

MEMORANDUM

Agenda Item No. 11(A)(3)

TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: June 2, 2020

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving a Memorandum of Understanding (“MOU”) between Virgin Trains USA Florida LLC (“Virgin Trains”) and Miami-Dade County providing the framework for negotiations for agreements for the implementation of commuter rail service for the northeast corridor of the Strategic Miami Area Rapid Transit Plan; directing the County Mayor to negotiate agreements with (1) Virgin Trains in accordance with the MOU and (2) public and private interested parties along the northeast corridor for contributions of land and funding toward capital, operating and maintenance expenses of the train stations and parking facilities; and further directing the County Mayor to place agreements on a Board agenda for approval or, if no agreement is reached, to provide report

The accompanying resolution was prepared and placed on the agenda at the request of Co-Prime Sponsors Commissioner Sally A. Heyman, Commissioner Eileen Higgins and Vice Chairwoman Rebeca Sosa.



Abigail Price-Williams
County Attorney

APW/smm



MEMORANDUM
(Revised)

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and Members, Board of County Commissioners

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Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Statement of social equity required
- Ordinance creating a new board requires detailed County Mayor's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's present ____, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A)(3)
6-2-20

RESOLUTION NO. _____

RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING (“MOU”) BETWEEN VIRGIN TRAINS USA FLORIDA LLC (“VIRGIN TRAINS”) AND MIAMI-DADE COUNTY PROVIDING THE FRAMEWORK FOR NEGOTIATIONS FOR AGREEMENTS FOR THE IMPLEMENTATION OF COMMUTER RAIL SERVICE FOR THE NORTHEAST CORRIDOR OF THE STRATEGIC MIAMI AREA RAPID TRANSIT PLAN; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO NEGOTIATE AGREEMENTS WITH (1) VIRGIN TRAINS IN ACCORDANCE WITH THE MOU AND (2) PUBLIC AND PRIVATE INTERESTED PARTIES ALONG THE NORTHEAST CORRIDOR FOR CONTRIBUTIONS OF LAND AND FUNDING TOWARD CAPITAL, OPERATING AND MAINTENANCE EXPENSES OF THE TRAIN STATIONS AND PARKING FACILITIES; AND FURTHER DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR’S DESIGNEE TO PLACE AGREEMENTS ON A BOARD AGENDA FOR APPROVAL OR, IF NO AGREEMENT IS REACHED, TO PROVIDE REPORT

WHEREAS, Virgin Trains USA Florida LLC (“Virgin Trains”) has constructed and is operating a privately-owned, environmentally friendly intercity passenger railway service with passenger train stations in Miami, Fort Lauderdale and West Palm Beach, and a planned extension to Orlando as well as inline stations in the Cities of Aventura and Boca Raton; and

WHEREAS, Miami-Dade County is experiencing continued growth and is seeking alternative transportation options to reduce impact on Miami-Dade County’s roadways and to minimize toxic pollutants from motor vehicles; and

WHEREAS, Miami-Dade County desires to commence the operation of trains transporting passengers and making frequent stops within urban areas and suburbs (“Commuter Rail Service”) along the heavily used northeast corridor of the Strategic Miami Area Rapid Transit (“SMART”) Plan; and

WHEREAS, the jobs created and economic stimulus produced by the construction and operation of the Commuter Rail Service would significantly benefit Miami-Dade County and support post coronavirus disease 2019 (“COVID-19”) economic recovery; and

WHEREAS, the attached memorandum of understanding (“MOU”) between Miami-Dade County and Virgin Trains outlines the proposal by Virgin Trains for a phased approach for the implementation of Commuter Rail Service for the northeast corridor of the SMART Plan; and

WHEREAS, this Board wishes to pursue negotiations with Virgin Trains generally in accordance with the framework outlined in the subject MOU,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Approves the attached Memorandum of Understanding (“MOU”) between Virgin Trains USA Florida LLC (“Virgin Trains”) and Miami-Dade County, which provides the framework for negotiations for agreements for the implementation of commuter rail service for the northeast corridor of the Strategic Miami Area Rapid Transit (“SMART”) Plan.

Section 2. Directs the County Mayor or County Mayor’s designee to pursue negotiations with Virgin Trains in accordance with the MOU, and further directs the County Mayor or Mayor’s designee to contact and negotiate with public and private interested parties along the northeast corridor of the SMART Plan, including, but not limited to, Florida International

University and municipalities, for their contributions of land and funding toward the capital, operating and maintenance expenses of the train stations and parking facilities along the northeast corridor.

Section 3. To the extent negotiations are successful with Virgin Trains and the public and private interested parties, the County Mayor or County Mayor’s designee is directed to place the finalized agreements on an agenda of this Board for its approval within 180 days. To the extent negotiations are not successful, the County Mayor or County Mayor’s designee is directed to provide a report to this Board within 180 days of the County Mayor or County Mayor’s designee’s determination of that an agreement cannot be reached, and to place said report on an agenda of the Board in accordance with Ordinance No. 14-65.

The Co-Prime Sponsors of the foregoing resolution are Commissioner Sally A. Heyman, Commissioner Eileen Higgins and Vice Chairwoman Rebeca Sosa. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Audrey M. Edmonson, Chairwoman
Rebeca Sosa, Vice Chairwoman

Esteban L. Bovo, Jr.	Daniella Levine Cava
Jose “Pepe” Diaz	Sally A. Heyman
Eileen Higgins	Barbara J. Jordan
Joe A. Martinez	Jean Monestime
Dennis C. Moss	Sen. Javier D. Souto
Xavier L. Suarez	


The Chairperson thereupon declared this resolution duly passed and adopted this 2nd day of June, 2020. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Annery Pulgar Alfonso
Monica Rizo Perez
Bruce Libhaber

MEMORANDUM OF UNDERSTANDING
BETWEEN
VIRGIN TRAINS USA FLORIDA LLC AND MIAMI-DADE COUNTY

This Memorandum of Understanding (the “MOU”) is entered into between Miami-Dade County (the “County”), a political subdivision of the State of Florida, and Virgin Trains USA Florida LLC (“VTUSA”) (together, the “County” and “VTUSA” are the “Parties”) on this ___ day of _____, 2020 (the “Effective Date”).

RECITALS

WHEREAS, VTUSA has constructed and is operating a privately-owned, environmentally friendly intercity passenger railway service (“Express Rail Service”) with passenger train stations in Miami, Fort Lauderdale and West Palm Beach and a planned extension to Orlando and inline stations in Aventura and Boca Raton (the “Express Rail System”).

WHEREAS, Miami-Dade County is experiencing continued growth and is seeking alternative transportation options to reduce impact on Miami-Dade County’s roadways and to minimize toxic pollutants from motor vehicles.

WHEREAS, as part of the Express Rail System, VTUSA has invested and is investing heavily to upgrade and build infrastructure on the Florida East Coast (FEC) Rail Corridor (the “Corridor”).

WHEREAS, the County desires to commence the operation of trains transporting passengers and making frequent stops within urban areas and their immediate suburbs (“Commuter Rail Service”) along the heavily used Northeast Corridor of the Strategic Miami Area Rapid Transit Plan (“SMART Plan”).

WHEREAS, it would be challenging and costly for Miami-Dade County to independently create a corridor similar to the Corridor for Commuter Rail Service.

WHEREAS, the Corridor represents the most cost effective opportunity to provide Commuter Rail Service.

WHEREAS, various government agencies and coalitions have attempted to negotiate terms for use of the Corridor for commuter rail since the 1990’s.

WHEREAS, the jobs created and economic stimulus produced by the construction and operation of the Commuter Rail Service shall significantly benefit Miami-Dade County and support post Covid-19 economic recovery.

WHEREAS, VTUSA is prepared, subject to definitive agreements with the County, to (a) design and construct the station platforms and ticketing areas at up to five (5) additional train stations between the MiamiCentral Station in downtown Miami and the Aventura Station (the “Commuter Rail Stations”) and the necessary rail and other infrastructure (the “Rail Infrastructure”) required to add up to five (5) additional train stops within Miami-Dade County in the vicinity of each of the five areas identified in Exhibit “A” attached hereto, (b) determine existing availability of parking, acquire or lease land, or otherwise arrange for the parking for each of the up to five (5) Commuter Rail Stations (the “Parking Areas”), (c) determine the availability and options regarding train sets (the

“Rolling Stock”) required for providing the Commuter Rail Service during the different phases, (d) determine the availability and options regarding the location, design and construction of a suitable maintenance facility for the Rolling Stock (the “Maintenance Facility”), when applicable and (e) operate Commuter Rail Service among its existing station in downtown Miami, known as the MiamiCentral Station (the “MiamiCentral Station”), the proposed station in Aventura (the “Aventura Station”) and the additional up to five (5) Commuter Rail Stations, in each case, and maintain the Commuter Rail Stations, the Rolling Stock, and the Maintenance Facility, when applicable. The MiamiCentral Station, the Aventura Station, the Commuter Rail Stations and the related Rail Infrastructure for the Commuter Rail Service shall be hereinafter called the Commuter Rail System.

WHEREAS, VTUSA proposes that the operation of the Commuter Rail Service be developed and ramped up in phases, subject to required approvals to enable the combined operation of freight service, Commuter Rail Service and Express Rail Service.

NOW, THEREFORE, the Parties hereby memorialize their intent to negotiate definitive agreements in response to the framework proposed by VTUSA as set forth below:

FRAMEWORK

1. Nature of MOU; Future Agreement. This MOU is intended as a framework for continuing negotiations surrounding the construction and operation of the Commuter Rail System, the Parties agreeing and understanding that, while both Parties are desirous of accomplishing the aforementioned objective, the terms on which said objective is accomplished (including those set forth herein) may vary depending on the outcome of ongoing negotiations. This Agreement does not bind either Party to any terms herein and shall not be deemed to impose any obligations on, or grant any rights to, either Party. Any future agreement(s) between the Parties will be subject to the requirements of any applicable collective bargaining agreement provisions and subject to the approval of the Board of County Commissioners in its full legislative discretion. Any future agreement(s) between the Parties may take the form of a development, access and operating agreement(s). Neither Party shall have any obligations to incur any expenses, assume any liability or pay any sums unless or until there are approved and executed definitive agreements, of the nature set forth in Section 2 below, and only in accordance with the terms of said definitive agreements.

2. Negotiation Period/Definitive Agreements. It is the Parties’ intention to negotiate the following definitive agreements (the “Definitive Agreements”), with a structure generally consistent with the structure set forth in this MOU, during the period commencing on the Effective Date and completed within ninety (90) days; provided, however, that this negotiation period will be extended automatically for up to two (2) months unless and until written notice is provided by either the County or VTUSA and can be extended thereafter by mutual consent:

(i) An access or similar agreement entered into by VTUSA, as rail operator, and the County, for the use by the public of the Commuter Rail Stations, right of way access, and the Rail Improvements (the “Access Agreement”).

(ii) An operating and maintenance agreement entered into by VTUSA, as operator, and the County for the operation and maintenance of the Commuter Rail System including the Rolling Stock and the cost or lease expense related thereto and the cost related to the Maintenance Facility (the “Operating and Maintenance Agreement”).

(iii) A design and construction agreement for Phase 2 and Phase 3, as hereinafter defined (the “Design and Construction Agreement”).

3. Phases. The Parties contemplate that the construction of the Commuter Rail Stations and the Rail Infrastructure and the operation of the Commuter Rail Service shall commence in the following phases:

(i) “Phase 1” shall mean: (a) the construction of the up to five (5) Commuter Rail Stations with at grade pedestrian platform access; (b) the operation of Commuter Rail Service at the up to five (5) Commuter Rail Stations, the MiamiCentral Station and the Aventura Station (collectively, the “Rail System”) with, subject to capacity constraints, hourly service (30 minute headways during certain periods of commuter rush hour periods); (c) the designation or provision of Parking Areas for the Commuter Rail Stations during Phase 1 (whether leased, purchased or available in existing public garages); and (d) the provision by VTUSA of Rolling Stock, and VTUSA may, at its option, use its existing Rolling Stock, or lease or purchase the required Rolling Stock for providing the Commuter Rail Service during Phase 1 (the “Initial Rolling Stock”).

(ii) “Phase 2” shall mean the design and construction of sufficient infrastructure (the “Phase 2 Required Infrastructure”) required for the operation of Commuter Rail Service on the Rail System with hourly service (30 minute headways during certain periods of commuter rush hour periods) with the use of the Initial Rolling Stock or other Rolling Stock if the Initial Rolling Stock was a conversion of VTUSA’s existing rolling stock as well as Express Rail Service on the Express Rail System and freight service. Prior to Phase 2, the land for and the construction of the Maintenance Facility will need to be completed unless alternate facilities are available. Additionally, the County may, at its cost, request enhancements, which may include pedestrian bridges, parking facilities, and station amenities, to the Commuter Rail Stations or Rail Infrastructure and/or additional Rail Infrastructure. Further, the construction for Phase 2 shall not commence until (a) all required approvals are obtained, if any and (b) the County sources or provides funding for said design and construction of Phase 2 and the cost of any additional Rolling Stock or, at VTUSA’s option with the consent of the County, which consent may be granted, denied or conditioned by the County in its sole and absolute discretion, VTUSA provides the required funding with an increase to the Rent, as hereinafter defined. The Phase 2 Required Infrastructure should be completed by October of 2022 when the Express Service to Orlando is expected to commence.

(iii) “Phase 3” shall mean the construction of the additional Rail Infrastructure for the operation of Commuter Rail Service on the Rail System with 20-minute headways with hours and days of operation to be defined in the Definitive Agreements with the use of the Initial Rolling Stock or other Rolling Stock as well as Express Rail Service on the Express Rail System and freight service, with it being understood that such headways are subject to the physical restraints of and contractual constraints related to the Corridor. Further, the construction for Phase 3 shall not commence until (a) the County requests the commencement of Phase 3, (b) all required approvals are obtained, if any and (c) the County sources or provides funding for said design and construction of Phase 3 and the cost of any additional Rolling Stock.

4. Construction of the Commuter Rail Service.

(i) VTUSA proposes that it will design and construct the Commuter Rail Stations and the Rail Infrastructure required for Phase 1 at an approximate cost of Seventy-Five (\$75,000,000) Million Dollars, at VTUSA's cost.

(ii) VTUSA proposes that it will design and construct the Phase 2 Required Infrastructure at an preliminary approximate cost of One Hundred (\$100,000,000) Million Dollars, subject to design and engineering, and Phase 3, in conjunction with Phase 2, at an approximate cost of Three Hundred Fifty (\$350,000,000) Million Dollars, subject to design and engineering for the agreed upon service levels, with the cost being paid or sourced by the County or through an application for anticipated Federal Stimulus Funds (the "Application"), abiding by the County's competitive procurement rules, including application of small business programs, and wage requirements. Notwithstanding the foregoing, VTUSA will provide through its own procurement process (not subject to County competitive procurement rules), a concept design of the pedestrian bridges and up to 15% engineering design for the infrastructure required by Phase 2 and/or Phase 3 as necessary to enable the County, with the assistance of VTUSA, to file the Application. VTUSA proposes that all other design fees for Phase 2 and Phase 3 will be the responsibility of the County or paid by federal funds. For Phases 2 and 3, VTUSA proposes that it be paid a development fee equal to four (4%) percent of cost of the design, construction of the Maintenance Facility, additional Rail Infrastructure, enhancements to the Commuter Rail Stations and acquisition of Rolling Stock.

(iii) VTUSA will obtain a benefit cost analysis to the extent required by the Application.

(iv) VTUSA shall complete a RTC Simulation model in conjunction with the County to determine the required Rail Infrastructure necessary for the continuation of the freight service and Express Rail Service with the addition of the Commuter Rail Service for Phase 2 and Phase 3.

5. Access Agreement. VTUSA proposes the following terms for the Access Agreement:

(i) The "Term" of the Access Agreement should be thirty (30) years with three twenty (20) year renewal options, subject to mutual agreement, for a maximum possible term of ninety (90) years. The Term should commence on the commencement of the construction of the Commuter Rail System.

(ii) An annual access rate of Twenty-Nine Million (\$29,000,000) Dollars (the "Rent") which reflects an annual access fee for an entire year to reflect the value of the Corridor and the investment in the Express Rail System to date and the foregone capacity in the Corridor for other services, and escalate every three (3) years at a rate equal to CPI, but not lower than zero (0%) percent per annum and not greater than 2% per annum. The Rent should be paid in arrears with the first payment due on January 1, 2023 for the calendar year 2022 or on a pro-rated basis, provided, however that the commencement of Rent will not occur prior to the commencement of Commuter Rail Service from the MiamiCentral Station to the Aventura station with stops at all five (5) Commuter Rail Stations, and vice-versa and provided further than if the Commuter Rail Service has not commenced

on January 1, 2022, then the payment due for the calendar year 2022 shall be pro-rated to reflected the actual days during which the Commuter Rail Service was in effect in calendar year 2022. If VTUSA provides the funding for the design and construction of Phase 2 and the acquisition of the Rolling Stock, VTUS proposes that the Rent increase by a percentage of the cost thereof to be mutually agreed by the County and VTUSA.

6. Development Period VTUSA anticipates that its development obligations under the Definitive Agreements entered into between the Parties will provide for VTUSA's expected completion of the construction of (i) Phase 1 within twelve (12) months, but no later than twenty-four (24) months, from the later of the effective date of the Definitive Agreements and obtaining access to the required land parcels and any required approvals, (ii) Phase 2 within twenty-four (24) months, but no later than thirty-six (36) months, from the later of the effective date of the Definitive Agreements and obtaining access to the required land parcels, funding and any required approvals and (iii) Phase 3 within twenty-four (24) months, but no later than forty-eight (48) months, from the later of the effective date of the Definitive Agreements and obtaining access to the required land parcels, funding and any required approvals; provided, however that the Definitive Agreements will include outside dates by when Phase 1 and Phase 2 must be completed.

7. Location of Proposed Facility. As part of the Definitive Agreements, the Parties shall agree upon the location of the proposed additional up to five (5) Commuter Rail Stations in the vicinity of each of the five areas identified in Exhibit "A" attached hereto.

8. Operation and Maintenance of Station; Tracks. VTUSA proposes that it operates the commuter service and maintain the Commuter Rail Stations, the Rail Infrastructure and the Maintenance Facility, when added to the system. VTUSA would assume the cost of operating the Commuter Rail Service until January 1, 2023; provided however, during this period, VTUSA would retain all the revenues from the Commuter Rail Service. Thereafter, the County would retain the revenue and be responsible for all the annual operating costs of providing Commuter Rail Service to and from the up to five (5) Commuter Rail Stations on the Commuter Rail System, including the ongoing cost of maintaining the Commuter Rail Stations, the Rail Infrastructure and the Rolling Stock, including the Initial Rolling Stock as applicable. In addition, the County would pay an allocated cost to maintain the tracks on the Corridor used for the Commuter Rail Service and costs of dispatch of the Commuter Rail Service. In addition, VTUSA proposes that the County would pay VTUSA a management fee equal to ten (10%) percent of VTUSA's annual operating costs for providing the Commuter Rail Service on the Express Rail System, including the cost of personnel and third-party maintenance costs, and reimbursement of cost allocated for overhead expenses. The term of the Operating and Maintenance Agreement should correspond with the Term of the Access Agreement. It is estimated that the annual operating cost could be in the range of Thirty (\$30,000,000) Million Dollars to Fifty (\$50,000,000) Million Dollars per year, subject to the level of service. The annual operating cost is exclusive of the capital or lease cost of the Rolling Stock, (estimated to be Twenty Million Dollars (\$20,000,000.00) per train set acquired and Two Million Dollars (\$2,000,000.00) per year per train set leased), the Parking Areas (to be estimated once the County determines its requirement), and the Maintenance Facility (to be estimated once the County determines its requirement).

9. Pricing and Service Levels. VTUSA would operate the Commuter Rail Service according to agreed upon pricing and service levels.

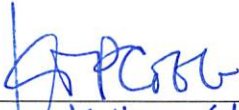
10. Aventura Station. Nothing in this non-binding MOU shall be construed to amend or modify the binding terms and obligations of the Parties set forth in that certain Land Acquisition and Development Agreement between the Parties approved by the County via Resolution No. R-1115-19.

11. Shared Rail Operations (Passenger/Freight). All train movements should be coordinated with other users of the Corridor to minimize disruption of freight, passenger, and vehicular traffic. Trains for the Express Rail Service should have priority over Commuter Rail Service. The operation of the Commuter Rail Service should comply with the terms and requirements of regulations and other agreements for the Corridor.

12. Ticketing. VTUSA proposes that the County assist it with respect to its ticketing technology.

Virgin Trains USA Florida LLC

Miami-Dade County, Florida

By: 
Print: Kathleen Cobb
Title: Vice President

By: _____
Print: _____
Title: _____

Dated: May 26, 2020.

Dated: _____, 2020.

Exhibit A
Proposed Areas

Wynwood / Midtown

Design District

Upper Eastside / El Portal

North Miami

FIU / Biscayne