

STATE OF ALABAMA)
COUNTY OF BALDWIN)

NOTICE TO PROCEED NUMBER -2020-03

**UNDER STANDING CONTRACT FOR POST-DISASTER DEBRIS REMOVAL SERVICES
BETWEEN THE CITY OF FOLEY, ALABAMA
AND D&J ENTERPRISES, INC.**

ARTICLE A. PURPOSE

The purpose of this Notice to Proceed (NTP) is to authorize and direct **D&J ENTERPRISES, INC.** ("Contractor") to proceed with providing certain services as more particularly described in Exhibit "A" which is attached hereto and incorporated herein and made a part of the Standing Contract for Post-Disaster Debris Removal Services dated August 6, 2018.

ARTICLE B. SCOPE OF SERVICES

The specific services to be performed by Contractor pursuant to this NTP are more particularly described and defined in Exhibit "A ", which is attached hereto and incorporated herein.

ARTICLE C. COMPENSATION / EXPENSES

As compensation for providing the services described in NTP 2020-01 dated September 17, 2020, and NTP 2020-02 dated November 16, 2020, the City authorized payment to the Contractor in accordance with the provisions of the Standing Contract a sum that shall not exceed a maximum cost of Ten Million Dollars Five Hundred Thousand and no/100 (\$10,500,000.00).

As disaster debris collection and disposal will exceed the previously authorized amount, the City is issuing **NTP 2020-03** which authorizes additional payment to the Contractor in accordance with the provisions of the Standing Contract, an additional sum that shall not exceed **One Million Two Hundred Fifty Thousand Dollars and No/100 (\$1,250,000.00)**. Contractor shall invoice City in accordance with the Standing Contract identifying all hours for which services were performed.

ARTICLE D. CITY REPRESENTATIVE

Contractor shall keep the City's NTP representative informed of all efforts and progress in regard to services pursuant to this NTP so that work effort can be monitored and coordinated. The City's representative for the services of Contractor pursuant to this NTP is hereby designated as:

Name: Richard Rider
Telephone: 251-284-4005

ARTICLE E. PERIOD OF SERVICE

Work by the Contractor on all aspects of this NTP shall commence upon the execution by both parties of this NTP. Time for completion shall be approximately six (6) months.

ARTICLE F. MERGER

This NTP together with any other authorized NTPs and the Standing Contract constitutes the entire agreement between the parties in relationship to the services stated herein. All written or oral understandings and agreements between the parties are merged into this agreement. To the extent that any provision of this NTP conflict with the Standing Contract, the terms and conditions of the Standing Contract shall prevail. To the extent there is a direct conflict between any term or condition hereof and Exhibit "A" attached hereto, the provisions of this NTP shall prevail. No representation, warranty or covenant made by any party which is not contained or referred to in the Standing Contract or this NTP has been relied on by any party in entering into this agreement.

ARTICLE G. AUTHORIZATION

This NTP is effective and the Contractor is authorized to commence providing services pursuant to the provisions hereof upon the execution by both parties to this NTP.

ARTICLE H. MISCELLANEOUS

Capacity: Each Party to this Agreement represents and warrants to the other as follows:

- (1) That it is an individual of the age of majority or otherwise a legal entity duly organized and in good standing pursuant to all applicable laws, rules and regulations.
- (2) That each has full power and capacity to enter into this Agreement, to perform and to conclude the same including the capacity, to the extent applicable, to grant, convey and/or transfer; areas, assets, facilities, properties, (both real and personal), permits, consents and authorizations and/or the full power and right to acquire and accept the same.
- (3) That to the extent required, each Party has obtained the necessary approval of its governing body or board and a resolution or other binding act has been duly and properly enacted by such governing body or board authorizing this Agreement and said approval has been reduced to writing and certified or attested by the appropriate official of the Party.
- (4) That each Party has duly authorized and empowered a representative to execute this Agreement on their respective behalf and the execution of this Agreement by such representative fully and completely binds the Party to the terms and conditions hereof.
- (5) That absent fraud, the execution of this Agreement by a representative of the party shall constitute a certification that all such authorizations for execution exist and have been performed and the other Party shall be entitled to rely upon the same. To the extent a Party is a partnership, limited liability company or joint venture, the execution of this Agreement by any member thereof shall bind the Party and to the extent that the execution of Agreement is limited to a manager, managing partner or specific member then the person so executing this Agreement is duly authorized to act in such capacity for the Party.
- (6) That each party represents and warrants to the other that there is no litigation, claim or administrative action threatened or pending or other proceedings to its knowledge against

it which would have an adverse impact upon this transaction or upon either's ability to conclude the transaction or perform pursuant to the terms and conditions of this Agreement.

(7) That each party has obtained any and all required permits, approvals and/or authorizations from third parties to enable it to fully perform pursuant to this Agreement.

Third Party Beneficiaries: It is the intent of the parties hereto that there shall be no third party beneficiaries to this Agreement.

Final Integration: This Agreement, together with any amendments, constitutes the entire agreement of the parties, as a complete and final integration thereof with respect to its subject matter. In the event of a direct conflict between the provisions hereof and any prior agreement or amendment, the latter shall supersede the former. All written or oral understandings and agreements heretofore had between and among the parties are merged into this Agreement, which alone fully and completely expresses their understandings. No representation, warranty, or covenant made by any party which is not contained in this Agreement or expressly referred to herein has been relied on by any party in entering into this Agreement.

Force Majeure: Neither party to this Agreement shall hold the other party responsible for damages or delay in performance caused by acts of God, strikes, lockouts or other circumstances beyond the reasonable control of the other or the other party's employees, agents or contractors.

Amendment in Writing: This Agreement may not be amended, modified, altered, changed, terminated, or waived in any respect whatsoever, except by a further agreement in writing, properly executed by all of the parties.

Binding Effect: This Agreement shall bind the parties and their respective personal representatives, heirs, next of kin, legatees, distributees, successors, and assigns. If any provision in this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Captions: The captions of this Agreement are for convenience and reference only, are not a part of this Agreement, and in no way define, describe, extend, or limit the scope or intent of this Agreement.

Construction: This Agreement shall be construed in its entirety according to its plain meaning and shall not be construed against the party who provided or drafted it.

Mandatory and Permissive: "Shall", "will", and "agrees" are mandatory; "may" is permissive.

Governing Laws: The laws of the State of Alabama shall govern the validity of this Agreement, the construction of its terms, the interpretation of the rights, the duties of the parties, the enforcement of its terms, and all other matters relating to this Agreement.

Prohibition on Assignment and Delegation: No party to this Agreement may assign or delegate its interests or obligations hereunder without the written consent of all other parties hereto obtained in advance of any such assignment or delegation. No such assignment or delegation shall in any manner whatsoever relieve any party from its obligations and duties hereunder and such assigning

or delegating party shall in all respects remain liable hereunder irrespective of such assignment or delegation.

Waiver: Non enforcement of any provision of this Agreement by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remaining terms and conditions of the Agreement.

Agreement Date/Counterparts: The date of this Agreement is intended as and for a date for the convenient identification of this Agreement and is not intended to indicate that this Agreement was necessarily executed and delivered on said date. This instrument may be executed in any number of counterparts, each of which so executed shall be deemed an original, but all such counterparts shall together constitute but one and the same instrument.

Use of Words and Phrases: The following words and phrases, where used in this document, shall be given the following and respective interpretations: "Herein," "hereby," "hereunder," "hereof," and other equivalent words refer to this document as an entirety and not solely to the particular portion hereof in which any such word is used.

The definitions set forth in any portion of this Agreement unless the text or context indicates differently shall be deemed applicable whether the words defined are herein used in the singular or the plural. Wherever used herein any pronoun or pronouns shall be deemed to include both singular and plural and to cover all genders.

IN WITNESS WHEREOF the parties hereto each herewith subscribe the same on this the _____ day of _____, 2020.

CITY OF FOLEY,
A MUNICIPAL CORPORATION

BY: **RALPH G. HELLMICH**
ITS: **MAYOR**
DATE: _____

D&J ENTERPRISES, INC.

BY: **JASON R. SANDERS**
ITS: **VICE PRESIDENT OF OPERATIONS**
DATE: _____

STATE OF ALABAMA)
BALDWIN COUNTY)

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that **RALPH G. HELLMICH**, whose name as **MAYOR** of the City of Foley, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the within instrument, he, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the ____ day of _____, 20__.

Notary Public.
My Commission Expires: _____

STATE OF _____)
COUNTY OF _____)

I, the undersigned authority, a Notary Public in and for said County and State, hereby certify that _____, who is named as, is signed to the foregoing document as _____ of **D&J ENTERPRISES, INC.** who is known to me, or Whose identity I proved, and that being informed of the contents of the document, he/she, as such officer and with full authority, executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the ____ day of _____, 20__.

Notary Public.
My Commission Expires: _____

EXHIBIT "A"

Duties to be Performed:

- First push to clear roads and right-of-ways.
- Removal of said debris from first push.
- Haul to debris site.
- Perform vegetative debris reduction by tub grinder.
- Remove after reduction.
- Debris removal passes as needed.
- Removal of electronics, white goods, hazardous waste, construction debris.
- Punch list.
- Any additional operations as needed by the City.