

EXHIBIT**"A"**

**CITY OF ROUND ROCK AGREEMENT FOR
PURCHASE AND INSTALLATION OF
FABRIC SHADE STRUCTURE AT
OLD SETTLERS PARK ADULT RECREATION COMPLEX
BASKETBALL COURT PROJECT 2020
WITH
SHADE STRUCTURES, INC.**

THE STATE OF TEXAS**§****CITY OF ROUND ROCK****§****KNOW ALL BY THESE PRESENTS:****§****COUNTY OF WILLIAMSON****§****COUNTY OF TRAVIS****§****§**

THAT THIS AGREEMENT for the purchase and installation of a fabric shade structure for Old Settlers Park Adult Recreation Complex Basketball Court Project 2020 at 3300 East Palm Valley Boulevard, Round Rock, Texas 78665, and for related goods and services (referred to herein as the "Agreement"), is made and entered into on this the ____ day of the month of _____, 2020 by and between the CITY OF ROUND ROCK, a Texas home-rule municipality, whose offices are located at 221 East Main Street, Round Rock, Texas 78664-5299 (referred to herein as the "City"), and SHADE STRUCTURES, INC., whose offices are located at 2580 Esters Boulevard, Suite 100, DFW Airport, Texas 75261 (referred to herein as "Vendor").

RECITALS:

WHEREAS, City desires to purchase certain deliverables and installation service, specifically, a shade structure for the Old Settlers Park Adult Recreation Center Basketball Court Project 2020 at 3300 East Palm Valley Boulevard, Round Rock Texas, 78665 and City desires to procure same from Vendor; and

WHEREAS, City is a member of the Buy Board Cooperative Purchasing Program ("Buy Board") and Vendor is an approved Buy Board vendor; and

WHEREAS, City desires to purchase of certain goods and services from Vendor through Buy Board Contract No. 592-19 as set forth herein; and

WHEREAS, the parties desire to enter into this Agreement to set forth in writing their respective rights, duties, and obligations;

NOW, THEREFORE, WITNESSETH:

That for and in consideration of the mutual promises contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, it is mutually agreed between the parties as follows:

1.01 DEFINITIONS

A. **Agreement** means the binding legal contract between City and Vendor whereby City is obligated to buy specified goods and services and Vendor is obligated to sell same. The Agreement includes Vendor's Proposal dated July 30, 2020 (attached as Exhibit "A").

B. **City** means the City of Round Rock, Williamson and Travis Counties, Texas.

C. **Effective Date** means the date upon which the binding signatures of both parties to this Agreement are affixed.

D. **Force Majeure** means acts of God, strikes, lockouts, or other industrial disturbances, acts of the public enemy, orders of any kind from the government of the United States or the State of Texas or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, restraint of the government and the people, civil disturbances, explosions, or other causes not reasonably within the control of the party claiming such inability.

E. **Goods** mean the specified supplies, materials, commodities, or equipment.

F. **Services** mean work performed to meet a demand or effort by Vendor to comply with promised delivery dates, specifications, and technical assistance specified.

2.01 EFFECTIVE DATE, TERM, PRICES FIRM

A. This Agreement shall be effective on the date this Agreement has been signed by each party hereto, and shall remain in full force and effect unless and until it expires by operation of the term indicated herein, or is terminated or extended as provided herein.

B. This Agreement shall terminate upon the completion of purchase and installation of the shade structure as described in Exhibit "A."

C. Prices shall be firm for the duration of this Agreement. No separate line item charges shall be permitted for invoicing purposes, including but not limited to equipment rental, demurrage, costs associated with obtaining permits, or any other extraneous charges.

D. City reserves the right to review the relationship with Vendor at any time, and may elect to terminate this Agreement with or without cause or may elect to continue.

3.01 CONTRACT DOCUMENTS AND EXHIBITS

The goods and services which are the subject matter of this Agreement are described in Exhibit "A" and, together with this Agreement, comprise the Contract Documents. Any inconsistencies or conflicts in the contract documents shall be resolved by giving preference to the terms and conditions of this Agreement.

4.01 SCOPE OF WORK

Vendor shall satisfactorily provide all goods and complete all services described in Vendor's Proposal, Exhibit "A," attached hereto and incorporated herein.

This Agreement shall evidence the entire understanding and agreement between the parties and shall supersede any prior proposals, correspondence or discussions.

Vendor shall satisfactorily provide all deliverables and services described in Exhibit "A" within the contract term specified. A change in the Scope of Services must be negotiated and agreed to in all relevant details, and must be embodied in a valid Supplemental Agreement as described herein.

5.01 CONTRACT AMOUNT

In consideration for the deliverables and services related to the deliverables, the City agrees to pay Vendor **One Hundred Forty-Five Thousand Three Hundred Seventy-One and No/100 Dollars (\$145,371.00)** for the goods and services set forth in Exhibit "A."

6.01 INVOICES

All invoices shall include, at a minimum, the following information:

- A. Name and address of Vendor;
- B. Purchase Order Number;
- C. Description and quantity of items received or services provided; and
- D. Delivery or performance dates.

7.01 NON-APPROPRIATION AND FISCAL FUNDING

This Agreement is a commitment of City's current revenues only. It is understood and agreed that City shall have the right to terminate this Agreement at the end of any City fiscal year if the governing body of City does not appropriate funds sufficient to purchase the services as determined by City's budget for the fiscal year in question. City may effect such termination by giving Vendor a written notice of termination at the end of its then current fiscal year.

8.01 PROMPT PAYMENT POLICY

In accordance with Chapter 2251, V.T.C.A., Texas Government Code, payment to Vendor will be made within thirty (30) days of the day on which City receives the performance, supplies, materials, equipment, and/or deliverables, or within thirty (30) days of the day on which the performance of services was complete, or within thirty (30) days of the day on which

City receives a correct invoice for the performance and/or deliverables or services, whichever is later. Vendor may charge interest on an overdue payment at the “rate in effect” on September 1 of the fiscal year in which the payment becomes overdue, in accordance with V.T.C.A., Texas Government Code, Section 2251.025(b); however, this Policy does not apply to payments made by City in the event:

- A. There is a bona fide dispute between City and Vendor, a contractor, subcontractor or supplier about the goods delivered or the service performed that cause the payment to be late; or
- B. The terms of a federal contract, grant, regulation, or statute prevent City from making a timely payment with federal funds; or
- C. There is a bona fide dispute between Vendor and a subcontractor or between a subcontractor and its supplier about the goods delivered or the service performed that causes the payment to be late; or
- D. Invoices are not mailed to City in strict accordance with instructions, if any, on the purchase order or the Agreement or other such contractual agreement.

9.01 GRATUITIES AND BRIBES

City may, by written notice to Vendor, cancel this Agreement without liability to Vendor if it is determined by City that gratuities or bribes in the form of entertainment, gifts, or otherwise were offered or given by Vendor or its agents or representatives to any City officer, employee or elected representative with respect to the performance of this Agreement. In addition, Vendor may be subject to penalties stated in Title 8 of the Texas Penal Code.

10.01 TAXES

City is exempt from Federal Excise and State Sales Tax; therefore, tax shall not be included in Vendor’s charges.

11.01 ORDERS PLACED WITH ALTERNATE VENDORS

If Vendor cannot provide the goods as specified, City reserves the right and option to obtain the products from another supplier or suppliers.

12.01 CITY’S REPRESENTATIVE

City hereby designates the following representative authorized to act in its behalf with regard to this Agreement:

Katie Baker
Park Development Manager
City of Round Rock
301 W. Bagdad Avenue, Suite 250
Round Rock, Texas 78664

13.01 INSURANCE

Vendor shall meet all City of Round Rock Insurance Requirements set forth at insurance requirements as required by the City's Purchasing Department as set forth at: http://www.roundrocktexas.gov/wp-content/uploads/2014/12/corr_insurance_07.20112.pdf

14.01 RIGHT TO ASSURANCE

Whenever either party to this Agreement, in good faith, has reason to question the other party's intent to perform hereunder, then demand may be made to the other party for written assurance of the intent to perform. In the event that no written assurance is given within the reasonable time specified when demand is made, then and in that event the demanding party may treat such failure as an anticipatory repudiation of this Agreement.

15.01 DEFAULT

If Vendor abandons or defaults under this Agreement and is a cause of City purchasing the specified goods elsewhere, Vendor agrees that it may be charged the difference in cost, if any, and that it will not be considered in the re-advertisement of the service and that it may not be considered in future bids for the same type of work unless the scope of work is significantly changed.

Vendor shall be declared in default of this Agreement if it does any of the following:

- A. Fails to fully, timely and faithfully perform any of its material obligations under this Agreement;
- B. Fails to provide adequate assurance of performance under the "Right to Assurance" section herein; or
- C. Becomes insolvent or seeks relief under the bankruptcy laws of the United States.

16.01 TERMINATION AND SUSPENSION

A. City has the right to terminate this Agreement, in whole or in part, for convenience and without cause, at any time upon thirty (30) days' written notice to Vendor.

B. In the event of any default by Vendor, City has the right to terminate this Agreement for cause, upon ten (10) days' written notice to Vendor.

C. Vendor has the right to terminate this Agreement only for cause, that being in the event of a material and substantial breach by City, or by mutual agreement to terminate evidenced in writing by and between the parties.

D. In the event City terminates under subsections (A) or (B) of this section, the following shall apply: Upon City's delivery of the referenced notice to Vendor, Vendor shall discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders and contracts are chargeable to this Agreement. Within thirty (30) days after such notice of termination, Vendor shall submit a statement showing in detail the goods and/or services satisfactorily performed under this Agreement to the date of termination. City shall then pay Vendor that portion of the charges, if undisputed. The parties agree that Vendor is not entitled to compensation for services it would have performed under the remaining term of the Agreement except as provided herein.

17.01 INDEMNIFICATION

Vendor shall defend (at the option of City), indemnify, and hold City, its successors, assigns, officers, employees and elected officials harmless from and against all suits, actions, legal proceedings, claims, demands, damages, costs, expenses, attorney's fees, and any and all other costs or fees arising out of, or incident to, concerning or resulting from the fault of Vendor, or Vendor's agents, employees or subcontractors, in the performance of Vendor's obligations under this Agreement, no matter how, or to whom, such loss may occur. Nothing herein shall be deemed to limit the rights of City or Vendor (including, but not limited to the right to seek contribution) against any third party who may be liable for an indemnified claim.

18.01 COMPLIANCE WITH LAWS, CHARTER AND ORDINANCES

A. Vendor, its agents, employees and subcontractors shall use best efforts to comply with all applicable federal and state laws, the Charter and Ordinances of the City of Round Rock, as amended, and with all applicable rules and regulations promulgated by local, state and national boards, bureaus and agencies.

B. Vendor acknowledges and understands that City has adopted a Storm Water Management Program (SWMP) and an Illicit Discharge Ordinance, Sections 14-139 through 14-152 of the City's Code of Ordinances, to manage the quality of the discharges from its Municipal Separate Storm Sewer System (MS4) and to be in compliance with the requirements of the Texas Commission on Environmental Quality (TCEQ) and the Texas Pollutant Discharge Elimination System (TPDES). The Vendor agrees to perform all operations on City-owned facilities in compliance with the City's Illicit Discharge Ordinance to minimize the release of pollutants into the MS4. The Vendor agrees to comply with of the City's stormwater control measures, good housekeeping practices and any facility specific stormwater management operating procedures specific to a certain City facility. In addition, the Vendor agrees to comply with any applicable TCEQ Total Maximum Daily Load (TMDL) Requirements and/or I-Plan requirements.

C. In accordance with Chapter 2270, Texas Government Code, a governmental entity may not enter into a contract with a company for goods and services unless the contract contains written verification from the company that it: (1) does not boycott Israel; and (2) will not boycott Israel during the term of the contract. The signatory executing this Agreement on behalf of Vendor verifies that Vendor does not boycott Israel and will not boycott Israel during the term of this Agreement.

19.01 ASSIGNMENT AND DELEGATION

The parties each hereby bind themselves, their successors, assigns and legal representatives to each other with respect to the terms of this Agreement. Neither party shall assign, sublet or transfer any interest in this Agreement without prior written authorization of the other party.

20.01 NOTICES

All notices and other communications in connection with this Agreement shall be in writing and shall be considered given as follows:

1. When delivered personally to the recipient's address as stated in this Agreement;
or
2. Three (3) days after being deposited in the United States mail, with postage prepaid to the recipient's address as stated in this Agreement.

Notice to Vendor:

Shade Structures, Inc.
P.O. Box 3467
Coppel, Texas 75019

Notice to City:

City Manager
221 East Main Street
Round Rock, TX 78664

Stephan L. Sheets, City Attorney
AND TO: 309 East Main Street
Round Rock, TX 78664

Nothing contained herein shall be construed to restrict the transmission of routine communications between representatives of City and Vendor.

21.01 APPLICABLE LAW; ENFORCEMENT AND VENUE

This Agreement shall be enforceable in Round Rock, Texas, and if legal action is necessary by either party with respect to the enforcement of any or all of the terms or conditions herein, exclusive venue for same shall lie in Williamson County, Texas. This Agreement shall be governed by and construed in accordance with the laws and court decisions of the State of Texas.

22.01 EXCLUSIVE AGREEMENT

This document, and all appended documents, constitutes the entire Agreement between Vendor and City. This Agreement may only be amended or supplemented by mutual agreement of the parties hereto in writing, duly authorized by action of the City Manager or City Council.

23.01 DISPUTE RESOLUTION

City and Vendor hereby expressly agree that no claims or disputes between the parties arising out of or relating to this Agreement or a breach thereof shall be decided by any arbitration proceeding, including without limitation, any proceeding under the Federal Arbitration Act (9 USC Section 1-14) or any applicable state arbitration statute.

24.01 SEVERABILITY

The invalidity, illegality, or unenforceability of any provision of this Agreement or the occurrence of any event rendering any portion or provision of this Agreement void shall in no way affect the validity or enforceability of any other portion or provision of this Agreement. Any void provision shall be deemed severed from this Agreement, and the balance of this Agreement shall be construed and enforced as if this Agreement did not contain the particular portion or provision held to be void. The parties further agree to amend this Agreement to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Agreement from being void should a provision which is of the essence of this Agreement be determined void.

25.01 MISCELLANEOUS PROVISIONS

Standard of Care. Vendor represents that it employs trained, experienced and competent persons to perform all of the services, responsibilities and duties specified herein and that such services, responsibilities and duties shall be performed in a manner according to generally accepted industry practices.

Time is of the Essence. Vendor understands and agrees that time is of the essence and that any failure of Vendor to fulfill obligations for each portion of this Agreement within the agreed timeframes will constitute a material breach of this Agreement. Vendor shall be fully responsible for its delays or for failures to use best efforts in accordance with the terms of this Agreement. Where damage is caused to City due to Vendor's failure to perform in these circumstances, City may pursue any remedy available without waiver of any of City's additional legal rights or remedies.

Force Majeure. Neither City nor Vendor shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons for which it is not responsible as defined herein. However, notice of such impediment or delay in performance must be timely given and all reasonable efforts undertaken to mitigate its effects.

Multiple Counterparts. This Agreement may be executed in multiple counterparts, any one of which shall be considered an original of this document; and all of which, when taken together, shall constitute one and the same instrument.

IN WITNESS WHEREOF, City and Vendor have executed this Agreement on the dates indicated.

City of Round Rock, Texas

By: _____
Printed Name: _____
Title: _____
Date Signed: _____

Attest:

By: _____
Sara L. White, City Clerk

For City, Approved as to Form:

By: _____
Stephan L. Sheets, City Attorney

Shade Structures, Inc.

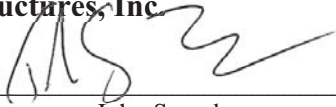
By:  _____
Printed Name: John Saunders
Title: President
Date Signed: 8/28/2020

Exhibit “A”
Vendor’s Proposal



USASHADE
& Fabric Structures®

Old Settlers Basketball Court

7/30/2020

Proposal Prepared For:
City of Round Rock
301 West Bagdad Ave
Round Rock , Texas 78664

AZ: 289388 CA: 989458 LA: 61718 NV: 78724
NM: 383826 TN: 68712 DIR: 1000003533



Date: 7/30/2020

Proposal for USA SHADE & Fabric Structures

Project Information:				Sales Information:	
Purchaser:	City of Round Rock	Contact:	Katie Baker	Sales Rep:	Dion Botha
Project Name:	Old Settlers Basketball Court	Phone:	(512) 341-3355	Phone:	512-608-8364
Quote No:	DWB07072020	Email:	kbaker@roundrocktexas.gov	Email:	dbotha@usa-shade.com
PO No:		Fax:		Fax:	

Billing Information:		Shipping Information:		Jobsite Information:	
City of Round Rock		JOB SITE		Old Settlers Park	
301 West Bagdad Ave		3300 E. Palm Valley Blvd		3300 E. Palm Valley Blvd	
Round Rock		Round Rock		Round Rock	
Texas		Texas		Texas	
78664		78665		78665	
Contact:	Katie Baker	Contact:	Katie Baker	Contact:	Katie Baker
Phone	(512) 341-3355	Phone	(512) 341-3355	Phone	(512) 341-3355
Fax:		Fax:		Fax:	
Email:	kbaker@roundrocktexas.gov	Email:	kbaker@roundrocktexas.gov	Email:	kbaker@roundrocktexas.gov

CORPORATE ADDRESS:

2580 Esters Blvd., Suite 100
DFW Airport, TX 75261

MAILING ADDRESS:

P.O. Box 3467
Coppel, TX 75019

REMITTANCE ADDRESS:

P.O. Box 734158
Dallas, TX 75373-4158

SOUTHERN CALIFORNIA:

1085 N. Main Street, Suite C
Orange, CA 92867

NORTHERN CALIFORNIA:

927 Enterprise Way, Suite A
Napa, CA 94558

ARIZONA:

2452 W. Birchwood Ave, Suite 112
Mesa, AZ 85202

LAS VEGAS:

6225 S. Valley View Blvd., Suite I
Las Vegas, NV 89118

NOTE: This message is intended only for the use of the individual to whom it is addressed, and contains information that is privileged, confidential, and exempt from disclosure under applicable law. If you are not the intended recipient, or the employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any unauthorized disclosure, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by phone and return the original message to the applicable address above.


www.usa-shade.com

800-966-5005

AZ: 289388 CA: 989458 LA: 61718 NV: 78724 NV: 78724 NM: 383826 TN: 68712 DIR: 1000003533



Structure Pricing

Structure 1				
UNIT IMAGE	UNIT DETAILS			
 <p>PERSPECTIVE VIEW</p>	Unit Quantity:	1	Foundations By	USA Shade
	Unit Type:	402_SS_Hip	Grout Installation	USA Shade
	Structure Size:	63'x 114'	Base Attachment:	Recessed Base Plate
	Entry Height:	16'	Footing Type:	Drilled Pier
	No of Columns:	8	Anchor Bolts:	Included
	No of Fabric Tops:	1	Concrete Cutting:	Not Included
	Fabric Type:	Extreme_32	Dirt Removal:	Included
	Fabric Color:	TBD	Surface Type:	Dirt
	Steel Finish:	Powder Coated	NOTES As per Buyboard Contract # 592-19.	
	Steel Color:	TBD		
	Electrical Provisions:	N/A		
	Cable/HDW Finish:	Galvanized		
	Concept No:			



ACCESS/MISC.			
QTY	ITEM	DETAILS	COST
TOTAL FOR ACCESS/MISC ITEMS:			

PRICING TOTALS:	
Unit Total	Included
Accessories/Miscellaneous	
Shipping/Handling	Included
SUBTOTAL	
Sales Tax (%)	Exempt
Engineering	Included
Installation	Included
TOTAL PRICE	\$145,371.00

PAYMENT TERMS:	
(1) Upon execution of the Agreement (Deposit)	
(2) Upon delivery of Unit(s)	
(3) Upon completion of assembly/installation	100%
(4) Other (specify):	
NOTES:	

USA SHADE reserves the right to implement a surcharge for significant increases in raw materials, including the following, but not limited to: fuel, steel , fabric, and concrete. Proposal pricing is only valid for 30 days due to the fluctuation in pricing. Due to recent significant increases experienced in raw steel and fabric materials, it may be necessary to order, invoice, and receive payments for steel and fabric as soon as final sizing can be determined.

ENGINEERING REQUIREMENTS			NOTES
Building Code	IBC 2015		
Wind Load	95 mph		
Snow Load	5 psf		
Drawing Size	11 X 17		
No. of Sealed Drawings	2		
Calculations Required	No		

INCLUSIONS / EXCLUSIONS					
INCLUDED	EXCLUDED	ENGINEERING REQUIREMENTS	INCLUDED	EXCLUDED	INSTALLATION - MISCELLANEOUS
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Sealed Drawings & Calculations	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Prevailing Wage / Certified Payroll
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Permit Submittal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Union Wages
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Permit Fee	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Fencing
<input type="checkbox"/>	<input checked="" type="checkbox"/>	DSA Submittal & Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Curb Repair
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Design and Engineering of Structure	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Landscape Repair
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Design and Engineering of Foundation	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Demolition (Existing Structures)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Reactions and Loads for attachment to Walls, Rooftops, or Other	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Payment and Performance Bonds
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Foundation Location and Elevation Survey	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Special Inspection Fees



Construction Assumptions

- 1) The designated area for our structures will be accessible by drive-up for unloading of our trucks and equipment, including personnel man-lifts, forklifts, etc. Should a crane be required and direct access not available, additional costs for such will be submitted by a Change Order.
- 2) Our pricing is based on the ability to perform all of our work with clear, sequential, and continuous access without interruption during normal daytime working hours. We have assumed one mobilization for the installation of foundations, steel and fabric; if additional mobilizations are required, there will be an additional charge. We will require exclusive access to the area for our work during the construction process.
- 3) Our pricing does not include daily site delays accessing the work areas. USA SHADE will submit a Change Order for any delays caused by other trades which interfere or cause us to stop working.
- 4) Pricing assumes secure storage and adequate lay down area for our tools, equipment, and materials, within close proximity to the installation site will be provided, free of charge.
- 5) Our price assumes others to provide 200-amp, 110-volt electrical service and necessary potable water available within 100 feet of our work.
- 6) We will require site sanitary facilities and refuse containers by others within 200 feet of our work.
- 7) USA SHADE will leave its work and materials in a clean condition at the conclusion of our work.
- 8) Barricades and public security requirements are not included.
- 9) Unless specifically included in this proposal, this agreement does not include, and Company will not provide, services, labor, or materials for any of the following work: (a) removal and disposal of any materials containing asbestos or any hazardous materials as defined by the EPA; (b) moving Owner's property around the installation site; (c) repair or replacement of any Purchaser or Owner-supplied materials; or (d) repair of damage to existing surfaces that may occur when construction equipment and vehicles are being used in the normal course of construction.
- 10) Pricing for foundation design is based on drilled pier footings. In the event the geotechnical report requires an alternate configuration, any additional costs incurred will be submitted to the client by a Change Order.
- 11) Digging of our foundations will not be constrained by any existing concrete or utilities. USA SHADE will not be responsible for moving or repairing any underground utility lines such as electrical, telephone, gas, water, or sprinkler lines that may be encountered during installation.
- 12) Any additional costs incurred as a result of hard rock conditions requiring extra equipment, utility removal or repair, resulting in delay, will result in additional charges unless they are detailed on as-built site drawings provided to USA SHADE or marked on the ground and communicated to USA SHADE in writing prior to installation.

GENERAL TERMS & CONDITIONS AND WARRANTY

- 1) **Proposal:** The above proposal is valid for **30** days from the date first set forth above. After 30 days, we reserve the right to increase prices due to the rise in cost of raw materials, fuel, or other cost increases. When applicable, USA SHADE & Fabric Structures reserves the right to implement a surcharge for significant increases in raw materials, including, but not limited to; fuel, steel, and concrete. Due to the duration of time between proposals, contracts, and final installation, USA SHADE & Fabric Structures reserves the right to implement this surcharge, when applicable.
- 2) **Purchase:** By executing this proposal, or submitting a purchase order pursuant to this proposal (which shall incorporate the terms of this agreement specifically by reference) which is accepted by USA SHADE & Fabric Structures (the "Company"), the purchaser identified above ("you" or the "Purchaser") agrees to purchase Shade Structures brand shade structures ("Structures") and the services to be provided by the Company, as detailed in the "Structure Pricing" and "General Scope of Work" sections of this agreement, above, or in the relevant purchase order accepted by the Company, for use by Purchaser or for installation by Company or Purchaser on behalf of a third-party who will be the ultimate owner of the Structures (the ultimate owner of a Structure, whether Purchaser or a third-party, being the "Owner").
- 3) **Short Ship Claims:** Purchaser has 15 days from receipt of the structures to file a short ship report in writing to its sales representative. Company will not honor claims made after this time.



- 4) **Standard Exclusions:** Unless specifically included under the "General Scope of Work" section above, this agreement does not include, and Company will not provide, services, labor, or materials for any of the following work: (a) removal and disposal of any materials containing asbestos or any hazardous materials as defined by the EPA; (b) moving Owner's property around the installation site; (c) repair or replacement of any Purchaser or Owner-supplied materials; (d) repair of concealed underground utilities not located on prints supplied to Company by Owner during the bidding process, or physically staked out by Owner, and which are damaged during construction; or (e) repair of damage to existing surfaces that may occur when construction equipment and vehicles are being used in the normal course of construction.
- 5) **Bonding Guidelines:** If Purchaser will use or provide the Structures and Services for an Owner other than Purchaser (including, without limitation, as a subcontractor of Purchaser), Purchaser will include the following statement in Purchaser's contract with Owner:
- "The manufacturer's warranty for the Shade Structures brand shade structures is a separate document between USA SHADE & Fabric Structures and the ultimate owner of the Shade Structures brand shade structures, which will be provided to the ultimate owner at the time of completion of the installation and other services to be provided by USA SHADE & Fabric Structures. Due to surety requirements, any performance and/or payment bond will cover only the first year of the USA SHADE & Fabric Structures warranty."
- 6) **Insurance Requirements:** Company is not required to provide any insurance coverage in excess of Company's standard insurance. A copy of the Company's standard insurance is available for your review prior to acceptance of the Company's proposal.
- 7) **Payment:** Terms of payment are defined in the "Pricing Details" section and are specific to this contract. For purposes of this agreement, "Completion" is defined as being the point at which the Structure is suitable for its intended use, the issue of occupancy consent, or a final building department approval is issued, whichever occurs first. In any event where Completion cannot be effected due to delays or postponements caused by the Purchaser or Owner, final payment (less 10% retainage) is due within 30 days of the date when Completion was scheduled, had the delay not occurred. All payments must be made to Shade Structures, Inc., P.O. Box 734158, Dallas, TX 75373-4158. If the Purchaser or Owner fails or delays in making any scheduled milestone payments, the Company may suspend the fulfillment of its obligations hereunder until such payments are made, or Company may be relieved of its obligations hereunder if payment is more than 60 days past due. Company may use all remedies available to it under current laws including, but not limited to, filing of liens against the property and using a collection agency or the courts to secure the collection of the outstanding debt.
- 8) **Lien Releases:** Upon request by Owner, Company will issue appropriate partial lien releases as corresponding payments are received from Purchaser, but prior to receiving final payment from Purchaser or Owner. Company will provide a full release of liens upon receipt of final payment. In accordance with state laws, Company reserves the right to place a lien on the property if final payment has not been received 10 days prior to the filing deadline for liens.
- 9) **Site Plan Approval, Permit/s, Permit Fees, Plans, Engineering Drawings, and Surveying:** Site plan approval, permits, permit fees, plans, engineering drawings, and surveying are specifically excluded from this agreement and the Services unless specified under the "General Scope of Work". The Company does not in any way warrant or represent that a permit or site plan approval for construction will be obtained. Sealed engineered drawings that are required but not included in the "General Scope of Work" will result in an additional cost to Purchaser.
- 10) **Manufacturing & Delivery:** Manufacturing lead-time from Company's receipt of the "Notice To Proceed" is approximately 6 to 8 weeks for standard structures, and 8 to 12 weeks for custom structures. Delivery is approximately 1 week thereafter. Delivery of structures may be prior to or at start of assembly. Please note that these timelines do not include approval or permitting timeframes.
- 11) **Returned Product, Deposits, and/or Cancelled Order:** Within the first 45 days after shipment from our facility, all returned product(s) and cancelled orders are subject to a 50% restocking fee. No returns are available following this 45 day period. All deposits are non-refundable. All expenses incurred (engineering, site surveys, shipping, handling, etc.) are the responsibility of the Purchaser, up to notice of cancellation.



- 12) **Concealed Conditions:** "Concealed conditions" include, without limitation, water, gas, sprinkler, electrical and sewage lines, post tension cables, and steel rebar. This agreement is based solely on observations the Company was able to make either by visual inspection or by drawings and/or plans submitted by Owner at the time this agreement was bid. If additional Concealed Conditions are discovered once work has commenced, which were not visible at the time this proposal was bid, Company will stop work and indicate these unforeseen Concealed Conditions to Purchaser or Owner so that Purchaser and Company can execute a Change Order for any additional work. In any event, any damage caused by or to unforeseen Concealed Conditions is the sole responsibility of the Purchaser and Company shall not be held liable for any such damage. Soil conditions are assumed to be soil that does not contain any water, hard rock (such as limestone, caliche, etc.), rocks larger than 4 inches in diameter, or any other condition that will require additional labor, equipment and/or materials not specified by the Purchaser or Owner in the bidding process. Any condition requiring additional labor, equipment, and/or materials to complete the drilling or concrete operations will require a Change Order before Company will complete the process. Price quotes are based on a drilled pier footing. Any variation will incur additional charges (i.e. spread footings, concrete mat, sand, water, landfill, etc.). Costs for footing and installation do not include any allowance for extending below frost lines (the additional costs for which vary by geographical region).
- 13) **Changes in the Work:** During the course of this project, Purchaser may order changes in the work (both additions and deletions). Additionally, an approving agency may require changes in the work from the original design or engineering quoted and provided by the Company (both additions and deletions.) The cost of these changes will be determined by the Company, and a Change Order form must be completed and signed by both the Purchaser and the Company, which will detail the "General Scope of the Change Order". Should any Change Order be essential to the completion of the project, and the Purchaser refuses to authorize such Change Order, then Company will be deemed to have performed its part of the project, and the project and services will be terminated. Upon such termination, Company will submit a final billing to Purchaser for payment, less a labor allowance for work not performed but including additional charges incurred due to the stoppage. No credit will be allowed for materials sold and supplied, which will remain the property of the Purchaser.
- 14) **Indemnification:** To the fullest extent permitted by law, Purchaser shall indemnify, defend, and hold harmless the Company and its consultants, agents, and employees or any of them from and against claims, damages, losses and expenses, including, but not limited to, attorneys' fees related to the installation of the Structure or performance of the services, provided that such claim, damage, loss, or expense is attributable to bodily injury to, sickness, disease, or death of a person, or to injury to or destruction of tangible property, but only to the extent caused by the negligent acts or omissions of the Purchaser or its agents, employees, or subcontractors, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in Section 15.
- 15) **Statement of Limited Warranty:**
- The structural integrity of all supplied steel is warranted for ten years.
 - If assembly is provided by the Company, workmanship of the structure is covered for one year, including labor for the removal of any failed part, disassembly (if necessary), cost of shipping, and reassembly.
 - All steel surface finishes are warranted for one year.
 - Shadesure™, Colourshade® FR, eXtreme 32™, Commercial 95™, SaFRshade™, and Monotec 370™ fabrics all carry a ten year limited manufacturer's warranty against failure from significant fading, deterioration, breakdown, outdoor heat, cold, or discoloration. Should the fabric need to be replaced under the warranty, the Company will manufacture and ship a new replacement fabric at no charge for the first six years, thereafter pro-rated at 20% per year over the remaining four years. The following are exceptions to the preceding warranty terms:
 - Shadesure™ fabrics in Red, Yellow, Atomic Orange, Electric Purple, Zesty Lime, Cinnamon, Olive, and Mulberry carry a five year pro-rated
 - Fabric tops attached to Coolbrella™ structures carry a three year warranty;
 - Individual fabric tops measuring greater than 40' in length are covered by a non-prorated five year warranty;
 - Preconstraint 502™ waterproof membrane is subject to an eight year pro-rated warranty.
 - Sewing thread is warranted for ten years.



General Limited Warranty Terms and Conditions

- These limited warranties are effective from the date of sale, or, if assembly is provided by the Company, upon receipt by Company from Purchaser of a completed and signed "Customer Checklist and Sign-off" form.
- In its sole discretion, the Company will repair and/or/replace defective structures, products or workmanship, or refund that portion of the price related to the defective product, labor, or service rendered.
- The Company reserves the right, in cases where certain fabric colors have been discontinued, to offer the Purchaser or Owner a choice of available alternative colors to replace the warranted fabric. The Company does not guarantee that any particular color will be available for any period of time, and reserves the right to discontinue any color for any reason, without recourse by the Purchaser or Owner of the discontinued fabric color.
- Should the Purchaser or Owner sell the structures to another party, the warranty cannot be transferred to the new owner without a complete and thorough on-site inspection performed by a Company representative. Please contact the Company at warranty@usa-shade.com for more details.
- All warranty claims covering Company supplied structures, products, and services must be submitted by Purchaser or Owner in writing to the Company within thirty days from the date of discovery of the alleged defect and must include a detailed description and applicable photographs of the alleged defect or problem. Warranty claims should be submitted by email to warranty@usa-shade.com.
- Purchaser or Owner agrees that venue for any court action to enforce these limited warranties shall be in the City or County of Dallas in the State of Texas, USA.
- These limited warranties are void if:
 - o the supplied structures, products, services and/or labor are not paid for in full;
 - o the structures are not assembled in strict compliance with USA SHADE specifications;
 - o any changes, modifications, additions, or attachments are made to the structures in any way, without prior written approval from the Company. Specifically, no signs, objects, fans, light fixtures, etc. may be hung from the structures, unless specifically engineered by the Company.
- These limited warranties do not cover defects and/or damages caused by:
 - o normal wear and tear;
 - o misuse, willful or intentional damage, vandalism, contact with chemicals, cuts and Acts of God (i.e. tornado, hurricane, micro/macros burst, earthquake, wildfires, etc.);
 - o ice, snow or wind loads in excess of the designed load parameters engineered for the supplied structures;
 - o use, maintenance, neglect, repair, and/or service inconsistent with the Company's written care and maintenance instructions, provided with the order.
- The limited warranties explicitly exclude:
 - o workmanship related to assembly not provided by the Company or its agents;
 - o fabric curtains, valances, and flat vertical panels;
 - o fabric tops installed on structures that were not engineered and originally supplied by the Company.
- THE COMPANY SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, LIQUIDATED, EXEMPLARY, OR PUNITIVE DAMAGES, OR ANY LOSS OF REVENUE, PROFIT, USE OR GOODWILL, WHETHER BASED UPON CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, ARISING OUT OF A BREACH OF THIS WARRANTY OR IN CONNECTION WITH THE SALE, INSTALLATION, MAINTENANCE, USE, OPERATION OR REPAIR OF ANY PRODUCT OR SERVICE. IN NO EVENT WILL THE COMPANY BE LIABLE FOR ANY AMOUNT GREATER THAN THE PURCHASE PRICE FOR ANY PRODUCT OR SERVICE PROVIDED BY THE COMPANY.
- THE FOREGOING LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE WARRANTY FOR THE COMPANY'S PRODUCTS AND SERVICES, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN LAW OR IN FACT. SELLER SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE, AND ANY IMPLIED WARRANTIES ARISING OUT OF COURSE OF DEALING OR PERFORMANCE OR TRADE USAGE. PURCHASER, BY ACCEPTANCE AND USE OF THIS LIMITED WARRANTY, WAIVES ANY RIGHTS IT WOULD OTHERWISE HAVE TO CLAIM OR ASSERT THAT THIS LIMITED WARRANTY FAILS OF ITS ESSENTIAL PURPOSE.

Colourshade ® and eXtreme 32™ are registered trademarks of Multiknit Pty. Ltd.

Commercial 95™ and SaFRshade™ are registered trademarks of Gale Pacific USA Inc.

Monotec 370™ is a registered trademark of PRO-KNIT Industries Pty. Ltd.

Precontraint 502™ is a registered trademark of Serge Ferrari North America, Inc.



16) **Assembly/Installation:**

- Company will notify Purchaser of the scheduled assembly date. Owner agrees to have an owner representative meet the assembly crew at the job site on the scheduled assembly date to verify the exact location where the structure(s) is to be placed.
 - Labor for the removal, assembly, and/or freight charges will only be covered by Company in instances where the structures supplied and installed by Company are determined by the Company to be defective. In all cases where structures are not installed by Company, all labor for the removal, assembly, and/or freight of the structures will be the Purchaser's responsibility.
 - Installation prices are based on a single mobilization charge. If additional mobilizations are required, there will be additional charges.
 - If the requested services require Company access to Owner's premises, Company will be provided access to the Owner's premises free and clear of debris, automobiles, or other interference Monday ~ Friday during the hours of 8:00am to 6:00pm, and Company will have access to water and electrical facilities during installation. Additional charges will apply if utilities are not easily accessible. Where applicable, all vehicles will be moved prior to Company's crew beginning any installation.
 - Company will not be responsible for moving or repairing any underground utility lines such as electrical, telephone, gas, water, or sprinkler lines that may be encountered during installation.
 - Any additional costs incurred as a result of hard rock conditions requiring extra equipment, utility removal or repair resulting in delay will result in additional charges unless they are detailed on as-built site drawings provided to Company or marked on the ground and communicated to Company in writing prior to fabrication and installation.
- 17) **Installation/Assembly on-site:** Where installation/assembly is part of the services, Purchaser must provide the Company with a detailed drawing prepared by or for the Owner showing exactly where the structures are to be assembled as well as detailing any obstacles or other impediments that may cause the assembly process to be more difficult. Any fixture(s), e.g., playground, pools, etc., that the structures are to be assembled over must also be detailed, along with their peak heights (if applicable).
- 18) **Site/Use Review by Purchaser:** Company relies on the Purchaser to determine that the structures ordered are appropriate and safe for the Owner's installation site and/or intended use. Company is not responsible for damages or injuries resulting from collisions by moving objects or persons with the structure post(s). Company can recommend, or supply at additional cost, padding for posts from a third party manufacturer.
- 19) **Preparatory Work:** Where installation/assembly is part of the services and in the event that the foundation or job site is not suitable or ready for assembly to begin on the scheduled day, a Delay of Order notification must be sent to Company at least 4 working days prior, in order to allow Company to reschedule the project. In the event that Company is not notified and incurs an expense in attempting to execute the assembly, a re-mobilization charge may be charged to Purchaser before Company will reschedule the assembly.
- 20) **Delegation: Subcontractors:** The services and the manufacturing and assembly of the structures may be performed by subcontractors under appropriate agreements with the Company.
- 21) **Force Majeure: Impracticability:** The Company shall not be charged with any loss or damage for failure or delay in delivering or assembling of the structures when such failure or delay is due to any cause beyond the control of the Company, due to compliance with governmental regulations or orders, or due to any Acts of God, strikes, lockouts, slowdowns, wars, or shortages in transportation, materials or labor.
- 22) **Dispute Resolution:** Any controversy or claim arising out of or related to this agreement must be settled by binding arbitration administered in Dallas, TX by a single arbitrator selected by the parties or by the American Arbitration Association, and conducted in accordance with the construction industry arbitration rules. Judgment upon the award may be entered in any court having jurisdiction thereof.
- 23) **Entire Agreement; No Reliance:** This agreement represents and contains the entire agreement between the parties. Prior discussion or verbal representations by the parties that are not contained in this agreement are not part of this agreement. Purchaser hereby acknowledges that it has not received or relied upon any statements or representations by Company or its agents which are not expressly stipulated herein, including without limitation any statements as to the structures, warranties, or services provided hereunder.
- 24) **No Third-Party Beneficiaries:** This agreement creates no third-party rights or obligations between Company and any other person, including any Owner who is not also a Purchaser. It is understood and agreed that the parties do not intend that any third party should be a beneficiary of this agreement.
- 25) **Governing Law:** The agreement will be construed and enforced in accordance with the laws of the State of Texas.
- 26) **Assignment:** Purchaser may not assign this agreement, by operation of law or otherwise, without the prior written consent of Company. The agreement shall be binding upon and insure to the benefit of the Company and the Purchaser, and their successors and permitted assigns.



Executed to be effective as of the date executed by the Company:

NOTE: FOR ANY PURCHASE EQUAL TO OR EXCEEDING \$100,000.00 USD, NO WORK, OTHER THAN PRE-WORK, SHALL BE UNDERTAKEN WITHOUT A MUTUALLY ACCEPTABLE AND SIGNED CONSTRUCTION CONTRACT.

PURCHASER:

City of Round Rock

SELLER:

USA SHADE & Fabric Structures

Signature:

By: (Print)

Title:

Date:

Signature: *Dion Botha*

By: (Print) Dion Botha

Title: Snr. Regional Manager

Date: 07-30-2020

NOTE: All purchase orders and contracts should be drafted in the name of Shade Structures, Inc.