

**MEMORANDUM OF AGREEMENT
BETWEEN THE
S.C. DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL
AND
PALMETTO RAILWAYS
REGARDING THE NAVY BASE INTERMODAL FACILITY PROJECT IN
CHARLESTON COUNTY, SOUTH CAROLINA**

This Memorandum of Agreement (MOA) is made and entered into this 26 day of October 2016, by and between the South Carolina Department of Health and Environmental Control (DHEC) and Palmetto Railways, a division of the South Carolina Department of Commerce (PR) (each a Party and collectively Parties).

RECITALS

WHEREAS, PR is committed to responsible environmental stewardship;

WHEREAS, DHEC and PR recognize the importance of clean and healthy air for communities in the Charleston area;

WHEREAS, DHEC and PR desire that the Charleston area continue to maintain its designation as "attainment" for all criteria pollutants under the Clean Air Act, 42 U.S.C.A. §§ 7401 et seq.;

WHEREAS, DHEC and PR seek to facilitate and enhance economic growth and development and foster a vibrant marketplace for the State of South Carolina;

WHEREAS, PR has proposed construction and operation of the Navy Base Intermodal Facility (NBIF) at the former Charleston Naval Complex (CNC) and is willing to voluntarily undertake certain mitigation measures to reduce air emissions from proposed and existing PR facilities; and

WHEREAS, DHEC is willing to provide technical assistance and expertise in support of PR as it evaluates fiscally feasible and demonstrated technologies and practices of intermodal facilities on the east coast in areas designated as attainment that may mitigate certain air emissions from the proposed and existing PR facilities.

NOW THEREFORE, in furtherance of these recitations and in consideration of the mutual covenants and promises made herein, the Parties agree as follows:

1.0 PURPOSE

- 1.1 The Parties recognize that economic development and a cleaner environment can be mutually compatible goals, and the Parties seek to implement options that will minimize the air emissions for the community and environment of the region and that support economic development in the State of South Carolina. The Parties

seek to establish a working relationship that balances the economic development needs of PR and the State of South Carolina related to the proposed rail facilities in the Charleston area and air impacts resulting from such economic development.

2.0 TERM OF THE MOA

2.1 This MOA will expire by its terms on December 31, 2019, unless otherwise terminated in accordance with this section.

2.2 This MOA will terminate

- (a) should any requisite governmental permit, approval, license, permission, or review be denied or otherwise issued in a manner that substantially impairs the construction of the NBIF, including but not limited to any and all additional or necessary federal permits, any and all additional or necessary state permits, and the final environmental impact statement and record of decision related to the project pursuant to the National Environmental Policy Act; or
- (b) should PR determine, in its sole discretion, that it will not continue with the construction or operation of the NBIF project.

PR will provide written notice of termination to the Director of DHEC upon the occurrence of either event in Section 2.2(a) or (b). Upon termination, PR shall have no further obligation, duty, or responsibility arising under or related to this MOA.

3.0 COMMITMENTS OF DHEC

- 3.1 DHEC commits to promptly and thoroughly review any regulatory determinations and respond to requested consultations by PR.
- 3.2 DHEC commits to designate a point of contact who will make staff reasonably available to participate in discussions related to the design of the NBIF (see Section 4.1).
- 3.3 DHEC commits to designate a point of contact who will make staff reasonably available to participate in discussions and review of operational and equipment options at future and existing PR facilities (see Section 4.2).
- 3.4 DHEC commits to work cooperatively with PR in evaluating reasonable and proven practices and technologies to assist PR in meeting applicable environmental standards at the proposed and existing PR facilities while fairly accounting for environmental and economic considerations.
- 3.5 During the term of this MOA and for two years after operations begin at the NBIF, DHEC shall conduct an annual community meeting in the vicinity of the NBIF to

update the community on relevant environmental and health issues. PR shall use its best efforts to cooperate and assist DHEC with such community meeting as may be reasonably requested by DHEC.

4.0 COMMITMENTS OF PR

- 4.1 PR commits to work cooperatively with DHEC staff to evaluate potential design, operation, and equipment options that are environmentally beneficial and fiscally feasible with demonstrated technologies and practices of intermodal facilities on the east coast in areas designated as attainment for implementation at the NBIF (see Section 3.2). PR will consider innovative technologies on a case-by-case basis.
- 4.2 PR commits to work cooperatively with DHEC staff to evaluate operational and equipment options that are environmentally beneficial and fiscally feasible with demonstrated technologies and practices of intermodal facilities on the east coast in areas designated as attainment for implementation at existing PR rail facilities (see Section 3.3). PR will consider innovative technologies on a case-by-case basis.
- 4.3 PR commits that when major equipment reaches the end of its useful life and is retired, PR will identify and replace such equipment with environmentally beneficial and fiscally feasible equipment and demonstrated technology of intermodal facilities on the east coast in areas designated as attainment then currently available.
 - 4.3.1 As an example of this commitment, replacement equipment for retired equipment will include engines that meet the federal Tier 3 or higher emission standard.
- 4.4 PR will designate one (1) individual as the point of contact with DHEC related to the implementation of this MOA.
- 4.5 PR will contribute Fifty Thousand and 00/100 Dollars (\$50,000.00) to DHEC towards ambient air quality initiatives in the Charleston region in conjunction and coordination with the Medical University of South Carolina, for which DHEC will serve as the lead and point of contact, to be payable within thirty (30) days of the commencement of construction of the NBIF.
- 4.6 PR will include in its contractor bid documents and in the construction contract for the NBIF the terms, conditions, and provisions set forth in Exhibit A to this MOA. These terms, conditions, and provisions are designed to ensure the implementation of best management practices and minimize air emissions during the construction of the NBIF.

5.0 OTHER MATERIAL TERMS

- 5.1 This MOA is made and entered into in the State of South Carolina and shall in all respects be interpreted and governed under the laws of the State of South Carolina.
- 5.2 This MOA constitutes the entire agreement between the Parties pertaining to the subject matter hereof and embodies, merges, and integrates all prior and current agreements and understandings of the Parties. No interpretation, clarification, modification, change, amendment, termination or waiver of any provision pursuant to this MOA shall be binding upon a Party except in writing signed by each of the signatories hereto or their other authorized representatives.
- 5.3 The Parties agree that this MOA is a contract entered into solely for their mutual benefit only and is not intended and does not create any independent or separate rights or benefits for any third parties.
- 5.4 Neither Party shall have the right to transfer, assign, or delegate its rights or obligations pursuant to this MOA without the written consent of the other Party.
- 5.5 This MOA shall inure solely to the benefit of and be binding upon the Parties hereto and their successors.
- 5.6 This section and other headings contained in this MOA are for reference purposes only and shall not affect the interpretation or meaning of this MOA. This MOA may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.
- 5.7 Except as may be provided herein to the contrary, nothing herein shall waive the powers which PR and DHEC have under existing law. Nothing in this MOA is intended or shall be construed to relieve PR of any obligations under federal or state environmental or other statutes or regulations.

IN WITNESS WHEREOF the Parties have caused their authorized representatives to execute this Memorandum of Agreement and set their hands and seals as of the date first set forth above.

**SOUTH CAROLINA DEPARTMENT
OF HEALTH & ENVIRONMENTAL
CONTROL**



Catherine E. Heigel
Agency Director

PALMETTO RAILWAYS



Jeffrey McWhorter
President & Chief Executive Officer

EXHIBIT A

Pursuant to Section 4.6 of the MOA, contractor bid documents and the construction contract for the NBIF will include the following terms:

- (1) The Contractor shall perform work in compliance with all applicable local, state, and federal environmental laws and requirements.
- (2) For all non-road equipment used on the job producing between 100 and 750 horsepower, the Contractor shall use low emission vehicles that conform to the federal Tier 2 or higher emissions standards. Please visit <https://www3.epa.gov/otaq/nonroad-diesel.htm> for additional guidance pertaining to this requirement.
- (3) Diesel combustion engines on construction equipment not in active use shall be turned off.
- (4) The Contractor shall provide a list of all equipment and vehicles to be used to complete the work including type, manufacturer, model, serial number, horsepower rating, and model year for approval prior to commencing work.
- (5) The Contractor shall develop and implement a dust control plan using best management practices that may include, by way of example, water spraying, applying mulch and establishing vegetation, applying polymers, and spraying tackifiers in compliance with local, state and federal law.