

23) **Pre-designed and Engineered Canopy Shade Structures and Installation from Usa Shade & Fabric Structures for Canyon Hills Community Park, Summerly Park and Swick & Matich Park**

1. Approve and authorize the City Manager to execute the agreement with USA Shade & Fabric Structures for the purchase and installation of the canopy shade structures in an amount not to exceed \$824,721.90 in such final form as approved by the City Attorney; and
2. Authorize the City Manager to execute change orders not to exceed a 10% contingency amount of \$82,472.10 for unanticipated costs.



## REPORT TO CITY COUNCIL

**To:** Honorable Mayor or Members of the City Council

**From:** Jason Simpson, City Manager

**Prepared by:** Rick De Santiago, Public Works Manager

**Date:** December 13, 2022

**Subject:** **Pre-designed and Engineered Canopy Shade Structures and Installation from USA Shade & Fabric Structures for Canyon Hills Community Park, Summerly Park and Swick & Matich Park**

### Recommendation

1. Approve and authorize the City Manager to execute the agreement with USA Shade & Fabric Structures for the purchase and installation of the canopy shade structures in an amount not to exceed \$824,721.90 in such final form as approved by the City Attorney; and
2. Authorize the City Manager to execute change orders not to exceed a 10% contingency amount of \$82,472.10 for unanticipated costs.

### Background

Staff has performed research on various shade structure configurations and opportunities to conclude the shade structures available on the National Buy Board (Sourcewell) through USA Shade & Fabric Structures meet and exceed the requirements of the City for all 3 City Locations (Canyon Hills, Summerly Park and Swick & Matich Park.) This purchase will provide for all 3 locations a turn-key shade structure product which includes, design, engineering, fabrication, supply, and installation. Using the buy board (Sourcewell) considerably reduces construction engineering, on-site construction timelines and is more economical than architecturally designed shade structures that are built on-site. Purchasing the shade structures directly from the manufacturer, on a pre-determined competitive price schedule will avoid any additional mark-ups.

## Canopy Shade Structures

### Discussion

USA Shade & Fabric Structures will design, engineer, fabricate, supply and install including certified structural footings for the following shade structures. The major shade structure elements are listed below:

#### Canyon Hills Park

- One (1) Super span Pyramid multi-level multi-panel 50' long and 50' high
- Four (4) columns, Eight (8) fabric tops
- Steel finish powder coated (white)
- Cable/HDW galvanized finish
- Footing engineered, concrete steel reinforce driller pier on grass
- Price \$149,965.00

#### Summerly Park

- Two (2) Full hip cantilever 19' long and 8' high
- Two (2) columns, one (1) fabric top
- Six (6) Full hip cantilever 19' long and 12' high
- Two (2) columns, one (1) fabric top
- Cable/HDW galvanized finish
- Footing engineered, concrete steel reinforce driller pier on concrete
- Price \$304,756.90

#### Swick & Match Park

- Two (2) Single Post Pyramid Cantilever 20' long and 20' high
- One (1) column, one (1) fabric top
- Three (3) Full Hip Cantilever Joined 36' long and 20' high
- Three (3) columns, one (1) fabric top
- Cable/HDW galvanized finish
- Footing engineered, concrete steel reinforce driller pier on dirt
- Price \$370,000.00

USA Shade & Fabric Structures has been competitively bid and priced on Sourcewell, Contract Number #010521-LTS, with an expiration date of 2/17/2025. Sourcewell, formerly National Joint Powers Alliance, was created by state law as a service cooperative to provide programs and services to members in education and government. Sourcewell was established with the statutory purpose to assist members in meeting specific needs which are more efficiently delivered cooperatively than by an entity individually. Sourcewell is authorized to establish competitively awarded cooperative purchasing contracts on behalf of itself and its member agencies. Sourcewell follows the competitive contracting law process to solicit, evaluate, and award cooperative purchasing contracts for goods and services. Sourcewell cooperative purchasing contracts are made available through the joint exercise of powers law to member agencies. Member agencies include all eligible government, education, and non-profit agencies nationwide and in Canada.

## Canopy Shade Structures

The attached proposal from USA Shade & Fabric Structures proposes a turn-key shade canopy system purchase and installation for all 3 locations. Following the approval of this agenda item, staff will execute a City purchase and installation agreement for the shade structures and place the material on order for an immediate installation.

### **Fiscal Impact**

The funding is available in the FY 22/23 Capital Improvement Plan (CIP) budget.

### **Attachments**

Attachment 1 - Agreement  
Exhibit A - Quotes

## **AGREEMENT FOR CONTRACTOR SERVICES**

### **USA Shade & Fabric Structures**

#### **Purchase & Installation of Canopy Shade Structures at Canyon Hills Park, Summerly Park and Swick & Matich Park**

This Agreement for Contractor Services (the "Agreement") is made and entered into as of December 13, 2022, by and between the City of Lake Elsinore, a municipal corporation ("City") and USA Shade & Fabric Structures, a Corporation ("Contractor").

#### **RECITALS**

A. The City has determined that it requires the following Contractor services:

Purchase and installation of canopy shade structures at Canyon Hills Park, Summerly Park and Swick and Swick & Matich Park.

B. Contractor has submitted to City a proposal, dated October 7, 2022, attached hereto as Exhibit A ("Contractor's Proposal") and incorporated herein, to provide contractor services to City pursuant to the terms of this Agreement.

C. Contractor possesses the skill, experience, ability, background, certification and knowledge to perform the services described in this Agreement on the terms and conditions described herein.

D. City desires to retain Contractor to perform the services as provided herein and Contractor desires to provide such contractor services as set forth in this Agreement.

#### **AGREEMENT**

1. Scope of Services. Contractor shall perform the services described in Contractor's Proposal (Exhibit A). Contractor shall provide such services at the time, place, and in the manner specified in Contractor's Proposal, subject to the direction of the City through its staff that it may provide from time to time.

2. Time of Performance.

a. Time of Essence. Time is of the essence in the performance of this Agreement. The time for completion of the contractor services to be performed by Contractor is an essential condition of this Agreement. Contractor shall prosecute regularly and diligently the contractor services contemplated pursuant to this Agreement according to the agreed upon performance schedule in Contractor's Proposal (Exhibit A).

b. Performance Schedule. Contractor shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the Contractor's Proposal (Exhibit A). When requested by Contractor, extensions to the time period(s) specified may be approved in writing by the City Manager.

c. Term and Compliance with Task/Work Order System. Unless earlier terminated as provided elsewhere in this Agreement, this Agreement shall continue in full force and effect for a period commencing on December 13, 2022 and ending June 30, 2023. The City may, at its sole discretion, extend the term of this Agreement on a 12-month basis not to exceed 2 additional twelve (12) month renewal terms by giving written notice thereof to Contractor not less than thirty (30) days before the end of the contract term, such notice to be exercised by the City Manager.

Contractor hereby agrees and acknowledges that any and all work or services performed pursuant to this Agreement shall be based upon the issuance of a Task/Work Order by the City. Contractor acknowledges that it is not guaranteed any minimum or specific amount of work or services as all work or services shall be authorized through a Task/Work Order issued by the City.

3. Compensation. Compensation to be paid to Contractor shall be in accordance with the fees set forth in Contractor's Proposal (Exhibit A), which is attached hereto and incorporated herein by reference. In no event shall Contractor's annual compensation exceed Eight Hundred Twenty-Four Thousand Seven Hundred Twenty-One and Ninety Cents (\$824,721.90) without additional written authorization from the City. Notwithstanding any provision of Contractor's Proposal to the contrary, out of pocket expenses set forth in Exhibit A shall be reimbursed at cost without an inflator or administrative charge. Payment by City under this Agreement shall not be deemed a waiver of defects, even if such defects were known to the City at the time of payment.

4. Method of Payment. Contractor shall promptly submit billings to the City describing the services and related work performed during the preceding month to the extent that such services and related work were performed. Contractor's bills shall be segregated by project task, if applicable, such that the City receives a separate accounting for work done on each individual task for which Contractor provides services. Contractor's bills shall include a brief description of the services performed, the date the services were performed, the number of hours spent and by whom, and a description of any reimbursable expenditures. City shall pay Contractor no later than forty-five (45) days after receipt of the monthly invoice by City staff.

5. Background Checks. At any time during the term of this Agreement, the City reserves the right to make an independent investigation into the background of Contractor's personnel who perform work required by this Agreement, including but not limited to their references, character, address history, past employment, education, social security number validation, and criminal or police records, for the purpose of confirming that such personnel are lawfully employed, qualified to provide the subject service or pose a risk to the safety of persons or property in and around the vicinity of where the services will be rendered or City Hall. If the City makes a reasonable determination that any of Contractor's prospective or then current personnel is deemed objectionable, then the City may notify Contractor of the same. Contractor shall not use that personnel to perform work required by this Agreement, and if necessary, shall replace him or her with a suitable worker.

6. Suspension or Termination.

a. The City may at any time, for any reason, with or without cause, suspend or terminate this Agreement, or any portion hereof, by serving upon the Contractor at least ten (10) days prior written notice. Upon receipt of such notice, the Contractor shall immediately cease all work under this Agreement, unless the notice provides otherwise. If the City suspends or

terminates a portion of this Agreement such suspension or termination shall not make void or invalidate the remainder of this Agreement.

b. In the event this Agreement is terminated pursuant to this Section, the City shall pay to Contractor the actual value of the work performed up to the time of termination, provided that the work performed is of value to the City. Upon termination of the Agreement pursuant to this Section, the Contractor will submit an invoice to the City, pursuant to Section entitled "Method of Payment" herein.

7. Plans, Studies, Documents.

a. Ownership of Documents. All plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents and subcontractors in the course of implementing this Agreement, except working notepad internal documents, shall become the property of the City upon payment to Contractor for such work, and the City shall have the sole right to use such materials in its discretion without further compensation to Contractor or to any other party. Contractor shall, at Contractor's expense, provide such reports, plans, studies, documents and other writings to City upon written request. City shall have sole determination of the public's rights to documents under the Public Records Act, and any third-party requests of Contractor shall be immediately referred to City, without any other actions by Contractor.

b. Licensing of Intellectual Property. This Agreement creates a nonexclusive and perpetual license for City to copy, use, modify, reuse, or sublicense any and all copyrights, designs, and other intellectual property embodied in plans, specifications, studies, drawings, estimates, and other documents or works of authorship fixed in any tangible medium of expression, including but not limited to, physical drawings or data magnetically or otherwise recorded on computer diskettes, which are prepared or caused to be prepared by Contractor under this Agreement ("Documents & Data"). Contractor shall require that all subcontractors agree in writing that City is granted a nonexclusive and perpetual license for any Documents & Data the subcontractor prepares under this Agreement. Contractor represents and warrants that Contractor has the legal right to license any and all Documents & Data. Contractor makes no such representation and warranty in regard to Documents & Data which were prepared by design professionals other than Contractor or provided to Contractor by the City. City shall not be limited in any way in its use of the Documents & Data at any time, provided that any such use not within the purposes intended by this Agreement shall be at City's sole risk.

c. Confidentiality. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other Documents & Data either created by or provided to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor. Such materials shall not, without the prior written consent of City, be used by Contractor for any purposes other than the performance of the services under this Agreement. Nor shall such materials be disclosed to any person or entity not connected with the performance of the services under this Agreement. Nothing furnished to Contractor which is otherwise known to Contractor or is generally known, or has become known, to the related industry shall be deemed confidential. Contractor shall not use City's name or insignia, photographs relating to project for which Contractor's services are rendered, or any publicity pertaining to the Contractor's services under this Agreement in any magazine, trade paper, newspaper, television or radio production or other similar medium without the prior written consent of City.

8. Contractor's Books and Records.

a. Contractor shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services, or expenditures and disbursements charged to City for a minimum period of three (3) years, or for any longer period required by law, from the date of final payment to Contractor to this Agreement.

b. Contractor shall maintain all documents and records which demonstrate performance under this Agreement for a minimum period of three (3) years, or for any longer period required by law, from the date of termination or completion of this Agreement.

c. Any records or documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit, at any time during regular business hours, upon written request by the City Manager, City Attorney, City Auditor or a designated representative of these officers. Copies of such documents shall be provided to the City for inspection at City Hall when it is practical to do so. Otherwise, unless an alternative is mutually agreed upon, the records shall be available at Contractor's address indicated for receipt of notices in this Agreement.

d. Where City has reason to believe that such records or documents may be lost or discarded due to dissolution, disbandment or termination of Contractor's business, City may, by written request by any of the above-named officers, require that custody of the records be given to the City and that the records and documents be maintained in City Hall. Access to such records and documents shall be granted to any party authorized by Contractor, Contractor's representatives, or Contractor's successor-in-interest.

9. Independent Contractor.

a. Contractor is and shall at all times remain as to the City a wholly independent contractor pursuant to California Labor Code Section 3353. The personnel performing the services under this Agreement on behalf of Contractor shall at all times be under Contractor's exclusive direction and control. Neither City nor any of its officers, employees, or agents shall have control over the conduct of Contractor or any of Contractor's officers, employees, or agents, except as set forth in this Agreement. Contractor shall not at any time or in any manner represent that it or any of its officers, employees, or agents are in any manner officers, employees, or agents of the City. Contractor shall not incur or have the power to incur any debt, obligation, or liability whatsoever against City, or bind City in any manner.

b. Notwithstanding any other federal, state and local laws, codes, ordinances and regulations to the contrary and except for the fees paid to Contractor as provided in the Agreement, Contractor and any of its employees, agents, and subcontractors providing service under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in PERS as an employee of City and entitlement to any contribution to be paid by City for employer contribution and/or employee contributions for PERS benefits.

10. PERS Eligibility Indemnification. In the event that Contractor or any employee, agent, or subcontractor of Contractor providing services under this Agreement claims or is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of the City, Contractor shall

indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Contractor or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

11. Interests of Contractor. Contractor (including principals, associates and professional employees) covenants and represents that it does not now have any investment or interest in real property and shall not acquire any interest, direct or indirect, in the area covered by this Agreement or any other source of income, interest in real property or investment which would be affected in any manner or degree by the performance of Contractor's services hereunder. Contractor further covenants and represents that in the performance of its duties hereunder no person having any such interest shall perform any services under this Agreement.

Contractor is not a designated employee within the meaning of the Political Reform Act because Contractor:

- a. will conduct research and arrive at conclusions with respect to his/her rendition of information, advice, recommendation or counsel independent of the control and direction of the City or of any City official, other than normal agreement monitoring; and
- b. possesses no authority with respect to any City decision beyond rendition of information, advice, recommendation or counsel. (FPPC Reg. 18700(a)(2).)

12. Professional Ability of Contractor. City has relied upon the professional training and ability of Contractor to perform the services hereunder as a material inducement to enter into this Agreement. Contractor shall therefore provide properly skilled professional and technical personnel to perform all services under this Agreement. All work performed by Contractor under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily to be expected of competent professionals in Contractor's field of expertise.

13. Compliance with Laws.

- a. Contractor shall comply with all local, state and federal laws and regulations applicable to the services required hereunder, including any rule, regulation or bylaw governing the conduct or performance of Contractor and/or its employees, officers, or board members.
- b. Contractor represents that it has obtained and will maintain at all times during the term of this Agreement all professional and/or business licenses, certifications and/or permits necessary for performing the services described in this Agreement, including a City business license.

14. Licenses. Contractor represents and warrants to City that it has the licenses, permits, qualifications, insurance and approvals of whatsoever nature which are legally required of Contractor to practice its profession. Contractor represents and warrants to City that Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, insurance and approvals which are legally required of Contractor to practice its profession. Contractor shall maintain a City of Lake Elsinore business license.

15. Indemnity. Contractor shall indemnify, defend, and hold harmless the City and its officials, officers, employees, agents, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Contractor or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Contractor shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises from the sole negligence or willful misconduct of the City or its officers, employees, agents, or volunteers and (2) the actions of Contractor or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Contractor to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Contractor from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Contractor acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

16. Insurance Requirements.

a. Insurance. Contractor, at Contractor's own cost and expense, shall procure and maintain, for the duration of the contract, unless modified by the City's Risk Manager, the following insurance policies.

i. Workers' Compensation Coverage. Contractor shall maintain Workers' Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California. In addition, Contractor shall require each subcontractor to similarly maintain Workers' Compensation Insurance and Employer's Liability Insurance in accordance with the laws of the State of California for all of the subcontractor's employees. Any notice of cancellation or non-renewal of all Workers' Compensation policies must be received by the City at least thirty (30) days prior to such change. The insurer shall agree to waive all rights of subrogation against City, its officers, agents, employees and volunteers for losses arising from work performed by Contractor for City. In the event that Contractor is exempt from Worker's Compensation Insurance and Employer's Liability Insurance for his/her employees in accordance with the laws of the State of California, Contractor shall submit to the City a Certificate of Exemption from Workers Compensation Insurance in a form approved by the City Attorney.

ii. General Liability Coverage. Contractor shall maintain commercial general liability insurance in an amount not less than one million dollars (\$1,000,000) per occurrence for bodily injury, personal injury and property damage. If a commercial general liability insurance form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Required commercial general liability coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404

covering Broad Form Comprehensive General Liability. No endorsement may be attached limiting the coverage.

iii. Automobile Liability Coverage. Contractor shall maintain automobile liability insurance covering bodily injury and property damage for all activities of the Contractor arising out of or in connection with the work to be performed under this Agreement, including coverage for owned, hired and non-owned vehicles, in an amount of not less than one million dollars (\$1,000,000) combined single limit for each occurrence. Automobile liability coverage must be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement may be attached limiting the coverage.

iv. Professional Liability Coverage. Contractor shall maintain professional errors and omissions liability insurance appropriate for Contractor's profession for protection against claims alleging negligent acts, errors or omissions which may arise from Contractor's services under this Agreement, whether such services are provided by the Contractor or by its employees, subcontractors, or sub Contractors. The amount of this insurance shall not be less than one million dollars (\$1,000,000) on a claims-made annual aggregate basis, or a combined single limit per occurrence basis.

b. Endorsements. Each general liability and automobile liability insurance policy shall be with insurers possessing a Best's rating of no less than A:VII and shall be endorsed with the following specific language:

i. Notwithstanding any inconsistent statement in any required insurance policies or any subsequent endorsements attached thereto, the protection offered by all policies, except for Workers' Compensation, shall bear an endorsement whereby it is provided that, the City and its officers, employees, servants, volunteers and agents and independent contractors, including without limitation, the City Manager and City Attorney, are named as additional insureds. Additional insureds shall be entitled to the full benefit of all insurance policies in the same manner and to the same extent as any other insureds and there shall be no limitation to the benefits conferred upon them other than policy limits to coverages.

ii. This policy shall be considered primary insurance as respects the City, its elected or appointed officers, officials, employees, agents and volunteers. Any insurance maintained by the City, including any self-insured retention the City may have, shall be considered excess insurance only and shall not contribute with it.

iii. This insurance shall act for each insured and additional insured as though a separate policy had been written for each, except with respect to the limits of liability of the insuring company.

iv. The insurer waives all rights of subrogation against the City, its elected or appointed officers, officials, employees or agents.

v. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, its elected or appointed officers, officials, employees, agents or volunteers.



20. Litigation Expenses and Attorneys' Fees. If either party to this Agreement commences any legal action against the other party arising out of this Agreement, the prevailing party shall be entitled to recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and attorneys' fees.

21. Mediation. The parties agree to make a good faith attempt to resolve any disputes arising out of this Agreement through mediation prior to commencing litigation. The parties shall mutually agree upon the mediator and share the costs of mediation equally. If the parties are unable to agree upon a mediator, the dispute shall be submitted to JAMS or its successor in interest. JAMS shall provide the parties with the names of five qualified mediators. Each party shall have the option to strike two of the five mediators selected by JAMS and thereafter the mediator remaining shall hear the dispute. If the dispute remains unresolved after mediation, either party may commence litigation.

22. Prohibited Interests. Contractor maintains and warrants that it has not employed nor retained any company or person, other than a bona fide employee working solely for Contractor, to solicit or secure this Agreement. Further, Contractor warrants that it has not paid nor has it agreed to pay any company or person, other than a bona fide employee working solely for Contractor, any fee, commission, percentage, brokerage fee, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For breach or violation of this warranty, City shall have the right to rescind this Agreement without liability. For the term of this Agreement, no member, officer or employee of City, during the term of his or her service with City, shall have any direct interest in this Agreement, or obtain any present or anticipated material benefit arising therefrom.

23. Equal Opportunity Employment. Contractor represents that it is an equal opportunity employer and it shall not discriminate against any subcontractor, employee or applicant for employment because of race, religion, color, national origin, handicap, ancestry, sex or age. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

24. Prevailing Wages. Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 16000, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "public works" and "maintenance" projects. Contractor agrees to fully comply with all applicable federal and state labor laws (including, without limitation, if applicable, the Prevailing Wage Laws). It is agreed by the parties that, in connection with the Work or Services provided pursuant to this Agreement, Contractor shall bear all risks of payment or non-payment of prevailing wages under California law, and Contractor hereby agrees to defend, indemnify, and hold the City, and its officials, officers, employees, agents, and volunteers, free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws. The foregoing indemnity shall survive termination of this Agreement.

25. Severability. If any term or portion of this Agreement is held to be invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall continue in full force and effect.

26. Controlling Law Venue. This Agreement and all matters relating to it shall be governed by the laws of the State of California and any action brought relating to this Agreement shall be held exclusively in a state court in the County of Riverside.

27. Authority to Enter Agreement. Contractor has all requisite power and authority to conduct its business and to execute, deliver, and perform the Agreement. Each party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and to bind each respective party. The City Manager is authorized to enter into an amendment or otherwise take action on behalf of the City to make the following modifications to the Agreement: (a) a name change; (b) grant extensions of time; (c) non-monetary changes in the scope of services; and/or (d) suspend or terminate the Agreement.

28. Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute one and the same instrument and shall become binding upon the parties when at least one copy hereof shall have been signed by both parties hereto. In approving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.

29. Entire Agreement; Incorporation; Conflict. This Agreement contains the entire understanding between the parties relating to the obligations described herein. All prior or contemporaneous understandings, agreements, representations and statements, oral or written, are superseded in total by this Agreement and shall be of no further force or effect. Contractor's Proposal is incorporated only for the description of the scope of services and/or the schedule of performance and no other terms and conditions from such proposal shall apply to this Agreement unless specifically agreed to in writing. In the event of conflict, this Agreement shall take precedence over those contained in the Contractor's Proposal.

30. Amendments. This Agreement may be modified or amended only by a written document executed by both Contractor and City and approved as to form by the City Attorney.

[Signatures on next page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date first written above.

“CITY”

CITY OF LAKE ELSINORE, a municipal corporation

“CONTRACTOR”

Shade Structures, Inc., a Corporation

\_\_\_\_\_  
City Manager

\_\_\_\_\_  
By: Virginia Marquez

Its: Assistant Secretary

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Assistant City Manager

Attachments: Exhibit A – Contractor’s Proposal  
Exhibit B – List of Subcontractors

EXHIBIT A  
CONTRACTOR'S PROPOSAL  
[ATTACHED]

EXHIBIT B  
LIST OF SUBCONTRACTORS  
[ATTACHED]



**USASHADE**  
**& Fabric Structures.**

# **Canyon Hills Community Park**

**10/7/2022**

**Pricing valid for 15 days**

**Proposal Prepared For:**

**City of Lake Elsinore Accounts Payable**

**521 North Landstaff St  
Lake Elsinore, CA 92530**

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

[www.usa-shade.com](http://www.usa-shade.com)

| 800-966-5005



Date: 10/7/2022

## Proposal for USA SHADE & Fabric Structures

Project Information:				Sales Information:	
Purchaser:	City of Lake Elsinore	Contact:	Chris Erickson	Sales Rep:	Eric Roys
Project Name:	Canyon Hills Community Park	Phone:	951-453-9463	Phone:	909-927-7567
Quote No:	01091422ER	Email:	<a href="mailto:cerickson@lake-elsinore.org">cerickson@lake-elsinore.org</a>	Email:	<a href="mailto:eric.roys@usa-shade.com">eric.roys@usa-shade.com</a>
PO No:		Fax:		Fax:	

Billing Information:		Shipping Information:		Jobsite Information:	
City of Lake Elsinore Accounts Payable		SOUTHERN CALIFORNIA		Canyon Hills Community Park	
521 North Landstaff St		1085 N. Main st		34360 Canyon Hills Rd	
Lake Elsinore		Orange		Lake Elsinore	
CA		CA		CA	
92530		92867		92532	
Contact:		Contact:	Construction Dept	Contact:	Chris Erickson
Phone		Phone	714-656-4564	Phone	951-453-9463
Email:		Email:	<a href="mailto:lceballos@usa-shade.com">lceballos@usa-shade.com</a>	Email:	<a href="mailto:cerickson@lake-elsinore.org">cerickson@lake-elsinore.org</a>
Fax:		Fax:		Fax:	

**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

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**Structure Pricing**

Structure 1				
UNIT IMAGE	UNIT DETAILS			
	Unit Quantity:	1	Foundations By	USA Shade
	Unit Type:	Super Span Pyramid Multi-Level Multi-Panel	Grout Installation	Not Applicable
	Structure Size:	50x50	Footing Type:	Drilled Pier
	USA Shade Model Number	405.3	Base Attachment:	PIH - Embed
	Entry Height:	10	Anchor Bolts:	N/A
	No of Columns:	4	Concrete Cutting:	N/A
	No of Fabric Tops:	8	Dirt Removal:	Included
	Fabric Type:	Colourshade_FR	Surface Type:	Grass
	Fabric Color:	TBD	<b>NOTES</b>	
	Steel Finish:	Powder Coated	Sourcewell Contract # 010521 List price \$69,500.12-10%=\$62,550.10	
	Steel Color:	TBD		
	Electrical Provisions:	N/A		
	Cable/HDW Finish:	Galvanized		
Concept No:				
<b>PRICE</b>				
<b>\$62,550.10</b>				



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

PRICING TOTALS:	
Unit Total	Included
Accessories/Miscellaneous	Included
Shipping/Handling *subject to market fluctuation	\$7,503.52
<b>SUBTOTAL</b>	<b>\$7,503.52</b>
Sales Tax (8.75%)	Included
Engineering	Included
Installation	Included
<b>TOTAL PRICE</b>	<b>\$149,965.00</b>

PAYMENT TERMS:	
(1) Upon execution of the Agreement (Deposit)	50%
(2) Upon delivery of Unit(s)	
(3) Upon completion of assembly/installation	100%
(4) Other (specify):	
<b>NOTES:</b>	
<b>Pricing Terms above subject to credit approval</b>	

**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 15 days 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	CBC 2019
Wind Load	115 mph
Snow Load	5 psf
Drawing Size	Electronic
No. of Sealed Drawings	Electronic
Calculations Required	Electronic
<b>If Bonds are needed, add 2% to the total price.</b>	

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 checked="" type="checkbox"/>	<input type="checkbox"/>	Fencing
<input type="checkbox"/>	<input checked="" type="checkbox"/>	DSA Submittal & Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	water and Electrical
<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) We will require site sanitary facilities and refuse containers by others within 200 feet of our work.
- 5) USA SHADE will leave its work and materials in a clean condition at the conclusion of our work.
- 6) Barricades and public security requirements are not included.
- 7) 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.
- 8) 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.
- 9) 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.
- 10) 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.

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## GENERAL TERMS & CONDITIONS AND WARRANTY

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- 1) **Proposal:** The above proposal is valid for **15 days** from the date first set forth above. After 15 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 during normal course of construction.

[www.usa-shade.com](http://www.usa-shade.com) 800-966-5005

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



## **USASHADE** **& Fabric Structures.**

- 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. Progress billing and payment will be required. All payments must be made to Shade Structures, Inc., P.O. Box 734158, Dallas, TX 75373-4158. 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](mailto: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](mailto: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.

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

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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 Lake Elsinore

**SELLER:**  
Shade Structures, Inc. DBA USA Shade

Signature: *Shannon Buckley*  
By: (Print) Shannon Buckley  
Title: Acem  
Date: 11.9.02

Signature: \_\_\_\_\_  
By: (Print) \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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



**USASHADE**  
**& Fabric Structures.**

# Summerly Park

11/3/2022

Pricing valid for 15 days

Proposal Prepared For:

**City of Lake Elsinore Accounts Payable**

**521 North Landstaff St  
Lake Elsinore, CA 92530**

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

[www.usa-shade.com](http://www.usa-shade.com)

| 800-966-5005



Date: 11/3/2022

## Proposal for USA SHADE & Fabric Structures

Project Information:				Sales Information:	
Purchaser:	City of Lake Elsinore	Contact:	Chris Erickson	Sales Rep:	Eric Roys
Project Name:	Summerly Park	Phone:	951-453-9463	Phone:	909-927-7567
Quote No:	ca1122ER00617	Email:	<a href="mailto:cerickson@lake-elsinore.org">cerickson@lake-elsinore.org</a>	Email:	<a href="mailto:eric.roys@usa-shade.com">eric.roys@usa-shade.com</a>
PO No:		Fax:		Fax:	

Billing Information:		Shipping Information:		Jobsite Information:	
City of Lake Elsinore Accounts Payable		SOUTHERN CALIFORNIA		Summerly Park	
521 North Landstaff St		1085 N. Main st		18505 Malaga Rd	
Lake Elsinore		Orange		Lake Elsinore	
CA		CA		CA	
92530		92867		92530	
Contact:		Contact:	Construction Dept	Contact:	Chris Erickson
Phone		Phone	714-656-4564	Phone	951-453-9463
Email:		Email:	<a href="mailto:iceballos@usa-shade.com">iceballos@usa-shade.com</a>	Email:	<a href="mailto:cerickson@lake-elsinore.org">cerickson@lake-elsinore.org</a>
Fax:		Fax:		Fax:	

**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

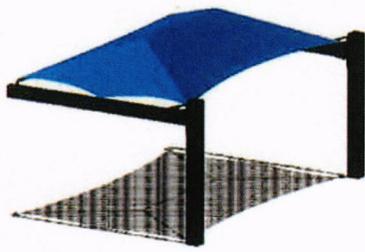
**NORTHERN CALIFORNIA:**  
 927 Enterprise Way, Suite A  
 Napa, CA 94558

**ARIZONA:**  
 2452 W. Birchwood Ave, Suite 112  
 Mesa, AZ 85202

**LAS VEGAS:**  
 6225 S. Valley View Blvd., Suite I  
 Las Vegas, NV 89118

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### Structure Pricing

Structure 1				
UNIT IMAGE	UNIT DETAILS			
	Unit Quantity:	2	Foundations By	USA Shade
	Unit Type:	Full Hip Cantilever	Grout Installation	Not Applicable
	Structure Size:	19x 8 Projection	Footing Type:	Drilled Pier
	USA Shade Model Number	202.5	Base Attachment:	PIH - Embed
	Entry Height:	12	Anchor Bolts:	N/A
	No of Columns:	2	Concrete Cutting:	Included
	No of Fabric Tops:	1	Dirt Removal:	Included
	Fabric Type:	Colourshade_FR	Surface Type:	Concrete
	Fabric Color:	TBD	<b>NOTES</b>	
	Steel Finish:	Powder Coated	Sourcewell Pricing contract # 010521 List Price \$8159.00 - 3% = \$7914.23	
Steel Color:	TBD			
Electrical Provisions:	N/A			
Cable/HDW Finish:	Galvanized			
Concept No:				
<b>PRICE</b>				
<b>\$15,828.46</b>				
Structure 2				
UNIT IMAGE	UNIT DETAILS			
	Unit Quantity:	6	Foundations By	USA Shade
	Unit Type:	Full Hip Cantilever	Grout Installation	Not Applicable
	Structure Size:	19x 12 Projection	Footing Type:	Drilled Pier
	USA Shade Model Number	202.5	Base Attachment:	PIH - Embed
	Entry Height:	12	Anchor Bolts:	N/A
	No of Columns:	2	Concrete Cutting:	Included
	No of Fabric Tops:	1	Dirt Removal:	Included
	Fabric Type:	Colourshade_FR	Surface Type:	Concrete
	Fabric Color:	TBD	<b>NOTES</b>	
	Steel Finish:	Powder Coated	Sourcewell Pricing contract # 010521 List Price \$9686.00 - 3% = \$9395.42	
Steel Color:	TBD			
Electrical Provisions:	N/A			
Cable/HDW Finish:	Galvanized			
Concept No:				
<b>PRICE</b>				
<b>\$56,372.52</b>				



**USASHADE**  
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### Structure Pricing

Structure Name	Material	Dimensions	Weight	Price
Structure 1	Material A	10' x 10'	100 lbs	\$1,000
Structure 2	Material B	12' x 12'	120 lbs	\$1,200
Structure 3	Material C	14' x 14'	140 lbs	\$1,400
Structure 4	Material D	16' x 16'	160 lbs	\$1,600
Structure 5	Material E	18' x 18'	180 lbs	\$1,800
Structure 6	Material F	20' x 20'	200 lbs	\$2,000
Structure 7	Material G	22' x 22'	220 lbs	\$2,200
Structure 8	Material H	24' x 24'	240 lbs	\$2,400
Structure 9	Material I	26' x 26'	260 lbs	\$2,600
Structure 10	Material J	28' x 28'	280 lbs	\$2,800



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

PRICING TOTALS:	
Unit Total	Included
Accessories/Miscellaneous	Included
Shipping/Handling *subject to market fluctuation	\$12,936.91
<b>SUBTOTAL</b>	<b>\$12,936.91</b>
Sales Tax (8.75%)	\$1,131.98
Engineering	Included
Installation	Included
<b>TOTAL PRICE</b>	<b>\$304,756.90</b>

PAYMENT TERMS:	
(1) Upon execution of the Agreement (Deposit)	50%
(2) Upon delivery of Unit(s)	
(3) Upon completion of assembly/installation	100%
(4) Other (specify):	
<b>NOTES:</b>	
<b>Pricing Terms above subject to credit approval</b>	

**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 15 days 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	CBC 2019	<b>Does not include Performance or Payment bonds. If required add 2.5% to the total.</b>
Wind Load	115 mph	
Snow Load	5 psf	
Drawing Size	Electronic	
No. of Sealed Drawings	Electronic	
Calculations Required	Electronic	

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 type="checkbox"/>	<input checked="" type="checkbox"/>	Permit Submittal	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Union Wages
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Permit Fee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Fencing
<input type="checkbox"/>	<input checked="" type="checkbox"/>	DSA Submittal & Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	water and Electrical
<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) We will require site sanitary facilities and refuse containers by others within 200 feet of our work.
- 5) USA SHADE will leave its work and materials in a clean condition at the conclusion of our work.
- 6) Barricades and public security requirements are not included.
- 7) 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.
- 8) 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.
- 9) 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.
- 10) 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.

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### GENERAL TERMS & CONDITIONS AND WARRANTY

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- 1) **Proposal:** The above proposal is valid for **15 days** from the date first set forth above. After 15 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 during 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. Progress billing and payment will be required. All payments must be made to Shade Structures, Inc., P.O. Box 734158, Dallas, TX 75373-4158. 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).

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- 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](mailto: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](mailto: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.

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

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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 inure to the benefit of the Company and the Purchaser, and their successors and permitted assigns.



**USA SHADE**  
& Fabric Structures.

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 Lake Elsinore

**SELLER:**  
Shade Structures, Inc. DBA USA Shade

Signature: Shannon Buckley  
By: (Print) Shannon Buckley  
Title: AcM  
Date: 11.9.22

Signature: \_\_\_\_\_  
By: (Print) \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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



**USASHADE**  
**& Fabric Structures.**

## **Swick & Match Park**

**9/14/2022**

**Pricing valid for 15 days**

**Proposal Prepared For:**

## **City of Lake Elsinore Accounts Payable**

**521 North Landstaff St  
Lake Elsinore, CA 92530**

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

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**USA SHADE**  
**& Fabric Structures.**

Date: 9/14/2022

**Proposal for USA SHADE & Fabric Structures**

Project Information:				Sales Information:	
Purchaser:	City of Lake Elsinore	Contact:	Chris Erickson	Sales Rep:	Eric Roys
Project Name:	Swick & Matich Park	Phone:	951-453-9463	Phone:	909-927-7567
Quote No:	01091322ER	Email:	<a href="mailto:cerickson@lake-elsinore.org">cerickson@lake-elsinore.org</a>	Email:	<a href="mailto:eric.roys@usa-shade.com">eric.roys@usa-shade.com</a>
PO No:		Fax:		Fax:	

Billing Information:		Shipping Information:		Jobsite Information:	
City of Lake Elsinore Accounts Payable		SOUTHERN CALIFORNIA		Swick & Matich Park	
521 North Landstaff St		1085 N. Main st		402 Limited St.	
Lake Elsinore		Orange		Lake Elsinore	
CA		CA		CA	
92530		92867		92530	
Contact:		Contact:	Construction Dept	Contact:	Chris Erickson
Phone		Phone	714-656-4564	Phone	951-453-9463
Email:		Email:	<a href="mailto:lceballos@usa-shade.com">lceballos@usa-shade.com</a>	Email:	<a href="mailto:cerickson@lake-elsinore.org">cerickson@lake-elsinore.org</a>
Fax:		Fax:		Fax:	

**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 1  
 Las Vegas, NV 89118

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### Structure Pricing

Near the Snack Bar				
UNIT IMAGE	UNIT DETAILS			
	Unit Quantity:	2	Foundations By	USA Shade
	Unit Type:	Single Post Pyramid Cantilever	Grout Installation	Not Applicable
	Structure Size:	20x20	Footing Type:	Drilled Pier
	USA Shade Model Number	124.1	Base Attachment:	PIH - Embed
	Entry Height:	10	Anchor Bolts:	N/A
	No of Columns:	1	Concrete Cutting:	N/A
	No of Fabric Tops:	1	Dirt Removal:	Included
	Fabric Type:	Colourshade_FR	Surface Type:	Dirt
	Fabric Color:	TBD	<b>NOTES</b>	
	Steel Finish:	Powder Coated	Sourcewell Contract #010521 Line item 1095 \$8714.00 - 3%= \$8452.58	
Steel Color:	TBD			
Electrical Provisions:	N/A			
Cable/HDW Finish:	Galvanized			
Concept No:				
<b>PRICE</b>				
<b>\$16,905.16</b>				

Over large bleacher area				
UNIT IMAGE	UNIT DETAILS			
	Unit Quantity:	3	Foundations By	USA Shade
	Unit Type:	Full Hip Cantilever Joined	Grout Installation	Not Applicable
	Structure Size:	36x20	Footing Type:	Drilled Pier
	USA Shade Model Number	302.5	Base Attachment:	PIH - Embed
	Entry Height:	10	Anchor Bolts:	N/A
	No of Columns:	3	Concrete Cutting:	N/A
	No of Fabric Tops:	1	Dirt Removal:	Included
	Fabric Type:	Colourshade_FR	Surface Type:	Dirt
	Fabric Color:	TBD	<b>NOTES</b>	
	Steel Finish:	Powder Coated	Sourcewell Contract #010521 \$22,483.08- 3%=21,808.58	
Steel Color:	TBD			
Electrical Provisions:	N/A			
Cable/HDW Finish:	Galvanized			
Concept No:				
<b>PRICE</b>				
<b>\$65,425.76</b>				

### Over smaller movable bleachers



**Structure Pricing**

UNIT IMAGE	UNIT DETAILS			
	Unit Quantity:	4	Foundations By	USA Shade
	Unit Type:	Full Hip Cantilever	Grout Installation	Not Applicable
	Structure Size:	25x12	Footing Type:	Drilled Pier
	USA Shade Model Number	202.5	Base Attachment:	PIH - Embed
	Entry Height:	12	Anchor Bolts:	N/A
	No of Columns:	2	Concrete Cutting:	Included
	No of Fabric Tops:	1	Dirt Removal:	Included
	Fabric Type:	Colourshade_FR	Surface Type:	Concrete
	Fabric Color:	TBD	<b>NOTES</b>	
	Steel Finish:	Powder Coated	Sourcewell contract #010521 \$ 3,888.74 - 3%=3,772.07	
Steel Color:	TBD			
Electrical Provisions:	N/A			
Cable/HDW Finish:	Galvanized			
<b>PRICE</b>	Concept No:			
<b>\$15,088.28</b>				



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

PRICING TOTALS:	
Unit Total	Included
Accessories/Miscellaneous	Included
Shipping/Handling *subject to market fluctuation	\$22,766.44
<b>SUBTOTAL</b>	<b>\$22,766.44</b>
Sales Tax (8.75%)	Included
Engineering	Included
Installation	Included
<b>TOTAL PRICE</b>	<b>\$370,000.00</b>

PAYMENT TERMS:	
(1) Upon execution of the Agreement (Deposit)	50%
(2) Upon delivery of Unit(s)	
(3) Upon completion of assembly/installation	100%
(4) Other (specify):	
NOTES:	
<b>Pricing Terms above subject to credit approval</b>	

**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 15 days 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	CBC 2019	
Wind Load	115 mph	
Snow Load	5 psf	
Drawing Size	Electronic	
No. of Sealed Drawings	Electronic	
Calculations Required	Electronic	

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 type="checkbox"/>	<input checked="" type="checkbox"/>	Permit Fee	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Fencing
<input type="checkbox"/>	<input checked="" type="checkbox"/>	DSA Submittal & Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	water and Electrical
<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) We will require site sanitary facilities and refuse containers by others within 200 feet of our work.
- 5) USA SHADE will leave its work and materials in a clean condition at the conclusion of our work.
- 6) Barricades and public security requirements are not included.
- 7) 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.
- 8) 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.
- 9) 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.
- 10) 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.

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### GENERAL TERMS & CONDITIONS AND WARRANTY

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- 1) **Proposal:** The above proposal is valid for **15 days** from the date first set forth above. After 15 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 during 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. Progress billing and payment will be required. All payments must be made to Shade Structures, Inc., P.O. Box 734158, Dallas, TX 75373-4158. 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.

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AZ: 289388 CA: 989458 LA: 61718 NV: 78724 NV: 78724 NM: 383826 TN: 68712 DIR: 100003533



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:
  - o Shadesure™ fabrics in Red, Yellow, Atomic Orange, Electric Purple, Zesty Lime, Cinnamon, Olive, and Mulberry carry a five year pro-rated
  - o Fabric tops attached to Coolbrella™ structures carry a three year warranty;
  - o Individual fabric tops measuring greater than 40' in length are covered by a non-prorated five year warranty;
  - o 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](mailto: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](mailto: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<sup>®</sup> and eXtreme 32<sup>™</sup> are registered trademarks of Multiknit Pty. Ltd.

Commercial 95<sup>™</sup> and SaFRshade<sup>™</sup> are registered trademarks of Gale Pacific USA Inc.

Monotek 370<sup>™</sup> is a registered trademark of PRO-KNIT Industries Pty. Ltd.

Preconstraint 502<sup>™</sup> is a registered trademark of Serge Ferrari North America, Inc.

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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.



**USASHADE**  
& Fabric Structures.

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 Lake Elsinore

**SELLER:**  
Shade Structures, Inc. DBA USA Shade

\_\_\_\_\_  
Signature: Shannon Buckley  
By: (Print) Shannon Buckley  
Title: PEM  
Date: 11.9.22

\_\_\_\_\_  
Signature: \_\_\_\_\_  
By: (Print) \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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