

INTERLOCAL AGREEMENT

Between

BROWARD COUNTY

and

CITY OF MARGATE

for

PREPARATION, IMPLEMENTATION, AND ADMINISTRATION BY BROWARD  
COUNTY OF THE CITY OF MARGATE'S STATE HOUSING INITIATIVES  
PARTNERSHIP (SHIP) PROGRAM FOR THE STATE OF FLORIDA'S FISCAL YEARS  
2016-2017, 2017-2018, AND 2018-2019

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This is an Interlocal Agreement ("Agreement"), made and entered into by and between Broward County, a political subdivision of the State of Florida ("County"), and the City of Margate, a municipal corporation of the State of Florida ("City"), collectively referred to as the "Parties."

## RECITALS

WHEREAS, the State Housing Initiatives Partnership (SHIP) Act, Sections 420.907 through 420.9079, Florida Statutes, provides for the establishment of local housing assistance programs; and

WHEREAS, the SHIP Act encourages the establishment of joint local housing assistance programs, and authorizes local governments to enter into interlocal agreements to establish and implement such programs; and

WHEREAS, the Parties desire to address the housing needs of their respective residents, and to promote the efficient location, design, and provision of affordable housing; and

WHEREAS, the Parties believe the establishment and implementation of a joint local housing assistance program is a more efficient use of resources; and

WHEREAS, City is considered an eligible municipality under the SHIP Act entitling City to receive its own allocation of SHIP Program funds; however, City desires for County to receive City's allocation of SHIP Program funding and administer the SHIP Program funds in accordance with the terms of this Agreement, to include expending all funds within City; and

WHEREAS, the Parties desire to distribute SHIP Program funds pursuant to the terms of this Agreement, and provide for County to prepare, implement, and administer the joint local housing assistance program in accordance with the requirements under the SHIP Act and Rule 67-37, Florida Administrative Code; NOW, THEREFORE,

IN CONSIDERATION of the mutual covenants, promises, and agreements hereinafter set forth, the Parties agree as follows:

## **ARTICLE 1 - DEFINITIONS**

- 1.1 **Board.** The Board of County Commissioners of Broward County, Florida.
- 1.2 **Contract Administrator.** The Director of the Housing Finance and Community Redevelopment Division or County's SHIP Program Administrator.
- 1.3 **County Administrator.** The administrative head of County appointed by the Board.
- 1.4 **Designated Representative.** The City Manager for City.
- 1.5 **LHAP.** The local housing assistance plan adopted by resolution of the Board which describes the local housing assistance strategies and local housing incentive strategies, and explains how such strategies meet the requirements under the SHIP Statute and Rule.
- 1.6 **SHIP Statute and Rule.** The applicable definitions, rules, and regulations set forth in Sections 420.907 through 420.9079, Florida Statutes, and Rule 67-37, Florida Administrative Code, as amended from time to time, and which are incorporated herein by reference.

## **ARTICLE 2 - JOINT LOCAL HOUSING ASSISTANCE PROGRAM**

Upon the complete execution of this Agreement by the Parties ("Effective Date"), the Contract Administrator and the Designated Representative shall meet as necessary to establish a joint local housing assistance program ("Program") under this Agreement. The Program will become part of the LHAP that COUNTY submits to the Florida Housing Finance Corporation ("Corporation") for its review and approval for fiscal years 2016-2017, 2017-2018, and 2018-2019, and if approved, COUNTY will implement and operate the Program through June 30, 2019, unless terminated earlier or extended as provided for herein. In the event the Parties are unable to establish the Program for COUNTY to submit the LHAP to the Corporation within sixty (60) days following the Effective Date of this Agreement, the following will occur: (i) COUNTY will submit the LHAP to the Corporation without inclusion of the Program, (ii) neither party shall have any further obligations under this Agreement, and (iii) this Agreement shall terminate without further action required of the Parties.

### **ARTICLE 3 - ADMINISTRATION AND IMPLEMENTATION OF THE PROGRAM**

- 3.1 County, through its Environmental Protection and Growth Management Department, Housing Finance and Community Redevelopment Division shall be solely responsible for the administration and implementation of the Program in accordance with the SHIP Statute and Rule.
- 3.2 Annual Reports. County will submit a single annual report for the Parties to the Corporation in accordance with Rule 67-37.011, Florida Administrative Code, and the requirements under Section 420.9075(10), Florida Statutes, and provide a copy of the annual report to the Designated Representative.
- 3.3 County shall establish, or cause to be established based on input from City, the administrative criteria or requirements necessary or desirable to implement the SHIP Act including, but not limited to, the maximum award schedule for each strategy, eligibility criteria for the Program participants, and advertising requirements for the availability of SHIP Program funds.
- 3.4 County shall supply the City with quarterly reports of awards to City recipients. City shall have access to all client lists.

### **ARTICLE 4 - ESTABLISHMENT AND ADMINISTRATION OF THE TRUST FUND**

- 4.1 Establishment of Trust Fund. County has established an Affordable Housing Assistance Trust Fund ("Trust Fund") in Section 5-556, Broward County Code of Ordinances. All SHIP Program funds received by County from the Corporation pursuant to the SHIP Act including, but not limited to, City's allocation of SHIP Program funds shall be earmarked as County's or City's SHIP Program funding and deposited by County into the Trust Fund.
- 4.2 Restrictions on use of SHIP Program funds. In accordance with the SHIP Statute and Rule, any SHIP Program funds expended from the Trust Fund shall be utilized solely for the administration and implementation of the Program.
- 4.3 Audit of Trust Fund. County agrees that the Trust Fund shall be separately stated as a special revenue fund in County's audited financial statements. In accordance with the SHIP Statute and Rule, copies of such audited financial statements shall be forwarded to the Corporation as soon as such statements are available. County shall provide City with a copy of this audit upon completion.

In the event County expends a total amount of state financial assistance equal to or in excess of \$500,000 in any fiscal year of County, County must conduct a State single audit or State project-specific audit for such fiscal year in accordance with Section 215.97, Florida Statutes, applicable rules of the State Department of Financial Services, and Chapter 10.550, Rules of the Auditor General, pertaining to local governmental entities.

- 4.4 Notification to Corporation. County shall provide written notification to the Corporation of any changes in the Trust Fund, or termination of this Agreement as provided herein.

## **ARTICLE 5 - DISTRIBUTION OF SHIP FUNDS**

- 5.1 County shall utilize the SHIP Program funds received from the Corporation in accordance with the SHIP Statute and Rule. The SHIP Program funds allocated to City and deposited in the Trust Fund by County in accordance with Section 4.1 shall be utilized by County in City for the SHIP Program. This Agreement includes all unexpended or unencumbered SHIP Program funds transferred from City's SHIP Program distributions to County from State fiscal years 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, and subsequent years under the term of this Agreement. All SHIP Program funds transferred from City to County under this Agreement will become 2016-2017 County SHIP Program funds when such funds are deposited in the Trust Fund. Funds transferred to County for the above fiscal years shall include SHIP Program funds to be allocated for City that have not yet been drawn down by City.
- 5.2 County shall administer and distribute the SHIP Program funding in accordance with the maximum award for each strategy included in the LHAP. County shall retain the maximum amounts allowable for the administrative fee and administrative expenses from all funds received by City, or on behalf of City, related to SHIP Program funding including, but not limited to, SHIP Program income for each fiscal year under this Agreement for administration of the SHIP Program funds for that year.
- 5.3 All SHIP Program income and recaptured funds received by City shall be immediately transferred to County, identified as SHIP Program income (interest or payments) or recaptured funds, and tracked according to the state fiscal year in which such funds were received. City shall establish a mechanism for identifying and transferring the SHIP Program income and recaptured funds to County no later than fifteen (15) days from City's receipt of SHIP Program income and recaptured funds.
- 5.4 City shall be responsible for all files, monitoring, annual reports, audits, release or satisfaction of liens, and all other requirements under the SHIP Statute and Rule

related to funding assistance provided by City prior to the transfer of funds to County and the effective date of this Agreement.

- 5.5 County shall make a good faith effort to recapture SHIP Program funds and deposit such funds into the Trust Fund. Any recapture of SHIP Program funds allocated to City by the Corporation shall be re-used by County within City.
- 5.6 The Contract Administrator shall provide the Designated Representative with quarterly activity reports, which shall, at a minimum, include expenditures made by County during the preceding quarter and the status of all pending applications received for assistance under the SHIP Program.
- 5.7 Upon expiration of this Agreement, or any renewal term exercised by the Parties as provided in Subsection 6.1.2, County will retain any SHIP Program funds in the Trust Fund that are earmarked for City and that have not been encumbered or obligated, until such time as County receives written notification from the Corporation as to the disposition of such SHIP Program Funds. Upon approval of the Corporation, any such remaining funds shall be returned to City. Remaining City funds under County jurisdiction will be expended within City.

## **ARTICLE 6 - TERM AND TERMINATION**

### **6.1 Term of Agreement.**

- 6.1.1 The term of this Agreement shall commence upon the complete execution by the Parties, and shall end on June 30, 2019, unless terminated earlier or extended as provided under this Agreement, and in accordance with the SHIP Statute and Rule. The County Administrator is authorized to execute any amendment to this Agreement extending the term as provided in Subsection 6.1.2.
- 6.1.2 City shall provide County with written notice, at least six (6) months prior to the expiration date provided in Subsection 6.1.1, of City's intent to extend the term of this Agreement for up to three (3) fiscal years. Any amendment to extend the term of this Agreement shall be by mutual agreement of the Parties in accordance with the Amendment section of this Agreement.

### **6.2 Termination of Agreement.**

- 6.2.1 Termination for Cause. This Agreement may be terminated for cause by the aggrieved party if the party in breach has not corrected the breach within fifteen (15) days after receipt of written notice from the aggrieved party identifying the breach.

- 6.2.2 Termination for Convenience. This Agreement may also be terminated for convenience by either party. Termination for convenience by County shall be by the Board. Termination shall be effective on the termination date stated in written notice provided by the terminating party, which termination date shall be not less than thirty (30) days after the date of such written notice.
- 6.2.3 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, at the other party's sole election, be deemed a termination for convenience, which shall be effective thirty (30) days after such notice of termination for cause is provided.
- 6.2.4 In the event this Agreement is terminated for any reason, all SHIP Program funds allocated for use in City that have been encumbered or obligated by County prior to the date of termination shall be payable by County pursuant to the terms of such obligation(s). Any unencumbered or unobligated SHIP Program funds allocated for use in City shall be returned to City upon approval of the Corporation. The Parties shall provide the Corporation with written notification of termination of this Agreement.
- 6.2.5 Notice of termination under this Agreement shall be provided in accordance with the "NOTICES" article of this Agreement.

## **ARTICLE 7 - GOVERNMENTAL IMMUNITY**

Nothing herein is intended to serve as a waiver of sovereign immunity by any party 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. The Parties are state agencies or political subdivisions as defined in Section 768.28, Florida Statutes, and each party shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

## **ARTICLE 8 - INSURANCE**

The Parties are entities subject to Section 768.28, Florida Statutes, and each party shall furnish the other party with written verification of liability protection in accordance with state law prior to final execution of this Agreement.

## ARTICLE 9 - 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 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:

Director  
Housing Finance and Community Redevelopment Division  
110 NE Third Street, Suite 300  
Fort Lauderdale, Florida 33301  
Email address: rstone@broward.org

For City:

City Manager  
City of Margate  
City Hall  
5790 Margate Blvd.  
Margate, Florida 33063  
Email: citymanager@margatefl.com

## ARTICLE 10 - MISCELLANEOUS

- 10.1 No Discrimination. No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement.
- 10.2 Public Records. The Parties are public agencies subject to Chapter 119, Florida Statutes, and each party shall comply with its respective obligations as provided by law. The failure of either party to comply with the provisions set forth in this Section shall constitute a default and breach of this Agreement and shall entitle the non-defaulting party to enforce the default and breach in accordance with the provisions set forth in Section 6.2.
- 10.3 Audit Rights and Retention of Records. County shall have the right to audit the books, records, and accounts of City that are related to this Agreement. City shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement and performance thereunder. All books, records, and accounts of City 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, City shall make same available at no cost to County in written form.

City shall have the right to audit the books, records, and accounts of County that are related to this Agreement. County shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement and performance thereunder. All books, records, and accounts of County 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, County shall make same available at no cost to City in written form.

City shall preserve and make available, at reasonable times within Broward County for examination and audit by County, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement until 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 City's place of business, if deemed appropriate by County, with seventy-two (72) hours' advance notice.

County shall preserve and make available, at reasonable times within Broward County for examination and audit by City, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement until expiration or termination of this Agreement or until resolution of any audit findings, whichever is longer. City audits and inspections pursuant to this Section may be performed by any City representative (including any outside representative engaged by City). City reserves the right to conduct such audit or review at County's place of business, if deemed appropriate by City, with seventy-two (72) hours' advance notice.

- 10.4 Public Entity Crime Act. Each party represents that it is familiar with the requirements and prohibitions under the Public Entity Crime Act, Section 287.133, Florida Statutes, and represents that its entry into this Agreement will not violate that Act. In addition to the foregoing, each party further represents that there has been no determination that it committed a "public entity crime" as defined by Section 287.133, Florida Statutes, and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether the party has been placed on the convicted vendor list. Notwithstanding any provision in this Agreement to the contrary, if any party makes a representation as stated in this Section that is false, the other party shall have the right to immediately terminate this Agreement.

- 10.5 Independent Contractors. Each party is an independent contractor under this Agreement. In performing its respective obligations and services under this Agreement, neither party nor its agents shall act as officers, employees, or agents of the other party. Neither party shall have the right to bind the other party to any obligation not expressly undertaken by that party under this Agreement.
- 10.6 Third Party Beneficiaries. Neither City 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.
- 10.7 Assignment. Neither this Agreement nor any right or interest herein may be assigned, transferred, subcontracted, or encumbered by either party.
- 10.8 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 hereof. Either party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or 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.
- 10.9 Compliance with Laws. The Parties shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its respective duties, responsibilities, and obligations pursuant to this Agreement.
- 10.10 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.
- 10.11 Joint Preparation. This Agreement has been jointly prepared by the Parties hereto, and shall not be construed more strictly against either party.
- 10.12 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.

- 10.13 Priority of Provisions. If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 10 of this Agreement, the provisions contained in Articles 1 through 10 shall prevail and be given effect.
- 10.14 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 Parties agree that 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 Parties agree that 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, CITY AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**
- 10.15 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 City or others delegated authority or otherwise authorized to execute same on their behalf.
- 10.16 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.
- 10.17 Incorporation by Reference. Any and all Recital clauses stated above are true and correct and are incorporated herein by reference.

- 10.18 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.
- 10.19 Filing of Agreement. Pursuant to Section 163.01(11), Florida Statutes, this Agreement shall be filed by County with the Clerk of the Circuit Court for Broward County, Florida.
- 10.20 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.

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, the Parties have made and executed this Interlocal Agreement on the respective dates under each signature: Broward County, through its Board of County Commissioners, signing by and through Mayor or Vice Mayor, authorized to execute same by Board action of \_\_\_\_ day of \_\_\_\_\_, 20\_\_, and the City of Margate, signing through its Mayor, authorized to execute same by action of the City Commission on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

County

ATTEST:

BROWARD COUNTY, by and through  
its Board of County Commissioners

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

By: \_\_\_\_\_  
\_\_\_\_ day of \_\_\_\_\_, 20\_\_

Insurance requirements approved by  
Broward County Risk Management  
Division:

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

By: \_\_\_\_\_  
Jacqueline Binns (Date)  
Risk Manager

By: \_\_\_\_\_  
Patrice M. Eichen (Date)  
Assistant County Attorney

By: \_\_\_\_\_  
Sharon V. Thorsen (Date)  
Senior Assistant County Attorney

PME:dp  
SHIP ILA CITY OF MARGATE  
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#16-129.14

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(SHIP) PROGRAM FOR THE STATE OF FLORIDA'S FISCAL YEARS 2016-2017,  
2017-2018, AND 2018-2019

City

\_\_\_\_\_  
Tommy Ruzzano, Mayor

\_\_\_\_ day of \_\_\_\_\_, 2016

ATTEST:

\_\_\_\_\_  
Joseph J. Kavanagh, City Clerk

\_\_\_\_ day of \_\_\_\_\_, 2016

\_\_\_\_\_  
Douglas E. Smith, City Manager

\_\_\_\_ day of \_\_\_\_\_, 2016

APPROVED AS TO FORM:

\_\_\_\_\_  
Douglas R. Gonzales, City Attorney

\_\_\_\_ day of \_\_\_\_\_, 2016