

RESOLUTION NO. 2015-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARINA
AUTHORIZING THE CREATION OF PRESTON PARK SUSTAINABLE COMMUNITY
NONPROFIT CORPORATION AND DESIGNATING THE INCORPORATOR OF PRESTON
PARK SUSTAINABLE COMMUNITY NONPROFIT CORPORATION AS CITY MANAGER

WHEREAS, the City of Marina, California (the "City") expects to acquire certain ownership interests in a residential facility located in the City commonly known as the Preston Park Housing Project (the "Property") from the Fort Ord Reuse Authority;

WHEREAS, the City Council has determined that acquisition of Preston Park will further essential governmental functions by providing needed safe and sanitary housing as well as providing the City with revenues to fund governmental services; and

WHEREAS, in order acquire the Property the City will need to secure financing from a private financial institution which will require that the Property be used as security for the financing;

WHEREAS, the City Council determined that it is in the best interests of the City to form a California nonprofit public benefit corporation named Preston Park Sustainable Community Nonprofit Corporation to facilitate the financing necessary for the acquisition of the Property; and

WHEREAS, the members of the City Council have reviewed the draft Articles of Incorporation and Bylaws of Preston Park Sustainable Community Nonprofit Corporation attached as "Exhibit A" and "Exhibit B" respectively.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Marina does hereby:

1. Authorize the creation of Preston Park Sustainable Community Nonprofit Corporation and approve the Articles of Incorporation and Bylaws in the form attached hereto as "Exhibit A" and "Exhibit B" respectively.
2. Authorize and direct City Manager, Layne Long, to file Articles of Incorporation for the Preston Park Sustainable Community Nonprofit Corporation in substantially the same form as those attached hereto as "Exhibit A" with the California Secretary of State.

PASSED AND ADOPTED by the City Council of the City of Marina at a regular meeting duly held on March 3, 2015 by the following votes:

AYES, COUNCIL MEMBERS: Amadeo, Brown, Morton, O'Connell, Delgado

NOES, COUNCIL MEMBERS: None

ABSENT, COUNCIL MEMBERS: None

ABSTAIN, COUNCIL MEMBERS: None

Frank O'Connell, Mayor Pro-Tem

ATTEST:

Anita Sharp, Deputy City Clerk

ARTICLES OF INCORPORATION

OF

PRESTON PARK SUSTAINABLE COMMUNITY NONPROFIT CORPORATION

I. NAME

The name of this corporation is Preston Park Sustainable Community Nonprofit Corporation (the “Corporation”).

II. PURPOSE

A. This Corporation is a nonprofit public benefit corporation and is not organized for the private gain of any person. It is organized under the Nonprofit Public Benefit Corporation Law for public purposes. The general purpose of this Corporation is to have and exercise all rights and powers conferred on nonprofit corporations under the laws of California, subject to Article V.B of these Articles, and provided that this Corporation shall not, except to an insubstantial degree, engage in any activities or exercise any powers that are not in furtherance of the primary and specific purposes of this Corporation.

B. The specific purpose of this Corporation is to lessen the burdens of government by assisting the City of Marina, California (the “City”) by (i) acquiring that certain residential facility located in the City commonly known as Preston Park (the “Property”), which may include participating in one or more leases, undertaking one or more borrowings, and/or engaging in other financing transactions with respect to the Property; (ii) acquiring, owning, operating, developing, constructing, financing, managing, selling, renting, subsidizing, and monitoring the Property; and (iii) conducting or performing any ancillary or related activity in furtherance of the foregoing.

C. This Corporation is formed for the benefit of, and to carry out the purposes of, the City by helping the City engage in certain financing transactions with respect to the ownership, development, and operation of the Property and thereby lessen the burdens of government within the meaning of Section 1.501(c)(3)-1(d)(2) of the Treasury Regulations. It is intended that this Corporation is organized as an entity all the income of which is excluded from gross income for federal income tax purposes under Section 115(1) of the Internal Revenue Code or the corresponding section of any future federal tax code.

III. AGENT FOR SERVICE

The name and address in California of the Corporation's initial agent for service of process is Layne Long, 211 Hillcrest Avenue, Marina, California 93933.

IV. INITIAL BUSINESS AND MAILING ADDRESS

The initial place of business and mailing address of the Corporation is located at 211 Hillcrest Avenue, Marina, California 93933. The board of directors of the Corporation may change the office from one location to another.

V. DEDICATION AND DISPOSITION OF ASSETS

A. The property of this Corporation is irrevocably dedicated to public purposes, and no part of the net earnings or assets of this Corporation shall inure to the benefit of (or be distributable to) any director or officer of this Corporation or other private person, except that this Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of its public purposes.

B. Upon the dissolution or winding up of this Corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of this Corporation shall be distributed to the City for a public purpose. In the event that the City does not accept any asset of this Corporation on dissolution then any such asset shall be distributed to one or more states, political subdivisions thereof, or entities the income of which is excluded from gross income under section 115 of the Internal Revenue Code, or the corresponding section of any future federal tax code.

VI. DIRECTORS

The number of directors and the manner in which directors shall be chosen and removed from office, their qualifications, powers, duties, term of office, the manner of filling vacancies on the board of directors and the manner of calling and holding meetings of directors shall be as stated in the bylaws.

Adopted this _____ day of _____ 2015.

Layne Long, Incorporator

DECLARATION

I declare that I am the person who executed the foregoing Articles of Incorporation, which execution is my act and deed.

Date: _____, 2015

BYLAWS OF
PRESTON PARK SUSTAINABLE COMMUNITY NONPROFIT CORPORATION
a California Nonprofit Public Benefit Corporation

ARTICLE I.

The name of this corporation shall be: Preston Park Sustainable Community Nonprofit Corporation.

ARTICLE II.

Section 1. Principal Office. The principal office for the transaction of the business of this corporation ("principal executive office") shall be fixed and located at 211 Hillcrest Avenue, Marina, California 93933, or at such other place as the board of directors shall determine. The directors may change the principal office from one location to another. Any change of this location shall be noted by the Secretary on these bylaws opposite this section, or this section may be amended to state the new location.

Section 2. Other Offices. The board of directors may at any time establish branch or subordinate offices at any place or places where this corporation is qualified to do business.

ARTICLE III.
MEMBERSHIP

Section 1. Members. This corporation shall have no members. Any action which would otherwise require approval by a majority of all members or approval by the members shall require only approval of the board of directors. All rights which would otherwise vest in the members shall vest in the board of directors.

Section 2. Associates. Nothing in this Article III shall be construed as limiting the right of this corporation to refer to persons associated with it as "members" even though such persons are not members, and no such reference shall constitute anyone a member, within the meaning of Section 5056 of the California Nonprofit Corporation Law.

ARTICLE IV.
DIRECTORS

Section 1. Powers. Subject to limitations of the articles of incorporation and these bylaws, the activities and affairs of this corporation shall be conducted and all corporate powers shall be exercised by or under the direction of the board of directors ("board"). The board may delegate the management of the activities of this corporation to any person or persons, a management company, or committees, however composed, provided that the activities and affairs of this corporation shall be managed and all corporate powers shall be exercised under the ultimate direction of the board. Without prejudice to such general powers, but subject to the

same limitations, it is hereby expressly declared that the board shall have the following powers in addition to the other powers enumerated in these bylaws or statute:

(a) To select and remove all the other officers, agents, and employees of this corporation, prescribe powers and duties for them as may not be inconsistent with law, the articles of incorporation, or these bylaws, fix their compensation, and require from them security for faithful service.

(b) To conduct, manage, and control the affairs and activities of this corporation and to make such rules and regulations therefor not inconsistent with law, the articles of incorporation, or these bylaws, as they may deem best.

(c) To adopt, make, and use a corporate seal and to alter the form of such seal from time to time as they may deem best.

(d) To borrow money and incur indebtedness for the purposes of this corporation, and to cause to be executed and delivered therefor, in the corporate name, promissory notes, bonds, debentures, deeds of trust, mortgages, pledges, hypothecations, or other evidences of debt and securities therefor.

(e) To carry on a business at a profit and apply any profit that results from the business activity to any activity in which the corporation may lawfully engage as a tax exempt corporation, subject to the limitations set forth in the articles of incorporation of the corporation. No part of such profits shall inure to the benefit of any of the corporation's directors, trustees, officers, members, or to any other individual.

Section 2. Number of Directors. The board shall consist of five (5) directors.

Section 3. Selection and Term of Office. The directors shall be the members of the City Council of the City of Marina, California (the "City") then in office (the "Ex Officio Directors"). At any time that an Ex Officio Director ceases to be a member of the City Council of the City, such director's term as a director of the Corporation shall terminate. At such time as new members are elected or appointed to the City Council, such city councilmembers shall automatically become Ex Officio Directors of the Corporation. Ex Officio Directors shall serve for so long as they are members of the City Council of the City. If any member of the City Council does not wish to serve as an Ex Officio Director of the Corporation, such member shall notify the board and the board shall appoint a replacement (an "Appointed Director"). Such appointment may be evidenced by the delivery to this corporation of written notification from the City Attorney (the "Appointment Notice") which shall be filed in the minute books of this corporation and such appointment shall be effective as of the specified future date in the Appointment Notice or, if no date is specified, the date of receipt by this corporation of the Appointment Notice.

Section 4. Vacancies and Removal. Notwithstanding Section 3 of this Article IV, in the event an Ex Officio director is removed from the City Council or resigns from the City Council prior to the election of a successor by the voters of the City, the directors may elect to either appoint an Appointed Director pursuant to Section 3 of this Article IV or leave the seat

vacant until the City Council appoints a replacement council member or a replacement councilmember is elected by the voters of the City.

Any Appointed Director may be removed by the board at any time with or without cause. Any such removal may be evidenced by the delivery to this corporation of a removal notice (a "Removal Notice") which shall be filed in the minute books of this corporation and such removal shall be effective as of the date of receipt by this corporation of the Removal Notice. Ex Officio Directors may not be removed by the board.

No reduction of the authorized number of directors shall have the effect of removing any Appointed Director before that director has been removed by the board.

Section 5. Place of Meetings. Meetings of the board may be held at any place within the jurisdictional limits of the City. In the absence of a designation of an alternative place, regular meetings shall be held at the principal executive office of this corporation.

Section 6. Annual Meetings. The board shall hold an annual meeting for the purpose of organization, selection of officers, and the transaction of other business. Annual meetings of the board shall be held on a date determined by the board.

Section 7. Other Regular Meetings. Other regular meetings of the board shall be held on such dates and at such times as may be fixed by the board.

Section 8. Special Meetings. Special meetings of the board for any purpose or purposes may be called at any time by the Chairperson of the board, the Secretary or by any two (2) directors acting together. Special meetings shall be noticed in accordance with the requirements of the Ralph M. Brown Act, being Sections 54950 through 54961 of the Government Code of the State of California (the "Brown Act"), and the California Nonprofit Public Benefit Corporation Law. Any such notice shall be addressed or delivered to each director at such director's address as it is shown upon the records of this corporation by the director for purposes of notice or, if such address is not shown on such records or is not readily ascertainable, at the place in which the meetings of the directors are regularly held. Notices of all meetings shall also be posted in accordance with the Brown Act.

Notice by mail shall be deemed to have been given at the time a written notice is deposited in the United States mails, postage prepaid. Any other written notice shall be deemed to have been given at the time it is personally delivered to the recipient or is delivered to a common carrier for transmission, or actually transmitted by the person giving the notice by electronic means, to the recipient. Oral notice shall be deemed to have been given at the time it is communicated, in person or by telephone or wireless, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the receiver.

Section 9. Quorum. A majority of the authorized number of directors shall constitute a quorum for the transaction of business[, except to adjourn as provided below]. Every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present shall be regarded as the act of the board of directors, unless a greater number

is required by law, the articles of incorporation, or these bylaws, except as provided in the next sentence. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting. Subject to Section 13 of this Article IV, a majority of the directors present, whether or not constituting a quorum, may adjourn any meeting to another time and place.

Section 10. Waiver of Notice. Subject to Section 13 of this Article IV, notice of a meeting need not be given to any director who signs a waiver of notice or a written consent to holding the meeting or an approval of the minutes thereof, whether before or after the meeting, or who attends the meeting, without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents, and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

Section 11. Rights of Inspection. Every director shall have the absolute right at any reasonable time to inspect and copy all books, records, and documents of every kind and to inspect the physical properties of this corporation of which such person is a director.

Section 12. Fees and Compensation. Directors and members of committees shall receive no compensation for their services. Reimbursement for expenses incurred in performance of duties may be fixed or determined by the board.

Section 13. Ralph M. Brown Act. All regular and special meetings of the board shall, in all respects, conform to provisions of the Brown Act; provided, however, failure to comply with such requirements, in and of itself, shall not modify or invalidate any corporate action. Regular and special meetings of the board shall be called, noticed and held in accordance with the provisions of section 54956 of the Brown Act; provided, however, failure to comply with such requirements, in and of itself, shall not modify or invalidate any corporate action.

ARTICLE V. COMMITTEES

Section 1. Committees of the Board. The board may appoint one or more committees, each consisting of two (2) or more directors and such other persons who may be appointed by the board, provided, however, committees sole purpose shall be to advise and make recommendations to the board and the board shall not delegate any of its power to a committee.

Any such committee must be created, and the members thereof appointed, by resolution adopted by a majority of the authorized number of directors then in office, provided a quorum is present, and any such committee may be designated by such name as the board shall specify. The board may appoint, in the same manner, alternate members of any committee who may replace any absent member at any meeting of the committee. The board shall have the power to prescribe the manner in which proceedings of any such committee shall be conducted. In the absence of any such prescription, such committee shall have the power to prescribe the manner in which its proceedings be conducted. Unless the board or such committee shall otherwise provide, the regular and special meetings and other actions of any such committee shall be

governed by the provisions of Article IV hereof applicable to meetings and actions of the board. Minutes shall be kept of each meeting of each committee.

Section 2. Advisory Committee. Advisory committees may be appointed from time to time by the board of directors. Advisory committees' membership may consist of both directors and non-directors or non-directors only. Advisory committees have no legal authority to act for this corporation but shall report their findings and recommendations to the board of directors.

ARTICLE VI. OFFICERS

Section 1. Officers. The officers of this corporation shall be a Chairperson of the board, the Executive Director, Secretary, and Chief Financial Officer. This corporation may also have, at the discretion of the board of directors, one or more vice presidents, one or more assistant secretaries, one or more assistant treasurers, and such other officers as may be appointed in accordance with the provisions of Section 3 of this Article VI. Any number of offices may be held by the same person, except as provided in the articles of incorporation or in these bylaws and except that neither the Secretary nor the Chief Financial Officer may serve concurrently as the Chairperson of the board.

Section 2. Officers Serve Ex Officio. The following officials of the City shall serve as the officers of this corporation ex officio: (i) the City Manager shall serve as the Executive Director, (ii) the City Clerk shall serve as the Secretary, (iii) the City Finance Director shall serve as the Chief Financial Officer, and (iv) the Mayor shall serve as the Chairperson of the board.

Section 3. Subordinate Officers. The board of directors may appoint, and may authorize the Chairperson of the board or another officer to appoint, any other officers the business of this corporation may require, each of whom shall have the title, hold office for the period, have the authority, and perform the duties specified in the bylaws or determined from time to time by the board of directors.

Section 4. Vacancies. A vacancy in any office because of death, resignation, removal, disqualification, or any other cause shall be filled only in the manner prescribed in these bylaws for appointment to that office, provided that such vacancies shall be filled as they occur and not on an annual basis.

Section 5. Chairperson of the Board. The Chairperson of the board shall preside at meetings of the board of directors and exercise and perform such other powers and duties as may be from time to time assigned to him by the board of directors or prescribed by the bylaws.

Section 6. Executive Director. The Executive Director shall be responsible for the day-to-day operations and affairs of the Corporation, shall have the power to execute documents on behalf of the corporation, and shall have such other powers and perform such other duties as may be prescribed from time to time by the board or the Chairperson of the board.

Section 7. Secretary. The Secretary shall attend to the following:

(a) Book of minutes. The Secretary shall keep or cause to be kept, at the principal executive office a book of minutes of all meetings and actions of directors, and committees of directors, with the time and place of holding, whether regular or special, and, if special, how authorized, the notice given, the names of those present at such meetings, and the proceedings of such meetings.

(b) Notices, seal and other duties. The Secretary shall give, or cause to be given, notice of all meetings of the board of directors required by the bylaws to be given. The Secretary shall keep the seal of this corporation in safe custody. The Secretary shall have such other powers and perform such other duties as may be prescribed by the board of directors or the bylaws.

Section 8. Chief Financial Officer. The Chief Financial Officer shall attend to the following:

(a) Books of account. The Chief Financial Officer shall keep and maintain, or cause to be kept and maintained, at the principal executive office, adequate and correct books and records of accounts of the properties and business transactions of this corporation, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital, retained earnings, and other matters customarily included in financial statements. The books of account shall be open to inspection by any director at all reasonable times.

(b) Deposit and disbursement of money and valuables. The Chief Financial Officer shall deposit all money and other valuables in the name and to the credit of this corporation with such depositories as may be designated by the board of directors; shall disburse the funds of this corporation as may be ordered by the board of directors; shall render to the Chairperson of the board and the directors, whenever they request it, an account of all transactions as Chief Financial Officer and of the financial condition of this corporation; and shall have such other powers and perform such other duties as may be prescribed by the board of directors or the bylaws.

Section 9. Compensation. Officers may receive such compensation, if any, for their services, and such reimbursement for expenses, as may be fixed or determined by the board.

ARTICLE VII. RECORDS AND REPORTS

Section 1. Corporate Records. This corporation shall keep:

- (a) Adequate and correct books and records of accounts;
- (b) Written minutes of the proceedings of its board and committees of the board; and
- (c) The original or a copy of the articles of incorporation and bylaws, as amended, to date.

Section 2. Annual Report.

(a) Financial statements shall be prepared as soon as reasonably practicable after the close of the fiscal year. The financial statements shall contain in appropriate detail the following:

(1) The assets and liabilities, including trust funds, of this corporation as of the end of the fiscal year;

(2) The principal changes in assets and liabilities, including trust funds, during the fiscal year;

(3) The revenue or receipts of this corporation, both unrestricted and restricted to particular purposes, for the fiscal year;

(4) The expenses or disbursements of this corporation, for both general and restricted purposes during the fiscal year;

(5) Any transaction during the previous fiscal year to which this corporation or a subsidiary was a party and in which any directors or officers of this corporation or subsidiary had or has a direct or indirect material financial interest. The report must disclose the names of the interested persons involved in such transaction, stating such person's relationship to this corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest; and

(6) The amount and circumstances of any indemnification or advances aggregating more than Ten Thousand Dollars (\$10,000.00) paid during the fiscal year to any officer or director of this corporation.

(b) Such financial statements shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of this corporation that such statements were prepared without audit from the books and records of this corporation.

(c) A report including the financial statements prescribed above shall be furnished annually to all directors of this corporation and to the City.

ARTICLE VIII.
OTHER PROVISIONS

Section 1. Construction and Definitions. Unless the context otherwise requires, the general provisions, rules of construction, and definitions contained in the General Provisions of the California Nonprofit Corporation Law and in the California Nonprofit Public Benefit Corporation Law shall govern the construction of these bylaws.

Section 2. Amendments. These bylaws may be amended or repealed by the majority vote of the directors then in office. Notwithstanding the foregoing, this Section, Section 4,

below, Section 5, below, and Article IV, Sections 3 and 4 may only be amended or repealed with the written consent of the City.

Section 3. Fiscal Year. The fiscal year of this corporation shall be the fiscal year of the City.

Section 4. Annual Budget Review. The annual budget of the corporation shall be delivered to the City for review before the budget is adopted by the corporation. The board shall in good faith review any recommendations made by the City regarding the annual budget to be adopted by the corporation.

Section 5. Section 115 of the Internal Revenue Code. The corporation is organized as an entity all the income of which is excluded from gross income for federal income tax purposes under Section 115(1) of the Internal Revenue Code or the corresponding section of any future federal tax code. Any annual surplus net revenue of the corporation, taking into consideration any reserve deemed reasonable and necessary by the board, shall be distributed to the City within three months of the close of the corporation's fiscal year. Upon the dissolution or winding up of the corporation, its assets remaining after payment, or provision for payment, of all debts and liabilities of the corporation, shall be distributed to the City. In no event shall any excess revenue or any assets of the corporation in dissolution be distributed to any entity that is not a state, political subdivision, or entity the income of which is excluded under Section 115(1) of the Internal Revenue Code or the corresponding section of any future federal tax code.

Section 6. Corporate Seal. This corporation may have a seal which shall be specified by resolution of the board of directors. The seal, if any, shall be affixed to all corporate instruments, but failure to affix it shall not affect the validity of the instrument.

ARTICLE IX. INDEMNIFICATION

Section 1. Right of Indemnity. To the fullest extent permitted by law, this corporation shall indemnify its directors, officers, employees, and other persons described in Section 5238(a) of the California Corporations Code, including persons formerly occupying any such position, against all expenses, judgments, fines, settlements and other amounts actually and reasonably incurred by them in connection with any "proceeding," as that term is used in that Section, and including an action by or in the right of this corporation, by reason of the fact that the person is or was a person described in that Section. "Expenses," as used in this Section, shall have the same meaning as in Section 5238(a) of the California Corporations Code.

Section 2. Approval of Indemnity. On written request to the board by any person seeking indemnification under Section 5238(b) or Section 5238(c) of the California Corporations Code, the board shall promptly determine under Section 5238(e) of the California Corporations Code whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met and, if so, the board shall authorize indemnification. If the board cannot authorize indemnification because the number of directors who are parties to the proceeding with respect to which indemnification is sought prevents the formation of a quorum of directors who are not

parties to that proceeding, the court in which such proceeding is or was pending upon application made by this corporation or the agent or the attorney or other person rendering services in connection with the defense, whether or not such application by the agent, attorney, or other person is opposed by this corporation, shall determine under Section 5238(e) of the California Corporations Code whether the applicable standard of conduct set forth in Section 5238(b) or Section 5238(c) has been met and, if so, the court shall authorize indemnification.

Section 3. Advancement of Expenses. To the fullest extent permitted by law and except as otherwise determined by the board in a specific instance, expenses incurred by a person seeking indemnification under Sections 1 and 2 of this Article in defending any proceeding covered by those sections shall be advanced by this corporation before final disposition of the proceeding, on receipt by this corporation of an undertaking by or on behalf of that person that the advance will be repaid unless it is ultimately determined that the person is entitled to be indemnified by this corporation for those expenses.

Section 4. Insurance. This corporation shall have the right to purchase and maintain insurance to the full extent permitted by law on behalf of its officers, directors, employees, and other agents, against any liability asserted or incurred by any officer, director, employee, or agent in such capacity or arising out of the officer's, director's, employee's, or agent's status as such.

CERTIFICATE OF SECRETARY

I, the undersigned, certify that I am the presently elected and acting Secretary of Preston Park Sustainable Community Nonprofit Corporation, a California nonprofit public benefit corporation, and the above bylaws, consisting of 10 pages (including this page), are the bylaws of this corporation as adopted at a meeting of the board of directors held on _____, 2015.

DATED: _____, 2015.

Secretary

Honorable Mayor and Members
of the Marina City Council

City Council Meeting
of March 3, 2015

RECOMMENDATION TO CONSIDER ADOPTING RESOLUTION NO. 2015-, OF THE CITY COUNCIL OF THE CITY OF MARINA AUTHORIZING THE CREATION OF PRESTON PARK SUSTAINABLE COMMUNITY NONPROFIT CORPORATION AND DESIGNATING THE INCORPORATOR OF PRESTON PARK SUSTAINABLE COMMUNITY NONPROFIT CORPORATION AS CITY MANAGER

RECOMMENDATION:

It is recommended that the City Council:

1. Consider adopting Resolution No. 2015-, authorizing the creation of Preston Park Sustainable Community Nonprofit Corporation, and;
2. Designating the Incorporator of Preston Park Sustainable Community Nonprofit Corporation as City Manager.

BACKGROUND:

The City of Marina has been engaged in litigation with the Fort Ord Reuse Authority regarding the owner of the Preston Park. The City and FORA have reached agreement on the terms of a settlement and expect to enter into a Settlement Agreement and Purchase and Sale Agreement whereby the City would purchase Preston Park from FORA. In order obtain financing necessary to cover the acquisition costs of Preston Park, the City needs to form a nonprofit corporation which will own and operate Preston Park. The nonprofit corporation will be able to give the lender a deed of trust on Preston Park securing the loan.

ANALYSIS:

The Preston Park Sustainable Community Nonprofit Corporation will be governed by a five person board composed of the members of the Marina City Council. Because the nonprofit is being formed by the City of Marina and is performing essential governmental functions, it will be subject to the Brown Act and other public agency requirements with regards to its operations. The Preston Park Sustainable Community Nonprofit Corporation will function similarly to the Abrams B Non-Profit Corporation which owns and operates the Abrams B housing development.

Once the Corporation is formed and the property is acquired, the City and the Corporation are expected to enter into a revenue agreement whereby the Corporation will pass through to the City any excess revenue generated from Preston Park.

The Incorporation documents for the Corporation are attached as (“**EXHIBIT A**”), and the Bylaws naming the City Council members as the Directors of the Corporation are attached as (“**EXHIBIT B**”).

FISCAL IMPACT:

There is a nominal fee to incorporate the Nonprofit.

CONCLUSION:

This request is submitted for City Council consideration and possible action.

Respectfully submitted,

Layne Long
City Manager
City of Marina