

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

AGREEMENT.

Parties.

Preamble, relating to Tripartite Indenture of 1856; and certain sewers therein agreed upon.

1. Release of obligations to build the main sewer.
2. The Commonwealth agrees to construct a sewer in Berkeley Street; described.
3. The Water Power Company to pay the city \$50,000.
4. The city to continue the Berkeley Street sewer to the Worcester Railroad, and also to build sewers in Columbus Avenue.

5. Plan to be adopted; streets to correspond therewith.

6. The Water Power Company to convey certain lands to the city for an Institute of Fine Arts.

7. The Water Power Company to give the city the option of purchasing "Reserved" lots at fifty cents a foot.

8. The Commonwealth may make certain changes in its plans.

9. Indenture of December 11, 1856, to remain in force except as modified.

AGREEMENT.<sup>1</sup>

Parties.  
1864, Dec. 31.

This Indenture, of three parts, made and concluded this 31st day of December, in the year of our Lord one thousand eight hundred and sixty-four, by and between the Commonwealth of Massachusetts, acting by its Commissioners on Public Lands, of the first part, the Boston Water Power Company, a corporation established by the laws of the said Commonwealth, of the second part, and the city of Boston, acting by its committee duly authorized, of the third part.

Preamble relating to Tripartite Indenture of 1856, and certain sewers therein agreed upon.  
1864, Dec. 31.

Witnesseth, that, whereas by an Indenture of three parts, made and executed between the same parties, bearing date the 11th day of December, in the year of our Lord one thousand eight hundred and fifty-six,<sup>2</sup> provision is made for the building of two large main sewers, in the Back Bay Lands, so called, one beginning at Tremont Street, in the city of Boston, and passing through the first street of avenue numbered four on

<sup>1</sup> Recorded with Suffolk Deeds, liber 854, folio 241.

<sup>2</sup> This is known as the "New Tripartite Agreement." See *ante*, p. 258.

a plan of the Back Bay Lands referred to in said Indenture, 1864, Dec. 31. 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 the said sluiceway and opening into the same; and one from Camden Street to the aforesaid main sewer; the said sewers were to be not less than three feet in diameter at Tremont and Camden streets, and not less than nine feet at said sluice, and to be built by the three said several parties in parts as specified in the said Indenture; and whereas it is deemed expedient and for the interest of all the said parties, that the said sewers shall not be built, and that other means of draining shall be provided in lieu thereof; and whereas by the said Indenture certain provisions were made in regard to the laying out and making of streets or ways on the Back Bay Territory, so called, lying in the westerly part of the city of Boston, which it is deemed expedient to change in some respects. Now, therefore, it is agreed by the said parties as follows, viz:—

*First.* Each of the said parties is hereby released and discharged from its obligation to build any part of the two aforesaid main sewers or of either of them.

Release of obligations to build the main sewers.

*Second.* The said Commonwealth hereby covenants and agrees, in place of the sewer it has laid in Berkeley Street to construct in bricks and cement in a good, substantial, and workmanlike manner, equal in capacity to a sewer of six feet in diameter, a sewer from Charles River through Berkeley Street to the line of the Boston and Providence Railroad, and also a similar sewer of equal capacity from Charles River through Dedham Street to the line of the Commonwealth's land, and a continuation of the last-mentioned sewer, with a gradual and regular diminution in size, until it is reduced to a capacity equal to a sewer of three feet in diameter at its terminus, from the said line of the Commonwealth's land, across the land of the said Boston Water Power Company, a distance of three hundred feet towards the Boston and Worcester Railroad; and to furnish and set for each of the said sewers substantial tidal gates: and to do all the said work at a grade agreed upon, so

The Commonwealth agrees to construct a sewer on Berkeley Street; described.

1864, Dec. 31. as to accommodate existing lateral sewers, by and under the superintendence of an engineer employed by the city of Boston ; and the said sewers shall thereafter become a part of the sewerage of the city of Boston ; and until the streets through which they run are accepted by the said city as public highways, the said city shall have the right to enter upon the said streets for the purpose of repairing, cleaning, or relaying the said sewers. The Commonwealth shall, however, have the right under the direction of the Superintendent of Sewers in said city, to enter its other drains or sewers into the two said main sewers, to drain all its lands ; but this right shall not extend to the assignees of the Commonwealth.

Water Power  
Company to pay  
the city \$50,000.

*Third.* The said Boston Water Power Company hereby covenants and agrees to pay the said city of Boston the sum of fifty thousand dollars in consideration of the premises.

City to continue  
the Berkeley  
Street sewer to  
the Worcester  
Railroad, and  
also to build  
sewers in Co-  
lumbus Avenue,  
etc.

*Fourth.* The said city of Boston covenants and agrees, that it will build a continuation of the sewer to be laid by the Commonwealth in Berkeley Street as aforesaid, with a reduced diameter, under the Boston and Providence Railroad, across the land of the said Boston Water Power Company to the Boston and Worcester Railroad ; also a sewer of three feet in diameter at its commencement and six feet at its outlet, from some point on Camden Street north of Tremont Street, through Columbus Avenue, Avenue Third, Dedham Street, Montgomery Street, Union Park and Union Park Street, to the South Bay ; and also a sewer of proper dimensions from the last-mentioned sewer and connecting therewith, through Montgomery and Clarendon streets, and other streets, if necessary, to the Boston and Worcester Railroad, or as near thereto as a sewer may be needed for domestic purposes. The lines of all said sewers are marked on the plan hereinafter referred to.

Plan to be  
adopted ; streets  
to correspond  
therewith.

*Fifth.* The said parties of the first and second parts covenant and agree, and the said party of the third part assents, that a plan of the said territory, bearing even date herewith and signed by the three said several parties hereto, showing the contemplated streets on the said territory, shall be adopted in lieu of the plan which was heretofore agreed upon by the said par-

ties, or any of them ; and that all streets and ways which shall be made on so much of the said territory as belongs to the said parties of the first and second parts shall be according to the said plan adopted by this instrument. Provided, that nothing in this new plan shall interfere with the plan of lands belonging to the Commonwealth and adopted by the Commissioners on public lands, except as hereinafter provided, and except so far as is necessary to connect Huntington Avenue with Boylston Street. 1864, Dec. 31.

*Sixth.* The said party of the second part covenants and agrees to and with the said party of the third part ; that it will convey to the said party of the third part, upon the execution of this instrument, a certain parcel of land in fee, which is delineated on the said plan hereby adopted and marked " Proposed Site for an Institute of fine arts ;" and the conveyance shall include all the land so marked extending to the middle of each of the streets or ways by which the said land is bounded, as indicated on the said plan. The said conveyance shall, however, restrict the said party of the third part from using the said land or permitting it to be used for any purpose other than a public square or for a building to be devoted to the promotion of the fine arts. Water Power Company to convey certain land to the city for an Institute of Fine Arts.

*Seventh.* The said party of the second part further covenants and agrees to and with the said party of the third part, that it will convey to the said party of the third part any or all of the parcels of land, after they shall have been filled to the established grade, which are designated on the said plan hereby adopted as " reserved," so far as the said parcels are within the limits of the lands of the said party of the second part, which the said party of the third part shall elect to purchase at the rate of fifty cents per square foot ; and so often as either of the said parcels of land designated as " reserved " shall be filled as aforesaid, the said party of the second part shall give notice thereof to the said party of the third part, and the said party of the third part shall thereupon determine whether it will purchase such parcel as aforesaid. Water Power Company to give the city the option of purchasing Reserved lots at fifty cents a foot.

*Eighth.* The said party of the first part may so alter the Commonwealth

AGREEMENTS.

may make certain changes in its plans.

1864, Dec. 31.

plan heretofore adopted for laying out and selling the lands of the Commonwealth on the Back Bay as to reduce the width of the street next West of Dedham Street, and running parallel thereto from the Boston and Worcester Railroad to Beacon Street, from eighty feet to sixty feet in width, and may discontinue as a public square and sell for building purposes the land laid down as a public square on the said plan at the corner of the street next west of Dedham Street and Beacon Street, and may also discontinue and sell for building purposes the land laid down on the said plan as a street running from Marlborough Street to Beacon Street. And it shall be optional with the Commissioners on Public Lands, or those having their powers, at any time hereafter before making further sales on Dedham Street, to increase the width of said Dedham Street from the point where it connects with Huntington Avenue to Beacon Street to one hundred feet, to correspond with the laying out of said Huntington Avenue.

Indenture of Dec. 11, 1856, to remain in force except as modified.

*Ninth.* The aforesaid Indenture dated the 11th day of December, A. D. eighteen hundred and fifty-six, shall remain in full force, except in so far as the same is expressly changed or modified by this instrument; and all rights which have accrued to either of the said parties thereunder shall remain and continue as perfect as if this instrument had not been made.

Duly executed.<sup>1</sup>

---

<sup>1</sup> Signed by the Commissioners on Public Lands, for the Commonwealth; by Nathan Matthews, President of the Water Power Company, and by the Joint Special Commissioners on the Back Bay, for the city.