



TOWN OF MARBLEHEAD

DEPARTMENT OF PUBLIC WORKS

**DIRECTOR**

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TREE WARDEN

Jonathan Fobert

ASSISTANT DIRECTOR

Robert Titus
James Johnson

3 Tower Way
Marblehead, MA 01945

STAFF ENGINEER

Maggie Wheeler

ANNUAL CONTRACT
AGREEMENT TO REPAIR TRENCHES

This is an Agreement by and between _____, of _____
(name of contractor) (address)
_____, _____, _____ (hereinafter
(State) (Zip)

“Contractor”) and the Town of Marblehead, 188 Washington Street, Abbot Hall, Marblehead, MA 01945 (hereinafter the “Town”).

WHEREAS; the Contractor has requested and the Town has granted permission to cut into and/or make a trench (hereinafter “Trench”) in a public way; and

WHEREAS; the Contractor understands that it is to repair the public way and the surrounding work area when it has concluded its construction to a condition which existed prior to creating the Trench but that such condition is not always immediately known depending on the depth of the Trench, the weather conditions at the time of construction or other various factors; and

WHEREAS; the parties agree that it is in the best interest of public safety, health and welfare to be assured that the public way and work area is restored to their condition prior to the Trench construction, that a reasonable time must pass in order to understand the impact of said construction.

NOW THEREFORE, for good and valuable consideration the receipt and sufficiency of which is hereby acknowledged and for the mutual promises set forth below, the parties agree as follows:

1. The Contractor shall perform its construction in accordance with the Street Opening Permit Process and Trench Permit Regulation of the Town.
2. Following completion of the construction, the Contractor shall undertake to repair the public way, including the Trench and surrounding work area, to a condition which existed prior to construction.
3. Condition of Repair:
 - a. For one year following the Town’s confirmation that the work is complete and the Trench is repaired, the Contractor shall be financially responsible for repairs to the public way in the event the Contractor’s repair to the public way disintegrates or in any way ceases to be of such a condition as existed prior to the construction of the Trench.
 - i. The Contractor agrees that it will promptly respond to the Town’s notice that a further repair needs to be made.
 - ii. The Contractor agrees that it will cause immediate repair to any disintegrated Trench.
 - iii. In the event the Contractor does not respond and repair the disintegrated Trench within 48 hours of notice of same by the Town, the Contractor authorizes the Town to repair same and agrees that it will pay to the Town an amount sufficient to cover the cost of said repair.
 - iv. Until such payment is received, the Contractor agrees that the Town may withhold future Street Opening or Trench Opening Permits to the Contractor.
 - b. Alternatively the Contractor may authorize the Town to retain its Performance Deposit for one year following completion of the Trench Repair and further authorizes the Town to use the Performance Deposit to make repairs to any disintegrated Trench or surrounding work area without further notice or advance permission from the Contractor.



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The Contractor chooses alternate **3A or 3B** as its method of guaranteeing repair. _____
(choose one by circling)

(Initial)

4. Any notice under this Agreement that is required to be given to the parties at the addresses in the first paragraph hereof.

5. The Parties agree that should a court declare any sentence, part or paragraph of this Agreement to be invalid, the remaining sentences, parts and paragraphs shall remain in full force and effect and binding between the Parties.

6. This Agreement and the Street Opening and Trench Permits constitutes the sole and entire agreement of the Parties with respect to the subject matter hereof, and no modification of this Agreement shall be binding unless signed by the Parties to this Agreement. No representation, promise or inducement not included in this Agreement shall be binding upon any of the Parties.

7. The Parties hereby represent and acknowledge that this Agreement is given and executed voluntarily and is not based upon any representations by any of the Parties as to the merits, legal liability or value of any claims of the Parties or any matters related or unrelated hereto.

8. In any action to enforce any of the terms of this Agreement, the prevailing Party shall be awarded its legal fees, court costs and expenses.

9. The parties acknowledge that they all have been afforded an opportunity to consult with their respective counsel prior to executing this Agreement.

10. This Agreement and all transactions contemplated by this Agreement shall be governed by and construed and enforced in accordance with the internal laws of the Commonwealth of Massachusetts, without regard to principles of conflicts of law. Any action hereunder shall be brought in the courts of the Commonwealth of Massachusetts sitting in Essex County.

11. This Agreement may be executed in counterparts by the Parties hereto and each shall be considered an original insofar as the Parties hereto are concerned, but together said counterparts shall comprise one agreement.

12. This contract is executed annually for all permits issued in a calendar year however it is valid for one year following the completion of any work (see 3.a).

This Agreement is executed under seal as of this ____ day of _____, 2022.

Contractor

Town of Marblehead

By:

By Its DPW Director
