

MEMORANDUM

Agenda Item No. 8(J)(1)

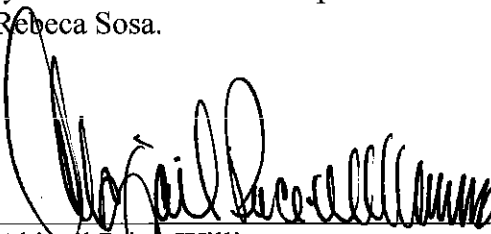
TO: Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners

DATE: October 29, 2019

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Resolution approving a Memorandum of Understanding (MOU) between Virgin Trains USA LLC (Virgin Trains) and Miami-Dade County; directing the County Mayor to negotiate an agreement with Virgin Trains generally in accordance with the MOU; and further directing the County Mayor to place any finalized agreement on an agenda of this Board for its approval or, if no agreement is reached, to report the impasse to this Board within 180 days of the County Mayor's determination of an impasse in accordance with Ordinance No. 14-65

The accompanying resolution was prepared by the Port of Miami and placed on the agenda at the request of Prime Sponsor Vice Chairwoman Rebecca Sosa.



Abigail Price-Williams
County Attorney

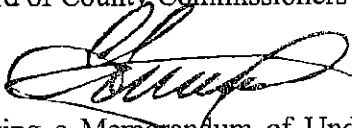
APW/smm

Memorandum



Date: October 29, 2019

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

From: Carlos A. Gimenez
Mayor 

Subject: Resolution Approving a Memorandum of Understanding between Miami-Dade County and Virgin Trains USA Summarizing Principal Terms for an Agreement to Implement Passenger Rail Service to PortMiami

Recommendation

It is recommended that the Board of County Commissioners (Board) adopt the accompanying resolution approving a Memorandum of Understanding (MOU) with Virgin Trains USA LLC (VTUSA) summarizing the principal terms for an agreement to implement passenger rail service to PortMiami, and authorizing the County Mayor or the County Mayor's designee to negotiate a proposed agreement with VTUSA to be presented to the Board for consideration.

Scope

The Port is located within District 5, which is represented by Commissioner Eileen Higgins. The impact of this agenda item is countywide, as the Port is a regional asset and generates employment for residents throughout Miami-Dade County.

Background

Virgin Trains USA LLC (formerly Brightline Trains) is a Miami based company that operates intercity passenger rail service between West Palm Beach and Miami, with a stop in Fort Lauderdale. VTUSA has built three train stations, five new train sets and extensive rail infrastructure in South Florida, investing over \$1.7 billion to date. In addition, VTUSA is constructing a rail link to Orlando International Airport that will transport passengers from Orlando to Miami in approximately three hours, and is planning additional rail connections throughout Florida.

On February 20, 2019, the Board adopted Resolution No. R-220-19, directing the County Mayor or the County Mayor's designee to evaluate the feasibility of expanding VTUSA's passenger rail service into PortMiami. Towards that end, PortMiami and VTUSA engaged in conversations and have developed a proposed MOU including the provisions outlined below.

VTUSA wishes to enter into an agreement with the County to build and operate a passenger rail station at PortMiami adjacent to an existing rail line owned by the County. The proposed passenger rail service will share the existing tracks, which will require some improvements, with the ongoing freight rail operations at PortMiami. Under the proposed agreement, VTUSA will be responsible for construction of the train station, platform and related structures, utilizing the County's competitive procurement process. The station will be constructed on a designated one acre parcel of land for which VTUSA will pay rent as detailed in the Fiscal Impact section of this memorandum.

For the first two years of operation, VTUSA plans to operate an average of two roundtrip trains per day, with the plan to expand to at least four roundtrip trains thereafter. VTUSA will be solely responsible for the costs operation and maintenance of the train station and trains, as well as all annual operating costs of passenger rail service to and from PortMiami. VTUSA will also work together to shuttle passengers from the train station to their cruise terminals with VTUSA bearing the cost of the shuttling.

The proposed agreement is for an initial term of 30 years with renewal options that can extend the agreement to a maximum of 90 years as further detailed in the Fiscal Impact section of this memorandum. During the initial 10 years of the agreement, VTUSA agrees that it will not operate a train station on any seaport property in South Florida other than at PortMiami.

This MOU shall sunset should the County and VTUSA not present a negotiated agreement to this Board within 6 months of the effective date of this resolution. The parties anticipate that VTUSA's construction of the station will be complete by the first quarter of 2021.

Fiscal Impact/Funding Source

The accompanying MOU contemplates the negotiation of a future agreement between the County and VTUSA, and there will be no fiscal impact to the County from the approval of the MOU.

To the extent the County and VTUSA successfully negotiate a definitive agreement in accordance with the MOU, VTUSA would enter into a lease or operating agreement with the County for no less than one acre of Seaport property on which VTUSA will design, construct, maintain, and operate, at its cost, an approximately 20,500 square foot building and train platform on one leased acre of land. The agreement would have an initial term of 30 years with one 20 year renewal at VTUSA's option. Thereafter there will be two additional 20-year renewals subject to mutual agreement of the County and VTUSA for a maximum term of 90 years.

Under the framework established in the MOU, VTUSA will pay the County \$5.75 per square foot (\$250,470.00 per acre) annually, escalating at a rate of three percent, compounded annually, which escalation would commence upon execution of this MOU. Rent will not be charged in the first year of the agreement and would thereafter be payable annually in arrears. For the first five years of the agreement, the County will receive approximately \$1.1m in land rent.

The estimated cost of the on-Port station and rail infrastructure is \$15,400,000.00, of which, the County would be responsible for a one-time capital contribution of \$5,200,000.00. This capital contribution will be recaptured with interest by way of a \$2.00 charge per departing train passenger. If the County has not received \$7,000,000.00 by the end of the fifth full year of operation, VTUSA will pay the balance of the \$7,000,000.00 to the County by the end of the fifth year. Starting the sixth year of operation, through year twelfth, VTUSA will pay the County a \$2.00 per departing person fee and guarantee a minimum total aggregate payment

Honorable Chairwoman Audrey M. Edmonson
and Members, Board of County Commissioners
Page No. 3

of movement and lease fees in the amount of \$750,000.00 increasing by \$75,000.00 annually. After the twelfth year, through the twenty-fifth year, the minimum annual payment shall increase by 5 percent annually, and at 3 percent thereafter. It is estimated that over the initial 30-year term, the County will collect approximately \$49,000,000.00 in rent and passenger movement fees. If all renewal options are exercised, the County will receive over \$490,000,000.00 in rent and passenger movement fees.

All operating costs will be borne solely by VTUSA.

Track Record/Monitor

The Seaport Department staff members responsible for monitoring the Agreement are Hydi Webb, Deputy Director; Andy Hecker, CFO; and Basil A. Binns, II, Assistant Port Director, Business Development.

Delegated Authority

This item authorizes the County Mayor or County Mayor's designee to negotiate an agreement with VTUSA for consideration by the Board. No other rights are conferred in this item.



Jack Osterholt
Deputy Mayor



MEMORANDUM
(Revised)

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

DATE: October 29, 2019

FROM: Abigail Price-Williams
County Attorney

SUBJECT: Agenda Item No. 8(J)(1)

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 _____

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10-29-19

RESOLUTION NO. _____

RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING (MOU) BETWEEN VIRGIN TRAINS USA LLC (VIRGIN TRAINS) AND MIAMI-DADE COUNTY; DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO NEGOTIATE AN AGREEMENT WITH VIRGIN TRAINS GENERALLY IN ACCORDANCE WITH THE MOU; AND FURTHER DIRECTING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO PLACE ANY FINALIZED AGREEMENT ON AN AGENDA OF THIS BOARD FOR ITS APPROVAL OR, IF NO AGREEMENT IS REACHED, TO REPORT THE IMPASSE TO THIS BOARD WITHIN 180 DAYS OF THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE'S DETERMINATION OF AN IMPASSE IN ACCORDANCE WITH ORDINANCE NO. 14-65

WHEREAS, this Board desires to accomplish the purposes set forth in the accompanying memorandum,

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

Section 1. Approves the foregoing recital and incorporates it herein.

Section 2. Approves the attached Memorandum of Understanding ("MOU") between Virgin Trains USA LLC ("Virgin Trains") and Miami-Dade County, and directs the County Mayor or County Mayor's designee to pursue negotiations with Virgin Trains generally in accordance with the MOU. To the extent those negotiations are successful, the County Mayor or County Mayor's designee is directed to place the finalized agreement on an agenda of this Board for its approval. To the extent those negotiations are not successful, the County Mayor or County Mayor's designee is directed to report the impasse to this Board within 180 days of the County Mayor or County Mayor's designee's determination of impasse, and to place said report on an agenda of the Board in accordance with Ordinance No 14-65.

The foregoing resolution 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 29th day of October, 2019. 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.

MAG

Miguel A. Gonzalez

**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 LLC ("VTUSA") (together, the "County" and "VTUSA" are the "Parties") on this ___ day of October, 2019 (the "Effective Date").

RECITALS

WHEREAS, the County owns certain lands located in Miami-Dade County, Florida, on which the Dante B. Fascell Port of Miami-Dade ("PortMiami") is located; and

WHEREAS, the County operates PortMiami through the Miami-Dade County Seaport Department, which is a department of the County; and

WHEREAS, PortMiami is experiencing unprecedented growth, particularly in the cruise sector, and is interested in exploring alternative transportation and parking options to provide additional options to cruise passengers and other PortMiami users; and

WHEREAS, VTUSA has invested over \$1.7 billion in South Florida, has built three (3) stations, extensive rail infrastructure, and has acquired five (5) new train sets that operate on the Florida East Coast Railway ("FECR") corridor which is already connected to PortMiami; and

WHEREAS, the County owns rail tracks within the existing intermodal yard at PortMiami that can support passenger rail, and there is available space within the intermodal yard for the construction of a passenger train station; and

WHEREAS, VTUSA is prepared to provide passenger train service from certain of its existing and future train stations to PortMiami; and

WHEREAS, VTUSA's significant investments in South Florida will soon be complemented by VTUSA's investments in Central Florida, which once completed will provide a link from PortMiami to Orlando International Airport, once VTUSA's extension to Orlando is completed; and

WHEREAS, VTUSA is working directly with cruise lines on bundling packages for cruise passengers to PortMiami utilizing passenger rail as a seamless transportation option and is prepared to provide passenger train service from certain of its existing and future station locations to PortMiami; and

WHEREAS, VTUSA has developed parking infrastructure in connection with its Miami, Fort Lauderdale, and West Palm Beach stations, and intends to develop additional parking infrastructure in connection with its potential future stations in Miami-Dade County, Broward County, Orange County, and Florida's Treasure Coast; and

WHEREAS, the Parties anticipate that the infrastructure necessary for the proposed PortMiami train station will cost approximately \$15.4 million, with costs to be shared between the Parties as outlined below, and the necessary additional rolling stock (consisting of a 240-passenger train set) with a cost of approximately \$35 million, to be contributed solely by VTUSA; and

WHEREAS, the Parties anticipate that the total value of the PortMiami project will be approximately \$53.3 million, within any cost overruns to be borne by VTUSA; and

WHEREAS, in light of the mutual benefits presented by PortMiami's success in the passenger cruise business, the infrastructure that has been developed and planned by VTUSA throughout the State of Florida, and the availability of rail tracks within PortMiami for use for passenger rail service, the Parties desire to enter into this MOU, providing the framework for negotiations between the Parties on a definitive agreement, consisting of either a lease or operating agreement (and any necessary riders providing for the development of the PortMiami station) between the Parties for passenger rail service at PortMiami,

NOW, THEREFORE, the Parties hereby memorialize the progress in their negotiations, as set forth below:

FRAMEWORK

1. **Incorporation of Recitals.** The Parties adopt the foregoing recitals as true and correct and incorporate each of the foregoing recitals as if set forth fully herein.
2. **Nature of MOU; Future Agreement.** This MOU is intended as a framework for continuing negotiations surrounding the construction and operation of a passenger train station within PortMiami, 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. It is anticipated that any future agreement between the Parties, which will be subject to the approval of the Board of County Commissioners in its full legislative discretion, will take the form of either a lease or an operating agreement, together with any necessary riders necessary to accomplish the construction of the proposed passenger train station.
3. **Negotiation Period.** It is the Parties' intention to negotiate a definitive agreement, on terms generally consistent with the terms set forth in this MOU, during the period commencing on the Effective Date and ending six (6) months thereafter; provided, however, that this negotiation period may be extended upon the mutual consent of the County and VTUSA.
4. **Term of Future Agreement; Rental Payment.** The agreement will be for a term of thirty (30) years with one twenty (20) year renewal option at VTUSA's option and another two twenty (20) year renewal options, subject to mutual agreement, for a maximum possible term of ninety (90) years. Rent will commence at the end of the first (1st) year of the effective date of the agreement and shall be paid annually in arrears. VTUSA will pay the County

approximately \$250,000.00 per year based on a one (1) acre leased or operating area; the final rent amount shall be calculated by applying the rate of \$5.75 per square foot to the actual ground area granted to VTUSA in the definitive lease or operating agreement. The rental rate is subject to a three percent (3%) annual escalation, with escalation commencing upon execution of the agreement. The square footage of the building and train platform may increase or decrease in the future, within the leased or operating area, and VTUSA may build additional structures related to its business on the remaining space of the leased or operating area at its own expense. By way of example, and assuming a rental amount (determined using the above formula) of \$250,000.00, if the definitive agreement becomes effective on January 1, 2020, VTUSA's obligation to pay ground rent will commence on January 1, 2021, with the first payment payable on January 1, 2022; with the applicable escalation rate of three percent (3%), the ground rent payment payable on January 1, 2022 would be \$257,500.00. On January 1, 2022, VTUSA will be obligated to pay ground rent in the amount of \$265,225.00, with said ground rent payment payable on January 1, 2023.

5. **VTUSA's Early Termination Rights.** VTUSA shall have the right to terminate the agreement and all other obligations under the agreement upon two (2) years' prior written notice, which notice shall not be given prior to the eighth (8th) year of the agreement. VTUSA's right to early termination shall be conditioned on its restoration of the premises to the condition existing as of the effective date of the agreement, unless the County elects to keep the improvements in their "as is" condition, except that VTUSA shall have the right to remove modular or other structures to use for its own benefit. VTUSA shall also have the right to terminate the agreement and all other obligations under the agreement if, despite diligent efforts, it does not obtain the required regulatory or other approvals necessary to provide passenger rail service from its current system to the planned PortMiami station. Termination under the foregoing sentence shall only be possible before the commencement of passenger rail service to PortMiami and upon thirty (30) days' prior written notice to the County and reimbursement to the County of any amounts disbursed by the County related to its capital contribution to the project. In no event shall early termination, regardless of the cause of the early termination, result in the County incurring an obligation to reimburse VTUSA for any expenditures associated with the PortMiami station or for rent or passenger movement fees paid through the effective date of the termination.

6. **Development Period.** The Parties anticipate that VTUSA's development obligations under the definitive agreement entered into between the Parties will provide for VTUSA's expected completion of the construction of the station within twelve (12) months, but no later than twenty-four (24) months, from the effective date of the definitive agreement.

7. **Departing Passenger Movement Fee.** For the first five years of operation, VTUSA will pay the County a fee of \$2.00 per departing passenger. If the County has not received \$7,000,000 in departing passenger fees by the fifth (5th) full year of operation, VTUSA shall make a payment to the County in the amount of such deficiency. This payment shall be additional to the land rent, and the deficiency payment shall not be reduced by the land rent paid to the County. Starting in the sixth year of operation, VTUSA will pay the County a fee of \$2.00 per departing passenger and guarantee a minimum total aggregate payment of movement and lease fees in the amount of \$750,000 per year increasing by \$75,000 annually through the twelfth (12th) year in which year the annual payment will be \$1,200,000. After the twelfth (12th) year, through the twenty-fifth (25th) year, the minimum

annual payment shall increase by 5% annually over the amount paid in the preceding year. Starting in the twenty-fifth (25th) year of the agreement through the conclusion of the term of the agreement (including any exercised renewal terms), the aggregate payments to the County shall increase by 3% over the amount paid in the preceding year.

8. **Location of Proposed Facility.** The Parties anticipate that the proposed passenger rail facility will be located within PortMiami, adjacent to the existing rail line owned by the County; the precise boundaries of the proposed facility have not been determined, but approximately one (1) acre of land is available to create a dedicated exclusive passenger train station within the PortMiami facility without impeding existing freight rail operations. The County agrees that VTUSA will have the ability to use the tent structure currently located at Cruise Terminal H. If VTUSA decides not to use the tent structure for the station building, VTUSA will have the ability to use the tent structure for a temporary staging area at the designated station site. VTUSA shall decide on whether it will use the tent structure no later than December 31, 2019. The required relocation of the tent structure and any costs associated with is disassembly, reassembly, and maintenance shall be borne exclusively by VTUSA.

9. **Construction of Passenger Rail Facility; Cost-Sharing.** VTUSA will construct the new train station and platform with a combined square footage of approximately 20,500 square feet, abiding by the County's competitive procurement rules, including application of small business programs, wage requirements, and any other development requirements (e.g., Art in Public Places and Sustainable Buildings). As part of that construction, it will be necessary to make improvements to the existing rail track. The agreement shall grant the County consultation and approval rights over the design of the PortMiami station and platform, which approval will not be unreasonably withheld, conditioned or delayed. Of the anticipated \$15.4 million construction cost of the proposed rail facility (including necessary track improvements), the County will be responsible for a one-time capital contribution to the project in the amount of \$5.2 million; the remaining \$10.2 million estimated construction cost (and any cost overruns) shall be funded by VTUSA from non-County sources. Any cost overruns incurred in connection with the construction of the passenger rail facility, including any purchases or contributions of rolling stock or operating/maintenance expenses contemplated under Section 10 of this MOU, shall be borne exclusively by VTUSA, the Parties agreeing and understanding that the County's financial contribution shall not exceed the \$5.2 million one-time capital contribution contemplated herein.

10. **Purchase of Rolling Stock; Operation and Maintenance of Station; Tracks.** VTUSA shall be responsible for the contribution of the rolling stock necessary for the operation of the new passenger rail facility, which is currently estimated at \$35 million for a 240-passenger train set. VTUSA's will bear all its annual operating costs of rail service to the PortMiami. VTUSA will be responsible for the operation and maintenance of the train station, and its trains, and will coordinate maintenance of the tracks with FERC.

11. **Shared Rail Operations (Passenger/Freight).** VTUSA will have non-exclusive access to an existing rail track, as improved in connection with the development of the passenger rail station. Rail access to and from the rail intermodal yard will be shared with

other users (actual and future), including FECR in connection with its freight rail operations. All train movements will be coordinated with other users of the rail track so as to minimize disruption of freight, passenger, and vehicular traffic.

12. **Coordination with Passenger Cruise Lines; Promotion of Passenger Rail.** VTUSA will be responsible for providing rail service for passengers embarking onto or disembarking from cruise ships at the PortMiami. The County agrees to work with VTUSA and cruise lines on how to shuttle passengers between the station and the various cruise ship terminals, the Parties agreeing and understanding that any costs associated with the shuttling of passengers shall not be borne by the County. The County and VTUSA agree to negotiate commercially reasonable terms surrounding signage at the PortMiami parking areas, co-marketing the passenger train service to PortMiami, and to the extent mutually agreed, sharing of data.

13. **Obligation to Provide Continuous Passenger Rail Service.** VTUSA will provide at least an average of two (2) roundtrips per day during a ramp-up period of twelve (12) to twenty-four (24) months with the expectation of expanding to no less than four (4) roundtrips per day on high volume days.

14. **Exclusivity.** VTUSA agrees that at least until the tenth (10th) anniversary of the effective date of the agreement, VTUSA will not operate a train station on seaport property in South Florida other than at PortMiami; for the avoidance of doubt, there will be no restriction on VTUSA building, owning, or operating train stations at airports.

15. **Intermodal Facility.** If the County builds a cruise intermodal terminal at PortMiami, or if additional space within PortMiami becomes available (as determined by PortMiami) that would serve as a more optimal location for the passenger train station, the County and VTUSA shall cooperate on determining whether and on what terms VTUSA may relocate to said intermodal terminal or utilize the new space that PortMiami has determined is available for use by VTUSA for passenger train service; provided, however, that if those negotiations do not result in a new or amended definitive agreement, then the Parties shall continue to be bound by the station agreement then in effect.

16. **Assignment.** For so long as Virgin Trains USA Florida LLC ("VTUSA-F") is an affiliate of VTUSA, VTUSA shall be entitled to assign its rights hereunder to VTUSA-F or another wholly owned subsidiary.

Virgin Trains USA LLC

By: [Signature]

Print: P. GODDARD

Title: PRESIDENT

Dated: October 10, 2019.

Attest: [Signature]

Print: Janice Leon

Seal:



Miami-Dade County, Florida

By: _____

Print: _____

Title: _____

Dated: October __, 2019.

By: _____

Assistant County Attorney
As to Form and Legal Sufficiency

ATTEST:
CLERK OF THE BOARD

By: _____

Deputy Clerk