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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

MEMORANDUM

Substitute
Agenda Item No. 8(I)(2)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: October 21, 2014

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

SUBJECT: Resolution approving terms of a Memorandum of Understanding between Miami-Dade County, through the Miami-Dade Police Department, the Office of the State Attorney for the Eleventh Judicial Circuit of Florida, and the Florida Department of Law Enforcement relating to investigations involving the shooting of a person by a Miami-Dade Police Department Law Enforcement Officer acting in the line of duty
Resolution No. R-933-14

This substitute item differs from the original version as stated on the County Mayor's memorandum.

The accompanying resolution was prepared by the Miami-Dade Police Department and placed on the agenda at the request of Prime Sponsor Commissioner Sally A. Heyman.

R. A. Cuevas, Jr.
County Attorney

RAC/smm

Memorandum

MIAMI-DADE COUNTY

DATE: October 21, 2014

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

FROM: Carlos A. Gimenez
Mayor

SUBJECT: Resolution Authorizing Execution of Memorandum of Understanding with the Office of the State Attorney and the Florida Department of Law Enforcement

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This substitute version differs from the original item in that a termination clause has been included in the Memorandum of Understanding and a requirement that amendments and extensions be approved by the Board of County Commissioners.

Recommendation
It is recommended that the Board of County Commissioners approve the attached resolution authorizing the terms of a Memorandum of Understanding between Miami-Dade County, through the Miami-Dade Police Department, and the Office of the State Attorney for the Eleventh Judicial Circuit of Florida and the Florida Department of Law Enforcement, and authorize the County Mayor or Mayor's designee to execute the Memorandum.

Scope
The scope of services is countywide.

Fiscal Impact/Funding Source
There is no fiscal impact to the County.

Track Record/Monitor
The entity involved for this Memorandum of Understanding is the Miami-Dade Police Department's Homicide Bureau. Hector Llevat, Major of the Homicide Bureau, will track and monitor this agreement.

Background
The Memorandum of Understanding has been jointly developed by the participating agencies. Its purpose is to outline the working relationship between the parties whereby the Florida Department of Law Enforcement will assume the investigations of the following events: the shooting of a person by a Miami-Dade Police Department law enforcement officer acting in the line of duty; the death of an arrestee while in the care, custody or control of a Miami-Dade Police Department law enforcement officer; the death of an arrestee shortly after being in the care, custody or control of a Miami-Dade Police Department law enforcement officer or the death of an intended arrestee during an arrest attempt by a Miami-Dade Police Department law enforcement officer. The term of the agreement is ten years, but any party may terminate the agreement prior to the expiration of the ten year period.

The Memorandum of Understanding details the protocol that will be used when the events listed above occur. This protocol has been carefully developed with the active participation of each agency, including their legal representatives. It is intended that this protocol will provide important transparency to the investigations of these serious situations and will help to ensure the completion of an objective investigative report. This transparency is important for the respective agencies who are party to this

Memorandum of Understanding, the involved law enforcement officers, victims and survivors of victims, and ultimately, the entire Miami-Dade community.

Delegation of Authority

This resolution authorizes the County Mayor or County Mayor's designee to terminate the agreement prior to the expiration of the ten year period.

Russell Benford
Deputy Mayor

MEMORANDUM
(Revised)

TO: Honorable Chairwoman Rebeca Sosa
and Members, Board of County Commissioners

DATE: October 21, 2014

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

SUBJECT: Substitute Agenda Item No. 8(I)(2)

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 Mayor'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)(2)
10-21-14

RESOLUTION NO. R-933-14

RESOLUTION APPROVING TERMS OF A MEMORANDUM OF UNDERSTANDING BETWEEN MIAMI-DADE COUNTY, THROUGH THE MIAMI-DADE POLICE DEPARTMENT, THE OFFICE OF THE STATE ATTORNEY FOR THE ELEVENTH JUDICIAL CIRCUIT OF FLORIDA, AND THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT RELATING TO INVESTIGATIONS INVOLVING THE SHOOTING OF A PERSON BY A MIAMI-DADE POLICE DEPARTMENT LAW ENFORCEMENT OFFICER ACTING IN THE LINE OF DUTY, THE DEATH OF AN ARRESTEE WHILE IN THE CARE, CUSTODY, OR CONTROL OF A MIAMI-DADE POLICE DEPARTMENT LAW ENFORCEMENT OFFICER, THE DEATH OF AN ARRESTEE SHORTLY AFTER BEING IN THE CARE, CUSTODY, OR CONTROL OF A MIAMI-DADE POLICE DEPARTMENT LAW ENFORCEMENT OFFICER OR THE DEATH OF AN INTENDED ARRESTEE DURING AN ARREST ATTEMPT BY A MIAMI-DADE POLICE DEPARTMENT LAW ENFORCEMENT OFFICER; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE MEMORANDUM OF UNDERSTANDING AND TO EXERCISE THE TERMINATION 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; and

WHEREAS, the Florida Department of Law Enforcement will assume the investigations of specific serious incidents outlined [[~~above,~~]][1] >>in the accompanying memorandum<<; and

WHEREAS, this protocol will provide important transparency to the investigations of these serious situations and will help to ensure the completion of an objective investigative report in the best interests of the involved parties and the Miami-Dade County community,

[1] The difference between the substitute and the original item are indicted as follows: words stricken through and /or [[double bracketed]] shall be deleted, words underscored and /or >>double arrowed<< constitute the amendment proposed.

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>>s<< the [[~~execution of this~~]] >>terms of the attached<< Memorandum of Understanding between Miami-Dade County, through the Miami-Dade Police Department, [[~~and~~]] the State Attorney for the Eleventh Judicial Circuit of Florida and the Florida Department of Law Enforcement relating to specific investigations, in substantially the form attached hereto and made a part hereof, and authorizes the County Mayor or County Mayor's designee to execute the Memorandum Of Understanding [[~~for and on behalf of Miami-Dade County, and to execute any amendments, modifications, renewals, and extensions of same, to exercise the cancellation provisions contained in the Memorandum of Understanding, and termination clauses on behalf of Miami-Dade County, Florida~~]] >>and to exercise the termination provisions contained therein<<.

The foregoing resolution was offered by Commissioner **Sally A. Heyman**, who moved its adoption. The motion was seconded by Commissioner **Lynda Bell** and upon being put to a vote, the vote was as follows:

Rebeca Sosa, Chairwoman	**aye**		
Lynda Bell, Vice Chair	**aye**		
Bruno A. Barreiro	**absent**	Esteban L. Bovo, Jr.	**nay**
Jose "Pepe" Diaz	**nay**	Audrey M. Edmonson	**aye**
Sally A. Heyman	**aye**	Barbara J. Jordan	**aye**
Jean Monestime	**aye**	Dennis C. Moss	**aye**
Sen. Javier D. Souto	**aye**	Xavier L. Suarez	**aye**
Juan C. Zapata	**absent**		

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The Chairperson thereupon declared the resolution duly passed and adopted this 21st day of October, 2014. 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: Christopher Agrippa
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Ben Simon

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between Miami-Dade County, by and through its department, the Miami-Dade Police Department (MDPD) and the Office of the State Attorney for the Eleventh Judicial Circuit of Florida (SAO) and the Florida Department of Law Enforcement (FDLE), in furtherance of their respective duties under law for the purpose of facilitating investigations of incidents as described hereafter. Miami-Dade County, the SAO and FDLE agree as follows:

1. The occurrence of any of the following predicate events will initiate investigative and forensic involvement, assistance or coordination by FDLE:

   a. The shooting of a person by a MDPD law enforcement officer acting in the line of duty; or

   b. The death of an arrestee while in the care, custody or control of a MDPD law enforcement officer, the death of an arrestee shortly after being in the care, custody or control of a MDPD law enforcement officer or the death of an intended arrestee during an arrest attempt by a MDPD law enforcement officer.

2. Upon the occurrence of any of the enumerated predicate events, the ranking MDPD member on the scene will ensure that emergency medical services are provided to injured persons and that a secure crime scene perimeter is established with restricted access. Only emergency medical personnel, crime scene technicians, medical examiner personnel, State Attorney personnel, investigating FDLE members, and other law enforcement investigators assisting FDLE will be permitted inside the crime scene perimeter. The ranking MDPD representative will then ensure that the FDLE Regional Operations Center is promptly contacted and requested to dispatch the FDLE Critical Incident Team to initiate an investigation, notify the SAO Police Shooting Team and to coordinate crime laboratory services at the scene.

3. Pending arrival of the FDLE Critical Incident Team, the ranking MDPD member will ensure that the scene remains secured, that physical evidence and documentation is protected and preserved and that all law enforcement and citizen witnesses are identified and separated pending initial interview. If feasible, the ranking MDPD member will ensure that arrested persons at the scene are detained pending the arrival of the FDLE Critical Incident Team. The MDPD will conduct the investigation related to any underlying criminal activity that preceded or occurred at the same time as the predicate events outlined in paragraph 1 above, when applicable. The ranking MDPD member will also provide any assistance requested by FDLE during and after the on-scene investigation has been concluded, such as additional collection of evidence from suspects, vehicles, or involved law enforcement personnel, as well as the securing of other evidence such as radio communications tapes. The ranking MDPD member will also coordinate with local law enforcement in any necessary crowd control efforts.

4. Upon receipt of notification from the MDPD that any of the enumerated predicate events have occurred, the appropriate FDLE Special Agent in Charge or designee will immediately implement an investigation pursuant to FDLE procedures governing FDLE Investigations of Non-FDLE Officer Involved Shootings and In-Custody Death Incidents, which are incorporated herein by reference. FDLE, in conjunction with MDPD, will promptly coordinate the dispatch of the Critical Incident Team together with the appropriate crime scene

personnel, medical examiner personnel, State Attorney personnel and any additional law enforcement personnel which are required. FDLE will be the lead agency, in consultation with the State Attorney's Office, responsible for conducting all interviews and sworn statements of witnesses and subject officers.

5. FDLE will assume operational direction of investigations and forensic assistance or coordination initiated pursuant to this Memorandum of Understanding. FDLE may request the assistance of MDPD personnel or personnel from other law enforcement agencies.

6. The MDPD will retain overall direction and responsibility for any internal or administrative investigations initiated in response to the occurrence of any of the enumerated predicate events. However, the parties agree that the criminal investigative efforts take precedence over any internal or administrative investigations conducted by the MDPD. No documentation whether internal report or statement authored or obtained by MDPD personnel involved in the subject incident that has been provided to the MDPD under order or policy shall be provided, or its contents revealed, to the criminal investigative team or the prosecutor until such time as the criminal investigative team and the FDLE Office of General Counsel agree that the criminal investigation will not be adversely impacted by any potential for immunity that may attach to any such statement. The criminal investigative team and the FDLE Office of General Counsel may consult with the prosecutor to determine whether such statement may adversely impact any subsequent criminal prosecution. However, the criminal investigative team and the FDLE Office of General Counsel will make the final determination regarding use of such statements in FDLE's investigation. To help assure that the criminal investigation is not impeded or negatively affected by internal or administrative investigative efforts, the MDPD's internal or administrative investigation shall be initiated only after the criminal investigative efforts have been concluded or when otherwise specifically authorized by the FDLE's investigative team.

7. The parties agree that the MDPD may issue initial press statements acknowledging an incident, reporting the status of the law enforcement officer(s) involved in the incident, and referral to the investigative process. At the appropriate stage(s) of an investigation initiated under this Memorandum of Understanding, FDLE will forward copies of all investigative reports and investigative summaries to the State Attorney having jurisdiction over the case and to the MDPD for review. Transmittal of reports and summaries will be done so as to preserve any applicable exemptions from public disclosure and to maintain any confidentiality of information that may apply. Any press release related to investigative activities and responses to public records requests shall be coordinated jointly by the involved agencies to assure that disclosure, if any, is appropriate and timely. The parties agree that best efforts will be made to coordinate said releases jointly.

8. FDLE will submit all final reports to the State Attorney for review. FDLE will report the material factual findings of the investigation but will offer no recommendations or reach legal conclusions concerning whether the force used, if any, was justified.

9. This Memorandum of Understanding represents the entire agreement between the parties on this subject matter. Any alteration or amendment of the provisions of this agreement shall be in writing, duly signed by authorized personnel of each of the parties and attached to the original of this agreement.

10. This agreement shall become effective on the date executed by the final signatory below. The agreement shall expire on November 1, 2024. Any party may terminate this agreement

prior to the expiration of the ten year period by providing the others with 30 days advance notice in writing or by mutual agreement of the parties.

11. This Memorandum of Understanding does not supersede or replace any existing Memorandum of Understanding between Miami-Dade County, by and through its department, MDPD, and Federal Law Enforcement Agencies or municipal police departments as it relates to Police Use of Deadly Force Investigations.

_____	_____
Gerald M. Bailey, Commissioner Florida Department of Law Enforcement Date:_____	Carlos A. Gimenez, Mayor Miami-Dade County Date:_____
_____	_____
Katherine Fernandez Rundle State Attorney Eleventh Judicial Circuit of Florida Date:_____	J.D. Patterson, Jr. Director Miami-Dade Police Department Date:_____