

John J. Tecklenburg
Mayor



Randall Keith Benjamin, II
Director

City of Charleston
South Carolina
Department of Traffic & Transportation

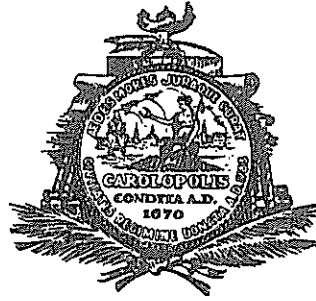
Traffic & Transportation Committee
Conference Call #1-929-205-6099
Access ID: 556 524 367
March 8, 2021 Time: 2:30 p.m.

Chair, Councilmember Michael Seekings
Vice-Chair, Councilmember Karl L. Brady, Jr.
Councilwoman Marie Delcioppo
Councilwoman Carol Jackson
Mayor John J. Tecklenburg

AGENDA

1. Invocation Councilwoman Delcioppo
2. Approval of Minutes February 22, 2021
3. Approval of an ordinance authorizing the Mayor to execute a memorandum of agreement with Palmetto Railways; the South Carolina Department of Commerce; and the South Carolina State Ports Authority regarding the Navy Base Intermodal Facility (NBIF) project
4. Director's Update Keith Benjamin
5. Discussion

In accordance with the Americans with Disabilities Act, people who need alternative formats, ASL (American Sign Language) interpretation or other accommodation please contact Janet Schumacher at (843) 577-1389 or email to schumacherj@charleston-sc.gov three business days prior to the meeting.



Ratification
Number _____

A N O R D I N A N C E

AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY OF CHARLESTON, A MEMORANDUM OF AGREEMENT WITH PALMETTO RAILWAYS; THE SOUTH CAROLINA DEPARTMENT OF COMMERCE; AND THE SOUTH CAROLINA STATE PORTS AUTHORITY REGARDING THE NAVY BASE INTERMODAL FACILITY (NBIF) PROJECT IN CHARLESTON COUNTY, SOUTH CAROLINA, UNDER WHICH THE CITY WILL ACCEPT \$11.5 MILLION FOR (1) THE CITY'S CONVEYANCE OF CERTAIN REAL PROPERTY, BEING A PORTION OF CHARLESTON COUNTY TMS NO. 464-02-00-051, COMMONLY KNOWN AS THE W.R. GRACE SITE, THROUGH SEPARATE PURCHASE AGREEMENT; AND (2) MITIGATION OF EXISTING AND FUTURE IMPACTS RELATED TO THE CONSTRUCTION AND OPERATION OF THE NBIF, INCLUDING BUT NOT LIMITED TO FREIGHT RAIL MOVEMENT IN THE VICINITY OF THE SOUTHERN ACCESS COMPONENT OF THE NBIF.

BE IT ORDAINED BY THE MAYOR AND COUNCILMEMBERS OF CHARLESTON, IN CITY COUNCIL ASSEMBLED:

Section 1. That the Mayor is hereby authorized to execute, on behalf of the City of Charleston, a Memorandum of Agreement with Palmetto Railways, the South Carolina Department of Commerce, and the South Carolina State Ports Authority, a copy of which is attached hereto and incorporated herein by reference as Exhibit 1, pursuant to which the City will accept \$11.5 million for (1) the City's conveyance of certain real property, being a portion of Charleston County TMS No. 464-02-00-051, commonly known as the W.R. Grace site, through separate purchase agreement; and (2) mitigation of existing and future impacts related to the construction and operation of the Navy Base Intermodal Facility ("NBIF"), including but not limited to freight rail movement in the vicinity of the southern access component of the NBIF.

Section 2. That this Ordinance shall become effective upon ratification.

Ratified in City Council this _____ day of
_____ in the Year of Our Lord,
2021, and in the 245th Year of the Independence of
the United States of America.

By:

John J. Tecklenburg
Mayor, City of Charleston

ATTEST:

Jennifer Cook
Clerk of Council

EXHIBIT 1

**MEMORANDUM OF AGREEMENT AMONG
PALMETTO RAILWAYS; THE CITY OF CHARLESTON;
THE SOUTH CAROLINA DEPARTMENT OF COMMERCE; AND THE SOUTH
CAROLINA STATE PORTS AUTHORITY
REGARDING THE NAVY BASE INTERMODAL FACILITY PROJECT IN
CHARLESTON COUNTY, SOUTH CAROLINA**

This Memorandum of Agreement (MOA) is made and entered into this _____ day of _____, 2021, by and between Palmetto Railways (Palmetto Railways), the City of Charleston (City), the South Carolina Department of Commerce (Commerce), and the South Carolina State Ports Authority (Ports Authority) (each a party and collectively Parties).

WHEREAS, Palmetto Railways and the Ports Authority have proposed to construct and operate the Navy Base Intermodal Facility (NBIF) at the former Charleston Naval Complex (CNC);

WHEREAS, the Parties acknowledge the importance of the proposed equal, dual-access NBIF to ensure the efficient, cost-effective movement of goods to and from the Port of Charleston, which is vital to the local, regional, and statewide economy;

WHEREAS, Palmetto Railways has applied for and received from the United States Army Corps of Engineers, Charleston District (USACE), a permit for the construction and operation of the proposed NBIF, Department of the Army Permit SAC-2012-00960;

WHEREAS, the City has an interest in ensuring an adequate and functioning transportation system within its jurisdiction specifically, and the region generally;

WHEREAS, Commerce is authorized pursuant to S.C. Code Ann. § 13-1-20 to implement a statewide program for the stimulation of economic activity to develop the potentialities of the State, and enhance the economic growth and development of the State through strategic planning and coordinating activities, among other activities;

WHEREAS, the Ports Authority has as its purpose, among others, to contribute to economic development by fostering and stimulating waterborne commerce; to develop and improve the harbors or seaports of the State; to construct, equip, maintain, develop and improve such harbors or seaports and their port facilities; and to increase waterborne commerce, foreign and domestic, through such harbors and seaports;

WHEREAS, the construction and operation of a near-dock intermodal container transfer facility furthers the above-referenced purpose of the Ports Authority;

WHEREAS, in order to allow connection between existing rail infrastructure in the area, the NBIF includes proposed trackage constructed as a southern access (the "Southern Access") passing through property within the City;

WHEREAS, numerous locations for the NBIF and the Southern Access have been evaluated, and after such evaluations, the only feasible site for the NBIF and the Southern Access

is the site approved and determined by the USACE to be the least environmentally damaging practicable alternative in the Record of Decision issued concurrently with DA Permit No. SAC-2012-00960;

WHEREAS, the Parties seek to facilitate and enhance economic growth and development and foster a vibrant marketplace for the City and its surrounding communities; and

WHEREAS, the Parties are committed to engaging in a dialogue to discuss the minimization of impacts, and the overall functionality and safety, of all NBIF-specific grade crossings within the corporate limits of the City.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the sufficiency of which is herein acknowledged, and intending to be legally bound thereby, the Parties agree hereto as follows:

1. SCSPA will contribute Eleven Million Five Hundred Thousand and 00/100 Dollars (\$11,500,000.00) towards:
 - a. the purchase of land from the City, through separate purchase agreement, such land being a portion of the property designated as Charleston County TMS No. 464-02-00-051 (the "Grace Site"); and
 - b. mitigation of existing and future impacts related to the construction and operation of the NBIF, including but not limited to freight rail movement in the vicinity of the "Southern Access" component of the NBIF.

2. The City shall be responsible for designing, permitting, and constructing mitigation improvements or projects. The City shall retain sole discretion as to the type and location of all mitigation improvements or projects. The City shall utilize at least Four Million Nine Hundred Fifteen Thousand and 00/100 Dollars (\$4,915,000.00) of the SCSPA's contribution toward such improvements or projects. The remaining funds shall be utilized for (1) designing, permitting, constructing, and/or maintaining mitigation improvements or projects; and/or (2) purchasing of land, designing, permitting, constructing, and/or maintaining facilities to replace the City's public services facilities currently located at Milford Street (the "Replacement Facilities"). The Replacement Facilities may include land and improvements for public works, fire training, the police fleet, and/or other municipal services. Except as specifically provided otherwise, the City shall retain sole discretion as to the allocation of funds for mitigation improvements/projects and

Replacement Facilities, as well as the specific use of the funds for the referenced purposes as to location, type, and scope.

3. The City hereby consents to the construction and operation of the NBIF, and specifically the location and grade level crossings for the permitted NBIF, including the Southern Access.
4. City staff will support all reasonable rezoning, permitting, road closures, and other administrative approvals necessary for the implementation of the NBIF, including the Southern Access, associated railway lines, and roadways.
5. This MOU is conditioned on the adoption of Joint Resolution, S.4911 of the 124th Session, 2021-22. If such general obligation state economic development bond is not issued, then this MOU shall be null and void.

6. General Provisions.

A. 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 authorized representatives.

B. All notices or other communications required or permitted under this MOA shall be in writing to the Parties at the addresses below:

To Palmetto Railways: President & CEO
 Palmetto Railways
 540 East Bay Street
 Charleston, SC 29403

To Commerce: Chief Legal Counsel
 S.C. Department of Commerce
 1201 Main Street, Ste. 1600
 Columbia, SC 29201

To Ports Authority: President and CEO
 200 Ports Authority Drive
 Mount Pleasant, SC 29464

To City of Charleston: Mayor
 City of Charleston
 80 Broad Street
 Charleston, SC 29401

C. This MOA shall be binding on the Parties, their successors, and assigns.

- D. This MOA is made solely for the benefit of the Parties and does not and is not intended to confer any interests, benefits, rights, or remedies, whether direct or indirect, or incidental, upon any other person(s), corporation(s), or governmental entity and does not create any rights in any third parties.
- E. This MOA may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument.
- F. All modifications or amendments to this MOA must be approved by the Parties hereto in a signed writing.
- G. This MOA contains all the promises, covenants, agreements, and understandings between the Parties concerning the subject matter herein, and the execution of this MOA has not been induced by either Party by any representations, promises, or understandings not expressed herein. There are no collateral agreements, stipulations, promises, or undertakings that are not expressly referenced herein.
- H. This MOA and the legal relationship between the Parties shall be governed by and construed in accordance with the laws of the State of South Carolina.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed when signed and dated below.

WITNESSES:

The City of Charleston

Print Name: _____

By: _____

Print Name: John J. Tecklenburg

Its: Mayor

Date: _____

Print Name: _____

WITNESSES:

SOUTH CAROLINA DEPARTMENT OF
COMMERCE

Print Name: _____

By: _____

Print Name: Robert M. Hitt, III

Its: Secretary

Date: _____

Print Name: _____

WITNESSES:

PALMETTO RAILWAYS

Print Name: _____

By: _____

Print Name: Jeffrey McWhorter

Its: President and CEO

Date: _____

Print Name: _____

WITNESSES:

SOUTH CAROLINA STATE PORTS
AUTHORITY

Print Name: _____

By: _____

Print Name: James I. Newsome, III

Its: President and CEO

Date: _____

Print Name: _____