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MEMORANDUM

TO: City and County Attorneys
for the localities listed on Exhibit A

FROM: Matthew W. Light 

DATE: May 30, 2019

RE: Consortium Agreement for Workforce Development

To my local government colleagues:

I am attaching for your consideration and that of your governing bodies a “consortium agreement” regarding workforce development functions. I have tried to provide a basic outline of what is happening in the recitals to the agreement, but I thought a memorandum with some additional background might be helpful as you wade through the layers of bureaucratic language. I have waded through much of it in drafting the agreement, and I hope that my work will save you some work. In short:

A federal statute, the Workforce Innovation and Opportunity Act of 2013 (“WIOA”), is the vehicle by which federal funding for workforce training is administered and disbursed. (For those of you who wish to read the statute, you can find it codified at 29 U.S.C. § 3101 *et seq.*) Under WIOA and its corresponding Virginia implementation legislation, codified at Virginia Code § 2.2-2470 *et seq.*, these programs are implemented through an entity called a “local workforce development board”, which employs the various administrators and runs the programs. The Shenandoah Valley Workforce Development Board, which is the “local workforce development board” for this region, is organized as non-stock corporation, and has a charter issued through the State Corporation Commission. The local workforce development boards are assigned a particular region in which to operate. For our region, the local workforce development board is called the “Shenandoah Valley Workforce Development Board” (the “SVWDB”).

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Like all corporations, the SVWDB has a Board of Directors that supervises its policies, together with officers and all the standard corporate accoutrements (articles of incorporation, bylaws, etc.). The primary question is how those directors are appointed.

WIOA has a complex formula to determine how directors of a local workforce development board are appointed. The idea is that all stakeholders should be represented: government, private industry, labor, education, etc. The policy goal of WIOA is that the activity be *local*—that is, the appointments should be bottom-up, not top-down. To accomplish this, WIOA requires that the appointments to the Board of Directors of the local workforce development board be made by the “chief elected official” of the unit of local government that the board serves. This is fine in larger localities where the local workforce development board’s service area is the same as the boundaries of the locality. In more rural areas like ours, however, the local workforce development board will cover many localities. In that event, WIOA requires the appointments to be made by the chief elected officials (“CEOs”) of the various localities collectively. It also requires that the localities agree how to discharge this function and other functions that WIOA delegates to CEOs. As a practical matter, given the need for administrative oversight of the various WIOA requirements, this agreement must be in writing.

The several localities within the SVWDB’s area executed such an agreement several years ago. The older agreement created a “CEO Consortium” – that is, the mechanisms by which the CEOs of the localities involved would be to exercise, jointly, the functions committed to CEOs under WIOA. However, a recent administrative audit of that agreement identified several technical areas in which the old agreement was deficient—specific clauses that WIOA required in the agreement, but that were omitted, etc. The auditors required SVWDB to revise the agreement. SVWDB retained me to do so.

I have tried to bring some clarity to the document while addressing the auditors’ comments. The document reflects the arrangement that is already in place, as the folks from the SVWDB have described it to me. In addition, a Virginia local government attorney operates in a “Dillon’s Rule” universe and always prefers to cite a specific statute that authorizes his or her locality to take a contemplated action. In this instance, although federal law requires this agreement or something like it, I have relied upon the state law authority cited in the recitals to authorize the respective localities to execute the agreement.

A word about funding: WIOA is a federally-funded program, and as with all federal grants, there are strings attached to the money. The money passes first into the state Community College System; from thence, to Page County as the “grant recipient”, and then from Page County to the SVWDB as the “fiscal agent”. Accordingly, the Consortium of CEOs itself never possesses the money nor, indeed, any other property. No appropriations are required from the localities.

WIOA requires, as a condition of the grant assistance, that the localities be financially responsible in the event that a local workforce development board misuses funds received under a WIOA grant.

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This is not optional. In the event that misuse occurred, each locality would be responsible pro rata based on the Commonwealth's computation of how much each locality benefitted from the WIOA assistance. The Commonwealth provides these figures upon disbursement of grant funds. The provisions memorializing this requirement appear in the agreement. I note that the agreement also requires the Consortium to ensure that the SVWDB purchase insurance to cover the misuse of grant funds, which provides some protection to the localities against the risk of misappropriation.

Please let me know if you have any questions. The reality of coordinating execution of this agreement among 16 jurisdictions means that it may be difficult to implement substantive changes in the agreement, but if you have concerns, feel free to contact me. I note that Virginia Code § 15.2-1300(B) requires the enactment of the agreement by ordinance, which means in Counties that advertising is required. Cities should comply with any restrictions or provisions contained in their charters for the enactment of ordinances.

EXHIBIT A

LIST OF LOCALITIES

Augusta County
Bath County
City of Buena Vista
Clarke County
Frederick County
City of Harrisonburg
Highland County
City of Lexington
Page County
Rockbridge County
Rockingham County
Shenandoah County
City of Staunton
Warren County
City of Waynesboro
City of Winchester