

From: [Misty Sims](#)
To: [Wayne McDaniel](#)
Subject: FW: Whiteley Oliver Engineering Agreement
Date: Thursday, May 19, 2022 9:52:30 AM
Attachments: [PSA and Proposal - Whiteley Oliver Engineering - HARDIN COUNTY ARP Ditch Improvements.pdf](#)
[image001.png](#)
[image003.png](#)

Matt has this agreement, so I don't have it ready to provide back-up for agenda yet. Do you think it is okay to wait for June 14 Commissioners Court?

Misty Sims
Hardin County
Purchasing Agent
300 West Monroe Street
Kountze, Texas 77625
(409) 246-5124 phone
(409) 246-3208 fax
misty.sims@co.hardin.tx.us



From: Jeff Leavins, PE <jeff.leavins@whiteleyoliver.com>
Sent: Friday, May 13, 2022 4:05 PM
To: Misty Sims <misty.sims@co.hardin.tx.us>
Cc: Wayne McDaniel <wayne.mcdaniel@co.hardin.tx.us>; Alvin Roberts <alvin.roberts@co.hardin.tx.us>
Subject: Whiteley Oliver Engineering Agreement

Misty,

Please find our attached engineering agreement (Professional Service Agreement and Proposal).

If I need to revise any language once reviewed, please let me know and I will address.

Thanks and have a great weekend.

Jeff Leavins, PE
President - Whiteley Oliver Engineering

Whiteley Oliver Engineering, LLC

4351 Crow Road
Beaumont, TX 77706

Texas Registered Engineering Firm F-22257

O: 409-892-0421

M: 409-673-6134

E: jeff.leavins@whiteleyoliver.com

W: www.whiteleyoliver.com



WHITELEY OLIVER ENGINEERING, LLC

4351 CROW ROAD, BEAUMONT, TEXAS 77706

OFFICE: 409.892.0421 TEXAS FIRM REGISTRATION F-22257

PROFESSIONAL SERVICES AGREEMENT (REV1)

This Agreement prepared on May 13, 2022 is by and between the Hardin County, Texas with address at 300 West Monroe Street, Kounzte, TX 77625 ("Client") and Whiteley Oliver Engineering, LLC ("WOE"), who agree as follows:

Client engages WOE to perform professional services (the "Services") for the compensation set forth in one or more proposals or work authorizations (the "Proposal(s)"). WOE shall be authorized to commence the Services upon execution of the Proposal(s) by the Client. Client and WOE agree that this Agreement, the Proposal(s), and any attachments herein incorporated by reference (the "Agreement") constitute the entire agreement between them.

I. WOE'S RESPONSIBILITIES: WOE shall perform or furnish the Services described in the Proposals, which shall be combined and attached as part of this Agreement. Where the terms or conditions of any Proposal conflict with those of Parts I-III contained herein, the Proposal shall control for the Services performed under that Proposal only.

II. CLIENT'S RESPONSIBILITIES: Client, at its expense, shall do the following in a timely manner so as not to delay the Services:

1. INFORMATION/REPORTS: Furnish WOE with all information, reports, studies, site characterizations, advice, instructions, and similar information in its possession relating to the Project.

2. REPRESENTATIVE / ACCESS: Designate a representative for the Project who shall have the authority to transmit instructions, receive information, interpret and define Client's policies, and make decisions with respect to the Services, and provide WOE safe access to any premises necessary for WOE to provide the Services.

3. DECISIONS: Provide all criteria and full information as to requirements for the Project, obtain (with WOE's assistance, if applicable) necessary approvals and permits, attend Project-related meetings, provide interim reviews on an agreed-upon schedule, make decisions on Project alternatives, and participate in the Project to the extent necessary to allow WOE to perform the Services.

III. COMPENSATION, BILLING, & PAYMENT: Client shall pay WOE for Services as denoted in the applicable Proposal and in accordance with the standard rate schedule – Attachment B.

IV. STANDARD TERMS AND CONDITIONS: Attachment A.

The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing and each of the undersigned parties has caused this Agreement to be duly executed. This Agreement contains a limitation of liability clause and the Client has read and consents to all terms.

APPROVED FOR "CLIENT"
HARDIN COUNTY, TEXAS

APPROVED FOR "WOE"
WHITELEY OLIVER ENGINEERING, LLC.

By: _____

By:  _____

Printed Name: _____

Printed Name: Jeff D. Leavins

Title: _____

Title: President

Effective Date: _____

Attachments:
A – Standard Terms and Conditions
B – Standard Rate Schedule

ATTACHMENT A STANDARD TERMS AND CONDITIONS

1. STANDARD OF CARE. Services shall be performed with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license. Professional services are not subject to, and WOE cannot provide, any warranty or guarantee, express or implied, including warranties or guarantees contained in any uniform commercial code, work authorization, requisition, or notice, except as provided herein.

2. CHANGE OF SCOPE. The scope of Services set forth in this Agreement is based on facts known at the time of execution of this Agreement, including, if applicable, Client Data (defined below). As the Project progresses, facts discovered, including, but not limited to, site conditions or the existence of differing subsurface or physical conditions, may indicate that the scope, pricing, or other terms must be redefined, and the parties shall reasonably cooperate to equitably adjust the scope, pricing, or terms of this Agreement accordingly. The compensation set forth in this Agreement shall be deemed to be full compensation for all work and materials furnished by WOE whether specifically called for by the Agreement, plans, or specifications, or not, and no additional compensation shall be paid to WOE unless a written extra work order is provided by Client in advance, stating that the work is extra work and designating the additional compensation to be paid for the extra work and additional time for completion (if applicable). Any request for extra work shall be submitted to Client prior to such work being performed, and allowing for sufficient time for such request to be timely reviewed by Client. Approval or disapproval of extra work shall be made by Client within five (5) calendar days from the date of submission by WOE.

3. SAFETY. WOE has established and maintains corporate programs and procedures for the safety of its employees. Unless included as part of the Services, WOE specifically disclaims any authority or responsibility for general job site safety and safety of persons other than WOE employees.

4. DELAYS. The Services shall be performed expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer. Where WOE is prevented from completing any part of the Services within the schedule provided under the Agreement due to delay beyond its reasonable control, the schedule will be extended in an amount of time equal to the time lost due to such delay so long as WOE provides written explanation of the delay to Client. Except with regard to payment of any amounts due WOE from any Services, neither party shall be liable to the other for any delays or failure to act, due to unforeseeable causes reasonably beyond the control of the

party claiming such circumstances.

5. TERMINATION/SUSPENSION. Either party may terminate this Agreement upon thirty (30) days written notice to the other party. In the event of termination, Client shall pay WOE for all Services, including profit relating thereto, rendered prior to termination, plus any expenses of termination. In the event either party defaults in its obligations under this Agreement (including Client's obligation to make the payments required hereunder), the non-defaulting party may suspend performance under this Agreement. In the event of a suspension of Services, WOE shall have no liability to the Client for delay or damage caused the Client because of such suspension of Services. Before resuming Services, WOE shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of WOE's Services. WOE's fees for the remaining Services and the time schedules shall be equitably adjusted. Obligations under this Agreement, which by their nature would continue beyond the suspension or termination of this Agreement (e.g., indemnification), shall survive such suspension or termination.

6. OPINIONS OF CONSTRUCTION COST. Any opinion of construction costs prepared by WOE is supplied for the general guidance of the Client only. Since WOE has no control over competitive bidding or market conditions, WOE cannot guarantee the accuracy of such opinions as compared to contract bids or actual costs to Client.

7. RELATIONSHIP WITH CONTRACTORS / REVIEW. WOE shall serve as Client's professional representative for the Services, and may make recommendations to Client concerning actions relating to Client's contractors, but WOE specifically disclaims any authority to direct or supervise the means, methods, techniques, safety activities, personnel, compliance, sequences, or procedures of construction selected by Client's contractors. For Projects involving construction, Client acknowledges that under generally accepted professional practice, interpretations of construction documents in the field are normally required, and that performance of construction-related services by the design professional for the Project permits errors or omissions to be identified and corrected at comparatively low cost. Client agrees to hold WOE harmless from any claims resulting from performance of construction-related services by persons other than WOE. In fulfilling its duties pursuant to the Agreement, Client permits WOE to elect to subcontract to others certain tasks in its scope of Services.

8. INSURANCE. WOE will maintain insurance coverage for Professional Liability, Commercial Liability, Auto, and Workers' Compensation in amounts in

accordance with legal and business requirements. Certificates evidencing such coverage will be provided to Client upon request. WOE's coverages referenced above shall, in such case, be excess over any contractor's primary coverage.

9. PROJECTS WITH MULTIPLE CLIENTS. When WOE undertakes a Project for multiple Clients, each Client on the Project is jointly and severally liable for payments for WOE's Services. If any Client fails to make timely payment to WOE, and the remaining Clients wish to continue the Project, the remaining Clients will promptly notify WOE in writing to continue the Project and their joint and several obligations shall remain the same. WOE, at its option, may suspend the remaining performance under this Agreement until all past due payments are made, and authorization to proceed and pay from all non-defaulting Clients is received, or continue work on the Project and invoice and collect from the remaining Clients any payment (including damages) of amounts past due and that become due.

10. SITE CONDITIONS. Hazardous, archaeological, paleontological, cultural, biological, or other materials, protected resources, unknown underground facilities, or other conditions ("Conditions") may exist at a site where there is no reason to believe they could or should be present. WOE and Client agree that the discovery of unanticipated Conditions constitutes a changed condition mandating a renegotiation of the scope of Services. WOE will notify Client should unanticipated Conditions be encountered. Client acknowledges and agrees that it retains title to all Conditions existing on the site and shall report to the appropriate public agencies, as required, any Conditions at the site that may present a potential danger to the public health, safety, or the environment. Client shall execute any manifests in connection with avoidance, containment, transportation, storage, or disposal of Conditions resulting from the site.

11. INDEMNITY. WOE shall indemnify Client from and against liability for damage to the extent that the damage is actually caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by WOE, WOE's agent, or another entity over which WOE exercises control.

Client shall indemnify WOE from and against liability for damage to the extent that the damage is actually caused by or results from an act of negligence, intentional tort, intellectual property infringement, or failure to pay a subcontractor or supplier committed by Client, Client's agent, or another entity over which Client exercises control."

12. CONSEQUENTIAL DAMAGES. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOST REVENUES, PROFITS, DELAYS, OR OTHER ECONOMIC LOSS ARISING FROM BREACH OF WARRANTY OR BREACH OF CONTRACT.

13. REUSE OF PROJECT DELIVERABLES. Reuse of any documents or other deliverables, including electronic

media, pertaining to the Project by Client for any purpose other than that for which such were originally prepared, or alteration of such without the written verification or adaptation by WOE for the specific purpose intended, shall be at the Client's risk. All title blocks and the engineer's seal, if applicable, shall be removed if Client provides deliverables in electronic media to any third party. Any modification of the plans will be evidenced on the plans and be signed and sealed by a licensed professional prior to reuse of modified plans. Client agrees that relevant analyses, findings, and reports provided in electronic media shall also be provided in hard copy and that the hard copy shall govern in the case of a discrepancy between the two versions, and shall be held as the official set of drawings, as signed and sealed. Client shall be afforded a period of thirty (30) days to check the hard copy against the electronic media. In the event that any error or inconsistency is found during that time, WOE shall be advised and the inconsistency shall be corrected at no additional cost to Client. Following the expiration of this notice period, Client shall bear all responsibility for the care, custody, and control of the electronic media. In addition, Client represents that it shall retain the necessary mechanisms to read the electronic media. Client agrees to indemnify and hold harmless WOE from all claims, damages, and expenses (including reasonable litigation costs) arising out of such reuse or alteration by Client or others acting through Client.

14. CLIENT DATA. Client or any third party designated by Client may provide information, reports, studies, site characterizations, advice, instructions, and similar information in its possession relating to the Project ("Client Data"). WOE may reasonably and in good faith rely upon the accuracy of Client Data and unless described as part of the Services, WOE is not required to audit, examine, or verify Client Data. However, WOE will not ignore the implications of information furnished to WOE and may make reasonable inquiries if Client Data as furnished appears to be incorrect or incomplete. WOE makes no representations or warranties (express or implied) as the quality, accuracy, usefulness, or completeness of any Services to the extent WOE relies on Client Data. WOE, its affiliates, its officers, directors, and employees shall have no liability whatsoever with respect to the use of unreliable, inaccurate, or incomplete Client Data.

15. ASSIGNMENT/BENEFICIARIES. Neither party may assign this Agreement without the written consent of the other party. With the exception of such assignments, nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party, including Client's contractors, if any.

16. AMENDMENT, NO WAIVER, & SEVERABILITY. This Agreement can be amended in writing and signed by the parties. No waiver by either party of any default by the other party in the performance of this Agreement shall invalidate any other section of this Agreement or operate as a waiver of any future default, whether like or different in character. The various terms, provisions, and covenants herein contained shall be deemed to be separate and

severable, and the invalidity or unenforceability of any of them shall not affect or impair the validity or enforceability of the remainder.

17. STATUTORY TERMS APPLICABLE TO STATE POLITICAL SUBDIVISIONS. As required by Chapter 2270, Government Code, WOE hereby verifies that it does not boycott Israel and will not boycott Israel through the term of this Agreement. For purposes of this verification, "boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

18. DISPUTE RESOLUTION. The parties shall attempt to settle all claims, disputes, and controversies arising out of or in relation to the performance, interpretation, application, or enforcement of this Agreement, including but not limited to breach thereof, by discussion between the parties' senior representatives. If any dispute cannot be resolved in this manner, within five (5) business days, the parties agree to refer such claims, disputes, and controversies to mediation by a mediator mutually agreed to and equally paid for by the parties before, and as a condition precedent to, the initiation of any adjudicative action or proceeding. The mediator shall convene the mediation within ten (10) business days of the request of either party, and the mediation will last at such times and as long as the mediator reasonably believes agreement is probable. The parties agree that an officer of each entity with complete authority to resolve the dispute shall attend the mediation. Notwithstanding the foregoing, prior to or during negotiation or mediation, either party may initiate litigation that would otherwise become barred by a statute of limitation, and WOE may pursue, at any time and without invoking dispute resolution as provided herein, any property liens or other rights it may have to obtain security for the payment of its invoice. In the event any actions are brought to enforce this Agreement, the prevailing party shall be entitled to collect its litigation costs including reasonable attorney's fees from the other party.

19. LITIGATION SUPPORT. WOE will not be obligated to provide expert witness or other litigation support related to its Services, unless expressly agreed in writing. In the event WOE is required to respond to a subpoena, inquiry, or other legal process related to the Services in connection with a proceeding to which WOE is not a party, Client will reimburse WOE for its costs and compensate WOE at its then standard rates for the time it incurs in gathering information and documents and attending depositions, hearings, and the like.

20. GOVERNING LAW. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas without giving effect to any conflict or choice of law rules or principles under which the law of any other jurisdiction would apply. Each party hereby submits to the jurisdiction of the federal and state

courts located in Hardin County and agrees that such courts shall be exclusive forum and venue for resolving any legal suit, action or proceeding arising out of or relating to this Agreement.

ATTACHMENT B

WHITELEY OLIVER ENGINEERING, LLC

4351 CROW ROAD, BEAUMONT, TEXAS 77706

OFFICE: 409.892.0421

Texas Firm Registration F-22257 | www.whiteleyoliver.com | Louisiana Firm Registration EF-7086

2022 STANDARD RATE SCHEDULE

ENGINEERING SERVICES:

Principal - Registered Professional Engineer.....	\$225.00	per hour
Senior Project Engineer.....	\$205.00	per hour
Project Engineer	\$194.00	per hour
Engineer In Training (EIT)		
Level 2	\$147.00	per hour
Level 1	\$131.00	per hour
Graduate Engineer	\$116.00	per hour
Sr. Project Manager	\$152.00	per hour
Project Manager / Sr. Designer	\$131.00	per hour
Engineering Technician III (Designer)	\$116.00	per hour
Engineering Technician II (Sr. AutoCAD Operator)	\$99.00	per hour
Engineering Technician I (AutoCAD Operator)	\$81.00	per hour
Resident Project Representative	\$121.00	per hour
Billing Clerk	\$72.00	per hour

GENERAL NOTES:

* These rates include labor, material, supplies, transportation, insurance and payroll related taxes.

* Rates are adjusted as necessary at the beginning of each calendar year to reflect increases in cost of operation, inflation, etc.

* Invoices based on these rates, or any other contractual arrangements with Whiteley Oliver Engineering, are NET 30 DAYS unless specific arrangements/agreements are made. If payment is not received within 30 days, project work will proceed at our discretion.

May 13, 2022

PROPOSAL

Honorable Judge Wayne McDaniel
Hardin County, Texas
300 West Monroe Street
Kountze, Texas 77625

Re: Proposal for Engineering Services
Hardin County, Texas – American Rescue Plan (ARP) Drainage Improvements Project

Dear Judge McDaniel:

Whiteley Oliver Engineering, LLC (WOE) is pleased to submit this proposal to provide engineering and construction services associated with Hardin County's American Rescue Plan (ARP) Drainage Improvements Project. The scope of this project includes the reshaping and concrete lining of approximately 1,215 linear feet of existing earthen ditch located at Mitchell Road and adjacent to Parkway Church.

WOE propose the following professional engineering services and corresponding fees for this project.

SCOPE OF SERVICES

A. Preliminary and Design Phase

1. Attend Preliminary Conference with the County and other interested parties regarding the project.
2. Review all reports/plans regarding the existing drainage area of the project.
3. Perform topographic survey and data collection of the existing drainage ditch, utilities, and existing concrete paving area.
4. Prepare detailed specifications, contract documents, and construction drawings.
5. Submit final contract specifications and drawings to the required agencies for review and approval.

B. Bidding Phase

1. Assist the County in the advertisements of the project for bids.
2. Respond to questions regarding the project during the bidding process. If required, issue addendums to clarify any questions regarding the project.

3. Conduct a Pre-bid Conference between the Engineer, prospective bidders, suppliers, etc., to make certain that the scope of the work is fully understood.
4. Assist the County in the opening of bids for construction of the project. Tabulate and evaluate bids and prepare a recommendation letter for the County Judge and Commissioner's action.
5. Prepare final contract documents for execution by the Contractor and the County.

C. Construction Phase

1. Conduct a Pre-Construction Conference between the County, Engineer and Contractor.
2. Issue a Notice to Proceed to the Contractor, approved by the County.
3. Perform site visits (not full-time inspection) to the project site to observe work with regard to general compliance with the construction plans and technical specifications. This will include daily site visits to review progress of contractor's work. The Resident Project Representative will be on-site during critical phases of work.
4. Review equipment, materials, schedules, shop drawings, and other data which the Contractor submits.
5. Preparation for execution of the necessary progress documents including Contractor pay request, change orders, and other correspondence required to achieve the intended finished project.
6. Conduct final inspection in conjunction with the County, Contractor, and Engineer. Prepare all closing documents to finalize the contract.
7. Upon completion of the project, the contract drawings will be revised to reflect all field changes. The completed "record drawings" will be delivered to the Owner.

D. Miscellaneous Services

1. Easement Documents: Provide easement exhibits and metes / bounds descriptions for proposed easements required for alignment and construction.
2. Geotechnical Investigations: Provide field investigation of the geotechnical conditions to determine design. Determine ground water conditions and need for dewatering during construction.

BASIS OF COMPENSATION

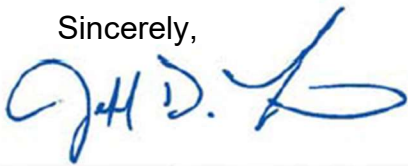
For the accomplishment of the above tasks, WOE proposes the following fixed fee budget shown below.

Preliminary Design Phase.....	\$ 9,600
Surveying / Data Collection.....	\$15,000
Engineering Design Phase.....	\$50,500
Bidding Phase.....	\$ 6,600
Construction Phase Engineering.....	\$18,500
Construction Inspection.....	\$41,000
Project Closeout.....	\$ 4,000
Geotechnical Engineering.....	\$10,000
TOTAL	\$155,200

We appreciate the opportunity to provide professional engineering services for Hardin County. If you have any questions, please feel free to contact me at 409.673.6134 or jeff.leavins@whiteleyoliver.com.

Please sign and return the attached Professional Service Agreement and this engineering proposal. Upon authorization, we will begin work immediately.

Sincerely,



Jeff D. Leavins, P.E.
President

**Engineering Proposal Accepted By:
HARDIN COUNTY, TEXAS**

By: _____

Name: _____

Date: _____