



John R. Bugbee
Chief Procurement Officer

Town of Franklin

PURCHASING OFFICE
355 East Central St., Room 206
Franklin, MA 02038

AGREEMENT

This contract is made this 4th day of June, 2019, by and between the Town of Franklin a Municipal Corporation, duly organized under the laws of the Commonwealth of Massachusetts and having a usual place of business at the Municipal Building, 355 East Central St. in said Franklin, MA 02038 herein referred to as the "Town" and Premier Fence LLC, with a usual place of business at 41 Ledin Dr., Avon, MA 02322 referred to as "Contractor."

WITNESSED:

Whereas, the Town utilized a sealed bid process to solicit work assisting the Town of Franklin with on-call new fence / guard rail supply, installation, repairs, and maintenance for town / schools in the Town of Franklin, work hereinafter referred to as "Program"; and

Whereas, the Contractor submitted a bid for fence / guard rail supply / maintenance activities as identified and priced out on the bid form submitted to the Town of Franklin in response to the solicitation to perform the "on-call new fence / guard rail supply, installation, repairs, and maintenance for town / school," work required for the Program, and the Town has decided to award the contract therefore to the Contractor.

NOW, THEREFORE, the Town and the Contractor agree as follows:

1. Contract Documents. The Contract Documents consist of this Three-Year Agreement and the bid documentation titled "Bid Form" (Attachment A), in its entirety, submitted to the Town of Franklin on Thursday, May 23, 2019 as part of Premier Fence, LLC response to Franklin's solicitation for bids. The contract documents constitute the entire Agreement between the parties concerning the services and all are as fully a part of this Agreement as if attached hereto. In the event of conflicting provisions, the language of this Agreement shall govern provided that if the conflict relates to quantity or quality of goods or services, the greater quantity or higher quality specified shall be required.
2. Goods/ Services. The Contractor shall furnish all product and services related to the Program in accordance with the bid specifications provided in the attached bid documents (Attachment A).

3. Performance of Work. Performance of Work. If applicable, the Contractor shall furnish all equipment, staffing and materials to accomplish the Program in strict conformity with all applicable Federal, State, and local laws, each of which is incorporated by reference and shall be responsible for obtaining all necessary approvals/permits as required for the performance of the Program.
4. Warranties. The contractor guarantees that the goods sold are merchantable; that they are fit for the purpose for which they are being purchased; that they are of uniform quality and consistency and absent from any latent defects and that they are in conformity with any sample, which may have been presented to the Town. The contractor warrants that all work will be performed in a good and workmanlike manner and in strict conformity with any sample, which may have been presented to the Town. The Contractor warrants that all work will be performed in a good and workmanlike manner and in strict conformity with the contract documents. The contractor shall replace, repair, or make good, without cost to the Town, any defects or faults arising within one (1) year after date of Town's acceptance of articles furnished hereunder (acceptance not to be unreasonably delayed) resulting from imperfect or defective work done or materials furnished by contractor.
5. Payment for Work. The Town shall pay the Contractor based on the bid sheet proposal submitted to the Town of Franklin on 5.23.2019 (Attachment A) in the amounts identified on the bid form. If applicable by law, invoices accompanied by copies of the weekly-certified payroll records shall be submitted for payment by the Contractor to Town on a monthly basis. The Town shall make payments on the basis of the work completed. The Town shall make payments within thirty (30) days after its receipt. Contractor acknowledges that Town's payment obligations for future fiscal years are subject to local legislature's annual appropriation of funding.
6. Indemnification of the Town. The Town's liability hereunder shall be limited to the amounts due the Contractor for services actually rendered. The Contractor shall defend, indemnify and hold harmless the Town, its officers, boards, agents and employees to maximum extent permitted by law from any liability loss, damage, cost, charge, or expense resulting from any employees or third party contractor or suppliers claim for payment for wages, labor, materials, goods or services rendered to Contractor or from any claim for injury to person or property, which may be made as a result of any act, omission or default on the part of the Contractor, or any of its agents or employees and will pay promptly on demand all costs and expenses of the investigation thereof, including attorney's fees and expenses. If any such claim is made, the Town may retain out of any payments, then or thereafter due to the Contractor a sufficient amount to protect the Town against such claims, costs and expenses.
7. Contractor's Standard of Care. In providing services under this three (3) year agreement, the Contractor will endeavor to perform in a manner consistent with that degree of care and skill ordinarily exercised by members of the fencing supply / maintenance profession currently practicing under similar circumstances. Upon notice to the Contractor and by mutual agreement between the parties, the Contractor will, without additional compensation, correct those services not meeting such a standard.

8. Contractor's Personnel. The Contractor shall utilize only its employees and shall not utilize any third-party contractors without prior written approval of the Town.
9. Insurance. The Contractor shall provide a Certificate of Insurance showing evidence of General Liability, and Automobile Liability with a minimum of \$2,000,000, aggregate, each and, in case of General Liability, naming the Town of Franklin as an additional insured for this Project, as well as Worker's Compensation per Statute.
10. Independent Contractor. The Contractor is an independent contractor and is not an agent or employee of the Town and is not authorized to act on behalf of the Town. The Town will not withhold Federal, State or payroll taxes of any kind, on behalf of the Contractor or the employees of the Contractor. The Contractor is not eligible for, and shall not participate in, any employee pension, health or other fringe benefit plan of the Town.
11. Successors and Assigns. This Agreement is binding upon the parties hereto, their successors, assigns and legal representatives. Neither the Town nor the Contractor shall assign or transfer any interest in the Agreement without the written consent of the other.
12. Inspection and Reports. The Town shall have the right at any time to inspect the records of the Contractor relative to the services provided to the Town pursuant to this Agreement. This shall include the right to enter upon any property owned or occupied by the Contractor, whether situated within or beyond the limits of the Town. Upon request the Contractor shall immediately furnish to the Town any and all written reports relative to such services arising out of its operations under this Contract during and/or after the termination of the contract.
13. Termination.
 - a. For Cause - The Town shall have the right to terminate this Agreement if (i) the Contractor's neglects or fails to perform or observe any of its obligations hereunder and a cure is not effected by the Contractor within seven (7) days next following its receipt of a termination notice issued by the Town, (ii) if an order is entered against the Contractor approving a petition for an arrangement, liquidation, dissolution or similar relief relating to bankruptcy or insolvency and such order remains unvacated for thirty (30) days; or (iii) immediately if the Contractor shall file a voluntary petition in bankruptcy or any petition or answer seeking any arrangement, liquidation or dissolution relating to bankruptcy, insolvency or other relief for debtors or shall seek or consent or acquiesce in appointment of any trustee, receiver or liquidation of any of the Contractor's property.

The Town shall pay all reasonable and supportable costs incurred prior to termination, which payment shall not exceed the value of services provided.
 - b. For Convenience - The Town may terminate this Agreement at any time for any reason upon submitting to the Contractor thirty (30) days prior a written notice of its intention to terminate. Upon receipt of such notice, the Contractor shall immediately cease to incur expenses pursuant to this Agreement unless otherwise directed in the Town's termination notice. The Contractor shall

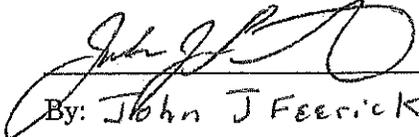
promptly notify the Town of costs incurred to date of termination and the Town shall pay all such reasonable and supportable costs which payment shall not exceed the unpaid balance due on this Agreement.

- c. Return of Property - Upon termination, the Contractor shall immediately return to the Town, without limitation, all documents and items of any nature whatever, supplied to Contractor by the Town or developed by the Contractor in accordance with this Agreement.

14. **Notice.** Any and all notices, or other communications required or permitted under this Contract, shall be in writing and delivered by hand or mailed postage prepaid, return receipt requested, be registered or certified mail or by other reputable delivery service, to the parties at the address set forth on Page 1 or furnished from time to time in writing hereafter by one party to the other party. Any such notice or correspondence shall be deemed given when so delivered by hand, if so mailed, when deposited with the U.S. Postal Service or, if sent by private overnight or other delivery service.
15. **Severability.** If any term of this Contract or application thereof shall to any extent be held invalid, illegal or unenforceable by the court of competent jurisdiction, legality, and enforceability of the remaining terms and conditions of the Contract shall not be deemed affected thereby unless one or both parties would be substantially or materially prejudiced.
16. **Governing Law.** The performance of this Contract shall be governed, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts. Claims and Disputes and Resolution Procedure, Claims, Disputes, or other matters in question with the Town and Contractor or any other party claiming rights under this agreement relating to or arising from the Project, the Work, or interpretation of any terms of the Contract or Contract documents shall be resolved only by a civil action commenced in the Commonwealth of Massachusetts in either Superior Court Department, Norfolk Court, or the District Court Department, Wrentham Division, of Massachusetts Trial Court; in the alternative, private arbitration or mediation may be employed if the parties mutually agree in writing to do so.
17. **Entire Agreement.** This Contract, including all documents incorporated herein by reference, constitutes the entire integrated agreement between the parties with respect to the matters described. This Contract supersedes all prior agreements; negotiations, either written or oral and it shall not be modified or amended except by a written document executed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this day and year first above written.

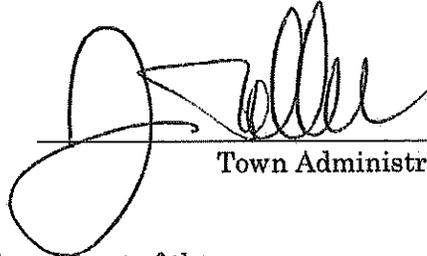
Premier Fence , LLC


By: John J Ferrick
Title: Member

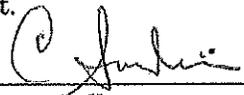
Approved as to Form: _____

Town of Franklin, MA


Town Attorney


Town Administrator

I certify that an appropriation is available in the amount of the Contract.


Town Comptroller

**TOWN OF FRANKLIN
 BID FORM
 FENCING, GATES AND GUARDRAIL INSTALLATION AND REPAIRS**

<u>ITEM</u>	<u>DESCRIPTION</u>	<u>UNIT BID</u>
	Labor – Fence Erector	
	1.2 man Monday-Friday for maintenance/repairs \$ <u>70</u>	Hourly Rate per man for a total \$ <u>140</u>

2. Pricing for: Fence pricing all inclusive with labor, footings etc:

Supply /Installation for new 4 FT galvanized steel	29.75	per LF
Supply /Installation for new 4 FT vinyl fabric 6 gauge core	32	per LF
Supply /Installation for new 4 FT vinyl fabric 9 gauge core	30	per LF
Supply /Installation for new 5 FT galvanized steel	30	per LF
Supply /Installation for new 5 FT vinyl fabric 6 gauge core	32	per LF
Supply /Installation for new 5 FT vinyl fabric 9 gauge core	31	per LF
Supply /Installation for new 6 FT galvanized steel	33	per LF
Supply /Installation for new 6 FT vinyl fabric 6 gauge core	34	per LF
Supply /Installation for new 6 FT vinyl fabric 9 gauge core	34	per LF
Supply /Installation for new 8 FT galvanized steel	34	per LF
Supply /Installation for new 8 FT vinyl fabric 6 gauge core	38	per LF
Supply /Installation for new 8 FT vinyl fabric 9 gauge core	36	per LF
Supply /Installation for new 10 FT galvanized steel	40	per LF
Supply /Installation for new 10 FT vinyl fabric 6 gauge core	48	per LF
Supply /Installation for new 10 FT vinyl fabric 9 gauge core	44	per LF
Supply /Installation for new vinyl privacy slats	20	per LF

Subtotal Fencing \$ 545.75

Gates – pricing all-inclusive with labor, footings etc.:

Supply /Installation for new 4 FT galvanized steel	99	per LF
Supply /Installation for new 4 FT fabric 6 gauge core	104	per LF
Supply /Installation for new 4 FT fabric 9 gauge core	102	per LF
Supply /Installation for new 5 FT galvanized steel	110	per LF
Supply /Installation for new 5 FT fabric 6 gauge core	116	per LF
Supply /Installation for new 5 FT fabric 9 gauge core	104	per LF
Supply /Installation for new 6 FT galvanized steel	120	per LF
Supply /Installation for new 6 FT fabric 6 gauge core	116	per LF
Supply /Installation for new 6 FT fabric 9 gauge core	124	per LF

Supply /Installation for new 8 FT galvanized steel	<u>124</u>	per LF
Supply /Installation for new 8 FT fabric 6 gauge core	<u>130</u>	per LF
Supply /Installation for new 8 FT fabric 9 gauge core	<u>128</u>	per LF

Supply /Installation for new 10 FT galvanized steel	<u>145</u>	per LF
Supply /Installation for new 10 FT fabric 6 gauge core	<u>160</u>	per LF
Supply /Installation for new 10 FT fabric 9 gauge core	<u>152</u>	per LF

Subtotal Gates:\$ 1834

3. GUARDRAIL

Supply/Installation for new Highway Guardrail (Corten Steel W-Beam Single faced Wood posts) MHD 622.11 Straight	<u>28</u>	per LF
---	-----------	--------

Supply/Installation for new Highway Guardrail (Corten Steel W-Beam Single Faced Wood posts) MHD 623.11 Curved	<u>32</u>	per LF
---	-----------	--------

Supply/Installation for new Highway Guardrail (Corten Steel W-Beam Single Faced Wood posts) MHD 622.51 Buried End	<u>950</u>	Each
---	------------	------

Supply/Installation for new Highway Guardrail (Corten Steel W-Beam) MHD 627.11 Terminal End	<u>100</u>	Each
---	------------	------

Supply/Installation for new Highway Guardrail (Demountable Reflectorized Delineators) MHD 833.5	<u>6</u>	Each
---	----------	------

Supply/Installation for new Highway Guardrail (Type Ss Steel W-Beam Single Faced Wood Posts) MHD 620.1 Straight	<u>28</u>	per LF
---	-----------	--------

Supply/Installation for new Highway Guardrail (Type Ss Steel W-Beam Single Faced Wood Posts) MHD 620.3 Curved	<u>29.50</u>	per LF
---	--------------	--------

Supply/Installation for new Highway Guardrail (Type Ss Steel W-Beam Single Faced Wood Posts) MHD 620.4 Buried End	<u>900</u>	Each
---	------------	------

Supply/Installation for new Highway Guardrail (Type Ss Steel W-Beam) MHD 620.5 Terminal End	<u>100</u>	Each
---	------------	------

Supply/Installation for new Highway Guardrail (Single Wood Guardrail Straight 4"x10" Rails with Wood Posts 6"x8"x6")	<u>28</u>	per LF
--	-----------	--------

Supply/Installation for new Highway Guardrail (Single Wood Guardrail Radius 4"x10" Rails with Wood Posts 6"x8"x6")	<u>30</u>	per LF
--	-----------	--------

Supply/Installation for new Highway Guardrail (Double Wood Guardrail Straight 4"x10" Rails with Wood Posts 6"x8"x7")	<u>36</u>	per LF
--	-----------	--------

Supply/Installation for new Highway Guardrail (Double Wood Guardrail Radius 4"x10" Rails with Wood Posts 6"x8"x7")	<u>40</u>	per LF
--	-----------	--------

Remove and Dispose of Guardrail	6	per LF
Supply/Installation for new Highway Guardrail (Double Wood Guardrail 4"x10" Rails with Steel Posts)	32	per LF
Supply/Installation for new Highway Guardrail (Single Wood Guardrail 4"x10" Rails with Steel Posts)	32	per LF
Supply/Installation for new Highway Guardrail Set Steel Posts into Concrete	85	Each
Supply/Installation for new Highway Guardrail Delineation	30	Each
Hand Dug holes due to underground utilities	85	Each

Subtotal Guardrail: \$ 2583.50

Total Price Fence/Gates/Guardrail: \$ 4963.25

Written Total

- | | | | |
|----|--|--------------|-------------|
| 4. | A signed certificate of non-collusion is included hereto: | <u>Y</u> Yes | ___ No |
| 5. | A signed certificate of state tax compliance | <u>Y</u> Yes | ___ No |
| 6. | Acceptance of response time for repairs-48 hours range | ___ Yes | <u>N</u> No |
| 7. | Accept change in wage rates for second year | <u>Y</u> Yes | ___ No |
| 8. | Accept scheduling the work within 2 weeks of authorization | <u>Y</u> Yes | ___ No |

9. Quality Requirement:

- A no response or a failure to respond to the following Quality Requirements *may* result in a rejection of your bid. Circle Yes or No for the following criteria.

Bidder has five (5) years experience in the supply & repair of fencing in MA. Y YES ___ NO

• Reference Form

Bidder Premier Fence LLC IFB Title: Fencing Supply/Installation

Bidder must provide references for all contracts performed within the past five (5) years of similar size and scope in Massachusetts:

Contact See Attached
 Address _____ City, State _____
 Telephone Number _____
 Description and date(s) of project: _____
 General Contractor: _____

See Attached References

The undersigned hereby certifies that he is able to furnish labor that can work in harmony with all other elements of labor employed or to be employed on the work; that all employees to be employed at the