

STATE OF ALABAMA

ADCNR GRANT#: G-BCCSGS/19/BCC

MONTGOMERY 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 Baldwin County Commission, 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 for the purpose of installing, operating, and maintaining a stream gaging station at Fish River on Baldwin County 32 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 January 1, 2019, or the date of the Governor's signature, whichever occurs later ("Project Commencement Date"), and end March 31, 2021.
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:** ADCNR agrees to provide an advance disbursement of GOMESA funds to Grantee pursuant to a single payment in an amount not to exceed EIGHTY-SEVEN THOUSAND, TWO HUNDRED AND FIFTY DOLLARS

(\$87,250.00) to allow satisfactory completion of all Project Services following full execution of this Agreement and submission by Grantee of an invoice for payment which shall include a reference to the Grant Number identified above. In the event these funds are not 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. **FUNDING AVAILABILITY/PRORATION:** 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. Further, Grantee acknowledges and agrees that, 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.
8. **ALLOWABLE COSTS:** Allowable Costs allowed under this Agreement shall be determined in accordance with Exhibit A, all requirements of GOMESA, and applicable local, state and federal laws.
9. **REPORTS:** The Grantee 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 and other documents as necessary to evidence successful project completion. 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. 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:**

- 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, judgments, 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. **ASSIGNABILITY/AMENDMENTS:** 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. **COST RECORDS:** The State of Alabama, through internal Department of Conservation auditors and/or Alabama Examiners of Public Accounts, and the Federal Government, through any agency thereof, 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 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 three (3) years after date of final payment under this Agreement or as otherwise required pursuant the Department of Conservation and Natural Resources Records Disposition Authority (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. 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 such amounts as are acceptable to ADCNR, and shall include ADCNR, its employees and agents, as additional insureds in said insurance policy. Contractor 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 DCNR 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 OF AGREEMENT:** In addition to terms of Paragraph 7, 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. **NONDISCRIMINATION:** Grantee shall be and is prohibited from discriminating based on race, color, religion, age, sex, pregnancy, national origin, veteran status, or disability in its hiring or employment practices nor in admission to, access to, or operations of the project funded pursuant to this agreement.
22. **NOT TO CONSTITUTE 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.
23. **ALTERNATIVE DISPUTE RESOLUTION CLAUSE:** 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 contract 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.

24. **IMMIGRATION COMPLIANCE:** 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.
25. **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.
26. **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.
27. **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
Atten: Christopher M. Blankenship, Commissioner
64 N. Union St., Suite 468
Montgomery, AL 36130

To Grantee:

Baldwin County Commission
Atten: Joey Nunnally, County Engineer
312 Courthouse Square, Suite 12
Bay Minette, AL 36507

28. 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.

ADCNR:

Christopher M. Blankenship
Commissioner

APPROVED:

Kay Ivey
Governor of Alabama

Date: _____

ATTEST:

John Merrill
Secretary of State

GRANTEE:

(Signature)

By: _____
(Print Name)

Its: _____
(Print Title)