DATE: June 19, 2006

SUBJECT: Corporate Executive Board Performance Agreement revisions related to Governor’s Opportunity Fund award.

C. M. RECOMMENDATION:

Authorize the County Manager to sign on behalf of the Arlington County Board the revised Performance Agreement among Arlington County, the Industrial Development Authority (IDA), and Corporate Executive Board (CEB), which outlines the fund disbursement and management terms and conditions of the Governor’s Opportunity Fund (GOF) grant award.

ISSUES: The delivery, and therefore, the occupancy date of the new Waterview Building (19th and Lynn Streets) has changed making it impossible for CEB to meet the terms and conditions set forth in the original Performance Agreement.

SUMMARY: In 2005, the Commonwealth of Virginia awarded Arlington County a Governor’s Opportunity Fund (GOF) award of $1,000,000 in order to assist the Corporate Executive Board (CEB) in relocating its headquarters from the District of Columbia to the Waterview Building (19th and Lynn Streets) in Arlington.

Since March 2005, the delivery, and therefore, the occupancy date of the Waterview Building has been changed making it impossible for CEB to meet the terms and conditions set forth in the original Performance Agreement. The Commonwealth of Virginia and Arlington Economic Development agree that it is essential to revise the Performance Agreement to reflect the new 2008 occupancy date as well as subsequent employment threshold and capital expenditure certification dates.

BACKGROUND: At its March 12, 2005 meeting, the Arlington County Board:
1. Authorized the County Manager to sign the original Performance Agreement among Arlington County, the Industrial Development Authority and CEB related to the GOF award
2. Authorized the acceptance of the $1,000,000 from the GOF, and
3. Allocated the $1,000,000 to CEB subject to the terms and conditions of the original Performance Agreement among Arlington County, the IDA, and CEB.
Since March 2005, the construction of the Waterview Building has been delayed making it impossible for CEB to meet the terms and conditions set forth in the original Performance Agreement. The Commonwealth of Virginia and Arlington Economic Development agree that it is essential to revise the Performance Agreement to reflect the new 2008 occupancy date as well as subsequent employment threshold and capital expenditure certification dates.

The Commonwealth of Virginia Governor’s Office also recommends relaxing annual certifications of employment thresholds and capital expenditures between fund disbursement and the 30-month threshold date in the original Performance Agreement because it no longer considers them necessary. The final required certification 30-months after fund disbursement will remain. Finally, the Commonwealth recommends removing from the original Performance Agreement Arlington County’s obligation to return any GOF funds recaptured if CEB subsequently moves its headquarters prior to the expiration of a ten-year lease.

DISCUSSION: Since the change in occupancy date was unforeseen and is unavoidable, the Commonwealth of Virginia and Arlington Economic Development agree that it is consistent with the Governor’s Opportunity Fund purpose and Arlington County’s commitment to its business community to revise and reissue the Performance Agreement.

Arlington County has no reason not to accommodate the Governor’s Office request to relax various terms of the Performance Agreement. As a practical matter, eliminating the number of certifications required will minimize the IDA’s tasks and shorten the time period in which it will have a responsibility to the Commonwealth to manage this Agreement. These recommended modifications will not negatively affect Arlington County’s or the IDA’s ability to manage the requirements of the GOF or change any party’s legal obligation within the Agreement.

The performance requirements of the Performance Agreement remain the same. The various delivery and reporting dates change to reflect the true occupancy date:

- CEB will relocate its headquarters from the District of Columbia to the Waterview Building at 19th and Lynn Streets in the Rosslyn area of Arlington for a period of ten years;
- CEB will move their 1,100 current employees to and place an additional 500 employees in (total of 1,600 consisting of executives, corporate officers, corporate managers, member service and corporate support staff) the Waterview Building in 2008 (previously 2007);
- CEB has committed to increasing its employee count to 2,300 by year end 2010 (previously 2009);
- Arlington County has been awarded a Virginia Governor’s Opportunity Fund award in the amount of $1,000,000 for purposes of assisting CEB in site development and landscaping associated with making this new development a showcase for a corporate headquarters of this caliber;
- CEB is to invest a total of $227,400,000, with $225,000,000 in the building and the remaining $2,400,000 in furniture, fixtures, and equipment by year-end 2010 (previously within 30 months of receiving a GOF grant payment).

The revised Performance Agreement is to be signed by the County Manager and will void the previous Agreement.

FISCAL IMPACT: There is no fiscal impact to the FY 2007 Arlington County budget.
PERFORMANCE AGREEMENT

This Performance Agreement is made and entered this _______ day of __________, 2006, by and between the Arlington County, Virginia, a political subdivision of the Commonwealth of Virginia (the County), the Industrial Development Authority of Arlington County (the Authority) and the Corporate Executive Board (CEB), a corporation headquartered in the District of Columbia, a Delaware corporation, herein called “the Company” and supersedes any previous agreements made among these parties.

WHEREAS, the Company plans to relocate its headquarters out of the District of Columbia into the County, sign a 10-year lease at the Waterview Building (19th and Lynn Streets) occupying 610,000 square feet known as hereinafter as the “facility”; and

WHEREAS, the Company will invest $225,000,000 in the building in site development and landscaping of the facility and will move the 1,100 current employees from the District of Columbia plus an additional 500 new employees with an average wage of at least $70,000 per year. In addition, CEB has committed to increasing its employee base to 2,300 by year-end 2010.

WHEREAS, the County has received a grant of and expects to receive the sum of $1,000,000.00 from the Governor's Opportunity Fund (GOF) through the Virginia Economic Development Partnership for the purpose of inducing the Company to relocate in Arlington creating new jobs (representing $500,000 of the total grant) and investment into the Commonwealth of Virginia (representing the remaining $500,000 of the total grant); and

WHEREAS, the County is willing to provide the GOF funds to Company in its entirety provided Company meets certain criteria relating to employment projections and capital investment thresholds, and

WHEREAS, the County is required to return all or a portion of the funds so received to the Commonwealth of Virginia if the performance criteria of Company are not met,

WHEREAS, Arlington County and the Authority find that the provisions of this agreement and the commitments of Arlington County and the Authority herein promote the County as a business location by inducing development and business location within Arlington County, increasing the tax base, and providing employment for its citizens, and the parties and that such development and business location will promote the prosperity of the citizens of Arlington County.

NOW, THEREFORE, Arlington County, the Authority and CEB agree as follows:

1. Operations -- CEB will locate its corporate headquarters in Arlington County, Virginia and will maintain its operation at the Waterview Building (19th and Lynn Streets) for a period of ten years from initial occupancy at employment levels described in paragraph (3).

2. Capital Expenditures -- CEB agrees to invest a total of $227,400,000 with $225,000,000 in the “facility” for the use of at least 610,000 square feet and the remaining $2,400,000 in furniture, fixtures and equipment and the like by December 31, 2010 or within 30 months of receiving the GOF grant payment whichever is sooner. An inspection will be conducted to verify the expenditure totals before funds will be disbursed. The Capital Expenditures represents one-half of the $1,000,000 GOF grant or $500,000.

3. Employment Requirement -- The employment and investment thresholds used in the Governor’s Opportunity Fund grant application commits CEB to reaching certain employment levels. CEB agrees to meet these thresholds and to continue to employ a minimum number of full time equivalent positions at the headquarters “facility.” CEB will move its 1,100 current employees from the District of Columbia plus an additional 500 employees (1,600 total) in 2008 to the Waterview Building consisting of executives, corporate officers, corporate managers, member service and corporate support staff. CEB has also committed to increasing its number of employees to 2,300 by year-end 2010. The Employment Requirement represents one-half of the $1,000,000 GOF grant or $500,000.
4. **Jobs Report** – At the initial occupancy of the facility and before January 15, 2009, 2010, and 2011 CEB, through its Chief Financial Officer, agrees to certify and to report to the Authority the number of persons employed by it at the site as of December 31 of the prior year.

5. **Use of Governor’s Opportunity Fund** – The Governor’s Opportunity Fund and the Authorities payment must be used only in site development and landscaping associated with making the “facility” a showcase for a corporate headquarters. An inspection will be conducted to verify the expenditure totals before funds will be disbursed. The Company is to immediately make available all pertinent documentation and payment receipts as requested. The Commonwealth of Virginia reserves the right to reclaim unused Governor Opportunity Fund dollars.

6. **Basis of Release of Funds** -- Arlington County will transfer up to $1 million received from the GOF to the Authority, to be held in account, which shall then release said funds to CEB upon presentation and certification of initial employment threshold of 1,600 employees has been met as stated in paragraph (3) above to the Authority’s satisfaction. The full $1 million GOF funds will be released within 60 days after such certification only upon verification by the Authority that initial employment goals are met. Should the Authority not receive certification and adequate documentation by the deadline date of January 15, 2009, this agreement shall be null and void and the Authority shall refund the County any funds transferred to the Authority by the County.

7. **Basis of Recapture of Funds** – CEB agrees that if after receiving the funds it cannot verify that it satisfied the employment threshold requirement of 2,300 employees on December 31, 2010, CEB will forfeit part of the $500,000 representing the employment requirement portion of the GOF grant that is proportional to the shortfall; and

- CEB agrees that if within 30 months of receipt of the GOF funds it cannot verify that it has satisfied the capital expenditures requirement of $227,400,000, with $225,000,000 in the “facility” and the remaining $2,400,000 in furniture, fixtures and equipment as stated in paragraph (2) above to the Authority’s satisfaction, CEB will forfeit part of the $500,000 representing the investment portion of the GOF grant that is proportional to the shortfall.

An example of the proportioning is as follows:

The grant of $1,000,000 is considered to be $500,000 for the capital investment commitment by the Company and $500,000 for its employment commitment. When the initial employment requirement threshold is met, the funds will be disbursed. If within thirty (30) months of disbursement the Company is short 25% of the goal, e.g.: had in its fulltime employ 75% of the required 2,300 or 1,725 employees, the Company shall refund the County 25% of the $500,000 related to employment requirement or $125,000 within 60 days. The same is true of the capital investment requirement. If CEB spends only 75% of the amount required within 30 months of fund disbursement, CEB shall refund the County 25% of the $500,000 related to capital investment or $125,000 within 60 days. Any refunds by Company to the Authority will be forwarded to the County, which shall return funds to the Governor’s Opportunity Fund.

After all requirements are fulfilled by Company within thirty (30) months of disbursement, then and thereafter Company is no longer obligated to repay any portion of the grant provided to it hereunder except, that if CEB subsequently moves its headquarters prior to the expiration of a ten year lease, the amount of one million dollars ($1,000,000) received by the Company from the Commonwealth of Virginia and the Authority, shall be returned to the Authority and then to Arlington County, upon demand of the County or the Authority.

8. **County and Authority Obligations** – Arlington County’s and the Authority’s obligation herein are contingent upon receipt of the $1,000,000 grant from the Governor’s Opportunity Fund. Neither the Authority nor the County have an obligation to pay any funds except as may be received from the Commonwealth of Virginia’s Governor’s Opportunity Fund.

9. **Governing Law** – This agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.

10. **Execution** – Each copy of this agreement shall constitute an original.
11. **Limitation of Liability** – Notwithstanding any provisions of this agreement, in no event shall any party, its employees, directors, officers, agents, subsidiaries, or affiliates, be liable to any other party for any special, incidental, consequential, indirect or punitive damages, whether foreseeable or not, arising from this agreement. In no event shall CEB’s total liability for any act, error, or omission arising from this agreement, whether foreseeable or not, exceed $1 million or the actual amount received by CEB pursuant to this agreement.

12. **Applicability** – This agreement is binding on the heirs, successors, and assigns of the Corporate Executive Board.

Signatures on following page.

WITNESS The following signatures and seals:

ATTEST: ARLINGTON COUNTY:

___________________________ BY: __________________________

Ron Carlee
County Manager

CORPORATE EXECUTIVE BOARD: BY:

___________________________

James Edgemond
Treasurer and Corporate Controller

INDUSTRIAL DEVELOPMENT AUTHORITY OF ARLINGTON COUNTY, VIRGINIA:

BY: __________________________

James Mayer
Chairman

COMMONWEALTH OF VIRGINIA, AT LARGE

The foregoing instrument was acknowledged before me in Arlington County, Virginia on the _______ day of ________, 2006 by: _____________________________.

My commission expires _________________________________.

Given under my hand this ________ day of ____________________, 2006.

___________________________ (Seal)

Notary Public