

AGREEMENT REGARDING INDEMNIFICATION
AGAINST CLAIMS FOR
INTERRUPTION OF LITTORAL FLOW OF SAND

This Agreement Regarding Indemnification Against Claims for Interruption of Littoral Flow of Sand is entered into this ____ day of _____, 2023, by and between the Commissioner of the Alabama Department of Conservation and Natural Resources, State of Alabama, ('Commissioner') and The City of Orange Beach, Alabama ('City').

RECITALS

A. The City of Orange Beach has applied to the Commissioner of the Alabama Department of Conservation and Natural Resources for a permit for the construction and maintenance of a beach project under the Authority of Article 11 of Chapter 47 of Title 11 of the Code of Alabama 1975.

B. Pursuant to Ala. Code Section 9-15-54 and Section 9-15-61, the Commissioner after examination of the application of the City and all supporting information and technical analysis requested by the Commissioner in connection with this application, has, based upon this information, made no finding that the beach project as proposed cannot be established and maintained without a materially adverse impact on adjacent or abutting riparian or littoral landowners, on the public water bottoms, or on the fish, shellfish, and wildlife resources of the state. The beach project as proposed has been issued a Dredging Permit by the U. S. Army Corps of Engineers for the removal of sand from the designated offshore sites. The parties recognize, nonetheless, that the removal of sand from the public water bottoms at the designated sites or placement of sand at the designated depositional sites could at some point result in the assertion of claims that the alongshore or littoral flow of sand below the mean high water mark, either in the Gulf of Mexico or Little Lagoon, has been interrupted or altered in some manner to the injury of riparian or littoral landowners.

C. Pursuant to Ala. Code Section 9-15-61(d), the Commissioner has the authority to impose additional requirements, conditions, or limitations on the issuance of a permit for a proposed beach project. As a requirement and condition to the issuance of the beach project permit required by the City, the Commissioner has determined to require pursuant to Section 9-15-61 (d) the agreement of the City to indemnify and hold harmless the State of Alabama, the Commissioner, and the Alabama Department of Conservation and Natural Resources and its employees from any and all claims or other demands for relief relating to the actual or alleged interruption or alteration of sand migration or littoral flow below the mean high water mark as a result of the removal of sand from the designated offshore site or placement of sand at the depositional sites for utilization in the City's beach project.

D. In order to secure the required issuance of a permit for its beach project by the Commissioner, the City is willing to enter into this Agreement regarding Indemnification.

The premises considered, it is hereby agreed by and between the parties to this Agreement as follows:

1. To the extent permitted under the Constitution and laws of the State of Alabama, the City of Orange Beach, Alabama agrees to indemnify and hold harmless the State of Alabama the present and any future Commissioner of the Alabama Department of Conservation and Natural Resources, and all present and future employees of the Alabama Department of Conservation and Natural Resource (hereinafter, collectively, the 'Indemnitees') from any and all claims or other demands for relief relating to the actual or alleged interruptions or alteration of sand migration or littoral flow below the mean high water mark as a result of the removal or placement of sand from the designated sites for utilization in the City's beach project.

2. The position of the parties to this Agreement is that the Indemnities are legally immune from any liability for any claim or demand for relief within the scope of the indemnity created in this Agreement under the doctrines of sovereign immunity, discretionary function immunity, and other legal doctrines. Nothing in this Agreement is to be construed as an implied admission that the Indemnitees are not legally immune from liability or as an implied waiver of such immunities.

In Witness Whereof, the parties have executed this Agreement as of the date above written.

The City of Orange Beach, Alabama

ATTEST:

By _____
Tony Kennon, Mayor

Renee Eberly, City Clerk

Alabama Department of Conservation
and Natural Resources

By _____
Chris Blankenship, Commissioner