

**RESOLUTION NO. 20 , 2024**

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT WITH PRODIGY BUILDING SOLUTIONS, LLC FOR CONSTRUCTION SERVICES FOR RECREATIONAL FACILITIES IN WELLER PARK**

**WHEREAS**, the Administration has recommended to City Council that various Pickleball Courts and supporting facilities should be upgraded in Weller Park; and

**WHEREAS**, the purchase of goods or services in excess of \$75,000 requires Council approval and competitive bidding unless an exception to competitive bidding is recognized; and

**WHEREAS**, Ohio law allows an exception to competitive bidding if the purchase is through a joint purchasing program operated by or through a national or state association of political subdivisions in which the Municipal entity is a member; and

**WHEREAS**, the City of Montgomery is a member of The Ohio Purchasing Council, a Regional Council of Governments entity which offers a cooperative purchasing consortium for state and local governments which meets this statutory exception; and

**WHEREAS**, The Ohio Purchasing Council offers construction services for recreation facilities through Prodigy Building Solutions, LLC, an entity familiar with the design and construction needs for Pickleball facilities specific to the City's needs for the Weller Park facilities; and

**WHEREAS**, the Administration has determined that separate bids for these construction services likely would exceed the price available through Prodigy Building Solutions, LLC and likely unreasonably delay the construction of these recreation facilities; and

**WHEREAS,** the Administration has negotiated with Prodigy Building Solutions, LLC and reached an agreement in principle for the construction of Pickleball courts at Weller Park consistent with the Administration's projected budget.


**NOW THEREFORE, BE IT RESOLVED** by the Council of the City of Montgomery, Hamilton County, Ohio, that:

**SECTION 1.** The City Manager is hereby authorized to acquire through The Ohio Purchasing Council and Prodigy Building Solutions, LLC design and construction services in an amount not to exceed \$590,631.00 for the construction of recreation Pickleball facilities in Weller Park, which amount includes a \$10,000.00 contingency.

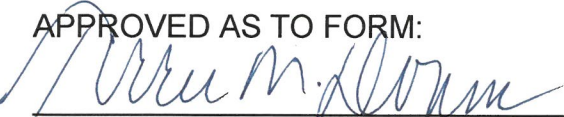
**SECTION 2.** The City Manager is hereby authorized to execute a contract for such services and to execute such additional documentation as may be required to complete this construction work.

**SECTION 3.** This Resolution shall be in full force and effect from and after its passage.

PASSED: August 7, 2024

ATTEST:   
Connie Gaylor, Clerk of Council

  
Ronald G. Messer, Mayor

APPROVED AS TO FORM:  
  
Terrence M. Donnellon, Law Director

*PROPRIETARY AND CONFIDENTIAL PROPERTY OF Prodigy Building Solutions, LLC  
DISTRIBUTION TO OTHER THAN THE NAMED RECIPIENT IS PROHIBITED*

**Prepared For:**  
Mr. Gary Heitkamp  
City of Montgomery  
7315 Cornell Road  
Montgomery, OH 45242

**Date:** July 31, 2024  
**Job Name:** Weller Park Pickleball Courts  
**Delivery Terms:** Freight Allowed and Prepaid - F.O.B. Jobsite

**Procurement Contract:** The Ohio Purchasing Council (TOP-C) Unit  
Price Contracts 2021-06-001b and 2021-06-002b

## PROPOSAL SCOPE OF WORK

### Project Address

Weller Park  
10021 Weller Road  
Montgomery, OH 45249

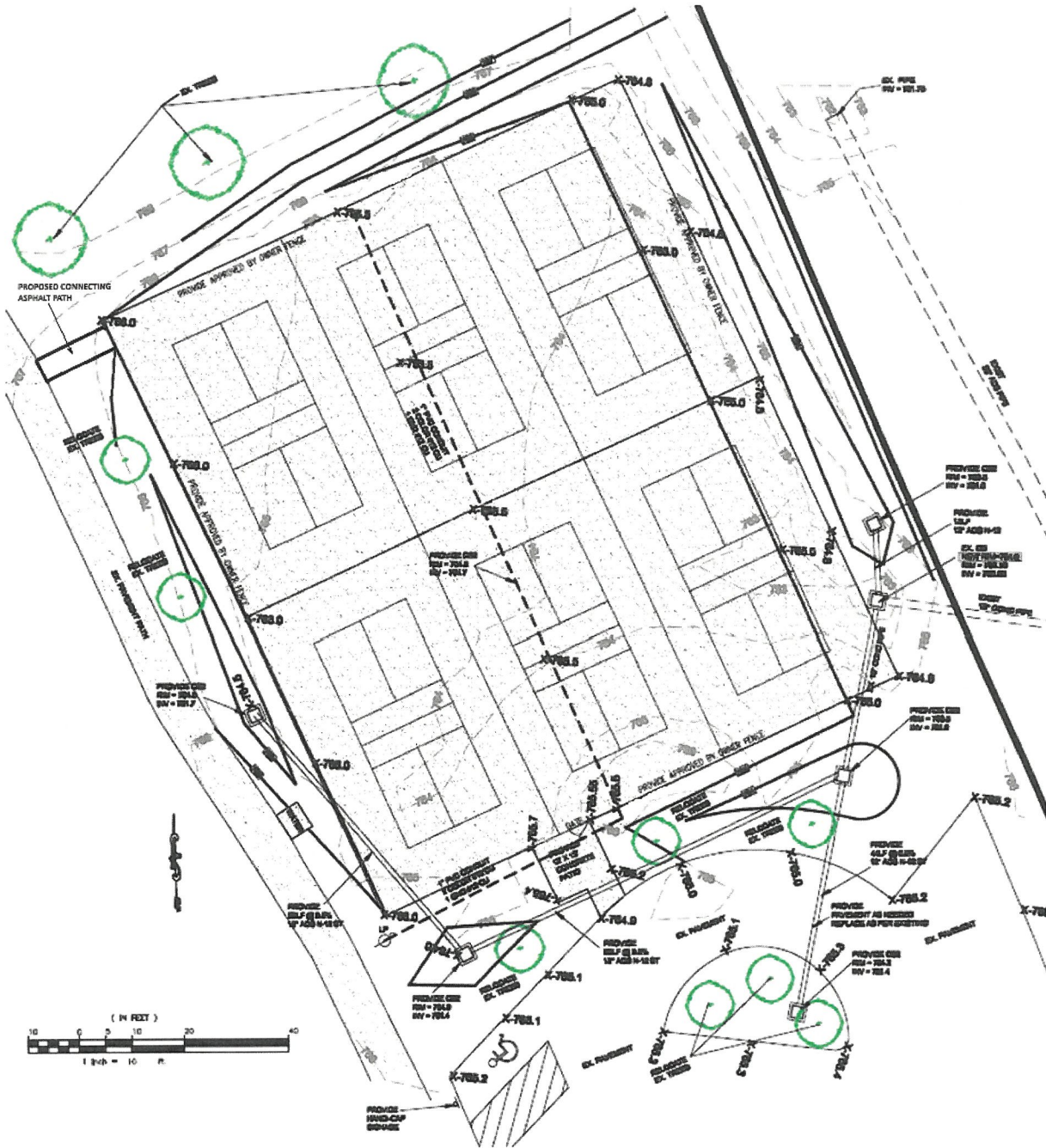
### Scope Overview

Create 6 new pickleball courts in the location of the existing basketball and pickleball area.

### Scope Details

1. Locate all utilities in the work site with assistance from Owner and a private utility locator
2. Pulverize and break up the existing asphalt courts to reuse as subgrade material
3. Sawcut the existing asphalt parking lot and pulverize asphalt for subgrade material
  - a. This will allow for a new turnaround lane as shown on site plan below
4. Relocate approximately 6 existing trees to new owner approved location
5. Remove 1 catch basin and all associated pipes
6. Install 5 catch basins and storm conduits in locations indicated on the site plan below
7. Course and fine grade the site after installing storm fixtures
  - a. Excess spoils will be removed from site
  - b. Necessary additional suitable fill subgrade and compaction is included
8. Furnish and install an average of 6 compacted inches of #304 gravel compacted in multiple lifts over areas to be paved
9. Furnish and install 3 compacted inches of #301 base course asphalt in 1 lift in areas to be paved
10. Apply trackless tack coat at a rate of 0.05 gallons per square yard over base course asphalt
11. Furnish and install 2 compacted inches of #447 surface course asphalt in 1 lift in areas to be paved
12. Apply trackless tack coat at a rate of 0.05 gallons per square yard over asphalt parking stalls not recently resurfaced (approximately 8 stalls and 2 drive lanes), then furnish and install 2 compacted inches of #447 surface course asphalt in 1 lift
  - a. Restripe this disturbed parking area according to Owner approved plan
13. After the manufacturers recommended cure time, furnish and install 3 coats of asphalt resurfacer on the new courts
14. Furnish and install 2 coats of colored paint on the new courts with 2 standard colors (to be approved by Owner) with white lines
15. Provide and install 10-foot galvanized black vinyl dipped fencing with schedule 40 piping and top, middle and bottom rails, 3-inch terminal posts, 2.5-inch line posts set in concrete just outside of the asphalt
  - a. 3 man-gates 36" wide will be included
16. Remove, stockpile, and relocate the existing light pole in the grass island to the new location shown on the site plan
17. Redistribute stockpiled topsoil and hydroseed disturbed area
18. Supply and install 6 above ground pickleball net systems





**Scope Clarifications**

- Hazardous Material identification, abatement and/or removal are excluded from this scope of work
- Payment and Performance Bonds are included
- Prevailing wages are included
- The below pricing does not include sales tax
- Any scope/service not listed is not included
- Rectification of unsuitable subgrade is not included in this proposal



- This proposal is valid for thirty days from the proposal date due to changing material costs – due to a volatile market in material pricing, please verify pricing after five days
This Agreement is subject to Prodigy Building Solutions, LLC Standard Terms and Conditions, attached herein

Payment Terms

The project cost is \$580,631.00 for services described in this Agreement. Customer agrees to pay Prodigy Building Solutions, LLC within 15 days of receipt of invoices. The project will be invoiced as a percentage of project completion, with invoices expected upon material delivery (to crane yard, customer’s site, or temporary storage) and monthly upon installation completed in the previous month.

IN WITNESS WHEREOF, the CUSTOMER and SERVICE PROVIDER have executed these Terms as of the last date written below.

CUSTOMER: City of Montgomery

SERVICE PROVIDER: Prodigy Building Solutions, LLC

Signed: [Signature]

Signed: \_\_\_\_\_

Name: Brian K. Riblet

Name: \_\_\_\_\_

Title: City Manager

Title: \_\_\_\_\_

Date: 8/8/24

Date: \_\_\_\_\_

CERTIFICATE OF AVAILABLE FUNDS
ORC Section 5705.41

The undersigned, Fiscal Officer for the City of Montgomery, located in Hamilton County, Ohio, hereby certifies in connection with the preceding Agreement that the amount required to meet the obligations under the contract, obligation, or expenditure for the services described in the Agreement, has been lawfully appropriated for the purpose, and is in the treasury or in process of collection to the credit of an appropriate fund, free from any outstanding obligation or encumbrance, subject to annual appropriations.

[Signature]
Signed (Fiscal Officer) Maura Gray

8/8/24
Date



## PRODIGY BUILDING SOLUTIONS, LLC STANDARD TERMS AND CONDITIONS

The following Standard Terms and Conditions ("Terms") shall apply to all of the situations in which Prodigy Building Solutions, LLC ("Service Provider") is selling equipment or providing services to City of Montgomery ("Customer"). Collectively, Service Provider and Customer are referred as "Parties" and individually as "Party."

1. Customer retains Service Provider to provide the Services and Equipment as set forth in **Proposal Scope of Work** above and as set forth by the Parties in any mutually agreed upon statements of work.
2. Payment is due from Customer as set forth in **Payment Terms** above. Conditional credit may be extended by Service Provider, in its sole discretion, to Customer upon commercially reasonable proof of creditworthiness. It is Customer's responsibility to provide any applicable sales tax exemption certificates to Service Provider.
3. Customer agrees to provide reasonable access to the worksite. The Parties shall establish a mutually agreed upon installation schedule after Equipment is ordered and lead time is provided to Service Provider by its suppliers.
4. Service Provider is not responsible for the testing of, documentation of or removal of any hazardous or toxic materials from the worksite.
5. Service Provider may suspend or terminate its performance if Customer fails to perform under the Terms and Customer does not cure such failure to Service Provider's satisfaction within a period of 10 days after receipt of written notice from Service Provider.
6. With regard to any equipment, parts, hardware or accessories purchased or licensed by Service Provider from third-party manufacturers or licensors, Service Provider will assign all the original manufacturer's or licensor's warranties, to the extent permitted by law, to Customer. Customer shall be solely responsible for complying with the applicable terms and conditions, restrictions and limitations, usage instructions and safety warnings related to such items. Service Provider will not permit or cause the work to be performed in such a way that will invalidate any manufacturer's warranty.
7. Customer makes the following representations, warranties and covenants, as applicable: (1) Customer is an Ohio political subdivision duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has the full power and authority to execute and deliver the Terms and to perform its obligations under these Terms; (2) Customer will give clear briefings and ensure that all the facts, information, intellectual property, materials, and documents provided by Customer are accurate, timely, non-infringing and in good condition; (3) Customer is solely responsible for any modifications to the Equipment and Services, or integration thereof with other equipment, products and systems made by any party other than Service Provider and (4) Customer will ensure that its employees and agents utilize all guards, mechanical, electronic and electrical safety systems, warning signs and other safety procedures and devices that are provided with, or are recommended to be used in conjunction with, the Equipment and will not disconnect, disassemble or use the Equipment without the same.
8. Customer is solely responsible for any modifications to or the integration of the Equipment and the Services with other equipment, products, and systems made by any party other than Service Provider.
9. Customer hereby assigns the PJM Interconnection LLC capacity rights of any demand savings created from the energy efficiency project to Contractor, to be offered into the PJM Reliability Pricing Model Capacity Market directly or by assigning to another PJM member.
10. To assist in Prodigy Building Solutions, LLC's tax compliance, upon final acceptance of the Scope of Work, the Contracting Officer or Authorized Representative of the owner of the building agrees to execute any documents related to Section 179D of the Internal Revenue Code. Customer hereby acknowledges Prodigy Building Solutions, LLC is the primary designer for the Project at a Government Owned building. Prodigy Building Solutions, LLC intends on taking a tax deduction, not to exceed \$5 per square foot, for work done in this Agreement, and both parties agree no additional signoffs will be required. Service Provider will be responsible for preparing all documents, all accompanying documentation and the contents therein. Prodigy Building Solutions, LLC will be designated the sole Section 179D beneficiary. Upon substantial completion of the project, Customer agrees to examine the allocation documents related to the Project and an authorized Customer representative will declare the project is completed.
11. **EXCEPT AS OTHERWISE EXPRESSLY STATED HEREIN, SERVICE PROVIDER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ALL OTHER WARRANTIES. THE WARRANTIES CONTAINED HEREIN ARE EXCLUSIVE AND GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES PROVIDED IN THE UNIFORM COMMERCIAL CODE AND INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF PRODUCT LIABILITY, INTELLECTUAL PROPERTY INFRINGEMENT, MERCHANTABILITY, QUALITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. No guarantee**

has been made by the Service Provider regarding the performance of the installed equipment, including, but not limited to, energy savings or equipment life. Notwithstanding the foregoing, Service Provider warrants that the work will be performed with the ordinary care and skill exercised in the industry.

12. **UNDER NO CIRCUMSTANCES SHALL SERVICE PROVIDER BE LIABLE FOR ANY PUNITIVE, SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OR LOSSES INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST REVENUES, LOSS OF GOODWILL, USE, DATA OR LOST OPPORTUNITIES ARISING UNDER OR IN CONNECTION WITH THE EQUIPMENT AND SERVICES, EVEN IF THE POSSIBILITY OF ANY SUCH DAMAGE OR LOSS IS KNOWN OR APPARENT TO SERVICE PROVIDER. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, SERVICE PROVIDER'S MAXIMUM AGGREGATE LIABILITY ARISING FROM OR RELATED TO THE EQUIPMENT AND SERVICES SHALL NOT EXCEED \$2,000,000 WITH RESPECT TO EQUIPMENT OR SERVICES GIVING RISE TO THE CLAIM.**
13. These Terms set forth the entire agreement of the Parties with respect to the subject matter hereof. Any and all previous agreements and understandings between the Parties regarding the subject matter hereof, whether written or oral, are superseded by these Terms. The Services and the rights, duties and obligations under the Terms may not be assigned by Customer without the prior written consent of Service Provider. These Terms shall inure to the benefit of and be binding upon the parties and their respective successors and authorized assigns. These Terms shall be governed by and interpreted and enforced in accordance with the laws of the State of Ohio, without regard to any principle of conflicts of law which would apply the laws of another jurisdiction. Any legal suit, action or proceeding arising out of or related to the Terms, Equipment, or the Services shall be instituted in the courts of the State of Ohio, in each case, applicable to Hamilton County, and each Party irrevocably submits to the exclusive jurisdiction and venue of such courts in such suit, action or proceedings.
14. The Parties intend that these Terms shall exclusively control the relationship of the parties with respect to the Equipment and Services. In the event of any inconsistency between any quotation, purchase order, acknowledgement, invoice or acceptance form and these Terms, these Terms shall control and shall be binding on the Parties. The Parties hereto have agreed and it is their intent that the battle of the forms section of UCC § 2-207 (O.R.C. § 1302.10) shall not apply.
15. Service Provider shall not be responsible for failure to perform under the Terms or liable to Customer for any loss or damage due to causes beyond its reasonable control including, but not limited to, any of the following events: acts of God, fires, civil disobedience, war, acts of terrorism, riots, strikes, work stoppages, labor disputes, floods, delays caused by the other Party, delays caused by third-parties, changes in laws or other governmental requirements, unforeseeable local conditions, or shortages of labor or materials.
16. Service Provider is an independent Service Provider and is not to be deemed an employee of Customer or to be entitled to any benefits of employment offered by Customer to its employees.