

JOINT POWERS AGREEMENT  
THE BIG INDEPENDENT CITIES EXCESS POOL JOINT POWERS AUTHORITY

This Agreement is executed by and among those public agencies, duly organized and existing, which are parties signatory to this Agreement. All such public agencies, hereinafter called Members, shall be listed in Appendix A, which shall be attached hereto and made a part hereof.

RECITALS

WHEREAS, Articles 1 through 4, Chapter 5, Division 7, Title 1 of the California Government Code (commencing with Section 6500 et seq.) (hereinafter the "Joint Powers Law") permits two or more public agencies by agreement to jointly exercise powers common to the contracting parties; and

WHEREAS, a joint powers authority was formed pursuant to the Joint Powers Law by the execution of the Members of that certain Joint Powers Agreement Creating the Big Independent Cities Excess Pool Joint Powers Authority (the "Original Agreement"); and

WHEREAS, the Members desire to amend and restate the Original Agreement to continue to join together for the purpose of sharing risk, jointly purchasing liability insurance and other coverages and related programs that exist, or to be determined in the future.

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1  
DEFINITIONS

"Authority" shall mean the Big Independent Cities Excess Pool Joint Powers Authority created by the Original Agreement and continued by this Agreement.

"Board of Directors" or "Board" shall mean the governing body of the Authority.

"Coverage(s)" means the liability coverage to be provided under a Memorandum of Liability Coverage, and any other areas of coverage including but not limited to, property, workers compensation, etc., as determined and approved by the Board.

"Executive Committee" shall mean the Executive Committee of the Board of Directors of the Authority.

"Fiscal Year" shall mean that period of twelve months which is established by the Board of Directors or the Bylaws as the fiscal year of the Authority.

"Government Code" shall mean the California Government Code, as it may be amended from time to time.

"Insurance" means commercial primary or excess insurance or reinsurance.

"Member(s)" means any public agency as the term "public agency" is defined by Section 6500 of the Joint Powers Law, which includes, but is not limited to, any federal, state, county, city, public corporation, public district of this state or another state, or any joint powers authority formed pursuant to the Joint Powers Law by any of these agencies which has executed this Agreement and has become a member of the Authority.

"Risk Management Program(s)" means those programs of risk sharing, Insurance, and risk management services created by Authority to provide Coverage to each Member.

## ARTICLE 2 PURPOSES

This Agreement is entered into by the Members to amend and restate the Original Agreement in order that they may jointly continue to develop and fund Coverage including but not limited to such programs as risk sharing, excess insurance, the purchase of reinsurance, and the provision of necessary administrative services. Such administrative services may include, but shall not be limited to, risk management consulting, loss prevention and control, centralized loss reporting, actuarial consulting, claims adjusting, and legal defense services.

All such purposes shall be accomplished through a joint exercise of powers by such public agencies, pursuant to this Agreement, to be administered by a separate legal entity, the Big Independent Cities Excess Pool Joint Powers Authority.

Upon execution of this Agreement by two-thirds (2/3rds) of the Members, the Original Agreement shall no longer be in force and effect.

## ARTICLE 3 PARTIES TO AGREEMENT

Each Member, as a party to this Agreement, certifies that it intends to and does contract with all other Members as parties to this Agreement and with such other public agencies as later may be added as parties to this Agreement.

## ARTICLE 4 TERM

This Agreement shall become effective when executed and returned to the Authority by each Member. The Authority shall promptly notify all Members in writing of such effective date. This Agreement shall continue in effect until terminated as provided herein; provided that the termination of this Agreement with respect to an individual

Member, upon its withdrawal or expulsion from membership in the Authority, shall not operate to terminate this Agreement with respect to the remaining Members; and provided further that this Agreement shall continue in effect so long as any obligations of the Authority are outstanding.

## ARTICLE 5 THE AUTHORITY

Pursuant to the Joint Powers Law, there is hereby created and continued a public entity separate and apart from each party hereto, to be known as the "Big Independent Cities Excess Pool Joint Powers Authority," with such powers as are hereinafter set forth.

## ARTICLE 6 POWERS OF THE AUTHORITY

(a) Powers. The Authority shall have all of the powers common to its Members and all additional powers set forth in the Joint Powers Law and other statutes applicable to a joint powers authority created hereby, and is hereby authorized to do all acts necessary for the exercise of said powers. Such powers include, but are not limited to, the following:

- (1) To make and enter into contracts.
- (2) To incur debts, liabilities, and obligations and to encumber real or personal property.
- (3) To acquire, hold, or dispose of real or personal property, contributions and donations of real or personal property, funds, services, and other forms of assistance from persons, firms, corporations, and government entities.
- (4) To sue and be sued in its own name, and to settle any claim against it.
- (5) To receive and use contributions and advances from Members as provided in Government Code Section 6504, including contributions or advances of personnel, equipment or property.
- (6) To invest any money in its treasury that is not required for its immediate necessities, pursuant to Government Code Section 6509.5.
- (7) To employ agents and employees.
- (8) To receive, collect and disburse moneys.
- (9) To develop and implement Risk Management Programs, including but not limited to the purchase of excess insurance and reinsurance, to pay claims under Coverages provided by the Authority.

(10) To finance in accordance with applicable laws, by means of the issuance of bonds or other instruments of indebtedness, self-insurance reserve funds necessary or convenient for the implementation of this Agreement.

(11) To exercise other reasonable and necessary powers in furtherance or support of any purpose of the Authority or power granted by the Joint Powers Law, this Agreement or the Bylaws of the Authority.

(b) Restrictions on Powers. Pursuant to and to the extent required by Government Code Section 6509, the Authority shall be restricted in the exercise of its powers in the same manner as the City of Oxnard is restricted in its exercise of similar powers; provided that, if the City of Oxnard shall cease to be a Member, then the Authority shall be restricted in the exercise of its power in the same manner as the City of Santa Ana.

## ARTICLE 7 BOARD OF DIRECTORS

(a) Composition of Board. The Authority shall be governed by the Board of Directors, which shall be composed of one director representing each Member, appointed by the Member's City Council or Governing Board and serving at the pleasure of such City Council or Governing Board. The City Council or Governing Board of each Member shall also appoint an alternate director who shall have the authority to attend, participate in and vote at any meeting of the Board when the director is absent. A director or alternate director shall be a member of the City Council of the City or Governing Board of the public entity which appoints such director or alternate director, or an official or staff person of the Member which such director or alternate director represents. Any vacancy in a director or alternate director position shall be filled by the appointing Member's City Council or Governing Board, subject to the provisions of this Article. Immediately upon admission of a new Member pursuant to Article 16, such Member shall be entitled and required to appoint a director and alternate director.

(b) Termination of Status as Director. A director and/or alternate director shall be removed from the Board of Directors upon the occurrence of any one of the following events:

(1) the Authority receives written notice from the appointing Member of the removal of the director or alternate director, together with a certified copy of the resolution of the City Council or Governing Board of the Member effecting such removal;

(2) the withdrawal or removal of the Member from the Authority;

(3) the death or resignation of the director or alternate director;

(4) the Authority's receipt of written notice from the Member that the director or alternate director is no longer qualified as provided in subsection (a) of this Article.

(c) Compensation. Directors and their alternates are not entitled to compensation. The Board of Directors may authorize reimbursement of expenses incurred by directors or their alternates.

(d) Powers of Board. The Board of Directors shall have the following powers and functions:

(1) Except as otherwise provided in this Agreement, the Board shall exercise all powers and conduct all business of the Authority, either directly or by delegation to other bodies or persons.

(2) The Board shall form an Executive Committee, as provided in Article 10. The Executive Committee may exercise all powers or duties of the Board except adoption of the Authority's annual budget.

(3) The Board may form, as provided in Article 11, such other committees as it deems appropriate to conduct the business of the Authority or it may delegate such power to the Executive Committee in the Bylaws or by resolution of the Board. The membership of any such other committee may consist in whole or in part of persons who are not members of the Board; provided that the Board and the Executive Committee may delegate decision-making powers and duties only to a committee whose membership is comprised by a majority of directors or their alternate. Any committee not so constituted may function only in an advisory capacity.

(4) The Board shall elect the officers of the Authority and shall appoint or employ necessary staff in accordance with Articles 9 and 12.

(5) The Board shall cause to be prepared, and shall review, modify as necessary, and adopt the annual operating budget of the Authority. Adoption of the budget may not be delegated.

(6) The Board shall receive, review and act upon periodic reports and audits of the funds of the Authority, as required under Articles 13 and 14 of this Agreement.

(7) The Board shall have such other powers and duties as are reasonably necessary to carry out the purposes of the Authority.

## ARTICLE 8 MEETINGS OF THE BOARD OF DIRECTORS

(a) Regular Meetings. The Board of Directors shall hold at least three (3) regular meetings each year. The Board of Directors shall fix by resolution or in the Bylaws the date upon which, and the hour and place at which, each regular meeting is to be held.

(b) Ralph M. Brown Act. Each meeting of the Board of Directors, including without limitation a regular, adjourned regular, and special meetings shall be called, noticed, held, and conducted in accordance with the Ralph M. Brown Act, Section 54950 et seq. of the Government Code.

(c) Minutes. The Authority shall have minutes of each regular, adjourned regular, and special meetings kept by the Secretary. As soon as practicable after each

meeting, the Secretary shall forward to each Board member a copy of the minutes of such meeting.

(d) Quorum. A majority of the members of the Board is a quorum for the transaction of business. However, less than a quorum may adjourn from time to time. A vote of the majority of a quorum at a meeting is sufficient to take action unless otherwise provided in the Bylaws.

(e) Voting. Each member of the Board shall have one vote.

#### ARTICLE 9 OFFICERS

The Board shall elect a President and Vice President from among its members at its last meeting of each Fiscal Year. Each officer shall assume the duties of his office upon election. If either the President or Vice President ceases to be a member of the Board, the resulting vacancy shall be filled at the next regular meeting of the Board held after the vacancy occurs or at a special meeting of the Board called to fill such vacancy. In the absence or inability of the President to act, the Vice President shall act as President. The President shall preside at and conduct all meetings of the Board. The Board may appoint such other officers as it considers necessary and as provided in the Bylaws.

#### ARTICLE 10 EXECUTIVE COMMITTEE

The Board shall establish an Executive Committee of the Board which shall consist solely of members selected from the membership of the Board. The composition and the terms of office of the members of the Executive Committee shall be provided in the Bylaws of the Authority. The Executive Committee shall conduct the business of the Authority between meetings of the Board, exercising all those powers as provided for in section (d)(2) of Article 7, or as otherwise delegated to it by the Board.

#### ARTICLE 11 COMMITTEES

The Board may establish committees as it deems appropriate to conduct the business of the Authority or it may, in the Bylaws or by resolution, delegate such power to the President. Members of committees shall be appointed by the Board or the President, as the case may be. Each committee shall have those duties as determined by the Board or the President, as the case may be, or as otherwise set forth in the Bylaws. Each Committee shall meet on the call of its chairperson, and shall report to the Executive Committee and the Board as directed by the Board or the Executive Committee, as the case may be.

ARTICLE 12  
STAFF

(a) Principal Staff. The following staff members shall be appointed by and serve at the pleasure of the Board of Directors:

(1) General Manager/Secretary. The General Manager/Secretary shall administer the business and activities of the Authority, subject to the general supervision and policy direction of the Board and the Executive Committee; shall be responsible for all minutes, notices and records of the Authority; and shall perform such other duties as are assigned by the Board and Executive Committee.

(2) Treasurer. The Treasurer shall be appointed as provided in the Bylaws and pursuant to Government Code Section 6505.5 or Section 6505.6, as these sections may be amended from time to time. The duties of the Treasurer are set forth in Article 13 of this Agreement.

(3) Controller. The Controller shall be appointed as provided in the Bylaws and pursuant to Government Code Section 6505.5 or Section 6505.6, as these sections may be amended from time to time. The duties of the Controller are set forth in Article 14 of this Agreement.

(b) Other Staff. The Board, the Executive Committee or the General Manager/Secretary shall provide for the appointment of such other staff as may be necessary for the administration of the Authority.

(c) Compensation. The General Manager/Secretary, Treasurer, the Controller and any other members of the staff or employees of the Authority shall be compensated in such manner as shall be approved by the Board as permitted by applicable law.

ARTICLE 13  
RESPONSIBILITIES FOR FUNDS AND PROPERTY

(a) Duties of Treasurer. The Treasurer shall perform all duties as required under the Joint Powers Law including:

(1) Receive and receipt for all money of the Authority and place it in the treasury of the treasurer so designated to the credit of the Authority.

(2) Be responsible, upon his or her official bond, for the safekeeping and disbursement of all Authority money so held by him or her.

(3) Pay, when due, out of money of the Authority held by him or her, all sums payable on outstanding bonds and coupons of the Authority.

(4) Pay any other sums due from the Authority from Authority money, or any portion thereof, only upon warrants of the public officer performing the functions of Controller who has been designated pursuant to the Bylaws.

(5) Verify and report in writing on the first day of July, October, January, and April of each year to the Authority and to each Member to this Agreement, the amount of money he or she holds for the Authority, the amount of receipts since his or her last report, and the amount paid out since his or her last report.

(b) Authority Property. Pursuant to Government Code Section 6505.1, the General Manager/Secretary, the Treasurer, and such other persons as the Board may designate shall have charge of, handle, and have access to the property of the Authority.

#### ARTICLE 14 ACCOUNTS AND RECORDS

(a) Annual Budget. The Authority shall annually adopt an operating budget pursuant to Article 7(d)(5) of this Agreement.

(b) Funds and Accounts. The Controller of the Authority shall establish and maintain such funds and accounts as may be required by good accounting practices and by the Board. Books and records of the Authority in the hands of the Controller shall be open to inspection by authorized representatives of the Members at all reasonable times. The Authority shall adhere to a standard of strict accountability of all funds as set forth in the Joint Powers Law.

(c) Controller's Report. The Controller, within one hundred twenty (120) days after the close of each Fiscal Year, shall give or cause to be given a complete written report of all financial activities of such Fiscal Year to the Board and to each Member.

(d) Annual Audit. The Authority shall provide for a certified, annual audit of the accounts and records of the Authority which audit shall conform to generally accepted auditing standards. When such an audit of the accounts and records is made by a Certified Public Accountant, such report shall be filed as a public record with each of the Members and with the county auditor in which each of the Members is located. Such report shall be filed within six (6) months of the end of the Fiscal Year under examination. Costs of such audit shall be considered a general expense of the Authority and included in the term "administrative costs."

#### ARTICLE 15 MEMBER RESPONSIBILITIES

Each Member shall have the following responsibilities:

(a) To appoint its director and alternate director to, or remove its director and alternate director from the Board as set forth in Article 7.



- (b) To consider proposed amendments to this Agreement as set forth in Article 24.
- (c) To make contributions in the form of membership premiums, assessments, fees and fees, if any, in accordance with the Bylaws and as determined by the Board, for the purpose of defraying the costs of providing the annual benefits accruing directly to each party from this Agreement.
- (d) To provide to the Authority such other information or assistance as may be necessary for the Authority to carry out the Risk Management Programs as determined by the Board.

ARTICLE 16  
NEW MEMBERS

With the approval of two-thirds (2/3rds) of all current members of the Board, and compliance with all requirements of the Bylaws of the Authority and of the Joint Powers Law, any qualified public agency may become a party to this Agreement. The date that the applying public agency will become a Member shall be determined by the Board.

ARTICLE 17  
DISSOLUTION AND DISTRIBUTION OF ASSETS

This Agreement may be terminated and the Authority dissolved by the written consent of two-thirds (2/3rds) of all Members; provided however, that this Agreement and the Authority shall continue to exist for the purpose of disposing of all claims, the distribution of assets, and any other functions necessary to conclude the affairs of the Authority as provided in the Bylaws of the Authority.

ARTICLE 18  
WITHDRAWAL OF MEMBER

A Member may withdraw from membership in the Authority in accordance with the procedures and the conditions as provided in the Bylaws of the Authority.

ARTICLE 19  
EXPULSION OF MEMBER

A Member may be expelled from membership in the Authority by a two-thirds (2/3rds) vote of all members of the Board in accordance with the procedures and the conditions as provided in the Bylaws of the Authority.

ARTICLE 20  
OBLIGATIONS OF AUTHORITY

The debts, liabilities and obligations of the Authority shall not be the debts, liabilities and obligations of each Member. Any Member may separately contract or assume responsibility for specific debts, liabilities, or obligations of the Authority.

Pursuant to Section 895.2 of the Government Code, the Members may be jointly and severally liable for any liability which is imposed by any law for injury caused by a negligent or wrongful act or omission occurring in the performance of this Agreement. In the event that such liability arises out of a negligent or wrongful act or omission with respect to a Risk Management Program, the Members hereby provide, pursuant to Section 895.6 of the Government Code, that such liability shall be borne by the Members participating in such Risk Management Program in the same proportion as administrative expenses of the Risk Management Program are allocated among such participating Members at the time the liability is determined. In the event a Member is held liable upon any judgment for damages caused by such an act or omission and makes payment in excess of its proportional share, as determined in the preceding sentence, such Member is entitled contribution from each of the Members which have not paid their proportional share.

ARTICLE 21  
LIABILITY OF BOARD OF DIRECTORS, OFFICERS AND COMMITTEE MEMBERS

The members of the Board of Directors, officers and committee members of the Authority shall use ordinary care and reasonable diligence in the exercise of their powers and in the performance of their duties pursuant to this Agreement. They shall not be liable for any mistake of judgment or any other action made, taken or omitted by them in good faith, nor for any action taken or omitted by any agent, employee or independent contractor selected with reasonable care, nor for loss incurred through investment of Authority funds, or failure to invest.

No director, officer or committee member shall be responsible for any action taken or omitted by any other director, officer or committee member. No director, officer or committee member shall be required to give a bond or other security to guarantee the faithful performance of his or her duties pursuant to this Agreement.

ARTICLE 22  
BYLAWS

The Board shall adopt Bylaws consistent with this Agreement which shall provide for the administration and management of the Authority.

ARTICLE 23  
NOTICES

The Authority shall address notices, billings and other communications to a Member as directed by such Member. Each Member shall provide the Authority with the address to which communications are to be sent. Members shall address notices and other communications to the Authority, at the office address of the Authority as set forth in the Bylaws.

ARTICLE 24  
AMENDMENT

This Agreement may be amended at any time by vote of two-thirds (2/3rds) of the Members, acting through their City Councils or Governing Boards, and compliance with any requirements of the Joint Powers Law. Any amendment of this Agreement shall become effective upon receipt by the Authority of notice of the approval of such amendment by the City Councils or Governing Boards of two-thirds (2/3rds) of the Members and satisfaction of any requirements of the Joint Powers Law.

ARTICLE 25  
SEVERABILITY

Should any portion, term, condition, or provision of this Agreement be decided by a court of competent jurisdiction to be illegal or in conflict with any law of the State of California, or be otherwise rendered unenforceable or ineffectual, the validity of the remaining portions, terms, conditions, and provisions shall not be affected thereby.

ARTICLE 26  
PROHIBITION AGAINST ASSIGNMENT

No Member may assign any right, claim or interest it may have under this Agreement, and no creditor, assignee or third party beneficiary of any Member shall have any right, claim, or title to any part, share, interest, fund or asset of the Authority.

ARTICLE 27  
AGREEMENT COMPLETE

This Agreement constitutes the full and complete agreement of the parties. There are no oral understandings or agreements not set forth in writing herein.

ARTICLE 28  
FILING OF NOTICE OF AMENDMENT

The General Manager/Secretary of the Authority shall file a notice of this Agreement within 30 days of its effective date with the office of the California Secretary of State, as

required by Government Code Section 6503.5. Upon any change in membership, the General Manager/Secretary shall file a notice of such change of membership within 10 days of its effective date with the Secretary of State and with the county clerk of the county in which each Member is located, as required by Government Code Section 53051.

IN WITNESS WHEREOF, the undersigned party hereto has executed this Joint Powers Agreement on the dated indicated below.


DATE: June 6, 2006

CITY OF WEST COVINA

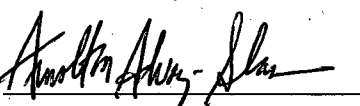
BY: 

ITS: Mayor Steve Herfert

ATTEST:  
CITY CLERK

BY:  Susan Fish, Assistant City Clerk

APPROVED AS TO FORM:  
CITY ATTORNEY

BY:   
Arnold Alvarez-Glasman



AMENDED BYLAWS  
OF THE  
BIG INDEPENDENT CITIES EXCESS POOL JOINT POWERS AUTHORITY

ARTICLE I  
DEFINITIONS

The definitions of terms used in these Bylaws shall be the same as those contained in the Joint Powers Agreement ("JPA Agreement") creating the Big Independent Cities Excess Pool Joint Powers Authority, hereinafter called BICEP, unless otherwise expressly provided herein.

1.1 "Board" means members of the Board of Directors of BICEP; provided that Members that do not participate in a given risk sharing layer(s) shall not be entitled to vote on any action with respect to those risk sharing layer(s) and any references in these Bylaws to a majority or specified percentage of the Board shall be deemed to mean a majority of the affected Members of the Board.

1.2 "Charter Member" means the Member cities that formed BICEP in September 1988 which are Huntington Beach, Oxnard, Pomona, San Bernardino and Santa Ana.

1.3 "Coverage" means the liability coverage provided in the Memorandum attached as Exhibit A hereto and incorporated herein by reference, and any other areas of coverage including but not limited to, property, workers compensation, etc., as determined and approved by the Board.

1.4 "Coverage Period" means each year co-extensive with the Fiscal Year for which a Member pays premiums for Coverage, unless and as amended by the Board.

1.5 "Fiscal Year" means from July 1 in each calendar year to June 30 of the next calendar year unless later amended by the Board.

1.6 "Insurance" means commercial primary or excess insurance or reinsurance.

1.7 "Member" means any public agency as the term "public agency" is defined by Section 6500 of the Joint Powers Law, which includes, but is not limited to, any federal, state, county, city, public corporation, public district of this state or another state, or any joint powers authority formed pursuant to the Joint Powers Law by any of these agencies which has executed this Agreement and has become a member of the Authority.

1.8 "Memorandum" means the BICEP Memorandum of Liability Coverage set forth in Exhibit A hereto and incorporated herein by reference.

1.9 "Risk Management Program" means those programs of risk sharing, Insurance, and risk management services created by BICEP to provide Coverage to each Member.

## ARTICLE II OPERATIONAL ITEMS AND GOVERNANCE

2.1 Term. The Term of these Amended Bylaws shall commence on the date of approval by the Board as provided in Section 2.3 and shall continue until later amended by the Board or dissolution of BICEP as provided herein.

2.2 Amendment of Bylaws. These Bylaws may be further amended at any time by a two-thirds (2/3rds) vote of all members of the Board. Following adoption of amendments, the General Manager shall prepare and distribute a revision of the Bylaws to all Members.

2.3 Effective Date. These Bylaws shall go into effect immediately upon adoption by the Board as provided herein.

2.4 Election of Officers. The Board shall elect the President and the Vice President from among the members of the Board. For each Fiscal Year, the officers shall be elected in the following manner:

2.4.1 At the last regular meeting of each Fiscal Year, the Board shall elect officers as required by the JPA Agreement and these Bylaws for the upcoming Fiscal Year. All terms of office shall be for one year. The officers shall begin serving terms upon the beginning of the fiscal year immediately following the election.

2.4.2 Each Board member may place himself or another Board member in nomination for each office.

2.4.3 Each Board member shall cast one vote for the candidate of his/her choice for each office.

2.4.4 The Board may remove an officer at any time. A vacancy in any office, due to death, resignation, removal, disqualification, or any other cause, shall be filled by election of the Board.

2.5 Duties of Officers.

2.5.1 Duties of the President.

The President shall preside at and conduct all meetings of the Board and perform all duties as provided in these Bylaws or delegated by the Board. The immediate Past President shall

serve as an ex officio member of the Executive Committee for a term of one (1) year, and as long as he or she remains a member of the Board.

#### 2.5.2 Duties of Vice President.

In the absence of the President, the Vice President shall perform all duties assigned to the President by these Bylaws or by the Board.

#### 2.6 Appointment and Duties of Treasurer.

The Board shall appoint the Treasurer as provided in Section 6505.5 or Section 6505.6 of the California Government Code. The duties of the Treasurer shall be those specified in JPA Agreement, in Section 6505.5 or 6505.6 of the California Government Code, and in accordance with the laws applicable to any out-of-state Member. The Treasurer shall monitor and oversee the deposits and investments of BICEP's funds by the General Manager and perform other duties as specified by the Board.

#### 2.7 Appointment and Duties of Controller.

The Board shall appoint the Controller as provided in Section 6505.5 or Section 6505.6 of the California Government Code. The duties of the Controller shall be those specified in the JPA Agreement, in Section 6505.5 or Section 6505.6 of the California Government Code, and in accordance with the laws applicable to any out-of-state Member.

#### 2.8 Appointment and Duties of General Manager.

By a majority vote of all members, the Board shall appoint a General Manager to conduct the day-to-day operations of BICEP. The General Manager shall perform those duties as delegated and authorized by the Board, including but not limited to, keeping minutes of the Board meetings, and keeping and maintaining all of the records of BICEP.

#### 2.9 Establishment of Committees

2.9.1 Executive Committee. There shall be an Executive Committee of the Board of Directors which shall consist of not less than four (4) members, exclusive of any current immediate Past President serving as an Ex Officio Executive Committee Member. Two of the members of the Executive Committee shall be the President and the Vice President of the Board. The other members of the Executive Committee shall be elected by the Board. The President, or the Vice President in his/her absence, shall serve as the Chairperson of the Executive Committee.

2.9.2 Subject to approval of the Board, the President shall appoint any other committees and determine the committees' structure, charge, size and membership. Committees may be



established to consider any matter within the jurisdiction of BICEP. Committees shall operate according to the policies adopted by the Board and shall submit their reports and recommendations to the Board. The chairperson of a committee shall be a member of the Board or an alternate director.

## 2.10 Board Meetings

### 2.10.1 Regular Meetings.

A. Time Held. Unless otherwise changed by a majority vote of the Board, regular meetings shall be held as required to conduct the business of BICEP, not less than three (3) times in each Fiscal Year.

B. Business to be Transacted. At any meeting, the Board may transact any business within its powers, and receive reports of the operations and affairs of BICEP.

C. Notice. Written notice ("Notice") of each regular meeting of the Board shall be delivered to each director and/or alternate director at least fourteen (14) days in advance of the meeting. Delivery of the Notice may be accomplished in electronic form. The Notice shall include a proposed agenda and shall specify:

- (i) The place, date and hour of the meeting.
- (ii) Those matters which are intended to be presented for action by the Board.

D. Inclusion of Items in Regular Meeting Agenda. Within three (3) calendar days of receipt of the Notice which includes the proposed agenda, any director or alternate director may cause an item to be included in the agenda for the upcoming Board meeting by delivering to the President or the General Manager a written request, which may be in electronic form, to include such item in the agenda.

### 2.10.2 Special Meetings.

A special meeting of the Board may be called at any time by the President or by a majority of the directors subject to the requirements for 24-hour written notice to the directors and/or alternate directors and to requesting representatives of the media. The notice of a special meeting shall specify the time and place of the meeting and the business to be transacted. No other business shall be considered at the meeting. A member of the Board may waive notice as provided in Section 54956 of the Government Code and in accordance with the laws applicable to any out-of-state Member. Notice of the calling of any special meeting

shall be posted as provided in said Section 54956 and in accordance with the laws applicable to any out-of-state Member.

#### 2.10.3 Adjourned Meetings.

The Board may adjourn any regular or special meeting to a time and place specified in the order of adjournment, whether or not a quorum has been established. If a quorum is not established, no business other than adjournment may be transacted. A copy of the order for adjournment shall be posted.

#### 2.11 Alternate Director.

The alternate director appointed by a Member as its alternate representative on the Board may attend and participate in any meeting of the Board and, in the absence of the director, may vote in any meeting of the Board as the representative of the Member.

#### 2.12 Quorum and Voting Requirements.

A majority of the Members shall constitute a quorum for the transaction of business. All actions of the Board shall require the affirmative votes of a majority of the Members present at a meeting duly held at which a quorum is present unless otherwise expressly provided herein. Each Member shall be entitled to cast only one vote.

#### 2.13 Brown Act Compliance.

Notwithstanding anything herein to the contrary, all meetings shall be held in strict compliance with the Ralph M. Brown Act (California Government Code Section 54950 *et seq.*), as it may be amended from time to time, and in accordance with the laws applicable to any out-of-state Member.

#### 2.14 Robert's Rules of Order.

All meetings of the Board, its Committees or other bodies of BICEP shall be conducted in accordance with Robert's Rules of Order, provided that in the event of a conflict, these Bylaws or applicable state law shall supersede and control.

#### 2.15 Authority to Sign Documents.

The Board may authorize any officer, staff member, or agent of BICEP to execute any contract in the name of and on behalf of BICEP, and such authorization may be general or specific in nature. Unless so authorized, no officer, staff member or agent shall have any power to bind BICEP by contract.

## 2.16 Offices.

BICEP's principal office for the transaction of business is located at 1100 S. Flower Street, Suite 2100, Los Angeles California 90015. The Board may change the location of the principal office from time to time. The Board may establish one or more subordinate offices at any place or places where BICEP is qualified to do business.

## ARTICLE III FINANCE

### 3.1 Budget.

Prior to the last Board meeting in a Fiscal Year, the General Manager shall submit to the Board a proposed general budget for the next Fiscal Year. That budget shall include revenues and expenses with beginning balances. Revenues are to be broken down by operating revenues and interest income. Expenses are to be broken down by operating expenses, professional/contractual services plus pool coverage and claim expense. The budget shall provide information for the three prior Fiscal Years, the budget and projected budget for the current Fiscal Year, and the proposed budget for the upcoming Fiscal Year. The Board shall review and adopt the budget no later than at the last meeting of the Board in each Fiscal Year.

### 3.2 Delegation.

The General Manager shall manage all expenditures, subject to control of the Board. The General Manager and Treasurer shall have power to transfer funds within the total detailed budget to meet unanticipated needs or changed situations. Such action shall be reported to the Board at their next meeting.

## ARTICLE IV NEW MEMBER REQUIREMENTS

### 4.1 Conditions to providing Coverage to a New Member.

BICEP may provide Coverage to any new Member(s) which is not currently a Member under these Bylaws, subject to the following conditions:

4.1.1 The new Member shall be a public agency as defined in Section 6500 of the California Government Code.

4.1.2 The public agency shall have a full-time risk management employee, or subject to the unanimous approval of the Board, shall have either: (i) a risk management

professional or (ii) otherwise must be able to demonstrate a sound risk management program.

4.1.3 The public agency shall have an active loss control program.

4.1.4 A new Member's participation in a coverage program of BICEP shall be subject to an actuarial study of loss experience to compare with current Members to see if the new Member's participation would adversely affect the actuarial soundness of a BICEP program.

4.1.5 The recommendation of BICEP's insurance broker.

4.1.6 Submission of reasonably required information including but not limited to, audited financial statements, underwriting data, claims and loss reports.

#### 4.2 Acceptance of New Member.

Acceptance of a new Member shall be approved by a vote of two-thirds (2/3rds) of all current Members of the Board.

#### 4.3 Condition to Acceptance.

Acceptance of a new Member shall be subject to the approval and execution of the Joint Powers Agreement, as it may be amended from time to time, by such Member's governing body and agreement to be bound by these Bylaws.

### ARTICLE V COVERAGE ACCEPTANCE

5.1 BICEP hereby agrees to provide the Coverage to each Member, and each Member hereby agrees to accept the Coverage, in accordance with these Bylaws and upon the terms and conditions set forth in the Memorandum and/or Insurance purchased for Members in accordance with each Risk Management Program in which a Member participates.

5.2 The Board shall annually determine each type of Risk Management Program which BICEP may provide for Coverage, or for a portion of Coverage, to the Members. Each such Risk Management Program shall provide for appropriate levels of self-insured retention, risk sharing and the purchase of Insurance from a commercial insurer or reinsurer, as determined and approved by the Board. The Board may determine to suspend the Memorandum and accept the policy of Insurance as the basis for liability coverage by the approval of a "reverse following form."

5.3 Coverage provided to each Member is expressly conditioned on that Member's payment of applicable premiums related to the Risk Management Program in which the Member participates.

ARTICLE VI  
DISSOLUTION OF BICEP

6.1 BICEP shall continue until dissolution as determined by a two-thirds (2/3rds) vote of the entire Board. The JPA Agreement and these Bylaws shall continue in force and effect for purposes of disposing of all claims, payment of all expenses related to such dissolution, including but not limited to, insurance company payroll audits, claims adjustment costs, financial auditing expenses, accounting costs, investment services expenses, required official dissolution notices to various parties, attorney costs and any other related necessary expenses, and the distribution of remaining assets of BICEP.

6.2 The distribution of remaining assets of BICEP upon dissolution shall be in accordance with the terms and conditions for distribution as provided in the Risk Management Program in which a Member participates.

6.3 The Board is vested with all powers of BICEP for the purpose of concluding and dissolving the business affairs of BICEP.

ARTICLE VII  
WITHDRAWAL BY MEMBER

7.1 Conditions to Permitting Withdrawal of a Member from Coverage. On and after July 1, 2005, BICEP shall permit a Member to withdraw from Coverage subject to the following conditions:

7.1.1 A Member shall not be in default of any of its obligations to pay any premium as provided herein and pursuant to a Risk Management Program.

7.1.2 Notice to Withdraw.

(a) A Charter Member shall provide written notice to BICEP of its intent to withdraw no less than six (6) months preceding the upcoming renewal date of Coverage. A non-Charter Member may not withdraw for a period of thirty-six (36) months commencing from the date of admission to BICEP ("Initial Term"). After the Initial Term, a non-Charter Member shall provide written notice to BICEP of its intent to withdraw no less than six (6) months preceding the upcoming renewal date of Coverage; except, however, a non-Charter Member may provide such 6-month notice prior to the end of its Initial Term, which withdrawal shall take effect on the next immediate renewal date of Coverage.

(b) Any Member may withdraw from a Risk Management Program which is non-risk sharing by providing written notice no less than ninety (90) days preceding the upcoming renewal date of such non-risk sharing Coverage.

7.1.3 A Member shall have paid all fees and expenses incurred by BICEP as a result of such withdrawal.

7.1.4 A Member's withdrawal shall be effective on the first day of a new Coverage Period.

7.2 The distribution to a Member of assets of BICEP upon withdrawal shall be in accordance with the terms and conditions for such distribution as provided in the Risk Management Program in which a Member participates.

7.3 A Member that is not participating in any Risk Management Program shall be deemed to have withdrawn from BICEP.

#### ARTICLE VIII EXPULSION OF MEMBER

8.1 Conditions to permitting expulsion of a Member from Coverage. BICEP may expel a Member from Coverage subject to the following conditions:

8.1.1 A Member shall be in default under these Bylaws, the Memorandum, or a Risk Management Program and shall have failed to cure such default in accordance with the provisions of Article X, below;

8.1.2 The Board, by not less than two-thirds (2/3rds) vote of the Members, excluding the Member in default, shall have approved such expulsion and written notice of the final action of expulsion shall have been given to the Member not less than sixty (60) days preceding the effective date of such expulsion;

8.2 In the event that BICEP elects to expel any defaulting Member, subject to the conditions described and in the manner provided in Section 8.1 hereof, the Member nevertheless agrees to pay to BICEP all cost, losses or damages howsoever arising or occurring as a result of such default. In no event shall expulsion waive or release such defaulting Member from its ongoing obligations assumed during its years of participation in BICEP prior to the effective date of expulsion.

8.3 The distribution to a Member of assets of BICEP upon expulsion shall be in accordance with the terms and conditions for such distribution as provided in the Risk Management Program in which a Member participates.

ARTICLE IX  
INDEMNIFICATION AND DISCLAIMER

9.1 Indemnification Covenants. Each Member hereby agrees to indemnify and save BICEP and all other Members and their respective officers harmless from and against all claims, losses and damages, including legal fees and expenses, arising out of such Member's breach or default in the performance of any of its obligations under these Bylaws, the Memorandum, and a Risk Management Program.

9.2 Disclaimer. BICEP MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE ADEQUACY OF THE COVERAGE FOR THE NEEDS OF ANY OR EACH OF THE MEMBERS.

ARTICLE X  
DEFAULTS AND REMEDIES

10.1 Defaults. The following shall be an event of default under these Bylaws and the term "Event of Default" shall mean, whenever it is used in these Bylaws with respect to a Member, any one or more of the following events:

10.1.1 Failure by a Member to pay any premium or various adjustments or allocations required to be paid hereunder;

10.1.2 Failure by a Member to observe and perform any covenant, condition or agreement on its part to be observed or performed herein or otherwise with respect hereto;

10.1.3 The filing by the Member of a case of bankruptcy, or the subjection of any right or interest of the Member under these Bylaws to any execution, garnishment or attachment, or adjudication of the Member as a bankrupt, or assignment by the Member for the benefit of creditors, or the entry by the Member into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Member in any proceedings instituted under the provisions of the federal bankruptcy code, as amended, or under any similar act which may hereafter be enacted;

10.1.4 Failure to fully comply with the terms and provisions of the Memorandum or a Risk Management Program.

10.2 Notice of Default. BICEP shall give written notice of the Event of Default ("Notice of Default") to the Member in default, specifying the Event of Default complained of by BICEP, in the time periods as provided in Section 10.3 below. Failure or delay in giving such notice shall not constitute a waiver of any Event of Default, nor shall it change the time of default.

10.3 Right to Cure Default. The Member whose acts or omissions to act constitute an Event of Default as defined in Section 10.1 shall be entitled to cure, correct, or remedy such Event of Default, if (i) such defaulting Member commences and thereafter diligently pursues the curing of said Event of Default within thirty (30) days of receipt of a Notice of Default, as defined in Section 10.2; and (ii) such defaulting Party fully completes such cure, correction or remedy within thirty (30) days of receipt of said Notice of Default, or, in the event that the Event of Default is not curable within said thirty (30) day period), within such additional period as is reasonably necessary to cure said Event of Default; provided that such additional period shall not in any event exceed ninety (90) days without the Board's consent. In the event Member reasonably and in good faith contends that it will take more than ninety (90) days to cure the Event of Default, the defaulting Member and Board shall meet and confer in good faith and determine whether additional time is required to cure the Event of Default, and, if so, the Board shall extend the time to cure the Event of Default. Notwithstanding anything to the contrary in this Section, if the Event of Default consists of a Member's failure to timely discharge its monetary obligations to BICEP, then the Member in default shall cure any such default within ten (10) days of receipt of a Notice of Default.

10.4 No Remedy Exclusive. Unless otherwise expressly provided in these Bylaws, the Memorandum, or a Risk Management Program, the rights and remedies of BICEP are cumulative, and the exercise by BICEP of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default.

10.5 Agreement to Pay Attorneys' Fees and Expenses. In the event any party to these Bylaws should default under any of the provisions hereof and the nondefaulting parties should employ attorneys or incur other expenses for the collection of moneys or the enforcement of performance or observance of any obligation or agreement on the part of the defaulting party contained herein, the defaulting party agrees that it will on demand pay to the nondefaulting parties the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting parties awarded to the nondefaulting parties by a court of competent jurisdiction.

10.6 No Additional Waiver Implied by One Waiver. No waiver by BICEP of any breach of these Bylaws or any provisions of these Bylaws shall be deemed to constitute a waiver of any preceding or succeeding breach of the same or any other provision of these Bylaws. Any failures or delays by BICEP in asserting any of its rights and remedies as to any default shall not operate as a waiver of any default or of any such rights or remedies. Delays by BICEP in asserting any of its rights and remedies shall not deprive BICEP of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert or enforce any such rights or remedies.

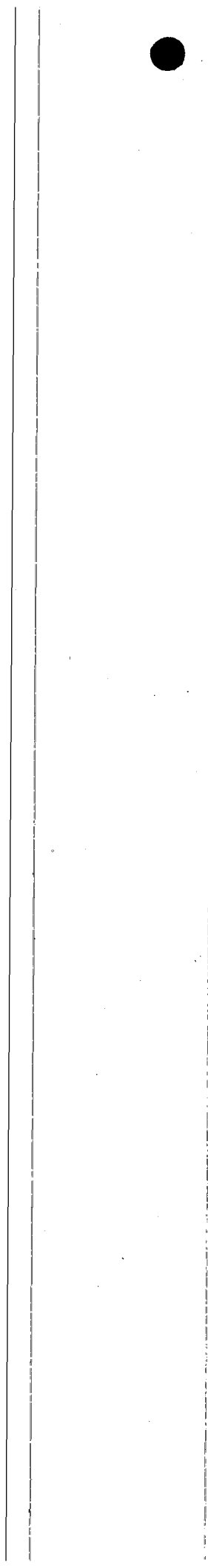


ARTICLE XI  
APPLICABLE STATE LAW

11.1 The laws of the State of California shall govern the interpretation and enforcement of these Bylaws. In the event of a conflict between California laws and an out-of-state Member's state law, California law shall control; except however, notwithstanding any provision to the contrary, these Bylaws shall not be construed to alter or change any applicable limitations to liability, e.g., caps on liability judgments, more stringent claim requirements, or other immunities, applicable under the state law of an out-of-state Member to such Member. To the extent that another state's laws do not conflict with California laws as referenced herein, the other state's laws also apply. The Members agree that any legal actions and proceedings to resolve any dispute under JPA Agreement, these Bylaws or any Risk Management Program shall only be brought in the Superior Court of the State of California.

ARTICLE XII  
COMPANION DOCUMENTS

12.1 All Exhibits referred to in this Agreement are incorporated herein by such reference and made a part hereof.



**LIABILITY PROGRAM  
BIG INDEPENDENT CITIES EXCESS POOL (BICEP)**

**Self-Insured Retention:**   \$1,000,000.00  

**Program Year:**   FY 2006-2007  

The Member, West Covina, hereby agrees to enter into and participate in the Program of Coverage ("Program") as stated herein in accordance with the terms and conditions as follows:

**ARTICLE I  
DEFINITIONS**

The definitions of terms used in this Program shall be the same as those contained in the Joint Powers Authority Agreement ("JPA") and the Bylaws of Big Independent Cities Excess Pool ("BICEP"), unless otherwise expressly provided herein.

1.1 "Actuary" means a firm with at least one employee who is both a Fellow of the Casualty Actuarial Society and a Member of the American Academy of Actuaries, which firm is appointed by BICEP with the approval of at least a majority of the Board.

1.2 "Administrative Premium" means each Member's proportion of all administrative costs of BICEP including, but not limited to, fees of any accountants, Actuary, attorneys, Claims Auditor, financial auditors, general management, investments services, trustee services, and all other necessary administrative costs of BICEP or charges required to be paid by it in order to administer BICEP, as further set forth in Section 4.1.2.1 hereof.

1.3 "Case Reserves" means amounts in the Claims Payment Fund required to be designated as reserves for payment of Settlements pursuant to Article III hereof in accordance with prudent claims practice and the recommendations in the Claims Auditor's annual report. Case Reserves will be adjusted to reflect any changed circumstances subsequent to the year any Claim is filed and to reflect the amount by which a Settlement exceeds or is less than reserves established for any Claim; provided, however, that there shall be no Case Reserves established for a Claim or any portion thereof within a Member's Self-Insured Retention or which is covered by Insurance pursuant to Section 2.1.1 hereof.

1.4 "Claim(s)" means a demand(s) against a Member to recover for losses or damages within or alleged to be within the scope of Coverage in accordance with Section 2.1 below.

1.5 "Claims Auditor" means an individual or an organization experienced in the handling of public entity liability Claims, appointed by BICEP with the approval of a majority of the Board who shall be independent of any party who administers Claims on behalf of BICEP or its members.

1.6 "Claims Payment Fund" means the fund established for the payment of Settlements pursuant to Section 3.2 hereof. Nothing in this Program is intended to prohibit BICEP from designating the Claims Payment Fund as being comprised of separate accounts for the purposes of issuing and securing funding.

1.7 "Coverage Period" means each year coextensive with the Memorandum Period (as set forth in Section II, Paragraph 20 of the Memorandum) for which a Member pays Participation Premium.

1.8 "Experience Percent Contribution" means each Member's percentages set forth in the BICEP Experience Rating Study performed by BICEP's Actuary in each year prior to the next Coverage Period using the methodology set forth in the Liability Rating Plan, attached hereto as Exhibit A in this Program.

1.9 "Participation Premium" means with respect to each Member, the sum of the Administrative Premium, Risk Sharing Premium and Insurance Premium, due and payable by each Member on each Premium Payment Date as determined in accordance with Article IV hereof.

1.10 "Payroll" means with respect to a Member, the workers' compensation payroll of such Member as reported to the State of California or if a Member is not domiciled in California, as required to be reported in the other state.

1.11 "Participation Premium Adjustment" means the actual accounting of revenue and expenses and all Claims, including incurred but not reported (IBNR), for each Coverage Period that occurred on or after July 1, 2004 versus the amounts deposited for each Coverage Period commencing July 1, 2004 and thereafter, in accordance with the Liability Rating Plan.

1.12 "Pure Premium Adjustment" means the annual adjustment on all risk-shared Claims that occurred from October 1, 1988 (inception date of BICEP) up to July 1, 2004.

1.13 "Retained Earnings" shall be that as identified in the audited annual financial statements of BICEP.

1.14 "Reverse Following Form" means suspending the terms and conditions of the Memorandum and replacing them with terms and conditions of the policy of Insurance, or with the terms and conditions of another public agency's memorandum of coverage.

1.15 "Risk Sharing Premium" means the amount necessary to fund expected losses required to be established to pay Settlements of the Members for a Coverage Period as determined in accordance with the Liability Rating Plan.

1.16 "Risk Sharing Layer" means a specific layer of coverage per occurrence applicable to one or more Members. BICEP may establish one or more levels of self-insured retention in compliance with Section 2.1 hereof as approved by the Board annually.

1.17 "Settlement(s)" means the settlement by BICEP or a Member, in accordance with Insurance in effect or the Memorandum, of a Claim against such Member, or the final adjudication of such Claim. The amount of any Settlement may include any costs or expenses deemed appropriate by BICEP in connection therewith including DEFENSE COSTS as described in the Memorandum or as covered by Insurance.

1.18 "Supplemental Premium" means the amount new Members must deposit with BICEP if the new Member will participate in BICEP's Retained Earnings on an equal footing with Charter Members.

1.19 "Terminated Member" means a Member permitted to withdraw from Coverage pursuant to Article VII of the Bylaws or a Member expelled pursuant to Article VIII of the Bylaws.

## ARTICLE II COVERAGE PROGRAMS

### 2.1 Coverage.

In accordance with Article V of the Bylaws, BICEP hereby provides and the Member hereby accepts the Coverage and shall participate in the Risk Sharing Layer as set forth in the Declaration for each year's Coverage Period.

2.1.1 BICEP may provide Coverage, or a portion of Coverage, to the Members by purchase of insurance ("Insurance") from a commercial insurer or reinsurer, upon the approval of the Board. BICEP shall be obligated to assist and cooperate with each Member in collecting for covered Claims from such insurers to the fullest extent.

2.1.2 BICEP shall pay any covered Claims in each Coverage Period in accordance with the Memorandum. However, prior to each Coverage Period, BICEP may also determine whether or not to suspend the Memorandum and to approve and accept a Reverse Following Form as the basis for liability coverage of Claims.

2.1.3 Notwithstanding any recoveries through reinsurance or insurance, in no

event shall BICEP be obligated to pay any covered Claim in excess of the maximum amount of \$10 million per occurrence or \$25 million annual aggregate for all Claims.

### ARTICLE III PAYMENT OF CLAIMS

#### 3.1 Case Reserves.

BICEP shall retain a Claims Auditor for the purpose of submitting an annual report to BICEP setting forth (a) the amount of Case Reserves necessary to be established with respect to each Claim arising during the preceding full Coverage Period and a breakdown of the amount of Case Reserves applicable to each Risk Sharing Pool, and (b) any adjustments (whether upward or downward) necessary to be made in the amount of each Case Reserve previously established pursuant to this Section.

#### 3.2 Payment of Settlements.

BICEP shall establish a Claims Payment Fund for the payment of Settlements. Settlements shall be paid upon submission to BICEP in accordance with the procedures of the Liability Risk Management Requirements, attached as Exhibit A to the Memorandum, and incorporated herein by reference, as approved and adopted by the Board.

#### 3.3 Structuring Settlements.

Each Member hereby covenants to cooperate with BICEP in the settlement and/or litigation of Claims in excess of the Member's Self-Insured Retention. To the extent such Member has control over any negotiation or structuring of a Settlement and subject to the limitations as determined by BICEP in accordance with Section 2.1.2., above, each Member shall not allow Settlement payment dates earlier than the date the Claims Payment Fund has been or will be fully funded to cover Case Reserves established for the payment of such Claim. With respect to any judgment (as defined in California Government Code Section 970 or in accordance with the laws applicable to any out-of-state member) in an amount which exceeds such Member's Self-Insured Retention, each Member shall petition the court for payment of such judgment in installments pursuant to the provisions of California Government Code Section 970.6 or in accordance with the laws applicable to any out-of-state member upon request by BICEP after consideration by the BICEP Board of its Target Retained Earnings Policy Statement attached hereto as Exhibit B and incorporated herein by reference.

## ARTICLE IV PREMIUMS

### 4.1 Member's Premium Costs.

4.1.1 Appropriation of Premium Payments. Each Member shall take such action as may be necessary to include Participation Premium payments payable hereunder in its annual agency budget and to make the necessary annual appropriations for all such payments to BICEP. The obligations on the part of each Member herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of each Member to take such action and do such things as are required by law in the performance of the official duty of such officials to enable each Member to carry out and perform its obligations herein.

4.1.2 The Participation Premium payments are made in consideration for Coverage for each Coverage Period. The entire amount of Participation Premium is due on the Premium Payment Date, which shall be August 1 of each Fiscal Year which is coextensive with the applicable Coverage Period. The determination of the amount of the Participation Premium payable for such Coverage Period by each Member shall be made as soon as reasonably possible but no later than the day before the renewal date preceding the next Coverage Period. Each Member shall be obligated to pay the Participation Premium, which is determined as follows:

4.1.2.1 Administrative Premium. Each Member shall pay to BICEP an Administrative Premium. The method for charging Administrative Premium may be to apply the Experience Percent Contribution set forth in the Liability Rating Plan, Exhibit A, or to divide all administrative costs equally between the Members, as annually determined by the Board.

4.1.2.2 Risk Sharing Premium. Each Member shall be responsible for its proportion of the Risk Sharing Premium, as calculated in the Liability Rating Plan, Exhibit A. The Risk Sharing Premium shall be calculated in the following manner. With respect to each Coverage Period, BICEP shall determine the total of the Risk Sharing Premium by retaining an Actuary to prepare a report to be delivered to BICEP preceding the beginning of such Coverage Period which recommends the amount of funds to be deposited in the Claims Payment Fund such that the deposit, along with anticipated investment income, equals the expected value of all pooled losses, plus any margin for contingency the Board may determine appropriate for the Risk Sharing Layer retained by BICEP for said Coverage Period.

In no event will Risk Sharing Premium be payable to establish Case Reserves for Coverage in excess of \$10 million per occurrence unless the Board raises the limit above \$10 million per occurrence.

4.1.2.3 Insurance Premium. In a Coverage Period for which BICEP has purchased Insurance on behalf of each Member, each such Member shall be obligated to pay its proportion of the costs of such Insurance in accordance with the Experience Percent Contribution under the Liability Rating Plan, in lieu of all or a portion of Risk Sharing Premium, in addition to the other components of Participation Premium.

4.1.2.4 Supplemental Premium. In the sole discretion of each Member, a Member may pay to BICEP a Supplemental Premium that shall be applied and credited to that Member's portion of Retained Earnings.

4.1.3 Adjustments to Participation Premium. The Participation Premium may be adjusted as follows:

4.1.3.1 Participation Premium Adjustment. Annually beginning after July 1, 2005, the Participation Premium may be adjusted by a Participation Premium Adjustment.

BICEP shall give prompt written notice to each Member of the determination of such adjustment. If assessed due to a deficit in a prior Coverage Period, each Member shall be obligated to pay the full amount of the assessment on the Premium Payment Date; unless, at the discretion of the Board, each Member is allowed to pay a portion of the assessment prorated up to five (5) years as authorized by the Board. In the event of an excess in payment in any Coverage Period, each Member shall be credited its proportion of such excess payment in accordance with Exhibit A Liability Rating Plan and attachments thereto, which shall be held by BICEP as Retained Earnings until released in accordance with the provisions of this Program.

4.1.3.2 Pure Premium Adjustment. A Pure Premium Adjustment shall be applied to the Participation Premium as applicable to Claims of each Member that occurred during the period from October 1, 1988 up to July 1, 2004. The amount of the Pure Premium Adjustment shall be calculated in accordance with the Liability Risk Coverage Agreement, dated as of October 1, 1988, which shall remain in force and effect for such calculation. Said Liability Risk Coverage Agreement shall automatically expire upon the event that all such Claims have been fully satisfied. Such Pure Premium Adjustment shall be detailed and included in each Member's renewal invoice.

4.1.4. Use of Retained Earnings. The Board may, but is not obligated to, authorize the release of Retained Earnings as a dividend to be applied to the Participation Premium of a Member or to be paid to a Member, upon consideration of the Target Retained Earnings Policy Statement (Exhibit B).

## 4.2 Terminated Member's Premium Costs

4.2.1. Each Terminated Member shall take such action as may be necessary to



include Termination Premium payments payable hereunder in its annual agency budget and to make the necessary annual appropriations for all such payments to BICEP. The obligations on the part of each Terminated Member herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of each Terminated Member to take such action and do such things as are required by law in the performance of the official duty of such officials to enable each Terminated Member to carry out and perform its obligations herein. This obligation may not be imposed in any given year that a Terminated Member's account exceeds their charges for adjustments and allocations, depending on the condition of the Claims Payment Fund and the Board's determination whether to release any Retained Earnings after consideration of the Target Retained Earnings Policy Statement (Exhibit B).

4.2.2. Termination Premium. A Terminated Member shall pay a Termination Premium which is comprised of all costs, including but not limited to, any administrative costs and any adjustments applicable pursuant to Section 4.1.3 of this Program, for any Coverage Period in which the Terminated Member was an active Member of BICEP.

4.2.3 Determination of a Member's Retained Earnings Upon Withdrawal or Expulsion. In connection with permitting withdrawal of a Member from Coverage pursuant to Article VII of the Bylaws or expelling a Member pursuant to Article VIII of the Bylaws, a portion of Retained Earnings shall at such time be allocated to the Terminated Member in accordance with the most recent annual audited financial statement of BICEP available as of the effective date of the Terminated Member's withdrawal or expulsion. The sum of such amounts allocated to such Terminated Member shall be applied first to the payment of Termination Premium pursuant to Section 4.2.2.

4.2.4. After credit to pay the Termination Premium and all other obligations due from such Terminated Member under the terms of this Program and any interest thereon, BICEP shall hold the remaining balance of the Terminated Member's Retained Earnings ("Remaining Assets") due to the Terminated Member, if any, in a segregated account. BICEP will transfer to a Terminated Member its Remaining Assets on the earliest practicable date when such Member is no longer subject to the payment of a Termination Premium under the terms of this Program i.e., when all Claims within the scope of Coverage prior to withdrawal or expulsion of such Member have been finally determined and/or paid as Settlements, unless the Board upon consideration of its Target Retained Earnings Policy Statement (Exhibit B) determines that release of the Remaining Assets will substantially affect the financial condition of BICEP. If there are insufficient Remaining Assets to meet the Terminated Member's continuing obligations to BICEP, the Terminated Member shall be obligated to pay any such deficit amount.

4.2.5 The release of Retained Earnings to each Member upon the dissolution of BICEP pursuant to Article VI of the Bylaws shall be handled in substantially the same

manner as hereinabove provided in this Section 4.2.

#### 4.3 Common Premium Provisions to Members and Terminated Members

4.3.1 No Withholding. Notwithstanding any dispute between BICEP and a Member or Terminated Member, including a dispute as to the scope or nature of Coverage provided by BICEP or the availability of amounts in the Claims Payment Fund to pay Claims made against any Member or Terminated Member, or for any other reason (other than the termination of the obligation to pay Participation Premium pursuant to Section 4.2.4 hereof) each Member including Terminated Member shall appropriate funds sufficient to pay and shall make all Participation Premium payments including Pure Premium Adjustments, and Participation Premium Adjustments for Members or Terminated Members when due and shall not withhold any such payments pending the final resolution of such dispute.

4.3.2. Payment of Invoices. BICEP invoices are to be paid within 30 days of presentation to Members unless another due date is specified on the invoice.

4.3.3 Rate on Overdue Payments. In the event a Member or Terminated Member fails to make any of the payments required in this Article, the payment in default shall continue as an obligation of the Member or Terminated Member until the amount in default shall have been fully paid, and in addition to any remedies available with respect to such default, the Member or Terminated Member agrees to pay the same with interest thereon. Interest shall be calculated using BICEP's average earnings rate as determined in the latest 12-month Investment Performance Portfolio prepared by BICEP's investment managers, but not to exceed the highest rate permitted by law, from the date such amount was originally payable. This provision can be waived by the Board on a case-by-case basis.

4.3.4 Damages; Revocation of Withdrawal. In no event shall withdrawal from Coverage release a Member from its obligation to pay damages resulting from default under the terms of this Program which is not remedied by payment of Termination Premium or from its obligation to pay Pure Premium Adjustments and Participation Premium Adjustments with respect to Claims within the scope of Coverage prior to such withdrawal. BICEP shall continue to pay Settlement of Claims relating to the withdrawn Member within the scope of Coverage prior to withdrawal as provided herein, unless the Member defaults in the payment of its continuing obligations described herein.

4.3.5 Member's Rights Upon Dissolution of BICEP. In the event of the dissolution of BICEP in accordance with Article VI of the Bylaws, the terms and conditions of this Liability Program shall remain in full force and effect until such time as all Claims within the scope of Coverage have been finally determined and/or paid as Settlements. Remaining Assets (as defined in Section 4.2.4, above) shall be distributed consistent with Section 4.2.4.

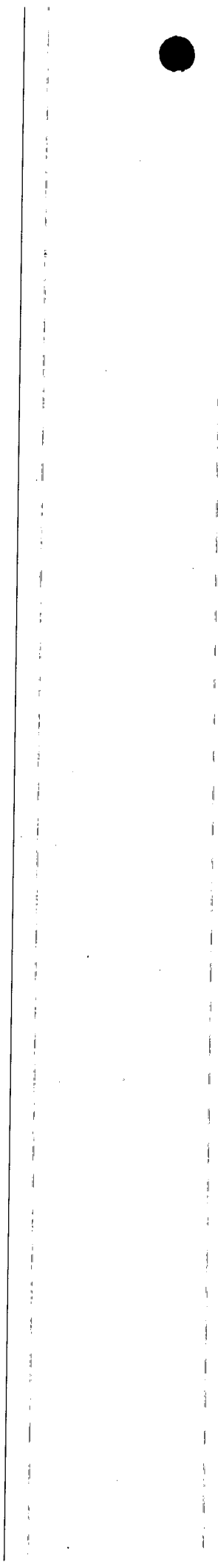
IN WITNESS WHEREOF, the undersigned Member acknowledges reading, fully understanding and accepting the terms and provisions of the Program.

Date: October 1, 2006

By: 

Print Name: Andrew Pasmant

City of West Covina



## Exhibit A

### Big Independent Cities Excess Program (BICEP)

#### Liability Rating Plan

##### I. Participation Premium

For each Coverage Period, beginning July 1, 2004, a Participation Premium shall be calculated for each member. The Members' Participation Premium shall be sufficient to pay the Members' Risk Sharing Premium, Insurance Premium and Administrative Premium. The process for calculating each Members' share of these three Premiums is set forth in Appendix A-1, Exhibits CA-1 through CA-9, inclusive, and as more specifically set forth below.

A. **Risk Sharing Premium.** As stated in I. above, each Member's Risk Sharing Premium shall be based on the following data for the three years beginning four years prior to the Coverage Period for which Participation Premiums are being calculated:

1. Reported incurred losses. These are loss payments plus reserves for incurred but unpaid claims, as established by BICEP's claims administrator. Only liability claims of the type covered by the Memorandum or in accordance with Section 2.1.2 shall be considered.
2. Number of reported incurred claims exceeding \$250,000.
3. Workers compensation payroll, as reported to the State of California or any other state if a member is domiciled in another state.

The above three amounts shall be used to compute an experience modification factor (Xmod) for each Member for the upcoming Coverage Period.

Each Member's share of the Risk Sharing Premium shall be the product of its:

1. Xmod, multiplied by its
2. Workers compensation payroll for the year for which Participation Premiums are being calculated, multiplied by

3. The loss rate calculated by BICEP's actuary and as adopted by BICEP for the Risk Sharing Layer(s) in which the Member will participate. The BICEP Board may elect to include an addition to Retained Earnings in the loss rate(s).

**B. Insurance Premium.** Each Member's Insurance Premium shall be calculated as the product of its Experience Percent Contribution multiplied by the total premium to be paid by BICEP for insurance for the upcoming program year.

**C. Administrative Premium.** Each Member's Administrative Premium shall be calculated as the product of its Experience Percent Contribution multiplied by the total amount of Administrative Premium required by BICEP for the upcoming program year.

## **II. Participation Premium Adjustment**

Following the close of each Coverage Period, an adjustment shall be made to the Participation Premium, as described in I. above, paid by each Member. The adjustment to each component of the Participation Premium shall be calculated as set forth below.

**A. Risk Sharing Premium.** Each Member's share of the total Risk Sharing Premium paid by all Members for the Coverage Period shall be calculated. The percentage so determined shall be multiplied by total losses in all Risk Sharing Layers in which a Member participates to determine each Member's actual share of the Risk Sharing Premiums. Total losses shall include amounts paid, case reserves and incurred but not reported losses. The BICEP Board may elect to include an addition to or deletion from Retained Earnings.

**B. Administrative Premium.** Each Member's share of actual administrative costs shall be its Experience Percent Contribution multiplied by total administrative costs for the year.

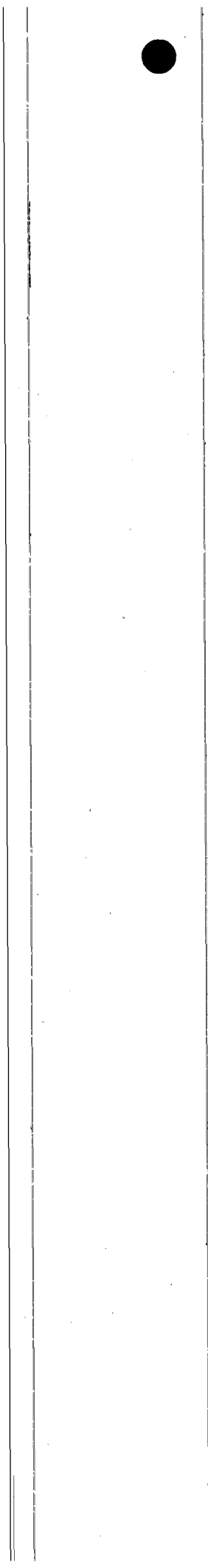
**C. Insurance Premium.** Each Member's share of actual insurance premiums shall be its Experience Percent Contribution multiplied by total insurance premiums for the year.

Each Member's Participation Premium Adjustment for each Coverage Period shall be:

- A. The Participation Premium paid at the beginning of the year, less
- B. The Member's share of Risk Sharing Premium, Administrative Premium and Insurance Premium, as calculated in Section II, items A, B and C above.

The process for calculating Member Participation Premium Adjustments is set forth in Appendix A-1, Exhibits EQ-1 and EQ-2.

A Participation Premium Adjustment for each Coverage Period shall be calculated 18 months following the close of the Coverage Period and at annual intervals thereafter until all claims in the Risk Sharing Layer are closed.





BIG INDEPENDENT CITIES EXCESS POOL  
EXPERIENCE RATING

Payroll 2001 /02 to 2003/04

I. Payroll (\$000)

City (1)	Payroll (\$000) 2001 /02 (2)	Payroll (\$000) 2002/03 (3)	Payroll (\$000) 2003/04 (4)	Payroll (\$000) 2001 /02 to 2003/04 (2)+(3)+(4) (5)
Huntington Beach	\$76,759	\$79,241	\$82,938	\$238,939
Oxnard	44,061	47,693	52,796	144,550
San Bernardino	76,036	75,443	91,446	242,925
Santa Ana	115,928	118,978	120,367	355,273
West Covina	21,671	22,111	26,776	70,558
<b>Total</b>	<b>\$334,455</b>	<b>\$343,467</b>	<b>\$374,322</b>	<b>\$1,052,244</b>

II. Percent of Payroll

City	Percent Payroll 2001 /02	Percent Payroll 2002/03	Percent Payroll 2003/04	Average Percent Payroll 2001/02 to 2003/04
Huntington Beach	23.0%	23.1 %	22.2%	22.7%
Oxnard	13.2%	13.9%	14.1 %	13.7%
San Bernardino	22.7%	22.0%	24.4%	23.1 %
Santa Ana	34.7%	34.6%	32.2%	33.8%
West Covina	6.5%	6.4%	7.2%	6.7%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

Section I is from the ARM Tech actuarial study.

Section II is based on Section I.

BIG INDEPENDENT CITIES EXCESS POOL  
EXPERIENCE RATING

Reported Incurred Losses as of December 31, 2004 for 2001 /02 to 2003/04

I. Reported Incurred Losses as of December 31, 2004

City (1)	Reported Incurred Losses 2001 /02 (2)	Reported Incurred Losses 2002/03 (3)	Reported Incurred Losses 2003/04 (4)	2001 /02 to 2003/04 Reported Incurred Losses (2)+(3)+(4) (5)
Huntington Beach	\$1,929,567	\$2,427,825	\$962,625	\$5,320,017
Oxnard	3,338,783	1,600,419	821,421	5,760,622
San Bernardino	2,042,436	564,543	2,023,605	4,630,583
Santa Ana	1,323,683	1,506,485	970,208	3,800,376
West Covina	925,638	77,440	121,814	1,124,892
<b>Total</b>	<b>\$9,560,107</b>	<b>\$6,176,711</b>	<b>\$4,899,673</b>	<b>\$20,636,491</b>

II. Percent of Reported Incurred Losses as of December 31, 2004

City	Percent Reported Incurred Losses 2001 /02	Percent Reported Incurred Losses 2002/03	Percent Reported Incurred Losses 2003/04	Percent Reported Incurred Losses 2001/02 to 2003/04
Huntington Beach	20.2%	39.3%	19.6%	25.8%
Oxnard	34.9%	25.9%	16.8%	27.9%
San Bernardino	21.4%	9.1%	41.3%	22.4%
Santa Ana	13.8%	24.4%	19.8%	18.4%
West Covina	9.7%	1.3%	2.5%	5.5%
<b>Total</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>

BIG INDEPENDENT CITIES EXCESS POOL  
EXPERIENCE RATING

2001/02 to 2003/04 Claims with Reported Incurred Losses Over a \$250,000 Threshold as of December 31, 2004

## I. Claims Over \$250,000 Threshold

City (1)	Claims Over \$250,000 Threshold 2001 /02 (2)	Claims Over \$250,000 Threshold 2002/03 (3)	Claims Over \$250,000 Threshold 2003/04 (4)	Claims Over \$250,000 Threshold 2001 /02 to 2003/04 (2)+(3)+(4) (5)
Huntington Beach	3	3	0	6
Oxnard	2	1	0	3
San Bernardino	2	0	2	4
Santa Ana	0	1	1	2
West Covina	1	0	0	1
Total	8	5	3	16

## II. Percent Claims Over a \$250,000 Threshold

City	Percent Claims Over \$250,000 Threshold 2001 /02	Percent Claims Over \$250,000 Threshold 2002/03	Percent Claims Over \$250,000 Threshold 2003/04	Percent Claims Over \$250,000 Threshold 2001/02 to 2003/04
Huntington Beach	37.5%	60.0%	0.0%	37.5%
Oxnard	25.0%	20.0%	0.0%	18.8%
San Bernardino	25.0%	0.0%	66.7%	25.0%
Santa Ana	0.0%	20.0%	33.3%	12.5%
West Covina	12.5%	0.0%	0.0%	6.3%
Total	100.0%	100.0%	100.0%	100.0%

BIG INDEPENDENT CITIES EXCESS POOL  
EXPERIENCE RATING

## Relative Loss Rates

I. 2001 /02			
City (1)	Percent Payroll 2001 /02 (2)	Percent Reported Incurred Losses 2001 /02 (3)	Relative Loss Rate 2001 /02 (3)/(2) (4)
Huntington Beach	23.0%	20.2%	0.879
Oxnard	13.2%	34.9%	2.651
San Bernardino	22.7%	21.4%	0.940
Santa Ana	34.7%	13.8%	0.399
West Covina	6.5%	9.7%	1.494
Total	100.0%	100.0%	1.000
II. 2002/03			
City (1)	Percent Payroll 2002/03 (2)	Percent Reported Incurred Losses 2002/03 (3)	Relative Loss Rate 2002/03 (3)/(2) (4)
Huntington Beach	23.1 %	39.3%	1.704
Oxnard	13.9%	25.9%	1.866
San Bernardino	22.0%	9.1%	0.416
Santa Ana	34.6%	24.4%	0.704
West Covina	6.4%	1.3%	0.195
Total	100.0%	100.0%	1.000
III. 2003/04			
City (1)	Percent Payroll 2003/04 (2)	Percent Reported Incurred Losses 2003/04 (3)	Relative Loss Rate 2003/04 (3)/(2) (4)
Huntington Beach	22.2%	19.6%	0.887
Oxnard	14.1 %	16.8%	1.189
San Bernardino	24.4%	41.3%	1.691
Santa Ana	32.2%	19.8%	0.616
West Covina	7.2%	2.5%	0.348
Total	100.0%	100.0%	1.000

Sections I, II and III, (2) are from Exhibit CA-1.

Sections I, II and III, (3) are from Exhibit CA-2.

BIG INDEPENDENT CITIES EXCESS POOL  
EXPERIENCE RATING

Relative Claim Rates

I. 2001 /02

City (1)	Percent Payroll 2001 /02 (2)	Percent Claims Over \$250,000 Threshold 2001 /02 (3)	Relative Claim Rate 2001 /02 (3)/(2) (4)
Huntington Beach	23.0%	37.5%	1.634
Oxnard	13.2%	25.0%	1.898
San Bernardino	22.7%	25.0%	1.100
Santa Ana	34.7%	0.0%	0.000
West Covina	6.5%	12.5%	1.929
Total	100.0%	100.0%	1.000

II. 2002/03

City (1)	Percent Payroll 2002/03 (2)	Percent Claims Over \$250,000 Threshold 2002/03 (3)	Relative Claim Rate 2002/03 (3)/(2) (4)
Huntington Beach	23.1 %	60.0%	2.500
Oxnard	13.9%	20.0%	1.440
San Bernardino	22.0%	0.0%	0.000
Santa Ana	34.6%	20.0%	0.577
West Covina	6.4%	0.0%	0.000
Total	100.0%	100.0%	1.000

III. 2003/04

City (1)	Percent Payroll 2003/04 (2)	Percent Claims Over \$250,000 Threshold 2003/04 (3)	Relative Claim Rate 2003/04 (3)/(2) (4)
Huntington Beach	22.2%	0.0%	0.000
Oxnard	14.1 %	0.0%	0.000
San Bernardino	24.4%	66.7%	2.500
Santa Ana	32.2%	33.3%	1.037
West Covina	7.2%	0.0%	0.000
Total	100.0%	100.0%	1.000

Sections I, II and III, (2) are from Exhibit CA-1.

Sections I, II and III, (3) are from Exhibit CA-3.

Sections I, II and III, (4) is capped to 2.500.

BIG INDEPENDENT CITIES EXCESS POOL  
EXPERIENCE RATING

## Calculation of Experience Modification Factor for 2005/06

## I. Average Relative Loss Rate

City (1)	Relative Loss Rate 2001 /02 (2)	Relative Loss Rate 2002/03 (3)	Relative Loss Rate 2003/04 (4)	Average Relative Loss Rate 2001 /02 to 2003/04 Avg[(2), (3),(4)] (5)
Huntington Beach	0.879	1.704	0.887	1.157
Oxnard	2.651	1.866	1.189	1.902
San Bernardino	0.940	0.416	1.691	1.015
Santa Ana	0.399	0.704	0.616	0.573
West Covina	1.494	0.195	0.348	0.679
Total	1.000	1.000	1.000	1.000

## II. Average Relative Claim Rate

City (1)	Relative Claim Rate 2001,/02 (2)	Relative Claim Rate 2002/03 (3)	Relative Claim Rate 2003/04 (4)	Average Relative Claim Rate 2001 /02 to 2003/04 Avg[(2), (3),(4)] (5)
Huntington Beach	1.634	2.500	0.000	1.378
Oxnard	1.898	1.440	0.000	1.113
San Bernardino	1.100	0.000	2.500	1.200
Santa Ana	0.000	0.577	1.037	0.538
West Covina	1.929	0.000	0.000	0.643
Total	1.000	1.000	1.000	1.000

## III. Experience Modification Factor

City (1)	Average Relative Loss Rate 2001 /02 to 2003/04 (2)	Average Relative Claim Rate 2001 /02 to 2003/04 (3)	Rating Factor Avg[(2),(3)] (4)	Average Percent Payroll 2001 /02 to 2003/04 (5)	Credibility Weight (5)/[(5)+ Max(5)X1] (6)	Prior Experience Modification Factor (7)	2005/06 Experience Modification Factor (8)
Huntington Beach	1.157	1.378	1.267	22.7%	0.402	1.040	1.129
Oxnard	1.902	1.113	1.507	13.7%	0.289	1.479	1.484
San Bernardino	1.015	1.200	1.108	23.1 %	0.406	0.985	1.033
Santa Ana	0.573	0.538	0.556	33.8%	0.500	0.760	0.656
West Covina	0.679	0.643	0.661	6.7%	0.166	1.166	1.080
Total	1.000	1.000	1.000			1.000	1.000

Section I, (2), (3) and (4) are from Exhibit CA-4.

Section II, (2), (3) and (4) are from Exhibit CA-5.

Section III, (5) is from Exhibit CA-1.

Section III, (6) is designed to give the largest city a weight of 0.500 and others proportionally less.

Section III, (7) is from the prior experience rating study.

Section III, (8) = (4) x (6) + [1.000 - (6)] x (7). It is subject to an off-balance factor of 0.998.

BIG INDEPENDENT CITIES EXCESS POOL  
EXPERIENCE RATING

Calculation of Experience Percent Contribution 2005/06

I. Using Maximum City Weight at 0.500

City (1)	Payroll (\$000) 2003/04 (2)	Percent Payroll 2003/04 (3)	Experience Modification Factor (4)	Experience Percent Contribution 2005/06 (3)X(4) (5)
Huntington Beach	\$82,938	22.2%	1.129	25.01 %
Oxnard	52,796	14.1 %	1.484	20.93%
San Bernardino	91,446	24.4%	1.033	25.23%
Santa Ana	120,367	32.2%	0.656	21.10%
West Covina	26,776	7.2%	1.080	7.72%
Total	\$374,322	100.0%	1.000	100.00%

(2) was provided by BICEP for 2005/06 rating.

(3) is based on (2).

(4) is from Exhibit CA-6.

BIG INDEPENDENT CITIES EXCESS POOL  
EXPERIENCE RATING

Example of Recommended Rating Plan

I. Risk Sharing Premium for 2005/06

City (1)	Experience Modification Factor (2)	Payroll (\$000) 2005/06 (3)	Loss Rate at \$500,000 Retention 2005/06 (4)	Loss Rate at \$1,000,000 Retention 2005/06 (5)	Premium at \$500,000 Retention 2005/06 (2)X(3)X(4) (6)	Premium at \$1,000,000 Retention 2005/06 (2)X(3)X(5) (7)
Huntington Beach	1.129	\$87,989	6.000	3.040	\$595,849	\$301,897
Oxnard	1.484	56,011	6.000	3.040	498,784	252,717
San Bernardino	1.033	97,015	6.000	3.040	601,199	304,608
Santa Ana	0.656	127,697	6.000	3.040	502,827	254,766
West Covina	1.080	28,407	6.000	3.040	184,048	93,251
<b>Total</b>	<b>1.000</b>	<b>\$397,118</b>			<b>\$2,382,708</b>	<b>\$1,207,239</b>

II. Administrative Premium and Insurance Premium for 2005/06

City (1)	Experience Percent Contribution 2005/06 (2)	Administrative Premium (2)XTotal(3) (3)	2005/06 Insurance Premium \$2,000,000 to \$12,000,000 (2)XTotal(4) (4)	2005/06 Insurance Premium \$12,000,000 to \$17,000,000 (2)XTotal(5) (5)
Huntington Beach	25.01 %	\$56,266	\$425,123	\$62,518
Oxnard	20.93%	47,100	355,869	52,334
San Bernardino	25.23%	56,771	428,940	63,079
Santa Ana	21.10%	47,482	358,754	52,758
West Covina	7.72%	17,380	131,313	19,311
<b>Total</b>	<b>100.00%</b>	<b>\$225,000</b>	<b>\$1,700,000</b>	<b>\$250,000</b>

Section I, (2) is from Exhibit CA-7.

Section I, (3) is based on payroll for 2003/04 and a 3% trend.

Section I, (4) and (5) are approximations.

Section I, (4) and (5) fund losses from SIR shown to \$2 million.

Section II, (2) is from Exhibit CA-7.

Section II, Total(3), Total(4) and Total(5) are for example only.



BIG INDEPENDENT CITIES EXCESS POOL  
EXPERIENCE RATING

## Calculation of Total Payment for 2005/06

City (1)	Retention (2)	2005/06 Risk Sharing Premium (3)	2005/06 Insurance Premium \$2,000,000 to \$17,000,000 (4)	2005/06 Administrative Premium (5)	2005/06 Total Payment Sum[(3)..(5)] (6)
Huntington Beach	\$1,000,000	\$301,897	\$487,641	\$56,266	\$845,804
Oxnard	1,000,000	252,717	408,203	47,100	708,021
San Bernardino	1,000,000	304,608	492,019	56,771	853,398
Santa Ana	1,000,000	254,766	411,512	47,482	713,760
West Covina	500,000	184,048	150,624	17,380	352,052
Total		\$1,298,036	\$1,950,000	\$225,000	\$3,473,036

(3), (4) and (5) are from Exhibit CA-8.

BIG INDEPENDENT CITIES' EXCESS POOL  
COST ALLOCATION

2005/06 Expenses

## I. Total Expenses

Type of Expenditure (1)	Amount Deposited in 2005/06 (2)	Actual Costs in 2005/06 (3)
Incurring losses	\$1,298,036	\$950,000
Excess Insurance	1,950,000	2,000,000
Legal Expense	75,000	5,000
Audit	20,000	8,000
Consulting	50,000	20,000
Management	65,000	65,000
Other Expense	15,000	15,000
Investment Income	0	(15,000)
<b>Total</b>	<b>\$3,473,036</b>	<b>\$3,048,000</b>

## II. Expenses by Type

Type	Amount Deposited in 2005/06	Actual Costs in 2005/06
Losses	\$1,298,036	\$935,000
Excess Insurance	1,950,000	2,000,000
All Other	225,000	113,000
<b>Total</b>	<b>\$3,473,036</b>	<b>\$3,048,000</b>

Section I, (2) and (3) are for illustration.

In Section I, incurred losses, (2) is greater than (3) due to reserve changes in prior years.

Section II is based on Section I.

In Section II, investment income is an offset to losses.

BIG INDEPENDENT CITIES EXCESS POOL  
COST ALLOCATION

2005/06 Member Allocation

I. Allocation by Member

City	Experience Percent Contribution 2005/06	Share of All Other Expenses 2005/06 (2)XTotal(3)	Share of Insurance Premium 2005/06 (2)XTotal(4)	Risk Sharing Paid for 2005/06 (5)	Percent Risk Sharing Premium (5)/Total(5)	Share of Pooled Losses 2005/06 (6)XTotal(7)	Total Actual Costs (3)+(4)+(7)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Huntington Beach	25.01 %	\$28,258	\$500,145	\$301,897	—	\$217,462	\$745,865
Oxnard	20.93%	23,655	418,670	252,717	19.47%	182,037	624,362
San Bernardino	25.23%	28,512	504,635	304,608	23.47%	219,415	752,562
Santa Ana	21.10%	23,847	422,064	254,766	19.63%	183,513	629,423
West Covina	7.72%	8,728	154,486	184,048	14.18%	132,573	295,788
<b>Total</b>	<b>100.00%</b>	<b>\$113,000</b>	<b>\$2,000,000</b>	<b>\$1,298,036</b>	<b>100.00%</b>	<b>\$935,000</b>	<b>\$3,048,000</b>

II. Member Equity

City	Amount Deposited in 2005/06	Total Actual Costs	Equity/ (Deficit) for 2005/06 Operations (2)-(3)
(1)	(2)	(3)	(4)
Huntington Beach	\$845,804	\$745,865	\$99,939
Oxnard	708,021	624,362	83,659
San Bernardino	853,398	752,562	100,837
Santa Ana	713,760	629,423	84,337
West Covina	352,052	295,788	56,264
<b>Total</b>	<b>\$3,473,036</b>	<b>\$3,048,000</b>	<b>\$425,036</b>

Section I, (2) is from Exhibit CA-7.

Section I, Total(3) and Total(4) are from Exhibit EQ-1.

Section I, (5) is from Exhibit CA-9.

Section I, Total(7) is from Exhibit EQ-1.

Section II, (2) is from Exhibit CA-9.

Section II, (3) is from Section I, (8).



## Exhibit B

### BICEP Liability Program Target Retained Earnings Policy Statement

1. **PURPOSE.** The purpose of this policy statement is to give guidance to the Board in making annual funding decisions for the Liability Program. By adoption of this policy statement, the Board of Directors acknowledges that the long-term financial strength of the Liability Program is of utmost importance. There is a high degree of uncertainty in actuarial estimates due to the possibility of occasional catastrophic claims and inconsistent or inaccurate case reserving; therefore, the Board of Directors desires to fund the Program in a cautious and prudent manner and return dividends to its members in an equally cautious and prudent manner.
2. **TARGET RETAINED EARNINGS.** BICEP has determined that the target retained earnings goal for the Liability Program is the actuarially determined 85% confidence level discounted for investment income, subject to the following ratios:

**Participation Premium to Retained Earnings ratio: Target = 1.5:1**

This ratio is a measure of how Retained Earnings is leveraged against possible pricing inaccuracies. A low ratio is desirable.

**BICEP Retention to Retained Earnings ratio: Target = 0.5:1**

This ratio is a measure of the maximum amount that Retained Earnings could decline due to a single loss. A low ratio is desirable.

**Outstanding Reserves to Retained Earnings ratio: Target = 1.5:1**

This ratio is a measure of how Retained Earnings is leveraged against possible reserve inaccuracies. A low ratio is desirable.

- Retained Earnings is the amount shown as Retained Earnings in BICEP's most recent financial audit.
- Participation Premium includes the Risk Sharing Premium and reinsurance/excess insurance premium but does not include administrative costs.
- BICEP Retention is the maximum amount of exposure to a single loss retained by BICEP over the most recent 10 years.

- Outstanding Reserves are the sum total of unpaid case reserves, and incurred but not reported claims, in the Risk Sharing Layer as determined by the Claims Auditor and Actuary.
3. **ANNUAL ACTUARIAL STUDY.** BICEP will conduct an annual actuarial analysis to assist the Board of Directors in making funding decisions on a prospective and retrospective basis.
  4. **APPLICATION OF TARGET SURPLUS CRITERIA.** After annual review of the target retained earnings ratios, the Board of Directors will be able to determine whether it is desirable to increase, decrease, or stabilize retained earnings. If the Board desires to decrease retained earnings, it may approve a funding level below the 85% confidence level. Conversely, a funding decision above the 85% confidence level will indicate a bias toward increasing retained earnings. A determination to fund at the 85% confidence level will reflect the Board's desire to keep retained earnings at the current level.
  5. **RETROSPECTIVE DIVIDENDS.** Dividends may be available four (4) years from the end of a Coverage Period. The Board of Directors, using the target retained earnings ratios as a guide, may declare additional retrospective dividends at any time.
  6. **PROSPECTIVE DIVIDEND.** To the extent the Board approves funding a new year at a confidence level less than the target 85%, the Board recognizes the difference between actual funding and the 85% confidence level as a prospective (up front) dividend.
  7. **AMENDMENT.** This policy statement, adopted by the Board dated July 1, 2006 , shall be reviewed annually and reaffirmed or modified accordingly.



WORKERS' COMPENSATION PROGRAM  
BIG INDEPENDENT CITIES EXCESS POOL (BICEP)

Self-Insured Retention: \_\_\_\_\_

Program Year:   FY 2006-2007  

The Member, West Covina, hereby agrees to enter into and participate in the Workers' Compensation Program of Coverage ("Program") as stated herein in accordance with the terms and conditions as follows:

ARTICLE I  
DEFINITIONS

The definitions of terms used in this Program shall be the same as those contained in the Joint Powers Authority Agreement ("JPA") and the Bylaws of Big Independent Cities Excess Pool ("BICEP"), unless otherwise expressly provided herein.

1.1 "Administrative Premium" means each Member's proportion of all administrative costs of BICEP relating to the Program, as further set forth in Section 4.1.2.1 hereof.

1.2 "Allocated Costs" means those costs of the Program which are specifically related to a Member.

1.3 "Claim(s)" means a demand(s) against a Member to recover for losses or damages within or alleged to be within the scope of the Program.

1.4 "Coverage Period" means each year coextensive with the Fiscal Year (as defined in the Bylaws) for which a Member pays Participation Premium, unless and as amended by the Board.

1.5 "Insurance" means providing coverage for Claims in excess of a Member's Self-Insured Retention amount by commercial insurance or reinsurance.

1.6 "Participation Premium" means with respect to each Member, the Administrative Premium, if any, and estimated Insurance Premium payable by each Member on each Premium Payment Date as determined in accordance with Article IV hereof.

1.7 "Settlement(s)" means the settlement by a Member and/or insurer, in accordance with the Program, of a Claim against such Member, or the final adjudication of such Claim.



ARTICLE II  
COVERAGE PROGRAMS

2.1 Coverage.

In accordance with Article V of the Bylaws, BICEP hereby provides and Member hereby accepts workers' compensation coverage ("Coverage") as set forth in the Declaration for each year's Coverage Period.

2.1.1 Upon the approval of the Board, BICEP shall provide Insurance which is in excess of the Self-Insured Retention as determined by the Member. The usual method of funding will be to have each Member deposit their portion of premium for Insurance purchased at the beginning of each Fiscal Year as a component part of their Participation Premium.

2.1.2 Insurance provided for BICEP to its Members for Coverage, or any portion thereof, shall be primary to pay any covered Claims. BICEP shall be obligated to assist and cooperate with each Member in collecting for covered Claims from such insurers to the fullest extent.

2.1.3 BICEP shall not be obligated to pay any covered Claim.

ARTICLE III  
PAYMENT OF CLAIMS

3.1 Settlements.

3.1.1 Each Member shall retain the right to approve or reject a Claim where the settlement amount is less than their Self-Insured Retention.

3.1.2 Each Member shall have the authority and responsibility for all legal costs for defense of a Claim that does not involve the insurance carrier(s). The Member may choose the attorney to handle its Claim.

ARTICLE IV  
PREMIUMS

4.1 Member's Premium Costs.

4.1.1 Appropriation of Premium Payments. Each Member shall take such action as may be necessary to include Participation Premium payments payable hereunder in

its annual agency budget and to make the necessary annual appropriations for all such payments to BICEP. The obligations on the part of each Member herein contained shall be deemed to be and shall be construed to be duties imposed by law and it shall be the duty of each and every public official of each Member to take such action and do such things as are required by law in the performance of the official duty of such officials to enable each Member to carry out and perform its obligations herein.

4.1.2 The Participation Premium payments due in any Coverage Period shall be made in consideration for Coverage for such Coverage Period. The entire amount of Participation Premium is due on the Premium Payment Date which shall be August 1 of each Fiscal Year. The determination of the Participation Premium payable in each Coverage Period by each Member shall be made as soon as reasonably possible but no later than the day before the renewal date preceding a Coverage Period. Each Member shall be obligated to pay the Participation Premium which is determined as follows:

4.1.2.1. Administrative Premium. Each Member shall pay to BICEP as Administrative Premium such amounts as shall be required for the payment of all administrative costs of BICEP including but not limited to, general management and all other necessary administrative costs of BICEP or charges required to be paid by it in order to administer the Program, if any. The Administrative Premium shall be equally shared by each Member in the Program.

4.1.2.2. In a Coverage Period for which BICEP has purchased insurance on behalf of each Member, each such Member shall be obligated to pay its Allocated Costs which includes but is not limited to the premium for such insurance and includes insurance brokerage fees and/or commissions.

4.1.3 At the end of a Coverage Year, insurers may audit each Member's payroll which may result in refunds, credits or additional premium payable.

#### 4.2 Common Premium Provisions to Members and Terminated Members

4.2.1. No Withholding. Notwithstanding any dispute between BICEP and a Member or Terminated Member, including a dispute as to the scope or nature of Coverage provided by insurers or for any other reason, each Member including a Terminated Member shall appropriate funds sufficient to pay and shall make all Participation Premium payments when due, including any audited payroll as provided in Section 4.1.3 above, and shall not withhold any such payments pending the final resolution of such dispute.

4.2.2. Payment of Invoices. BICEP invoices are to be paid within 30 days of presentation to members unless another due date is specified on the invoice.

4.2.3. Rate on Overdue Payments. In the event a Member or Terminated Member fails to make any of the payments required in this Article, the payment in default shall continue as an obligation of the Member or Terminated Member until the amount in default shall have been fully paid, and in addition to any remedies available with respect to such default, the Member or Terminated Member agrees to pay the same with interest thereon. Interest shall be calculated using the BICEP's average earnings rate as determined in the latest 12-month Investment Performance Portfolio prepared by BICEP's investment managers, but not to exceed the highest rate permitted by law from the date such amount was originally payable. This provision can be waived by the Board on a case-by-case basis.

4.2.4. Termination of Coverage. In no event shall termination of Coverage due to withdrawal or expulsion release a Member from its obligation to pay damages resulting from default under the terms of this Program or from its obligation to pay their Self-Insured Retention of Claims within the scope of Coverage prior to such withdrawal. BICEP shall continue to pay Settlement of Claims relating to the withdrawn Member within the scope of Coverage prior to withdrawal as provided herein, unless the Member defaults in the payment of its continuing obligations described in the preceding sentence. Notice to withdraw shall be revocable by the Member only with the consent of BICEP.

4.2.5. Member's Rights Upon Dissolution of BICEP. In the event of the dissolution of BICEP in accordance with Article VI of the Bylaws, the terms and conditions of this Workers' Compensation Program shall remain in full force and effect until such time as all Claims within the scope of Coverage have been finally determined and/or paid.

IN WITNESS WHEREOF, the undersigned Member acknowledges reading, fully understanding and accepting the terms and provisions of the Program.

Date: October 1, 2006

By:   
Print Name: Andrew Pasmant



## BICEP MASTER MEMORANDUM OF LIABILITY COVERAGE

This MEMORANDUM provides pooled risk sharing among the MEMBERS of the Big Independent Cities Excess Pool Joint Powers Authority (ABICEP@) pursuant to Government Code sections 990.8 and 6500, *et seq.*

In consideration of the MEMBER=s payment of the premium, BICEP and the MEMBER agree as follows:

### SECTION I -- COVERAGES

BICEP will pay those sums on behalf of the COVERED PARTY for COVERED ULTIMATE NET LOSS that the COVERED PARTY becomes legally obligated to pay as DAMAGES by reason of liability imposed by law or assumed under a COVERED INDEMNITY CONTRACT because of BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY, EMPLOYMENT PRACTICES, LAND USE CLAIM, or PUBLIC ENTITY ERRORS AND OMISSIONS caused by an OCCURRENCE.

In the event there is no coverage for a LAND USE CLAIM through commercial insurance or reinsurance, any coverage under the Memorandum for LAND USE CLAIM shall be limited per Member to \$5.0 million per occurrence and \$5.0 million per annual aggregate.

BICEP will pay DEFENSE COSTS incurred within the COVERED ULTIMATE NET LOSS.

### SECTION II -- DEFINITIONS

Capitalized words and phrases have the special meanings given in this Section.

1. AGENCY -- means any council, commission, agency, district, authority, board or similar public entity under the MEMBER's direction or control or on which the MEMBER's governing board sits as the governing body.

This Definition excludes an airport or hospital board or commission, regardless of how such body is denominated.

2. AIRCRAFT -- means an operational vehicle designed for the transport of persons or property principally in the air.
3. AUTOMOBILE -- means a self-propelled land motor vehicle and/or trailer or semi-trailer, including any attached machinery or equipment, designed for travel on public roads and subject to motor vehicle registration.
4. BODILY INJURY -- means physical injury, emotional distress, sickness, or disease sustained by a person, including death resulting from any of these at any time.

5. CLAIM -- means a claim presented pursuant to Government Code section 910, *et seq.*, and/or demand, action, suit, or administrative proceeding against a COVERED PARTY to recover DAMAGES caused by an OCCURRENCE.
6. COVERED PARTY -- means:
  - a. BICEP;
  - b. The MEMBER;
  - c. The MEMBER's EMPLOYEES;
  - d. The MEMBER's AGENCIES;
  - e. With respect to any AUTOMOBILE owned by a COVERED PARTY or leased or hired for use by or on behalf of a COVERED PARTY, any person while using such AUTOMOBILE and any person or organization legally responsible for the use thereof, provided its actual use is with the permission of the MEMBER. However, the following are not COVERED PARTIES:
    - i. Any person or organization, or any agent or employee thereof, operating an AUTOMOBILE sales agency, repair shop, service station, storage garage, or public parking place with respect to an OCCURRENCE arising out of the operation thereof, including road testing and delivery; or
    - ii. The owner or any lessee, other than the COVERED PARTY, of a leased or hired AUTOMOBILE or any agent or employee of such owner or lessee;
  - f. Any person or entity holding a certificate of coverage duly issued by BICEP, as limited therein ("ADDITIONAL COVERED PARTY"). An ADDITIONAL COVERED PARTY is not covered for claims arising from the ADDITIONAL COVERED PARTY's sole negligence or for claims by another COVERED PARTY.

This Definition 6 excludes a joint powers agency, or any person or entity acting pursuant to a joint powers agreement, other than an EMPLOYEE, unless the agency or agreement is added by endorsement to this MEMORANDUM.

7. COVERED INDEMNITY CONTRACT -- means an agreement pertaining to the MEMBER's or its AGENCY's routine governmental operations that incidentally requires either of them to defend or indemnify another party for BODILY INJURY, PROPERTY DAMAGE or PERSONAL INJURY to a third party caused by an OCCURRENCE.
8. COVERED ULTIMATE NET LOSS -- means an amount by which ULTIMATE NET LOSS exceeds the SELF-INSURED RETENTION, but not exceeding the LIMIT OF LIABILITY, and which this MEMORANDUM covers.
9. DAM -- means any artificial barrier, together with appurtenant works, which:

- a. Is 25 feet or more in height from the natural bed of the stream or watercourse; or
- b. Has an impounding capacity of 50 acre-feet or more.

No structure specifically exempted from jurisdiction by the State of California Department of Water Resources, Division of Safety of Dams shall be a DAM, unless such structure is under the jurisdiction of any agency of the federal government.

10. DAMAGES -- means money damages, and includes attorney fees, costs and interest awarded against the COVERED PARTY.

This Definition excludes any demand, action, suit or petition for restitution, disgorgement and any non-monetary remedy or relief, including equitable relief, injunctive relief, administrative relief, administrative mandamus, or declaratory relief and any attorney fees, costs and interest based thereon.

This Definition also excludes attorney fees, costs and interest based on a contractual provision not falling within the definition of II.7. COVERED INDEMNITY CONTRACT.

11. DEFENSE COSTS -- means reasonable attorney fees, costs and expenses incurred by the COVERED PARTY for the adjustment, investigation, defense or appeal of a CLAIM.

This Definition includes City Attorney Office fees, but excludes the MEMBER=s claim administration expenses.

However, attorney fees shall not exceed the rates specified in the LIABILITY RISK MANAGEMENT REQUIREMENTS, unless the BICEP Board of Directors authorizes a higher rate.

This Definition excludes the attorney fees, costs and interest that a COVERED PARTY incurs in coverage or other disputes with BICEP.

12. EMPLOYEE -- means a past or present elected or appointed official, employee or volunteer of the MEMBER or its AGENCY acting within the scope of his or her employment with, or duties for, the MEMBER or AGENCY.
13. EMPLOYMENT PRACTICES -- means a COVERED PARTY's employment practices, policies, acts or omissions that lead to an EMPLOYEE's CLAIM for harassment, wrongful termination, wrongful employment, failure to hire or promote, retaliation, unlawful discrimination or violation of civil rights.
14. INVERSE CONDEMNATION -- means a CLAIM by any person or entity under the California or United States Constitutions alleging that the MEMBER or its Agency has taken or damaged real, personal, tangible or intangible property for public use through any means without payment of just compensation.
15. LAND USE CLAIM—means any CLAIM, other than for INVERSE CONDEMNATION, arising out of the enactment of any zoning ordinance, specific plan, general plan, or similar regulation or use or improvement of real property, and the granting, denying or the conditional granting of a

discretionary entitlement in the use of real property such as but not limited to, a conditional use permit or variance.

16. LIABILITY PROGRAM -- means the BICEP Liability Program, dated \_\_\_\_\_, or any later amendment or revision that the BICEP Board of Directors approves.
17. LIABILITY RISK MANAGEMENT REQUIREMENTS -- means Exhibit A to this MEMORANDUM, or any later amendment or revision that the BICEP Board of Directors approves.
18. LIMIT OF LIABILITY -- means BICEP's LIMIT OF LIABILITY per OCCURRENCE for the MEMBER in the amount specified in Item 4 of the Declarations, and includes DEFENSE COSTS. One LIMIT OF LIABILITY for all coverages applies collectively to the MEMBER, its AGENCIES, its EMPLOYEES and any COVERED PARTY under Definitions 6.e. and 6.f.
19. MEMBER -- means the public entity approved and admitted into BICEP and named in Item 1 of the Declarations .
20. MEMORANDUM -- means this BICEP Master Memorandum of Liability Coverage and any endorsements attached to it.
21. MEMORANDUM PERIOD -- means the period stated in Item 3 of the Declarations.
22. NUCLEAR MATERIAL -- means Source Material, Special Nuclear Material, or Byproduct Material. Source Material, Special Nuclear Material and Byproduct Material have the meanings given to them by the Atomic Energy Act of 1954 and any law amendatory thereto.
23. OCCURRENCE -- means:
  - a. With respect to BODILY INJURY or PROPERTY DAMAGE, an accident or event, including continuous or repeated exposure to substantially the same conditions or course of conduct, that results during the MEMORANDUM PERIOD in BODILY INJURY or PROPERTY DAMAGE neither expected nor intended from the standpoint of the COVERED PARTY;
  - b. With respect to PERSONAL INJURY (other than BODILY INJURY), EMPLOYMENT PRACTICES and PUBLIC ENTITY ERRORS AND OMISSIONS, an offense described in the Definitions of those terms that results in DAMAGES during the MEMORANDUM PERIOD.
24. PERSONAL INJURY -- means DAMAGES caused by or arising out of one or more of the following:
  - a. False arrest, detention or imprisonment, malicious prosecution or abuse of process;
  - b. Wrongful entry or eviction;
  - c. Publication or utterance of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services, or infringement of



copyright, title or slogan, or oral or written publication of material that violates a person's right of privacy;

d. Discrimination, other than EMPLOYMENT PRACTICES, based upon race, religion, nationality, national origin, color, creed, sex, sexual orientation, handicap, disability, age or employment or violation of civil rights;

e. Assault and battery.

25. POLLUTANTS -- means any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals, silt, airborne particles or fibers, mold, fungus, waste, or electromagnetic field. Waste includes materials to be discarded or be recycled, reconditioned or reclaimed.

This Definition excludes potable water, agricultural water, water furnished to commercial users, or water used for fire suppression.

26. PROPERTY DAMAGE -- means:

a. Physical injury to tangible property, including all resulting loss of use of that property; or

b. Loss of use of tangible property that is not physically injured.

27. PUBLIC ENTITY ERRORS AND OMISSIONS -- means any misleading statement, or any act or omission of a COVERED PARTY, whether by misfeasance, malfeasance or nonfeasance, that results in a CLAIM against the COVERED PARTY.

This Definition excludes BODILY INJURY, PROPERTY DAMAGE, PERSONAL INJURY, and EMPLOYMENT PRACTICES.

28. SELF-INSURED RETENTION -- means the amount stated in Item 5 of the Declarations that the MEMBER must pay for each OCCURRENCE for judgments, settlements and DEFENSE COSTS. A single SELF-INSURED RETENTION applies collectively to the MEMBER, its AGENCIES, its EMPLOYEES, and any COVERED PARTY under Definitions 6.e and 6.f.

Payment by valid and collectable insurance or other coverage available to the MEMBER, its AGENCIES, its EMPLOYEES, or a COVERED PARTY under Definition 6.e shall apply against the SELF-INSURED RETENTION.

29. ULTIMATE NET LOSS -- means the sums for which the MEMBER is liable as DAMAGES either by adjudication or by compromise after making proper deduction for all recoveries and salvages and includes DEFENSE COSTS.

30. WATERCRAFT -- means an operational vehicle in excess of 27 feet designed for the transport of persons or property principally on the water.

### SECTION III -- DEFENSE AND SETTLEMENT

1. BICEP shall have the right but not the duty to participate at its own expense in the defense of any CLAIM against a COVERED PARTY that BICEP determines will likely result in a COVERED ULTIMATE NET LOSS.
2. After the amount of the SELF-INSURED RETENTION has been exhausted by payment of judgments, settlements and DEFENSE COSTS, BICEP shall reimburse the COVERED PARTY for any further DEFENSE COSTS within the LIMIT OF LIABILITY even if the allegations against the COVERED PARTY are groundless, false or fraudulent.
3. Notwithstanding the above, BICEP shall not have the obligation to defend or reimburse the DEFENSE COSTS of an EMPLOYEE if the MEMBER determines under California Government Code section 995.2(a) that the EMPLOYEE is not entitled to a defense. BICEP shall, however, reimburse DEFENSE COSTS if a court determines that the MEMBER has an obligation to pay them.
4. A COVERED PARTY shall not settle a CLAIM for an amount in excess of the MEMBER=s SELF-INSURED RETENTION without the consent of BICEP=s Board of Directors.
5. BICEP shall not settle a CLAIM without the MEMBER=s consent. However, in the event a MEMBER does not give its consent to accept a bona fide monetary settlement offer, BICEP's liability shall be limited to the amount that BICEP would have paid in such settlement if:
  - a. Such settlement demand exceeds the MEMBER's SELF-INSURED RETENTION by \$500,000; and
  - b. The Member shall have expended or incurred \$250,000 or more in DEFENSE COSTS.
6. BICEP shall not be obligated to pay any CLAIM or reimburse DEFENSE COSTS after the LIMIT OF LIABILITY over the SELF-INSURED RETENTION has been tendered for settlements and/or DEFENSE COSTS or has been exhausted by payment of judgments, settlements and/or DEFENSE COSTS.

### SECTION IV -- MEMBER=S SELF-INSURED RETENTION AND BICEP=S LIMIT OF LIABILITY

1. BICEP=s liability to a COVERED PARTY as the result of any one OCCURRENCE is only the COVERED ULTIMATE NET LOSS.
2. For the purpose of determining the SELF-INSURED RETENTION and LIMIT OF LIABILITY, all DAMAGES arising out of continuous or repeated exposure to substantially the same general conditions or course of conduct shall be considered as arising out of one OCCURRENCE during the first applicable coverage period.

## SECTION V -- COVERAGE PERIOD AND TERRITORY

The coverages stated in Section I of this MEMORADUM apply to DAMAGES caused by an OCCURRENCE anywhere in the world during the MEMORANDUM PERIOD.

## SECTION VI -- EXCLUSIONS

This MEMORANDUM does not apply to any CLAIM for or arising out of:

1. Contamination of the environment by POLLUTANTS introduced at any time, into, under or upon land, the atmosphere, or any watercourse or body of water or aquifer. This exclusion applies whether or not the contamination is introduced into the environment intentionally or accidentally or gradually or suddenly, and whether or not the COVERED PARTY or any other person or organization is responsible for the contamination.

AContamination@ includes any unclean, unsafe, or unhealthful condition, either actual or potential, which arises out of the presence in the environment of any POLLUTANT whether permanent or transient.

AEnvironment@ includes land, bodies of water, underground water or water table or aquifer, the atmosphere, and any other natural feature of the earth, whether or not altered, developed or cultivated.

This exclusion does not apply to:

- a. Any discharge, dispersal, seepage, migration, release or escape of POLLUTANTS that meets all of the following conditions:
  - i. It was accidental and neither expected nor intended by the COVERED PARTY. This condition would not serve to deny coverage for a specific incident where such discharge, dispersal, seepage, migration, release or escape of pollutants was a result of an attempt by the COVERED PARTY to mitigate or avoid a situation where substantial third party bodily injury, PROPERTY DAMAGE or PERSONAL INJURY could occur;
  - ii. It was demonstrated as having commenced on a specific date during the term of this MEMORANDUM;
  - iii. Its commencement became known to the COVERED PARTY within twenty-one (21) calendar days and was further reported to the person responsible for risk management at the MEMBER within a reasonable time frame;
  - iv. Its commencement was reported in writing to BICEP within sixty (60) calendar days of

becoming known to the person responsible for risk management at the MEMBER; and

- v. Reasonable effort was expended by the COVERED PARTY to terminate the situation as soon as conditions permitted.

However, nothing contained in this provision shall operate to provide any coverage with respect to:

- (1) Any site or location principally used by the COVERED PARTY or by others on the COVERED PARTY's behalf, for the handling, storage, disposal, dumping, processing or treatment of waste material;
  - (2) Any fines or penalties;
  - (3) Any clean up costs ordered by the superfund program, or any federal, state or local governmental authority. However this specific exception shall not serve to deny coverage for third party clean up costs otherwise covered by this MEMORANDUM simply because of the involvement of a governmental authority;
  - (4) Acid rain;
  - (5) Clean up, removal, containment, treatment, detoxification or neutralization of POLLUTANTS situated on premises the COVERED PARTY owns, rents or occupies at the time of the actual discharge, dispersal, seepage, migration, release or escape of said POLLUTANTS; or
  - (6) Water pollution caused by oil or its derivatives.
- b. DAMAGES caused by heat, smoke or fume from a hostile fire. A hostile fire means one that becomes uncontrollable or breaks out where it was not intended to be;
  - c. Firefighting activities, including training fires, or intentional ignition of fires for the purpose of limiting a fire, or to the discharge of POLLUTANTS for the purpose of controlling a fire;
  - d. Police use of mace, oleoresin capsicum (O.C. or pepper gas), or tear gas;
  - e. Weed abatement, tree spraying or sudden and accidental sewer backups.
  - f. Use of chlorine for domestic water, swimming pools or other routine sanitation.
- 2. Governmental orders, directions or requests that the COVERED PARTY test for, monitor, clean up, remove, remedy, contain, treat, detoxify or neutralize POLLUTANTS.
  - 3. A governmental unit or other third party's loss or expenses, including attorney fees, for efforts to monitor, clean up, remove, remedy, contain, trace, detoxify or neutralize POLLUTANTS.
  - 4. Hazardous properties of NUCLEAR MATERIAL.

5. DAMAGES (unless arising out of liability for EMPLOYMENT PRACTICES) to:
  - a. An EMPLOYEE within the course and scope of his or her employment caused by the MEMBER, its AGENCY or its EMPLOYEE.
  - b. An EMPLOYEE=s spouse, child, parent, brother or sister resulting from the acts or omissions of the EMPLOYEE within the course and scope of his or her employment by the MEMBER or its AGENCY.

This exclusion does not apply, however, to the MEMBER or its AGENCY's liability under a COVERED INDEMNITY CONTRACT.

6. The liability of any MEMBER to its AGENCY, or the AGENCY to the MEMBER.
7. Liability of a COVERED PARTY to its own past or present employer.
8. Liability of a COVERED PARTY under Definition 6e to another COVERED PARTY.
9. Workers' compensation or disability benefits law or any similar law.
10. Use or operation by or on behalf of the MEMBER as respects:
  - a. Any hospital.
  - b. Any health care provider because of his or her professional arts, errors or omissions.

This exclusion does not apply to:

- i. Paramedics, emergency medical technicians, medical examiners, technicians, phlebotomists or nurses, but only when in employ of the MEMBER or its AGENCY; and
  - ii. Occupational physical examinations, tuberculosis testing and immunization conducted at the direction of the MEMBER or its AGENCY.
  - c. Any clinic or infirmary that has:
    - i. Overnight facilities; or
    - ii. That performs invasive surgery of any kind, or
  - d. Any pharmacy operated by or for the MEMBER or its AGENCY.
11. Rupture, bursting, overflow, seepage, or release or failure to release water from any DAM.
  12. Punitive or exemplary damages, or damage multiples such as double or treble damages awarded pursuant to statute or law.
  13. The COVERED PARTY=s actual fraud, corruption, or actual malice.

14. The COVERED PARTY=s “willful act”, as used in Insurance Code Section 533.
15. PROPERTY DAMAGE to:
  - a. Property owned by the COVERED PARTY;
  - b. Property rented to or leased to the COVERED PARTY where the COVERED PARTY has assumed liability for damage to or destruction of such property, unless the COVERED PARTY would have been liable in the absence of such assumption of liability; or
  - c. AIRCRAFT or WATERCRAFT in the COVERED PARTY=s care, custody or control.
16. Operation of any transit district, transit system, or public transportation system owned or operated by the COVERED PARTY, except any transit system operating over non-fixed route systems such as "dial-a-ride," senior citizen transportation, or handicapped transportation.
17. Ownership, maintenance, loading or unloading, use or operation of any AIRCRAFT, airfields, runways, hangars, buildings or other properties in connection with aviation activities. However, in connection with airfields, runways, hangars, buildings or other properties in connection with aviation activities, this exclusion shall not apply to those areas open to the public for the purpose of entering, leaving, or using the airport facilities, including parking lots and garages. “Loading” and “unloading” of AIRCRAFT as set forth above shall not apply to paramedics, nurses or emergency medical technicians.

This exclusion applies only to the coverages for BODILY INJURY and PROPERTY DAMAGE.

18. Failure to supply or provide an adequate supply of gas, water or electricity when such failure is a result of the inadequacy of the COVERED PARTY=s facilities to supply or produce sufficient gas, water or electricity to meet customary and expected demand.
19. Eminent domain, condemnation proceedings, regulatory takings or INVERSE CONDEMNATION, by whatever name called.

This exclusion shall not apply to physical injury to tangible third-party property, including resulting loss of use of that property.

20. Benefits payable by a COVERED PARTY under any employee benefit plan (whether the plan is voluntarily established or mandated by statute).

This exclusion does not apply, however to liability of a COVERED PARTY for failure to secure such benefits from a third party provider.

21. Refund of taxes, fees or assessments.
22. Remuneration or financial gain to which the COVERED PARTY was not legally entitled.
23. Willful violation of a penal code or ordinance committed by or with the knowledge or consent of the COVERED PARTY.

24. Estimates of probable costs or cost estimates being exceeded or faulty preparation of bid specifications or plans, including architectural plans.
25. Failure to perform, or breach of, a contractual obligation, except for liability:
  - a. That would be imposed in the absence of the contractual obligation;
  - b. Assumed under any COVERED INDEMNITY CONTRACT.
26. The Employee Retirement Income Security Act of 1974 (ERISA) and any law amendatory thereto, or any state statute or common law rule which imposes fiduciary duties and responsibilities with respect to employee benefit programs.
27. The Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).
28. War, whether or not declared, civil war, or revolution or any act or condition incident to the foregoing, except for a MEMBER's response to such acts or conditions.
29. The purchase, sale, issuance and holding of securities, including but not limited to bonds.
30. A lockout, strike, picket line, replacement or similar actions in connection with labor disputes or labor negotiations.

This exclusion does not apply to the coverages for BODILY INJURY and PROPERTY DAMAGE.

31. The cost of modifying any building or property in order to make said building or property more accessible or accommodating to any disabled person in compliance with the Americans with Disabilities Act (Public Law 101-336) or similar state law.

## SECTION VII -- CONDITIONS

The following are conditions precedent to coverage under this MEMORANDUM:

1. Premium and audit:
  - a. The MEMBER shall pay the Deposit Premium designated in the Declarations, and any further premium that the LIABILITY PROGRAM requires.
  - b. BICEP may examine the MEMBER's books and records that relate to the subject matter of this MEMORANDUM at any reasonable time until ten (10) years after the final termination of coverage under this MEMORANDUM or until all known claims noticed under paragraph 3 below have been closed, whichever occurs last.

2. Inspections:

BICEP shall be permitted, but is not obligated to, inspect the MEMBER's property and operations at any reasonable time. Neither such right to make inspections nor the making thereof, nor any

report thereon, shall constitute an undertaking, on behalf of or for the benefit of the MEMBER or others, to determine or warrant that such property or operations are safe.

3. Duties in the event of an occurrence or claim:

The COVERED PARTY shall have the duty:

- a. In the event of an OCCURRENCE that falls within the LIABILITY RISK MANAGEMENT REQUIREMENTS, to give written notice as soon as possible to BICEP with reasonably obtainable information about the time, place and circumstances thereof, and the names and addresses of the involved COVERED PARTIES and witnesses.
- b. If a CLAIM is made or legal action brought against the COVERED PARTY that falls within the LIABILITY RISK MANAGEMENT REQUIREMENTS, to forward to BICEP every demand, notice, summons or other process received by the COVERED PARTY or the COVERED PARTY=s representative.
- c. To cooperate fully with BICEP in the investigation and defense.
- d. Upon BICEP=s request, to assist in enforcing any right of contribution or indemnity against any person or organization that may be liable to the COVERED PARTY because of an OCCURRENCE with respect to which coverage is afforded under this MEMORANDUM.
- e. To attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses.
- f. To comply with BICEP=s LIABILITY RISK MANAGEMENT REQUIREMENTS.

4. No voluntary payments:

The COVERED PARTY shall not, except at its own cost, voluntarily (that is, without BICEP=s approval) make any payment, assume any obligation or incur any expense, including DEFENSE COSTS, after it has exhausted its SELF-INSURED RETENTION.

5. Bankruptcy and insolvency:

Bankruptcy or insolvency of the COVERED PARTY shall not relieve BICEP of any of its obligations hereunder. Nor shall the bankruptcy or insolvency of the COVERED PARTY increase BICEP=s obligations hereunder.

6. Other coverage:

Insurance or other coverage available to the COVERED PARTY for a CLAIM (whether on a primary, excess or contingent basis) shall be primary to, and shall not contribute with, this Memorandum=s coverage; except that this provision shall not apply with respect to the excess insurance purchased specifically to be in excess of this Memorandum, or to insurance or reinsurance which is intended to provide the remainder of the LIMIT OF LIABILITY stated in the Declaration.



7. Duration of an occurrence:

An OCCURRENCE with a duration of more than one MEMORANDUM PERIOD shall be treated as a single OCCURRENCE arising during the MEMORANDUM PERIOD when the OCCURRENCE began.

8. Endorsements to the MEMORANDUM:

Notice to any agent or knowledge possessed by any agent or by any other person shall not affect a waiver or change in any part of this MEMORANDUM or stop BICEP from asserting any right under the terms of this MEMORANDUM, nor shall the terms of this MEMORANDUM be waived or changed, except by endorsement issued to form a part of this MEMORANDUM.

9. No third party beneficiaries:

Nothing in this MEMORANDUM is intended to make any person or entity, other than a COVERED PARTY, a third party beneficiary of the coverage that this MEMORANDUM provides.

This MEMORANDUM confers no coverage or benefits on any person or entity other than a COVERED PARTY; no person or entity other than a COVERED PARTY shall have the right to bring a legal action against BICEP, without its consent, to determine BICEP's obligations to a COVERED PARTY under this MEMORANDUM.

10. Subrogation:

BICEP shall be subrogated to the extent of any payment hereunder to the COVERED PARTY=s rights of recovery thereof, and the COVERED PARTY shall do nothing after loss to prejudice such right and shall do everything necessary to secure such right. Any amount so recovered shall be apportioned as follows:

- a. The expenses of all such recovery proceedings shall be paid before any reimbursements are made. If there is no recovery in the proceedings conducted by BICEP, then BICEP shall bear the expenses thereof.
- b. The highest layer of coverage shall be reimbursed first and, if there be sufficient recoveries, then the next highest layer, until all recoveries are used up.

11. Assignment of interest:

Assignment of interest under this MEMORANDUM shall not bind BICEP unless approved by the BICEP Board of Directors.

12. Drop down exclusion:

BICEP=s LIMIT OF LIABILITY shall not be increased for any reason, including, but not limited to, the refusal or inability of the COVERED PARTY to pay the SELF-INSURED RETENTION or by the refusal or inability of any underlying insurer or joint powers authority to pay, whether by reason of insolvency, bankruptcy, or otherwise.

13. Separate limits:

If two or more MEMBERS are jointly or jointly and severally liable for the same CLAIM or OCCURRENCE, a separate SELF-INSURED RETENTION and LIMIT OF LIABILITY applies collectively to each MEMBER and its AGENCIES, its EMPLOYEES and any COVERED PARTY under Definition 6.e.

14. Severability:

This MEMORANDUM uses the term COVERED PARTY severally and not collectively, so that it applies separately to each COVERED PARTY as if it were the only COVERED PARTY. However, this provision shall not increase a MEMBER's SELF-INSURED RETENTION or BICEP's LIMIT OF LIABILITY.

15. Interpretation:

- a. This MEMORANDUM does not provide insurance so that the rule that all ambiguities must be construed against an insurer does not apply. This MEMORANDUM shall be construed according to the principles of contract law, giving full effect to the intent of the MEMBERS and BICEP's Board of Directors in adopting it.
- b. This MEMORANDUM shall be interpreted without regard to the drafter. Its terms and intent, with respect to the rights and obligations of any COVERED PARTY or BICEP, shall be interpreted and construed on the express assumption that the MEMBERS and BICEP participated equally in its drafting.

16. Law governing the MEMORANDUM:

This MEMORANDUM shall be governed and construed in accordance with the laws of the State of California.

17. Cancellation:

This MEMORANDUM may, with respect to any MEMBER, be cancelled by BICEP on ninety (90) days' notice either for the then-current MEMORANDUM PERIOD or, in the event of expulsion, permanently upon the occurrence of the events and under terms set forth in the LIABILITY PROGRAM.

19. Named Member:

The MEMBER first named in Item 1 of the Declarations is authorized to act on behalf of itself, its AGENCIES, its EMPLOYEES, and any COVERED PARTY under Definitions 6.e and 6.f with respect to giving and receiving Notice of Cancellation and for receiving any return premium that may become payable under this MEMORANDUM. That MEMBER is also responsible for the payment of all premiums.

## EXHIBIT "A" TO BICEP MEMORANDUM OF COVERAGE

### BIG INDEPENDENT CITIES EXCESS POOL LIABILITY RISK MANAGEMENT REQUIREMENTS

1.0. DEFINITIONS. The Definitions in the BICEP MASTER MEMORANDUM OF COVERAGE (MEMORANDUM) apply to capitalized words in these Liability Risk Management Requirements ("Requirements").

2.0. MEMBER=s RISK MANAGER. Each MEMBER shall have and maintain a full-time risk management employee, or subject to the unanimous approval of the Board, shall have either: (i) a risk management professional, or (ii) otherwise must be able to demonstrate a sound risk management program.

3.0. LOSS PREVENTION PROGRAM. Each MEMBER shall maintain a loss prevention program, and shall act upon all recommendations of BICEP concerning the reduction of unsafe conditions and the correction of policies or practices that are likely to lead to CLAIMS.

#### 4.0. RECORDS.

4.1. The MEMBER shall furnish an annual audited financial statement to BICEP.

4.2. The MEMBER shall maintain individual claim files containing the Documentation specified in Section 9.3 for all CLAIMS for the preceding ten (10) fiscal years. The files shall be referenced and stored for retrieval by City Claim Number.

4.3. The MEMBER shall maintain a computer-generated spreadsheet showing the following information by columns for all CLAIMS in the ten (10) preceding fiscal years:

- \$ City Claim No.
- \$ BICEP Claim No. [If any]
- \$ Claimant
- \$ City Department
- \$ Loss Date
- \$ Claim Date
- \$ Description
- \$ Current Status
- \$ Amounts Reserved
- \$ Amounts Paid
- \$ Date Closed

4.4 The MEMBER shall submit copies of the above records to BICEP as directed by its General Manager or its duly constituted committees.

#### 5.0. DEFENSE ATTORNEYS AND FEES.

5.1. The MEMBER shall use qualified defense attorneys experienced in litigating the type of CLAIM at issue.

5.2. BICEP retains the right to associate its attorneys with the MEMBER=s attorneys in the defense of any case that the BICEP Board of Directors determines has DAMAGES exposure that will likely exceed the MEMBER=s SELF-INSURED RETENTION. This right of association extends to petitions for relief from the claim filing requirements.

5.3. The MEMBER shall contract to pay outside defense attorneys a reasonable rate for the type of CLAIM at issue, not to exceed \$250 an hour, unless the BICEP Board of Directors authorizes a higher rate which determination shall consider the usual, customary and reasonable rate for the complexity of the CLAIM at issue.

5.4. If the MEMBER elects to defend a CLAIM through its City Attorney Office, BICEP will credit \$150 an hour or the MEMBER's actual cost (as demonstrated by the MEMBER), whichever is greater, as DEFENSE COSTS for services in defense of a CLAIM. The City Attorney Office shall maintain hourly time records.

5.5. The BICEP Board of Directors may periodically revise the rates in sections 5.3 and 5.4 to reflect prevailing attorney hourly rates.

5.6. The MEMBER may select, subject to BICEP's approval, an alternative method of accounting for DEFENSE COSTS, such as the resource allocation method.

#### 6.0. NOTICE OF CLAIMS AND OCCURRENCES.

6.1 As soon as practicable, the MEMBER shall provide BICEP with written notice of any CLAIM or OCCURRENCE that the BICEP MEMORANDUM covers or potentially covers, if:

§ The MEMBER reserves the CLAIM or OCCURRENCE in an amount at least equal to 50% of the MEMBER=s SELF-INSURED RETENTION or \$500,000, whichever is less;

§ The CLAIM or OCCURRENCE has a potential DAMAGES exposure at least equal to 50% of the MEMBER=s SELF-INSURED RETENTION or \$500,000, whichever is less;

§ The CLAIM or OCCURRENCE involves paralysis, brain damage, dismemberment, or death; or

§ A single OCCURRENCE results in two or more CLAIMS that, in the aggregate,

are reserved at, or have a potential DAMAGES exposure at least equal to 50% of the MEMBER's SELF-INSURED RETENTION or \$500,000, whichever is less.

6.2. The reserves and estimates of potential DAMAGES exposure in Section 6.1 above shall include the MEMBER's potential exposure to claimant's attorney fees, costs, and prejudgment interest, if applicable.

#### 7.0. CLAIMS ADMINISTRATION AUDIT.

7.1. The BICEP Board of Directors shall select a claims auditor.

7.2. Utilizing the Liability Claims Quality Control Guidelines in section 9 below, the auditor shall conduct a claims administration audit once annually, or more often at the discretion of the BICEP Board of Directors, particularly if:

§ There is an unusual fluctuation or increase in the MEMBER's claims experience or number of claims;

§ There is a change of liability claims administration firms; or in-house claims/litigation management; or

§ The MEMBER is new.

7.3. Within sixty (60) days of receipt of the audit report, the MEMBER shall respond to any recommendations and shall either outline in writing a program for corrective action or explain why the MEMBER should not be required to follow the recommendations.

8.0 ACTUARIAL STUDY. The BICEP Board of Directors shall obtain an actuarial study performed by a Fellow of the Casualty Actuarial Society annually, or more often if indicated. Based on the actuarial recommendations, BICEP shall maintain Reserves and the MEMBER shall make funding contributions equal to or exceeding the "Projected Ultimate Losses" shown in the actuarial report.

#### 9.0. LIABILITY CLAIMS QUALITY CONTROL GUIDELINES

9.1 The MEMBER will:

§ Conduct investigation within thirty days of the MEMBER's knowledge of the CLAIM, including taking statements from participants and witnesses.

§ Develop information regarding liability issues, including immunities, comparative negligence, joint tortfeasors, and joint and several liability.

§ Develop information on damages, including property damage, nature and extent of bodily injury and emotional distress claims, medical costs, and economic damages such as wage loss, lost profits and loss of goodwill.

§ Obtain and review contracts that may be in effect relating to specific accidents,

such as hold harmless and indemnity agreements, additional insured requirements, other applicable insurance policies and joint powers agreements with other public entities.

§ Obtain defective products and/or other evidence, and hold if at all possible or at least locate where such products are being held and obtain product information for the file.

§ Utilize experts appropriately in cases.

§ Maintain membership in Claims Index Bureau; provide the Bureau with updated indexing information as applicable; and make inquiries on claims when an index match occurs.

§ Arrange appraisals for damaged property.

§ Timely report to BICEP and all insurers that potentially provide insurance coverage.

9.2. Tort Claim Requirements. The MEMBER shall give all notices (pertaining to claims insufficiency, returning late claims, claims rejections) in accordance with applicable law.

9.3. Documentation:

9.3.1 The MEMBER shall establish reasonable reserves based upon facts known, within thirty (30) days of receipt of investigative report, with expenses included. The reserves shall reflect the MEMBER's potential exposure to claimant's attorney fees, costs and interest, if applicable. The MEMBER shall monitor reserves for adequacy throughout the life of the CLAIM and modify them as needed.

9.3.2. The MEMBER shall maintain a claim file on each CLAIM against the MEMBER or its EMPLOYEE.

9.3.3. The claims files shall contain documentation necessary to support the decisions made with respect to disposition of CLAIMS.

9.3.4. Photos, diagrams, plans, contracts, medical and law enforcement reports, reports of investigation, attorney reports and other relevant documents shall be deposited in the claim file in a timely fashion.

9.4. Requirements for Written Reports from MEMBER's defense attorney after the MEMBER has placed BICEP on notice of a CLAIM or OCCURRENCE.

9.4.1. The MEMBER shall provide its outside defense attorney(s) with copies of the attached (a) BICEP Defense Attorney Reporting Requirements and (b) BICEP Litigation Plan and Budget.

9.4.2. The MEMBER has the responsibility of ensuring that its outside defense

attorney(s) complies with BICEP's reporting and budgeting requirements.

9.4.3 If the City Attorney Office serves as lead defense attorney, it shall provide BICEP with the Preliminary Evaluation described in Section I of the attached BICEP Defense Attorney Reporting Requirements. Otherwise the City Attorney Office will be required only to copy BICEP with its internal status and evaluation reports.

9.4.4. These requirements apply regardless of whether or not there is a coverage controversy between BICEP and the MEMBER.

#### 9.5. DEFENSE COSTS.

9.5.1. Upon giving notice to BICEP of a CLAIM or OCCURRENCE, the MEMBER shall require its outside defense attorney(s) to provide the BICEP Claims Administrator with copies of monthly billings for attorney fees and other DEFENSE COSTS.

9.5.2. The MEMBER=s risk manager or claims manager shall keep a current ledger of payments of outside attorney(s) fees and other DEFENSE COSTS, and shall provide it to BICEP=s Claims Administrator upon request.

9.5.3. The City Attorney Office will not be required to submit a monthly record of DEFENSE COSTS. However, it must keep a current record documenting them.

#### 9.6. Settlement

9.6.1. Once the MEMBER gives the notice required by section 6 of the Requirements, BICEP shall have the right to negotiate a settlement directly with the claimant or plaintiff, subject to the MEMBER=s approval of the settlement.

9.6.2. The MEMBER=s defense attorney(s) shall provide BICEP with fully executed releases, settlement agreements and, when appropriate, court endorsed copies of dismissals and satisfactions of judgment.

#### 10.0. DEFAULT.

10.1. No MEMBER that substantially complies with these Requirements may be found in default.

10.2. BICEP shall furnish the MEMBER with written notification of the MEMBER=s failure to comply with these Requirements.

10.3. The MEMBER shall furnish a written response outlining a program for corrective action, or showing that it has substantially complied with these Requirements, within thirty (30) days of receipt of BICEP=s notification.

10.4. If BICEP approves corrective action, the MEMBER shall implement the approved program within sixty (60) days of notice of such approval.

10.5. Failure to cure noncompliance pursuant to sections 10.1 through 10.4 shall constitute an event of default in accordance with the LIABILITY PROGRAM.

10.6. The MEMBER may appeal any notice of default to the BICEP Board of Directors.



[Member's Letterhead]1

[Date]

[Attorney with Firm Name / Address]

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Re: [Case Name, Court Number, and Bicep Claim Number]

Dear \_\_\_\_\_:

## **BICEP DEFENSE ATTORNEY(S) REPORTING REQUIREMENTS**

Our City is a member of the Big Independent Cities Excess Pool (BICEP), a governmental Joint Powers risk sharing pool that provides excess coverage to its member cities. BICEP directly covers its member cities, and may also purchase commercial excess liability insurance or reinsurance for them.

We have placed BICEP on notice of the referenced claim. Pursuant to agreements between BICEP and our City, BICEP will monitor the claim and may take an active role in overseeing the claim, litigation and settlement negotiations in cooperation with the City and you as its defense attorney(s). Depending on the amount of potential damages, commercial excess liability insurers or reinsurers may also become involved.

Under the agreements between BICEP and the City, you must adhere to the following reporting requirements. Your reports, marked Confidential Attorney Client Communication, should be addressed to the City with copies to BICEP and, if applicable, commercial excess liability insurers or reinsurers and monitoring counsel.

### **1. PRELIMINARY EVALUATION.**

Within ninety (90) days of notice to BICEP of the claim or occurrence, your firm shall submit a letter to the City captioned Preliminary Evaluation and containing the following information under separate headings:

- \$ Brief Description of the Case. [A sentence or short paragraph will do.]
- \$ Procedural History
- \$ Trial and Settlement Conference Dates
- \$ Statement of Facts
- \$ Applicable Immunities
- \$ City's Liability
- \$ Plaintiff's Comparative Fault
- \$ Comparative Fault or Other Liability of Third Parties
- \$ Indemnification or Insurance Available from Other Parties

- \$ Damages
- \$ Litigation Cost Estimate
- \$ Settlement Demands/Offers
- \$ Evaluation and Recommendations

2. LITIGATION PLAN AND BUDGET:

Along with the Preliminary Evaluation, your firm shall complete and return the attached Litigation Plan and Budget.

3. SUMMARIES OF COURT PROCEEDINGS AND DISCOVERY.

Your firm shall provide the City with timely letter reports of court proceedings, depositions and written discovery. These letters shall comment on the significance of any new developments.

4. PRETRIAL EVALUATION.

Within sixty (60) days of the trial date, and one week before any settlement conference, your firm shall provide the Member City with a letter report captioned APretrial Evaluation@ that contains an update on the topics noted in Section 1.

5. SETTLEMENT OFFERS AND DEMANDS.

Your firm shall immediately communicate all settlement demands and offers to the City, BICEP=s General Manager, BICEP=s Claims Administrator, and when applicable, commercial excess insurers and monitoring counsel. The Member City shall not enter into a settlement that requires payment from BICEP=s pooled funds without BICEP=s consent.

6. COPIES TO BICEP AND COMMERCIAL EXCESS INSURERS.

Your firm shall direct copies of the reports in Sections 1 through 5 to BICEP=s General Manager and BICEP=s Claims Administrator, and to any excess insurers whose layers of coverage may be affected by a settlement or judgment. When requested, your firm shall also copy the reports to any monitoring attorney for BICEP and/or its excess insurers.

Copies to BICEP should be directed as follows:

BICEP General Manager  
Gregory Spiker  
Ken Spiker & Associates  
1100 South Flower Street, Suite 2100  
Los Angeles, CA 90015

BICEP Claims Administrator  
Craig Schweikhard  
Gregory Bragg & Associates, Inc.  
P.O. Box 3544  
Ventura, CA 93006-3544

These BICEP representatives may request you to add others to the circulation of your reports.

Thank you for your attention to the above.

Very truly yours,

[Title]

**BICEP LITIGATION PLAN & BUDGET**

To: Craig Schweikhard  
Gregory Bragg & Associates, Inc.  
P.O. Box 3544  
Ventura, CA 93006-3544

Case Name: \_\_\_\_\_

BICEP Claim No.: \_\_\_\_\_

Law Firm: \_\_\_\_\_

Firm Attorney: \_\_\_\_\_

Phone: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Damages Exposure: \_\_\_\_\_

Case Summary: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**I. FEES AND COSTS TO DATE:**

Attorney Fees to Date: \$ \_\_\_\_\_

Costs to date: \$ \_\_\_\_\_

**II. PREDISCOVERY (*Identify and list under each heading*)**

Estimated Fees

Case Evaluation/Preliminary Research \_\_\_\_\_

\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

Drafting Pleadings \_\_\_\_\_

Estimated Fees

\_\_\_\_\_ Estim. hrs. \_\_\_\_\_

@ \_\_\_\_\_

hour

\$ \_\_\_\_\_

III. DISCOVERY (Identify and list under each heading)

A. Fact Investigation: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Estim. hrs. \_\_\_\_\_

@ \_\_\_\_\_

hour

\$ \_\_\_\_\_

B. Witness Interviews: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Estim. hrs. \_\_\_\_\_

@ \_\_\_\_\_

hour

\$ \_\_\_\_\_

C. Witness Preparation for Deposition: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Estim. hrs. \_\_\_\_\_

@ \_\_\_\_\_

hour

\$ \_\_\_\_\_

D. Taking Depositions: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Estim. hrs. \_\_\_\_\_

@ \_\_\_\_\_

hour

\$ \_\_\_\_\_

E. Defending Depositions: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Estim. hrs. \_\_\_\_\_

@ \_\_\_\_\_

hour

\$ \_\_\_\_\_

F. Drafting Discovery: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ Estim. hrs. \_\_\_\_\_

@ \_\_\_\_\_

hour

\$ \_\_\_\_\_

G. Discovery Responses: \_\_\_\_\_ Estimated Fees  
\_\_\_\_\_  
\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

H. Evaluation of Discovery: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

IV. MOTIONS (Identify and list under each heading)

A. Procedural: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

B. Discovery: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

C. Summary Judgment: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

D. In Limine: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

E. Other: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

V. PRETRIAL/TRIAL (Identify and list under each heading) Estimated Fees

A. Court Conferences: \_\_\_\_\_

\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

B. Mediation/Arbitration: \_\_\_\_\_

\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

C. Trial Preparation: \_\_\_\_\_

\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

D. Trial: \_\_\_\_\_

\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

VI. MISCELLANEOUS (Identify and list under each heading)

A. Settlement Matters: \_\_\_\_\_

\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

B. Administration/Client Reports/Calls: \_\_\_\_\_

\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

C. Securing Expert: \_\_\_\_\_

\_\_\_\_\_ Estim. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

D. Miscellaneous: \_\_\_\_\_

Estimated Fees

\_\_\_\_\_ Est. hrs. @ \_\_\_\_\_ hour \$ \_\_\_\_\_

VII. ESTIMATED FUTURE EXPENSES FOR CASE

A. Prediscovery \$ \_\_\_\_\_

B. Discovery \$ \_\_\_\_\_

C. Motions \$ \_\_\_\_\_

D. Pretrial/Trial \$ \_\_\_\_\_

E. Miscellaneous \$ \_\_\_\_\_

F. Expert Fees \$ \_\_\_\_\_

G. Costs \$ \_\_\_\_\_

Total Estimated Future Expenses \$ \_\_\_\_\_

VIII. TIME DURATION ESTIMATE (*In months*):

Length of Time Before Settlement or Trial: \_\_\_\_\_ Months