

BOSTON
ELEVATED RAILWAY
COMPANY

STATUTES
SURFACE RAILWAY LEASES
CONTRACTS FOR USE OF SUBWAYS AND TUNNELS

1887—1912

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CONTRACTS FOR USE OF SUBWAYS AND TUNNELS

1887—JULY, 1912

COMPILED BY

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Part I.
STATUTES.



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Stat. 1887, Chap. 413.

AN ACT TO AUTHORIZE THE WEST END STREET RAILWAY COMPANY AND CERTAIN OTHER STREET RAILWAY COMPANIES TO LEASE AND TO PURCHASE AND HOLD THE PROPERTY, RIGHTS AND FRANCHISES OF EACH OTHER, AND TO UNITE AND CONSOLIDATE WITH EACH OTHER AND CERTAIN OTHER STREET RAILWAY COMPANIES, AND TO LOCATE AND CONSTRUCT TUNNELS, AND TO ESTABLISH AND MAINTAIN THE CABLE AND ELECTRIC SYSTEMS OF MOTIVE POWER, AND FOR OTHER PURPOSES.

Be it enacted, etc., as follows:

SECTION 1. The West End Street Railway Company and each of the other street railway companies now authorized to run cars in or into the city of Boston, and each corporation formed by consolidation as herein provided, may unite and consolidate with any or all said companies; and may purchase and hold the whole or any part of the property, rights and franchises of any or all of the same; and each of said companies may lease, sell, convey and assign to said West End Street Railway Company, or to any other of said companies now existing or hereafter formed by consolidation under this act, the whole or any part of its property, rights or franchises, and may unite and consolidate with said West End Street Railway Company, or any corporation formed by consolidation as aforesaid, or with any street railway company now authorized to run cars in or into the city of Boston; but such leases, purchases, sales and consolidations shall be only upon such terms and conditions as shall be agreed upon in the first instance by the directors and then by a majority in interest of the stockholders of each corporation at meetings of the stockholders of each corporation called for that purpose and approved by the board of railroad commissioners; and in every case of purchase by one corporation of the entire property, rights and franchises of another or others as aforesaid, the corporation purchasing shall have, hold, possess, exercise and enjoy all the locations, powers, privileges, rights, franchises, property and estates which, at the time of such purchase, shall be had, held, possessed or enjoyed by the corporation or corporations selling, or either or any of them, and shall be subject to all the duties, restrictions and liabilities to which they, or either or any of them, shall then be subject; and in every case of consolidation as aforesaid the corporations uniting shall constitute a new corporation under such name as shall be agreed upon in the manner and at the meetings aforesaid; but the calling of the first meeting of said new corporation, and the management of its business until the election of officers shall be provided for in its articles of consolidation; and every corporation

The West End Street Railway Company and each of the other street railways in Boston may unite and consolidate.
173 Mass. 447.
202 Mass. 304-309.

Terms and conditions to be agreed upon by a majority of the stockholders.

formed by consolidation as aforesaid shall have, hold, possess, exercise and enjoy all the locations, powers, privileges, rights, franchises, property and estates which, at the time of such union, shall be had, held, possessed or enjoyed by the corporations uniting, or either or any of them, and shall be subject to all the duties, restrictions and liabilities to which they, or either or any of them, shall then be subject, and to all general laws then or thereafter in force relating to street railway companies, except as provided in this act: *provided*, that any street railway company created under this act shall not be permitted to increase the rates of fares to an amount exceeding that charged upon the different routes at the date of the passage of this act.

Rates of fare
not to be
increased.

May issue
preferred stock
not exceeding
\$6,400,000.
202 Mass. 305,
308.

SECT. 2. Said West End Street Railway Company and any corporation formed by consolidation with said company, under section one of this act, may, having been first authorized to do so by a vote of the majority in interest of its stockholders at a meeting called for that purpose, issue from time to time its preferred stock to an amount not exceeding six million four hundred thousand dollars at par, with shares of the par value of fifty dollars each; and the holders of such preferred stock shall, in preference and priority over the common and all other stock of the corporation, forever be entitled to semi-annual dividends, to be paid out of the net profits of the corporation, not to exceed, however, eight per centum per annum, which shall be determined at such meeting, which dividends shall be cumulative, but shall not be entitled to participate in any increase or issue of new stock, common or preferred, which may at any time be made by said corporation; and such preferred stock shall have the same power of voting and transfer as said common stock, and shall be counted with said common stock in all questions of majorities and quorums, and may be issued in exchange, share for share or upon such other terms as may be agreed upon, for the stock of the other street railway corporations now, or under the provisions of this act, authorized to run cars in or into the city of Boston, upon the surrender and transfer of said stock of said other street railway corporations by the holders thereof; and all of said stock of said other street railway corporations acquired in exchange for such preferred stock as aforesaid shall at once be deposited with such trust company incorporated under the authority of this Commonwealth, and having its principal place of business in said city of Boston, as shall be selected by the directors of said West End Street Railway Company, or the consolidated corporation acquiring the same; and said stock of said other street railway corporations shall be held by said trust company and its successors, with the power and upon the trust to vote upon the same in all matters, as requested by said directors, until all of the shares of said other street railway corporations respectively shall have been received by it; and when, and as often as, all the shares of any one of said other street railway corporations shall have been so received by it, the same shall be cancelled,

and thereupon all the locations, powers, privileges, rights, franchises, property and estates of said corporation shall belong to, and become and be vested in said West End Street Railway Company, or the consolidated corporation acquiring the same, without any further or other conveyance, assignment or transfer, and said West End Street Railway Company, or said consolidated corporation shall be subject to all the duties, restrictions and liabilities to which said other corporation shall then be subject; and said trust company shall have no power to sell or transfer any of said stock acquired by it in exchange for such preferred stock. Any part of the amount of preferred stock hereby authorized may be issued for cash at not less than its par value, for the purpose of applying the proceeds thereof to the purchase of any of the property, rights and franchises which said corporation is hereby authorized to acquire or purchase, said stock to be disposed of as provided in sections fifty-eight and fifty-nine of chapter one hundred and twelve of the Public Statutes; *provided, however*, that no more preferred stock shall be issued under this act than the present amount of the capital stock of the railways which shall be consolidated or united under the provisions of the first section hereof nor than shall be necessary in amount to replace the common stock which shall be retired or exchanged for such preferred stock in such proportions as shall be agreed upon between the contracting corporations; and no such preferred stock shall be issued except for the purpose of acquiring the stock of such other corporations; but in case the property, rights and franchises of any corporation shall be purchased or acquired hereunder for such an amount of said preferred stock at its par value as shall be less than the capital of the corporation so purchased or acquired, the amount of preferred stock thus saved in the exchange may be used and issued for the purpose of acquiring in part any other of said street railway companies.

Any part of preferred stock may be issued for cash for purpose of purchasing property, franchises, etc.

Proviso.

SECT. 3. Said West End Street Railway Company, and any corporation formed by consolidation under section one of this act, may, from time to time, increase its capital stock as provided by the laws of this Commonwealth, and also to such an amount as the board of railroad commissioners may determine to be necessary or expedient to carry into effect the provisions of this act, and the par value of shares of the capital stock of said company shall be fifty dollars each.

May increase capital stock.

SECT. 4. Said West End Street Railway Company, and any corporation formed by consolidation under this act, or authorized to run cars in or into the city of Boston, may, with the consent of the board of aldermen of the city, or the selectmen of the town, in which such action is contemplated, establish and maintain the cable and electric systems of motive power, or either of them; and having first obtained permission from the board of aldermen of such city or the selectmen of such town, and the railroad commissioners, may make such underground and surface alterations of the streets in which its

May maintain the cable and electric systems of motive power.

tracks shall be located, as may be necessary to establish and maintain such cable and electric systems of motive power or either of them.

SECT. 5. Said West End Street Railway Company, or any corporation formed by consolidation therewith under the provisions of this act, may, from time to time, for the purpose of furnishing to the public better street railway accommodation, with the consent of the board of aldermen and of the board of railroad commissioners, to be given as hereinafter provided, locate, construct and maintain one or more tunnels between convenient points in said city in one or more directions under the squares, streets, ways and places, except as hereinafter provided, and under public and private lands, estates and premises in said city, with the necessary approaches and access thereto, and with suitable tracks, side tracks, turn-outs, switches, turn-tables, depots, stations and waiting-rooms, and for that purpose may, from time to time, take by purchase or otherwise, and hold such lands or interest therein and such rights of way and easements therein as may be necessary therefor, and for the proper construction, maintenance, lighting, ventilating and use of said tunnels, depots, stations and waiting-rooms and the necessary approaches and access thereto, but only in the manner and upon the terms hereinafter specified. Before any such tunnel shall be constructed or any work thereon shall be begun, and before the taking of any lands, rights, easements or interest therein under this act, said corporation shall prepare a plan of the proposed location of said tunnel on an appropriate scale, with an accurate profile thereof on a vertical scale of ten to one as compared with the horizontal scale, and showing also the grades and levels of the surface of the land over the same, and the length, width, height and manner of construction proposed, sufficiently complete and detailed to enable a competent engineer to construct the same and to determine the sufficiency and security thereof, and shall procure the report of a skilful engineer, based on actual examination and survey, showing the feasibility of the construction proposed, and approving thereof, which plan and report, with a petition for the approval thereof, shall be filed with the board of aldermen of the city of Boston and the board of railroad commissioners; and if the said board of aldermen and the board of railroad commissioners, after such public hearing and notice to parties interested as they shall severally direct, shall approve said plan and location, or any such amended plan and location as may be adopted by said corporation and approved by said boards, they shall sign and give to the said corporation a certificate thereof, which shall be taken as their consent to the location, construction and maintenance of said tunnel as herein required. Said tunnel or tunnels, when completed, shall be for the use and under the control of said West End Street Railway Company or other corporation constructing the same for the running of street cars; and the same may

May construct and maintain one or more tunnels under streets and under public and private lands.
Affected Stat. 1908, Chap. 551, Sect. 8.
Affected Stat. 1911, Chap. 740, Sect. 12.

Proceedings to be had before tunnel is constructed.

be extended or enlarged from time to time in the same manner as is herein provided for their original construction.

SECT. 6. Said corporation shall at the time of taking, otherwise than by purchase, any land or right of way or easement or other interest therein, file in the registry of deeds for the county of Suffolk a declaration of such taking and a full and specific plan and description thereof, sufficiently accurate for identification, with a statement of the purpose for which the same is so taken, which description and statement shall be signed by the president of the corporation, and thereupon said taking shall be complete; and the corporation shall be liable to pay all damages that shall be sustained by any person or corporation by reason of the taking of any such lands or right of way, easement or other interest therein, or by reason of the construction and maintenance of said tunnel; such damages to be ascertained, determined and recovered upon the application of either party, in the manner provided for ascertaining, determining and recovering damages in the case of laying out, constructing and maintaining railroads within the city of Boston and the taking of lands and materials therefor; and said corporation shall give security for all such damages and for costs, if required, in the like manner as is provided in case of such laying out of railroads in said city.

Declaration of taking land, etc., with full plan and description to be filed in registry of deeds.

SECT. 7. No location shall be granted upon and no tunnel shall be constructed under Boston Common under this act.

Tunnel not to be constructed under Boston Common.

SECT. 8. No location and no alteration or revocation of location of a street railway, and no authority to run cars over or use the tracks of another street railway, whether surface or elevated, in the cities of Boston, Cambridge, or in the town of Brookline, shall hereafter be valid until approved by the board of railroad commissioners. Nothing herein contained shall affect any proceeding now pending before the mayor and board of aldermen of the city of Cambridge.

Location not to be valid until approved by the railroad commissioners.

SECT. 9. The acceptance, by the association for the formation of said West End Street Railway Company, of the location granted to said association on the twenty-eighth day of December, eighteen hundred and eighty-six, by the selectmen of the town of Brookline, which has heretofore been filed by said association and accepted by said selectmen, shall, to all intents and purposes, be deemed to have been filed on the twelfth day of January, eighteen hundred and eighty-seven, and shall have the same force and effect as if then filed.

Acceptance of location, etc.

SECT. 10. This act shall take effect upon its passage. [Approved June 15, 1887.]

Stat. 1890, Chap. 454.

AN ACT TO AUTHORIZE THE WEST END STREET RAILWAY COMPANY TO BUILD ELEVATED RAILWAYS.

By Stat. 1911, Chap. 740, Section 12, such authority shall cease after June 10, 1922.

Stat. 1893, Chap. 478.

AN ACT RELATIVE TO THE CONSTRUCTION OF SUBWAYS IN THE CITY OF BOSTON.

Be it enacted, etc., as follows:

Board of subway commissioners, appointment, organization, compensation, etc.
Affected Stat. 1894, Chap. 548, Sect. 23.
174 Mass. 153.
176 Mass. 14.

SECTION 1. The mayor of the city of Boston shall appoint, subject to confirmation by the board of aldermen of said city, as in the case of other heads of departments of said city, three commissioners to constitute a board of said city, to be known as the board of subway commissioners. Said board shall choose one of its number to be chairman and a person not one of its number to be secretary; and said commissioners shall receive such compensation for their services, to be paid out of the proceeds of the loan hereinafter authorized, as the city council of said city shall by order determine.

Location and construction of subway.
Affected Stat. 1894, Chap. 548, Sects. 25, 29.
174 Mass. 153.

SECT. 2. The said board is hereby authorized to lay out and construct a subway for street railway purposes sufficient to contain two or more parallel tracks, with suitable approaches, stations, exits and entrances. Said subway shall extend through Tremont Street and lands adjacent thereto, excepting Boston Common, from a point or points at or near the junction of Tremont and Pleasant Streets to Scollay Square, and may continue through Court Street or other streets and lands near Scollay Square to a point or points where in the judgment of said board a suitable and advantageous exit to connect with surface tracks may be obtained.

Taking of lands, etc.
Affected Stat. 1894, Chap. 548, Sects. 28, 31.
174 Mass. 154.

SECT. 3. The said board is hereby authorized to select and take in the name and behalf of said city, by purchase or otherwise, such lands and rights of way, either upon or below the surface, as in the judgment of said board may be requisite for the widening of said subway or for suitable approaches thereto and extensions thereof to connect with surface tracks and for suitable stations, exits and entrances.

Description of lands, etc.
Affected Stat. 1894, Chap. 548, Sect. 32.

SECT. 4. The said board shall, within thirty days after the taking of any land or rights of way, file in the registry of deeds for the county of Suffolk and cause to be recorded a description of the lands or rights of way so taken, as certain as is required in a common conveyance of land, with a statement of the purpose for which the same are taken; which description and statement shall be signed by said commissioners or a majority thereof, and the fee of the land or the rights of way so taken or purchased shall vest in the city of Boston. The city shall be liable to pay all damages that shall be sustained by any person or persons by reason of taking such lands or rights of way as aforesaid; such damages to be ascertained and determined in the manner provided for ascertaining and determining damages in case of the laying out, altering or discontinuing of ways in the city of Boston.

Damages.

SECT. 5. Said board may employ one or more competent engineers to make surveys, submit plans, advise said board and to superintend the construction of said subway. Said board may also employ a competent architect to assist said board and its engineers, and to prepare plans for the architectural features and detail of said subway, which shall be made architecturally and otherwise as attractive as may be within reasonable limits of expense.

Engineers and architect.
Affected Stat.
1894, Chap.
548, Sect. 24.

SECT. 6. The city of Boston for the purpose of purchasing or taking land or rights of way for said subway, the widening or extension thereof, the approaches thereto, and for stations, exits and entrances, and for the purpose of enabling said board of commissioners to lay out and construct said subway, and to defray the expense thereof, may incur indebtedness and authorize the city treasurer of said city to issue from time to time as said board shall request, negotiable bonds or certificates of indebtedness to an amount not exceeding two millions of dollars outside of the limit of indebtedness fixed by law for said city. Such bonds shall be payable in not exceeding fifty years from their date, and shall bear interest, at a rate not exceeding four per cent. per annum, as the city council may determine. The said treasurer shall sell such bonds or certificates or any part thereof from time to time, and retain the proceeds thereof in the treasury of said city, and pay therefrom the expenses incurred by said board in carrying out the purposes of this act.

Bonds, etc.,
not exceeding
\$2,000,000.

SECT. 7. On the completion of said subway, said board of commissioners shall have the right and power to compel the cars of any lines of street railway running in or through said city, to run in or through said subway at such rate of compensation, to be paid by the railway company or companies using the same, to said city, as shall be determined by the board of railroad commissioners to be just and reasonable.

Running of
cars.
174 Mass. 154.

SECT. 8. The said board of subway commissioners shall have the power and authority to grant to any private corporation the right to place any pipes, wires or conduits in said subway, upon such terms and at such rates of compensation, to be paid to said city, as said board of subway commissioners shall deem to be just and reasonable.

Placing of
pipes.

SECT. 9. The said board of subway commissioners shall care for all the pipes and sewers along the line of said subway belonging to said city, and shall resurface and repave the streets over said subway, putting the same in as good condition as before; the expense attending the care of said pipes and sewers, resurfacing and repaving shall be paid out of the proceeds of said loan.

Care of pipes,
etc., repaving,
etc.

SECT. 10. Said commission shall report to the city council for its further disposition.

Report.

SECT. 11. This act shall take effect upon its adoption by the city council of the city of Boston. [Approved June 10, 1893.]

To take effect
upon adoption.

Stat. 1894, Chap. 548.

AN ACT TO INCORPORATE THE BOSTON ELEVATED RAILWAY COMPANY AND TO PROMOTE RAPID TRANSIT IN THE CITY OF BOSTON AND VICINITY.

Be it enacted, etc., as follows:

SECTION 1. Joe V. Meigs, Thomas W. Hyde, Willard Howland, Theodore W. Myers, Joseph H. O'Neil, Fred C. Patch, Charles A. Whittier, Abram S. Hewitt, Samuel M. Roosevelt, William S. Butler, George H. Towle, William Spaulding and Herman Haupt, their associates and successors, are hereby made a corporation by the name of Boston Elevated Railway Company, *subject to all general laws which now are or may hereafter be in force relating to railroad corporations, so far as applicable, except as hereinafter provided,* but said corporation shall not transport freight or baggage.

SECT. 2. The capital stock of said corporation shall be not less than ten million dollars, divided into shares of one hundred dollars each. The capital may be increased from time to time, by vote of said corporation, *to an amount not exceeding twenty million dollars in all.*

SECT. 3. Said corporation may issue coupon or registered bonds to an amount which, including that of bonds previously issued, shall not exceed in all the capital stock of the corporation actually paid in at the time. It may issue its bonds to provide means for construction and equipment, and for funding its floating debt, and for the purchase of such real or personal estate as may be necessary or convenient for the operation of its railway and in payment of any debt of said corporation.

SECT. 4. Said corporation may mortgage or pledge, as security for payment of its bonds, its franchise and any or all of its real or personal property, and property thereafter acquired by it.

SECT. 5. All issues of stock and bonds under the provisions of this act shall be subject to approval and certification by the board of railroad commissioners, in the manner provided in chapter four hundred and sixty-two of the acts of the year eighteen hundred and ninety-four, relative to the issue of stock and bonds by railroad and street railway companies.

SECT. 6. Said corporation may construct lines of elevated railway according to the plans or systems shown in the patents granted to Joe V. Meigs, or according to such other plans or systems, except the system now in use in New York, known as the Manhattan system, as the board of railroad commissioners may approve, upon the following locations, and may equip, maintain and operate engines and cars thereon, to wit:—

First. From a point on Main street, near Sullivan square, in that part of Boston called Charlestown, through and over

Boston Elevated Railway Company Incorporated. Limited Stat. 1897, Chap. 500, Sect. 7. Partially repealed, Stat. 1897, Chap. 500, Sect. 21. Affected Stat. 1908, Chap. 551, Sect. 7. 170 Mass. 76. 181 Mass. 208. 183 Mass. 179. 187 Mass. 331. 188 Mass. 415, 439. 191 Mass. 75, 104. 194 Mass. 84. 199 Mass. 99, 128. 200 Mass. 554. 201 Mass. 99.

Capital stock. Partially repealed, Stat. 1908, Chap. 551, Sect. 7.

May issue bonds, etc.

May mortgage its franchise, etc. Amended Stat. 1897, Chap. 500, Sect. 1.

Issue of stock and bonds to be approved by railroad commissioners.

System of construction to be approved by railroad commissioners. Amended Stat. 1897, Chap. 500, Sect. 2. 192 Mass. 313. 200 Mass. 554.

Locations.

Main street, to and through City square, to and through Warren avenue, to and over any existing bridge or over a new bridge across Charles river, to and through Beverly street, to and through Haymarket square, to and through Union street, to and through Dock square, to and through a new street which shall be built by said city, of the width of eighty feet, and one half of the cost of which shall be paid by said corporation, in the line of Congress street, between State street and Dock square, to and through Congress street and Post Office square, to and through Federal street, to and over Federal-street bridge or a new bridge across Fort Point channel, to and through Dorchester avenue to the Milton line.

Revoked Stat. 1907, Chap. 530.

(a) A branch railway through Alford street, to and over Malden bridge, to and through Main street, Everett, to the Malden line.

(b) A branch railway from Everett square, to and through Chelsea and Ferry streets to the Malden line.

(c) A branch railway from the junction of Broadway and Main street, Everett, to and through Broadway to the Malden line.

(d) A branch railway from said City square, to and through Chelsea street, to and over Chelsea bridge or a new bridge across the Mystic river, to and through Broadway, Chelsea, to and through Broadway, Revere, to and through Central avenue, to and through Beach street to Crescent Beach.

(e) A branch railway from Fenno's Corner, Revere, to and through Beach street, to and through Winthrop avenue to Beachmont.

(f) A branch railway from Dorchester avenue to and through West Broadway, to and through Dorchester street, to and through East Second street to City Point at Marine Park. Also a branch railway from Dorchester avenue to Sixth street, thence to D street, D street to Eighth street, Eighth street to L street, L street to Sixth street, to City Point and Marine Park.

(g) A branch railway from Field's Corner through Neponset avenue to Neponset bridge.

Second. From a point on Bow street in Somerville, near its junction on Walnut street, through Bow street, to and through Union Square, to and through Webster avenue, to and through Cambridge street, to and over Craigie bridge or a new bridge across Charles river to a point on Charles street between Allen and Poplar streets in Boston, through Charles street, to and through Leverett street, to and through Brighton street, to and through Lowell street, to and through Causeway street, to and through Portland street, to and through Merrimac street, to and through Washington street, to and through Dock square, to and through Devonshire street, to and through Franklin street, to and through Arch Street, to and through Chauncy street, to and through Harrison avenue, to and through Kneeland street, to and through Washington street to its junction with Hyde Park avenue.

Somerville locations revoked Stat. 1907, Chap. 530.

Cambridge locations revoked in part Stat. 1906, Chap. 520, Sect. 30.

Revoked Stat. 1907, Chap. 530.

Location extended Stat. 1907, Chap. 519.

(h) A branch railway from the junction of Washington and Warren streets, through Warren street, to and through Dudley street, to and through Blue Hill avenue to Vaughn street.

Amended Stat. 1897, Chap. 500, Sect. 3. Cambridge locations revoked except on its connection with bridge. Stat. 1906, Chap. 520, Sec. 30.

Revoked Stat. 1907, Chap. 530.

Third. *From a point in Brattle square in Cambridge, through Brattle square, to and through Mount Auburn street, to and through Putnam square and Putnam avenue, to and through Green street, to and through Western avenue or Central square, to and through Main street, to and over West Boston bridge, or a new bridge, or from a convenient point of deflection on Main street to and over a new bridge across the Charles river, to and through Charles street in Boston, to and through Park square, to and through Pleasant street, to and through Tremont street, to and through Pyncheon street, to and through Centre street to the corner of May street.*

(i) *A branch railway from Park square to and through Columbus avenue, to and over the location of the Boston and Albany railroad, with the consent of the directors of the Boston and Albany Railroad Company at a height of not less than twenty feet above the roadbed of said railroad, or by some other convenient route or way, to and through Huntington avenue, to and through Tremont street, to and through Washington street in Brookline to Village lane.*

Cambridge locations revoked except over and connecting with bridge. St. 1906, C. 520, S. 30. St. 1907, C. 530.

(j) *A branch railway from a point near the junction of River and Main streets in Cambridge, through River street, to and over Cambridge-street bridge or a new bridge across Charles river, to Cambridge street in that part of Boston called Brighton, to and through Cambridge street in said Brighton, to and through Washington street to Oak square.*

Revoked Stat. 1907, Chap. 530.

(k) *A branch railway from Charles street, to and through Cambridge street, to and through Bowdoin square, to and through Court street, to and through Brattle street to Dock square.*

(l) *A branch railway from Park square to and through Eliot street to Kneeland street.*

Locations and plans to be approved, etc., before any work is done. See, also, Stat. 1897, Chap. 500, Sects. 6, 13.

SECT. 7. Said corporation shall not do any work in any city or town until the streets through which its railway shall be laid in such city or town shall be approved by the mayor and aldermen of the city or the selectmen of the town, and shall not do any work on any new bridge aforesaid until the location thereof and the plans therefor shall be approved by the board of harbor and land commissioners, and said corporation may vary or alter the locations aforesaid within the limits of a city or town, with the approval of the mayor and aldermen of the city or the selectmen of the town, and may construct such branches, spurs, sidings, turnouts, connections, deflections, switches, extensions and loops in connection with any of its locations as may be authorized by the board of railroad commissioners.

Location, construction, etc., to be an additional servitude, etc. Affected Stat. 1897, Chap. 500, Sect. 9.

See, also, Stat. 1907, Chap. 277.

SECT. 8. The location, construction, maintenance or operation of said lines of railway in any public or private way shall be deemed an additional servitude and entitle lessees, mortgagees and other parties having an estate in such way or in premises which abut thereon, and who are damaged by reason of the location, construction, maintenance and operation of said lines of railway, to recover reasonable compensation in the manner herein provided. Any such person may at any time

within three years after the construction of such railway upon or in front of his premises, file in the clerk's office of the superior court for the county where his said premises lie, a petition setting forth his claim and the amount thereof against said corporation. He shall give to said corporation fourteen days' notice of the filing of such petition, and answer thereto shall be filed by said corporation within thirty days after the return day of such notice.

SECT. 9. Any such petition shall be heard before a jury, if either party claims such right at the time of the filing of the petition, or within ten days after the filing of the answer thereto; otherwise the same shall be heard before the court without a jury. The finding shall be on the following questions, to wit: First. Has the petitioner's estate been damaged more than it has been benefited or improved in value by reason of the location, construction, maintenance or operation of such railway? Second. If so, how much? If the answer to the first question shall be "No," a verdict shall be rendered for the corporation; otherwise a verdict shall be rendered for the petitioner for the amount found in answer to said second question, including interest from the day of the filing of the petition.

SECT. 10. Said corporation may locate stations at convenient points, with suitable exits and approaches to and from the streets and stations; but the same, except platforms and approaches thereto from buildings, shall not be located in any public way sixty feet or less in width, nor shall the same be located in any other public way or place unless approved by the mayor and aldermen or selectmen.

SECT. 11. Said corporation may lease, purchase, or otherwise take the fee of land, outside of limits of public ways, parks and other public lands, for the purpose of constructing its railway, buildings, shops, stations, engine and car houses, and for any purpose necessary for the construction or convenient use by said corporation or the public of its said railway, and for such purposes may take any private property in the manner in which land may be taken for the construction of railroads as set forth in sections ninety-five, ninety-six and ninety-seven of chapter one hundred and twelve of the Public Statutes. Said corporation shall pay all damages occasioned by the taking of such land or private property in accordance with the provisions of this section, and such damages on the application of either party shall be estimated and determined in the manner provided in reference to the assessment of damages occasioned by the laying out of highways.

SECT. 12. Said corporation shall, upon the entry of judgment pursuant to findings upon the foregoing provisions of Section 9, pay or tender to the judgment creditor the amount of such judgment with costs. If such payment or tender shall not be made within thirty days after the entry of such judgment, the court in which the same has been so entered shall issue its execution to compel the payment thereof.

183 Mass. 180.
187 Mass. 333,
336.
188 Mass. 405,
414.
191 Mass. 225,
513.
202 Mass. 118.

Proceedings
relative to
damages.
Affected Stat.
1897, Chap.
500, Sect. 9.
183 Mass. 180.
191 Mass. 225,
518, 520.

May locate
stations at
convenient
points.
Amended Stat.
1897, Chap.
500, Sect. 20.
See, also, Sect. 6.

May take cer-
tain lands, etc.
Affected Stat.
1897, Chap.
500, Sect. 9.
Affected Stat.
1900, Chap.
258.
174 Mass. 100.
183 Mass. 182.
191 Mass. 520.
200 Mass. 554.

Payment of
damages.

Deposit to be made with treasurer of the Commonwealth, etc. Affected Stat. 1897, Chap. 500, Sect. 13. 199 Mass. 138, 140.

SECT. 13. Said corporation before it shall begin the construction of any line of railway under this act shall deposit with the treasurer of the Commonwealth two hundred thousand dollars in cash or securities satisfactory to said treasurer, which, together with the three hundred thousand dollars required by the provisions of section nineteen of this act, shall be in the hands of said treasurer a fund out of which any execution issued pursuant to the provisions of the preceding section shall be paid by said treasurer. When said fund shall have been reduced to three hundred thousand dollars the said treasurer shall notify said corporation of the amount then in said fund, and said corporation shall within ten days thereafter pay to said treasurer such sum as shall restore said fund to the amount of five hundred thousand dollars.

Deposit to be returned when not required for purposes of this act. 199 Mass. 138, 140.

SECT. 14. The supreme judicial court may at any time, on application of said corporation, when it shall satisfy said court that there is no longer occasion for said fund for the purposes of this act, order the said treasurer to pay the same to said corporation or its assigns.

Highways, etc., to be restored to good condition, etc.

SECT. 15. Whenever said corporation shall make any excavations in or near any public highway, or shall set any foundation, pier or post in or near the same, the surface of the street, sidewalk or other ground shall be restored as soon as practicable to the condition, as near as may be, in which it was before the excavation was made; and any interference which shall be made with or change in water or gas mains or pipes, sewers, drains or other subterranean works shall be upon condition that the same shall be immediately restored to a serviceable condition, as good as before such change or interference, and at the sole cost and expense of said corporation. The said corporation shall, at its own expense, strengthen any bridge over which its railway shall pass, in such manner as the board of railroad commissioners shall determine.

See 1908 files of Supreme Jud. Ct., Suffolk County, No. 13049 Eq.

SECT. 16. *Said corporation shall be annually assessed, and shall pay taxes in the same manner as though it were a street railway company. Said corporation may establish for its sole benefit a toll or fare which shall not exceed upon the routes fixed by the provisions of this act the sum of five cents for a single passage between the termini of said routes, and this sum shall not be reduced by the legislature during a period of twenty years from the passage of this act. And transfer checks shall be issued or transfers made on demand, without additional payment, which shall entitle a passenger to a continuous ride from any station to any other station on the system.*

Subject to taxation.

May establish rates or tolls. Repealed Stat. 1897, Chap. 500, Sect. 22.

See Stat. 1897, Chap. 500, Sect. 10.

Shall issue transfers.

May acquire and operate other lines of railway, etc. Superseded by Stat. 1897, Chap. 500, Sect. 11.

SECT. 17. Said corporation may lease, purchase, own, and operate any lines of street or elevated railway which may be or become tributary to its lines, and enjoy all the rights and privileges enjoyed by those owning or operating such street or elevated railways, but no such lease or purchase shall be made or shall be valid if made, unless the railroad commissioners shall first decide that the public interests would not be thereby inju-

riously affected. Any such lease or purchase shall be subject to the provisions of an act of the current year entitled "An act relating to leases and consolidations of railroad and street railway companies."

SECT. 18. When said elevated railway has been constructed or any portion thereof, but before the same shall be opened for public use, it shall, upon application of said corporation, be examined by the board of railroad commissioners, and if it appears to be in a safe condition for operation then said board shall give a certificate to said corporation to that effect, which certificate shall be filed in the office of the secretary of the Commonwealth, and thereupon said corporation shall be authorized to operate said railway. Said corporation may at any time appeal from any decision of the board of railroad commissioners upon any question to the superior court, where issues of fact shall be framed, and tried before a jury if either party claims such right. Said court shall enter such judgment or decree in the premises as justice shall require, and shall have power to enforce the same by appropriate process.

SECT. 19. *Said corporation shall, on or before the expiration of six months from the date of the acceptance of this act, as provided in section forty of this act, apply for a route of not less than five miles of track in the city of Boston, and shall, on or before the first day of February in the year eighteen hundred and ninety-five, or within thirty days after the approval of such route by the mayor and aldermen, if such approval is not made until after the first day of January of said year, deposit with the treasurer of the Commonwealth the sum of three hundred thousand dollars in cash or securities satisfactory to said treasurer, and the same or such portion of the sum remaining after the payment of all executions under the provisions of section thirteen of this act shall be forfeited to the Commonwealth if said corporation shall negligently fail to construct at least five miles of its railway on such route so approved within two years from the date of the approval of such route as provided in this act.*

SECT. 20. The supreme judicial court and any justice thereof, and the superior court and any justice thereof, shall have jurisdiction in equity, on petition of any party interested, to compel compliance with the provisions of this act, and to enforce any order made under the authority of this act, and to prevent violations of any of the provisions hereof; and if it shall be found, on complaint of any city or town in which said corporation is authorized by this act to build a railway, or any party interested, that said corporation has negligently failed to comply with the provisions of this act, said court may order the removal of the structure or pass such other order or decree as it may deem proper in the premises, and may declare its charter forfeited and dissolve the corporation: provided, however, that no petition in equity shall be filed for damages for which an action is given by this act until payment thereof has been refused on execution issued as provided in section twelve.

Construction to be approved by railroad commissioners. 192 Mass. 313.

Appeals.

Shall apply for route within six months from date of acceptance, etc. Repealed Stat. 1897, Chap. 500, Sect. 22. See Stat. 1897, Chap. 500, Sect. 13. 199 Mass. 138.

Enforcement, etc., of provisions. Superseded by Stat. 1897, Chap. 500, Sect. 16. 180 Mass. 520. 192 Mass. 316.

Proviso.

Franchise tax to be imposed on and after the year 1907, etc.
 Repealed Stat. 1897, Chap. 500, Sect. 22.
 See Stat. 1897, Chap. 500, Sect. 10.
 199 Mass. 97.

SECT. 21. *On and after the first day of January in the year nineteen hundred and seven such franchise tax of not less than one per cent. nor more than five per cent. of the gross earnings of said corporation, as the board of approval provided for in section sixty-two of chapter thirteen of the Public Statutes shall annually determine, shall be imposed upon said corporation. Said tax shall be paid into the treasury of the Commonwealth and distributed to the different cities and towns in proportion to the mileage of said railway in operation therein.*

Boston Common and certain streets and ways not to be occupied, except, etc.
 Affected Stat. 1895, Chap. 440, Sect. 3.
 See Stat. 1897, Chap. 500, Sect. 4.

SECT. 22. Nothing in this act contained shall be construed to permit the occupation of any other part of Boston Common for any of the purposes named in this act, or of Washington street between Dock square and Eliot street, or of Tremont street between Scollay square and Eliot street, or of Copley square in the city of Boston, except as specifically mentioned in this act. Nothing herein contained shall authorize, except by purchase, the taking of land by any railroad company.

Boston Transit Commission, appointment of members of.
 See Stat. 1893, Chap. 478, Sect. 1.
 193 Mass. 349.

SECT. 23. The governor shall appoint, with the advice and consent of the executive council, two discreet persons, who, together with the commissioners appointed under the provisions of chapter four hundred and seventy-eight of the acts of the year eighteen hundred and ninety-three, shall constitute a board to be known as the Boston Transit Commission, and shall hold office for the term of five years from the date of the passage of this act. Any vacancy in said commission shall be filled by the mayor of said city, subject to the approval of the board of aldermen, as in the case of officers in charge of the departments in said city, or by the governor of the Commonwealth, with the advice and consent of the executive council, according as said vacancy occurs among the members originally appointed by the mayor of said city or by the governor, respectively. Each of said commissioners shall receive an annual salary of five thousand dollars or such other sum as the city council shall by ordinance provide.

Vacancy.

Salary.

Organization of commission.
 See Stat. 1893, Chap. 478, Sect. 5.

SECT. 24. Said commission shall organize by the choice of a chairman, and may from time to time choose a secretary and such engineers, clerks, agents, officers, assistants and other employees, not of their number, as it may deem necessary; may determine the duties and compensation of such employees, and may remove the same at pleasure; shall at all times keep accurate accounts of all expenditures made under this act, and shall make an annual report of its doings, containing an abstract of said accounts, to the city council of Boston.

Duties and compensation of employees.

Subways may be constructed, etc.
 Affected Stat. 1895, Chap. 440, Sects. 2 and 5.

SECT. 25. Said commission may construct in the city of Boston a subway or subways of sufficient size for four railway tracks, with approaches, entrances, sidings, stations and connections therefor, and for the running of railway cars thereon, through and under Tremont street and the adjoining

mall of Boston Common, or other public or private lands adjoining or near said street, from a point or points within one thousand feet of the junction of Tremont street and Shawmut avenue to, through and under Scollay square; thence through and under Hanover street and Washington street, Cornhill, Brattle and Washington streets or other streets, or public or private lands, to a point or points on Washington street, or between Scollay square and Causeway street. Said commission may discontinue as public ways Travers street between Canal street and Haverhill street, and such streets or portions of streets between Eliot street and the Boston and Albany railroad as it may deem necessary for said subways or for entrances, approaches or inclines thereto.

166 Mass. 364.
174 Mass. 154.
176 Mass. 10.
201 Mass. 585.

SECT. 26. Said commission may construct a tunnel or tunnels of sufficient size for two railway tracks, with approaches, entrances, sidings, stations and connections therefor, and for the running of railway cars therein, from a point on or near Scollay square in the city of Boston, where a suitable connection may be made with the subway or subways provided for by this act, to a point on or near Maverick square, in that part of Boston called East Boston, where a suitable connection with surface tracks may be made.

Tunnel may be constructed to East Boston.
174 Mass. 154.
176 Mass. 14.

SECT. 27. Said commission may also construct subways, to be used for the same purposes as said other subways, but which may be made of sufficient width for two tracks only, as follows: From Tremont street through and under Boylston street and the adjoining mall of Boston Common, or other public or private lands adjoining said street, to a point on or near Boylston street where a suitable connection with surface tracks may be made; from Boylston street through and under Park square and Columbus avenue, or other lands adjoining said square and avenue, to a point on or near Columbus avenue, where a suitable connection with surface tracks may be made, and from Tremont street through and under Park street and the adjoining mall of Boston Common, Temple street, and Staniford street, or other public or private lands adjoining said streets, to a point on or near Staniford street or Merrimac square, where a suitable connection with surface tracks may be made.

Additional subways may be constructed.
166 Mass. 364.
174 Mass. 155.

SECT. 28. Said commission shall not begin the work of constructing any of said subways until it has filed in the office of the city surveyor of said city a plan signed by said commission showing the route or location of the part of a subway which it proposes to construct. Any such plan so filed may be altered at any time by a new plan signed and filed in like manner.

Work not to be commenced until plan is filed.

SECT. 29. Said commission may locate and construct said subways, tunnels, approaches, tracks, sidings, stations, entrances and connections where it deems best within the limits aforesaid, and may place the entrances to the portions of said subways and tunnels intended for one railway, at points along the aforesaid routes distinct and different from the entrances

Location and construction of subways, etc., to be at discretion of commission, except, etc.
166 Mass. 364.
174 Mass. 155.

to the portions intended for another railway, but shall not permanently occupy above the surface of the ground for any purpose any part of said common, except so much of the Tremont and Boylston street malls as may be necessary for stairways to stations and coverings therefor; shall not between Boylston street and Park street, occupy or disturb any part of the surface of Tremont street east of the westerly track of the West End Street Railway Company as at present located; and shall so conduct the work of construction that all streets and places under or near which a subway is constructed shall be open for traffic between eight o'clock in the forenoon and six o'clock in the afternoon.

May construct
bridge over
Charles River,
etc.
Affected Stat.
1897, Chap.
500, Sect. 12.
166 Mass. 360.

SECT. 30. Said commission shall construct a bridge over Charles river, having regard to its use for railway purposes, between the present Charles-river bridge and the Fitchburg railroad bridge; and may, in its discretion, reconstruct Warren bridge with a width not exceeding one hundred feet; and shall make the draws in said bridge so built or reconstructed of such width as the board of harbor and land commissioners shall approve; and no compensation shall be required for occupation of lands of the Commonwealth, or displacement of tide water, but in all other respects the provisions of chapter nineteen of the Public Statutes and acts in amendment thereof or in addition thereto shall apply to such building or reconstruction. Said commission may make approaches to said bridges not exceeding one hundred feet in width, and may discontinue the present Charles-river bridge; and after such discontinuance the approaches thereto shall be kept open for landing places or other public uses.

May take and
use certain
public ways,
etc.
181 Mass. 235.
184 Mass. 587,
589.

SECT. 31. Said commission may, for the purposes of this act, which it is required or authorized to carry out, use public ways and lands subject to the limitations herein contained; may take for the city of Boston, by purchase or otherwise in fee, any part or the whole of the property bounded by Haymarket square, Canal, Causeway and Haverhill streets, and any other lands, including the buildings thereon, which said commission may deem necessary for said purposes; may take for said city, by purchase or otherwise, easements or estates or rights in lands, including the right to go under the surface thereof or through or under buildings or parts of buildings thereon; and any such taking in fee or otherwise may be made whether the lands taken or otherwise affected are held under or by title derived under eminent domain, or otherwise. A taking under this section of an easement or other estate or right in a given parcel of real estate, whether such parcel consists of unimproved land or of land and buildings, may be confined to a portion or section of such parcel fixed by horizontal planes of division, below or above, or at the surface of the soil, and in such case no taking need be made of upper or lower portions or sections except of such easements therein as said commission may deem necessary.

SECT. 32. Said commission, to make any taking by right of eminent domain, shall cause to be recorded in the registry of deeds for the county of Suffolk a description of the lands, easements, estates or rights to be taken, as certain as is required in a common conveyance of land, with a statement that the same are taken under the authority of this act, which description and statements shall be signed by said commission, and the lands, easements, estates or rights described in said description shall upon such recording be taken for, and shall vest in, said city.

Description of land taken by right of eminent domain to be recorded, etc.

SECT. 33. Said commission may remove the buildings from any and all lands taken by it, and may sell or lease for improvement or otherwise any part of, or estate or interest in, any lands or rights so taken, whenever the same shall, in the opinion of said commission cease to be required for the purposes of this act. And any person or corporation acting under authority of this act may enter into and upon any lands, and make surveys and examinations and place and maintain marks therein, and may do all other acts thereon incidental to such surveys, examinations and placing and maintaining marks.

May remove buildings from lands taken, etc.

SECT. 34. Said commission shall determine all damages sustained by any person whose property is injured by it under authority of Section 27, or is taken by it, and if any such person cannot agree with said commission as to the damages so sustained, such damages may be determined by a jury in the superior court for the county of Suffolk, on petition therefor of said commission or of said person against said city, filed in the clerk's office of said court within one year after such taking, or the property is so injured, and judgment shall be entered upon the determination of such jury, and costs shall be taxed and execution issued in favor of the prevailing party as in civil cases.

Damages. Amended Stat. 1895, Chap. 440, Sect. 1. 201 Mass. 589.

SECT. 35. Said commission may, on or before the completion of said subways and tunnels, grant locations for tracks to, and for two tracks in, said subways and tunnels, to be used by any street railway company or companies; shall order all surface tracks to be removed from Tremont street between Boylston street and Scollay square, and from Boylston street between Park square and Tremont street; and may order any other tracks which, in its opinion, have been rendered unnecessary by the construction of said subways and tunnels, and which are above said subways and tunnels, or within a distance of one thousand feet from any entrance to said subways and tunnels, to be removed from the streets. Said commission shall, subject to the approval of the board of railroad commissioners, fix by contract the terms and conditions and rates of compensation for the locations for said two tracks in any of said subways and tunnels, and for the use thereof by any street railway company or companies during a term of years not exceeding fifty.

Commission may grant locations for tracks to and in subways and tunnels, etc. Affected Stat. 1895, Chap. 440, Sect. 6. Amended Stat. 1896, Chap. 492. 166 Mass. 365. 174 Mass. 155. 180 Mass. 520.

Conditions and rates of compensation subject to approval of railroad commissioners. Amended Stat. 1896, Chap. 492.

Surface tracks not to be laid in certain streets.

Surface tracks shall not be laid or maintained in that part of any street from which said commission may have ordered such tracks removed, as herein provided.

May order temporary removal or relocation of surface tracks, etc.
180 Mass. 517
et seq.

SECT. 36. Said commission may order the temporary removal or relocation of any surface tracks in or on any land or way through or under or near which any subway, tunnel or railway aforesaid is to be built, also the removal or relocation of any conduits, pipes, wires or poles of any person or corporation which it deems to interfere with the construction or operation of any such subway, tunnel or railway, and the person or corporation owning such tracks, wires or other property shall comply with said orders. Any person or corporation using or authorized by law to use wires along the route of any such subway or tunnel may place them therein in such manner and on such terms as said commission may approve. Said commission shall also designate locations in or adjoining said subways and tunnels for sewers, gas-pipes, water-pipes, conduits and electric wires; and may fix the terms and conditions and rates of compensation to be paid for such locations and the use thereof.

Regulating use of wires along route of subways, etc.

Rapid Transit Loan.
See Stat. 1895, Chap. 440, Sects. 4, 7.
See Stat. 1897, Chap. 500, Sect. 18.
166 Mass. 363.
171 Mass. 428.

SECT. 37. The treasurer of the city of Boston shall from time to time, on the request of said commission, issue and sell at public or private sale, bonds, registered or with interest coupon attached, as he may deem best, in the name and behalf of said city, to an amount not exceeding seven millions of dollars, and such further amount for said Charlestown bridge and its approaches, in addition to the seven hundred and fifty thousand dollars heretofore appropriated therefor by the city council of said city, as may be necessary for the completion of said bridge and approaches. Said bonds, including said seven hundred and fifty thousand dollars, shall be designated on their face, Rapid Transit Loan, shall be for the term of forty years, and at rates of interest not exceeding four per cent. per annum, as said treasurer shall determine, payable semi-annually. The debt incurred under the provisions of this section, except the seven hundred fifty thousand dollars aforesaid, shall not be included in determining the limit of indebtedness of said city. The proceeds of said bonds shall be used to meet all damages, costs and expenses incurred in carrying out the provisions of this act by said commission and all expenses heretofore incurred for the purposes specified in chapter four hundred and seventy-eight of the acts of eighteen hundred and ninety-three.

Sinking fund. Affected Stat. 1895, Chap. 440, Sect. 4.
171 Mass. 428.
176 Mass. 15.

SECT. 38. The board of commissioners of sinking funds for the city of Boston shall establish a sinking fund for the payment of the bonds issued under this act. All premiums received from the sale of said bonds, all moneys or securities deposited with the treasurer of said city under the provisions of this act and forfeited to said city, and all proceeds from any sale of lands or rights taken under authority of this act, shall be paid into said sinking fund. All rents, per-

centages, or other annual compensation received from any person or corporation for any use of any of said subways, tunnels or adjacent locations, or for any use of any lands or rights taken under authority of this act shall be annually used by the said treasurer, first, to meet any deficiency in the sinking fund requirements for said bonds, after the payments hereinbefore provided for have been made; second, to meet the interest on said bonds, and the surplus, if any, as a part of the general revenue of said city for the maintenance of its public parks.

SECT. 39. Said commission may take in fee, by purchase, or otherwise, a strip of land from the southern entrance of said subway, at or near the junction of Tremont street and Shawmut avenue, to Franklin Park in said city. Said strip shall be taken in and along and across public ways or lands, or through private property, and shall not be less than twenty-five feet nor more than thirty-five feet in width. Said strip of land from Pleasant street to Dudley street shall be taken between Tremont and Washington streets; and from Dudley street to Franklin park between Warren street and Blue Hill avenue. Said commission may also take in fee, by purchase, or otherwise, a strip of land not less than twenty-five nor more than thirty-five feet in width, from the said entrance to said subway on or near Columbus avenue to a point on said first mentioned strip of land. Said strip or strips of land shall be used for an elevated railway, and for such other public purposes as said commission shall determine.

Certain lands may be taken for purposes of an elevated railway; etc.

SECT. 40. This act shall take effect upon its passage; but said railroad corporation shall not do any work in any public way or place, or take any land under the right of eminent domain, nor shall said Boston Transit Commission take any land or commence the construction of any subway or tunnel until this act shall be accepted by a majority of the voters of said city voting at some special election called by the mayor of said city or at some state or municipal election designated by said mayor, such election to be held during the year eighteen hundred and ninety-four. [*Approved July 2, 1894.*]

When to take effect.
166 Mass. 357.

The foregoing act was accepted at a special election held July 24, 1894.

Stat. 1895, Chap. 440.

AN ACT RELATIVE TO THE CONSTRUCTION OF SUBWAYS IN
THE CITY OF BOSTON.*Be it enacted, etc., as follows:*

1894, 548, Sect.
34, amended.
174 Mass. 156.
180 Mass. 520.
201 Mass. 589.

Construction
of subways,
damages.

SECTION 1. Section thirty-four of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four is hereby amended by striking out in the first, second, third and fourth lines the words "Said commission shall determine all damages sustained by any person whose property is injured by it under authority of section twenty-seven, or is taken by it," and inserting in place thereof the words:—Said commission may agree with any person as to the amount to be paid, as damages sustained by him, for any property taken, or injured, by said commission under authority of this act or of any act in amendment hereof,—so as to read as follows:—*Section 34.* Said commission may agree with any person as to the amount to be paid, as damages sustained by him, for any property taken, or injured, by said commission under authority of this act or of any act in amendment hereof, and if any such person cannot agree with said commission as to the damages so sustained, such damages may be determined by a jury in the superior court for the county of Suffolk, on petition therefor of said commission or of said person against said city, filed in the clerk's office of said court within one year after such taking, or the property is so injured, and judgment shall be entered upon the determination of such jury, and costs shall be taxed and execution issued in favor of the prevailing party, as in civil cases.

May be con-
structed for
less than four
tracks in
certain cases,
etc.
See Stat. 1894,
Chap. 548,
Sect. 25.

SECT. 2. Nothing contained in said act shall be construed as preventing the said commission from constructing subways for less than four railway tracks in any portion of the routes defined in the act where said commission deems that the construction of a subway or subways for four tracks is unnecessary or inexpedient; but said commission is authorized to make suitable provisions for the future enlargement of any subway or subways so as to accommodate four tracks in any portion of said routes, and to make such enlargement when said commission deems it expedient so to do.

Certain portion
of the Common
not to be
permanently
occupied, etc.
See Stat. 1894,
Chap. 548,
Sect. 22.
166 Mass. 365.

SECT. 3. No portion of the Common, with the exception of the malls on Boylston and Tremont streets, shall be permanently occupied above the surface of the ground for any of the purposes of the subway except so far as necessary for the suitable ventilation thereof, and no portion of said malls shall be permanently occupied above the surface of the ground except so far as necessary for suitable ventilation, and for shelter and other accommodations at the station entrances and exits. In constructing the subway under the Common

said commission shall not be limited to the line of the malls, provided that additional space is necessary or expedient in order to secure suitable curves and stations for the subway, and a suitable loop for turning cars, nor shall said commission be prohibited from disturbing the surface of Tremont street east of the westerly track of the West End street railway except between Winter street and a point one hundred and fifty feet northerly of Boylston street. In no case shall the subway extend under the Common more than sixty feet beyond the present limit of said malls.

SECT. 4. In order that the debt created for the construction of said subways may be limited as nearly as possible to the net cost thereof, the proceeds from any sales of lands or rights therein taken by purchase or otherwise under the authority of said act or any acts in amendment thereof made before the expiration of two years from the date of the completion of the construction of the subway may be credited to the subway account instead of being paid into the sinking fund.

Proceeds from sales of lands, etc.
See Stat. 1894, Chap. 548, Sects. 37, 38.

SECT. 5. The board of street commissioners of the city of Boston, with the approval of the mayor and of the Boston transit commission, may, for the purpose of widening Haverhill and Canal streets, take or lay out any portion of the land taken by purchase or otherwise by the said Boston transit commission; and so far as the widening of said Haverhill and Canal streets is not rendered necessary in consequence of the construction of the subway, the value of the real estate so taken or laid out by said board, as determined by agreement between said board and said transit commission, shall be considered as expended for street widenings, and not as part of the cost of building the subways.

Widening of Haverhill and Canal streets.
See Stat. 1894, Chap. 548, Sect. 25.

SECT. 6. Said Commission may, if it deems expedient, construct any portion or the whole of the tracks in said subway or subways, and may electrically or otherwise equip the same, and may in the name of the city of Boston, and subject to the approval of the board of railroad commissioners, enter into contracts with any surface or elevated railway company or companies, which shall be binding upon the contracting company or companies, and upon the city and its officers and boards, for locations for tracks and other rights in any part or all of said subway or subways, on such terms and conditions, and containing such stipulations and provisions for the security of said city of Boston, the Commonwealth, and all other parties, including such contracting company or companies, as to said commission or a majority thereof shall seem just and reasonable.

Construction, equipment and location of tracks, etc.
See Stat. 1894, Chap. 548, Sect. 35.
176 Mass. 15.

SECT. 7. The interest on the debt incurred for the construction of the subway or any part thereof shall be considered as part of the cost of the construction until such subway or part thereof is open for use. [*Approved June 1, 1895.*]

Interest to be considered as part of cost.
See Stat. 1894, Chap. 548, Sect. 37.

Stat. 1896, Chap. 492.

AN ACT RELATIVE TO THE CONSTRUCTION OF SUBWAYS IN THE CITY OF BOSTON.

Be it enacted, etc., as follows:

1894, 548, Sect. 35, amended.
174 Mass. 156.
176 Mass. 14.

Section thirty-five of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four is hereby amended by striking out in the nineteenth line, the word "fifty," and inserting in place thereof the word:— twenty, —so as to read as follows:—

Commission may grant locations for tracks to and in subways and tunnels, etc.

Section 35. Said commission may, on or before the completion of said subways and tunnels, grant locations for tracks to, and for two tracks in, said subways and tunnels, to be used by any street railway company or companies; shall order all surface tracks to be removed from Tremont street between Boylston street and Scollay square, and from Boylston street between Park square and Tremont street; and may order any other tracks which, in its opinion, have been rendered unnecessary by the construction of said subways and tunnels, and which are above said subways and tunnels, or within a distance of one thousand feet from any entrance to said subways and tunnels, to be removed from the streets. Said commission shall, subject to the approval of the board of railroad commissioners, fix by contract the terms and conditions and rates of compensation for the locations for said two tracks in any of said subways and tunnels, and for the use thereof by any street railway company or companies during a term of years not exceeding twenty. Surface tracks shall not be laid or maintained in that part of any street from which said commission may have ordered such tracks removed, as herein provided. [Approved June 5, 1896.]

Conditions and rates of compensation subject to approval of railroad commissioners.

Surface tracks not to be laid in certain streets.

Stat. 1897, Chap. 347.

AN ACT RELATIVE TO THE BOSTON TRANSIT COMMISSION.

Be it enacted, etc., as follows:

May transfer certain land to city of Boston.

SECTION 1. The Boston transit commission may transfer to the city of Boston, to be used for a market or other public purposes, so much of the land taken by it between Haverhill and Canal streets as said commission and the mayor of said city may agree upon.

Treasurer of city to issue bonds, etc.

SECT. 2. In order that the debt created for the construction of the subways by said commission may be limited as nearly as possible to the net cost thereof the treasurer of said city

shall from time to time on the request of said commission, approved by the mayor, issue bonds of said city, which shall not be considered in determining the debt limit, to the amount determined by said commission, with the approval of the mayor, to be the value of the real estate transferred to said city as hereinbefore provided and shall sell the same and hold the proceeds thereof for the construction of said subway; and the seven million dollars authorized for constructing said subways shall be reduced by the amount so issued.

SECT. 3. This act shall take effect upon its passage. [*Approved May 6, 1897.*]

Stat. 1897, Chap. 500.

AN ACT TO PROMOTE RAPID TRANSIT IN THE CITY OF BOSTON AND VICINITY.

Be it enacted, etc., as follows:

SECTION 1. Section four of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four is hereby amended by striking out the whole of said section and inserting in place thereof the following:—*Section 4.* Said corporation may mortgage or pledge to any corporation organized under the laws of the Commonwealth, as security for the payment of its bonds, its franchises and any or all of its real or personal property and property thereafter acquired by it, including its interest in any elevated or surface railways, under or by virtue of any lease or operating contract.

1894, 548, Sect. 4, amended.
187 Mass. 331, 336.
190 Mass. 608.
191 Mass. 75.
Boston Elevated Railway Company may mortgage its franchise, etc.

SECT. 2. The first paragraph of section six of said chapter five hundred and forty-eight is hereby amended so as to read as follows:—*Section 6.* Said corporation may construct lines of elevated railway according to such plans or systems as the board of railroad commissioners may approve, to be operated by electricity or other motive power except steam, upon the following locations, and may equip, maintain and operate engines, motors and cars thereon, to wit:—

1894, 548, Sect. 6, amended.
System of construction to be approved by railroad commissioners.
192 Mass. 313.
200 Mass. 554.

SECT. 3. Section six of said chapter five hundred and forty-eight is hereby further amended by striking out in the seventieth line of said section the words “in Brattle square in Cambridge,” and inserting in place thereof the words:—on Murray street near Charles river in Cambridge to and,—by striking out in the seventy-third and seventy-fourth lines of said section the words “to and through Western avenue or Central square,” and inserting in place thereof the words:—thence over and through private land at a point at or near the junction of Massachusetts avenue and Main street to and through Lafayette square,—and by adding at the end of said section the following:—

1894, 548, Sect. 6, amended.
Locations.

Fourth. Commencing at a point near the corner of Washington and Castle streets; then upon and over Castle street to a point at or near its intersection with Village street; thence over and across the location, lands and tracks of the Boston and Albany Railroad Company at a height of not less than twenty feet above said tracks, to Corning street; thence across Corning street to private lands between Porter and Kirkland streets; and thence over, upon and under said private lands by an incline, open cut and subway under Pleasant street, to the subway now constructed or in process of construction by the Boston transit commission; thence from the northerly terminus of said subway by an open cut, incline and elevated structure upon and over land acquired by the Boston transit commission, and Canal street to Causeway street; thence upon and over Causeway street to a new bridge now being built by said transit commission, under the provisions of said chapter five hundred and forty-eight; thence upon and over said new bridge to and through City square, Main street, *Essex street and Rutherford avenue to Sullivan square*, in that part of Boston known as Charlestown.

Locations.

Revoked
Stat. 1907,
Chap. 530.

Revoked
Stat. 1907,
Chap. 530.

Fifth. *Commencing at a point on Washington street at or near Fay street; thence upon and over private lands, and crossing Dover street, Shawmut avenue, Hingham, Middlesex, Emerald, Compton, Lucas, Paul and Castle streets to lands occupied by the Boston and Albany Railroad Company; thence over and across the location, lands and tracks of said company, at a height of not less than twenty feet above said tracks, to Corning street; thence across Corning street to private lands between Porter and Kirkland streets; and thence over, upon and under said private lands, by an incline, open cut and subway under Pleasant street to the subway aforesaid.*

Sixth. Commencing at a point at or near the junction of Washington and Dudley streets, thence upon and over that part of Dudley street between Washington and Warren streets, and upon and over that part of Zeigler street between Washington and Warren streets; *also from Dudley street, upon and over Guild row and Roxbury street, to Washington street.*

Revoked
Stat. 1907,
Chap. 530.

Seventh. Commencing at a point at or near the corner of Washington and Castle streets; thence upon and over private lands to Motte street or Orange lane; thence upon and over Motte street or Orange lane in part, and in part upon and over private lands, to Harrison avenue; thence upon and over Harrison avenue to Beach street; thence upon and over Beach street to Cove street; thence upon and over Cove street to Federal street, or upon and over the new street to be constructed by the city of Boston, to Atlantic avenue; thence upon and over Atlantic avenue, Commercial street and Causeway street to the said new bridge now in process of construction by said transit commission, and to Merrimac street.

Revoked
Stat. 1907,
Chap. 530.

Eighth. *Commencing at the corner of Harrison avenue and Beach street, upon and over Harrison avenue to Essex street; and thence upon and over Essex street to Cove street.*

Ninth. *Commencing at or near the corner of Motte street and Harrison avenue; thence upon and over Way street, Broadway extension and upon and over the existing bridge or a new bridge to be built across Fort Point channel to West Broadway, in that part of Boston known as South Boston.*

Revoked
Stat. 1907,
Chap. 530.

Said corporation may also construct such loop lines in connection with the locations herein granted, upon and over such streets or ways as may be necessary or convenient to turn its trains or reverse the direction thereof.

May construct
loop lines.

SECT. 4. Within the locations granted by paragraphs fourth and fifth of section three of this act no structure shall be placed upon or in the land or locations of the Boston and Albany Railroad Company, or upon or in the land authorized to be taken or acquired by the Boston and Providence Railroad Corporation under chapter five hundred and sixteen of the acts of the year eighteen hundred and ninety-six, entitled "An act to provide for a union station for passengers on railroads entering the southerly part of the city of Boston"; and no land shall be taken or location built upon within the limits of land authorized to be taken or acquired by said last-named corporation, under said chapter, without the consent of the directors of the Boston and Albany Railroad Company in any case affecting said company, and of the Old Colony Railroad Company in any case affecting said company, or of the board of railroad commissioners.

Placing of
structures upon
certain loca-
tions and the
taking of
certain land
restricted, etc.
See Stat. 1894,
Chap. 548,
Sect. 22.
See, also,
Sect. 7, *infra*.

SECT. 5. Whenever said corporation shall request said Boston transit commission or the city of Boston to construct a subway in or under Cambridge street, Bowdoin square and Court street to connect with the subway now being constructed by said commission, and shall have made with said commission or city an agreement for the sole use by it of said proposed subway for the running of its trains therein and for other purposes, which shall be for a term of not less than twenty years and at the same rental and, so far as applicable, shall otherwise contain the same provisions as the lease already made with the West End Street Railway Company for the use of said subway, said commission shall forthwith construct an incline, open cut and subway beginning at a point on Cambridge street, near North Russell street, upon, through and under Cambridge street, Bowdoin square and Court street to a junction at Scollay square with the subway described in section twenty-five of said chapter five hundred and forty-eight and shall, at the cost and expense of said corporation, to be estimated by the street commissioners of said city and paid in advance into the treasury of said city, such estimated sum to be increased or a part thereof returned, according as the actual expenses are more or less than the sum so estimated, take for the city of Boston such lands on each side of said Cambridge street as may be necessary to make a highway thirty feet wide on each side and extending not less than thirty feet nor more than one hundred feet, as said commissioners may

Extension of
subway may
be constructed,
etc.
174 Mass. 156.
193 Mass. 349.

Proviso.

determine, beyond the ends of said open cut, and shall construct such highway: *provided, however*, that in case the transit commissioners of the city of Boston shall determine that said subway may advantageously be extended nearer to Charles river than said North Russell street, said subway shall be so extended and may in such event be constructed under Cambridge street or substantially parallel therewith, and the city of Boston may, by its transit commissioners, take such land and buildings as may be needful for such construction, and the damages occasioned by such taking shall be ascertained and recovered in the manner provided by sections thirty-two and thirty-four of said chapter five hundred and forty-eight. Said takings shall be made, and the damages occasioned to any person by such takings shall be ascertained and recovered, in the manner provided in sections thirty-two and thirty-four of said chapter five hundred and forty-eight.

Plans showing form and method of construction proposed to be approved, etc. See Stat. 1894, Chap. 548, Sects. 7, 10. See, also, Sect. 13, *infra*. 187 Mass. 333. 192 Mass. 313.

SECT. 6. Before constructing its railroad upon any route granted to it and before constructing any station in any public way or place said corporation shall prepare and file with the mayor of the city of Boston plans showing the form and method of construction proposed, for his examination and approval as to architectural appearance and obstruction to light and air, who shall approve or disapprove the same in writing, and if disapproved by him the corporation may appeal to the said board of railroad commissioners, who shall determine the question. Said corporation shall also prepare and file with said board plans showing the form and method of construction proposed, and the proposed location of the tracks, elevated structure and stations, with such detail as may be necessary to show the extent to which any street, way, avenue, bridge, public or private lands are to be encroached upon. Said board shall examine the same with reference to the strength and safety of the structure, and to the strength and safety of any bridge traversed thereby, and with reference to the rolling stock, motive power and method of operation, and with reference to the convenience and comfort of the public, and may employ, at the expense of said corporation, a competent engineer with whom to consult in relation thereto. When said construction plans are satisfactory to said board they shall give a certificate approving the same. The corporation shall not proceed to construct its road until such certificate has been given, and if said construction plans, as filed, are not satisfactory to said board it may require them to be changed before giving said certificate of approval; and any structure erected in accordance with said plans may be modified or changed by said corporation, with the consent of said board.

Crossing of locations or tracks of railroad companies. See, also, Sect. 4, *supra*.

SECT. 7. Wherever the routes upon which said corporation is authorized to construct and operate its elevated railroad cross the locations or tracks of any railroad company, the crossing shall be made in such manner and the method of construction shall be such as may be agreed upon between

the directors of said railroad company and the directors of said corporation; and if the parties are unable to agree as to the manner of crossing or method of construction at that point, the same shall be determined by the board of railroad commissioners, upon the application of either party. And in case any railroad company sustains any damage by reason of such crossing, or in case any other person or corporation suffers any damage in property, by reason of any acts done by said corporation under the authority of this act or said chapter five hundred and forty-eight, the same shall be estimated and recovered in the manner provided in sections eight, nine and eleven of said chapter five hundred and forty-eight as amended by this act, according as said sections shall apply. Said corporation may construct that portion of its elevated railroad over that part of the seventh location described in section three of this act between Albany street and Merrimac street in the city of Boston of such strength and character that it will be suitable for the hauling of railroad cars thereon; and said corporation is hereby authorized to haul railroad cars of other corporations thereon; and the restriction contained in section one of said chapter five hundred and forty-eight, as to the transportation of freight and baggage, shall not apply to transportation thereon.

May haul railroad cars of other corporations on portion of its railroad, etc.

SECT. 8. If, in the construction of its said railroad and appurtenances, it becomes necessary for said corporation to remove any poles, wires or other structures, in, upon or over any public streets or ways, or to interfere with any pipes or structures underneath the surface of the ground in such streets or ways, it shall have the right to remove the same: *provided, however,* that it shall at its own expense provide for such structures, either above or below ground, in such manner as the superintendent or other officer having charge of the streets may approve. Said corporation may construct inclines at such points as it may deem expedient, for the purpose of making connections with surface railways or railroads.

May remove certain structures, etc.

Proviso.

SECT. 9. The provisions of chapter forty-nine of the Public Statutes, relative to cases where damages are claimed to estates in which two or more persons have different, separate or several interests, shall apply to all proceedings under sections eight, nine and eleven of said chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four in which damages caused by the acts of said corporation are claimed for such estates.

P. S. 49 to apply to certain proceedings.

SECT. 10. Said corporation may establish, and take a toll or fare, which shall not exceed the sum of five cents for a single continuous passage in the same general direction upon the roads owned, leased or operated by it; and this sum shall not be reduced by the legislature during the period of twenty-five years, from and after the passage of this act: *provided, however,* that the board of railroad commissioners may upon the petition of the board of aldermen of a city, selectmen of

May establish and take a toll or fare, etc. See Stat. 1898, Chap. 578, Sect. 28.

Proviso.

181 Mass. 208.
 199 Mass. 97.
 1 Op. Atty.-
 Genl. 581.
 2 Op. Atty.-
 Genl. 261.
 2 Op. Atty.-
 Genl. 426.
 1911 Atty.-
 Genl's Report,
 52, 55.

Certain
 burdens,
 obligations,
 etc., not to be
 imposed, etc.

Proviso.

Amended
 Stat. 1908,
 Chap. 388.

Free transfers
 to be provided,
 etc.

a town, or fifty legal voters of a city or town, in which any of the lines owned, leased or operated by said corporation are located, after due notice and hearing the parties interested, reduce such toll or fare; but such toll or fare shall not, without the consent of said corporation, be so reduced as to yield, with all other earnings and income of said corporation, except the income of the funds deposited with the treasurer of the Commonwealth as required by this act and said chapter five hundred and forty-eight, a net divisible income, after paying all expenses of operation, interest, taxes, rentals, and other lawful charges, and after charging off a reasonable amount for depreciation, of less than eight per cent. per annum on the outstanding capital stock of said corporation actually paid in in cash. The report of the board shall be final and conclusive for one year. During said period of twenty-five years no taxes or excises not at present in fact imposed upon street railways shall be imposed in respect of the lines owned, leased or operated by said corporation, other than such as may have been in fact imposed upon the lines hereafter leased or operated by it at the date of such operating contract or of such lease or agreement hereafter made therefor nor any other burden, duty or obligation which is not at the same time imposed by general law on all street railway companies: *provided, however,* that said corporation shall be annually assessed and shall pay taxes now or hereafter imposed by general law in the same manner as though it were a street railway company, and shall, in addition, as compensation for the privileges herein granted, and for the use and occupation of the public streets, squares and places, by the lines of elevated and surface railroad owned, leased and operated by it, pay to the Commonwealth, on or before the *last* day of November in each year, during said period of twenty-five years, an annual sum, the amount of which shall, in each year ending the last day of September, be determined by the amount of the annual dividend paid in that year by said corporation, in the following manner:—If the annual dividend paid is six per cent. or less, or if no dividend is paid, the sum payable that year shall be a sum equal to seven-eighths of one per cent. of the gross earnings of all the lines of elevated or surface railroads owned, leased or operated by said corporation; if said dividend exceeds six per cent. then a sum equal to the excess of the dividends over six per cent. in addition to said seven-eighths of one per cent. of said gross earnings. The above sum shall be paid into the treasury of the Commonwealth and distributed among the different cities and towns in proportion to the mileage of elevated and surface main track, reckoned as single track, which is owned, leased or operated by said corporation and located therein. Said corporation shall also provide free transfer from elevated to surface and from surface to elevated cars at all stations of the elevated lines reached by surface lines and from one elevated car or train to another at junction points

entitling a passenger to a continuous ride in the same general direction, and such further free transfers on all the surface lines of railway owned, leased or operated by it, as may be satisfactory to or required by the board of railroad commissioners.

SECT. 11. Section seventeen of said chapter five hundred and forty-eight is hereby amended by striking out the whole of said section and inserting in place thereof the following:—
Section 17. Said corporation is hereby authorized, at any time after the passage of this act, to lease and operate the lines, property, rights, locations and franchises of the West End Street Railway Company, and of any other street railways or elevated railroads whose lines may be or become, in whole or in part, tributary to or connecting with its lines, and enjoy all the rights and privileges thereto appertaining and belonging, subject to the duties, liabilities and restrictions thereto appertaining; and said West End Street Railway Company, and such railways or railroads, are hereby authorized to make such leases or operating contracts, upon the consent in each case of a majority in interest of their stockholders, given at a meeting called for that purpose: *provided, however,* that no such lease or operating contract of the West End Street Railway Company shall be valid until the terms thereof, so far as they relate to the rental or compensation to be paid, and to the due and safe transportation of the public, have been approved by the board of railroad commissioners; and *provided, further,* that any lease of any other street railway or elevated railway company shall be subject to the provisions of all general laws relating to the leasing of street railways.

1894, 548, Sect. 17, amended.

May lease and operate other lines of railway, etc.

Provisos.

SECT. 12. Said corporation shall not construct, maintain or operate its railroad in the subway now constructed or in process of construction and now leased to the West End Street Railway Company, unless said street railway company shall, under the provisions of said lease, assign to said corporation its rights, powers and privileges thereunder, or otherwise consent to such construction, maintenance or operation; and in such event said corporation may construct and, during the term of the existing and any future contract for the use of the subway, may operate its railroad in said subway. In such event, upon the request of said corporation and upon its agreement that the cost thereof shall be considered as part of the cost of the subway under the existing contract with said West End Street Railway Company for the use of the same, the Boston transit commission shall make such alterations in the subway, and the approaches thereto, as may be necessary to render the same suitable for the running of cars and trains of cars through the same, in connection with the elevated structure, upon the routes hereinbefore granted, and said commission shall discontinue so much of Travers street as may be necessary to provide a gradual incline from the northerly portion of the subway to the elevated structure on Causeway

Not to construct, etc., its railroad in the subway now leased to the West End Street Railway Company without consent of said company. 193 Mass. 349.

Alterations to be made in subway, etc.

Construction of new bridge across Charles River.

street. Said transit commission shall also construct the new bridge across the Charles river, now in process of construction by them, of such strength as to safely support said elevated railroad thereon, and shall so design the same that the elevated structure may be placed thereon; but any alteration in the plan and structure of said bridge hereafter made by said commission in order to secure such additional strength shall be paid for by said corporation.

Deposit to be made with treasurer of the Commonwealth, etc. See Stat. 1894, Chap. 548, Sects. 7, 10, 13, 19. See, also, Sect. 6, *supra*. 174 Mass. 153.

To apply for route within sixty days from making deposit, etc.

SECT. 13. Said corporation shall, within three months from the passage of this act, deposit with the treasurer of the Commonwealth the sum of three hundred thousand dollars in cash or securities satisfactory to said treasurer, and the same, or any portion thereof remaining after the payment of all executions under the provisions of section thirteen of said chapter five hundred and forty-eight, shall be forfeited to the Commonwealth if said corporation shall negligently fail to perform either of the requirements hereinafter in this section set forth, namely:—Within sixty days from the making of such deposit the corporation shall apply to the board of aldermen of the city of Boston for a route of not less than four or more than seven miles of double track in said city, exclusive of subways, over locations hereinbefore granted. If the route so applied for is not approved by the mayor and aldermen within sixty days of the application therefor, the corporation shall within thirty days from the expiration of said sixty days apply to the board of railroad commissioners for such approval, who shall have authority to approve the same, and upon any refusal or failure for sixty days of any board of aldermen or selectmen to approve any route lawfully applied for by said corporation, the corporation may apply therefor to said board, which may approve the same. The corporation shall construct its railroad over said route first applied for as aforesaid within three years after it is authorized to begin the construction thereof. In case of its failure so to do any lease from the West End Street Railway Company to said corporation shall thereupon cease and determine. If such construction is delayed by litigation or unforeseen casualty, so that the same cannot be completed within said period of three years, the corporation may apply to the supreme judicial court for relief from such forfeiture or determination of said lease, and the court, upon notice to the attorney-general, the city of Boston, and the West End Street Railway Company, and upon hearing and proof that said litigation was not collusive or that such casualty was without the fault of said corporation, may grant relief against such forfeiture or determination of the lease, and may fix the time within which such construction shall be completed.

Time for construction limited. Amended Stat. 1901, Chap. 90.

To apply for a further route, etc.

SECT. 14. Said corporation shall also, within one year after it is authorized to begin the construction of its railroad over the route first applied for as provided in section thirteen of this act, apply for a further route of such length that the

same, with said route first applied for, shall amount to not less than seven miles of double track, exclusive of subways, over locations hereinbefore granted. If said route is not approved by the mayor and aldermen of the city wherein said location is applied for within sixty days of the application therefor, the corporation shall, within thirty days from the expiration of said sixty days, apply to the board of railroad commissioners for such approval, who shall have authority to approve the same. Said corporation shall construct its railroad over said route within three years after it is authorized to begin the construction thereof.

Time for construction limited. See Stat. 1901, Chap. 90.

SECT. 15. Said corporation shall join with the city of Boston and the city of Cambridge in a petition to the legislature for the year eighteen hundred and ninety-eight or the year eighteen hundred and ninety-nine, as said cities may elect, for an act authorizing the construction and maintenance of a bridge across the Charles river, at or near the present site of the West Boston bridge, suitable for the use of the elevated and surface cars of said corporation, and also for all the purposes of ordinary travel between said cities; and said corporation shall pay toward the construction of said bridge such portion thereof as shall be rendered necessary by reason of its being of additional size and strength for the use of the elevated railroad of said corporation, and shall also itself construct or shall pay for constructing its railway, both elevated and surface, across said bridge, and the balance of such cost beyond that paid by said corporation shall be paid one-half by the city of Boston and one-half by the city of Cambridge. Said corporation shall also, within the period of six months from the time such bridge is finished, apply for a route beginning at any of its lines of elevated track in Boston to said new bridge, across the same, to Brattle square in Cambridge, over the locations hereinbefore granted. If said route is not approved by the mayor and aldermen of Boston and Cambridge within sixty days of the application therefor, the said corporation shall, within thirty days from the expiration of said sixty days, apply to the board of railroad commissioners for such approval, who shall have authority to approve the same. Said corporation shall construct its railroad over said route within two years after it is authorized to begin the construction thereof. The city of Cambridge may petition the supreme judicial court sitting in equity, to enforce compliance with the provisions of this section, and if it be found, on the petition of said city, that said corporation has failed to comply with said provisions, the said supreme judicial court may pass such order or decree as it may deem proper in the premises.

To join with city of Boston and city of Cambridge in a petition for a bridge across the Charles River, etc. See 1908 files Supreme Jud. Ct., Suffolk County, No. 13049 Eq. See Stat. 1898, Chap. 467. Amended Stat. 1906, Chap. 520, Sect. 23.

To apply for route within six months from the time bridge is finished, etc.

Time for construction limited, etc.

SECT. 16. Section twenty of said chapter five hundred and forty-eight is hereby amended by striking out the whole of said section and inserting in place thereof the following:—*Section 20.* The supreme judicial and superior courts shall

1894, 548, Sect. 20, amended.

Enforcement, etc., of provisions.

have jurisdiction in equity, on petition of any party in interest, or any city or town in which said corporation is required to build a railroad under this act, to compel compliance with the provisions of this act, and to enforce any order made under the authority thereof, and to prevent violation of any of the provisions thereof, and if it shall be found on complaint of any city or town in which said corporation has built or is proceeding to build a railroad under this act, or of any party in interest, that said corporation has negligently failed to comply with the provisions of this act, the court may pass such order or decree as it may deem proper in the premises: *provided, however,* that no petition in equity shall be filed for damages for which an action is given by this act until payment thereof has been refused on execution issued as provided in section twelve.

Proviso.

Tunnel to be constructed to East Boston.

Connections between tunnel and subways authorized. Stat. 1902, Chap. 114.
174 Mass. 153.
176 Mass. 12.
190 Mass. 609.

To be leased to the corporation at an annual rental, etc.

City to collect a certain toll.

Proviso.

SECT. 17. Whenever said corporation is authorized to begin the construction of its railroad over the route first applied for, as provided in section thirteen of this act the Boston transit commission shall construct a tunnel or tunnels, of sufficient size for two railway tracks, with approaches, entrances, sidings, stations and connections therefor, and for the running of railway cars therein, from a point on or near Hanover Street in the city of Boston, or such other point or points as said board may deem proper for a suitable connection with the subway or subways provided for in section twenty-five of said chapter five hundred and forty-eight, to a point at or near Maverick square in that part of Boston called East Boston, where a suitable connection with surface tracks may be made. Said tunnel or tunnels shall be constructed in a thorough and substantial manner, with special reference to strength, durability and safety for railway travel, and shall be water tight, or in case of leakage the water shall be taken care of by said city. Upon completion thereof said commission shall execute a lease thereof in writing to said corporation for a term expiring twenty-five years from the date of the passage of this act, at an annual rental equal to three-eighths of one per cent. of the gross receipts for each year ending September thirtieth, of all lines owned, leased or operated by said corporation, to be paid to said city on or before the last day of November in each year, with the privilege to the lessee to sublet the same, such lease to contain such other terms and provisions as may be agreed on by said commission and said corporation, or in case of disagreement, as shall be determined by the board of railroad commissioners. Said rental shall be in full compensation for the exclusive use of said tunnel by said corporation, its sub-lessees, successors or assigns. Said city shall collect from each person passing through said tunnel in either direction a toll of one cent: *provided, however,* that if in any year ending on the thirtieth day of September the receipts from such tolls, together with the rental above provided for, amount to a sum so in excess of the interest and sinking fund requirements of said bonds

for that year that the board of railroad commissioners is of opinion that the toll may be reduced, said board shall on petition of ten citizens of said city establish such reduced toll for the period of one year from the first day of January next ensuing, as will in its opinion yield an amount sufficient to meet, with said rental, said interest and sinking fund requirements for that year; or said board may altogether discontinue such toll when it is of opinion that such rental alone is sufficient to meet said requirements; but any such reduction shall be carried into effect by a provision for the sale of tickets, and the cash fare shall continue to be one cent.

The whole amount of such tolls and of said rentals is hereby pledged to meet the principal and interest of the bonds issued to pay for the construction of said tunnel or tunnels, and this pledge shall be expressed on the face of such bonds as one of the terms thereof; *provided, however*, that after such tolls have been discontinued if said rental shall for any year ending on the thirtieth day of September yield an amount more than sufficient to meet the interest and sinking fund requirements of said bonds for such year such excess over said requirements shall be regarded as general revenue of said city. In case in any year the rentals and tolls above provided for shall not yield a sufficient amount to meet said interest and sinking fund requirements the compensation received by said city under section ten of this act shall be applied so far as may be necessary toward meeting such requirements. Said corporation shall be the agent of said city to collect such tolls under such arrangements as shall be agreed upon by said city and said corporation, or in case of disagreement, as shall be determined by the board of railroad commissioners.

Amount of tolls and rentals pledged to payment of bonds, etc.

Proviso.

Corporation to be agent of city to collect tolls.

SECT. 18. The treasurer of said city shall from time to time, on the request of said transit commission, issue and sell at public or private sale, bonds of said city to the amount required to pay the cost and expenses of constructing the incline, open cut and subway under Cambridge street, Bowdoin square and Court street provided for in section five of this act, and the stations, steps and other structures in connection therewith, and of any alterations in subways which may be required under the lease of the subway made by said commission with said West End Street Railway Company, and shall further issue bonds for the purposes hereinafter specified to the amount of five hundred thousand dollars; all of said bonds shall be designated on their face, Rapid Transit Loan, shall be for the term of forty years, and be registered or have coupons attached, and shall bear interest at a rate not exceeding four per cent. per annum, payable semi-annually, as said treasurer shall determine, and shall not be included in determining the limit of indebtedness of said city; said treasurer shall apply the proceeds of said five hundred thousand dollars in bonds, and the proceeds of the

Rapid Transit Loan.
See Stat. 1894, Chap. 548, Sect. 37.
See Stat. 1903, Chap. 190.
See Stat. 1905, Chap. 187.
174 Mass. 156.
176 Mass. 12.

seven millions of dollars in bonds authorized to be issued by said chapter five hundred and forty-eight, to the payment of the costs and expenses of constructing the subways authorized by section twenty-five of said chapter five hundred and forty-eight, and of the tunnel or tunnels to East Boston provided for in the preceding section, and the stations, inclines and steps in connection therewith, but a separate account shall be kept of the bonds issued for, and expenses incurred in connection with, the construction of said tunnel or tunnels.

Revocation of locations, etc.
181 Mass. 208.

SECT. 19. The locations of or right to maintain any elevated lines or structures of the Boston Elevated Railway Company shall not be subject to revocation except in the manner and on the terms prescribed in sections seven and eight of chapter one hundred and twelve of the Public Statutes: *provided, however*, that any location upon which said corporation has not constructed its railroad within ten years from the passage of this act shall be subject to revocation by the legislature; but no location upon which said corporation has begun the construction of its railroad within said period shall be subject to revocation if the same be completed within three years thereafter.

Proviso.

1894, 548, Sect. 10, amended.

SECT. 20. Section ten of said chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four is hereby amended so as to read as follows:—*Section 10.* Said corporation may locate stations at convenient points, with suitable exits and approaches to and from the streets and stations, but the same, excepting platforms and approaches thereto from buildings, shall not be located in any public way or place, unless approved by the mayor and aldermen or selectmen.

May locate stations at convenient points, etc.

To have certain powers, privileges, etc.
181 Mass. 208.
192 Mass. 315.

SECT. 21. Except as otherwise expressly provided in said chapter five hundred and forty-eight and by this act, said corporation shall have all the powers and privileges and be subject to all the duties, liabilities and restrictions set forth in general laws now or hereafter in force relating to street railway companies, so far as the same may be applicable, but the provisions of chapter one hundred and thirteen of the Public Statutes or other general laws relating to the alteration or revocation of locations of street railway companies, shall not be deemed applicable to the locations or routes for elevated railroads granted to said corporation. So much of section one of said chapter five hundred and forty-eight as provides that said corporation shall be subject to the general laws relating to railroad corporations is hereby repealed.

Repeal.
199 Mass. 138.

SECT. 22. Sections sixteen, nineteen and twenty-one of said chapter five hundred and forty-eight are hereby repealed.

SECT. 23. This act shall take effect upon its passage. [*Approved June 10, 1897.*]

Stat. 1898, Chap. 467.

AN ACT TO AUTHORIZE THE CITIES OF BOSTON AND CAMBRIDGE TO CONSTRUCT AND MAINTAIN A BRIDGE OVER CHARLES RIVER.

Be it enacted, etc., as follows:

SECT. 1. The cities of Boston and Cambridge, by a commission as hereinafter specified, shall forthwith construct as a highway, a new bridge across Charles river, to be known as Cambridge bridge, at, upon, or near the present site of the so-called West Boston bridge, from Cambridge street in Boston to Main street in Cambridge; shall construct approaches to said bridge on each end thereof; may construct a temporary highway bridge to be used by teams and pedestrians during such construction; shall cause shoals to be dredged or otherwise removed so as to afford vessels passing to or through the draw of said bridge a depth of water equal at least to that now afforded to vessels passing to or through the draw of the present bridge; shall take such lands east of the westerly line of the easterly abutment of said bridge and west of the easterly line of the westerly abutment of said bridge as they shall deem necessary for carrying out the provisions of this act, and shall cause all lands so taken to be filled.

New bridge to be constructed across Charles river.

Temporary highway bridge may be constructed, etc.

SECT. 2. The board of harbor and land commissioners shall authorize such occupations of lands or flats outside of the harbor lines, at and near each end of said bridge, as they deem necessary for the proper construction of said bridge and for avoiding angles that will tend to cause collections of floating matter, and in granting licenses for the dredging of flats in said river shall endeavor to ensure the removal of the shoals aforesaid by the licensees prior to the necessity for such removal, as required in the preceding section.

Harbor and land commissioners to authorize occupations of certain lands, etc.

SECT. 3. Said commission shall be styled the Cambridge Bridge Commission, shall consist of the mayor for the time being of the city of Boston, and the mayor for the time being of the city of Cambridge, who shall serve without compensation, and a third person to be appointed in writing and certified to the city clerk of each city by said mayors, within thirty days after the passage of this act; and if said third commissioner is not so appointed and certified the governor may appoint some disinterested person as such third commissioner, and any vacancy occurring by reason of death, resignation, inability to serve, or otherwise, on the part of said third commissioner, shall be filled by appointment in the manner hereinbefore provided for his original appointment. Said third commissioner shall receive such compensation for his services as said mayors may agree upon,

Cambridge Bridge Commission.

Vacancy.

Compensation of third commissioner.

or, in case of their failure to agree, then such compensation as the governor may determine.

Construction,
etc., of bridge.

See 1908 files
Supreme Jud.
Ct., Suffolk
County, No.
13049 Eq.

P. S. 19, etc., to
apply.

SECT. 4. Said bridge shall be suitable for all the purposes of ordinary travel between said cities, and for the use of the elevated and surface cars of the Boston Elevated Railway Company; shall be built not less than one hundred and five feet in width, and with masonry piers and abutments, and a superstructure of iron or steel, or both, and with a draw substantially equidistant from the easterly and westerly end abutments of said bridge, with a clear opening not less than forty feet in width, according to plans to be determined by said commission; shall be constructed and maintained subject to the provisions of chapter nineteen of the Public Statutes and of all other general laws which now are or hereafter may be in force relating to bridges over tide water, and to the draws therein; except that no compensation for displacement of tide water, or for occupying any land or flats of the Commonwealth, shall be required from said cities or from either of them.

Construction,
etc., of ap-
proach to
bridge on
Boston side.

SECT. 5. The approach to said bridge on the Boston side shall be laid out by said commission as a highway not less than one hundred feet in width in all its extent from the westerly line of Charles street, extending westerly to the easterly line of the easterly abutment of said bridge, and the city engineer of the city of Boston, acting for said city, shall construct said approach at or before the completion of said new bridge.

Construction,
etc., of ap-
proach to
bridge on
Cambridge
side.

SECT. 6. The approach to said bridge on the Cambridge side shall be laid out by said commission as a highway not less than one hundred feet in width in all its extent from the junction of Broadway with Main street in Kendall square, so-called, extending easterly to the westerly line of the westerly abutment of said bridge, and the city engineer of the city of Cambridge, acting for said city, shall construct said approach at or before the completion of said new bridge.

Certain
provisions of
law to apply.

SECT. 7. Said commission shall in laying out said approaches proceed under the same general laws, so far as applicable, as govern the laying out of highways in said cities respectively under the provisions of law authorizing the assessment of betterments, with like remedies to all parties interested.

Payment of
cost of con-
struction, etc.

SECT. 8. The cost of laying out and construction of said approach in the city of Boston, and of all other work on the Boston end of said bridge, not including any part of the construction of the abutments or other parts of said bridge, shall be paid by the city of Boston, and the cost of the laying out and construction of said approach in the city of Cambridge, and of all other work on the Cambridge end of said bridge, not including any part of the construction of the abutments or other parts of said bridge, shall be paid by the city of Cambridge, and the cost of construction of the abutments and other parts of said bridge, including the cost of the temporary highway bridge, the removal of shoals, and the salaries of the com-

See 1908 files
Supreme Jud.
Ct., Suffolk
County, No.
13049 Eq.

missioners and of all employees of said commission, and including all other expenses incurred in carrying out the provisions of this act not hereinbefore required to be paid by said cities severally, shall be deemed the cost of construction of said bridge, and shall be paid as provided in section fifteen of chapter five hundred of the acts of the year eighteen hundred and ninety-seven.

SECT. 9. Said commission from time to time, while said bridge is in process of construction, shall certify to the treasurer of the city of Boston and to the treasurer of the city of Cambridge the amount to be paid by each city respectively for work done and materials furnished under this act, and the persons to whom the amounts are to be paid; and the amounts so certified shall on demand therefor by the person entitled thereto be paid forthwith.

Commission to certify to treasurer of each city amount to be paid, etc.

SECT. 10. The supreme judicial court, or any justice thereof, sitting in equity for either of the counties of Middlesex or Suffolk, upon the written application of said commission and after notice to all parties interested, may appoint three disinterested persons not residents of the county of Middlesex, who shall have the power to compel the attendance of witnesses, and who shall, after the construction of said bridge and avenues, and after notice to and hearing of the parties interested, determine what amount shall be paid by the Boston Elevated Railway Company as its proportion of the cost of the construction of said bridge under the provisions of section fifteen of chapter five hundred of the acts of the year eighteen hundred and ninety-seven. Said commissioners shall return their determination into said court, and the decree of the court confirming such determination shall be final and binding; and said elevated railway company shall pay to the city of Boston one half of the amount determined for it by said commissioners, and shall pay the other half to the city of Cambridge.

Commission may be appointed to determine amount to be paid by Boston Elevated Railway Company, etc.

See 1908 files Supreme Jud. Ct., Suffolk County, No. 13049 Eq.

SECT. 11. The treasurer of the city of Boston, on the request of the mayor thereof, and the treasurer of the city of Cambridge, on the request of the mayor thereof, shall from time to time issue notes, bonds or scrip of their respective cities as either may require, in excess of the debt limit prescribed by law, each bond to be designated on the face thereof, Cambridge Bridge Loan, and shall use the proceeds to meet the cost to be paid by them respectively under this act. Such notes, bonds or scrip shall bear interest, payable semi-annually, not exceeding four per cent. per annum, and be payable at such time, not less than ten nor more than forty years from their respective dates, as shall be determined respectively by the treasurer and mayor of the city of Boston and by vote of the city council of the city of Cambridge, and expressed upon the face of the bonds. The provisions of sections ten and eleven of chapter twenty-nine of the Public Statutes shall so far as applicable apply to the bonds, notes and scrip issued under the authority of this act.

Cambridge Bridge Loan.

P. S. 29, Sects. 10 and 11, to apply.

Damages.

SECT. 12. Any person entitled by law to any damages for the taking of or injury to this property under authority of this act may have such damages determined by a jury in the superior court for the county of Suffolk or Middlesex on petition therefor, under the same rules of law so far as applicable as damages are determined for the taking of land for highways in said cities of Boston and Cambridge, respectively, under the provisions of law authorizing the assessment of betterments.

Betterments
may be
assessed.

SECT. 13. Betterments may be assessed for the laying out and construction of said avenue in said cities of Boston and Cambridge, respectively, under the general laws authorizing the assessment of betterments, with like remedies to all parties interested.

Maintenance,
management,
etc.; commis-
sion to be ap-
pointed, etc.

2 Op. Atty-
Genl. 541.

SECT. 14. Said bridge and draw, and all other bridges and draws between said two cities, shall be policed and maintained by the cities of Boston and Cambridge, and a board of two commissioners, one appointed by the mayor of the city of Boston and one by the mayor of the city of Cambridge, without any confirmation thereof being required, shall support, manage and keep in repair said bridges, and exclusively authorize poles, wires and other structures to be placed on any or all of the same, in such places as said board may deem proper; and each city shall appropriate one half the amount required for such maintenance, policing, support, management and repairs as determined by said board and by the mayors of said cities; and all damages recovered in any action at law by reason of any defect or want of repair in any such bridge or draw shall be paid by said cities equally.

Payment of
damages.

Enforcement of
provisions, etc.

SECT. 15. The supreme judicial court, or any justice thereof, sitting in equity for either the county of Middlesex or the county of Suffolk, shall in term time or vacation, on the petition of any city, corporation, person or persons interested, or of the attorney of any such petitioner, have jurisdiction in equity to enforce and to prevent any violation of the provisions of this act.

SECT. 16. This act shall take effect upon its passage. [*Approved May 26, 1898.*]

Stat. 1900, Chap. 258.

AN ACT RELATIVE TO THE TAKING OF LAND OR OTHER PRIVATE PROPERTY BY THE BOSTON ELEVATED RAILWAY COMPANY, AND TO CONFIRM THE LOCATIONS OF SAID COMPANY IN THE COUNTY OF SUFFOLK.

Be it enacted, etc., as follows:

SECT. 1. In all cases wherein the Boston Elevated Railway Company has heretofore taken or shall hereafter take land or private property in accordance with the provisions of section eleven of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four, either party, if dissatisfied with the estimate of the county commissioners, or of the aldermen of the city of Boston having like powers and performing like duties within said city as are exercised and performed by the county commissioners of counties, may at any time within one year after the estimate is made apply for a jury in the superior court for the county in which such land or private property is situated, to assess the damages occasioned by such taking, and upon such application the proceedings shall be the same as are provided for the recovery of damages in the laying out of highways.

Taking of land, etc. by the Boston Elevated Railway Company.

SECT. 2. The locations of the Boston Elevated Railway Company in the county of Suffolk, filed by said company with the aldermen of the city of Boston, are hereby ratified and confirmed as valid locations and takings to all intents and purposes of the lands described in said locations and in the plans accompanying the same: *provided, however*, that claims for damages by reason of said locations and takings, or any of them, not heretofore legally satisfied, may be made and enforced in the same manner and with the same effect as if the filing of each and all of said locations and takings was first made at the time of the passage of this act.

Certain locations confirmed, etc.

Amended Stat. 1907, Chap. 277.

Proviso.

SECT. 3. This act shall take effect upon its passage. [*Approved April 25, 1900.*]

Stat. 1901, Chap. 90.

AN ACT TO EXTEND THE TIME WITHIN WHICH THE BOSTON ELEVATED RAILWAY COMPANY SHALL CONSTRUCT CERTAIN PARTS OF ITS RAILWAY.

Be it enacted, etc., as follows:

SECT. 1. Sections thirteen and fourteen of chapter five hundred of the acts of the year eighteen hundred and ninety-seven are hereby amended by inserting after the words "three

1897, 500, Sects. 13 and 14, amended. 199 Mass. 138.

years," wherever they occur in said sections, the words:— and six months.

SECT. 2. This act shall take effect upon its passage. [*Approved February 27, 1901.*]

Stat. 1902, Chap. 114.

AN ACT RELATIVE TO THE CONNECTING OF THE EAST BOSTON TUNNEL, THE CAMBRIDGE STREET SUBWAY, AND OTHER SUBWAYS.

Be it enacted, etc., as follows:

Provisions of 1897, 500, extended.

201 Mass. 586.

SECTION 1. The provisions of chapter five hundred of the acts of the year eighteen hundred and ninety-seven, relative to the construction of a tunnel to East Boston and a subway under Cambridge street, are extended so that the East Boston tunnel and the Cambridge street subway may, with the consent of the Boston Elevated Railway Company, be connected with the existing subway and with each other, and with any other subway, on such terms, in such manner and at such points, whether at grade or otherwise, as the Boston Transit Commission may deem that the public interests require.

Certain provisions of law to apply to the Boston Transit Commission, etc.

SECTION 2. The provisions of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four, of chapter five hundred of the acts of the year eighteen hundred and ninety-seven, and of the acts in amendment of or in addition to said acts, shall apply to the Boston Transit Commission and the members thereof in the execution of any work authorized by law to be done by said commission.

SECTION 3. This act shall take effect upon its passage. [*Approved February 25, 1902.*]

Stat. 1902, Chap. 388.

AN ACT TO AUTHORIZE THE OLD COLONY STREET RAILWAY COMPANY TO LEASE TO THE BOSTON ELEVATED RAILWAY COMPANY OR TO THE WEST END STREET RAILWAY COMPANY ANY PART OF ITS RAILWAY AND PROPERTY LOCATED IN THE CITY OF BOSTON.

Be it enacted, etc., as follows:

The Old Colony Street Railway Company may lease a part of its railway, etc.

The Old Colony Street Railway Company, by votes of its board of directors and of a majority in interest of its stockholders present and voting at a meeting called for the purpose, may lease to the Boston Elevated Railway Company or to

the West End Street Railway Company the whole or any part of that part of its railway and property located within the city of Boston, with such of the rights and privileges connected therewith, and for such period and upon such terms, and to such extent, as the parties to such lease shall agree upon and as shall be approved by the board of railroad commissioners; and either said Boston Elevated Railway Company or said West End Street Railway Company may accept such a lease by votes of its board of directors and of a majority in interest of its stockholders present and voting at a meeting called for the purpose. If such lease is made to said West End Street Railway Company said company may assign the same, and all its rights thereunder, for the whole or for a part of the term of the lease, to said Boston Elevated Railway Company; and said Boston Elevated Railway Company, after such lease or assignment of lease to it, may use and operate the leased railway and property, rights and privileges as a part of the system of railway owned or operated by it. Said Old Colony Street Railway Company, if it makes such lease, may, to such extent and in such instances as the board of railroad commissioners shall approve, anything to the contrary notwithstanding in the provisions of sections eighty-six and eighty-nine of chapter one hundred and twelve of the Revised Laws and in other provisions of law applicable thereto, readjust the fares and the distances covered by fares on other parts of its system established prior to or in connection with the purchase of or consolidation with other street railway companies. [*Approved May 12, 1902.*]

Stat. 1902, Chap. 534.

AN ACT TO PROVIDE FOR THE CONSTRUCTION OF ADDITIONAL TUNNELS AND SUBWAYS IN THE CITY OF BOSTON.

Be it enacted, etc., as follows:

SECTION 1. The Boston transit commission, hereinafter called the commission, may construct in the city of Boston, hereinafter called the city, a system of tunnels and subways so designed as to be adapted for the accommodation of two tracks especially for use by elevated cars or trains and two tracks especially for use by surface cars, from a point or points near the junction of Broadway and Washington street or within one thousand feet therefrom, through and under public streets, squares or places and public or private lands, between the existing subway and a line parallel with and seven hundred and fifty feet easterly from Washington street to the line of Court and State streets, and thence northerly by such route

Additional tunnels and subways may be constructed in Boston.

See Stat. 1904, Chap. 167.

199 Mass. 139.
206 Mass. 6. 88.

Authority to construct subway revoked by Stat. 1907, Chap. 573, Sect. 17.

as may be deemed best, to a point or points in or near Adams square, Haymarket square or Causeway street, together with approaches, sidings, entrances, stations, elevators, inclines, connections and other structures, hereinafter called appurtenances, which shall also include connections either at grade or otherwise with the East Boston tunnel and the existing subway.

When structures shall be begun, etc.

The structure for the two tracks especially adapted for elevated cars or trains, hereinafter called the tunnel, shall be begun immediately after the acceptance of this act by a majority of the voters of the city as hereinafter provided. The structure for the remaining two tracks, hereinafter called the subway, shall be begun at such time after the expiration of one year from the completion of the tunnel as the commission and the Boston Elevated Railway Company, hereinafter called the company, may agree upon, or, in case of difference, as the board of railroad commissioners, hereinafter called the board, shall determine that the public interests require. The structure or structures for all four tracks, with the appurtenances, or any part or parts thereof, may be begun at any time after the acceptance of this act by a majority of the voters of the city as hereinafter provided, if and so far as the commission deems it expedient and if the company by its board of directors consents thereto.

Preliminary investigations, surveys and plans to be made, etc.

SECTION 2. The commission shall immediately after the passage of this act make such preliminary investigations, surveys and plans as it deems expedient, and to that end may enter upon any lands and place and maintain marks therein, and may make excavations, borings and do all other acts necessary for such investigations and surveys. The commission may expend such sums as it deems necessary therefor. The expenses incurred in making such preliminary investigations, surveys and plans shall be paid from the loan authorized by chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four and acts in addition thereto, but if construction is begun hereunder the amount so expended shall be transferred and charged to the cost of such construction.

Plan to be filed before construction is begun, etc.

SECTION 3. The commission shall not begin the work of construction until it has filed in the office of the city engineer a plan signed by the commission showing the location of that part of the work which it is about to construct. Any such plan so filed may be altered at any time by a new plan signed and filed in like manner.

Contracts.

SECTION 4. The commission may make contracts in the name of the city for the work herein authorized, but all contracts involving two thousand dollars or more in amount shall be in writing and signed by a majority of the commission; and no such contract shall be altered except by an instrument in writing signed by the contractor and a majority of the commission, and also by the sureties, if any, on the bond given by the contractor, for the completion of the original contract. No

such contract or alteration of any such contract shall be valid or binding on the city unless executed in the manner aforesaid.

SECTION 5. All work done under this act under or near public streets and places shall be conducted, so far as practicable, in such manner as to leave such streets and places, or a reasonable part thereof, open for traffic between the hours of eight in the forenoon and six in the afternoon of each secular day except public holidays.

Parts of streets, etc., to be kept open for traffic between certain hours.

SECTION 6. The commission may for the purposes of this act use public ways and lands without compensation therefor, and may take for the city, by purchase or otherwise, lands in fee and easements, estates, and rights in land, including the right to go under the surface thereof or through or under buildings or parts of buildings thereon, and such takings in fee or otherwise may be made whether the lands taken or otherwise affected are held under or by title derived under eminent domain or otherwise. A taking under this section of an easement or other estate or right in a given parcel of real estate, whether such parcel consists of unimproved land or of land and buildings, may be confined to a portion or section of such parcel fixed by horizontal planes of division below or above or at the surface of the soil, and in such case no taking need be made of upper or lower portions or sections, except of such easements therein, if any, as the commission may deem necessary. The commission, to make any taking by right of eminent domain, shall cause to be recorded in the registry of deeds for the county of Suffolk a description of the lands, easements, estates or rights to be taken, as certain as is required in a common conveyance of land, with the statement that the same are taken under authority of this act, which description and statement shall be signed by the commission; and the lands, easements, estates or rights therein described shall upon such recording be taken for and shall vest in the city. The commission shall, so far as may be practicable, notify all known owners of such takings, but the validity thereof shall not be affected by want of such notice.

Public ways may be used, lands taken, etc.

Amended Stat. 1907, Chap. 258.

206 Mass. 88.

SECTION 7. The commission may sell or remove the buildings from any and all lands taken by it, and shall sell, if a sale be practicable, or if not shall lease, any lands, or rights or interests in land or other property so taken, or purchased for the purposes of this act, whenever the same shall in the opinion of the commission cease to be needed for such purposes. The proceeds of such sales, and the fair valuation of any such lands or other property no longer needed for such purposes but not actually sold, as agreed on by the commission and the company, or in case of difference as determined by the board, shall be deducted from the cost of the tunnel or the subway, as the case may be, for the purpose of ascertaining the rental thereof.

Certain buildings may be removed or sold, etc.

206 Mass. 88.

SECTION 8. The commission shall determine and award the damages sustained by any person by reason of property

Damages.

206 Mass. 89.

taken or injured by the commission under authority of this act, except public ways or lands, and may agree with any person as to the amount to be paid as damages sustained by him for any property so taken or injured, which damages the city shall be liable to pay. If such person is dissatisfied with such award, or cannot agree with the commission upon his damages, the same may be determined by a jury in the superior court for the county of Suffolk, on petition therefor of such person or of the commission against the city, filed in the clerk's office within one year after such property is so taken or injured; and judgment shall be entered upon the determination of such jury and costs shall be taxed and execution issued in favor of the prevailing party as in civil cases. The members of the commission shall not be personally liable for any such damage.

Certain structures may be removed or relocated, etc.

SECTION 9. The commission may order the temporary removal or relocation of any surface tracks, and the temporary or permanent removal or relocation of any conduits, pipes, wires, poles or other property of any person or corporation, which it deems to interfere with the construction or operation of the tunnel or subway, and shall grant new locations for any such structures so removed or relocated. Such orders, to the extent specified therein, shall be deemed a revocation of the right or license to maintain such tracks, conduits, pipes, wires, poles or other property, and the owner of any such structures in public ways or lands shall comply with such orders without expense to the city. If such owner shall fail to comply with the order of the commission within a reasonable time, to be fixed in the order, the commission may discontinue and remove such tracks, conduits, pipes, wires, poles or other property, and may relocate the same, and the cost of such discontinuance, removal or relocation shall be repaid to the city by the owner. No such discontinuance, removal or relocation shall entitle the owner of the property thus affected to any damages on account thereof. Any such structures in or upon private lands may be removed and relocated by the commission, or if removed and relocated by the owner thereof the reasonable expense shall be repaid him by the commission. Any gas company may shut off the gas from any pipes affected by any acts done hereunder, when and so far as it may be necessary to avoid danger of escape or explosion of gas.

Gas companies may shut off gas when necessary to avoid danger.

Contract may be made with the Boston Elevated Railway Company for the exclusive use of the tunnel and subway, etc.

SECTION 10. The commission shall within ninety days after the passage of this act execute with the company, in the name of the city, the company consenting thereto, a contract in writing for the sole and exclusive use of the tunnel and subway and appurtenances for the period of twenty-five years from the beginning of the use of the tunnel, at an annual rental equal to four and one half per cent. of the net cost of the tunnel and subway, respectively, for the running of trains and cars therein, and for such other uses and upon such provisions and conditions, not affecting the term of rental, as the commis-

sion and the company may agree upon, or in case of difference, as the board may determine. The provisions of this act, in so far as they declare, define or establish the terms and conditions for the construction, tenure, maintenance and operation of said tunnel, subway and appurtenances, shall be embodied in and made part of said contract. The use of the tunnel or subway respectively shall begin when, in the opinion of the commission, a reasonable time after completion has been allowed for equipment. The net cost of the tunnel and subway respectively shall be deemed to include all expenditures incurred in acquisition and construction, including damages, expenses and salaries of the commission, and interest at three and one fourth per cent. per annum on the debt incurred in construction prior to the beginning of the use. If the contract for the use of the tunnel and subway is executed as above provided the commission, upon the acceptance of this act by the voters of the city as hereinafter provided, shall proceed with the work of construction.

SECTION 11. If the company shall execute the contract hereinbefore provided for, the company may, before the completion of the tunnel, construct lines of elevated railway according to such plans as the board may approve, to be operated by electricity or by such other motive power except steam, as may be approved by the board in respect of the locations heretofore granted to the company; upon the following locations, which are hereby granted therefor, and may equip, maintain and operate engines, motors, trains and cars thereon, to wit:—(a) beginning at the southerly end or ends of the tunnel, thence upon and over any streets and public or private lands to the company's elevated structure now erected on or near Washington, Mott or Castle street; (b) beginning at the northerly end or ends of the tunnel, thence upon and over any streets, squares and public or private lands to the company's elevated structure now erected on or near Causeway street; and (c) such other locations as may in the opinion of the board be necessary or convenient to connect the tunnel with the elevated structures of the company. For the purposes of this act, including all equipment or other expenditure by the company thereby required or authorized, the company may issue such amounts of its stock or bonds, or of each, as may be necessary therefor, subject to all laws applicable to such issue; and it shall have all the rights and powers, and be subject to all the restrictions, liabilities and obligations conferred or imposed by sections eight, nine, eleven, twelve and fifteen of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four, and sections seven, eight, nine and twenty-one of chapter five hundred of the acts of the year eighteen hundred and ninety-seven. The locations granted by this section in, upon or over public ways or lands shall be held by the company or its assigns so long as it or they have the use of the tunnel.

If the company shall execute the contract it may construct lines of elevated railway upon certain locations, etc.

Necessary amounts of stock or bonds may be issued, etc.

Upon the completion of the tunnel, etc., elevated trains and cars shall be removed from existing subway, etc.

SECTION 12. Upon the completion of the tunnel and appurtenances and upon notification as hereinbefore provided, the company shall remove its elevated trains and cars from the existing subway; and thereupon any alterations therein or in the approaches thereto necessary to re-adapt it to the use of surface cars shall be made by the commission, and the expense thereof shall be deemed part of the cost of the tunnel. The tunnel during the term of the contract hereinbefore provided for shall be and be considered a part of the elevated railway operated by the company; and the board, subject to the provisions of the contract, shall have and exercise the same power and control over the same in all respects that are conferred upon the board as to the elevated structure by chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four, chapter five hundred of the acts of the year eighteen hundred and ninety-seven and by other laws in addition thereto. The company, upon removal of its elevated trains from the existing subway, may discontinue the use of its elevated structures and locations connecting its elevated road therewith, and may sell any lands or other property acquired for the purposes of such connection, applying all proceeds thereof to proper corporate uses; and such discontinuance or sale shall not be deemed to impair the capital of the company.

Company may apply for a revision of the determination of certain questions.
203 Mass.
153, n.

SECTION 13. Upon the determination by the commission of any important question arising in the course of the work herein provided for, upon which the company has previously requested a hearing, except an award of or agreement upon damages as provided in section eight hereof, the company may within three days after notice of such determination apply to the board for a revision of the same, and thereupon the board may consider and finally determine such question.

After one year from the completion of the subway certain surface tracks, poles, etc., may be removed, etc.

SECTION 14. At any time after the expiration of one year from the completion of the subway the board may order such surface tracks, together with the poles and wires used for the operation of cars thereon, to be removed from any part of Washington street between Broadway and Adams square, except tracks crossing said street, as in its opinion have been rendered unnecessary by the construction of such subway. Such order of the board shall be deemed a revocation of all rights or locations to occupy for street railway purposes the street or part thereof included in the order; and surface tracks shall not thereafter be laid or maintained thereon. Nothing in this section contained shall be construed as affecting any existing power to revoke locations on said street or any part thereof as provided by law.

Use and control of subway to be subject to certain rights.

SECTION 15. The use and control of the subway, if acquired by the company, shall be subject to the rights, if any, which the West End Street Railway Company may have under the provisions of article two of its lease to the company, dated December ninth, eighteen hundred and ninety-seven, or otherwise.

SECTION 16. The treasurer of the city shall from time to time, on request of the commission, issue and sell at public or private sale, the bonds of the city, registered or with interest coupons attached, as he may deem best, to an amount not exceeding the cost of the tunnel and subway herein provided for. Such bonds shall be designated on their face, Boston Tunnel and Subway Loan, shall be for such terms, not exceeding fifty years, as the mayor and treasurer of said city may determine, and shall bear interest payable semi-annually at such rate not exceeding four per cent. per annum, as the treasurer shall determine. The debts incurred by the city from time to time under the provisions of this act shall not be included in determining the limit of indebtedness of the city as established by law, and the proceeds of such bonds shall be used to meet all damages, costs and expenses incurred by the commission or the city in carrying out the provisions of this act. The board of commissioners of sinking funds shall establish a sinking fund for the payment of the bonds issued under this act. All premiums received from the sale thereof shall be paid into the sinking fund. All rents, tolls, percentages or other annual compensation received by the city for any use of the tunnel or subway under this act, or for any use of any lands or rights taken under authority of this act, shall annually be used by the treasurer,—first, to meet the requirements of and any deficiency in the sinking fund,—second, to meet the interest on the bonds, and the surplus, if any, as a part of the general revenue of the city. The proceeds from any sale of lands or rights taken by purchase or otherwise under authority of this act shall be paid into the sinking fund, or shall be used for construction, as the commission may determine.

Boston Tunnel
and Subway
Loan.

Sinking
fund, etc.

SECTION 17. The term of office of the commission is hereby extended to the first day of July in the year nineteen hundred and six. The provisions of section two of chapter three hundred and seventy-five of the acts of the year eighteen hundred and ninety-nine shall remain in force during said extended term. If the term of the commission, as hereby or as hereafter extended, expires before the completion of the work herein provided for, the city shall have all the rights, powers and privileges, and be subject to all the duties, restrictions and liabilities, hereby conferred or imposed upon the commission in respect thereof, such powers to be exercised by the mayor, city engineer and city treasurer in place of the commission, or by such other officers as the city council may prescribe. If this act is not accepted by a majority of the voters of the city, as hereinafter provided, the term of office of the commission shall be extended only to the first day of July in the year nineteen hundred and four. The members of the commission for the extended term provided for in this act shall be appointed by the governor and the mayor of the city in the manner provided in section twenty-three of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four. Said appointments shall be for the term of two years.

Term of
office of Boston
Transit Com-
mission ex-
tended, etc.

Members of
the commission
for extended
term, appoint-
ment, etc.

Enforcement,
etc., of pro-
visions.

SECTION 18. The supreme judicial court and the superior court, upon application of any party in interest, including the city or any ten taxable inhabitants thereof, may enforce or prevent violation of the provisions of this act by any appropriate process.

To be sub-
mitted for ac-
ceptance to
voters at next
municipal
election, etc.
184 Mass. 587,
590.
203 Mass.153,n.

SECTION 19. If the contract for the use of the tunnel and subway is executed by the commission and the company as hereinbefore provided, this act shall be submitted for acceptance to the voters of the city at the next municipal election, and if accepted by a majority of those voting thereon at such election it shall thereupon take full effect. The city shall have, hold and enjoy in its private or proprietary capacity, for its own property, the existing subway, the East Boston tunnel, the Cambridge street subway and the tunnel and subway built under this act, and all rents, tolls, income and profits from all contracts heretofore or hereafter entered into for the use of said subways or tunnels or any part thereof, and the same shall never be taken by the Commonwealth except on payment of just compensation: *provided, however,* that so much of such rents, tolls, income and profits as may be necessary therefor shall be paid into the respective sinking funds for the redemption of said bonds and used for the payment of the interest thereon.

Proviso.

When to take
effect.

SECTION 20. For the purposes of the preliminary work authorized by section two hereof, the payment of the expense of the same, the extension of the term of office of the commission and its powers to the first day of July in the year nineteen hundred and four, the appointment of the members thereof, and the execution of the contract provided for by section ten, and the submission of this act to the voters as hereinbefore provided, this act shall take effect upon its passage. [*Approved June 27, 1902.*]

The foregoing act was accepted by the voters of the city of Boston at an election held December 9, 1902, and acceptance was filed December 26, 1902.

Stat. 1904, Chap. 167.

AN ACT RELATIVE TO THE CONSTRUCTION OF A TUNNEL FOR ELEVATED CARS OR TRAINS IN THE CITY OF BOSTON.

Be it enacted, etc., as follows:

Construction of
a tunnel, etc.,
in the city of
Boston.
Amended
Statutes 1905,
Chapter 460.

SECTION 1. The structure for two tracks especially adapted for elevated cars or trains for which provision is made in chapter five hundred and thirty-four of the acts of the year nineteen hundred and two, therein called the tunnel, may be located and constructed by the Boston Transit Commission northerly of the junction of Washington street and Adams square, in

and through the existing subway; and in connection therewith such changes may be made within that part of said subway as may be necessary for the accommodation of surface cars; and at any time after the completion of the tunnel the commission may make such further changes in or additions to the existing subway between Adams square or Scollay square and Causeway street as may be necessary for the accommodation of surface cars. In all action hereunder the commission shall, so far as may be necessary, have all the powers conferred by the above named act and shall be subject to the provisions of section thirteen thereof. All expenses incurred hereunder, including any charges or expenses occasioned by reason or in consequence of the laying out of the tunnel through a part of the subway as above provided, shall be deemed a part of the cost of the tunnel under said act.

SECT. 2. This act shall take effect upon its passage. [*Approved March 21, 1904.*]

Stat. 1905, Chap. 460.

AN ACT RELATIVE TO THE LOCATION OF THE TUNNEL IN THE CITY OF BOSTON PROVIDED FOR BY CHAPTER FIVE HUNDRED THIRTY-FOUR OF THE ACTS OF THE YEAR NINETEEN HUNDRED AND TWO.

Be it enacted, etc., as follows:

SECTION 1. Chapter one hundred and sixty-seven of the acts of the year nineteen hundred and four is hereby amended by striking out section one and inserting in place thereof the following:—*Section 1.* The structure for two tracks especially adapted for elevated cars or trains for which provision is made in chapter five hundred and thirty-four of the acts of the year nineteen hundred and two, therein called the tunnel, may be located and constructed by the Boston Transit Commission, northerly of the junction of Washington street and Adams square, in and through the existing subway or any part or parts thereof, or in public or private lands outside thereof. When such structure is so located the commission may make such changes in or additions to the subway, by enlargements thereof or branch structures, in Washington street or in other public or private lands northerly of a line drawn east and west through said junction, as may be necessary for the accommodation of subway traffic. In all action hereunder the commission shall have all the powers conferred by said act so far as necessary therefor, and shall be subject to the provisions of section thirteen thereof. In any case arising under said section thirteen the board shall have and may exercise any and all powers which might have been exercised by the commission. All expenses incurred hereunder, whether by way of compensa-

1904, 167, § 1,
amended.

Construction,
etc., of a tunnel
in the city of
Boston.

tion for the use of a part or parts of the subway, or for the taking of private lands for track or station purposes, or otherwise, shall be deemed a part of the cost of the tunnel under said act.

SECT. 2. This act shall take effect upon its passage. [*Approved May 25, 1905.*]

Stat. 1905, Chap. 466.

AN ACT TO AUTHORIZE THE BOSTON ELEVATED RAILWAY COMPANY TO CONSTRUCT A SUBWAY OR SUBWAYS IN THE CITY OF CAMBRIDGE.

This act did not take effect, as it was not accepted by the company.

Stat. 1906, Chap. 520.

AN ACT TO AUTHORIZE THE BOSTON ELEVATED RAILWAY COMPANY TO CONSTRUCT A SUBWAY OR SUBWAYS IN THE CITY OF CAMBRIDGE AND TO PROVIDE FOR CONNECTION THEREOF WITH THE RAILWAY SYSTEM IN THE CITY OF BOSTON.

Be it enacted, etc., as follows:

The Boston Elevated Railway Company may construct certain subways in Cambridge, etc.
199 Mass. 139.
203 Mass. 148.

SECTION 1. The Boston Elevated Railway Company, hereinafter called the company, which term shall be deemed to include its successors and assigns but shall not include any construction company, may construct in the city of Cambridge, hereinafter called the city, under the supervision of the board of railroad commissioners, hereinafter called the board, to the extent hereinafter provided, a subway or subways, hereinafter called the Main street subway, of sufficient size for two railway tracks, and adapted to the running of elevated railway trains and surface cars therein, with approaches, entrances, sidings, stations, inclines, cuts, loops, connections and other suitable appurtenances therefor, all hereinafter called appurtenances (which term shall not include terminals), between such point or points in Main street at or near the westerly abutment of Cambridge bridge, or in, or in the vicinity of, Kendall square, as may be suitable for connection with elevated railway and surface railway tracks, in and under Main street, Massachusetts avenue, including Quincy square, Harvard square, Brattle street and Brattle square, and thence westerly by suitable inclines and approaches to a connection with surface tracks in Mount Auburn street at or near Story street; and, at its option, from Brattle square to and under Eliot square and Eliot street at or near Murray street, and thence by suitable inclines and approaches to a connection

with surface tracks and terminals; and from Harvard square northerly in and under Massachusetts avenue, and thence by suitable inclines and approaches to and through the westerly portion of the two small commons situated between Massachusetts avenue and Peabody street to a connection with surface tracks in Massachusetts avenue; leaving unoccupied sufficient space beneath the surface of Harvard square for a terminal station for the Cambridge street subway hereinafter referred to; and may operate and maintain the same for the running of railway trains and surface cars and other incidental uses in connection therewith. The city may, and upon request of the company shall, discontinue that part of the highway which lies between the two small commons.

City may discontinue part of a certain highway.

SECTION 2. Upon the acceptance of this act by the company, as hereinafter provided, the company may enter upon any lands, so far as may be necessary to make preliminary investigations, surveys and plans, and may place and maintain marks therein, make borings and excavations, and do all other acts necessary for such investigations and surveys.

Company may enter upon lands, etc.

SECTION 3. The company shall not begin the work of construction of the Main street subway until it has filed in the office of the city engineer, within twelve months after its acceptance of this act, a plan showing the proposed route or location thereof and the general form and method of construction, with the location of proposed tracks and stations and approaches; nor until such plan shall have been submitted to the mayor for approval. Any such plan may be amended or altered at any time by a new plan. After thirty days from the filing thereof and whether the mayor has or has not approved such plan, the company shall apply to the board, which, after such notice and hearing as it deems proper, shall approve such plan or alter the same in such manner as it may deem necessary. The city may employ a competent engineer at the expense of the company with whom to consult in reference to such plan and the construction of the subway or subways herein authorized. The company shall not begin the work of construction of any subway under or across the Grand Junction branch of the Boston and Albany railroad until the grade and elevation of such subway at such crossing shall have been approved by the board, after due hearing.

Not to begin work until plan is filed, etc.
197 Mass. 574, 577.

City may employ an engineer, etc.

SECTION 4. The company may take by purchase or otherwise for the subway purposes of this act, outside the limits of public ways, parks or other public lands, any lands in fee, including the buildings thereon, and any easements or limited estates or rights in lands, including the right to go under or above the surface thereof or through or under buildings or parts of buildings thereon, which it may deem necessary therefor; and any taking under this act in fee or otherwise may be made whether the lands taken or affected are held by title derived under eminent domain or otherwise. A taking or purchase of an easement or limited estate or right in a given

Company may take certain lands, etc.

parcel of real estate, whether such parcel consists of unimproved land or of land and buildings, may be confined to a part or section of such parcel, fixed by planes of divisions or otherwise, below, above or at the surface of the soil, and in such case no taking need be made of other parts or sections thereof except of such easements therein, if any, as the company may deem necessary. Except as otherwise provided herein, the company may locate and construct the subways herein provided for and their appurtenances wherever it deems best within the limits herein prescribed, or, for the purpose of obtaining the most advantageous alignments, curves and grades, with the approval of the board, in and under other public or private lands adjacent or near to the routes herein defined. For the purposes of this act and within the limits herein prescribed, public ways and parks and the lands over which the same are laid out, or other public lands, may be used without compensation for such use, with the same rights and immunities as the public would have in making the same use thereof.

May locate and construct subways, etc.

May take lands to make connections, etc.

Proviso.

SECTION 5. The company may take by purchase or otherwise such lands in fee or such easements or rights in lands as may be necessary or desirable to effect such connection or junction as it may deem suitable between the subway or subways constructed under this act and any elevated or surface railway tracks: *provided, however*, that the method of any such connection or junction which would exclude other public travel from any public way or parkway or part thereof, except at the terminal points of the subway or subways, shall be subject to the approval of the board.

May take lands for terminals or station purposes, etc.

SECTION 6. At any time before or after the completion of any subway or subways constructed under this act, the company may purchase or may take, in the manner prescribed by this act for the taking of lands for its subway purposes, any lands in fee with the buildings thereon, or easements or limited estates or rights in land, necessary or convenient for terminals or for station purposes or for any alterations approved by the board in the subways or their appurtenances aforesaid. For all purposes of the construction, connection, equipment, maintenance and operation of such subways and their appurtenances, so far as may be necessary therefor, the company shall have and may exercise any powers conferred upon it by this act and by chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four and chapter five hundred of the acts of the year eighteen hundred and ninety-seven.

May exercise certain powers, etc.

Proceedings in taking land, etc., by right of eminent domain.

SECTION 7. To make any taking for subway purposes by right of eminent domain the company shall cause to be recorded in the registry of deeds for the southern district of the county of Middlesex a description of the lands, easements, estates or rights taken, as certain as is required in a common conveyance of land, with a statement that the same are taken

for subway purposes under the authority of this act, signed by a majority of its directors; and the lands, easements, estates or rights so described shall thereupon be taken for such purposes. The company shall at the same time give notice of such taking to the owner of the property taken, if known, but want of such notice shall not affect the validity of the taking, nor extend the time for proceedings for damages.

SECTION 8. The company shall pay all damages to or for property taken or injured by it in any work done in or in connection with any subway construction under authority of this act, except that no damages shall be payable in respect of the use of public ways or parks or the lands over which the same are laid out, or other public lands, and may agree with any owner of such property upon the amount to be paid as compensation or damages therefor; and if the parties do not agree the same may be determined by a jury in the superior court for the county of Middlesex on petition of such owner against the company, filed in the clerk's office before the expiration of two years from the time when work done under the authority of this act is actually begun in front of any property affected thereby, or from the time of the injury to any property; and judgment shall be entered upon the verdict of such jury, and costs shall be taxed and execution issued in favor of the prevailing party as in other civil cases. The provisions of sections seventeen to twenty-five, inclusive, of chapter forty-eight of the Revised Laws, relating to procedure in case of damage to estates in which several parties have different or several interests, shall apply to proceedings in such cases under this act. The company shall indemnify the city against all liability for damages arising out of the work herein provided for, upon notice of any claim therefor and opportunity to defend against the same.

Damages.

Certain provisions of law to apply.

SECTION 9. Whenever any lands or other property of the company acquired for subway purposes under this act cease to be needed for such purposes, the company may sell the same, and may at any time sell or remove any buildings thereon; or it may lease any such lands, buildings or interests in lands or other property; and may sell any surplus materials from excavations. The proceeds of such sales and leases, and the fair valuation of such lands or other property not sold, as agreed upon by the city and the company, or in case of disagreement as determined by the board, shall be deducted from the cost to be paid by the city as hereinafter provided.

Company may sell certain property, etc.

SECTION 10. The mayor may, and upon the written request of the company shall, order the temporary or permanent removal or relocation of any surface tracks other than the tracks of a steam railroad, or of any conduits, pipes, wires, poles or other property of any person or corporation except the city or the company, which the company deems to interfere with the construction or operation of the subway or subways constructed under this act, and at the same time the city

The mayor may order the removal or relocation of tracks, etc.

shall grant new locations for any such structures previously having locations. Such order of the mayor, to the extent specified therein, shall be deemed a revocation of the former right or license to maintain such surface tracks, conduits, wires, pipes, poles or other property, and the owner of any such structures in public ways or lands shall comply with such order without expense to the company. If the owner shall fail to comply with such order within a reasonable time to be fixed therein, the company may remove such surface tracks, conduits, pipes, wires, poles or other property, and may relocate and reconstruct the same, and the cost of such removal, relocation and reconstruction shall be repaid to the company by the owner: *provided, however*, that the removal, relocation and reconstruction of gas pipes and telephone or electric lighting conduits or cables shall be done by the company, the owner paying for any new material required in place of the old, and the cost of the work, so far as it forms part of the cost of any subway, shall be repaid by the owner to the city upon purchase of such subway by the city under section twenty-eight hereof, with such interest, if any, as the city may thereby be required to pay the company thereon. No such discontinuance, removal or relocation shall entitle the owner of the property thus affected to any damages on account thereof. The removal and relocation of any property of the Commonwealth shall be subject to the approval of the public authorities having charge thereof, or of the board, and at the expense of the company. Any gas or electric lighting company may shut off the gas or current from any pipes or wires affected by any action done hereunder, when and so far as may be necessary to avoid the escape or explosion of gas or other public danger. Temporary locations shall be granted, on request of the company, for any surface tracks owned or operated by it; and as soon as the state of the work permits the company may restore the same to the original locations as nearly as may be. The company may remove any poles, wires, pipes, conduits, sewers, drains or other structures of the city, so far as the work may require, on condition that the same shall be replaced at the expense of the company in a condition, so far as may be, as serviceable as their condition before such removal, using such new material as may be necessary, and in such place and manner as the duly authorized city officers shall direct or approve.

Proviso.

Temporary locations, etc.

Company to deliver certain surplus materials to the city, etc.

SECTION 11. Whenever the company shall make an excavation in any public way or park or other public lands, it shall be upon condition that, if so directed by the mayor, it shall deliver such part of the surplus materials taken from such excavation as it does not sell, at such point or points in the city as he may direct, within two miles from the place of such excavation, which materials may be conveyed upon street railway tracks on locations then existing or temporary locations which the city upon request of the company shall grant

therefor. The company shall comply with all rules, regulations and ordinances of the city relating to obstruction or excavation of any ways or public lands, so far as the same are reasonably applicable to the work in the opinion of the board, and shall at its own expense restore the surface thereof as soon as practicable to a condition as good as its former condition.

Compliance with certain rules and regulations, etc.

SECTION 12. All subway work done under this act in or under any public way in the city shall be conducted, so far as practicable, in such manner as to leave such way, or a reasonable part thereof, open for travel between the hours of seven in the forenoon and six in the afternoon of each secular day, except public holidays: *provided, however*, that any such way may, if the company deems necessary, be closed to public travel for distances not exceeding one third of a mile each along the line of construction.

Public ways to be kept open for travel, etc.

Proviso.

SECTION 13. Subject to the approval of the mayor, the company may locate subway stations at convenient points, with suitable exits and approaches to and from the streets and such stations; but exits and approaches, except platforms and approaches thereto from buildings, shall not be located in any street less than sixty feet in width.

Location of stations, etc. 197 Mass. 575, 577.

SECTION 14. The company shall be entitled to written notice of the proposed determination by the city, or by any officer thereof, of any question arising in the course of the subway work herein provided for, which it or he is authorized by this act to determine, and to confer with the city or such officer thereon; and if such determination when made is not satisfactory to the company, it may within seven days after receiving written notice thereof, to be given after such determination, apply to the board for a revision thereof, and thereupon the board may consider and finally determine such question.

Determination of certain questions. 197 Mass. 577, 579.

SECTION 15. Any person or corporation using or authorized to use wires along the route of such subway or subways may place the same therein, in such manner and upon such terms, as to compensation and otherwise, as may be agreed upon with the company; except that no contract therefor shall extend beyond the period of twenty years from the opening for use of the subway to which it relates, or beyond the purchase thereof by the city as hereinafter provided.

Placing of wires in subways.

SECTION 16. The company shall file with the auditor of accounts of the city correct copies of all bills or accounts of the cost of construction of the subway or subways herein provided for, and also all sums credited, as the work proceeds.

Copies of bills, etc., to be filed with city auditor.

SECTION 17. Upon completion of any subway herein provided for, and before the same shall be opened for public use, it shall be examined by the board, and if it appears that all laws relating to its construction have been complied with and that the subway is in safe condition for operation the board shall give to the company a certificate to that effect, which

Subways to be examined, etc.

shall be filed in the office of the secretary of the Commonwealth; and thereupon the company shall be authorized to open such subway for public use.

Construction
of River street
subway, etc.

SECTION 18. At any time within four years after the opening for use of the Main street subway, the company may begin construction in the city of a subway or subways to be called the River street subway, of sufficient size for two railway tracks and adapted to the running of elevated railway trains and surface cars therein, with suitable appurtenances therefor, as defined in section one of this act, from a point in the Main street subway at or near the junction of Massachusetts avenue, formerly called Main street, and River street or Central square; thence to, in and under River street to the northerly line of Putnam avenue, or to a point at or near the northerly abutment of the Cambridge street bridge, in that part of Boston called Brighton, or to any other point between said northerly line of Putnam avenue and the northerly abutment of said bridge, there to connect with elevated railway or surface railway tracks, in such manner, not obstructing travel in any park or parkway, as the company may determine; and when built may maintain and operate the same for the running of elevated railway trains and surface cars and other incidental uses in connection therewith.

Cambridge
street subway,
etc.

SECTION 19. At any time within four years after the opening for use of the Main street subway, the company may begin construction in the city of a like subway or subways, to be called the Cambridge street subway, with like appurtenances, between a point in Cambridge street in the vicinity of Lechmere square, or in Bridge street, or in or easterly of Lechmere square, or in private lands adjacent or near to such streets or square, convenient for connection by a suitable incline between such subway and the elevated railway which the company may construct upon the location described in section twenty-one of this act, in and under such private lands, Bridge street, Lechmere square, Cambridge street, Peabody street, and any intervening ways or lands, and Harvard square; and may also begin construction of a like subway, to be called the Webster avenue subway, with like appurtenances, from Cambridge street in and under Webster avenue to a suitable connection with elevated railway or surface railway tracks in Cambridge or Somerville, at or as near as practicable to the line between said cities; and when built may maintain and operate the same for the running of elevated railway trains and surface cars and other incidental uses in connection therewith. The city, at the request and expense of the company, shall widen such part of Cambridge street or Bridge street, or both, to such extent as the company may deem necessary to permit the construction of the subway or open cut therein, or to permit suitable connection between the company's elevated railway structure and surface railway tracks in such streets and square. The space available for public surface travel in such streets

and square shall not be diminished so far as to interfere substantially with such travel. All expenses of any street widening required to obviate such interference shall be borne by the company. Said cities or either of them may, and at the request and expense of the company shall, widen Webster avenue, so far as the company may deem necessary for the work herein provided for. If the company shall not have begun to construct the Cambridge street subway within four years after the opening for use of the Main street subway, the city shall have the right, and is hereby authorized, to construct the same, provided it begins such construction within one year after the expiration of such four years. If the city constructs such subway, it shall have the same rights therein as in case of purchase thereof under this act. Nothing in this act shall be deemed to require the company to construct the River street, Cambridge street or Webster avenue subways or either of them, but the construction of the River street and Webster avenue subways, if built, shall be completed within two years, and of the Cambridge street subway, if built by the company, within four years, after the beginning of the construction thereof.

SECTION 20. Any and all of such subways shall be constructed upon and under the same terms, conditions and provisions, except as to time of construction, and with the same rights, powers and privileges in the construction, maintenance and operation thereof, which rights, powers and privileges are hereby conferred for such purpose, and shall be held by the company by and upon the same tenure and with the same rights, privileges and immunities as are herein provided for and concerning the Main street subway, and subject to the right of purchase by the city as hereinafter conferred.

Terms,
conditions, etc.,
under which
subways may
be constructed.

SECTION 21. Within six months after its acceptance of this act the company shall apply for an elevated railway route in the cities of Cambridge and Boston, over its locations heretofore granted or locations hereby granted, between a point in or easterly of Lechmere square, in Cambridge; thence in and over said square and Bridge street, or private lands adjacent or near thereto, and over that part of the lands owned or leased by the Boston and Maine Railroad contiguous to Bridge street and over Prison Point street: *provided, however*, that the elevated railway approaching and over such railroad lands shall be so constructed as to afford clear head-room of not less than fourteen feet; thence to and over the approaches to, if necessary, and the down-stream slope and the waterway of the new Charles river dam now under construction in place of the old Craigie bridge, such location over the dam and its approaches to be a substitute for, and to be held by the same tenure as, the location on the bridge under chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four, to and over the approaches to such dam in Boston, if necessary, thence by locations existing in Leverett street, Brighton street, Lowell street and Causeway street under the

Elevated
railway route
in Cambridge
and Boston,
etc.

Proviso.

provisions of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four and chapter five hundred of the acts of the year eighteen hundred and ninety-seven to such point in Causeway street as shall be, in the opinion of the board, suitable for connection with the existing subway and any additions thereto, and with the Washington street tunnel now under construction, and with its existing elevated lines, or, for the purpose of avoiding sharp or unsuitable curves, in and over such other intervening public or private ways or lands as the mayor and aldermen, under the power to vary or alter locations conferred by said chapter five hundred and forty-eight, or the board, may approve; thence, by such connections as shall be approved by the board, to said subway or additions and said Washington street tunnel and said existing elevated lines; or, as an alternative to that part of the route between the dam or its approaches and Brighton street or Leverett street, to and over that part of the lands owned or leased by said railroad corporation in Boston contiguous to Leverett street, there providing for the same head-room as aforesaid. Nothing in this act shall be deemed to authorize an elevated railway in any part of Leverett street between Brighton and Causeway streets. The company shall begin construction of its elevated railway upon and over such route within six months, and shall complete the same within three and one half years, after it is authorized to begin construction thereof. The company is hereby authorized to make connection by a suitable incline between its elevated railway structure and surface railway tracks in Cambridge street, in the vicinity of Lechmere square, Bridge street, or in or easterly of Lechmere square, in Cambridge, or in and upon private lands adjacent or near to such streets and square, which the company may take or purchase for such purpose, which may also be used, so far as the same are available, for purposes of the subway provided for in section nineteen of this act, if built. The design of so much of the elevated railway structure as passes over the down-stream slope of the new dam, in respect of its architectural features, shall be submitted to the Charles river basin commission for its approval, subject to an appeal by the company to the board, which shall finally determine the question. The method of attachment of the elevated railway structure to the dam shall be subject to approval by said commission. The procedure prescribed by section thirteen of said chapter five hundred in respect of the application for and approval of the route shall apply, so far as such approval is required, to the routes designated in this section and in section twenty-three of this act. In the construction, maintenance and operation of the elevated railways provided for by this section and by said section twenty-three the company shall have the rights, powers and privileges and be subject to the duties, restrictions and liabilities prescribed in respect of its elevated lines and structures by sec-

Limit of time
for beginning
construction,
etc.

Connections.

The Charles
river basin
commission to
approve design
for elevated
structure, etc.

tions three, seven to nine inclusive, eleven, twelve, fifteen and eighteen of said chapter five hundred and forty-eight, and sections one, two, six, eight to ten inclusive, twenty and twenty-one of said chapter five hundred; and such railways when constructed, and their locations, shall be held by the company by and upon the tenure prescribed in the first clause of section nineteen of said chapter five hundred, ending with the words "Public Statutes," and with the same rights, privileges and immunities therein as are provided in either of said acts in respect of its elevated lines or structures. The construction of any elevated railway upon any location mentioned in this section or in said section twenty-three shall not be taken to extend the time within which the company may construct elevated railways upon any other locations, but its other locations shall continue to be held by the company by and upon the tenure prescribed by said section nineteen of said chapter five hundred, subject however to the provisions of section thirty of this act.

1897, 500,
Sect. 19,
to govern the
holding of
certain
locations.

SECTION 22. The location and construction of the elevated railway structure near to and over the railroad lands contiguous to Bridge and Leverett streets, as above provided, shall be such as the company and said railroad corporation may agree upon, or in case of difference as the board may determine; but no lands now owned or leased by the Boston and Maine Railroad shall be taken for the purposes of this act, or used except as herein expressly provided; and any damage sustained by reason of such use shall be estimated and recovered in the manner provided by section seven of chapter five hundred of the acts of the year eighteen hundred and ninety-seven. Upon any application to the mayor and aldermen for the approval of a route, or a location for any elevated railway structure, tracks or stations in that part of Causeway street opposite the railroad stations now owned or leased by the Boston and Maine Railroad, or in the vicinity of the railroad lands situated on Lowell or Brighton streets, the mayor and aldermen shall give public notice and a hearing, and in any and all proceedings before the mayor and aldermen or the board for the approval of a route, or a location for any elevated structure, tracks or stations in or near to the parts of Causeway, Lowell or Brighton streets, above designated, said railroad corporation shall be deemed a party in interest entitled to be heard. Said railroad corporation may apply to the board for a revision of any action of the mayor and aldermen in the nature of an approval of any such route or location within thirty days after the date thereof; and in case any such application is made to the board by said railroad corporation, or in case any application authorized by law is made by the company to the board for the approval of a route or location which the mayor and aldermen have refused or failed to approve, the board, having in view all public interests, shall, after public notice and hearing, finally fix and determine such route or location.

Location and
construction of
elevated
structure
contiguous to
Bridge and
Leverett
streets, etc.

1897, 500, Sect.
15, amended.
203 Mass. 153.
See 1908 files
Supreme Jud.
Ct., Suffolk
County, No.
13049 Eq.

SECTION 23. Section fifteen of chapter five hundred of the acts of the year eighteen hundred and ninety-seven is hereby so far amended, that the company shall not erect any elevated structure upon its elevated railway location over the new Cambridge bridge, except so far as may be necessary or convenient to make a suitable connection at the easterly terminus thereof with its elevated railway structure, if any, on the location hereinafter described, and its tenure thereof or other rights shall not be impaired by omission so to do; nor shall it be required to apply for the elevated railway route between Boston and Cambridge, described in said section fifteen, within six months after the time when such bridge is finished, nor to construct its elevated railway thereon; but in lieu thereof it is hereby authorized and required to construct and complete its elevated railway, within the time allowed for completion of the Main street subway herein provided for, upon and over one of the routes in the city of Boston here designated, namely: (1) between Scollay square and North Russell street, or the westerly terminus of the subway authorized by section five of said chapter five hundred if extended nearer to Charles river than said street, in and through such subway if built, and thence, if such subway is not extended to such new bridge, upon and over its location granted by chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four, in and through Cambridge street and Charles street and in and over any intervening public or private ways or lands to such new bridge; or, (2) between the Park street subway station and a point between Pinckney and Cambridge streets or in Cambridge street or at or near such new bridge, in and through a tunnel for two railway tracks adapted to the use of elevated railway trains and surface cars, with suitable appurtenances and terminals, which the Boston transit commission is hereby authorized to construct, upon the request of the company as hereinafter provided, upon such route as the commission may determine, in and under any public or private ways or lands between such points; and thence if such tunnel is not extended to such new bridge, upon and over a location hereby granted in, through and over such street or streets or other public or private lands as the company may deem suitable for such route, to such new bridge, or to Cambridge street and thence over the location (1) aforesaid to such new bridge; and, from the westerly terminus of either route, upon its location across such new bridge and in Main street in Cambridge to a connection with the Main street subway.

Routes over
which new
subway may be
constructed,
etc.

Commission to
determine
which route
shall be
constructed,
etc.

Within six months after its acceptance of this act the company shall request the commission to construct such subway or such tunnel, and the commission shall thereupon determine which of such structures shall be constructed, and shall give the company written notice of such determination; and if the company is dissatisfied therewith, it may within thirty days after such notice apply to the board for a revision thereof, and thereupon the board may consider and finally determine

the question; and the commission shall proceed, as soon as may be, with the work of construction.

If the subway hereinabove referred to is constructed, it shall be constructed, except as otherwise expressly provided herein, in the manner and under the terms and conditions prescribed by said section five of said chapter five hundred.

1897, 500, Sect. 5, to govern, etc.

If the tunnel hereinabove described is constructed, it shall, except as otherwise expressly provided herein, be constructed and paid for upon and under the same terms, conditions and provisions, so far as the same are applicable, and with the same rights, powers and privileges in respect of the construction thereof, which rights, powers and privileges are hereby conferred for such purpose upon the commission, the board, the city of Boston and its treasurer, the company, and other public officers or parties in interest respectively, including any persons sustaining damages by the taking of or injury to property by the commission under authority hereof, as are prescribed by chapter five hundred and thirty-four of the acts of the year nineteen hundred and two for construction of the tunnel therein provided for; including the rights and powers conferred by section thirteen of said act, which section shall also apply to the location of the tunnel and to the construction of the subway referred to in this section if that is constructed.

Terms of payment for construction, etc.

If the construction of the subway or tunnel upon the route determined upon requires such a permanent cut in any street as to necessitate the widening thereof, or if the construction in connection with the subway or tunnel of an incline from the elevated railway structure to the surface in any street necessitates the widening thereof, the commission may take or purchase lands for such necessary widening, which shall not exceed thirty feet on each side nor extend less than thirty nor more than one hundred feet beyond the ends of such open cut or incline, and may construct a highway thereon; and the cost thereof, including all compensation or damages for property taken or purchased therefor, shall be repaid by the company to the city of Boston, with interest at four per cent. per annum from the time of expenditure to the time of repayment.

Commission may take, etc., lands, for widening ways, etc.

Any tunnel construction under or within one hundred feet from Boston common shall be, so far as practicable, watertight, and the work shall so be done as to avoid the draining of moisture from the surrounding soil or other injury to trees. No additional structures shall be placed above the surface of the common, but in connection with the construction of the tunnel the commission may enlarge, by not more than one third, the width of the existing entrances to and exits from the Park street subway station, and the cost thereof shall be deemed and treated as part of the cost of the tunnel.

Tunnel construction, etc.

Upon or before completion of the work the commission shall execute with the company, in the name of the city of Boston, a contract for the sole and exclusive use of the subway or tunnel and its appurtenances and terminals by the company, for the

Company may contract for exclusive use of subway, etc.

running of its elevated trains and surface cars therein and for other purposes, for a term of not less than twenty years from its opening for use, at an annual rental equal to four and seven eighths per cent. of its net cost, including therein interest at four per cent. per annum on the debt incurred in construction prior to the beginning of the use, and containing in substance the additional car tolls compensation clause, and the provisions relating to the city's police and fire-alarm wires and apparatus, of the subway lease dated December seventh, eighteen hundred and ninety-six, and such other provisions and conditions, following the form of the lease of the Washington street tunnel dated September twenty-fifth, nineteen hundred and two, so far as the same are applicable, as the commission and the company may agree upon, or in case of difference as the board may determine.

Issue of capital stock or bonds, etc.

SECTION 24. The company may from time to time, subject to the approval of the board, in the manner and subject to the requirements prescribed by law, issue and dispose of such additional amounts of its capital stock or bonds, or of either at its option, as may be necessary to meet and pay the cost of construction, connection and equipment for use and operation of the subway or subways and elevated railways which it is authorized by this act to construct, and their appurtenances and terminals, the cost of acquisition of any land or lands, and all other expenditures made or incurred by the company under authority of this act. If either of the subways herein authorized is acquired by the city as herein provided, the amount received by the company therefor shall be applied, with the approval of the board given after public hearing, to the purchase or payment and cancellation of obligations of the company; or with like approval to the purchase and cancellation of shares or other reduction of its capital stock, or with like approval to any purposes for which said board might approve the issue of new capital stock or bonds.

Additional track mileage, etc.

SECTION 25. The provisions of the compensation clause of section ten of chapter five hundred of the acts of the year eighteen hundred and ninety-seven, shall include the additional track mileage of the company constructed under this act, for the purpose of the distribution of the tax thereby imposed.

Subways to be considered part of elevated railway, etc.

SECTION 26. The subway or subways constructed by the company under this act with their appurtenances and equipment, shall be, and be considered, for the purposes of regulation by the board and for the purposes of section four of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four as now amended, a part of the elevated railway of the company. No taxes or excises not in fact imposed upon street railways at the time of the passage of chapter five hundred of the acts of the year eighteen hundred and ninety-seven, nor any other burden, duty or obligation which is not at the same time imposed by general law on all street railway companies, shall be imposed

upon or in respect of such subway or subways or their appurtenances or equipment during the period of twenty-five years after the passage of said chapter five hundred: *provided, however,* that the company shall continue to be annually assessed and to pay taxes then or thereafter imposed by general law in the same manner as though it were a street railway company, as provided in section ten of said act, and to pay the compensation tax imposed by said section ten; and such subway or subways and their appurtenances, equipment and locations and the right to maintain the same shall be held by the company by and upon the same tenure and with the same rights, privileges and immunities therein as are provided in respect of its elevated lines and structures by said chapter five hundred, and shall never be taken or purchased from the company, unless by its consent, except in the manner and on the terms prescribed in sections six and seven of chapter one hundred and eleven of the Revised Laws, or under the right of purchase conferred upon the city by section twenty-eight of this act.

Proviso.

SECTION 27. In respect to the equipment, use and operation of the railways to be constructed in such subway or subways, and transportation thereon, the company shall have all the rights, privileges and immunities and be subject to all the duties, liabilities and restrictions set forth in general or special laws now in force applicable to it, or in laws hereafter enacted applicable to it so far as the same do not impair its rights, privileges or immunities, acquired under any statute or otherwise.

Rights,
privileges, etc.

SECTION 28. At any time after the expiration of twenty years from the opening for use of the Main street subway, or at any earlier time by agreement with the company, and upon the payment to it by the city of such an amount as will reimburse the company the original cost of the Main street subway and the River street subway, if the latter is then built or begun, and their appurtenances and equipment, which shall not include rolling stock, together with the cost of all additions or alterations lawfully made thereto or therein, with simple interest at seven per cent. per year on the cost paid in by its stockholders, to be computed from the time of such payment by the stockholders (but not prior to the opening for use), to the time of the purchase, in addition to interest at three and one fourth per cent. per year on all sums expended in construction from the time of their expenditure to the time of the opening for use, deducting, however, from such interest any and all dividends declared and paid after such opening for use upon any stock issued therefor, but without interest on such dividends, and also deducting from the purchase price such other amounts accruing from property acquired for such two subways as are provided for by section nine of this act, the title to such two subways and their appurtenances and equipment as aforesaid and additions thereto, and all rights and

City may
purchase
property, etc.

interests therein, shall vest exclusively in the city. This right of purchase of the city shall be in addition to the right of the commonwealth under sections six and seven of chapter one hundred and eleven of the Revised Laws, but shall not otherwise affect any rights of the commonwealth. Upon such purchase the city shall have, hold and enjoy in its private or proprietary capacity, as its own property, the subway or subways and their appurtenances and additions so acquired, and all rents, tolls, income and profits derived therefrom, and the same shall never be taken by the commonwealth except upon payment of just compensation therefor: *provided, however,* that so much of such rents, tolls, income and profits as may be necessary therefor shall be paid into the respective sinking funds for the redemption of any bonds which shall be issued by the city for such purchase and shall be used for the payment of interest thereon. At any time after the expiration of twenty years from the opening for use of the Main street subway, or at any earlier time by agreement with the company, the city may purchase the Cambridge street subway, if then built or begun, and the Webster avenue subway, if then built or begun, and their appurtenances and equipment as aforesaid, and shall purchase both if either, upon the same terms, conditions and provisions and with the same effect as is hereinabove provided for and concerning its purchase of the Main street subway.

Proviso.

Cambridge
Subway Loan.

SECTION 29. For the purpose of meeting the requirements of sections nineteen and twenty-eight of this act, the city may issue from time to time notes, bonds or scrip, in excess of the tax limit prescribed by law, designated on the face thereof Cambridge Subway Loan, to an amount not exceeding the sums required under this act, and shall use the proceeds of the same for such purpose.

Certain
locations
revoked upon
acceptance of
this act, etc.

SECTION 30. Upon acceptance of this act by the company, the elevated railway locations within the city of Cambridge granted to the company by chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four and chapter five hundred of the acts of the year eighteen hundred and ninety-seven, shall be revoked, except the locations following, which shall not be revocable, except as provided in the first clause of section nineteen of said chapter five hundred, ending with the words "Public Statutes," so long as the company has the right under the provisions of this act to complete the respective subways in Cambridge connecting therewith, namely:—its location from the Cambridge line upon and over the new Cambridge bridge and its approaches and Main street, to the most westerly point at which the Main street subway may terminate at its easterly end under the provisions of section one hereof; its location from the Cambridge line upon and over Cambridge street bridge or a new bridge and River street, to the most northeasterly point at which the River street subway may terminate at its southwesterly

end under the provisions of section eighteen hereof; its location from the Cambridge line upon and over the downstream slope and waterway of the new Charles river dam and its approaches and thence westerly over the route described in section twenty-one of this act to the most westerly point at which the Cambridge street subway may terminate at its easterly end under the provisions of section nineteen of this act, which shall be deemed a substitute for the corresponding location granted by said chapter five hundred and forty-eight; and its location upon and over Webster avenue from the Cambridge line to the most southerly point at which the Webster avenue subway may terminate at its northerly end under the provisions of said section nineteen. The locations so revoked shall be of no further force or effect, and the company shall not without further legislative authority construct any elevated railway upon or over the same nor be subject to any penalty or forfeiture for omission so to do. So long as the right exists to complete the construction of the elevated railway upon the locations described in sections twenty-one and twenty-three, no part thereof shall be revocable, except as above provided in this section.

SECTION 31. The supreme judicial or superior court, upon application of the cities of Cambridge or Boston, the company, or any other party in interest, may enforce or prevent violation of the provisions of this act, by any appropriate process.

Enforcement
of provisions
of act.
197 Mass. 576.

SECTION 32. This act shall take effect upon its acceptance by the mayor and board of aldermen of the city within one month, and by the company, by vote of its board of directors and return thereof thereafter and within two months, after its passage. If so accepted, the company shall complete the work of construction of the Main street subway within four years after the final approval of the original plan required by section three. If the construction of any subway herein provided for, or the construction of the elevated railway, as provided in sections twenty-one and twenty-three hereof, is delayed by litigation, unforeseen casualty or other cause, the company may apply to the board for extension of the time therefor, and the board, upon notice to the city of Cambridge, or the city of Boston, or both if deemed necessary, and upon hearing and proof that such litigation was not collusive, or that such casualty or other cause was not due to the fault of the company, may determine what extension of the time may reasonably be allowed for completion of the subway or railway, or both, and such further time shall thereupon be allowed therefor. [*Approved June 23, 1906.*]

When to take
effect, etc.

The foregoing act was accepted by the city of Cambridge on June 26, 1906, and acceptance was filed June 28, 1906. It was accepted by the Company on June 29, 1906, and acceptance was filed on July 10, 1906.

Stat. 1907, Chap. 258.

AN ACT TO INCREASE THE AUTHORITY OF THE BOSTON TRANSIT COMMISSION TO TAKE BY EMINENT DOMAIN EASEMENTS OR OTHER ESTATES OR RIGHTS IN REAL ESTATE.

Be it enacted, etc., as follows:

1902, 534, §6,
amended.

Public ways
may be used,
land taken,
etc.

SECTION 1. Section six of chapter five hundred and thirty-four of the acts of the year nineteen hundred and two, being "An Act to provide for the construction of additional tunnels and subways in the city of Boston," is hereby amended by inserting after the word "horizontal," in the fourteenth line, the words:—or inclined,—and by inserting after the word "division," in the fifteenth line, the words:—or by other surfaces,—so as to read as follows:—*Section 6.* The commission may for the purposes of this act use public ways and lands without compensation therefor, and may take for the city, by purchase or otherwise, lands in fee and easements, estates, and rights in land, including the right to go under the surface thereof or through or under buildings or parts of buildings thereon, and such takings in fee or otherwise may be made whether the lands taken or otherwise affected are held under or by title derived under eminent domain or otherwise. A taking under this section of an easement or other estate or right in a given parcel of real estate, whether such parcel consists of unimproved land or of land and buildings, may be confined to a portion or section of such parcel fixed by horizontal or inclined planes of division or by other surfaces below or above or at the surface of the soil, and in such case no taking need be made of upper or lower portions or sections, except of such easements therein, if any, as the commission may deem necessary. The commission, to make any taking by right of eminent domain, shall cause to be recorded in the registry of deeds for the county of Suffolk a description of the lands, easements, estates or rights to be taken, as certain as is required in a common conveyance of land, with the statement that the same are taken under authority of this act, which description and statement shall be signed by the commission; and the lands, easements, estates or rights therein described shall upon such recording be taken for and shall vest in the city. The commission shall, so far as may be practicable, notify all known owners of such takings, but the validity thereof shall not be affected by want of such notice.

SECTION 2. This act shall take effect upon its passage.
[Approved March 29, 1907.]

Stat. 1907, Chap. 277.

AN ACT RELATIVE TO CLAIMS AGAINST THE BOSTON ELEVATED RAILWAY COMPANY FOR DAMAGES TO PROPERTY.

Be it enacted, etc., as follows:

SECTION 1. Section two of chapter two hundred and fifty-eight of the acts of the year nineteen hundred is hereby amended by adding at the end thereof the following:—*provided, further*, that the construction, addition or alteration by the Boston Elevated Railway Company of branches, spurs, sidings, turn-outs, connections, deflections, switches, extensions and loops, as provided for in section seven of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four, and the location, construction, maintenance, operation, addition to and modification or change of stations, as provided for in section ten of said chapter five hundred and forty-eight, as amended by chapter five hundred of the acts of the year eighteen hundred and ninety-seven, if such branches, additions or other structures were not contained in the original plans heretofore confirmed by the board of railroad commissioners, under which plans its elevated railway has been constructed, shall be deemed an additional servitude and shall entitle lessees, mortgagees and other parties having an estate in any public or private way or in any premises which abut thereon, and who are damaged by reason of such branches, additions or other structures, or changes or modifications, to recover reasonable compensation therefor. Any person so damaged may at any time within three years after the completion of the construction of such branches, additions or other structures, or changes or modifications, in front of his premises, file in the clerk's office of the superior court for the county where his said premises lie a petition setting forth his claim, and the amount thereof, against the Boston Elevated Railway Company. The provisions of sections eight and nine of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four, and of sections seventeen to twenty-five, inclusive, and section one hundred and fourteen of chapter forty-eight of the Revised Laws relating to procedure in case of damages to estates in which several parties have different or several interests, so far as not inconsistent herewith, shall govern proceedings taken under this act.

SECTION 2. This act shall take effect upon its passage. [Approved April 6, 1907.]

1900, 258,
Sect. 2,
amended.

Claims for
damages
against the
Boston
Elevated
Railway
Company, etc.

Certain
provisions of
law to govern
proceedings,
etc.

Stat. 1907, Chap. 497.

AN ACT TO AUTHORIZE THE BOSTON ELEVATED RAILWAY COMPANY TO CONSTRUCT AN ELEVATED RAILWAY FROM SULLIVAN SQUARE IN THE CITY OF BOSTON THROUGH THE CITIES OF EVERETT AND MALDEN.

Be it enacted, etc., as follows:

Construction of lines of elevated railway through the cities of Everett and Malden.
199 Mass. 139.

SECTION 1. The Boston Elevated Railway Company, hereinafter called the company, which term shall be deemed to include its successors and assigns, may construct lines of elevated railway, according to such plans or systems as the board of railroad commissioners, hereinafter called the board, may approve, to be operated by electricity or other motive power except steam, upon the following location, and may equip, maintain and operate engines, motors, trains and cars thereon, to wit:—Beginning at a point in Main street, in Alford street or in land of the company near the existing Sullivan Square terminal station, in that part of Boston formerly called Charlestown; thence through or across public or private ways or lands between Alford street and the tracks of the western division of the Boston and Maine Railroad, or through or across Main and Alford streets, or in part through or over the southwesterly corner of Charlestown playground and within and not more than fifty feet distant from the intersection of the northeasterly side of Main street with the southeasterly side of Alford street, and through or across either of said streets, to Mystic river; thence through Alford street and over Malden bridge and through or across Alford street, through or across Broadway to a point opposite Mystic street, and through or across public or private ways or lands in Boston and Everett between Alford street in Boston and the westerly line of Broadway and Main street on the east and the Malden river on the west; or over Mystic river and through or across public or private ways or lands in Boston and Everett between Alford, Broadway and Main street on the east and Malden river on the west, to the Malden line; thence through or across public or private ways or lands between the westerly line of Main street in Malden and the tracks of the western division of the Boston and Maine Railroad, to such point or points in Malden, southerly of Pleasant street, as may be convenient for terminals.

Construction may be near or upon the surface of the ground, etc.
Proviso.

Upon private lands, the said elevated railway may be constructed, so far as the company may deem necessary or desirable, near or upon the surface of the ground, with the approval of the board: *provided, however*, that no public street shall be crossed at grade.

May construct railway across streets or ways, etc.

The company may construct such terminals, branches, spurs, sidings, turn-outs, connections, deflections, switches, extensions and other structures, and such loop lines, in con-

nection with and within the location herein granted, through or across such streets or ways, or private lands, as may be necessary or convenient to turn its trains or to reverse the direction thereof, or to make connections with surface car lines, or for other purposes authorized by this act or by its charter, and may make such convenient changes, extensions and relocations of surface lines owned or controlled by the company, by elevated structure or otherwise, over public or private ways or lands, as may be approved by the board; all of which, with the stations, are hereinafter called appurtenances.

It may locate and construct stations at convenient points, with suitable exits and approaches to and from the streets and stations, but the same, excepting platforms and approaches thereto from buildings, shall not be located in any public way or place unless such location is approved by the mayor and aldermen or by the board. Before constructing its railroad upon any route granted to it, and before constructing any station in any public way or place, the company shall prepare and file with the mayor of the city in which the route or station is located plans showing the form and method of construction proposed, for his examination and approval as to architectural appearance and obstruction to light and air; and he shall approve or disapprove the same in writing; and if the plans are disapproved by him the company may appeal to the board, who shall decide the matter.

Location of
stations, etc.

SECTION 2. The company may lease, purchase or take the fee of public or private lands, except lands of the Commonwealth and of the Boston and Maine Railroad, for the purpose of constructing its railway or terminals, buildings, shops, stations, engine and car houses, and connections with surface railways, and for any purpose necessary for the construction or convenient use by the company or the public of its said railway, and for any purpose authorized by this act or by its charter. To make any taking by right of eminent domain, the company shall cause to be recorded in the registry of deeds for the county in which the land is situated a description of the land taken, as certain as is required in a common conveyance of land, with a statement that the same is taken under authority of this act, signed by a majority of its directors, and the land so described shall, upon such recording, be taken. The company shall at the same time give notice of such taking to the owner of the land taken, if known, but want of such notice shall not affect the validity of the taking, nor extend the time for proceedings for damages.

May lease,
purchase or
take the fee of
public or
private lands,
etc.

Description of
land taken to
be recorded.

The company shall pay all damages occasioned by the taking of such land, and may agree with any owner of such land upon the amount to be paid as compensation or damages therefor, and if the parties do not agree, the same may be determined by a jury in the superior court for the county in which the land is situated, on petition of the owner or the company filed in the clerk's office before the expiration of two years from the

Damages.

recording of the taking, and judgment shall be entered upon the verdict of the jury, and costs shall be taxed and execution issued in favor of the prevailing party as in other civil cases. The provisions of sections seventeen to twenty-five, inclusive, and of section one hundred and fourteen of chapter forty-eight of the Revised Laws relating to procedure in case of damage to estates in which several parties have different or several interests, shall apply to proceedings in such cases under this act.

The company shall indemnify the cities against all liability for damages arising out of the work herein provided for, upon notice of any claim therefor and opportunity to defend against the same.

SECTION 3. Wherever the route upon which the company is authorized to construct and operate its elevated railway crosses the location of tracks of any railroad company, or the land of the Commonwealth, or tide waters, the crossing shall be made in such manner, and the method of construction shall be such as may be agreed upon between the directors of such railroad company or the public board or officer having general control of such land or waters and the directors of the company, and if the parties are unable to agree as to the manner of crossing or method of construction at such point, the same shall be determined by the board, upon application of either party; and in case any railroad company or the Commonwealth sustains any damage by reason of such crossing, the same shall be estimated and recovered in the manner provided in section two of this act.

SECTION 4. Within one year after its acceptance of this act, as hereinafter provided, the company shall apply to the board of aldermen of the cities of Boston, Everett and Malden for an elevated railway route over the location herein granted, or in and over such other intervening public or private ways or lands as the mayor and aldermen may approve. If the route so applied for is not approved by the mayor and aldermen within sixty days after the application therefor, the company shall within thirty days after the expiration of said sixty days apply to the board for such approval, and thereupon the board, having in view all public interests shall, after public notice and hearing finally fix and determine a route. The company shall begin construction of its elevated railway over such route within six months and shall complete the same within three and one half years after it is authorized to begin construction thereof. In the construction, maintenance and operation of the elevated railway and appurtenances provided for by this act, the company shall have the rights, powers and privileges, and be subject to the duties, restrictions and liabilities prescribed in respect of its elevated lines and structures by sections eight, nine, twelve, fifteen and eighteen of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four and sections one, six, eight, ten, sixteen and twenty-one of chapter five hundred of the acts of the year eighteen

Proceeding
in cases where
the route
crosses the
location of a
railroad
company, etc.

Application
for a location
to be approved,
etc.

Rights, etc., of
the company,
etc.

hundred and ninety-seven, and such railway and appurtenances, when constructed, and its location shall be held by the company by and upon the tenure prescribed in the first clause of section nineteen of said chapter five hundred ending with the words "Public Statutes," and with the same rights, privileges and immunities therein as are provided in either of said acts in respect of its elevated lines or structures: *provided, however,* Proviso. that, if by reason of the construction of said elevated structure, it becomes necessary to reconstruct the bridge on Alford street, called Malden bridge, the city of Boston shall not be liable for any part of the expense therefor.

SECTION 5. The company may from time to time in the manner and subject to the requirements prescribed by law, issue and dispose of such amounts of its capital stock or bonds, or of either at its option, in addition to amounts heretofore authorized, as may be necessary to meet and pay the cost of construction, connection and equipment for use and operation of the railway which it is authorized by this act to construct, and its appurtenances, and the cost of acquisition of any land or lands, and all other expenditures made or incurred by the company under authority of this act. Capital stock or bonds, disposal of, etc.

SECTION 6. This act shall take effect upon its acceptance by the board of aldermen, approved by the mayor, of the cities of Everett and Malden, respectively, within one month, and by the company by vote of its board of directors and return thereof, filed in the office of the secretary of the Commonwealth within two months after its passage. If the construction of said railway is delayed by litigation, unforeseen casualty or other cause, the company may apply to the board for extension of the time therefor, and the board, upon notice to the cities of Everett and Malden, and upon hearing and proof that such litigation is not collusive or that such casualty or other cause was not due to the fault of the company, may determine what extension of the time may reasonably be allowed for the completion of the railway, and such further time shall thereupon be allowed therefor. When to take effect, etc.

SECTION 7. The owners, lessees, mortgagees, and other persons having an estate in any land or premises abutting on any land or rights of way over private land acquired by the company under the provisions of this act, upon which an elevated structure is erected, shall be entitled to reasonable compensation for all damage suffered by them by reason of the location, construction, maintenance, and operation of said railway. Any such person may, at any time within three years after the construction of such railway, file in the clerk's office of the superior court for the county where his said premises lie a petition setting forth his claim against the said corporation. Compensation for damages.

He shall give the said corporation fourteen days' notice of the filing of such petition, and an answer thereto shall be filed by the corporation within thirty days from the return day of such notice. Any such petition shall be heard before Notice of filing of petition for damages, etc.

a jury, if either party claims such right at the time of the filing of the petition or within ten days after the filing of the answer thereto; otherwise, the same shall be heard before a court without a jury. If a verdict shall be rendered for the petitioner, interest shall be included from the day of the filing of the petition.

Subject to
certain
provisions of
law.

Said corporation shall be subject to the duties and liabilities described in section twelve of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four, relative to satisfaction of judgments pursuant to findings under the provisions hereinbefore set forth. [*Approved June 12, 1907.*]

The foregoing act was accepted by the city of Everett on June 24, 1907, which acceptance was filed June 29, 1907; by the city of Malden on July 9, 1907, filed July 10, 1907; and by the Company July 11, 1907, filed the same day.

Stat. 1907, Chap. 519.

AN ACT RELATIVE TO THE LOCATION OF THE BOSTON ELEVATED RAILWAY COMPANY IN WASHINGTON STREET AT AND NEAR FOREST HILLS SQUARE IN THE CITY OF BOSTON.

Be it enacted, etc., as follows:

Location of
the Boston
Elevated
Railway
Company at
Forest Hills
square.

SECTION 1. The Boston Elevated Railway Company, hereinafter called the company, which term shall be deemed to include its successors and assigns, may construct, maintain and operate its elevated lines upon the following location hereby granted, to wit:—Through Forest Hills square and Washington street from its junction with Hyde Park avenue to a point at or near where Washington street is crossed by the Boston and Providence railroad, now leased to the New York, New Haven and Hartford Railroad Company. Said location may be used also for reversing the company's trains.

Rights and
privileges of
the company.

SECTION 2. In the construction, maintenance and operation of the elevated railway above provided for, the company shall have the rights, powers and privileges and be subject to the duties, restrictions and liabilities prescribed in respect to its elevated lines and structures by sections three, eight, nine, eleven, twelve, fifteen and eighteen of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four, and by sections one, two, six, eight to ten, inclusive, twenty and twenty-one of chapter five hundred of the acts of the year eighteen hundred and ninety-seven.

Subject to
certain terms,
etc.

SECTION 3. The location of or right to maintain an elevated line or structure herein granted shall be subject to the terms of sections six and seven, Part II, of chapter four hundred and

sixty-three of the acts of the year nineteen hundred and six, and shall further be subject to revocation by the general court, if the company shall not have completed the construction of its railway thereunder, within two years after the time when it was authorized to begin the construction of a railway and terminal station.

SECTION 4. Nothing in this act shall be construed as affecting the future location of a permanent terminal station for the elevated railway in the locality above described.

Permanent terminal station not affected.

SECTION 5. This act shall take effect upon its passage. [Approved June 15, 1907.]

Stat. 1907, Chap. 530.

AN ACT TO REVOKE CERTAIN LOCATIONS FOR LINES OF ELEVATED RAILWAY GRANTED TO THE BOSTON ELEVATED RAILWAY COMPANY IN THE CITY OF BOSTON AND VICINITY.

Be it enacted, etc., as follows:

SECTION 1. The following locations for lines of elevated railway of the Boston Elevated Railway Company, to wit: from City square to and through Warren avenue, to and over Warren bridge across Charles river, to and through Beverly street, to and through Haymarket square, to and through Union street, to and through Dock square, to and through a new street to be built by the city, of the width of eighty feet, in the line of Congress street, between State street and Dock square, to and through Congress street and Post Office square, to and through Federal street, to and over Federal street bridge or a new bridge across Fort Point channel, to and through Dorchester avenue to the Milton line.

Certain locations for lines of elevated railways revoked.

A branch railway through Alford street, to and over Malden bridge, to and through Main street, Everett, to the Malden line.

A branch railway from Everett square, to and through Chelsea and Ferry streets to the Malden line.

A branch railway from the junction of Broadway and Main street, Everett, to and through Broadway to the Malden line.

A branch railway from said City square to and through Chelsea street, to and over Chelsea bridge or a new bridge across the Mystic river, to and through Broadway, Chelsea, to and through Broadway, Revere, to and through Central avenue, to and through Beach street to Crescent beach.

A branch railway from Fenno's Corner, Revere, to and through Beach street, to and through Winthrop avenue to Beachmont.

A branch railway from Dorchester avenue to and through West Broadway, to and through Dorchester street, to and

through East Second street to City Point at Marine Park. Also a branch railway from Dorchester avenue to Sixth street, thence to D street, D street to Eighth street, Eighth street to L street, L street to Sixth street to City Point and Marine Park.

A branch railway from Field's Corner through Neponset avenue to Neponset bridge.

From a point on Bow street, in Somerville, near its junction on Walnut street, through Bow street, to and through Union square, to and through Webster avenue to the Cambridge line.

From Causeway street through Portland street, to and through Merrimac street, to and through Washington street, to and through Dock square, to and through Devonshire street, to and through Franklin street, to and through Arch street, to and through Chauncy street, to and through Harrison avenue, to Beach street, to and through Kneeland street, to Washington street.

From Warren street through Dudley street to Blue Hill avenue, to and through Blue Hill avenue to Vaughn street.

Commencing at a point on the southerly side of the approach to the Cambridge bridge, through Charles street in Boston, to and through Park square, to and through Pleasant street, to and through Tremont street, to and through Columbus avenue, to and through Centre street to the corner of May street.

A branch railway from Park square to and through Columbus avenue, to and over the location of the Boston and Albany railroad, or by some other convenient route or way, to and through Huntington avenue, to and through Tremont street, to and through Washington street in Brookline to Village lane.

From the Cambridge line over Cambridge street bridge or a new bridge over Charles river, Cambridge street in that part of Boston called Brighton, to and through Cambridge street in said Brighton, to and through Washington street to Oak square.

From North Russell street through Cambridge street, to and through Bowdoin square, to and through Court street, to and through Brattle street to Dock square.

A branch railway from Park square to and through Eliot street to Kneeland street.

From Main street in Charlestown through Essex street and Rutherford avenue to Sullivan square, in that part of Boston known as Charlestown.

Commencing at a point on Washington street at or near Fay street; thence upon and over private lands, and crossing Dover street, Shawmut avenue, Hingham, Middlesex, Emerald, Compton, Lucas and Paul streets. From Dudley street upon and over Guild row and Roxbury street to Washington street.

Commencing at the corner of Harrison avenue and Beach street, upon and over Harrison avenue to Essex street; and thence upon and over Essex street to Cove street.

Commencing at or near the corner of Motte street and Harrison avenue; thence upon and over Way street, Broadway extension and upon and over the existing bridge or a new

bridge to be built across Fort Point channel to West Broadway, in that part of Boston known as South Boston are hereby revoked: *provided, however*, that this act shall not in any way affect or impair the company's locations for or rights to maintain elevated lines and structures which shall be completed or begun at the time when this act takes effect or which were granted to the company by chapter five hundred and thirty-four of the acts of the year nineteen hundred and two or by chapter five hundred and twenty of the acts of the year nineteen hundred and six, and which have been or may be granted by any acts of the year nineteen hundred and seven.

SECTION 2. This act shall take effect on the eleventh day of June, nineteen hundred and seven. [*Approved June 19, 1907.*]

Proviso.

When to take effect.

Stat. 1907, Chap. 573.

AN ACT TO PROVIDE FOR THE CONSTRUCTION OF AN EAST AND WEST TUNNEL AND SUBWAY IN THE CITY OF BOSTON.

By this act, which was accepted by the company on July 11, 1907, the Boston Transit Commission was authorized to construct a tunnel and subway to be known as the Riverbank Subway. Some preliminary work was done by the Commission under this act, and some bonds, designated on their face "Boston Riverbank Subway Loan," were issued under the act by the city. By Sec. 17 the authority to construct a subway given by Stat. 1902, Ch. 534 was revoked. So much of this act as authorized the construction of this subway was repealed by Stat. 1911, Ch. 741, Sec. 8.

Stat. 1908, Chap. 388.

AN ACT RELATIVE TO THE DATE OF PAYMENT BY THE BOSTON ELEVATED RAILWAY COMPANY OF ITS FRANCHISE TAX.

Be it enacted, etc., as follows:

SECTION 1. Section ten of chapter five hundred of the acts of the year eighteen hundred and ninety-seven is hereby amended by striking out the word "last," in the forty-first line, and inserting in place thereof the word:—tenth,—so as to read as follows:—*Section 10.* Said corporation may establish, and take a toll or fare, which shall not exceed the sum of five cents for a single continuous passage in the same general direction upon the roads owned, leased or operated by it; and this sum shall not be reduced by the legislature during the period of twenty-five years, from and after the passage of this act: *provided, however*, that the board of railroad commissioners may upon the petition of the board of aldermen of a city, select-

1897, 500, Sect. 10, amended.

May establish and take a toll or fare, etc.

Proviso.

Certain burdens, obligations, etc., not to be imposed, etc.

Proviso.

men of a town, or fifty legal voters of a city or town, in which any of the lines owned, leased or operated by said corporation are located, after due notice and hearing the parties interested, reduce such toll or fare; but such toll or fare shall not, without the consent of said corporation, be so reduced as to yield, with all other earnings and income of said corporation, except the income of the funds deposited with the treasurer of the commonwealth as required by this act and said chapter five hundred and forty-eight, a net divisible income, after paying all expenses of operation, interest, taxes, rentals, and other lawful charges, and after charging off a reasonable amount for depreciation, of less than eight per cent per annum on the outstanding capital stock of said corporation actually paid in in cash. The report of the board shall be final and conclusive for one year. During said period of twenty-five years no taxes or excises not at present in fact imposed upon street railways shall be imposed in respect of the lines owned, leased or operated by said corporation, other than such as may have been in fact imposed upon the lines hereafter leased or operated by it at the date of such operating contract or of such lease or agreement hereafter made therefor nor any other burden, duty or obligation which is not at the same time imposed by general law on all street railway companies: *provided, however*, that said corporation shall be annually assessed and shall pay taxes now or hereafter imposed by general law in the same manner as though it were a street railway company, and shall, in addition, as compensation for the privileges herein granted, and for the use and occupation of the public streets, squares and places, by the lines of elevated and surface railroad owned, leased and operated by it, pay to the commonwealth, on or before the tenth day of November in each year, during said period of twenty-five years, an annual sum, the amount of which shall, in each year ending the last day of September, be determined by the amount of the annual dividend paid in that year by said corporation, in the following manner:—If the annual dividend paid is six per cent or less, or if no dividend is paid, the sum payable that year shall be a sum equal to seven eighths of one per cent of the gross earnings of all the lines of elevated or surface railroads owned, leased or operated by said corporation; if said dividend exceeds six per cent then a sum equal to the excess of the dividends over six per cent in addition to said seven eighths of one per cent of said gross earnings. The above sum shall be paid into the treasury of the commonwealth and distributed among the different cities and towns in proportion to the mileage of elevated and surface main track, reckoned as single track, which is owned, leased or operated by said corporation and located therein. Said corporation shall also provide free transfer from elevated to surface and from surface to elevated cars at all stations of the elevated lines reached by surface lines and from one elevated car or train to another at junction points entitling a passenger to a continu-

Free transfers to be provided, etc.

ous ride in the same general direction, and such further free transfers on all the surface lines of railway owned, leased or operated by it, as may be satisfactory to or required by the board of railroad commissioners.

SECTION 2. This act shall take effect upon its acceptance by the board of directors of the Boston Elevated Railway Company within two months after the date of its passage. [Approved April 11, 1908.]

When to
take effect.

Stat. 1908, Chap. 521.

AN ACT TO AUTHORIZE THE BOSTON ELEVATED RAILWAY COMPANY TO CONSTRUCT AN ELEVATED RAILWAY FROM SULLIVAN SQUARE IN THE CITY OF BOSTON THROUGH THE CITY OF SOMERVILLE TO THE CITY OF MEDFORD.

This act did not take effect, as it was not accepted as required by Section 14.

Stat. 1908, Chap. 551.

(AMENDED STAT. 1909, CHAP. 383.)

AN ACT TO AUTHORIZE THE CONSOLIDATION OF PROPERTIES AND FRANCHISES OF THE BOSTON ELEVATED RAILWAY COMPANY AND THE WEST END STREET RAILWAY COMPANY.

By this act the West End Street Railway Company was authorized to sell, and the Boston Elevated Railway Company was authorized to purchase, the property, privileges, and franchises of the West End Street Railway Company. It was provided, however, by Section 15, as amended by Stat. 1909, Chap. 383, that, unless the purchase and sale so authorized was effected on or before December 31, 1910, all authority under the act to make the same should cease. No action was taken under this act.

The following provisions are, however, in force:—

SECTION 6. . . . [The Boston Elevated Railway Company shall, in respect to the property, privileges and franchises purchased from the West End Street Railway Company, be subject to the same exemptions which the West End Street Railway Company or the Boston Elevated Railway Company were subject to in respect thereof prior to such purchase, except that] sections seven, sixty-four, sixty-five and sixty-six of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six shall apply to the Boston Elevated Railway Company in respect of the street railways at any time owned, leased or operated by it.

Application of
general laws
relating to
street railway
companies.

Powers, etc.

SECTION 7. The Boston Elevated Railway Company shall, in respect of the street railways owned, leased or operated by it have the powers conferred upon street railway companies by the general laws now or hereafter in force respecting the carriage of newspapers, baggage, express matter and freight, but such powers shall not be exercised in respect of its elevated lines, except as provided in section seven of chapter five hundred of the acts of the year eighteen hundred and ninety-seven.

Certain provisions of law not to apply.

So much of section one of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four as provides that the Boston Elevated Railway Company shall not transport freight or baggage shall not apply to such street railways. So much of section two of chapter five hundred and forty-eight of the acts of the year eighteen hundred and ninety-four as limits the capital stock of the Boston Elevated Railway Company to twenty million dollars is hereby repealed.

Repeal.

Stat. 1909, Chap. 383.

(See Stat. 1908, Chap. 551.)

Stat. 1910, Chap. 579.

AN ACT TO PROVIDE FOR THE RELOCATION OF THE WESTERLY TERMINAL OF THE RIVERBANK SUBWAY IN THE CITY OF BOSTON.

This act was accepted by the company on July 19, 1910, and acceptance was filed December 14, 1910.

(See Stat. 1907, Chap. 573.)

Stat. 1910, Chap. 630.

AN ACT TO AUTHORIZE THE BOSTON AND EASTERN ELECTRIC RAILROAD COMPANY TO CONSTRUCT A TUNNEL AND TERMINAL IN THE CITY OF BOSTON.

Be it enacted, etc., as follows:

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Tunnel under harbor and connection with Washington street tunnel authorized.

SECT. 2. The company, subject to the provisions of this act, may construct and operate and maintain a tunnel under the harbor from some convenient point in East Boston to some convenient point in the city of Boston proper, and with the consent of the commission and of the Boston Elevated Rail-

way Company or its assigns may connect the tunnel with the Washington street tunnel in such manner as the joint board shall approve. The general character, size, design and location of the tunnels shall be fixed and determined by the joint board as hereinafter provided and the joint board, in locating said tunnel, shall fix and determine the same with due regard to the requirements of a tunnel connection between the north and south stations. The tunnel may have such stations, approaches, entrances, exits, spurs, sidings, turnouts, inclines, loops, deflections, switches, connections and other suitable structures and appurtenances as the joint board may deem convenient and proper to enable the company to turn its trains or to reverse the direction thereof, or to make connections with the subway system of the Boston Elevated Railway Company with the consent of said company as aforesaid, or for other purposes authorized by this act or the general laws governing electric railroads, and the company subject to the limitations hereinafter set forth may operate and maintain the same for the running of electric railroad trains of its own cars and the cars of other companies or any such cars, and for such other incidental uses as are hereinafter defined in connection therewith. In respect of the equipment, use and operation of the railroad to be constructed in the tunnel and transportation thereon the company shall have all the rights, privileges and immunities and be subject to all the duties, liabilities and restrictions set forth in general laws now or hereafter in force applicable to it, so far as the same do not affect its obligations or impair its rights, privileges and immunities under this act.

Connections with subway system.

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SECT. 16. Any railroad corporation, electric railroad company or street railway company, including the Boston Elevated Railway Company, may, if the board shall approve and under such restrictions and regulations and upon such terms, conditions and compensation to the company and for such time as the board after a hearing shall fix, use the said tunnel and for such purpose the company shall permit a physical connection of tracks in the city of Boston at such place as the board shall determine.

Use of tunnel under harbor by Boston Elevated Railway Company.

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[Approved June 15, 1910.]

Stat. 1911, Chap. 740.

AN ACT TO AUTHORIZE THE CONSOLIDATION OF PROPERTIES AND FRANCHISES OF THE BOSTON ELEVATED RAILWAY COMPANY AND THE WEST END STREET RAILWAY COMPANY.

Be it enacted, etc., as follows:

Consolidation of the Boston Elevated Railway Company and the West End Street Railway Company authorized.

SECTION 1. The West End Street Railway Company is authorized to sell, and the Boston Elevated Railway Company is authorized to purchase the property, privileges and franchises of the West End Street Railway Company upon the terms and under the conditions hereinafter set forth, such sale and purchase, if made, to take effect upon the expiration of the present lease from the West End Street Railway Company to the Boston Elevated Railway Company on the tenth day of June, nineteen hundred and twenty-two.

Time of holding meeting to vote upon the question, etc.

The West End Street Railway Company shall, prior to the fifteenth day of September, nineteen hundred and eleven, hold a meeting of its stockholders, specially called for the purpose, to vote upon the question whether said company shall so sell its property, privileges and franchises to the Boston Elevated Railway Company upon the terms hereinafter set forth. The Boston Elevated Railway Company shall, prior to the fifteenth day of September, nineteen hundred and eleven, likewise hold a meeting, specially called for the purpose, to vote upon the question whether said company shall so purchase the property, privileges and franchises of the West End Street Railway Company. If such sale and purchase respectively are so authorized by the holders of not less than a majority in amount of the capital stock of the West End Street Railway Company voting thereon at such meeting, and by the holders of not less than a majority in amount of the capital stock of the Boston Elevated Railway Company likewise voting thereon at such meeting, certificates evidencing such action shall be filed with the secretary of the commonwealth, and said sale shall be made as authorized.

Majority of the capital stock of both companies required, etc.

If the said sale and purchase are not so authorized by the holders of at least a majority in amount of the capital stock of said companies voting thereon at such meetings prior to said date, then all authority hereunder to make said sale and purchase shall cease.

Capital stock may be increased, etc.

SECTION 2. For the purpose above mentioned the Boston Elevated Railway Company is authorized to increase its capital stock by an amount equal at par to the par value of the capital stock of the West End Street Railway Company outstanding at the time of purchase. Such new stock shall consist of shares of the par value of one hundred dollars each, and shall be divided into first preferred stock and second preferred stock, the aggregate par value of the first preferred

stock to be equal to the aggregate par value of the preferred stock of the West End Street Railway Company outstanding at the date of purchase, and the aggregate par value of the second preferred stock to be equal to the aggregate par value of the common stock of the West End Street Railway Company outstanding at the date of purchase; and upon the issue thereof no other stock shall thereafter be issued prior or equal to such first preferred and second preferred stock without the consent of two thirds of the holders of such stocks respectively. The first preferred stock, issued under and to carry into effect the provisions of this act, shall be forever entitled in preference and priority over all other stock of said corporation to semi-annual dividends to be paid out of the net profits of the corporation on the first days of January and July in each year at the rate of eight per cent per annum and no more, which dividends shall be cumulative. The second preferred stock, issued under and to carry into effect the provisions of this act, shall be forever entitled in preference and priority over all other stock of said corporations, except said first preferred stock, to semi-annual dividends to be paid out of the net profits of the corporation on the first days of April and October in each year, at a rate to be determined as hereinafter provided, which dividends shall be cumulative. In case of dissolution or liquidation, the holders of said first preferred and second preferred stock, issued under and to carry into effect the provisions of this act, shall be entitled to the payment of the par value of their shares and all accrued and unpaid dividends before any payment is made to the holders of any other shares, and the remainder of the assets of the corporation shall be distributed among the holders of the other stock. Said first and second preferred stock shall have the same power of voting and transfer as said other stock, and shall be counted with said common stock in all questions of majorities and quorums, but said first preferred stock shall not be entitled to participate in any increase or issue of new stock, common or preferred, which may at any time be made by said corporation. The second preferred stock shall have the same right as the common stock to participate in any increase or issue of such new stock. Dividends on said first and second preferred stock shall accrue from the dates of the last payment of dividends prior to the said purchase on the preferred and common stock, respectively, of the West End Street Railway Company.

SECTION 3. The rate of dividend upon said second preferred stock shall be seven per cent per annum and no more, unless a higher rate is fixed as hereinafter provided.

The West End Street Railway Company shall, if requested so to do in writing between the first day of January, nineteen hundred and twenty-two, and the first day of April, nineteen hundred and twenty-two, by the holders of not less than ten per cent of its then outstanding common stock, make appli-

Rate of
dividend.

Arbitrators
to be appointed
by the chief
justice of the
supreme judi-
cial court.

cation on or before the first day of April, nineteen hundred and twenty-two, to the chief justice of the supreme judicial court, who shall thereupon appoint a board of three disinterested arbitrators. Said arbitrators shall, as soon as may be, determine whether, in view of all pertinent circumstances, a rate of dividend upon said second preferred stock of the Boston Elevated Railway Company of seven per cent per annum is lower than is fair and reasonable. If said arbitrators, or a majority of them, decide that such rate of seven per cent is lower than is fair and reasonable, the arbitrators shall determine what higher rate, not exceeding in any case eight per cent, would be fair and reasonable; and the rate so fixed shall thereafter be the dividend rate upon the second preferred stock. Said arbitrators shall hold public hearings at which the stockholders and directors of the West End Street Railway Company and the Boston Elevated Railway Company, the mayor of any city or the selectmen of any town in which said West End Street Railway Company or the Boston Elevated Railway Company at that time holds locations, and any citizens of any such city or town may be heard; and at such hearings the board of railroad commissioners shall present its views. Said arbitrators may also resort to any other sources of information in respect to the question submitted for determination, shall have authority to utilize the services of the board of railroad commissioners and its employees in securing such information, and may summon witnesses in behalf of the commonwealth, and administer oaths and take testimony. The fees of such witnesses for attendance and travel shall be the same as for witnesses in the superior court. On or before said first day of September, nineteen hundred and twenty-two, unless such time is extended by written order of the arbitrators, they shall make their determination in writing in duplicate, one copy to be delivered to the Boston Elevated Railway Company and the other to the secretary of the commonwealth. In case any vacancy shall at any time occur, by reason of the death, resignation or inability to serve of any arbitrator, his successor shall be appointed in the manner above provided for the original appointment of the arbitrators. Any determination by a majority of the arbitrators shall be final and conclusive. All fees and expenses of the arbitrators shall be assessed upon the Boston Elevated Railway Company.

Issue of new
stock.

SECTION 4. For the purpose of paying for the property, privileges, and franchises of the West End Street Railway Company, the Boston Elevated Railway Company is hereby authorized to issue and deliver to the West End Street Railway Company at any time after April one, nineteen hundred and twenty-two, the amount of first and second preferred stock issued as above stated, and the West End Street Railway Company is hereby authorized to receive such stock in full payment for its property, privileges and franchises, subject

to its existing indebtedness and liabilities, and to distribute the same among its own stockholders in the manner following:— To deliver to each of the holders of its own preferred stock an equal amount at par of the first preferred stock of the Boston Elevated Railway Company, and to the holders of its own common stock an equal amount at par of the second preferred stock of the Boston Elevated Railway Company. Upon such delivery the holders of stock of the West End Street Railway Company shall surrender their shares of stock in the West End Street Railway Company to the Treasurer of the West End Street Railway Company who shall cancel the same as well as any shares delivered to that company under the provisions of the following sections. Such provision shall be made as may be agreed upon by the directors of said corporations for the issue of receipts for fractions of shares and their conversion into full shares.

SECTION 5. Any stockholder of the West End Street Railway Company, who at the meeting provided for in section one votes against the sale authorized by this act, may, within thirty days after the day of said meeting, file with the clerk of said company a writing declaring his opposition to the sale, and stating the number of shares held by him, and the number or numbers of the certificate or certificates evidencing the same, and shall at the same time present to said clerk the certificate or certificates of stock evidencing said shares to be stamped as “non-assenting.”

“Non-assenting” stockholders, etc.

Upon transfer thereafter of any share or shares the certificate or certificates evidencing which are so stamped “non-assenting,” the certificates for said shares issued to the transferee shall in all cases be likewise stamped “non-assenting,” and the holder of such shares shall not be entitled, at the time when the purchase and sale authorized by section one of this act takes effect, to receive in exchange therefor either first or second preferred stock of the Boston Elevated Railway Company, but shall be entitled to receive the cash value of said shares to be determined as provided in section six. The clerk of the West End Street Railway Company shall at all times keep a separate record of certificates outstanding stamped “non-assenting,” and duplicates of such record shall be filed from time to time with the Boston Elevated Railway Company. Any stockholder who at the time of the meeting provided for in section one is legally incapacitated from acting for himself and has no legal representative, may, within thirty days after the removal of such incapacity, file said declaration of opposition with the same effect as if he had voted against said sale.

SECTION 6. Any stockholder of the West End Street Railway Company who owns any share or shares of its stock, the certificates evidencing which are stamped “non-assenting,” as above provided, may at any time between January one, nineteen hundred and twenty-two, and April one, nineteen hundred and twenty-two, request that his said shares be valued

Share of “non-assenting” stockholders to be valued, etc.

as hereinafter provided, and the value thereof shall in such case be paid, tendered, or deposited to or for the account of such holder in the manner following:

Value may be determined by the court, etc.

The stockholder may file a petition in the supreme judicial court within and for the county of Suffolk setting forth the material facts, and asking that the value of his shares may be determined. Thereupon, and upon such notice to all parties concerned as it may deem proper, the court shall pass an order requiring the certificate or certificates evidencing such shares, and duly endorsed, to be deposited with the clerk of the court, and shall appoint three commissioners to ascertain and report the value of the shares. The report shall be made to the court as soon as is practicable, and, after due notice to the parties in interest, shall be confirmed by the court unless some error of law be made to appear upon the face of the report, in which event it shall be recommitted to the commissioners with such order as the court may make, or unless either of the parties to said proceedings shall claim a trial by jury, in which latter event the court shall order the question of the value of the shares to be tried and determined by a jury in the superior court in the same manner in which other civil cases are tried in that court. Any stockholder who holds shares the certificates evidencing which are stamped "non-assenting," and who, during said period between the first day of January, nineteen hundred and twenty-two, and the first day of April, nineteen hundred and twenty-two, is legally incapacitated from acting for himself and has no legal representative, may file the said petition in the supreme judicial court within ninety days after the removal of such incapacity by the appointment of a legal representative or otherwise.

Liability to holders of shares, etc.

The Boston Elevated Railway Company shall be liable for, and shall pay all sums found due and payable to all holders of shares in the proceedings aforesaid, including such interest, cost and expenses as the court may order and shall likewise furnish such security for the said payment as the court may order. For the purpose of the foregoing section, the value of the shares of the West End Street Railway Company shall neither be increased nor diminished by reason of the provisions of this act or by the consolidation herein provided for.

"Non-assenting" shares to become the property of the West End Street Railway Company, etc.

SECTION 7. Upon payment, or tender or deposit with the clerk of the court of the value of said shares fixed as aforesaid, such "non-assenting" shares and the certificate or certificates thereof shall become the property of and shall be transferred and delivered to the West End Street Railway Company, whose right and title to receive the same and to hold possession thereof may be enforced by the court by any appropriate process, and the West End Street Railway Company shall, upon such payment or tender or deposit redeliver to the Boston Elevated Railway Company the first or second preferred shares to which the holder of such "non-assenting" shares would have been entitled, and the Boston Elevated Railway Company may

sell the same in the manner and subject to the requirements prescribed by law, and apply the proceeds, so far as necessary, toward the reimbursement of the company for such payment or tender or deposit. If such proceeds are insufficient to reimburse the company for such payment or tender or deposit, the company may, in the manner and subject to the requirements prescribed by law, issue additional bonds or stock, or both, so far as may be necessary to provide for such reimbursement.

Exceptions may be taken to any ruling or order of said court, to be heard and determined as in other civil cases. The court may make all such orders for the enforcement of the rights of any party to the proceedings, for consolidation of two or more petitions and their reference to the same commissioners, for the consolidation of claims, for a trial by jury, for deposit of money in court, and for the payment of interest upon the value of the stockholders' shares as determined, and the payment of costs by one party to the other, as justice and the speedy settlement of the matters in controversy may require. Exceptions.

SECTION 8. After the necessary consent of the stockholders of the West End Street Railway Company and of the Boston Elevated Railway Company has been given to the purchase and sale authorized by section one of this act, any holder of common or preferred stock of the West End Street Railway Company may, on or before the tenth day of June, nineteen hundred and twenty-two, exchange his stock for an equal amount at par of the common stock of the Boston Elevated Railway Company; and, after the tenth day of June, nineteen hundred and twenty-two, any holder of the first or second preferred stock of the Boston Elevated Railway Company may exchange such first or second preferred stock for an equal amount at par of the common stock of the Boston Elevated Railway Company. The stock of the West End Street Railway Company so exchanged shall be held by the Boston Elevated Railway Company, and shall not be sold or incumbered without the consent of the board of railroad commissioners, and the market value thereof shall be deducted from the value of the corporate franchise of the Boston Elevated Railway Company for the purpose of ascertaining the amount of the tax on its corporate franchise. Upon the tenth day of June, nineteen hundred and twenty-two, all West End stock so acquired shall be cancelled, and shall not be taken into account in determining the aggregate par value of the first preferred and the second preferred stock to be issued by the Boston Elevated Railway Company and delivered to the West End Street Railway Company under the provisions of this act. After consent of the stockholders to the sale, etc., stock may be exchanged, etc.

In case of the exchange of first or second preferred stock of the Boston Elevated Railway Company for common stock of that company, the first or second preferred stock so exchanged shall be cancelled and no other first or second preferred stock shall be issued in its place. The Boston Elevated Railway Company is hereby authorized to increase its common stock Certain stock to be cancelled, etc.

from time to time for the purpose of effecting the exchange herein provided for.

Cash adjustment in respect to dividends, etc.

In connection with the exchange of the stock of the West End Street Railway Company for the stock of the Boston Elevated Railway Company, or of the first and second preferred stock of the Boston Elevated Railway Company for common stock of that company, there shall be a cash adjustment in respect of the accrued and unpaid dividends upon the stock of the West End Street Railway Company and the Boston Elevated Railway Company respectively, and if the parties are unable to agree upon such adjustment the same shall be determined, upon the application of either party, by the board of railroad commissioners.

Sale and purchase, etc.

SECTION 9. If the necessary consent of the stockholders of the West End Street Railway Company and of the Boston Elevated Railway Company shall be given to the purchase and sale authorized by section one of this act, the West End Street Railway Company shall forthwith sell, and the Boston Elevated Railway Company shall forthwith purchase, all the real estate of the West End Street Railway Company which is not required in the conduct of the business of said companies or either of them, for such price as the companies may agree upon. If the companies are unable to agree either upon what real estate is not required for the conduct of said business, or upon the price to be paid therefor, the same shall be determined, upon the application of either company, by the board of railroad commissioners. The proceeds of said sale to an amount not exceeding one million five hundred thousand dollars shall be held as a special trust fund by the Boston Elevated Railway Company and be invested by it and allowed to accumulate until the tenth day of June, nineteen hundred and twenty-two. Thereafter the Boston Elevated Railway Company shall continue to invest said fund with its accumulations to that date, and shall apply the annual income thereof to the purchase and retirement of second preferred stock of the Boston Elevated Railway Company issued under, and to carry into effect, the purposes of this act. Such stock shall be purchased by the Boston Elevated Railway Company as cheaply as possible after tenders have publicly been invited. No part of said fund or its income shall be used for any other purpose except for the retirement of the aforesaid second preferred stock of the Boston Elevated Railway Company, in case said purchase and sale are effected.

Certain stock to be cancelled, etc.

Any second preferred stock so purchased shall be cancelled and no other second preferred stock shall be issued in its place. When all the second preferred stock has either been converted into common stock of the Boston Elevated Railway Company or has been retired as hereinbefore provided, or otherwise, said fund, with its accumulations, shall be applied by the Boston Elevated Railway Company to any purpose for which its stock and bonds can legally be issued.

SECTION 10. Upon the taking effect of the purchase and sale authorized by section one of this act the Boston Elevated Railway Company shall assume and be responsible for all the indebtedness and liabilities of the West End Street Railway Company, and shall, in respect to the construction, operation and maintenance of street railways, succeed to all the powers, privileges, rights and franchises, and be subject to all the duties, obligations, restrictions and liabilities of said West End Street Railway Company, so far as the same are not in conflict with the provisions of law then applicable to street railways owned, leased or operated by the Boston Elevated Railway Company. All rights or claims of either the West End Street Railway Company or the Boston Elevated Railway Company against the other, whether arising out of the lease executed between them December nine, eighteen hundred and ninety-seven, or otherwise, as they respectively may be at the time of the said purchase shall be deemed to be satisfied and extinguished by the said purchase and sale: *provided, however,* that the Boston Elevated Railway Company may, subject to the approval of the board of railroad commissioners, issue additional stock or bonds, or both, to provide means for paying for permanent additions to, and alterations and improvements in the property of the West End Street Railway Company made prior to the said purchase, and for which it shall not have been reimbursed by the West End Street Railway Company.

Responsibility for indebtedness and liabilities, etc.

Proviso.

SECTION 11. The provisions of this act shall not be construed as, nor taken to be, an extension for any purpose of the twenty-five year period fixed by section ten of chapter five hundred of the acts of the year eighteen hundred and ninety-seven, and shall not in any respect impair or abridge any power of the commonwealth or other public authority which would otherwise exist to revoke or modify any franchises, rights or privileges now or hereafter enjoyed by said companies or either of them.

Certain powers of the commonwealth not impaired, etc.

SECTION 12. Upon the close of the tenth day of June, nineteen hundred and twenty-two, all authority granted to the West End Street Railway Company by sections five and six of chapter four hundred and thirteen of the acts of the year eighteen hundred and eighty-seven to construct and maintain tunnels, and all authority granted to said company under chapter four hundred and fifty-four of the acts of the year eighteen hundred and ninety to construct and operate a system of elevated railroads shall cease.

Certain authority for the construction of tunnels, etc., to cease, etc.

SECTION 13. The Boston Elevated Railway Company shall not with respect to any street railway at any time owned, leased or operated by it, other than the street railways acquired from the West End Street Railway Company, acquire by virtue of this act any rights or privileges in addition to those already possessed or enjoyed by it except such as are expressly granted herein.

No rights, etc., to be acquired unless expressly granted.

SECTION 14. The facilities for travel on the railways now or hereafter operated by the Boston Elevated Railway Company,

Facilities and rates, etc.

shall not be diminished nor the rates of fare increased by reason of this act or of the purchase and sale herein authorized.

Default
under existing
lease, etc.

SECTION 15. If the Boston Elevated Railway Company shall at any time make any default under the existing lease from the West End Street Railway Company to it whereby the West End Street Railway Company may become entitled to terminate said lease, or if the Boston Elevated Railway Company should become bankrupt, or if the Boston Elevated Railway Company shall fail to furnish such security as the court may order for the payment of any sums found due to the holders of non-assenting shares as provided for in section six, then, in either of said cases, the West End Street Railway Company shall be relieved from its obligations to sell its property and franchises to the Boston Elevated Railway Company, as herein provided, and the fund provided for in section nine shall be transferred to the West End Street Railway Company.

Extension of
contract, etc.

SECTION 16. If the necessary consent of the stockholders of the West End Street Railway Company and the Boston Elevated Railway Company shall be given to the purchase and sale authorized in section one of this act, the Boston Elevated Railway Company may, in its own name, execute an extension of the contract for the use of the Tremont street subway: *provided*, that such extension shall contain an express provision to the effect that the use and control of said subway, under such extension, is subject to the rights of the West End Street Railway Company under Article II of the existing lease from the West End Street Railway Company to the Boston Elevated Railway Company, and the insertion of said provision shall be deemed a full compliance with that part of Article II which requires the embodiment in any renewal or extension of said subway contract of stipulations satisfactory to the West End Street Railway Company providing for the use and control of said Tremont street subway by the West End Street Railway Company upon the expiration or earlier termination of the lease.

Proviso.

Changes and
alterations in
subway, etc.

Changes and alterations may be made in the Tremont street subway, so far as may be expedient in connection with the construction of the proposed Boylston street subway, and whenever the use and control of the Tremont street subway shall revert to the West End Street Railway Company, if two of the tracks therein are then operated as a part of or in connection with the Boylston street subway, the West End Street Railway Company shall accept as a substitute therefor the two additional tracks which have been constructed to be operated as a part of, or in connection with, the Tremont street subway.

SECTION 17. This act shall take effect upon its passage. [Approved July 20, 1911.]

The foregoing act was accepted by the Boston Elevated Railway Company on August 28, 1911, and acceptance was filed September 5, 1911. It was accepted by the West End Street Railway Company on September 6, 1911, and acceptance was filed September 12, 1911.

Stat. 1911, Chap. 741.**AN ACT RELATIVE TO ELECTRIC RAILWAY TRANSPORTATION FACILITIES IN THE CITY OF BOSTON AND ITS VICINITY.***Be it enacted, etc., as follows:***PART I.****RELATIVE TO THE CONSTRUCTION OF ADDITIONAL TUNNELS OR SUBWAYS IN THE CITY OF BOSTON.****DORCHESTER TUNNEL.**

SECTION 1. The Boston transit commission (hereinafter called the commission) shall construct in the city of Boston (hereinafter called the city) a tunnel (hereinafter called the Dorchester tunnel) designed to contain two railway tracks connecting with the tracks in the Park street station of the Cambridge connection, so-called, under Boston Common and Tremont street, and being an extension of said Cambridge connection, forming a continuous route therewith and running under Winter and Summer streets to Dewey square, and thence by such route as may be approved by the commission, to a point at or near the junction of Dorchester avenue and Broadway in South Boston; thence in, under or near Dorchester avenue to a point in, at or near Andrew square in Dorchester, together with stations at or near the corner of Washington street and Summer street, at or near the South station, at or near the corner of Broadway and Dorchester avenue, and in, at or near Andrew square, and passageway connections with the Tremont street subway and the Washington street tunnel and the South station; and the commission in connection therewith may make such alterations or enlargements of the present Park street station of the Tremont street subway, and of the exits and entrances from and to such station, and of the station now being constructed at or near the junction of Park and Tremont streets for the tunnel of the Cambridge connection, so-called, and of the exits and entrances therefrom and thereto, as the commission may deem necessary or advisable.

Construction of additional tunnels or subways in the city of Boston.

With the consent of the Boston Terminal Company, the New York, New Haven and Hartford Railroad Company and the Boston and Albany Railroad Company, or with the consent of the board of railroad commissioners (hereinafter called the board), said tunnel may be constructed across or under property owned or occupied by the last named corporations, but in that event said corporations shall be entitled to recover compensation for any injury to their property to the same extent as private persons from whom takings may be made for the purposes of said tunnel.

Compensation for injury to property, etc.

SECTION 2. The commission shall not begin the work of construction until it has filed in the office of the commissioner of public works of the city a plan, signed by the commission, showing

Beginning of work of construction, etc.

the proposed route, and the general form and method of construction, the location of proposed tracks, stations, approaches and connections, and the alignment and grade, which plan shall be submitted to the Boston Elevated Railway Company (hereinafter called the "company," which term shall be deemed to include its successors or assigns) for its examination, nor until the contract hereinafter mentioned for the use of said Dorchester tunnel has been executed. Any such plan so filed may be altered at any time by a new plan signed, submitted and filed in like manner.

Contract, etc.

SECTION 3. Within the time and upon the terms specified in Part II of this act, the commission, in the name and on behalf of the city of Boston, and the company, shall execute a contract in writing for the sole and exclusive use of the tunnel by the company for the running of its cars therein, and for such other uses as the commission and the company may agree upon, for a term of years and at an annual rental as specified in Part II of this act, and upon such other provisions and conditions not affecting the term or rental, and following the form of the contract made by and between the city, acting by the commission, and the company for the use of the Washington street tunnel, so far as the same may be applicable, as the commission and the company may agree upon, or, in case of difference, as the board may determine. The provisions of Part I of this act in so far as they declare, define or establish the terms and conditions for the construction, tenure, maintenance and operation of the tunnel shall be embodied in and made a part of said contract. The use of the tunnel shall begin when, in the opinion of the commission, a reasonable time after completion has been allowed for equipment. The net cost thereof shall be deemed to include, except as is otherwise provided herein, all expenditures incurred in acquisition and construction, including damages, expenses and salaries of the commission and the interest on the debt incurred in construction prior to the beginning of the use, and shall also include all expenses already incurred under the provisions of chapter ninety-four of the resolves of the year nineteen hundred and ten.

Dorchester
Tunnel Bonds.

SECTION 4. The treasurer of the city of Boston shall from time to time, on request of the commission, issue and sell at public or private sale the bonds of the city, registered or with interest coupons attached, as he may deem best, to an amount not exceeding the cost of the tunnel provided for by section one of this act. Such bonds shall be designated on their face "Dorchester Tunnel Bonds"; shall be for such terms not exceeding forty-five years, as the mayor and treasurer of the city may determine; and shall bear interest payable semi-annually, at such rate, not exceeding four per cent per annum, as the treasurer shall determine. The proceeds of such bonds, including any premiums realized from the sale thereof shall be used to meet all damages, costs and expenses incurred by the commission or by the city in carrying out the provisions of this act for the construction of the Dorchester tunnel. The proceeds from any sale or sales of

lands or rights taken, or acquired by purchase or otherwise under authority of this act for the construction of said tunnel shall be used for the same purpose as the rentals of said tunnel, or shall be used for the payment of expenditures incurred for construction, as the commission may determine. All rentals, tolls, percentages or other annual compensation received by the city for any use of the tunnel under this act, or for any use of any lands or rights acquired under the provisions of this act for the Dorchester tunnel shall be used in the first instance for the payment of interest on the bonds issued for the cost of said tunnel, and the balance shall be used for the purposes specified in Part II of this act. Any interest received by the city upon the proceeds of the bonds prior to the expenditure of such proceeds shall be credited against interest during construction in ascertaining the net cost of the tunnel. The city shall have, hold and enjoy in its private or proprietary capacity, for its own property, the said tunnel and subway and all rents, tolls, income and profits from all contracts entered into by it for the use of said subway or tunnel or any part thereof, and the same shall never be taken by the commonwealth except on payment of just compensation.

BOYLSTON STREET SUBWAY.

SECTION 5. The commission shall construct in the city of Boston a subway (hereinafter called the Boylston street subway) so designed as to be adapted to contain two railway tracks, commencing with an open cut at or near the junction of Commonwealth avenue and Beacon street, thence continuing to, in, and under Commonwealth avenue, Charlesgate west, the Fenway, Charlesgate east, Newbury street, crossing under Massachusetts avenue; thence passing under or across private land and land of the city of Boston to a point under Boylston street near Hereford street; thence under Boylston street to a point at or near its junction with Arlington street; thence in and under public ways and public or private lands by such route as the commission may determine, to a point at or near the junction of Boylston street and Tremont street, and thence in or under Tremont street and public lands to a point at or near the Park street station of the Tremont street subway, together with stations at Massachusetts avenue, at Copley square, at or near the corner of Boylston and Tremont streets, and at or near Park street. Instead of constructing said subway as a continuous line from Arlington street to Park street station, the commission may connect said subway at or near the junction of Boylston street and Tremont street with the tracks of the present Tremont street subway, and between that point and the Park street station may either enlarge the present Tremont street subway so as to provide for two additional tracks, or may construct a separate subway adapted to contain two railway tracks, connecting the same with the present Tremont street subway and the tracks located therein.

Construction
of the Boylston
street subway,
etc.

The cost of enlarging the Tremont street subway, if that is done,

or of building said separate subway, as above provided, shall be included in the cost of the Boylston street subway.

Any tunnel or subway construction under, or within one hundred feet of, Boston Common shall be made, so far as is practicable, water tight, and the work shall be so done as to avoid the drainage of moisture from the surrounding soil, or other injury to the trees; and the commission may construct a suitable system of sub-soil irrigation above or near the line of any section of said subway constructed under the Common, or may take any other measures which it may deem expedient for the preservation of the trees, to be paid for as a part of the cost of the subway. The commission shall not erect any additional permanent structures above the surface of the Common.

Plan to be
filed.

SECTION 6. The commission shall not begin the work of construction until it has filed in the office of the commissioner of public works of the city a plan signed by the commission showing the proposed route, and the general form and method of construction, the location of proposed tracks, stations and approaches and the alignment and grade, which plan shall be submitted to the company for its examination, nor until the contract hereinafter mentioned for the use of said Boylston street subway has been executed. Any such plan so filed may be altered at any time by a new plan signed, submitted and filed in like manner.

Contract for
use of subway,
etc.

SECTION 7. Within the time, and upon the terms specified in Part II of this act, the commission, in the name and on behalf of the city of Boston, and the company, shall execute a contract in writing for the sole and exclusive use of the subway by the company for the running of its cars therein, and for such other uses as the commission and the company may agree upon, for a term of years, and at an annual rental as specified in Part II of this act, upon such provisions and conditions, not affecting the term or rental, and following the form of the contract made by and between the city, acting by the commission, and the company for the use of the Washington street tunnel, so far as the same may be applicable, as the commission and the company may agree upon, or in case of difference as the board may determine. The provisions of Part I of this act in so far as they declare, define or establish the terms and conditions for the construction, tenure, maintenance and operation of the subway shall be embodied in and made a part of said contract. The use of the subway shall begin when, in the opinion of the commission, a reasonable time after completion has been allowed for equipment. The net cost thereof shall be deemed to include, except as is otherwise provided herein, all expenditures incurred in acquisition and construction, including damages, expenses and salaries of the commission, and the interest on the debt incurred in construction prior to the beginning of the use, and shall also include all expenses already incurred in connection with the Riverbank subway authorized by chapter five hundred and seventy-three of the acts of the year nineteen hundred and seven.

Repeal.

SECTION 8. So much of chapter five hundred and seventy-

three of the acts of the year nineteen hundred and seven as authorizes the construction of a subway and tunnel to be designated as the Riverbank subway is hereby repealed. The proceeds not already expended of the bonds already issued under section thirteen of said chapter, designated on their face as Boston Riverbank Subway Loan, including any premiums realized from the sale thereof, less the amount of said proceeds used as specified in section fourteen of this act, shall be used for the same purposes as the proceeds of the bonds authorized by section nine of this act, but no more such Riverbank subway bonds shall be issued after this act takes effect.

SECTION 9. The treasurer of the city of Boston shall, from time to time, on request of the commission, issue and sell, at public or private sale, the bonds of the city, registered or with interest coupons attached, as he may deem best, to an amount not exceeding the cost of the subway provided for by section five of this act, less the amount of the proceeds of any Riverbank subway bonds not already expended and not used as specified in section fourteen of this act. Such bonds shall be designated on their face as Boylston Street Subway Bonds, shall be for such terms, not exceeding forty-five years, as the mayor and treasurer of the city may determine; and shall bear interest, payable semi-annually, at such rate, not exceeding four per cent per annum, as the treasurer shall determine. The proceeds of such bonds, including any premiums realized from the sale thereof, shall be used to meet all damages, costs and expenses incurred by the commission or by the city in carrying out the provisions of this act for the construction of the Boylston street subway. The proceeds of any sale or sales of land or rights taken, or acquired by purchase or otherwise, under the provisions of this act for the construction of said subway shall be used for the same purposes as the rentals of said subway, or shall be used for the payment of expenditures incurred for construction, as the commission may determine. All rentals, tolls, percentages or other annual compensation received by the city for any use of said subway under this act, or for any use of any lands or rights acquired under the provisions of this act for the Boylston street subway, shall be used in the first instance for the payment of interest on the bonds issued for the cost of said subway, and on the Riverbank subway bonds, and the balance shall be used for the purposes specified in Part II of this act. Any interest received by the city upon the proceeds of the bonds, prior to the expenditure of such proceeds, shall be credited against interest during construction in ascertaining the net cost of the said subway. The city shall have, hold and enjoy in its private or proprietary capacity for its own property the said tunnel and subway and all rents, tolls, income and profits from all contracts entered into by it for the use of said subway or tunnel or any part thereof, and the same shall never be taken by the commonwealth except on payment of just compensation.

Treasurer of
the city of
Boston to
issue and sell
bonds, etc.

EAST BOSTON TUNNEL EXTENSION.

East Boston
tunnel
extension, etc.

SECTION 10. The commission shall extend the East Boston tunnel by constructing a tunnel and subway (to be designated as the East Boston tunnel extension) connecting with the existing East Boston tunnel at grade or otherwise, so designed as to be adapted to contain two railway tracks, beginning at or near the present terminus of the East Boston tunnel in Court street near Scollay square; thence under Court street to and through Scollay square; thence under Tremont Row and under Court street to, under and through Bowdoin square, and thence under Cambridge street to a suitable connection with surface tracks in Cambridge street at a point at or near Lynde street, or at or near North Russell street, or between said streets, together with a station in or near Scollay square and a station in or near Bowdoin square, and with suitable approaches, sidings, entrances, elevators, inclines, connections and other structures; and the commission may, with the consent of the company, make any changes which it deems necessary or expedient in the existing subway and tunnel and such alterations or enlargements in the existing subway station in Scollay square and Court street and in the exits and entrances therefrom and thereto, as it may deem necessary or expedient. To provide for the connection of the tunnel extension with the surface tracks in Cambridge street, the commission, acting for this purpose in place of, and with all the powers of the board of street commissioners of the city of Boston and of the officer authorized to construct streets by chapter three hundred and ninety-three of the acts of the year nineteen hundred and six, may widen, alter and construct Cambridge street in such manner as the commission may deem necessary or advisable, and may assess betterments for the improvement under section five of said chapter.

Plan of
proposed
route to be
filed, etc.

SECTION 11. The commission shall not begin the work of construction until it has filed in the office of the commissioner of public works of the city a plan signed by the commission showing the proposed route or the location thereof, and the general form and method of construction, the location of proposed tracks, stations and approaches, and the alignment and grade, which plan shall be submitted to the company for its examination, nor until the contract hereinafter mentioned for the use of said East Boston Tunnel extension has been executed. Any such plan so filed may be altered at any time by a new plan signed, submitted and filed in like manner.

Contract for
the use of the
tunnel exten-
sion, etc.

SECTION 12. Within the time and upon the terms specified in Part II of this act, the commission, in the name and on behalf of the city of Boston, and the company shall execute a contract in writing for the sole and exclusive use of the East Boston tunnel extension by the company for the running of its cars therein, and for such other uses as the commission and the company may agree upon, for a term of years and at an annual rental as specified in Part II of this act, upon such provisions and conditions not

affecting the term or rental, and following the form of the contract made by and between the city, acting by the commission, and the company for the use of the Washington street tunnel, so far as the same may be applicable, as the commission and the company may agree upon, or, in case of difference, as the board may determine. The provisions of Part I of this act in so far as they declare, define or establish the terms and conditions for the construction, tenure, maintenance and operation of the tunnel extension shall be embodied in and made a part of said contract. The use of the tunnel extension shall begin when, in the opinion of the commission, a reasonable time after completion has been allowed for equipment. The net cost thereof shall be deemed to include, except as is otherwise provided herein, all expenditures incurred in acquisition and construction and in making necessary changes in the East Boston tunnel, including damages, expenses (except damages and all other expenses for lands and rights in lands, or otherwise incurred, for the widening of Cambridge street, one half of which damages and expenses, less the betterments the city shall pay, in the same manner as for other work done under said chapter three hundred and ninety-three of the acts of the year nineteen hundred and six, and one half of which shall be considered as part of the cost of the tunnel extension and be paid for out of the proceeds of bonds issued under section thirteen), and salaries of the commission and the interest on the debt incurred in construction prior to the beginning of the use.

SECTION 13. The treasurer of the city of Boston shall, from time to time, on the request of the commission, issue and sell at public or private sale the bonds of the city, registered or with interest coupons attached, as he may deem best, to an amount not exceeding the cost of the tunnel and subway provided for by section ten of this act. Such bonds shall be designated on their face East Boston Tunnel Extension Bonds; shall be for such terms, not exceeding forty-five years, as the mayor and treasurer of the city may determine; and shall bear interest payable semi-annually, at such rate, not exceeding four per cent per annum, as the treasurer shall determine. The proceeds of such bonds, including any premiums realized from the sale thereof, shall be used to meet all damages, costs and expenses incurred by the commission or by the city, except as aforesaid, in carrying out the provisions of this act relative to the construction of the said tunnel extension. The proceeds of any sale or sales of lands or rights taken or otherwise acquired under authority of this act for the construction of said tunnel extension (except lands and rights in land taken or purchased for the widening of Cambridge street, which shall be applied in reduction of the damages and expenses incurred for said widening), shall be used for the same purpose as the rentals of said tunnel extension, or shall be used for the payment of expenditures incurred for construction, as the commission may determine. All rentals, tolls, percentages or other annual compensation received by the city for any use of said tunnel extension under this act, and for any use of any lands or

Issue and sale
of bonds, etc.

rights acquired under authority of this act for said tunnel extension, except as aforesaid, shall be used in the first instance for the payment of interest on the bonds issued for the cost of said tunnel extension, and the balance shall be applied to the purposes specified in Part II of this act. Any interest received by the city upon the proceeds of the bonds, prior to the expenditure of such proceeds, shall be credited against interest during construction in ascertaining the net cost of the said tunnel extension. The city shall have, hold and enjoy in its private or proprietary capacity, for its own property, the said subway and tunnel extension, and all rents, tolls, income and profits from all contracts entered into by it for the use of said subway and tunnel extension or any part thereof, and the same shall never be taken by the commonwealth except on payment of just compensation.

GENERAL PROVISIONS.

Investigation,
surveys, etc.,
to be made, etc.

SECTION 14. The commission shall, immediately after the passage of this act, make such preliminary investigations, surveys and plans as it may deem expedient, and to that end may enter upon any lands, and place and maintain marks therein, and may make excavations and borings, and do all other acts necessary for such investigations and surveys, and may expend such sums as it deems necessary therefor. The expenses incurred in making such preliminary investigations, surveys and plans to an amount not exceeding fifty thousand dollars shall be paid from the proceeds of the Riverbank subway bonds. Upon the construction of the respective tunnels and subways herein provided for such expenses shall be deemed a part of the cost thereof, and shall be charged to the respective subways and tunnels for which the expense was incurred.

Beginning of
work, etc.

SECTION 15. The construction of the Dorchester tunnel, the Boylston street subway and the East Boston tunnel extension, hereinbefore authorized, shall be begun, in each respective case, immediately after the contract for the use of such tunnel or subway has been executed by the commission and the company.

Variations
and alterations
in routes, etc.

SECTION 16. In connection with the construction of any tunnel or subway authorized by this act the commission may, for the purpose of avoiding objectionable curves or any practical or legal obstacles, vary or alter the routes herein respectively prescribed for the tunnels and subways, and for the said purposes may locate the tunnels, subways and stations or any of them, in whole or in part, on private or public lands. The commission may also, in connection with any tunnel or subway, construct such approaches, sidings, spur tracks, loops, entrances, inclines, elevators, connections and other structures as it may deem necessary. The commission may, with the consent of the company, make such alterations in the existing tunnels and subways, including stations and exits and entrances thereof, as it may deem necessary or advisable.

SECTION 17. The commission may make contracts in the name of the city for the work herein authorized, but all contracts involving two thousand dollars or more in amount shall be in writing and signed by a majority of the commission; and no such contract shall be altered except by an instrument in writing, signed by the contractor and a majority of the commission, and also by the sureties, if any, on the bond given by the contractor for the completion of the original contract. No such contract, and no alteration of any such contract, shall be valid or binding on the city unless executed in the manner aforesaid.

Certain contracts to be in writing, etc.

SECTION 18. All work done under this act, under or near public streets and places shall be conducted, so far as may be practicable, in such manner as to leave such streets and places, or a reasonable part thereof, open for traffic between the hours of seven in the forenoon and six in the afternoon of each secular day, except legal holidays.

Streets to be kept open for traffic, etc.

SECTION 19. The commission may, for the purposes of this act, use public ways and lands without compensation therefor, and may take, or acquire by purchase or otherwise for the city, lands in fee, and easements, estates and rights in land, including the right to go under the surface thereof or through or under buildings or parts of buildings thereon; and such taking in fee or otherwise may be made whether the lands taken or otherwise affected are held under or by title derived under eminent domain or otherwise, and may be made for the purpose of providing locations for pipes, wires, conduits, and other structures the relocation of which is made necessary or expedient by the construction of any subway or tunnel authorized by this act. A taking under this section of an easement or other estate or right in a given parcel of real estate, whether such parcel consists of unimproved land or of land and buildings, may be confined to a portion or section of such parcel fixed by planes or other surfaces of division, below, above, or at the surface of the soil; and in such case no taking need be made of upper or lower portions or sections, except of such easements therein, if any, as the commission may deem necessary. The commission, to make any taking by right of eminent domain, shall cause to be recorded in the registry of deeds for the county of Suffolk a description of the lands, easements, estates or rights to be taken, as certain as is required in a common conveyance of land, with the statement that the same are taken under authority of this act, which description and statement shall be signed by the commission; and the lands, easements, estates or rights therein described shall upon such recording be taken for and shall vest in the city. The commission shall, so far as may be practicable, notify all known owners of such taking, but the validity thereof shall not be affected by want of such notice.

Public ways and lands may be used, etc.

Taking to be recorded.

SECTION 20. The commission may sell the buildings and other structures upon any lands acquired by it, or may remove the same; and shall sell, if a sale be practicable, or if not shall lease, any lands, or rights or interests in land or other property acquired for the purposes of this act, whenever the same shall, in the opinion

Structures on lands acquired may be sold, etc.

of the commission, cease to be needed for such purposes. The proceeds of such sales and leases, and the fair valuation of any such lands or other property no longer needed for the said purposes, but not actually sold, as agreed upon by the commission and the company, or in case of difference as determined by the board, shall be deducted from the cost of the tunnel or subway for the construction of which such lands or other property were acquired, for the purpose of ascertaining the rental thereof.

Damages.

SECTION 21. The commission shall determine and award the damages sustained by any person by reason of property taken or injured by the commission under authority of this act, except public ways or lands, and may agree with any such person as to the amount of his damages, which amount the city shall be liable to pay. If any such person is dissatisfied with such award, or cannot agree with the commission upon his damages, the same may be determined by a jury in the superior court for the county of Suffolk, on petition therefor of such person, or of the commission, against the city, filed in the clerk's office within one year after the property is taken, entered on, or injured; and judgment shall be entered upon the determination of the jury and costs shall be taxed and execution issued in favor of the prevailing party as in civil cases. The members of the commission shall not be liable personally for any such damage. The provisions of sections seventeen to twenty-five, inclusive, and of section one hundred and fourteen, of chapter forty-eight of the Revised Laws, relating to procedure in case of damage to estates in which several parties have different or several interests shall apply to proceedings in such cases under this act.

Temporary removal of tracks, etc.

SECTION 22. The commission may order the temporary removal or relocation of any surface tracks, and the temporary or permanent removal or relocation of any conduits, pipes, wires, poles or other property of any person or corporation which it deems to interfere with the construction or operation of any tunnel or subway authorized by this act, and shall grant new locations for any such structures so removed or relocated. Such orders, to the extent specified therein, shall be deemed a revocation of the right or license to maintain such tracks, conduits, pipes, wires, poles or other property, and the owner of any such structures in public ways or lands shall comply with the said orders without expense to the city. If any such owner shall fail to comply with the order of the commission within a reasonable time, to be fixed in the order, the commission may discontinue and remove such tracks, conduits, pipes, wires, poles or other property, and may relocate the same, and the cost of such discontinuance, removal or relocation shall be repaid to the city by the owner. No such discontinuance, removal or relocation shall entitle the owner of the property thus affected to any damages on account thereof. Any such structures in or upon private lands may be removed and relocated by the commission, or if removed and relocated by the owner thereof, the reasonable expense shall be paid to him by the commission. Any gas or electric lighting company may shut off

the gas or current from any pipes or wires affected by any acts done hereunder, so far as may be necessary to avoid danger of escape or explosion of gas, or other public danger.

SECTION 23. Debts incurred by the city for the construction of the Dorchester tunnel, the Boylston street subway and the East Boston tunnel extension, including the widening of Cambridge street authorized by this act, shall not be considered in determining the statutory limit of indebtedness of the city.

Debts incurred not to be included within debt limit.

SECTION 24. The company, for the equipment of the tunnels and subways authorized by this act, and for all expenditures by the company required or authorized hereby, from time to time, in the manner and subject to the requirements prescribed by law, may issue and dispose of such amounts of its capital stock or bonds, or of each, at its option, in addition to the amounts heretofore authorized, as may be necessary therefor.

Capital stock and bonds.

In respect to the equipment, use and operation of the railway to be located in the tunnels and subways and transportation therein, the company shall have all the powers and privileges and be subject to all the duties, liabilities, restrictions and provisions set forth in general and special laws now or hereafter in force applicable to it. To provide for proper connections of the tracks in any subway or tunnel authorized by this act with surface tracks, the company may make such alterations or extensions of its surface tracks and appurtenances as the board may approve.

Powers and privileges.

SECTION 25. Upon the determination by the commission of any important question relating to any plan or work herein provided for, except an award of or agreement upon damages, as provided in section twenty-one hereof, the company may, within three days after notice of such determination, apply to the board for a revision of the same, and thereupon the board may consider and finally determine such question.

Board to consider and determine certain questions.

SECTION 26. The supreme judicial court and the superior court, upon application of any party in interest, including the city, the commission, the company or any ten taxable inhabitants of the city, may enforce or prevent violation of the foregoing provisions of this act by any appropriate process.

Jurisdiction of court.

PART II.

RELATIVE TO CONTRACTS FOR THE USE OF SUBWAYS AND TUNNELS WITHIN THE CITY OF BOSTON.

SECTION 27. The contract for the use of the Tremont street subway, so-called, shall be extended for a term beginning with the expiration of said present contract and ending on the first day of July, nineteen hundred and thirty-six, upon the same terms and conditions stated in said existing contract, except as is otherwise provided herein. The rental, from and after the expiration of the present contract, shall be a sum equal to four and one half per cent per annum on the net cost of said Tremont street subway.

Extension of contract of the Tremont street subway, etc.

Extension of
lease of the
East Boston
tunnel, etc.

SECTION 28. The lease of the East Boston tunnel to the Boston Elevated Railway Company shall be extended from the tenth day of June, nineteen hundred and twenty-two, until the first day of July, nineteen hundred and thirty-six, upon the same terms and conditions contained in the existing lease, except as is otherwise hereinafter expressly provided. The rental, after the tenth day of June, nineteen hundred and twenty-two, shall be a sum equal to four and one half per cent per annum on the net cost of the tunnel. The provision for the collection of tolls from passengers using the tunnel shall be eliminated from such extension.

Extension of
contract for
the use of the
Washington
street tunnel,
etc.

SECTION 29. The contract with the Boston Elevated Railway Company for the use of the Washington street tunnel shall be extended from the expiration of the present contract, on the thirtieth day of November, nineteen hundred and thirty-three, until the first day of July, nineteen hundred and thirty-six, such extension to be upon the same terms and conditions as are contained in the present contract, except as is otherwise provided hereinafter. The rental during such extension shall be at the rate of four and one half per cent per annum upon the net cost of the tunnel.

Term of
contract
and rate of
rental, etc.,
for the
Cambridge
connection.

SECTION 30. The contract to be made with the Boston Elevated Railway Company for the use of the tunnel of the Cambridge connection, so-called, under the provisions of section twenty-three of chapter five hundred and twenty of the acts of the year nineteen hundred and six, shall be for a term ending on the first day of July, nineteen hundred and thirty-six. The rental for a period of twenty years from the opening for use of the said tunnel shall be four and seven eighths per cent per annum upon the net cost of the tunnel, and thereafter until the first day of July, nineteen hundred and thirty-six, shall be at the rate of four and one half per cent per annum upon its net cost.

Term of
contract
and rate of
rental, etc.,
of the
Dorchester
tunnel.

SECTION 31. The contract for the use of the Dorchester tunnel to be made with the Boston Elevated Railway Company, as provided in sections three and thirty-eight of this act, shall be for a term ending on the first day of July, nineteen hundred and thirty-six, and the rental shall be at the rate of four and one half per cent per annum upon the net cost of the said tunnel.

—of the
Boylston
street subway.

SECTION 32. The contract for the use of the Boylston street subway, to be made with the Boston Elevated Railway Company, as provided in sections seven and thirty-eight of this act, shall be for a term ending on the first day of July, nineteen hundred and thirty-six, and the rental shall be at the rate of four and one half per cent per annum upon the net cost of the said subway.

—of the
East Boston
tunnel ex-
tension.

SECTION 33. The contract for the use of the East Boston tunnel extension to be made with the Boston Elevated Railway Company, as provided in sections twelve and thirty-eight of this act, shall be for a term ending on the first day of July, nineteen hundred and thirty-six, and the rental shall be at the rate of four and one half per cent per annum upon the net cost of the said extension.

SECTION 34. All contracts for the use of the several subways and tunnels provided for in sections twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two and thirty-three of this act shall continue in force after the first day of July, nineteen hundred and thirty-six, upon the same terms and conditions except as to the termination thereof, unless and until said contracts are terminated by notice either from the city of Boston or from the Boston Elevated Railway Company, as hereinafter provided. The city of Boston may terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving at least two years' prior notice in writing, which notice it shall be the duty of the mayor of the city to give if directed so to do by an act of the general court, or if directed so to do by a vote of the city council of the city, approved by the board of railroad commissioners. The Boston Elevated Railway Company may likewise terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving to the mayor of the city at least two years' prior notice in writing. No notice on the part of either the city or the company shall be given more than three years prior to the date therein fixed for termination.

Term of other contracts, etc.

Certain contracts may be terminated.

SECTION 35. The words "consolidated transit loan" as used in this act shall mean the bonds which have now been, or may hereafter be, issued by the city of Boston to pay for the construction of the Tremont street subway, the East Boston tunnel, the Washington street tunnel, the tunnel of the Cambridge connection, so-called, the proposed Dorchester tunnel, the proposed Boylston street subway, and the proposed East Boston tunnel extension, and also the bonds issued under authority of chapter five hundred and seventy-three of the acts of the year nineteen hundred and seven.

The phrase "consolidated transit loan" construed.

Subject to the requirements of existing acts, the rentals of all said subways and tunnels are hereby pledged to secure the payment of the principal and interest of the consolidated transit loan. All bonds hereafter issued by the city of Boston to provide for the construction of tunnels and subways shall be for such a term of years, not less than thirty years and not exceeding forty-five years, as the city treasurer of the city with the approval of the mayor may fix: *provided, however*, that before the term of any of such bonds shall be fixed at less than forty-five years, the city treasurer shall file with the city clerk a certificate that in his opinion the sinking funds provided for the retirement of the consolidated transit loan will be adequate to provide for the payment of such bonds at the maturity thereof.

Rentals pledged for payment of loan.

Proviso.

The treasurer of the city of Boston may at any time, with the written approval of the mayor, issue bonds payable in installments, as provided in section twenty-six of chapter four hundred and eighty-six of the acts of the year nineteen hundred and nine, instead of sinking fund bonds as above provided.

Bonds to be payable in installments.

Abolition of a
certain toll.

SECTION 36. In order to provide for the abolition at the earliest possible date of the toll required of passengers using the East Boston tunnel, and in order to provide for the payment of the bonds issued for the Washington street tunnel, the rental received from the proposed Dorchester tunnel, from the proposed Boylston street subway and from the proposed East Boston tunnel extension, if the same shall be constructed, over and above the amount required to pay the interest on the bonds issued therefor, and the rental received from the Tremont street subway, over and above the amount required to meet the interest and sinking fund requirements of the bonds issued therefor, shall, in addition to the rental payable by the Boston Elevated Railway Company under the lease of the East Boston tunnel, be applied to meet the interest and sinking fund requirements of the bonds issued for the construction of the East Boston tunnel; and in so far as such rentals may not be required for that purpose they shall be applied, in addition to the rental payable for the Washington street tunnel, to meet the interest and sinking fund requirements of the bonds issued for the construction of said Washington street tunnel.

Excess rentals,
how applied.

SECTION 37. The excess rentals of the East Boston tunnel, the Tremont street subway, the Washington street tunnel, the proposed Dorchester tunnel, the proposed Boylston street subway and the proposed East Boston tunnel extension, if the same shall be built, not needed to provide for the interest and sinking fund requirements specified in the preceding section, and any rental of the tunnel of the Cambridge connection, so-called, not needed to provide for the interest and sinking fund requirements of the bonds issued therefor, shall be applied, so far as may be necessary to meet the interest, sinking fund and installment requirements of the other bonds constituting the consolidated transit loan.

Execution of
certain
contracts, etc.

SECTION 38. Within ninety days after this act takes full effect the commission, acting on behalf of the city of Boston, and the Boston Elevated Railway Company shall execute a contract upon the terms and conditions hereinbefore prescribed for the use of the proposed Dorchester tunnel authorized by section one of this act; and shall likewise, within the same period, execute a contract upon the terms and conditions hereinbefore stated for the use of the proposed Boylston street subway authorized by section five of this act; and shall likewise, within the same period, execute a contract upon the terms and conditions hereinbefore prescribed for the use of the proposed East Boston tunnel extension authorized by section ten of this act; and shall likewise within the same period, execute a contract for the use of the tunnel of the Cambridge connection, so-called, upon the terms and upon the conditions hereinbefore prescribed, unless such contract has already been executed upon the terms and upon the conditions prescribed by law at the date of such execution, and, in case such contract has already so been executed, shall execute alterations of the same, readjusting the terms and conditions thereof so as to conform to the terms and conditions prescribed in this act; and shall likewise, within the same period, execute extensions of the exist-

ing contracts for the use of the Tremont street subway, of the East Boston tunnel, and of the Washington street tunnel, all upon the terms and upon the conditions hereinbefore prescribed.

SECTION 39. The contracts and extensions of contracts for the use of the several tunnels and subways executed in accordance with the authority conferred by this act shall not in any respect impair any right which the commonwealth or the city of Boston or any other licensee of the commonwealth may at any time have to take the railway properties of the Boston Elevated Railway Company. In the event of such taking the compensation to be paid to the company shall not be enhanced by reason of such contracts or extensions of contracts, nor shall it be diminished because of the fact that without such contracts or extensions of contracts the connection between different parts of said properties might be cut off.

Rights of the Commonwealth or the city of Boston not impaired.

SECTION 40. The use and control of the tunnels and subways specified in this act shall be held by the Boston Elevated Railway Company subject to the rights, if any, which the West End Street Railway Company may have under the provisions of Article II of its lease to the Boston Elevated Railway Company dated December nine, eighteen hundred and ninety-seven, as modified in accordance with law.

Use and control of the tunnels, etc.

SECTION 41. Section fourteen of Part I of this act shall take effect upon its passage. The remaining provisions of this act shall not take effect until it shall have been accepted both by vote of the city council of the city of Boston, approved by the mayor, and by the Boston Elevated Railway Company by vote of its board of directors. Such acceptances shall be evidenced by certificates thereof filed with the secretary of the commonwealth. If the act is not so accepted by the Boston Elevated Railway Company and by the city of Boston within fifteen days after the West End Street Railway Company shall, at a meeting of stockholders specially called for the purpose, have voted upon the question whether or not it shall sell its property, privileges and franchises to the Boston Elevated Railway Company, as provided in chapter seven hundred and forty of the acts of the year nineteen hundred and eleven, this act shall become void. [Approved July 20, 1911.]

Time of taking effect.

The foregoing act was accepted by the city of Boston, and acceptance was filed on September 21, 1911. It was accepted by the Company on September 13, 1911, and acceptance was filed on September 14, 1911.

Stat. 1912, Chap. 485.

AN ACT TO AUTHORIZE THE LEASING OF PARTS OF THE ENTRANCE AND APPROACH TO THE SUBWAY AT CANAL, CAUSEWAY AND HAVERHILL STREETS IN THE CITY OF BOSTON.

Be it enacted, etc., as follows:

SECTION 1. The Boston Elevated Railway Company may, for such purposes other than the sale of intoxicating liquor as the mayor of the city of Boston shall approve, lease such portion of the premises used in part for the entrance and approach to the subway at Canal, Causeway and Haverhill streets in the city of Boston as will not interfere with the free passage of passengers and with passenger transportation at such entrance and approach.

SECTION 2. This act shall take effect upon its passage. [Approved April 13, 1912.]

Stat. 1912, Chap. 640.

AN ACT TO AUTHORIZE THE BAY STATE STREET RAILWAY COMPANY TO LEASE ITS RAILWAY AND PROPERTY IN THE CITY OF CHELSEA.

Be it enacted, etc., as follows:

SECTION 1. The Bay State Street Railway Company, by votes of its board of directors and of a majority in interest of its stockholders present and voting at a meeting called for the purpose, may lease to the Boston Elevated Railway Company the whole or any part of that part of its railway and property located within the city of Chelsea, with such of the rights and privileges connected therewith, and for such period and upon such terms, and to such extent, as the parties to the lease shall agree upon, and as shall be approved by the board of railroad commissioners; and the Boston Elevated Railway Company may accept the lease by votes of its board of directors and of a majority in interest of its stockholders present and voting at a meeting called for the purpose; and the Boston Elevated Railway Company, after such lease or assignment of lease to it, may use and operate the leased railway and property, rights and privileges as a part of the system of railway owned or operated by it. The Bay State Street Railway Company, if it makes such lease, may, to such extent and in such instances as the board of railroad commissioners shall approve, anything to the contrary notwithstanding in the pro-

visions of section fifty-two of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, as amended by chapter three hundred and fifty-seven of the acts of the year nineteen hundred and eleven, and of section fifty-five of said Part III, and in other provisions of law applicable thereto, readjust the fares and the distances covered by fares on other parts of its system established prior to or in connection with the purchase of or consolidation with other street railway companies.

SECTION 2. Nothing in section 1 shall be construed as a legislative determination that there should be a readjustment of fares or of distances covered by fares, as contemplated in that section, and the board of railroad commissioners shall be free to consider any reason for or against such readjustment of fares and distances covered by fares.

SECTION 3. This act shall take effect upon its passage.
[Approved May 24, 1912.]

Stat. 1912, Chap. 644.

AN ACT TO AUTHORIZE THE BAY STATE STREET RAILWAY COMPANY TO LEASE ITS RAILWAY AND PROPERTY IN THE HYDE PARK DISTRICT OF THE CITY OF BOSTON.

Be it enacted, etc., as follows:

SECTION 1. The Bay State Street Railway Company, by votes of its board of directors and of a majority in interest of its stockholders present and voting at a meeting called for the purpose, may lease to the Boston Elevated Railway Company or to the West End Street Railway Company the whole or any part of that part of its railway and property located within the Hyde Park district of the city of Boston, with such of the rights and privileges connected therewith, and for such period and upon such terms, and to such extent, as the parties to the lease shall agree upon, and as shall be approved by the board of railroad commissioners; and either the Boston Elevated Railway Company or the West End Street Railway Company may accept the lease by votes of its board of directors and of a majority in interest of its stockholders present and voting at a meeting called for the purpose. If the said lease is made to the West End Street Railway Company, that company may assign the same, and all its rights thereunder, for the whole or for a part of the term of the lease, to the Boston Elevated Railway Company; and the Boston Elevated Railway Company, after such lease or assignment of lease to it, may use and operate the leased railway and property, rights and privileges as a part of the system of railway owned or operated by it. The Bay State Street Railway Company, if it make

the said lease, may, to such extent and in such instances as the board of railroad commissioners shall approve, anything to the contrary notwithstanding in the provisions of section fifty-two of Part III of chapter four hundred and sixty-three of the acts of the year nineteen hundred and six, as amended by chapter three hundred and fifty-seven of the acts of the year nineteen hundred and eleven, and of section fifty-five of said Part III, and in other provisions of law applicable thereto, readjust the fares and the distances covered by fares on other parts of its system established prior to, or in connection with, the purchase of or consolidation with other street railway companies.

SECTION 2. Nothing in section one shall be construed as a legislative determination that there should be a readjustment of fares, or of distances covered by fares, as contemplated in that section, and the board of railroad commissioners shall be free to consider any reason for or against such readjustment of fares and distances covered by fares.

SECTION 3. This act shall take effect upon its passage.
[Approved May 24, 1912.]

Part II.
SURFACE RAILWAY LEASES.

WEST END STREET RAILWAY CO.

WITH

BOSTON ELEVATED RAILWAY CO.

LEASE

[Dated December 9, 1897].

THIS INDENTURE, made in duplicate, this ninth day of December, A.D. 1897, by and between the WEST END STREET RAILWAY COMPANY, a corporation existing under and by virtue of the laws of the Commonwealth of Massachusetts, party of the first part, and hereinafter denominated the "Lessor," and the BOSTON ELEVATED RAILWAY COMPANY, a corporation existing under and by virtue of the laws of the said Commonwealth, party of the second part, and hereinafter denominated the "Lessee,"

WITNESSETH, That the said parties, each for itself, its successors and assigns, and each in consideration of the grants, covenants and engagements herein made by the other, have granted, covenanted and agreed, and do hereby grant, covenant and agree, each to and with the other, and its successor and assigns, as follows, to wit:

I.

The Lessor doth grant, assign, transfer, demise and lease unto the Lessee, its successors and assigns, subject to all legal obligations and encumbrances thereon, its railway and property of every description; including therein its railway, branches, tracks, side-tracks, road-beds, lands, stations and station grounds, viaducts, shops, car-houses, power-houses, buildings, fixtures, cars, horses, rolling stock, machinery, tools, furniture, patents, licenses, telegraphic and electrical apparatus, poles, wires, conduits, equipment, material and supplies and cash on hand at the inception of this lease, and all accounts and notes receivable, whether secured by mortgage or otherwise, and all rights, franchises, easements, privileges and appurtenances thereto belonging, together with the right to demand and receive all tolls, rent, revenue, income and profits of the demised premises; including therein, subject to all the duties, obligations and undertakings thereby imposed, all the rights, privileges and powers granted and conveyed to the Lessor by a certain contract between it and the City of Boston, acting by the Boston Transit Commission, dated December 7th, A.D. 1896; and also including therein, subject to all legal obligations and encumbrances thereon, all the right, title and interest of the Lessor in and to any and all street railways operated by it, directly or indirectly, under lease or operating contract or through ownership of stock or otherwise, and in and to any stock of other street rail-

way companies, all dividends thereon, and its right of voting thereon, and in and to any bonds, obligations and contracts of or with other corporations or individuals and all income or other advantages and benefits to be derived therefrom.

TO HAVE AND TO HOLD all and singular the demised premises to the Lessee, its successors and assigns, for and during the term of twenty-four years eight months and nine days from and after the first day of October A.D. 1897, the said Lessee keeping and performing the covenants herein contained on its part to be kept and performed and yielding and paying rent for the said premises to the amount and in the manner following, to wit:

1. The Lessee shall pay all operating expenses of the Lessor and of all railways of which it shall come into possession under and by virtue of this instrument, there being included therein, as part thereof, all repairs and, subject to the provisions of Article VI., all renewals; all expenditures arising out of any contract, obligation, business, negligence or misfeasance, or however otherwise arising, and whether the liability for the same now exist or be hereafter created, in any way connected with the use and operation of the demised premises, except the scheduled indebtedness hereinafter mentioned, and including damages to persons or property, insurance, taxes of every description, federal, state or municipal, levied upon the Lessor's property, income, business, franchises or capital stock, or by law required to be deducted from any amounts payable upon the Lessor's stock; all expenses consequent upon or incidental to the renewal or refunding of the Lessor's indebtedness, or that of any company for which it is responsible; all necessary legal expenses of the Lessor; all expenses incidental to the transfer and registration of the Lessor's stock and bonds, provided that the Lessee shall have the right to designate from time to time the registration and transfer agents, and if at any time the Lessor is dissatisfied with the responsibility of any transfer or registration agent so designated another agent shall be designated unless the Arbitral Board hereinafter mentioned shall approve of the continuance of the first agent; any expenditures hereinafter declared to be operating expenses; and the expenses of maintaining the organization of the Lessor, for which expenses, in addition to sufficient and suitable offices in Boston, with appropriate furniture and fittings to be supplied by the Lessee, there shall be paid to the Lessor at the end of each successive six months during the term of this lease, the sum of three thousand seven hundred and fifty (3750) dollars; provided, however, that the Lessor shall, from the proceeds of bonds heretofore issued or authorized, or of stock or bonds, or both, hereafter to be issued and authorized, as provided in Article IV., from time to time repay to the Lessee all sums which the Lessee shall pay on account of any indebtedness existing at the date hereof which has been incurred for permanent additions or improvements to the demised property, or which it may be obliged to pay under any existing contract for like purposes, or which it may be obliged to pay for the purpose of completing any work in the nature of such permanent additions or improvements already in part or in whole

contracted for by the Lessor; and provided further that the Lessor shall at the expiration or earlier termination of this lease reimburse the Lessee for all sums which it, the Lessee, may be obliged to pay on account of any indebtedness or liability of the Lessor existing or incurred prior to the inception of this lease other than for permanent additions or improvements, and also for such proportional part of all rentals, taxes, interest and dividend charges on preferred and common stock, as shall have accrued prior to the date hereof and shall be paid by the Lessee.

2. The Lessee, during the continuance of this lease, shall pay, as the same may from time to time become due, the rental of any railway of which it shall come into possession, by virtue of this lease; shall pay to the holders thereof the interest on the existing indebtedness of the Lessor and on the existing indebtedness of any street railway company whose indebtedness the Lessor is under obligation to pay, a schedule whereof is hereto annexed, and the interest upon any future indebtedness created in the manner hereinafter provided. The Lessee shall assume and pay the current expenses and indebtedness upon open account of the Lessor outstanding at the inception of this lease, and the same shall be accounted for and reimbursed to the Lessee from the proceeds of stock or bonds as hereinbefore provided so far as the indebtedness is for permanent additions or improvements, and at the expiration or earlier termination of this lease so far as the indebtedness is not for permanent additions and improvements.

The Lessor shall turn over to the Lessee all cash on hand, all bills, notes and accounts receivable outstanding at the inception of this lease, and all sums received thereon and all cash on hand shall be accounted for and paid over to the Lessor without interest at the expiration or earlier termination of this lease, together with a sum equal to all then accrued and unpaid rentals, taxes, interest and dividend charges on preferred and common stock; provided, however, that so far as proceeds of bonds heretofore issued under authority of the Railroad Commissioners or authorized by them are received by the Lessee under this Indenture, such proceeds shall be applied by the Lessee to the specific purposes for which said bonds were authorized, and the Lessee shall not be obliged to account therefor except by showing that such proceeds have been so applied.

3. The Lessee shall on the first day of April, 1898, and thereafter on the first days of October and April in each year during the continuance of this lease, pay to each holder of record of common stock of the Lessor a sum equal to one dollar and seventy-five cents for each and every share of common stock so held by him, and shall, on the first days of January and July in each year, during the continuance of this lease, pay to each holder of record of the preferred stock of the Lessor a sum equal to two dollars per share for each and every share of preferred stock so held by him; it being the intent hereof that the holders of common stock of the Lessor shall receive three and one-half ($3\frac{1}{2}$) per cent. semi-annually, net, and the holders of preferred stock four (4) per cent. semi-annually, net, during each and every year this

lease continues in force. The Treasurer of the Lessor shall, at least five days before each date of payment, furnish the Lessee with a certificate list of the holders of record of the common or preferred stock of the Lessor entitled to dividends on such date.

II.

The Lessee, as assignee hereunder of the contract of the Lessor with the City of Boston for the use of the subway, dated December 7th, 1896, hereby assumes all liabilities of the Lessor under said contract, shall punctually pay to the City of Boston the compensation therein stipulated at the times and in the manner therein set forth, and shall fulfil every obligation, express or implied, therein devolved upon the Lessor in the same manner and with the same effect as if said contract had been made with the Lessee.

Such alterations of said subway and its approaches as may be necessary to connect the same with the Lessee's road and to adapt the same to the use of the Lessee's road, shall, if made by the Lessee, with the approval of the Transit Commission, be borne exclusively by the Lessee; if, however, said alterations are made by the Transit Commission upon request of the Lessee, pursuant to the provisions of section 12 of chapter 500 of the Acts of 1897, nothing herein shall be construed as requiring the Lessor to make or join in any agreement respecting the same; provided, however, that at the expiration or earlier termination of this lease, said subway, if it shall then be in the control of the Lessee, shall be delivered to the Lessor in as good order and repair as the same shall be in when the use thereof shall be begun under said contract, and so that the same shall be equally well fitted for the independent use and operation thereof by the Lessor.

Any failure to comply with the terms of said subway contract by the Lessee shall be deemed a violation of the covenants of this lease, giving the Lessor the rights and remedies herein provided in case of violation, including a right of entry and repossession if such failure shall have continued for sixty days; provided, however, that if the Lessor shall at any time deem it necessary for its own protection, it may itself make any payment required by said subway contract and may fulfil any other provision thereof, and in every such case, while retaining unimpaired all its rights and remedies against the Lessee shall have the right to require the lessee to indemnify it for all money thus expended and for all loss thus sustained.

The Lessee, in anticipation of the expiration of said subway contract, shall use its best endeavors to agree with the City of Boston upon a new contract for a renewal or extension of the same upon the most favorable terms practicable, in which said new contract shall be embodied stipulations satisfactory to the Lessor, providing for the use and control of said subway by the Lessor upon the expiration or earlier termination of this lease.

All of the provisions of this lease applicable to said existing subway contract shall apply to any contract renewing or extending the same in the same manner and with the same effect as if said new contract had been in existence at the inception of this lease.

Extensions of said subway under the existing contract shall not be requested nor promoted by the Lessee except with the consent of the Lessor first had and obtained. In the event of any extension thereof under any other contract, or of the construction of any new subway, the use and control thereof if acquired by the Lessee shall be so acquired that upon the expiration or earlier termination of this lease, if such extension or new subway constitutes an essential part of the Lessor's surface system, the same shall belong to the Lessor; that if such extension or new subway constitute an essential part of the Lessee's system, the same shall belong to the Lessee; that if such extension or new subway be capable of concurrent use by both systems, provision shall be made for such concurrent use by both Lessor and Lessee; and that if such extension or new subway constitute an essential part of both systems, but be incapable of concurrent use by both, the Arbitral Board provided for by Article XII., shall determine, in view of all the equities of the case and of all the private and public considerations involved, to which of said systems the use and control of said new extension or new subway shall belong.

Provided, however, that the right of said Arbitral Board to assign the use and control of said new extension or new subway to the Lessee shall not affect or impair, nor be affected or impaired by, the obligation hereinafter imposed upon the Lessee to return the Lessor's road without break of continuity or connection.

III.

The Lessee shall assume all traffic balances due from the Lessor to other companies; shall assume and have the benefit of all contracts of the Lessor for equipment, supplies and material and all other contracts and liabilities of the Lessor to and with individuals or corporations express or implied (its contracts with the holders of its indebtedness as scheduled excepted); shall assume and defend all suits against the Lessor arising out of or in any way connected with the past or future use or operation of the railways demised or directly or indirectly operated by the Lessee under and by virtue of this instrument, and shall pay all judgments obtained thereon against the Lessor or which the Lessor is under obligation to assume; and shall assume and discharge all liabilities of the Lessor except as herein otherwise provided.

IV.

The Lessee shall pay the interest upon any portion of the indebtedness of the Lessor or of any Company for whose indebtedness the Lessor is responsible that shall be renewed or extended during the term of this lease in like manner as upon the same indebtedness before renewal or extension.

In case it shall become necessary under the provisions of this lease for the Lessor to make payment for permanent additions, alterations or improvements to the demised premises, or to pay or

refund any portion of the indebtedness mentioned in the annexed schedule, or any indebtedness hereafter incurred and scheduled, or to pay or fund any indebtedness contracted for permanent additions and improvements prior to the inception hereof, or to make any repayments to the Lessee for expenditures made by it for the foregoing purposes, the Lessor shall, from time to time at the request of the Lessee, issue additional stock or bonds, or both, to an amount sufficient for the purpose so far as it may legally have or can obtain the right so to do. In such cases the Lessor shall, at the expense and under the direction of the Lessee, do all such acts and things as may be necessary or proper to obtain the requisite authority for the issue desired from the Board of Railroad Commissioners or from any other board having jurisdiction in the premises or from the Legislature. Said stock and bonds so issued shall, except so far as other provision is made by law, be sold under the direction of the Lessee. In so far as the proceeds of any issue of stock or bonds exceed the amount to obtain which the issue has been authorized, the excess shall be paid over to the Lessee to be invested by it in permanent additions, alterations or improvements to the demised property, under the provisions of Article VI.

The Lessee shall in all cases have authority as between the parties to decide whether stock or bonds, or both, and what amount thereof, shall from time to time be issued, and shall also have the right to determine the rate of interest upon all interest-bearing obligations, and the time for which they shall run, whether the same are issued for the purpose of refunding or paying indebtedness or for the purpose of paying for permanent additions, alterations or improvements to or upon the demised property; provided, however, that no bonds shall be issued in excess of the outstanding capital stock of the Lessor; that no bonds shall be issued to become payable after the expiration of this lease without the consent of the Lessor; that all bonds shall be payable in lawful money of the United States, unless, in the case of bonds issued to refund gold bonds of the Lessor already outstanding, the parties shall otherwise agree; that no such bonds shall be sold at less than par; and that the benefit of all reductions in interest shall accrue to the Lessee. All stock issued as provided in this article shall from the time of such issue be deemed part of the Lessor's capital stock within the provisions of Clause 3 of Article I. of this Indenture, and all bonds so issued shall be scheduled and the interest paid as part of the Lessor's indebtedness under and pursuant to Clause 2 of Article I.

V.

The Lessee shall have the right of voting on all stock owned by the Lessor in other corporations, and said stock shall not be sold or otherwise disposed of except with the assent of both the Lessor and the Lessee.

VI.

The Lessee shall have the right at its own expense to alter the tracks of the demised railway and to build such sidings and branches as may be necessary to connect the demised railway with the stations or railroad of the Lessee.

The Lessee may from time to time make such additions to, alterations and improvements in the demised railway, its rolling stock, tracks, equipment, power-houses, car-houses, stations, structures and appurtenances, as it may deem necessary for the purpose of making better provisions for the due and safe transportation of the public, or for the purpose of complying with any requirement of law or public or municipal authority, or for the purpose of reducing the operating expenses of the demised railway.

The Lessor shall from time to time, either from moneys received by the Lessee under Article VII. or from the proceeds of stock and bonds lawfully authorized, and in no other manner, repay to the Lessee the cost of such permanent additions, alterations and improvements made by the Lessee, as the Lessor may consent to, or, if such consent be refused, as the Arbitral Board provided for in Article XII. shall determine that the Directors of the Lessor, if actually operating the Lessor's road, would be justified in making in the interest of the Lessor.

Permanent additions, alterations and improvements for which the Lessor may be called upon to pay under the provisions of this lease shall consist of,—

- (1) The abolition of grade crossings.
- (2) Additional rolling stock and its equipment.
- (3) Additional track mileage and its equipment.
- (4) Additional real estate.
- (5) Additional stations, additional power-houses with their equipments, and additional car-houses with their equipments.
- (6) Additional bridges, buildings and other structures.
- (7) Renewals of or substitutions for stations, bridges, buildings and other structures, tracks and equipment, rolling stock and equipment, power-houses and equipment and car-houses and equipment, so far as the cost of such renewals or substitutions exceeds the cost, when new, of the things renewed or the things replaced.

Provided, however, that the road of the Lessor shall so far as practicable continue unimpaired in length and value; that no part of the same shall be voluntarily discontinued except with the consent of the Lessor; that road discontinued by compulsion of law in consequence of the result of the construction and operation of the Lessee's elevated road, shall, within a reasonable time, be made good to the Lessor by other road of equal value constructed by the Lessee at its own expense, or otherwise shall be paid for at its value in money to be applied as in the case of the proceeds of real estate under Article VII.; and that new track mileage shall be deemed a permanent addition or improvement hereunder only when increasing the mileage of the Lessor's road as existing at the inception of this lease, or when exceeding in cost the cost of road pre-

viously discontinued, and then only to the extent of such increase or such excess of cost. Track mileage discontinued or removed from Tremont Street in Boston between Boylston Street and Scollay Square and from Boylston Street between Park Square and Tremont Street under the provisions of section 35, chapter 548, Acts of 1894, and all track mileage discontinued under compulsion of law which has been paid for by the Lessee as above provided, shall, for the purpose of computing additional mileage to be paid for by the Lessor, be deducted from the aggregate mileage of the Lessor's road existing at the inception of this lease.

Any moneys from time to time in the possession of the Lessee which are by the terms of this Indenture applicable to such purpose shall first be applied to the repayment to the Lessee of the cost of permanent additions, alterations and improvements, and only the balance remaining unpaid shall be paid from the proceeds of stock or bonds or both to be issued by the Lessor as provided in Article IV.

The Lessee shall have the right to apply for the necessary consent of the Lessor or for the necessary certification or determination of said Arbitral Board either before said additions, alterations and improvements are made or within one year thereafter.

The Lessee shall not directly or indirectly locate or construct, or through any agency or device promote or aid in the location or construction of any surface street railway paralleling or in any way competing with any surface street railway, or any portion thereof, demised to or directly or indirectly operated by the Lessee by virtue of this lease.

VII.

Real estate of the Lessor in the judgment of the Lessee not required by the Lessee for the conduct of its business may be sublet by the Lessee for a period not longer than the expiration or other earlier termination of this lease.

Such real estate may also be sold with the consent of the Lessor to be given upon the reasonable request of the Lessee, and the proceeds of said sale shall be received by the Lessee and applied either to purchasing and retiring the outstanding indebtedness of the Lessor as scheduled or to making permanent additions, alterations or improvements upon the property demised or operated by virtue of this lease,—as the parties hereto may agree. If such proceeds are applied to retire outstanding indebtedness, the annual rental to be paid by the Lessee under Clause 2 of Article I. hereof shall be reduced by the amount of the saving in interest charges thereby effected.

If the parties are unable to agree as to whether a sale of said real estate is reasonable or upon the terms thereof or upon the application of the proceeds, the matters in difference shall be determined by the arbitrators provided for in Article XII. hereof.

If the City of Boston, upon the expiration or any earlier termination of said Subway contract, shall take over and become the owner of the tracks, wires, appliances, fixtures, machinery and

other equipment of said Subway, any money paid for the same, so far as such money shall represent Subway equipment supplied by the Lessor, shall be applied or disposed of in the manner in this Article prescribed respecting the proceeds of sale of real estate.

The Lessee shall also receive any money paid by the City of Boston on account of Subway equipment, also all money not yet received to which the Lessor may be or become entitled for land or property taken by public authority, either before or after the date hereof, or for injury or damage to the same and apply the same as hereinabove provided with respect to the proceeds of real estate.

VIII.

The Lessee shall, subject to the special provisions of this Indenture, at its own expense maintain and keep the demised premises and all the property and fixtures of every description which it shall receive or operate under this lease in as good order and condition as the same now are or shall be when received by the Lessee, so that there shall be no depreciation as to quality or quantity in the same or any part thereof, and, at the expiration or earlier termination of this lease, shall, subject to the special provisions of this Indenture, return the same to the Lessor in the same good order and condition, and put the Lessor in possession of all the railways and property at said time demised to the Lessee under this Indenture. The Lessee shall use and operate said railways and properties so demised and operated in accordance with all laws of the Commonwealth of Massachusetts, all municipal ordinances, and all orders of the Railroad Commissioners or of any public authority that may be applicable thereto; shall, subject to the provisions of Article VI., furnish all horse or electric or other power, all engines, rolling stock and equipment of every description required, in addition to the like property hereby demised, for the due operation of the railways operated under and by virtue of this Indenture; shall not diminish the facilities for travel upon the Lessor's railway as they exist at the inception of this lease, except so far as substantially equal facilities may be furnished in substitution therefor either by the Lessee's elevated railway or otherwise; shall observe and perform all the provisions of contracts of the Lessor with companies whose railways now are or hereafter may be operated under this Indenture; shall keep the demised premises reasonably insured and shall apply the proceeds of any insurance to restoring or replacing the property destroyed or to making permanent improvements, not in the nature of ordinary repairs, upon the demised premises; shall apply the proceeds of the rolling stock, equipment and other personal property herein demised, which it may deem advisable to sell and which it is hereby authorized to sell at its discretion so as to substitute therefor like property of equal value; shall replace buildings or structures on the demised premises taken down or removed, and which the Lessee is hereby authorized to take down or remove at its discretion, with other buildings, structures or

permanent improvements upon the demised premises of equal value and equally convenient for the use of the Lessor at the expiration or earlier termination of this lease, or shall apply a sum of money equal to the value thereof in the same manner as the proceeds of real estate are to be applied under Article VII.; shall permit the demised premises to be inspected annually by the Lessor's Directors and by some competent person appointed by the Lessor who shall report to the Lessor the condition of said premises and shall, for the purpose of such inspection, be furnished with free transportation over the railways operated under and by virtue of this Indenture and shall receive a reasonable compensation for his services to be paid by the Lessee; shall make all returns required by law and shall furnish the Lessor with such abstracts of accounts as shall enable it to make all returns required of the Lessor; shall not assign this lease nor underlet the premises or any part thereof without the written assent of the Lessor first had and obtained, except as provided in Article VII. hereof and except that nothing herein shall be construed to impair the right and power of the Lessee to mortgage or pledge the interests acquired under and by virtue of this lease in accordance with the authority conferred by chapter 500 of the Acts of 1897; and at the end of the term of this lease, or at any earlier termination thereof from any cause whatever, shall surrender the real and personal estate demised under and by virtue of this Indenture, to be ascertained and determined according to the inventory hereinafter provided for, in the like good order and condition in which they are at the inception of this lease, or when received by the Lessee or may be put during the term, with all improvements thereon or additions thereto, the amount of money, materials and supplies to be surrendered or accounted for to the Lessor to be equivalent in value to the amount on hand at the inception of this lease, as shown by said inventory, and all stocks, bonds and securities, or any bonds, stocks or securities substituted therefor under the provisions of this Indenture to be returned at the expiration or other earlier termination of this lease.

Provided, however, that the continuity of the Lessor's road, whenever returned to the Lessor, and the connection between its several parts shall be such that said Lessor's road will be as well fitted for independent use and operation by the Lessor as at the inception of this lease,—any compensation for mileage previously discontinued and paid for but restored or made good, under this provision, to be accounted for and reimbursed to the Lessee.

IX.

That the property herein demised, and to be accounted for at the expiration or earlier termination of this lease, may be accurately determined, there shall be made, as of the day when this lease takes effect, a full, complete and particular inventory and description of all estate and property, real or personal, belonging to the Lessor, and coming into the possession of the Lessee by virtue of this lease,

and to this, from time to time, shall be added such other estate and property as shall come into the possession of the Lessee under the terms of this lease. Such inventory and description, with the additions thereto from time to time, shall be made by two competent persons, one selected by each party; in case of their disagreement, they shall refer the matter in difference to some third person, whose decision shall be final. Such inventory and description shall be made in duplicate, and an original furnished to each party, and shall be evidence of the nature and condition of the property demised at the inception of this lease, or at the time of the additions thereto in all cases in which any questions of the nature, condition or value may arise. The reasonable compensation for services and expenses of the persons making such inventory shall be paid by the Lessee.

X.

The Lessor shall maintain its existence and organization as a corporation, and to that end shall comply with all the requirements and forms of law; shall do all acts and things, and execute all legal instruments necessary and proper to put and secure the Lessee in the full enjoyment of all the property, rights, franchises and interests herein demised, and to carry into effect the true intent and meaning of this Lease; and shall not increase its capital stock as now existing and issued nor its indebtedness except as provided in this Lease. To further secure the Lessee in the beneficial enjoyment of the property, franchises, rights and privileges herein demised and specified, the Lessor constitutes the Lessee its attorney irrevocable with full right and power, at the Lessee's expense, to use the name of the Lessor in all legal proceedings and in all cases needful for obtaining, holding and enjoying the premises herein demised and specified, and for all purposes consistent with the true scope and intent of this instrument.

The Lessor further covenants that it will at the expense of the Lessee comply with all requirements of law and with the ordinances of all cities and towns in which the demised property is located, in so far as the Lessee cannot act in its stead, and that it will, at the request of the Lessee, itself make applications for extensions or alterations of tracks and locations where the Lessee cannot act in its stead, and will at all times, when it cannot act by the Lessee as attorney, itself do such acts and execute such papers as may be necessary or proper to carry out the true intent of these presents. Any locations, rights or property so acquired by the Lessor after the date hereof shall be made subject to the provisions of this Indenture. The Lessor also constitutes and appoints the Lessee its attorney in fact with full power to collect and receive all moneys due to the Lessor, and to compromise or refer to arbitration all claims by or against the Lessor or its property.

XI.

This lease is upon the condition that, if the Lessee shall at any time fail to punctually pay to the holders of the Lessor's indebtedness and each of them the interest on the Lessor's indebtedness as scheduled as the same shall become due and payable, or shall fail to make any payment as stipulated for in Clause 3 of Article I. hereof, then, and in such case, at any time after the expiration of thirty days from the time when written notice of such default has been served on the Lessee, the Lessor may, if such default still continues, enter upon the demised premises, and upon any part thereof, as and for the whole, and expel the Lessee, and determine the estate hereby granted, and shall thereupon become seized and possessed of the demised premises, and of all premises then in possession of the Lessee or the Lessor under this Indenture, and of every part thereof in its original right, and as if this lease had never been made; and upon the further condition that, if the Lessee shall fail to perform any other of the covenants and agreements in this lease contained, and such failure shall continue for six months after written notice of such failure from the Directors of the Lessor, the Lessor shall have the like right to enter and expel the Lessee, and vest in itself its former estate in the demised premises, and all premises then in possession of the Lessee or the Lessor under this Indenture, and every part thereof; provided, however, that such entry by the Lessor for breach of condition shall in no wise prejudice or impair any remedies to which it might otherwise be entitled for arrears of rent or preceding breach of covenant, or any other rights secured by this lease in case of its termination before the expiration of the time thereof.

XII.

In case of any disagreement between the parties hereto as to the true intent and meaning of this lease or any part thereof, or as to anything done under and by virtue of it, or growing out of it, the matter in controversy shall be determined by arbitrators to be chosen in the manner following: One shall be chosen by each of the parties hereto, or if either shall unreasonably fail or neglect to appoint an arbitrator when requested by the other, the Board of Railroad Commissioners or the Chief Justice of the Superior Court may, after due notice to the party so failing or neglecting appoint an arbitrator. The third shall be selected by the two so chosen, or in case of their failure to choose a third, by the Board of Railroad Commissioners or the Chief Justice of the Superior Court. The arbitrators shall hear the parties, after due notice to each of them, and if either party fail to attend after such notice, may proceed *ex parte*. The award in writing of said arbitrators, or a majority of them, being duly notified to the parties, shall be final and conclusive upon them. The expenses and reasonable compensation of said arbitrators shall be paid by the Lessee.

XIII.

This lease shall take effect as of the first day of October, 1897, and all accounts between the parties shall be made up as of that date; provided, however, that on or before January 15, 1898, at least five million (5,000,000) dollars in cash shall have been paid in upon the Lessee's capital stock, and that until such payment the Lessor shall remain in possession and operation of the demised property,—the Lessor accounting to the Lessee for all income in the interval; and provided further that this lease shall not be valid until the terms thereof, as respects the rental or compensation to be paid and the due and safe transportation of the public shall have been approved by the Board of Railroad Commissioners.

IN WITNESS WHEREOF, the said parties, by their respective Presidents and Treasurers, thereunto duly authorized, have caused their corporate seals to be hereto affixed, and these presents to be executed the day and year first above written.

WEST END STREET RAILWAY COMPANY,

[SEAL]

SAMUEL LITTLE, *President*.
JOSEPH H. GOODSPEED, *Treasurer*.

BOSTON ELEVATED RAILWAY COMPANY,

[SEAL]

WILLIAM A. GASTON, *President*.
JOSEPH REMICK, *Treasurer*.

Witness to all four signatures:

ROBERT H. DERRAH.

SCHEDULE OF INDEBTEDNESS REFERRED TO IN
THE WITHIN LEASE.

WEST END STREET RAILWAY COMPANY.

Funded Debt.

Bonds Highland St. Ry. due Jan. 1, 1898, 6%	. . .	\$100,000.00
“ “ “ “ due May 1, 1902, 5%	. . .	300,000.00
“ West End St. Ry. due Nov. 1, 1902, 5%	. . .	3,000,000.00
“ Cambridge R.R. due Apr. 1, 1903, 5%	. . .	480,000.00
“ Metropolitan R.R. due Dec. 15, 1903, 5%	. . .	500,000.00
“ Chas. River St. Ry. due Apr. 1, 1904, 5%	. . .	150,000.00
“ Middlesex R.R. due July 1, 1904, 5%	. . .	200,000.00
“ So. Boston H. Ry. due May 1, 1905, 5%	. . .	200,000.00
“ Boston Con. St. Ry. due June 1, 1907, 5%	. . .	500,000.00
“ West End St. Ry. due Mar. 1, 1914, 4½%	. . .	2,000,000.00
“ West End St. Ry. due May 1, 1916, 4%	. . .	815,000.00
“ West End St. Ry. due Feb. 1, 1917, 4%	. . .	2,700,000.00
		<hr/>
		\$10,945,000.00

OLD COLONY STREET RAILWAY CO.

WITH

BOSTON ELEVATED RAILWAY CO.

LEASE.

[Dated February 16, 1903.]

THIS INDENTURE made in triplicate this Sixteenth day of February, A.D. 1903 by and between the OLD COLONY STREET RAILWAY COMPANY, a corporation existing under the laws of the Commonwealth of Massachusetts, party of the first part, and hereinafter denominated the Lessor, which word shall include its successors and assigns, and the BOSTON ELEVATED RAILWAY COMPANY, a corporation existing under the laws of said Commonwealth, party of the second part, and hereinafter denominated the Lessee, which word shall include its successors and assigns,

WITNESSETH, That the said parties, each for itself, its successors and assigns, and each in consideration of the covenants and agreements herein made by the other, have covenanted and agreed, and do hereby covenant and agree, each to and with the other and its successors and assigns as follows, to wit—

THE PROPERTY DEMISED.

The Lessor doth demise and lease unto the Lessee, subject to all legal obligations and incumbrances thereon and to the provisions, exceptions and reservations hereinafter contained, all its railway and branches thereof situated in the City of Boston in said Commonwealth, westerly of the easterly line of Dorchester Avenue, and also in Washington Street, Pierce Square and Adams Street at Dorchester Lower Mills;

Including as a part thereof its railway, locations, structures, tracks, side tracks, road-bed, lands, buildings, fixtures, poles, wires, conduits and electrical equipment used in connection therewith, stationary machinery and appliances, and furniture (excepting that in the Company's general offices) situated in said city westerly of the easterly line of Dorchester Avenue; all its licenses, rights, franchises, easements, privileges and appurtenances belonging or appertaining thereto, or conveniently used in connection therewith, excepting such rights, franchises, privileges and interest in said location as may be necessary to enable the Lessor to fully comply with the provisions of Article 10 of this lease;

Together with the right to demand and receive all rents, tolls, revenue, income and profits from the demised premises, subject to the provisions hereinafter contained and except as hereinafter

otherwise provided; together with the benefit of all rights secured to the Lessee under the following provisions in this instrument contained.

HABENDUM.

TO HAVE AND TO HOLD all and singular the demised premises to the Lessee for and during a term of ninety-nine (99) years from and after the date fixed and determined as hereinafter provided, the said Lessee keeping and performing the covenants herein contained on its part to be kept and performed, and yielding and paying rent, which it hereby covenants to do, for the said premises to the amount and in the manner hereinafter provided. Said term, and the operation of the demised railway by the Lessee, shall begin as soon as the Lessor shall have obtained double track locations upon all streets in which it owns and operates at the date hereof lines of railway in said part of the City of Boston and shall have constructed a double track railway upon the following described locations, viz.:—

On Hyde Park avenue from Forest Hills to the Hyde Park Line; on Washington street from Kittredge street to Metropolitan avenue; on South street from Washington street to Brandon street; on Brandon street from South street to Amherst street; on Centre street from Beach street to Spring street; on Spring street from Centre street to Gardner street.

All to the reasonable satisfaction of the Lessee, but in any event the term and operation under this lease shall commence by the first day of July, 1903.

THE LESSEE TO OPERATE THE PROPERTY.

ARTICLE 1.

PAYMENTS BY LESSEE.

The Lessee shall at its own expense during the said term operate the demised railway and, except as herein otherwise provided, make all renewals, extensions, improvements and betterments; and shall meet all expenses and liabilities arising from the care, control, maintenance, repair, renewal and operation of the said premises; including all expenditures and liabilities in tort, contract and otherwise arising therefrom or in any way connected with the use and operation of the demised premises, including insurance, and shall pay or furnish to the Lessor the money necessary to pay all taxes of every description Federal, State and Municipal, levied upon the demised property, the income therefrom, the business thereof, and the rights and franchises thereto pertaining, and upon a portion of the capital stock of the Lessor (whether levied or assessed as a tax upon corporate franchise or otherwise, and ascertained by, or in relation to, or directly or indirectly based upon, a valuation of the shares of said capital stock) equal in value at par to the replacement value of the prop-

erty demised after deducting from said replacement value the assessed value of any real estate and machinery or other property included in the demised property and subject to local taxation in said Boston; and also any such taxes by law required to be deducted from any amounts payable as dividends or otherwise to the owners of such portion of the Lessor's capital stock.

Any and all of said taxes assessed as of May 1, prior to the time when the term and operation begin, shall be considered as assessed for the calendar year from said May 1 to the next following May 1, and shall be equitably apportioned between the Lessor and Lessee according to their possession of the demised premises.

ARTICLE 2.

BETTERMENTS.

The Lessee shall have the right, at its own expense, except as otherwise hereinafter provided, to alter the tracks of the demised railway and to make reasonable additions, extensions, alterations and improvements in the property demised as it may deem necessary for the purpose of making better provision for the safety and convenience of the public or for reducing the operating expenses of the demised railway or for the purpose of complying with any requirements of law or public authority.

The Lessor shall as required by the Lessee, from time to time repay to the Lessee the cost of such permanent additions, alterations and improvements made by the Lessee as may be determined by the parties to be properly chargeable against the Lessor for capital expenditure or in case of disagreement by the Railroad Commissioners.

Such permanent additions, alterations and improvements shall consist of,—

(1) The abolition of grade crossings, and betterment assessments upon or on account of the demised property under authority of law.

(2) Additional track mileage and additional track equipment, including electric line equipment of existing or new track mileage.

(3) Additional real estate.

(4) Additional stations, power-houses, sub-stations, battery houses and car-houses and additional equipments of existing or new stations, power-houses, sub-stations, battery houses and car-houses.

(5) Additional bridges, buildings and other structures.

(6) Renewals of or substitutions for stations, bridges, buildings, and other structures, tracks and equipments, so far as the cost of such renewals or substitutions exceeds the cost when new of the things renewed or the things replaced.

(7) Other works which the parties hereto may agree are properly chargeable against the Lessor for capital expenditures, according to the true intent and meaning of the parties, or in case of disagreement as may be determined by the Railroad Commissioners.

Provided, however, that the road of the Lessor shall so far as practicable continue unimpaired in length and value; that no part of the same shall be voluntarily discontinued except with the consent of the Lessor; and that new track mileage shall be deemed a permanent addition or improvement hereunder only when increasing the mileage of the Lessor's road as existing at the inception of this lease, less any road discontinued by compulsion of law, or when exceeding in cost the cost of road previously voluntarily discontinued, and then only to the extent of such increase or such excess of cost.

The Lessor shall finance the value of additions, alterations and betterments hereinbefore referred to by the issue of bonds whenever and to such extent as the Lessor may lawfully issue the same, and in all other cases by the issue of stock. If financed by means of stock, the taxes on account of said stock shall be taken care of by the Lessee, as is provided for the payment of taxes in regard to certain stock of the Lessor under Article 1.

ARTICLE 3.

RENT AND ACCOUNTS.

The rental to be paid by the Lessee to the Lessor shall be based upon the adjusted replacement value of the property demised as of the date of this agreement and upon the adjusted betterment value of the property from time to time.

The Lessee shall pay to the Lessor a sum equal to six and one-eighth ($6\frac{1}{8}$) per centum per annum upon the adjusted replacement value of the property demised, and a sum equal to four (4) per centum per annum upon the adjusted value of betterments from time to time, such payments to be made at the above annual rate in two semi-annual instalments, payable on the first day of May and November in each year; equitable abatement of rent shall be made at the first pay day, if the term has not been running for six months, and at the end or earlier termination of the term a proportionate part of said rent shall be paid for any part of a six months' period then unexpired.

By replacement value is meant the value of the property, as of the date of this indenture as determined by its estimated cost to replace anew less a reasonable charge for depreciation.

Within ninety days after the date of this Indenture there shall be made a full and particular inventory description and valuation of all estate and property, real or personal, belonging to the Lessor, and demised to the Lessee by virtue of this lease. Such inventory description and valuation shall be made by two competent persons, one selected by each party; in case of their disagreement, they shall refer the matter in difference to some third person, whose decision shall be final. Such inventory description and valuation shall be made in duplicate, and an original furnished to each party, and shall be evidence of the nature, condition and value of the property demised at the inception of this lease, in all cases in which any questions of the

nature, condition or value may arise, and the value of the property demised when so determined shall be deemed adjusted replacement value.

The cost of permanent additions, extensions, alterations and improvements and other proper capital charges shall be determined by the said parties from time to time by agreement, or in case of failure to agree, by the Railroad Commissioners upon the petition of either party. When such cost has been determined and paid for by the Lessor, it shall be deemed the adjusted value of betterments.

The Lessor shall be liable for and pay all expenses for repairs, renewals, permanent additions, alterations and improvements in the demised property made or contracted for or begun before the beginning of the term of this lease, and so far as the same are proper capital charges such expenses and liabilities shall, if incurred before the date of this indenture, be included as a part of the replacement value, and if incurred after the date of this indenture and before the beginning of the term and operation by the Lessee shall be considered as expenses and liabilities on account of the value of betterments. The Lessor shall also pay all liabilities in tort, contract or otherwise arising out of its conduct of the business of a street railway company upon the demised property prior to the beginning of the term; and shall save the Lessee harmless from all expenses or damage on account of any lien existing upon the demised property at the beginning of the term.

ARTICLE 4.

LESSOR'S TERRITORY.

The Lessee shall not, except as attorney for the Lessor as herein otherwise provided, directly or indirectly locate or construct or through any agency or device promote or aid in the location or construction of any surface street railway within that part of the West Roxbury district so called, of the City of Boston, bounded and described as follows,—

Commencing at the most northerly point of the City line between Boston and Hyde Park, thence southwesterly following the line between Boston and Hyde Park and Boston and Dedham to the angle in said line south of Washington Street; thence following said line northwesterly to the Newton line, thence northeasterly to the Brookline line, thence southeasterly to the southerly corner of said Brookline line, thence southeasterly in a right line to the junction of Centre and Beech Streets in the City of Boston, thence by said Beech Street to the West Roxbury branch of the Boston & Providence Railroad, thence northerly by said branch of the Boston & Providence Railroad to Walk Hill Street; thence southerly via Hyde Park Avenue to its junction with Ashland Street, thence southeasterly to the northerly corner of said Hyde Park.

ARTICLE 5.

REAL ESTATE.

Real estate of the Lessor in the judgment of the Lessee not required by the Lessee for the conduct of its business may be sublet by the Lessee for a period not longer than the expiration or earlier termination of this lease.

Such real estate may also be sold with the consent of the Lessor to be given upon the reasonable request of the Lessee and the proceeds of said sale may be received by the Lessee and applied to making permanent additions, alterations or improvements upon the property demised, as the parties hereto may agree.

ARTICLE 6.

COVENANTS.

The Lessee shall at its own expense so keep and maintain the demised premises and all permanent additions thereto that there shall be no permanent depreciation of replacement value and at the expiration or earlier termination of this lease, shall, subject to the special provisions of this indenture, return the same to the Lessor in good order and condition and without diminution in replacement value or adjusted betterment value; shall replace buildings or structures on the demised premises taken down or removed, and which the Lessee is hereby authorized to take down or remove at its discretion, with other buildings, structures or permanent improvements upon the demised premises of equal value and equally convenient for the use of the Lessor at the expiration or earlier termination of this lease, or shall apply a sum of money in the same manner as the proceeds of the sale of real estate are to be applied; shall use and operate the demised railway and property in accordance with all laws of said Commonwealth, all lawful municipal ordinances and all lawful orders of the Railroad Commissioners or of any public authority that may be applicable thereto; shall furnish all rolling stock, and shall also, subject to the provisions of Article 2, furnish all motive power, engines and other equipment in addition to the property hereby demised, for the due operation of the railways operated under this lease and for the operation of the Lessor's cars thereon as hereinafter provided; shall permit the demised premises to be inspected at reasonable times by the Lessor's directors and by some competent person appointed by the Lessor; shall not assign this lease nor underlet the premises or any part thereof, except as herein otherwise provided, without the written assent of the Lessor in every case being first had and obtained; but the Lessee may mortgage or pledge the interests thus acquired according to the authority of its charter or general laws, and acts in amendment thereof; and at the end of the term of this lease or at any earlier termination thereof, shall surrender the demised premises with all improvements thereon and additions thereto without depre-

ciation in replacement value or adjusted betterment value, and in such order and condition and so that the continuity of the Lessor's railway and the connection between its several parts shall be such that said Lessor's railway will be as well fitted for independent use and operation by the Lessor and with the same or equally good Boston terminals for such independent operation as at the inception of this lease.

ARTICLE 7.

ACTS OF LESSOR IN AID OF LESSEE.

The Lessor shall do all acts and things, and execute all legal instruments necessary and proper to put and secure the Lessee in the full enjoyment of the demised premises and to carry into effect the true intent and meaning of this lease; to further secure the Lessee in the beneficial enjoyment of the property demised, the Lessor constitutes the Lessee its attorney irrevocable with full right and power, at the Lessee's expense, to use the name of the Lessor in all legal proceedings and in all cases needful for obtaining, holding and enjoying the premises herein demised and for all purposes consistent with the true scope and intent of this instrument.

The Lessor further covenants that it will at the expense of the Lessee comply with all requirements of law in so far as the Lessee cannot act in its stead, and that it will at the request of the Lessee, itself make applications for extensions or alterations of tracks and locations in said City where the Lessee cannot act in its stead, and will at all times when it cannot act by the Lessee as attorney, itself do such acts and execute such papers as may be necessary or proper to carry out the true intent of these presents.

ARTICLE 8.

CONDITIONS.

This lease is made upon the condition that if the Lessee shall at any time fail to make any payment as stipulated for in this instrument, then, and in any such case, at any time after the expiration of sixty days from the time when written notice of such default has been served on the Lessee, and notwithstanding any license or waiver of any prior breach of condition, the Lessor may, if such default still continues, enter upon the demised premises and upon any part thereof, as and for the whole, and expel the Lessee and determine the estate hereby granted, and shall thereupon become seized and possessed of the demised premises and of all premises then in possession of the Lessee under this indenture, and of every part thereof in its original right as if this lease had never been made; and upon the further condition that if the Lessee shall fail to perform any other of the covenants and agreements in this lease contained, and such failure shall continue for six months after written notice thereof

from the directors of the Lessor, the Lessor shall have the like right to enter and expel the Lessee, and vest in itself its former estate in the demised premises, and all premises then in possession of the Lessee under this indenture, provided, however, that such entry shall in no wise prejudice or impair any remedies to which the Lessor might otherwise be entitled for arrears of rent or preceding breach of covenant or any other right secured by this lease in case of its termination before the expiration of the term thereof.

AND IT IS AGREED that in case of a determination of the estate hereby created by an entry for breach of the foregoing condition, the Lessee shall indemnify the Lessor for all loss and damage which it may, during the residue of the term above specified, suffer by reason of such determination, whether through decreased rents of said premises or otherwise.

ARTICLE 9.

REFEREES.

The Board of Railroad Commissioners shall be referees in case of disagreement between the parties to determine:

- (1) All questions of fact arising under this instrument.
- (2) The true intent and meaning of this instrument or any part thereof.
- (3) Anything done under and by virtue of this instrument or growing out of it.

The said Board may delegate its power to and appoint arbitrators to act in its stead and place. The expenses of such arbitration shall be paid as the arbitrators may determine just. The award of said Board or said arbitrators, or a majority of them, shall be final and conclusive and a condition precedent to the enforcement of any right in a court of law.

ARTICLE 10.

SPECIAL PROVISIONS AND OPERATING AGREEMENT.

Washington St. Line.

Hyde Park Avenue Line.

The Lessor shall furnish and the Lessee shall at its own expense and using its own employees receive, operate, and transport, according to agreed time tables and in case of failure of the parties to agree then according to such time tables as the Board of Railroad Commissioners shall from time to time prescribe, all cars tendered by Lessor at the boundary line of Boston and Dedham on Washington Street and the boundary line of Boston and Hyde Park on Hyde Park Avenue, to the Dudley Street Terminal of the Boston Elevated Railway Company, or such other southerly terminus of said Boston Elevated Railway as may be hereafter established and agreed by the parties or determined by the Railroad Commissioners to be a suitable substitute for said Dudley Street Terminal.

The Lessee shall transport in such cars without cost or expense to the Lessor or such passengers, any passenger showing proper checks or other vouchers of his payment of a fare to the Lessor for a continuous ride and desiring a continuous ride over said Washington Street line or Hyde Park Avenue line respectively from said boundary to Forest Hills Square, or any point southerly thereof on said Washington Street or Hyde Park Avenue.

And the Lessee shall likewise operate and transport said cars back to the points at which said cars were delivered to it; and shall give to every person taking one of said cars at or south of Forest Hills Square and paying a five cent cash fare (to be retained by the Lessee to its own use) and properly desiring and requesting a check, a check which the Lessor shall honor and which shall entitle the person to whom it was delivered to a continuous ride in such car to any point on the railway of the Lessor reached by said car within the Lessor's five cent fare limit from said Forest Hills Square as such limit may from time to time be established by the Lessor.

Spring Street Line.

The Lessee shall likewise receive according to such time tables from time to time agreed upon by the parties or prescribed by said Commissioners the cars of the Lessor at the boundary line of Dedham and Boston on Spring Street and operate and transport said cars to and from said Southerly terminal of the Boston Elevated Railway Company, and shall transport passengers therein between Centre Street and said boundary line under similar terms and conditions.

Grove Street Line.

East River Street Line.

Central Avenue Line.

The lines of railway on Grove Street from the boundary line between Dedham and Boston to Washington Street; the line of railway on East River Street from the boundary line between Hyde Park and Boston to the Junction of said East River Street with Oakland Street, in Mattapan; and the line of railway on Washington Street Ward 24 (Central Avenue line) from the middle of the Neponset River to Adams Street at Dorchester Lower Mills; shall not pass into the possession or control of the Lessee under this lease, until the Lessee shall desire to operate said lines, anything to the contrary in this instrument notwithstanding.

Until said lines shall pass into the control of the Lessee, there shall be a rebate and suspension of rent and all other obligations of the Lessee on account of said lines under this lease; and said abatement in and suspension of rent and other obligations shall be estimated according to the adjusted replacement value and the adjusted betterment value of said lines.

Upon said Grove street line, until the same passes into the

control of the Lessee, the Lessee shall furnish to the Lessor sufficient electric motive power thereon for the operation of the Lessor's cars between said Dedham line and Washington street, and in consideration thereof the Lessor shall transport in its cars between said points any passengers of the Lessee desiring to ride in the same general direction to or from any point on said Grove street line north of said boundary line between Dedham and Boston without cost or expense to such passengers additional to the payment, by each such passenger, of a five cent fare to the Lessee; the manner in which such passengers shall be transported and the evidence of their payment of fares to be such as shall from time to time be agreed upon by the Lessor and Lessee.

When the Lessee shall desire to operate said lines, they shall pass into the control of the Lessee under this indenture; but the Lessor shall have the right to use said lines jointly with the Lessee for the operation of cars; and thereupon there shall be an equitable apportionment of the rent and other obligations according to the number of the car miles run by each company over said tracks; and thereafter so long as the joint operation of cars over said tracks continues, each company shall be solely responsible for all accidents of every kind and to any person in any way caused by a car of that company or in connection therewith while upon said track, except only in the case—

(1) Of a rear-end collision, in which case the company operating the rear car shall be responsible for all results of such collision; and except

(2) In the case of any other collision, in which case the responsibility for the consequences of such a collision shall be determined in the manner hereinafter in paragraph (4), page 16, provided for determining the liability of the parties hereto in cases under said paragraph (4), page 16, where such liability is not agreed upon.

Or the Lessee shall at its election with its own employees operate and transport the Lessor's cars over said lines without expense to the Lessor or its passengers.

The Lessee shall be subject to any existing law in relation to free transfers to passengers on cars entirely within the limits of the City of Boston, which are operated by the Lessee under the provisions of this agreement.

Operating Provisions.

All cars of the Lessor operated by the Lessee over the railway of the Lessee or the demised railway shall be delivered.

(1) They shall be delivered to the employees of the Lessee and returned to the employees of the Lessor.

(2) At regular intervals according to time tables from time to time agreed to by the parties or prescribed by the Board of Railroad Commissioners.

(3) Suitable in design, construction, dimensions, weight, power, wheel construction, fenders, couplers, brake mechanism and gen-

eral equipment for operation by the Lessee over its railway and the demised railway, and in good order and according to all regulations of public authorities; and such as shall conform to the reasonable satisfaction of the Lessee in all respects.

(4) And the Lessor shall indemnify and save harmless the Lessee from all loss, cost, damage or expense growing out of any patent litigation on account of devices used in or on said cars, or any part thereof; and the Lessor shall indemnify and save harmless the Lessee from all loss, cost, damage or expense growing out of or incident to any accident due to the faulty construction, equipment or maintenance of the cars of the Lessor, or any defects thereof, (except such hidden defects as according to the laws of the Commonwealth for the time being the Lessee itself if it both owned and operated the cars would not be held liable for) which existed at the time when such cars entered upon the tracks of the Lessee; and the Lessee shall be liable for all injury and damage to persons or property caused by the Lessee's operation of the cars of the Lessor on the tracks demised under this lease: provided that the same is not due to the faulty construction or equipment of or lack of repair in such cars, or to any defects therein (excepting hidden defects for which the Lessee itself if it both owned and operated the cars would not be held liable according to the laws of the Commonwealth for the time being); and the acceptance by said Lessee of any car shall not be deemed or taken to be an admission that such car is in proper condition; provided that said Lessee promptly notifies said Lessor of the pendency of any claim for such injury or damage made against the Lessee, and affords said Lessor full opportunity and power to settle said claim, or to defend and settle any suit which may be brought thereon against said Lessee; and the Lessee agrees to indemnify and save harmless the Lessor for all damages suffered by the Lessor or for which it shall be held responsible to any third person, where according to the true intent of this indenture the said Lessee is liable; provided that said Lessor promptly notifies said Lessee of the pendency of any claim for such injury or damage made against said Lessor, and affords said Lessee full opportunity and power to settle said claim or to defend and settle any suit which may be brought thereon against said Lessor.

At the trial of any suit brought against either of the companies for a cause of action for which the defendant claims that the other may be liable, as between themselves, under the provisions hereof, some disinterested attorney at law, to be selected by agreement of the respective council of the two companies, shall attend and follow the testimony, and shall also, in case of a verdict for the plaintiff, hear such additional evidence, if any, deemed by him competent, as either company may offer, both companies being given by him an opportunity to be heard; and his decision as to which or as to the proportions in which each company is liable as aforesaid shall be conclusive and binding upon both parties. And the Company which he so finds to

be liable, and both companies in a case where such attorney at law finds both at fault, hereby agree to pay any judgment, or such proportions thereof, recovered by the plaintiff in such case as said attorney at law shall award against them respectively. If the parties, by their respective counsel, shall be unable to agree as to which Company is liable, under the provisions of this contract, for any injury or damages occurring, suit or claim for which shall be settled and paid without trial or out of court, both companies hereby agree to let the question be determined by a third person, some attorney at law agreed upon by their respective counsel for the purpose; and they will abide by his determination as conclusive. The services of the attorney, and his expenses if any, at any time employed under the foregoing provisions shall be paid by the companies jointly, in equal shares. The Lessee agrees from time to time as any accident occurs to, on, or in connection with any car of the Lessor in the charge or control of the Lessee under this contract, promptly, upon knowledge thereof coming to its superintendent or claim agent, to report in writing to the Lessor each such accident with a statement of the facts connected therewith as understood by the Lessee.

(5) And the Lessor shall make no mileage or other charge for the use of said cars.

(6) And will not deliver merchandise on said cars except by mutual agreement of the parties hereto

(7) nor undertake to commute or reduce the fares charged

(8) nor attempt to secure franchises or construct lines or operate tracks in the City of Boston outside the district mentioned in Article 4, except with the consent of the Lessee.

IN WITNESS WHEREOF the parties hereto have caused their names and corporate seals to be hereto affixed by their officers thereto authorized the day and year first above written.

OLD COLONY STREET RAILWAY COMPANY,

By

[SEAL]

P. F. SULLIVAN,
President.

Attest,

CHARLES WILLIAMS,
Clerk.

BOSTON ELEVATED RAILWAY COMPANY,

By

[SEAL]

WILLIAM A. BANCROFT,
President.

WILLIAM HOOPER,
Treasurer.

BOSTON AND NORTHERN STREET RAILWAY CO.

WITH

BOSTON ELEVATED RAILWAY CO.

LEASE

[Dated September 19, 1907].

AGREEMENT made this Nineteenth day of September, 1907, between the BOSTON AND NORTHERN STREET RAILWAY COMPANY, hereinafter called the Northern Company, as it is lessee of the franchise and property of the Boston and Revere Electric Street Railway Company, party of the first part, and the BOSTON ELEVATED RAILWAY COMPANY, hereinafter called the Elevated Company, lessee of the franchise and property of the West End Street Railway Company, party of the second part, WITNESSETH that—

WHEREAS the parties hereto respectively operate lines of street railway terminating and connecting with each other at or near the junction of Bennington and Saratoga streets, in that part of Boston known as East Boston, and are desirous of making an arrangement by which the part of the railway now and heretofore operated by the Northern Company between said point of connection at or near said junction of Bennington and Saratoga streets over and along said Bennington street to a point at or near the junction of said Bennington street and Gladstone street, may hereafter be operated by the Elevated Company, so that persons residing in that part of said East Boston known as Orient Heights may ride in the cars of the Elevated Company between any points on the railway heretofore operated by the Northern Company (located between said junction of Bennington and Saratoga streets and said junction of Bennington and Gladstone streets), and other points in the City of Boston without the payment of fares both to the Northern Company and the Elevated Company;

NOW THEREFORE the parties to this agreement, each for itself, its successors and assigns, in consideration of the premises, and of the covenants and agreements herein made, covenant and agree, each with the other, its successors and assigns, as follows:—

1. The Elevated Company may operate cars, including both cars owned by it and cars of any other company from time to time operated by it or permitted by it to be operated over its tracks, upon and over said part of the Northern Company's railway located on Bennington street between said junction of Bennington and Saratoga streets and said junction of Bennington and Gladstone streets in that part of said Boston known as East Boston, and may so operate said cars with its own motive power and by its own employees to the same extent, and in the same manner, as if said Elevated Company owned said part of the

Northern Company's railway, and may connect its tracks and overhead equipment with the tracks and overhead equipment of the Northern Company at said junction of Bennington and Saratoga streets, and the Elevated Company may grant the privilege, to continue during the life of this agreement, to any corporation conducting a telephone, telegraph or electric lighting service, to attach telephone, telegraph or electric light wires to the poles of the Northern Company on said Bennington street, between the junction thereof with said Gladstone street and the junction thereof with said Saratoga street.

2. The Elevated Company shall, during the continuance of this contract, maintain the tracks, roadbed, poles and wires of the Northern Company used by it hereunder, in the operation of cars as provided in paragraph 1 hereof, in as good condition as the same severally are at the date hereof, and in so operating cars over said part of the railway of the Northern Company, shall do and perform all conditions and obligations legally required of the Northern Company relative to and in connection with said part of the Northern Company's track and the operation of cars thereover, and for that purpose may use the name of the Northern Company and the name of the Boston & Revere Electric Company in all undertakings and proceedings necessary therefor, provided, however, that nothing in this section contained shall require the Elevated Company to carry passengers travelling on the tracks of the Northern Company used hereunder by the Elevated Company to or from points Northerly of said junction of Gladstone and Bennington streets.

3. The Elevated Company shall pay to the Northern Company, as compensation for the use of said tracks, poles and overhead equipment, a sum equal to five (5) per centum per annum upon the replacement value, as of the date of this agreement, of the tracks, pavement, poles, wires and other property, the use of which is permitted to said Elevated Company under this agreement, such value to be determined by the estimated cost to replace anew, less a reasonable charge for depreciation, said tracks, pavement, poles, wires and other property; such payments to be made at the above annual rate in two semi-annual instalments, payable on the first day of May and November in each year, equitable abatement being made at the first pay day if the use of said tracks has then been for a period less than six months, and at the termination of the use of said tracks a proportionate part of said compensation shall be paid for any part of a six months' period then unexpired. Within thirty days after the date of this agreement there shall be made an inventory, description and valuation of all the property, the use of which is permitted to the Elevated Company under this agreement, the same to be made by two competent persons, one selected by each party hereto, and in case of their disagreement they shall refer the matter in difference to some third person, whose decision shall be final. The valuation so determined shall be endorsed on each copy of this agreement, and shall constitute the amount upon which

said annual compensation of five (5) per centum per annum is to be calculated. A similar valuation shall be made in like manner at the termination of this agreement, and the Northern Company shall pay to the Elevated Company the amount of any net increase shown in the value of the property so inventoried according to said inventories, and the Elevated Company shall pay to the Northern Company the amount of any net decrease shown in the property of the Northern Company according to said inventories.

4. Each Company shall so arrange its time schedule that, so far as it is possible and practicable, the cars of both Companies shall meet at said junction of Bennington and Gladstone streets for the convenience of persons riding upon the cars of either Company desiring to travel beyond the said point on the cars of the other Company, and shall so arrange the summer schedules as to develop and adequately accommodate the traffic to and from Revere Beach.

5. The Northern Company shall not, so long as this contract shall remain in force, operate its cars over said portion of its tracks oftener than one day in each month, or at such other time as may be necessary for maintaining and retaining its rights and those of its lessor, said Boston & Revere Electric Street Railway Company, in and under the grant of location under which it is now operating cars over said portion of its tracks; provided, however, that no complaint of its failure or neglect to more frequently operate its said cars shall be made either to the Board of Aldermen of the City of Boston, the Board of Railroad Commissioners of the Commonwealth of Massachusetts, or to any other body having jurisdiction in the premises, and that no complaint or order relative thereto shall be addressed to the Northern Company relative thereto by said Board of Aldermen, Board of Railroad Commissioners, or other body having jurisdiction in the premises, and provided also that if said Aldermen, Commissioners, or other body, shall recommend or require the running of more than one car a month by the Northern Company, then the Northern Company shall pay to the Elevated Company, as compensation for the Northern Company's use of the tracks and other property and for electric motive power used in operating such cars, at the rate of eight (8) cents per car mile for each and every car mile so operated by the Northern Company over said tracks.

6. The Elevated Company shall be liable for all injury and damage to persons and property caused by the operation of cars over said portion of the tracks of the Northern Company, whether the same be caused by the negligence of the agents or employees of the Elevated Company, the faulty construction or lack of repair of the cars, or the mechanism, machinery or appliances of the cars of the Elevated Company, or otherwise, except accidents occurring through a collision between a car of the Northern Company and a car operated hereunder by the Elevated Company, in which event the Company at fault, or both Companies, if each

Company is at fault, and to the extent to which it is at fault, shall be liable for all damage so occurring to persons or property, and the Elevated Company shall be solely liable for all injury and damage occurring whether through the operation of cars operated by it or the cars of the Northern Company, due solely to the faulty construction or lack of repair of the tracks, poles, wires and appliances connected therewith of the Northern Company to be maintained hereunder by the Elevated Company, and in the event of injury occurring in part through the faulty construction or lack of repair of said tracks, poles, wires and appliances, and in part through the negligence of the Northern Company, the Elevated Company shall be liable in part and to such extent as said faulty construction and lack of repair of said tracks, poles, wires and appliances shall contribute to said injury or damage, and each Company hereby agrees to indemnify and save harmless the other Company from all loss, cost, damage or expense suffered by it or for which it shall be held responsible, where under the terms hereof the other Company is liable for such injury or damage, provided that the Company against which claim is made promptly notifies the other Company of the pendency of any claim for such injury or damage against it, and affords it full opportunity and power to settle said claim or defend and settle any suit which may be brought thereon against it.

7. The Elevated Company hereby agrees to indemnify and save harmless the Northern Company from all loss, cost, damage or expense arising out of all suits and actions, both at law or in equity, which may be brought against the Northern Company because of the manner in which said portion of the tracks of the Northern Company operated upon hereunder by the Elevated Company are maintained, or arising out of any conditions or obligations contained in the grant of location of the Northern Company under which said portion of its tracks to be operated over by the Elevated Company are now operated upon by it, and from all loss, cost, damage or expense arising out of any appliances patented or otherwise used by the Elevated Company, or arising out of any advertising matter or notices displayed in or upon its cars operated over said portion of the tracks of the Northern Company.

8. At the trial of any suit brought against either of the Companies for a cause of action for which the defendant claims that the other may be liable, as between themselves, under the provisions hereof, some disinterested attorney at law, to be selected by agreement of the respective counsel of the two companies, shall attend and follow the testimony, and shall also, in case of a verdict for the plaintiff, hear such additional evidence, if any, deemed by him competent, as either Company may offer, both Companies being given by him an opportunity to be heard; and his decision as to which or as to the proportion in which each Company is liable as aforesaid shall be conclusive and binding upon both parties. And the Company which he so finds to be liable, and both Companies in case such attorney at law finds

both liable, shall pay any judgment, or such proportions thereof, recovered by the plaintiff in such case as said attorney at law shall award against them respectively. If the parties, by their respective counsel, shall be unable to agree as to which Company is liable, under the provisions of this contract, for any injury or damages occurring, suit or claim for which shall be settled and paid by agreement of the counsel of both companies without trial or out of court, both companies hereby agree to let the question be determined by a third person, some attorney at law agreed upon by their respective counsel for the purpose; and they will abide by his determination as conclusive. The services of the attorney, and his expenses if any, at any time employed under the foregoing provisions shall be paid by the Companies jointly, in equal shares.

9. In case of any disagreements other than those provided for in paragraph 8 hereof, between the parties hereto, as to the true intent and meaning of this contract or any part thereof, or as to anything done under and by virtue of it, or growing out of it, the matter in controversy shall be determined by arbitrators to be chosen in the manner following:—One shall be chosen by each of the parties hereto, or if either shall unreasonably fail or neglect to appoint an arbitrator when requested by the other, the Board of Railroad Commissioners for the Commonwealth of Massachusetts may, after due notice to the party so failing or neglecting, appoint an arbitrator. The third shall be selected by the two so chosen, and in case of their failure to choose a third, by said Board of Railroad Commissioners. The arbitrators shall hear the parties, after due notice to each of them, and if either party fail to attend after such notice, may proceed *ex parte*. The award in writing of said arbitrators or a majority of them, being duly notified to the parties, shall be final and conclusive upon them. The expenses and reasonable compensation of said arbitrators shall be paid by the parties in such proportions as the arbitrators shall fix, but nothing in this paragraph contained shall affect or abridge the rights of the parties hereto to cancel this agreement as is provided in paragraph 11 hereof.

10. Neither Company shall be liable in any manner, either directly or indirectly, to the other Company because of its inability or failure to carry out any or all of the terms or conditions of this contract, in the event of the expiration or lapsing of any of its grants or powers, or in the event of any law, order, decree or other lawful act of any nature, of any duly authorized, national, state or municipal legislature, commission, court or other body, or of any refusal or failure to act of any person, persons, or body having jurisdiction in the premises, rendering illegal or impossible of performance any or all of said terms or conditions.

11. Either Company may cancel and terminate this agreement, except as to things already done and liabilities already approved hereunder, at any time, first giving ten days' written notice of its intention to terminate the agreement, addressed to the President of the other Company at said other Company's principal office in the City of Boston.

12. The failure of either Company to insist upon the full performance of any of the terms or provisions of this contract, and the allowance by either Company of the continuance of any breach thereof, shall not be or be held to be a waiver of any right hereunder, or a consent to the commission of such breach.

IN WITNESS WHEREOF the BOSTON AND NORTHERN STREET RAILWAY COMPANY, for itself and its lessor the Boston and Revere Electric Street Railway Company, and the BOSTON ELEVATED RAILWAY COMPANY, both for itself and its lessor the West End Street Railway Company, have caused these presents to be signed in duplicate, and their respective corporate seals to be hereto affixed and attested by their respective officers, all hereunto duly authorized, the day and year first above written.

BOSTON AND NORTHERN STREET
RAILWAY COMPANY,

By

[SEAL]

P. F. SULLIVAN,
President.

Attest:

CHARLES WILLIAMS,
Clerk.

BOSTON ELEVATED RAILWAY COMPANY,

By

[SEAL]

WILLIAM A. BANCROFT,
President.

Attest:

DANIEL L. PRENDERGAST,
Clerk.

Part III.
CONTRACTS FOR THE USE OF
SUBWAYS AND TUNNELS.

CONTRACT BETWEEN THE CITY OF BOSTON ACT-
ING BY THE BOSTON TRANSIT COMMISSION
AND THE WEST END STREET RAILWAY COM-
PANY FOR THE USE OF THE SUBWAY (THE TRE-
MONT STREET SUBWAY).

[Dated December 7, 1896.]

This contract made this seventh day of December in the year one thousand eight hundred and ninety-six by and between the City of Boston by the Boston Transit Commission acting by a majority of its members thereto duly authorized under the authority vested in it by the acts of the Commonwealth of Massachusetts Chapter 478 of the year 1893 Chapter 548 of the year 1894 Chapter 440 of the year 1895 and Chapter 492 of the year 1896 and under all other powers it hereto enabling party of the first part the Boston Transit Commission hereinafter called the Commission also acting by a majority of its members thereto duly authorized and joining in the grants hereinafter made in its own behalf in exercise of the powers conferred upon it by the acts aforesaid but not binding its members in their personal capacity by any agreement herein contained and the West End Street Railway Company party of the second part. Parties.

WITNESSETH The party of the first part in consideration of the covenants and agreements of the party of the second part herein contained hereby grants to the party of the second part for the term hereinafter stated and subject to the reservations restrictions and limitations hereinafter set forth the entire use and occupation of the subway now constructed or hereafter to be constructed by the Commission under the authority of the aforesaid acts the same to be used however only for locations of the railway tracks of the party of the second part for the operation of its railway and for the purposes hereinafter expressly enumerated including in such uses the right to construct maintain renew and use such tracks together with switches cross-overs connections wires appliances fixtures electrical apparatus and all other machinery and equipment which may be necessary or proper from time to time for the convenient operation of the railway of said party of the second part the carrying on of its lawful business in the subway and the performance of its agreements hereinafter contained. Grant.

The word subway as used above and wherever used in this instrument shall include all the subway subways tunnels entrances approaches connections sidings stations and appurtenant structures and fixtures of every kind which the Commission has constructed or hereafter may construct under the authority of the aforesaid acts and wherever in this instrument a portion of the subway is referred to there shall be meant a Definition of
subway.

continuous and connected portion of the subway as above defined unless a different signification is apparent.

The subway is to be constructed substantially according to the route and with the stations indicated on the plan hereto annexed and marked "A" so far as its route is exhibited thereon and similar to the portions already completed. Said plan is entitled "Boston Subway—Progress to Aug. 15, 1896."

Use of tracks
by another
street railway
company.

If any street railway company is now using and is entitled by virtue of an existing contract to use the tracks of the party of the second part in any portion of the route which is or hereafter may be occupied by the subway then the party of the second part may permit such street railway company to use during the whole or any part of the term of this grant the tracks which may be laid in the corresponding portion of the subway upon such terms as may be agreed upon between the party of the second part and such other street railway company.

If any corporation having the right to carry passengers in the city of Boston shall by authority of law succeed by purchase lease or otherwise to all the property rights and franchises of said West End Street Railway Company the said railway company may assign to such succeeding corporation all the rights privileges and powers granted and conveyed by this contract provided however and on condition that said succeeding corporation shall assume all the duties obligations and undertakings herein imposed upon said West End Street Railway Company.

Beginning and
length of term.

The use of the subway shall begin so soon as a reasonable time after its completion has been allowed the party of the second part for the equipment thereof.

The Commission shall determine when the use shall begin and shall notify the party of the second part of its decision and if in the judgment of the Commission any portion of the subway can be advantageously used before the completion of the whole then the use of such portion shall begin when in the opinion of the Commission a reasonable time after the completion of such portion has been allowed to the party of the second part for the equipment thereof and after notice to that effect has been given to the party of the second part.

The rights herein granted to the party of the second part shall continue for the term of twenty (20) years from the time when the right to use the subway or any portion thereof first accrues.

Compensation.

As compensation for the use of all the above premises and property the party of the second part agrees to pay in each year to the city of Boston a sum equal to four and seven-eighths ($4\frac{7}{8}$) per centum of seven million dollars or four and seven-eighths ($4\frac{7}{8}$) per centum of the net cost of the subway if such net cost be less than seven million dollars said net cost to be computed in the manner below provided. Said compensation is to begin to accrue from the time when the use of the said premises and property begins under the foregoing pro-

visions of this instrument and in case the right to use any portion of the said premises and property shall begin before the right to use the whole then compensation shall be paid for the use of such portion and shall begin to accrue with its use and shall be at the above named percentage of the net cost of such portion to be computed as below set forth.

And the party of the second part agrees also to pay in each year after it shall have acquired the use of all portions of the subway such additional compensation if any as may be determined by a computation of the number of passages made by cars in and through the subway as hereinafter provided that is to say in case the amount computed as below provided upon the basis of the number of such passages exceeds the amount determined by a percentage of the net cost of construction then the party of the second part agrees after so acquiring the use also to pay as compensation the amount of such excess. It is therefore agreed that the compensation for any quarter of a year after the party of the second part shall have acquired the use of all portions of the subway shall not be less than a sum computed by charging a toll of five (5) cents for each passage made through the subway by a car not exceeding twenty-five (25) feet in body length and at a proportionately greater rate for each car of greater length it being understood that any car which enters or passes through the subway or a portion thereof in one direction and then reverses its direction within the subway and makes a return trip shall be considered as making two passages but otherwise the passing through the subway shall be considered as a single passage only and it being also understood that no opening is to be made under the authority of existing statutes by which cars shall enter the subway from Washington street or Devonshire street. Cars used only for the conveyance of the United States mails or for construction or repairs or as motor cars only and carrying only persons necessary for such purposes shall not be included in computing the passages for which a toll is to be charged. The party of the second part shall keep a record of the passages of cars for which payment may be charged as above provided and shall report the same quarterly when making payment for the use of the subway.

In determining the net cost of the premises and property or of any portion thereof there shall be included all lawful expenditures of every kind incurred by the Commission on account of the acquisition and construction thereof or of the portion to be used as the case may be including the sums paid by the Commission to any persons by way of damages for property taken or injured or for personal injuries suffered the incidental expenses of the Commission incurred under the authority of said acts the sums paid to the Commission for salaries of its members and also such interest at the rate of four (4) per centum per annum as shall have accrued up to the time when the use by the party of the second part is to begin on

any debt incurred by the city of Boston at the request or in behalf of the Commission in acquiring or constructing the said premises or property as aforesaid or the portion thereof in question as the case may be.

From the gross cost so ascertained there shall be deducted any money which the Commission may then have received from the sales or other disposition of any property or rights which may have been included in estimating the gross cost and there shall be also deducted at a fair valuation to be then made by the Commission any property or rights so included which though not actually sold or otherwise disposed of will not be needed in the judgment of the Commission for the purposes for which the premises and property are to be used by the party of the second part and when said property and rights have been actually sold or otherwise finally disposed of an adjustment of the cost of the subway and its additions shall be made upon the basis of the actual proceeds received from such final disposition for the purpose of determining the amount on which a percentage is to be subsequently paid as compensation. The right is hereby reserved to the Commission and after the expiration of the Commission to the city of Boston to dispose of any property or rights so valued as aforesaid but neither this reservation nor the right of deduction above provided shall apply to any property or rights within the subway.

At any time when the use of the whole or any portion of the premises and property is to begin or as near thereto as is practicable the Commission shall make out and submit to the party of the second part a statement of the net cost computed as above showing with reasonable detail what is included therein.

If at any time during the continuance of the term of this grant the party of the second part shall be deprived in whole or in part of the use of the premises and property by any cause growing out of the act of God public enemies mobs riots the falling or settling of buildings bursting of pipes outside the subway explosions of gas or works or excavations carried on or permitted by said city or other public authority or the filling or caving in or other physical obstruction of the subway or any part thereof not due to the negligence of the party of the second part or by the location maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the subway then the amount above fixed as compensation or a just and reasonable part thereof shall be suspended or abated during such deprivation.

The compensation for the use of the subway or any portion thereof shall be paid to the city of Boston in quarterly payments on the last day of December March June and September in each year and at the rate aforesaid for any uncompleted quarter of a year.

Equipment of
subway.

Said party of the second part shall suitably lay and maintain in first-class condition railway tracks in proper places in the subway together with the appointments and apparatus

necessary for the safe and convenient operation of the same and shall provide and maintain all wires electrical or other apparatus or equipment necessary or convenient for the furnishing of power and light therein and shall further provide requisite pumps fans and ventilating apparatus and in general shall completely equip and furnish the subway with all machinery piping apparatus and furniture proper and adapted thereto and necessary for the convenient maintenance and operation of a railway therein and for the safety and accommodation of the passengers upon said railway.

All tracks wires appliances fixtures machinery equipment furniture and apparatus provided by said party of the second part shall be and remain the property of said party of the second part so long as it continues to occupy and use the subway under the provisions of this contract and upon the termination of such use and occupation the party of the first part hereby agrees to take and pay for all such property at its then fair value to be determined by the Board of Railroad Commissioners and the party of the second part hereby agrees to deliver to the party of the first part all such property at the said valuation.

The power to be used in the operation of the railway in the subway and of the apparatus placed therein shall be either electricity compressed air or some agent the use of which will not be accompanied by smoke steam or any noxious products which might impair the purity of the atmosphere within the subway and the use and manner of use of any motive power shall be subject to the approval of the Commission the use of electricity however as a motive power in the subway being hereby approved.

Power and
light.

Neither steam nor animals shall be used within the subway as a motive power except temporarily in cases of emergency.

Said party of the second part shall suitably and adequately and to the satisfaction of the Commission light the subway and the cars running therein by electricity or may from time to time in whole or in part use such other illuminating agents as may be approved by the Commission but no illuminating gas of any description shall be used therein nor any illuminating agent which is explosive.

Said party of the second part shall maintain the subway except as to repairs below excepted in good order and condition as a complete structure adapted to the maintenance and use of lines of railway and shall at all reasonable times be entitled to a permit to open the streets and other public grounds of said city for the purpose of making requisite repairs to the subway and when the right to use the subway shall terminate shall restore it to the city in good condition except as to repairs not obligatory upon said party of the second part.

Repairs.

All repairs to the subway shall be at the sole cost and expense of the party of the second part except such repairs as are made necessary by the act of God public enemies mobs

riots the falling or settling of buildings bursting of pipes outside the subway explosions of gas or works or excavations carried on or permitted by said city or other public authority or by the location maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the subway and if repairs should be made necessary by any of said excepted causes then such repairs may be made by the party of the second part and the reasonable cost and expense thereof deducted from the compensation subsequently due and payable hereunder.

Liability for
damages.

The party of the first part shall not be responsible to the party of the second part for damages of any description resulting from any defects in the subway whether structural or arising out of want of repair or from any cause after the use of the same by the party of the second part has begun as hereinbefore provided unless such damage result from the location maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the subway nor shall it be responsible for any damages resulting to persons or property in the operation and use of the subway including all parts thereof whether on property belonging to the party of the first part or upon property the fee of which belongs to other parties and the party of the second part shall hold the party of the first part harmless and indemnified therefrom and shall at its own expense upon due notice from said party of the first part defend all suits and other proceedings of every description whether at law or in equity which may be brought against said party of the first part its officers servants or agents by reason of any liability arising out of the maintenance operation and use of any portion of the subway or of the railways machinery and apparatus therein and accruing after the right to use such portion has begun as hereinbefore provided and shall satisfy all final judgments of legal tribunals rendered in such suits and proceedings but the foregoing provisions shall not apply to legal proceedings to recover for loss or injuries growing out of the act of God public enemies mobs riots the falling or settling of buildings bursting of pipes outside the subway explosions of gas or works or excavations carried on or permitted by said city or other public authority or the location maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the subway.

Removal of
surface tracks.

The party of the second part agrees that it will make no claim against the party of the first part for any damage for removing upon the order of the Commission its surface tracks from Tremont street between Boylston street and Scollay square and from Boylston street between Park square and Tremont street and such other tracks as the Commission may order to be removed under the authority of the aforesaid acts provided that during the term of this contract the right to lay maintain and use tracks on the locations from which the tracks are so removed be not granted nor permitted to any other

person or corporation for street railway purposes and the party of the second part agrees at its own expense to restore and leave in good condition the pavement of that portion of the streets occupied by the tracks so removed.

The members of the Commission the Governor of the Commonwealth the Board of Railroad Commissioners and their respective engineers and the Mayor and the City Engineer of Boston shall at all times have free entry to the subway for the purpose of inspecting the same.

Inspection by public officials.

The party of the second part shall keep the subway thoroughly clean and in good order and condition at all times except as herein excepted shall by use of pumps keep the same free from unnecessary dampness and shall by artificial ventilation when needed keep the air therein pure and shall keep the stations and their approaches free from ice and snow all which service shall be performed to the satisfaction of the Commission.

Subway to be kept clean.

Said party of the second part shall have no right to make substantial alterations or additions in the subway unless with the approval of the Commission and after the termination of the existence of the Commission with the approval of the Mayor for the time being of the city of Boston and the Board of Railroad Commissioners nor shall it have the right to place therein or attach thereto except as hereinafter provided any structures machinery merchandise apparatus advertisements or property of any sort which are not necessary or proper for the operation of its railway therein and the performance of its agreements herein contained but the said party of the second part may place and maintain booths of suitable size and character upon each platform for the sale of newspapers magazines periodicals and books so far as the party of the first part has the power to grant the right to place and maintain said booths and in the event that it shall be determined by any court of competent jurisdiction that said party of the first part has not such power then no abatement of the compensation which the party of the second part herein agrees to pay for the use of the subway shall be allowed in consequence.

Changes in subway not to be made by railway company.

Unnecessary structures.

Newspaper booths.

The Commission if it deems that public convenience and necessity so require may make such additions to or improvements or changes in the subway within the limits defined by existing acts as it sees fit and said party of the second part may and shall in like manner as hereinbefore provided equip and use the subway after such additions improvements and changes therein shall have been made and shall be under all the obligations and have all the privileges respecting the same which are above provided with respect to the subway and shall pay for such use four and seven-eighths ($4\frac{7}{8}$) per centum annually upon the net cost of such additions improvements or changes determined as hereinbefore provided provided however that the total annual compensation to be paid by said party of the second part in any way under this instrument shall not exceed the amount above specified namely four

Changes in subway by Commission.

and seven-eighths ($4\frac{7}{8}$) per centum of seven million (7,000,000) dollars unless such compensation shall exceed that amount when determined by a computation of the number of cars using the subway in the manner above provided.

Obligations of railway company confined to portions in use.

The obligations and liability of the party of the second part under the foregoing provisions of this instrument shall not in any event apply to any portion of the premises or property covered hereby or to any additions improvements changes or alterations thereof except in so far as the party of the second part may have the right to the use and enjoyment thereof under the provisions hereof at the time as to which it may be sought to impose such obligation or liability.

Wires, conduits, and tubes.

The party of the second part may grant upon such terms as it may deem expedient to any person or corporation not authorized to carry on a railway business but authorized by law to use and maintain for other purposes wires conduits for wires or pneumatic tubes along any portion of the route of the subway the privilege of placing such wires conduits or tubes within a corresponding portion of the subway used by the party of the second part but only to such extent and for such time as may be practicable without interfering with the convenient operation of the railway and other apparatus which the party of the second part is hereby authorized to put therein. If the party desiring such privilege cannot agree with the party of the second part upon the terms of such grant the privilege to the extent and for the time above stated shall be so granted upon terms to be settled by the Commission but in any event the compensation for such privilege shall be paid to the party of the second part.

The city of Boston may without charge place in the subway such wires and apparatus as may be necessary for its police and fire-alarm service to be used however exclusively for such service and to be so located as not to interfere with the use of the subway which the party of the second part is hereby authorized to make. The location construction maintenance and repair of such wires and apparatus shall be subject to such reasonable directions and regulations as the party of the second part may impose or in case of any disagreement as the Commission may determine.

Default and penalty.

In the event of the failure of the party of the second part or its successor to pay the compensation herein fixed for the use of the subway for three months after such compensation shall have become due or in the event of a failure to maintain and operate a railway within the subway and if such failure shall have continued for three months then in either of said events the city of Boston shall have the right to terminate this contract and to re-enter upon and repossess itself of the above-described premises and property unless such failure to maintain and operate grow out of the act of God public enemies mobs riots the falling or settling of buildings bursting of pipes outside the subway explosions of gas or works or exca-

vations carried on or permitted by said city or other public authority or the filling or caving in or other physical obstruction of the subway not due to the negligence of the party of the second part or out of the location maintenance or use of the wires or other apparatus which the city is hereinbefore authorized to maintain in the subway. In case the right of re-entry and repossession above given shall be exercised all the tracks wires apparatus equipment and other property in the nature of fixtures of the party of the second part within the subway shall become the property of the city of Boston and be paid for by it at a valuation to be determined as hereinbefore provided for the occasion when the same are to be surrendered by the party of the second part at the expiration of said term of twenty years.

Said party of the second part shall have no right at any time to remove from the subway any tracks wires apparatus equipment or other property necessary to the use and maintenance of the subway and the operation of a railway therein except for the purpose of repairs or renewal or for the substitution of equivalent structures property apparatus or equipment nor shall it have the right to sell or mortgage such property unless removed under foregoing provisions.

Removal of property by railway company.

In case of the termination of this contract prior to the expiration of the term of twenty (20) years under the foregoing provisions hereof and a re-entry upon the premises and property aforesaid and a repossession of the same by the city of Boston the party of the second part agrees to indemnify the said city for all loss and damages which it may in any manner sustain by reason of such termination during the residue of said term of twenty (20) years.

Indemnity.

In case there shall be any disagreement between the parties hereto respecting the amount of compensation due hereunder and the party of the second part shall pay more than it maintains to be justly due it may make such payment under protest and may thereafter bring proceedings in any court of competent jurisdiction to recover the excess and any amount which the Court may adjudge to have been paid in excess shall be repaid by the party of the first part with interest at the rate of four and seven-eighths ($4\frac{7}{8}$) per centum per annum.

Recovery of excessive payment.

In respect to all matters arising under this contract where provision is made for action by the Commission or its approval of acts to be done by the party of the second part is required it is hereby provided and agreed that upon the termination of the existence of the Commission the authority to take such action shall vest in and the necessity of approval shall apply to the Board of Railroad Commissioners unless otherwise herein provided until some other tribunal shall be designated by law for such purpose but the provisions of this paragraph shall not apply to the powers hereinbefore reserved to the Transit Commission to make additions to improvements changes or alterations in the subway or to dispose in a certain event

Termination of the existence of the Commission.

of certain property and rights acquired by the Transit Commission.

The Company
to be subject
to law.

It is understood and agreed that the party of the second part and any other company running cars within the subway as aforesaid shall with respect to the railway and tracks located in the subway and the equipment use and operation thereof and transportation thereon have all the powers and privileges and be subject to all the duties liabilities restrictions and provisions set forth in the general laws which now are or hereafter may be in force relating to street railways and street railway companies and in any other laws or acts which are or may be applicable to the party of the second part or such other company so far as the same are not or may not be inconsistent with the grants herein specifically made.

In
testimonium.

In witness whereof the said parties hereto set their hands and seals the day and year first above mentioned the city of Boston executing this instrument by the Boston Transit Commission acting by a majority of its members thereto duly authorized and adopting a common seal the West End Street Railway Company causing its name and corporate seal to be affixed to these presents by its president thereto duly authorized and the Boston Transit Commission also signing in the capacity above stated in the first paragraph of this instrument by a majority of its members thereto duly authorized each member adopting the same common seal.

*The City of Boston
acting by the Boston
Transit Commission.* { GEORGE G. CROCKER,
CHARLES H. DALTON, [SEAL]
THOMAS J. GARGAN,
GEORGE F. SWAIN.

*Boston Transit
Commission.* { GEORGE G. CROCKER,
CHARLES H. DALTON, [SEAL]
THOMAS J. GARGAN,
GEORGE F. SWAIN.

THE WEST END STREET RAILWAY COMPANY,

By SAMUEL LITTLE,

President. [SEAL]

CONTRACT BETWEEN THE CITY OF BOSTON
ACTING BY THE BOSTON TRANSIT COMMISSION AND THE BOSTON ELEVATED RAILWAY
COMPANY FOR THE USE OF THE NEW TUNNEL
AND SUBWAY (THE WASHINGTON STREET
TUNNEL).

[Dated September 25, 1902.]

This contract made this twenty-fifth day of September in the year one thousand nine hundred and two by and between the city of Boston, hereinafter called the city, acting by the Boston Transit Commission, hereinafter called the commission, under and by virtue of an act of the Commonwealth of Massachusetts entitled "An Act to Provide for the Construction of Additional Tunnels and Subways in the City of Boston," being chapter 534 of the acts of the year one thousand nine hundred and two, hereinafter called the act, and the Boston Elevated Railway Company, hereinafter called the company, witnesseth as follows: Parties.

The city, pursuant to the act and in consideration of the rental therein provided for, hereby contracts with the company for the sole and exclusive use of the system of tunnels, subways and appurtenances which may be constructed under the authority of the act, which system and appurtenances are hereinafter called the premises.

The term is for the period of twenty-five years from the beginning of the use of the tunnel, as said use and tunnel are in the act defined. Term.

The rental is an annual rental equal to four and one-half per cent. of the net cost of the tunnel and subway respectively. The net cost of the tunnel and subway respectively shall be deemed to include all expenditures incurred in acquisition and construction, including damages, expenses and salaries of the commission and interest at three and one-fourth per cent. per annum on the debt incurred in construction prior to the beginning of the use of such tunnel or subway respectively. Such net cost shall also include the amount expended for preliminary investigations and otherwise under the provisions of section two of the act, and the amount expended for alterations in the existing subway and in the approaches thereto under the provisions of section twelve, and shall be reduced by the deductions provided for in section seven, and if affected by any other provisions of the act shall be computed in accordance therewith. The rental shall be paid to the city in quarterly payments on the last day of December, March, June and September in each year and at the rate aforesaid for any un- Rental.

completed quarter of a year. The rental of the tunnel and subway respectively is to begin when the use of each begins as hereinafter defined.

If at any time during the continuance of the term of this contract the company shall be deprived in whole or in part of the use of the premises by any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises; then the rental or a just and reasonable part thereof, as agreed upon by the mayor of the city and the company or in case of difference as determined by arbitration as hereinafter provided, shall be suspended or abated during such deprivation.

Use.

The use is the sole and exclusive use of the premises for the running of trains and cars therein and such other uses as are hereinafter specified.

The use of the tunnel or subway respectively shall begin when in the opinion of the commission a reasonable time after completion has been allowed for equipment.

Provisions and conditions.

The use of the premises is to be upon the following provisions and conditions.

Equipment of the premises.

The company shall suitably lay and maintain in first-class condition railway tracks in proper places in the premises, together with the appointments and apparatus necessary for the safe and convenient operation of the same and shall provide and maintain all wires, electrical or other apparatus or equipment necessary or convenient for the furnishing of power and light therein and shall further provide requisite pumps, fans and ventilating apparatus and in general shall completely equip and furnish the premises with all machinery, piping, apparatus and furniture proper and adapted thereto and necessary for the convenient maintenance and operation of a railway therein and for the safety and accommodation of the passengers upon such railway.

All tracks, wires, appliances, fixtures, machinery, equipment, furniture and apparatus provided by the company shall be and remain the property of the company so long as it continues to occupy and use the premises under the provisions of this contract, and upon the termination of such use the city hereby agrees to take and pay for all such property at its then fair value as agreed upon by the mayor of the city and the company or in case of difference as determined by arbitration as

hereinafter provided, and the company agrees to deliver to the city all such property at such valuation.

The company shall maintain the premises, except as to repairs below excepted, in good order and condition as a complete structure adapted to the maintenance and use of lines of railway, and shall at all reasonable times be entitled to a permit to open the streets and other public grounds of the city for the purpose of making requisite repairs to the premises, and when the right of the company or its assigns to use the premises shall terminate shall restore them to the city in good condition except as to repairs not obligatory upon the company. Repairs.

All repairs to the premises shall be at the sole cost and expense of the company except such repairs as are made necessary by any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises; and if repairs shall be made necessary by any of said excepted causes then such repairs shall be made by the company and the reasonable cost and expense thereof deducted from the rental subsequently payable.

The city shall not be responsible to the company for damages of any description resulting from any defects in the premises, whether structural or arising out of want of repair or from any cause after the use of the same by the company has begun as hereinbefore provided, unless such damage result from the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises; nor shall it be responsible for any damages resulting to persons or property in the operation and use of the premises, including all parts thereof, whether on property belonging to the city or upon property the fee of which belongs to other parties, and the company shall hold the city harmless and indemnified therefrom and shall at its own expense upon due notice from the city defend all suits and other proceedings of every description, whether at law or in equity, which may be brought against the city, its officers, servants or agents by reason of any liability arising out of the operation and use of any portion of the premises or of the railways, machinery and apparatus therein and accruing after the right to use such portion has begun as herein provided, and shall satisfy all final Liability for damages.

judgments of legal tribunals rendered in such suits and proceedings. The foregoing provisions shall not be construed to impose any liability or obligation upon the company for any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises.

Premises to be kept clean.

The company shall keep the premises thoroughly clean and free from unnecessary dampness, and the approaches to stations clean and free from ice and snow. When the premises are in use it shall suitably light the same in all parts, and by means of artificial ventilation shall keep the air adequately pure for health and comfort.

Inspection by public officials.

The governor of the commonwealth, the mayor and engineer of the city, and the members of the board of Railroad Commissioners, hereinafter called the board, and of the commission, and their respective engineers shall at all times have free entry to the premises for the purpose of inspecting the same.

Changes in premises.

The company within the limitations of the act may make such alterations in or additions to the premises as may be approved by the commission.

Additional uses.

To the extent of the power of the company so to do and the power of the commission to contract therefor, the company may place and maintain in the premises booths for the sale of newspapers, magazines, periodicals and books, and in places specially adapted therefor may place or admit unobjectionable advertisements, and may make such other uses of the premises, not impairing the use for transportation of passengers, as the board may from time to time approve; provided however that such booths and advertisements shall not be so placed or used as to diminish or impair the safety, accommodation, convenience or comfort of passengers using the premises; and the company agrees that upon receipt of notice in writing at any time or from time to time from the board that in its opinion any of the uses above referred to or approved, either in whole or in part, in any way diminish or impair such safety, accommodation, convenience or comfort or conflict in any way with the best interests of the public, it will forthwith to the extent specified in the notice discontinue such use.

Newspaper booths and advertisements.

Wires, conduits, and tubes.

The company, upon such terms as it may deem expedient, may permit any person or corporation not authorized to carry

on a railway business but authorized to use and maintain wires, conduits, tubes or similar structures along the route of the premises, to place such wires, conduits, tubes or similar structures within a corresponding portion of the premises used by the company, but only to such extent and for such time as may be practicable without interfering with the safe and convenient operation of the railway and other apparatus which the company is hereby authorized to put therein, but the privilege shall not extend to gas or water pipes.

The city may place in the premises such wires and apparatus as may be necessary for its police and fire-alarm service, to be used however exclusively for such service and to be so located as not to interfere with the use of the premises which the company is hereby authorized to make. The location, construction, maintenance and repair of such wires and apparatus shall be subject to such reasonable directions and regulations as the company may impose or in case of any disagreement as the board may determine.

Except as above provided the company shall not have the right to place in the premises or attach thereto any structures, machinery, merchandise, apparatus, advertisements or property of any sort which are not necessary or proper for the operation of its railway therein and the performance of its agreements herein contained.

In the event of the failure of the company or its assigns to pay the rental for three months after such rental shall have become due, or in the event of a failure to maintain and operate a railway within the premises, and if such failure shall have continued for three months, then in either of said events the city upon three months' notice, such default still continuing, shall have the right to terminate this contract and to re-enter upon and repossess itself of the premises, unless such failure to maintain and operate grows out of the act of God, of public enemies, of mobs or of riots; or grows out of works or excavations carried on or permitted by the city or other public authority; or grows out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or grows out of the location, maintenance or use of the wires or other apparatus which the city is herein authorized to maintain in the premises. In case the right of re-entry and repossession above given shall be exercised, all the tracks, wires, apparatus, equipment and other property in the nature of fixtures of the company or its assigns within the premises may be taken by the city and be paid for by it at a valuation to be determined as herein provided for the

Default and
penalty.

occasion when the same are to be surrendered by the company at the expiration of the term of this contract.

Removal of property by railway company.

The company shall have no right at any time to remove from the premises any tracks, wires, apparatus, equipment or other property necessary to the use and maintenance of the premises and the operation of a railway therein, except for the purpose of repairs or renewal or for the substitution of equivalent structures, property, apparatus or equipment.

Arbitration.

In case of disagreement between the city acting by its mayor and the company as to the amount due for rental, or as to the suspension or abatement thereof as herein provided, or as to the valuation of the property upon the termination of the use herein contracted for, the matter in dispute shall be left to the decision of three persons, one to be selected by the mayor of the city, one to be selected by the company and the third by the two thus chosen. The report of the arbitrators or the majority of them shall be binding upon the parties hereto.

Termination of the existence of the commission.

In respect of all matters arising under this contract where provision is made for action by the commission or its approval of acts to be done by the company is required, it is provided and agreed that upon the termination of the existence of the commission the authority to take such action shall vest in the city, which shall have all the rights, powers and privileges and be subject to all the duties, restrictions and liabilities herein conferred or imposed upon the commission in respect thereof; such powers to be exercised by the mayor, city engineer and city treasurer in place of the commission or by such other officers as the city council may prescribe.

The company to be subject to law.

With respect to the equipment, use and operation of the railway to be located in the premises and transportation thereon, the company is to have all the powers and privileges and be subject to all the duties, liabilities, restrictions and provisions set forth in general and special laws which now are or hereafter may be in force applicable to it.

The recital of any provision of the act in the body of this contract shall not be deemed to convey any implication that any other provision thereof is not equally a part of the contract.

The following is a copy of the act, the provisions of which, in so far as they declare, define or establish the terms and conditions for the construction, tenure, maintenance and operation of the tunnel, subway and appurtenances, are hereby embodied in and made part of this contract.

[Chap. 534, Acts of 1902. See page 43.]

In witness whereof the parties hereto set their hands and seals the day and year first above mentioned, the City of Boston executing this contract by the Boston Transit Commission, pursuant to a vote of the Commission, its members not being bound in their personal capacity, and the Boston Elevated

Railway Company causing its name and corporate seal to be affixed to these presents by its president thereto duly authorized.

THE CITY OF BOSTON BY THE
BOSTON TRANSIT COMMISSION.

GEORGE G. CROCKER,
CHARLES H. DALTON,
THOMAS J. GARGAN, [SEAL].
GEORGE F. SWAIN,
HORACE G. ALLEN.

THE BOSTON ELEVATED RAILWAY COMPANY.

By WILLIAM A. BANCROFT,
President. [SEAL].

LEASE FROM THE CITY OF BOSTON ACTING BY
THE BOSTON TRANSIT COMMISSION TO THE
BOSTON ELEVATED RAILWAY COMPANY OF
THE EAST BOSTON TUNNEL.

1904.

The Boston Transit Commission, hereinafter called the commission, acting under and by virtue of an act of the Commonwealth of Massachusetts entitled "An Act to Promote Rapid Transit in the City of Boston and Vicinity," being chapter 500 of the acts of the year one thousand eight hundred and ninety-seven, hereinafter called the act, pursuant to the requirements of the act hereby executes this lease to the Boston Elevated Railway Company, hereinafter called the company, of the tunnel to East Boston with the approaches, entrances, sidings, stations and connections therefor, hereinafter called appurtenances, constructed under the authority of the act, which tunnel and appurtenances are hereinafter called the premises.

Term.

The term is to begin when the use begins as hereinafter provided, and expires, as prescribed by the act, twenty-five years from the tenth day of June in the year one thousand eight hundred and ninety-seven.

The use of the premises is to begin on the thirtieth day of December, 1904.

Rental.

The rental fixed by the act and hereby reserved is an annual rental equal to three-eighths of one per cent. of the gross receipts for each year, ending September thirtieth, of all lines owned, leased or operated by the company, to be paid to the city on or before the last day of November in each year, and at the same rate for fractional parts of a year.

The rental, as prescribed by the act, shall be in full compensation for the exclusive use of the premises by the company, its sub-lessees, successors or assigns, the company having the privilege to sub-let the premises, as therein prescribed.

As prescribed by the act, the company, as the agent of the city of Boston, hereinafter called the city, shall collect from each person passing through the tunnel in either direction a toll of one cent or such reduced toll as from time to time may lawfully be established, until such toll may lawfully be discontinued; and if such toll is reduced below the amount of one cent the company shall make provision for the sale of tickets, and the cash toll shall continue to be one cent; which toll shall be collected under such arrangements as shall be agreed upon by the city and the company, or in case of dis-

agreement as shall be determined by the Board of Railroad Commissioners, hereinafter called the board.

If at any time during the continuance of the term hereof the company shall be deprived in whole or in part of the use of the premises by any cause growing out of the act of God, or public enemies, mobs or riots, works or excavations carried on or permitted by the city or other public authority, explosions or the bursting of pipes outside the premises, or the falling or settling of buildings; or growing out of the filling, caving in or other physical obstruction of the premises or any part thereof not due to any unlawful or negligent act of the company, or its agents, servants or licensees, in the use of the premises, or to any failure of the company to maintain the premises in good order and condition so far as it is herein required so to do; or growing out of leakage, or the location, maintenance or use of the wires or other apparatus which the city is herein authorized to maintain in the premises; then during such deprivation the rental or a just and reasonable part thereof, as agreed upon by the mayor of the city and the company or in case of difference as determined by arbitration as hereinafter provided, shall be abated.

The company shall suitably lay and maintain in first-class condition railway tracks in proper places in the premises, together with the appointments and apparatus necessary for the safe and convenient operation of the same and shall provide and maintain all wires, ducts, electrical or other apparatus or equipment necessary or convenient for the furnishing of power and light therein, and in general shall furnish all machinery, apparatus and furniture necessary or proper for the convenient maintenance and operation of a railway therein, and for the safety and accommodation of passengers, elevators and ventilating fans, however, being the subject of separate agreements of the parties; all of which so furnished shall remain the property of the company or its assigns so long as it or they continue to occupy and use the premises, and upon the termination of such use the same shall become the property of the city, which hereby agrees to pay for the same at its then fair value as agreed upon by the mayor of the city and the company or its assigns, or in case of difference as determined by arbitration as hereinafter provided, and the same shall be delivered to the city at such valuation. Equipment.

The company shall maintain the premises, except as herein otherwise provided, in good order and condition as a complete structure adapted to the maintenance and use of lines of railway, and shall at all reasonable times be entitled to a permit to open the streets and other public grounds of the city for the purpose of making such repairs as it is under obligation to make, and when the right of the company or its assigns to use the premises shall terminate, they shall be restored to the city in good condition except as to repairs not obligatory upon the company or its assigns. Repairs.

All repairs to the premises shall be at the sole cost and expense of the company except such repairs as are made necessary by any cause growing out of the act of God, or public enemies, mobs or riots, works or excavations carried on or permitted by the city or other public authority, explosions or the bursting of pipes outside the premises, or the falling or settling of buildings; or growing out of the filling, caving in or other physical obstruction of the premises or any part thereof, not due to any unlawful or negligent act of the company, or its agents, servants or licensees, in the use of the premises, or to any failure of the company to maintain the premises in good order and condition so far as it is herein required so to do; or growing out of leakage, or the location, maintenance or use of the wires or other apparatus which the city is herein authorized to maintain in the premises. If repairs should be made necessary by any of said excepted causes, such repairs shall be made by the company and the reasonable cost and expense thereof shall be paid by the city at or before the time when the next payment of rental is made.

Liability for damages.

In the operation and use of the premises, or of the railways, machinery or apparatus therein, if the company has exercised due care, the city shall hold it harmless and indemnified for such injury to the company's corporeal property, and against such damages for injuries to persons or to the property of others, as may result from leakage, the location, maintenance or use of the wires or other apparatus which the city is herein authorized to maintain in the premises, works or excavations carried on or permitted by the city or other public authority, mobs or riots to the extent of the city's legal liability therefor, the falling or settling of buildings in consequence of the construction or use hereunder of the premises, the collection of tolls, which is the subject of a separate agreement, or from the bursting or leakage of the city's pipes outside the premises, or the filling or caving in or other physical obstruction of the premises or any part thereof, such bursting or leakage of the city's pipes outside the premises or such filling, caving in or obstruction not being due to the act of God or public enemies. The company shall hold the city harmless and indemnified against all other injuries or damages for injuries resulting to persons or property in such operation and use, except such as result from the act of God, public enemies, mobs or riots or from explosions or the bursting or leakage of pipes outside the premises.

Each party shall have the right, without prejudice to any other rights, to participate in the defence of any action or suit for any of the above causes.

Premises to be kept clean, lighted and ventilated.

The company shall keep the premises thoroughly clean and the approaches to stations clean and free from ice and snow, and when the premises are in use it shall suitably light the same in all parts, and shall keep in repair and operate to the best of its ability the ventilating apparatus.

In accordance with the provisions of the act, the city agrees that the premises shall be kept water tight or, in case of leakage, that the water shall be taken care of by it; and agrees to install and maintain, in such manner as not to interfere except unavoidably with the use of the premises by the company, or its assigns, all pumps, piping, wires and other appliances necessary therefor; and the company agrees to take care of and operate such appliances, as the agent of the city, to the best of its ability, and promptly to notify the city whenever it comes to its knowledge that new appliances or extraordinary repairs are needed, but otherwise assumes no obligation to see that such appliances are at any time without defects or sufficient for the purpose, or responsibility in relation to such appliances, or to leakage in the premises. The company's compensation therefor as agreed upon by the mayor and the company or, in case of difference, determined by arbitration, as herein provided, shall be paid at or before the time when the next payment of rental is made.

Leakage.

The governor of the commonwealth, the mayor and engineer of the city, and the members of the board and of the commission, and their respective engineers shall at all times have free entry to the premises for the purpose of inspecting the same.

Inspection by public officials.

To the extent of its lawful powers the company may make other incidental uses of the premises not impairing the use thereof for transportation of passengers, or diminishing or impairing the safety, accommodation, convenience or comfort of passengers; provided, however, that upon notice in writing at any time from the board that in its opinion any such incidental use impairs the use for transportation, or diminishes or impairs the safety, accommodation, convenience or comfort of passengers, it will forthwith, to the extent specified in the notice, discontinue such incidental use.

Additional uses.

If the company permits any other corporation or person to place or maintain wires, ducts or other structures within the premises, it shall be only to such extent as will not interfere with the safe and convenient operation of the railway and other apparatus which the company or the city is authorized to put therein, and the company agrees not to permit any gas pipes to be placed therein, or any water pipes except such as may be needed for fire protection and other uses therein.

Wires and ducts.

Except as herein above provided the company shall not have the right to place in the premises or attach thereto any structures, machinery, merchandise, apparatus, advertisements or property of any sort which are not necessary or proper for the operation of its railway therein and the performance of its agreements herein contained.

The city may place in the premises such wires and apparatus as may be necessary for its police and fire-alarm service, to be used, however, exclusively for such service, and to be so located as not to interfere with the use of the premises which

the company is hereby authorized to make, for which privilege the city shall allow such compensation as the mayor and the company may agree upon, or in case of difference as may be determined by arbitration as herein provided, to be paid at or before the time when the next payment of rental is made. The location, construction, maintenance and repair of such wires and apparatus shall be subject to such reasonable directions and regulations as the company may impose, or in case of any disagreement, as the board may determine.

Default and
penalty.

In the event of the failure of the company or its assigns to pay the rental for three months after such rental shall have become due, or in the event of a failure to maintain and operate a railway within the premises, and if such failure shall have continued for three months, then in either of said events the city upon three months' notice, such default still continuing, shall have the right to terminate this contract and to re-enter upon and repossess itself of the premises, unless such failure to maintain and operate grows out of the act of God, or public enemies, mobs or riots, works or excavations carried on or permitted by the city or other public authority, explosions or the bursting of pipes outside the premises, or the falling or settling of buildings; or grows out of the filling, caving in or other physical obstruction of the premises or any part thereof not due to any unlawful or negligent act of the company, or its agents, servants or licensees, in the use of the premises, or to any failure of the company to maintain the premises in good order and condition so far as it is herein required so to do; or grows out of leakage, or the location, maintenance or use of the wires or other apparatus which the city is herein authorized to maintain in the premises. In case the right of re-entry and repossession above given shall be exercised, all the tracks, wires, ducts, apparatus, equipment and other property of the company or its assigns within the premises shall become the property of the city and shall be paid for by it at a valuation to be determined as herein provided upon termination of use.

Arbitration.

In case of difference between the city, acting by its mayor, and the company upon any matter as to which arbitration is herein provided for, the matter in dispute shall be left to the decision of three persons, one to be selected by the mayor of the city, one to be selected by the company and the third by the two thus chosen, the award of the majority of whom shall be binding upon the parties.

The company
to be subject
to law.

In respect to the equipment, use and operation of the railway to be located in the premises and transportation thereon, the company is to have all the powers and privileges and be subject to all the duties, liabilities, restrictions and provisions set forth in general and special laws which now are or hereafter may be in force applicable to it, so far as the same do not impair contract rights or privileges, acquired under any law or otherwise.

It is agreed that the recital or repetition in this contract of certain provisions of the act is not understood or intended either to extend or impair the operation or effect of such provisions, but is for convenience of reference, and that such recital or repetition shall convey no implication that any other provision of said act is not equally operative and effective.

In witness whereof the Boston Transit Commission has executed this instrument by the signature of a majority of its members pursuant to a vote of the commission, its members not being bound in their personal capacity, and the Boston Elevated Railway Company has caused its name and corporate seal to be affixed hereto by its president thereto duly authorized.

GEORGE G. CROCKER	}	THE BOSTON TRANSIT COMMISSION.
C. H. DALTON		
THOMAS J. GARGAN		
GEO. F. SWAIN		
HORACE G. ALLEN		

THE BOSTON ELEVATED RAILWAY COMPANY
By

[SEAL]

WILLIAM A. BANCROFT
President.

CONTRACT BETWEEN THE CITY OF BOSTON ACT-
ING BY THE BOSTON TRANSIT COMMISSION
AND THE BOSTON ELEVATED RAILWAY COM-
PANY FOR THE USE OF THE DORCHESTER
TUNNEL.

[Dated December 7, 1911.]

I.—This contract made this seventh day of December in the year nineteen hundred and eleven by and between the city of Boston, hereinafter called the city, acting by the Boston Transit Commission, hereinafter called the commission, under and by virtue of an act of the Commonwealth of Massachusetts entitled "An Act Relative to Electric Railway Transportation Facilities in the City of Boston and its Vicinity," being chapter seven hundred and forty-one of the acts of the year nineteen hundred and eleven, hereinafter called the act, and the Boston Elevated Railway Company, hereinafter called the company, witnesseth as follows:

Parties.

St. 1911, c. 741.

II.—The city, pursuant to the act and in consideration of the covenants and agreements herein contained, grants to the company the sole and exclusive use of the Dorchester tunnel, hereinafter called the premises, as defined in the act, and to be constructed under authority thereof, for the running of its cars therein and such other uses as are hereinafter specified.

Grant.

Premises.
St. 1911, c. 741,
s. 3.
Uses.

Beginning of
Use.
St. 1911, c. 741,
s. 3.

III.—The use shall begin when in the opinion of the commission a reasonable time after completion has been allowed for equipment.

Term.
St. 1911, c. 741,
s. 31.

IV.—The term of years of the use shall extend from the beginning of the use to the first day of July, nineteen hundred and thirty-six, and thereafter is to continue unless or until terminated as follows:

St. 1911, c. 741,
s. 34.

All contracts for the use of the Tremont street subway, the East Boston tunnel, the Washington street tunnel, the tunnel of the Cambridge Connection, the Dorchester tunnel, the Boylston Street subway, and the East Boston tunnel extension shall continue in force after the first day of July, nineteen hundred and thirty-six, upon the same terms and conditions except as to the termination thereof, unless and until said contracts are terminated by notice either from the city of Boston or from the Boston Elevated Railway Company, as hereinafter provided. The city of Boston may terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving at least two years' prior notice in writing, which notice it shall be the duty of the mayor of the city to give if directed so to do by an act of the general court, or if directed so to do by a vote of the city council of the city, approved by the board of Railroad Commissioners, hereinafter called the board. The Boston Elevated Railway Company may likewise terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving to the mayor of the city at least two years' prior notice in writing. No notice on the part of either the city or the company shall be given more than three years prior to the date therein fixed for termination.

Rental.
St. 1911, c. 741,
s. 31.

V.—The rental shall be at the rate of four and one-half per cent. per annum upon the net cost.

St. 1911, c. 741,
s. 3.
St. 1911, c. 741,
s. 20.
St. 1911, c. 741,
s. 4.

The net cost shall be deemed to include, except as is otherwise provided herein, all expenditures incurred in acquisition and construction including damages, expenses and salaries of the commission, and the interest on the debt incurred in construction prior to the beginning of the use and also all expenses incurred under the provisions of chapter ninety-four of the resolves of the year nineteen hundred and ten, prior to the date when the act took effect. For the purpose of ascertaining the rental there shall be deducted from the cost the proceeds of sales and leases of lands, rights, or interests in lands or other property acquired by the commission in connection with the construction of the premises, and the proceeds of sales or leases of buildings or other structures upon lands so acquired, and the fair valuation of any such lands and other property no longer needed for the purposes of the Dorchester tunnel but not actually sold, as agreed upon by the commission and the company, or in case of difference as determined by the board. Any interest received by the city upon the proceeds

St. 1911, c. 741,
s. 20.

of the bonds issued by it prior to the expenditure of such proceeds shall be credited against interest during construction in ascertaining the net cost.

St. 1911, c. 741,
s. 4.

The rental shall begin when the use begins.

The rental shall be paid to the city in quarterly payments on the last day of December, March, June and September in each year and at the rate aforesaid for any uncompleted quarter of a year.

If at any time during the continuance of the term of this contract the company shall be deprived in whole or in part of the use of the premises by any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises, then the rental or a just and reasonable part thereof, as agreed upon by the mayor of the city and the company or in case of difference as determined by arbitration as hereinafter provided, shall be suspended or abated during such deprivation.

VI.—The company shall suitably lay and maintain in first-class condition railway tracks in proper places in the premises, together with the appointments and apparatus necessary for the safe and convenient operation of the same and shall provide and maintain all wires, electrical or other apparatus or equipment necessary or convenient for the furnishing of power and light therein and shall further provide requisite pumps, fans and ventilating apparatus and in general shall completely equip and furnish the premises with all machinery, piping, apparatus and furniture proper and adapted thereto and necessary for the convenient maintenance and operation of a railway therein and for the safety and accommodation of the passengers upon such railway.

Equipment.

All tracks, wires, appliances, fixtures, machinery, equipment, furniture and apparatus provided by the company shall be and remain the property of the company so long as it continues to occupy and use the premises under the provisions of this contract, and upon the termination of such use the city hereby agrees to take and pay for all such property at its then fair value as agreed upon by the mayor of the city and the company or in case of difference as determined by arbitration as hereinafter provided, and the company agrees to deliver to the city all such property at such valuation.

Repairs.

VII.—The company shall maintain the premises except as to repairs below excepted, in good order and condition as a structure complete so far as consistent with the provisions of the act, and adapted to the maintenance and use of lines of railway, and shall at all reasonable times be entitled to a permit to open the streets and other public grounds of the city for the purpose of making requisite repairs to the premises, and when the right of the company or its assigns to use the premises shall terminate shall restore them to the city in good condition except as to repairs not obligatory upon the company.

All repairs to the premises shall be at the sole cost and expense of the company except such repairs as are made necessary by any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises; and if repairs shall be made necessary by any of said excepted causes then such repairs shall be made by the company and the reasonable cost and expense thereof deducted from the rental subsequently payable.

Liability for damages.

VIII.—The city shall not be responsible to the company for damages of any description resulting from any defects in the premises, whether structural or arising out of want of repair or from any cause after the use of the same by the company has begun as hereinbefore provided, unless such damage result from the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises; nor shall it be responsible for any damages resulting to persons or property in the operation and use of the premises, including all parts thereof, whether on property belonging to the city or upon property the fee of which belongs to other parties, and the company shall hold the city harmless and indemnified therefrom and shall at its own expense upon due notice from the city defend all suits and other proceedings of every description, whether at law or in equity, which may be brought against the city, its officers, servants or agents by reason of any liability arising out of the operation and use of any portion of the premises or of the railways, machinery and apparatus therein and accruing after the right to use such portion has begun as herein provided, and shall satisfy all final judgments of legal tribunals rendered in such suits and proceedings. The foregoing provisions

shall not be construed to impose any liability or obligation upon the company for any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises.

IX.—The company shall keep the premises thoroughly clean and free from unnecessary dampness, and the approaches to stations clean and free from ice and snow. When the premises are in use it shall suitably light the same in all parts, and by means of artificial ventilation shall keep the air adequately pure for health and comfort.

Premises to be kept clean.

X.—The company within the limitations of the act may make such alterations in or additions to the premises as may be approved by the commission.

Changes in Premises.

XI.—To the extent of the power of the company so to do and the power of the commission to contract therefor, the company may place and maintain in the premises booths for the sale of newspapers, magazines, periodicals and books, and in places specially adapted therefor may place or admit unobjectionable advertisements, and may make such other uses of the premises, not impairing the use for transportation of passengers, as the board may from time to time approve; provided however that such booths and advertisements shall not be so placed or used as to diminish or impair the safety, accommodation, convenience or comfort of passengers using the premises; and the company agrees that upon receipt of notice in writing at any time or from time to time from the board that in its opinion any of the uses above referred to or approved, either in whole or in part, in any way diminish or impair such safety, accommodation, convenience or comfort or conflict in any way with the best interests of the public, it will forthwith to the extent specified in the notice discontinue such use.

Sundry uses.

Newspaper booths and advertisements.

XII.—The company, upon such terms as it may deem expedient, may permit any person or corporation not authorized to carry on a railway business but authorized to use and maintain wires, conduits, tubes or similar structures along the route of the premises, to place such wires, conduits, tubes or similar structures within a corresponding portion of the premises used by the company, but only to such extent and for such time as may be practicable without interfering with the safe

Wires, conduits and tubes.

and convenient operation of the railway and other apparatus which the company is hereby authorized to put therein, but the privilege shall not extend to gas or water pipes.

Except as above provided the company shall not have the right to place in the premises or attach thereto any structures, machinery, merchandise, apparatus, advertisements or property of any sort which are not necessary or proper for the operation of its railway therein and the performance of its agreements herein contained.

Police and
Fire Alarm
Service.

XIII.—The city may place in the premises such wires and apparatus as may be necessary for its police and fire-alarm service, to be used however exclusively for such service and to be so located as not to interfere with the use of the premises which the company is hereby authorized to make. The location, construction, maintenance and repair of such wires and apparatus shall be subject to such reasonable directions and regulations as the company may impose or in case of any disagreement as the board may determine.

Default and
penalty.

XIV.—In the event of the failure of the company or its assigns to pay the rental for three months after such rental shall have become due, or in the event of a failure to maintain and operate a railway within the premises, and if such failure shall have continued for three months, then in either of said events the city upon three months' notice, such default still continuing, shall have the right to terminate this contract and to re-enter upon and repossess itself of the premises, unless such failure to maintain and operate grows out of the act of God, of public enemies, of mobs or of riots; or grows out of works or excavations carried on or permitted by the city or other public authority; or grows out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or grows out of the location, maintenance or use of the wires or other apparatus which the city is herein authorized to maintain in the premises. In case the right of re-entry and re-possession above given shall be exercised, all the tracks, wires, apparatus, equipment and other property in the nature of fixtures of the company or its assigns within the premises may be taken by the city and be paid for by it at a valuation to be determined as herein provided for the occasion when the same are to be surrendered by the company at the expiration of the term of this contract.

Removal of
property by
railway com-
pany.

XV.—The company shall have no right at any time to remove from the premises any tracks, wires, apparatus, equipment or other property necessary to the use and maintenance of the premises and the operation of a railway therein, except

for the purpose of repairs or renewal or for the substitution of equivalent structures, property, apparatus or equipment.

XVI.—The governor of the commonwealth, the mayor and commissioner of public works of the city, and the members of the board and of the commission, and their respective engineers shall at all times have free entry to the premises for the purpose of inspecting the same.

Inspection by public officials.

XVII.—In case of disagreement between the city acting by its mayor and the company as to the amount due for rental, or as to the suspension or abatement thereof as herein provided, or as to the valuation of the property upon the termination of the use herein contracted for, the matter in dispute shall be left to the decision of three persons, one to be selected by the mayor of the city, one to be selected by the company and the third by the two thus chosen. The report of the arbitrators or the majority of them shall be binding upon the parties hereto.

Arbitration.

XVIII.—In respect of all matters arising under this contract where provision is made for action by the commission or its approval of acts to be done by the company is required, it is provided and agreed that upon the termination of the existence of the commission the authority to take such action shall vest in the city, which shall have all the rights, powers and privileges and be subject to all the duties, restrictions and liabilities herein conferred or imposed upon the commission in respect thereof; such powers to be exercised by the mayor, commissioner of public works and city treasurer in place of the commission or by such other officers as the city council may prescribe.

Termination of the existence of the Commission.

XIX.—With respect to the equipment, use and operation of the railway to be located in the premises and transportation thereon, the company is to have all the powers and privileges and be subject to all the duties, liabilities, restrictions and provisions set forth in general and special laws which now are or hereafter may be in force applicable to it.

The Company to be subject to law.

XX.—The use and control of the premises under this contract is subject to the rights, if any, of the West End Street Railway Company under Article II of the existing lease from the West End Street Railway Company to the Boston Elevated Railway Company as modified in accordance with law.

Rights of West End Street Railway Company.

St. 1911, c. 741, s. 40.

XXI.—This contract shall not in any respect impair any right which the commonwealth or the city, or any other licensee of the commonwealth may at any time have to take the railway properties of the company. In the event of such taking the compensation to be paid to the company shall not be enhanced by reason of this contract nor shall it be diminished because of the fact that without this contract the connection between different parts of said properties might be cut off.

Right of Commonwealth or City to Take by Eminent Domain.

XXII.—The recital of any provision of the act in the body of this contract shall not be deemed to convey any implica-

Controlling Effect of the Act.

tion that any other provision thereof is not equally a part of the contract, and it is understood and agreed that anything herein contained which is contrary to or inconsistent with the provisions of the act in the form and as approved on the twentieth day of July, nineteen hundred and eleven, is and shall be void and of no effect.

XXIII.—The following is a copy of those sections of Part I of the act, the provisions of which, in so far as they declare, define or establish the terms and conditions for the construction, tenure, maintenance and operation of the premises, are embodied in and made part of this contract, as required by the act.

[Acts of 1911, Chap. 741, Sections 1-4, see page 91; Sections 14-26, see page 98.]

In witness whereof the parties hereto, and to two other instruments of like tenor and effect, have set their hands and seals the day and year first above mentioned, the City of Boston, acting by the Boston Transit Commission, pursuant to a vote of the Commission, its members not being bound in their personal capacity, and the Boston Elevated Railway Company, acting by its President, hereto duly authorized.

THE CITY OF BOSTON BY THE
BOSTON TRANSIT COMMISSION.

By GEORGE G. CROCKER
GEORGE F. SWAIN
[SEAL] HORACE G. ALLEN
JOSIAH QUINCY
JAMES B. NOYES

Members of said Commission.

BOSTON ELEVATED RAILWAY COMPANY.

By WILLIAM A. BANCROFT
President.
[SEAL]

CONTRACT BETWEEN THE CITY OF BOSTON ACT-
ING BY THE BOSTON TRANSIT COMMISSION
WITH THE BOSTON ELEVATED RAILWAY
COMPANY FOR THE USE OF THE BOYLSTON
STREET SUBWAY.

[Dated December 7, 1911.]

I.—This contract made this seventh day of December in the year nineteen hundred and eleven by and between the city of Boston, hereinafter called the city, acting by the Boston Transit Commission, hereinafter called the commission, under and by virtue of an act of the Commonwealth of Massachusetts entitled “An Act Relative to Electric Railway Transportation Facilities in the City of Boston and its Vicinity,” being chapter seven hundred and forty-one of the acts of the year nineteen hundred and eleven, hereinafter called the act, and the Boston Elevated Railway Company, hereinafter called the company, witnesseth as follows:

Parties.

St. 1911, c. 741.

II.—The city, pursuant to the act and in consideration of the covenants and agreements herein contained, grants to the company the sole and exclusive use of the Boylston Street subway, hereinafter called the premises, as defined in the act, and to be constructed under authority thereof, for the running of its cars therein and such other uses as are hereinafter specified.

Grant.
St. 1911, c. 741,
s. 7.

Premises.

Uses.

III.—The use shall begin when in the opinion of the commission a reasonable time after completion has been allowed for equipment.

Beginning of
Use.
St. 1911, c. 741,
s. 7.

IV.—The term of years of the use shall extend from the beginning of the use to the first day of July, nineteen hundred and thirty-six, and thereafter is to continue unless or until terminated as follows:

Term.
St. 1911, c. 741,
s. 32.

All contracts for the use of the Tremont street subway, the East Boston tunnel, the Washington street tunnel, the tunnel of the Cambridge Connection, the Dorchester tunnel, the Boylston Street subway, and the East Boston tunnel extension shall continue in force after the first day of July, nineteen hundred and thirty-six, upon the same terms and conditions except as to the termination thereof, unless and until said contracts are terminated by notice either from the city of Boston or from the Boston Elevated Railway Company, as hereinafter provided. The city of Boston may terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving at least two years' prior notice in writing, which notice it shall be the duty of the mayor of the city to give if directed so to do by an act of the general court, or if directed so to do by

St. 1911, c. 741,
s. 34.

a vote of the city council of the city, approved by the board of Railroad Commissioners, hereinafter called the board. The Boston Elevated Railway Company may likewise terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving to the mayor of the city at least two years' prior notice in writing. No notice on the part of either the city or the company shall be given more than three years prior to the date therein fixed for termination.

Rental.
St. 1911, c. 741,
s. 32.

V.—The rental shall be at the rate of four and one-half per cent. per annum upon the net cost.

St. 1911, c. 741,
s. 7.

The net cost shall be deemed to include, except as is otherwise provided herein, all expenditures incurred in acquisition and construction including damages, expenses and salaries of the commission, and the interest on the debt incurred in construction prior to the beginning of the use, and shall also include all expenses incurred in connection with the Riverbank subway authorized by chapter five hundred and seventy-three of the acts of the year nineteen hundred and seven, prior to the date when the act took effect. The cost of enlarging the Tremont street subway, if that is done, or of building a separate subway, as provided in the act, shall be included in the cost of the premises. For the purpose of ascertaining the rental there shall be deducted from the cost the proceeds of sales and leases of lands, rights, or interests in lands or other property acquired by the commission in connection with the construction of the premises and the proceeds of sales or leases of buildings or other structures upon lands so acquired, and the fair valuation of any such lands and other property no longer needed for the purposes of the Boylston Street subway but not actually sold, as agreed upon by the commission and the company, or in case of difference as determined by the board. Any interest received by the city upon the proceeds of the bonds issued by it prior to the expenditure of such proceeds shall be credited against interest during construction in ascertaining the net cost.

St. 1911, c. 741,
s. 20.
St. 1911, c. 741,
s. 5.

St. 1911, c. 741,
s. 20.

St. 1911, c. 741,
s. 9.

The rental shall begin when the use begins.

The rental shall be paid to the city in quarterly payments on the last day of December, March, June and September in each year and at the rate aforesaid for any uncompleted quarter of a year.

If at any time during the continuance of the term of this contract the company shall be deprived in whole or in part of the use of the premises by any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the

premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises; then the rental or a just and reasonable part thereof, as agreed upon by the mayor of the city and the company or in case of difference as determined by arbitration as hereinafter provided, shall be suspended or abated during such deprivation.

VI.—The company shall suitably lay and maintain in first-class condition railway tracks in proper places in the premises, together with the appointments and apparatus necessary for the safe and convenient operation of the same and shall provide and maintain all wires, electrical or other apparatus or equipment necessary or convenient for the furnishing of power and light therein and shall further provide requisite pumps, fans and ventilating apparatus and in general shall completely equip and furnish the premises with all machinery, piping, apparatus and furniture proper and adapted thereto and necessary for the convenient maintenance and operation of a railway therein and for the safety and accommodation of the passengers upon such railway.

Equipment.

All tracks, wires, appliances, fixtures, machinery, equipment, furniture and apparatus provided by the company shall be and remain the property of the company so long as it continues to occupy and use the premises under the provisions of this contract, and upon the termination of such use the city hereby agrees to take and pay for all such property at its then fair value as agreed upon by the mayor of the city and the company or in case of difference as determined by arbitration as hereinafter provided, and the company agrees to deliver to the city all such property at such valuation.

VII.—The company shall maintain the premises, except as to repairs below excepted, in good order and condition as a structure complete so far as consistent with the provisions of the act, and adapted to the maintenance and use of lines of railway, and shall at all reasonable times be entitled to a permit to open the streets and other public grounds of the city for the purpose of making requisite repairs to the premises, and when the right of the company or its assigns to use the premises shall terminate shall restore them to the city in good condition except as to repairs not obligatory upon the company.

Repairs.

All repairs to the premises shall be at the sole cost and expense of the company except such repairs as are made necessary by any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any

part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises, and if repairs shall be made necessary by any of said excepted causes then such repairs shall be made by the company and the reasonable cost and expense thereof deducted from the rental subsequently payable.

Liability for damages.

VIII.—The city shall not be responsible to the company for damages of any description resulting from any defects in the premises, whether structural or arising out of want of repair or from any cause after the use of the same by the company has begun as hereinbefore provided, unless such damage result from the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises; nor shall it be responsible for any damages resulting to persons or property in the operation and use of the premises, including all parts thereof, whether on property belonging to the city or upon property the fee of which belongs to other parties, and the company shall hold the city harmless and indemnified therefrom and shall at its own expense upon due notice from the city defend all suits and other proceedings of every description, whether at law or in equity, which may be brought against the city, its officers, servants or agents by reason of any liability arising out of the operation and use of any portion of the premises or of the railways, machinery and apparatus therein and accruing after the right to use such portion has begun as herein provided, and shall satisfy all final judgments of legal tribunals rendered in such suits and proceedings. The foregoing provisions shall not be construed to impose any liability or obligation upon the company for any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises.

Premises to be kept clean.

IX.—The company shall keep the premises thoroughly clean and free from unnecessary dampness, and the approaches to stations clean and free from ice and snow. When the

premises are in use it shall suitably light the same in all parts, and by means of artificial ventilation shall keep the air adequately pure for health and comfort.

X.—The company within the limitations of the act may make such alterations in or additions to the premises as may be approved by the commission. Changes in premises.

XI.—To the extent of the power of the company so to do and the power of the commission to contract therefor, the company may place and maintain in the premises booths for the sale of newspapers, magazines, periodicals and books and in places specially adapted therefor may place or admit unobjectionable advertisements, and may make such other uses of the premises, not impairing the use for transportation of passengers, as the board may from time to time approve; provided however that such booths and advertisements shall not be so placed or used as to diminish or impair the safety, accommodation, convenience or comfort of passengers using the premises; and the company agrees that upon receipt of notice in writing at any time or from time to time from the board that in its opinion any of the uses above referred to or approved, either in whole or in part, in any way diminish or impair such safety, accommodation, convenience or comfort or conflict in any way with the best interests of the public, it will forthwith to the extent specified in the notice discontinue such use. Sundry uses.

Newspaper booths and advertisements.

XII.—The company, upon such terms as it may deem expedient, may permit any person or corporation not authorized to carry on a railway business but authorized to use and maintain wires, conduits, tubes or similar structures along the route of the premises, to place such wires, conduits, tubes or similar structures within a corresponding portion of the premises used by the company, but only to such extent and for such time as may be practicable without interfering with the safe and convenient operation of the railway and other apparatus which the company is hereby authorized to put therein, but the privilege shall not extend to gas or water pipes. Wires, conduits and tubes.

Except as above provided the company shall not have the right to place in the premises or attach thereto any structures, machinery, merchandise, apparatus, advertisements or property of any sort which are not necessary or proper for the operation of its railway therein and the performance of its agreements herein contained.

XIII.—The city may place in the premises such wires and apparatus as may be necessary for its police and fire-alarm service, to be used however exclusively for such service and to be so located as not to interfere with the use of the premises which the company is hereby authorized to make. The location, construction, maintenance and repair of such wires and apparatus shall be subject to such reasonable directions and regulations as the company may impose or in case of any disagreement as the board may determine. Police and Fire Alarm Service.

Default and
penalty.

XIV.—In the event of the failure of the company or its assigns to pay the rental for three months after such rental shall have become due, or in the event of a failure to maintain and operate a railway within the premises, and if such failure shall have continued for three months, then in either of said events the city upon three months' notice, such default still continuing, shall have the right to terminate this contract and to re-enter upon and re-possess itself of the premises, unless such failure to maintain and operate grows out of the act of God, of public enemies, of mobs or of riots; or grows out of works or excavations carried on or permitted by the city or other public authority; or grows out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises; or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or grows out of the location, maintenance or use of the wires or other apparatus which the city is herein authorized to maintain in the premises. In case the right of re-entry and re-possession above given shall be exercised, all the tracks, wires, apparatus, equipment and other property in the nature of fixtures of the company or its assigns within the premises may be taken by the city and be paid for by it at a valuation to be determined as herein provided for the occasion when the same are to be surrendered by the company at the expiration of the term of this contract.

Removal of
property by
railway com-
pany.

XV.—The company shall have no right at any time to remove from the premises any tracks, wires, apparatus, equipment or other property necessary to the use and maintenance of the premises and the operation of a railway therein, except for the purpose of repairs or renewal or for the substitution of equivalent structures, property, apparatus or equipment.

Inspection by
public officials.

XVI.—The governor of the commonwealth, the mayor and commissioner of public works of the city, and the members of the board and of the commission, and their respective engineers shall at all times have free entry to the premises for the purpose of inspecting the same.

Arbitration.

XVII.—In case of disagreement between the city acting by its mayor and the company as to the amount due for rental, or as to the suspension or abatement thereof as herein provided, or as to the valuation of the property upon the termination of the use herein contracted for, the matter in dispute shall be left to the decision of three persons, one to be selected by the mayor of the city, one to be selected by the company and the third by the two thus chosen. The report of the arbitrators or the majority of them shall be binding upon the parties hereto.

XVIII.—In respect of all matters arising under this contract where provision is made for action by the commission or its approval of acts to be done by the company is required, it is provided and agreed that upon the termination of the existence of the commission the authority to take such action shall vest in the city, which shall have all the rights, powers and privileges and be subject to all the duties, restrictions and liabilities herein conferred or imposed upon the commission in respect thereof; such powers to be exercised by the mayor, commissioner of public works and city treasurer in place of the commission or by such other officers as the city council may prescribe.

Termination of the existence of the commission.

XIX.—With respect to the equipment, use and operation of the railway to be located in the premises and transportation thereon, the company is to have all the powers and privileges and be subject to all the duties, liabilities, restrictions and provisions set forth in general and special laws which now are or hereafter may be in force applicable to it.

The company to be subject to law.

XX.—The use and control of the premises under this contract is subject to the rights, if any, of the West End Street Railway Company under Article II of the existing lease from the West End Street Railway Company to the Boston Elevated Railway Company as modified in accordance with law.

Rights of West End Street Railway Company. St. 1911, c. 741, s. 40.

XXI.—This contract shall not in any respect impair any right which the commonwealth or the city, or any other licensee of the commonwealth may at any time have to take the railway properties of the company. In the event of such taking the compensation to be paid to the company shall not be enhanced by reason of this contract nor shall it be diminished because of the fact that without this contract the connection between different parts of said properties might be cut off.

Right of Commonwealth or City to Take by Eminent Domain.

XXII.—The recital of any provision of the act in the body of this contract shall not be deemed to convey any implication that any other provision thereof is not equally a part of the contract, and it is understood and agreed that anything herein contained which is contrary to or inconsistent with the provisions of the act in the form and as approved on the twentieth day of July, nineteen hundred and eleven, is and shall be void and of no effect.

Controlling Effect of the Act.

XXIII.—The following is a copy of those sections of Part I of the act, the provisions of which, in so far as they declare, define or establish the terms and conditions for the construction, tenure, maintenance and operation of the premises, are embodied in and made part of this contract, as required by the act.

St. 1911, c. 741, s. 7. Copy of Certain Provisions of the Act.

[Acts of 1911, Chap. 741, Sections 5-9, see page 93; Sections 14-26, see page 98.]

In witness whereof the parties hereto, and to two other instruments of like tenor and effect, have set their hands and seals the day and year first above mentioned, the City of

Boston, acting by the Boston Transit Commission, pursuant to a vote of the Commission, its members not being bound in their personal capacity, and the Boston Elevated Railway Company, acting by its President, hereto duly authorized.

THE CITY OF BOSTON BY THE
BOSTON TRANSIT COMMISSION.

By GEORGE G. CROCKER
GEORGE F. SWAIN
[SEAL] HORACE G. ALLEN
JOSIAH QUINCY
JAMES B. NOYES

Members of said Commission.

BOSTON ELEVATED RAILWAY COMPANY.

By WILLIAM A. BANCROFT
[SEAL] *President.*

CONTRACT BETWEEN THE CITY OF BOSTON
ACTING BY THE BOSTON TRANSIT COMMISSION AND THE BOSTON ELEVATED RAILWAY
COMPANY FOR THE USE OF THE EAST BOSTON
TUNNEL EXTENSION.

[Dated December 7, 1911.]

Parties.

I.—This contract made this seventh day of December in the year nineteen hundred and eleven by and between the city of Boston, hereinafter called the city, acting by the Boston Transit Commission, hereinafter called the commission, under and by virtue of an act of the Commonwealth of Massachusetts entitled “An Act Relative to Electric Railway Transportation Facilities in the City of Boston and its Vicinity,” being chapter seven hundred and forty-one of the acts of the year nineteen hundred and eleven, hereinafter called the act, and the Boston Elevated Railway Company, hereinafter called the company, witnesseth as follows:

St. 1911, c. 741.

Grant.
St. 1911, c. 741,
s. 12.

Premises.

Uses.

II.—The city, pursuant to the act and in consideration of the covenants and agreements herein contained, grants to the company the sole and exclusive use of the East Boston tunnel extension, hereinafter called the premises, as defined in the act, and to be constructed under authority thereof, for the running of its cars therein and such uses as are hereinafter specified.

Beginning of
Use.
St. 1911, c. 741,
s. 12.

III.—The use shall begin when in the opinion of the commission a reasonable time after completion has been allowed for equipment.

IV.—The term of years of the use shall extend from the beginning of the use to the first day of July, nineteen hundred and thirty-six, and thereafter is to continue unless or until terminated as follows:

Term.
St. 1911, c. 741,
s. 33.

All contracts for the use of the Tremont street subway, the East Boston tunnel, the Washington street tunnel, the tunnel of the Cambridge Connection, the Dorchester tunnel, the Boylston Street subway, and the East Boston tunnel extension shall continue in force after the first day of July, nineteen hundred and thirty-six, upon the same terms and conditions except as to the termination thereof, unless and until said contracts are terminated by notice either from the city of Boston or from the Boston Elevated Railway Company, as hereinafter provided. The city of Boston may terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving at least two years' prior notice in writing, which notice it shall be the duty of the mayor of the city to give if directed so to do by an act of the general court, or if directed so to do by a vote of the city council of the city, approved by the board of Railroad Commissioners, hereinafter called the board. The Boston Elevated Railway Company may likewise terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving to the mayor of the city at least two years' prior notice in writing. No notice on the part of either the city or the company shall be given more than three years prior to the date therein fixed for termination.

St. 1911, c. 741,
s. 34.

V.—The rental shall be at the rate of four and one-half per cent. per annum upon the net cost.

Rental.
St. 1911, c. 741,
s. 33, 34.
St. 1911, c. 741,
s. 12.
St. 1911, c. 741,
s. 20.
St. 1911, c. 741,
s. 13.

The net cost shall be deemed to include, except as is otherwise provided herein, all expenditures incurred in acquisition and construction and in making necessary changes in the East Boston tunnel including damages, expenses (except damages and all other expenses for lands and rights in lands or otherwise incurred, for the widening of Cambridge street, one-half of which damages and expenses, less the betterments the city shall pay, in the same manner as for other work done under chapter three hundred and ninety-three of the acts of the year nineteen hundred and six, and one-half of which shall be considered as part of the cost of the premises and be paid for out of the proceeds of bonds issued under section thirteen of the act), and salaries of the commission, and the interest on the debt incurred in construction prior to the beginning of the use. For the purpose of ascertaining the rental there shall be deducted from the cost, except as above provided, the proceeds of sales and leases of lands, rights, or interests in lands or other property acquired by the commission in connection with the construction of the premises, and the proceeds of sales or leases of buildings or other structures upon lands so acquired, and the fair valuation of any such lands and other property no longer needed

St. 1911, c. 741,
s. 20.

St. 1911, c. 741,
s. 13.

for the purposes of the East Boston tunnel extension but not actually sold, as agreed upon by the commission and the company, or in case of difference as determined by the board. Any interest received by the city upon the proceeds of the bonds issued by it prior to the expenditure of such proceeds shall be credited against interest during construction in ascertaining the net cost.

The rental shall begin when the use begins.

The rental shall be paid to the city in quarterly payments on the last day of December, March, June and September in each year and at the rate aforesaid for any uncompleted quarter of a year.

If at any time during the continuance of the term of this contract the company shall be deprived in whole or in part of the use of the premises by any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants, or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises; then the rental or a just and reasonable part thereof, as agreed upon by the mayor of the city and the company or in case of difference as determined by arbitration as hereinafter provided, shall be suspended or abated during such deprivation.

Equipment.

VI.—The company shall suitably lay and maintain in first-class condition railway tracks in proper places in the premises, together with the appointments and apparatus necessary for the safe and convenient operation of the same and shall provide and maintain all wires, electrical or other apparatus or equipment necessary or convenient for the furnishing of power and light therein and shall further provide requisite pumps, fans and ventilating apparatus and in general shall completely equip and furnish the premises with all machinery, piping, apparatus and furniture proper and adapted thereto and necessary for the convenient maintenance and operation of a railway therein and for the safety and accommodation of the passengers upon such railway.

All tracks, wires, appliances, fixtures, machinery, equipment, furniture and apparatus provided by the company shall be and remain the property of the company so long as it continues to occupy and use the premises under the provisions of this contract, and upon the termination of such use the city hereby agrees to take and pay for all such property at its then

fair value as agreed upon by the mayor of the city and the company or in case of difference as determined by arbitration as hereinafter provided, and the company agrees to deliver to the city all such property at such valuation.

VII.—The company shall maintain the premises, except as to repairs below excepted, in good order and condition as a structure complete so far as consistent with the provisions of the act, and adapted to the maintenance and use of lines of railway, and shall at all reasonable times be entitled to a permit to open the streets and other public grounds of the city for the purpose of making requisite repairs to the premises, and when the right of the company or its assigns to use the premises shall terminate shall restore them to the city in good condition except as to repairs not obligatory upon the company. Repairs.

All repairs to the premises shall be at the sole cost and expense of the company except such repairs as are made necessary by any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises; and if repairs shall be made necessary by any of said excepted causes then such repairs shall be made by the company and the reasonable cost and expense thereof deducted from the rental subsequently payable.

VIII.—The city shall not be responsible to the company for damages of any description resulting from any defects in the premises, whether structural or arising out of want of repair or from any cause after the use of the same by the company has begun as hereinbefore provided, unless such damage result from the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises; nor shall it be responsible for any damages resulting to persons or property in the operation and use of the premises, including all parts thereof, whether on property belonging to the city or upon property the fee of which belongs to other parties, and the company shall hold the city harmless and indemnified therefrom and shall at its own expense upon due notice from the city defend all suits and other proceedings of every description, whether at law or in equity, which may be brought against the city, its officers, servants or agents by reason of any liability arising out of the operation and use of any portion of the premises or of the railways, machinery and apparatus therein and accruing after the Liability for damages.

right to use such portion has begun as herein provided, and shall satisfy all final judgments of legal tribunals rendered in such suits and proceedings. The foregoing provisions shall not be construed to impose any liability or obligation upon the company for any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises.

Premises to be kept clean.

IX.—The company shall keep the premises thoroughly clean and free from unnecessary dampness, and the approaches to stations clean and free from ice and snow. When the premises are in use it shall suitably light the same in all parts, and by means of artificial ventilation shall keep the air adequately pure for health and comfort.

Changes in premises.

X.—The company within the limitations of the act may make such alterations in or additions to the premises as may be approved by the commission.

Sundry uses.

XI.—To the extent of the power of the company so to do and the power of the commission to contract therefor, the company may place and maintain in the premises booths for the sale of newspapers, magazines, periodicals and books, and in places specially adapted therefor may place or admit unobjectionable advertisements, and may make such other uses of the premises, not impairing the use for transportation of passengers, as the board may from time to time approve; provided however that such booths and advertisements shall not be so placed or used as to diminish or impair the safety, accommodation, convenience or comfort of passengers using the premises; and the company agrees that upon receipt of notice in writing at any time or from time to time from the board that in its opinion any of the uses above referred to or approved, either in whole or in part, in any way diminish or impair such safety, accommodation, convenience or comfort or conflict in any way with the best interests of the public, it will forthwith to the extent specified in the notice discontinue such use.

Newspaper booths and advertisements.

Wires, conduits and tubes.

XII.—The company, upon such terms as it may deem expedient, may permit any person or corporation not authorized to carry on a railway business but authorized to use and maintain wires, conduits, tubes or similar structures along the route of the premises, to place such wires, conduits, tubes or similar structures within a corresponding portion of the premises used by the company, but only to such extent and for such

time as may be practicable without interfering with the safe and convenient operation of the railway and other apparatus which the company is hereby authorized to put therein, but the privilege shall not extend to gas or water pipes.

Except as above provided the company shall not have the right to place in the premises or attach thereto any structures, machinery, merchandise, apparatus, advertisements or property of any sort which are not necessary or proper for the operation of its railway therein and the performance of its agreements herein contained.

XIII.—The city may place in the premises such wires and apparatus as may be necessary for its police and fire-alarm service, to be used however exclusively for such service and to be so located as not to interfere with the use of the premises which the company is hereby authorized to make. The location, construction, maintenance and repair of such wires and apparatus shall be subject to such reasonable directions and regulations as the company may impose or in case of any disagreement as the board may determine.

Police and Fire
Alarm Service.

XIV.—In the event of the failure of the company or its assigns to pay the rental for three months after such rental shall have become due, or in the event of a failure to maintain and operate a railway within the premises, and if such failure shall have continued for three months, then in either of said events the city upon three months' notice, such default still continuing, shall have the right to terminate this contract and to re-enter upon and repossess itself of the premises, unless such failure to maintain and operate grows out of the act of God, of public enemies, of mobs, or riots; or grows out of works or excavations carried on or permitted by the city or other public authority; or grows out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or grows out of the location, maintenance or use of the wires or other apparatus which the city is herein authorized to maintain in the premises. In case the right of re-entry and repossession above given shall be exercised, all the tracks, wires, apparatus, equipment and other property in the nature of fixtures of the company or its assigns within the premises may be taken by the city and be paid for by it at a valuation to be determined as herein provided for the occasion when the same are to be surrendered by the company at the expiration of the term of this contract.

Default and
penalty.

XV.—The company shall have no right at any time to remove from the premises any tracks, wires, apparatus, equipment or other property necessary to the use and maintenance of the premises and the operation of a railway therein, except

Removal of
property by
railway com-
pany.

for the purpose of repairs or renewal or for the substitution of equivalent structures, property, apparatus or equipment.

Inspection by
public officials.

XVI.—The governor of the commonwealth, the mayor and commissioner of public works of the city, and the members of the board and of the commission, and their respective engineers shall at all times have free entry to the premises for the purpose of inspecting the same.

Arbitration.

XVII.—In case of disagreement between the city acting by its mayor and the company as to the amount due for rental, or as to the suspension or abatement thereof as herein provided, or as to the valuation of the property upon the termination of the use herein contracted for, the matter in dispute shall be left to the decision of three persons, one to be selected by the mayor of the city, one to be selected by the company and the third by the two thus chosen. The report of the arbitrators or the majority of them shall be binding upon the parties hereto.

Termination of
the existence of
the commis-
sion.

XVIII.—In respect of all matters arising under this contract where provision is made for action by the commission or its approval of acts to be done by the company is required, it is provided and agreed that upon the termination of the existence of the commission the authority to take such action shall vest in the city, which shall have all the rights, powers and privileges and be subject to all the duties, restrictions and liabilities herein conferred or imposed upon the commission in respect thereof; such powers to be exercised by the mayor, commissioner of public works and city treasurer in place of the commission or by such other officers as the city council may prescribe.

The company
to be subject
to law.

XIX.—With respect to the equipment, use and operation of the railway to be located in the premises and transportation thereon, the company is to have all the powers and privileges and be subject to all the duties, liabilities, restrictions and provisions set forth in general and special laws which now are or hereafter may be in force applicable to it.

Rights of West
End Street
Railway
Company.
St. 1911, c. 741,
s. 40.

XX.—The use and control of the premises under this contract is subject to the rights, if any, of the West End Street Railway Company under Article II of the existing lease from the West End Street Railway Company to the Boston Elevated Railway Company as modified in accordance with law.

Right of Com-
monwealth or
City to Take
by Eminent
Domain.

XXI.—This contract shall not in any respect impair any right which the commonwealth or the city, or any other licensee of the commonwealth may at any time have to take the railway properties of the company. In the event of such taking the compensation to be paid to the company shall not be enhanced by reason of this contract nor shall it be diminished because of the fact that without this contract the connection between different parts of said properties might be cut off.

Controlling
Effect of the
Act.

XXII.—The recital of any provision of the act in the body of this contract shall not be deemed to convey any implication that any other provision thereof is not equally a part of the

contract, and it is understood and agreed that anything herein contained which is contrary to or inconsistent with the provisions of the act in the form and as approved on the twentieth day of July, nineteen hundred and eleven, is and shall be void and of no effect.

XXIII.—The following is a copy of those sections of Part I of the act, the provisions of which, in so far as they declare, define or establish the terms and conditions for the construction, tenure, maintenance and operation of the premises and appurtenances, are embodied in and made part of this contract, as required by the act.

Copy of
Certain
Provisions of
the Act.
St. 1911, c. 741,
s. 12.

[Acts 1911, Chap. 741, Sections 10–26, see page 109.]

In witness whereof the parties hereto, and to two other instruments of like tenor and effect, have set their hands and seals the day and year first above mentioned, the City of Boston, acting by the Boston Transit Commission, pursuant to a vote of the Commission, its members not being bound in their personal capacity, and the Boston Elevated Railway Company, acting by its President, hereto duly authorized.

THE CITY OF BOSTON BY THE
BOSTON TRANSIT COMMISSION.

By GEORGE G. CROCKER

GEORGE F. SWAIN

[SEAL]

HORACE G. ALLEN

JOSIAH QUINCY

JAMES B. NOYES

Members of said Commission.

BOSTON ELEVATED RAILWAY COMPANY.

By WILLIAM A. BANCROFT

President.

[SEAL]

CONTRACT BETWEEN THE CITY OF BOSTON ACTING
BY THE BOSTON TRANSIT COMMISSION AND
THE BOSTON ELEVATED RAILWAY COMPANY
FOR THE USE OF THE CAMBRIDGE CONNEC-
TION, SO-CALLED.

[Dated December 7, 1911.]

I.—This contract made this seventh day of December in the year nineteen hundred and eleven by and between the city of Boston, hereinafter called the city, acting by the Boston Transit Commission, hereinafter called the commission, under and by virtue of two acts of the Commonwealth of Massachusetts, one being entitled “An Act to Authorize the Boston Elevated Railway Company to Construct a Subway or Sub-

Parties.

St. 1906, c. 520,
s. 23.

ways in the City of Cambridge and to Provide for Connection Thereof with the Railway System in the City of Boston," being chapter five hundred and twenty of the acts of the year nineteen hundred and six, and the other being entitled "An Act Relative to Electric Railway Transportation Facilities in the City of Boston and its Vicinity," being chapter seven hundred and forty-one of the acts of the year nineteen hundred and eleven, said two acts being hereinafter called the acts, and the Boston Elevated Railway Company, hereinafter called the company, witnesseth as follows:

St. 1911, c. 741.

Grant.
St. 1906, c. 520,
s. 23.
St. 1911, c. 741,
s. 30.

Premises.

II.—The city, pursuant to the acts and in consideration of the covenants and agreements herein contained, grants to the company the sole and exclusive use of the tunnel and its appurtenances and terminals now being constructed under authority of section twenty-three of chapter five hundred and twenty of the acts of the year nineteen hundred and six, being the Cambridge Connection, so called, and hereinafter called the premises, for the running of its elevated trains and surface cars therein and such other uses as are hereinafter specified.

Uses.

Beginning of
Use.
St. 1906, c. 520,
s. 23.

III.—The use shall begin when in the opinion of the commission a reasonable time after completion has been allowed for equipment.

Term.
St. 1911, c. 741,
s. 30.

IV.—The term of years of the use shall extend from the beginning of the use to the first day of July, nineteen hundred and thirty-six, and thereafter is to continue unless or until terminated as follows:

St. 1911, c. 741,
s. 34.

All contracts for the use of the Tremont street subway, the East Boston tunnel, the Washington street tunnel, the tunnel of the Cambridge Connection, the Dorchester tunnel, the Boylston Street subway, and the East Boston tunnel extension shall continue in force after the first day of July, nineteen hundred and thirty-six, upon the same terms and conditions except as to the termination thereof, unless and until said contracts are terminated by notice either from the city of Boston or from the Boston Elevated Railway Company, as hereinafter provided. The city of Boston may terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving at least two years' prior notice in writing, which notice it shall be the duty of the mayor of the city to give if directed so to do by an act of the general court, or if directed so to do by a vote of the city council of the city, approved by the board of Railroad Commissioners, hereinafter called the board. The Boston Elevated Railway Company may likewise terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving to the mayor of the city at least two years' prior notice in writing. No notice on the part of either the city or the company shall be given more than three years prior to the date therein fixed for termination.

V.—The rental for a period of twenty years from the beginning of use shall be at the rate of four and seven-eighths per cent. per annum upon the net cost and thereafter shall be at the rate of four and one-half per cent. per annum upon the net cost.

Rental.
St. 1906, c. 520,
s. 23.
St. 1911, c. 741,
s. 30.

The net cost shall be deemed to include all expenditures incurred in acquisition and construction including damages, expenses and salaries of the commission, and interest at the rate of four per cent. per annum on the debt incurred in construction prior to the beginning of the use. It shall also include the cost of enlarging by not more than one-third the width of the existing entrances to and exits from the Park street station. For the purpose of ascertaining the rental, there shall be deducted from the cost the proceeds of sales of buildings, lands, rights or interests in lands or other property acquired in connection with the construction of the premises and the fair valuation of any such lands and other property no longer needed for the purposes of the Cambridge Connection but not actually sold, as agreed upon by the commission and the company or in case of difference as determined by the board.

St. 1906, c. 520,
s. 23.
St. 1902, c. 534,
s. 7.
St. 1911, c. 741,
s. 20.

The rental shall begin when the use begins.

The rental shall be paid to the city in quarterly payments on the last day of December, March, June and September in each year and at the rate aforesaid for any uncompleted quarter of a year.

If at any time during the continuance of the term of this contract the company shall be deprived in whole or in part of the use of the premises by any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises; then the rental or a just and reasonable part thereof, as agreed upon by the mayor of the city and the company or in case of difference as determined by arbitration as hereinafter provided, shall be suspended or abated during such deprivation.

VI.—The company shall suitably lay and maintain in first-class condition railway tracks in proper places in the premises, together with the appointments and apparatus necessary for the safe and convenient operation of the same and shall provide and maintain all wires, electrical or other apparatus

Equipment.

or equipment necessary or convenient for the furnishing of power and light therein and shall further provide requisite pumps, fans and ventilating apparatus and in general shall completely equip and furnish the premises with all machinery, piping, apparatus and furniture proper and adapted thereto and necessary for the convenient maintenance and operation of a railway therein and for the safety and accommodation of the passengers upon such railway.

All tracks, wires, appliances, fixtures, machinery, equipment, furniture and apparatus provided by the company shall be and remain the property of the company so long as it continues to occupy and use the premises under the provisions of this contract, and upon the termination of such use the city hereby agrees to take and pay for all such property at its then fair value as agreed upon by the mayor of the city and the company or in case of difference as determined by arbitration as hereinafter provided, and the company agrees to deliver to the city all such property at such valuation.

Repairs.

VII.—The company shall maintain the premises, except as to repairs below excepted, in good order and condition as a structure complete so far as consistent with the provisions of the act, and adapted to the maintenance and use of lines of railway, and shall at all reasonable times be entitled to a permit to open the streets and other public grounds of the city for the purpose of making requisite repairs to the premises, and when the right of the company or its assigns to use the premises shall terminate shall restore them to the city in good condition except as to repairs not obligatory upon the company.

All repairs to the premises shall be at the sole cost and expense of the company except such repairs as are made necessary by any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises; and if repairs shall be made necessary by any of said excepted causes then such repairs shall be made by the company and the reasonable cost and expense thereof deducted from the rental subsequently payable.

Liability for damages.

VIII.—The city shall not be responsible to the company for damages of any description resulting from any defects in the premises, whether structural or arising out of want of

repair or from any cause after the use of the same by the company has begun as hereinbefore provided, unless such damage result from the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises; nor shall it be responsible for any damages resulting to persons or property in the operation and use of the premises, including all parts thereof, whether on property belonging to the city or upon property the fee of which belongs to other parties, and the company shall hold the city harmless and indemnified therefrom and shall at its own expense upon due notice from the city defend all suits and other proceedings of every description, whether at law or in equity, which may be brought against the city, its officers, servants or agents by reason of any liability arising out of the operation and use of any portion of the premises or of the railways, machinery and apparatus therein and accruing after the right to use such portion has begun as herein provided, and shall satisfy all final judgments of legal tribunals rendered in such suits and proceedings. The foregoing provisions shall not be construed to impose any liability or obligation upon the company for any cause growing out of the act of God, of public enemies, of mobs or of riots; or growing out of works or excavations carried on or permitted by the city or other public authority; or growing out of explosions or the bursting of pipes outside the premises, the falling or settling of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or growing out of the location, maintenance or use of the wires or other apparatus which the city is hereinafter authorized to maintain in the premises.

IX.—The company shall keep the premises thoroughly clean and free from unnecessary dampness, and the approaches to stations clean and free from ice and snow. When the premises are in use it shall suitably light the same in all parts, and by means of artificial ventilation shall keep the air adequately pure for health and comfort, unless such artificial ventilation is deemed by the board to be unnecessary.

Premises to be kept clean.

X.—The company within the limitations of the acts may make such alterations in or additions to the premises as may be approved by the commission.

Changes in premises.

XI.—To the extent of the power of the company so to do and the power of the commission to contract therefor, the company may place and maintain in the premises booths for the sale of newspapers, magazines, periodicals and books, and in places specially adapted therefor may place or admit unobjectionable advertisements, and may make such other uses of the premises, not impairing the use for transportation of passengers, as the board may from time to time approve;

Sundry uses.

Newspaper booths and advertisements.

provided however that such booths and advertisements shall not be so placed or used as to diminish or impair the safety, accommodation, convenience or comfort of passengers using the premises; and the company agrees that upon receipt of notice in writing at any time or from time to time from the board that in its opinion any of the uses above referred to or approved, either in whole or in part, in any way diminish or impair such safety, accommodation, convenience or comfort or conflict in any way with the best interests of the public, it will forthwith to the extent specified in the notice discontinue such use.

Wires, conduits and tubes.

XII.—The company, upon such terms as it may deem expedient, may permit any person or corporation not authorized to carry on a railway business but authorized to use and maintain wires, conduits, tubes or similar structures along the route of the premises, to place such wires, conduits, tubes or similar structures within a corresponding portion of the premises used by the company, but only to such extent and for such time as may be practicable without interfering with the safe and convenient operation of the railway and other apparatus which the company is hereby authorized to put therein, but the privilege shall not extend to gas or water pipes.

Except as above provided the company shall not have the right to place in the premises or attach thereto any structures, machinery, merchandise, apparatus, advertisements or property of any sort which are not necessary or proper for the operation of its railway therein and the performance of its agreements herein contained.

Police and Fire Alarm Service. St. 1906, c. 520, s. 23.

XIII.—The city may without charge place in the premises such wires and apparatus as may be necessary for its police and fire-alarm service, to be used, however, exclusively for such service, and to be so located as not to interfere with the use of the premises which the company is hereby authorized to make. The location, construction, maintenance and repair of such wires and apparatus shall be subject to such reasonable directions and regulations as the company may impose, or, in case of any disagreement, as the commission may determine.

Default and penalty.

XIV.—In the event of the failure of the company or its assigns to pay the rental for three months after such rental shall have become due, or in the event of a failure to maintain and operate a railway within the premises and if such failure shall have continued for three months, then in either of said events the city upon three months' notice, such default still continuing, shall have the right to terminate this contract and to re-enter upon and repossess itself of the premises, unless such failure to maintain and operate grows out of the act of God, of public enemies, of mobs or of riots; or grows out of works or excavations carried on or permitted by the city or other public authority; or grows out of explosions or the bursting of pipes outside the premises, the falling or settling

of buildings, the filling or caving in or other physical obstruction of the premises or any part thereof not due to any act of the company, or its agents, servants or licensees, in the use of the premises, or to any negligence on its or their part, or to any failure of the company to maintain the premises in good order and condition as herein provided; or grows out of the location, maintenance or use of the wires or other apparatus which the city is herein authorized to maintain in the premises. In case the right of re-entry and repossession above given shall be exercised, all the tracks, wires, apparatus, equipment and other property in the nature of fixtures of the company or its assigns within the premises may be taken by the city and be paid for by it at a valuation to be determined as herein provided for the occasion when the same are to be surrendered by the company at the expiration of the term of this contract.

XV.—The company shall have no right at any time to remove from the premises any tracks, wires, apparatus, equipment or other property necessary to the use and maintenance of the premises and the operation of a railway therein, except for the purpose of repairs or renewal or for the substitution of equivalent structures, property, apparatus or equipment.

Removal of property by railway company.

XVI.—The governor of the commonwealth, the mayor and commissioner of public works of the city, and the members of the board and of the commission, and their respective engineers shall at all times have free entry to the premises for the purpose of inspecting the same.

Inspection by public officials.

XVII.—In case of disagreement between the city acting by its mayor and the company as to the amount due for rental, or as to the suspension or abatement thereof as herein provided, or as to the valuation of the property upon the termination of the use herein contracted for, the matter in dispute shall be left to the decision of three persons, one to be selected by the mayor of the city, one to be selected by the company and the third by the two thus chosen. The report of the arbitrators of the majority of them shall be binding upon the parties hereto.

Arbitration.

XVIII.—In respect of all matters arising under this contract where provision is made for action by the commission or its approval of acts to be done by the company is required, it is provided and agreed that upon the termination of the existence of the commission the authority to take such action shall vest in the city, which shall have all the rights, powers and privileges and be subject to all the duties, restrictions and liabilities herein conferred or imposed upon the commission in respect thereof; such powers to be exercised by the mayor, commissioner of public works and city treasurer in place of the commission or by such other officers as the city council may prescribe.

Termination of the existence of the commission.

XIX.—With respect to the equipment, use and operation of the railway to be located in the premises and transportation thereon, the company is to have all the powers and privileges and be subject to all the duties, liabilities, restric-

The company to be subject to law.

tions and provisions set forth in general and special laws which now are or hereafter may be in force applicable to it.

Rights of West
End Street
Railway Com-
pany.
St. 1911, c. 741,
s. 40.

XX.—The use and control of the premises under this contract is subject to the rights, if any, of the West End Street Railway Company under Article II of the existing lease from the West End Street Railway Company to the Boston Elevated Railway Company as modified in accordance with law.

Right of Com-
monwealth or
City to take
by Eminent
Domain.

XXI.—This contract shall not in any respect impair any right which the commonwealth or the city, or any other licensee of the commonwealth may at any time have to take the railway properties of the company. In the event of such taking the compensation to be paid to the company shall not be enhanced by reason of this contract nor shall it be diminished because of the fact that without this contract the connection between different parts of said properties might be cut off.

Controlling
Effect of the
Acts.

XXII.—It is understood and agreed that anything herein contained which is contrary to or inconsistent with the provisions of the acts in the form and as approved on the twenty-third day of June, nineteen hundred and six, and on the twentieth day of July, nineteen hundred and eleven, respectively, is and shall be void and of no effect.

In witness whereof the parties hereto, and to two other instruments of like tenor and effect, have set their hands and seals the day and year first above mentioned, the City of Boston, acting by the Boston Transit Commission, pursuant to a vote of the Commission, its members not being bound in their personal capacity, and the Boston Elevated Railway Company, acting by its President, hereto duly authorized.

THE CITY OF BOSTON BY THE
BOSTON TRANSIT COMMISSION.

By GEORGE G. CROCKER
GEORGE F. SWAIN
HORACE G. ALLEN
JOSIAH QUINCY
JAMES B. NOYES

[SEAL]

Members of said Commission.

BOSTON ELEVATED RAILWAY COMPANY.

By WILLIAM A. BANCROFT
President.
[SEAL]

EXTENSION OF THE CONTRACT FOR THE USE OF
THE TREMONT STREET SUBWAY.

[Dated December 7, 1911.]

I.—This contract made this seventh day of December in the year nineteen hundred and eleven by and between the city of Boston, hereinafter called the city, acting by the Boston Transit Commission, hereinafter called the commission, under and by virtue of an act of the Commonwealth of Massachusetts entitled “An Act Relative to Electric Railway Transportation Facilities in the City of Boston and its Vicinity,” being chapter seven hundred and forty-one of the acts of the year nineteen hundred and eleven, hereinafter called the act, and the Boston Elevated Railway Company, hereinafter called the company, witnesseth as follows:

Parties.

St. 1911, c. 741.

II.—The contract between the city and the West End Street Railway Company for the use of the Tremont street subway, dated December 7, 1896, which contract was, by an instrument dated December 9, 1897, assigned by the West End Street Railway Company to the Boston Elevated Railway Company, is extended from its expiration to the first day of July, nineteen hundred and thirty-six, and thereafter is to continue unless or until terminated as follows:

Extension of
contract.
St. 1911, c. 741,
s. 27.

All contracts for the use of the Tremont street subway, the East Boston tunnel, the Washington street tunnel, the tunnel of the Cambridge Connection, the Dorchester tunnel, the Boylston Street subway, and the East Boston tunnel extension shall continue in force after the first day of July, nineteen hundred and thirty-six, upon the same terms and conditions except as to the termination thereof, unless and until said contracts are terminated by notice either from the city of Boston or from the Boston Elevated Railway Company, as hereinafter provided. The city of Boston may terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving at least two years' prior notice in writing, which notice it shall be the duty of the mayor of the city to give if directed so to do by an act of the general court, or if directed so to do by a vote of the city council of the city, approved by the board of Railroad Commissioners. The Boston Elevated Railway Company may likewise terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving to the mayor of the city at least two years' prior notice in writing. No notice on the part of either the city or the company shall be given more than three years prior to the date therein fixed for termination.

St. 1911, c. 741,
s. 34.

Rental.
St. 1911, c. 741,
s. 27.

III.—The rental of said Tremont street subway from and after the expiration of the said existing contract shall be a sum equal to four and one-half per cent. per annum upon the net cost thereof.

St. 1911, c. 741,
s. 5.

The cost of enlarging the present Tremont street subway, if that is done, or of building a separate subway, as below provided, shall be included in the cost of the Boylston Street subway.

Connections
with and
enlargement
of Tremont
street subway.
St. 1911, c. 741,
s. 5.

IV.—Instead of constructing the Boylston Street subway as a continuous line from Arlington street to Park street station, the commission may connect said Boylston Street subway at or near the junction of Boylston street and Tremont street with the tracks of the present Tremont street subway and between that point and the Park street station may either enlarge the present Tremont street subway so as to provide for two additional tracks or may construct a separate subway adapted to contain two railway tracks connecting the same with the present Tremont street subway and the tracks located therein.

Rights of West
End Street
Railway
Company.
St. 1911, c. 740,
s. 16.
St. 1911, c. 741,
s. 40.

V.—The use and control of the Tremont street subway under this extension is subject to the rights, if any, of the West End Street Railway Company under Article II of the existing lease from the West End Street Railway Company to the Boston Elevated Railway Company as modified in accordance with law.

Alterations in
Tremont Street
Subway.
St. 1911, c. 741,
s. 5.

VI.—In connection with the construction of the proposed Boylston Street subway, changes and alterations may be made in the Tremont street subway so far as authorized by the act, and in conformity with and subject to the provisions of sections fifteen and sixteen of chapter seven hundred and forty of the acts of the year nineteen hundred and eleven, being "An Act to Authorize the Consolidation of Properties and Franchises of the Boston Elevated Railway Company and the West End Street Railway Company."

Right of Com-
monwealth or
City to Take
by Eminent
Domain.
St. 1911, c. 741,
s. 39.

VII.—This extension shall not in any respect impair any right which the commonwealth or the city, or any other licensee of the commonwealth, may, at any time, have to take the railway properties of the company. In the event of such taking the compensation to be paid to the company shall not be enhanced by reason of this extension, nor shall it be diminished because of the fact that without such extension the connection between different parts of its properties might be cut off.

Terms and
conditions.
St. 1911, c. 741,
s. 27.

VIII.—Except as hereinbefore and in the act provided the terms and conditions set forth in said contract between the city and the West End Street Railway Company shall remain in full force and effect and bind the parties hereto during the extended term.

Statutory
limitations.

IX.—This agreement is made pursuant to the authority and is intended to be in accordance with the provisions of the laws relating thereto. It is understood and agreed that anything herein contained which is contrary to or inconsistent

with the provisions of the act in the form and as approved on the twentieth day of July, nineteen hundred and eleven, is and shall be void and of no effect.

In witness whereof the parties hereto, and to two other instruments of like tenor and effect, have set their hands and seals the day and year first above mentioned, the City of Boston, acting by the Boston Transit Commission, hereunto authorized by the act, its members not being bound in their personal capacity, and the Boston Elevated Railway Company, acting by its President, hereto duly authorized.

THE CITY OF BOSTON BY THE
BOSTON TRANSIT COMMISSION.

By GEORGE G. CROCKER
GEORGE F. SWAIN
[SEAL] HORACE G. ALLEN
JOSIAH QUINCY
JAMES B. NOYES
Members of said Commission.

BOSTON ELEVATED RAILWAY COMPANY.

By WILLIAM A. BANCROFT
President.
[SEAL]

EXTENSION OF THE LEASE OF THE EAST BOSTON
TUNNEL.

[Dated December 7, 1911.]

I.—This contract made this seventh day of December in the year nineteen hundred and eleven by and between the city of Boston, hereinafter called the city, acting by the Boston Transit Commission, hereinafter called the commission, under and by virtue of an act of the Commonwealth of Massachusetts entitled “An Act Relative to Electric Railway Transportation Facilities in the City of Boston and its Vicinity,” being chapter seven hundred and forty-one of the acts of the year nineteen hundred and eleven, hereinafter called the act, and the Boston Elevated Railway Company, hereinafter called the company, witnesseth as follows:

Parties.

St. 1911, c. 741.

II.—The existing lease from the city to the company of the East Boston tunnel is extended from the tenth day of June, nineteen hundred and twenty-two, to the first day of July, nineteen hundred and thirty-six, and thereafter is to continue unless or until terminated as follows:

Extension of
lease.
St. 1911, c. 741,
s. 28.

St. 1911, c. 741,
s. 34.

All contracts for the use of the Tremont street subway, the East Boston tunnel, the Washington street tunnel, the tunnel of the Cambridge Connection, the Dorchester tunnel, the Boylston Street subway, and the East Boston tunnel extension shall continue in force after the first day of July, nineteen hundred and thirty-six, upon the same terms and conditions except as to the termination thereof, unless and until said contracts are terminated by notice either from the city of Boston or from the Boston Elevated Railway Company, as hereinafter provided. The city of Boston may terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving at least two years' prior notice in writing, which notice it shall be the duty of the mayor of the city to give if directed so to do by an act of the general court, or if directed so to do by a vote of the city council of the city, approved by the board of Railroad Commissioners. The Boston Elevated Railway Company may likewise terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving to the mayor of the city at least two years' prior notice in writing. No notice on the part of either the city or the company shall be given more than three years prior to the date therein fixed for termination.

Rental.
St. 1911, c. 741,
s. 28.

III.—The rental of said East Boston tunnel from and after the expiration of the present lease shall be a sum equal to four and one-half per cent. per annum upon the net cost thereof, to be paid to the city in quarterly payments on the last day of December, March, June and September in each year, and at the rate aforesaid for any uncompleted quarter of a year. The company shall be under no obligation after the tenth day of June, nineteen hundred and twenty-two, to collect as agent for the city the toll from passengers passing through the tunnel provided for by chapter five hundred of the acts of the year eighteen hundred and ninety-seven.

Right of
Commonwealth
or City to take
by Eminent
Domain.
St. 1911, c. 741,
s. 39.

IV.—This extension shall not in any respect impair any right which the commonwealth or the city, or any other licensee of the commonwealth may, at any time, have to take the railway properties of the company. In the event of such taking the compensation to be paid to the company shall not be enhanced by reason of this extension, nor shall it be diminished because of the fact that without such extension the connection between different parts of its properties might be cut off.

Rights of
West End
Street Railway
Company.
St. 1911, c. 741,
s. 40.

V.—The use and control of the East Boston tunnel under this extension is subject to the rights, if any, of the West End Street Railway Company under Article II of the existing lease from the West End Street Railway Company to the Boston Elevated Railway Company as modified in accordance with law.

Alterations in
East Boston
tunnel.
St. 1911, c. 741,
s. 10.

VI.—In connection with the construction of the proposed East Boston tunnel extension, changes and alterations may be made in the East Boston tunnel so far as authorized by the act.

VII.—Except as hereinbefore and in the act provided the terms and conditions set forth in said contract between the city and the company shall remain in full force and effect and bind the parties hereto during the extended term.

Terms and conditions.
St. 1911, c. 741,
s. 28.

VIII.—This agreement is made pursuant to the authority and is intended to be in accordance with the provisions of the laws relating thereto. It is understood and agreed that anything herein contained which is contrary to or inconsistent with the provisions of the act in the form and as approved on the twentieth day of July, nineteen hundred and eleven, is and shall be void and of no effect.

Statutory limitations.

In witness whereof the parties hereto, and to two other instruments of like tenor and effect, have set their hands and seals the day and year first above mentioned, the City of Boston, acting by the Boston Transit Commission, hereunto authorized by the act, its members not being bound in their personal capacity, and the Boston Elevated Railway Company, acting by its President, hereto duly authorized.

THE CITY OF BOSTON BY THE
BOSTON TRANSIT COMMISSION.

By GEORGE G. CROCKER
GEORGE F. SWAIN
[SEAL] HORACE G. ALLEN
JOSIAH QUINCY
JAMES B. NOYES

Members of said Commission.

BOSTON ELEVATED RAILWAY COMPANY.

By WILLIAM A. BANCROFT
President.
[SEAL]

EXTENSION OF THE CONTRACT FOR THE USE OF
THE WASHINGTON STREET TUNNEL.

[Dated December 7, 1911.]

Parties.

I.—This contract made this seventh day of December in the year nineteen hundred and eleven by and between the city of Boston, hereinafter called the city, acting by the Boston Transit Commission, hereinafter called the commission, under and by virtue of an act of the Commonwealth of Massachusetts entitled “An Act Relative to Electric Railway Transportation Facilities in the City of Boston and its Vicinity,” being chapter seven hundred and forty-one of the acts of the year nineteen hundred and eleven, hereinafter called the act, and the Boston Elevated Railway Company, hereinafter called the company, witnesseth as follows:

St. 1911, c. 741.

Extension of
contract.
St. 1911, c. 741,
s. 29.

II.—The existing contract between the city and the company for the use of the Washington street tunnel is extended from its expiration on the thirtieth day of November, nineteen hundred and thirty-three, to the first day of July, nineteen hundred and thirty-six, and thereafter is to continue unless or until terminated as follows:

St. 1911, c. 741,
s. 34.

All contracts for the use of the Tremont street subway, the East Boston tunnel, the Washington street tunnel, the tunnel of the Cambridge Connection, the Dorchester tunnel, the Boylston Street subway, and the East Boston tunnel extension shall continue in force after the first day of July, nineteen hundred and thirty-six, upon the same terms and conditions except as to the termination thereof, unless and until said contracts are terminated by notice either from the city of Boston or from the Boston Elevated Railway Company, as hereinafter provided. The city of Boston may terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving at least two years' prior notice in writing, which notice it shall be the duty of the mayor of the city to give if directed so to do by an act of the general court, or if directed so to do by a vote of the city council of the city, approved by the board of Railroad Commissioners. The Boston Elevated Railway Company may likewise terminate all said contracts on the first day of July, nineteen hundred and thirty-six, or on the first day of July of any year thereafter by giving to the mayor of the city at least two years' prior notice in writing. No notice on the part of either the city or the company shall be given more than three years prior to the date therein fixed for termination.

Rental.

St. 1911, c. 741,
s. 29.

III.—The rental of said Washington street tunnel from and after the expiration of the said existing contract shall be a sum equal to four and one-half per cent. per annum upon the net cost thereof.

IV.—This extension shall not in any respect impair any right which the commonwealth or the city, or any other licensee of the commonwealth may, at any time, have to take the railway properties of the company. In the event of such taking the compensation to be paid to the company shall not be enhanced by reason of this extension, nor shall it be diminished because of the fact that without such extension the connection between different parts of its properties might be cut off.

Right of Commonwealth or City to Take by Eminent Domain.

St. 1911, c. 741, s. 39.

V.—The use and control of the Washington street tunnel under this extension is subject to the rights, if any, of the West End Street Railway Company under Article II of the existing lease from the West End Street Railway Company to the Boston Elevated Railway Company as modified in accordance with law.

Rights of West End Street Railway Company.

St. 1911, c. 741, s. 40.

VI.—Except as hereinbefore and in the act provided, the terms and conditions set forth in said contract between the city and the company shall remain in full force and effect and bind the parties hereto during the extended term.

Terms and conditions.

St. 1911, c. 741, s. 29.

VII.—This agreement is made pursuant to the authority and is intended to be in accordance with the provisions of the laws relating thereto. It is understood and agreed that anything herein contained which is contrary to or inconsistent with the provisions of the act in the form and as approved on the twentieth day of July, nineteen hundred and eleven, is and shall be void and of no effect.

Statutory limitations.

In witness whereof the parties hereto, and to two other instruments of like tenor and effect, have set their hands and seals the day and year first above mentioned, the City of Boston, acting by the Boston Transit Commission, hereunto authorized by the act, its members not being bound in their personal capacity, and the Boston Elevated Railway Company, acting by its President, hereto duly authorized.

THE CITY OF BOSTON BY THE
BOSTON TRANSIT COMMISSION.

By GEORGE G. CROCKER
GEORGE F. SWAIN
HORACE G. ALLEN
JOSIAH QUINCY
JAMES B. NOYES

[SEAL]

Members of said Commission.

BOSTON ELEVATED RAILWAY COMPANY.

By WILLIAM A. BANCROFT
President.

[SEAL]

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(Abbreviations: Co., Boston Elevated Railway Company; B. T. C., Boston Transit Commission; W. E. St. Ry. Co., West End Street Railway Company.)

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