

**MEMORANDUM OF AGREEMENT
BETWEEN
PALMETTO RAILWAYS
AND
THE CHICORA-CHEROKEE NEIGHBORHOOD ASSOCIATION, THE UNION
HEIGHTS COMMUNITY COUNCIL, THE LOWCOUNTRY ALLIANCE FOR
MODEL COMMUNITIES, AND THE METANOIA COMMUNITY DEVELOPMENT
CORPORATION RELATED TO THE USE OF MITIGATION FUNDS IN
CONNECTION WITH THE REDEVELOPMENT ON THE NAVY BASE
INTERMODAL FACILITY**

This Agreement (the "Agreement") is made and entered in Charleston, South Carolina as of the day of October 18, 2016 ("Effective Date"), by and between the South Carolina Division of Public Railways, a Division of the South Carolina Department of Commerce, d/b/a PALMETTO RAILWAYS ("Palmetto Railways"), and the leaders of the Chicora-Cherokee Neighborhood Association, the Union Heights Community Council, the Lowcountry Alliance for Model Communities ("LAMC"), and the Metanoia Community Development Corporation (hereafter referred to as the "Community Mitigation Working Group"). Palmetto Railways and the Community Mitigation Working Group are sometimes referred to herein collectively as the "Parties". This Agreement is entered into on the basis of the following facts, understandings, and intentions of all the Parties.

WHEREAS, Palmetto Railways has proposed the construction and operation of the Navy Base Intermodal Facility ("NBIF") at the former Charleston Naval Complex ("CNC");

WHEREAS, Palmetto Railways has applied to the United States Army Corps of Engineers, Charleston District ("Corps"), for a permit for the construction and operation of the proposed NBIF ("Permit") and to the Federal Railroad Administration ("FRA") for funding for construction and operation of the proposed NBIF;

WHEREAS, the Community Mitigation Working Group involved in this mitigation agreement are: The Chicora-Cherokee Neighborhood Association and the Union Heights Community Council (the "Communities"), both with a mission to make their respective neighborhoods healthy communities in all respects; the Lowcountry Alliance for Model Communities, a 501(c)(3) organization founded for the purpose of advocating environmental justice and promoting community development, education, quality housing and community empowerment in Accabee, Chicora-Cherokee, Union Heights, Howard Heights, Windsor Place, Five Mile and Liberty Hill; and the Metanoia Community Development Corporation, a 501(c)(3) organization working to discover and grow the assets of distressed communities in the southern portion of North Charleston with a particular focus on the Chicora-Cherokee community.

WHEREAS, it is the desire and intent of the Parties to take certain mitigation and enhancement actions that will reduce, avoid, or offset actual and potential, direct and indirect, negative impacts in the Chicora-Cherokee and Union Heights communities related to the construction and operation of the proposed NBIF at the former CNC. These communities are identified as those in closest proximity to the proposed NBIF facility.

- Chicora-Cherokee is bound by Spruill Avenue to the north, Viaduct Road and Burton Lane to the South, and Avenue D South to the east and Meeting Street to the west.
- Union Heights is essentially a triangle bound by Stromboli Avenue, Spruill Avenue and Meeting Street. It also includes the former Windsor Place neighborhood.

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

1. Background. In an effort to reduce, avoid, or offset actual and potential, direct and indirect, negative impacts in the Chicora-Cherokee and Union Heights Communities related to the construction and operation of the proposed NBIF, the Parties have worked cooperatively to develop an appropriate mitigation plan that addresses the concerns of these Communities. The Parties now wish to enter into this Agreement, which identifies the scope of the mitigation and enhancement activities, sources of funding, and roles and responsibilities of the Parties hereto in connection therewith.
2. Project Target Area. The project target area is the Chicora-Cherokee and Union Heights Communities, as defined herein.
3. Relocation Area. The relocation services that are offered by Palmetto Railways as a part of this Agreement are limited to owner-occupied residential property owners that, as of the Effective Date, reside in the area bounded by the NBIF on the East/Northeast, Quitman's Marsh on the South/Southeast, North Carolina Avenue on the West/Southwest, and Reynolds Avenue on North/Northwest ("Relocation Area") (see Attachment A).
4. Mitigation and Enhancement Activities to be Accomplished Through this Agreement.

The Parties agree that the scope of the mitigation and enhancement actions to compensate the Communities for the impacts of the NBIF shall be:

- A. Palmetto Railways shall fund (1) Three Million and 00/100 Dollars (\$3,000,000.00) for the construction of a community recreation center ("Rec Center") on property to be provided by the City of North Charleston, located in the area commonly referred to as the Chicora Tank Farm. Palmetto Railways understands the Rec Center is proposed to include approximately 10,000/sf of gymnasium space and approximately 5,000/sf of fitness facility space, office space, bathroom facilities. LAMC commits to provide \$200,000 for fitness equipment and \$50,000 for exterior fitness stations. Palmetto Railways supports inclusion of an outdoor area that could be used as a community farmer's market in the planning for the Rec Center.
- B. Palmetto Railways shall provide an additional One Million and 00/100 Dollars (\$1,000,000) in mitigation funds to mitigate for the impacts of the NBIF. Such funding amount may be increased as set forth in Section 5.B should the construction funds for the Rec Center set forth in Section 4.A not be fully expended or utilized. The funds shall be disbursed in the following manner.

- 47% shall go to establish a revolving fund for affordable housing in the affected Communities to be stewarded by the Metanoia Community Development Corporation.
- 13% shall go to establish a Job Training Endowment at the Coastal Community Foundation to provide job training scholarships for the Communities.
- 13% shall go to support educational initiatives in the Communities through the creation of an endowment at the Coastal Community Foundation for this purpose.
- 13% shall go toward environmental research, monitoring and health impact studies within the Communities to be stewarded by the Charleston Area Research to Action Board.
- 8% shall go toward an endowment at the Coastal Community Foundation that will provide support for organizations offering assistance to youth within the Communities.
- 6% shall go toward an endowment at the Coastal Community Foundation that will provide capacity building trainings for community organizations working Communities.

It is the responsibility of the Communities to ensure that once funded by Palmetto Railways that these funds are utilized for the purposes for which they are designated.

- C. The development of an agreement with the South Carolina Department of Health and Environmental Control to address certain concerns related to the environmental impacts of the Project including support for operational efficiencies and Best Management Practices for intermodal facilities.
- D. Palmetto Railways, as part of the construction of the NBIF, will provide a One Hundred Foot (100 foot) buffer with a landscaped earthen berm and noise wall between the NBIF and the adjacent Chicora-Cherokee Neighborhood. The buffer will be appropriately landscaped with native, non-evasive vegetation. When appropriate, Palmetto Railways will seek exceptions to the City of North Charleston's Tree Preservation Ordinance for vegetation options that can support appropriate mitigation. The buffer will be permanently maintained by Palmetto Railways.
- E. For a period of three (3) years after the official opening of the NBIF, Palmetto Railways shall provide relocation services to owner-occupied residential property owners who, as of the Effective Date, reside in the Relocation Area from 100 feet of the project up to North Carolina Avenue. The relocation services provided by Palmetto Railways will be consistent with the Uniform Relocation Assistance and Real Property Acquisition Act of 1970, 42 U.S.C.A. §§ 4601 *et seq.*, as amended.
- F. Palmetto Railways will maintain its 5% set aside goal for DBEs in its construction contracts. Palmetto Railways further commits to making the Community Mitigation Working Group aware of all job opportunities, through providing job announcements to the community, minority media, and local organizations. Palmetto Railways will support job fairs in the local community, internship and training programs, with regard

to the facility in both its construction and operation stages. Palmetto Railways will further investigate the possibility of summer internships for youth in partnership with the Community Mitigation Working Group.

- G. Palmetto Railways will support the City of North Charleston and Class I Rail Carriers and the Community Mitigation Working Group to establish quiet zones for rail traffic within the impacted communities.
- H. Palmetto Railways will support the City of North Charleston to develop a truck route and restriction plan for the area. Additionally, Palmetto Railways will work to inform truck traffic to the facility of streets where truck traffic is not permitted.
- I. Palmetto Railways will support the City of North Charleston in the rehabilitation and repair of the former Chicora Elementary School in the Chicora-Cherokee area for the benefit of the community. The City of North Charleston's rehabilitation of the auditorium, which, when combined with the Rec Center partially funded by Palmetto Railways, will serve to replace the facilities that were once provided to the affected communities at Sterett Hall. Palmetto Railways assumes no responsibility or obligation, financial or otherwise, for the rehabilitation of the auditorium, which is not a part of this Agreement or the Mitigation Activities described herein.
- J. Palmetto Railways will support the City of North Charleston and the Community Mitigation Working Group in the establishment of Quitman's Marsh as a recreational area.
- K. Palmetto Railways will support the City of North Charleston and the Community Mitigation Working Group in the establishment of a pool near the Rec Center

The scope of mitigation and enhancement activities described in Section 4.A - K of this Agreement shall be referred to hereinafter as the "Mitigation Activities".

The Parties will support one or more of the Mitigation Activities through their respective responsibilities as described in Sections 8 and 9 of this Agreement.

5. **Funding.** To assist in carrying out the Mitigation Activities, Palmetto Railways shall expend and/or provide a total of Four Million and 00/100 Dollars (\$4,000,000.00) in mitigation funds (the "Mitigation Funds") into the Chicora-Cherokee and Union Heights Communities as set forth in Section 4.A and 4.B above. With the exception of the funds designated for the construction of the Rec Center, as described below, which will be expended directly by Palmetto Railways to fund the construction of the Rec Center, the disbursement of the remaining Mitigation Funds shall be made directly to the entities described in Section 4.B of this document.

The schedule of payment of the Mitigation Funds shall be as follows:

- A. The Community Mitigation Working Group understand and agree that Palmetto Railways' obligations under this Agreement shall be expressly conditioned upon the

receipt of the Permit for the construction and operation of the NBIF from the Corps and FRA, respectively, including the respective Records of Decision from each agency.

- B. Palmetto Railways shall expend up to Three Million and 00/100 Dollars (\$3,000,000.00), as necessary and required for the timely construction of the Rec Center and upon such design and construction schedule as is developed and approved. Should it cost less than \$3,000,000.00 to complete the Rec Center, Palmetto Railways shall invest excess funds, up to the cap of \$3,000,000.00 in the other initiatives in this mitigation agreement according to the percentages set forth in Section 4.B. If, prior to construction of the Rec Center, the Community Mitigation Working Group should decide that they would prefer to construct the Rec Center without Palmetto Railways' involvement, then, with reasonable notice, Palmetto Railways will provide the full amount of \$3,000,000.00 in lieu of and in complete fulfillment of Palmetto Railways' obligations under the Agreement to oversee and contribute funding for the construction of the Rec Center. *Provided, however,* that Palmetto Railways has no obligation to fund any construction of the Rec Center or make any payment under Section 4.A until both Records of Decision (i.e., the ROD by the Corps and the ROD by FRA) are issued for the NBIF.
- C. Palmetto Railways shall disburse to the entity or entities designated by the Community Mitigation Working Group and provided for in Section 4.B Two Hundred Thousand and 00/100 Dollars (\$200,000.00) no later than sixty (60) days after the issuance of both Records of Decision (i.e., the ROD by the Corps and the ROD by FRA) for the NBIF. Palmetto Railways shall thereafter disburse One Hundred Thousand and 00/100 Dollars (\$100,000.00) no later than the anniversary of Palmetto Railways' initial \$200,000.00 payment for each succeeding year until such time as the full amount of the Mitigation Funds promised herein are fully disbursed.
- D. If construction of the NBIF is halted for any reason, including by and during the pendency of any legal challenge to the Permit, lack of adequate funding, or Record of Decision, Palmetto Railways, in its discretion, may defer the construction of the Rec Center and any payment(s) under the schedule of this Agreement upon the provision of written notice to the Community Mitigation Working Group at the address herein below, until such time as all legal impediments to the construction and operation of the proposed NBIF are removed.

6. Use of the Mitigation Funds. The Parties acknowledged and agree that the Mitigation Funds must be used exclusively for and in support of the Mitigation Activities. The Parties agree that the transfers and/or allocations of Mitigation Funds recited in Section 5 of this Agreement are consistent with the proper use of the Mitigation Funds and otherwise conform to the objectives and intent of the Parties.

7. Termination of Funding Upon Abandonment of the Project and Return of Uncommitted Mitigation Funds. The Parties agree that if the NBIF is formally abandoned for any reason, then upon notice by Palmetto Railways to the Parties of such abandonment, all remaining obligations for funding by Palmetto Railways under Section 5 of this Agreement, as well as any active and remaining duties of Palmetto Railways under Section 9 of this Agreement, shall be terminated without further action by Palmetto Railways, and any and all uncommitted Mitigation Funds transferred to the Community

Mitigation Working Group pursuant to this Agreement shall be promptly returned to Palmetto Railways.

8. Reporting and Record Keeping. The Parties agree to the following reporting and record keeping requirements attendant to their respective responsibilities under this Agreement:

- A. The Community Mitigation Working Group agree to ensure that each investee in this agreement will maintain records of receipts and expenditures (including checks, payrolls, time records, invoices, agreements, contracts, vouchers, orders and other data, information, and material concerning any matter covered by this MOU) which shall be made available to Palmetto Railways upon reasonable notice and request. In addition, the Community Mitigation Working Group agree to submit one annual report, through LAMC, to Palmetto Railways providing an accounting of the expenditure of Mitigation Funds in the preceding year and advising Palmetto Railways of progress being made on particular projects.
- B. Any entity with revenues in excess of \$500,000 per year which is an investee within this mitigation agreement shall have an annual audit performed each year. The audit shall be made available to Palmetto Railways upon notice and request by Palmetto Railways.
- C. Palmetto Railways agrees to provide a quarterly report to the Community Mitigation Working Group regarding the construction of the Rec Center, until such time as construction is completed.
- D. Palmetto Railways agrees to provide the Community Mitigation Working Group a final accounting of expenditures made in the construction of the Rec Center, within thirty (30) days of its completion.

9. Responsibilities of Palmetto Railways. The responsibilities of Palmetto Railways in connection with this Agreement shall be limited to the following:

- A. Fund, up to a total contribution of to Three Million and 00/100 Dollars (\$3,000,000.00), as set forth in Sections 4 and 5 of this Agreement.
- B. Make payments of the remaining One Million and 00/100 Dollars (\$1,000,000) Mitigation Funds as set forth in Section 5 of this Agreement.
- C. Cooperate in good faith with local, state, and federal agencies, the City, and the Community Mitigation Working Group to maximize utilization of Mitigation Funds.
- D. Enter into a memorandum of agreement with the South Carolina Department of Health and Environmental Control ("DHEC") to monitor and address potential air impacts related to the NBIF. Palmetto Railways further commits to hosting, along with DHEC, annual meetings to review and address the results of the air quality monitoring with the Community Mitigation Working Group once the NBIF is operational as set forth in such memorandum of agreement.

- E. Promote, within the Community Mitigation Working Group, available construction jobs related to the construction of the Rec Center and NBIF, through the respective contractors for those projects, as well as a job fair. In addition, Palmetto Railways further commits to continuing its practice of notifying the Community Mitigation Working Group directly regarding potential job opportunities in the area.
- F. For a period of three (3) years after the official opening of the NBIF, provide relocation services within the Relocation Area and in accordance with the applicable Relocation Policy, as amended, as described in Section 4, herein.

10. Responsibilities of the Community Mitigation Working Group signing this Mitigation Agreement. The responsibilities of the Parties in connection with this Agreement shall be limited to the following enumerated list:

- A. Cooperate in good faith with local, state, and federal agencies, the City, and Palmetto Railways to maximize utilization of the Mitigation Funds.
- B. Ensure that Mitigation Funds are used exclusively in the Chicora-Cherokee and Union Heights Communities and for the Mitigation Activities recited in Section 4 of this Agreement.
- C. Publicize and inform their constituents of on-going Mitigation Activities.
- D. Enter into appropriate agreements with the Metanoia Community Development Corp., the Coastal Community Foundation of South Carolina, Inc., Charleston Community Research to Action Board, Lowcountry Development Corporation, and/or the City of North Charleston or similar organizations with memoranda of understanding to ensure the objectives of this Agreement are achieved.
- E. Support the NBIF project, as evidenced by letters of support to the Corps, FRA, and other regulatory agencies, other local, state, and federal agencies, and the public.

11. Discharge and Termination Upon Complete Performance. The Parties acknowledge and agree that one year after the final payment is made satisfying Palmetto Railways obligation to expend the Mitigation Funds in Section 5 this Agreement shall terminate without further action required by the Parties.

12. General Provisions.

- A. This Agreement (including any attachments and any documents incorporated herein by reference) constitutes the entire agreement between the Parties pertaining to the subject matter hereof, and terminates, supersedes, and renders null and void any other prior agreement entered into between the Parties, either orally or in writing, relating to the subject matter herein.
- B. This Agreement shall remain in full force and effect until terminated pursuant to Section 11 of this Agreement, by written agreement of the Parties hereto, or by other legal means.

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

Palmetto Railways	President & CEO Palmetto Railways 540 East Bay Street Charleston, SC 29403
Chicora-Cherokee Neighborhood Association	President Chicora-Cherokee Neighborhood Association 2012 Success Street North Charleston, SC 29405
Union Heights Community Council	President Union Heights Community Council 2449 Beacon Street North Charleston, SC 29405
Lowcountry Alliance for Model Communities	President LAMC 2125 Dorchester Road North Charleston, SC 29405
Metanoia Community Development Corporation	CEO Metanoia 2005 Reynolds Avenue North Charleston, SC 29405

- D. This Agreement shall be binding on the Parties, their successors, and assigns.
- E. Neither party shall have the right to transfer, assign or delegate its rights or obligations pursuant to this Agreement without prior written consent of the other Party.
- F. This Agreement 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) and does not create any rights in any third parties.
- G. This Agreement 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.
- I. All modifications or amendments to this Agreement must be approved by the Parties hereto in a signed writing.

- J. This Agreement contains all the promises, covenants, agreements, and understandings between the Parties concerning the subject matter herein, and the execution of this Agreement 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.
- K. This Agreement and the legal relationship between the Parties shall be governed by and construed in accordance with the laws of the State of South Carolina.

In Witness Whereof, the Parties have caused this Agreement to be executed when signed and dated below.

For Palmetto Railways:



Witness

By:  Date: 10-21-16
Jeffrey McWhorter, President & CEO
Palmetto Railways

Shari Cooper

Printed Name

For the Parties:




Witness

By:  Date: 10/21/16
Rebecca Rushton, President
Chicora-Cherokee Neighborhood Association

Melvin Smalls

Printed Name



Witness


 Date: 10-21-2016
Gerard Mikell, President
Union Heights Community Council

Hassat Feroz-Rahim

Printed Name



Witness

 Date: 10/21/16
Omar Muhammad
Lowcountry Alliance for Model Communities

Rahim Karim

Printed Name



Witness

 Date: 10-21-16
Bill Stanfield, CEO
Metanoia Community Development Corporation

Camella R. Scott

Printed Name