

**Minute Book 32**

**March 25, 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 25, 2022

BE IT REMEMBERED, that the Mayor and Board of Aldermen of the Town of Tunica, held a meeting on Friday, March 25, 2022. The meeting was held in the Boardroom in the Municipal Complex at 909 River Road in the Town of Tunica, Mississippi, beginning at 10:00 a.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	Absent
Alderman Daniel M. Pierce	Present
Town Clerk Kate Scott Pennock	Present
Town Attorney Richard W. Ryals, II	Present
*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 receiving the fully executed Grant Agreement for the DRA Project. Mayor Dulaney advised that DRA has executed the Grant Agreement and the same has been received. Alderman Fyfe moved that the executed DRA Grant Agreement be received and included in the minutes, and that the Board authorize and approve proceeding with the project. 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 25<sup>th</sup> day of March 2022.

APPENDIX B – GRANT AGREEMENT EXECUTED BY DRA – BEATLINE ROAD  
PROJECT

The Mayor and Board next discussed and considered approving an engineering contract with Fisher and Arnold, Inc. for the necessary professional engineering services required for the DRA Project – Beatline Road Drainage Improvements. A copy of the proposed contract was available for review. Following a brief review of the terms of the contract and associated cost, Alderman Hartsfield moved that the professional engineering contract between the Town of Tunica and

Fisher & Arnold, Inc. for the DRA – Beatline Road Drainage Project be approved and that Andrew Dulaney, Mayor, and Kate Scott Pennock, Clerk, be authorized to execute the same. 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 25<sup>th</sup> day of March 2022.

#### APPENDIX C – DRA ENGINEERING CONTRACT – BEATLINE ROAD DRAINAGE PROJECT

Mayor Dulaney next discussed a personnel issue. Mayor Dulaney advised that Reggie Griffin, Director of Public Works, lives on Jacks Avenue just outside of the Town limits but within the Town’s water/sewer service area. As Mr. Griffin is frequently called out after regular business hours, Mayor Dulaney recommended that Mr. Griffin be authorized to take his Town work truck home at night and on the weekends. This will allow for a more efficient and timely response to emergency issues. Alderman Turner moved that the recommendation be accepted and Mr. Griffin be authorized to take his work truck home in order that he can more efficiently and timely respond when he is called out after hours and on the weekend. Alderman Hartsfield 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.

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 25<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 Friday, March 25, 2022, at 10:00 a.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. DRA Grant;
2. CDBG engineering contract;
3. Personnel;
4. Adjourn.

  
\_\_\_\_\_  
MAYOR

Dated: March 24, 2022 8:30 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:

Lee B. Turner

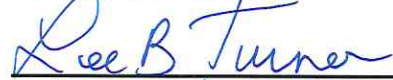
Valerie Hartsfield


Rebecca P. Fyfe

Adam Fullilove

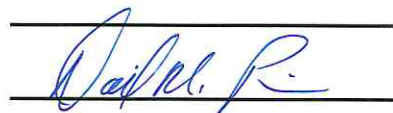
Daniel M. Pierce

DATE AND HOUR:

  
\_\_\_\_\_

  
\_\_\_\_\_

\_\_\_\_\_

  
\_\_\_\_\_

DELTA REGIONAL AUTHORITY

March 8, 2022,

Dear Andrew T. Dulaney  
Project: MS-54556

Attached separately to this email you will find Delta Regional Authority's (DRA) standard award documents (listed below), which must be agreed to for receipt of the Notice to Proceed. If the terms and conditions in the award documents are acceptable, this page must be signed by the authorized official, notarized and returned to the Basic Agency listed below within 45-days. Additionally, if this project's budget included any other uncommitted source(s) of funding, you will have 6-months from the date of this letter to provide DRA with documentation proving those funds are now authorized for use on this project. Only when all other funds are committed will you receive the Notice to Proceed. If for any reason either of these two milestones are not met, the DRA award could be rescinded.

No project activities shall begin prior to the awardee's receipt of the Notice to Proceed, without prior written approval from DRA. No social media or local press coverage is allowed prior to the awardee's receipt of the Notice to Proceed, without prior written approval from DRA. The awardee will be given a maximum of 12-months from the date of the Notice to Proceed to request the first reimbursement of DRA funds. Failure to meet this milestone will also result in the award being rescinded.

1. Memorandum of Agreement
2. Participation Agreement
3. Mediation and Arbitration Disclosures
4. Arbitration Agreement
5. Notice of Basic Agency Transfer
6. Environmental Declaration and Indemnity
7. Board Resolutions Example
8. Automated Clearing House Form (ACH)

The approved project application details are as follows:

**Investment Details:**

DRA Investment (LDD Admin Fee Included \$6,340)	\$234,028
Other Public/Project Investment	\$0
Other Private/Capital Investment	\$0
Total Investment	\$234,028

**The Basic Agency for this project is identified as:**

North Delta Planning and Development District  
220 Power Drive  
Batesville, MS 38606-1488  
P: (662) 561-4100

If you have any questions or comments regarding these documents or the administration of your project, please address them to Amanda Allen, SEDAP Manager, at [aallen@dra.gov](mailto:aallen@dra.gov).

The awardee affirms this award and the statements and documents produced in the accompanying award application are true and correct. By executing this Award Agreement with DRA, the awardee adopts and ratifies all statements, representations, warranties, covenants, and materials it has submitted to DRA, consents to the award, and agrees to all terms and conditions of this Award Agreement.

Authorized Awardee Signatory  
Signature: [Signature]  
Print Name/Title: ANDREW T. Dulaney, Mayor  
Date: March 8, 2022

Kemp Morgan  
Director of Project Management and Development

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

Notary Public Seal  
Signature: [Signature]  
Date: March 8, 2022  
STATE OF MISSISSIPPI  
NOTARY PUBLIC  
JID # 121624  
KATHRYN C. PENNOCK  
Commission Expires  
Sept. 21, 2025  
TUNICA COUNTY



**Appendix 1**  
**2022 HOURLY RATE SCHEDULE**  
**For the Town of Tunica, Mississippi**

<u>Classification</u>	<u>Rate/Hour</u>
Vice President / Senior Principal	\$195.00
Engineering Director	\$175.00
Engineering Manager / Project Manager	\$150.00
Project Civil Engineer I	\$125.00
Project Civil Engineer II	\$145.00
Intern Engineer I	\$105.00
Intern Engineer II	\$125.00
Senior Specialist / Senior Construction Observer	\$105.00
Specialist / Construction Observer	\$85.00
Survey Manager	\$150.00
Two-Person Survey Crew	\$185.00
Professional Surveyor	\$130.00
CAD Technician	\$105.00
Administrative Professional	\$60.00
Environmental Engineer	\$125.00
 Reimbursable Expenses:	
Mileage	Current IRS rate / mile + 15%
Materials and Subconsultant Mark-up	Cost Plus 15%
Miscellaneous Expenses	Cost Plus 15%
(i.e. Printing, Supplies, Rental Equipment, Travel, etc.)	





## **Attachment "A"**

### **Project Detailed Scope and Fee Proposal For the Town of Tunica, Mississippi Beatline Road Drainage Improvements**

#### **Project Scope**

Based upon design efforts previously undertaken on behalf of the Town of Tunica, Fisher Arnold will prepare necessary drainage plans and technical specifications detailing the replacement of existing driveway culverts along Beatline Road, west of US Highway 61 to School Street. Elements of the Survey and Design Phase will include:

- Necessary field verification of critical elevations used in previous design
- Development of all required Plan & Profile drawings detailing proposed driveway culvert sizes, elevations, and roadside ditch profiles
- Culvert and inlet details
- Preparation of temporary construction easement documents for property owners to sign
- Preparation of Technical Specifications
- Preparation of Bid Documents and Construction Contract for use in Bidding
- Assistance to the Town for the bidding process including plan reproduction, conducting the pre-construction conference, preparing addenda as needed, bid tabulation, and project award.

After Notice of Award, Construction Administration Phase services will be prorated monthly based on a four-month construction schedule and will include:

- Assist the Town with documents related to the Funding Agency Grant requirements
- Review and approval of submittals and shop drawings
- Attendance at regular progress meetings
- Review and approve Contractor's monthly pay applications
- Review and file results for concrete, asphalt, soil compaction, and aggregate testing performed by third party. Testing will be paid for by the Town.
- Assist with project closeout
- Prepare record drawings using Contractor's field markups



During Construction Observation, services will be billed on a time and expenses basis and will include:

- Observing construction throughout the duration of the project as needed. It is anticipated that two site visits per week by an Intern Engineer for sixteen weeks will be necessary. Full-time inspection is not believed to be necessary for this work.

<u>Project Phase</u>	<u>Phase Fee</u>
Survey, Design, and Bid Phase, Lump Sum	\$11,500.00
Construction Administration Phase, Not-to-Exceed Time and Materials Fee	\$4,800.00
Construction Observation, Not-to-Exceed Time and Materials Fee	<u>\$15,552.00</u>
Project Total Fees	\$31,852.00



**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 Beatline Road Drainage Improvements ("Project"). Description of Engineer's Services: Design of drainage improvements on Beatline Rd from School Road to Highway 61. 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.

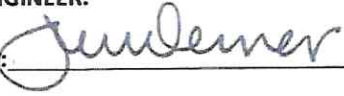
CLIENT:

By: 

Title: Mayor

Date Signed: March 25, 2022

ENGINEER:

By: 

Title: Senior Vice President

Date Signed: March 11, 2022

Address for giving notices:

P.O. Box 395  
909 River Road  
Tunica, MS 38676

Address for giving notices:

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