

**Minute Book 32**

**March 7, 2022**

**SPECIAL BOARD MEETING**

**OF THE**

**MAYOR**

**AND**

**BOARD OF ALDERMEN**

**OF THE**

**TOWN OF TUNICA, MISSISSIPPI**

**OFFICERS:**

**Mayor Andrew T. Dulaney**

**Alderman Lee B. Turner**

**Alderman Valerie Hartsfield**

**Alderman Rebecca P. Fyfe**

**Alderman Adam Fullilove**

**Alderman Daniel M. Pierce**

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**Town Attorney Richard W. Ryals, II**

**Town Clerk Kate Scott Pennock**

**Chief of Police Kevin Hatton**

**Town Chaplain Danny Smith**

SPECIAL MEETING OF THE MAYOR AND BOARD  
OF ALDERMEN HELD MARCH 7, 2022

BE IT REMEMBERED, that the Mayor and Board of Aldermen of the Town of Tunica, held a meeting on Monday, March 7, 2022. The meeting was held in the Boardroom in the Municipal Complex at 909 River Road in the Town of Tunica, Mississippi, beginning at 4:00 p.m. with the following present or absent as indicated below:

Mayor Andrew T. Dulaney	Present
Alderman Lee B. Turner	Present
Alderman Valerie Hartsfield	Present*
Alderman Rebecca P. Fyfe	Present
Alderman Adam Fullilove	Present
Alderman Daniel M. Pierce	Present
Town Clerk Kate Scott Pennock	Present
Town Attorney Richard W. Ryals, II	Absent
*Via telephone.	

Others in attendance are listed on the attendance sheet - None.

A copy of the notice which was posted and given to each Alderman was received and directed to be attached hereto as Appendix A.

Mayor Dulaney called the meeting to order.

The Mayor and Board discussed and considered authorizing a resolution designating and appointing Mayor Andy Dulaney on behalf of the Town of Tunica to execute and submit any and all documents for the DRA grant for 2021. Alderman Turner moved to approve a resolution designating and appointing Mayor Andy Dulaney on behalf of the Town of Tunica to execute and submit any and all documents for the DRA grant for 2021. Alderman Fyfe seconded the motion. The matter having received the majority affirmative vote of the Board of Aldermen of the Town of Tunica, Andrew T. Dulaney, Mayor, declared the same carried, adopted and approved this the 7<sup>th</sup> day of March 2022.

APPENDIX B – RESOLUTION FOR DRA DESIGNATION APPOINTEE

The Mayor and Board next discussed and considered to authorize execution of the CDBG engineering contract. Alderman Fyfe moved to approve authorization execution of the CDBG engineering contract. Alderman Pierce seconded the motion. The matter having received the majority affirmative vote of the Board of Aldermen of the Town of Tunica, Andrew T. Dulaney, Mayor, declared the same carried, adopted and approved this the 7<sup>th</sup> day of March 2022.

## APPENDIX C – CDBG ENGINEERING CONTRACT

The Mayor and Board of Aldermen next considered holding an Executive Session, as authorized pursuant to Section 25-41-7, Mississippi Code of 1972, as amended. Alderman Pierce moved that a closed determination be held to discuss whether an executive session is needed to be held and is appropriate. Alderman Fullilove seconded the motion. Thereupon, the matter was put to a vote with the results as follows: Alderman Turner, yea; Alderman Hartsfield, yea; Alderman Fyfe, yea; Alderman Fullilove, yea; and Alderman Pierce, yea. The matter having received the majority affirmative vote of the Board of Aldermen of the Town of Tunica, the Mayor declared the motion carried and the Mayor and Board held a closed determination on the issue of whether an executive session is necessary. Mayor Dulaney stated that the purpose for holding the executive session would be to discuss personnel.

Based on this, Alderman Turner moved that the Mayor and Board of Aldermen hold an executive session to discuss, consider and act on the Executive Session Matter. Alderman Pierce seconded the motion. The matter was put to a vote with the result as follows: Alderman Turner, yea; Alderman Hartsfield, yea; Alderman Fyfe, yea; Alderman Fullilove, yea; and Alderman Pierce, yea. The matter having received the majority affirmative vote of the Board of Aldermen of Tunica, the Mayor declared the same carried and the Board entered executive session to consider the Executive Session Matters. Present during the executive session were the Mayor, all members of the Board of Aldermen, and Town Clerk Pennock.

During the executive session, the Executive Session Matter discussed was to promote Reggie Griffin as Director for Public Works to primarily oversee the street crew and spend approximately 2 hours a day to check lift stations and wells until training has been completed for a designated employee. He will move to a salary position of \$44,000.00 per year and paid bi-weekly. Alderman Pierce moved to approve to promote Reggie Griffin to Director for Public Works to primarily oversee the street crew at \$44,000.00 on a salary basis. Alderman Fullilove seconded the motion. The matter was put to a vote with the result follows: Alderman Turner, yea; Alderman Hartsfield, yea; Alderman Fyfe, yea; Alderman Fullilove, yea; and Alderman Pierce, yea. Thereupon, the matter was put to a vote and the same having received the unanimous affirmative vote of all Alderman present, the Mayor declared the same carried and adopted.

Following the discussion, Alderman Turner moved to leave executive session. Alderman Fyfe seconded the motion. The matter was put to a vote with the result follows: Alderman Turner, yea; Alderman Hartsfield, yea; Alderman Fyfe, yea; Alderman Fullilove, yea; and Alderman Pierce, yea. The matter having received the majority affirmative vote of the Board of Aldermen of Tunica, the Mayor declared the same carried and the Board ended the executive session and returned to open meeting. Mayor Dulaney announced the actions taken during executive session.

With there being no other business, Alderman Turner moved to adjourn the meeting. Alderman Fyfe seconded the motion. Thereupon, the matter was put to a vote and the same having received the unanimous affirmative vote of all Aldermen present, the Mayor declared the same carried and adopted, and the meeting adjourned this 7<sup>th</sup> day of March 2022.

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Andrew T. Dulaney, Mayor

ATTEST:

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Kate Scott Pennock, Town Clerk

APPENDIX A – NOTICE OF SPECIAL MEETING

APPENDIX B – RESOLUTION FOR DRA DESIGNATION APPOINTEE

APPENDIX C – CDBG ENGINEERING CONTRACT

**NOTICE OF SPECIAL MEETING OF THE MAYOR & BOARD OF  
ALDERMAN – TOWN OF TUNICA, MISSISSIPPI**

Notice is hereby given that Andrew T. Dulaney, Mayor, has and does hereby call a special meeting of the Mayor and Board of Aldermen of the Town of Tunica to be held on Monday, March 7, 2022, at 4:00 p.m. in the Board Room located in Town Hall, 909 River Road, Tunica, Mississippi, at which date/time/place, the following items will be considered and acted upon:

1. Employee personnel;
2. DRA Grant
3. CDBG engineering contract;
4. Adjourn.

  
\_\_\_\_\_  
MAYOR  
Dated: March 4, 2022 9:30 a.m.

This notice shall be serviced on Lee B. Turner, Valerie Hartsfield, Rebecca P. Fyfe, Adam Fullilove, Daniel M. Pierce, and Richard “Wes” Ryals, II, who are hereby notified of the special meeting. Additionally, this notice is being posted at Town Hall. This notice is given as contemplated by Section 21-3-21 of the Mississippi Code of 1972, as amended.

Notice of the foregoing call of Special Board Meeting of the Mayor and Board of Aldermen of the Town of Tunica, Mississippi was accepted electronically via email by each Member of the Board of Alderman as of the date/time indicated and the undersigned hereby join in the call for said meeting.

NAME:

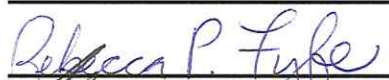
DATE AND HOUR:

Lee B. Turner

  
\_\_\_\_\_

Valerie Hartsfield

Rebecca P. Fyfe

  
\_\_\_\_\_

Adam Fullilove

  
\_\_\_\_\_

Daniel M. Pierce

  
\_\_\_\_\_

**The Town of Tunica, Mississippi  
&  
Delta Regional Authority**

**Resolution**

WHEREAS, the Delta Regional Authority (hereinafter "DRA") was created by Congress by the *Delta Regional Authority Act of 2000*, as amended, as a federal/state partnership now comprised of 252 counties and parishes within the eight states of Alabama, Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri and Tennessee in order to remedy severe and chronic economic distress by stimulating economic development and fostering partnerships that will have a positive impact on the Delta Region's economy;

WHEREAS, The Town of Tunica, MS, acting by and through its Board, proposes to apply for and receive award(s) for a workforce development center from Fiscal Year 2021 DRA federal award program cycle;

WHEREAS, DRA requires that a person be designated, appointed, and given the authority to perform certain duties and administration of said award for and on behalf of the Awardee;

WHEREAS, the Board met in a regular session on March 7, 2022, whereby a quorum was present;

WHEREAS, a motion was made by Alderman Turner, was seconded by Alderman Fyfe to designate and appoint Andrew T. Dulaney to perform all duties and administration of said award, and in the event of an administration change, the new Mayor shall continue to have such authority under this Resolution which carried unanimously by voice vote and was recorded on the minutes;

NOW THEREFORE, *BE IT RESOLVED THAT*, by the Board, as follows:

THAT, Andrew T. Dulaney, be and is hereby designated and appointed to perform on behalf of The Town of Tunica, Mississippi and has the authority to make those acts and assume any and all duties in dealing with the award with DRA for the Fiscal Year - 2021 federal award program cycle.

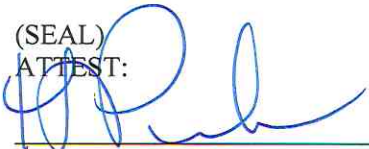
THAT, Andrew T. Dulaney is hereby authorized to execute and submit any and all documents including, but not limited to, applications, award closing documents, request for funds, status reports to DRA for the Fiscal Year - 2021 federal award program cycle. (It was noted that the current grant amount is \$234,028.)

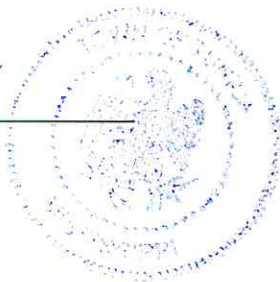
THAT, in the event of an administration change, the new Mayor shall continue to have such authority under this Resolution.

*READ AND ADOPTED, this the 7<sup>th</sup> day of March, 2022.*

  
\_\_\_\_\_  
Andrew T. Dulaney, Mayor  
Town of Tunica

(SEAL)  
ATTEST:

  
\_\_\_\_\_  
Kate Scott Pennock  
Town Clerk



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

THIS IS AN AGREEMENT between **The Town of Tunica, Mississippi ("Client") and Fisher & Arnold, Inc.** ("Engineer"). Engineer agrees to provide the services described below to Client for **WASTEWATER TREATMENT LAGOON AERATION SYSTEM IMPROVEMENTS ("Project")**. **Description of Engineer's Services: Design, Construction Administration, and Construction Observation of aeration system improvements at the existing Tunica Wastewater Treatment Lagoon. The full scope of services can be found on Attachment "A" to this Agreement.**

Client and Engineer further agree as follows:

**1. Basic Agreement**

- A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Client shall pay Engineer for such Services as set forth in Paragraph 10.

**2. Payment Procedures**

- A. *Preparation of Invoices.* Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Client.
- B. *Payment of Invoices.* Invoices are due and payable within 30 days of receipt. If Client fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Client, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal. In the event the account or any portion thereof remains unpaid Sixty (60) days after billing, the Client shall pay all costs of collection, including reasonable attorney's fees.

**3. Additional Services**

- A. When authorized by the Client due to changes in the Project, Engineer shall furnish services in addition to those set forth above. Client and Engineer agree that authorization should be in writing with a mutually agreed upon estimated cost of these additional services provided by Engineer.

- B. Client shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project 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. The Engineer's hourly rates and expense charges are included herewith as Attachment "B".

#### **4. Termination**

- A. The obligation to provide further services 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.
    - b. By Engineer:
      - (1) upon seven days written notice if Engineer believes that Engineer is being requested by Client to 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 or suspended for more than 90 days for reasons beyond Engineer's control.
      - (3) Engineer shall have no liability to Client on account of such termination.
    - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.A.1.a. if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure 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 Client effective upon 30 days written notice.
- B. The terminating party under paragraphs 4.A.1. or 4.A.2. may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, 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.

#### **5. Governing Law and Jurisdiction**

- A. The Client and the Engineer agree that this Agreement and any legal actions concerning its validity, interpretation and performance shall be governed by the laws of Mississippi.



- B. It is further agreed that any legal action between the Client and the Engineer arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in Mississippi.

#### **6. Successors, Assigns, and Beneficiaries**

- A. Client and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Client and Engineer (and to the extent permitted by paragraph 6.B. the assigns of Client and Engineer) are hereby bound to the other party to this Agreement and to the partners, 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 Client 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.

#### **7. General Considerations**

- A. Engineer shall perform its services consistent with the professional skill and care ordinarily provided by design professionals practicing in the same or similar locality under the same or similar circumstances. Engineer shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. Client agrees to make no delay claim or other related claims against Engineer provided that the Engineer has exercised reasonable diligence in the execution of its services. Engineer makes no other representations and no warranties, whether express or implied, with respect to its services performed under this Agreement. Engineer disclaims any responsibility for any plans, specifications, estimates, reports, surveys, tests or other documents or instruments, or any part thereof, prepared by Contractor's or Client's separate consultants, and the Engineer's liability to Client shall be limited to those documents, information and specification prepared by and services rendered by Engineer or its employees, agents, contractors and consultants. Client further acknowledges that reports concerning concealed conditions as well as investigations depict only conditions at the specific site. Accordingly, Engineer shall not be liable or responsible for anticipating conditions that are not depicted in information furnished by the Client's separate consultants or other sources of information concerning existing conditions at the applicable Project site.
- B. Engineer shall not have control over or charge of and shall not be responsible for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since they are solely the responsibility of others. Engineer shall not be responsible for any party's failure to perform the Work in accordance with the requirements of the Contract documents. Engineer will not have control over or charge of and will not be responsible for acts or omissions of any persons or entities performing portions of the Work.
- C. 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 Client and such contractor.

- D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Client without consultation and advice of Engineer.
- E. Engineer shall not be liable for equipment failures, manufacturing defects, power outages, loss of production, schedules, or other failures, nor any cost to the Client caused by circumstances related to such failures.
- F. Any opinion of probable construction cost prepared by the Engineer represents the judgment of design professionals and is supplied for general guidance only. Engineer does not guarantee the accuracy of such opinions as compared to contractor bids or actual cost.
- G. All design documents prepared or furnished by Engineer are instruments of service for use as intended on the Project, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed. Reuse of any design documents without Engineer's written permission is prohibited and shall be at the Client's sole risk without any liability or legal exposure to the Engineer. Client shall indemnify Engineer for any loss, damages, expenses or demands arising out of any reuse, alteration, or use of Engineer's Documents or work product without Engineer's involvement.
- H. The Client and Engineer mutually agree, to the fullest extent permitted by law, to indemnify and hold each other harmless from any and all damages, liability or cost, including reasonable attorney's fees and costs of defense, arising from their own negligent acts, errors or omissions in the performance of their services under this Agreement, to the extent that each party is responsible for such damage, liabilities and costs on a comparative basis of fault.
- I. To the fullest extent permitted by law, Engineer and Client waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement. Consequential damages include, but are not limited to, loss of profits, loss of revenues, loss of business and of business operations, reduced rental or market values, increased insurance costs, increased energy, water and other operational costs, unrealized tax incentives, credits, deductions, and/or rebates. Engineer and Client agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of the provision, and agree that the total liability in the aggregate of the Engineer and Engineer's officers, directors, employees, agents, and independent professional associates, and any of them, to Client and any one claiming by, through or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever arising out of or in any way related to Engineer's services, the Project or this Agreement, from any cause or causes whatsoever, including but not limited to, the negligence, errors, omissions, strict liability, breach of contract, misrepresentation, or breach of warranty of Engineer's officers, directors, employees, agents or independent professional associates, or any of them, shall not exceed the total compensation received by Engineer under this Agreement.
- J. 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, and 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 Client: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

**8. Disputes Resolution**

- A. All claims, counterclaims, disputes and other matters in question between the parties hereto arising out of or relating to this Agreement or breach thereof shall be presented to non-binding mediation, subject to the parties agreeing to a mediator.

**9. Total Agreement**

- A. This Agreement (consisting of pages 1 to 5 inclusive together with any expressly incorporated appendices or attachments) constitutes the entire agreement between Client 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.
- B. Attachments
  - 1. Attachment "A", Detailed Project Scope and Fee Proposal.
  - 2. Attachment "B", Hourly Billing Rate Schedule for work billed as Time-and-Expense and work described in Paragraph 3 above.

**10. Payment**

- A. Using the procedures set forth in paragraph 2, Client shall pay Engineer as follows:
  - 1. Lump sum amounts and Time/Material amounts based upon specific Project Phases as described in Attachment "A".
  - 3. For all extra work authorized in writing by the Client required on the project as described in Paragraph 3 above: 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 performed on the Project, plus reimbursable expenses and Engineer's consultants' charges, if any.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which shall be the later of the two signature dates below.

CLIENT:

By: \_\_\_\_\_

Title: Mayor

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

ENGINEER:

By: 

Title: Senior Vice President

Date Signed: March 11, 2022

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Address for giving notices:

Fisher & Arnold, Inc.  
9180 Crestwyn Hills Drive  
Memphis, TN 38125