

1316 COUNTY-CITY BUILDING  
227 W. JEFFERSON BOULEVARD  
SOUTH BEND, INDIANA 46601-1830



PHONE 574/ 235-9251  
FAX 574/ 235-9171

CITY OF SOUTH BEND JAMES MUELLER, MAYOR  
**BOARD OF PUBLIC WORKS**

October 8, 2024

Mr. Jonathon Geels  
Toyer Group, Inc.  
3930 Edison Lakes Parkway  
Mishawaka, IN 46545  
[jsg@troyergroup.com](mailto:jsg@troyergroup.com)

RE: Professional Service Agreement

Dear Mr. Geels:

At its October 8, 2024 meeting, the Board of Public Works approved the above referenced agreement for the design and engineering support for three (3) City of South Bend Nurseries in the amount of not to exceed \$30,000.

Enclosed please find the original of the agreement for your signature. Please sign and return the original agreement to [horvath@southbendin.gov](mailto:horvath@southbendin.gov). Please retain a copy for your records.

If you have any further questions, please call this office at (574) 235-9251.

Sincerely,

/s/ Theresa Heffner

Theresa Heffner, Clerk

Enclosures  
TH/hh

**AGREEMENT  
BETWEEN OWNER AND ENGINEER  
FOR  
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of September 30, 2024 (“Effective Date”)

between Board of Public Works, City of South Bend, Indiana (“Owner”) and

Troyer Group, INC. (“Engineer”).

Owner's Project, of which Engineer's services under this Agreement are a part, is generally identified as follows:

Urban Tree Nursery – Site Designs (“Project”).

Engineer’s Services under this Agreement are generally identified as follows:

**Site Master Plan and Construction Documents**

Owner and Engineer further agree as follows:

1.01 *Basic Agreement and Period of Service*

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above. Owner shall pay Engineer for its services as set forth in Paragraphs 7.01 and 7.02.
- B. Engineer shall complete its services within a reasonable time, or within the following specific time period: Six (6) Months
- C. If the Project includes construction-related professional services, then Engineer's time for completion of services is conditioned on the time for Owner and its contractors to complete construction not exceeding 6 months. If the actual time to complete construction exceeds the number of months indicated, then Engineer's period of service and its total compensation shall be appropriately adjusted.

## 2.01 *Payment Procedures*

- A. *Invoices*: Engineer shall prepare invoices in accordance with its standard invoicing practices and submit the invoices to Owner on a monthly basis. Invoices are due and payable within **35** days of receipt. In addition, Engineer may, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Owner waives any and all **non-disputed** claims against Engineer for any such suspension.

## 3.01 *Termination*

- A. The obligation to continue performance under this Agreement may be terminated:

- 1. For cause,

- a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party. Failure to pay Engineer for its services is a substantial failure to perform and a basis for termination.
- b. By Engineer:
  - 1) upon seven days written notice if Owner demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
  - 2) upon seven days written notice if the Engineer's services for the Project are delayed for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of a termination by Engineer under Paragraph 3.01.A.1.b.

- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under Paragraph 3.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its substantial failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

- 2. For convenience, by Owner effective upon Engineer's receipt of written notice from Owner.

- B. The terminating party under Paragraph 3.01.A may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

- C. In the event of any termination under Paragraph 3.01, Engineer will be entitled to invoice Owner and to receive full payment for all **non-disputed** services performed or furnished in accordance

with this Agreement and all reimbursable expenses incurred through the effective date of termination.

#### 4.01 *Successors, Assigns, and Beneficiaries*

- A. Owner and Engineer are hereby bound and the successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by Paragraph 4.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise, nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Owner or Engineer to any contractor, subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Owner and Engineer and not for the benefit of any other party.

#### 5.01 *General Considerations*

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Subject to the foregoing standard of care, Engineer and its consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- B. Engineer shall not at any time supervise, direct, control, or have authority over any contractor's work, nor shall Engineer have authority over or be responsible for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, or the safety precautions and programs incident thereto, for security or safety at the Project site, nor for any failure of a contractor to comply with laws and regulations applicable to such contractor's furnishing and performing of its work.
- C. This Agreement is to be governed by the law of the state or jurisdiction in which the Project is located.
- D. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor. Engineer is not responsible for variations between actual construction bids or costs and Engineer's opinions or estimates regarding construction costs.

- E. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any construction work; or for any decision made regarding the construction contract requirements, or any application, interpretation, or clarification of the construction contract other than those made by Engineer.
- F. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (EJCDC C-700, 2007 Edition) unless the parties agree otherwise.
- G. The Owner acknowledges the Engineer's construction documents, including all electronic files, as instruments of professional services. Owner shall have a limited license to use the documents on the Project, extensions of the Project, and for related uses of the Owner, subject to the following limitations: (1) Owner acknowledges that such documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Owner or others on extensions of the Project, on any other project, or for any other use or purpose, without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Owner's sole risk and without liability or legal exposure to Engineer or to its officers, directors, members, partners, agents, employees, and consultants; (3) Owner shall indemnify and hold harmless Engineer and its officers, directors, members, partners, agents, employees, and consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification of the documents without written verification, completion, or adaptation by Engineer; and (4) such limited license to Owner shall not create any rights in third parties. Nevertheless, the final construction documents, including all electronic files, prepared under this agreement shall become the property of the Owner upon completion of services and payment in full of all monies due to the Engineer.
- H. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- I. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste as defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq., or radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (1) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.
- J. Owner and Engineer agree to negotiate each dispute between them in good faith during the 30 days after notice of dispute. If negotiations are unsuccessful in resolving the dispute, then the dispute shall be mediated. If mediation is unsuccessful, then the parties may exercise their rights at law.

6.01 *Total Agreement*

- A. This Agreement (including any expressly incorporated attachments), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

7.01 *Basis of Payment—Lump Sum*

- A. Using the procedures set forth in Paragraph 2.01, Owner shall pay Engineer as follows:
  - 1. A Lump Sum amount of \$30,000
- B. The portion of the compensation amount billed monthly for Engineer's services will be based upon Engineer's estimate of the percentage of the total services completed during the billing period.

7.02 *Additional Services:* For additional services of Engineer's employees engaged directly on the Project, Owner shall pay Engineer an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Engineer's standard hourly rates are attached as Appendix 1.

Attachments: Appendix 1, Engineer's Standard Hourly Rates

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Owner:

CITY OF SOUTH BEND, INDIANA  
BOARD OF PUBLIC WORKS

  
Elizabeth A. Maradik, President

  
Gary A. Gilot, Member

  
Murray L. Miller, Member

  
Joseph R. Molnar, Vice President

  
Briana Micou, Member

  
Attest: Theresa M. Heffner, Clerk

Date: October 8, 2024

Engineer:

Troyer Group - 3930 Edison Lakes Parkway, Mishawaka, IN  
46545

By: \_\_\_\_\_  
Title: John Leszczynski, President

Date: 09.24.24

Engineer License or Firm's Certificate No. LA21400022  
State of: Indiana

Address for giving notices:  
227 West Jefferson Boulevard  
South Bend, Indiana 46601

Address for giving notices:  
Troyer Group - 3930 Edison Lakes Parkway, Mishawaka, IN  
46545

Designated Representative (Paragraph 8.03.A):  
Barbara Dale

Designated Representative (Paragraph 8.03.A):  
Jonathon Geels, PLA, ASLA

Title: Project Manager, Office of Sustainability

Title: Landscape Architect/Project Manager

Phone Number: (574) 235-5933

Phone Number: 574.259.9976

Facsimile Number: (574) 235-9171

Facsimile Number: \_\_\_\_\_

E-Mail Address: [bdale@southbendin.gov](mailto:bdale@southbendin.gov)

E-Mail Address: [jsg@troyergroup.com](mailto:jsg@troyergroup.com)

This is **Appendix 1, Engineer's Standard Hourly Rates**, referred to in and part of the Short Form of Agreement between Owner and Engineer for Professional Services dated September 24, 2024.

**Engineer's Standard Hourly Rates**

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A. *Standard Hourly Rates:*

1. Standard Hourly Rates are set forth in this Appendix 1 and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.
2. The Standard Hourly Rates apply only as specified in Paragraphs 7.01 and 7.02, and are subject to annual review and adjustment.

B. *Schedule of Hourly Rates:*

Hourly rates for services performed on or after the Effective Date are:

President	\$ <u>245.00</u> /hour
Project Manager / LA	\$ <u>140.00</u> /hour
Landscape Architect	\$ <u>120.00</u> /hour
Graduate Landscape Architect	\$ <u>100.00</u> /hour
Design Technician	\$ <u>85.00</u> /hour
Clerical	\$ <u>65.00</u> /hour
Intern	\$ <u>45.00</u> /hour





## EXHIBIT A

Ms. Barbara Dale, Project Manager  
Office of Sustainability  
219 South St. Louis Blvd.  
South Bend, Indiana 46617

September 30, 2024

Reference:  
Plaza Park Project

Dear Ms. Dale,

Thank you for giving us the opportunity to provide site design services for three locations for Urban Tree Canopy Improvements. We understand the critical nature and functional operations of tree nurseries and the number of trees that each site needs to support moving forward. We are familiar with each of the sites and have visited each. We also understand that part of this project will be to complete construction designs to support the addition of site furnishing, like pavilions and seating areas. After meeting with you, we have a firm understanding of the process necessary to successfully bring this project to completion.

The following proposal offers costs for preparing site designs and construction documentation.

Thank you for the opportunity to continue to serve the City of South Bend and the Office of Sustainability. Please contact us with any questions regarding our proposal.

Sincerely,

---

Jonathon Geels, PLA, FASLA  
Landscape Architect and Project Manager

### **Schematic Design Scope of Services (20 Hours)**

Complete an existing conditions plan for each of the three sites based on aerial photography, provided site plans/surveys, and field verification.

- Work with the Forestry Service and other industry experts/stakeholders to determine schematic layouts of each nursery.
- Provide Case Studies incorporating Best Practices for Urban Tree Nurseries, including water/utility requirements.
- Provide Schematic Design Plan Options and Associated Information (plans, metrics, budgets, etc.)
- Project Review Meeting (1)
- Refine site concepts and develop preferred plan for each site with proposed budget
- Prepare final schematic design and plans

### **Construction Documentation Scope of Services (220 Hours – approximately 74hrs per location)**

- Develop a construction document set for site improvements that reflects to the final schematic design and meets City of South Bend Board of Public Works requirements that may include, but is not limited to the following:
  - Site Demolition Plan
  - Site Plan, Grading and Drainage Plans
  - Site Details and Site Specifications
- Attend a review meeting with the project team and prepare any revisions.
- Update the site construction cost estimate.

### **Bidding/Preparing for Quotes and Construction Administration (10 Hours)**

- Attend a pre-bid meeting with the owner and contractor. (1)
- Answer contractor questions and assist in preparation of addenda as required.
- Attend a pre-construction meeting with the owner and contractor.
- Make up to two (2) site visits to observe construction progress and its accordance with the plans and specifications.
- Prepare field reports or provide City with site information for field reports.
- Review shop drawings, contractor questions, and change order requests, as necessary.
- Attend the substantial completion walk through and develop a site work punch list.

### **Compensation:**

- Total Design Fees, including all Schematic Design and Construction Documents not to exceed: **\$30,000**

### **Conditions and Assumptions:**

- Any reimbursable expenses such as prints or copies are included in the fee listed.
- If additional design, engineering, or surveying services are required which are outside of the scope of this agreement - or if additional meetings/presentations are required beyond those indicated here, those out of scope of services shall be negotiated.
- This proposal does not include preparation of ordinance variances.
- Troyer Group will notify City of South Bend, Office of Sustainability if Project Scope changes require modifications to the above-stated contract value. Services relative to scope changes will not be initiated without authorization from City.

Please contact us with any questions regarding our proposal.



**BOARD OF PUBLIC WORKS  
AGENDA ITEM REVIEW REQUEST FORM**

Date: 9/30/2024  
 Name: Barbara Dale Department of Public Works – Engineering Division  
 BPW Date: 10/8/2024 Phone Extension: 9098

**Required Prior to Submittal to Board**

BPW Attorney	<input checked="" type="checkbox"/>	Attorney Name	_____
Dept. Attorney	<input type="checkbox"/>	Attorney Name	_____
Purchasing	<input type="checkbox"/>	_____	_____

**Check the Appropriate Item Type – Required for All Submissions**

<input checked="" type="checkbox"/> Professional Services Agreement	<input type="checkbox"/> Contract	<input type="checkbox"/> Proposal
<input type="checkbox"/> Open Market Contract	<input type="checkbox"/> Amendment/Addendum	<input type="checkbox"/> Special Purchase, QPA
<input type="checkbox"/> Bid Opening	<input type="checkbox"/> Bid Award	<input type="checkbox"/> Req. to Advertise <input type="checkbox"/> Title Sheet
<input type="checkbox"/> Quote Opening	<input type="checkbox"/> Quote Award	<input type="checkbox"/> Reject Bids/Quotes
<input type="checkbox"/> Proposal Opening	<input type="checkbox"/> C/O & PCA No. _____	<input type="checkbox"/> PCA
<input type="checkbox"/> Chg. Order, No. _____	<input type="checkbox"/> Traffic Control	<input type="checkbox"/> Resolution
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Ease./Encroach	

**Required Information**

Company or Vendor Name	<u>Troyer Group</u>
New Vendor	<input type="checkbox"/> Yes <input type="checkbox"/> If Yes, Approved by Purchasing <input checked="" type="checkbox"/> No
MBE/WBE Contractor	<input type="checkbox"/> MBE <input type="checkbox"/> WBE <u>Completed E-Verify Form Attached</u> <input type="checkbox"/> Yes <input type="checkbox"/> No
Project Name	<u>Urban Tree Nursery – Site Designs</u>
Project Number	<u>n/a</u>
Funding Source	<u>USDA Urban &amp; Community Forestry Grant - 212-10-101-132-439300</u>
Account No.	<u>PR#00036447</u>
Amount	<u>\$30,000</u>
Terms of Contract	<u>NTE</u>
Special Contract Provisions	_____
Purpose/Description	<u>Design &amp; engineering support for 3 City of South Bend urban tree nurseries.</u>

**For Change Orders Only**

Amount of	<input type="checkbox"/> Increase	\$ _____
	<input type="checkbox"/> Decrease	(\$ _____ )
Previous Amount		\$ _____
	Increase	_____ %
Current Percent of Change:	Decrease	( _____ %)
New Amount		\$ _____
	Increase	_____ %
Total Percent of Change:	Decrease	( _____ %)
Time Extension Amount:		_____
New Completion Date:		_____