

JOINT POWERS AGREEMENT

IMPERIAL VALLEY TELECOMMUNICATIONS AUTHORITY

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

In order to establish the Authority, the County of Imperial by action of its Board of Supervisors, the Imperial County Office of Education by action of its County Superintendent of Schools, the City of El Centro by action of its City Council, and at least five (5) other public agencies (school districts, cities, special districts, etc.) by action of their governing bodies must approve this Agreement.

At any time after its establishment, any other public agency ("Member") may join the Authority by action of its governing body to approve this Agreement, and by action of the Board of Directors of the Authority.

PREAMBLE

WHEREAS, newly developed telecommunications (in the form of fiber optic cable and wireless telecommunications system) is necessary for the growth and development of the Imperial Valley; and

WHEREAS, this new technology has developed an opportunity for creation of a Telecommunications Network for all local public agencies to gain access to this new technology and provide access to a community-wide system, for public benefit; and

WHEREAS, the creation of a Telecommunications Network, including the involvement of new technology, is not only needed for the local public agencies, but has become a necessity for effective communication and delivery of services by the local public agencies; and

WHEREAS, the purpose of the Telecommunications Network is to provide a "backbone" to Member agencies so that they may access to telecommunications systems networks to assist them in providing services to the public; and

WHEREAS, for the Telecommunications Network to be successful, all Member agencies to this Agreement must cooperate with the best interest of all Member agencies being the primary goal of this Authority;

THEREFORE, there exists a need for local public agencies to work in concert toward the development of a program to ensure the implementation and continued beneficial use of a telecommunications program, including fiber optic and aerial, for the benefit of local public agencies.

RECITALS

WHEREAS, each of the Member local public agencies herein is authorized and empowered to contract with 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 to this Agreement have the authority and power to direct and coordinate actions relating to telecommunications and to create a separate public agency to carry out such activities; and

WHEREAS, the Member local public agencies recognize the immediate necessity for the coordinated planning and in the future for construction, operation, and maintenance of works and facilities for optimizing the beneficial uses of the Telecommunications Network; and

WHEREAS, Member local public agencies would like a reliable communications system that provides state of the art technology, which is also cost effective; and

WHEREAS, Member local public agencies would like to see a maximum benefit from fiber and wireless, or whatever resource may be available at that time; and

WHEREAS, Member local public agencies would like the ability to incorporate the newest available technology into a community-wide system; and

WHEREAS, Member local public agencies need and will comply with rules protecting system integrity; and

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

WHEREAS, the ICOE has entered into three separate written agreements with the Imperial Irrigation District ("IID") which grants to the ICOE access to a Fiber Optic Communications System owned by IID, access to microwave facilities and appurtenances on selected towers owned by the IID, and access to poles owned by the IID; and which access made available by these three separate agreements between the ICOE and the IID may be an important part of the Imperial Valley Telecommunications Network.

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 PARTIES AGREE AS FOLLOWS:

ARTICLE I CREATION AND PURPOSE

1.1 Creation of Public Agency

There is hereby created a public agency to be known as the "Imperial Valley Telecommunications 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 be each 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.

The Authority shall designate and authorize a Network Administrator which initially shall be the ICOE, subject to written agreement with the ICOE.

The Network Administrator will promulgate and enforce all reasonable rules, as it deems necessary for the effective operation, maintenance and security of the Imperial Valley Telecommunications Network.

Nothing contained in this Agreement shall imply or be interpreted to mean that the IID is a Member of the Authority or has agreed to this Agreement, although the IID if it so determines may become a Member by action of its governing body and by approval by the Board of Directors of the Authority.

Nothing contained in this Agreement shall imply or be interpreted to mean that the Authority or any of its Members has any third party interest of any kind, or any enforceable right of any kind, against either the IID or the ICOE with regard to the three separate agreements between the IID and the ICOE referenced above.

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 continued

development and monitoring of the Imperial Valley Telecommunications Network and establish a mechanism for the sharing of the costs related to the joint development, operations, maintenance and growth of the Telecommunications Network 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 Imperial Valley Telecommunications Network. 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.

The Imperial Valley Telecommunications Network shall be used strictly for public purposes, subject to exceptions that may be approved by the Board of Directors and subject to compliance with applicable laws and regulations.

1.3 Member Agency Contributions On A Voluntary Basis

It is anticipated and encouraged that each Member local public agency will voluntarily contribute additional financial resources, cable, fiber, and other personal property to the Authority which will become the property of the Authority. 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 Valley Telecommunications Network for all participants.

The Board of Directors of the Authority may accept voluntary contributions of personal property and any other tangible assets to the Authority from any Member local public agency. All voluntary contributions of personal 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.

Personal 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 personal property or tangible assets of the Authority unless the Member local public agency contributes such personal property or tangible assets and the Authority accepts them through action of the Board of Directors.

Personal property and any other tangible assets belonging to the Network Administrator will not be considered as personal property or tangible assets of the Authority unless the Network Administrator contributes such personal 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.

Establish fees for Members of local public agencies which join the Authority.

Acquire, hold and convey real property and personal property.

Incur debts, obligations and liabilities; except that any long term debt (for longer than the current July 1 - June 30 year) incurred, 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 two - thirds 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.

To 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 with 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 report 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 Network Administrator.

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 the Network Administrator

Pursuant to contract between the Board of Directors and the Network Administrator, the Network Administrator shall have the following powers and duties:

Shall be the Manager for the Telecommunications Network.

Shall promulgate and enforce rules and regulations, and to take reasonable precautions and actions to ensure that the Telecommunications Network is not overloaded or excessively utilized.

Shall take reasonable precautions and actions to ensure that the Telecommunications Network is used only for appropriate purposes.

Shall take reasonable precautions and actions to ensure that the Telecommunications Network is secure and that there are no violations of applicable laws and regulations.

Shall be the fiscal agent for the Authority and shall provide accounting, billing, and other budget and financial services to the Board of Directors of the Authority, and shall prepare and recommend an annual budget for approval by the Board of Directors.

Shall employ its own employees for the operations, repair, maintenance and management of the Telecommunications Network.

Shall serve as Clerk/Secretary to the Board of Directors.

2.3 Powers and Duties of Member 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:

Reasonable access to a reliable and cost-effective Telecommunications Network “backbone” that provides state of the art technology within the restrictions of the Authority’s annual budget and the additional voluntary contributions of its Member local public agencies.

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

Retention of control of its own private, internal network(s) up to the demarcation point (of the Telecommunications Network of the Authority) established by the Board of Directors.

In no case shall the Member local public agency extend the Telecommunications Network of the Authority to other agencies or entities without the express prior written approval of the Board of Directors.

Compliance with all actions of the Board of Directors.

Compliance with all rules, regulations and directives from the Network Administrator.

Prompt notification to the Network Administrator of any abuse of the Telecommunications Network.

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 Telecommunications Network 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 Agencies, needed to form this Authority, have approved and executed this 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 operations of the Telecommunications Network and makes recommendations regarding the operations, repair and maintenance of the Telecommunications Network to the Network Administrator.

The Board of Directors shall monitor all the rules and regulations and actions taken by the Network Administrator with regard to the Telecommunications Network.

The Board of Directors shall approve the annual budget for the operations of the Network to be submitted by the Network Administrator. The Board of Directors may decline to adopt any annual budget submitted by the Network Administrator. If for some reason the

Board of Directors fails to adopt an annual budget as submitted by the Network Administrator, the next year's annual budget shall be the same as the current year's annual budget with no increase in the annual maintenance and operations fees, except for any change to reflect the previous calendar year's change in the All California CPI, and except to reflect any change in the number of Member local public agencies. In any year, if the Board of Directors fails to adopt the annual budget as submitted by the Network Administrator, the Network Administrator may voluntarily withdraw from the Authority pursuant to the terms of this Agreement, and its obligations as the Network Administrator and as a Member local public agency shall be terminated.

The Board of Directors shall establish the annual maintenance and operations fees for each Member local public agency.

The Board of Directors shall approve any Amendment to this Agreement only if there is an affirmative vote by two - thirds 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 Telecommunications Network.

The Board of Directors shall approve any Agreements with the designated Network Administrator.

- 4.3 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.
- 4.4 Meetings: The regular meetings of the Board of Directors shall be consistent with what is stated in its By-Laws. 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 one-third (1/3) of the members of the Board of Directors and no less than five (5) of the members of the Board of Directors.
- 4.5 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. Each member of the Board of Directors shall be the CEO or Manager of the appointing Member, 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.
- 4.6 Term: All duly appointed Directors and designated Alternate Directors shall serve a term of four (4) years.

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 (the Network Administrator shall be designated as the Clerk/Secretary).
- 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.

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 maintenance and operations fees for that last

fiscal year, also shall pay the reasonable costs for disconnecting from the Telecommunications Network maintained 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 Agency

Upon recommendation by the Network Administrator, or 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 two - thirds 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 two - thirds 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 follows, 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 to the Authority.

ARTICLE XII
AMENDMENTS

- 12.1 Amendment: This Agreement may be amended only upon an affirmative vote by two - thirds 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 together, 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.

Vincent L Long III / 5-1-02
Signature of Authorized Representative of the Member Local Public Agency Date

Vincent L Long III
Printed Name of Authorized Representative of the Member Local Public Agency

4-17-02
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

CITY COUNCIL
Doug Cox - Mayor
Geoff Dale - Mayor Pro - Tem
Mark Gran
Betty Sampson
James Tucker

CITY CLERK
Debra Jackson

CITY TREASURER
Steve Shaner

CITY OF IMPERIAL

INCORPORATED 1904



CITY HALL
420 South Imperial Avenue
Imperial, California 92251
City Hall (760) 355-4371
Fax (760) 355-4718

CITY ATTORNEY
Dennis Morita
Horton, Knox, Carter, Foote

April 30, 2002

Mr. Steve Hogan, President
Imperial Valley Telecommunications Authority
1398 Sperber Road
El Centro, CA 92243

RE: Selection of a Director and Alternate for the Board of Directors

Pursuant to section 2.3 Powers and Duties of Member Agencies of the Joint Powers Agreement for the Imperial Valley Telecommunications Authority, the City of Imperial is appointing Mr. Vince Long as Director, and Mr. John Lau as the Alternate.

Should you need additional information regarding the City's selections, please call me at 355-3807.

Sincerely,

A handwritten signature in black ink, appearing to read "John Lau".

John Lau
Finance Director