

erty, and may and shall recover of the delinquent party or parties, his or their full, ratable and distributive share of the cost of such work, with interest upon such share at the rate of ten per cent per annum.

Duly executed.¹

THE COMMONWEALTH AND THE BOSTON AND ROXBURY MILL CORPORATION.

AGREEMENT.

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| <p>1. Parties: Commonwealth releases to the Boston and Roxbury Mill Corporation certain lands; reserving rights of drainage.</p> <p>2. Boston and Roxbury Mill Corporation releases to Commonwealth the Milldam; excepting rights of way, toll, and flowage; and agrees to build a sea-wall along the northerly side to Brookline.</p> | <p>3. Boston and Roxbury Mill Corporation to drain certain lands, according to plans of Commissioners; to surrender franchise of toll in certain events; may arrange with any city or town for maintaining the dam, roads, and bridges.</p> <p>4. Commonwealth may enforce this covenant at expense of the Boston and Roxbury Mill Corporation, if the latter neglect.</p> |
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AGREEMENT.²

This Indenture of two parts, made and concluded this ninth day of June, A. D. 1854, by and between the Commonwealth of Massachusetts, acting by John A. Bolles, Giles H. Whitney, and William H. Swift, the Board of Commissioners of said Commonwealth, appointed under and in pursuance of the Resolves concerning Boston Harbor and the Back Bay, approved May 20, 1852, of the first part, and the Boston and Roxbury Mill Corporation, a corporation created by the laws of said

Parties.
1854, June 9.

¹ Signed by John A. Bolles, Giles H. Whitney, and W. H. Swift, Commissioners of the Commonwealth, and by John C. Gray, President of the Boston Water Power Company.

² Recorded with Suffolk Deeds, Liber _____, page _____

1854, June 9. Commonwealth, of the second part, witnesseth as follows, viz: —

Commonwealth releases to B. & R. M. Corporation certain lands; reserving rights of drainage.

ARTICLE 1. That in consideration of the covenants and agreements hereinafter contained and set forth, the said Commonwealth doth hereby release and forever quitclaim to said Boston and Roxbury Mill Corporation, its successors and assigns, all the right, title, interest and estate of said Commonwealth, in and to that tract of land, two hundred feet in width, consisting of flats, channels, and land already made by said Corporation, lying next north of the original north wall of the Milldam, and within two hundred feet thereof, situated partly in Boston and partly in Brookline, and extending from ordinary high-water mark on the Boston to shore, ordinary high-water mark on the Brookline shore; saving and reserving to said Commonwealth, and its assigns, the right of drainage from the Back Bay into Charles River, through said released premises and the Milldam, across and under all avenues or streets laid out, or to be laid out, as hereinafter provided, and the right in common with said corporation and its assigns, to pass and repass, toll free, upon and over all avenues or streets laid out, or to be laid out, from north to south across said released premises and said dam, by said Commissioners or their successors, as hereinafter provided.

To have and to hold said released premises to said Boston and Roxbury Mill Corporation, its successors and assigns, forever.

B. & R. M. Corporation releases to Commonwealth the Milldam, excepting right of way, toll, and flowage, and agrees to build a sea-wall along the northerly side to Brookline.

ARTICLE 2. That in consideration of the foregoing release, the said Boston and Roxbury Mill Corporation doth hereby release and forever quitclaim to said Commonwealth and its assigns, all right, title, interest and estate, except the existing rights of way and toll, in and to the land upon and over which said Milldam was originally constructed, to be forever kept open as a public highway, together with all right not heretofore conveyed to the Boston Water Power Company, to flow any of the lands in the Back Bay, southerly of said Milldam; and doth hereby, for itself and its successors and assigns, covenant and agree, to and with said Commonwealth and its assigns, that said corporation will, and its successors and assigns shall, within

such period of time as may be prescribed by said Commissioners ^{1854, June 9.} or their successors in office or authority, in conjunction with the Governor for the time being of said Commonwealth, construct and complete a sea-wall in a manner, of materials, and to a height satisfactory to said Commissioners or their successors aforesaid, extending along the northerly line of said released premises, from the westerly end of the present sea-wall of said corporation, to ordinary high-water mark on said Brookline shore, with suitable sluices for the admission of water into the full basin, so called, in the Back Bay, and from the empty basin, so called, in said Back Bay, and will and shall forever keep said sea-wall from shore to shore and said sluices in good repair, and will and shall fill up with materials and in a manner satisfactory to said Commissioners or their said successors, the whole space inclosed or to be inclosed by said sea-wall, from shore to shore, as aforesaid, to the full height of the Milldam, as fast as may be deemed proper either by the major part of a committee consisting of said Commissioners or their said successors, and a like number of persons elected for that purpose on the part of said corporation, or by said Commissioners or their successors alone, if no such persons shall be so elected by said corporation; and will and shall, whenever requested by said Commissioners, or their said successors, fill up any portion of the space aforesaid, in manner aforesaid, which said Commissioners or their said successors may deem needful to be filled, to prevent leakage through said Milldam.

ARTICLE 3. That for the consideration last aforesaid, the said Boston and Roxbury Mill Corporation, for itself, its successors and assigns, doth hereby covenant and agree, to and with said Commonwealth and its assigns, that said corporation will, and its successors and assigns shall, lay out and drain all land by said corporation already made west of Otter Street, and all land hereafter by said corporation to be made, west of said street, in conformity with such plan as may by said Commissioners, or their said successors, be devised and prescribed: *provided* such plan, so far as it relates to land now made, shall be furnished within sixty days after the Governor and Council

B. & R. M. Corporation to drain certain lands according to plan of Commissioners.

1854, June 9.

shall have approved of this indenture, and so far as it relates to land hereafter to be made, shall be furnished within sixty days after any portion of said land, not less than one hundred feet in length, shall have been completed to the satisfaction of said Commissioners or their said successors, and shall not require for streets, or other public uses, more than one third part of said lands, including in said third part twenty feet to be added to the width of the highway over said dam; and will and shall, from time to time, remove the toll-house of said corporation, so as to keep the same westward of all dwelling-houses that may hereafter be built east of the junction of said dam with the cross-dam, during the continuance of the toll franchise of said corporation, and shall and will surrender said franchise of toll, together with all said corporation's present rights of way over the Milldam and cross-dam, and over all bridges and roads as said roads are now constructed, connected with, or leading to, either of said dams, whensoever either of the following events shall occur, viz: Whenever avenue number two on the plan hereto annexed, shall be extended and opened as a street for public travel to the cross-dam; or whenever a strip of land, not less than one hundred and fifty feet wide, shall be made and filled to the height of the Milldam, extending from Otter Street, on the north side of said dam, as far west as the point opposite the end of the cross-dam, or extending on the south side of said dam to a point on the Milldam thirteen hundred and fifty-seven feet east of the cross-dam; or at the expiration of ten years from the first day of May, A. D. 1853; it being understood, however, that said corporation has, and shall have liberty at any time, to surrender its toll franchise to said Commonwealth, or to enter into an arrangement, subject to the covenants herein contained, with any city or town within which any parts of the dam, cross-dam, bridges or roads aforesaid are situated, for the maintenance of such parts, and that said corporation shall remain bound, as now, until such arrangement or surrender, to keep said dams, roads and bridges in good repair: *provided, however*, that the toll franchise shall not terminate in consequence of the filling up of said land north of the dam,

To surrender franchise of toll in certain events.

May arrange with any city or town for maintaining the dam, roads, and bridges.

under the direction of said Commissioners, or their said successors, to prevent leakage through said dam, as herein before provided. 1864, June 9.

ARTICLE 4. That for the consideration aforesaid, the said Boston and Roxbury Mill Corporation, for itself, and its successors and assigns, doth hereby covenant and agree, to and with said Commonwealth, that said Commonwealth by said Commissioners, or by such other agents as may by law be thereto authorized, may, at any and all times hereafter, enforce a compliance with and an execution of the terms, conditions and covenants of this indenture in regard to the building of said sea-wall, the filling up and laying out and draining of all lands included within the same, and in regard to all other the premises, and for this purpose may enter upon any portion of the said lands, and remove therefrom any obstruction interfering with said Commissioners' said plans; and that said Commissioners or their said successors, after due notice to said corporation or its successors or assigns who shall, in the judgment of said Commissioners or their said successors, unreasonably delay or neglect to keep and perform said terms, conditions and covenants, may proceed, at the expense of said dilatory or negligent party, to build or repair such sea-wall, sluiceway, sewer, or drain, or to fill up such space and lay out and construct such street, or other public area, as under the covenants of this indenture should be built, laid out or constructed by said corporation, its successors or assigns, and that the said covenants shall run with the land released as aforesaid, until fulfilled, or until released by said Commonwealth.

Commonwealth may enforce this covenant at expense of B. & R. Corp. if the latter neglects.

Duly executed, etc.