

**SALES CONTRACT BETWEEN THE CITY OF SAN MATEO AND MARINA LANDSCAPE, INC.  
FOR THE PURCHASE OF 310 WATER-FILLED BARRIERS**

This Sales Contract ("Contract"), made and entered into this day of \_\_\_\_\_, by and between the **CITY OF SAN MATEO**, a municipal corporation existing under the laws of the State of California ("CITY"), and **MARINA LANDSCAPE, INC.**, a California Corporation ("BUYER").

**RECITALS:**

- A. BUYER desires to purchase certain 310 used water-filled barriers from the CITY.
- B. CITY agrees to the sale of 310 used water-filled barriers subject to the terms set forth in this Contract.

**NOW, THEREFORE, IT IS AGREED** as follows:

**SECTION 1 - PURCHASE**

The goods to be purchased by BUYER from CITY under this Contract include 310 used water-filled barriers (the "Goods").

**SECTION 2 - PRICE**

All prices shall be as stated in this Contract and are firm and not subject to escalation or reduction. BUYER agrees to purchase 310 water-filled barriers at a price of \$125 per unit, for a total purchase price of \$38,750.

**SECTION 3 - PAYMENT**

Unless otherwise agreed in writing, payment terms shall be net thirty (30) days from date of receipt of invoice or acceptance of goods, whichever occurs first.

**SECTION 4 - DELIVERY**

BUYER assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products. No charges for transportation containers, packing, etc., will be allowed unless so specified in this Contract.

**SECTION 5 – DISCLAIMER & WARRANTIES**

Except as expressly set forth in this Contract, CITY does not make, and hereby specifically disclaims, any representations or warranties, express or implied, regarding the Goods, including any implied warranties of title, merchantability, fitness for a particular purpose or non-infringement. BUYER acknowledges that the goods furnished by CITY under this Contract are provided by CITY on an "as is" basis.

## **SECTION 6 - INDEMNITY**

BUYER agrees to hold harmless and indemnify CITY, its elected and appointed officials, employees, and agents from and against any and all claims, loss, liability, damage, and expense arising out of BUYER's performance of this Contract, except for those claims arising out of CITY's sole negligence or willful misconduct. BUYER agrees to defend CITY, its elected and appointed officials, employees, and agents against any such claims. The BUYER's duty to indemnify shall survive expiration or early termination of this Agreement.

## **SECTION 7 - TERMINATION**

This Contract may be terminated by mutual consent of both parties or by the CITY at its discretion. If the Contract is terminated, CITY shall be paid in accordance with the terms of the Contract for the Goods delivered and accepted.

## **SECTION 8 - REMEDIES**

In the event of BUYER's breach of this Contract, CITY may recover the Goods or the purchase price payable for Goods received by BUYER prior to such breach. In the event of CITY's breach of this Contract, BUYER's sole remedy is the recovery of any monies for Goods paid for, but not yet received.

## **SECTION 9 - COMPLIANCE WITH LAW**

BUYER warrants that it will comply with all federal, state, and local laws, ordinances, rules and regulations applicable to its performance under this Contract.

## **SECTION 10 - ASSIGNMENT**

BUYER shall not delegate or subcontract any duties and services or assign any rights or claims under this Contract without the CITY's prior written consent.

## **SECTION 11 - GOVERNING LAW**

This Contract between the parties evidenced hereby or attached thereto shall be deemed to be made in the State of California and shall in all respects be construed and governed by the laws of that state.

## **SECTION 12 - VENUE**

In the event of litigation, venue will be in the County of San Mateo.

### **SECTION 13 - WAIVER**

The waiver by either party of any breach or violation of any term, covenant, or condition of this Contract or of any provisions of any ordinance or law shall not be deemed to be a waiver of such term, covenant, condition, ordinance or law or of any subsequent breach or violation of the same or of any other term, condition, ordinance, or law. The subsequent acceptance by either party of any fee or other money which may become due hereunder shall not be deemed to be a waiver of any preceding breach or violation by the other party of any term, covenant, or condition of this Contract or of any applicable law or ordinance.

### **SECTION 14 - COSTS AND ATTORNEY FEES**

Attorney fees in total amount not exceeding \$5000, shall be recoverable as costs (by the filing of a cost bill) by the prevailing party in any action or actions to enforce the provisions of this Contract. The above \$5000 limit is the total of attorney fees recoverable whether in the trial court, appellate court, or otherwise, and regardless of the number of attorneys, trials, appeals, or actions. It is the intent of this provision that neither party shall have to pay the other more than \$5000 for attorney fees arising out of an action, or actions to enforce the provisions of this Contract.

### **SECTION 15 - MEDIATION**

Should any dispute arise out of this Contract, any party may request that it be submitted to mediation. The parties shall meet in mediation within 30 days of a request. The mediator shall be agreed to by the mediating parties; in the absence of an agreement, the parties shall each submit one name from mediators listed by either the American Arbitration Association, the California State Board of Mediation and Conciliation, or other agreed-upon service. The mediator shall be selected by a "blindfolded" process.

The cost of mediation shall be borne equally by the parties. Neither party shall be deemed the prevailing party. No party shall be permitted to file a legal action without first meeting in mediation and making a good faith attempt to reach a mediated settlement. The mediation process, once commenced by a meeting with the mediator, shall last until agreement is reached by the parties but not more than 60 days, unless the maximum time is extended by the parties.

### **SECTION 16 - LITIGATION**

BUYER shall testify at CITY's request if litigation is brought against CITY in connection with the performance under this Agreement. Unless the action is brought by BUYER, or is based upon BUYER's wrongdoing, CITY shall compensate BUYER for preparation for testimony, testimony, and travel at BUYER's standard hourly rates at the time of actual testimony.

### **SECTION 17 - NOTICES**

All notices hereunder shall be given in writing and mailed, postage prepaid, addressed as follows:

To CITY: City of San Mateo  
Attn: Public Works Director  
330 West 20<sup>th</sup> Avenue  
San Mateo, CA 94403

To BUYER: Marina Landscape, Inc.  
Attn: Ali Tavakoli  
3707 West Garden Grove Boulevard  
Orange, CA 92868

**SECTION 18 - AGREEMENT CONTAINS ALL UNDERSTANDINGS; AMENDMENT**

This document represents the entire and integrated Contract between CITY and BUYER and supersedes all prior negotiations, representations, and agreements, either written or oral.

This document may be amended only by written instrument, signed by both CITY and BUYER.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, CITY OF SAN MATEO and MARINA LANDSCAPE, INC. have executed this Sales Contract the day and year first above written.

CITY OF SAN MATEO

BUYER

Alex Khojikian City Manager	Date
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Marina Landscape, Inc.	Date
Ali Tavakoli	
Vice President	

APPROVED AS TO FORM

ADDITIONAL CORPORATE  
OFFICER

Linh Nguyen  
Assistant City Attorney

Karen Ness  
Assistant Secretary

Date