



**CONTRA COSTA COUNTY  
DEPARTMENT OF CONSERVATION & DEVELOPMENT  
30 Muir Road  
Martinez, CA 94553  
Telephone: (925) 674-7878**

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TO: Members, Board of Supervisors

FROM: Maureen Toms, Deputy Director, and  
Kara Douglas, Assistant Deputy Director

DATE: December 12, 2017

SUBJECT: Agenda Item D 4 - Disposition, Development and Loan Agreement Heritage Point

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County Code Section 25-2.206 (Better Government Ordinance) requires that *“all such staff material must be distributed to the policy body and be made available to the public 96 hours before the scheduled meeting.”* The code allows the policy body, by a three-fourths vote, to waive these limits, *“when, in its judgment, it is essential to do so, providing that the County Administrator, appropriate Department head, or staff member furnishes to the Board of Supervisors or other body a written explanation as to why the material could not be provided to the Board or other policy and the general public within the above time limits.”*

Item D4 on the December 12, 2017 agenda recommends adoption of Resolution No. 2017/443, which includes the provision of \$3,406,584 in Housing Successor funds to Heritage Point A/G L.P. for the development of 42 units of affordable multi-family housing on Fred Jackson Way in North Richmond (Heritage Point). The purpose of this memo is to provide additional information (attached) and request approval up to an additional \$560,000, and defer the \$66,330 commercial loan, for a total of up to \$3,900,254 in Housing Successor funds. This request is reflected in the revised Board Order, Resolution and 33433 Summary Report.

Attachments

- a) Summary of Funding Gap
- b) Redline Board Order
- c) Redline Resolution

## **Summary of Funding Gap**

*Addendum to Board of Supervisors Item D4, December 12, 2017*

As described in the December 12, 2017 Board Order, Heritage Point financing includes County Housing Successor, Community Development Block Grant (CDBG), Livable Community Trust funds, private activity bonds (tax-exempt bonds) and low income housing tax credits (tax credits). Over the past several weeks the Heritage Point development team identified several proposals in the federal Tax Cuts and Jobs Act of 2017 (tax reform) that will cause one or more funding gaps in the development budget. The latest of these impacts was just brought to Department of Conservation and Development staff on Thursday, December 7, 2017 after the December 12, 2017 agenda was published.

### **Funding Gap #1**

Elimination of private activity bonds in 2018: The County is the conduit issuer of \$17,000,000 in private activity bonds for this development, which provides tax-exempt construction financing. Typically, construction draws occur over the 18 to 24 month construction period and interest on the construction draws starts accruing as the funds are drawn down. The proposal to eliminate private activity bonds is moving developers to draw down all of their construction financing prior to December 31, 2017. Drawing down all of the funds before construction begins means the interest payments are on the full construction loan amount from the beginning of construction, rather than spread out over time. Even though the drawn funds can be held in an interest-bearing account, Heritage Point will still have a funding gap that is estimated to be up to \$440,000.

Funding Gap #1 will occur and the County loan documents include the \$440,000 to cover that gap. This amount is included in the Board Order, Resolution, 33433 Summary Report and legal documents.

### **Funding Gap #2**

Reduction of the corporate tax rate: The tax-exempt bond financing for Heritage Point is combined with low income housing tax credits (tax credits). Tax credits are sold by a non-profit developer to an investor that provides an equity investment in the development. In 2017, tax credit investors presumed that there would be tax reform and that the corporate tax rate would be set at 25 percent. Tax credit purchase offers were made with that assumption. With a proposed corporate tax rate of 20 percent, most investors are incorporating downward adjusters into their purchase agreements. Meaning, they are putting the risk of lower value tax credits onto the developer. A corporate tax rate anywhere below 25 percent will create a funding gap. Until the final tax reform bill is signed by the President, we do not know the amount of the funding gap. The estimated financing gap due to the downward adjustment for Heritage Point is up to \$350,000.

Funding Gap #2 may be covered by a combination of Housing Successor funds and a contribution from Raymond James, the equity investor. This amount is included in the Board Order, Resolution, and 33433 Summary Report. It does not need to be included in the legal documents until the need and final amount are determined.

### **Funding Gap #3**

Reduction in "Basis Boost": The tax credit program provides a mechanism to off-set development costs in high cost areas (known as "difficult to develop areas", or DDAs) by increasing the eligible basis for tax credits by providing a 130 percent "basis boost." An amendment to the Senate tax reform bill would

decrease the basis boost in DDAs to 125 percent for any project that is not complete and occupied by December 31, 2017. If this amendment stays in the final tax bill, it will cause a funding gap, which is estimated to be up to \$560,000 for Heritage Point.

Funding Gap #3 was not included in any of the documents submitted with the original Board Order. It is included in the revised Board Order, Resolution, and 33433 Summary Report. It does not need to be included in the legal documents until the need and final amount are determined. Staff has identified some potential sources to be available in the event this gap needs to be addressed as well, including additional Housing Successor, CDBG, Neighborhood Stabilization Program or HOME Investment Partnerships Act funds.

### **Summary**

- Funding Gap #1, estimated at up to \$440,000, will happen. This \$440,000 is already reflected in the Board Order, the Resolution and the loan documents.
- Funding Gap #2, estimated at up to \$350,000 may or may not occur. This \$350,000 is already reflected in the Board Order and the Resolution. It will not be reflected in the loan documents until the need and final amount are determined.
- Funding Gap #3, estimated at up to \$560,000, may or may not happen. This \$560,000 is not reflected in the Board Order, the Resolution or the loan documents. This gap could be filled by using additional Housing Successor funds or by using HOME funds from HUD. Staffing is seeking authority to increase the amount of funds made available from the Housing Successor by \$560,000, in the event it is needed.

Cc: D. Twa, County Administrator  
S. Anderson, County Counsel



Contra  
Costa  
County

To: Board of Supervisors  
From: John Kopchik, Director, Conservation & Development Department  
Date: December 12, 2017

Subject: Disposition, Development and Loan Agreement – Heritage Point Development, North Richmond Area

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**RECOMMENDATION(S):**

1. OPEN public hearing, RECEIVE testimony, and CLOSE public hearing.
  
2. ADOPT Resolution No. 2017/443 approving and authorizing the Director of Conservation and Development to execute a Disposition Development and Loan Agreement (DDLA) between the County and Heritage Point A/G L.P. (the “Borrower”) for the sale of six parcels of real property in North Richmond fronting the east side of Fred Jackson Way, between Grove Street and Chelsey Avenue, to the Borrower for the development of 42 multi-family residential units and approximately 900 square feet of commercial/retail space, and the loan of up to \$3,900,254 ~~3,406,584~~ in Housing Successor Low Moderate Income Housing Funds (LMIHF) and \$2,900,000 in Community Development Block Grant (CDBG) funds. The resolution also provides approval of a grant agreement in the amount of \$1,432,830 from District 1 Livable Communities Trust (Trust) funds to Community Housing Development Corporation of North Richmond (CHDC).
  
3. APPROVE and AUTHORIZE the Director of Conservation and Development Department to execute various legal documents in connection with the loan and grant,

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<input checked="" type="checkbox"/> APPROVE	<input type="checkbox"/> OTHER
<input checked="" type="checkbox"/> RECOMMENDATION OF CNTY ADMINISTRATOR	<input type="checkbox"/> RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: 12/12/2017  APPROVED AS RECOMMENDED  OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

Contact: Maureen Toms (925) 674-7878

**cc:**

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 12, 2017

David J. Twa, County Administrator and Clerk of the Board of Supervisors

By: , Deputy

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including the DDLA, Memorandum of DDLA, Assignment Agreement, Grant Deed, County Regulatory Agreement, and Grant Agreement.

4. FIND the Adopted Mitigated Negative Declaration, adopted on March 24, 2015, for Development Plan #14-3026 and Minor Subdivision #14-000007 and May 5, 2015, for General Plan Amendment #13-0004, is adequate for the DDLA and has been prepared in a manner that is consistent with State and County CEQA guidelines and ADOPT the Mitigated Negative Declaration.

5. AUTHORIZE staff to file a Notice of Determination with County Clerk and pay the filing fee.

**FISCAL IMPACT:**

There is no impact on the County's General Fund. The property is a housing asset under Health and Safety Code section 34176 and was acquired using the former Contra Costa County Redevelopment Agency's Low and Moderate Income Housing Fund (LMIHF). The total amount to be loaned by the County ~~cost is anticipated to be \$7.37 million, is anticipated to be approximately \$6.87 million. That amount, when combined with - from various sources including the LMIHF, Community Development Block Grant (CDBG), and~~ the Livable Communities Trust Fund (Trust) result in a total proposed County contribution of up to \$8,299,414. The financing and other terms of the proposed disposition of the County housing asset are described in the attached "Amended Summary 33433 Report."

CDBG funds are provided to the County on a formula allocation basis through the U.S. Department of Housing and Urban Development. CFDA #14.218

Trust funds in the amount of \$1,432,830 are from the District I allocation of deposits into the Trust. On December 3, 2013, the Board of Supervisors determined that revenue from the Trust should be spent equally among supervisorial districts. At build-out of the development projects contributing revenue to the Trust fund, deposits to the Trust fund will total \$8,448,000. As of November 3, 2017, Trust fund deposits from development fees totaled \$7,648,000, interest earnings totaled \$425,622 and commitments and expenditures totaled \$2,341,475.

**BACKGROUND:**

The recommended action is the adoption of a resolution by the Board to sell Housing Successor owned property, make a loan to Heritage Point A/G L.P. of Housing Successor and CDBG funds for the development of Heritage Point apartments in North Richmond, and to inform the public of these actions through a document known as the "33433 Summary Report." The development includes the disposition of Housing Successor owned property located on the east side of Fred Jackson Way between Grove Street and Chelsey Avenue in North Richmond, and the construction of 42 multi-family residential units and approximately 900 square feet of commercial/retail space (the "Project").

On February 14, 2017, the Board of Supervisors allocated \$877,200 in Housing Successor funds to CHDC for predevelopment activities in support of the Heritage Point development . The predevelopment loan included a three percent simple interest rate. The predevelopment agreement has been modified five times, and there is \$42,822.61 in accrued interest. Both the funds drawn to date and the remaining funds will be included in the DDLA. At CHDC's request, staff recommends that the accrued interest be forgiven.

On April 1, 2014, the County made a loan of \$48,000 in HOME Investment Partnerships Act (HOME) funds with a three percent annual interest to CHDC to provide technical assistance for the development of the Project. On February 14, 2017, the loan was amended and restated to extend the term and to include the accrued interest to the principal amount for a new loan of \$51,925.24. Because the development did not meet the HOME program timeliness requirements, the loan will be repaid to the County at the close of the construction loan in December 2017. County staff recommends forgiving the approximately \$1,280 of accrued interest.

On May 10, 2016, the County allocated \$1.7 million in CDBG funds and increased the allocation to \$2.9 million on July 18, 2017 for the acquisition and construction of the Project.

On May 9, 2017, the Board of Supervisors adopted Resolution No. 2017/71 approving a Disposition and Development Agreement (DDA) between the County and CHDC for the sale of the six parcels that are the Project site as described above. The Mitigated Negative Declaration for the Project was approved, in compliance with the California Environmental Quality Act, at the time the General Plan Amendment and Development Plan were approved.

The DDA provided for the conveyance of certain real property and the construction of the Project provided certain conditions are met. The DDA was necessary in May 2017 to provide CHDC with site control prior to the submittal of various funding applications. The DDLA now under consideration includes the land disposition, in addition to the various loan agreements. The DDLA also includes the CDBG funds.

The DDLA provides for terms of the loan of \$3,406,584 in LMIHF (including land for the residential portion of the development) and the CDBG funds. [If additional funds are made available by the County up to the amounts authorized by this board order, the DDLA will be amended accordingly with any changes approved as to form by County Counsel.](#) The Grant Agreement provides for the \$1,432,830 of District 1 Livable Communities Trust Funds to CHDC. The close of escrow is expected to occur in December of 2017. Implementation of the DDLA will provide 42 new residential units, thereby contributing to the community's supply of housing for affordable to very low to moderate-income households. The project allows the County, as Housing Successor, to fulfill its legal obligation for affordable housing production, dispose of housing assets and use funds from the LMIHF. A separate Amended and Restated DDA for the Commercial property is expected to be considered by the Board of Supervisors in January 2018. [The](#)

Summary Report includes this loan amount of \$66,330 as part of the land cost.

Section 33433 of the Health and Safety Code requires the County to hold a public hearing prior to approving the sale of property acquired with former Redevelopment Agency funds. A 33433 Summary Report of the terms of the proposed disposition was approved in May 2017 and an update ~~to~~ of the report is attached hereto. A corrected version of the 33433 Summary Report will be filed with the Clerk of the Board when all the financing details are known. A change in the financing amount will not change the findings made in the 33433 Summary Report.

County legal documents for the Housing Successor and CDBG funds include the DDLA, a promissory note, a deed of trust and security agreement, and a regulatory agreement. The loan will have a three percent interest rate and 55 year term, which is typical for CDBG loans. There may be some annual loan payments if the project has surplus cash flow. Otherwise, the loan is deferred for 55 years. The loan documents are attached in their substantially final form and will be executed in a form approved by County Counsel. The County will also be requested to subordinate to the bank loan and may be requested to sign estoppel agreements. Due to the high development costs relative to the Project revenues from the restricted rents, and the senior lender and investor security requirements, the County debt may not be fully secured by the value of the property and improvements. Also attached is the form of the grant agreement for the Communities Livable Trust funds.

In addition to the Housing Successor, CDBG and Trust funds, the County is also the conduit issuer of \$17 million in tax-exempt private activity bonds. The documents for the tax-exempt bonds are included in a separate Board Order on this December 12, 2017 Board agenda.

National Environmental Policy Act (NEPA): CDBG projects are subject to NEPA and 24 CFR Part 58 review. The NEPA review for this project has been completed and mitigations are included in the CDBG loan agreement.

#### CONSEQUENCE OF NEGATIVE ACTION:

Failure to approve the DDLA will result in the project not closing by funding deadlines.

#### ATTACHMENTS

Resolution No. 2017/443

33433 Summary Report

DDLA

Assignment Agreement

Grant Deed

Promissory Note

Deed of Trust

Regulatory Agreement

Grant Agreement



**THE BOARD OF SUPERVISORS OF CONTRA COSTA COUNTY, CALIFORNIA**

**and for Special Districts, Agencies and Authorities Governed by the Board**

Adopted this Resolution on 12/12/2017 by the following vote:

AYE:   
NO:   
ABSENT:   
ABSTAIN:   
RECUSE:



**Resolution No. 2017/443**

IN THE MATTER OF authorizing execution of a Disposition Development and Loan Agreement by and between the County of Contra Costa and Heritage Point A/G, L.P., a California limited partnership (the "Partnership"), and making findings and approvals pursuant to the California Community Redevelopment Law, for the sale of property to the Partnership and the development of the Heritage Point Development, with 42 affordable multi-family residential units in the North Richmond Area.

The Board of Supervisors (the "Board") of the County of Contra Costa (the "County") adopted the North Richmond Redevelopment Plan North Richmond Redevelopment Project Area by Ordinance No. 87-50, adopted on July 14, 1987, as amended by Ordinance No. 94-63, adopted on December 6, 1994, as amended by Ordinance No. 99-06, adopted on February 23, 1999, as amended by Ordinance No. 99-31, adopted on June 8, 1999, as further amended by Ordinance No. 2006-35, adopted on July 18, 2006, and as further amended by Ordinance No. 2007-25, adopted on June 5, 2007, which sets forth a plan for redevelopment of the North Richmond Redevelopment Project Area. The County has succeeded to the housing assets of the former Contra Costa County Redevelopment Agency (the "Former Agency") in accordance with Health and Safety Code Section 34176. In its capacity as housing successor, the County owns six parcels of real property, fronting the east side of Fred Jackson Way, between Grove Street and Chesley Avenue, in North Richmond (the "Site"). The Site has been identified as a "housing asset" pursuant to Health and Safety Code Section 34176. The Oversight Board of the Contra Costa County Successor Agency and the California Department of Finance have approved such identification. The Former Agency acquired the Site using the Former Agency's low and moderate housing fund, which was established pursuant to Health and Safety Code Section 33334.2.

On May 9, 2017, the County and Community Housing Development Corporation of North Richmond ("CHDC") entered into a Disposition and Development Agreement (the "Original DDA") governing the transfer and redevelopment of the Site through the construction of forty-two (42) multifamily rental apartment units affordable to low and moderate income persons and limited commercial space on the Site. Under the Original DDA, the County would sell the Site to CHDC for a purchase price of Five Hundred Thirty Thousand Six Hundred Fifty-Five Dollars (\$530,655) or such price as is determined to be the fair market value of the Property established by an analysis of sales of comparable properties (the "Purchase Price"), which would be paid at the time of transfer.

The County intends to subdivide the Site to facilitate the construction of the forty-two (42) multifamily rental apartment units affordable to low and moderate income persons (the "Housing Improvements") on one portion of the Site (the "Housing Parcel"), and the construction of the commercial improvements (the "Commercial Improvements") on the other portion of the Site (the "Commercial Parcel").

CHDC has formed the Partnership in which a CHDC affiliate is the general partner to facilitate the construction of the Housing Improvements on the Housing Parcel.

The County has established a Low and Moderate Income Housing Asset Fund (the "Housing Fund") pursuant to Health and Safety Code Sections 34176. The Partnership intends to finance the cost of the Housing Improvements with public and private sources, as more particularly described in Section V of the Section 33433 Summary Report (defined below).

The County and the Partnership now propose to enter into a Disposition Development and Loan Agreement (the "DDLA") governing the transfer and redevelopment of the Housing Parcel, as described in the DDLA, as well as the terms of the loan of [Housing Funds held by the Housing Successor Low Moderate Income Housing Funds \("LMIHF"\)](#), and Community Development Block Grant (CDBG) funds (collectively, the

“County Loan”). The DDLA proposed for consideration supersedes the Original DDA with respect to the construction of the Housing Improvements, and reflects the affiliated entity purchase, and the County financing of the Housing Improvements. The \$530,655 sales price referenced in the Original DDA has been modified to segregate the price for the Residential Parcel (\$464,325) and Commercial Parcel (\$66,330). A Disposition and Development Agreement for the transfer of the Commercial Parcel between the County and CHDC or a wholly owned affiliate of CHDC will be considered by the Board at a later date. The County Loan will serve the purpose of Health and Safety Code Section 33334.2, providing a benefit to the Project Area, by assisting in the development of affordable housing for persons living and/or working in the Project Area, and serve major goals and objectives of the Redevelopment Plan by improving and increasing the supply of housing available at affordable housing cost in the community, thereby decreasing the market pressure on the supply of affordable housing in the community and the Project Area.

The DDLA provides for terms of the loan of \$2,990,254 in LMIHF (including land for the residential portion of the development) and \$2,900,000 in CDBG funds. [It may be necessary to increase the loan from LMIHF by up to \\$910,000 \(\\$350,000 + 560,000\) to cover a short-fall in funding.](#) The 2014 loan of \$48,000 in HOME Investment Partnerships Act (HOME) funds with a three percent annual interest to CHDC, now \$51,925.24 will be repaid at closing. The County and CHDC also intend to enter into a grant agreement for \$1,432,830 of District 1 Livable Communities Trust Funds (the "Livable Communities Grant Agreement") which will provide additional financial assistance for the construction of the Housing Improvements.

The County desires to execute the Livable Communities Grant Agreement and DDLA substantially in the form on file with the Clerk of the Board. [Any changes will be approved as to form by legal counsel.](#) The DDLA: (i) conveys the Housing Parcel to the Partnership, for \$464,325; (ii) requires execution of a promissory note and deed of trust to secure payment of the County Loan by the Partnership; (iii) requires execution by the Partnership of a regulatory agreement and declaration of affordability covenants and notice of affordability covenants governing the long term affordability and management of the Housing Improvements (iv) addresses other matters related to the disposition of the Housing Parcel; and (v) governs the terms of the County Loan to the Partnership.

The County has placed on file a copy of the DDLA and the summary report called for in Health and Safety Code Section 33433 (the "33433 Summary Report"), and has made the DDLA and the 33433 Summary Report available for public inspection and copying pursuant to Health and Safety Code Section 33433. [A corrected version of the 33433 Summary Report will be filed with the Clerk of the Board when all the financing details are known. A change in the financing amount will not change the findings in the 33433 Summary Report.](#)

The County desires to approve the 33433 Summary Report, [in its current form](#), which indicates that the cost of the development of the Site and the Housing Improvements to the County is \$10,179,313, with a net cost of \$7,179,313 after the deduction of the net present value of loan repayments.

The Board has conducted a duly noticed public hearing on the DDLA and 33433 Summary Report pursuant to Health and Safety Code Section 33433, for the purpose of receiving the input and comments of the public on the DDLA and the 33433 Summary Report.

The Mitigated Negative Declaration previously prepared by the County to serve as the environmental documentation under the California Environmental Quality Act for the Development Plan #14-3026 and Minor Subdivision # 14-00007 and May 5, 2015, for General Plan Amendment # 13-0004 and continues to serve as the environmental documentation for purposes of compliance with the California Environmental Quality Act for consideration of the DDLA.

By the board order accompanying this Resolution which is incorporated into this Resolution by this reference, the County has been provided with additional information upon which the findings and actions set forth in this Resolution are based.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors finds that the above recitals are true and correct and have served, together with the 33433 Summary Report and the board order as the basis for the findings and approvals set forth below.

BE IT FURTHER RESOLVED, pursuant to Health and Safety Code Section 33433, the Board of Supervisors hereby finds that the consideration to be given by the Partnership under the DDLA is not less than the fair market value of the Housing Parcel. This finding is based on the facts and analysis set forth in the Staff Report and the Section 33433 Summary accompanying this Resolution.

BE IT FURTHER RESOLVED, pursuant to Health and Safety Code Section 33433, the Board of Supervisors hereby finds that

the conveyance of the Housing Parcel pursuant to the DDLA will assist in the elimination of blight in the Project Area, will provide housing for low- and moderate-income persons, and is consistent with the implementation plan adopted pursuant to Section 33490 of the Redevelopment Law. These findings are based on the facts and analysis set forth in the Section 33433 Summary Report and the board order accompanying this Resolution, which may be briefly synopsisized as follows: the sale of the Housing Parcel to the Partnership and construction of the Housing Improvements pursuant to the DDLA will provide 42 units of needed affordable housing to the community and eliminate the blighted conditions of the Site as the Site is currently vacant. Construction of the Housing Improvements will create attractive, quality and affordable housing designed to complement the surrounding developed area.

[BE IT FURTHER RESOLVED, additional loan amount of up to \\$910,000, is authorized and revised loan documents shall be prepared and executed if the additional funds are needed.](#)

BE IT FURTHER RESOLVED, pursuant to Health and Safety Code Section 33433, the Board of Supervisors hereby approves the DDLA and the 33433 Summary Report, in substantially the form on file with the Clerk of the Board, and all ancillary documents including the Livable Communities Grant Agreement;

BE IT FURTHER RESOLVED that the Board of Supervisors approves execution by the Director, Department of Conservation and Development of the DDLA and all ancillary documents including the Livable Communities Grant Agreement, in substantially the form on file with the Clerk of the Board of Supervisors, with such changes as are approved by the County signatory (such approval to be conclusively evidenced by the execution of the DDLA and ancillary documents including the Livable Communities Grant Agreement); and approves the sale of the Housing Parcel as contemplated in the provisions of the DDLA.

BE IT FURTHER RESOLVED that the Board of Supervisors designates the Clerk of the Board and the Director of the Department of Conservation and Development as the custodian of the documents and other material which constitute the record of proceedings upon which the decision herein is based. These documents may be found at the office of the Department of Conservation and Development at 30 Muir Road, Martinez, CA 94553.

BE IT FURTHER RESOLVED that this Resolution shall take immediate effect from and after its passage.

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

**ATTESTED: December 12, 2017**

David J. Twa, County Administrator and Clerk of the Board of Supervisors

Contact: Maureen Toms (925) 674-7878

By: , Deputy

cc: