

10.2.2 Nothing contained in this Agreement shall create any contractual relationship between any subcontractor and the CITY or subject the CITY to liability of any kind to any subcontractor. The CONSULTANT shall supply the names and addresses of subcontractors and material suppliers when requested to do so by the CITY upon activation of the Agreement and updated by the CONSULTANT to the CITY on a biweekly basis during said activation.

10.2.3 The CONSULTANT shall not use a subcontractor or material supplier against whom the CITY has a reasonable objection to and shall to the extent practicable subcontract with local firms within the CITY and surrounding area.

10.2.4 No subcontract shall, under any circumstances, relieve the CONSULTANT of its liability and obligations under this Agreement and all transactions with the CITY must be through the CONSULTANT.

Article 11 – Special Conditions

11.1 Independent Consultant: All employees of the CONSULTANT shall be, at all times, the sole employees of the CONSULTANT under its sole discretion and not an employee or agent of the CITY. The CONSULTANT shall supply competent and physically capable employees who shall have and wear proper identification. The CITY reserves the right to require the CONSULTANT to remove an employee the CITY deems careless, incompetent insubordinate or otherwise objectionable and whose continued employment on CITY property is not in the best interest of the CITY. The CITY also reserves the right to dismiss any of the CONSULTANT’S drivers who fail to follow proper safety and traffic rules and regulations.

11.3 Work Hours: CONSULTANT will conduct its services at the times and dates necessary and appropriate to perform its duties as provided for in this Agreement.

Article 12 – General Conditions

12.1 Interpretation and Venue: This Agreement is made under, and in all respects shall be interpreted, construed, and governed by and in accordance with the laws of the State of Mississippi. Venue for any legal action resulting from this Agreement shall lie in Jackson County, Mississippi.

12.2 Captions: The captions utilized in this Agreement are for the purposes of identification only and do not affect the meaning or interpretation of any of the provisions hereof.

12.3 Amendment: This Agreement may not be amended, released, discharged, rescinded or abandoned, except by written instrument duly executed by each of the parties hereto.

12.4 Waiver: The failure of either party hereto at anytime to enforce any of the provisions of this Agreement will in no way constitute or be construed as a waiver or relinquishment of such provision or of any other provision hereof, nor in any way affect the validity of, or the right thereafter to enforce, each and every provision of this Agreement.

12.5 Civil Rights: During the term of this Agreement CONSULTANT assures the CITY that it is in compliance with Title VII of the 1964 Civil Rights Act, as amended, in the CONSULTANT does not on the grounds of race, color, national origin, religion, sex, age, disability or marital status, discriminate in any form or manner against CONSULTANT'S employees or applicants for employment. CONSULTANT understands and agrees that this Agreement is conditioned upon the veracity of this statement of assurance.

12.6 Other Laws: CONSULTANT shall, at all times, comply with all federal, state and local laws, rules and regulations.

12.7 Severability: The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

12.8 Records: CONSULTANT shall keep records and accounts of all services provided under this Agreement and require any and all contractors and subcontractors to keep records and accounts of all services provided as may be necessary in order to record complete and correct entries as to the fees and expenses charged for services under this Agreement. Such books and records will be available at all reasonable times for examination and audit by the CITY and shall be kept for a period of three (3) years after the completion of all work to be performed pursuant to this Agreement. Incomplete or incorrect entries in such books and records will be grounds for disallowance by the CITY of any fees or expenses based upon such entries. All records developed subject to this Agreement shall be deemed public records and subject to inspection in accordance with Mississippi Statutes.

12.9 Independent Contractor: This Agreement does not create an employee/ employer relationship between both Parties. It is the intent of both Parties that this CONSULTANT is an independent contractor under this Agreement and not the CITY'S employee for all purposes, including but not limited to the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The CONSULTANT shall retain sole and absolute discretion in the judgment of the manner and means of carrying out CONSULTANT'S activities and responsibilities hereunder provided, further and administrative procedures applicable to services rendered under this Agreement shall be those of the CONSULTANT, which policies of CONSULTANT shall not conflict with the CITY of United States policies, rules and regulations relating to the use of CONSULTANT'S funds provided for herein. The CONSULTANT agrees that it is a separate and independent enterprise from the CITY, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the CONSULTANT and the CITY and the CITY will not be liable for any obligation incurred by CONSULTANT, including but not limited to, unpaid minimum wages and/or overtime premiums.

12.10 Dispute Resolution: Upon the occurrence of any dispute or disagreement between the parties hereto arising out of or in connection with any term or provision of this Agreement, the subject matter hereof, or the interpretation or enforcement hereof (the "Dispute"), both Parties shall engage in informal, good faith discussions and attempt to resolve the Dispute. In connection therewith, upon written notice of either party, each of the parties will appoint a designated officer whose task it shall be to meet for the purpose of attempting to resolve such Dispute. Such officers will discuss the Dispute. If the parties are unable to resolve the Dispute in accordance with this section, and in the event that either of the parties concludes in good faith that amicable resolution through continued negotiation with respect to the Dispute is not reasonably likely, then the parties may mutually agree to submit to binding or nonbinding arbitration or mediation.

12.11 Binding Authority: Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this Agreement.

12.12 Exhibits: Each Exhibit referred to in this Agreement forms an essential part of this Agreement. The exhibits if not physically attached should be treated as part of this Agreement and are incorporated herein by reference.

12.13 Legal Representation: It is acknowledged that each party to this Agreement had the opportunity to be represented by counsel in the preparation of this Agreement and, accordingly, the rule that a contract shall be interpreted strictly against the party preparing same shall not apply herein due to the joint contribution of both parties.

12.14 Notices: Wherever provision is made in this Agreement for the giving, service or delivery of any notice, statement or other instrument, such notice shall be in writing and shall be deemed to have been duly given, served and delivered, if delivered by hand, mailed by United States registered or certified mail, sent by facsimile addressed as follows:

As to CONSULTANT: Arrington & Associates, LLC
Post Office Box 1175
Gautier, MS 39553
Phone: 228-627-0727
Fax: 228-497-1942

As to CITY: Samantha Abell, City Manager
City of Gautier, Mississippi
3330 Hwy 90
Gautier, MS 39553

With a Copy to: Dennis Reeves, Director of Public Works
City of Gautier, Mississippi
3330 Hwy 90
Gautier, MS 39553

With a Copy to: Patty Huffman, Grants and Special Projects Manager
City of Gautier, Mississippi
3330 Hwy 90
Gautier, MS 39553

Each Party hereto may change its mailing address by giving the other party notice of such change.

12.15 Entire Agreement: This Agreement is intended by both parties hereto to be final expression of this Agreement, and it constitutes the full and entire understanding between the parties with respect to the subject hereof, notwithstanding any prior representations, statements, or agreements contrary heretofore made.

12.16 Assignment of Rights/Subletting of Contract: This Agreement shall not be sublet and/or assigned to any other party except with the written permission of the CITY.

12.17 Attorney's Fees: In the event that either party brings suit for enforcement of this Agreement, the prevailing party shall be entitled to attorney's fees and court costs in addition to any other remedy afforded by law.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the date first written above.

CONSULTANT:	CITY of Gautier, Mississippi:
Arrington & Associates, LLC	
By: <u><i>Andy Arrington</i></u>	By: _____
Printed Name: <u>ANDY ARRINGTON</u>	Printed Name: _____
Title: <u>President</u>	Title: _____

Exhibit “A”
SCOPE OF SERVICES
Disaster Debris Monitoring for the City of Gautier, Mississippi

Arrington & Associates, LLC will provide any and/or all services listed below to the City of Gautier as they deem applicable to recovery efforts.

Field Documentation

Arrington & Associates will work closely with the CITY, FEMA, MEMA, FHWA and any other applicable agencies to ensure that work/ project documentation, verification and eligibility requirements are sufficiently met for reimbursement.

Collection Monitoring of Right-of-Way and Public Property Debris/Trees

Arrington & Associates, LLC will provide collection monitors to ensure debris is disaster related and eligible for federal reimbursement as designated under the Robert T. Stafford Disaster Relief and Emergency Assistance Act. Load tickets will be issued in the field including information as stated in the Debris Monitor Field Guide - Disaster Assistance Directorate Public Assistance Division FEMA B-587 / June 2008. Information will include but not be limited to location, date, time, debris type, vehicle identification, drivers name, load size, and disposal site. Tickets will be issued for each load which will be delivered to the temporary debris reduction site (TDRS) or disposal site with the truck driver for rating. Similar services will be provided if private property work is approved later on this project.

Monitor Training

Arrington & Associates, LLC will provide training to employees concerning safety, eligibility for reimbursement, and disaster specific information. All guidelines will be available to FEMA/ MEMA for review to ensure adequate measures are being used for monitoring all debris from ‘cradle to grave’.

Spot Checks and Auditing of Monitors

Arrington & Associates, LLC will provide supervisory personnel to ensure that field monitors are making accurate eligibility calls, providing adequate and complete documentation, and are working effectively with the debris removal contractor.

Project Mapping

Arrington & Associates, LLC will use maps, as required by the City, to document the debris removal progress. The final pass along each roadway will be mapped for Public Information, and FEMA/ MEMA documentation. We will assist the City in public communication and relay any citizen complaints for action by the contractor or the City.

Truck Certification

Arrington & Associates, LLC will inspect and certify vehicles for hauling storm related debris in accordance with FEMA guidelines. A certification sheet with measurements, photos, and calculations documenting the capacity of the truck will be kept for load rating and ticket auditing.

TDRS/ Disposal Sites

Arrington & Associates, LLC will provide trained monitors as needed at the TDRS and/or disposal sites to call loads based on the amount of debris in each truck. Monitors will ensure that each truck is empty upon leaving the site. In addition, our monitors will inspect and verify truck certification sheets during and throughout the project to ensure no modifications have been made. Similar systems will be used to verify, track, and document hauling of reduced debris from TDRS sites through final disposal.

Data Management

Arrington & Associates, LLC will establish a data management team that reconciles load ticket information. This information will be provided to the City, FEMA/ MEMA, and the contractor as needed. In addition, our staff will work with the contractor reconcile invoices, and help process invoices for recommendation to the City. Arrington & Associates, LLC will organize field information for FEMA/ MEMA documentation. We will help track invoices for FEMA/ MEMA reimbursement and provide additional supporting information as necessary.

Safety Meetings and Monitor Updates

Arrington Associates, LLC will hold regular meetings with debris monitors and staff for project updates and for safety issues.

Weekly Coordination Meetings with Contractor(s)

Arrington & Associates, LLC will initiate a weekly meeting with the debris removal contractor to help expedite the work, and to discuss any issues that may arise during the week.

Status Reports

Arrington & Associates, LLC will provide detailed status reports to the City. Relevant project statistics and cumulative statistics will be shown in a straight forward manner for officials to provide information to the media or to their constituents. We will communicate with the City on a regular basis to resolve any disputes which may arise on the project.

Project Worksheet Preparation and Project Closeout

Arrington & Associates, LLC will work directly with the FEMA Project Officer with the development of the project worksheets (PW) and furnish data needed to ensure the scope of work and cost estimates for the project are properly represented in the PW. In addition, Arrington & Associates, LLC will act as the applicant's representative through the duration of the project until the FEMA project closeout team has closed out the project.

**Exhibit “B”
FEE SCHEDULE
Disaster Debris Monitoring Services for the City of Gautier, Mississippi**

Position	Hourly Rate
Project Manager	\$ 60.00
Operations Manager	\$ 55.00
Data Manager	\$ 35.00
GIS Analyst	\$ 50.00
Field Supervisor	\$ 45.00
Debris Site/ Tower Monitor	\$ 30.00
Collection Monitors	\$ 30.00
Data Entry Clerk/ Clerical	\$ 25.00
Billing/ Invoice Analyst	\$ 25.00

Arrington & Associates, LLC agrees that the hourly rates listed above will cover all cost of labor and/or expenses relating to the Scope of Services detailed in Exhibit “A” and no additional expenses incurred will be billed to the City of Gautier including; food, lodging, cell phone use, GPS equipment, and/ or automobile expenses, with the exception of “Marine Based” expenses. Such “Marine Based” expenses not included in the labor costs/ hourly rates listed above may include, but are not limited to, boat rental and Sonar equipment deemed necessary and applicable in order to meet Federal/ State project eligibility, documentation or verification requirements of debris removal activities and monitoring services. In addition, any/ all overtime hours will be billed to the City of Gautier at the REGULAR hourly rates listed above.

Exhibit “C”
ADDITIONAL INFORMATION
Disaster Debris Monitoring for the City of Gautier, Mississippi

Tax Identification

Arrington & Associates, LLC’s Tax Identification Number is **27-2486691**.

CCR Registration/ DUNS Identification

Arrington & Associates, LLC is registered and active in CCR and our DUNS Identification Number is 008366798.

Firm Certificate of Authorization to provide Engineering Services

Arrington & Associates, LLC has met requirements of Title 73, Chapter 13, Code of Mississippi, 1972, and has been issued a “Certificate of Authorization” by the Mississippi Board of Licensure for Professional Engineers & Surveyors to provide Engineering Services in the State of Mississippi. **CERTIFICATE No. E-2411**

Firm Certificate of Authorization to provide Surveying Services

Arrington & Associates, LLC has met requirements of Title 73, Chapter 13, Code of Mississippi, 1972, and has been issued a “Certificate of Authorization” by the Mississippi Board of Licensure for Professional Engineers & Surveyors to provide Surveying Services in the State of Mississippi. **CERTIFICATE No. S-0450**

There came for consideration of the Mayor and Members of the Council of the City of Gautier, Mississippi, the following:

ORDER NUMBER 214-2012

IT IS HEREBY ORDERED by the Mayor and Members of the Council of the City of Gautier, Mississippi, that a contribution in the amount of \$5,000.00 to the 22nd Annual Gautier Mullet & Music Fest from the City's Cultural Support Fund is hereby approved.

IT IS FURTHER ORDERED that the City Manager or Interim City Clerk is authorized to execute any and all documents necessary.

Motion was made by Councilman Guillotte, seconded by Councilwoman Martin and the following vote was recorded:

AYES: Tommy Fortenberry
Johnny Jones
Hurley Ray Guillotte
Gordon Gollott
Mary Martin
Scott Macfarland
Adam Colledge

NAYS: None

MAYOR

ATTEST:

INTERIM CITY CLERK

PASSED AND ADOPTED by Mayor and Members of the Council of the City of Gautier, Mississippi, at the meeting of September 18, 2012.