

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 anyone 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: _____

CITY OF _____

BY: _____

ITS: _____

ATTEST:
CITY CLERK

BY: _____

APPROVED AS TO FORM:
CITY ATTORNEY

BY: _____

APPENDIX A
BICEP MEMBERS

Cities of Huntington Beach, Oxnard, West Covina, San Bernardino, and Santa Ana