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MEMORANDUM

DATE: June 4, 2019
TO: Rose Burcina
FROM: Robin Johnson
SUBJECT: Proposed Changes to RESIG Joint Powers Agreement and Bylaws

Attached are a draft of the proposed changes to the Joint Powers Agreement forming Redwood Empire Schools' Insurance Group ("RESIG") and the corresponding Bylaws. You will notice that many paragraphs have been moved without changes, for a better progression through the documents. Other paragraphs have been deleted, amended or added. I will point out the major changes with an attachment showing all changes.

SUMMARY OF SIGNIFICANT CHANGES TO THE JOINT POWERS AGREEMENT:

Although the title refers to the following list as significant changes, it should be remembered that any change may be significant in a certain context. This memorandum merely attempts to highlight the more striking changes.

- The biggest change is in the ability to amend the Agreement in the future. Currently, it states that a two-thirds vote of the Board members at a meeting can change the Agreement. The proposed change is to require two-thirds of the members to agree to a change. The rationale for the change is that the governing boards of the member agencies are likely to want to see and have a say in the changes to an Agreement to which they originally had to agree. This change will force amendments to be brought to the governing body of the members, causing such changes to be more transparent, and will require a supermajority of the members to agree to the change.
- The powers of the Board of Directors were recast to state that they have broad powers to manage RESIG. It then lists certain powers that cannot be delegated. Many of these, such as the adoption of the budget, are non-delegable by law. Others, such as the acceptance of a new member, was stated throughout the Agreement and Bylaws. This list just places those non-delegable items in one place.
- The voting on matters affecting one program requiring a vote of the majority of those in the program and voting at the meeting was moved from the Bylaws to the Agreement.
- The creation of the Executive Committee and officers is only mentioned in the powers of the Board. The Executive Committee and officers are created in the Bylaws, providing flexibility to amend and alter the Committee and officers as needed over time.

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- The provision for strict accountability of funds does require someone to be the Treasurer of RESIG, and the same or a different person to be the Auditor. This is stated in the Agreement just to assure that the duties imposed in G.C. § 6505.5 are assigned to someone.
- The provision for the dissolution of RESIG was restated to clearly state that the agency shall continue until all liabilities and obligations are discharged. The wording of “including, but not limited to, claims liabilities” was added to clarify the obligations that must be discharged are more than just claims liabilities.
- The Indemnification and Contribution section was moved to the Agreement because it seemed that the indemnification of a Board member should be decided by the membership and provide greater security to the Board members of their protection.

Other changes have been made to the Agreement, and the proposed Agreement should be read carefully to make sure it reflects the desires of the Board and the members.

SUMMARY OF CHANGES TO THE BYLAWS

This summary of changes to the Bylaws also does not state all the changes, but rather just highlights some of the more significant changes.

- The Program detail was deleted from the Bylaws with the anticipation of adoption of separate documents for each program which can be amended by the participants in the program. The Article now describes the process for the creation of a program and the documentation required. See the proposed Program Documents for details of the programs.
- A provision was added to Article I, Section B to allow special meetings of the Board of Directors.
- The Secretary and Treasurer are separate officers. However, these positions may be held by the same individual. Because the Agreement allows the Treasurer and the Auditor to be the same individual, all three positions may be held by the same individual.
- Article IX – Finance of the current Bylaws was deleted. The duty to pay contributions was addressed in the Agreement. The expenditure of funds being made by administrative staff seems better addressed in a policy where changes are more easily made and the process of check writing and signing can be addressed. The permissive use of the County Office of Education as the fiscal agent is unnecessary. The Board or Executive Committee may adopt a policy to that effect without first being given permission by the Bylaws.

The Agreement, Bylaws and Program Documents should be read carefully to make sure they reflect what RESIG desires and the procedures prescribed are workable. Please advise me of any changes desired.

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ATTACHMENT A

CHANGES TO THE JOINT POWERS AGREEMENT

ARTICLES CHANGED

1. The preamble has been shortened, with less detailed to indicate a broader application, if desired.
2. The Creation of the Authority has been moved to Article II and the purpose placed as Article I.
3. The second paragraph of the current Article I was separated from the purpose and made into a separate Article III – Powers of the Group.
4. The manner in which the common powers will be exercised is recast to specifically name a member pursuant to G.C. § 6509. The draft also includes the provision for an alternate member, should the first member named terminate its participation.
5. The third paragraph of the original Article I was deleted, because the statement about ambiguities and applications of insurance law to the documents is better placed in the memoranda of coverages.
6. The original Article II – Purpose – was, as stated earlier, moved to Article I. It was also shortened and made more general, leaving the details of the types of programs, etc., to the Bylaws and program documents.
7. Article III – Membership – has been renumbered to Article IV.
8. Article IV – Withdrawal or Termination of Membership – has been moved to Article IX.
9. Article V – Dissolution of RESIG – was moved to Article X. It was also shortened to merely state that RESIG will continue until all outstanding liabilities and obligations will have been discharged. Wording was added to make it clear that all liabilities are to be discharged, not just claims liabilities.
10. Article VI – Bylaws – was moved to Article VII.
11. The part of Article VII – Board of Directors, Officers and Executive Committee – dealing with the Board was moved to Article V. The new Article V gives the Board the ability to create an Executive Committee and appoint officers. This will be done in the Bylaws. The powers retained unto the Board include the election of the Executive Committee and the election or appointment of the officers.
12. Article VII – Affirmative Action Policy – was deleted.
13. Article IX – Powers of the Board – was moved to Article V – Board of Directors, Section B. It also gives the Board broad powers to direct and oversee the operations of RESIG, which can be delegated to another. The specific list of powers found in Section B are those powers that the Board cannot delegate. Thus, the list is different than that found in the current Agreement.

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14. Article X – Finance – was moved to Article VIII – Strict Accountability of Funds. This section was also revised to delete the reference to each program being legally separate from the others. The new section impose a duty on the Board to appoint or elect a Treasurer and an Auditor, while allowing the two positions to be held by the same individual. The Treasurer is also limited in the ability to invest by procedures established by the Board.
15. Article XI – Amendment – was moved to Article XIV. It was also amended to require two-thirds of the members to agree to the change, rather than the Board of Directors at a meeting.

ARTICLES ADDED

1. Article VI – Term – was added to the Agreement.
2. Article XI – Indemnification and Contribution – was moved from the Bylaws to the Agreement.
3. Article XII – Notices – was added.
4. Article XIII – Prohibition against Assignment – was added.
5. Article XV – Severability – was added and replaces Article VIII – Invalidity – of the Bylaws.
6. Article XVI – Agreement Complete – was added.
7. Article XVII – Execution in Counterparts – was added.

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ATTACHMENT B

CHANGES TO THE BYLAWS

1. Section I.B. – Officers – has been moved to its own Article. It is now Article III. The positions of Secretary, Treasurer, and Auditor have been separated into different offices. However, it allows one person to serve in all three capacities.
2. Section F of Article I – Membership – has been placed in its own Article X.
3. Section G of Article I – Accounts and Records – is now Article VIII.
4. Part 5 of Section G of Article I – Investing of Reserves – is its own Article IX, and states that the Executive Committee shall invest funds not immediately needed. The new provision deleted the reference to the County Treasurer’s Office, etc. This is better addressed in the Investment Policy.
5. Section H of Article I – Loss Records – was deleted, because this is better treated by the program documents.
6. Article II – Executive Committee – is still Article II.
7. Article II – Staff of the Board of Directors – was relabeled as just “Staff.”
8. Article IV – Additional Parties – was combined with Article X – Membership – as Section B.
9. Article V – Amendments – is now Article XVII.
10. Article VI – Withdrawal and Termination – is now Article XI.
11. Article VII – Enforcement – is now Article XII.
12. Article VIII – Invalidity – was moved to the Agreement and labeled “Severability.”
13. Article IX – Finance – was deleted from the Bylaws. The first part states the member agency shall pay contributions. We already have that in the Agreement under the obligations of the members. The second part states the Executive Committee adopts the budget, which the Board must do. Policies should be established separately for bank accounts and who has signature authority, and not as part of the Bylaws and easier to change as needed. The County Office of Education is permitted to act as the fiscal agent. The Bylaws just provides permission that is not needed. A policy should be adopted that is easier to change.
14. Article X – Effective Date – is now Article XIV.
15. Article XI – Property, Funds, Contributions and Income – has been broken into separate Articles. The “Disposition of Property and Funds” is now Article XV. “Funds and Accounting” is addressed in Article VIII of the Agreement. “Fiscal Year” is addressed in Article V of the Bylaws. “Contributions” was provided for in the “Powers of the Authority,” Article III of the Agreement. “Assessments” are addressed in Article VII of the Bylaws. References found in the Assessments section relating to program funds being legally separate was deleted.

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16. Article XII – Bylaws Applicable to Programs – was amended to discuss the creation of programs and the development of program documents. The new Article XVI does not have the detail of the programs, anticipating that other documents will be adopted which expand more fully on the operations of each program.
17. As stated earlier, Article XIII – Indemnification and Contributions – was moved to the Agreement.
18. Article XIV – Glossary – was deleted.