

Securing Your Future
402A W. Palm Valley Blvd., Suite #181
Round Rock, Texas 78664
PH: 512.709.8467 FAX: 512.310.8307
www.BarrierFence.com
Member – Better Business Bureau

Williamson County Sheriff's Dept

Date: 06-20-2022

Customer: Williamson County Sherriff Dept
Nathan Pearl
[REDACTED]
npearl@wilco.org

Project: Emergency Fence Repair

Bid Details: Fence Proposal for Barrier Fence LLC to Furnish and Install Below Detailed Line Items.

Fence Replacement:

80' - 6' Tall +1 Fence commercial grade
80' - Demo Existing Fence

TOTAL: \$8,400.00

80' - TxDot Style Guard Rail
80' - Demo Existing Guard Rail

TOTAL: \$3,900.00

TOTAL: \$12,300.00

Project Inclusions:

1. 1-Year Warranty on Material
2. 1-year warranty on workmanship against defects
3. Labor and machinery as needed
4. Hotel as needed
5. Staking of fence line
6. All Applicable Insurances
7. Payments Terms: Net30
8. Pricing Valid for 15 Days from Above Date


Project Exclusions:

1. Labor and Material Tax
2. Surveying
3. Utility Scanning if required
4. Grounding of fence, gates, and operators
5. Core drilling
6. Bonding
7. Engineered Drawings
8. All Grading and clearing of Fence Line
9. All Electrical Wiring, boxes, and associated work

QUALIFICATIONS AND LIMITATIONS

- A. The terms and conditions on page 2 of this Proposal are an essential part of this Proposal and are expressly incorporated herein for all purposes. This Proposal is submitted to **Williamson County**, (referred to herein as "Customer"). It may not be assigned or transferred for the benefit of any other person or entity without Barrier's express written consent.
- B. Notwithstanding anything in Customer's bid documents, terms and conditions, contracts or agreements with third parties, or any other documents, acceptance of this Proposal constitutes acceptance of these clarifications, qualifications and limitations, each of which shall be binding on Customer.
- C. This Proposal is made on the condition that it may be accepted by Customer only by notice to Barrier that Customer wishes to accept Barrier's Proposal, either by its signature below or by verbal or written authorization otherwise communicated to Barrier. This Proposal is valid for thirty (30) calendar days, after which it shall be considered void and revoked.
- D. Any work performed by Barrier prior to acceptance and execution of this Proposal shall be paid for and governed by the pricing and qualifications set out in this Proposal, and for those purposes this Proposal supersedes and replaces any prior oral or written estimates and/or agreements and/or negotiations between the parties.
- E. Pricing supplied in this Proposal is a total "package" price based upon the entire scope of work presented by Client. It is not subject to division or partial acceptance in any way. Where unit prices have been used, those unit prices are likewise not subject to individual acceptance, division or recalculation.
- F. Upon issuance of additional information or drawings, Barrier reserves the right to review any such information and revise its pricing.
- G. Pricing is based on current labor rates in the area for qualified craftsmen. If, at the discretion of Barrier, a raise in the pay scale at any time during the project is necessary in order to maintain a qualified labor force, the additional cost (plus burden) shall be a reimbursable cost, invoiced monthly.
- H. Where the price of materials, equipment, fuel, or energy increases significantly at any time during the project through no fault of Barrier, all cost resulting from such price increases shall be equitably adjusted by change order.
- I. Customer shall ensure that i) no overhead obstruction (e.g., without limitation, trees, poles, power lines, telephone lines, etc.) shall interfere with Barrier's ability to carry out its work, and ii) no surface or subsurface obstruction or differing site condition (e.g., without limitation, floors slabs, rubble, buried objects, etc.) shall interfere with Barrier's ability to carry out its work.
- J. Payment terms are thirty (30) days maximum, monthly invoicing with no retainage withheld.
- K. This Proposal expressly excludes: i) taxes on sales and materials; ii) all grounding of fence; iii) all electrical; iv) all access control; v) all tree clearing; and vi) all bonding.

By affixing its signature below, Customer represents its acceptance of this Proposal and agreement and consent to all terms, conditions, qualifications, and exclusions set forth herein or in the attached Terms & Conditions:

By:  SALES
Name: _____ Title: _____

By: _____
Name: _____ Title: _____

Date: 6-21-2022

Date: _____

Thank you,

Dwayne Drury
Barrier Fence LLC - Securing Your Future
402A W. Palm Valley Blvd. Suite #181
Round Rock, Texas 78664
Cell: 512.516-1455
Ph: 512.709.8467
Fax: 512.310.8307
dwayne@BarrierFence.com
www.BarrierFence.com

PO#: _____

TERMS AND CONDITIONS

1. **Entire Agreement.** This Proposal (alternatively referred to in these Terms and Conditions as the "Agreement") constitutes the entire agreement between the parties with respect to the subject matter herein. NO ALTERATIONS, CHANGES, OR ADDITIONS SHALL BE MADE TO THIS AGREEMENT WITHOUT SUBCONTRACTOR'S EXPRESS APPROVAL IN WRITING.
2. **Insurance Limits.** Barrier shall provide and maintain insurance coverage consistent with the Certificate of Insurance attached hereto as Exhibit "A."
3. **Release and Waiver.** Customer hereby releases Barrier from any and all claims or causes of action whatsoever which Customer might now or hereafter possess resulting in or from or in any way connected with any loss covered by insurance, whether required herein or not. **THE FOREGOING RELEASE AND WAIVER APPLY EVEN IF THE LOSS OR DAMAGE IS CAUSED IN WHOLE OR IN PART BY THE FAULT OR NEGLIGENCE OF SUBCONTRACTOR.**
4. **Compensation.** As consideration of Barrier's performance of the Work, Customer shall timely and faithfully pay to Barrier the Total Base Bid Amount reflected on page 1 of the Proposal (the "Contract Sum").
5. **Payment Procedure.** Barrier shall submit monthly invoices for Work completed and/or material stored. Customer shall pay Barrier in accordance with the terms of this Agreement, but in no event later than thirty (30) days after Customer's receipt of each invoice.
6. **Customer's Failure to Pay.** Customer's obligation to make timely payments of amounts due as set forth herein is a material term of this Agreement. Should Customer fail to timely pay Barrier as set forth herein, Barrier may, in addition to any other remedies herein or at law, after ten (10) days' notice, stop or suspend its Work until payment for all outstanding sums is received, all associated costs being charged to Customer. In the event of stoppage or suspension of Work due to Customer's nonpayment, Barrier shall be entitled to an extension of time and reimbursement for any demobilization and/or remobilization costs.
7. **Time of Performance.** The time limits or delivery and installation dates set forth in the Agreement are estimates only. Barrier makes no guarantee as to the time required to complete the Work, and Customer shall not be entitled to any damages or other compensation for delay, including without limitation liquidated damages, regardless of cause.
8. **Change Orders.** Barrier shall not be required to perform additional or changed work absent an agreed and executed change order. Provided, however, and notwithstanding anything herein to the contrary, in the event Customer issues a verbal/unwritten directive or instruction to Barrier for the completion of additional or changed work, and to the extent Barrier performs such work based upon Customer's direction despite the lack of an executed change order, Barrier shall be entitled to equitable adjustment of the Contract Sum and an extension of time for performance of the Work.
9. **Limited Warranty.** For a period of one (1) year, Barrier warrants the materials and equipment incorporated in Barrier's Work shall be of the quality and grade required or permitted by this Agreement and the Work shall be performed in a good and workmanlike manner. The warranty obligations expressed herein are exclusive and in lieu of all other warranties, whether express or implied. ALL IMPLIED WARRANTIES ARE HEREBY DISCLAIMED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
10. **Variations and Tolerances.** Equipment and materials installed as part of the Work shall be subject to tolerances and variations consistent with those generally accepted and customary in the industry and regular practices concerning dimension, weight, composition, mechanical properties and quality.
11. **Waiver of Consequential Damages.** IN NO EVENT SHALL SUBCONTRACTOR BE LIABLE FOR ANY LOSS OF OR DAMAGE TO REVENUES, PROFITS OR GOODWILL OR FOR OTHER SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING DAMAGES ARISING FROM DELAY, REGARDLESS OF CAUSE, ARISING OUT OF OR RELATED IN ANY WAY TO THIS AGREEMENT, EVEN IF CAUSED BY SUBCONTRACTOR'S BREACH OF CONTRACT OR BREACH OF WARRANTY, AND EVEN IF SUBCONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. "Consequential Damages" as used herein includes without limitation damages incurred for rental expenses, loss of financing, lost profits, loss of use, loss of business or reputation, lost opportunity, and lost productivity.
12. **Limitation of Damages.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, THE MAXIMUM AGGREGATE AMOUNT OF MONEY DAMAGES FOR WHICH SUBCONTRACTOR MAY BE LIABLE UNDER THIS AGREEMENT, RESULTING FROM ANY CAUSE WHATSOEVER, SHALL BE LIMITED TO THE LESSER OF (1) THE REASONABLE COST TO CORRECT THE DEFECTS IN THE WORK; OR (2) THE TOTAL AMOUNTS ACTUALLY PAID TO SUBCONTRACTOR UNDER THIS AGREEMENT. ANY LEGAL ACTION FOR BREACH OF THIS CONTRACT INCLUDING, WITHOUT LIMITATION, THE FOREGOING WARRANTY, MUST BE COMMENCED WITHIN TWENTY-FIVE (25) MONTHS AFTER THE EXPIRATION OF THE WARRANTY PERIOD ESTABLISHED IN PARAGRAPH 5.1, ABOVE. THIS LIMITATION SHALL NOT BE EXTENDED BY THE LATENT NATURE OF ANY DEFECT OR OTHER BREACH.
13. **No Responsibility for Design.** The Parties expressly acknowledge and agree Barrier's work involves the procurement and installation of materials and/or equipment in accordance with plans or designs furnished by others over whom Barrier has no control. Accordingly, Barrier shall have no liability or obligation with respect to design other than the limited obligation to ensure installation of its Work substantially conforms to the design(s) provided by Customer or others with whom Customer has contracted. Barrier expressly disclaims liability for any errors, omissions, inconsistencies, or other defects in such design(s).
14. **Customer-Provided Information.** Barrier shall be entitled to rely upon any and all information supplied by or on behalf of Customer.
15. **No Liability for Site Conditions.** Barrier has made no investigation or inspection of the site upon which the Work is to be performed and makes no representations with respect thereto.
16. **Governing Law.** This Agreement shall be governed by the laws of the State of Texas. Venue for any formal dispute resolution, including but not limited to litigation, shall be exclusively in Williamson County, Texas. Any dispute hereunder shall at Barrier's sole election be submitted to binding arbitration with venue in Williamson County, Texas in accordance with the Construction Industry Rules of the American Arbitration Association. Any judgment upon the award may be entered by any court having jurisdiction and this clause shall be enforceable pursuant to the Federal Arbitration Act. The prevailing party shall be entitled to recover its reasonable attorneys' fees, expenses, and costs, as determined by the arbitrator.
17. **Severability.** If any term or provision of this Agreement is found to be unenforceable, for any reason, in litigation, arbitration, or other forum for binding dispute resolution, that term or provision shall be deemed to be deleted from this Agreement and all remaining terms and provision are to remain in full force and effect.
18. **No Third-Party Beneficiaries.** The only parties to this Agreement are Customer and Barrier. There are no third-party beneficiaries.
19. **Notices.** All notices required to be given hereunder shall be given in writing and shall be delivered by certified mail, postage prepaid, return receipt requested, to the addresses of the parties reflected on page 1 of the Proposal.
20. **Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
21. **Captions.** The paragraph headings and captions and arrangement of paragraphs and concepts are intended for the convenience of the parties, and do not in any way modify, alter, limit or amend the terms and conditions of this Agreement. Words of singular tense shall be deemed to include the plural and vice versa unless specifically stated otherwise or required in the context where used.
22. **No Waiver of Sovereign Immunity or Powers:** Nothing in this agreement will be deemed to constitute a waiver of sovereign immunity or powers of Customer, the Williamson County Commissioners Court, or the Williamson County Judge.
23. **Texas Law Applicable to Indemnification:** All indemnifications or limitations of liability or statutes of limitations shall be to the extent authorized under Texas law and shall follow Texas law without modifying the Customer's rights.
24. **Termination for Convenience:** This agreement may be terminated at any time at the option of either party, without future or prospective liability for performance upon giving ten (10) days written notice thereof. In the event of termination, Customer will only be liable for its pro rata share of services rendered and goods actually received.
25. **Texas Prompt Payment Act Compliance:** Payment for goods and services shall be governed by Chapter 2251 of the Texas Government Code. An invoice shall be deemed overdue the 31st day after the later of (1) the date Customer receives the goods under the contract; (2) the date the performance of the service under the contract is completed; or (3) the date the Williamson County Auditor receives an invoice for the goods or services. Interest charges for any overdue payments shall be paid by Customer in accordance with Texas Government Code Section 2251.025. More specifically, the rate of interest that shall accrue on a late payment is the rate in effect on September 1 of Customer's fiscal year in which the payment becomes due. The said rate in effect on September 1 shall be equal to the sum of one percent (1%); and (2) the prime rate published in the Wall Street Journal on the first day of July of the preceding fiscal year that does not fall on a Saturday or Sunday.
26. **Mediation:** The parties agree to use mediation for dispute resolution prior to and formal legal action being taken on this Contract.
27. **Venue and Governing Law:** Venue of this contract shall be Williamson County, Texas, and the law of the State of Texas shall govern.