

AGREEMENT BETWEEN BROWARD COUNTY AND BROWARD SHERIFF'S OFFICE, FOR MANATEE PATROL DEPUTY FOR BROWARD COUNTY

This is an Agreement ("Agreement"), made and entered into by and between Broward County, a political subdivision of the State of Florida ("County") and Broward Sheriff's Office ("BSO") (collectively referred to as the "Parties").

RECITALS

- A. County adopted a Boat Facility Siting Plan on June 26, 2007, as part of County's Manatee Protection Plan. Under the Boat Facility Siting Plan, County provides for future boat facility development by also providing offsetting measures, including increased marine law enforcement and boater safety education.
- B. County has contracted with BSO for the Marine Law Enforcement Services needed to implement the Boat Facility Siting Plan since April 28, 2009, and the Parties wish to continue contracting for such Services.
- C. Accordingly, the Parties propose for County to reimburse BSO for the Marine Law Enforcement Services of BSO's Marine Unit as defined in Section 1.4 and described in Article 2 below, and to enter into an Agreement describing the terms and conditions of the Services and reimbursement thereof.

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 **Board** means the Board of County Commissioners of Broward County, Florida.
- 1.2 **Contract Administrator** means the Director of the Environmental Protection and Growth Management Department ("Department").
- 1.3 **County Administrator** means the administrative head of County appointed by the Board.
- 1.4 **Marine Law Enforcement Services** or **Services** means enforcement of marine laws and ordinances within the manatee protection and boating safety zones, with high visibility patrol and education of the boating public through educational programs promoting manatee protection and boating safety, as more specifically described in Article 2.

ARTICLE 2. SCOPE OF SERVICES

- 2.1 BSO will provide year-round Marine Law Enforcement Services for the Department within a patrol area consisting of the New River/South Fork New River/Dania Cutoff Canal/Port

Everglades loop with patrol concentration on the South Fork New River and Dania Cutoff Canal ("Patrol Area"). Specific areas may be targeted at the request of Department. The Marine Law Enforcement Services will be provided by a dedicated, armed, uniformed deputy ("Deputy") with a fully equipped, appropriately marked vessel and vehicle and will include the following:

- a) Exercise of any and all law enforcement authority granted to Deputy by applicable state and/or local laws, rules, regulations, and/or ordinances during patrol hours. The minimum number of on-water patrol hours will be consistent with other marine unit deputies and BSO guidelines, unless superseded by other Scope of Services responsibilities and/or in the event of a natural disaster or other public safety emergency rendering it impractical for BSO to provide on-water patrol.
- b) Conduct education/awareness operations at key locations throughout the Patrol Area.
- c) Conduct, with the assistance of other selected Marine Deputies as necessary, safety stops/inspections and distribute manatee protection literature and boating safety handbooks. Literature will be provided by the Department.
- d) Immediately report any distressed, injured, or dead manatees to the Florida Fish and Wildlife Conservation Commission ("FWC") and Department.
- e) Report any missing or damaged speed or manatee zone signs within the Patrol Area to Department.
- f) Respond to citizen complaints regarding violation of speed and manatee zones within the Patrol Area.
- g) Render reasonable assistance that is requested by FWC or Department related to manatee protection conservation within Broward County waterways.
- h) Attend meetings of the Manatee Awareness Group or other relevant boards or organizations, as requested by Department.
- i) Assist Department in any reasonable request related to the implementation of the Manatee Protection Plan.
- j) Attend mandatory training related to the job functions of the position.

2.2 Patrol hours will be a flexible hourly schedule and days off to allow coverage on weekends and variable times of the day for randomization of patrol.

2.3 In the event the Deputy is absent from the position for greater than two (2) consecutive days during manatee season (November 15 – March 31), BSO will make every reasonable effort

to fill the position with a Deputy that possesses skills, training, and experience substantially equivalent to the regularly assigned Deputy.

2.4 Within fifteen (15) business days after the end of each month, BSO will provide a written report of activities to include, at a minimum, hours/days of patrol plus a summary of on-water enforcement actions (e.g., warnings or tickets issued), educational/safety stops (other than warnings/tickets), and upland activities (e.g., distribution of educational materials).

2.5 A reporting format will be developed between BSO and Department to minimize the time required for report completion and maximize the time on-water. At any time during the term of this Agreement, Department may make reasonable modifications to the reporting format(s), reporting content, and reporting period(s). Reports will be cumulative such that the final report at the fiscal year's end will include all previously reported information. Reports will be sent to County's Contract Administrator or designee.

2.6 BSO acknowledges and agrees that County's Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement unless expressly stated or as authorized by the Broward County Procurement Code (Chapter 21 of the Broward County Administrative Code, as may be amended from time to time).

ARTICLE 3. TERM AND TIME OF PERFORMANCE

3.1 Term. The term of this Agreement shall begin on October 1, 2018, and shall end on September 30, 2023 ("Initial Term"). If executed after October 1, 2018, this Agreement shall be retroactive to that date due to BSO having provided Services based on good faith negotiations.

3.2 Extensions. In the event County and BSO mutually agree to extend the term of this Agreement beyond the Initial Term, County and BSO will negotiate terms and conditions as set forth in this Agreement for such extended period, which shall not be more than five (5) years beyond the Initial Term. BSO shall be compensated for the Services at a mutually agreed upon rate.

ARTICLE 4. COMPENSATION

4.1 The County agrees to pay BSO, in a manner specified in Section 4.5, a maximum amount not to exceed \$1,024,060 during the Initial Term, estimated to be \$204,812 per year. This amount shall be inclusive of the following:

Reimbursement for a Deputy to perform the Marine Law Enforcement Services. This amount will compensate BSO only for work actually performed and completed pursuant to this Agreement. The reimbursement rate will be \$98.47 per hour, which includes all operational costs associated with the Services to be provided, including personnel, equipment, vessel, trailer, vehicle, and fuel expenses.

4.2 Upon execution of the Agreement, County will make reasonable efforts to purchase and install a new boat lift at Boaters Park, 3300 N. Park Road, Hollywood, Florida. County will own the boat lift but, for the duration of this Agreement, BSO may use the boat lift in the performance of this Agreement and is responsible for maintaining the boat lift. The Parties agree that the performance of Marine Law Enforcement Services is not contingent upon the installation of a new boat lift and BSO shall not be excused from the performance of this Agreement if County is unable to purchase and install a new boat lift. The County shall purchase and maintain the BSO-approved police radio that is to be used by the Deputy in the performance of this Agreement. County will own the radio but, for the duration of this Agreement, BSO may use the police radio in the performance of this Agreement.

4.3 County shall not be obligated to make any expenditures other than what is provided for in this article, including expenses related to additional capital improvements, maintenance, purchases, or expenses.

4.4 It is agreed by BSO that the estimated annual cost amount is only an estimate and not a guarantee or monetary obligation for Services rendered pursuant to this Agreement. The Parties understand that payments made by County to BSO are not to exceed \$1,024,060 total during the Initial Term of this Agreement unless an amendment is executed by the Parties in accordance with Section 8.15. The not-to-exceed amount does not include monies spent to acquire the boat lift and police radio provided for in Section 4.2. The Parties also understand that it will be the sole responsibility of County to monitor the cumulative amount of payments made to BSO for the Services and to notify BSO prior to the reaching the \$1,024,060 total allotment, at which time the Parties may negotiate an amendment to the Agreement or terminate the Agreement.

4.5 Fiscal Year. The continuation of this Agreement beyond the end of any County fiscal year is subject to both the appropriation and the availability of funds in accordance with Chapter 129, Florida Statutes.

4.6 Method of Billing and Payment.

4.6.1 BSO will submit quarterly invoices for compensation only after the Marine Law Enforcement Services for which the invoices are submitted have been completed. An original invoice is due within fifteen (15) days after the end of the quarter except the final invoice which must be received no later than sixty (60) days after expiration or earlier termination of this Agreement. Invoices shall designate the nature of the Marine Law Enforcement Services performed and, as applicable, the personnel, hours, tasks, or other details as requested by the Contract Administrator.

4.6.2 Invoices will designate the nature of the Services performed and the time spent on patrol.

4.6.3 County shall pay BSO within thirty (30) calendar days after receipt of BSO's proper invoice, as required under the "Broward County Prompt Payment Ordinance,"

Section 1-51.6, Broward County Code of Ordinances. To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of BSO to comply with a term, condition, or requirement of this Agreement.

4.7 Notwithstanding any provision of this Agreement to the contrary, County may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work that has not been remedied or resolved in a manner satisfactory to the Contract Administrator or failure to comply with any provision of this Agreement. The amount withheld shall not be subject to payment of interest by County.

4.8 Payment shall be made to BSO at the address designated in the Notices section.

ARTICLE 5. GOVERNMENT IMMUNITY

Nothing herein is intended to serve as a waiver of sovereign immunity by any party to which sovereign immunity may be applicable or of any rights or limits to liability existing under section 768.28, Florida Statutes, nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. BSO agrees to be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law. This section shall survive termination of all performance or obligations under this Agreement.

ARTICLE 6. INSURANCE

BSO is an entity subject to Section 768.28, Florida Statutes, and BSO shall furnish the Contract Administrator with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

ARTICLE 7. TERMINATION

7.1 This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within ten (10) days after receipt of written notice from the aggrieved party identifying the breach. This Agreement may also be terminated for convenience by either party. Termination for convenience shall be effective on the termination date stated in a written notice, which termination date shall be not less than thirty (30) days after the date of such written notice. This Agreement may also be terminated by the County Administrator upon such notice as the County Administrator deems appropriate under the circumstances in the event the County Administrator determines that termination is necessary to protect the public health, safety, or welfare. If either party erroneously, improperly, or unjustifiably terminates for cause, such termination shall be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.

7.2 Notice of termination shall be provided in accordance with the "Notices" section of this Agreement except that notice of termination by the County Administrator, which the County Administrator deems necessary to protect the public health, safety, or welfare, may be verbal notice that shall be promptly confirmed in writing in accordance with the "Notices" section of this Agreement.

7.3 In the event this Agreement is terminated for convenience by County, BSO shall be paid for any Services properly performed under this Agreement through the termination date specified in the written notice of termination.

7.4 In the event this Agreement is terminated for any reason, any amounts due BSO shall be withheld by County until all documents are provided to County pursuant to Section 8.1.

ARTICLE 8. MISCELLANEOUS

8.1 Public Records. To the extent BSO is acting on behalf of County as stated in Section 119.0701, Florida Statutes, BSO shall:

- a) Keep and maintain public records required by County to perform the Services under this Agreement;
- b) Upon request from County, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
- c) Ensure that public records that are exempt or confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of this Agreement and following completion or termination of this Agreement if the records are not transferred to County; and
- d) Upon completion or termination of this Agreement, transfer to County, at no cost, all public records in possession of BSO or keep and maintain public records required by County to perform the Services. If BSO transfers the records to County, BSO shall destroy any duplicate public records that are exempt or confidential and exempt. If BSO keeps and maintains public records, BSO shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County upon request in a format that is compatible with the information technology systems of County.

The failure of BSO to comply with the provisions of this section shall constitute a material breach of this Agreement entitling County to exercise any remedy provided in this Agreement or under applicable law.

A request for public records regarding this Agreement must be made directly to County, who will be responsible for responding to any such public records requests. BSO will provide any requested records to County to enable County to respond to the public records request.

IF EITHER PARTY HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO A PARTY'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE BROWARD COUNTY CUSTODIAN OF PUBLIC RECORDS, NORMA ELLISON, 115 S. ANDREWS AVE., FORT LAUDERDALE FLORIDA, 33301 (954) 519-1466, NEllison@broward.org, OR ERIN FOLEY, RECORDS MANAGEMENT LIAISON OFFICER, ADMINISTRATIVE SUPPORT BUREAU, BROWARD SHERIFF'S OFFICE, 2601 WEST BROWARD BOULEVARD, FORT LAUDERDALE, FLORIDA 33312 (954) 831-8745, Erin.Foley@sheriff.org, OR THE OFFICE OF GENERAL COUNSEL, BROWARD SHERIFF'S OFFICE AT (954) 831-8920.

8.2 Audit Rights, and Retention of Records. County shall have the right to audit the books, records, and accounts of BSO that are related to this Agreement. BSO shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement and performance thereunder. All books, records, and accounts of BSO shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, BSO shall make same available at no cost to County in written form.

BSO shall preserve and make available, at reasonable times for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for a minimum period of three (3) years after expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. County audits and inspections pursuant to this section may be performed by any County representative (including any outside representative engaged by County). County reserves the right to conduct such audit or review at BSO's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice. If the Florida Public Records Act is determined by County to be applicable to BSO's records, BSO will comply with all requirements thereof; however, no confidentiality or nondisclosure requirement of either federal or state law will be violated by BSO. Any incomplete or incorrect entry in such books, records, and accounts will be a basis for County's disallowance and recovery of any payment upon such entry.

Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for County's disallowance and recovery of any payment upon such entry. If an audit or inspection in accordance with this section discloses overpricing or overcharges to County of any nature by BSO in excess of five percent (5%) of the total contract billings reviewed by County, the reasonable

actual cost of County's audit shall be reimbursed to the County by BSO in addition to making adjustments for the overcharges. Any adjustments and/or payments due as a result of such audit or inspection shall be made within thirty (30) days after presentation of County's findings to BSO.

8.3 Truth-In-Negotiation Representation. BSO's compensation under this Agreement is based upon representations supplied to County by BSO, and BSO certifies that the wage rates, factual unit costs, and other information supplied to substantiate BSO's compensation, including without limitation in the negotiation of this Agreement, are accurate, complete, and current at the time of contracting. County shall be entitled to recover any damages it incurs to the extent any such representation is untrue.

8.4 Independent Contractor. BSO is an independent contractor under this Agreement. In providing Services under this Agreement, neither BSO nor its agents shall act as officers, employees, or agents of County. BSO shall not have the right to bind County to any obligation not expressly undertaken by County under this Agreement.

8.5 Third Party Beneficiaries. Neither BSO nor County intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

8.6 Notices. In order for a notice to a party to be effective under this Agreement, notice must be sent via U.S. first-class mail, hand delivery, or commercial overnight delivery, each with a contemporaneous copy via e-mail to the addresses listed below and shall be effective upon mailing. The addresses for notice shall remain as set forth herein unless and until changed by providing notice of such change in accordance with the provisions of this section.

FOR COUNTY:

Broward County Environmental Planning and Community Resilience Division
Attn: Dr. Jennifer Jurado
Governmental Center, Room 329-H
115 S. Andrews Avenue
Ft. Lauderdale, FL 33301
E-mail address: jjurado@broward.org

FOR BSO:

Broward County Sheriff's Office
Attn: Lt. Colonel Oscar Llerena
2601 W. Broward Boulevard
Ft. Lauderdale, FL 33312
E-mail address: oscar.llerena@sheriff.org

With a copy to:
Office of the General Counsel
Attn: Mr. Lee Futch, Senior Asst. General Counsel
2601 W. Broward Boulevard
Ft. Lauderdale, FL 33312
E-mail address: lee_futch@sheriff.org

8.7 Assignment and Performance. Neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by BSO. If BSO violates this provision, County shall have the right to immediately terminate this Agreement. BSO represents that each person and entity that will provide Services under this Agreement is duly qualified to perform such Services by all appropriate governmental authorities, where required, and is sufficiently experienced and skilled in the area(s) for which such person or entity will render Services. BSO agrees that all Services under this Agreement shall be performed in a skillful and respectful manner, and that the quality of all such Services shall equal or exceed prevailing industry standards for the provision of such Services.

8.8 Conflicts. Neither BSO nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with BSO's loyal and conscientious exercise of judgment and care related to its performance under this Agreement. None of BSO's officers or employees shall, during the term of this Agreement, serve as expert witnesses against County in any legal or administrative proceeding in which he, she, or BSO is not a party, unless compelled by court process. Further, such persons shall not give sworn testimony or issue a report or writing, as an expression of their expert opinion, which is adverse or prejudicial to the interests of County in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude BSO or any persons in any way from representing themselves, including giving expert testimony in support thereof, in any action or in any administrative or legal proceeding.

8.9 Materiality and Waiver of Breach. Each requirement, duty, and obligation set forth herein was bargained for at arm's length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and each is, therefore, a material term of this Agreement. County's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or a modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the party.

8.10 Compliance with Laws. BSO shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

8.11 Severability. In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

8.12 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either party.

8.13 Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a section or article of this Agreement, such reference is to the section or article as a whole, including all of the subsections of such section, unless the reference is made to a particular subsection or subparagraph of such section or article.

8.14 Law, Jurisdiction, Venue, Waiver of Jury Trial. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, BSO AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.**

8.15 Amendments. 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 Board and BSO or others delegated authority or otherwise authorized to execute same on their behalf.

8.16 Prior Agreements. This Agreement represents the final and complete understanding of the Parties regarding the subject matter hereof and supersedes all prior and contemporaneous negotiations and discussions regarding that subject matter. There is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document.

8.17 Payable Interest.

8.17.1 Payment of Interest. County shall not be liable to pay any interest to BSO for any reason, whether as prejudgment interest or for any other purpose, and in furtherance thereof BSO waives, rejects, disclaims, and surrenders any and all entitlement it has or may have to receive interest in connection with a dispute or claim arising from, related to, or in connection with this Agreement. This subsection shall not apply to any claim for interest, including for postjudgment interest, if such application would be contrary to applicable law.

8.17.2 Rate of Interest. If the preceding subsection is inapplicable or is determined to be invalid or unenforceable by a court of competent jurisdiction, the annual rate of interest payable by County under this Agreement, whether as prejudgment interest or for any other purpose, shall be, to the full extent permissible under applicable law, 0.25% (one quarter of one percent) simple interest (uncompounded).

8.18 Representation of Authority. Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

8.19 Counterparts and Multiple Originals. This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the 4 day of December, 2018, and BSO, signing by and through its Executive Director, Department of Law Enforcement, duly authorized to execute same.

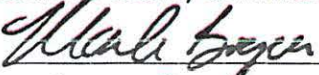
COUNTY

ATTEST:


Broward County Administrator, as
Ex officio Clerk of the Broward County
Board of County Commissioners



BROWARD COUNTY, by and through
its Board of County Commissioners

By: 
5 day of December, 2018
(12/4/18 #21)

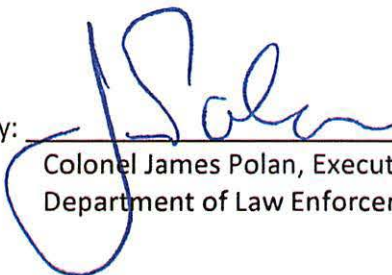
Approved as to form by
Andrew J. Meyers
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By:  for 12/8/18
Joseph K. Jarone (Date)
Assistant County Attorney

By:  11/8/18
Maite Azcoitia (Date)
Deputy County Attorney

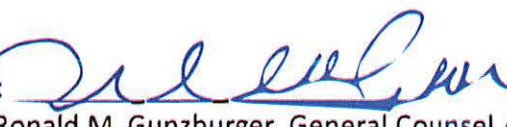
AGREEMENT BETWEEN BROWARD COUNTY AND BROWARD SHERIFF'S OFFICE, FOR MANATEE
PATROL DEPUTY FOR BROWARD COUNTY

SHERIFF OF BROWARD COUNTY

By: 
Colonel James Polan, Executive Director
Department of Law Enforcement

7 day of 11, 2018

Approved as to form and legal
sufficiency subject to execution

By: 
Ronald M. Gunzburger, General Counsel /
Executive Director
Broward Sheriff's Office

Date 11/7/18