

I.V.
Emergency Communications
Authority

JOINT EXERCISE OF POWERS AGREEMENT

THIS AGREEMENT is made and entered into this 18th day of July, 1995, by and between the cities of BRAWLEY, CALEXICO, CALIPATRIA, EL CENTRO, HOLTVILLE, IMPERIAL and WESTMORLAND, all municipal corporations duly organized and existing under the laws of the State of California, and the COUNTY OF IMPERIAL, a political subdivision of the State of California, hereinafter collectively referred to as "the parties."

WITNESSETH

WHEREAS, the parties are empowered by law to provide for certain services to protect public health and safety; and

WHEREAS, pursuant to the general laws of the State of California the parties provide law enforcement, fire protection, emergency medical services and other public safety services, including mutual aid to other local jurisdictions in California and Arizona; and

WHEREAS, the provision of adequate public safety services depends upon effective communication between and among local governments, as well as agencies of the Federal and State governments; and

WHEREAS, the parties are authorized to lease, purchase, acquire, receive and hold property for the public purposes of the parties; and

WHEREAS, the parties are also empowered to staff and operate communication services for the provision of public safety services; and

WHEREAS, the parties desire to accomplish the aforesaid purpose by jointly exercising certain of their common powers in the manner set forth in this Agreement; and

WHEREAS, the agencies desire to form a joint powers authority pursuant to Title I, Division 7, Chapter 5 (commencing with Section 6500) of the California Government Code (hereinafter referred to as "the Act") for the purposes of acquiring, equipping, staffing and operating a consolidated countywide public safety communication dispatch center (hereinafter referred to as "the center");

NOW, THEREFORE, the parties, for and in consideration of the mutual benefits, promises and agreements set forth herein, agree as follows:

Section 1. Purposes

The principal purpose of this Agreement is to establish a consolidated communications center by equipping, maintaining, operating and staffing a single-site facility to provide emergency call receiving and dispatching services to the parties.

Secondary purposes are to provide such services, on a contractual basis, to other governmental agencies and to serve as a forum for discussion, study, development and implementation of public safety communication services of mutual interest.

Section 2. Creation of the Authority

Pursuant to Section 6506 of the Act, there is hereby created a public entity, separate and apart from the parties, to be known as the Imperial Valley Emergency Communications Authority (hereinafter referred to as "the Authority"). The debts, liabilities and obligations of the Authority shall not constitute debts, liabilities, and/or obligations of any of the parties.

Section 3. Governance of the Authority

The Authority shall be governed in the manner set forth in this Section.

3.1.1 Board of Directors

The Authority shall be governed by an 11-member Board of Directors, selected as follows:

- a) The Chief Administrative Officer of the County of Imperial.
- b) Two city managers selected by the managers of parties to the Agreement.
- b) Two representatives selected by the city chiefs of police of the parties to the Agreement.
- c) Two representatives selected by the city chiefs of fire departments of the parties to the Agreement.
- d) The sheriff of the County of Imperial.
- e) The fire chief of the County of Imperial.
- f) One representative of the emergency medical services community, selected by the Director of Health Services for the County of Imperial.
- g) One representative of the public works agencies receiving services from the center, selected by the public works subcommittee of the Imperial Valley Association of Governments.

3.1.2 Terms/Vacancies

Of the members first appointed to represent cities, the two city managers shall serve for an initial term of three years, the two police chiefs for an initial term of two years, the two fire chiefs for an initial term of one year. The members first appointed to represent emergency medical services and public works agencies shall serve for a term of three

years and two years, respectively. Their successors shall serve for a term of three years and until appointment of their successors, each term to commence on the expiration date of the term of the predecessor. Members representing cities, public works agencies, and emergency services may be reappointed to one additional consecutive term.

A member of the Board of Directors, or alternate, shall cease to be a director if he/she ceases to be an employee in a designated position of a party to this Agreement, or if the public entity ceases to be a party to this Agreement as provided herein. Each director shall notify the Secretary-Treasurer of the appointment of his/her alternate representative.

In the event of a vacancy of a position designated to represent cities, emergency medical services, or public works agencies, the resulting vacant office shall be filled for the unexpired term by their respective selection authority.

3.2 Officers

The Board of Directors shall elect a President and Vice President at the first meeting of the Authority, and at the January meeting annually thereafter. In the absence or inability of the President to act, the Vice President shall act as President. The President, or in his/her absence the Vice President, shall preside at and conduct all meetings of the Board of Directors. In the event the President or Vice President ceases to be a member of the Board of Directors, the resulting vacant office shall be filled by election at the next meeting following the occurrence of the vacancy.

3.3 General Manager

The Board of Directors shall appoint and employ a General Manager of the Authority, who shall serve at the pleasure of the Board of Directors and shall attend all

meetings of the Board of Directors. The General Manager shall:

(a) Act as the Authority's Secretary-Treasurer.

(b) Fulfill all duties and responsibilities set forth in law with respect to maintenance of the Authority's operational and financial records, including but not limited to, those set forth in Sections 6505, 6505.5 and 6509.5 of the Act, described generally as follows:

(1) Establish, with Board of Director approval, the annual budget format, accounts and documentation pertaining thereto, which most nearly reflect the objectives of the Authority and the operation of the center;

(2) Establish and maintain the particular funds and accounts as required by generally accepted accounting practices for a public entity and which most accurately and appropriately record and report the operations of the Authority as represented by the annual budget document;

(3) Enforce strict compliance with the approved annual budget and approve only expenditures authorized therein, or authorized by action of the Board of Directors;

(4) Ensure that all available cash on hand is at all times fully invested in a cash management program and investment portfolio pertaining thereto, as approved by the Board of Directors;

(5) Maintain sufficient liquidity in the Authority's invested funds to meet the Authority's cash disbursement needs, as approved by the Board of Directors;

(6) Furnish monthly revenue, expenditure and funds status reports to the Board of Directors;

(7) Maintain an inventory of all property of the Authority, and designate a custodian of the property;

(8) Obtain and maintain general liability, workers' compensation, and property insurance for the Authority, and its officers, employees and agents; and

(9) Make all books and records of the Authority open to inspection at all reasonable times by the Board of Directors, or their representatives, and any other person in accordance with provisions of law.

(c) Be responsible for the operation of the Authority's personnel system, and shall appoint all other employees of the Authority, except the Legal Counsel, in accordance with personnel rules adopted by the Board of Directors.

3.4 Legal Counsel

The Board of Directors shall appoint and employ a Legal Counsel for the Authority, who shall serve at the pleasure of the Board of Directors and shall attend meetings of the Board, as required, to advise in connection with any legal matters relating to the Authority. Additional counsel may be employed, as the Board of Directors deems necessary, or in the event of a conflict of interest involving the Legal Counsel.

3.5 Users' Committee

Pursuant to Section 6506 of the Act, an advisory Users' Committee is created, subordinate to the Board of Directors.

(a) Membership on the Users' Committee shall include a representative of each department of each public agency receiving communication services from the center.

Initially, such representation shall include:

- (1) A representative of each fire department of the parties;
- (2) A representative of each police department of the parties;

(3) A representative of each public works department of the parties receiving services of the center; and

(4) A representative of the Imperial County Emergency Medical Services Agency.

(b) A member of the Users' Committee, or alternate, shall cease to be a member if he/she ceases to be an employee of a designated department of a party to this Agreement, or if the public entity ceases to be a party to this Agreement as provided herein. Each member shall notify the General Manager of the appointment of his/her alternate representative. Each member of the Users' Committee shall serve an indefinite term unless removed by the department or agency by which they are employed or as otherwise provided herein.

(c) The Users' Committee shall elect a chair, vice chair and secretary at the first meeting of following creation of the Authority, and at the January meeting annually thereafter. In the absence or inability of the chair to act, the vice chair shall act as chair. The chair, or in his/her absence the vice chair, shall preside at and conduct all meetings of the Users' Committee. In the event that any of these officers ceases to be a member of the Users' Committee, or is unable to continue in their elected capacity, the resulting vacancy shall be filled by election at the next meeting of the Users' Committee following the occurrence of the vacancy.

3.6 Meetings

The Board of Directors and the Users' Committee shall adopt rules for conducting their meetings and other business.

(a) All meetings, including without limitation, regular, adjourned regular and special meetings, shall be called, noticed, and conducted in accordance with the provisions of the Ralph M. Brown Act as enacted and hereafter amended (commencing with Section 54950 of the California Government Code).

(b) The Board of Directors shall conduct regular meetings, holding at least one regular meeting each quarter. The date and hour of any regular meeting shall be set by resolution of the Board of Directors, a copy of which is to be filed with the clerk of each party to the Agreement. Regular and special meetings shall be conducted at the center, although a regular or special meeting may be called by the President at a different location pursuant to the provisions of the Ralph M. Brown Act.

(c) Prior to April 1 of each year following adoption of this Agreement, the Board of Directors shall conduct an additional meeting, to be designated as the "annual meeting," at which the Board of Directors shall consider and adopt the Authority's annual budget for the ensuing fiscal year beginning July 1.

(d) The Users' Committee shall meet at least every other calendar month. The date and hour and location of the regular meetings shall be established by resolution of the Board of Directors, a copy of which is to be filed with the clerk of each party to the Agreement.

(e) A majority of the Board of Directors and a majority of the Users' Committee shall constitute a quorum for the transaction of business at any meeting, except that a lesser number of the Board of Directors or the Users' Committee may adjourn a meeting for lack of a quorum.

(f) The respective secretaries of the Board of Directors and the Users' Committee shall keep minutes of regular, adjourned regular, and special meetings. As soon as possible after each such meeting, a copy of the minutes shall be provided to the clerk of each party to this Agreement, each Board of Directors member, and each Users' Committee member.

3.7 Dispatch Services to the Parties

Within 90 days of the effective date of this Agreement, each party will notify the Authority of the party's departments to receive communication dispatch services from the center. It is recognized that each party may have particular non-emergency dispatch services it wishes to handle separately from the combined dispatch services of the center, at its own costs.

3.8 Dispatch Services to Other Agencies

The Board of Directors may authorize the Authority to provide dispatch services to any public agency not a party to this Agreement, which services shall be provided on a full cost-recovery basis. Such services shall not be provided for any period of less than one-year, and the Board of Directors shall establish the amount to be charged for such services, which shall be billed and paid monthly. Charges will be set with the intent to recover all operational, capital and maintenance costs expended by the Authority to provide dispatch services to a particular agency.

Section 4. Powers and Duties

The Authority, Board of Directors and Users' Committees shall have the powers and duties set forth in this Section.

4.1 Powers and Duties of the Authority

The Authority shall have the powers common to the parties as set forth in this Agreement, to wit: the power to purchase, acquire, receive, hold and lease real property, construct, equip, staff, maintain, operate buildings and related facilities for the purposes of providing public safety communications in Imperial County, and to contract with agencies of other governmental entities on a mutual aid or other basis.

The Authority is authorized in its own name to perform all acts necessary for the exercise of common powers, including but not limited to, any or all of the following:

- (a) To make and enter into contracts;
- (b) To employ staff and agents;
- (c) To acquire, lease, construct, manage, maintain and operate any buildings, works or improvements;
- (d) To acquire, hold, or dispose of real or personal property;
- (e) To incur debts, liabilities or obligations;
- (f) To cooperate with other public agencies in the delivery of communications services within Imperial County, or any territory adjacent thereto;
- (g) To receive gifts, contributions and donations of property and funds, services and other forms of financial assistance, from persons, firms, corporations and any governmental entity;
- (h) To rent or lease communications services to non-public agencies if it is in the public interest to do so; and
- (i) To sue and be sued in its own name.

The Authority shall exercise its powers as needed to implement the purpose of this Agreement. Pursuant to Section 6504 of the Act, the Authority is further empowered, and by this Agreement is required, to assess the parties to finance the operation of the Authority in the manner set forth in this Agreement.

Pursuant to the requirement of Section 6509 of the Act, all powers of the Authority shall be exercised in the manner provided in the Act or as expressly set forth in this Agreement, subject only to the restrictions on the exercise of such powers as are imposed upon the participating party City of El Centro in the exercise of its powers.

4.2 Board of Directors

The Board of Directors shall serve as the governing and administering body of the Authority, and shall formulate and set policy for its operation, and shall exercise the powers set forth in Section 4.1 of this Agreement to accomplish the purposes of the Authority. The Board of Directors is responsible for the development of a consolidated public safety communications and dispatching center and program to serve the parties, and for leasing and/or construction of a facility and/or acquisition of property for its operation, and for its ongoing maintenance and operations costs. The Board of Directors shall select a General Manager, who shall employ staff of the center.

4.3 Users' Committee

The Users' Committee will review programs and operations and make necessary recommendations to the Board of Directors and General Manager as they pertain to the center's programs. The Users' Committee will establish at least six subcommittees (Law Enforcement, Fire Services, Emergency Medical Services, Public Works, County Services, and Management), which will discuss issues pertaining to their respective disciplines or

interests. When issues arise concerning the mutual interests of more than one subcommittee, an ad hoc committee shall be formed to make recommendations on a timely basis, for discussion and action by the Users' Committee, General Manager and the Board of Directors.

4.4 Insurance

During the term of this Agreement, and any extension thereof, the Authority shall maintain the following insurance:

4.4.1 Workers' Compensation

Workers' compensation and employer's liability insurance as prescribed by applicable law.

4.4.2 General Liability Insurance

Comprehensive or commercial general liability insurance (bodily injury and property damage) the liability limits of which shall be not less than five million dollars (\$5,000,000.00) combined single limit per occurrence.

4.4.3 Vehicle Insurance

Automobile bodily injury and property damage liability insurance, covering owned, non-owned and hired vehicles, the limit of which shall be not less than five hundred thousand dollars (\$500,000.00) per person, one million dollars (\$1,000,000.00) per occurrence for bodily injury, and one hundred thousand dollars (\$100,000.00) per occurrence for property damage.

4.4.4 Directors' and Officers' Insurance

Directors' and officers' insurance against any wrongful acts, breach of duty, neglect, misstatement, error or omission by Authority directors or officers, with a liability limit which shall not be less than one million dollars (\$1,000,000.00) combined single limit per occurrence.

4.4.5 Parties as Additional Insureds; Cancellation Notice Required

The above insurance shall name the parties as additional insureds, and shall provide that the parties will receive thirty (30) days' written notice prior to the cancellation or material change of the insurance.

4.4.6 Self-Insurance

The Authority may elect to self-insure or participate in a self-insurance pool to satisfy the requirements of this section.

Section 5. Dispatch Center

The Authority is empowered to lease, purchase or otherwise obtain the use of an existing facility, or to build a new facility if necessary, for the purposes of locating and establishing the center. The Authority shall determine what equipment is necessary to operate the center and shall contract, lease, and/or arrange for the equipment for the center to be provided by another public agency or entity established for that purpose or take such action as is necessary to provide such equipment.

Section 6. Fiscal Year, Annual Budget and Financing

The financial operations of Authority shall be generally conducted as provided in this Section.

6.1 Fiscal Year

The Authority's fiscal year shall be the twelve month period commencing each July 1, and ending June 30, except if the effective date of this Agreement is other than July 1, the first fiscal year shall be the short year commencing with the effective date of this Agreement and ending the following June 30.

6.2 Annual Budget

The Authority shall operate on an annual budget established by the Board of Directors. The annual budget shall:

(a) Be approved by two thirds of the members of the Board of Directors no later than April 1 of each year for the fiscal year commencing on the subsequent July 1, except that the first budget shall be adopted within 180 days of the effective date of this Agreement.

(b) Provide funding sufficient to cover the expected expenses of the Authority such that the Authority will not operate at a deficit.

(c) Include a contingency reserve in an amount at least equal to five percent of otherwise budgeted and approved expenditures. Moneys from the contingency reserve may be expended upon approval by a two-thirds vote of the members of the Board of Directors during the fiscal year. The Board of Directors may suspend additions to the contingency reserve after the third fiscal year of the Authority upon adoption by a two-thirds vote of the members of the Board of Directors upon a finding that the contingency reserve is sufficient to meet the needs of the Authority.

(d) Assess each party for its share of the cost of the operations of the center, after including all revenues expected from executed contracts for dispatch services to other public and non-public agencies. Any unencumbered funds available at the end of the fiscal

year shall be credited against the assessments of the parties in proportion to the total of their assigned contributions. The annual budget of the Authority shall allocate the costs among the parties for each full fiscal year as follows: 25 percent of the allocated costs based on the ratio of a party's population to the total population of the county; 37.5 percent based on the ratio of a party's calls for service to the total calls for service of the county; and 37.5 percent based on the ratio of a party's assessed valuation of real property to the total assessed valuation of real property of the county.

(e) Be transmitted to the clerk of each party to this Agreement within fifteen (15) days of its approval.

In the second fiscal year following the adoption of this Agreement, the Board of Directors shall develop a capital budget. Except as otherwise provided in this Agreement, the Board of Directors may decide all other budgetary matters by a vote of a majority of the total members.

6.3 Assessments

Upon adoption of the annual budget by the Board of Directors, and the forwarding thereof to the parties, the assessments fixed therein are automatically due and payable without further notice by July 15 of that year except that the first assessment shall be due and payable without further notice within fifteen (15) days after receipt of the budget by the clerk of each party to this Agreement. A five percent (5%) late charge shall be imposed upon assessment payments not received within thirty (30) calendar days following the scheduled date for payment. An additional five percent (5%) late charge shall be imposed if an assessment, including late charges, is not paid in full within sixty (60) days of the scheduled date for payment. If an assessment, including late charges, is not paid within

seventy-five (75) days of the scheduled payment date, the party shall be in default and subject to immediate and automatic termination from this Agreement, and shall be liable for any defaulted payments, late charges, and costs of collection, including legal costs. In addition, a party terminated for non-payment of assessments forfeits any claim to any assets of the Authority.

6.4 Budget Authority of the General Manager

The General Manager shall have the authority to fully implement the approved budget. The General Manager may recommend for approval by a vote of the Board of Directors expenditures for approval separate from the budget process, or seek authorization for budgetary transfers or other adjustments as necessary during the fiscal year. The General Manager shall not employ more personnel than authorized by the budget, nor shall he/she expend funds from the contingency reserve, increase the capital reserve, or increase the total amount of the approved expenditure budget, without approval by a vote of the Board of Directors.

6.5 Annual Statement of Financial Condition

Prior to the end of each operating year, a certified public accounting firm will be selected by the Board of Directors, and, not more than ninety (90) days after the end of the fiscal year, a report certifying the year end financial condition of the Authority, including statements of income and expenses for the year, assets and liabilities, and auditor's notes, if appropriate, shall be provided to the parties by the accounting firm selected for that purpose. The cost of the report shall be considered an operating expense of the Authority.

Section 7. Personnel

7.1 Authorization

The General Manager is authorized to act on behalf of the Authority in all matters of personnel administration, except as otherwise provided in this Agreement, including but not limited to hiring, supervisory direction, performance evaluation, disciplinary action, and termination in accordance with personnel rules adopted by the Board of Directors. The General Manager may employ supervisory and operations staff as deemed necessary, in accordance with the approved personnel rules, annual budget or amendments thereto.

7.2 Standards

It is the intent of the parties that dispatching activities undertaken pursuant to this Agreement meet all standards for local public safety dispatching established by the California Commission on Peace Officer Standards and Training pursuant to Section 13510(c) of the California Penal Code.

7.3 Transition Personnel

It is further recognized that the creation of this Authority will mean that the parties may no longer employ the communications dispatchers or persons with similar job duties, and it is the intent of the parties that the General Manager shall first offer the opportunity of employment to incumbent full-time permanent communications dispatchers currently employed by each party on the date 60 days prior to the delivery of dispatch services to that party under this Agreement. It is further the intent of the parties that the employment of any person currently employed by the parties be accomplished in an orderly manner to minimize personnel problems associated with the consolidation. It is understood by the

parties that this paragraph shall operate solely during and until the center becomes fully operational.

Section 8. Term of Agreement

This Agreement shall become effective on the date first written above, and shall be binding upon all parties hereto, and shall continue in full force and effective until such time as the parties agree to modify or terminate the Agreement, in accordance with the provisions of Section 10.

Section 9. Termination or Withdrawal

Each party shall remain a party to the Agreement and shall share in the costs of start up and operation of the center until the close of the fifth full fiscal year following the delivery of dispatch services under this Agreement.

9.1 Defaults

If, in the interim, a party defaults on payment of any assessment as provided in Section 6.3, or otherwise breaches this Agreement, such party shall be automatically terminated as a party to the Agreement. The terminated party remains liable for the defaulted payment and late charges for the balance of the year's assessment, and for assessments remaining in the minimum term of agreed upon participation. Such subsequent assessments will be determined as if the terminated party were still a party to the Agreement, and the assessments shall be due and payable in full on the first day of the fiscal year for which it is levied. After expiration of five full fiscal years of dispatch center operations, any party defaulting on payment shall be automatically terminated and shall be liable for any defaulted payments and late charges remaining unpaid.

9.2 Withdrawal

A party to the Agreement may withdraw from participation in the Authority without penalty on the first day of July, 2003, or any subsequent fiscal year thereafter, upon one-year's written notice to the Authority of the party's intent to withdraw. Such withdrawing party shall perform all obligations under this Agreement until the effective date of the withdrawal.

Each party at the time of any debt issuance by the Authority is responsible for its share of the annual debt service payment regardless of whether it has withdrawn as a party to this Agreement.

9.3 Default

The Authority retains the right to seek legal redress, if necessary, to obtain payment of all amounts due and payable for a party whose membership is terminated for non-payment of any assessments due. A party terminated for non-payment of assessments forfeits any claim to any assets of the Authority.

Section 10. Dissolution

After the close of the fifth full fiscal year following the delivery of dispatch services under this Agreement, the Agreement shall terminate and the Authority shall dissolve if the parties unanimously agree to its termination by August 1 of that year. Dissolution shall be effective on the last day of the sixth fiscal year, unless the disposition of assets requirements of Section 11 are completed sooner and the parties unanimously agree to the early termination.

Section 11. Disposition of Assets

This Agreement may not be terminated or disposition of assets made to the parties until the Authority reasonably exhausts all means of collecting any moneys due it, and identifies and satisfies all its obligations and liabilities.

The Board of Directors shall be required to formally accept a final accounting prepared under the direction of the General Manager before any disposition of net assets shall be made and termination of the Agreement completed.

If the cause for termination of the Agreement is a reduction of the number of parties to the Agreement to less than three, or by mutual Agreement, the total dollar amount of net assets shall be apportioned among such parties according to the relative proportions of total assessments paid by those parties during the previous five years of the Agreement.

Section 12. Amendment to the Agreement

This Agreement may be amended at any time by unanimous consent of the parties. A proposed amendment shall be submitted to the Board of Directors for its review and a recommendation to the governing body of each party. The Board of Directors' recommendation may be accompanied by an alternative amendment to the Agreement. Each party shall either approve such amendment or return it to the Authority without approval within 60 days from the date of notification by the Board of Directors of the proposed amendment. The General Manager shall notify each party of the action taken on each proposed amendment, and shall distribute to the parties a copy of the agreement, if and as amended.

Section 13. Additional Parties to the Agreement

Parties, as defined in the Act, which are not parties to this Agreement, may become parties hereto only by amendment to this Agreement as defined in Section 12, and subject to the following terms and conditions:

(a) The Board of Directors shall determine a buy-in fee for long-term fixed assets (capital expenditures) owned by the Authority at the time of the buy-in.

(b) The effective date of the amendment to this Agreement and inclusion of an additional party shall occur only on the first date of the fiscal year following adoption of the amendment admitting the party, and at such time, the public agency or entity becoming a party shall be entitled to all rights and obligations of the Authority, and shall be entitled to representation on the Board of Directors and Users' Committee in accordance with the Agreement, as amended.

Section 14. Severability

Should any part, term, portion or provision of this Agreement, or the application thereof to any person or circumstance be in conflict with any State or Federal law, or otherwise be rendered unenforceable or ineffectual, the validity of the remaining parts, terms, portions or provisions, or the application thereof to other persons or circumstances, shall be deemed severable and shall not be affected thereby, providing such remaining portions or provisions can be construed in substance to continue to constitute the agreement that the parties intended to enter in the first instance.

Section 15. Agreement Not Partnership or Joint Venture; No Third Party

Beneficiaries

Nothing in this Agreement shall be deemed to establish relationships between the parties other than those expressly described and set forth. Specifically, nothing herein shall be deemed to establish a partnership or joint venture relationship between the parties.

The agreements contained herein are made solely for the benefit of the parties, and shall not be construed as benefiting any person who is not a party to this Agreement, except to the extent that, in carrying out the purposes of this Agreement, creation of the Authority is deemed by the parties to be in the public interest.

Section 16. Indemnity

Each party (herein, the "Indemnitor"), shall defend, indemnify and save harmless the other party (herein, the "Indemnitee"), from and against any and all loss; damage, injury or liability for injury to or death of any person (including an employee of an Indemnitee) or for loss or damage to property (including the property of an Indemnitee) resulting from the conduct or activities of the Indemnitor pursuant to this Agreement. Such indemnity shall apply whether or not an Indemnitee was or is claimed to be passively or actively negligent, and regardless of whether liability without fault is imposed or sought to be imposed on an Indemnitee. This indemnity shall not apply to the extent that it is void or otherwise unenforceable under applicable law in effect on, or validly retroactive to, the date of this Agreement, and shall not apply where such loss, damage, injury, liability or claim is a result of the sole negligence or willful misconduct of an Indemnitee.

Section 17. Successors

This Agreement shall be binding upon and shall inure to the benefit of the successors of the parties hereto.

Section 18. Notice of Creation

Within 10 days of the creation of the Authority by this Agreement, the City Clerk of the City of El Centro shall cause to be filed with the Secretary of State a notice of creation pursuant to Section 6503.5 of the Act.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and attested by their proper officers thereunto duly authorized, and their officials seals to be hereto affixed, as of the day and year first above written.

CITY OF WESTMORLAND

Dated: 8-16-95

By: Allan Martin

Mayor

Dated: 8-16-95

Attest: Amanda S. Armstrong

City Clerk

(seal)