

*Amendment to
Deed No. 3242*

AGREEMENT made this 12th day of

September , 1975, by and between the COMMONWEALTH OF MASSACHUSETTS, acting by and through its DEPARTMENT OF PUBLIC WORKS, hereinafter referred to as "Commonwealth", party of the first part, and ROBERT W. MESERVE and BENJAMIN H. LACY, as they are Trustees of the Property of Boston and Maine Corporation, Debtor, and not individually (see In the Matter of Boston and Maine Corporation, Debtor, United States District Court for the District of Massachusetts, Docket No. 70-250-M) hereinafter referred to as "Trustees", party of the second part.

WITNESSETH:

WHEREAS Commonwealth desires to remove Bridge No. 35.61 of Trustees which carries the right of way of Trustees' Marlborough Branch, so-called, over Fitchburg Street, a continuation of a State Highway within the City of Marlborough, for the sole purpose of eliminating the impediment to traffic in the State Highway at the underpass thereof without benefit to Trustees therefrom, and

WHEREAS Trustees are agreeable to the removal of said bridge provided that Commonwealth substitutes a suitable crossing at grade with such signal protection therefor as Trustees may be required by law to provide, all at no cost to Trustees for the construction, substitution and maintenance of said crossing at grade, and the protection thereof by signal or otherwise, so long as said crossing shall be required in the continued operation of said Marlborough Branch.

NOW, THEREFORE, the parties hereto, each in consideration of the promise of the other herein contained agree as follows:

1. In the event Commonwealth, in accordance with the provisions of Massachusetts General Laws (Ter. Ed.) Chapter 159, Section 59, decides that it is necessary for the security or convenience of the public that an alteration should be made in the crossing of Fitchburg Street, a state highway, in the City of Marlborough, by eliminating Trustees' Bridge No. 35.61 and substituting a crossing at grade therefor, its order in the proceedings shall incorporate the following terms and conditions in its certificate of decision to the parties in the proceedings thereto and to the Department of Public Utilities of the Commonwealth of Massachusetts (D. P. U.):

a. Provision whereby such decision is subject, in accordance with Mass. Gen. Laws (Ter. Ed.) Chapter 159, Section 58 and Chapter 160, Section 147, to the approval and order by the D. P. U. of the plans and specifications for the crossing at grade over the property of Trustees at Fitchburg Street, Marlborough, and the protection thereof, by signal or otherwise, as D. P. U. may require.

b. Provision whereby Commonwealth agrees to reimburse Trustees, their successors and assigns, for any and all costs, including, without limiting, direct labor and supervisory costs, which Trustees may incur in installing and maintaining said crossing at grade and in furnishing, installing and maintaining such signal protection, title to which shall be in Trustees, as D. P. U. shall by its order in the proceedings require.

c. Provision whereby Commonwealth agrees to indemnify and save Trustees, their successors and assigns, harmless from and against any and all claims, loss, cost, damage and expense for damage to property and injuries to persons, including death, caused by or in any way arising or related to the existence of a crossing at grade of Trustees' property at or near Fitchburg Street, Marlborough, Massachusetts, except for the negligence of Trustees, their officers, agents, servants, successors and assigns in the installation, maintenance and operation of said signal protection and in the installation and maintenance of railroad tracks within said crossing.

d. Provision whereby Commonwealth agrees to maintain the approaches and wearing surface of the highway at said crossing at grade.

2. Upon the order of D. P. U. approving the plans and specifications of the crossing at grade and the protection thereof, Trustees agree to apply to the Interstate Commerce Commission, Railroad Service Board, for temporary authority to discontinue operations on their Marlborough Branch, so-called, between Valuation Station 531.58 and Valuation Station 646+35.5, approximately 2.17 miles in length, during elimination and removal of the existing bridge on Fitchburg Street and the substitution therefor of a crossing at grade, all in accordance with the Agreement of the parties hereto and pursuant to the authority and order of the D. P. U.

3. Upon the grant of such authority by the Interstate Commerce Commission, Railroad Service Board, Commonwealth agrees, at its own sole cost and expense, to remove Trustees' Bridge 35.61 and to substitute therefor a crossing at grade in accordance with the specifications attached hereto,

marked "A" and made a part hereof, and to protect such crossing in accordance with the requirements contained in the order of D. P. U.

4. Subject to the prior approval and authorization of the Reorganization Court having jurisdiction of the Boston and Maine Corporation, Debtor, under Section 77(o) of the Bankruptcy Act 11(USC 205(o), Trustees agree to apply to the Interstate Commerce Commission for a certificate approving and authorizing the abandonment of their Marlborough Branch, so-called, or any part thereof, requiring continuation of a line of railroad at or near Fitchburg Street, Marlborough, Massachusetts.

5. In the event that the Massachusetts Bay Transportation Authority, a body politic and corporate established under Chapter 161A of the Massachusetts General Laws (M. B. T. A.), acquires the title of the Trustees in that portion of the aforesaid Marlborough Branch, at or near Fitchburg Street and determines that a bridge carrying the tracks of the Authority over said Fitchburg Street is required for mass transportation purposes, Commonwealth agrees to construct such bridge at its own sole cost and expense in accordance with the reasonable requirements, plans and specifications of M. B. T. A. therefor.

IN WITNESS WHEREOF, the parties hereto have caused this

instrument to be executed on the day and year first above written.

COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF PUBLIC WORKS

John J. Danell Commissioner

Approved as to form:

[Signature] Associate Comm.

Assistant Attorney General

James J. Bean Associate Comm.
Malcolm E. Hoag

ROBERT W. MESERVE and BENJAMIN H. LACY, as Trustees of the property of Boston and Maine Corporation, Debtor

Approved as to form:

Robert W. Meserve
As Trustee, and not individually

Counsel for the Trustees

Benjamin H. Lacy
As Trustee, and not individually

The execution of the foregoing agreement by Robert W. Meserve and Benjamin H. Lacy, as Trustees aforesaid, is hereby assented to, approved and authorized by the Massachusetts Bay Transportation Authority insofar as such assent, approval and authorization may be required under the terms and provisions of a Memorandum Agreement, dated July 2, 1975, by and between the said Trustees and Authority.

MASSACHUSETTS BAY TRANSPORTATION
AUTHORITY

By *David J. [Signature]*

Dated:

"A"

AGREEMENT BY AND BETWEEN COMMONWEALTH OF MASSACHUSETTS AND BOSTON AND MAINE CORPORATION, DEBTOR (ROBERT W. MESERVE AND BENJAMIN H. LACY, TRUSTEES), DATED

SPECIFICATIONS FOR REMOVAL OF BRIDGE 35.61 CARRYING TRACKS OVER FITCHBURG STREET, MARLBOROUGH, MASSACHUSETTS AND SUBSTITUTION OF GRADE CROSSING

The cost for any and all work hereunder, except for any and all work required under Section A herein below, shall be borne solely by the Commonwealth. The Trustees shall be reimbursed by the Commonwealth for any and all costs incurred by the Trustees in their performance of any and all work hereunder, except those incurred under Section A.

- A. The Trustees shall remove the track from existing roadbed for a distance of approximately 1800 ft. as shown on the plan hereinafter described.
- B. The Commonwealth shall remove the existing Railroad fill to an elevation 3 feet 6 inches below the proposed grade line shown on attached plan entitled:

"PROFILE OF PROPOSED
BOSTON & MAINE RAILROAD
GRADE CHANGE

Scale: Vert. 1"=4' May 1975

Horiz. 1"=40'

Eng. Div. D. P. W. Marlborough, Mass."

- C. The Commonwealth shall remove Trustees' Bridge No. 35.61, including its abutments, wing walls and footings, cut up the bridge steel and load same into rail freight cars at Public Delivery Track in Hudson, Massachusetts which shall be furnished by Trustees after Commonwealth notification to Trustees that such bridge steel has been prepared for loading and delivery.
- D. The Commonwealth shall install compacted gravel of a kind and quality approved by Trustees' Vice President - Engineering to a depth of two (2) feet and width of nineteen (19) feet upon the excavated area referred to in Item B hereinabove, with the center of the gravel fill located on the center line of track to be restored.
- E. The Commonwealth shall install all drainage, including culverts, within the project area to provide adequate drainage to the Trustees' roadbed. All drainage and culverts at the location of the new grade crossing shall be maintained by the Commonwealth.

- F. The Trustees shall restore the track structure, including ballast, on the new subgrade prepared by the Commonwealth as provided in Item D hereinabove.
- G. The Trustees shall prepare the track structure within such limits of Fitchburg Street as Commonwealth shall determine for bituminous paving. The Commonwealth shall furnish and install the bituminous paving at the crossing.
- H. The Commonwealth shall furnish and install any and all signal protection at the crossing which may be required by the Massachusetts Department of Public Utilities and shall reimburse Trustees for their costs, if any, in the maintenance, operation and replacement thereof.

Boston and Maine Corporation, Debtor
Office of Vice Pres. - Engineering
Dated July 30, 1975