

Introduced by: City Manager Nathan Mai-Lombardo

**AN ORDINANCE OF THE CITY OF BERKELEY, MISSOURI, AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH NATIONWIDE FIXTURE INSTALLATIONS (NFI) FOR THE INSTALLATION OF THE NFC FITNESS COURT © (THE CITY COUNCIL HEREBY FIND AND DECLARE THAT AN EMERGENCY EXISTS WHICH REQUIRES THE IMMEDIATE PASSAGE OF THIS ORDINANCE FOR THE PRESERVATION OF THE WELFARE OF THE CITIZENS OF THE CITY OF BERKELEY.)**

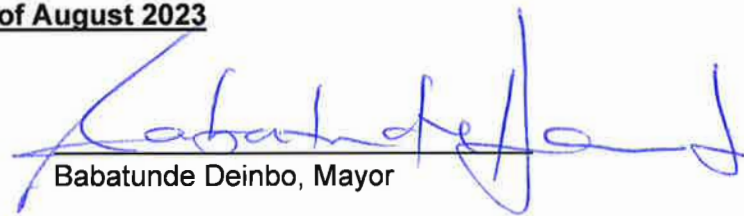
**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF BERKELEY, MISSOURI, AS FOLLOWS:**

- Section 1.** The City Manager is hereby authorized to and execute an agreement with Nationwide Fixture Installations (NFI) for the National Fitness Campaign Fitness Court ©. NFI is an approved installation vendor of the National Fitness Campaign.
- Section 2.** The agreement is attached and hereby incorporated herein and made a part of this ordinance, as if fully set out herein.
- Section 3.** This Ordinance shall be in full force and effect from and after its date of passage.
- Section 4.** The City Council hereby find and declare that an emergency exists which requires the immediate passage of this ordinance for the preservation of the welfare of the citizens of the City of Berkeley.

1st Reading this 21<sup>st</sup> day of August 2023

2nd Reading this 21<sup>st</sup> day of August 2023

3rd Reading, PASSED and APPROVED, this 21<sup>st</sup> day of August 2023



Babatunde Deinbo, Mayor

ATTEST:



Deanna L. Jones, City Clerk



Approved as to Form:

Donnell Smith, City Attorney

Final Roll Call:

Councilwoman Verges	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>
Councilwoman Williams	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>
Councilman Hoskins	Aye <input type="checkbox"/>	Nay <input checked="" type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>
Councilwoman Anthony	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>
Councilman Hindeleh	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>
Councilwoman-at-Large Crawford-Graham	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>
Mayor Deinbo	Aye <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>	Absent <input type="checkbox"/>	Abstain <input type="checkbox"/>



**Installation Proposal for Site Partner Project  
St Louis, MO.**

City of Berkely Missouri  
8425 Airport Road  
Berkeley, MO. 63134

August 11, 2023

**Proposal #:** 230759.2

Thank you for allowing Nationwide Fixture Installations (NFI) the opportunity to provide a proposal for the installation of Fitness Court© provided by the National Fitness Campaign.

Please review the details of this proposal to ensure we have accurately described the scope of work (SOW), and that we have met all your expectations.

**Scope of Work:**

Installation of Fitness Court© provided by the National Fitness Campaign in accordance with the National Fitness Campaign Installation Instructions and associated manufacturer's guidelines. This proposal represents the full scope of work.

**Installation Documentation & Guidelines:**

- NFC provided Concrete Slab Drawings
- The Fitness Court® Tile overview
- The Fitness Court® Specifications
- The Fitness Court® Installation Kit overview
- The Fitness Court® Installation and Maintenance Manual
- The Fitness Court® Vinyl Artwork Alignment Guide

**Anticipated Schedule:**

1. Anticipated Project Start Date: 9/25/23
2. Project End Date: 9/30/23

Installation of the Fitness Court® will not be scheduled for installation any sooner than 28 days after concrete is poured unless approved Spray-Lock product is used allowing installation to occur as soon as 14 days after concrete is poured / application of the Spray-Lock treatment. Installation of the Fitness Court® will only be scheduled if the conditions of the concrete and atmospheric conditions meet

product manufacturers' requirements during use of product(s) including the 24-hour period following use of product(s). Schedule will be coordinated with Customer 14 days or more prior to installation. Schedule may also be affected by requirements for curing if using PIP flooring.

**Assumptions:**

1. All work to be completed with Non-Union Labor.
2. Proposal is based on one single mobilization and a continuous work schedule with no downtime.
3. NFI will be responsible for completing punch list items related to our original SOW based on materials available during our mobilization. NFI will NOT be responsible for new SOW items, punch list items added after our demobilization, item(s) requiring materials not available or part of our SOW, or finish touch-ups or repairs due to manufacturing defects or damage caused by other trades.
4. In the event we must return for reasons outside the control of NFI, additional charges may apply.
5. This proposal is based on NFI providing a standard required COI. It does not reflect OCIP or CCIP job requirements, unless disclosed by Customer and stated otherwise in our Inclusions.
6. NFI reserves the right to review and revise said proposal upon receipt of an updated Scope of work.

**Inclusions:**

Installation of the following items:

- Body Weight Training Wall
- Anchor Bolts
- Sports Tile Flooring
- ADA Tile Border (Where applicable)
- All Equipment Elements
- Floor Markings
- Wall Graphics Installation according to 3M product requirements and the NFC Graphics Installation Guide.
- Signed Certificate of Completed Installation
- Close Out Documents filed with NFC for Fitness Court® Warranty
- Owner Site Walk Thru upon completion
- Completion of Fitness Court Installation in 4 Days or less (Weather permitting)
- Completion of Graphics installation within 1 week of completion of Fitness Court

**Installation**

- Travel & Logistics
- Installation Project Management & Scheduling
- Pre- Installation Kickoff Meeting
- Insurance Certificate

**Exclusions:**

1. Repairs required due to damage caused by shipping, mishandling by others, or onsite damage by others.
2. Call backs due to site issues outside the control of NFI.
3. Punch list item(s) not related to original SOW, item(s) added after our demobilization, item(s) where necessary materials are not available, touch-up or repairs to SOW due to manufacturing defects or damages by other trades.
4. Any required permits required for construction (unless specifically noted in Inclusions).
5. Any taxes or other fees (unless specifically noted in Inclusions).

**Provided by Customer:**

- Procurement / supply of The Fitness Court®, Fitness Court® Tile, and Fitness Court® Install Kit.
- Site Prep
- Concrete slab built & cured, according to provided slab drawing specifications
- Construction fencing which will remain in place until all graphics are installed.
- Traffic and Pedestrian Control
- Restroom Facilities
- Storage of Fitness Court©
- Safe environmentally controlled storage of graphics until time of installation
- 6' Step Ladder
- Charging capabilities for cordless tools
- Exact location and orientation of the Fitness Court® relative to the concrete footing.
- Parking adjacent to installation site for one vehicle
- Shade Structure
- Construction Lighting (as required)
- Pour in Place (PIP) Flooring (If chosen)

Concrete Slab Installation Requirements: Slab must be installed per NFC Installation Manual including dimensions, slope, and surface preparations. Surfaces of concrete must be clean, dry, and flat, free of voids, projections, loose materials, oil, grease, sealers, and all other surface contaminants. Slab to be swept and cleaned prior to the arrival of the installation crew. "Concrete substrate should NOT be smooth and reflective; it must have a concrete surface profile of CSP 1-3 (similar to a light broomed finish). Alkaline surfaces need to be coated with primer prior to installation of tiles. Application of Spray-Lock treatment must be done in accordance with manufacturers recommendations.

**Provided by Customer as coordinated with installation team:**

- Site Security
- Delivery and staging of Fitness Court© to site prior to arrival of installation crews
- Debris and trash removal & recycling

**Qualifications:**

1. All work to be completed with Non-Union labor.
2. If job schedule changes or deviates from schedule noted above, NFI reserve the right to adjust our pricing accordingly.
3. To avoid expediting fees NFI must receive a written approval of this proposal twenty-one (21) days prior to the start of the installation.
4. Missing or damaged inventory items will be ordered as soon as they are identified. Customer will be contacted and is expected to deliver priority overnight or as necessary in order that there are no delays in meeting critical completion dates. Any missing materials that arrive after our completion date may require a return trip that will be billed at Time & Material (T&M) including all labor, remobilization costs, and any materials required for installation of missing materials.
5. Proposal is based on the site being "Installation Ready" prior to the arrival of the installation crew. Permanent or adequate power required for operating all power tools and equipment must be operating and available to our installation crew.

**Execution of this Agreement:**

- Signed Proposal, Customer issued Purchase Order, or other acceptable agreement by all parties.

- 50% Down Payment required prior to deployment of installation team
- Final payment invoice will be processed following installation and customer sign off on both the Fitness Court installation and the Graphics installation.

**Price:**

Installation of Fitness Court: \$25,000.00

Studio : \$7500

Total: \$32,500.00

**Expiration Date** – Unless the Customer accepts this Proposal in writing within thirty (30) days of the date listed above, this Proposal will expire.

**Pre-lien Notice** - Please be advised that the state in which the Project is located may require subcontractors to issue pre-lien notifications and/or filings. NFI reserves the option to complete all statutorily required notifications and filings to preserve its right to lien the Project in the future, if necessary.

**COVID-19** - The impact on travel, manpower, job site access, job location, and other unforeseen issues is ongoing and will continue to evolve. As a result, NFI reserves the right to modify the contract terms contained herein to ensure our ability to provide the services on the day / time requested and seek additional time and compensation if it or the Project are disrupted due to circumstances beyond NFI's control.

**Payment Terms:**

NFI will submit invoice upon completion of Fitness Court installation. Payment terms are net 10 Days from date of invoice. A signature below and a hard copy purchase order is required a minimum of 21 days in advance of the scheduled installation date. Changes made less than 14 days of the agreed upon installation date may require this proposal to be modified.

NFI terms and conditions will apply unless specifically countermanded in writing prior to the project start.

Thank you again for the opportunity to provide you with an install proposal for this project. Be assured that everyone on our team will do our part to exceed your expectations. If accepted, please provide your signature below:

**Approval Signature:**

Nathan Mai-Lombardo

Authorized Name



Authorized Signature

8/23/23

Date

City Manager

Position/Title

Sincerely,

Michael Haddon

## Terms and Conditions

---

1. Proposal is for previously described scope of work only; price does not include any manufacturing or fabricating of any components. Our proposal includes all travel expenses and per diems, tools, and miscellaneous supplies to complete the work. Proposal does not include for any specialty hardware, fasteners, or material handling equipment unless specifically indicated within this proposal.
2. All work to be completed with Non-Union labor. If at any time union labor is required, current pricing will no longer be valid. Proposal will need to be repriced with applicable union labor rates.
3. The proposal price and time are based on the representation and warranty, hereby made by Customer to NFI, that all products shall be delivered in accordance with the delivery schedules set forth in this proposal, that deliveries will be complete, and organized in a logical sequential order; that all fixtures are reasonably capable of being installed with little or no adjustment, reworking or refinishing; that the project space is in a condition of construction that is capable of installing fixtures free from interference by the work of the owner, general contractor and/or other trades if applicable.
4. Proposal is based on the site having adequate lighting and electrical service.
5. Price is based on unloading material as adjacent to jobsite as is possible, with clear access from the unload point into the space.
6. Should unloading of materials and goods be required off premise, additional work required will be executed on a Time and Material basis for all applicable labor, facilities, equipment, and additional transportation and shipping charges.
7. Proposal includes for removal of trade related debris to a dumpster provided by others.
8. Pricing is based on one crew mobilization, unless otherwise specifically noted within this proposal.
9. Customer will process Change Order requests within a timely manner such that NFI's operations at each project site are not impacted. In the event that Customer directs NFI to proceed with installation of fixtures or other work that: 1) is outside the scope of this proposal; 2) was the subject of late, disorganized, defective or partial deliveries; 3) occurs before the space is ready for fixture installation; 4) occurs while other trades are working in the space; 5) is impacted by means that are outside of NFI's reasonable control, then NFI shall be entitled to an equitable adjustment of the Proposal Amount and/or Proposal Time for the impacted project or projects.
10. Back charges will not be accepted without prior written approval from NFI Project Manager.
11. Mutual Consequential Damages Waiver. Notwithstanding any other provisions in this proposal to the contrary, Customer and NFI mutually waive all claims for consequential, incidental, and exemplary damages that each may have against the other.
12. Notwithstanding any other provisions in this proposal to the contrary, NFI shall bear no responsibility for the condition of fixtures and materials provided by others, or for blocking, electrical, flooring, mechanical, plumbing and/or any sub-trade work installed by others.
13. Mutual Subrogation Waiver. Customer and NFI mutually waive all claims for damage to any property to the extent that such property is covered by builder's risk or other first-party property insurance maintained by anyone.
14. Dispute Resolution. The first step in the resolution of any dispute between NFI and Customer will be a meeting to discuss and attempt to resolve the dispute. If both parties agree, the dispute may be submitted to mediation with any service offering mediation services acceptable to both NFI and Customer.
15. Any claim arising out of or relating to this proposal, which is not resolved by a meeting, as required in the preceding paragraph, shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the agreement. A demand for arbitration shall be made in writing, delivered to the other party to this agreement, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all claims then known to that party on which arbitration is permitted to be demanded.
16. Either party, at its sole discretion, may consolidate an arbitration conducted under this proposal with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation; (2) the arbitrations to be consolidated substantially involve common questions of law or fact; and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).
17. Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of a claim not described in the written consent.
18. This agreement to arbitrate and any other written agreement to arbitrate with an additional person or persons referred to herein shall be specifically enforceable under applicable law in any court having jurisdiction thereof. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof.

19. Fire, explosion, theft, lightning, windstorm, earthquake, flood, hurricane, tornado, storm, labor disputes not caused by the Contractor, area-wide labor disputes impacting the Work, riot, civil commotion, act of war, act of foreign or domestic terrorism, malicious mischief, epidemic, pandemic (including but not limited to the COVID-19 coronavirus pandemic), act of God, or any other event not listed above that is both reasonably unforeseeable and beyond the Parties' reasonable control shall be a "Force Majeure Event." A Party to this Agreement shall not be held responsible for or liable to the other for any unavoidable loss, damage, or delay to the extent that such loss damage or delay is caused by a Force Majeure Event. Should a Force Majeure Event occur, the Parties shall promptly notify one another of the event. The Parties shall use all commercially reasonable efforts to overcome and mitigate all resulting losses, damages, or delays and to resume as soon as practical the normal pursuit and schedule of the Work. Should a Force Majeure Event result in increased labor or material costs or unavailability of same, or other loss, damage or delay to the Project, the Project schedule and price shall be equitably adjusted to reflect the actual time and cost impact caused by the Force Majeure Event.