

RESOLUTION NO. 05 - 108

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
EL CENTRO APPROVING THE JOINT POWERS AGREEMENT
ESTABLISHING THE IMPERIAL VALLEY FOREIGN TRADE
ZONE AUTHORITY WITH THE COUNTY OF IMPERIAL,
CITIES OF BRAWLEY, CALEXICO AND CALIPATRIA

WHEREAS, the City of El Centro, County of Imperial, Cities of Brawley, Calexico and Calipatria (hereinafter referred to as the "Agencies"), desire to create a public entity, separate and apart from the Agencies, to be known as the Imperial Valley Foreign Trade Zone Authority (hereinafter referred to as the "Authority") for purpose of expediting and to encourage foreign commerce; and

WHEREAS, it is necessary for the City Council of the City of El Centro (hereinafter referred to as "City Council"), to approve a Joint Powers Agreement with the Agencies in order to create the Authority (hereinafter referred to as "Agreement"); and

WHEREAS, on October 9, 2003, the County of Imperial was awarded a Grant of Authority, from the Foreign Trade Zones Board, for the establishment of the Imperial County Foreign Trade Zone #257; and

WHEREAS, the establishment of the Imperial County Foreign Trade Zone provides an opportunity for economic development in the designated foreign trade zone sites to encourage foreign commerce wherein goods in foreign commerce might be stored within the boundaries of the United States without the payment of custom duties until or unless any such goods passed from that zone into customs territory of the United States; and

WHEREAS, for Imperial County Foreign Trade Zone(s) to be successful, all Member local public agencies to this Agreement must cooperate with planning, activation and operation with the best interest of the Imperial County Foreign Trade Zone(s) being the primary goal of this Authority; and

WHEREAS, each of the member local public Agencies herein is authorized and empowered to contract with any or all other member local public Agencies for the joint exercise of powers under Article I and II, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the California Government Code; and

WHEREAS, each of the member local public Agencies recognize the immediate necessity for the coordinated planning for activation and operation of the Authority; and

WHEREAS, the Agencies expect Imperial Valley residents to

experience a maximum benefit from the establishment of the Authority by permitting storage, exhibition, sale and general dealing in regard to foreign commerce without subjecting it to United States Customs laws; and

WHEREAS, there exists a need for local public agencies to work in concert to ensure the proper operation of the Imperial County Foreign Trade Zone; and

WHEREAS, the City Council finds that its approval of said Agreement will be in the best interest of the City of El Centro, California.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF EL CENTRO DOES HEREBY RESOLVE AS FOLLOWS:


1. That the foregoing is true, correct and adopted.
2. That the City Council of the City of El Centro, California, does hereby approve the Joint Powers Agreement between the County of Imperial, Cities of Brawley, Calexico, Calipatria and El Centro in order to create the Imperial Valley Foreign Trade Zone Authority.
3. That the City Manager of the City of El Centro, California, or his designee, is hereby authorized to sign said agreement, a copy of which is on file in the Office of the City Clerk, on behalf of the City of El Centro, California.

PASSES AND ADOPTED at an adjourned regular meeting of the City Council of the City of El Centro, California, held on the 11th day of October, 2005.

CITY OF EL CENTRO

By 
Cheryl Viegas-Walker, Mayor

ATTEST:

By 
Rita M. Noden, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

By 

STATE OF CALIFORNIA)
COUNTY OF IMPERIAL) ss
CITY OF EL CENTRO)

I, Rita M. Noden, City Clerk of the City of El Centro, California, do hereby certify that the foregoing Resolution No. 05-108 was duly and regularly adopted at an adjourned regular meeting of the City Council of the City of El Centro, California, held on the 11th day of October, 2005, by the following vote:

AYES: Edney, Sanders, Viegas-Walker, Moore, Castillo

NOES: None

ABSENT: None

ABSTAINED: None

By *Rita M. Noden*
Rita M. Noden, City Clerk

JOINT POWERS AGREEMENT

IMPERIAL VALLEY FOREIGN TRADE ZONE AUTHORITY

This Joint Powers Agreement ("Agreement") is entered into by and among the public agencies to establish and become Members of the Imperial Valley Foreign Trade Zone Authority ("Authority").

In order to establish the Authority, the County of Imperial, the City of Brawley, the City of Calipatria, the City of Calexico, and the City of El Centro, by action of their governing bodies must approve this Agreement. This agency may be formed by two or more agencies and any agency not electing to join at formation may join only after the 5th year following formation.

PREAMBLE

WHEREAS, the Foreign-Trade Zones Act provides for the establishment of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce; and

WHEREAS, on October 9, 2003, the County of Imperial was awarded a Grant of Authority, from the Foreign-Trade Zones Board, for the establishment of the Imperial County Foreign Trade Zone # 257; and

WHEREAS, the establishment of the Imperial County Foreign Trade Zone provides an opportunity for economic development in the designated foreign trade zone sites to encourage foreign commerce wherein goods in foreign commerce might be stored within the boundaries of the United States without the payment of custom duties until or unless any such goods passed from that zone into customs territory of the United States; and

WHEREAS, for Imperial County Foreign Trade Zone(s) to be successful, all Member local public agencies to this Agreement must cooperate with planning activation and operation with the best interest of the Imperial County Foreign Trade Zone(s) being the primary goal of this Authority;

THEREFORE, there exists a need for local public agencies to work in concert to ensure the proper of the Imperial County Foreign Trade Zone.

RECITALS

WHEREAS, each of the Member local public agencies herein is authorized and empowered to contract with any or all other Member local public agencies for the joint exercise of powers under Article I and II, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the California Government Code; and

WHEREAS, each of the Member local public agencies recognize the immediate necessity for the coordinated planning for activation and operation of the Imperial County Foreign Trade Zone hereinafter "Foreign Trade Zone"; and

WHEREAS, the Member local public agencies expect Imperial Valley residents to experience a maximum benefit from the establishment of the Foreign Trade Zone by permitting storage, exhibition, sale and general dealing in regard to foreign commerce without subjecting it to United States Customs laws ; and

WHEREAS, each Member local public agency finds that it is in its best interest to enter into this Agreement.

COVENANTS

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND PROMISES OF THE PARTIES HERETO, AND THE PROVISIONS, CONDITIONS AND TERMS PROVIDED FOR HEREIN, THE UNDERSIGNED PARTIES AGREE AS FOLLOWS:

ARTICLE I CREATION AND PURPOSE

1.1 Creation of a Public Agency

There is hereby created a public agency to be known as the "Imperial Valley Foreign Trade Zone Authority" ("Authority"). The Authority is formed by this Agreement pursuant to the provisions of Articles I and II, Chapter 5, Division 7, Title 1 (commencing with Section 6500) of the Government Code of the State of California. It is the intent of the Member local public agencies that the Authority shall be a public agency separate and apart from any Member local public agency. The Members of the Authority shall each be a local public agency which has executed, or hereafter executes, this Agreement, or any addenda or supplement thereto and which has not, pursuant to the provisions of the agreement, withdrawn from the Authority.

1.2 Purpose

The purpose of this Agreement is to enable the Member local public agencies to create an entity, governed by an appointed Board of Directors made up of representatives from each of the Member local public agencies, that will be responsible for the activation, operation, marketing and management of the Imperial County Foreign Trade Zone and to establish a mechanism for sharing the costs related to the activation, operation, marketing, and management of the Foreign Trade Zone by each of the Member local public agencies. The purpose of the Agreement is to create a public agency to exercise the common power of directing and coordinating actions relating to the management of the Imperial County Foreign Trade Zone. The purpose of this Agreement shall be accomplished and said power exercised in a manner herein set forth subject, however, to such restrictions as are applicable to the Member local public agencies to the Agreement in the manner of exercising such powers, as required by California Government Code Section 6509.

1.3 Member local public agency Contributions

It is required that each Member local public agency contribute financial resources to the Authority. Each member agency will contribute its fair share of all costs associated with the activation, operation and management of the Imperial County Foreign Trade Zone. Fair share contributions shall be determined according to Foreign Trade Zone acreage of the Member agency's jurisdiction compared to the total Foreign Trade Zone acreage of all Member agency jurisdictions. It is also anticipated and encouraged that each Member local public agency will voluntarily contribute technical expertise and time of their own employees to the Authority. All Member local public agencies agree and understand that good faith cooperation and voluntary contributions will enhance and improve the Imperial County Foreign Trade Zone for all participants.

The Board of Directors of the Authority may accept voluntary contributions of property and any other tangible assets to the Authority from any Member local public agency. All voluntary contributions of property and any other tangible assets by a Member local agency to the Authority shall be irrevocable and shall thereafter be fully owned and controlled by the Authority.

Property and any other tangible assets belonging to a Member local public agency at the time of entering into this Agreement, or at any other time, will not be considered as property or tangible assets of the Authority unless the Member local public agency contributes such property or tangible assets and the Authority accepts them through action of the Board of Directors.

ARTICLE II
POWERS AND DUTIES

2.1 **Powers and Duties of the Authority**

The Board of Directors on behalf of the Authority shall have the following general powers and duties:

Make and enter into contracts.

Acquire, hold and convey real property and personal property.

Provide and maintain facilities in connection with the Foreign Trade Zone in accordance with the provisions of 19 USC 81I.

Operate the Foreign Trade Zone as a public utility with fair and reasonable rates and charges for all zone services and privileges, and afford to all who apply for the use of the zone and its facilities and provide uniform treatment under like conditions in accordance with the provisions of 19 USC 81n and 15 CFR 400.42 (b).

Approve all reports to be submitted to Foreign Trade Zone Board of Directors in accordance with 19 USC 81p (b) and 15 CFR 400.46 (d).

Maintain all books records, and accounts in accordance with Foreign Trade Zone regulations 15 CFR400.46 (a), (b).

Apply to the Foreign Trade Zone Board of Directors for grant of authority to establish a subzone or expand or otherwise modify the Imperial County Foreign Trade Zone boundaries in accordance with (15 CFR 400.22(d), 400.26 (a)(1).

Approve the erection of buildings necessary to carry out an approved Foreign Trade Zone project in accordance with 19 USC 81m and 15 CFR 400.28 (a) (6).

Operate, maintain, and administer the Imperial County Foreign Trade Zone under all applicable laws and regulations administered by Customs and Border Protection for other agencies, or administered directly by other agencies, and the schedules of rates and charges made and fixed by the grantee, in accordance with 15 CFR 40041, 400.42 (b)(1).

Approve written applications to the Port Director for new zone operators pursuant to 19 CFR 146.7 (e), (f).

Approve and adopt an Imperial County Foreign Trade Zone policies and procedures operational manual.

Set Foreign Trade Zone Tariff Schedule and all other fee schedules associated with the administration and management of the foreign trade zone.

Incur debts, obligations and liabilities; except that any long-term debt (for longer than the current July 1 - June 30 year), including any long term debt which requires the issuance of bonds or any negotiable instruments which require debt payments, shall not be approved unless there is an affirmative vote by three-fifths of the entire Board of Directors at two consecutive regular meetings of the Board of Directors. At the time of approval of any long-term debt, the Board of Directors shall determine the proportionate share of such debt which will be owed by each Member local public agency if such Member local public agency withdraws from this Authority at any time prior to the full payment of that debt.

Accept contributions, grants, loans from any public or private agency or individual, or the United States or any department, instrumentality, or agency thereof, for the purpose of financing its activities.

Do all other acts reasonable and necessary to carry out the purpose of this Agreement.

To the extent not herein specifically provided for, exercise any powers in the manner and according to methods provided under the laws applicable to the public agencies.

Contract each year with an accounting firm qualified and experienced to make an annual fiscal year audit of all the accounts and records of the Authority, conforming all respects with requirements of all applicable laws. A copy of the audit shall be provided to each member organization within six (6) months of the end of the fiscal year under examination. The cost of the audit shall be considered a general expense of the Authority.

The Board of Directors shall be strictly responsible for all funds received, held and disbursed by it and of all receipts and disbursements.

Except for the first year of the Authority, adopt an annual (July 1 - June 30) budget for the Authority no later than the preceding March 31, upon recommendation of the Board of Directors.

The Board of Directors shall not employ any employees, but may contract with independent contractors such as attorneys or expert consultants.

2.2 Powers and Duties of Member Local Public Agencies

Member local public agencies must be "public agencies" and be included within the definition of "local agency" in Government Code Section 54951. Each member local public agency shall have the following powers and duties:

Selection of one Director and one alternate for the Board of Directors.

Compliance with all actions of the Board of Directors.

Compliance with all rules, regulations and directives from the Foreign Trade Zone Board of Directors.

Prompt pre-payment of quarterly billings to the Authority for participation as a Member local public agency of the Authority as authorized by the Board of Directors.

Participation in the Authority and use of its Foreign Trade Zone in good faith and in the best interests of the Authority and all of its participating Member local public agencies.

ARTICLE III **EFFECTIVE DATE**

- 3.1 This Agreement shall become effective and the Authority shall be created as of the date on which the Member local public agencies, needed to form this Authority, have approved and executed this Agreement. In the event that not all agencies listed above join the formation, the effective date shall be fifty (50) days after the last agency signs the agreement.

ARTICLE IV **GOVERNING BODY**

- 4.1 A Board of Directors of the Authority shall administer this Agreement and the Authority created hereby.

4.2 Board of Directors Duties and Responsibilities

The Board of Directors shall monitor the activation, operation, marketing and management of the Foreign Trade Zone.

The Board of Directors shall approve the annual budget for the operations of the Foreign Trade Zone. If for some reason the Board of Directors fails to adopt an annual budget the next year's annual budget shall be the same as the current year's annual budget with no increase in the annual operations fees.

The Board of Directors shall establish the annual administrative fees for each Member local public agency based upon section 4.3 of this Agreement.

The Board of Directors shall approve any Amendment to this Agreement only if there is an affirmative vote by three-fifths of the entire Board of Directors at two consecutive regular meetings of the Board of Directors.

The Board of Directors shall assist in the short and long-range planning for the Foreign Trade Zone.

The Board of Directors shall approve any Agreements with the designated Foreign Trade Zone Administrator.

- 4.3 Calculation of Fees: Member local public agencies of the Authority shall each contribute a fair share of all fees associated with the administration and management of the authority based on the fixed contribution percentages. All costs associated with the Authority and administration of Foreign Trade Zone grant of authority shall be distributed according to the following percentages:

City of Brawley	3.95%
City of Calexico	24.79%
City of Calipatria	5.35%
City of El Centro	27.24%
County of Imperial	38.67%

Methodology approved by all member local public agencies consisted of calculating the ratio of Member local public agency Foreign Trade Zone acreage to total acreage of the Foreign Trade Zone. In the event, that a Member local public agency increases its amount of acreage in the Foreign Trade Zone either through a boundary modification or expansion, all fair share percentages shall adjust accordingly.

In the event a Member local public agency requests services from an Authority consultant that will solely benefit the Member local public agency jurisdiction, all costs will be the sole financial responsibility of that Member local public agency. Examples of such services include, but are not limited to, boundary modifications, subzone applications or manufacturing applications to the Foreign Trade Zone Board.

- 4.4 Revenues: Any revenues earned by the Authority due to activity in any Foreign Trade Zone sites shall remain in the Authority budget. Revenues may be used to reimburse Member local public agency fair share contributions only after all Authority obligations have been satisfied.
- 4.5 Number of Votes: Member local public agencies of the Authority shall each have one vote on the Board of Directors which shall be exercised by its appointed Director or Alternate Director at Board of Director meetings.
- 4.6 Meetings: The regular meetings of the Board of Directors shall be consistent with what is stated in its Bylaws. All meetings of the Board of Directors shall comply with the provisions of the Ralph M. Brown Act. A quorum for any meeting shall be no less than three-fifths (3/5) of the members of the Board of Directors.
- 4.7 Membership of the Board of Directors: The Board of Directors of the Authority shall be comprised of duly appointed members of the Member public local agencies only. The governing body of the Member local public agency shall appoint its member of the Board of Directors by a majority vote of the governing body of the local public agency. Each member of the Board of Directors shall be either the City Manager/ County CEO or the Director of Economic Development, and each member also shall have a designated alternate Director who shall have the same authority as the primary Director. Each Member local public agency shall immediately notify the Authority, in writing, of its duly appointed Director and alternate, and any change of either.
- 4.8 Term: All duly appointed Directors and designated Alternate Directors shall serve a term of five (5) years and may be re-appointed to successive 5 year terms. The member local public agency can remove its duly appointed member of the Board of Directors at any time by majority vote of the governing body of the local public agency.

ARTICLE V
OFFICERS

- 5.1 The officers of the Board of Directors shall be selected by a majority vote of the Board of Directors present at the meeting where such action is on the agenda. There shall be a President, Vice-President and Clerk/Secretary of the Board of Directors.
- 5.2 The President shall preside at all meetings of the Board of Directors and shall have such authority as the Bylaws provide. In the absence of the President, the Vice-President shall preside at the meeting of the Board of Directors. In the absence of both the President and Vice-President, the Clerk/Secretary shall preside at the meeting of the Board of Directors.

ARTICLE VI
BYLAWS

- 6.1 The Board of Directors shall adopt and revise Bylaws for the conduct of its affairs as it may deem necessary, but any such action on Bylaws shall occur only at a regular meeting of the Board of Directors.

ARTICLE VII
ADMISSION AND WITHDRAWAL

7.1 **Admission to Authority**

After the establishment of this Authority, additional local public agencies may become Members of the Authority upon ratification of this Agreement and any Amendment thereto, and by approval of the Board of Directors. Additional local public agencies may only become a Member if a foreign trade zone expansion enters the limits of the new jurisdiction.

7.2 **Withdrawal from the Authority**

It is fully anticipated that each party hereto shall participate in the Authority until purposes set forth in this Agreement are accomplished.

Voluntary Withdrawal: Any local public agency may withdraw from the Authority upon no less than a one-year prior written notice to the Authority communicating the withdrawal. Such written withdrawal notice must be authorized by the governing body of its local public agency in an open meeting of its governing body. Such written notice must be actually received by the Authority no later than June

30 of any year which is one year prior to the effective date of withdrawal. Voluntary withdrawals shall be effective only at the end (June 30) of any fiscal year of the Authority. The Member local public agency, in addition to the full payment of the annual operations fees for that last fiscal year, also shall pay the reasonable costs for deactivation of the Foreign Trade Zone monitored by the Authority as established by the Board of Directors.

Any withdrawal shall not relieve the Member local public agency of its proportionate share of any long-term debt incurred by the Authority prior to the effective date of the parties' notice of withdrawal. In no event, however, shall a Member local public agency be required to contribute toward any long-term debt if its duly appointed Director on the Board of Directors votes against the approval of such long term debt and the Member local public agency withdraws from the Authority as soon as possible under the terms of this Agreement.

Any withdrawal shall result in the forfeiture of that Member local public agency's rights and claims related to the distribution of property or funds upon any future dissolution of the Authority.

Involuntary Removal of Member local public agency

Upon recommendation by any member of the Board of Directors, that a Member local public agency has failed to meet its obligations under this Agreement, the Board of Directors pursuant to a vote of the Board of Directors may provide written notice of its intention to remove that Member local public agency from the Authority, and the reason(s) therefore.

If subject Member local public agency objects to the proposed involuntary removal, it shall have the opportunity within fifteen (15) days of receipt to request a hearing before the Board of Directors.

Once the Board of Directors has received the above-mentioned request, the Clerk of the Board of Directors, shall schedule a public hearing within thirty (30) days of the written request.

The hearing before the Board of Directors shall be consistent with any hearing procedures contained in the By-Laws of the Authority, and, at a minimum, shall grant the Member local public agency which is proposed for removal an adequate and reasonable opportunity to explain why it should not be removed.

An involuntary removal of a Member local public agency shall be approved only upon an affirmative vote by three - fifths of the Board of Directors present at a meeting of the Board of Directors.

Any involuntary removal shall be effective upon the date determined by the Board of Directors, and the removed local public agency shall be responsible for all of its obligations owed to the Authority, including all those obligations applicable under the terms of this Agreement as if the withdrawal had been voluntary.

ARTICLE VIII
DISSOLUTION OF THE AUTHORITY

- 8.1 This Agreement may be terminated and this Authority may be dissolved upon an affirmative vote by four - fifths of the entire Board of Directors at two consecutive regular meetings of the Board of Directors.

Upon a dissolution of the Authority, there shall be a complete distribution of assets and discharge of liabilities as determined by the Board of Directors and which must be consistent with any prior actions by the Board of Directors regarding proportionate contributions and obligations by the Member local public agencies.

ARTICLE IX
LIABILITY INSURANCE

- 9.1 As soon as possible after the establishment of the Authority, the Board of Directors shall purchase, and maintain during the entire term of this Agreement, general liability insurance and general directors and officers' insurance the liability of which shall be not less than one million dollars (\$1,000,000.00) combined single limit per occurrence.

ARTICLE X
DISPUTES UNDER AGREEMENT

- 10.1 Any dispute under this Agreement shall first be submitted in writing to the Board of Directors which will be given sixty (60) calendar days to consider the dispute and make recommendations to the parties.
- 10.2 If the dispute is not settled by the recommendations from the Board of Directors, or the Board of Directors fails to make any recommendations within sixty (60) calendar days, the Board of Directors shall appoint a neutral mediator in an effort to resolve the disputes.
- 10.3 If the dispute is not settled within ninety days after the appointment of a mediator, either party may file an action in the Imperial County Superior Court, which is the designated court of competent jurisdiction to hear any and all lawsuits, claims and disputes under this Agreement.

ARTICLE XI
NOTICES

- 11.1 Notices under this Agreement shall be sufficient if addressed to the principal office of each of the Member local public agency and shall be deemed given upon deposit in the U.S. Mail, First-Class, Postage Pre-Paid.
- 11.2 All notices regarding Board of Directors meetings and all final reports regarding fiscal issues of the Authority shall be sent to Member local public agencies.
- 11.3 All other notices sent, shall be consistent with the By-Laws of the Authority.

ARTICLE XII
AMENDMENTS

- 12.1 Amendment: This Agreement may be amended only upon an affirmative vote by three-fifths of the entire Board of Directors at two consecutive regular meetings of the Board of Directors.

ARTICLE XIII
MISCELLANEOUS

- 13.1 Headings: The section headings herein are for convenience only and are not to be construed as modifying or governing language in the section.
- 13.2 State Laws: This Agreement is made in the State of California and under the Constitution and law of this State and is to be so construed.
- 13.3 Binding Agreement: This Agreement shall be binding upon and shall inure to the benefit of the successors of the Member local public agencies. This Agreement contains all the agreements of the parties with respect to any matter mentioned herein. No prior agreement or understanding pertaining to any such matter shall be effective.
- 13.4 Severability: If any one or more of the terms, provisions, promises, covenants or conditions of this Agreement shall to any extent be adjudged invalid, unenforceable, void or voidable, for any reason whatsoever by a court of competent jurisdiction, each and all of the remaining terms, provisions, promises, covenants, and conditions of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
- 13.5 Assignability: No Member local public agency may assign any rights or obligations under this Agreement without the written approval of the Board of Directors.

13.6 Execution in Counterparts. This agreement may be executed in counterparts, each of which shall be deemed, as original, all of which shall constitute one and the same instrument.

13.7 Public Record: This Agreement is a disclosable public record under the California Public Records Act (Government Code Section 6250).

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by authorized officials on the dates indicated below.

Signature of Authorized Representative
of the Member Local Public Agency

Date

Signature of Authorized Representative
of the Member Local Public Agency

Date Approved By Governing Body
of the Member Local Public Agency at an
Open Meeting

APPROVAL BY THE BOARD OF DIRECTORS OF THE AUTHORITY

Signature of Authorized Representative
of the Authority

Date

Printed Name of Authorized Representative
of the Authority

Date Approved By the Board of Directors
of the Authority