

4/26/2018 #5

**STATE OF FLORIDA  
COUNTY OF ESCAMBIA**

**INTERLOCAL AGREEMENT BETWEEN ESCAMBIA COUNTY,  
FLORIDA AND ESCAMBIA COUNTY SHERIFF'S OFFICE RELATING  
TO THE ANNUAL BUDGET FOR THE SHERIFF AND  
IMPLEMENTATION OF HIS PAY PLAN**

**THIS AGREEMENT** is made and entered into by and between Escambia County Board of County Commissioners, a political subdivision of the State of Florida, with administrative offices located at 221 Palafox Place, Pensacola, Florida 32502 (hereinafter referred to as "County"), and the Escambia County Sheriff's Office, with administrative offices located at 1700 West Leonard Street, Pensacola, Florida 32501 (hereinafter referred to as "Sheriff") (each at times also being referred to as a "Party" or collectively as "Parties").

**WITNESSETH:**

WHEREAS, County and Sheriff are authorized by §163.01, Florida Statutes, to enter into Interlocal Agreements and thereby cooperatively utilize their governmental powers and available resources in the most efficient manner possible; and

WHEREAS, Sheriff filed an appeal of his Fiscal Year (FY) 2017-18 budget allocation to the Administration Commission; and

WHEREAS, it is the parties' intent to enter into this Agreement to put into effect the Mediation Agreement signed on April 21, 2018.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and of the mutual benefits to flow each unto the other, and for other good and valuable consideration, County and Sheriff agree as follows:

**Section 1. Purpose of Agreement.**

1.1 The recitals contained in the Preamble of this Agreement are declared to be true and correct and are incorporated into this Agreement.

1.2 Pursuant to §163.01, Florida Statutes, this Agreement establishes the conditions, extent, and mechanisms whereby County will fund Sheriff's budget through September 30, 2021, and County and Sheriff will resolve the appeal of Sheriff's FY 2017-18 budget.

**Section 2. Responsibilities of the Parties.**

2.1 The Parties agree to implement the terms of the Mediation Agreement, signed by the Parties on Saturday, April 21, 2018 and approved by the Board of County Commissioners on April 26, 2018. A copy of the Mediation Agreement is attached as Exhibit "A" and incorporated by reference.

2.2 County covenants and agrees to appropriate in its annual budgets from legally available revenues sufficient to fund the annual budget obligations in this Agreement.

### **Section 3. Term and Termination.**

3.1 The term of this Agreement shall commence upon the Effective Date and remain in effect through September 30, 2021.

3.2 This Agreement may only be terminated for cause by either party upon providing thirty (30) days' written notice pursuant to Section 8 of this Agreement.

### **Section 4. Survival.**

All other provisions, which by their inherent character, sense, and context are intended to survive termination of this Agreement, shall survive the termination of this Agreement.

### **Section 5. Interpretation.**

5.1 For the purpose of this Agreement, the singular includes the plural and the plural shall include the singular. References to statutes or regulations shall include all statutory or regulatory provisions consolidating, amending, or replacing the statute or regulation referred to. Words not otherwise defined that have well-known technical or industry meanings, are used in accordance with such recognized meanings.

5.2 References to persons include their respective permitted successors and assigns and, in the case of governmental persons, persons succeeding to their respective functions and capacities. This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all of the terms and provisions hereof.

### **Section 6. Severability.**

The invalidity or non-enforceability of any portion or provision of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and the balance hereof shall be construed and enforced as if this Agreement did not contain such invalid or unenforceable portion or provision.

### **Section 7. Further Documents.**

The parties shall execute and deliver all documents and perform further actions that may be reasonably necessary to effectuate the provision of this Agreement.

**Section 8. Notices.**

All notices required to be given under this Agreement shall be in writing, and shall be sent by first class United States mail, unless some other form of notice is established by the County Administrator, to the respective parties as follows:

**Notices shall be sent to:**

County Administrator  
Escambia County  
221 Palafox Place, Suite 420  
Pensacola, Florida 32502

Sheriff  
Escambia County Sheriff's Office  
1700 West Leonard Street  
Pensacola, Florida 32501

**Section 9. Prior Agreements Superseded.**

This document incorporates and includes all prior negotiations, correspondence, conversations, agreements, or understandings applicable to the matters contained herein, and the parties agree that there are no commitments, agreements, or understandings concerning the subject matter of this Agreement, that are not contained in this document. Accordingly, no deviations from the terms and conditions hereof shall be predicated upon any prior representations or agreements, whether oral or written.

It is further agreed that no modification, amendment, or alteration in the terms and conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

**Section 10. Governing Law.**

The Agreement shall be interpreted under and its performance governed by the laws of the State of Florida. The parties agree that any action relating to this Agreement shall be instituted and prosecuted in the courts of Escambia County, Florida, and therefore, each party to this Agreement hereby waives the right to any change of venue.

**Section 11. No Waiver.**

The failure of either party to enforce at any time or for any period of time any one or more of the provisions of the Agreement shall not be construed to be and shall not be a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.

**Section 12. Effective Date.**

This Agreement, after being properly executed by all parties named herein, shall become effective upon its filing with the Clerk of the Circuit Court of Escambia County, Florida. Escambia County shall be responsible for filing this document upon receipt of the executed Agreement from the Sheriff.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the respective dates under each signature: Escambia County, Florida through its Board of County Commissioners, signing by and through its duly authorized Chairman and the Escambia County Sheriff's Office, signing by and through its duly authorized Sheriff.

BOARD OF COUNTY COMMISSIONERS  
OF ESCAMBIA COUNTY, FLORIDA

ATTEST: PAM CHILDERS  
Clerk of the Circuit Court



By: [Signature]  
Deputy Clerk

By: [Signature]  
Jeff Bergosh, Chairman

Date Executed

APPROVED AS TO FORM: 4/26/2018

[Signature]  
Charles V. Pepler  
Deputy County Attorney

Signature certified as below<sup>1</sup>:

[Signature]  
Chief Deputy Eric Haines

[Signature]  
Gerald E. Champagne  
General Counsel for  
David Morgan, Sheriff

By: [Signature]  
David Morgan, Sheriff  
Date: 4/25/18

APPROVED AS TO FORM:

[Signature]  
Gerald E. Champagne  
General Counsel for  
David Morgan, Sheriff

CERTIFIED TO BE A TRUE COPY OF THE  
ORIGINAL ON FILE IN THIS OFFICE  
WITNESS MY HAND AND OFFICIAL SEAL  
PAM CHILDERS  
CLERK OF THE CIRCUIT COURT & COMPTROLLER  
ESCAMBIA COUNTY, FLORIDA  
BY: [Signature] D.C.  
DATE: April 26, 2018



BCC Approved 04-26-2018

<sup>1</sup> Pursuant to Section 92.18, Fla. Stat., both Chief Deputy Haines and General County Champagne hereby certify that Sheriff David Morgan authorized and approved the use of his signature stamp to this Agreement as evidence of his full assent to the terms of this Agreement. This stamp shall be prima facie evidence of an official act as described in the foregoing statute.

**Mediation Settlement Agreement**  
**Mediation: April 21, 2018**

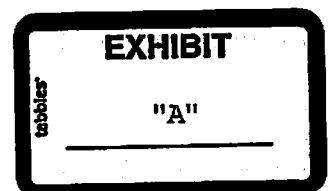
In consideration of the promises, covenants and conditions agreed upon by the Parties at the mediation conference held on April 21, 2018, Escambia County Board of County Commissioners (the "County"), and Sheriff David Morgan ("Sheriff"), by and through his undersigned representatives, the Parties agree to the Following:

1. **Formal Approval of Agreement.** All the terms of this Agreement are conditioned upon and subject to "Formal Approval" (as hereinafter defined) by the County and Sheriff. Formal Approval is defined to be approval of all of the terms contained in this Agreement by the County after formal meeting, vote and approval by the Escambia County Board of County Commissioners and the Sheriff signing the Interlocal Agreement. By signing this Agreement, the Chairman, County Administrator and Chief Deputy make no representation or warranty as to the likelihood of an Interlocal Agreement being reached, and only agree to present this Agreement to the Escambia Board of County Commissioners and Sheriff for Formal Approval.

2. **County's Obligations.** County shall agree to do the following in furtherance of a four year pay plan requested by Sheriff:

a. In the first year, payment of One Million Dollars (\$1,000,000) for Fiscal Year 2018 to be paid according to the standard formula commencing in May for a five-month period of time consisting of five equal installments. This payment shall completely resolve the Sheriff's budget request for the Fiscal Year 2018.

b. Beginning October 1, 2018 and ending September 30, 2021 for a period of three years, Sheriff shall be paid a sum of Two Million Five Hundred Thousand Dollars (\$2,500,000) for Fiscal Year 2019; the sum of Two Million Six Hundred Thousand



Dollars (\$2,600,000) for Fiscal Year 2020 and a sum of Two Million Nine Hundred Thousand Dollars (\$2,900,000) for Fiscal Year 2021 of this period inclusive of all personnel services and costs for each Fiscal Year of the four-year pay plan. Each annual payment described above shall be in addition to Sheriff's personnel services budget adopted by County for the immediate preceding Fiscal Year of the four-year pay plan. For the purpose of this Agreement, the term "adopted" budget for FY 2018 will include the additional \$1,000,000 above which shall be added to the original adopted Sheriff's FY 2018 personnel budget.

3. **Sheriff's Obligations.** In consideration of the implementation of the four-year plan described in paragraph 2 above, Sheriff agrees that he will not request, demand or appeal to the Administration Commission any further budget allocations for personnel services or costs either during or for each Fiscal Year described in paragraph 2 above. Such personnel services or costs are defined according to § 30.49(2)(c)1, Fla. Stat. and the Uniform Accounting System prescribed by the Department of Financial Services and shall include any and all contingencies such as increases in employer contributions required by Florida Retirement System, increases in employer provided group health, dental, vision care plans and life insurance for Sheriff employees and increases in Workers' Compensation insurance policies or self-insurance funds purchased or sponsored by Sheriff. While the Sheriff does not anticipate the need to add additional personnel at this time, nothing herein shall preclude Sheriff from requesting budget allocations in addition to the amounts in paragraph 2 for additional personnel positions starting Fiscal Year 2020 and Fiscal Year 2021, when, in the judgment of the Sheriff, unforeseen or extraordinary circumstances require the hiring of

additional personnel.

4. **Sheriff's Mediated Reserve.** In order to effectuate the implementation of the pay plan as described in paragraphs 2 and 3 above, the Parties have agreed to the creation of a fund to be named Sheriff's Mediated Reserve (SMR), which shall be funded by the Parties as described below with the following restrictions and uses:

	FY 18	FY19	FY20	FY21
Sheriff's Contribution to SMR		\$500,000	\$250,000	\$250,000
Board's Additional Reserve			\$750,000	\$750,000
Total	\$0	\$500,000	\$1,000,000	\$1,000,000
Total SMR Reserve				\$2,500,000

- a. The SMR shall be funded as follows:

By October 31, 2018 the Sheriff will return to the Board of County Commissioners a minimum of \$500,000 from the FY2018 budget allocation. By October 31, 2019 the Sheriff will return to the Board of County Commissioners a minimum of \$250,000 from their FY 2019 budget allocation. By October 31, 2020, the Sheriff will return to the Board of County Commissioners a minimum of \$250,000 from their FY 2020 budget allocations. These residual equity transfers shall be used to fund the SMR and shall only be utilized as described as follows.

- b. ECSO will not use or request any portion of SMR until FY 2020 at the earliest.

- c. If funds from the SMR become necessary for any allowable reason, the ECSO portion of this fund shall be utilized first and the BCC portion shall only be utilized when the ECSO portion of the fund has been exhausted.
- d. The SMR shall only be utilized for the following purposes:
  - i. to offset the difference in required FRS rate increases in FY 2020 and/or FY 2021. The required FRS rate shall be the net change realized when the combined sworn and non-sworn rate exceeds the baseline aggregate as established by the rates effective July 1, 2018.
  - ii. healthcare costs if and only if the BCC budgets more than \$10,000 per employee for life, health, and dental in FY19, FY20, and/or FY21. The amount ECSO may utilize for life, health, dental and vision from the SMR shall be limited to the amount per employee which exceeds the \$10,000 budgeted allocation.
  - iii. an amount that equals 50% of the net increase in the Workers' Compensation Insurance rate in FY20 and/or FY21. The Workers' compensation rate shall be the net change realized when the combined sworn and non-sworn Workers' Compensation Rate exceeds the baseline aggregate rate as established with the actual FY19 Workers' Compensation Rate. BCC exposure to Workers' Compensation Rate increases under this agreement shall be limited to no more than \$200,000 total annually for FY20 and/or FY21.
- f. BCC shall reserve \$750,000 yearly in FY20 and FY21 respectively for a maximum total of \$1,500,000 to be used only as described above and only after



the ECSO's portion of the SMR is exhausted. Any funds remaining in SMR shall revert to BCC at the end of FY 2021 or an earlier date if agreed upon by Sheriff.

5. **Interlocal Agreement.** No later than 15 calendar days from notice of Formal Approval, the Parties shall execute and exchange an Interlocal Agreement (IA) as the formal instrument for the implementation of the four-year pay plan described herein. A proposed Interlocal Agreement is attached for consideration by the Parties should Formal Approval of this Agreement occur as described in paragraph 1 above. The IA shall also be subject to approval by the Board of County Commissioners and Sheriff. The IA will not vary or modify the terms of the settlement as reflected in this Agreement. Once the IA is approved and executed by both Parties, the Sheriff shall request the Administration Commission to withdraw the appeal pending under Case No. SBA-17-003. The Parties agree to abide by any requirements imposed by the Administration Commission as to form of the withdrawal. Nothing agreed herein shall waive or release the rights of County to pursue enforcement of the settlement reflected in the mediation agreement of March 9, 2018 until such time as both Formal Approval has been made by the Board of County Commissioners and the IA has been approved and executed by both Parties.

6. **Due Dates Falling on Weekends or Holidays.** In the event that the date of any act required to be performed by this Agreement (including, but not limited to, the payment of any money) falls on a weekend or a federal holiday, then the same shall not be required to be performed until the next business day thereafter.

7. **Entire Agreement.** This Agreement sets forth the entire understanding of the Parties and no verbal or written warranties or representations have been made or

have been relied upon which do not appear in writing within this Agreement. Any reliance on verbal or other representations which do not appear within this Agreement shall be deemed unjustifiable reliance. Each Party hereto is represented by that Party's own counsel (or has had the opportunity to confer with counsel of their own choosing) and has had the benefit of (or the opportunity to have the benefit of) such counsel's advice in reviewing, commenting upon, and modifying this Agreement. The BCC hereby withdraws its request that 50% of LEFT funds be used for school resource officers. The ECSO hereby withdraws its request that the BCC utilize outside agency funds and commissioner discretionary funds to contribute to the pay plan.

8. **Modification.** None of the terms in this Agreement may be amended or modified except by written instrument signed by all of the Parties hereto, and the Parties agree that this provision may not be waived except in writing.

9. **Cooperation.** The Parties hereto agree to cooperate fully in the execution of any documents or performance in any way which may be reasonably necessary to carry out the purposes of this Agreement and to effectuate the intent of the Parties hereto.

10. **Headings.** The headings used in this Agreement are for convenience and reference only and in no way, define, describe, extend, or limit the scope or intent of this Agreement or the intent of any provision in it.

11. **Severability.** If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, whether on its face or as applied, the remaining provisions shall remain in full force and effect unless the provision(s) rendered illegal, invalid, or unenforceable result in the failure of

the essential purpose of the Agreement.

12. **Benefit and Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties, their heirs, successors and assigns. The individuals signing below on behalf of Sheriff represent and warrant that they have the full authority to bind Sheriff to all of the provisions hereof. Signatures by facsimile transmission or other electronic transmission of this Agreement shall be acceptable and binding upon the Parties. A copy hereof shall be as binding as the executed original.

13. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida, without regard to its principles of conflicts of law.

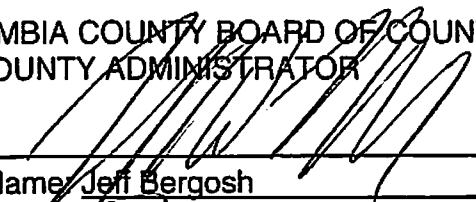
14. **Attorneys' Fees and Costs.** All Parties shall bear their own attorneys fees and costs incurred in connection with this matter.

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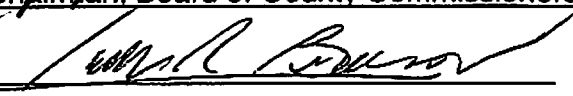
15. **Confidentiality.** Until there is Formal Approval, the amount and the terms of the settlement described in this Agreement shall not be disclosed or discussed with anyone who is not a Party or a Party representative without the prior written consent of the other Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as indicated below.

ESCAMBIA COUNTY BOARD OF COUNTY COMMISSIONERS, BY AND THROUGH ITS COUNTY ADMINISTRATOR

By:   
Print Name: Jeff Bergosh  
Title: Chairman, Board of County Commissioners

Date: 4-21-2018


By:   
Print Name: Jack Brown  
Title: County Administrator

Date: 4/21/18


By:   
Charles V. Peppler, Deputy County Attorney  
Counsel for the County

Date: April 21, 2018

SHERIFF DAVID MORGAN

By:   
Print Name: Eric Haines  
Title: Chief Deputy Sheriff

Date: 4/21/18

By:   
Gerald Champagne, Esq.  
Counsel for David Morgan, Sheriff

Date: 4/21/18