

**MEMORANDUM OF UNDERSTANDING
REGARDING DUAL ENROLLMENT
BETWEEN THE KERN COMMUNITY COLLEGE DISTRICT AND THE
TEHACHAPI UNIFIED SCHOOL DISTRICT**

This Memorandum of Understanding ("MOU") is between the Kern Community College District and its respective colleges ("KCCD"), and Tehachapi Unified School District ("DISTRICT"). For identification purposes only this MOU is dated.

RECITALS

WHEREAS, KCCD is a multi-college District whose mission includes providing educational programs and services that are responsive to the needs of the students and communities within the DISTRICT;

WHEREAS, DISTRICT is a UNIFIED School District located in Kern County;

WHEREAS, the parties desire to collaborate and provide college credit and stand-alone courses ("Courses");

WHEREAS, instruction will comply with the student selection standards, curriculum guidelines, recommendations and procedures promulgated by the Legislature and KCCD;

WHEREAS, the parties desire to enter into a MOU, which sets forth their mutual rights and responsibilities and governs their relationship regarding the subject Courses;

WHEREAS, this MOU contemplates that the parties will enter into a related course agreement (CA) for the individual subject Courses, that each CA will fully incorporate the terms of this MOU, and that each CA will set out the necessary details specific to the subject Programs/Courses;

WHEREAS, the parties intend for KCCD to report full-time equivalent students (FTES) and obtain state apportionment for the subject Courses given through this MOU in accordance with California Code of Regulations, Title 5, sections 58050, 58051, and 58051.5;

WHEREAS, all Courses will be located within KCCD's District boundaries;

NOW, THEREFORE, the parties mutually agree as follows:

TERMS

1. **Recitals.** The above recitals are incorporated herein and made a part of this MOU.
2. **Effective Date and Duration.** This MOU shall be effective on the date authorized representatives of both parties sign it and continue in effect until June 30, 2019, or until duly modified or terminated by the parties.
3. **Early Termination.** This MOU may be terminated by either party with cause if another party fails to comply with the insurance or indemnification requirements or otherwise commits a material breach. Termination will be effective no sooner than 15 calendar days after a written demand to cure is provided and the party fails to cure. This remedy is in addition to any other remedy which may be provided for by law.

This MOU may be terminated without cause and for any reason by any party. The party desiring early termination without cause must provide written notice to the other parties. Termination will be effective no sooner than 60 calendar days after actual receipt of the written notice.

The parties agree to consider the needs of currently enrolled students when determining a termination date.

The indemnification provisions contained in this MOU shall survive termination.

4. **Course Agreements.** The terms of this MOU are deemed to be part of and fully incorporated into any and all presently existing or future CAs pertaining to the Courses unless expressly modified by a related CA. Related CAs will typically address the time, date, location, number of educational hours, KCCCD credits offered, number of students, and other specifics related to each Course. The terms of this MOU may be modified by individual CA as necessary. Any inconsistency between the MOU and an express provision of a CA will be resolved in favor of this MOU.
5. **Certifications for State Apportionment Purposes**
 - A. DISTRICT certifies that the direct education costs of the courses are not being fully funded through other sources.
 - B. KCCCD certifies that it has not received full compensation for the direct education costs for the conduct of the course from other sources.

- C. The Board of Trustees of DISTRICT will pass a resolution during a regularly scheduled board meeting which will provide that the location where courses are being held under this MOU will be open to the public at all times when courses are in session. The resolution shall be in the form provided in attachment A to this MOU. This resolution shall provide that the provisions of Penal Code 627.2 do not apply to the DISTRICT facilities where courses are being held during those times when courses are in session.
- D. DISTRICT agrees and acknowledges that all courses held under the terms of this MOU must be open to the general public.
- E. DISTRICT will not pay KCCD for the full costs of offering any course under this MOU. DISTRICT agrees and acknowledges that KCCD will claim apportionment for the students enrolled in courses under this MOU. Full costs are defined as compensation covering 80 percent or more of the direct education costs for the course.
- F. If the course instructor is an employee of DISTRICT then KCCD shall reimburse DISTRICT in an amount equal to at least 25% of the cost to DISTRICT for employing the instructor during the time the course is in session. For example, if the instructor's normal load is five class periods plus a prep period then KCCD shall reimburse DISTRICT in an amount equal to 25% of 1/6 of the daily compensation paid by DISTRICT to the instructor for each day the course is taught. The amount to be paid shall be specified in the CA.

6. **Regulatory Requirements for State Apportionment Purposes Applicable to All Courses Conducted Under the Terms of This MOU**

These provisions may not be voided, modified nor waived by a related CA unless otherwise expressly provided herein:

- A. Responsibilities of Each Party. KCCD policies and procedures apply and KCCD is responsible for the Courses. The Courses will comply with all applicable regulations, procedures, prerequisites and standards applicable to KCCD, as well as any corresponding local policies, practices, and requirements of the DISTRICT.
- B. Enrollment Period. The enrollment period shall be determined by KCCD in accordance with its guidelines, policies, pertinent statutes, and regulations.
- C. Number of Course Hours Sufficient to Meet the Stated Performance Objectives. KCCD will determine the performance objectives for each of the Courses and the number of course hours necessary to

meet the performance objectives. The performance objectives and corresponding course hours shall be specified in the related CA.

- D. Supervision and Evaluation of Students. Supervision and evaluation of students shall be in accordance with KCCD guidelines, policies, pertinent statutes, and regulations. All students will be under the immediate supervision of an employee of KCCD. For purposes of this paragraph all DISTRICT employees who are teaching the courses shall be deemed to be employees of KCCD.
- E. Withdrawal Prior to Completion of the Course. A student's withdrawal prior to completion of the Course shall be in accordance with KCCD guidelines, policies, pertinent statutes and regulations.
- F. Right to Control and Direct Instructional Activities. KCCD is responsible for the Courses and has the sole right to control and direct the instructional activities of all instructors, including those who are DISTRICT personnel
- G. Minimum Qualifications for Instructors Teaching Courses. Instructors who are DISTRICT personnel shall either meet the minimum qualifications to provide instruction in a California community college, or shall work under the immediate supervision and control of a KCCD employee who has those minimum qualifications. The minimum qualifications shall be consistent with the requirements in other similar courses offered by KCCD and shall be published or otherwise listed by KCCD. All instructors shall meet the qualification requirements of Title 5 CCR sections 53410 and 58060.
- H. Facilities. DISTRICT will provide adequate classroom space at its facilities, or other mutually agreed upon location, to conduct the contemplated instruction and do so without charge to KCCD or students. DISTRICT agrees to clean, maintain, and safeguard DISTRICT's premises. DISTRICT warrants that its facilities are safe and compliant with all applicable building, fire, and safety codes. All courses will be held at facilities which are clearly identified as being open to the general public. Pursuant to the provisions of Penal Code Section 627.9 (d) the DISTRICT Board of Trustees will pass a resolution before courses are held which exempts all campuses in the District which will be used for courses under this MOU from the provisions of Penal Code Section 627.2. The exemption from Section 627.2 may be limited by the resolution to the time immediately before, immediately after and during the time courses are being held under the terms of this MOU.

- I. Equipment. DISTRICT will furnish, at its own expense, all course materials, specialized equipment, and other necessary equipment for all DISTRICT students. The parties understand that such equipment and materials are DISTRICT's sole property. The instructor shall determine the type, make, and model of all equipment and materials to be used during each Course. DISTRICT understands that no equipment or materials fee may be charged to students except as provided for by KCCD policies and practices. Students in a course who are not enrolled in DISTRICT shall be provided course materials, specialized equipment, and other necessary equipment as specified in KCCD Policies and the applicable student handbook.
- J. Enrollment. Enrollment shall be open to any person who has been admitted to KCCD and meets all applicable prerequisites. Applicable prerequisite courses, training, or experience will be determined by KCCD. Applicants must meet the standards and prerequisites of the KCCD.

KCCD will be responsible for processing student applications. KCCD will provide the necessary admission forms and procedures and both KCCD and DISTRICT will jointly ensure that each applicant accepted has met all the enrollment requirements, including liability and medical care coverage requirements, if any.

KCCD will ensure that each student completes the admissions procedure, the course enrollment process, and otherwise process student applications and enroll students in the Courses, as appropriate. DISTRICT will assist KCCD as necessary. A successful enrollment requires that each student has completed an enrollment application provided by KCCD, the application has been delivered to and accepted by KCCD's Admissions and Registration Office, all enrollment and other applicable fees have been paid, and the applicant has met all requirements, to include the standard KCCD student liability and medical care coverage, if applicable.

- K. Enrollment Fees. Pursuant to KCCD Board Policy (Education Code Section 76300(f)) the enrollment fee for students who are Special Part-Time Students (Education Code 76001) will be waived by KCCD.
- N. Records of Student Attendance and Achievement. All records of student attendance and achievement shall be submitted to KCCD periodically, or upon demand, and shall be maintained by KCCD.
- O. Ancillary Support Services for Students. Both KCCD and DISTRICT shall ensure that students enrolled in the Courses are provided ancillary

and support services as may be needed, including but not limited to counseling and guidance and placement assistance.

- P. Courses Outside KCCD Boundaries. For locations outside the geographical boundaries of KCCD, KCCD will comply with the requirements of Title 5 of the California Code of Regulations, Sections 53000 et seq. concerning approval by adjoining high school or community college districts and use of non-district facilities.
7. **Liaison.** At no cost to the DISTRICT, KCCD will provide the services of faculty members who will facilitate coordination and cooperation between KCCD and DISTRICT. KCCD will provide DISTRICT personnel with reasonable assistance, direction and instruction in how to fulfill their responsibilities under this MOU, including conducting appropriate student assessments, outreach/recruitment activities and the KCCD's application procedures.
8. **Support Staff.** These provisions may not be voided, modified nor waived by a related CA unless otherwise expressly provided herein:
- A. DISTRICT to Provide Support Services. Unless otherwise provided for in a related CA, DISTRICT will provide personnel to perform clerical services and services associated with outreach activities, recruiting students, assessing students, processing student applications, enrolling qualified students, and other related services as may be necessary.
- B. DISTRICT is Responsible for its Own Personnel. DISTRICT's personnel will perform these services on duty time. DISTRICT personnel performing these services will be employees solely of DISTRICT, subject to the authority of DISTRICT, but will also be subject to the direction of KCCD, specifically with regard to their duties pertaining to the Courses described in the related CAs. KCCD has the primary right to control and direct such activities.
9. **Instructors.** These provisions may not be voided, modified nor waived by a related CA unless otherwise expressly provided herein:
- A. KCCD to Select Instructors. KCCD may select instructors from DISTRICT personnel nominated by the DISTRICT, or other sources. DISTRICT personnel will perform instructional duties on duty time. DISTRICT personnel selected to be instructors remain employees solely of the DISTRICT, subject to the authority of the DISTRICT, but will also be subject to the authority of KCCD, specifically with regard to their duties as instructors. KCCD will exercise this authority in consultation with the DISTRICT.

- B. District May Nominate Instructors. DISTRICT shall ensure that all instructor nominees are experienced, competent, dedicated personnel who have the personal attributes necessary for providing instruction in the Courses. DISTRICT shall ensure that all instructor/staff nominees possess any Certificates or other training indicia that may be required including, but not limited to the qualification requirements of Title 5 CCR 53410 and 58060.
- C. KCCD Shall Determine Instructor Requirements. KCCD shall determine the number of instructors, the ratio of instructors to students, and the subject areas of instruction.
- D. DISTRICT is Responsible for its Own Personnel. DISTRICT's personnel will perform these services on duty time. DISTRICT personnel performing their services will be employees solely of DISTRICT, subject to the authority of DISTRICT, but will also be subject to the direction of KCCD, specifically with regard to their duties pertaining to the Courses described in the related CAs. KCCD has the primary right to control and direct such activities.
- E. Orientation Meeting. Instructors shall attend an orientation meeting if scheduled and KCCD shall provide manuals, course outlines, curriculum materials, and testing and grading procedures as necessary.
- F. Instructor Agreement with KCCD. All instructors who are DISTRICT employees must sign an agreement with KCCD which states that KCCD shall have the primary right of control over the instructor's activities while the instructor is teaching a course under the terms of this MOU.
- G. No Other Assigned Duties. Instructors teaching courses under this MOU shall not have any other assigned duty while course instruction is taking place.
- H. Cost of Instruction. If the course instructor is an employee of DISTRICT then KCCD shall reimburse DISTRICT in an amount equal to at least 25% of the cost to DISTRICT for employing the instructor during the time the course is in session. For example, if the instructor's normal load is five class periods plus a prep period then KCCD shall reimburse DISTRICT in an amount equal to 25% of 1/6 of the daily compensation paid by DISTRICT to the instructor for each day the course is taught. The amount to be paid shall be specified in the CA.

11. **Instruction.** The instructional services provided by DISTRICT personnel shall include development of appropriate lectures. The lectures will conform to the approved curriculum and course outlines and recommendations of experienced KCCD instructors. Instructional presentations shall incorporate planned practical demonstrations, as may be necessary, and use audiovisual techniques or equipment and vocational equipment.

All instructional presentations, including practical demonstrations and demonstrations of vocational equipment, are subject to the advance approval of KCCD.

12. **Facilities.** The parties contemplate that primarily, the facilities of the DISTRICT will be utilized to carry out the goals of this MOU and any related CA, although from time to time KCCD facilities may be utilized subject to mutual MOU by the parties as expressed in a related CA. DISTRICT agrees to defend, hold harmless, and indemnify KCCD and its governing board, officers, employees, administrators, independent contractors, subcontractors, and other representatives from all damages, losses, or expenses, including litigation costs such as attorney's fees, should a student, instructor, or third party be injured as a result of or connected with the condition of the DISTRICT's premises, in whole or in part. The indemnity shall survive termination of this MOU and is in addition to any other rights or remedies KCCD may have under law or otherwise.

13. **Workers' Compensation.** DISTRICT shall be the "primary employer" for all its personnel who perform services as instructors and support staff. DISTRICT shall be solely responsible for processing, investigating, defending, and paying all workers' compensation claims by their respective DISTRICT personnel made in connection with performing services and receiving instruction under this MOU or any related CA. DISTRICT agrees to hold harmless, indemnify, and defend KCCD from any liability resulting from its failure to process, investigate, defend, or pay any workers' compensation claims by DISTRICT personnel connected with providing services under this MOU or any related CA. DISTRICT is not responsible for non-District personnel who may serve as instructors or students who are not affiliated with the DISTRICT. These provisions may not be voided, modified nor waived by a related CA.

14. **Indemnification.**

- A. DISTRICT shall defend, hold harmless, and indemnify KCCD, its governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and other representatives from and against any and all liabilities, claims, demands, costs, losses, damages, or expenses, including reasonable

attorney fees and costs, including but not limited to consequential damages, death, sickness, or injury to any person(s) or damage to any property, from any cause whatsoever arising from or connected with the provision of instruction pursuant to this MOU or any related CA that may arise out of or result from, in whole or in part, the negligent, wrongful, or willful acts or omissions of DISTRICT, its employees, agents, subcontractors, independent contractors, consultants, or other representatives.

- B. KCCD shall defend, hold harmless, and indemnify DISTRICT, their governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and other representatives from and against any and all liabilities, claims, demands, costs, losses, damages, or expenses, including reasonable attorney fees and costs, including but not limited to consequential damages, death, sickness, or injury to any person(s) or damage to any property, from any cause whatsoever arising from or connected with its responsibilities hereunder that may arise out of or result from, in whole or in part, the negligent, wrongful, or willful acts or omissions of KCCD, its employees, agents, subcontractors, independent contractors, consultants, or other representatives.
- C. DISTRICT shall have no obligation to defend, hold harmless, or indemnify KCCD, its governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and/or other representatives for their sole negligence or willful misconduct; and KCCD shall have no obligation to defend, hold harmless, or indemnify DISTRICT, its governing board, officers, administrators, agents, employees, independent contractors, subcontractors, consultants, and/or other representatives for their sole negligence or willful misconduct.
- D. This indemnity shall survive termination of this MOU or any related CA, and is in addition to any other rights or remedies that DISTRICT or KCCD may have under law and/or otherwise.
- E. These provisions may not be voided, modified nor waived by any related CA.

15. Insurance Requirements.

- A. Each party shall obtain, pay for, and maintain in effect during the life of this MOU the following policies of insurance issued by an insurance company rated not less than "A-;V" in Best Insurance Rating Guide and admitted to transact business in California: (1) commercial general liability (including contractual, products, and completed operations coverages, bodily injury, and property damage liability) with single combined limits not less than \$1,000,000 per occurrence; (2) commercial automobile liability for "any auto" with combined single limits of liability not less than \$1,000,000 per occurrence; (3) professional liability (errors and omissions) with a limit of liability not less than \$1,000,000 per occurrence; and (4) workers' compensation insurance as required under state law.
- B. Each party's policy(ies) shall contain an endorsement naming the other party as an additional insured insofar as this MOU is concerned, and provide that written notice shall be given to the other party at least 30 days prior to cancellation or material change in the form of the policy or reduction in coverage. Each party shall furnish the other with a certificate of insurance containing the endorsements required under this section, and each party shall have the right to inspect the other party's original insurance policies upon request. Upon notification of receipt of a notice of cancellation, change, or reduction in a party's coverage, that party shall immediately file with the other party a certified copy of the required new or renewal policy and certificates for such policy.
- C. Nothing in this section concerning minimum insurance requirements shall reduce a party's liability or obligations under the indemnification provisions of this MOU.
- D. The parties acknowledge that both parties are permissibly self-insured under California law.
- E. These provisions may not be voided, modified nor waived by a related CA.

- 16. Discrimination and Harassment.** Each party agrees it will not unlawfully discriminate, harass, or allow harassment against any employee or other person because of sex, race, color, ancestry, religious creed, national origin, mental or physical disability (including HIV and AIDS), marital status, or age, and shall comply with all applicable laws pertaining to employment.

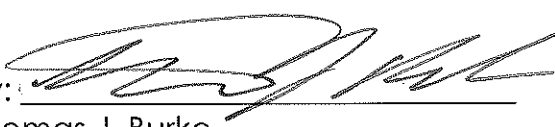
17. **Entire Agreement.** This MOU and any related CAs constitute the entire agreement between the parties with regard to the Courses and supersedes any prior or contemporaneous understanding or agreement. No party has been induced to enter into this MOU by, nor is any party relying on, any representation or promise outside those expressly set forth in this MOU and any related CA.
18. **Amendment.** The provisions of this MOU may be modified only by mutual MOU of the parties. No modification shall be binding unless it is in writing and signed by the party against whom enforcement of the modification is sought.
19. **Waiver.** Unless otherwise precluded by the terms of this MOU, terms or conditions may be waived by the party entitled to the benefit of the term or condition, but no such waiver shall affect or impair the right of the waiving party to require observance, performance, or satisfaction of that term or condition as it applies on a subsequent occasion.
20. **Assignment.** Neither party may assign any rights or benefits or delegate any duty under this MOU without written consent of the other party. Any purported assignment without written consent shall be void.
21. **Parties in Interest.** Nothing in this MOU, whether express or implied, is intended to confer any rights or remedies under or by reason of this MOU on any person other than the parties to it and their respective successors and assigns, nor is anything in this MOU intended to relieve or discharge the obligation or liability of any third person to any party to this MOU, nor shall any provision give any third person any right to subrogation or action against any party to this MOU.
22. **Severability.** If any provision of this MOU is held by an arbitrator or court of competent jurisdiction to be invalid or unenforceable, the remainder of the MOU shall continue in full force and effect and shall in no way be impaired or invalidated.
23. **Notices.** Any notice under this MOU shall be in writing, and any written notice or other document shall be deemed to have been duly given on the date of personal service on the parties or on the second business day after mailing if the document is mailed by registered or certified mail, addressed to the parties at the addresses set forth below, or at the most recent address specified by the addressee through written notice under this provision. Failure to conform to the requirement that mailings be done by registered or certified mail shall not defeat the effectiveness of notice actually received by the addressee.

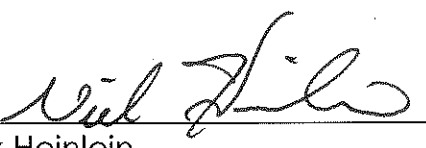
24. **Authority to Enter Into MOU.** Each party to this MOU represents and warrants that it has the full power and authority to enter into this MOU and to carry out the transactions contemplated by it and that it has taken all action necessary to authorize the execution, delivery, and performance of this MOU.
25. **Status of the Parties.** Neither party is a partner, joint venture, co-principal, employer, or co-employer of the other or of an employee of the other party. DISTRICT shall be solely responsible for paying all salaries, wages, benefits, and other compensation which its employees or subcontractors may be entitled to receive in connection with performing services under this MOU and any related CA. DISTRICT shall be solely responsible for withholding and paying all applicable payroll taxes and contributions, including federal, state, and local income taxes, FICA, FUTA, and state unemployment, workers' compensation, and disability insurance in connection with performing services under this MOU and any related CA.
26. **Retention and Audit of Records.** Each party shall maintain records pertaining to this MOU and related CAs as may be required by federal and state law. Each party may review and obtain a copy of the other party's pertinent records subject to federal and state privacy statutes.
27. **Governing Law and Venue.** This MOU will be governed by and construed in accordance with California law and venue of any action or proceeding in connection with this MOU shall be Kern County, California.

IN WITNESS WHEREOF, the parties hereto have caused this MOU to be executed the day and year first above written.

AGREED TO AND ACCEPTED:
KERN COMMUNITY COLLEGE DISTRICT

AGREED TO AND ACCEPTED:
TEHACHAPI UNIFIED SCHOOL DISTRICT

By: 
Thomas J. Burke
Chief Financial Officer
2100 Chester Avenue
Bakersfield, CA 93301
(661) 336-5117

By: 
Nick Heinlein
Chief Administrator, Business Services
300 S. Robinson Street
Tehachapi, CA 93561
(661) 822-2100

Regular Board Meeting
May 12, 2015 5:00 PM
Claude L. Wells Education Center
700 S. Robinson Street
Tehachapi, CA 93561

Agenda Item: **X.2. Adoption of Resolution Number 19MAY15, Regarding Dual Enrollment Exemption from Penal Code Section 627.2**

Speaker: Scott Heitman

Rationale: The Tehachapi Unified School District and the Kern Community College District are entering into a Memorandum of Understanding for Dual Enrollment of students in college courses. The MOU requires TUSD to provide an open campus during those hours when college courses are conducted. This Resolution would exempt the designated portions of school grounds from the operation of Penal Code 627.2.

Recommended Motion: It is recommended that the Tehachapi Unified School District Board of Trustees adopt Resolution Number 19MAY15, and authorize the Superintendent, or her designee, to execute all pertinent documentation.

Quick Summary / Abstract: Roll Call Vote

It was moved by Trustee Wallek, seconded by Trustee Kermode, the Board adopt the Resolution Number 19MAY15, and authorize the Superintendent, or her designee, to execute all pertinent documentation.

Motion carried Denied

Attachments:
Res 19MAY15 MOU Dual Enrollment Exemption from Penal Code 627.2

SCANNED
5/15/15

APPROVED BY TUSD BOARD OF TRUSTEES
DATE: May 15, 2015
(DME)
012

**TEHACHAPI UNIFIED SCHOOL DISTRICT
BOARD OF TRUSTEES**

**RESOLUTION NUMBER 19MAY15
REGARDING DUAL ENROLLMENT EXEMPTION FROM PENAL CODE SECTION 627.2**

Whereas the Tehachapi Unified School District and the Kern Community College District have entered into a memorandum of understanding for dual enrollment of students in college courses (MOU); and

Whereas pursuant to the provisions of the MOU the Tehachapi Unified School District is required to provide an open campus during those hours when college courses are conducted; and

Whereas access to the campuses of the Tehachapi Unified School District by the public is currently restricted as provided in section 627.2 of the California Penal Code; and

Whereas the governing board (the "Board") is authorized to exempt the designated portions of school grounds from the operation of Penal Code section 627.2 during some or all school hours pursuant to the provisions of section 627.9 (d) of the California Penal Code; and

Whereas the Board has determined that is in the best interests of District to provide an open campus during those hours when college courses are conducted;

NOW, THEREFORE the Board hereby finds, determines, declares and resolves as follows:

Section 1. Recitals. All of the above recitals are true and correct and this Board so finds and determines.

Section 2. Exemption from Penal Code section 627.2. Those campuses where college courses are held pursuant to the terms of the MOU shall be exempted from the provisions of Penal Code section 627.2 during those hours when classes are conducted as provided in Penal Code section 627.9 (d).

The foregoing resolution was adopted by the Board of Trustees of the Tehachapi Unified School District on the 12th day of May, 2015 by the following vote:

Ayes: 6

Noes: 0

Absent: 1

Abstentions: 0