#### **RESOLUTION NO. 2016-146**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
ADOPTING UPDATES TO THE CITY'S TRANSIT PASS OUTLET AGREEMENT
AND SALES OUTLET PROGRAM GUIDELINES; AUTHORIZING THE CITY'S
TRANSIT SYSTEM MANAGER TO EXECUTE TRANSIT PASS OUTLET
AGREEMENTS WITH OUTLETS FOR THE SALE OF E-TRAN/E-VAN TRANSIT
FARE MERCHANDISE; AND AUTHORIZING THE CITY'S TRANSIT SYSTEM
MANAGER TO MAKE MINOR MODIFICATIONS OR AMENDMENTS TO THE
TRANSIT PASS OUTLET AGREEMENT AND SALES OUTLET
PROGRAM GUIDELINES

WHEREAS, to encourage ridership and accommodate the needs of passengers, the City allows approved businesses and other government agencies to serve as sales outlets for e-tran/e-van transit fare merchandise ("TFM") ("Outlet," or collectively as "Outlets"); and

**WHEREAS**, an Outlet's sale of TFM is subject to specific terms and conditions established in the City's Sales Outlet Program Guidelines, and a Transit Pass Outlet Agreement executed between the City and the individual Outlet; and

**WHEREAS**, to improve greater accountability and reconciliation, the City has updated the form of the Transit Pass Outlet Agreement, as attached hereto as Exhibit A, and Sales Outlet Program Guidelines, as attached hereto as Exhibit B.

**NOW, THEREFORE BE IT RESOLVED** that the City Council of the City of Elk Grove hereby adopts the City's updated Transit Pass Outlet Agreement, in the form attached hereto as Exhibit A, and the updated Sales Outlet Program Guidelines, in the form attached hereto as Exhibit B; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Elk Grove authorizes the City's Transit System Manager to execute the updated Transit Pass Outlet Agreement with present and future Transit Pass Outlets for the sale of e-tran/e-van transit fare merchandise; and

**BE IT FURTHER RESOLVED** that the City Council of the City of Elk Grove authorizes the Transit System Manager to make minor modifications or amendments to the Transit Pass Outlet Agreements and Sales Outlet Program Guidelines, subject to the review and approval of the City Manager and City Attorney.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 24<sup>th</sup> day of August 2016.

GARY DAVIS, MAYOR of the CITY OF ELK GROVE

APPROVED AS TO FORM:

JONATHAN P. HOBBS,

ÇİTY ATTORNEY

TTECT

JASON LINDGREN, GITY CLERK

#### **EXHIBIT A**

# CITY OF ELK GROVE TRANSIT PASS OUTLET AGREEMENT

This Sales Outlet Agreement ("Agreement") between the CITY OF ELK GROVE, hereafte
"CITY" and
(Business or Outlet Name), hereafter "OUTLET", is made and entered into as of

#### RECITALS

Whereas, the CITY provides public transportation services through its e-tran/e-van transportation system; and

Whereas, to encourage ridership and accommodate the needs of passengers, the CITY offers multiple locations and methods for passengers to purchase the CITY's e-tran transit fare merchandise, including monthly, 10-ride, and daily passes ("Transit Fare Merchandise" or "TFM"); and

Whereas, OUTLET is a business or government agency desiring to serve as a location that offers Transit Fare Merchandise for sale to e-tran/e-van passengers; and

Whereas, the CITY agrees to OUTLET serving as a sales outlet location ("Sales Outlet") where e-tran/e-van passengers may purchase Transit Fare Merchandise, subject to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises set forth herein, CITY and OUTLET agree to as follows:

#### 1. Terms and Conditions

OUTLET agrees to abide by all terms and conditions pertaining to Sales Outlets which sell TFM; the terms and conditions are set forth in this Agreement and include the CITY's Sales Outlet Program Guidelines ("Program Guidelines"), which are attached hereto and incorporated herein by this reference as "Exhibit A".

CITY may amend the Program Guidelines at any time, in its sole discretion, and OUTLET agrees to comply with any new or modified Program Guidelines within 5 calendar days of its receipt of the amended Program Guidelines unless OUTLET provides written notice to CITY within 5 calendar days of its receipt of the amended Program Guidelines of OUTLET's intent to terminate this Agreement in the manner set forth in Section 3 herein. In the event of a conflict between this Agreement and the Program Guidelines, the terms and conditions of the Program Guidelines shall control.

Upon OUTLET's receipt of CITY's TFM, OUTLET shall be solely responsible to CITY for the cash value of the TFM, and upon demand and/or in compliance with the time lines set forth in the Program Guidelines, OUTLET shall submit to CITY all unsold TFM and/or payment for the full value of the TFM received by OUTLET. OUTLET shall remit all payments to CITY by check made payable to the "CITY OF ELK GROVE." In no event shall OUTLET submit payment by cash. CITY shall not be responsible for lost or stolen cash, checks and/or TFM after acceptance by OUTLET. It shall be the sole responsibility of OUTLET to pay for any lost or stolen TFM. OUTLET shall track and account for all payments and for each of the TFM received, which tracking shall include, without limitation, a tracking of the TFM individualized serial numbers and other information set forth in the Program Guidelines.

The Program Guidelines are intended to be used, in part, as the minimum standard of care OUTLET must exercise to ensure full accountability to CITY for the TFM, and OUTLET shall undertake all additional actions it deems necessary to protect against theft, loss and other mishandling of the TFM, and payments received therefore, provided those actions are consistent with the Program Guidelines and ensure (1) payment to CITY for all sold TFM, and (2) accounting for, and return to, CITY of all unsold TFM.

#### 2. Independent Contractor

In selling TFM, OUTLET shall act as an independent contractor and not as an employee of CITY. In particular, CITY shall not be responsible by providing workers' compensation insurance or any other protective insurance coverage or employment benefit payable to employees of OUTLET that is based upon the relationship of employer and employee. OUTLET shall assume all responsibility of payment of wages to its employees and for federal and state income tax withholding. OUTLET hereby agrees to indemnify and hold CITY, its officers, agents, employees, contractor, volunteers or OUTLETs, harmless from any and all claims that may be made against CITY based upon any contention by any employee of OUTLET or by any third party, including but not limited to any State or Federal agency, that an employer – employee relationship or a substitute therefore exists for any purpose whatsoever by reason of this Sales Outlet Agreement or by reason of the nature and/or performance of any obligation under this Agreement.

## 3. Termination and Suspension of the Agreement

This Agreement may be terminated by either Party, provided that the terminating Party gives the other Party not less than thirty (30) calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate. Upon termination, OUTLET shall immediately, but in no event later than 10 business days, remit to CITY payment for all TFM received by CITY, less the value of unsold TFM returned to CITY.

The CITY may temporarily suspend this Agreement provided that OUTLET is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, OUTLET shall immediately suspend its activities under this Agreement and, upon request by CITY, OUTLET shall immediately, but in no event later than 10 business days, remit to CITY payment for all TFM received by CITY, less the value of unsold TFM returned to CITY. A temporary suspension may be issued concurrent with the notice of termination provided for in herein.

Notwithstanding the foregoing, CITY, in its sole discretion, may immediately terminate or suspend this Agreement without prior notice to OUTLET for nonpayment, violation of any term or condition of this Agreement or the Program Guidelines, or as necessary to protect the interests of the CITY. In the event of an immediate suspension or termination, OUTLET shall immediately suspend its activities under this Agreement and OUTLET shall immediately, but in no event later than 10 business days, remit to CITY payment for all TFM received by CITY, less the value of unsold TFM returned to CITY.

Notwithstanding any provisions of this Agreement, OUTLET shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of this Agreement by OUTLET.

### 4. Compliance With Law

OUTLET shall comply with all applicable laws, ordinances, and codes of federal, State and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Agreement.

#### 5. Assignment And Subcontracting:

Except as expressly authorized herein, OUTLET's obligations under this Agreement are not assignable or transferable, and OUTLET shall not subcontract any work, without the prior written approval of the City.

### 6. Indemnity And Litigation Costs

To the fullest extent permitted by law, OUTLET shall indemnify, protect, defend, and hold harmless CITY, its officers, officials, agents, employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation, court costs and reasonable attorneys' and expert witness fees, arising out of any failure to comply with applicable law, any injury to or death of any person(s), damage to property, loss of use of property, economic loss or otherwise arising out of the performance of this Agreement, to the extent caused by a negligent act or negligent failure to act, errors, omissions, recklessness or willful misconduct incident to the performance of this Agreement on the part of OUTLET, except such loss or damage which was caused by the sole negligence, or willful misconduct of the CITY. The provisions of this section shall survive termination or suspension of this Agreement.

#### 7. Records And Inspection

OUTLET shall maintain records, books, documents and other evidence directly pertinent to the performance of this Agreement in accordance with generally accepted accounting principles and practices. CITY shall have the right to access and examine such records, without charge, during normal business hours. CITY shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

#### 8. Miscellaneous Provisions

a. <u>Attorneys' Fees</u>: In the event an action or proceeding is instituted by either party for the breach or enforcement of any provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and all litigation expenses, including, but not limited to expert's fees and disbursements.

- b. <u>Venue</u>: This Agreement shall be deemed to be made in, and the rights and liabilities of the Parties, and the interpretation and construction of the Agreement governed by and construed in accordance with the laws of the State of California. Any legal action arising out of this Agreement shall be filed in and adjudicated by a court of competent jurisdiction in the County of Sacramento, State of California.
- c. <u>Enforceability</u>: If any term or provision of this Agreement is found to be void, voidable, invalid or unenforceable by a court of competent jurisdiction under the laws of the State of California, any and all of the remaining terms and provisions of this Agreement shall remain binding.
- d. <u>Time</u>: All times stated in this Agreement, including any exhibits attached hereto, are of the essence.
- e. <u>Binding</u>: This Agreement shall bind and inure to the heirs, devisees, assignees and successors in interest of OUTLET and to the successors in interest of City in the same manner as if such parties had been expressly named herein.
- f. <u>Survivorship</u>: Any responsibility of OUTLET for warranties, insurance, indemnity, record-keeping or compliance with laws with respect to this Agreement shall not be invalidated due to the expiration, termination or cancellation of this Agreement.
- g. <u>Construction and Interpretation</u>: OUTLET and City agree and acknowledge that the provisions of this Agreement have been arrived at through negotiation and that each party has had a full and fair opportunity to revise the provisions of this Agreement and to have such provisions reviewed by legal counsel. Therefore, any ambiguities in construing or interpreting this Agreement shall not be resolved against the drafting party. The titles of the various sections are merely informational and shall not be construed as a substantive portion of this Agreement.
- h. <u>Waiver</u>: The waiver at any time by any party of any of its rights with respect to a default or other matter arising in connection with this Agreement shall not be deemed a wavier with respect to any subsequent default or other matter.
- i. <u>Severability</u>: The invalidity, illegality or unenforceability, of any provision of this Agreement shall not render the other provisions invalid, illegal or unenforceable.
- j. No Third Party Beneficiary: It is expressly understood and agreed that the enforcement of these terms and conditions shall be reserved to the CITY and OUTLET. Nothing contained in this Agreement shall give or allow any claim or right of action whatsoever by any third party. It is the express intent of the CITY and the OUTLET that any such person or entity, other than the CITY or OUTLET, receiving benefits or services under this agreement shall be deemed as incidental beneficiary.

- k. <u>Non-Discrimination/Non-Preferential Treatment Statement</u>: In performing this Agreement, the parties shall not discriminate or grant preferential treatment on the basis of race, sex, color, age, religion, sexual orientation, disability, ethnicity, or national origin, and shall comply to the fullest extent allowed by law, with all applicable local, state, and federal laws relating to nondiscrimination.
- Authority to Execute: The person or persons executing this Agreement on behalf of the OUTLET warrant and represent that they have the authority to execute this Agreement on behalf of their agency and further warrant and represent that they have the authority to bind OUTLET to the performance of its obligations hereunder.
- m. <u>Dispute Resolution</u>: Prior to either party commencing any legal action under this Agreement, the parties agree to try in good faith, to settle any dispute amicably between them. If a dispute has not been settled after forty-five (45) days of good-faith negotiations and as may be otherwise provided herein, then either party may commence legal action against the other.
- n. <u>Amendments, Changes, or Modifications</u>: Amendments, changes or modifications in the terms of this Agreement may be made at any time by mutual written agreement between the parties hereto and shall be signed by the persons authorized to bind the parties. Notwithstanding the foregoing, the Program Guidelines may be changed unilaterally by CITY as provided for in Section 1 of this Agreement.

#### 9. **NOTICES**

OUTLET shall submit payment, return unsold TFM, and submit any notices required by this Agreement to City as follows:

City of Elk Grove Attn: Transit Manager 8401 Laguna Palms Way Elk Grove, California 95758

CITY shall submit TFM and	d any notices required by this Agreement to OUT	LET as follows
		_
		_
		_

# 10. Entire Agreement:

This instrument and any attachments hereto constitute the entire Agreement between CITY and OUTLET concerning the subject matter hereof and supersedes any and all prior oral and written communications between the Parties regarding the subject matter hereof.

GREED to this day of	_, 20, by the Parties as follows:
OUTLET	CITY OF ELK GROVE
Ву:	By:
	Jean Foletta, Transit System Manage
	Approved as to form:
Applicant Name	
	By:
Title	Jonathan P. Hobbs, City Attorney
	Attest to:
Business/Outlet Name	
	— Ву:
Business/Outlet Contact Name	Jason Lindgren, City Clerk
and Telephone Number	

#### **EXHIBIT B**

# CITY OF ELK GROVE SALES OUTLET PROGRAM GUIDELINES FOR E-TRAN/E-VAN TRANSIT FARE MERCHANDISE

#### 1. Program Background

The City of Elk Grove ("CITY") provides public transportation services through its e-tran/e-van transportation system. To encourage ridership and accommodate the needs of passengers, the City offers multiple locations and methods to enable passengers to conveniently purchase the City's e-tran transit fare merchandise, which consists of monthly, 10-ride and daily passes ("Transit Fare Merchandise" or "TFM"). Accordingly, the City will allow approved businesses and other government agencies to sell e-tran/e-van TFM ("Outlet" or "Outlets"), subject to the terms and conditions of these Program Guidelines and a Sale Outlet Agreement signed by the City and the Outlet.

#### 2. Becoming an e-tran/e-van Sales Outlet

A business or government agency interested in becoming an Outlet shall submit a written request to the City. The City will review the request and, if the request is approved, the City shall provide the proposed Outlet with a Sales Outlet Agreement for review and execution by a person authorized to bind the business or government agency. The signed original Sales Outlet Agreement must be returned to the City for final review and approval by the City. Once the Sales Outlet Agreement is fully executed, the requesting business or government agency shall be an Outlet eligible to receive and sell TFM.

#### 3. Ordering Merchandise

After the Outlet is established to sell *e-tran/e-van* TFM, the Outlet must fully complete the *e-tran/e-van* Consignment Order Form, attached hereto as "Attachment 1," and return the form to the City by fax at (916) 691-3173. Additional forms are available by contacting the City at (916) 687-3009.

#### 4. Delivery of Transit Fare Merchandise

The Outlet will receive *e-tran/e-van* TFM and the Consignment Delivery Form based on the Outlet's order, which order may be modified in the City's sole discretion (e.g., the City may reduce the amount requested).

If the Outlet is located within the City of Elk Grove, a representative of the City will make an appointment to personally deliver the TFM. Upon delivery, the Outlet shall verify the quantities and individual serial numbers of the TFM received, and sign a receipt in the form provided by the City.

If the Outlet is located outside the City of Elk Grove, at the City's discretion, the TFM may be personally delivered to the Outlet in the manner set forth above, or the City may opt to send the TFM to the Outlet by overnight courier. In the event the TFM is sent by overnight courier, the Outlet shall immediately verify the order, and sign and return the enclosed receipt to the City at the fax number or address stated on the receipt. It is important that

before accepting an order, the Outlet verify that the order is complete and correct, and that the TFM received matches the invoice that accompanies the order. Once received, the Outlet is responsible for the full value of the TFM. Should the Outlet find any discrepancy, the Outlet must contact the City's Transit Services Department at (916) 687-3009 within 5 days after delivery of the TFM to report the discrepancy; the order shall be deemed complete as reported by the City if any discrepancy is not reported to the City within the required 5 days, whether or not the Outlet signs and returns the TFM order receipt.

#### E-tran/e-van Monthly Reconciliation

After transit fare merchandise has been accepted, it is the sole responsibility of the Outlet to sell the TFM. If passes are lost or stolen, the City of Elk Grove will not replace them, and the Outlet shall reimburse the City for the full value of the lost or stolen TFM.

Outlets shall provide City with a monthly reconciliation of all TFM received by the Outlet, in the form attached herein as "Attachment 2." The City may revise the monthly reconciliation form, in its discretion, and Outlet shall utilize the form provided by the City.

When preparing monthly reconciliation forms, Outlets shall comply with the following:

- Monthly reconciliation forms must be completed and returned to the City of Elk Grove by each 15th of the following month, at the address stated on the monthly reconciliation form.
- Each month, Outlets shall return to the City all unsold passes for the month along with payment for passes sold, lost and/or stolen. This reconciliation shall match the number of TFM received.
- Outlets shall submit payment to the City by check, made payable to the "City of Elk Grove." Cash will not be accepted and the City shall not be liable to Outlet for payments send in cash in violation of this term.
- Outlets must submit one payment for each invoice. (Do not send multiple personal checks from individual sales.)
- 5. Outlets agree to allow the City, or City's designee, the ability to audit the Outlet's records and inventory at any time. Outlets shall fully cooperate with any audit and provide City, or its designee, with any requested information and/or documentation.
- 6. <u>e-tran Monthly Pass Prices</u> Outlets shall sell the monthly TFM at the rates determined by the City, which rates are subject to change with a 30-day prior notice. The current rates are included below. The City will update these Program Guidelines as rates are modified, and provide a copy to Outlet.

Commuter 31-Day Pass		<u>Local 31-Day Pass</u>				
General Public	\$100.00	General Public	\$80.00			
Senior/Disabled/Discount*	\$ 50.00	Senior/Disabled/Discount*	\$40.00			
Student**	\$ 50.00	Student**	\$40.00			

(The 31-Day Pass is good for unlimited rides for 31 days from the date of first use)

7. <u>e-tran 10- Ride Passes</u> Outlets shall sell the 10-Ride e-Tran Passes TFM at the rates determined by the City, which rates are subject to change with a 30-day prior notice. The current rates are included below. The City will update these Program Guidelines as rates are modified, and provide a copy to Outlet.

(10-Ride Pass - Customer inserts the pass in the farebox card slot each time they ride. The number of remaining rides will show on the back of the pass).

General Public	\$ 22.50
Senior/Disabled/Discount*	\$ 11.00
Student**	\$ 11.00

\* Discount Eligibility Requirements: Seniors (age 62 years old and older)

Show RT Discount Card, Senior ID card or birth certificate.

Persons with Disabilities – Show RT Discount Card, DMV placard or Medicare Card.

- \*\* Student Eligibility Requirements: <u>Student (ages 5-18 years old)</u>
  Show student ID card or birth certificate.
- 8. <u>e-van 10-Ride Passes\*</u> Outlets shall sell the 10-Ride e-Van Passes TFM at the rates determined by the City, which rates are subject to change with a 30-day prior notice. The current rates are included below. The City will update these Program Guidelines as rates are modified, and provide a copy to Outlet.
- \* Passengers must be certified eligible for *e-van* service in order to use these passes.

Local \$35.00 Regional \$75.00

Sales: The actual structure of sales hours, locations, personnel etc., shall be determined by Outlet.

#### 10. Return Check Policy

Outlet shall pay City a \$25.00 service charge for all returned checks. The City, in its discretion, may exercise all lawful actions necessary to collect amounts owed to the City, and may send unpaid accounts to a collection agency.

#### 11. Helpful Materials

Riders Guides, **e-van** Riders Guides and System Maps will be provided to **e-tran/e-van** Sales Outlets free of charge. Occasionally, some marketing materials may also be available. Call (916) 687-3009 to place an order for materials.

*e-tran/e-van* Customer Service Representatives are available to assist with route and schedule information. Call (916) 683-8726 or 511.



# City of Elk Grove *Transit Department* 8401 Laguna Palms Way Elk Grove, CA 95758 Phone (916) 687-3009 Fax: (916) 691-3173

e-tran/e-van Consignment ORDER FORM

FROM:			P	MONTH:			
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		REQUESTED		PRICE	TO	OTAL	
LOCAL 31-DAY PASS	ES	•					
General P	ublic		\$	80.00	\$	-	
Student			\$	40.00	\$	-	
Senior/Di	sabled		\$	40.00	\$	_	
					\$	-	
COMMUTER 31-DAY	PASSES						
General P	ublic		\$	100.00	\$	-	
Student			\$	50.00	\$		
Senior/Di	sabled		\$	50.00	\$	-	
					\$	-	
10-RIDE PASSES							
General P	ublic		\$	22.50	\$		
Student			\$	11.00	\$	-	
Senior/Di	sabled		\$	11.00	\$	-	
					\$	-	
E-VAN PASSES			_		<del>, -</del>		
10-Ride L	ocal		\$	35.00	\$	-	
10-Ride R	egional		\$	75.00	\$		
44-Ride e	-van	<u> </u>	\$	150.00	\$		
					\$	-	
		Total Due	he City	of Elk Grove	\$	-	
Printed Name		Signature				Date	



# e-tran/e-van Consignment Reconcilliation Form

ATTN: Cashier Dept City of Elk Grove Transit Department 8401 Laguna Palms Way Elk Grove, CA 95758 Phone (916) 627-3427

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FROM: Agency !	Name						MONTH			}
Agency (									<u> </u>	
Telepho	ne #								15TH OF	OMPLETED AND RETURNED THE FOLLOWING MONTH VITH PAYMENT
							<del> </del>			
		QTY OF PASSES RETURNED		PRICE	TOTAL AMOUNT RETURNED	PASSES SOLD	SEQUENCE NUMBERS SOLD		PRICE	TOTAL AMOUNT SOLD
LOCAL 3:	1-DAY PASSES									
	General Public		\$	80.00	\$0.00	0		\$	80.00	\$ -
	Student		\$	40.00	\$0.00	0		\$	40.00	\$ -
	Senior/Disabled	<u> </u>	\$	40.00	\$0.00	0		\$	40.00	\$ -
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	Senior/Disabled		\$	11.00	\$0.00	0		\$	11.00	-
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	44-Ride e-van		기 >	150.00	\$0.00			Þ	150.00	\$ -
					[3					
	By signature, par	rties hereto certify	the c	uantities and	l amounts hereto:	To	otal Invoice (Order) Amo	ount		
	1.0	•		•			Total Sold Amount			\$ -
							Total Return Amount			\$ -
	Agency Represe	ntative Name			_		Total Due the City	of E	lk Grove	
İ										\$ -
	Signature				– — Date					
	Signature				bute					
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						( e-tran use only	r)			
						Invoice Date		_		
						Amount Collecte	ed \$	_		
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# CERTIFICATION ELK GROVE CITY COUNCIL RESOLUTION NO. 2016-146

STATE OF CALIFORNIA	)	
COUNTY OF SACRAMENTO	)	SS
CITY OF ELK GROVE	Ć	

I, Jason Lindgren, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on August 24, 2016 by the following vote:

AYES: COUNCILMEMBERS: Davis, Ly, Detrick, Hume, Suen

NOES: COUNCILMEMBERS: None

ABSTAIN: COUNCILMEMBERS: None

ABSENT: COUNCILMEMBERS: None

Jason Lindgren, City Clerk City of Elk Grove, California