

**THE COMMONWEALTH OF MASSACHUSETTS, THE
BOSTON WATER POWER COMPANY, AND THE
CITY OF BOSTON.**

AGREEMENT.

Parties.

Preamble relating to previous Indentures; Sewers agreed upon; described; city of Boston may lay other sewers and assess expense; the sewers here provided for to be in lieu of rights of drainage under Indentures with Tuckerman, &c.; restrictions against digging earth from the flats to be removed; Commonwealth and city jointly to build an eighty-foot street from Beacon Street to Boylston Street; city may enter certain sewers into these; and may build a sewer from Boylston or Providence Street to the main sewer; Commonwealth to convey lands to Water Power Company, notwithstanding conditions of Indenture of September 26, 1854.

1. Commonwealth to build a portion, described, of the main sewer.
2. Commonwealth grants to Water Power Company, the right to enter said sewer. Proviso.
3. Commonwealth to release to Water Power Company certain lands on completion of avenues one and two.
4. City may lay sewers in all the streets on the Commonwealth

land and assess expense; and to build a sewer from Boylston or Providence Street to main sewer.

5. Commonwealth grants a certain piece of land to the city.
6. Commonwealth appropriates and agrees to fill up for an eighty-foot street, a strip of land adjoining.
7. Water Power Company agrees to build the sewer from Camden Street to the main sewer.
8. Water Power Company grants to the city the right to lay sewers in its streets, and assess expense.
9. City of Boston agrees to build a portion of the main sewer and to extend and keep the street in which it is to be built.
10. City grants to Water Power Company the right to enter said portion of the main sewer.
11. City releases rights to dig and lay drains in the Receiving Basin.
12. City releases restrictions, by previous Indentures, on certain lands, and grants the Commonwealth the right to build west of the land released to the city; and the city agrees to fill up its half of the eighty-foot street and to lay out said street.

AGREEMENT.¹

THIS INDENTURE, of three parts, made and concluded this eleventh day of December, in the year of our Lord one thousand eight hundred and fifty-six, by and between the Commonwealth of Massachusetts, acting by its Committee appointed under and in pursuance of the resolves in relation to lands in the Back Bay, approved May 30, A. D. 1856, of the first part; the Boston Water Power Company, a corporation established by the laws of said Commonwealth, of the second part; and the city of Boston, acting by its Committee duly authorized, of the third part, witnesseth: —

Parties.
1856, Dec. 11.

Whereas, the said Commonwealth, by Commissioners duly authorized, did enter into an indenture with the Boston and Roxbury Mill Corporation, which indenture is dated June 9, A. D. 1854, and recorded in Suffolk Registry of Deeds, Lib. 665, Fol. 149;² also into an Indenture with the Boston Water Power Company, dated on said June 9, A. D. 1854, and recorded with Suffolk Deeds, Lib. 665, Fol. 145²; and also into another indenture with said Water Power Company, dated September 26, A. D. 1854,² and recorded in Suffolk Registry of Deeds, which several indentures were duly approved by the Governor and Council.

Preamble relating to previous indentures.

And *whereas*, by said indentures, provision is made for filling up the lands in the receiving basin of the Boston Water Power Company, belonging to said Company and to said Commonwealth, situated partly within the limits of the city of Boston, and partly within the limits of the city of Roxbury; and for laying out avenues, streets, and other public improvements mentioned in said indentures, conformably to the directions and

¹ This is what is known as the "Tripartite Indenture," under which the filling of the Back Bay was practically first begun. Recorded with Suffolk Deeds, Liber 719, page 30.

For an Indenture between the same parties, greatly modifying this, see *post*, p. 288.

² *Ante*, pp. 234, 245, 250.

1856, Dec. 11. plans therein contained, as to material and height of filling, mode of drainage, location, and arrangement of squares, streets, and other public areas, said Commissioners not to require for streets and other public uses more than one third part of the lands of flat of the parties thereto respectively; also, for the location and construction of sluices, culverts, bridges, and other public improvements, to be made under the resolves referred to in said Indentures, and as may be prescribed by said Commissioners on the Back Bay, or their successors, for a more full understanding of which provisions, reference is hereby had to said Indentures.

And *whereas*, by an Indenture, by and between the Commonwealth and said Water Power Company, dated July 11, A. D. 1856,¹ it is provided that all the streets and avenues enumerated in said Indenture of June 9, 1854, or laid out on the plan accompanying the Third Annual Report of the State Commissioners, dated February 16, 1855, or upon any plan that may be hereafter adopted by the State Commissioners, in accordance with the Indenture, are to be filled to the level of the Milldam, as the same now is, and as much higher, not exceeding three feet, (excepting where necessary to cross the railroad,) as the State Commissioners, subject to the approval of the Governor and Council, may order; "and the remainder of the territory, not included in the streets, shall be filled to a point within five feet of the level of the Milldam;" which last Indenture is hereby referred to for a more particular understanding of the provisions thereof, being recorded herewith.

Sewers agreed upon.

And *whereas*, it is important for the interests of all parties hereto, that the system of draining the land in the Back Bay, and that part of the territory of the city of Boston contiguous thereto, and also a part of the city of Roxbury, should be the best that can be devised; and *whereas*, it has been agreed, by and between the parties hereto, that the following described main sewers shall be built in said Back Bay, to wit: one

¹ *Ante*, p. 254.

large main sewer, beginning at Tremont Street in the city of ^{1856, Dec. 11.} Boston, and passing through the first street east of avenue numbered four on the said plan of the Back Bay lands, accompanying said Commissioners' Third Annual Report (which street is to be extended by the city of Boston to Tremont Street), to the first street south of the Milldam; thence through said last mentioned street to a point opposite to the most easterly discharging sluice of the receiving basin; thence to said sluiceway, and opening into Charles River through the same. Also, another main common sewer, from Camden Street to the aforesaid main sewer. The location of which main sewers, so far as the same is determined, is indicated on a copy of said plan of the State Commissioners, recorded with Suffolk Deeds, at the end of Lib. 709, to which reference is hereby made for the purpose of indicating said sewers, and the location of a street eighty feet wide hereinafter referred to, and for no other purpose. Said sewers to be not less than three feet in diameter, at Tremont and Camden streets, and not less than nine feet at said sluice. Said sewers to be built of such materials and at such grades as may ^{Described.} be hereafter agreed upon by the Board of Aldermen of said city of Boston and the State Commissioners on the Back Bay, or whoever may represent them; and to be constructed as fast as the Board of Health of the city of Boston may deem necessary to prevent nuisances being created by the drains which may open into the basin; said two main sewers to be for the use and benefit of all the parties hereto, and to be built as hereinafter provided.

And *whereas*, it may be necessary for the authorities of the ^{City of Boston} city of Boston to lay and maintain other sewers through some ^{may lay other} or all the streets and passageways laid out or to be laid out, ^{sewers and as-} within the limits of the city of Boston, by the Commissioners on ^{sess expense.} the Back Bay; and *whereas*, it is herein provided that said city may use such streets or passageways for the purpose of such drains, and assess a just and equitable portion of the expense thereof upon the lots in said Back Bay which shall be benefited thereby, according to the rules established for the city sewers and the laws of the Commonwealth relating thereto at

1856, Dec. 11. the time such drains shall be built, the amount of such assessments to be paid by the owners of such lots when the same shall be filled up as aforesaid and require drains, and in no case before; said sewers to be built in the passageways, in the rear of the lots, in preference to the streets, when the Board of Aldermen of said city shall think it expedient to do so, in conformity with the system of sewerage which may be adopted by the Commissioners on the Back Bay. Said sewers which may be so built by the city through any of said streets or passageways, and assessed upon the lots benefited thereby, shall supersede and be in lieu of the sewers which are mentioned in the Indentures between the Commonwealth and the said Water Power Company, for the same territory; but not for any other sewers that said Commissioners may deem necessary for draining any other portion of the land in the Back Bay, as provided by said Indentures. It being understood that said Water Power Company, and said Commonwealth, and their respective assigns, shall in no case be assessed or required to share the expense of more than one set of sewers or drains, for the drainage of the same territory.

The sewers here provided for to be in lieu of rights under indentures with Tuckerman and the Boston and Roxbury Mill Corporation.

And the sewers herein provided for are to be substituted, and in lieu of the rights of building and maintaining drains in said basin under the Indenture between Edward Tuckerman and others and the city of Boston of the one part, and the Boston and Roxbury Mill Corporation of the other part, dated December 26, A. D. 1826, recorded with Suffolk County Deeds, Lib. 315, Fol. 278,¹ and the Indenture between said city and said Mill Corporation, dated February 1, A. D. 1827, recorded with Suffolk Deeds, Lib. 315, Fol. 284,² and of any other rights which the city may have to lay and maintain drains in said basin, by virtue of any agreement or contract heretofore made.

Restrictions against digging earth from the flats removed.

And *whereas*, a portion of the land in said basin, now of the Commonwealth, formerly belonging to the Boston Water Power Company, was restricted by said Indentures of December

¹ *Ante*, p. 209.

² *Ante*, p. 214.

26, 1826, and February 1, 1827, and the right of digging 1856, Dec. 11.
 mud and earth from the vacant flats in a part of said basin was granted to said city of Boston under the restrictions contained therein; and it is agreed that said restrictions shall now be abolished, and a portion of the land so restricted be conveyed by the Commonwealth to said city, and that said city shall release to the Commonwealth said restrictions on the residue of said land, and also all rights that it may have to dig and convey away mud or earth from the lands and flats in said basin.

And whereas, it is agreed that the Commonwealth and said city shall lay out and build a street eighty feet wide, from Beacon Street to Boylston Street, as indicated on the plan hereinbefore referred to, taking a strip of land forty feet wide from the land to be released to the city, and a strip forty feet wide from the remaining land of the Commonwealth; said street to be filled up, one half by the Commonwealth, and the other half by the city, as high as the level of the Milldam, and as much higher as the Board of Aldermen of said city, and the Commissioners on the Back Bay, or their successors, may deem expedient; and the residue of said restricted land to be filled up to the level specified in said Indenture dated July 11, A. D. 1856.

Commonwealth and city to jointly build an 80-foot street from Beacon Street to Boylston St.

And whereas, it is agreed by and between the parties hereto, that said city, at its own expense, may enter the sewers and drains which now are, or may hereafter be, laid within that part of said city lying northerly and westerly of the westerly side of Washington Street, from Roxbury line to Common Street, and westerly of Common and Tremont streets to Park Street, and westerly and southerly of Park and Beacon streets, into the above-mentioned common or main sewers.

City may enter certain sewers into these.

And whereas, it is agreed, by and between the parties hereto, that said city of Boston may extend to said main sewer a drain, either from Boylston Street or from Providence Street, through the lands belonging to the Commonwealth or the said Water Power Company, situated in the city of Roxbury, said drain to be built either in the avenue numbered two on the Commis-

City may build a sewer from Boylston or Providence St. to the main sewer.

1856, Dec. 11. sioners' plan, or in the passageway in the rear of the lots on the southerly side of said avenue, and a just and equitable portion of the expense of such drain to be assessed upon the lots using the same, and the assessments to be collected in the manner heretofore provided for drains within the city of Boston.

And whereas, by said Indenture dated September 26, A. D. 1854, it was covenanted and agreed by said Commonwealth to and with said Water Power Company, its successors and assigns, that upon the completion of certain portions of avenues numbered one and two, as therein described, within the time that may, by the Commissioners on the Back Bay, be prescribed, and to the satisfaction of said Commissioners or their successors, the said Commonwealth will release and convey to said Corporation, its successors and assigns, all the right, title, and interest now owned by said Commonwealth in and to the parcel of land and flats, one hundred and fifty feet in width, and about three hundred and forty feet in length, which lies south of and adjoining to avenue numbered two, and east of and adjoining avenue numbered one, subject to the conditions therein expressed.

Commonwealth
to convey lands
to Water Power
Company, not-
withstanding
conditions of
indenture of
Sept. 26, 1854.

And whereas, by said agreement dated the 11th day of July, A. D. 1856, the time for building and completing said parts of said avenues, numbered one and two, have been extended beyond the time prescribed by said Commissioners for the completion of the same. And whereas, it is agreed that the Commonwealth shall convey to said Water Power Company the parcel of lands and flats above described, when the said portions of said avenues shall be completed, according to the provisions of said Indenture dated July 11, A. D. 1856, notwithstanding the provisions and conditions contained in said Indenture of September 26, 1854.

ARTICLE 1. Now be it known, that the Commonwealth of Massachusetts, acting by its Committee as aforesaid, in consideration of the premises, and of the grants, releases, covenants, and agreements herein contained and set forth, doth hereby covenant and agree to and with the said city of Boston,

and said Water Power Company, and their respective assigns, that said Commonwealth or its assigns shall and will build within a time, and of materials to be determined as hereinbefore set forth, all that part of the first-described main sewer extending from said Milldam to a point on said street first east from Avenue IV, twelve hundred feet southeasterly from the dividing line between the land of said Commonwealth and the land of said Water Power Company, and maintain, or cause to be maintained, that part thereof situated within the present limits of the city of Roxbury, until the same shall be included within the jurisdiction of said city of Boston. And said Commonwealth hereby covenants and agrees, for itself and its assigns, to and with the said city of Boston, that it and they will build the portion of said main sewer which said Commonwealth has herein covenanted to build, before it or they shall make use of any of the aforesaid premises in such way or manner as shall deprive the said city of Boston of the use of any of said city's drains or rights of drainage, as they now exist.

Commonwealth to build a portion, described, of the main sewer.

ARTICLE 2. And for the considerations aforesaid, the said Commonwealth doth hereby give and grant unto the said Boston Water power Company and its assigns, free of all charge, the right to enter into said main sewer, to be built as aforesaid by said Commonwealth, the common sewer which is to be built by said Company, as hereinafter provided, in continuation of said main sewer; also, all other sewers and drains which may be required by the Commissioners on the Back Bay, to be built by said Company under the provisions of the Indenture heretofore referred to. Also, the right to permit drains to enter said sewer, to be built by said Company, to drain that part of the city of Roxbury situated between Washington Street and the Providence Railroad, and easterly of Water Street (but no other part of said city of Roxbury), upon such terms and conditions as the said Company may deem expedient. Provided, however, that no sewer or drain shall be allowed to enter into or use said main sewer, to drain any lands southerly of Camden Street, until the water from the brook that enters said territory in Roxbury, shall be carried into Stony Brook on the South

Commonwealth grants to Water Power Compy the right to enter said sewer.

Proviso.

Bay, or otherwise diverted so that it shall not enter said sewer ; and provided, also, that the flow of the tide water shall be so far excluded from said territory southerly of Camden Street, as will prevent it from entering into said main sewer.

Commonwealth to release to W. P. Company certain lands on completion of Avenues 1 & 2.

ARTICLE 3. For the considerations aforesaid, the said Commonwealth hereby covenants and agrees to and with said Water Power Company, that upon the completion by the said Water Power Company of the said portions of said avenues numbered one and two, as provided in said Indenture of July 11, A. D. 1856, and to the satisfaction of the Commissioners on the Back Bay, or their successors, the said Commonwealth will release and convey to said Corporation, its successors and assigns, all the right, title, and interest now owned by the Commonwealth, in and to the parcel of land described in the fifth article of said Indenture of September 26, A. D. 1854.

City may lay sewers on all the streets on the Commonwealth's land, and assess expense; and to build a sewer from Boylston or Providence Street to the main sewer.

ARTICLE 4. And for the considerations aforesaid, the said Commonwealth hereby covenants and agrees to and with said city of Boston, that the city authorities shall have the right to lay and maintain sewers in all the streets and passageways which have been or shall be laid out over the land of said Commonwealth in the Back Bay about to be filled up, so far as the same at the time being shall be within the limits of said city, and may assess the expense of the same upon the lots benefited thereby, according to the rules established for the city sewers, and the laws of the Commonwealth relating thereto, at the time such sewers shall be built ; the amount of such assessment to be paid by the owner of such lots, when the same shall be filled up as aforesaid and require drains, and in no case before. Provided, however, that said land of the Commonwealth shall in no case be assessed for the expense of more than one set of sewers and drains, for the drainage thereof. Said sewers to be built in the passageways in preference to the streets, as hereinbefore set forth. And said Commonwealth further grants to said city of Boston the right to enter into said main sewers to be built by the Commonwealth, all the sewers and drains which may be built by said city for the drainage of the land in the said basin, and the land contiguous thereto, but within the limits of said

Washington, Common, Tremont, Park, and Beacon streets, as hereinbefore set forth; also, the right to build the sewer from Providence or Boylston Street through the territory of the Commonwealth lying within the city of Roxbury, upon the terms and conditions hereinbefore set forth, and to enter the same into said main sewer.

ARTICLE 5. And for the considerations aforesaid, the said Commonwealth doth hereby grant, remise, release, and convey to the said city of Boston, the piece of land hereinbefore referred to, bounded as follows, viz: Beginning on the southerly side of the Milldam or Beacon Street, at a point six hundred and thirty-six feet easterly from the easterly side of avenue numbered one, in the Back Bay, as now established by said Commissioners' plan; thence running southerly by a line parallel with said avenue "One," thirteen hundred and five feet, more or less, to Boylston Street, or avenue numbered two on said plan: thence by the northerly line of said avenue numbered two, to land belonging to said city of Boston; thence bounded easterly by land belonging to said city, called the "Public Garden," to Beacon Street; thence bounded northerly by said Beacon Street to the point of beginning.

Commonwealth grants a certain piece of land to the city.¹

To have and to hold the same to the said city of Boston, its successors and assigns forever, free from all restrictions or conditions, excepting as herein provided.

ARTICLE 6. And for the considerations aforesaid, the said Commonwealth further covenants and agrees to and with said city of Boston, that it will appropriate for the street eighty feet wide hereinbefore mentioned, a strip of land forty feet wide adjoining and westerly of the westerly line of the foregoing granted premises, in connection with a similar strip of land to be appropriated by the city on the easterly side of said line, which two pieces are to remain open for a public street or highway forever: and said Commonwealth covenants and agrees to fill up and build its half of said street, as hereinbefore set forth.

The Commonwealth appropriates and agrees to fill up, for an 80-foot street, a strip of land adjoining.

¹ A "heater-piece" between the Public Garden as then laid out, and the eighty foot Street provided, now known as Arlington Street.

Water Power Company agree to bring the sewer from Camden Street to the main sewer.

ARTICLE 7. And the said Boston Water Power Company, in consideration of the grants, covenants, and agreements in this Indenture contained and set forth, doth hereby covenant and agree, to and with said Commonwealth and said city of Boston, that said Company or its assigns shall and will build or cause to be built, within the time and in the manner to be determined as hereinbefore recited, all that common sewer hereinbefore described, extending from Camden Street to said main sewer, in such street through the land of said Company, as the said Commissioners on the Back Bay may locate the same. And said Company hereby covenants and agrees, for itself and its assigns, to and with the said city of Boston, that it and they will build the portion of said main sewer which said Company has herein covenanted to build, before it or they shall make use of any of the aforesaid premises in such way or manner as shall deprive the said city of Boston of the use of any of said city's drains or rights of drainage, as they now exist.

Water Power Company grants to the city the right to lay sewers in its streets and assess expenses.

ARTICLE 8. And for the considerations aforesaid, the said Water Power Company doth hereby grant and convey to said city of Boston the right to lay any sewers the city authorities may deem necessary, other than those which may be prescribed by said Commissioners on the Back Bay, through any of the streets or passageways (the latter to be preferred) in the limits of said Company's land, and enter the same into said main sewer extending from Camden Street, as aforesaid; and further the right to assess the expense thereof upon the land of said Company or its assigns benefited thereby, in the manner hereinbefore set forth. Provided, however, that such assessment shall not be collected by said city until such land is actually filled up as aforesaid and requires such sewers; and provided also that said Company and its assigns shall in no case be called upon to share the expense of building more than one set of sewers and drains within or for any portion of said Company's territory. Said sewers of said city to be only for the drainage of the portion of said city hereinbefore described, and lying within said Washington, Common, Tremont, Park, and Beacon streets.

ARTICLE 9. And in consideration of the grants, releases, covenants, and agreements in this Indenture contained, the said city of Boston hereby covenants and agrees to and with the Commonwealth and said Water Power Company, that the said city of Boston, or its assigns, shall and will, at its or their own sole expense, and without any assessment or claim upon other persons or corporations, build within the time and in the manner hereinbefore recited, all that part of the first-described main sewer which extends southerly through said street, the first easterly of avenue numbered "Four," from said point, twelve hundred feet southeasterly from the division line between the land of the Commonwealth and the land of said Water Power Company, to Tremont Street, and that said city will lay out and extend said street, of the width of sixty feet, from the land of said Water Power Company to said Tremont Street, as a public street or highway, and keep the same open forever.

City of Boston agrees to build a portion of the main sewer, and to extend and keep open the street in which it is to be built.

ARTICLE 10. And for the considerations aforesaid, the said city of Boston doth hereby grant to the said Water Power Company and its assigns, the right to enter their sewers and drains, free from all charge for so doing, into said portion of said main sewer to be built by said city, including any drainage of the portion of the city of Roxbury contemplated to be carried through said main sewer extending from Camden Street, but within the limits and in the manner hereinbefore set forth. And the said city of Boston further covenants and agrees that the said Commonwealth and the said Water Power Company, and their respective assigns, may enter sewers and drains into all other sewers which may be built by said city within said basin, upon the payment by them respectively of their proportional part of the expense of building the same, to be assessed in the manner and at the times hereinbefore set forth. And said city hereby covenants and agrees to and with said Commonwealth and said Water Power Company and their respective assigns, that the authorities of said city shall not collect such assessments until the land through which the sewers are built is actually filled up and requires drains, as hereinbefore recited.

City grants to Water Power Company the right to enter said portion of the main sewer.

City releases rights to dig and lay drains in the receiving basin.

ARTICLE 11. And for the considerations aforesaid, the said city of Boston doth hereby release, remise, and forever quit-claim, to the said Commonwealth and said Water Power Company and their successors and assigns, all the rights that said city has to dig, lay, and maintain drains in said receiving basin of said Company, and all right to dig and carry mud and earth from the vacant flats in said basin, as the same are given in said Indentures, dated December 26, A. D. 1826, and February 1, A. D. 1827.

City releases restrictions on lands by specified indentures; and grants the Commonwealth the right to build west of the land released to the city; and the city agrees to fill up its half of the 80-foot street, and to lay out said street.

ARTICLE 12. And for the considerations aforesaid the said city of Boston doth hereby release all the land and flats restricted by said Indentures of December 26, 1826, and February 1, 1827, from the restrictions contained therein, in regard to the erection of buildings, and doth hereby agree that the said Commonwealth and its assigns may erect buildings on any and all the lands belonging to said Commonwealth, lying westerly of the land hereinbefore released and conveyed by the Commonwealth to said city. And said city doth hereby covenant that it will warrant and defend so much of said Commonwealth's land as lies between said land so released to said city, and the old channel west of Charles Street, to said Commonwealth and its assigns, against the lawful claims and demands of said city, and of all persons claiming by, through or under said city, but against none other. And for the considerations aforesaid, the said city doth hereby agree to lay out, in conjunction with said Commonwealth, the said street of eighty feet in width, from Beacon to Boylston Street, and to fill up its half thereof, and the residue of said land herein released to said city to the level and in the manner hereinbefore set forth.

Duly executed.¹

¹ This Indenture was signed, on behalf of the Commonwealth, by the Commissioners on the Back Bay, viz: John H. Shaw, John Batchelder, George M. Thatcher, Horatio G. K. Calef, Elijah B. Stoddard, Jonathan E. Morrill, Charles Hale, Stephen P. Fuller, E. C. Purdy, and Thomas B. Hall, (the approval of the Governor's Council being certified by the Secretary of the Commonwealth); by Thomas G. Carey, President of the Boston Water Power