RESOLUTION 26-2011

RESOLUTION APPROVING ENGINEERING SERVICES AGREEMENT WITH FISHER & ARNOLD, INC.

WHEREAS, the City intends to enter into a Revolving Fund Loan Agreement with the Tennessee Department of Environment and Conservation and the Tennessee Local Development Authority for a loan in the estimated amount of $ 2,827,400 for design and construction of improvements to the City's wastewater treatment plant (the "Loan Agreement"); and

WHEREAS, the Board of Mayor and Aldermen desires to contract with Fisher & Arnold, Inc., for provision of design phase and construction phase engineering services for said project;

NOW, THEREFORE, BE IT RESOLVED by the Board of Mayor and Aldermen of the City of Millington, Tennessee, as follows:

1. The City is authorized to execute, deliver and perform its obligations under the Engineering Services Agreement with Fisher & Arnold, Inc. attached to this Resolution as Exhibit A and incorporated herein by reference;

2. The City shall have no obligation or liability under the Engineering Services Agreement if it does not receive the loan contemplated by and described in the Loan Agreement;

3. Mayor Richard L. Hodges is authorized to execute and deliver the Engineering Services Agreement on behalf of the City.

This Resolution is adopted as of the 1st day of August, 2011.

Richard L. Hodges, Mayor

Bruce Rasmussen, City Clerk and Treasurer

ENGINEERING SERVICES AGREEMENT

This Agreement made and entered into this 20th day of July, 2011, by and between the City of Millington, the "OWNER" and Fisher & Arnold, Inc. hereinafter called the "ENGINEER", Witnesseth;

For and in consideration of mutual promises, covenants, stipulations and payments to be made as provided herein, the OWNER contracts with the ENGINEER to provide engineering services for the Design of the Renovation of the Wastewater Treatment Plant as described in Article I, Item 2, Design Phase, and for Construction Phase services as described in Article 1, Item 3, Construction Phase, below.

Now therefore, the OWNER and ENGINEER for the consideration hereinafter set forth, agree as follows:

ARTICLE 1 – ENGINEER'S SERVICES

Item 1: Planning Phase (Complete under previous Agreement)

The ENGINEER has prepared a Facilities Plan to meet the requirements of the Tennessee Clean Water State Revolving (CWSRF) Loan Program with the intent of acquiring a loan from the Tennessee Department of Environmental and Conservation (TDEC). This Facilities Plan has been approved by TDEC.

Item 2: Design Phase

The ENGINEER shall provide all services required for the design of the renovation of the wastewater treatment plan. The ENGINEER shall meet with the OWNER as necessary to determine OWNER'S requirements for the project. The design will include all civil, survey, process, electrical and mechanical services necessary for a complete project, including plans, specifications and contract documents suitable for obtaining bids for construction of the renovation of the wastewater treatment plant.

The plans, specifications and contract documents will be submitted to TDEC for approval under the CWSRF Loan Program.

Cost projections will be updated at the completion of the design phase.

Item 3: Construction Phase

The ENGINEER shall assist the OWNER in advertising and opening bids for renovation of the wastewater treatment plant. The ENGINEER will review the bids and make recommendations for acceptance of bids and selection of Contractor.

During construction, the ENGINEER shall attend a pre-construction conference, review all Contractor submittals including shop drawings, pay request and change

order requests, submit reimbursement applications to the CWSRF Program at TDEC, provide a Resident Project Representative , make periodic site visits, issue Notice of Substantial Completion, make Final Inspection, submit close-out documentation to the OWNER and TDEC, and provide Record Drawing.

Item 4: Additional Services

In the event that the OWNER, in writing, requests the ENGINEER to perform additional services not covered in this Agreement, an additional fee will be negotiated.

ARTICLE 2 – OWNER'S RESPONSIBILITIES

Item 1: The OWNER shall make available all documents pertaining to the wastewater treatment plant including past 12 months operating data, drawings of the wastewater treatment plant, Plant Operations & Maintenance Manual.

Item 2: Provide access to the wastewater treatment plant during normal business hours.

Item 3: Attend meetings with the ENGINEER and review and comment on submittals by ENGINEER.

Item 4: Provide prompt notice to the ENGINEER of any perceived defect or nonconformance in ENGINEER'S services or in the work of any contractor.

ARTICLE 3 – TIME OF RENDERING SERVICES

The ENGINEER agrees to diligently prosecute its assignment to the end that the following schedules will be met:

The time limitations stated herein are to be conditional upon timely receipt of various information to be supplied by the OWNER, upon the OWNER'S close working relationship with the ENGINEER during the several functions of the project, and upon prompt review and approval of the work by the OWNER and others requested by the ENGINEER during the duration of the Contract.

The ENGINEER agrees to begin work on the project within five (5) calendar days after receiving written authorization to proceed with the project. Expiration of this Contract shall be one (1) year after final acceptance of construction.

ARTICLE 4 – PAYMENT

In payment for the services described in Article 1, Engineer's Services, the OWNER agrees to pay the ENGINEER the following amounts:

Item 1 – Planning Phase (Paid Under Previous Agreement)	$12,000
Item 2 – Design Phase	120,400
Item 3 – Construction (Including Bidding & Resident Project Representative)	84,500
TOTAL	**$216,900**

Invoices for work performed under this Agreement shall be submitted by the ENGINEER for approval by the OWNER on a monthly basis and paid within 30 days by the OWNER after receipt of invoice from ENGINEER, subject to the OWNER's receipt of the requested amount due to Engineer under each invoice pursuant to the Revolving Fund Loan Agreement (the "Loan Agreement").among the OWNER, the Tennessee Department of Environment and Conservation (the "Department") and the Tennessee Local Development Authority (the "Authority").

ARTICLE 5 – GENERAL CONDITIONS

The ENGINEER's estimate for the construction cost is the opinion of the ENGINEER of the probable construction cost on the date of the estimate and is supplied only as a guide. Since the ENGINEER has no control over the cost of the labor and materials or over competitive bidding and market conditions, the ENGINEER does not guarantee the accuracy of such opinion as compared to contractor's bids or actual cost to the OWNER.

The ENGINEER will provide Workmen's Compensation coverage on the ENGINEER'S employees assigned to the project and will deliver to the OWNER a certificate of insurance which shows that the ENGINEER has in full force and effect general public liability insurance, with the OWNER named as additional insured, in such amounts as the OWNER and ENGINEER shall agree.

The ENGINEER does not guarantee the performance or safety of materials or equipment provided by the Construction Contractors, which material and equipment may include, but not necessarily be limited to, pipe, valves, fittings, traps, conduit, wiring, steel, wire, nails, lumber, cement, aggregate, bricks, tile, pumps, motors, compressors, boilers, air conditioning apparatus, electrical apparatus of all types, all metal pressure and storage vessels, and all other materials and equipment as are required to provide a complete safe and functional facility.

The ENGINEER agrees that in its performance of this Agreement, it will comply with all provisions of federal and state law listed on Exhibit A of the Loan Agreement that are applicable to it.

The ENGINEER hereby indemnifies and holds harmless the OWNER, its elected and appointed officials and employees, from and against all losses, claims and liabilities of every kind, including court costs and attorney fees, arising out of or occurring because of the negligent

acts, errors or omissions by ENGINEER, its officers or employees in the performance of professional services under this Agreement. ENGINEER shall have no obligation to indemnify the OWNER as to losses, claims or liabilities caused solely by the negligence of the OWNER, its elected and appointed officials or employees.

TERMINATION OR SUSPENSION

The terms of the Agreement shall be binding upon the parties hereto until the work has been completed, approved by the Department and the Authority, and accepted by the OWNER and all payments required to the ENGINEER have been made. This Agreement may be terminated under any or all of the following conditions:

A. If either party hereto shall fail or refuse to perform the terms and conditions of this Agreement, the party not in default shall give three (3) days written notice to the defaulting party of the alleged default, and if such default continues for as long as three (3) additional business days from the date of receipt of said written notice, then this Agreement may be cancelled by the party not in default for the breach thereof by the defaulting party, and all of the rights and remedies allowed by law for breach of contract shall be open to the party not in default. The waiver of any breach or written notice of breach of any provision of this Agreement shall not be a waiver of any succeeding breach of any of the terms of this Agreement.

B. This Agreement may also be terminated by mutual agreement by both parties. If this Agreement is thus terminated, the ENGINEER shall be compensated for the full extent of his services satisfactorily performed to the date of such written notice.

In the event of termination, the ENGINEER shall deliver to the OWNER all plans and records of the work compiled to the date of termination, and the OWNER shall pay in full for all work satisfactorily accomplished up to the date of termination, on a quantum merit base, including any retained percentage earned to date.

Should the OWNER desire to suspend the work, but not terminate the agreement, this may be done by (3) three days notice given by the OWNER in writing to the ENGINEER to that effect. The work may be reinstated and resumed in full force and effect upon receipt by the ENGINEER from the OWNER of (3) three days notice in writing to that effect.

VERBAL AGREEMENTS

It is specifically stipulated that there are no verbal agreements or understandings between the parties hereto affect this contract, which is made on the express condition that it contains all of the terms and conditions agreed upon by the parties. Any modification of or amendment to this Agreement shall be made only by written agreement signed by both parties.

Witness the signature of the parties the date first written above.

CITY OF MILLINGTON

By: _____
Mayor

_____
Attest

FISHER & ARNOLD, INC.

By: _____
Vice-President

_____
Reviewed by

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