

STATE OF ALABAMA

ADCNR GRANT#: G-OBWSE/19/OB

BALDWIN COUNTY

GOMESA GRANT AGREEMENT

THIS GOMESA GRANT AGREEMENT, ("Agreement") is made and entered by and between the State of Alabama Department of Conservation and Natural Resources hereinafter, referred to as "ADCNR", and the City of Orange Beach, hereinafter referred to as "Grantee" (ADCNR and Grantee collectively hereinafter "Parties").

In consideration of the mutual covenants herein contained, Grantee hereby agrees to perform, in proper sequence and in the time specified, all tasks necessary for successful completion of the project as hereinafter set forth.

1. **PROJECT PURPOSE AND IDENTITY:** The purpose of the Agreement is to provide funding under the Gulf of Mexico Security Act of 2006 (GOMESA) to Grantee to mitigate marine debris and waterborne trash on a daily basis on over 46 miles of coastal Alabama shoreline as described in the Disbursement Justification attached as Exhibit A ("Project").
2. **PROJECT SERVICES:** Grantee shall provide, in accordance with all applicable laws, executive orders, codes, regulations, etc., all the necessary labor, materials, services and facilities to successfully complete the Project and fulfill all requirements of this Agreement including, but not limited to, requirements as set forth in Paragraphs 9 and 16.
3. **PROJECT PERIOD:** The Project Period shall begin as of the Effective Date as defined hereinbelow and end September 30, 2024.
4. **AGREEMENT TERM:** The Agreement Term for the fulfillment of all Project Services shall begin on the Project Commencement Date and end ninety (90) days after the end of the Project Period, unless extended in writing by ADCNR by amendment pursuant to Paragraph 12.
5. **NOTICE TO PROCEED:** Grantee shall proceed with performing Project Services upon receipt of a fully executed Agreement which has been approved by the appropriate State of Alabama officials.
6. **FUNDING AMOUNT/PAYMENT:** Disbursement of funds by ADCNR to Grantee for Allowable Costs shall be pursuant to two (2) equal installments of Six Hundred and Fifty-Seven Thousand and Two Hundred and Fifty Dollars (\$657,250) as set forth in Exhibit A for a total disbursement not to exceed ONE MILLION AND THREE HUNDRED AND FOURTEEN THOUSAND AND FIVE HUNDRED DOLLARS (\$1,314,500.00) to allow

satisfactory completion of all Project Services. The first installment will be disbursed following execution of the Agreement and upon receipt of an invoice for an installment payment submitted by Grantee to ADCNR's State Lands Division (64 N. Union St., Suite 468, Montgomery, AL, 36130) which shall include a reference to the Grant Number identified above. Grantee agrees that the second installment will not be disbursed by ADCNR until receipt of satisfactory verification that all previously disbursed funds were used for Allowable Costs and that funds from the first installment have been fully utilized. Such verification shall be submitted with the Grantee's invoice requesting disbursement of the second installment. In the event any funds are not fully expended before the end of the Project Period, the Grantee shall return the remaining funds to the ADCNR prior to the end of the Agreement Term in such manner as specified by ADCNR.

7. **CONTINGENCY/ FUNDING AVAILABILITY:** Grantee acknowledges and agrees that the commencement and continuation of funding pursuant to this Agreement shall be specifically contingent upon the receipt and availability of GOMESA funding for this Project.
8. **ALLOWABLE COSTS:** Allowable Costs allowed under this Agreement shall be determined in accordance with Exhibit A; all requirements of GOMESA; local, state and federal laws; and other applicable requirements including the following:
 - a. Grantee agrees that any expenditure related to any type of lower tier contract or subaward support prior to execution of a written agreement for such purpose shall not qualify as an Allowable Cost.
 - b. Grantee shall immediately notify ADCNR in writing in the event, subsequent to execution of this Agreement, it receives other financial assistance to support or fund any activity related to Project Services. Grantee further agrees that no costs funded by such other sources constitute Allowable Costs.
 - c. Grantee acknowledges that no pre-award costs or other costs incurred prior to the Effective Date of this Agreement shall constitute Allowable Costs.
 - d. Grantee agrees that all disbursed funds shall be expended solely for Allowable Cost and that the amount of any expenditure determined by ADCNR not to constitute an Allowable Cost shall be immediately returned to ADCNR in such manner as specified by ADCNR.
9. **REPORTS:** Grantee agrees to submit semi-annual financial and performance reports no later than April 30 and October 30 each year with the last semi-annual report being due April 30, 2024. The semi-annual reports shall provide supporting documentation detailing Allowable Cost expenditures and Project activities during the reporting period. The

Grantee further agrees to submit a Completion Report no later than sixty (60) days after the end of the Project Period. The Completion Report must include a summary financial report detailing Project expenditures and a certification confirming both that Grantee has completed all Project Services and that all expenditures by Grantee of funds received pursuant to this Agreement constituted Allowable Costs. The Completion Report shall include supporting documentation establishing the Allowable Costs as to all expenditures, documents necessary to evidence successful Project completion, and any other documents to be maintained by ADCNR for purposes of recordkeeping and audit compliance. Additionally, if requested by ADCNR, data and reports generated or compiled within the scope of this Agreement shall be provided in digital format as may be specified by ADCNR. Grantee agrees failure to submit such reports in a timely manner may result in the termination of this Agreement. All reports and correspondence submitted to ADCNR in connection with this Agreement shall be identified by the Grant Number identified above and shall be sent to the following:

Alabama Department of Conservation and Natural Resources
Attn: GOMESA Coordinator
31115 Five Rivers Blvd.
Spanish Fort, AL 36527

10. INDEMNIFICATION AND HOLD HARMLESS:

- a. Grantee agrees to protect, defend, indemnify, save and hold harmless the State of Alabama and ADCNR, and any and all of their officers, agents, and employees, from and against any and all claims, demands, expense and liability arising out of injury or death to any person, or the damage, loss or destruction of any property, which may occur or in any way grow out of, any act or omission of ADCNR, its officers, agents, and employees, the Grantee, and the Grantee's agents, servants, employees, and subcontractors. Grantee's obligation and duty to protect, defend, indemnify, save and hold harmless ADCNR and its agents and employees shall include and extend to any and all costs, expenses, attorney fees, judgements, awards, and settlements incurred by the parties or their agents or employees as a result of any claims, demands, and/or causes of action arising out of the performance of the obligations or objectives set forth herein. Grantee agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims are groundless, false or fraudulent.
- b. Grantee further agrees it releases from liability and waives its right to sue the State of Alabama and ADCNR, and their officers, agents, and employees, regarding any and all claims resulting in any physical injury, economic loss, or other damage or loss as a result of or related in any way to the Agreement.

- c. The provisions of this Paragraph 10 shall survive the Agreement Term and remain a continuing obligation of Grantee.
11. **CLAIMS FOR LIENS:** Grantee shall be solely liable for and shall hold the State of Alabama, all State Agencies, Boards and Commissions, along with the respective officers, agents, servants, employees, and volunteers of each, harmless from any and all claims or liens for labor, services or material furnished to Grantee in connection with the performance of its obligations under this Agreement.
12. **ASSIGNMENT/AMENDMENT:** Grantee shall not assign or otherwise transfer any interest in this Agreement without the prior written consent of ADCNR. ADCNR may from time to time, request amendments to various provisions of this Agreement. Such amendments, which are mutually agreed upon between ADCNR and Grantee, must be in writing and approved by all signatory/authorities prior to becoming effective.
13. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon the successors and assigns of the respective Parties hereto.
14. **COMPLIANCE WITH LAWS:** The Grantee shall comply with all applicable laws, ordinances, regulations, and codes of the federal, state and local governments in the performance of this Agreement. Grantee shall procure all applicable federal, state and local permits and pay all said fees. Grantee further agrees and acknowledges that the ADCNR is relying upon the Grantee to maintain compliance with all provisions of GOMESA in connection with Project Services and related activities and expenditures.
15. **TAX RESPONSIBILITY:** Grantee hereby agrees that the responsibility for payment of any taxes from the funds received under this Agreement shall be the Grantee's obligation and shall be identified under the appropriate Tax Identification Number.
16. **RECORDS:** The State of Alabama, through ADCNR auditors and/or Alabama Examiners of Public Accounts, and the Federal Government, through any of their duly authorized representatives, shall be entitled to audit the books, documents, papers and records of the Grantee and any lower tier recipients which are reasonably related to this Agreement. Grantee agrees to assist with any such audit as requested by ADCNR and further agrees to the following:
- a. Grantee shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred and shall make such materials available at their respective offices at all reasonable times during the Agreement period and for six (6) years after date of final payment under this Agreement or as otherwise required pursuant the Department of Conservation and Natural Resources Records

Disposition Authority (requirements current as of date of this Agreement available at http://www.archives.alabama.gov/officials/rdas/Conservation_RDA_2016.pdf), whichever period expires later, for inspection by any of the above entities, and copies thereof shall be furnished, if requested.

- b. Pursuant to Act 94-414, Grantee must forward a copy of every audit report issued in connection with funding provided under this Agreement where public funds are received and/or disbursed to: Department of Examiners of Public Accounts, P. O. Box 302251, Montgomery, Alabama 36130-2251, ATTN: Audit Report Repository. Grantee shall also simultaneously therewith forward a copy of same to ADCNR
 - c. The provisions of this Paragraph 16 shall survive the Agreement Term and remain a continuing obligation of Grantee.
17. **INSURANCE:** In addition, Grantee shall maintain in force, at its sole expense, liability insurance for injury or death or damage to property, in the amount of ONE MILLION DOLLARS (\$1,000,000), and shall include ADCNR, its employees and agents, as additional insureds in said insurance policy. Grantee shall provide to ADCNR a current certificate of insurance and said insurance carrier or carriers shall be required to provide unto ADCNR at least thirty (30) days' written notice of any cancellation or modification of coverage under any such policies. Any notices required to be provided by ADCNR hereunder shall be made to General Counsel, State of Alabama Department of Conservation and Natural Resources, 64 North Union Street, Suite 474, Montgomery, Alabama, 36130.
18. **TERMINATION:** In addition to terms of Paragraphs 7 and 22, this Agreement may be terminated as follows:
- a. If, in the determination of ADCNR, Grantee fails to fulfill in timely and proper manner its obligations under this Agreement or violates any of the covenants, agreements, or stipulations of this Agreement, ADCNR, in addition to all other available remedies, shall thereupon have the right to terminate this Agreement by giving written notice, sent certified mail (return receipt requested) or overnight courier (signature required), to Grantee of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date. In that event, at the option of ADCNR, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by Grantee under this Agreement shall become the property of ADCNR.
 - b. ADCNR may terminate this Agreement at any time without cause by giving written notice to Grantee by certified mail (return receipt requested) or overnight courier

(signature required) of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date. In that event, at the option of ADCNR, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by Grantee under this Agreement shall become the property of ADCNR.

- c. If the Agreement is terminated by ADCNR, as provided herein, Grantee shall promptly submit a statement detailing the actual services performed and associated Allowable Costs to date of termination. The Grantee shall immediately return any remaining funds to ADCNR in such manner as specified by ADCNR.
19. **PRESS/EVENTS:** Grantee shall notify the ADCNR of the location, date, and time of any press conferences, press releases, etc. related to this Project at least five (5) working days prior to the scheduled event or release.
 20. **CONFLICT OF INTEREST CERTIFICATION:** The Grantee by his/her/its signature, certifies to the best of his/her/its knowledge and belief, no conflicts of interest existed or now exist which have, may have or have had any effect on this Agreement or any expenditure of funds associated with this Agreement. In addition, in the event Grantee cannot maintain this certification at any point during the Agreement Term, Grantee shall immediately notify ADCNR in writing and suspend performance of services under this Agreement as well as any expenditure of funds under this Agreement until the potential conflict of interest is resolved to ADCNR's satisfaction.
 21. **DISCRIMINATION:** Grantee agrees to comply with all Federal and State laws which prohibit discrimination on the basis of race, color, religion, age, sex, pregnancy, national origin, genetic information, veteran status or disability.
 22. **PRORATION:** In the event of the proration of the fund from which payment under this Agreement is to be made, the Agreement will be subject to termination.
 23. **NOT A DEBT OF THE STATE:** It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this Agreement shall contravene any statute or constitutional provision or amendment, either now in effect or which may, during the course of this Agreement, be enacted, then that conflicting provision in the Agreement shall be deemed null and void.
 24. **DISPUTE RESOLUTION:** In the event of any dispute between the Parties, senior officials of both Parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all

other disputes arising under the terms of this Agreement which are not resolved by negotiation, the Parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center For Dispute Resolution of the Alabama State Bar.

25. IMMIGRATION: By signing this Agreement, the Grantee affirms, for the duration of the Agreement, that it will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, if found to be in violation of this provision, Grantee shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
26. NO AGENCY: By entering into this Agreement, Grantee understands and agrees it is not an agent of the State, its officers, employees, agents or assigns. The Grantee is an independent entity from the State and nothing in this Agreement creates an agency relationship between the Parties.
27. NOT ENTITLED TO MERIT SYSTEM: Grantee understands and agrees that nothing in this Agreement entitles Grantee to any benefits of the Alabama State Merit System.
28. BOYCOTT: In compliance with Act 2016-312, Grantee hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which the State can enjoy open trade.
29. NOTICE: Contact information of Parties for purposes of providing notice pursuant to the terms of this Agreement will be as set forth below, unless and until updated information is provided:

To ADCNR:

Alabama Department of Conservation and Natural Resources
Attn: Christopher M. Blankenship, Commissioner
64 N. Union St., Suite 468
Montgomery, AL 36130

To Grantee:

City of Orange Beach
Attn: Tony Kennon, Mayor
P.O. Box 2432
Orange Beach, AL 36561

30. SEVERABILITY: In the event any terms or provisions of this Agreement are deemed to be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remaining terms or provisions hereof.
31. REVIEW AND EXECUTION: Grantee acknowledges and agrees that it has had the opportunity to seek legal counsel in connection with reviewing and executing this Agreement. Accordingly, any rule of law or legal decision potentially requiring interpretation of any claimed ambiguity in this Agreement against the drafting party shall have no application and is expressly waived by Grantee.
32. ADCNR AND GRANTEE REPRESENT THAT THIS AGREEMENT SUPERSEDES ALL PROPOSALS, ORAL AND WRITTEN, ALL PREVIOUS CONTRACTS, AGREEMENTS, NEGOTIATIONS AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF.
33. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date entered below (herein referred to as “Effective Date”).

ADCNR:

Christopher M. Blankenship
Commissioner

Date: _____, 20__

GRANTEE:

(Signature)

By: _____
(Print Name)

Its: _____
(Print Title)