

TO: James L. App, City Manager
FROM: Ann Robb, Director, Library & Recreation Services
SUBJECT: Award of Contract – Shade Structures
DATE: August 3, 2010

NEEDS: For the City Council to consider awarding a contract to USA Shade & Fabric Structures Inc. (USA Shade) for shade structures at Barney Schwartz Park soccer fields.

- FACTS:**
1. Over the last several years, shade structures have been installed at Municipal and Centennial pools, and over the softball bleachers at Barney Schwartz Park. The shade enhances the park experience and is greatly appreciated by patrons.
 2. REC Foundation offered to add shade structures to the soccer fields at Barney Schwartz Park.
 3. The structures provided by USA Shade have proven to be both attractive and durable. The new shade structures are selected to match existing structures to maintain a consistent look. For these reasons, it is suggested that USA Shade be contracted to supply the new structures under a sole-source vendor designation.
 4. After reviewing the issue, the City Attorney suggested that the City’s purchasing authority could waive competitive bid requirements in accordance with Section 10 of the City’s Purchasing Manual and name USA Shade as a sole-source vendor.

ANALYSIS & CONCLUSION: Additional shade structures are desirable at Barney Schwartz Park to provide shade in the soccer area. REC Foundation has agreed to pay for materials and installation of 2 shade shelters. A sole source vendor, USA Shade, would provide shelters that are similar to those existing at Barney Schwartz Park, Centennial and Municipal pools.

POLICY REFERENCE: Purchasing and Payment Procedures Manual.

FISCAL IMPACT: REC Foundation will fund the cost = \$48,000.

- OPTIONS:**
- a. Adopt Resolution No. 10-xxx awarding a contract to USA Shade & Fabric Structures Inc for the purchase and installation of Shade Shelters at B.S.P. soccer area.
 - b. Amend, modify, or reject the above option.

- Attachments
- 1) Contract
 - 2) Site Map
 - 3) Resolution



City of Paso Robles
1000 Spring Street
Paso Robles, CA 93446

SHORT FORM CONTRACT FOR CONSTRUCTION

Project Address: Barney Schwartz Park
2970 Union Road
Paso Robles, CA

Project: Shade Structures for Barney Schwartz Park Soccer Complex

This Agreement is made this 28th day of June, 2010 between the **City of Paso Robles (City)**, **REC Foundation ("REC")**, and **USA Shade & Fabric Structures, Inc., dba USA Shade Structures (Contractor)**. The work described in Section 1 below shall be performed in accordance with the all plans, specifications and other contract documents attached to or incorporated into this Agreement.

The following documents are incorporated into and made part of this Contract by this reference:

- Special Conditions (Attachment A)
- Plans and details prepared by Contractor and approved by City.
- Site drawings

The documents shall be referred to collectively as the "Contract Documents".

REC's obligations under this contract are limited to payment of the Contract Price as described in Section 2, below.

SECTION 1 - SCOPE

Contractor shall furnish all necessary management, supervision, labor, materials, tools, supplies, equipment, plant, services, engineering, testing and/or any other act or thing required to diligently and fully perform and complete the work generally described as follows:

- 1) Furnish and install custom shade structures at Barney Schwartz Park Soccer Complex as follows:
 - (2) 4-post Hypar Sail Shade Structures, 30' x 30' w/ 12'/16' entry height, embed anchor detail.
- 2) Fabric color: Shadesure Terra Cotta. Post color: White

3) Scope includes:

- Site survey to confirm size and design
- Footing locations to be marked and approved by **USA Shade & Fabric Structures, Inc.** representative 5 weeks before estimated installation date.
- Custom manufacture of structure/s. Manufacturing lead time is approximately 8 to 10 weeks.
- Units
- Freight & Handling
- Assembly start date will be scheduled approximately 1 week prior to start. Assembly will take approximately 1 week. A Project Manager is included with the assembly crew.
- General cleanup
- Comprehensive warranty

4) Scope excludes:

- Dirt removal
- Site plan approval
- Permit processing
- Permit fees
- Removal of any existing structures or poles (if needed)
- Unforeseen underground obstacles or openings which might affect the engineering, unit size, and/or assembly costs.
- Landscaping and repair of concrete curbs
- Soils Tests

Contractor shall comply with all requirements of the Contract Documents. Where there is a conflict between the requirements of the several Contract Documents, the more stringent requirements shall govern.

Without limiting the foregoing description, Contractor's scope of work includes, but is not limited to, the following:

- Provide engineering for custom shade structures. All engineering will be performed by duly licensed professionals and comply with all applicable building codes and other requirements. Design documents will be stamped by the responsible design professional.
- Submit all required samples, product data, certificates, operations and maintenance instructions, guarantees, and other submittals no later than five (5) days after the date the City issues a Notice to Proceed.
- Obtain all necessary permits and approvals for the Work.
- Protect all materials to be used in the Work in accordance with the specifications.

- Protect existing facilities and personal property.
- Attend a preconstruction conference with City to discuss schedule, access, sequence of work, and other issues.
- Prepare and submit a written daily activity report to City for each day on which work is performed, including weekends and holidays when worked, and submit the reports to the City no later than the next business day. The daily reports shall, at a minimum, include the following information: construction activities and locations, construction crew sizes of general and subcontractors, start or completion of activities, progress on construction activities (including units or portions of work completed), tests or inspections performed, deliveries of material or equipment, delays or potential delays, visitors to the site, weather conditions, construction equipment used, and personal injuries or damage to property.
- The Contractor shall be responsible for unloading, hoisting and otherwise handling its own materials, supplies and equipment.
- Coordinate with City-scheduled events.
- The Contractor is responsible for researching and complying with all local codes, agencies and jurisdictions that regulate and govern the Work.
- Contractor shall set up, identify, coordinate, provide safe access, and obtain all inspections for its work, as required by any authorized agency or applicable code, prior to covering up work.

SECTION 2 - PRICE

A. REC will pay, and Contractor agrees to accept as payment in full, the following (the "Contract Price"):

- (2) - 30' x 30' 4-Post Hypar Sail Shade Structures: \$ 48,000

The Contract Price includes all engineering, delivery charges, and applicable taxes, as well as discounts for multiple units.

B. Contractor shall submit a payment application in the amount of the Contract Price upon completion of the Work and satisfaction of all conditions of the Contract Documents. REC shall make payment within 30 days of receipt of application, less ten percent retention. REC shall release the retained funds no less than thirty five (35) days after the date the City accepts the Work.

C. Contractor agrees to furnish, as a condition of payment, payroll affidavits, receipts, vouchers, and other documents, in form satisfactory to City and REC, prior to receipt of any payment. Contractor shall submit Conditional and Unconditional waivers and release of lien upon (as provided in Civil Code Section 3262) on behalf of itself and suppliers that furnished labor, material, equipment or services to the Project.

SECTION 3 - ENTIRE AGREEMENT

This Agreement represents the entire agreement between City, REC and Contractor and supersedes any prior written or oral representations.

SECTION 4 - TIME

A. Contractor shall complete the Work no later than **ninety (90)** calendar days following City's issuance of the Notice To Proceed (the "Contract Time").

B. Time is of the essence of this Agreement.

C. Contractor shall provide City with scheduling information in a form acceptable to City, including any changes made by City in the scheduling of work. Contractor shall coordinate its work with that of all other contractors, subcontractors and suppliers so as not to delay or damage their performance.

D. If Contractor fails to complete the Work on or before the expiration of the Contract Time, the City will sustain damage and that it is and will be impracticable to determine the actual damage which the City will sustain in the event of and by reason of such delay; and it is therefore agreed that the Contractor will pay to the City the sum set forth in the Special Provisions for each and every calendar day's delay beyond the time prescribed to complete the Work; Contractor agrees to pay such liquidated damages as herein provided, and in case the same are not paid, agrees that REC, at City's direction, may deduct the amount thereof from any monies due or that may become due the Contractor under the Contract.

E. It is further agreed that in case Contractor fails to complete the Work in all parts and requirements within the Contract Time, the City shall have the right to extend the Contract Time or not, as may seem best to serve the interest of the City; and if it decides to extend Contract Time, City shall further have the right to charge to the Contractor, his heirs, assigns or sureties, and to deduct from the final payment for the Work, all or any part, as it may deem proper, of the actual cost of engineering, inspection, superintendence, and other overhead expenses which are directly chargeable to the Contract, and which accrue during the period of such extension.

F. The Contractor will not be assessed with liquidated damages or the cost of engineering and inspection during the delay in the completion of the Work caused by acts of God or of the public enemy, fire, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather or delays of subcontractors due to such causes; provided, that the Contractor shall within five (5) days from the beginning of any such delay, notify the Engineer, in writing of the causes of delay. The Engineer shall ascertain the facts and the extent of delay, and his findings thereon shall be final and conclusive.

G. In the event that Contractor's work is delayed for any reason, including acts of City, Contractor's sole remedy shall be an extension of time equal to the period of delay,

provided Contractor has given City written notice of the commencement of delay within 48 hours of its occurrence.

SECTION 5 – LABOR

A. The Contract is subject to the provisions of Part 7 of Division 2 of the California Labor Code (Sections 1720 and following), and Contractor and any subcontractor shall pay not less than the specified prevailing rates of wage to all workers employed in performance of the Work. Pursuant to the provisions of Section 1770 of the Labor Code of the State of California, the City Council of the City of Paso Robles has obtained the general prevailing rate of wages and employer payments for health and welfare, vacation, pension and similar purposes in the City, a copy of which is on file in the office of the City Engineer, and shall be made available for viewing to any interested party upon request.

B. Contractor's attention is directed to the provisions in Section 1777.5 and 1777.6 of the Labor Code concerning the employment of apprentices by the Contractor or any subcontractor under the Contractor. It shall be the responsibility of the Contractor to effectuate compliance on the part of itself and any subcontractors with the requirements of said sections in the employment of apprentices. Information relative to apprenticeship standards, wage schedules, and other requirements may be obtained from the Director of Industrial Relations, ex-officio the Administrator of Apprenticeship, San Francisco, California, or from the Division of Apprenticeship Standards and its branch offices.

C. Pursuant to the requirements of Division 4 of the Labor Code, the Contractor will be required to secure the payment of worker's compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code. Prior to commencement of work, the Contractor shall sign and file with the Engineer a certification in the following form:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract."

D. The Contractor or subcontractor shall, as a penalty to the state or political subdivision on whose behalf the contract is made or awarded, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the respective contractor or subcontractor for each calendar day during which the worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of this article.

E. Pursuant to the requirements of Division 4 of the Labor Code, the Contractor will be required to secure the payment of worker's compensation to its employees in accordance with the provisions of Section 3700 of the Labor Code. Prior to commencement of work, the Contractor shall sign and file with the Engineer a certification in the following form:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to

undertake self-insurance in accordance with the provisions before commencing the performance of the work of this contract."

SECTION 6 - CHANGES IN WORK

A. Contractor shall make no changes in the Work without written direction from the City. Contractor shall not be compensated for any change made without any such written direction. No changes in the work covered by this Agreement shall exonerate any surety or any bond given in connection with this Agreement.

B. If the City directs the Contractor in writing to make changes in the Work that materially affect the cost of performing the Work, the Contract Prices will be adjusted based on one of the following:

- i. Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities involved in the changed Work;
- ii. By establishment of new unit prices and related quantities for the changed Work;
- iii. By a combination of existing and new unit prices and related quantities for the changed Work; or
- iv. By mutual acceptance of a lump sum.

C. If the City directs the Contractor in writing to make changes in the Work that materially affect the time required to perform the Work, the City will make a reasonable adjustment to the Contract Time.

SECTION 7 – NOTICE OF CLAIM

If any dispute shall arise between City and Contractor regarding performance of the work, or any alleged change in the work, Contractor shall timely perform the disputed work and shall give written notice of a claim for additional compensation for the work to City within ten (10) days after commencement of the disputed work. Contractor's failure to give written notice within the ten (10) day period constitutes an agreement by Contractor that it will receive no extra compensation for the disputed work.

SECTION 8 - INSPECTION AND PROTECTION OF WORK

A. Contractor shall make the work accessible at all reasonable times for inspection by the City. Contractor shall, at the first opportunity, inspect all material and equipment delivered to the jobsite by others to be used or incorporated in the Contractor's work and give prompt notice of any defect therein. Contractor assumes full responsibility to protect the work done hereunder until final acceptance by the City.

B. When the Work is completed, Contractor shall request, in writing, a final inspection. Within ten (10) days of the receipt of such request, the City shall make a final inspection. The Contractor or its representatives may be present at the final inspection. The purpose of such final inspection shall be to determine whether the Work has been completed in accordance with the Contract Documents, including all change orders and all interpretations and instructions previously issued.

SECTION 9 – ASSIGNMENT AND SUBCONTRACTING

A. Contractor shall give personal attention to the performance of the Contract and shall keep the Work under its control.

B. No subcontractors will be recognized as such, and all persons engaged in the work of construction will be considered as employees of the Contractor, who will be held responsible for their work which shall be subject to the provisions of the Contract and specifications.

C. No subcontractor who is ineligible to bid work on, or be awarded, a public works project under Labor Code Sections 1771.1 or 1777.7 can bid on, be awarded or perform work as a subcontractor on the Project. The Contractor is prohibited from performing work on the Project with a subcontractor who is ineligible to perform work on a public works project under these sections of the Labor Code.

D. When a portion of the work which has been subcontracted by the Contractor is not being prosecuted in a manner satisfactory to the City Engineer, the subcontractor shall be removed immediately on the request of the City Engineer and shall not again be employed on the work.

E. Contractor may not assign performance of the Contract except upon written consent of the City Engineer.

SECTION 10 - TERMINATION

A. Should Contractor fail within three (3) working days from receipt of City's written notice to correct any contractual deficiencies, including but not limited to failure perform the Work in accordance with the Contract Documents, failure to comply with the directions of City, or failure pay its creditors, City may terminate this Agreement. Following a termination for default, City shall have the right to take whatever steps it deems necessary to correct and complete the Work and charge the cost thereof to Contractor, who shall be liable for the full cost of City's corrective action, including reasonable overhead, profit and attorneys' fees.

B. City may at any time terminate the Contract at City's convenience upon five days written notice to Contractor; in the event of termination for convenience, Contractor shall recover only the actual cost of work completed to the date of termination, which costs are documented to City's satisfaction, plus a reasonable amount not to exceed fifteen percent (15%) of the actual cost of the Work performed for overhead and profit. Contractor shall not be entitled to any claim or lien against City or REC for any additional compensation or damages in the event of such termination.

C. If City terminates Contractor for cause, and if it is later determined that the termination was wrongful, such default termination shall automatically be converted to and treated as a termination for convenience. In such event, Contractor shall be entitled to receive only the amounts payable under this section, and Contractor specifically waives any claim for any other amounts or damages, including, but not limited to, any claim for consequential damages or lost profits.

SECTION 11 – HOLD HARMLESS AND INDEMNIFICATION

A. The City of Paso Robles, REC, and all officers and employees thereof connected with the Work, including but not limited to the City Council, shall not be answerable or accountable in any manner: for any loss or damage that may happen to the Work or any part thereof; for any loss or damage to any of the materials or other things used or employed in performing the Work; for injury to or death of any person; or for damage to property from any cause except losses due to sole or active negligence of the City of Paso Robles' officers or employees.

B. To the fullest extent allowed by law, Contractor shall defend, indemnify and hold harmless the City of Paso Robles, REC, their elected and appointed officials, contractors, and employees and agents, from all liability, penalties, costs, losses, damages, expenses, causes of action, claims or judgments, including attorney's fees and other defense costs, resulting from injury to or death sustained by any person (including Contractor's employees), or damage to property of any kind, or any other injury or damage whatsoever, which injury, death or damage arises out of or is in any way connected with the performance of the Work, regardless of the Contractor's fault or negligence, including any of the same resulting from City's or REC's alleged or actual negligent act or omission, or its agents, contractors or employees; except that said indemnity shall not be applicable to injury, death or damage to property arising from the sole or active negligence or willful misconduct of City, REC, their officers, agents, or servants who are directly responsible to City. This indemnification shall extend to claims asserted after termination of this Contract for whatever reason.

C. In addition to any remedy authorized by law, so much of the money due the Contractor under and by virtue of the contract as shall be considered necessary by the City, may be retained by REC until disposition has been made of such suits or claims for damage.

SECTION 12 – BONDS AND INSURANCE

A. Bonds

1. Within ten (10) days after being notified of the award of the contract, and before the City will execute the agreement for construction, the Contractor to whom the Contract is awarded shall furnish and file with the City Performance and Payment Surety bonds as set forth below.

2. Contractor shall submit a faithful performance bond on the form provided with the Contract Documents, duly executed by a responsible corporate surety listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to City conditioned upon the faithful performance by the Contractor of all requirements of the Contract Documents. The amount of said bond shall be in a sum no less than one hundred percent (100%) of the total Contract Price.

3. Contractor shall also submit a bond on the form provided with the Contract Documents, duly executed by a responsible corporate surety listed in the United States Department of the Treasury circular entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies," authorized to do business in the State of California and acceptable to City, which in all respects complies with Civil Code sections 3247-3252, inclusive. This bond, hereinafter referred to as a "payment bond," shall be in a sum no less than one hundred percent (100%) of the Contract Price.

B. Insurance

1. Contractor shall obtain, at its sole cost and expense, all insurance required by this section 12.B. Certificates of such insurance and copies of the insurance policies and endorsements shall be delivered to City within ten (10) days after being notified of the award of the contract, and before execution of the agreement for construction by the City.

2. The insurance requirements specified herein shall apply to all subcontractors. The Contractor shall designate appropriate insurance limits for subcontractors. It shall be the responsibility of the Contractor to ensure that all subcontractors comply with this provision, and to verify their compliance when requested by the City. The Contractor shall not allow any subcontractor to commence work until all insurance required of the subcontractor has been obtained and verified by the Contractor and submitted to the City. Subcontractors shall furnish original certificates and endorsements as verification of insurance coverage. Upon request, Contractor shall deliver certificates of insurance or copies of the insurance policies and endorsements of all subcontractors; provided, however, that this authority shall not relieve Contractor of its obligation to ascertain the existence of such insurance.

3. The insurance required by this article shall be maintained by Contractor in full force and effect at all times during prosecution of the Work and until the expiration of the warranty period following the final completion and acceptance thereof by City, and every policy shall be endorsed to state that it shall not be assigned, cancelled, or reduced in coverage without thirty (30) days' prior written notice to City. Every policy shall also be endorsed to state that the City shall be given written notice of nonrenewal at least thirty (30) days prior to the nonrenewal date.

4. Liability Insurance. This insurance shall protect the Contractor from claims for bodily injury and property damage which may arise because of the nature of the work or from operations under this Contract.

a. Coverage shall be at least as broad as:

- i. Commercial General Liability coverage (Insurance Services Office form number GG 0001 – “occurrence” form).
- ii. Owners and Contractors Protective Liability Coverage form – Coverage for Operations of Designated Contractor (Insurance Services Office form G0009 11 88).
- iii. Insurance Services Office form number CA 0001 covering Automobile Liability, code 1 "any auto," and endorsement CA 0025.
- iv. Workers' Compensation insurance as required by the Labor Code of the State of California and Employers Liability insurance.

b. The Commercial General Liability Insurance shall include the following coverages:

- Premises – Operations;
- Owner's/Independent Contractors and Contractor's Protective;
- Products - Completed Operations;
- Personal Injury - (False Arrest, Libel, Wrongful Eviction, etc.);
- Broad Form Property Damage – including to the maximum extent possible, coverage for the Assumption of Liability Pursuant to Completed Operations;
- Blanket Contractual liability, including the indemnity agreement in this contract
- Separation of Insureds / Cross-Liability Provisions
- Duty to Defend all Insureds
- Deletion of any limitation on Coverage for Bodily Injury or Property
- Damage Arising out of Subsidence or Soil or Earth Movement.
- A provision that the annual general aggregate and the products and completed operations annual aggregate shall apply separately to the Project.
- Pollution Legal Liability Endorsement
- XCU - (Explosion, Collapse, Underground Damage)

c. Coverage shall not extend to any indemnity coverage for the sole or active negligence of the additional insured in any case where any agreement to indemnify the additional insured would be invalid under Civil Code Section 2782(b).

d. Contractor shall maintain limits no less than:

- i. Commercial General Liability: One Million Dollars (\$1,000,000) combined single limit per occurrence for bodily injury, personal injury and property damage.
- ii. Automobile Liability: One Million Dollars (\$1,000,000) combined single limit per accident for bodily injury and property damage.
- iii. Workers' Compensation and Employers Liability: Workers' compensation limits as required by the Labor Code of the State of California and Employers Liability limits of One Million Dollars (\$1,000,000) per accident.

e. At the option of the Contractor, primary limits may be less than required, with an Umbrella Policy providing the additional limits needed. This form of insurance will be acceptable provided that the Primary and Umbrella Policies both provide the insurance coverages herein required, including all additional insured requirements. The umbrella policy shall be provided on a "following form" basis with coverage at least as broad as provided on the underlying commercial General Liability insurance.

f. Contractor shall furnish the City with certificates of insurance and with original endorsements effecting coverage required by this clause. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The certificates and endorsements are to be on forms provided by the City, provided that the forms conform to these requirements, and are to be received and approved by the City before work commences. The City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications, at any time.

g. Contractor shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

h. Insurance is to be placed with insurers with a Bests' rating of no less than A:VIII.

i. Originals of the following endorsements shall be attached to the liability insurance policy and delivered to City:

- i. The Commercial General Liability and Automobile Liability policies of insurance shall be endorsed to name as additional insureds the City of Paso Robles, REC, and all of their elected and appointed officials, directors, officers, employees, agents, construction manager, and servants, using ISO Form CG201185. This policy shall provide coverage to each of the additional insureds with respect to the Work.

- ii. The policy shall be endorsed to provide primary coverage to the full limit of liability stated in the declarations, and provide that if the

additional insureds have any other insurance or self-insurance against the loss covered by this policy, that other insurance shall be excess insurance and not contribute with contractor's policy.

- iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the City, REC, their officials, employees or volunteers.
- iv. Coverage shall state that the Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.
- v. The insurer shall waive all rights of subrogation against the City, REC, their officials, employees, agents, and volunteers for losses arising from work performed by the Contractor for the City.
- vi. An endorsement shall be attached which states that the coverage is primary insurance and that any insurance or self-insurance fund maintained by or available to City or any of its officers, agents, employees or volunteers shall be in excess of Contractor's insurance and shall not be called upon to contribute to a loss covered by the policy.
- vii. The policy must provide that it shall not be cancelled, suspended, voided or changed nor may the "retroactive date" of the policy or any renewal or replacement policy be changed without thirty (30) days' prior written notice to the City.
- viii. A cross-liability endorsement must be included to the effect that each insured is covered as if separate policies had been issued to each insured.
- ix. The liability coverage may be either on a blanket basis or a policy which specifically identifies this agreement with a contractual liability endorsement.
- j. Any deductibles or self-insured retentions must be declared to and approved by the City. At the option of City, the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, agents, construction manager, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigation, claims administration and defense expenses.

C. Waiver of Subrogation. City, REC, and Contractor waive all rights against each other and against all other subcontractors for loss or damage to the extent covered by Builder's Risk or any other property or equipment insurance applicable to the Project, except such rights as they may have to the proceeds of such insurance less their pro-rata share of the deductible. If the policies of insurance referred to in this section require an endorsement or consent of the insurance company to provide for continued

coverage where there is a waiver of subrogation, the owners of such policies will cause them to be so endorsed or obtain such consent.

D. Insurance Requirements are Material Element of Performance. In the event of the breach of any provision of this paragraph, or in the event of any notices received which indicate any required insurance coverage will be diminished or canceled, City, at its option, may, notwithstanding any other provisions of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work pursuant to this Agreement.

SECTION 13 - CLAIMS RESOLUTION

Disputes arising under this Agreement shall be resolved in accordance with the procedures set forth in Section 20104.50 of the Public Contract Code.

SECTION 14 - WARRANTY

Contractor warrants to City that all materials and equipment furnished shall be new, free from faults and defects and of good quality. Contractor hereby warrants its work against all deficiencies and defects as provided in the Special Provisions or for the longest period permitted by the law of this State, whichever is less.

SECTION 15 – LAWS TO BE OBSERVED

A. Contractor shall keep itself fully informed of all existing and future state and federal laws and county and municipal ordinances and regulations which in any manner affect those engaged or employed in the work, or the materials used in the work, or which in any way affect the conduct of work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same.

B. Contractor shall at all times observe and comply with, and shall cause all of its agents and employees to observe and comply with all such existing and future laws, ordinances, regulations, orders, and decrees of bodies or tribunals having any jurisdiction or authority over the work; and shall protect and indemnify the City, and all officers and employees thereof connected with the work, against any claim or liability arising from or based on the violation of any such law, ordinance, regulation, order, or decree, whether by the City's representative or their employees. If any discrepancy or inconsistency is discovered in the plans, drawings, specifications, or contract for the work in relation to any such law, ordinance, regulation, order or decree, Contractor shall forthwith report the same to the Engineer in writing.

SECTION 16 – MISCELLANEOUS

A. UTILITY FACILITIES

1. The Contractor shall protect from damage any utility facilities that are to remain in place, be installed, relocated or otherwise rearranged.

2. If Contractor while performing the Work discovers utility facilities not identified in the Contract Documents, Contractor shall immediately notify the City and the utility owner. City shall arrange the removal, relocation, or protection of existing main or trunk line utility facilities located at the site of the Work but not identified in the Contract.

3. If the Contractor is required to locate, repair damage not due to the Contractor's failure to exercise reasonable care, and remove or relocate existing main or trunk line utility facilities, it shall be compensated under the Changes section of this Contract, including payment for equipment on the Project necessarily idled during such work.

4. Contractor will not be entitled to damages or additional payment for delays caused solely by the failure of City, or the owner of the utility, to provide for removal or relocation of existing main or trunk line utility facilities not identified in the Contract Documents, except for equipment necessarily idled during such work.

5. Contractor shall not be assessed liquidated damages for delay in completing the WORK solely attributable to the failure of City, or the owner of the utility, to provide for removal or relocation of existing main or trunk line utility facilities not indicated in the Contract Documents with reasonable accuracy.

6. The right is reserved by the City and the owners of facilities or their authorized agents, to enter the job for the purpose of making such changes as are necessary for the rearrangement of their facilities or for making necessary connections or repairs to their properties. The Contractor shall cooperate with forces engaged in such work and shall conduct his operations in such a manner as to avoid any delay or hindrance to the work being performed by such other forces.

7. Attention is directed to the possible existence of underground facilities not known to the City of Paso Robles, or in a location different from that which is shown on the plans or in the Special Provisions. The Contractor shall take all steps reasonably necessary to ascertain the exact location of all underground facilities prior to doing work that may damage such facilities or interfere with their service, including but not limited to calling USA to mark utilities.

B. DIFFERING SITE CONDITIONS.

1. The Contractor shall promptly, and before the following conditions are disturbed, notify the City in writing of any:

- a) Material that the Contractor believes may be material that is hazardous waste, as defined in Section 25117 of the Health and Safety Code, that is required

to be removed to a Class I, Class II, or Class III disposal site in accordance with provisions of existing law.

b) Subsurface or latent physical conditions at the site differing materially from those indicated in this Contract, or

c) Unknown physical conditions at the site of any unusual nature, differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in this Contract.

2. The City shall promptly investigate the conditions, and if it finds that such conditions do materially so differ, or do involve hazardous waste, and cause an increase or decrease in the Contractor's cost of, or the time required for, performance of any part of the Work, it shall issue a change order under the provisions described in the Contract Documents.

3. No claim of the Contractor under this clause shall be allowed unless the Contractor has given the notice required in the Contract Documents.

4. In the event a dispute arises between the City and the Contractor as to whether the conditions materially differ, or involve hazardous waste, or cause a decrease or increase in the Contractor's cost of, or time required for, performance of any part of the work, Contractor shall not be excused from completing the Work as provided in the Contract Documents. The Contractor shall proceed with all work to be performed under the Contract. The Contractor shall retain any and all rights provided either by this Contract or by law which pertain to the resolution of disputes and protests.

C. RECORDS AND AUDITS

1. Contractor and its subcontractors shall establish and maintain records pertaining to this contract. Contractor's and subcontractors' accounting systems shall conform to generally accepted accounting principles and all records shall provide a breakdown of total costs charged under this contract, including properly executed payrolls, time records, invoices and vouchers.

2. Contractor shall permit City and its authorized representatives to inspect and examine Contractor's books, records, accounts, and any and all data relevant to this Contract at any reasonable time for the purpose of auditing and verifying statements, invoices, or bills submitted by Contractor pursuant to this contract and shall provide such assistance as may be reasonably required in the course of such inspection. City further reserves the right to examine and re-examine said books, records, accounts, and data during the three (3) year period following the termination of this Contract; and Contractor shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatever for three (3) years after the termination of this Contract.

3. Pursuant to California Government Code Section 10532, the parties to this Contract shall be subject to the examination and audit of representative of the Auditor General of the State of California for a period of three (3) years after final payment under the contract. The examination and audit shall be confined to those matters connected with the performance of this contract including, but not limited to, the cost of administering the contract

D. ANTI TRUST ASSIGNMENT

In accordance with Section 7103.5 of the California Public Contract Code, the Contractor and Subcontractors shall conform to the following requirements. In entering into a public works contract or a subcontract to supply goods, services, or materials pursuant to a public works contract, the Contractor or subcontractor offers and agrees to assign to the awarding body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, services, or materials pursuant to the public works contract or the subcontract. This assignment shall be made and become effective at the time the awarding body tenders final payment to the Contractor, without further acknowledgement by the parties.

SECTION 17 - WAIVERS OF LIEN

Upon request the Contractor shall submit a complete list of major suppliers and/or subcontractors who will be providing material and/or labor for the performance of the Work, and shall submit with each payment request waivers of lien from each major supplier and/or subcontractor. A sample of this form to be used will be furnished by the City.

SECTION 18 - BACK CHARGES

Charges from Contractor to City will not be honored or paid by City unless the charges are authorized and approved by City at the time the work is being performed for which a charge is to be submitted.

SECTION 19 - CLEAN-UP

Contractor will remove from the project site all debris resulting from performance of the Work no less often than daily. If Contractor fails to do so, City may, after twenty-four (24) hours' notice to Contractor, clean up the site and deduct the cost from the Contract Price.

SECTION 20 - LICENSE REQUIREMENT

Contractor's attention is directed to Business and Professions Code Sections 7000 et seq. concerning the licensing of contractors. At the time Contractor enters into this Contract and all times Contractor is performing the Work, Contractor shall have a valid license issued by the Contractors State License Board in the classification stated in the Special Provisions. Contractor and all subcontractors shall be licensed in accordance with the laws of this State and any contractor or subcontractor not so licensed is subject to penalties imposed by such laws.

CONTRACTORS ARE REQUIRED BY LAW TO BE LICENSED AND REGULATED BY THE CONTRACTORS' STATE LICENSE BOARD WHICH HAS JURISDICTION TO INVESTIGATE COMPLAINTS AGAINST CONTRACTORS IF A COMPLAINT REGARDING A PATENT ACT OR OMISSION IS FILED WITHIN FOUR YEARS OF THE DATE OF THE ALLEGED VIOLATION. A COMPLAINT REGARDING A LATENT ACT OR OMISSION PERTAINING TO STRUCTURAL DEFECTS MUST BE FILED WITHIN 10 YEARS OF THE DATE OF THE ALLEGED VIOLATION. ANY QUESTIONS CONCERNING A CONTRACTOR MAY BE REFERRED TO THE REGISTRAR, CONTRACTORS' STATE LICENSE BOARD, P.O. BOX 26000, SACRAMENTO, CALIFORNIA 95826.

SIGNED:

City of Paso Robles

Contractor: USA Shade and Fabric Structures, Inc., dba Shade Structures

By: James App

Title: City Manager

Dated: _____

By: _____

Title: _____

Dated: _____

REC Foundation

Contractors License No.: 851280-B

By: Greg Haas

Title: President

Dated: _____

Addresses to which notices may be sent:

City of Paso Robles
Attn: Doug Monn
1000 Spring Street
Paso Robles, CA 93446

USA Shade and Fabric Structures, Inc.,
Attn: Dian Wright
8505 Chancellor Row
Dallas, TX 75247

REC Foundation
c/o City of Paso Robles Recreation
Attn: Ann Robb
600 Nickerson Drive
Paso Robles, CA 93446

ATTACHMENT A
SPECIAL PROVISIONS

SC 1. LIQUIDATED DAMAGES

As provided in Section 4 of the Contract, Contractor shall pay to City the sum of One Hundred Dollars (\$100) for each and every calendar day's delay in completion of the Work.

SC 2. LICENSE CLASSIFICATION

In accordance with Section 3300 of the Public Contract Code, the City has determined that the Contractor shall have a Class B (General Building) License at the time it enters into the Contract and at all times it is performing the Work.

SC 3. COOPERATION AND CARE

A. City Performed Work.

The City will perform the following work required to prepare the site for the installation of Contractor's structures in accordance with written direction provided by Contractor:

- Identify and mark underground utilities around area of proposed footings 5 weeks prior to installation for 2 – 30x30 Hypar Sails.

Contractor shall mark and approve footing locations 5 weeks prior to installation of structures.

Contractor may inspect the work performed by the City prior to commencing installation, and shall notify the City of any defects or deficiencies in the work in writing. Once Contractor commences installation, it is deemed to have accepted the work performed by City.

B. Should construction be under way by the City, other agencies or other contractors within or adjacent to the limits of the work specified or should work of any other nature be under way by other forces within or adjacent to said limits, the Contractor shall cooperate with all such other contractors or other forces to the end that any delay or hindrance to their work will be avoided. The City reserves the right to perform other or additional work at or near the site (including material sources) at any time, by the use of other forces.

C. Until the final acceptance of the contract, the Contractor shall have the charge and care of the Work and of the materials to be used therein, including materials for which partial payment has been received. The City of Paso Robles shall not be held

responsible for the care or protection of any material or parts of the Work prior to final acceptance, except as expressly provided in the Special Provisions.

SC 4 PROGRESS OF THE WORK

A. Hours of work - Overtime and holidays. The Contractor shall perform all work during the hours of 7:00 a.m. to 3:30 p.m., Monday through Friday unless otherwise specified in the Special Provisions or authorized by the City in writing. If the Contractor wishes to work during any other hours or on weekends, written permission must be received from the City Engineer. The request must be received at least two (2) working days in advance of any work. No work will be allowed on City of Paso Robles Holidays except in the case of an emergency. A listing of City of Paso Robles holidays is on file in the office of the City Engineer. If Contractor requests overtime work in which the City will incur costs, Contractor shall be responsible for payment of the City's costs incurred in connection with the overtime work. The City will invoice the Contractor at time and one half to cover the costs incurred. If Contractor does not pay the invoice within ten days, the City may deduct the amount billed from other payments due or to become due to Contractor under the Contract.

B. A working day is defined as any calendar day other than a Saturday, Sunday or holiday observed by the City of Paso Robles. A list of holidays observed by the City is available from the Office of the City Clerk.

C. The Public Works Director or his designee shall have the authority to suspend the Work wholly or in part, for such a period as the Public Works Director may deem necessary.

SC 5 LIMITS OF WORK

The "limits of work" are shown on the plans (where applicable). The Contractor shall make its own arrangements, and pay all expenses for additional area required outside of the limits of work unless provided in the Special Provisions.

SC-6 Warranty: Limitation of Liability

Contractor provides a limited warranty on all contractor supplied labor and materials. No other warranty is implied.

General Conditions:

- The warranty set forth below shall be the purchaser's sole and exclusive warranty.
- All warranties below are effective from the date of assembly by Shade Structures, a brand of USA Shade & Fabric Structures, Inc. and acceptance by the City.
- Shade Structures, a brand of USA Shade & Fabric Structures, Inc. reserves the right to repair or replace any item covered by this warranty. The quality of any replacement item shall at least equal the original item provided under this Agreement.
- This warranty will be void if units are not paid for in full.

- Purchaser shall notify Shade Structures, a brand of USA Shade & Fabric Structures, Inc. in writing detailing any defects for which a warranty claim is being made.
- Shade Structures, a brand of USA Shade & Fabric Structures, Inc. specifically denies the implied warranties of merchantability.
- The warranty is void if any changes, modifications, additions or attachments are made to the unit without the written consent of the manufacturer.
- No signs, objects, ornaments, fans, light fixtures or decorations may be hung from the top part of the structure, unless specifically designed and engineered by the manufacturer. These items may interfere with the fabric causing the warranty to be voided.

Fabric:

- Shadesure® fabrics carry a 10 years limited manufacturers warranty from the date of installation, against failure from significant fading, deterioration, breakdown, mildew, outdoor heat, cold, or discoloration with the exception of Red and Red/White stripe and Coolbrella shade structures which carry a 3 year limited warranty. Should the fabric need to be replaced under the warranty, Shade America will manufacture and ship a new fabric at no charge for the first 6 years, thereafter the City will pay only the pro-rated cost of the structure at 18% per annum over the last 4 years.
- This warranty shall be void if damage to the shade fabric is caused by contact with chemicals, misuse, vandalism, any act of God, including but not limited to, ice, snow or wind in excess of the applicable building code parameters.
- All fabric tops are only warranted for winds and gusts up to 90mph and prior to snow or ice accumulation.
- All fabric curtains, valences and flat vertical panels are not covered under the warranty.
- Fabric is not warranted where it is assembled on a structure that is not engineered and built by Shade Structures, a brand of USA Shade & Fabric Structures, Inc.
- The structures have been designed to eliminate any friction between the rafters and the fabric. The warranty will, therefore, be voided if any modification (temporary or permanent) or any attachment (temporary or permanent) is made to the rafter. The fabric will wear or tear should any object be placed between the rafter and the fabric, voiding the fabric warranty.
- Labor for the removal, installation and/or freight charges will be covered in full for a period of **12 Months**, where the shade structures supplied and installed by USA Shade & Fabric Structures, Inc. are defective. In all cases where the shade structures are not installed by USA Shade & Fabric Structures, Inc. or its agents, all labor for the removal, installation and/or freight will be at the customers' expense and the warranty will only be applicable to the repair or replacement of the defective materials
- Shade Structures, a brand of USA Shade & Fabric Structures, Inc. reserves the right, in cases where certain fabric colors have been discontinued, to offer the customer a choice of available colors to replace the warranted fabric of the discontinued color. The company does not warrant that any particular color will be available for any period of time and reserves the right to

discontinue any color for any reason it may determine, without the recourse by the owner of the discontinued fabric color.

Steel:

- The structural integrity of the steel is warranted for 10 years.
- Workmanship and painted surfaces are warranted for 12 months.
- This warranty shall be void if damage to the steel frame is caused by misuse, vandalism, any act of God, including but not limited to, ice, snow or wind in excess of applicable building code parameters

Assembly:

- Labor for the removal, assembly and / or freight charges will only be covered in instances where the unit(s) supplied and assembled by Shade Structures, a brand of USA Shade & Fabric Structures, Inc. are defective. In all cases where units are not assembled by Shade Structures, a brand of USA Shade & Fabric Structures, Inc. all labor for the removal, assembly and / or freight will be for the customer's account and the warranty will only be applicable to the repair or replacement of defective materials.

Thread:

- Shade Structures, a brand of USA Shade & Fabric Structures, Inc. warrants its sewing thread for a period of eight (8) years.
- This warrants that the sewing thread will be free from defects in material and workmanship and will not be damaged by exposure to sunlight, weather or water.
- This warranty does not cover damage from fire, cuts, vandalism, misuse, or any act of God including but not limited to ice, snow or wind in excess of the applicable building code.
- All other warranties are disclaimed.
- Labor for the removal, assembly and / or freight charges, of tops with damage caused by thread, will only be covered in instances where Shade Structures, a brand of USA Shade & Fabric Structures, Inc. has assembled the unit. In all cases where units where not assembled by Shade Structures, a brand of USA Shade & Fabric Structures, Inc. all labor for the removal, assembly and / or freight will be for the customers account and the warranty will only be applicable to the repair or replacement of defective materials.

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Shade structure locations



RESOLUTION NO. 10-xxx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASO ROBLES
AUTHORIZING AWARDING A SOLE SOURCE CONTRACT TO USA SHADE & FABRIC SHELTERS, INC.
(USA SHADE)

WHEREAS, shade shelters have proved successful at Municipal and Centennial pools and Barney Schwartz Park softball area; and

WHEREAS, staff identified a need for additional shade structures at Barney Schwartz Park soccer fields; and

WHEREAS, REC Foundation has pledged to cover cost of manufacture and installation of 2 additional shade structures totaling \$48,000; and

WHEREAS, the City Attorney and City's purchasing authority concur that it is in the City's best interest to waive competitive bid and quotation requirements in accordance with Section 10 of the City's Purchasing Manuel and name USA Shade as a sole vendor;

THEREFORE, BE IT RESOLVED AS FOLLOWS:

The City Council of the City of Paso Robles does authorize the City Manager to enter into a contract with USA Shade & Fabric, Inc. and REC Foundation for the purchase and installation of 2 shade structures at Barney Schwartz Park soccer fields

PASSED AND ADOPTED by the City Council of the City of Paso Robles this 3rd day of August, 2010, by the following votes:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

Duane Picanco, Mayor

Caryn Jackson, Deputy City Clerk