

**THE COMMONWEALTH AND THE BOSTON WATER
POWER COMPANY.**

AGREEMENT.

Parties.

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| <ol style="list-style-type: none"> 1. Commonwealth relinquishes to Water Power Company all claim to certain lands and flats, excepting avenues, etc. Avenues located. 2. Water Power Company relinquishes to the Commonwealth all claim to certain lands and flats. 3. Third parties release claims; Commonwealth releases channels, etc., to third parties. 4. Water Power Company grants the right of filling up the basin to third parties. 5. Commonwealth not to take more than one third of land for streets. Water Power to be undisturbed. 6. Water Power Company and third parties to fill up and drain ac- | <p>ording to Commission plans.</p> <ol style="list-style-type: none"> 7. Water Power Company to b avenue No. 1 and part of 2, according to direction the Commissioners. 8. Water Power Company and tl parties to complete aven within a fixed time. 9. Commonwealth may enforce c pliance with plans; and, parties neglect, at their pense. 10. Water Power Company to k sluiceways open. 11. Indenture to take effect u signature; and then own may become parties at disc tion of Commissioners. 12. Improvements requiring coöpe tion of third parties may they neglect, be carried at their expense. |
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AGREEMENT.¹

Parties.
1854, June 9.

This Indenture of three parts, made and concluded this nird day of June, A. D. 1854, by and between the Commonwealth of Massachusetts, acting by John A. Bolles, Giles H. Whitne and William H. Swift, the Board of Commissioners of s Commonwealth, appointed under and in pursuance of the B solves concerning Boston Harbor and the Back Bay, approv May 20, 1852, of the first part, the Boston Water Power Co

¹ Indenture of June 9, 1854, between the Commonwealth, the Boston Water Power Co., and other parties, recorded with Suffolk Deeds, Liber , folio

pany of the second part, and all such other owners or claimants, individual or corporate, of lands or flats in the Back Bay as shall, by signing this Indenture, become parties hereto, of the third part, witnesseth as follows, to wit : —

1854. June 9.

ARTICLE 1. That in consideration of the grants, releases, covenants, and agreements in this indenture contained and set forth, the said Commonwealth doth hereby release and forever quit-claim to said Boston Water Power Company, its successors and assigns, subject to the provisions of article third of this indenture, and subject, also, to all the avenues as public highways, and to all the railroads laid down on the plan hereto annexed, so long as the same shall continue, all the right, title, interest, and estate of said Commonwealth in and to all lands, channels, and flats situated in the empty basin, so called, in the Back Bay, lying below the riparian line and easterly of avenue number four, and southerly of a line drawn from avenue numbered four to Providence Street, parallel with avenue numbered two, and one hundred and fifty feet south thereof; and in and to all land, channels, and flats in said basin lying westerly of a line extending at right angles, from the Milldam parallel with avenue numbered six, to avenue numbered five, starting at a point on said dam distant eastwardly thirteen hundred and fifty-seven feet from the junction of the east line of the cross-dam continued with the south line of said Milldam continued, and lying northerly of avenue numbered five, and southerly of the said Milldam, and easterly of the cross-dam, and in and to the land, channels, and flats south of avenue numbered two, north of the Boston and Providence Railroad, and east of avenue numbered one; subject to the rights of way hereinafter described, said several avenues being the same so numbered on the plan hereto annexed: upon which plan are laid down six avenues, numbered one, two, three, four, five, and six, situated and described as follows, viz : —

Commonwealth relinquishes to Water Power Company certain lands and flats; excepting avenues, &c.

Avenue number one begins at the harbor line, on the northerly side of the Milldam, and, crossing the dam at right angles, runs, in the same course, southerly, of the width of eighty feet,

Avenues located.

1854, June 9.

to the Tremont Road: the point where the easterly line of the said avenue intersects the southerly wall of the dam, being, measured on said wall, four hundred and ninety-one $\frac{1}{8}$ feet westerly of the western wall of the Public Garden.

Avenue number two begins at the westerly end of Boylston Street, and runs westerly, at right angles with avenue number one, of the width of eighty feet, to tide-mill road or the cross-dam on Gravelly Point: its southerly side being an extension in the course above described of the southerly line of Boylston Street.

Avenue number three begins on avenue number one at point three thousand two hundred and thirty-eight $\frac{1}{8}$ feet southerly from the south wall of the Milldam, and runs westerly of the width of eighty feet to the Dike.

Avenue number four, beginning at the harbor line, north of the Milldam, crosses the dam at right angles, and runs southerly, of the width of one hundred and twenty feet, parallel with avenue number one, to the Tremont Road; the point where its easterly line intersects the southerly wall of the dam, being two thousand one hundred and two $\frac{1}{8}$ feet westerly of the western line of avenue number one.

Avenue number five, beginning on the westerly line of avenue number one, at a point five hundred and ninety-two feet distant southerly from the south wall of the Milldam, runs westerly, of the width of one hundred and twenty feet, parallel with avenue number two and the Milldam, to the cross-dam.

Avenue number six, beginning at the harbor line north of the Milldam, crosses the dam at right angles, its easterly line intersecting the south wall of the dam at a point thirteen hundred and fifty $\frac{1}{8}$ feet westerly of the west line of avenue number four, and runs southerly, of the width of one hundred feet parallel with avenue number four, to the Tremont Road:—

To have and to hold said released premises unto the said Boston Water Power Company, its successors and assigns, to their own use and behoof forever.

Water Power
Company
relinquishes to

ARTICLE 2. That in consideration of the release aforesaid, the said Boston Water Power Company hereby releases and forev

quitclaims to said Commonwealth and its assigns, all the right, title, interest, and estate of said Company, in and to all land, channels, and flats, in said empty basin lying below said riparian line, and southerly of the Milldam, excepting those lands which are by article first of this indenture released by said Commonwealth to said Company, so far as to allow the Commonwealth and its assigns, and each and every person or corporation who shall become a party to this indenture, and their several and respective heirs, executors, administrators, successors, and assigns, to fill up his or their lands and flats within said Back Bay, in conformity with the plan hereto annexed, and such further plans as said Commissioners, or their successors in office or authority, shall devise, adopt, and prescribe, and in accordance with the provisions of this indenture; and so far as to allow said Commissioners, and their said successors, to execute or cause to be executed, any lake, pond, reservoir, or other public improvement, which they may desire and design in pursuance of said resolves and of this indenture; and also all right, title, and interest in that tract of land bounded north by the Milldam, west by avenue numbered one, east by the Public Garden, and south by the southerly line of avenue numbered two; and also the right through any sluiceway in the dam, or any water-way that may be constructed through the dam or cross-dam under avenues numbered one, four, five and six, and through any sewer or drain constructed as hereinafter provided, to receive and discharge, at any and all times, the water needful for filling or emptying any such sewer or drain, or any of the lakes, ponds, reservoirs, or improvements aforesaid; and also the full and free right of way, in common with every other party hereto and their assigns, over and upon all spaces marked and laid down as avenues on the plan hereto annexed.

Commonwealth
certain lands
and flats.
1854, June 9.

To have and to hold said released premises to said Commonwealth and its assigns forever.

ARTICLE 3. That, for the considerations aforesaid, the said several persons and corporations, parties hereto of the third part, do hereby severally and respectively release and forever quitclaim to said Water Power Company, its successors and as-

Third parties
release claims.

1854, June 9.

signs, one undivided half part of all such portions of land owned by said parties of the third part, respectively, as are situated below said riparian line, and within the limits of release from said Commonwealth to said Company, described in article first of this indenture, and to said Commonwealth and said Company respectively, and their respective successors and assigns, all such portions of land owned by said parties of the third part, respectively, as are situated above said riparian line, and east of avenue numbered four, and west of avenue numbered one, and north of avenue numbered three, and south of the Milldam and lying within the several and respective lines of release described in articles first and second of this indenture; and also the right of way to said Commonwealth and its assigns, and every other party hereto and his respective successors and assigns, over all avenues or streets laid down on the plan hereto annexed; for the purposes of this article the line marked on the said annexed plan, being taken by all parties hereto to be the line of riparian proprietorship.

To have and to hold said released premises to said Commonwealth and its assigns, and to said other releasees and their respective heirs, executors, administrators, successors, and assigns forever.

Commonwealth releases certain channels, &c., to third parties.

And, for the considerations aforesaid, the said Commonwealth doth hereby release and forever quitclaim to the several and respective persons and corporations who may, as riparian owners of land and flats on the westerly side of the empty basin in the Back Bay, become parties hereto, by signing this indenture, the right, title, interest, and estate of said Commonwealth and to any and all channels, guzzles, and flats, in said empty basin lying south of avenue numbered five and west of avenue numbered four on said plan hereto annexed, and which would be included within and between the several and respective boundary lines of the said parties legally produced and extended to the avenues aforesaid; and doth also hereby release and forever quitclaim to the several and respective persons and corporations who may, as riparian owners of land or flats on the easterly side of said empty basin, become parties hereto in manner

aforesaid, all the right, title, and interest of said Commonwealth in and to all guzzles, flats, and channels in said empty basin, east of avenue numbered one and south of avenue numbered two on said plan, which would be included within and between the several and respective boundary lines of said parties, produced and extended in their legal directions to said avenue numbered one:—

To have and to hold said released premises to said several and respective persons and corporations within their several and respective limits, and to their respective heirs, executors, administrators, successors, and assigns, forever.

ARTICLE 4. That, for the considerations aforesaid, the said Boston Water Power Company doth hereby grant, sell and assign to said Commonwealth and its assigns, and to each and every of the other persons and corporations party hereto, their heirs, executors, administrators, successors, and assigns, the right of flowage of said Company in either basin in said Back Bay, so far as to allow each and every one of said other parties, his heirs, executors, administrators, successors, and assigns, as fast as he or they may desire, to fill up his said land and flats in conformity with such plan or plans as said Commissioners, or their successors, may have devised or shall devise and adopt, and in accordance with the provisions of this indenture: *provided, however,* that no person or corporation claiming lands in said empty basin, below the riparian line, under title adverse to the Commonwealth, shall be allowed to fill up his said lands, as herein provided, until such person or corporation shall have become party hereto, or shall have agreed with said Commonwealth and said Company, to execute releases to said Commonwealth and said Company, as described in article third of this indenture, whenever and as soon as the judgment or decree of the Supreme Judicial Court, or the award of Referees chosen for that purpose, shall have determined that such claimant has any such right, title, or interest in said premises which can be released as herein provided. To have and to hold the same to said several and respective persons and corporations, their heirs, executors, administrators, successors, and assigns, forever.

1864, June 9.

Water Power Co. grants the right of filling up the basin to third parties.

Commonwealth
not to take
more than one
third of land
for streets.
1854, June 9.

ARTICLE 5. That, for the considerations aforesaid, the said Commonwealth doth hereby covenant and agree to and with each and every of the other persons and corporations, parties hereto, and their several and respective heirs, executors, administrators, successors, and assigns, that said plans, devised or to be devised, by said Commissioners and their successors, shall not require for streets or other public use more than one third part of the land and flats of either of said parties included within said plans, — reckoning as part of said third all avenues or portions of avenues to be, by said parties of the second and third parts, constructed in accordance with this indenture: and that, in order that the water power be not needlessly injured or diminished, all streets and avenues shall be so laid out and arranged by said Commissioners and their successors upon their said plans, as to allow the flow of water to and from the mills of said Boston Water Power Company and its lessees, under or across said streets and avenues, and over all such spaces in the Back Bay as are not, from time to time, actually filled up, or in process of being filled or set apart for any public improvement, conformably to the provisions of this indenture so far as may be consistent with the system of drainage that may, by said Commissioners or their successors, be established as hereinafter provided, and that the said Commissioners or their said successors will, within ninety days after the approval of this indenture by the Governor and Council, furnish so much of their plan as shall be applicable to that part of the lands of said corporation situated in the empty basin and lying south of the Boston and Providence Railroad, and east of the junction or crossing of said railroad and of the Boston and Worcester Railroad, and the portion of their plan applicable to the remainder of said corporation's lands in said basin within two years after the said approval.

Water power to
be undisturbed.

Water Power
Co. and third
parties to fill up
and drain ac-
cording to Com-
missioners'
plans.

ARTICLE 6. That, for the considerations aforesaid, the said Boston Water Power Company, for itself, its successors and assigns, and the said parties hereto of the third part, for themselves and their respective heirs, executors, administrators, successors, and assigns, do hereby severally and respectively cove-

nant and agree, to and with said Commonwealth and its assigns, ^{1854, June 9.} that they will, and their several and respective heirs, executors, administrators, successors, and assigns, shall fill up, lay out, and drain their respective lands already made, and all other their lands and flats within the Back Bay, or laid down upon or included within the Commissioners' said plans, conformably to such directions and plans, as to materials and height of filling, mode of drainage, location and arrangements of streets, squares, and other public areas, and as to the location and construction of sluices, culverts, bridges, and other public improvements, as may, under the said resolves and according to the provisions of this indenture, be prescribed by said Commissioners or their successors, and duly made known to said parties.

ARTICLE 7. That, for the considerations aforesaid, the said ^{Water Power Co. to build Avenue No. 1 and part of No. 2, according to direction of the Commissioners.} Boston Water Power Company, for itself and its successors and assigns, doth hereby covenant and agree, to and with said Commonwealth and its assigns, that said Company will, and its successors and assigns shall, within such time as said Commissioners or their successors shall, in writing, direct and notify, complete, to the satisfaction of said Commissioners, under their direction, and according to their plan, all that portion of the avenue numbered one on the plan hereto annexed, and the sewers, drains, culverts, and bridges connected therewith, which extends from the line of said Company's land near the Tremont Road to avenue numbered two on said plan, and also the southerly half part of said avenue numbered two, from the end of Boylston Street to said avenue numbered one.

ARTICLE 8. That, for the considerations aforesaid, the said ^{Water Power Co. and third parties to complete avenues, and within a fixed time.} Boston Water Power Company, for itself and its successors and assigns, and the several other persons and Corporations who shall become parties hereto, of the third part, for themselves and their several and respective heirs, executors, administrators, successors, and assigns, do hereby severally covenant and agree, to and with said Commonwealth and its assigns, that they will respectively, within the periods specified in this article, complete to the satisfaction of said Commissioners or their successors, at their own several and respective cost and charge,

1854, June 9.

all such portions of the following avenues, including all sewers and drains, sluices, culverts, and bridges appurtenant to said portions, as are, or may be, laid out wholly upon their several and respective lands and flats, or on or under said cross-dam, namely, avenue numbered two on the plan hereto annexed, within three years from the first day of May, A. D. 1854, avenues numbered three and four on said plan within five years, and avenues five and six on said plan within six years from said date, or within such longer time as said Commissioners or their said successors shall hereafter prescribe, and will and shall in like manner make any alteration of sluices, culverts, and bridges, in size, structure, or position, connected with either of said avenues, as may, in the judgment of said Commissioners, or their said successors, be needful for the flowage described in the fifth article of this indenture; and that they will and shall in like manner, within said several and respective periods, and at their several and respective cost and charge, severally complete one half part of all such portions of the aforesaid avenues, sewers and drains, sluices, culverts, and bridges, as bound or touch upon their said several estates: it being understood that full power is reserved by said Commissioners at any time, to vary either of said avenues within the line of the Commonwealth's land, or, by his consent, within the limits of any other party hereto.

Commonwealth
may enforce
compliance
with plans; and
if parties
neglect, at
their expense.

ARTICLE 9. That, for the considerations aforesaid, it is hereby covenanted and agreed by each and all of said persons and corporations, parties hereto of the second and third parts, for themselves severally and respectively, and their respective heirs, executors, administrators, successors and assigns, to and with said Commonwealth and its assigns, 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 a full execution of, the said plans of said Commissioners and their successors, in regard to the filling up of the land and flats aforesaid, and laying out and construction of streets, squares, ponds, sluices, culverts, drains, sewers, bridges and other public improvements, in, upon, and

over the lands and flats included in said plans, and for this purpose may enter upon the said lands and flats, and remove therefrom any building or other structure, or obstruction interfering with said plans; and that said Commissioners or their said successors in authority, after due notice to any of said parties who shall, in the judgment of such Commissioners or of their successors aforesaid, unreasonably delay or neglect to keep and perform the covenants and undertakings of this indenture, may proceed, in such manner as they may deem proper, and at the expense of the party so neglecting or delaying, to construct and complete any of the avenues laid out and numbered on the plan hereto annexed, together with any or all sluices, culverts, drains, sewers or bridges, forming parts of said Commissioners' said plans, according to the true intent and meaning of this indenture; and that the lands and flats of each of said parties of the second and third parts hereof within said plans, shall forever remain subject to the covenants of this indenture on the part of such party, his heirs, executors, administrators, successors and assigns, to be kept and performed.

ARTICLE 10. That, for the considerations aforesaid, the said Boston Water Power Company, for itself, and its successors and assigns, doth hereby covenant and agree, to and with said Commonwealth and its assigns, that until the whole of the lands and flats in the Back Bay are filled up and laid out as herein provided, or until said Water Power Company shall surrender its mill franchise, said corporation, its successors and assigns, will and shall, subject as now to the control of the board of health of the city of Boston, keep and maintain in good condition, the filling sluices of both basins in said Back Bay, and also the emptying sluices of the empty basin, and so regulate the flow of water into, through, and from said basins, as to prevent any nuisance or inconvenience to the public health or comfort, so far as the same may depend on the said flow of tide waters, and in such manner, also, as to secure, according to the said Commissioners' said plans, and to their satisfaction, an efficient system of sewerage and drainage, so far as the same

Water Power
Co. to keep
sluiceways
open.

1854, June 9. may depend upon the ebb, flow, and circulation of tides and tide waters.

Indenture to take effect upon signature.

ARTICLE 11. That for the considerations aforesaid, it is hereby mutually agreed by and between the actual parties hereto, that this indenture shall, in all its parts, take immediate and full effect upon each and all of said parties, their heirs, executors, administrators, successors and assigns, so far as the said party or his interests are concerned, upon the execution thereof, and shall not await or remain dependent upon the signing, sealing, acknowledgment, or delivery of said indenture by any other party; and that any person or corporation owning or claiming land in the Back Bay, may, at any time hereafter, at the discretion of said Commissioners or their said successors, but not otherwise, become parties hereto, and receive and enjoy the full benefit of the releases, covenants, and agreements herein contained and set forth, subject to all the duties and obligations herein created and imposed.

Other owners may become parties at discretion of Commissioners.

Improvements requiring co-operation of third parties may, if they neglect, be carried out at their expense.

ARTICLE 12. And for the considerations aforesaid, it is hereby mutually covenanted and agreed, that where any avenue laid out on the plan hereto annexed, or any culvert, sluiceway, sewer, drain or bridge, that may by said Commissioners or their successors, be prescribed as part and portion of said avenues, or any sewer or drain that may, by said Commissioners or their successors, be deemed needful for the system of drainage aforesaid, in pursuance of said resolves, and in conformity with the provisions of this indenture, requires for its completion the co-operation of two or more parties hereto of the second and third parts, because bounding upon or touching their estates; where the same are conterminous, either of said conterminous owners may give notice in writing, to the other or others so bound to co-operate, of his desire and intention to proceed in constructing and completing the same at joint expense and in ratable proportion, and if the party or parties so notified shall refuse or neglect to comply with said notice, the party giving such notice may proceed to construct and complete the whole of such public improvement upon the said conterminous prop-

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 _____