

Memorandum

To: **Jill Lofald**
School Board Chair

Cathy Erickson
CFO/Executive Director of Business Services

From: **David J. Spooner** 
Manager of Facilities

Date: **April 8, 2021**

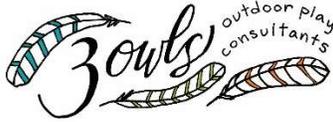
Re: **BID #1292 – Duluth Preschool's Nature Playscape - Laura MacArthur, Myers-Wilkins, and Piedmont Elementary Schools - Terra Bella Landscaping**

Attached please find three (3) copies of the Agreement between **Terra Bella Landscaping** and ISD #709 to provide the scope of work defined in **BID #1292 – Duluth Preschool's Nature Playscape - Laura MacArthur, Myers-Wilkins, and Piedmont Elementary Schools** project. The total cost of this work is not to exceed the sum of \$177,150.00.

Recommendation:

I am recommending that Ms. Jill Lofald, School Board Chair, enter into an agreement with **Terra Bella Landscaping** to perform the work scope as defined in the attached Agreement for a not to exceed amount of \$177,150.00

If you concur, please sign the three (3) copies and return to Facilities Management for processing.



April 2, 2021

To: ISD709 Duluth Public Schools
215 North 1st Ave East
Duluth, MN 55802

Attn: Dave Spooner, Manager of Facilities
Cc: Tony Kelekovich, Supervisor of Purchasing
Sherry Williams, Duluth Preschool & Head Start

Re: Recommendation of Award
Bid #1292
Duluth Preschool's Nature Playscapes

Dear Mr. Spooner,

Upon review of all bids submitted on April 1, 2021 for Bid #1292 Duluth Preschool's Nature Playscapes, it is the recommendation of 3 Owls Outdoor Play Consultants, LLC to award the contract to Bella Terra Landscaping. Their bid was the lowest, qualified, responsible bid and their price includes the furnishing and installing of all nature playscape materials as described in the project documents.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebekah Johnson'.

Rebekah Johnson, RLA
Co-Founder, 3 Owls Outdoor Play Consultants, LLC

AGREEMENT

THIS AGREEMENT, made and entered into this 5th day of April, 2021, by and between Independent School District #709, a public corporation, hereinafter called District, and Terra Bella Landscaping, an independent contractor, hereinafter called Contractor.

THE PURPOSE OF THE AGREEMENT is to set out the terms and conditions whereby Contractor will provide programs or services for the District at the times and locations set forth in this Agreement.

The terms and conditions of this Agreement are as follows:

1. **Dates of Service.** This Agreement shall be deemed to be effective upon full execution of this agreement and all requirements and shall remain in effect until August 27, 2021, unless terminated earlier as provided for herein, or unless and until all obligations set forth in this Agreement have been satisfactorily fulfilled, whichever occurs first.

2. **Performance.** Perform all work as specified in **Bid #1292 Duluth Preschool's Nature Playscapes at Laura MacArthur, Myers-Wilkins, and Piedmont Elementary Schools**. This contract award is for the not to exceed amount of \$177,150.00.

This Contract consists of the following:

1. Printed Memoranda of Agreement and Title Sheet;
2. Contractor's response;
3. Bid #1292 and Bid #1292 Addendum 1;
4. Contractor's Insurance Policy;
5. Payment and Performance Bond;
6. Contractor's Affidavit; and
7. Any other documents identified by District.

3. **Background Check. N/A**

Contractor must provide an executed criminal history consent form and a money order or check payable to the District in an amount equal to the actual cost of conducting a criminal history background check on all of its employees assigned to the program. Contractor is precluded from performance of the contract until the results of the criminal background check(s) are on file.

If Contractor has already completed background checks for their business needs, Contractor stipulates that the background checks are completed, on file, and will be made available for review if the District should request.

Contractor will notify the District of any individual working in our schools with convictions of a gross misdemeanor or felony.

4. **Reimbursement.** In consideration of the performance of Contractor of its obligations pursuant to this Agreement, District hereby agrees to reimburse Contractor for its services and expenses in performing said obligations for the not to exceed amount of \$177,150.00. Contractor is required by Minnesota Statutes, Section 270.66, subd. 3, to provide their Taxpayer Identification Number (TIN) used in the enforcement of Federal and State tax laws. The TIN

will be available to Federal and State tax authorities and State personnel involved in the payment of State obligations. This Agreement will not be approved unless TIN is provided.

5. **Requests for Reimbursement.** The terms of payment under this Agreement are as follows:

- a. Payment shall be made by the District within 30 days of receipt of all required backup documentation and submission of a proper invoice by the Contractor;
- b. Any other terms of payment in the performance of services are incorporated by reference in this Agreement.

6. **Propriety of Expenses.** The fact that the District has reimbursed Contractor for any expense claimed by Contractor shall not preclude District from questioning the propriety of any such item. District reserves the right to offset any overpayment or disallowance of any item or items at any time under this Agreement by reducing future payments to Contractor. This clause shall not be construed to bar any other legal remedies District may have to recover funds expended by Contractor for disallowed costs.

7. **Ownership of Materials.** The District reserves the rights to reproduce the programming in any fashion, or appropriate the contents of the programming, or any portion thereof, to its own use for any and all programs, forms and other materials that Contractor has provided, prepared, or utilized in performance of the terms of this Agreement.

8. **Independent Contractor.** Both the District and Contractor agree that they will act as an independent contractor in the performance of its duties under this Agreement. Nothing contained in this Agreement shall be construed as in any manner creating a relationship of joint venture between the parties, which shall remain independent contractors with respect to all actions performed pursuant to this Agreement.

Accordingly, Contractor shall be responsible for payment of all taxes, including Federal, State, and local taxes, arising out of Contractor's activities in accordance with this Agreement, including by way of illustration, but not limited to, Federal and State income tax, Social Security tax, Unemployment Insurance taxes, workers compensations, and any other taxes or business license fees as required.

9. **Indemnity and defense of the District.** Contractor hereby agrees to defend, indemnify and hold the District harmless from all claims relating to its work pursuant to this Agreement.

In the event that Contractor breaches its obligation to defend, indemnify and hold the District harmless, then in addition to its other damages the District shall be entitled to recover its attorney's fees and costs and disbursements incurred in enforcing this Agreement.

10. **Notices.** All notices to be given by Contractor to District shall be deemed to have been given by depositing the same in writing in the United States Mail: ISD 709, Duluth Public Schools, Attn: David Spooner, 215 North 1st Avenue East, Duluth, MN 55802.

All notices to be given by District to Contractor shall be deemed to have been given by depositing the same in writing in the United States Mail to Bella Terra Landscaping, 3701 Crescent View Ave., Duluth, MN 55804.

11. **Assignment.** Contractor shall not in any way assign or transfer any of its rights, interests or obligations under this Agreement in any way whatsoever without the prior written approval of the District.

12. **Modification or Amendment.** No amendment, change or modification of this Agreement shall be valid unless in writing signed by the parties' hereto.

13. **Governing Laws.** This Agreement, together with all its paragraphs, terms and provisions is made in the State of Minnesota and shall be construed and interpreted in accordance with the laws of the State of Minnesota.

14. **Compliance with Laws.** The Contractor shall comply with all governing laws, rules and regulations, whether federal, state, local or those of the District. Those governing laws include but are not limited to Minnesota Statute 16C.05 (5) (formerly 1998 Minnesota Laws Ch. 386, Art. 1 Section 6) which Statute presently provides that the books, records, documents and accounting procedures and practices of the vendor or other party, that are relevant to the Contractor transaction, are subject to examination by the contracting agency and either the legislative auditor or the state auditor, as appropriate, for a minimum of six years. The other provisions of the Statute also apply.

The Contractor recognizes that, to the extent that competitive vendor requirements apply to this Contract, those requirements apply to the award and performance of this Contract.

The Regulations of the District are incorporated into this Contract by reference and must be complied with whether or not specifically identified in this Contract.

15. **Entire Agreement.** This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof and shall not be changed or otherwise altered except by written agreement of the parties.

16. **Cancellation.** Either party shall have the right to terminate this Agreement, without cause, upon (30) days written notice to the other party as provided for in this Agreement.

17. **Data Practices.** Contractor further understands and agrees that it shall be bound by the Minnesota Government Data Practices Act (Minnesota Statutes 13.03-13.04) with respect to "data on individuals"; as defined in 13.02, subd. 5 of that Statute) which it collects, receives, stores, uses, creates or disseminates pursuant to this Agreement.

18. **Insurance.** Contractor shall not commence work under the contract until they have obtained all the insurance described below and Duluth Public Schools has approved such insurance. Contractor shall maintain such insurance in force and effect throughout the term of the contract.

Contractor is required to maintain and furnish satisfactory evidence of the following insurance policies:

Workers' Compensation Insurance: Contractor must provide Worker's Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota including Coverage B, Employer's Liability.

Commercial General Liability: Contractor is required to maintain insurance protecting it from claims for damages for bodily injury, including sickness or disease, death, and for care and loss of services as well as claims for property damage, including loss of use which may arise from operations under the Contract whether the operations are by the contractor or subcontractor or by anyone directly or indirectly employed under the contract. The District shall be listed as the

certificate holder and shall be named an additional insured under said policy and proof of this insurance shall be provided to the District. This insurance shall be in the amount of at least \$1,500,000 per occurrence.

19. **Bonding.** Contractor shall provide such Payment and Performance Bonds as required.

20. **Representatives of District.** The Contractor shall perform work pursuant to this Agreement pursuant to the request and authority of the following persons:

<u>ISD 709 Employee</u>	<u>Position</u>
Cathy Erickson	CFO/Executive Director of Business Services

The Consultant shall report to the following persons regarding its work pursuant to this Agreement, or the designees:

<u>ISD 709 Employee</u>	<u>Position</u>
David Spooner	Manager of Facilities

21. **Protection of District.** To the extent that work by the Contractor or others on behalf of ISD 709 is to be planned, conducted, supervised or reviewed by the Contractor, the Contractor shall advise ISD 709 if such work:

- a. is not being performed pursuant to the plans and specifications, according to the best practice or in accordance with industry standards;
- b. should be rejected or modified;
- c. should be performed in a different manner and whether other work should be performed;
- d. requires ISD 709 to be advised of any other facts or opinions regarding that work.

In all respects, the Contractor shall represent the interests of ISD 709 and act to protect those interests and endeavor to guard ISD 709 against defects, deficiencies and omissions in the performance of the work.

22. **Negotiation, Mediation and Arbitration.** Any disputes between the parties shall first be negotiated. If the parties are not successful in negotiation, they then shall subject the dispute to mediation. If mediation is not successful, then any disputes between ISD 709 and the Consultant shall be resolved through binding arbitration. The arbitration shall be conducted in the State of Minnesota, and Minnesota law shall apply. Unless otherwise agreed by the parties, the arbitration shall be conducted pursuant to the rules of the American Arbitration Association.

At the option of ISD 709, the arbitration shall include in one consolidated arbitration proceeding, all claims and disputes regarding the Contractor and any architects, contractors, subcontractors, material men and other consultants as may be involved in the dispute. Contractor shall include this paragraph in all its subcontracts dealing with the work of ISD 709.

Following the issuance of a demand for arbitration, any party to the arbitration shall be entitled to use all discovery methods permitted in the Minnesota Rules of Civil Procedures for ISD 709 courts. Once selected, the arbitrator shall hear any discovery disputes regarding discovery unless otherwise agreed by the parties.

23. **Conflict of Interest and Fiduciary Duty:** All contractors doing business with the District agree to follow Policy 307 - Conflicts of Interest and Fiduciary Duty. This policy is located on the District's website.

THE REMAINDER OF THIS PAGE IS LEFT INTENTIONALLY BLANK

AS EVIDENCE OF THEIR ASSENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, set forth above, the parties hereto have caused this Agreement to be executed by their duly authorized officers as of the day and year first above written.

DocuSigned by:

4096000792BC4E7
 Bella Terra Landscaping

SSN/Tax ID Number
 member471084951

4/8/2021

SSN/Tax ID Number Date

DocuSigned by:

F4BB9215A4FF41B
 Program Director

4/8/2021

Date

Please note: All signatures *must* be obtained AND the following *must* be completed by the Program Director before submission to the CFO for review and approval.

This contract is funded by either:

1. The following budget (include full 18 digit code); or
2. will be paid using Student Activity Funds; or
3. is no cost contract (e.g. Memorandum of Understanding).

Please check the appropriate line below:

Check if the contract will be paid using District funds and enter the budget code in the top line below (enter in blank spots following the example).

TBD						

Check if the contract will be paid using Student Activity Funds

Check if the contract is a no-cost contract such as a Memorandum of Understanding

 CFO / Superintendent of Schools / **Board Chair**

 Date

BID RESPONSE FORM

Duluth Preschool's Nature Playscapes
 at Laura MacArthur, Myers-Wilkins, and Piedmont Elementary Schools
 Independent School District No. 709, Duluth, MN

Bid #1292

Thursday, April 1, 2021, 2:00pm

The undersigned, having personally and carefully examined the bidding documents for Duluth Preschool Nature Playscapes for ISD709, Duluth, MN, filed in the office of the Supervisor of Purchasing for the School District, hereby proposes to provide all labor, material, equipment, and services as necessary to complete the work, all in strict accordance with said bidding documents.

Bids submitted shall be valid for forty-five (45) days from date of bid. If their bid is accepted, the undersigned will promptly enter into a contract with ISD709 for the performance of this said bid, all as required by the bidding documents.

The bid will be awarded to the responsible, qualified contractor submitting the low Total Amount of Bid on the Bid Response Form and based on the contractor's ability to fulfill contract and bidding document requirements. ISD709 reserves the right to accept or reject any or all bids.

Site	Cost
Laura MacArthur Eagles Nature Playscape	\$ 82,600.00
Myers-Wilkins Wolves Nature Playscape	\$ 43,200.00
Piedmont Panthers Nature Playscape	\$ 51,350.00

Total Amount for all three sites (if all three sites are awarded)	\$ 177,150.00
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	Check <input checked="" type="checkbox"/> if Received
Addendum No. 1	<input checked="" type="checkbox"/>
Addendum No. 2	<input type="checkbox"/>
Addendum No. 3	<input type="checkbox"/>


 Authorized Representative Signature
Keegan Hartley
 Print Name
Keegan Hartley
 Primary Contact
James Haiskenan 218-576-3842
 Emergency Contact & Phone Number

Bella Terra Landscaping
 Company Name
3701 Crescent View Ave.
 Company Address
218-341-4443
 Primary Contact Phone Number
Keegan.hartley@gmail.com
 Correspondence Email Address

Duluth Preschool's Nature Playscapes

Bid Response Form

Costs for line items below may be used to add or deduct from the project based on project budget. Costs for all items shall include all labor, material, equipment, and services as necessary to provide the item furnished and installed.

#	Item	Unit Cost	Unit	Site
1	Chainlink Fence, with gates	33 ⁰⁰ /	lf	MW, P
2	Wood & Wire Mesh Fence, with gates	50 ⁰⁰ /	lf	LM
3	Sandpit	35 ⁰⁰ /	sf	LM, MW, P
4	Sandpit Perimeter - logs, stumps, tree cookies	32 ⁰⁰ /	lf	LM, MW, P
5	Scramble & Sliding Hill	8,900 /	ea	LM, P
6	Accessible Path	4,600 /	lf	LM, MW, P
7	Challenge Course - Boulders	45 ⁰⁰ /	ea	LM, MW, P
8	Challenge Course - Stumps	70 ⁰⁰ /	ea	LM, MW, P
9	Challenge Course - Logs & Balance Beams	250 ⁰⁰ /	ea	LM, MW, P
10	Challenge Course - Stepping Stones	35 ⁰⁰ /	ea	LM
11	Stump Spiral	2500 ⁰⁰ /	ea	MW
12	Stump Tables	400 ⁰⁰ /	ea	LM, MW, P
13	Stump Seats	100 ⁰⁰ /	ea	LM, MW, P
14	Topsoil	35 ⁰⁰ /	cy	LM, MW, P
15	Turfgrass, sodded	9 ⁰⁰ /	sf	LM, MW, P
16	Turfgrass, seeded	4.50 /	sf	LM, MW, P
17	Mulch	35 ⁰⁰ /	cy	LM, MW, P
18	Engineered Wood Fiber Mulch	35 ⁰⁰ /	cy	LM, MW, P
19	Landscape Edging	3 ⁰⁰ /	lf	LM, MW, P
20	Mascot Silhouette Sign	250 ⁰⁰ /	ea	LM, MW, P
21	Gate Entry Sign	350 ⁰⁰ /	ea	LM, MW, P
22	Storage Box	300 ⁰⁰ /	ea	LM, MW, P
23	Mud Kitchen	650 /	ea	LM, MW, P
24	Art Panel	450 /	ea	LM, MW, P
25	Music Panel	350 /	ea	LM, MW, P
26	Water/Ball Panel	300 /	ea	LM, MW, P
27	Fort Frame	300 /	ea	P
28	Gallery Hooks & Wires	200 /	ea	P
29	Climbing wall mounts	25 /	ea	P
30	Branch Swinger	200 /	ea	P
31	Raised Garden Beds	250 /	ea	P
32	Stage Platform - Piedmont	1700 /	ea	P
33	Picnic Table - adult	500 /	ea	LM, P
34	Picnic Table - child	400 /	ea	LM, P

Duluth Preschool's Nature Playscapes

Bid Response Form

#	Item	Unit Cost /	Unit	Site
35	Stage Platform - Laura MacArthur	2200 /	ea	LM
36	Eagle Perch	750 /	ea	LM
37	Nest	750 /	ea	LM
38	Hillside Net Climber	2200 /	ea	LM
39	Seesaw	650 /	ea	MW
40	Entry Arch	750 /	ea	MW
41	Loose Parts Table	600 /	ea	MW

Botanical Name	Common Name	Size	Cost (ea)
TREES			
Acer rubrum	Red Maple	#10	750.00
Acer saccharum	Sugar Maple	#10	380.00
Amelanchier x grandiflora	Serviceberry 'Autumn Brilliance'	#10	300.00
Betula papyrifera 'Varen'	Paper Birch, clump form	#10	300.00
Picea glauca	White Spruce	#10	320.00
LARGE & MEDIUM SHRUBS			
Cornus sericea 'Isanti'	Red-twig Dogwood	#5	60.00
Hydrangea paniculata 'Limelight'	Limelight Hydrangea	#5	80.00
Euonymus alatus 'Compactus'	Dwarf Winged Burning Bush	#5	80.00
Pinus mugo pumilio	Dwarf Mugo Pine	#5	120.00
Syringa patula 'Miss Kim'	Miss Kim Lilac	#5	90.00
Cotinus coggygria 'Winecraft Black'	Smokebush	#3	50.00
Physocarpus opulifolius	Little Devil Ninebark	#2	40.00
Rhus aromatica 'Gro-Low'	Fragrant Sumac	#3	35.00
Salix purpurea 'Nana'	Dwarf Arctic Willow	#3	35.00
Weigela florida 'My Monet'	Variegated Weigela	#2	30.00
ORNAMENTAL GRASSES and PERENNIALS			
Calamagrostis acutiflora	Feather Reed 'Karl Foerster'	#1	20.00
Sporobolus heterolepis	Prairie Dropseed	4"	15.00
Average cost of #1 perennial		#1	20.00
Average cost of 4" pot perennial		4"	15.00

ISD No. 709
Duluth Public Schools
**Addendum to Standard Form of Agreement Between Owner and Architect-
Contractor**

**Amendments to AIA Document A101-2007 Standard Form of Agreement Between
Owner and Contractor where the basis of payment is a Stipulated Sum**

- 3.3. Add:** “Any liquidated damages provided in the Addendum to AIA Document A201-2007 General Conditions shall apply to this Contract, in addition to any other provisions relating to liquidated damages in any of the other Contract documents. The Addendum to AIA Document A101- 2007 General Conditions is a part of this Contract, and this reference in this Article is made for the convenience of the Contractor in reviewing the Contract documents.”
- 5.1.6.5 Add:** “Unless otherwise specified, the retainage specified in 5.1.6 shall be ten percent (10%).”
- 5.1.8 Add:** “None.”
- 6.2 Add:** “The binding dispute resolution chosen pursuant to this Article is arbitration pursuant to Section 15.4 of the AIA Document A201-2007. Contractor does consent to joinder and consolidation for any arbitration, with any other arbitration involving the Owner or the Architect or other Contractors or subcontractors or other design professionals or manufacturers or material suppliers, and which involve this project.”
- 8.2 Add:** “If it is not otherwise specified in this Paragraph, the applicable rate of interest is six percent (6%) simple interest per year.”
- 8.6 Add:** “This Agreement is subject to the laws of the State of Minnesota as also provided in AIA Document A201-2007 and its Addenda. Any dispute resolution shall be located in the city where the project is located.”
- 9.1.2 Add:** “The Addendum to AIA Document A101-2007, General Conditions of the Contract for Construction, is also a part of the Contract documents.”

VERIFICATION OF FORM OF AIA STANDARD CONTRACT
Contract Between – Contractor's Name and ISD No. 709

The undersigned verifies that the noted Standard AIA Contracts have not been modified from the standard form contract, except as indicated by the amendments shown above and as follows:

- Names and addresses, etc. of parties
- Dollar Amounts
- Times inserted into blanks where blanks exist
- Highlighted, underlined or redlined changes
- Handwritten and initialed changes
- Addenda and Schedules

It is verified that the standard language has not been modified, except in the manner noted above. If changes have been made in the standard language, which are not identified in the manner noted above, the standard language shall govern and the changes shall be void.

The following AIA Forms are hereby verified:

AIA Document A201 - 2007 General Conditions of the Contract for Construction

The undersigned has prepared these contract forms, or has reviewed them, for the purpose of this verification.

Contractor

Signed 

Date 3/30/2021

Name Keegan Hartley

Capacity president

Company Bella Terra Landscape

Address Design Inc., 370 Alderscent
view Avenue

Owner

School Board Chair

ISD No. 709

215 North 1st Ave. East

Duluth, MN 44802

Make claims for loss of use.

RESPONSIBLE CONTRACTOR CERTIFICATE

Applies to all prime contracts in excess of \$50,000.00

A responsible contractor is defined in Minnesota Statutes §16C.285, subdivision 3.

Any prime contractor or subcontractor who does not meet the minimum criteria under Minnesota Statute §16C.285, subdivision 3, or who fails to verify that it meets those criteria, is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project.

A false statement under oath verifying compliance with any of the minimum criteria shall render the prime contractor or subcontractor that makes the false statement ineligible to be awarded a construction contract for the project and may result in termination of a contract awarded to a prime contractor or subcontractor that makes a false statement.

A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause 7.

By signing this statement, I, Keegan Hartley,
(type or print name)
president
(title) certify that I am an owner or officer of the company
and do verify under oath that my company is in compliance with each of the minimum criteria listed in the law.

Bella Terra Landscape Design Inc.
(name of the person, partnership, or corporation submitting this proposal)
3701 Crescent View Avenue Duluth, MN 55804
(business address)

Signed: [Signature]
(bidder or authorized representative) Date: 3/30/2021

ATTACHMENT A

RESPONSIBLE CONTRACTOR AND CERTIFICATION OF COMPLIANCE

Minn. Stat. §16.285, Subd., 7, **IMPLEMENTATION.** any prime contractor or subcontractor that does not meet the minimum criteria in subdivision 3 or fails to verify it meets those criteria is not a responsible contractor and is not eligible to be awarded a construction contract for the project or to perform work on the project.

Minn. Stat. §16.285, Subd. 3. **RESPONSIBLE CONTRACTOR, MINIMUM CRITERIA.** "Responsible contractor" means a contractor that conforms to the responsibility requirements in the solicitation document for its portion of the work on the project and verifies that it meets the following minimum criteria:

1. The Contractor:
 - a. is in compliance with workers' compensation and unemployment insurance requirements;
 - b. is currently registered with the Department of Revenue and the Department of Employment and Economic Development if it has employees;
 - c. has a valid federal tax identification number or a valid Social Security number if an individual; and
 - d. has filed a certificate of authority to transact business in Minnesota with the secretary of state if a foreign corporation or cooperative.
 - e.
2. The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 177.24, 177.25, 177.41 to 177.44, 181.13, 181.14, or 181.722, and has not violated United States Code, title 29, sections 201 to 219, or United States Code, title 40, sections 3141 to 3148. For purposes of this clause, a violation occurs when a contractor or related entity:
 - a. repeatedly fails to pay statutorily required wages or penalties on one or more separate projects for a total underpayment of \$25,000 or more within the three-year period;
 - b. has been issued an order to comply by the commissioner of labor and industry that has become final;
 - c. has been issued at least two determination letters within the three-year period by the Department of Transportation finding an underpayment by the contractor or related entity to its own employees;
 - d. has been found by the commissioner of labor and industry to have repeatedly or willfully violated any of the sections referenced in this clause pursuant to section 177.27;
 - e. has been issued a ruling or findings of underpayment by the administrator of the Wage and Hour Division of the United States Department of Labor that have become final or have been upheld by an administrative law judge or the Administrative Review Board; or
 - f. has been found liable for underpayment of wages or penalties or misrepresenting a construction worker as an independent contractor in an action brought in a court having jurisdiction. Provided that, if the contractor or related entity contests a determination of underpayment by the Department of Transportation in a contested case proceeding, a

Amendments to AIA Document A201 - 2007 General Conditions of the Contract for Construction

- 1.1.2 Add:** “This contract is made subject to all applicable law, statutes, codes, rules and regulations governing the owner and its rights, obligations, limitations and requirements pertaining to this contract and Project.”
- 1.5.1 Add:** “However, the Owner and its agents may use and reproduce such documents for additional work on the subject of the Project and for revision of the original work.”
- 2.2.3 Add:** “If Contractor becomes aware of material inaccuracies or changes in the information provided by the Owner and the Architect, then the Contractor shall notify the Owner of any inaccurate or changed information.”
- 3.2.4 Add at the end of last sentence:** “insofar as the Contractor has given notice of such specific errors, inconsistencies or omissions.”
- 3.4.3 Add:** “These obligations of Contractor also apply to subcontractors and other persons carrying out the work.”
- 3.5 Add:** “Contractor shall assign for the benefit of the Owner, any and all warranties from manufacturers or other entities or persons which may be applicable to equipment or materials or any other property that is a part of the work. This applies to work provided by the Contractor or subcontractors, or others doing the work directly or indirectly under the Contractor.”
- 3.6 Add:** “The Contractor shall endeavor and assure that the Owner receives the benefit of the exemptions of sales taxes or other taxes where the Owner may be entitled to such exemptions.”
- 3.12.10 Add:** “The Contractor agrees that all such professional design services or certifications which the Contractor causes to be provided, shall be for the benefit of the Owner. The Contractor shall be responsible for the adequacy, accuracy and completeness of such services, certifications and approvals performed or provided by such design professionals.”
- 3.18.1 Add:** “The obligation of the Contractor shall be to defend the Owner, as well as to indemnify and hold harmless the owner under this Paragraph, and also insofar as there may be other obligations to indemnify and hold the Owner harmless under the provisions of this Agreement.”
- 4.2.2 Delete portion:** The words “in general” shall be deleted in sentence (1); The words “exhaustive or” shall be deleted in sentence (2).
- 4.2.3 Add:** “However, the Architect shall notify the Owner and the Contractor of any defects or deficiencies in the Work which the architect is aware has not been completed in accordance with the contract documents.”

- 4.2.6 Delete:** The last sentence that the states that the architect has no obligation to the contractor, subcontractors or others doing work.
- 4.2.7 Add:** “If the architect is aware that the Contractor’s submittals do not conform with the plans and specifications and any other contract documents, the architect shall so inform the owner and the Contractor.”
- 9.6.7 Delete:** “shall create any fiduciary liability or tort liability on the part of the Contractor for breach of trust or shall entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this Provision.”
- 9.8.4 Add at the end:** “In the event that, after a Certificate of Substantial Completion has been signed, it is learned that there are defects in the work so that the Owner cannot occupy or utilize the work in full for its intended use, without substantial limitation, then the date of Substantial Completion and Certificate of Substantial Completion shall be amended to reflect the date that the Owner can occupy or utilize the work for its intended use without substantial limitation, after the necessary corrections have been made. Any dates for notice required after the Certificate of Substantial Completion, shall be changed to comply with the amended date of substantial completion and amended Certificate of Substantial Completion.”
- 9.10.4 Delete original language in its entirety:** (Waiver of claims by owner)
- 9.10.4 Add:** “The making of final payment, shall not constitute a waiver of any claims by the owner.”
- 10.2.5 Delete portion:** “(other than damage or loss insured under property insurance required by the Contract Documents)”
- 10.3.3 Add at the End of the Last Sentence:** “or the consultants or agents or employees of any of them.”
- 11.3.1 Delete portion:** Replace the word ”Owner” with the word “Contractor” in the first sentence. (Builders Risk Insurance). **Add at the end:** “Any deductibles shall be subject to approval by the owner.”
- 11.3.1.2 Delete this paragraph in its entirety.**
- 11.3.2 Substitute:** “Contractor” for “Owner” as the second word in this Paragraph.
- 11.3.3 Delete second sentence:** (Waiver of claims against contractor for loss of use.)
- 11.3.5 Delete all:** (Waiver of claims if insured)
- 11.3.7 Delete all:** (Waiver of claims and subrogation if insured)
- 12.2.2. Replace:** Change “one-year” to “such period as is specified by law” for each occurrence in this section. This change applies to all of 12.2.2, including all subdivisions thereof.

12.2.2.3 Delete the word “not”: (Extension of correction period by correction)

13.2 Add: “**SIGNATURES AND NOTARIZATION.** The Parties shall be entitled to digitally sign documents pursuant to the then current law governing digital signatures. If a document provides for notarization, and if the Parties submitting the document do not have a signature notarized, then that party nonetheless confirms that the signature is accurate and authorized and is by the person from whom the signature purports to be, and that the signature is authorized, under penalty of perjury. Such signature shall still have the same force and effect as the signature if it had been properly notarized.”

13.7 Delete portion: (“but in any case not more than 10 years after the date of substantial completion of the work”)

14.2.5 The remedies provided in this section 14.2 are in addition to, and not in place of, rights of the Owner under any applicable performance and payment bonds.

15.1.2 Add at the end of the Current Paragraph: “However, the owner shall be entitled to make claims after that twenty-one (21) day period if such claim can be made without substantial prejudice to the other party, resulting from that later notice after the twenty-one (21) day period.

15.1.6 Delete all: (Consequential damages waiver by owner and contractor) **Replace with: Claims for Consequential Damages.**

.1 The contractor waives claims against the Owner for damages incurred by the contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the work.

.2 “Liquidated Damages. Owner shall be entitled to liquidated damages in the sum of \$ _____ per day for each day that the work is not completed beyond the stated contract time, and any extensions agreed to by the Owner. Time is of the essence in the performance of the Work. Such liquidated damages are in lieu of claims which Owner might otherwise make for damages for loss of use, interference with classes and scheduling and the use of other facilities (unless leased or purchased by Owner), employee time in making use or scheduling adjustments due to delay in completion, additional time in transferring equipment, materials and personnel and inconvenience as a result of such delays. The Owner retains the right to claim other additional actual damages not included in liquidated damages. The Owner retains the right to claim actual damages from the lease or purchase of other buildings, facilities or equipment as a result of delay in completion of the contract. The Owner may deduct and set off the liquidated damages from any sums, which are due to the contractor under the contract. The Contractor acknowledges that it is aware of these liquidated damages provisions, accepts this contract with those provisions and acknowledges that the liquidated damages provisions are reasonable and enforceable.

If there are no liquidated damages specified in this section 15.1.6.2 in excess of \$1, then the Owner is entitled to claim all other damages available to the Owner. If no liquidated damages are specified in this section 15.1.6.2 in excess of \$1, then the deletion of the Consequential Damages Waiver by Owner and Contractor is still effective, and that original paragraph 15.1.6 is still deleted, and the Owner is still entitled to all damages permitted by law without waiver of any of those damages. The Owner does specifically retain all claims for loss of use.”

15.4.3 Add: “Following the issuance of a demand for arbitration, any party to the arbitration shall be entitled to use all Discovery Methods delineated in the Minnesota Rules of Civil Procedure for the District Courts, to the same extent and subject to the same procedures and sanctions as therein set forth. Once selected, the arbitrator shall hear any disputes regarding discovery unless otherwise agreed by the parties.”

15.4.4.4 Add: “Award of Attorney's Fees and Expert Witness Costs. Notwithstanding any other conditions of the contracts, in any lawsuit or arbitration involving the subject matter of this Contract or its interpretation, the prevailing parties shall be entitled to attorney's fees and expert witness costs as provided herein. The awards detailed herein are in addition to, and not a substitute for, any other awards or remedies which the parties may have pursuant to the governing contract and the governing law.

These awards apply to the Owner, Architect, Contractor, Subcontractor, Suppliers, Materialmen and others subject to the governing contracts and subcontracts. The prevailing party shall be entitled to an award of the prevailing party's attorney's fees and costs without deduction for that party's share of any fault, if any. For the purposes of this Section, a party not required by the Arbitrator to make any of the compensatory adjustments demanded by the other parties in the dispute, shall be considered a Prevailing Party. In addition to this definition of a prevailing party, the arbitrator or other decision maker shall also be entitled to rule that a party is a prevailing party on other grounds.

The prevailing party shall be entitled to an award of attorney's fees from each of the other non-prevailing parties in an amount not greater than \$15,000 from each of those other non-prevailing parties. This award of attorney's fees includes reasonable attorney's fees, costs and disbursements incurred in the action, investigative costs, other legal research and other legal services and advice from the attorneys, including such services before the initiation of such arbitration or suit. The prevailing party shall also be entitled to an award in an amount not greater than \$3,500 from each of the other non-prevailing parties for expert witness fees and other expert services in investigating, giving opinions, research and planning, costs of the expert, the expert's fees in testifying and fees in providing other expert services in connection with the investigation of the subject matter, including preparing and investigating remedies, plans, and specifications relating to that matter.”

The undersigned has prepared these contract forms, or has reviewed them, for the purpose of this verification.

Contractor - Architect

Owner

Signed

Keegan Hartley

Date

3/30/2021

Name

Keegan Hartley

Capacity

president

Company

Bella Terra Landscape

Address

*Design, Inc. 3701 Crescent
View Avenue, Duluth MN 55804*

School Board Chair

ISD No. 709

215 North 1st Ave. East

Duluth MN 55802

violation does not occur until the contested case proceeding has concluded with a determination that the contractor or related entity underpaid wages or penalties.

3. The contractor or related entity is in compliance with and, during the three-year period before submitting the verification, has not violated section 181.723 or chapter 326B. For purposes of this clause, a violation occurs when a contractor or related entity has been issued a final administrative or licensing order.
4. The contractor or related entity has not, more than twice during the three-year period before submitting the verification, had a certificate of compliance under section 363A.36 revoked or suspended based on the provisions of section 363A.36, with the revocation or suspension becoming final because it was upheld by the Office of Administrative Hearings or was not appealed to the office.
5. The contractor or related entity has not received a final determination assessing a monetary sanction from the Department of Administration or Transportation for failure to meet targeted group business, disadvantaged business enterprise, or veteran-owned business goals, due to a lack of good faith effort, more than once during the three-year period before submitting the verification.
6. The contractor or related entity is not currently suspended or debarred by the federal government or the state of Minnesota or any of its departments, commissions, agencies, or political subdivisions; and
7. All subcontractors that the contractor intends to use to perform project work have verified to the contractor through a signed statement under oath by an owner or officer that they meet the minimum criteria listed in clauses (1) to (6).

Minn. Stat. 1§16.285, Subd. 5. **SUBCONTRACTOR VERIFICATION.** A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project.

If a prime contractor or any subcontractor retains additional subcontractors on the project after submitting its verification of compliance, the prime contractor or subcontractor shall obtain verifications of compliance from each additional subcontractor with which it has a direct contractual relationship and shall submit a supplemental verification confirming compliance with subdivision 3, clause (7), within 14 days of retaining the additional subcontractors.

A prime contractor shall submit to the contracting authority upon request copies of the signed verifications of compliance from all subcontractors of any tier pursuant to subdivision 3, clause (7). A prime contractor and subcontractors shall not be responsible for the false statements of any subcontractor with which they do not have a direct contractual relationship. A prime contractor and subcontractors shall be responsible for false statements by their first-tier subcontractors with which they have a direct contractual relationship only if they accept the verification of compliance with actual knowledge that it contains a false statement.

Minn.Stat. §16.285, Subd. 4. **VERIFICATION OF COMPLIANCE.** A contractor responding to a solicitation document of a contracting authority shall submit to the contracting authority a signed statement under oath by an owner or officer verifying compliance with each of the minimum criteria in subdivision 3 at the time that it responds to the solicitation document.

A contracting authority may accept a sworn statement as sufficient to demonstrate that a contractor is a responsible contractor and shall not be held liable for awarding a contract in reasonable reliance on that statement. Failure to verify compliance with any one of the minimum criteria or a false statement under oath in a verification of compliance shall render the prime contractor or subcontractor that makes the false statement ineligible to be awarded a construction contract on the project for which the verification was submitted.

A false statement under oath verifying compliance with any of the minimum criteria may result in termination of a construction contract that has already been awarded to a prime contractor or subcontractor that submits a false statement. A contracting authority shall not be liable for declining to award a contract or terminating a contract based on a reasonable determination that the contractor failed to verify compliance with the minimum criteria or falsely stated that it meets the minimum criteria.

CERTIFICATION

By signing this document I certify that I am an owner or officer of the company, and I swear under oath that:

- 1) My company meets each of the Minimum Criteria to be a responsible contractor as defined herein and is in compliance with Minn. Stat. §16.285,
- 2) I have included Attachment A-1 with my company's solicitation response, and
- 3) if my company is awarded a contract, I will also submit Attachment A-2 as required.

Authorized Signature of Owner or Officer: 	Printed Name: Keegan Hartley
Title: president	Date: 3/30/2021
Company Name: Bella Terra Landscape Design Inc.	

ATTACHMENT A-1

FIRST-TIER SUBCONTRACTOR LIST (Submit with Prime Contractor Response)

Minn. Stat. §16.285, Subd. 5: A prime contractor or subcontractor shall include in its verification of compliance under subdivision 4 a list of all of its first-tier subcontractors that it intends to retain for work on the project.

First-Tier Subcontractor Names (Legal name of company as registered with the Secretary of State)	Name of city where company home office is located
Keller Fence Co.	Cchasset, MN

BIDDER'S QUALIFICATIONS

Contractor shall demonstrate previous experience with installation of outdoor play and learning spaces for children, preferably with nature playscapes or similar. Bidder's Qualifications must be submitted with the sealed Bid at the time of Bid Opening.

EXPERIENCE

Length of time the company has been in operation 15 years

Time period of work related to outdoor play and learning spaces for children 5 years

CERTIFICATION

Attach a list of all certifications and/or licenses (for the company or for individual employees) related to the work prescribed in this project. Optional: Attach a description of any other special or specific qualifications the company has for this project.

REFERENCES

List projects and references, preferably including two from children's play and learning spaces

Project Name	Location	Completion Date	Reference Name	Reference Phone
Hartley Playscape	Hartley Nature Center Duluth, MN	July 2015	Tom O'Rourke	724-6735
Congdon Park Edible garden	Congdon Park Elementary School, Duluth	November 2013	Renee Willemson	218-349-9897

Bella Terra Landscape Design
Company Name

Keegan.hartley@gmail.com
Email

Keegan Hartley
Primary Contact Name

218-341-4443
Primary Contact Phone Number

[Signature]
Primary Contact Signature

3/30/2021
Date