

TOWN OF CHILMARK

**CONTRACT & GENERAL CONDITIONS**

# 23-004

(Contract Number)

Date: June 30, 2023

This Contract is entered into on, or as of, this date by and between the Town of Chilmark (the "Town"), and

Seth Karlinsky (Smith Property Care)

("Contractor")

PO Box 546, Chilmark, MA 02535

(Mailing Address of the Contractor)

508-

(Telephone)

(FAX)

sethkarlinsky@gmail.com

(Website)

1. This is a Contract for the procurement of the following:

Cleaning and operation of the Menemsha Comfort Station and the collection of trash, litter and debris from the Menemsha Harbor, Beach, parking lot and Town docks

2. The Contract price to be paid to the Contractor by the Town of Chilmark is:

June 2023: \$78,000.00

June 2024: \$81,900.00

June 2025: \$85,995.00

3. Payment will be made as follows:

Payments will be issued on receipt of invoices at the end of each month. Payment amounts may vary based on services rendered due to seasonal work load.

4. Definitions:

4.1 Acceptance: All Contracts require proper acceptance of the described good or services by the Town of Chilmark. Proper acceptance shall be understood to include inspection of goods and certification of acceptable performance of services by authorized representatives of the Town to insure that the goods or services are complete and are as specified in the Contract.

4.2 Contract Documents: All documents relative to the Contract including (where used) Instructions to Bidders, Proposal Form, General Conditions, Supplementary General Conditions, General Specifications, Other Specifications Included in IFB, Drawings, and all Addenda issued during the bidding period. The Contract Documents are complementary, and what is called for by any one

shall be as binding as if called for by all. The intention of the documents is to include all labor and materials, equipment and transportation necessary for the proper performance of the Contract.

- 4.3 The Contractor: The "other party" to any contract with the Town. The term shall (as the sense and particular contract so require) include Vendor, Contractor, Engineer, or other label used to identify the other party in the particular Contract, Use of the term "Contractor" shall be understood to refer to any other such label used.
- 4.4 Date of Substantial Performance: The date when the work is sufficiently complete, the services are performed, or the goods delivered, in accordance with Contract Documents, as modified by Amendments and Change Orders.
- 4.5 Goods: Goods, Supplies, or Materials.
- 4.6 Subcontractor: Those having a direct Contract with the Contractor. The term includes one who furnished material worked to a special design according to the Drawings or Specifications of this work, but does not include one who merely furnishes material not so worked.
- 4.7 Work: The services or materials contracted for, or both

5. Terms of Contract and Time for Performance:

This Contract shall be fully performed by the Contractor on or before July 1 of each calendar year unless extended pursuant to a provision for extension contained in the Contract Documents at the sole discretion of the Town, and not subject to assent by the Contractor, and subject to the availability and appropriation of funds. The time limits stated in the Contract Documents are of the essence of the Contract.

6. Subject to Appropriation:

Notwithstanding anything in the Contract Documents to the contrary, any and all payments which the Town is required to make under this Contract shall be subject to appropriation or other availability of funds as certified by the Town Accountant.

7. Permits and Approvals:

Permits, Licenses, Approvals and all other legal or administrative prerequisites to its performance of the Contract shall be secured and paid by the Contractor.

8. The Contractor's Breach and the Town's Remedies:

Failure of the Contractor to comply with any of the terms or conditions of this Contract shall be deemed a material breach of this Contract, and the Town of Chilmark shall have all the rights and remedies provided in the Contract Documents, the right to cancel, terminate, or suspend the Contract in whole or in part, the right to maintain any and all actions at law or in equity or other proceedings with respect to a breach of this Contract including damages and specific performance and the right select among the remedies available to it by all of the above.

Statutory Compliance:

- 9.1 This Contract will be construed and governed by the provisions of applicable federal, state and local laws and regulations; and wherever any provision of the Contract or Contract Documents shall conflict with any provision or requirement of federal, state or local law or regulation, then the provisions of law and regulation shall control. Where applicable to the Contract, the provisions of General Laws are incorporated by reference into this Contract, including but not limited to the following:

**General Laws Chapter 30B: Procurement of Goods and Services.**

**General Laws Chapter 30, Sec. 39, et seq: Public Works Contracts.**

**General Laws Chapter 149, Sec. 44A, et seq: Public Buildings Contracts.**

- 9.2 Wherever applicable law mandates the inclusion of any term and provision into a municipal contract, this Section shall be understood to import such term or provision into this Contract. To whatever extent any provision of this Contract shall be inconsistent with any law or regulation limiting the power or liability of cities and towns, such law or regulation shall control.
- 9.3 The Contractor shall give all notices and comply with all laws and regulations bearing on the performance of this Contract. If the Contractor performs the Contract in violation of any applicable law or regulation, the Contractor shall bear all costs arising there from.
- 9.4 The Contractor shall keep itself fully informed of all existing and future State and National Laws and Municipal Bylaw and regulations and of all orders and decrees of any bodies or tribunals having jurisdiction in any manner affecting those engaged or employed in the work, of the materials used in the work, or in any way affecting the conduct of the work, if any discrepancy or inconsistency is discovered in the Drawings, Specifications or Contract for this work in violation of any such law, by-law, regulation, order or decree, it shall forthwith report the same in writing to the Town. It shall, at all times, itself observe and comply with and shall cause all its agents, employees and Subcontractors to observe and comply will all such existing and future laws, by-laws, regulations, orders and decrees; and shall protect and indemnify the Town of Chilmark, and its duly appointed agents against any claim or liability arising from or based on any violation whether by him or its agents, employees or Subcontractors or any such law, by-law, regulation or decree.
10. Conflict of Interest:  
Both the Town and the Contractor stipulate to the applicability of the State Conflict of Interest Law (General Laws Chapter 268A), and this Contract expressly prohibits any activity, which shall constitute a violation of that law. The Contractor shall be deemed to have investigated its applicability to the performance of this Contract; and by executing the Contract Documents the Contractor certifies to the Town that neither it nor its agents, employees, or subcontractors are thereby in violation of General Laws Chapter 268A.
11. Certification of Tax Compliance:  
This Contract must include a certification of tax compliance by the Contractor, as required by General Laws Chapter 62C, Section 49A, (Requirement of Tax Compliance by All Contractors Providing Goods, Services, or Real Estate Space to the Commonwealth or Subdivision).
12. Debarment:  
The Town (as a non-federal entity) is prohibited from contracting with or making sub awards under covered transactions to parties that are suspended or debarred or whose principals are suspended or debarred (Excluded Parties List System). The Contractor, by executing the Contract, certifies that it is not currently debarred or suspended by the Commonwealth of Massachusetts, or the Federal Government, under any Commonwealth or Federal Law or regulation. Furthermore, if, during the duration of this contract, the Contractor becomes suspended or debarred, the Contractor shall notify the Town via registered mail of this occurrence.
13. Discrimination:  
The Contractor will carry out the obligation of this Contract in full compliance with all of the requirements imposed by or pursuant to General Laws Chapter 151B (Law Against Discrimination,) and any executive orders, rules, regulations, and requirements of the Commonwealth of Massachusetts as they may from time to time be amended.
14. Assignment:  
Assignment of this Contract is prohibited, unless assignment is provided for expressly in the Contract Documents.

15. Condition of Enforceability against the Town:

This Contract is only binding upon, and enforceable against, the Town if: (1) the Contract is signed by the Mayor as Chief Procurement Officer or his/her designee; and (2) endorsed with approval by the Town Accountant as to appropriation or availability of funds; and (3) endorsed with approval by the Town Counsel as to form.

Corporate Contractor:

If the Contractor is a corporation, it shall endorse upon this Contract (or attach hereto) its Clerk's Certificate certifying the corporate capacity and authority of the party signing this Contract for the corporation. Such certificate shall be accompanied by a letter or other instrument stating that such authority continues in full force and effect as of the date the Contract is executed by the Contractor. This Contract shall not be enforceable against the Town of Chilmark unless and until the Contractor complies with this section.

The Contractor (and Subcontractors as defined in Paragraph 4.6 of the General Conditions), if a foreign corporation shall comply with the provisions of the General Laws, Chapter 181, Sections 3 and 5, and any Acts and Amendments thereof, and in addition thereto, relating to the appointment of the Commissioner of Corporations as its attorney, shall file with the Commissioner of Corporations a Power of Attorney and duly authenticated copies of its Charter or Certificate of Incorporation; and said Contractor shall comply with all the laws of the Commonwealth.

16. Liability of Public Officials:

To the full extent permitted by law, no official, employee, agent or representative of the Town of Chilmark shall be individually or personally liable on any obligation of the Town under this Contract.

17. Notice:

Any notice permitted or required under the provisions of this Contract to be given or served by either of the parties hereto upon the other party hereto shall be in writing and signed in the name or on the behalf of the party giving or serving the same. Notice shall be deemed to have been received at the time of actual service or three (3) business days after the date of a certified or registered mailing properly addressed. Notice to the Contractor shall be deemed sufficient if sent to the address set forth on page 1 of the Contract, and to the Town of Chilmark, Town Hall, 401 Middle Road, Chilmark, Massachusetts 02535.

18. Binding on Successors:

This Contract shall be binding upon the Contractor, its assignees, transferees, and/or successors in interest (and where not corporate, the heirs and estate of the Contractor).

19. Complete Contract:

This instrument together with its endorsed supplements, and the other components of the Contract Documents, constitutes the entire contract between the parties, with no agreements other than those incorporated herein.

20. Contract Type Supplements:

The foregoing provisions apply to all contracts to which the Town of Chilmark shall be a party. One of the following "**Supplements**" **must be** "checked" as applicable to this Contract, shall be attached hereto, and shall in any event apply as the nature of the Contract requires. The Supplement contains additional terms governing the Contract:

( ) Goods Supplement "G"                      Applicable to Contracts for the procurement of Goods (governed by the provisions of General Laws Chapter 30B).

( ) Services Supplement "S"                      Applicable to Contracts for the procurement of Services, (governed by the provisions of General Laws Chapter 30B).

( ) Construction Supplement "C" Applicable to Contracts for the construction of:

- (1) Public Buildings and Public Works (governed by the provision of General Laws Chapter 30B);
- (2) Public Buildings (governed by the provision of General Laws Chapter 149, Sec. 44A, et seq.); and
- (3) Public Works (governed by the provisions of General Laws Chapter 30, Sec. 39M, et seq.).

Dated: June 30, 2023

By:

  
The Town of Chilmark  
Chief Procurement Officer, Executive Secretary

By:

  
Town Accountant  
Certified as to Appropriation

By:

Town Counsel

The Contractor by:

