



Meeting Date: 07/25/06

ACTION	TYPE OF ITEM
<input type="checkbox"/> Approved Recommendation	<input checked="" type="checkbox"/> Info/Consent
<input type="checkbox"/> Ord. No(s). _____	<input type="checkbox"/> Report
<input type="checkbox"/> Res. No(s). _____	<input type="checkbox"/> Public Hearing (Info/consent)
<input type="checkbox"/> Other _____	<input type="checkbox"/> Other _____

Prepared By: Michael J. More *MSM* Agenda Item No. I-4  
 Reviewed By: City Manager *JRB* City Attorney *J.* Finance *M* Other (Specify) \_\_\_\_\_

DATE: July 19, 2006

TO: City Council

FROM: Michael More, Financial Services Manager *Michael MS*  
Finance Department

SUBJECT: **Big Independent Cities Excess Pool (BICEP) Amended Joint Powers Agreement and Operating Documents**

**RECOMMENDATION**

That the City Council adopt a resolution approving the amended and restated BICEP Joint Powers Agreement (A-6706) and authorizing and approving other Operating Documents in connection therewith.

**DISCUSSION**

By way of background, all of the other members of BICEP (the cities of Huntington Beach, Santa Ana, San Bernardino, and West Covina) have adopted the attached resolution. Pursuant to Section 23 of the original BICEP Joint Powers Agreement ("Original JPA"), amendment of the Original JPA requires approval by City Councils of 2/3 of the members of BICEP. Since this has already occurred, the amended and restated Joint Powers Agreement and all of the Operating Documents are already in effect.

BICEP was initially formed in 1988 in response to the extreme difficulty cities were having in obtaining liability insurance coverage. The cities of Huntington Beach, Santa Ana, San Bernardino, Oxnard and Pomona were the charter members that formed BICEP. Subsequently, the City of Pomona withdrew and the City of West Covina joined BICEP in October 2003.

In order to provide adequate reserves for coverage liability, BICEP issued bonds in 1988 and as a further consequence entered into certain legal operating documents to provide the necessary and required protection for bondholders. More specifically, the Liability Risk Coverage Agreement and Trust Indenture were specifically crafted to ensure that the premiums paid in and the settlements paid out under the liability coverage program, were administratively handled to protect the interest of bondholders.

## **Big Independent Cities Excess Pool (BICEP) Amended Joint Powers Agreement and Operating Documents**

July 19, 2006

Page 2

In October 2003, BICEP determined to retire the bonds and with the ratification of the City Councils of each member, undertook necessary actions to defease the bonds in March 2004. With the retirement of this bonded indebtedness, BICEP has been diligently working to revise the operating documents to remove the now unnecessary and burdensome provisions related to bondholder protection. BICEP's goal is to replace the existing operating documents with new operating documents that ensure efficiency in handling claims and provide clarity in the obligations and rights of each member of BICEP.

The amended and restated Joint Powers Agreement ("JPA")(Attachment No. 2), along with the following operating documents (the "Operating Documents") are being presented for City Council approval:

- BICEP Master Memorandum of Coverage (Attachment No. 3)
- Bylaws (Attachment No. 4)
- Liability Program (Attachment No. 5)
- Workers' Compensation Program (Attachment No. 6)

These Operating Documents are intended to fully replace the existing joint powers agreement and operating documents originally entered into in 1988, with one exception. That exception relates to how a charter member (i.e., Huntington Beach, Oxnard, San Bernardino and Santa Ana) will continue to participate in the reserves for liability coverage created by the now-retired bonds. To this extent only and subject to the final disposition of all claims that occurred prior to the defeasance of the bonds, the terms and conditions of the existing Liability Risk Coverage Agreement would remain in force and effect. Otherwise, on or after July 1, 2004, the rights and obligations for coverage of any Member of BICEP would be controlled under the proposed Operating Documents.

The following represents the main changes to the JPA and Operating Documents:

1. The JPA and the proposed bylaws ("Bylaws") will broaden the definition of "Member" from any "California city which has executed the Agreement (i.e., the JPA)" to "any public agency as the term 'public agency' is defined by Section 6500 of the Joint Powers Law" (the Joint Exercise of Powers Act, Government Code Section 6500 *et seq.*). The intention is to allow other types of public agencies (e.g., the Los Angeles County Community Development Commission) or even an out-of-state public agency, to potentially join BICEP and to share in the distribution of risk and thereby reduce each member's risk as well as administrative costs.

2. The proposed Bylaws would include and change the eligibility criteria for admission to BICEP. More specifically and in addition to the revised definition of "Member", the eligibility criteria would delete the requirement for a population of at least 100,000. This would allow consideration of smaller-population cities to join BICEP. However, other appropriate underwriting criteria related to a new member's potential impact on BICEP coverage, such as a new member's loss experience, would remain in place and continue to be applied. Again, the intent is to enlarge membership to share risk, but not to the detriment of BICEP's financial condition.

**000020**

## **Big Independent Cities Excess Pool (BICEP) Amended Joint Powers Agreement and Operating Documents**

July 19, 2006

Page 3

3. The proposed new Bylaws would clarify that the BICEP board of directors can make modifications to the Operating Documents and the terms and conditions of coverage for the Members. This is intended to add flexibility and respond to continual changes in the excess insurance marketplace. Currently, pursuant to the existing Liability Risk Coverage Agreement executed in 1988, any such revision to the existing Operating Documents would require a two-thirds vote of the Board of BICEP and a two-thirds vote of the members' city councils. This vote of the Board and ratification by the city councils was intended to provide protection for bondholders. However, with the retirement of the bonds, the procedure provided in the Liability Risk Coverage Agreement creates inefficiency in responding to coverage available in the excess insurance marketplace.

Each member continues to protect its individual interests through the City Council's designation of the representative to the Board. Additionally, the new Bylaws continue to require a supermajority vote of two-thirds to add or expel a member. Such controls are typical and a normal means of control found in other risk sharing pools.

4. Pursuant to the Bylaws, coverage for each Member of BICEP would be provided through a Memorandum of Liability Coverage and through various Risk Management Programs determined and authorized by the BICEP Board, which is a similar procedure in other such pools. However, these new Operating Documents would revise certain existing coverage policies, as follows:

- a. The Liability Program (Attachment No. 4) will establish new limits to BICEP's coverage at \$10 million per occurrence and \$25 million annual aggregate for all claims. (Liability Program, Section 2.1.3) BICEP's exposure under the existing operating documents is \$25 million per occurrence in each coverage period without any aggregate cap.
- b. As noted earlier, the terms and conditions of the Liability Program may be amended annually by the BICEP Board to adjust to conditions in the excess insurance market.
- c. The Liability Program recognizes that liability coverage may be provided by adopting a "Reverse Following Form" which suspends the terms and conditions of the Memorandum of Liability Coverage ("MOC") and accepts a commercial insurance policy form as the basis for coverage.
- d. The Memorandum of Liability Coverage would clearly provide for coverage of a 'Land Use Claim' (as defined in the MOC) in the event no such coverage was available through commercial insurance or reinsurance. However, such coverage would be limited per member to \$5.0 million per occurrence and \$5.0 million per annual aggregate.

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.

**000021**

**Big Independent Cities Excess Pool (BICEP) Amended Joint Powers Agreement and Operating Documents**

July 19, 2006

Page 4

As stated earlier, the intent of the BICEP board in bringing the amended and restated JPA and the underlying revised Operating Documents to the City Council is to promote efficiency in handling member's claims and to provide clarity on the obligations and rights of each member of BICEP.

**FINANCIAL IMPACT**

There is no financial impact relative to the approval of the attached documents.

MJM

Attachments

- #1 - Resolution approving the amended and restated BICEP Joint Powers Agreement and authorizing and approving other Operating Documents in connection therewith
- #2 - Joint Powers Agreement (A-6706)
- #3 - BICEP Master Memorandum of Coverage
- #4 - Bylaws
- #5 - Liability Program
- #6 - Workers' Compensation Program

Note: Attachments No. 2, 3, 4, and 5 have been provided to the City Council. Copies are available for review at the Circulation Desk in the Library after 6:00 p.m. on the Thursday prior to the Council meeting and at the City Clerk's Office after 8:00 a.m. on Friday.

**000022**

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF OXNARD APPROVING THE AMENDMENT AND RESTATEMENT OF THE JOINT POWERS AGREEMENT CREATING THE BIG INDEPENDENT CITIES EXCESS POOL JOINT POWERS AUTHORITY, AND AUTHORIZING, RATIFYING, AND APPROVING CERTAIN OTHER OPERATING DOCUMENTS IN CONNECTION THEREWITH

WHEREAS, the City of Oxnard is a municipal corporation organized and existing under and by virtue of the constitution and laws of the State of California (the "City"); and

WHEREAS, the Cities of Huntington Beach, Oxnard, West Covina, San Bernardino, and Santa Ana are the current Members of the Big Independent Cities Excess Pool Joint Powers Authority, a joint exercise of powers entity organized and existing under the laws of the State of California (the "Authority"); and

WHEREAS, each Member of the Authority entered into that certain JOINT POWERS AGREEMENT CREATING THE BIG INDEPENDENT CITIES EXCESS POOL JOINT POWERS AUTHORITY, executed and delivered in and after September 1988, as subsequently amended; and

WHEREAS, the Authority approved and entered into certain operating documents to carry out the purpose of the Authority to jointly develop and fund programs for comprehensive liability coverage and other coverages, including but not limited to, Bylaws, the Liability Risk Coverage Agreement, a Memorandum of Liability Coverage, and the Trust Agreement, all originally dated as of October 1, 1988 and subsequently amended from time to time (the "Original Operating Documents"); and

WHEREAS, the Authority entered into the form of the Original Operating Documents in order to issue bonded indebtedness in October 1988 to fund the necessary reserves for the comprehensive liability coverage provided to the Members of the Authority; and

WHEREAS, in October 2003, the Authority, with the subsequent approval and ratification of the City Council of each Member, determined and approved actions to defease and retire said bonded indebtedness in March 2004; and

WHEREAS, the Authority now desires to amend and restate the form of its operating documents in order to provide clarity and efficiency in providing coverages to its Members, and to allow the expansion of membership in the Authority to any public agency, as that term is defined in the California Government Code commencing at Section 6500 *et seq.*; and

WHEREAS, the City desires to approve, ratify, and confirm in all respects all previous actions taken by the City or any member of this City Council of this City (the "City Council") or any other officer or staff member of the City with respect to the foregoing; and

000023

WHEREAS, the forms of the following documents are on file with the City Clerk of the City (the "City Clerk") and have been submitted to this City Council, and the Risk Manager of the City (the "Risk Manager"), who in consultation with the City Attorney of the City (the "City Attorney"), has examined and approved each of the following document (the "Operating Documents") and has recommended that this City Council direct the completion, where appropriate, and the execution and delivery of such documents:

- (a) the Joint Powers Agreement;
- (b) the Amended Bylaws;
- (c) the Memorandum of Liability Coverage;
- (d) the Liability Program;
- (e) the Workers' Compensation Program.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OXNARD DOES HEREBY FIND, DETERMINE, RESOLVE AND ORDER AS FOLLOWS:

SECTION 1. The foregoing recitals, and each of them, are true and correct.

SECTION 2. The amended and restate Joint Powers Agreement on file with the City Clerk is approved in substantially the form presented at this meeting. The Mayor is hereby authorized and directed, for and in the name of the City, to execute and deliver the Joint Powers Agreement and such approval to be conclusively evidenced by the execution and delivery thereof.

SECTION 3. The amended and restated form of the Operating Documents of the Authority as listed hereinabove are hereby ratified and approved and the Original Operating Documents shall no longer be in force and effect in accordance and as provided in these new Operating Documents.

SECTION 4. The Mayor, the City Clerk, the City Attorney, and any other proper officer of the City are hereby authorized and directed, jointly and severally, to do any and all things and to execute and deliver any and all documents necessary or proper for carrying out the actions contemplated by this Resolution or any of the documents referred to herein.

SECTION 5. Any document, the execution of which by the Mayor, the City Clerk, the City Attorney, or any other proper officer of the City is authorized by this Resolution, shall, in the absence or inability to act of such officer, be executed by any authorized designee of such officer, such authorization to be given in writing.

SECTION 6. All actions previously taken by this City Council and by the officers and staff of the City with respect to the matters addressed by this Resolution are hereby approved, ratified, and confirmed in all respects.

000024

ATTACHMENT NO. 1  
PAGE 2 OF 3

SECTION 7. This Resolution shall immediately take effect from and after its date of adoption.

ADOPTED, SIGNED, AND APPROVED this \_\_\_\_ day of \_\_\_\_\_, 2006, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Dr. Thomas E. Holden, Mayor

ATTEST:

\_\_\_\_\_  
Daniel Martinez, City Clerk

APPROVED AS TO FORM:

 07-17-06  
\_\_\_\_\_  
Gary L. Gillig, City Attorney

000025

ATTACHMENT NO. 1  
PAGE 3 OF 3

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

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

Program Year: \_\_\_\_\_

The Member, \_\_\_\_\_, 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

Workers' Compensation Program  
01-21-06

000027

ATTACHMENT NO. 6  
PAGE 2 OF 4

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 Porfolio 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: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_