



Board Agenda Item #	II A - Recommended Action Item
Date:	March 7, 2018
To:	MPS Facility Committee
From:	Caprice Young, Ed.D., CEO & Superintendent
Staff Lead:	Patrick Ontiveros, General Counsel & Director of Facilities
RE:	Approval of Agreement with USA Shade & Fabric Structures to Provide Shade Structure for MSA-2

Proposed Board Recommendation

Recommend the full Board of Directors approve management to enter into a contract with USA Shade & Fabric Structures in order to provide a shade structure for the MSA-2 campus in an amount not to exceed Thirty Thousand Dollars (\$30,000).

Background

The current outdoor dining area at MSA-2 is inadequate and the staff of MSA-2 desires to install a shade structure. MSA-2 issued an RFP for shade structures. Responses were due by January 25, 2018. Three (3) proposals were received.

- One was provided by Superior Awning, a copy of which is included as Attachment 1. While it is a reputable company, their response included no detail regarding warranty or any information to provide confidence that the project could be delivered for the quoted price. The price quote provided was for \$10,781.65, which was the lowest received. However, it would include nine (9) posts greatly decreasing the utility of the structure. The number of posts could be reduced to four (4) with the addition of a truss system. The company provided no information on the engineering and there is no guarantee that the re-engineered structure would be permitted by the Division of State Architect (“DSA”). Moreover, the price quoted seemed artificially low and leads one to believe that change orders are likely.
- One was provided by Fred Monitello General Contractor, a local contractor, a copy of which is attached as Attachment 2, who quoted a price of \$20,409.84. This proposal did not include any information regarding experience constructing such structures and did not reflect any DSA experience. Moreover, this company required an upfront deposit of \$10,204.92.
- One was provided by USA Shade & Fabric Structure, a copy of which is attached as Attachment 3. While it presented the highest price of the three (3) proposals, management believes it represents the best value. This company was recommended by the LAUSD complex manager for the MSA-2 campus. They provided a detailed proposal. Moreover, they have a DSA PC—i.e., Pre-Certified model – which means much less review time by DSA. Their contract, presented as part of their proposal, was reviewed by MPS counsel and found to be fair and reasonable.

Accordingly, Staff recommends the USA Shade & Fabric Structure proposal for approval.

Schedule Impact

The goal is to install the shade structure as soon as possible, however, an architect of record must be secured to provide a site plan that includes ADA/accessibility details. The plan must be submitted to DSA, approved and then the canopy can be fabricated, installed and inspected. The cost for the architect and the inspector is not expected to exceed the threshold amount of \$25,000 that requires board approval.

Budget Impact

The source of payment for this project will be MSA-2's reserves.

Risks

MSA-2 desired that the structure be installed by the end of March but this is not likely feasible due to the need to secure an architect of record, submit for DSA approval, fabrication, installation, and final inspection sign-off.

Exhibits:

Attachment 1 – Superior Awning Proposal

Attachment 2 – Fred Monitello Proposal

Attachment 3 – USA Shade and Fabric Structure Proposal



Attachment 1

Superior Awning Proposal



14555 Titus Street • Van Nuys, CA 91402
 (800) 780-0201 phone • (818) 780-7993 fax
 Contractor's License #589431 (D03 Awnings)
 www.SuperiorAwning.com

Document No. 18012601-10
 Revision No. 0
 Proposal Date 26-Jan-2018

CONSTRUCTION CONTRACT

You are entitled to a fully completed copy of this agreement, signed by both you and the contractor before work is started.

Customer/Contact: **MAGNOLIA PUBLIC SCHOOLS**
 Billing Address:

Phone: **STEVEN KESKINTURK**
 Site Address:
 E-Mail: **SKESKINTURK@MAGNOLIAPUBLICSCHOOLS.ORG**

Description of the Project, Significant Materials to be Used and Product to be Installed:

- FIELD MEASURE REQUIRED
- FIELD WELD REQUIRED
- FIELD PATTERN REQUIRED

Cabana - Hip Roof

Width: **30 0** Projection: **30 0** \$10,781.65 x **1** -----> \$ **10,781.65**
 feet inches feet inches unit price quantity

Material: **SUNBRELLA**

Additional Specifications:

**FABRICATE AND INSTALL A FREESTANDING PATIO COVER
 30' WIDE X 30' PROJECTION, INCLUDES (9) POSTS**

Product Option Adjustments:

- A-Frame/No Vent
- Complete Unit
- Custom Fabric
- Installation Included
- Stock Paint

OPTION 1 WOULD BE A TOTAL OF \$10,781.65 PLUS TAX

Item Subtotal: \$ **10,781.65**

Product Description

0 0 **0 0 0** \$0.00 x Qty -----> \$
 feet inches feet inches unit price quantity

Material:

Additional Specifications:

**ADDITIONAL OPTION: WE COULD INSTALL 150 FEET OF A 30'
 TRUSS SYSTEM AND THIS WOULD INCLUDE ONLY (4) POSTS
 THE ADDITIONAL PRICE WILL BE \$3445.50**

Product Option Adjustments:

OPTION 2 WOULD BE A TOTAL OF 14,226.65 PLUS TAX

Item Subtotal: \$ **0.00**

Subtotal Primary Items \$ **10,781.65**

Accessories:

	<u>Cost/Unit</u>	<u>Qty</u>	<u>Extension</u>
Steel Truss, stock paint, 21' - 30' span, price per lineal foot	\$ 22.97	\$	0.00

Total Accessories: \$ **0.00**

Subtotal Pre-Tax: \$ **10,781.65**

Sales Tax: \$

Total Contract Price Including Sales Taxes: \$ 10,781.65

Start of work commences with the above design layout.

Completion estimated to be [] from deposit date.
 Permits and related fees and drawings are not included unless expressly
 and separately itemized. Gore™ Tenara® thread carries a lifetime warranty
 against defect or deterioration and all steel is galvanized and rust resistant.
 Other warranties as itemized above. See warranty literature for
 details/limitations.

Down Payment/Schedule of Progress Payments as follows:

Execution of this contract requires payment made now in the amount of:-----> \$ []
 Representing initial deposit in accordance with contract regulation plus
 progress payment for design layout and custom materials procurement.
 via check or credit card # [] exp. []
 Final payment of remaining contract balance is due upon installation.

ACCEPTANCE: I, the undersigned, acknowledge that I have read and understood the terms of this agreement including the Terms, Conditions & Notices enclosed herewith.

Purchaser Signature: X _____ Date: _____

Superior Awning, by: X **BRIAN HOTCHKISS** _____ Date: **1/26/2018**



Attachment 2

Fred Monitello Proposal

Invoice

Fred Monitello Gen. Contr.
16904 Lorne St.
Van Nuys Ca.
(818) 259-3503

DATE 4/24/2017	INVOICE # 359
--------------------------	-------------------------

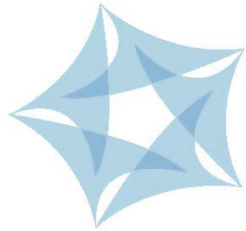
BILL TO Magnolia Science Academy #2 17125 Victory Blvd. Van Nuys Ca. 91406	JOB SITE
--	-----------------

ITEM	DESCRIPTION	QTY	RATE	AMOUNT
Shade Cover	FABRICATE & INSTALL (1) STATIONARY CANVAS HIP ROOF CABANA. 31' Wide X 26', with a 3' drop. Includes (8) 4" steel posts bolted to the existing decking. There will be no post in the middle of the canopy.			20,409.84
Notes	Execution of the contract requires payment in the amount of \$10,204.92 for design layout, & custom materials procurement, pryor to start. There are no Architectural, Or Engineering plans or permit fees included in this proposal.			0.00
				0.00
Total				20,409.84



Attachment 3

USA Shade and Fabric Structure Proposal



USASHADE
& Fabric Structures®

Magnolia Science Academy #2
1/25/2018

Proposal Prepared For:
Magnolia Science Academy #2
17125 Victory Blvd
Van Nuys, CA 91406

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



Date: 1/25/2018

Proposal for USA SHADE & Fabric Structures

Project Information:				Sales Information:	
Purchaser:	Magnolia Charter Schools	Contact:	David Garner	Sales Rep:	Liz Norton
Project Name:	Magnolia Science Academy #2	Phone:	310-923-4502	Phone:	323-490-9502
Quote No:	ELN010518Areva	Email:	dgarner@magnoliapublicschools.org	Email:	enorton@usa-shace.com
PO No:		Fax:		Fax:	

Billing Information:		Shipping Information:		Jobsite Information:	
Magnolia Science Academy #2		SOUTHERN CALIFORNIA		Magnolia Science Academy #2	
17125 Victory Blvd		1085 N. Main Street, Suite C		17125 Victory Blvd	
Van Nuys		Orange		Van Nuys	
CA		CA		CA	
91406		92867		91406	
Contact:	David Garner	Contact:	Construction	Contact:	David Garner
Phone	310-923-4502	Phone		Phone	310-923-4502
Fax:		Fax:		Fax:	
Email:	dgarner@magnoliapublicschools.org	Email:		Email:	dgarner@magnoliapublicschools.org

CORPORATE ADDRESS:

8505 Chancellor Row
Dallas, TX 75247-5519

REMITTANCE ADDRESS:

P.O. Box 204691
Dallas, TX 75230-4691

SOUTHERN CALIFORNIA:

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

NORTHERN CALIFORNIA:

927 Enterprise Way, Suite A
Napa, CA 94558

ARIZONA:

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

LAS VEGAS:

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


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

www.usa-shade.com 800-966-5005

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



Structure Pricing

OPTION 2				
UNIT IMAGE	UNIT DETAILS			
	Unit Quantity:	1	Foundations By	USA Shade
	Unit Type:	DSA PC Hip	Grout Installation	USA Shade
	Structure Size:	30' x 30'	Base Attachment:	Recessed Base Plate
	Entry Height:	10'	Footing Type:	Drilled Pier
	No of Columns:	4	Anchor Bolts:	Included
	No of Fabric Tops:	1	Concrete Cutting:	N/A
	Fabric Type:	Colourshade FR	Dirt Removal:	Included
	Fabric Color:	Blue	Surface Type:	Concrete
	Steel Finish:	Powder Coat	NOTES	
	Steel Color:	Black		
PRICE	Electrical Provisions:	N/A		
\$24,500.00	Cable/HDW Finish:	Galvanized		
	Concept No:	N/A		



ADDITIONAL COSTS			
QTY	ITEM	DETAILS	COST
TOTAL FOR ACCESS/MISC ITEMS:			

PRICING TOTALS:	
Unit Total	Included
Accessories/Miscellaneous	
Shipping/Handling	Included
SUBTOTAL	Included
Sales Tax (9.5%)	Included
Installation	Included
TOTAL PRICE	\$24,500.00

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

ENGINEERING REQUIREMENTS		NOTES
Building Code	DSA PC	
Wind Load	90	
Snow Load	0	
Drawing Size	24 X 36	
No. of Sealed Drawings	3	
Calculations Required	Yes	

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	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Curb Repair
<input type="checkbox"/>	<input checked="" type="checkbox"/>	DSA Fee	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Landscape Repair
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Foundation Design & Engineering	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Demolition (Existing Structures)
<input type="checkbox"/>	<input checked="" type="checkbox"/>	Special Inspection Fees	<input type="checkbox"/>	<input checked="" type="checkbox"/>	Payment and Performance Bonds



Construction Assumptions

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

GENERAL TERMS & CONDITIONS AND WARRANTY

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



- 4) **Standard Exclusions:** Unless specifically included under the "General Scope of Work" section above, this agreement does not include, and Company will not provide, services, labor, or materials for any of the following work: (a) removal and disposal of any materials containing asbestos or any hazardous materials as defined by the EPA; (b) moving Owner's property around the installation site; (c) repair or replacement of any Purchaser or Owner-supplied materials; (d) repair of concealed underground utilities not located on prints supplied to Company by Owner during the bidding process, or physically staked out by Owner, and which are damaged during construction; or (e) repair of damage to existing surfaces that may occur when construction equipment and vehicles are being used in the normal course of construction.
- 5) **Bonding Guidelines:** If Purchaser will use or provide the Structures and Services for an Owner other than Purchaser (including, without limitation, as a subcontractor of Purchaser), Purchaser will include the following statement in Purchaser's contract with Owner:

"The manufacturer's warranty for the Shade Structures brand shade structures is a separate document between USA SHADE & Fabric Structures and the ultimate owner of the Shade Structures brand shade structures, which will be provided to the ultimate owner at the time of completion of the installation and other services to be provided by USA SHADE & Fabric Structures. Due to surety requirements, any performance and/or payment bond will cover only the first year of the USA SHADE & Fabric Structures warranty."
- 6) **Insurance Requirements:** Company is not required to provide any insurance coverage in excess of Company's standard insurance. A copy of the Company's standard insurance is available for your review prior to acceptance of the Company's proposal.
- 7) **Payment:** Terms of payment are defined in the "Pricing Details" section and are specific to this contract. For purposes of this agreement, "Completion" is defined as being the point at which the Structure is suitable for its intended use, the issue of occupancy consent, or a final building department approval is issued, whichever occurs first. In any event where Completion cannot be effected due to delays or postponements caused by the Purchaser or Owner, final payment (less 10% retainage) is due within 30 days of the date when Completion was scheduled, had the delay not occurred. All payments must be made to Shade Structures, Inc., P.O. Box 204691, Dallas, TX 75320-4691. If the Purchaser or Owner fails or delays in making any scheduled milestone payments, the Company may suspend the fulfillment of its obligations hereunder until such payments are made, or Company may be relieved of its obligations hereunder if payment is more than 60 days past due. Company may use all remedies available to it under current laws including, but not limited to, filing of liens against the property and using a collection agency or the courts to secure the collection of the outstanding debt.
- 8) **Lien Releases:** Upon request by Owner, Company will issue appropriate partial lien releases as corresponding payments are received from Purchaser, but prior to receiving final payment from Purchaser or Owner. Company will provide a full release of liens upon receipt of final payment. In accordance with state laws, Company reserves the right to place a lien on the property if final payment has not been received 10 days prior to the filing deadline for liens.
- 9) **Site Plan Approval, Permit/s, Permit Fees, Plans, Engineering Drawings, and Surveying:** Site plan approval, permits, permit fees, plans, engineering drawings, and surveying are specifically excluded from this agreement and the Services unless specified under the "General Scope of Work". The Company does not in any way warrant or represent that a permit or site plan approval for construction will be obtained. Sealed engineered drawings that are required but not included in the "General Scope of Work" will result in an additional cost to Purchaser.
- 10) **Manufacturing & Delivery:** Manufacturing lead-time from Company's receipt of the "Notice To Proceed" is approximately 6 to 8 weeks for standard structures, and 8 to 12 weeks for custom structures. Delivery is approximately 1 week thereafter. Delivery of structures may be prior to or at start of assembly. Please note that these timelines do not include approval or permitting timeframes.
- 11) **Returned Product, Deposits, and/or Cancelled Order:** Within the first 45 days after shipment from our facility, all returned product(s) and cancelled orders are subject to a 50% restocking fee. No returns are available following this 45 day period. All deposits are non-refundable. All expenses incurred (engineering, site surveys, shipping, handling, etc.) are the responsibility of the Purchaser, up to notice of cancellation.



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



General Limited Warranty Terms and Conditions

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

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

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

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

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

www.usa-shade.com

800-966-5005

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



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.



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:
Magnolia Charter Schools

SELLER:
USA SHADE & Fabric Structures

Signature:

By: (Print)

Title:

Date:

Signature:

By: (Print)

Title:

Date:

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