

STATE OF NORTH CAROLINA

TERMINATION & RELEASE  
AGREEMENT

TOWN OF NORTH TOPSAIL BEACH

This Mutual Termination and Release Agreement (the "Agreement"), dated this 25<sup>th</sup> day of November, 2024, is hereby made and entered into by and among the TOWN OF NORTH TOPSAIL BEACH, a municipal corporation organized under the laws of the State of North Carolina ("Town"), and C.M. MITCHELL CONSTRUCTION COMPANY, INC. ("CMM"):

WITNESSETH

WHEREAS, the Town and CMM (collectively, "the Parties"), contracted for a state grant-funded beach renourishment project known as "North Topsail Beach Phase/Reach 4 Shoreline Beach Truck Haul Reach 4 Only" (hereinafter "Contract" or "Phase 4 Contract"); and

WHEREAS, the Parties now wish to mutually terminate the Contract and be released from any further obligations due under the Contract;

NOW, THEREFORE, in consideration of the promises and other considerations described below, the receipt and sufficiency of which are hereby acknowledged, the Parties to this Agreement do hereby agree as follows:

1. **Payment to Contractor.** Within seven (7) business days of CMM executing this Agreement, the Town shall pay to CMM the sum of four hundred and eighty thousand dollars (\$480,000.00), which represents: the amount due for all work CMM had completed under the Contract to date; all expenses sustained to date in performing said services and furnishing labor, materials, or equipment; and other reasonable expenses directly attributable to this termination.

2. **Mutual Release for Phase 4 Contract.** In consideration of the promises and releases herein, and with the exception of the payments contemplated in this Agreement, the Town

and CMM agree to mutually release, quitclaim, and forever discharge one another, their successors, assigns, agents, officers, employees, and contractors of and from any and all past and present actions, causes of actions, suits, claims, demands, damages, liabilities, or obligations of any kind whatsoever, whether known or unknown, contingent or not contingent, liquidated or unliquidated, which the Parties now have or claim to have against the other, solely arising out of the Phase 4 Contract. This paragraph shall not apply to any action to enforce the provisions of this Agreement. The Parties expressly acknowledge that there is an active dispute between the Parties arising out of a separate contract, entitled "North Topsail Beach Phase/Reach 5 Shoreline Beach Truck Haul Tranche Two" ("Phase 5 Contract"). Accordingly, it is the express intent of the Parties that nothing in this Agreement, including this paragraph for mutual release, shall apply to any actions, suits, claims, demands, damages liabilities, or obligations between the Parties related to the Phase 5 Contract and that this agreement shall not prejudice the rights of either party with respect to the dispute arising out of the Phase 5 Contract.

3. **Ownership of Sand; Reasonable Access.** CMM expressly represents it has procured approximately 10,652 cubic yards of beach quality sand for the Phase 4 project (hereinafter "Phase 4 Sand") and is currently storing it at CMM's facility. Therefore, CMM agrees that in addition to a mutual release and termination of the Phase 4 Contract, in exchange for the payment contemplated in this Agreement, CMM will immediately transfer title and ownership of the Phase 4 Sand to the Town, free and clear of any encumbrances. To that end, CMM will grant the Town, its employees and contractors reasonable access during normal business hours (8:00 a.m. to 5:00 p.m.) to take possession of the Phase 4 Sand within a reasonable time from the date the Town executes this Agreement. CMM further agrees that it and its employees, agents, contractors, or officers will not impede the Town or its employees or contractors from taking

possession of the Phase 4 Sand during normal business hours, and that any such impediment will cause the Town substantial economic harm in completing its Phase 4 beach renourishment project. Therefore, CMM agrees to work amicably with the Town and its employees or contractors to effectuate the transfer and possession of the Phase 4 Sand.

4. **No Admission of Liability.** The Parties agree that this settlement is a compromise of the claims contained herein and that payment is not to be construed as an admission of liability or fault on the part of the Parties hereby released.

5. **Costs.** The Parties to this Agreement agree that they will bear their own costs, attorneys' fees, expert fees, disbursements and expenses of any kind incurred with respect to the above-referenced dispute. The Parties further agree to execute any other documents necessary to effectuate fully the terms of this Agreement.

6. **No Oral Amendment.** The Parties agree that the terms of this Agreement may not be amended orally.

7. **Finding of Unenforceability.** If any paragraph or part of this Agreement is found void or unenforceable, the remainder of this Agreement shall not be affected by such a finding.

8. **Agreement Binding.** This Agreement shall be binding on the Parties and the Parties' executors, administrators, personal representatives, collectors, heirs, successors and assigns.

9. **No Other Promises or Representations.** The undersigned acknowledge that they have read this Agreement, and that no promise or representation of any kind, other than as contained herein, has been made by the Parties or anyone acting for them. The Parties to this Agreement have relied fully and completely on their own judgment and advice of counsel in executing this Agreement.

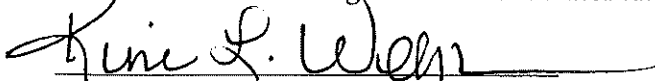
10. **Governing Law; Separate Signature Pages.** This Agreement shall be construed in accordance with the laws of the State of North Carolina, and may be executed on separate signature pages, which may be combined to make a complete agreement. Any dispute arising from this Agreement shall be resolved in a court of competent jurisdiction within Onslow County, North Carolina.

*[signature page to follow]*

TOWN OF NORTH TOPSAIL BEACH

By:   
ALICE DERIAN, Town Manager

This Agreement, and only this Agreement, has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

  
Finance Officer

C.M. MITCHELL CONSTRUCTION COMPANY, INC.

By: 

Printed Name: Charles M. Mitchell

Title: President