

Tangipahoa Parish Recording Page

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First MORTGAGOR

TANGIPAHOA PARISH GOVERNMENT (O)

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INDEPENDENT CONTRACTOR AGREEMENT

THIS INDEPENDENT CONTRACTOR AGREEMENT (the "Agreement") is made and entered into effective as of the 24th day of August, 2015 (the "Effective Date"), by and between the TANGIPAHOA PARISH GOVERNMENT (the "Parish") and ARX DISASTER MANAGEMENT, INC. (the "Contractor").

RECITALS

WHEREAS, the Parish desires to engage Contractor to perform certain Contractor Services (as hereinafter defined) and Contractor desires to perform such Contractor Services, all on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, the mutual covenants and agreements contained herein, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Duties of Contractor. Effective as of the date of this Agreement, Contractor agrees to supply personnel as specifically requested in writing by the Parish to perform the services described in Exhibit A attached hereto (collectively, the "Contractor Services").

2. Independent Contractor Relationship. Contractor is an independent contractor and is solely responsible for all taxes, withholdings, and other similar statutory obligations, including, but not limited to, workers' compensation insurance and unemployment insurance. Nothing in this Agreement shall be deemed to create an agency, partnership, or joint venture between the parties, nor shall this Agreement be interpreted or construed as creating or establishing the relationship of employer and employee between the Parish and Contractor. Contractor has no authority to act on behalf of or to enter into any contract, incur any liability or make any representation on behalf of the Parish. It is expressly understood that Contractor is an independent contractor in every respect.

3. No Exclusive Duty. The Contractor shall use its best efforts to perform the Contractor Services, provided, however, the Contractor shall not be required to perform work exclusively for the Parish and Contractor may have other business interests and may engage in other activities in addition to those relating to the Parish.

4. Term. The term of this Agreement shall commence on the Effective Date and terminate on December 31, 2016, subject to the provisions of Paragraph 5 (the "Initial Term"). Upon expiration of the Initial Term, this Agreement shall continue on a month-to-month basis until terminated as set forth in Section 5 below or otherwise extended pursuant to mutually agreeable written terms.

5. Termination. Either party shall have the right to terminate this Agreement immediately upon written notice thereof to the other party, if such other party breaches any of the material terms of this Agreement or fails to perform or observe any of its material obligations

hereunder, and such breach or failure is not cured within a period of thirty (30) days after the receipt by such party of written notice of such breach or failure specifying the nature of the breach or failure. The Parish or Contractor may terminate this Agreement without cause and at any time for any reason without any further obligation to the other party by providing the other party thirty (30) days written notice. In the event of termination in accordance with this Paragraph, the Parish shall pay Contractor any compensation due (as set forth in Paragraph 6 of this Agreement) as of the effective termination date. Compensation payable at termination shall be the pro-rata portion of the annual compensation accrued as of the termination date.

6. Compensation. The Parish will pay Contractor an hourly rate for the personnel provided by Contractor pursuant to the payment schedule attached to Exhibit B. Contractor agrees to track the number of hours worked per week and to provide invoices for services rendered to the Parish on a weekly basis. Payment shall be due from the Parish to the Contractor within fifteen (15) days of the regular meeting of the Tangipahoa Parish Government immediately following receipt of the invoice. Under no circumstances shall the amount payable by the Parish for this Contract exceed \$1,000,000 without the prior written consent of both parties.

7. Taxes. Contractor shall be solely responsible for the payment of all taxes and/or assessments imposed on the payments of compensation for the performance of services outlined herein, including, without limitation, any unemployment insurance or tax, self-employment tax, federal, state and foreign income taxes, and any federal social security payment or similar taxes (and Contractor shall provide evidence to the Parish, upon the Parish's request, that such have been paid). Notwithstanding, the Parish may withhold from any amounts payable under this Agreement such federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

8. No Breach. Contractor warrants and covenants that by entering into this Agreement and performing the obligations herein, it will not breach or violate any agreement, charter, instrument or other document to which it is a party or otherwise bound.

9. Non-Disclosure. Parish shall not: (1) directly or indirectly divulge any information designated by the Contractor as secret or confidential to any unauthorized person.

The obligations set forth in this Paragraph 9 shall not apply to such confidential information which (i) is or becomes generally available to the public other than as a result of a disclosure by the Parish; (ii) was available to Parish on a non-confidential basis prior to its disclosure by the Contractor or its agents; or (iii) becomes available to Parish on a non-confidential basis from a source other than the Contractor or its agents.

Notwithstanding the foregoing, if Parish is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any confidential information, Parish shall promptly notify the Contractor of such request(s) so that the Contractor may seek an appropriate protective order or waive compliance with the provisions of this Agreement. Parish agrees to cooperate fully with the Contractor in seeking any protective order. If, in the absence of a protective order or the receipt of a waiver hereunder, Parish is, nonetheless, in the reasonable opinion of their counsel, compelled to

disclose any such confidential information or else stand liable for contempt or suffer other censure or penalty, then it may disclose such information pursuant to such request or requirement without liability hereunder.

10. Arbitration. The Parish and Contractor agree than any legal or equitable claims or disputes arising out of or in connection with this Agreement will be settled by binding arbitration. This agreement to arbitrate includes all claims, whether arising under federal or state law; compensation disputes; tortious conduct; contractual violations; and other statutory and common law claims, regardless of whether the statute or common law doctrine existed or was recognized at the time this Agreement was signed.

The arbitration proceedings shall be conducted at a mutually agreed site in Tangipahoa Parish, Louisiana, in accordance with the National Rules for the Resolution of Commercial Disputes ("National Rules") of the American Arbitration Association ("AAA") in effect at the time a demand for arbitration is made. Contractor and the Parish are entitled to representation by an attorney throughout the proceedings at their own expense.

One arbitrator shall be used and shall be chosen by mutual agreement of the parties. If, within thirty (30) days after Contractor notifies the Parish, or the Parish notifies Contractor, of an arbitral dispute no arbitrator has been chosen, an arbitrator shall be chosen by AAA pursuant to its National Rules. The arbitrator shall coordinate and limit as appropriate all pre-arbitral discoveries, which shall include document production, information requests and depositions. The arbitrator shall issue a written decision and award, stating the reasons therefore. The decision and award shall be exclusive, final and binding on both parties, their heirs, executors, administrators, successors and assigns. The costs and expenses of the arbitration shall be awarded by the arbitrator in accordance with the substantive law applicable to the dispute. If there is no applicable substantive law, then the costs and expenses shall be split between the parties.

The Parish and Contractor agree, acknowledge and understand that this arbitration provision and all related proceedings are subject to the Federal Arbitration Act, 9 U.S.C. §§ 1-16.

11. Indemnity. Contractor hereby agrees to protect, hold harmless and indemnify the Parish against any claims or liability for compensation under any law, rule or regulation of this state by reason of alleged damages or injuries of any description sustained by Contractor's employees, volunteers, subcontractors, the general public or any other person in connection with the event for any reason whatsoever during the term of this Agreement or at any other time in connection with services provided to Parish, including, but not limited to, the amount of any judgments, settlements, costs, or attorney's fees incurred in defense of any such claims wherein Contractor, its agents, servants, employees, or anyone acting on its behalf, are claimed or shown to be in any manner negligent, solely or contributory, in connection with the services provided to the Parish. It is expressly provided that it is a condition precedent to this Agreement that Contractor must show proof of a "Hold Harmless" policy of insurance with the Parish, its employees and elected officials being held harmless by such policy. Such policy of insurance shall be in such amount not less than \$1,000,000.00.

12. Insurance. Contractor shall furnish the Parish as a condition precedent to this Agreement an approved and satisfactory general comprehensive liability insurance in the minimum amount of \$1,000,000.00, and naming the Parish, its employees and elected officials as additional insureds. Such general comprehensive insurance, the premiums for which have been paid by the Contractor, shall cover any claim for damages of whatever nature brought by any person, corporation or business entity against the Contractor, the Parish, its employees, named insureds, or additional insureds, or any of them arising out of or in any manner connected with the services provided to the Parish. A certificate of insurance shall be provided by its producing agent to the Parish prior to the Contractor's beginning work under this Agreement.

Contractor shall furnish the Parish as a condition precedent to this Agreement and approved and satisfactory workers' compensation insurance providing workers' compensation insurance to Contractor's employees, unless Contractor is not required by law to have such insurance coverage.

13. Assignment. This Agreement shall not be assigned, in whole or in part, by Contractor without the prior written consent of the Parish, which shall not be unreasonably withheld.

14. Solid Waste Disposal Act. The Contractor shall comply with The Solid Waste Disposal Act of 1965, as amended (42 USCA § 6901, et seq.) and as applicable at all times during the term of this Agreement and any extensions thereof.

15. Contract Work Hours and Safety Standards Act. The Contractor shall comply with The Contract Work Hours and Safety Standards Act, as amended (40 United States Code, Chapter 37) and as applicable at all times during the term of this Agreement and any extensions thereof.

16. Clean Air Act. The Contractor shall comply with the Clean Air Act, as amended (42 U.S.C. §7401, et seq.) as applicable at all times during the term of this Agreement and any extensions thereof.

17. Federal Water Pollution Control Act (Clean Water Act). The Contractor shall comply with the Federal Water Pollution Control Act (Clean Water Act), as amended (33 U.S.C. § 1251 et seq.) as applicable at all times during the term of this Agreement and any extensions thereof.

18. Energy Policy and Conservation Act. The Contractor shall at all times comply with all applicable federal, state and local laws pertaining to energy efficiency, including but not limited to, the Energy Policy and Conservation Act, as amended (42 U.S.C.A § 6201 et seq.) as applicable during the term of the Agreement and any extensions thereof.

19. Byrd Anti-Lobbying Amendment. The Contractor shall comply with the Byrd Anti-Lobbying Amendment (42 U.S.C. § 1352, et seq.) as applicable at all times during the term of this Agreement and any extensions thereof.

20. Non-Discrimination. The Contractor will not discriminate against any person, employee or applicant for work or employment because of race, color, religion, sex, sexual

orientation, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation or national origin. Such action shall include, but not be limited to the following: employment, upgrading demotion or transfer; recruitment or recruitment advertising; layoffs or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will received consideration for employment without regard to race, color, religion, sex, sexual orientation or national origin.

The Contractor, with regard to the work performed by it during the term of this Agreement, shall not discriminate on the rounds of race, color, sex, sexual orientation or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment.

In all solicitations ether by competitive bidding or negotiation made by the Contractor for work to be performed under subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation or national origin

The Contractor will furnish all information and reports required by Executive Order 11246 and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts for purposes of investigation to ascertain compliance with such rules, regulations, and relevant orders of the Secretary of Labor.

The Contractor will comply with all provisions of Executive Order 11246 and of the rules, regulations and relevant orders of the Secretary of Labor.

The Contractor will comply with all provisions of Executive Order 12250 Coordination of Grant-Related Civil Rates Statutes.

The Contractor will take steps to solicit employment, subcontractor, vendor, volunteer and other employment opportunities with respect to services provided to Parish under this Agreement from minority and women owned businesses.

21. Miscellaneous.

(a) This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana, without reference to principles of conflict of laws. The captions of this Agreement are not part of the provisions hereof and shall have no force or effect. This Agreement may not be amended or modified otherwise than by a written

agreement executed by the parties hereto or their respective successors and legal representatives.

(b) All notices and other communications hereunder shall be in writing and shall be given by hand delivery to the other party or by registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

If to Contractor:

Arx Disaster Management, Inc.
Attn: Brooks Wallace
311 Telly Road
Picayune, Mississippi 39466

If to the Parish:

Tangipahoa Parish Government
Attn: Missy R. Cowart, CPA
P.O. Box 215
Amite, LA 70422

or to such other address as either party shall have furnished to the other in writing in accordance herewith. Notice and communications shall be effective when actually received by the addressee.

(c) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement.

(d) Contractor's or the Parish's failure to insist upon strict compliance with any provision of this Agreement or the failure to assert any right Contractor or the Parish may have hereunder shall not be deemed to be a waiver of such provision or right or any other provision or right of this Agreement.

(e) If any provision of this Agreement shall be deemed unlawful, void or unenforceable for any reason, it shall be deemed severable, and in no way shall effect the validity or enforceability of, the remaining provisions of this Agreement.

(f) This Agreement shall not be construed or interpreted in favor of or against Contractor or the Parish on the basis of draftsmanship or preparation of the Agreement.

(g) From and after the date this Agreement is signed by both Parish and Contractor, this Agreement shall supersede any other agreement between Contractor and the Parish with respect to the subject matter hereof.

(h) This Agreement can only be amended or modified in a written document signed by both Contractor and the Parish.

(i) This Agreement and any amendment, waiver, approval or consent relating hereto may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all of which when taken together shall constitute one and the same instrument. The delivery by any party of an executed signature page to this Agreement or any amendment, waiver, approval or consent relating hereto by facsimile transmission or by electronic email in Adobe Corporation's Portable Document Format (or PDF) shall be deemed to be, and shall be enforceable to the same extent as, an original signature page hereto or thereto. Any party who delivers such a signature page agrees to later deliver an original counterpart to any party that requests it.

IN WITNESS WHEREOF, the parties have executed this Independent Contractor Agreement as of the date first written above.

-CONTRACTOR-

-PARISH-

ARX DISASTER MANAGEMENT, INC.

TANGIPAHOA PARISH GOVERNMENT

By: BRWL

By: Gordon A. Burgess

Name: Brooks Wallace

Name: Gordon A. Burgess

Title: Vice President

Title: Parish President

EXHIBIT A

Contractor Services

Scope of Work

I. BACKGROUND

The Parish requires management, recovery, and consulting services related to disaster recovery. As such, the Consultant should be capable of providing a range of related services including debris removal monitoring, grant application, administration and program management, damage assessment, training, emergency planning, infrastructure restoration, and other services as needed and directed by the Parish. Other services may include, but not limited to, facilitating communication with FEMA, FHWA, the State of Louisiana and other agencies, coordination with insurance representatives, pre-event planning, and post-event reconstruction, grant funding, and reimbursement services.

II. SCOPE

A. DISASTER DEBRIS MONITORING SERVICES

The selected firm will be expected to provide disaster debris monitoring services to include debris generated from the public rights-of-way, private property, drainage areas/canals, waterways, and other areas designated as eligible by the Parish. Specific services may include:

- a. Debris monitoring company shall provide a debris management consultant to the parish upon full activation of the EOC (no later than 6 hrs prior to the parish experiencing tropical storm winds.
- b. Coordinating daily briefings, work progress, staffing, and other key items with the Parish.
- c. Support with the selection and permitting of Temporary Debris Storage and Reduction Site (TDSRS) locations and other permitting/regulatory issues as requested.
- d. Scheduling work for team members and contractors on a daily basis.
- e. Hiring, scheduling, and managing field staff.
- f. Monitoring recovery contractor operations and making/implementing recommendations to improve efficiency and speed up recovery work.
- g. Assisting the Parish with responding to public concerns and comments.
- h. Certifying contractor vehicles for debris removal using methodology and documentation practices appropriate for contract monitoring.

- i. Entering load tickets into a database application.
- j. Digitization of source documentation (such as load tickets) and photographs of load tickets.
- k. Developing daily operational reports to keep the Parish informed of work progress.
- l. Development of maps, GIS applications, etc. as necessary.
- m. Comprehensive review, reconciliation, and validation of debris removal contractor(s) invoices prior to submission to the Parish for processing.
- n. Project Worksheet and other pertinent report preparation required for reimbursement by FEMA, FHWA and any other applicable agency for disaster recovery efforts by Parish staff and designated debris removal contractors.
- o. Final report and appeal preparation and assistance.

B. GRANT APPLICATION, ADMINISTRATION & MANAGEMENT SERVICES

As directed by the Parish, the consultant shall provide:

- a. Preliminary Damage Assessment (PDA)
- b. Direct Administrative Cost Assistance
- c. Small PW Development
- d. Large PW Preparation
- e. Alternate and Improved Project Funding Consultation
- f. Hazard Mitigation Funding Support
- g. Special Consideration Assistance
- h. Construction Inspection
- i. Grant Administration/Financial Reconciliation Services
- j. Interim Project Inspections

- k. Final Project Inspections
- l. Data Collection and Dissemination
- m. Financial Compliance Review
- n. Insurance evaluation, documentation adjusting and settlement services;
- o. Project Scope Development
- p. Project Cost Estimation and Documentation
- q. Project Payment Requests
- r. Management – Project Cost Reconciliations
- s. Evaluating/Estimating Cost Overruns
- t. Preparing PW Versions for Cost Adjustments
- u. Grant Closeout Services
- v. Audit Assistance/Defense
- w. Appeals Development

C. EMERGENCY MANAGEMENT PLANNING AND TRAINING

As directed by the Parish, the Consultant shall provide:

- a. Comprehensive mitigation programs to include development of mitigation plan(s), staff training, cost benefit analysis, project management, environmental review and staff augmentation.
- b. Development of a debris management plan – including identification of an adequate number of TDSRS locations. Staff training as necessary.
- c. Procurement assistance for debris removal contractors and other services as requested.
- d. Technical support and assistance in developing public information.
- e. Other training and assistance as requested by the Parish.

- f. Other reports and data as required by the Parish.
- g. Other emergency management and consulting services identified and required by the City.

END OF SCOPE

EXHIBIT B

COST PROPOSAL FORM

RFP # Debris 2015-2016

The hourly labor rates shall include all applicable overhead and profit. All non-labor related project costs will be billed to the Parish at cost without mark-up.

DISASTER DEBRIS MONITORING SERVICES

POSITIONS	HOURLY RATES
Project Manager	<u>\$73.00</u>
Operations Managers	<u>\$62.00</u>
GIS Analyst	<u>\$57.00</u>
Environmental Specialist	<u>\$64.00</u>
Field Supervisors	<u>\$46.00</u>
Data Manager	<u>\$34.00</u>
Debris Site/Tower Monitors	<u>\$33.00</u>
Crew Monitors	<u>\$33.00</u>
Load Ticket Data Entry Clerks (QA/QC)	<u>\$20.00</u>
Project Coordinators	<u>\$30.00</u>

The hourly labor rates shall include all applicable overhead and profit. All non-labor related project costs will be billed to the Parish at cost without mark-up.

GRANT APPLICATION, ADMINISTRATION & MANAGEMENT SERVICES

POSITIONS	HOURLY RATES
Legislative Affairs Consultant	<u>\$125.00</u>
Project Manager	<u>\$125.00</u>
Senior Grant Management Consultant	<u>\$95.00</u>
Project Engineer	<u>\$125.00</u>
Grant Management Consultant	<u>\$75.00</u>
Environmental Scientist (Regulatory Support)	<u>\$95.00</u>
Grant Management Specialist	<u>\$75.00</u>
Grant Management Analyst	<u>\$65.00</u>
Field Site Inspector	<u>\$65.00</u>
Office/Clerical	<u>\$33.00</u>

The hourly labor rates shall include all applicable overhead and profit. All non-labor related project costs will be billed to the Parish at cost without mark-up.

EMERGENCY MANAGEMENT PLANNING AND TRAINING

POSITIONS	HOURLY RATES
Project Manager	<u>\$125.00</u>
Senior Consultant	<u>\$125.00</u>
Emergency Management Consultant	<u>\$95.00</u>
Emergency Management Trainer	<u>\$75.00</u>
Emergency Management Specialist	<u>\$65.00</u>
Emergency Management Analyst	<u>\$65.00</u>
Office/Clerical	<u>\$33.00</u>

OTHER REQUIRED POSITIONS

Proposer may include other positions, with hourly rates and attach job description for each position.