



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of September 25, 2010**

**DATE:** July 19, 2010

**SUBJECT:** Approval of a Donor-Advised Fund Agreement (“Agreement”) with the Arlington Community Foundation (“Foundation”) to establish the Arlington Artisphere Fund.

**C. M. RECOMMENDATION:**

Authorize the County Manager to sign the Agreement with the Arlington Community Foundation to establish the Arlington Artisphere Fund to manage assets for the benefit of the Artisphere. Further revisions to the Agreement will be executed by the County Manager, after review and approval by the County Attorney.

**ISSUES:** No issues have been identified.

**SUMMARY:** This report seeks the Board’s authorization for the County Manager to execute the Agreement on the Board’s behalf. The Agreement will establish the Arlington Artisphere Fund. The purpose of this fund is to support the development and operations of the Artisphere. Donations and other contributions intended for the Artisphere will be directed to this fund. As a charitable fund managed by a non-profit institution (the Foundation), the Artisphere Fund will be an attractive philanthropic opportunity for donors. The Agreement is intended to remain active, at a minimum, until a future § 501(c)(3)-qualified organization is established and assumes governing, fiduciary, and operational responsibilities of the Artisphere within the next three (3) years.

**BACKGROUND:** The County Board approved plans on July 14, 2009, to transform the former Newseum site in Rosslyn into a cultural center. The cultural center, which has since been named “Artisphere”, combines this space and the Rosslyn Spectrum as one jointly programmed, managed and marketed arts facility that will serve as a draw to Rosslyn, enliven the street life and complement the next generation of Rosslyn redevelopment, while at the same time creating a critical mass of space that offers Arlington an exciting and diverse mix of cultural programming. Programming will include innovative national and international artists as well as showcase award-winning Arlington-based companies. Conceived as “an arts space for everyone,” the

County Manager:

County Attorney:

Staff: Jeffrey Marin, PRCR

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54,000 square foot Artisphere will be the venue for dozens of weekly events, ranging from community-specific activities to live bands in the 3,000 square foot ballroom. It will house well-established Arlington-based arts organizations, such as the Washington Shakespeare Company, as well as a café, a wireless town square, and a new home for the arts exhibition program previously presented at the Ellipse Gallery.

The Artisphere is designed to be a new model that will encourage the creative participation of diverse audiences, utilizing state-of-the-art technology, active entertainment and the best in contemporary visual and performing arts. The Artisphere is expected to have an estimated \$10 million in annual economic impact, enhance street life in Rosslyn and attract an estimated 250,000 visitors each year.

A portion of the Artisphere's operating budget is anticipated to be contributed by foundations, corporations and individual donors. In order to encourage potential donors or granting organizations to provide funding for Artisphere operations and programs, creating a charitable fund is important. The Foundation is an established organization in Arlington, and is able to fill the role of a qualified recipient organization until an Artisphere § 501(c)(3)-qualified entity is formed to provide the same charitable opportunities for donors.

**DISCUSSION:** The agreement with the Foundation will create a new charitable fund, the Arlington Artisphere Fund, within the Foundation. The purpose of this non-permanent fund will be to support the development and operations of the Artisphere. The assets of the fund will be managed by the Foundation, in accordance with its established investment policies. The County will provide input to the Foundation regarding the investment of the fund's assets. The County can request disbursements from the fund. Both income, including interest, and principal will be able to be withdrawn from the fund to fulfill the stated purpose of supporting the development and operations of the Artisphere.

An annual fee of 1.25% of the value of assets held in the Artisphere Fund will be paid from the assets of the Artisphere Fund to the Foundation for the administration and management of the assets of the Arlington Artisphere Fund. This fee is the Foundation's standard fee for a fund of this type.

**FISCAL IMPACT:** An annual fee of 1.25% of the value of assets held in the Artisphere Fund will be paid from the assets of the Artisphere Fund to the Foundation for the administration and management of the assets of the Arlington Artisphere Fund. Payment of the annual fee to the Foundation will have no direct budgetary impact on the Artisphere. There is no fiscal impact.

## ATTACHMENT I

### FUND AGREEMENT

**by and between the County Board of Arlington County, Virginia,  
and the Arlington Community Foundation**

THIS AGREEMENT (hereinafter "Agreement") is made this the \_\_\_\_\_ day of \_\_\_\_\_ 2010, by and between the County Board of Arlington County, Virginia (hereinafter "Donor"), and the Arlington Community Foundation, a Virginia non-stock, non-profit corporation (hereinafter "Foundation"). Collectively the Donor and the Foundation may be referred to as "the parties".

### ARTICLE I

#### WARRANTS AND REPRESENTATIONS

1. Donor wishes to create, in accordance with applicable IRS regulations, a charitable fund within the Foundation to be known as the Arlington Artisphere Fund (hereinafter "Fund").

2. The purpose for establishing the Fund is to support the development, operations and activities of the Arlington County Artisphere ("Artisphere"), a cultural center that will operate at 1101 Wilson Boulevard, Arlington, VA.

3. The Artisphere will initially be operated by the Donor. At some point in the near future, management and fiduciary responsibility will be assigned or transferred by the Donor to a new entity with § 501(c)(3) status from the Internal Revenue Service.

4. The Donor shall be initially advised by an Artisphere Advisory Group with an Executive Committee. The Artisphere Advisory Group will be appointed by the Donor. The members of the Artisphere Advisory Group may become the officers and directors of the new non-profit entity once it forms.

5. The Donor has appointed the County Manager of Arlington County or his or her designee as its Fund Advisor ("Fund Advisor"). The Fund Advisor will periodically request that disbursements be made from the Fund to support the development, operations and activities of the Artisphere.

6. The Foundation recognizes that the Donor's plans for the Artisphere are evolving, as described in this Article, and the Foundation further recognizes that the Donor expects that a new non-profit will assume management of the Artisphere in the future, at which time the Fund Advisor may request that assets held in the Fund be transferred by the Foundation to the new non-profit entity. If the Fund Advisor requests such an asset transfer, the Foundation will facilitate the transfer of the assets to the new non-profit entity, subject to applicable provisions of the Internal Revenue Code and Treasury (Tax) Regulations.

## **ARTICLE II THE FUND**

1. Donor agrees to deliver to the Foundation the assets described in Schedule A, attached. The Foundation will be entrusted with the management of those assets and any other assets contributed to the Fund by the Donor or other donors. The following additional terms and conditions shall apply:

a. The Fund will be classified a non-permanent fund. Donations to this non-permanent fund will be invested in one of the Foundation's three (3) investment options, as selected by the Donor. Both income (including interest) and principal may be spent to advance and fulfill the stated purposes of the Fund.

b. The standard Foundation fees shall be paid to the Foundation for the administration and management of the assets of the Fund.

c. Subject to the Foundation's gift acceptance and fundraising policies, assets may be added to the Fund at any time by the Donor or other donors.

d. The Fund's assets shall be the property and responsibility of the Foundation, subject to the provisions of Article III, below. The Foundation will hold in trust and invest the assets of the Fund jointly with other assets held by the Foundation, but will account for the assets of the Fund separate from other assets held by the Foundation. The assets of the Fund shall not be deemed a separate trust fund. The Foundation shall have full authority regarding the investment of the assets of the Fund pursuant to the Foundation's investment policy. The Fund Advisor shall provide regular input to the Foundation regarding investment of the Fund's assets. A copy of the investment policy in effect at the time of execution of this Agreement will be provided to the Fund Advisor upon execution of this Agreement. If changes are made to the Foundation's investment policy after execution of this Agreement, a copy of the amended investment policy will be provided to the Fund Advisor within thirty (30) days of approval of the amended investment policy or policies by the Board of Trustees of the Foundation.

2. The parties agree that this Agreement will terminate at any time if the Foundation fails to maintain its status as a § 501(c)-qualified entity or organization as established under Internal Revenue Services rules and regulations. This Agreement may also be terminated by written agreement of the Fund Advisor and the Foundation in the event that the Fund's balance is \$0.00. The Fund Advisor may, at any time, request that the assets of the Fund be transferred to any § 501(c)(3)-qualified entity or to any governmental entity, including the Office of the Treasurer of Arlington County, Virginia, on the condition that the assets be disbursed by the recipient entity for the management, operations, and activities of the Artisphere. Any such transfer shall be subject to applicable provisions of the Internal Revenue Code and Treasury (Tax) Regulations.

3. The Foundation shall provide to the Donor quarterly financial reports accounting for all Fund balances, assets, investment income, charges, and disbursements. The parties agree that the Donor may perform its own audit of the Fund at any time after providing ten (10) days notice to the Foundation prior to commencing any such audit. The Foundation further shall provide copies of all of its regularly-produced annual financial reports and audits to the Donor. The Foundation agrees to retain all books, records and other documents related to this Agreement, and the Foundation's investment work pursuant hereto, for at least two (2) years after the date on which the Foundation no longer continues to hold assets in the Fund for the Donor, or until audited by the Donor or its auditor, whichever is sooner. The Donor or its authorized agents shall have full access to and the right to examine any of the above-described documents during that period. The Donor shall pay for the costs of any staff time or involvement or the costs the Foundation's accountants in assisting in monitoring said audit. The Foundation further shall provide copies of all of its regularly-produced annual financial reports and audits to the Donor. If the Foundation wishes to destroy or dispose of records (including confidential records) during that period, the Foundation shall notify the Donor at least thirty (30) days prior to such destruction or disposal, and, if the Donor objects, the Foundation shall not dispose of or destroy the records.

4. The parties agree that this Agreement represents the entire agreement between the Foundation and the Donor regarding the Fund, and that this Agreement supersedes all prior negotiations, discussions, representations or agreements between them, either written or oral.

5. The parties agree that this Agreement shall be governed by the laws of the Commonwealth of Virginia and all applicable federal laws and regulations. The parties further agree that any court action filed by either of them against the other regarding this Agreement and/or the Fund shall be filed in the Circuit Court of Arlington County, Virginia, and in no other court.

6. The Foundation will be legally considered as an independent contractor, and neither the Foundation nor its employees will, under any circumstances, be considered employees, servants or agents of the Donor. The Donor will not be legally responsible for any negligence or other wrongdoing by the Foundation or its employees, officers or agents. The Foundation will not withhold from donations to the Foundation for the Fund any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits for the Foundation's employees. Further, the Donor will not provide to the Foundation any insurance coverage or other benefits, including workers' compensation, normally provided by the Donor for its employees.

7. The Foundation shall maintain, at its own expense, Directors and Officers coverage from any insurance company authorized to do business in the Commonwealth of Virginia. The policy limits of such insurance shall be not less than \$1 million (\$1,000,000.00) per occurrence. The Foundation shall also maintain, at its own expense, employee dishonesty coverage in an amount not less than \$1 million (\$1,000,000.00) per occurrence.

8. The parties agree that this Agreement shall not be amended except by written amendment executed by persons duly authorized to bind the Foundation and the Donor. The

parties further agree that headings used in this Agreement are intended only as a matter of convenience and for reference, and they in no way define, limit or describe the scope or intent of this Agreement. The sections, paragraphs, sentences, clauses and phrases of this Agreement are severable, and if any phrase, clause, sentence, paragraph or section of this Agreement shall be declared invalid by the valid judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Agreement.

**ARTICLE III  
DONOR RECOMMENDATIONS**

1. Requests by the Fund Advisor for disbursements may be made in writing at any time to the Board of Trustees of the Foundation, and may be made for general support of the Artisphere or for a particular program or activity of the Artisphere. The Foundation requests that the Fund Advisor’s requests for disbursements be in amounts no less than \$500.00.
  
2. Only the Fund Advisor may request a distribution from the Fund.

**ARTICLE IV  
VARIANCE POWER**

In accordance with the Internal Revenue Code, Treasury (Tax) Regulations , revenue rulings, and any other applicable law, the Foundation may modify any restriction or condition on the distribution of money or other assets from the Fund if, in the sole judgment of the Board of Trustees of the Foundation (without the necessity of the approval of any participating trustee, custodian, or agent), such restriction or condition becomes, in effect, unnecessary, incapable of fulfillment, or inconsistent with the charitable needs of the Artisphere. It is understood and agreed that all assets held in the Fund shall be subject to the governing documents of the Foundation.

**ARTICLE V  
INACTIVITY OF FUND**

If no disbursements have been made from the Fund for a period of five (5) years, the parties agree that the Fund shall be terminated and all remaining assets held by the Foundation in the Fund shall be transferred to a § 501(c)(3)-qualified entity or organization established to support the activities of the Artisphere or, if no such § 501(c)(3)-qualified entity or organization exists, to a governmental entity (if permitted by IRS rules and regulations) or to a § 501(c)(3)-qualified entity or organization working in the same general field as the Artisphere.

**ARTICLE VI  
DISSOLUTION OR DISQUALIFICATION OF THE FOUNDATION**

If the Foundation ceases to be a qualified charitable organization or if the Foundation proposes to dissolve or convert its legal existence, the Foundation shall notify the Donor of the Foundation's disqualification, dissolution, or conversion at least sixty (60) calendar days before the disqualification, dissolution or conversion is effective, and the Foundation furthermore shall transfer all assets held in the Fund to a governmental entity (if permitted by IRS rules and regulations) or to a § 501(c)(3)-qualified entity or organization established to support the activities of the Artisphere or, if no such § 501(c)(3)-qualified entity or organization exists, to a § 501(c)(3)-qualified entity or organization working in the same general field as the Artisphere.

**ARTICLE VII  
ACCEPTANCE OF ASSETS**

The Foundation acknowledges its receipt of the assets described in Schedule A. The Foundation provided no goods or services to the Donor with respect to the contribution of those assets.

AGREED TO:

ARLINGTON COMMUNITY FOUNDATION

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

SCHEDULE A

Assets delivered to the Arlington Community Foundation  
pursuant to the Agreement dated \_\_\_\_\_ [insert date here]

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ACKNOWLEDGED:

ARLINGTON COMMUNITY FOUNDATION

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_

THE COUNTY BOARD OF ARLINGTON COUNTY, VIRGINIA

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_