

SERVICE AGREEMENT FOR AIRPORT CANOPY REPLACEMENT

Contract No. 656

THIS **Airport Canopy Replacement Service Agreement** (this "Agreement") is entered into by and between the City of Corpus Christi, a Texas home-rule municipal corporation ("City"), acting by and through its City Manager or his designee ("City Manager"), and, Shade Structures, Inc., doing business as USA Shade & Fabric Structures ("Contractor"), of Huntersville, North Carolina, is effective for all purposes upon execution by the City Manager.

WHEREAS, Contractor has proposed a turnkey fabric, hardware cables, and brackets replacement of the airport's vehicle protection canopy structure as per **Quote #: WW-001063-CCIA**; and

WHEREAS, the City has determined Contractor to be a vendor qualified by the Texas Local Government Purchasing Cooperative (TLGPC).

NOW, THEREFORE, City and Contractor enter into this Agreement and agree as follows:

- 1. Services.** Contractor shall provide **turnkey fabric, hardware cables, and brackets replacement** in accordance with quote **WW-001063-CCIA** which includes **design and engineering, furnished materials, and warranty** dated 2/16/16 ("Services"). Contractor's proposal to provide the Services is attached to this Agreement and incorporated by reference into this Agreement as Exhibit "A".
- 2. Term.** This Agreement is for a term of seven weeks, commencing on the date signed by the City Manager and continuing until completion of the work and includes a continuing one-year workmanship warranty and a 10-year fabric warranty (with the last two years prorated at 30%).
- 3. Payment.** Payment terms are net 30 days after the goods are provided or services are completed, as required, or a correct invoice is received, whichever is later.
- 4. Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement including deductions for non-performance and authorizations for payment. All of the Contractor's notices and communications regarding this Agreement must be directed to the Contract Administrator, who serves as the **Airport Contract Administrator**, unless indicated otherwise in this Agreement.
- 5. Independent Contractor.** Contractor shall perform the Services as an independent contractor and furnish such Services in its own manner and method, and under no circumstances will any employee, agent, or representative of the Contractor be considered an employee of the City.

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6. **Insurance.** Before Services can begin under this Agreement, the Contractor's insurance company must deliver a Certificate of Insurance as proof of the required insurance coverages to the Contract Administrator. Additionally, the certificate must state that the City's Risk Manager and the Contract Administrator will be given at least thirty (30) days' notice of cancellation, material change in the coverages, or intent not to renew any of the policies. The City must be named as an additional insured. The City Attorney must be given copies of all insurance policies within 15 days of the City Manager's written request to Contractor.

7. **Payment and Performance Bonds.** Before Services can begin under this Agreement, the Contractor's bonding company must deliver a Certificate of Surety Bond as proof of the required payment and performance bonds to the Contract Administrator. A payment bond is necessary if the Agreement is in excess of \$25,000 and a performance bond is necessary if the Agreement is in excess of \$100,000. Both the payment and performance bonds must be in the amount of the Agreement. If the Agreement increases at any time during the project, then the bonds must be amended to reflect the increase.

8. **Assignment.** No assignment of this Agreement or of any right or interest in this Agreement held by the Contractor is effective unless the City Manager first gives written consent to such assignment. The performance of this Agreement by the Contractor is the essence of this Agreement, and the City's right to withhold consent to such assignment is within the sole discretion of the City Manager on any ground whatsoever.

9. **Fiscal Year.** All parties recognize that the continuation of any contract after the close of any fiscal year of the City (the City's fiscal year ends each September 30th) is subject to budget approval and appropriations providing for such contract item as expenditure in the fiscal budget. The City does not represent that a budget item for this Agreement will be actually adopted, as that determination is within the sole discretion of the City Council at the time of adoption of each fiscal budget.

10. **Waiver.** No waiver by either party of any breach of any term or condition of this Agreement waives any subsequent breach of the same.

11. **Compliance with Laws.** Contractor shall comply with all applicable federal, State, and local laws, rules, and regulations in the performance of this Agreement. This Agreement is subject to all applicable federal, state and local laws. All duties of the parties must be performed in Corpus Christi, Texas. The applicable law for any legal disputes arising out of this Agreement is the law of Texas, and the forum and venue for such disputes is the appropriate State or federal court in Nueces County, Texas.

12. **Subcontractors.** The Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the Contract Administrator. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the

Contractor. All requirements set forth as part of this Agreement, including the insurance requirements, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the Services.

13. **Amendments.** This Agreement may be amended only in writing and signed by persons authorized to execute the same by both parties.

14. **Termination.**

A. The City Manager may terminate this Agreement for Contractor's failure to perform the Services specified in this Agreement. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period stated in the notice, the City may terminate this Agreement immediately thereafter. Failure to keep all insurance policies in force for the entire term of this Agreement is grounds for termination.

B. Alternatively, the City may terminate this Agreement without cause upon 20 days' advance written notice to the Contractor. However, the City may terminate this Agreement upon 24 hours' advance written notice to the Contractor for the Contractor's failure to pay any required taxes or to provide proof of payment of taxes as set out in this Agreement. The Contractor may terminate this Agreement upon 90 days' advance written notice to the City.

15. **Taxes.** The Contractor covenants to pay all applicable federal and State payroll taxes, Medicare taxes, FICA taxes, unemployment taxes, and all other taxes in accordance with Circular E "Employer's Tax Guide", Publication 15, as it may be amended. Upon request, the City Manager shall be provided proof of payment of taxes within 15 days of such request.

16. **Notice.** Notice must be given by personal delivery, facsimile (fax), or by certified mail, postage prepaid and return receipt requested, and is deemed received on the date hand-delivered or faxed, with proof of accepted transmission, and on the third day after deposit in the U.S. mail if sent by certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attention: Airport Department Contract Administrator
P.O. Box 9277
Corpus Christi, TX 78469-9277
1000 International Drive
Corpus Christi, TX 78406
Fax: (361) 826-4533

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IF TO CONTRACTOR:

USA Shade & Fabric Structures

Attn: Wade White

Mailing Address: 8505 Chancellor Row

City, State, ZIP: Dallas, TX 75247

Physical Address (if different than above)

City, State, ZIP

Fax: (214) 905-9514

17. **Severability.** Each provision of this Agreement is severable and if, for any reason, any provision or any part thereof is determined to be invalid and contrary to any applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

18. **INDEMNIFICATION.** CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS ("INDEMNITEES") FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE ON ACCOUNT OF DEATH, PERSONAL INJURIES, PROPERTY LOSS OR DAMAGE OR ANY OTHER KIND OF LOSS OR DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS' FEES AND EXPERT WITNESS FEES WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT REGARDLESS OF WHETHER THE INJURIES, DEATH, OR DAMAGES ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTORY NEGLIGENCE OF INDEMNITEES BUT NOT IF BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR ENTITY. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL REASONABLY SATISFACTORY TO INDEMNITEES, AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY SAID LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SURVIVE THE EXPIRATION OR EARLIER TERMINATION OF THIS AGREEMENT.

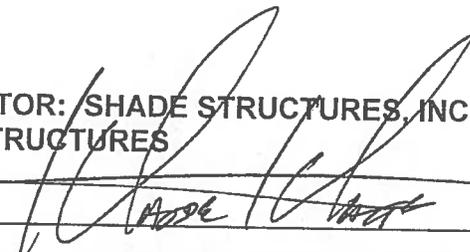
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19. **Certificate of Interested Parties.** Contractor agrees to comply with Texas Government Code section 2252.908 and complete Form 1295 "Certificate of Interested Parties" as part of this Agreement.

(SIGNATURE PAGE FOLLOWS)

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CONTRACTOR: SHADE STRUCTURES, INC., doing business as USA SHADE & FABRIC STRUCTURES

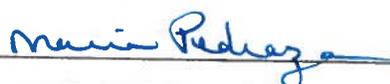
Signature: 

Printed Name: WADE WHITE

Title: Senior Vice President

Date: 2/25/16

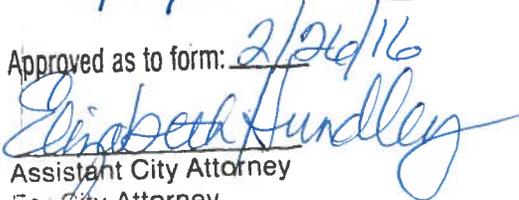
CITY OF CORPUS CHRISTI:

Signature: 

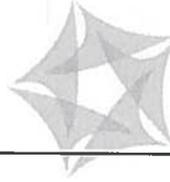
Printed Name: Maria Pedraza

Title: Procurement manager

Date: 2/26/16

Approved as to form: 2/26/16

Assistant City Attorney
For City Attorney

Attached and Incorporated by Reference:
Exhibit A: QUOTE #: WW-001063-CCIA



BUYBOARD# - 423-13

February 16, 2016

QUOTE #: WW-001063-CCIA

Mr. Gary Williams
Corpus Christi International Airport
1000 International Drive
Corpus Christi, TX 78406

PROJECT DESCRIPTION

Shade Structures, Inc. d/b/a USA SHADE & Fabric Structures is pleased to offer the following quote for the covered parking fabric replacement at the Corpus Christi International Airport. We will also include fabric attachment improvements, as detailed below.

Turnkey/Complete Fabric Replacement:	\$174,000.00
<ul style="list-style-type: none"> - includes patterning & fabrication of approx. 75,000 ft² of HailShield Ultra (eXtreme32) fabric and side panels in Royal Blue - includes new galvanized hardware and tension cables - includes fabrication, powder-coating and replacement of fifty (50) steel fabric-attachment brackets - includes all shipping/delivery costs 	
Performance Bond:	\$3,132.00

TOTAL:	\$177,132.00

PROJECT TIMELINE

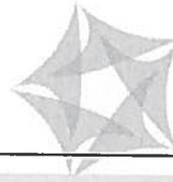
1. Once we receive a purchase order, a site survey will be conducted within 2 weeks.
2. After the site survey, patterning and fabrication will be performed over the following 4 weeks.
3. After fabrication, installation will be performed/completed over the following 3~4 weeks.

PAYMENT TERMS

For this project, terms are Net 30. Payment should be made in the name of our legal entity, Shade Structures, Inc., d/b/a USA SHADE & Fabric Structures.

Client Signature: *Marin Pedraza*

Date: 02/26/2016

**WARRANTY**

1. One (1) year workmanship warranty and fabric manufacturer's standard pass-thru warranty on shade fabric and hardware only. *Because of surety requirements, any performance bond that may be required will cover only the first year of the warranty. The warranty will be a separate document between USA SHADE & Fabric Structures and the Owner. Upon completion of work, USA SHADE will execute the warranty as outlined below.*
2. **Fabric:** From the date of substantial completion, HDPE fabrics carry an eight (8) year warranty with an additional two (2) years pro-rated at 30%. The warranty protects against failure from significant fading, deterioration, breakdown, mildew, heat, cold, or discoloration. Should the fabric need to be replaced under warranty, USA SHADE will sew and ship a new fabric at no charge.
3. This warranty shall be void if damage to the shade fabric is caused by contact with chemicals, misuse, vandalism, any Act of God (i.e. hurricane, etc.), including but not limited to, ice, snow or wind in excess of the applicable building code.
4. Our structures are designed to eliminate friction between the rafters and the fabric. The warranty will be voided if any modification or attachment is made to the steel structure. The fabric will wear and/or tear should any object be placed between the steel and fabric, voiding the warranty.
5. **Thread:** USA SHADE utilizes GORE® TENARA® sewing thread, which includes the manufacturer's warranty. This warranty does not cover damage from fire, cuts, vandalism, misuse, or any Act of God (i.e. hurricane, etc.), including but not limited to ice, snow or wind in excess of the applicable building code. Labor for the removal, re-attachment, and/or freight of fabrics with damage caused by thread will only be covered for a period of 3 years from the date of substantial completion.

ADDITIONAL COMMENTS

1. Any changes or services outside this form of agreement may affect the price, scope of work and schedule.
2. Any deviations from the products/services outlined in this quote without the mutual consent of both Shade Structures, Inc. and the City of Corpus Christi will be subject to a Change Request/Change Order. Change orders will be invoiced, as required.
3. Payment will be made in U.S. Dollars at the time of payment.

Sincerely,

Wade White
Senior Vice President
972.523.6197