To:	Honorable Mayor and Village Council	Date:	September 12, 2016
From:	Edward Silva, Village Manager	Re:	Joint Participation Agreement (JPA) between Miami-Dade County and the Village of Palmetto Bay

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO A JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE VILLAGE OF PALMETTO BAY FOR THE DESIGN AND CONSTRUCTION OF A ROAD IMPROVEMENT PROJECT WITHIN THE VILLAGE; PROVIDING FOR APPROVAL OF A JOINT PARTICIPATION AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT "A" TRAFFIC CIRCLE AT THE INTERSECTION OF SW 82ND AVENUE AND SW 168TH STREET; FURTHER PROVIDING AUTHORIZATION FOR THE VILLAGE MANAGER TO EXECUTE THE JOINT PARTICIPATION AGREEMENT BETWEEN THE VILLAGE OF PALMETTO BAY AND MIAMI-DADE COUNTY WITH FUNDING SUPPLIED BY MIAMI-DADE COUNTY IN AN AMOUNT NOT TO EXCEED $250,000 FOR CONSTRUCTION OF THE TRAFFIC CIRCLE AT THE INTERSECTION OF SW 168TH STREET AND SW 82ND AVENUE; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE. (Sponsored by Administration)

BACKGROUND AND ANALYSIS:

The Village of Palmetto Bay desires to enter into a Joint Participation Agreement (JPA) with Miami-Dade County to build a traffic circle at the intersection of SW 168th Street and SW 82nd Avenue. This project is located within the Village of Palmetto Bay, in Commission District 8. The circle will improve traffic flow and operational safety at this intersection. The Village has requested that Miami-Dade County provide funds to facilitate construction of the traffic circle, and has coordinated with the area Commissioner to identify PTP funding under the Neighborhood Improvements Category, up to a maximum of $250,000. The County will provide funding in the amount of $250,000 for eligible expenses incurred to facilitate the construction of a traffic circle at the intersection of SW 168th Street and SW 82nd Avenue while utilizing resources of the Village to design, contract, and administer the traffic circle roadway improvement projects.

Disbursement of County funds to the Village shall be based upon Village invoices with certified copies of paid contractor invoices. Miami-Dade County Transportation and Public Works Department (T&PWD) will assign an individual from their Construction Division to oversee inspections conducted by the Village's CEI for the project before release of funds is recommended.

The Village will implement a Public Involvement Plan (PIP) to provide information to all affected property owners, tenants, and area residents for major work to be performed in the area. Once the JPA is fully executed, contractor approval for construction of the traffic circle will be placed on the agenda for presentation to the Village Council.

FISCAL/BUDGETARY IMPACT:

The project is estimated to cost $250,000. Funding is available and budgeted for this item under "Special Revenue Fund- Transportation – Traffic Calming" in an amount not to exceed $250,000 in Fiscal Year 2016-2017. The Traffic Circle improvements qualify under the allowable work categories included in the PTP Neighborhood Improvements and will be 100% reimbursed to the Village by Miami-Dade County.

RECOMMENDATION:

Administration is requesting the Village Council to authorize the Village Manager to enter into a JPA to facilitate the construction of a traffic circle at the intersection of SW 168th Steeet and SW 82nd Avenue, in substantially the form attached hereto as Exhibit "A" subject to the condition that the Village Manager or his designee negotiate a more favorable reimbursement provision for the agreement. Approval of this item is recommended.

Attachments:

- Exhibit A – Joint Participation Agreement for a Traffic Circle

RESOLUTION NO. 2016-_____

A RESOLUTION OF THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, RELATING TO A JOINT PARTICIPATION AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE VILLAGE OF PALMETTO BAY FOR THE DESIGN AND CONSTRUCTION OF A ROAD IMPROVEMENT PROJECT WITHIN THE VILLAGE; PROVIDING FOR APPROVAL OF A JOINT PARTICIPATION AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT "A" TRAFFIC CIRCLE AT THE INTERSECTION OF SW 82ND AVENUE AND SW 168TH STREET; FURTHER PROVIDING AUTHORIZATION FOR THE VILLAGE MANAGER TO EXECUTE THE JOINT PARTICIPATION AGREEMENT BETWEEN THE VILLAGE OF PALMETTO BAY AND MIAMI-DADE COUNTY WITH FUNDING SUPPLIED BY MIAMI-DADE COUNTY IN AN AMOUNT NOT TO EXCEED $250,000 FOR CONSTRUCTION OF THE TRAFFIC CIRCLE AT THE INTERSECTION OF SW 168TH STREET AND SW 82ND AVENUE; PROVIDING FOR AUTHORIZATION; AND PROVIDING FOR AN EFFECTIVE DATE. (Sponsored by Administration)

WHEREAS, Miami-Dade County (the "County") and the Village of Palmetto Bay (the "Village") both desire to facilitate the construction of a traffic circle at the intersection of SW 168th Street and SW 82nd Avenue; and

WHEREAS, in order to further facilitate the construction of the road improvements, the County desires to provide funding in the amount of $250,000 for eligible expenses incurred to facilitate the construction of a traffic circle at the intersection of SW 168th Street and SW 82nd Avenue while utilizing resources of the Village to design, contract, and administer the traffic circle roadway improvement project; and

WHEREAS, the Village will implement a Public Involvement Plan (PIP) during the design and construction of the Project to provide information to property owners, tenants, and area residents, including but not limited to: public meetings, project documentation and flyers, and schedules for major work to be performed in the area; and

WHEREAS, the Village agrees to enter into a Joint Participation Agreement to facilitate the construction of a traffic circle at the intersection of SW 168th Street and SW 82nd Avenue, in substantially the form attached hereto as Exhibit "A" subject to the condition that the Village Manager or his designee negotiate a more favorable reimbursement provision for the agreement; and

WHEREAS, the Village Council finds that this Resolution is in the best interest and welfare of the residents of the Village.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND VILLAGE COUNCIL OF THE VILLAGE OF PALMETTO BAY, FLORIDA, THAT:

Section 1. **Recitals.** The above recitals are true and correct and are incorporated herein by this reference.

Section 2. **Approval of Agreement.** The Village Council hereby approvals the Joint Participation Agreement to facilitate the construction of a traffic circle at the intersection of SW 168th Street and SW 82nd Avenue, in substantially the form attached hereto as Exhibit "A" subject to the condition that the Village Manager or his designee negotiate a more favorable reimbursement provision for the agreement.

Section 3. **Authorization of the Village Manager.** The Village Manager is authorized to take all action necessary to enter into the Joint Participation Agreement between the Village of Palmetto Bay and Miami-Dade County and accept funding in the amount of $250,000 from the County for eligible expenses incurred to facilitate the construction of a traffic circle at the intersection of SW 168th Street and SW 82nd Avenue, in substantially the form attached hereto as Exhibit "A" subject to the condition that the Village Manager or his designee negotiate a more favorable reimbursement provision for the agreement.

Section 4. This Resolution shall become effective upon the date of its adoption herein.

PASSED and **ADOPTED** this _____ day of September, 2016.

Attest: _____ _____

Missy Arocha
Village Clerk

Eugene Flinn
Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY FOR THE USE AND RELIANCE OF THE VILLAGE OF PALMETTO BAY, FLORIDA ONLY:

_____

Dexter W. Lehtinen
Village Attorney

FINAL VOTE AT ADOPTION:

Council Member Karyn Cunningham _____

Council Member Tim Schaffer _____

Council Member Larissa Siegel Lara _____

Vice-Mayor John DuBois _____

Mayor Eugene Flinn _____

EXHIBIT A

JOINT PARTICIPATION AGREEMENT FOR FOR A TRAFFIC CIRCLE AT THE INTERSECTION OF SW 168TH STREET AND SW 82ND AVENUE BETWEEN MIAMI-DADE COUNTY AND THE VILLAGE OF PALMETTO BAY

This Joint Participation Agreement is made and entered into this_____day of_____, 2016, by and between the VILLAGE OF PALMETTO BAY, FLORIDA a municipal corporation of the STATE OF FLORIDA hereinafter referred to as the "Village", and MIAMI-DADE COUNTY, a political subdivision of the STATE OF FLORIDA, hereinafter referred to as the "County".

WITNESSETH

WHEREAS, both parties herein wish to facilitate the construction of a road improvement project in MIAMI-DADE COUNTY, hereinafter referred to as the "Project" described as follows:

The construction of a traffic circle at the intersection of SW 168TH STREET AND SW 82ND AVENUE; and

WHEREAS, the County wishes to utilize the resources of the Village to contract and construct the Project, subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the promises and covenants contained herein, the parties agree:

1. **RESPONSIBILITIES OF VILLAGE:**

1.1. **Permits and Approvals:** The Village shall obtain all necessary permits, and utility adjustments; and coordinate the review of construction documents by utilities and permitting agencies. The Village shall make all necessary adjustments as required for approval and/or permitting by those agencies. The Village shall obtain all necessary permits, and utility adjustments for the Project in accordance with

applicable state, federal and local laws and ordinances. The Village shall not pay for any permits required by the Miami- Dade County Transportation and Public Works Department.

1.2. **Right-of-Way:** The Village shall acquire at its sole expense, any right-of-way that is required to complete the construction of the Project.

1.3. **Public Information and Involvement:** The Village will implement a Public Involvement Plan (PIP) during the construction of the Project to provide information to property owners, tenants, and area residents, including but not limited to: public meetings, project documentation and flyers, business signs, directional parking signs, and schedules for major work to be performed in the area. Appropriate investigation of the project stakeholders will be used to develop the goals and objectives to implement the PIP. The Village shall submit a copy of the PIP to the County Transportation and Public Works Director for review and concurrence prior to the Notice to Proceed for construction.

1.4 **Accounting:** The Village shall at all times maintain separate accounting for the costs of the Project so those costs may be independently verified and audited by the County, at the request and cost of the County. The Village agrees to permit the County auditors to inspect the books, records and accounts of the Project for three years after completion of the Project. These records shall be made available to the County for inspection within five (5) business days upon written receipt of a written request from the County.

1.5 **Construction:** The Village shall procure the services of a licensed contractor holding an engineering contractor's license to construct the Project. The Village may award the contract through any available lawful means which, in the Village's discretion, affords the most competitive price for construction of the Project and

which may include, but is not limited to, bid solicitation, request for proposals, the award of a change order on existing Village contract(s), or the extension of unit-prices provided in connection with prior competitive bid awards. Notwithstanding any provision to the contrary, the Village shall comply with all applicable County contract compliance and oversight measures relating to the expenditure of County funds, in accordance with Section 6 of this Agreement. Prior to the advertisement to solicit a licensed contractor to construct the Project, the Village will contact the County's Transportation and Public Works Contracts and Specifications Section to ensure this compliance.

The construction contract shall also contain a requirement that the contractor(s) provide a payment and performance bond at least in the amount and form required by state law naming the County and Village as joint obliges or joint contracting public entities. The construction contract shall contain a contingency amount to address unforeseen conditions and owner required changes which shall not exceed ten percent (10%) of the base amount of the contract, unless otherwise approved by designated representatives of the County and Village. The commitment for the expenditures of any contingency funds shall not be made by the Village without the prior written approval of the County Public Works Director. The County shall respond, in writing, within thirty (30) business days of receiving written requests from the Village to approve the commitment of contingency funds.

Subsequent to the evaluation of bids or proposals by the Village and the Village's determination of the most advantageous bid or proposal, the Village shall provide said evaluation to the County Public Works Director for review and approval. Final commitment of County funds for the Project shall occur upon approval of the contract award recommendation by the County Transportation and Public Works Director. The County agrees that the selection, retention and discharge of such contractor shall be the responsibility of the Village.

1.6. **Claims and Change Orders**: The Village shall notify the County

Transportation and Public Works Director in writing when claims or change orders arise. The Village shall also invite the County to participate in negotiations of these claims and change *orders.* The County shall review and make a determination or approval of all change orders or supplemental agreements, permits, modifications of plans, or other requests for approvals submitted by the Village.

1.7. **Construction Administration and Inspection**: The Village shall exercise all responsibilities of the owner under the construction contract, including construction administration and inspections. The Village may delegate this function to an authorized agent or Construction Engineering Inspection consultant. The County's inspector shall have an oversight role in the routine daily inspections. In the case of a disagreement over the interpretation of the plans, the County Public Works Director, or their representative, shall have final authority subsequent to an independent final inspection by the County. The Village's designated representative and the County's designated representative shall jointly perform the inspection of the Project which immediately precedes substantial completion. The Village shall certify upon completion that the Project has been constructed pursuant to the design plans, specifications and approved change orders. Final payment to the Village and obligation of maintenance responsibility to the parties shall be subject to the final acceptance of the Project by the County Transportation and Public Works Director or designee.

1.8. **Maintenance**: The Village shall be solely responsible for maintenance upon construction completion of the Project.

2. RESPONSIBILITIES OF COUNTY:

2.1. **Funding Amount, Reimbursement of Project Costs**: The County agrees

to provide funds up to $ (this amount includes 10% contingency) for eligible costs, as defined herein, incurred by the Village for the construction of the Project. The County shall disburse to the Village funds for the Project in the manner set forth in this Section. The County shall incur no liability for any costs in excess of said funding amount unless there has been a duly authorized increase approved by the Board of County Commissioners.

2.2 **<u>County Payments of Project Costs</u>**: The County funds provided for eligible costs as defined herein, incurred for the construction of the Project are specified below:

Funding Amount	Funding Source	FY of Commitment
$	Transit Surtax Funds (Construction)	2015-2016

2.3 **<u>Project Cost Adjustments</u>**: The amount contributed by the County is based on the current estimated costs of the Project. The parties recognize that adjustments to the above referenced cost may be required in the future and that at the option of the parties, amendments may be entered into to revise the funds available for the Project. Provided that there is no increase in the amount of County funds required as stated in Section 2.1, amendments may be executed by the Village Manager and the County Mayor or County Mayor's designee without the need for approval by the Village Council and County Commission. Otherwise, further funding commitments shall be subject to the approvals of the parties' respective governing boards.

3. <u>ELIGIBLE COSTS:</u> The parties agree that only the below identified costs that may be incurred by the Village that are directly related to the Project are eligible for reimbursement, provided adequate documentation accompanies the reimbursement request in the form of approved invoices, verified payment requests, documented journal entries, and/or check vouchers. For purposes of this costs are further defined as those pertaining to the construction of Project elements that are the

standard items normally provided for by the County in County roadway construction projects, and not the enhancement of standard Items, or the incorporation of items which are in addition to those standard items. The County shall not be assumed to be liable to provide reimbursement for the construction or maintenance of such items that do not conform to this section of the Agreement. If enhancements to standard items are constructed in this Project, the Village may request County reimbursement only to a maximum amount corresponding to that which would be expended in providing the normal standard version of that item for a project of the same scope. The parties further agree that eligible costs will not include fees for construction management, construction inspections, and project management.

4. **SCHEDULE AND MANNER OF REIMBURSEMENTS:** Upon execution, the Village shall furnish the County with a copy of the estimated budget for the Project, and will similarly furnish the County with any and all revisions thereto. At the time of contract award for this Project, the Village shall submit the Estimated Quarterly Construction Payout Schedule for the Project *to* the County Transportation and Public Works Director. Quarterly disbursement of County funds to the Village shall be based upon Village invoices with certified copies of paid contractor estimates attached and shall not include any other charges. The quarterly submittal for invoice shall also include a certified copy of payment to Sub-Contracted firms.

5. **COMPLIANCE WITH LAWS:** The parties shall comply with applicable federal, state and local laws, codes, ordinances, rules and regulations in performing their respective duties, responsibilities, and obligations pursuant to this Agreement and with all applicable laws relating to the Project. The parties shall not unlawfully discriminate in the performance of their respective duties under this Agreement.

6. **BUSINESS PROGRAM COMPLIANCE AND OVERSIGHT:** Whenever County funds are used, the Village agrees to comply with applicable County

regulations including but not limited to the Community Small Business Enterprise (CSBE) Program, Community Business Enterprise(CBE) Program, the Community Workforce Program (CWP), and the Responsible Wages and Benefits Ordinance (Ordinance No. 90-143). Specifically, the Village agrees to abide by the applicable contract measure recommendation(s) established by the Department of Business Development Project Worksheet for the participation of specified business entities and/or trades, and for CWP requirements, as administered by the County's Department of Small Business Development (SBD). SBD shall have the right to oversee and perform compliance monitoring, including but not limited to, the right to audit and to require reports and documentation related to the Code.

7. **CITIZENS' INDEPENDENT TRANSPORTATION TRUST APPROVAL:** Unless waived by action of the County, this Agreement shall only become effective upon approval by the Board of County Commissioners and the Citizens' Independent Transportation Trust (CITT) or, if not approved by the CITT, by the Board of County Commissioners re-affirmance of the award by 2/3 vote of its membership, all pursuant to the applicable ordinance. In the event the Agreement is not approved, the Agreement shall be null and void and be of no force or effect.

8. **PEOPLE'S TRANSPORTATION ON PLAN PROJECT SIGNAGE**: The County shall furnish and install a Project sign in each direction of traffic indicating that this Project is being funded by the People's Transportation Plan, in coordination with the Village, in proximity to the start/end of the Project limits. Should Maintenance of Traffic (MOT) signage be required as part of the work, the Project sign shall be placed an appropriate distance before the MOT signage range. The Project signs shall remain in place for the duration of the work or as directed by the Project engineer.

9. **INDEMNIFICATION**: To the extent authorized by Florida law, the Village hereby agrees to indemnify, defend, save and hold harmless the County to the extent of all the limitations included with Section §768.28, Florida Statutes, from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the breach of this Agreement by the Village, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the County for its sole negligence or breach of contract.

To the extent authorized by Florida law, the County hereby agrees to indemnify, defend, save and hold harmless the Village to the extent of all the limitations included in Section §768.28, Florida Statutes, from all claims, demands, liabilities and suits of any nature whatsoever arising out of, because of or due to the breach of this Agreement by the County, its agents or employees. It is specifically understood and agreed that this indemnification clause does not cover or indemnify the Village for its sole negligence or breach of contract.

In the event of breach or non-performance by the persons selected by the Village to perform the work, the Village shall, upon written request by the county, assign to the County any and all of its rights under the affected contract for purposes of the County's prosecution of claims, actions or causes of action resulting from such breach or non-performance unless the Village pursues such claims, actions or causes of action through arbitration, administrative proceeding or lawsuit. The Village agrees to cooperate fully with the County in the prosecution of any such claim or action. Any damage recovered by the County which is attributable to expenditure by the Village shall be returned to the Village by the County, within sixty (60) business days of receipt.

10. **DISPUTE RESOLUTION, APPLICABLE LAW:** The parties shall resolve any

disputes, controversies or claims between them arising out of this Agreement in accordance with the "Florida Governmental Conflict Resolution Act", Chapter 164, Florida Statutes, as amended. This Agreement shall be governed by the laws of the State of Florida. Venue in any proceedings shall be in Miami-Dade, Florida.

11. **ENTIRE AGREEMENT, AMENDMENTS:** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that no modification, amendment or alteration in the terms contained herein shall be effective unless set forth in writing in accordance with this section. No modification, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the parties.

12. **JOINT PREPARATION:** The parties acknowledge that they have sought and received whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties from the other.

13. **SEVERANCE:** In the event a portion of this Agreement is found to be invalid by a court of competent jurisdiction, the remaining provisions shall continue to be

effective unless the Village or County elect to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) business days after the finding by the court becomes final.

14. <u>NOTICES</u>: Any and all notices required to be given under this agreement shall be sent by first class mail, addressed as follows:

To the County:
Attention: Alice Bravo, P.E.
Director, Miami-Dade County
Transportation and Public Works Department
111 NW First Street, Suite 1640
Miami, Florida 33128
(305) 375-2960

To the Village:
Attention: Edward Silva
Manager, Village of Palmetto Bay
9705 E. Hibiscus Street
Palmetto Bay, Florida 33157
(305) 259-1234

IN WITNESS WHEREOF, the parties hereto set their hands and official seals the day and year first above written.

ATTEST:

HARVEY RUVIN
CLERK OF THE BOARD

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

BY:_____
DEPUTY CLERK

BY:_____
County Mayor or County Mayor's Designee

Approved by County Attorney
as to form and legal sufficiency_____
County Attorney

ATTEST:

VILLAGE OF PALMETTO BAY, a municipal corporation of the STATE OF FLORIDA

BY:_____
Missy Arocha
Interim Village Clerk

BY:_____
Edward Silva,
Village Manager

(AFFIX VILLAGE SEAL)

Approved by Village Attorney
as to form and legal sufficiency_____
Dexter W. Lehtinen
Village Attorney