MEMORANDUM

Agenda Item No. 8(I)(3)

TO:	Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners	**DATE:**	October 2, 2012
FROM:	R. A. Cuevas, Jr. County Attorney	**SUBJECT:**	Resolution authorizing execution of a Memorandum of Understanding between the United States Attorney for the District of Columbia, the Metropolitan Police Department of Washington, D.C. and Miami-Dade County through the Miami-Dade Police Department

The accompanying resolution was prepared by the Miami-Dade Police Department and placed on the agenda at the request of Prime Sponsor Commissioner Jose "Pepe" Diaz.

R. A. Cuevas, Jr.
County Attorney

RAC/smm

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Memorandum

MIAMI-DADE COUNTY

DATE: October 2, 2012

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

FROM: Carlos A. Gimenez
Mayor

SUBJECT: Memorandum of Understanding Between the United States Attorney for the District of Columbia, the Metropolitan Police Department of Washington, D.C., and Miami-Dade County

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Recommendation

It is recommended that the Board of County Commissioners approve the attached Memorandum of Understanding between the United States Attorney for the District of Columbia, the Metropolitan Police Department of Washington, D.C. and Miami-Dade County. This Memorandum of Understanding is for the purpose of assisting the Metropolitan Police Department, the primary law enforcement agency responsible for ensuring the safety of the participants and the public during the presidential inaugural events. The Memorandum of Understanding is effective January 16, 2013 and will continue through January 22, 2013. The costs associated with this Memorandum of Understanding, including personnel (salary and fringes), air travel, lodging, ground travel, and per diem will be fully paid for the assigned sworn personnel by the Metropolitan Police Department.

Scope

This Memorandum of Understanding coordinates the provision of assistance to the Metropolitan Police Department of Washington, D.C. for the purpose of providing law enforcement support as members of the Presidential Inauguration Task Force. The Miami-Dade Police Department will assign forty specially trained officers.

Fiscal Impact/Funding Source

This Memorandum of Understanding provides for the reimbursement of costs associated with the law enforcement assistance requested, including personnel (salary and fringes), air travel, lodging, ground travel, and per diem. These costs will be fully paid for the assigned sworn personnel.

Track Record/Monitor

The Miami-Dade Police Department Special Patrol Bureau Major, Thomas P. Hanlon, will monitor this Agreement.

Background

The Metropolitan Police Department is the primary law enforcement agency responsible for ensuring the safety of the participants and the public during the presidential inaugural events as well as with assisting the United States Secret Service with perimeter security and traffic control. As a result of the current threat level in the Nation's Capital and the on-going development of intelligence, Cathy Lanier, Chief of Police, Metropolitan Police Department of Washington, D.C., requested the assistance of the Miami-Dade Police Department during the 2013 Presidential Inauguration.

It is an honor that the Miami-Dade Police Department has been selected by the Metropolitan Police Department of Washington, D.C. to provide these services at such an important and historic event. The Miami-Dade Police Department provided these services for the 2009 Presidential Inauguration and based on the performance of our police officers, a return invitation was extended for the 2013 Presidential Inauguration.

Genaro "Chip" Iglesias
Office of the Mayor

MEMORANDUM
(Revised)

TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: October 2, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Agenda Item No. 8(I)(3)

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**

_____ **Ordinance creating a new board requires detailed County Manager's report for public hearing**

✓ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous_____) 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. 8(I)(3)
10-2-12

RESOLUTION NO. _____

RESOLUTION AUTHORIZING EXECUTION OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES ATTORNEY FOR THE DISTRICT OF COLUMBIA, THE METROPOLITAN POLICE DEPARTMENT OF WASHINGTON, D.C. AND MIAMI-DADE COUNTY THROUGH THE MIAMI-DADE POLICE DEPARTMENT; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE ACTION TO EXECUTE AMENDMENTS, RENEWALS, AND EXTENSIONS AND TO EXERCISE THE CANCELLATION PROVISIONS CONTAINED THEREIN

WHEREAS, this Board desires to accomplish the purposes outlined in the accompanying Memorandum, a copy of which is incorporated herein by reference,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board finds it is in the best interest of Miami-Dade County to approve the execution of a Memorandum of Understanding between the United States Attorney for the District of Columbia, the Metropolitan Police Department of Washington, D.C. and Miami-Dade County through the Miami-Dade Police Department, in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute the Agreement for and on behalf of Miami-Dade County, and to execute any amendments, renewals and extensions of same, and to exercise the cancellation provisions contained in the Agreement.

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:

Joe A. Martinez, Chairman
Audrey M. Edmonson, Vice Chairwoman

Bruno A. Barreiro	Lynda Bell
Esteban L. Bovo, Jr.	Jose "Pepe" Diaz
Sally A. Heyman	Barbara J. Jordan
Jean Monestime	Dennis C. Moss
Rebeca Sosa	Sen. Javier D. Souto
Xavier L. Suarez	

The Chairperson thereupon declared the Resolution duly passed and adopted this 2nd day of October, 2012. This Resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this 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.

Ben Simon

GOVERNMENT OF THE DISTRICT OF COLUMBIA
METROPOLITAN POLICE DEPARTMENT

February 17, 2012

Dear Director Loftus:

On Sunday, January 20, 2013, the 57th Inauguration of the President of the United States will be held in the District of Columbia. The Metropolitan Police Department (MPD) is the primary law enforcement agency responsible for ensuring the safety of the participants and the public during the Inaugural Parade as well as with assisting the United States Secret Service with perimeter security and traffic control for the subsequent Inaugural Balls. As a result of the current threat level in the Nation's Capital and the on-going development of intelligence, I am requesting the assistance of your agency during the Inauguration.

Historically, public events of national and international importance draw large and enthusiastic crowds to the District of Columbia. Therefore, your members will work in partnership with uniformed MPD officers providing increased uniformed law enforcement visibility during Presidential and dignitary motorcades, the Inaugural Parade and the subsequent Inaugural Balls.

The MPD is asking your department to provide a supplemental uniformed presence consisting of a minimum of forty (40) sworn members to aid with crowd and traffic control responsibilities. Participation of agencies unable to provide the minimum number of required members will be addressed on a case by case basis.

If your department is able to accommodate this request, please respond as soon as possible, but no later than March 5, 2012, with the number of sworn members that will be assigned to this event. The MPD will pay for the cost of salaries, lodging, travel and a per diem for meals, as appropriate, for the sworn members sent to assist us. I am looking forward to an on-going dialogue and appreciate any assistance you may provide.

Assistant Chief of Police Lamar Greene, Homeland Security Bureau, or Commander Steven Sund, Homeland Security Bureau, will contact you shortly after you reply in the affirmative in reference to this request. Questions may be addressed to Commander Steven Sund on (202) 439-1741.

Sincerely,

Cathy L. Lanier
Chief of Police

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is executed by the United States Attorney for the District of Columbia, the Metropolitan Police Department of Washington, D.C. (MPD) and Miami-Dade County, by and through its department, the Miami-Dade Police Department.

I. PURPOSE

The purpose of the MOU is to outline the mission of the Presidential Inauguration Task Force (PITF) in the Washington, D.C. area from January 16, 2013, to January 22, 2013. Additionally, this MOU will define relationships between the U.S. Marshal Service, MPD and the Miami-Dade Police Department, as well as other participating agencies with regard to policy, guidance, utilization of resources, planning, training, public relations and media in order to maximize interagency cooperation.

II. MISSION

The mission of the PITF is to achieve maximum coordination and cooperation in bringing to bear combined resources to effectively implement measures to promote the safety of the President of the United States, inaugural participants, the public, visitors and residents while allowing individuals and groups to exercise their legal rights.

Additionally, all units that are participating agencies will coordinate their activities and be considered a member of the PITF, sharing information and coordinating investigative and law enforcement efforts which may result from any apprehensions originating from the PITF.

III. ORGANIZATIONAL STRUCTURE

A. Direction

Miami-Dade County acknowledges that the PITF is a joint operation in which all agencies, including the Metropolitan Police Department of the District of Columbia, Office of the United States Attorney for the District of Columbia, United States Marshals Service, United States Secret Service, United States Federal Bureau of Investigation, National Park Service, the Miami-Dade Police Department and other agencies, act as partners in the operation of the PITF. The Command Center for the operations will be located at the Metropolitan Police Department (MPD) Headquarters and will be staffed by officers from the United States Marshals Service, MPD, U.S. Park Police, and the Federal Bureau of Investigation. These officers will serve as the Executive Council for this operation.

B. Supervision

The day-to-day operation and administrative control of the PITF will be the responsibility of a Tactical Team Commander selected from one of the participating agencies. The Tactical Team Commander will coordinate with supervisory personnel of the United States Secret Service as the sponsoring agency for Special Deputation (federal) and with MPD as the lead agency for the operation. The daily management of the PITF will be closely monitored by the MPD.

Responsibility for the conduct of the PITF members, both personally and professionally, shall remain with the respective agency directors subject to the provisions in Section IX (Liability).

C. Unilateral Law Enforcement Action

There shall be no unilateral action taken on the part of any participating non-federal or non-MPD law enforcement agency relating to PITF activities. All law enforcement action by participating non-federal and non-MPD law enforcement agencies will be coordinated and conducted in a cooperative manner under the direction of the Executive Council and the MPD.

IV. PROCEDURES

A. Personnel

Continued assignment of personnel to the PITF will be based upon performance and will be at the discretion of the respective agency. Each participating agency will be provided with reports as necessary regarding the program, direction, and accomplishment of the PITF.

B. Deputation

All local and state law enforcement personnel designated to the PITF will be subject to background inquiry and will be federally deputized, with the United States Marshals Service securing the required deputation authorization. These deputations will remain in effect throughout the tenure of each officer's assignment to the PITF or until termination of the PITF, whichever occurs first. Each individual deputized as a Special Deputy U.S. Marshal will have all necessary law enforcement authority as provided by 28 U.S.C. § 566(c) and (d); 28 U.S.C. § 564; 18 U.S.C. § 3053; 28 C.F.R. § 0.112, and the deputation authority of the Deputy Attorney General. The Special Deputy U.S. Marshals will be responsible for 1) performing necessary law enforcement steps to keep the peace of the United States; 2) enforcing federal law (e.g., 18 U.S.C. §§ 112, 1116, and 878, as well as other provisions of that title); 3) protecting visiting foreign officials, official guests, and internationally protected persons; 4) taking necessary law enforcement steps to prevent violations of federal law, and; 5) enforcing District of Columbia law as a result of the deputation (see D.C. Code 23-581 and 28 U.S.C. § 564).

Individuals deputized as Special Deputy U.S. Marshals pursuant to this MOU who suffer a disability or die as a result of personal injury sustained while in the performance of his or her duty during the assignment shall be treated as a federal employee as defined by Title 5 U.S.C. section 8101. Any such individuals who apply to the U.S. Department of Labor for federal workers' compensation under Section 3374 must submit a copy of this MOU with his or her application. All applicants will be processed by the U.S. Department of Labor on a case by case basis in accordance with applicable law and regulation.

C. Law Enforcement Activities

Since it is anticipated that almost all cases originating from any PITF arrests will be prosecuted at the state or local level, the law enforcement methods employed by all participating law enforcement agencies shall conform to the requirements of such statutory or common law pending a decision as to a change of venue for prosecution.

D. Prosecution

The criteria for determining whether to prosecute a particular violation in federal or state court will focus upon achieving the greatest overall benefit to law enforcement and the community. Any question which arises pertaining to prosecutorial jurisdiction will be resolved through the Executive Council. The U.S. Attorney's Office for the District of Columbia has agreed to formally participate in the PITF and will adopt policies and seek sentences that meet the needs of justice.

V. ADMINISTRATIVE

A. Records and Reports

All records and reports generated by PITF members shall be routed through the Tactical Team Commander who shall be responsible for maintaining custody and proper dissemination of said records as he or she deems appropriate.

B. Staff Briefings

Periodic briefings on PITF law enforcement actions will be provided to the directors of the participating agencies or their designees. Statistics regarding accomplishments will also be provided to the participating agencies as available.

VI. MEDIA

All media releases pertaining to PITF law enforcement activity and/or arrests will be coordinated by all participants of this MOU. No unilateral press releases will be made by any participating agency without the prior approval of the Executive Council. No information pertaining to the PITF itself will be released to the media without mutual approval of all participants.

VII. EQUIPMENT

A. PITF Vehicles

Each participating agency, pending availability and individual agency policy, agrees and authorizes PITF members to use vehicles, when available, owned or leased by those participating agencies, in connection with PITF law enforcement operations. In turn, each participating agency agrees to be responsible for any negligent act or omission on the part of its agency or its employees, and for any liability resulting from the misuse of said vehicles, as well as any damage incurred to those vehicles as a result of any such negligent act or omission on the part of the participating agency or its employees, subject to the provisions of Section IX (Liability).

Participating agency vehicles assigned to the PITF are subject to funding availability, are provided at the discretion of the supervisor of the providing agency, and will be used only by PITF members. Vehicles provided by participating agencies will be used only during working hours and will not be used for transportation to and from work by task force members or used for any other purpose. Participating agencies will provide maintenance and upkeep of their vehicles consistent with each agency's policy. Vehicles provided as pool vehicles for PITF use will be parked at the end of each shift at a location determined by the Tactical Team Commander or his/her designee.

B. Other Equipment

Other equipment furnished by any agency for use by other agencies' participating personnel shall be returned to the originating agency upon termination of the PITF or this MOU.

VIII. FUNDING

Miami-Dade County agrees to provide the full-time services of Miami-Dade Police Department personnel for the duration of this operation, and to assume all personnel costs for their PITF representatives, including salaries, overtime payments, and fringe benefits consistent with their respective agency policies and procedures. Reimbursement for the cost of such personnel will be made by the District of Columbia, with funds provided by the United States and from general revenue.

IX. LIABILITY

Unless specifically addressed by the terms of this MOU, the parties agree to be responsible for the negligent or wrongful acts or omissions of their respective employees. Legal representation by the United States is determined by the Department of Justice on a case-by-case basis. There is no guarantee that the United States will provide legal representation to any federal, state or local law enforcement officer. Congress has provided that the exclusive remedy for the negligent or wrongful act or omission of any employee of the United States government, acting within the scope of employment, shall be an action against the United States under the Federal Tort Claims Act (FTCA), 28 U.S.C. § 2679(b)(2).

For the limited purpose of defending claims arising out of PITF activity, state or local law enforcement officers who have been specially deputized as U.S. Marshals and who are acting within the course and scope of their official duties and assignments pursuant to this MOU, may be considered an "employee" of the United States government as defined in 28 U.S.C. 2671. It is the position of the Department of Justice Civil Division Torts Branch that such individuals are federal employees for these purposes.

Under the Federal Employees Liability Reform and Tort Compensation Act of 1988 (commonly known as the Westfall Act), 28 U.S.C. § 2679(b)(1), the Attorney General or his designee may certify that an individual defendant acted within the scope of employment at the time of the incident giving rise to the suit. Id., 28 U.S.C. § 2679(d)(2). The United States can then be substituted for the employee as the sole defendant with respect to any tort claims. 28 U.S.C. § 2679(d)(2). If the United States is substituted as defendant, the individual employee is thereby protected from suit.

If the Attorney General declines to certify that an employee was acting within the scope of employment, "the employee may at any time before trial petition the court to find and certify that the employee was acting within the scope of his office or employment." 28 U.S.C. § 2679(d)(3).

Liability for any negligent or willful acts of PITF employees, undertaken outside the terms of this MOU will be the sole responsibility of the respective employee and agency involved.

Liability for violations of federal constitutional law rests with the individual federal agent or officer pursuant to *Bivens v. Six Unknown Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971), or pursuant to 42 U.S.C. § 1983 for state and local officers or cross-deputized federal officers.

Both state and federal officers enjoy qualified immunity from suit for constitutional torts insofar as their conduct does not violate "clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800 (1982).

PITF officers may request representation by the U.S. Department of Justice for civil suits against them in their individual capacities for actions taken within the scope of employment. 28 C.F.R. § 50.15, 50.16.

An employee may be provided representation when the actions for which representation is requested reasonably appear to have been performed within the scope of the employee's employment and the Attorney General or his designee determines that providing representation would otherwise be in the interest of the United States. 28 C.F.R. § 50.15(a). A PITF officer's written request for representation should be directed to the Attorney General and provided to the Civil Division of the U.S. Attorney's Office for the District of Columbia, which will then forward the representation request to the Civil Division of the United States Department of Justice together with a recommendation concerning scope of employment and Department representation. 28 C.F.R. § 50.15(a)(3).

If a PITF officer is found to be liable for a constitutional tort, he/she may request indemnification from the Department of Justice to satisfy an adverse judgment rendered against the employee in his/her individual capacity. 28 C.F.R. § 50.15(c)(4). The criteria for payment are substantially similar to those used to determine whether a federal employee is entitled to Department of Justice representation under 28 C.F.R. § 50.15(a).

X. DURATION

This MOU shall remain in effect until terminated as specified above, unless that date is modified as set forth in Section XI. Continuation of the MOU shall be subject to the availability of necessary funding. This agreement may be terminated at any time by any of the participating agencies. The Miami-Dade County may withdraw from this MOU at any time by providing a seven-day written notice of its intent to withdraw to the MPD. Upon the termination of the MOU, all equipment will be returned to the supplying agencies.

XI. MODIFICATIONS

The terms of this MOU may be modified at any time by written consent of all parties. Modifications to this MOU shall have no force and effect unless such modifications are reduced to writing and signed by an authorized representative of each participating agency.

XII. LIMITATION

Nothing in this MOU is intended to, or shall be construed to create enforceable rights in third parties.

CATHY L. LANIER
CHIEF OF POLICE
METROPOLITAN POLICE DEPARTMENT
WASHINGTON, D.C.

RONALD C. MACHEN, JR.
UNITED STATES ATTORNEY
DISTRICT OF COLUMBIA

MIAMI-DADE COUNTY

_____

CARLOS A. GIMENEZ DATE
MAYOR

_____

JAMES K. LOFTUS DATE
DIRECTOR
MIAMI-DADE POLICE DEPARTMENT