of Alberta, Hotel Keeper.

OF THE SECOND PART.

WHEREAS the said Hostyn is desirous of constructing a hoist or haul-way for the purpose of transporting and hauling wagons, teams, freight and passengers up and down the hill on First Street in the City of Edmonton, from the South boundary of College Avenue to the North Boundary of Victoria Avenue in the said City.

AND WHEREAS subject to the conditions hereinafter set forth, the said City has caused that portion of First Street hereinafter described to be closed for the purpose of allowing the said Hostyn to construct and operate said haul-way thereon.

NOW THEREFORE THIS AGREEMENT WITNESSETH AS FOLLOWS:-

1. The City, subject to the conditions, provisos and restrictions hereinafter set forth doth hereby transfer to the said Hostyn all that portion of First Street in the said City of Edmonton particularly described as follows:-

That portion of said First Street forty five feet in width extending from the southern boundary of College Avenue to the northern boundary of the eastern extension of Victoria Avenue in the said City and parallel with the western boundary of

First Street, and the western boundary of the said portion, being distant seventeen and one-half feet (17½) easterly from the western boundary of First Street ~~and which said land is shown on the sketch herewith attached.~~

*A.W.*  
PROVIDED, however, should the said Hostyn fail to construct and operate the said haul-way within the time herein limited, or should the said Hostyn fail to bona fide operate the said haul-way for one month during the currency of these presents, or should the said City acquire or purchase the said haulway pursuant to the provisions of this agreement, then and in any such event the said Hostyn shall immediately re-transfer to the said City the lands hereby transferred to the said Hostyn free and clear of all encumbrances.

The said Hostyn agrees to commence the actual construction of the said haul-way by the first day of August, 1907, and with all reasonable dispatch to continue the same so that the said haul-way shall be in bona fide operation by the first of February, 1908.

Provided ~~however~~, that if the construction of the said haul-way be delayed by strikes or failure of transportation companies to deliver the materials for the erection of said haul-way, the said Hostyn shall have such further time to complete the construction of the said haul-way as the work shall have been delayed by reason of any such strikes or failure of transportation companies as aforesaid.

3. The actual work of construction, however, shall not be commenced until a plan thereof showing the location of the said haul-way on the said land and until a statement showing the position of the system to be adopted, the power to be used, and the appliances for safety in the work of the said haul-way have been submitted to and approved of by the Commissioner of the City.

4. The said Hostyn before commencing the construction of said haul-way, shall deposit with the chartered bank in the said City of Edmonton a sum equal to 25% of the estimated actual cost of the equipment and construction of the said Haul-way, the said deposit to be paid out to the said Hostyn as the work of the said haul-way progresses, on progressive certificate to be issued by the City Engineer, on the basis of 80% of the value of the work or increased work done.

5. The said Hostyne shall always keep and maintain the said haul-way in good and efficient condition and capable of transporting passengers, teams, drays and freight applying for transportation; nevertheless this provision shall not be interpreted arbitrarily and shall apply to the average number of passengers teams, drays and freight applying for transportation from month to month.

6. If the said Hostyn shall well and truly fulfill all the conditions and observe all restrictions herein contained, he shall enjoy the right and privilege of operating the said haul-way or hoist on the land aforesaid for the full term of ten years dating from the date of the execution of these presents, with power to do such grading on that part of said land utilized for purposes of said hoist as shall be requisite; but nothing in this agreement shall effect or abridge any rights, powers, or privileges which it may be deemed desirable that the City should exercise in respect of any Municipal Street Railway System or which the City may have heretofore granted or may hereafter grant to any Street Railway Company.

7. The said Hostyn shall have the right from time to time to replace the system of hoist or haul-way at the time being in operation with an improved system or one of larger capacity or to substitute a moving system or one of larger capacity

or to substitute a moving roadway or system similar thereto.

8. At the expiration of the term of ten days years referred to in paragraph 6 on giving three months previous notice in writing to the said Hostyn, the City shall have the right to purchase the plant machinery, rolling stock, equipment, property and interest in and connected with the said haulway or hoist, as a going concern at a valuation to be agreed upon by the parties hereto failing to agree upon the price so to be paid, the same shall be decided by arbitration in pursuance of the statutory law of the Province for the time being in force; the award of the majority of the arbitrators to be binding; provided that in estimating or fixing such price no allowance shall be made in respect either of good will or of the value of the said land.

9. In the event of the City not exercising the right to purchase the said haulway the said Hostyn shall enjoy the right and privileges herein contained for a further term of five years, and at the expiration of that period the City shall again have the right to purchase the said haulway as a going concern in accordance with the conditions of the last preceding paragraph and so on every five years until the City shall exercise the right and option so to purchase.

10. The said Hostyn, for himself his heirs, executors and administrators, hereby covenants with the said City that he will at all times and from time to time indemnify and keep harmless the said City from all loss, costs, charges, actions or damages that the said City may suffer, incur, be put to, or become liable for, by reason of, or arising through the construction, operation or maintenance of the said Haulway or otherwise howsoever

11. And for better securing the City against all loss, costs, charges damages and expenses as hereinbefore set forth the said Hostyn shall and he doth hereby grant, mortgage and charge the said lands and the said haulway and entire place at any time hereafter used in operating the same all of which are hereby declared to be fixtures attached to the realty and to form part of the security hereby intended, with the due and proper fulfillment and observance of all the covenants, provisos and conditions on his part by these presents to be kept, observed and performed.

And it is hereby agreed that the City is to file caveat against the said land and fixtures for the purpose of giving fuller effect to the foregoing clauses.

These presents shall extend to, enure to the benefit of and bind the respective heirs, executors, administrators, successors or assigns of the parties hereto.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals this 10<sup>th</sup> day of July 1907.

*W. J. ...*

J. M. C. ...  
Secretary-Treasurer

*Joseph Hostyn*

As to signature of  
Joseph Hostyn  
H. J. Dawson