INTEROFFICE MEMORANDUM

TO: JOSEPH LO BELLO, TOWN MANAGER

FROM: BRIAN J. SMITH, CHIEF OF POLICE

SUBJECT: MEMORANDUM OF UNDERSTANDING (MOU) WITH THE FLORIDA DEPARTMENT OF LAW ENFORCEMENT (FDLE) TO FACILITATE EXTERNAL INVESTIGATIONS INTO CRITICAL INCIDENTS

DATE: JANUARY 5, 2016

Background:

In the event of a police involved shooting or in-custody death of an arrestee, the Juno Beach Police Department would contact an outside agency to conduct an independent investigation. There are currently two investigative units that typically conduct these types of investigations; the Palm Beach County Sheriff's Department and the FDLE. In addition to a law enforcement investigation, the State Attorney's Office conducts their own investigation in cooperation with law enforcement.

Discussion:

In the event of a police involved shooting or an in-custody death, it is my opinion that the Juno Beach Police Department would be best served by utilizing the services of FDLE. Statewide, FDLE conducts the majority of police involved shootings and in-custody death investigations. By utilizing FDLE investigative services to conduct an independent investigation into specific critical incidents, the Juno Beach Police Department demonstrates a transparent and unbiased process that maintains the public trust. By signing an MOU between the Town of Juno Beach and FDLE for investigation of specific critical incidents, both parties agree to abide by FDLE's established policies and procedures regarding these investigations.

Recommendation:

Staff recommends the MOU with FDLE for the investigation of critical incidents be approved and then executed by the Town Manager.

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between the Town of Juno Beach, Florida, (Town), by and through its police department, the Town of Juno Beach Police Department (JBPD) 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. The Town and the 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 JBPD 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 JBPD law enforcement officer, the death of an arrestee shortly after being in the care, custody or control of a JBPD law enforcement officer or the death of an intended arrestee during an arrest attempt by a JBPD law enforcement officer.

2. Upon the occurrence of any of the enumerated predicate events, the ranking JBPD 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 JBPD 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. FDLE will notify the State Attorney as soon as reasonably possible.

3. Pending arrival of the FDLE Critical Incident Team, the ranking JBPD 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 JBPD member will ensure that arrested persons at the scene are detained pending the arrival of the FDLE Critical Incident Team. The JBPD 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 JBPD 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 JBPD member will also coordinate with local law enforcement in any necessary crowd control efforts.

4. Upon receipt of notification from the JBPD 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 JBPD, 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.

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 JBPD personnel or personnel from other law enforcement agencies.

6. The JBPD 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 JBPD. No documentation, whether internal report or statement authored or obtained by JBPD personnel involved in the subject incident that has been provided to the JBPD 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 JBPD'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 JBPD 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 JBPD 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 upon the signatures of all parties below. Any party may terminate this agreement by providing the others with thirty (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 the Town of Juno Beach, by and through its police department, JBPD, and Federal Law Enforcement Agencies or municipal police departments as it relates to Police Use of Deadly Force Investigations.

For FDLE:

_____

Richard L. Swearingen, Commissioner
Florida Department of Law Enforcement

Date: _____

For the Town:

_____

Joseph Lo Bello
Town Manager

Date:_____

FLORIDA DEPARTMENT OF LAW ENFORCEMENT

Policy #4.15

FDLE INVESTIGATIONS OF NON-FDLE OFFICER INVOLVED SHOOTINGS AND IN-CUSTODY DEATH OR LIFE THREATENING INJURY INCIDENTS

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GENERAL PARAMETERS
FDLE RESPONSE
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RELATED REFERENCES:

Memorandum of Understanding (MOU)
Officer/Deputy Involved Use of Force Incident Assignment
In-Custody Incident Assignment
Investigative Summary Template
Interview Preamble
FDLE Procedure - Investigations of Non-FDLE Officer Involved Shootings and In-Custody Death or Life Threatening Injury Incidents

KEY AGENCY CONTACT:

Investigations and Forensic Science (IFS)

POLICY:

FDLE will provide investigative and forensic services to assist other criminal justice agencies in the investigation of incidents of use of deadly force by a law enforcement or correctional officer and incidents of in-custody death and life threatening injury. Whenever a law enforcement or correctional officer uses deadly force, or whenever there is an in-custody death or life threatening injury of a prisoner, a thorough collection of evidence and an objective investigation is imperative to assure that justice is served. FDLE can investigate such incidents occurring within other agencies with the requisite objectivity.

GENERAL PARAMETERS

A. Each Special Agent in Charge (SAC), or their designee, will designate sworn members to be part of an investigative response team. The team will be responsible for investigation of incidents of use of deadly force by law enforcement or correctional officers and incidents of in-custody death, or life threatening injury. SAC may also assign appropriate forensic members to respond to an incident with the team.

B. Using a standard form approved by the department, SAC may enter into Memorandum of Understanding (MOU) with other criminal justice agencies to provide for FDLE investigative assistance in the event of an incident of use of deadly force or an in-custody death or life threatening injury. A variance from the standard MOU may be used upon approval by the Commissioner or designee and the Office of the General Counsel (OGC). The Regional

Operations Centers (ROC s) will forward a scanned original of such_agreements to OGC. The original agreements will be filed and maintained in the ROCs.

C. Upon completion of a formal investigation of an incident, FDLE will provide an investigative case file to the appropriate Office of the State Attorney setting forth the factual findings of the investigation. Investigative case files for officer involved shooting and in-custody incidents will not include recommendations or legal conclusions concerning an officer's use of force.

FDLE RESPONSE

A. FDLE is legally authorized to investigate the use of force by a law enforcement officer or a correctional officer and incidents of in-custody death or life threatening injury upon the request of a sheriff, police chief, administrator of a criminal justice agency, the Office of the State Attorney or designee, and with the approval of the Office of the Executive Director.

B. The occurrence of any of the following predicate incidents may initiate investigative and forensic involvement, assistance or coordination by FDLE:

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

   2. The death or life threatening injury of a person while in the care, custody or control of a law enforcement officer or correctional officer, the death or life threatening injury of a a person shortly after being in the care, custody or control of a law enforcement officer or correctional officer, or the death or life threatening injury of a person during an arrest attempt by a law enforcement officer; or

   3. Other use of force incidents as approved by the SAC.

C. In the absence of a signed MOU, any request for assistance must be approved by the SAC or their designee.

D. When the Florida Fusion Center (FFC) receives a request for assistance regarding officer involved shooting or in-custody death or life threatening injury incident, FFC member will document and forward the request to the appropriate Special Agent Supervisor (SAS) and Assistant Special Agent in Charge (ASAC), pursuant to "FDLE Investigations of Non-FDLE Officer Involved Shootings and In-Custody Death or Life Threatening Injury Incidents" procedure. If the request for assistance is received by the region, the region will ensure FFC is notified regarding the incident as soon as practical.

E. Assigned SAS, or their designee, will ensure activation of response team members, coordinate crime scene response and activities, and provide immediate briefing of FDLE command personnel, pursuant to "FDLE Investigations of Non-FDLE Officer Involved Shootings and In-Custody Death or Life Threatening Injury Incidents" procedure.

F. SAC, or their designee, will ensure notification of the Assistant Commissioner, maintain liaison with the involved agency's chief executive and provide a briefing of the incident with command representatives of the involved agency and the Office of the State Attorney, pursuant to "FDLE Investigations of Non-FDLE Officer Involved Shootings and In-Custody Death or Life Threatening Injury Incidents" procedure.

G. SAS, ASAC or SAC will coordinate all press releases/conferences with involved agency and the Office of External Affairs (OEA) in headquarters. All media inquiries will be directed to OEA.

INVESTIGATIVE REVIEW PROCESS

SAS will ensure the Regional Legal Advisor or OGC representative, the ASAC and/or the SAC review the investigative summary prior to submitting the case to the Office of the State Attorney.

FDLE's investigation into incidents will be considered "active" while the facts are under review by the Office of the State Attorney. As such, the contents of FDLE's investigative case file will be exempt from public disclosure, unless otherwise indicated by OGC.

Florida Department of Law Enforcement
Investigations & Forensic Science

FDLE INVESTIGATIONS OF NON-FDLE OFFICER INVOLVED SHOOTINGS AND IN-CUSTODY DEATH OR LIFE THREATENING INJURY INCIDENTS

PRIMARY RESPONSIBILITIES

A. Florida Fusion Center (FFC)

1. When the FFC receives a request for assistance to investigate another agency officer involved shooting or in-custody death or life threatening injury incident, the FFC member will immediately establish and document the following:

   a. Identity of the person calling, their contact information and agency requesting assistance,

   b. Identity of the on-scene officer in charge and their contact information,

   c. Date and time of call/request for assistance,

   d. Date and time incident occurred,

   e. Location of and directions to the incident,

   f. Brief synopsis of incident.

2. FFC will immediately notify, via telephone, the regional on-call Special Agent Supervisor (SAS) and Assistant Special Agent in Charge (ASAC).

3. It will be the responsibility of the ASAC to make the appropriate notifications to the SAC, Chief of Forensic Services, Office of External Affairs (OEA) and Office of the State Attorney.

4. If the request for assistance is received by the region, the region will ensure FFC is notified regarding the incident as soon as practical.

B. Responsibilities of the SAS

1. The assigned SAS, or their designee, will:

   a. Ensure activation of response team members;

   b. Establish law enforcement (involved agency) contact;

   c. Ensure the crime scene perimeter is established and secured;

   d. Respond to the scene of the incident, if applicable, and assume control of the investigation;

e. Obtain comprehensive incident briefing;

f. Assign case agent and ensure investigative assignments are made as necessary;

g. Coordinate with the first responding sworn member;

h. Coordinate Crime Scene response and activities. If an FDLE crime scene unit is not available, personnel from another agency can be utilized;

i. Provide summary for immediate briefing of FDLE command personnel.

j. Coordinate a post-incident team briefing to identify future investigative needs.

C. Responsibilities of First Sworn Member(s) On Scene

1. At the direction of the SAS - the first sworn member(s) on scene will:

a. Obtain a general briefing of the incident;

b. Assess scope and security of the scene;

c. Begin to identify all pertinent parties and their locations;

d. Brief responding SAS and response team members.

D. Responsibilities of Case Agent

1. The Case Agent will consult with the SAS on investigative assignments to ensure that a Special Agent(s) are assigned appropriate investigative tasks, as identified in the *FDLE Officer/Deputy Involved Use of Force Incident Assignment* or the *FDLE In Custody Incident Assignment* forms, to include:

a. Separate all witnesses to include subject officer(s) and witness officer(s), if possible.

b. Obtain and/or ensure the issuance of a search warrant or consent to search for the crime scene when applicable.

c. Debrief agents for results of leads and development of additional witnesses and leads.

d. Coordinate the collection and inspection of all weapons and ammunition that were involved during the incident. A complete ammunition round count should be documented within the case file.

e. Facilitate interviews of all subject officers and witness officers.

f. Ensure that all evidence is properly collected and submitted.

g. Collect all pertinent video and audio recordings. Identify and document any inoperable recording devices.

h. Seek input from the appropriate prosecutor and/or Regional Legal Advisor (RLA), if needed.

2. The Case Agent will brief the SAS on significant developments.

3. The Case Agent will maintain liaison with involved agency's lead investigator.

4. The Case Agent will consult with the SAS and other relevant parties (State Attorney, Involved Agency Head, and Office of External Affairs (OEA) for time/place of appropriate briefings.

5. The Case Agent will prepare for the briefing by incorporating facts, witness statements, photos, and a draft timeline of events.

6. The Case Agent will review all administrative file(s) of the involved officer(s). This review will include records such as disciplinary, training, and use of force records.

E. Responsibilities of the SAC

1. The SAC will ensure notification to the Assistant Commissioner and Commissioner's Office, when appropriate.

2. The SAC, or their designee, will ensure liaison with the involved agency's chief executive is maintained.

3. The SAC, or their designee, will offer an Executive Briefing of the incident with command representatives of the involved agency and the State Attorney's Office within a reasonable timeframe after the incident. The Executive Briefing should include a summary of investigative progress, to date, and an identification of future investigative needs.

INTERVIEWS

A. When interviewing witnesses, all interviews should be conducted under oath and recorded via audio and/or video.

B. When interviewing sworn officer(s):

1. All sworn officer interviews should be conducted under oath and recorded via audio and/or video.

2. Sworn officers will not be afforded an opportunity to walk through a scene or review any digital evidence unless directed by the SAC, their designee or the State Attorney.

3. The *interview preamble* shall precede and be included in the recording of all interviews of all sworn officers. The Agent(s) conducting the interview will ensure that the officer is aware that the statement is voluntary and part of a criminal investigation.

4. During the interview of involved officers, no persons other than FDLE agents will be present unless authorized by the SAC, or their designee.

CONTENTS OF THE INVESTIGATIVE CASE FILE

A. Agents should refer to the appropriate Incident Assignment form for documentation purposes. (*FDLE Officer Involved Use of Force Incident Assignment Form* or *In-Custody Incident Assignment*)

B. The contents of the investigative case file will be pursuant to existing procedures in the Automated Investigative Management System (AIMS) and include other information, as appropriate. Any official documentation created during the investigation shall be included in the case file.

C. An investigative packet will be submitted to the Office of the State Attorney and will contain at a minimum:

1. Investigative summary/timeline should follow the format in the *Investigative Summary Template* document;
2. Witness/Officer's interview statements/transcriptions;
3. FDLE investigative reports/ related items;
4. Evidentiary exhibits list;
5. Crime scene reports/photos;
6. Lab reports;
7. Medical Examiner's report, if appropriate;
8. Other agency reports and documentation; and
9. Other information as appropriate.