



## ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item  
Meeting of September 17, 2011**

**DATE:** September 13, 2011

**SUBJECT:** "Frida Kahlo: Her Photos" exhibition at Artisphere

**C. M. RECOMMENDATION:**

1. Approve the proposed Exhibition Agreement between the County Board of Arlington County and Banco de México and the Trust of the Diego Rivera and Frida Kahlo Museums, by and through their trustees.
2. Authorize the Executive Director of Artisphere to sign the Exhibition Agreement on behalf of the County Board, after approval of the final Exhibition Agreement by the County Attorney.

**ISSUES:** County Board approval is required to authorize execution of this the Exhibition Agreement on the Board's behalf.

**SUMMARY:** "Frida Kahlo: Her Photos" is an international touring exhibit managed by the Diego Rivera and Frida Kahlo Museums in Coyoacán, Mexico. Coyoacán is one of Arlington's five Sister Cities. The Sister City delegation in Arlington suggested that the Diego Rivera and Frida Kahlo Museums show this special exhibit in Arlington and connected the Department of Parks, Recreation and Cultural Resources (PRCR) with the Museums' directors. Dinesh Tiwari, Director of PRCR, Norma Kaplan, Cultural Affairs Division Chief, and Cynthia Connolly, Artisphere's Visual Arts Curator, met with Hilda Trujilo, Museum Director of the Diego Rivera and Frida Kahlo Museums, and Alejandra López, Curator, in early 2011 at Artisphere. Ms. Trujilo and Ms. Lopez proposed that the exhibit's owners loan the exhibit to the County, without a participation fee, for an Artisphere exhibition in early 2012. This generous offer was verbally accepted by Ms. Kaplan and Ms. Connolly. Working with the County Attorney's Office, PRCR staff has drawn up the draft Exhibition Agreement attached to this Report. The draft Exhibition Agreement is being reviewed by the exhibit's owners at this time, and PRCR staff anticipate the owners' approval of the Agreement shortly. This exhibition at Artisphere will be open to the public at no charge.

**BACKGROUND:** Well known deceased artists Frida Kahlo and Diego Rivera resided in Coyoacán, Mexico, where the Frida Kahlo Museum is now located adjacent to their home, the Casa Azul. The "Frida Kahlo: Her Photos" exhibit is made up of a collection of exhibition-

County Manager: BMO/mjs

County Attorney: SMY/BRC

Staff: Cynthia Connolly, Artisphere Visual Arts Curator, PRCR

quality facsimile photographs taken from the Casa Azul. At his death, Diego Rivera requested this collection of photographs be locked in rooms in the home where it remained behind closed doors for a period of 50 years. When the rooms were finally opened, over 30,000 documents, photographs, magazines, books and drawings were discovered and cleaned, classified and ultimately digitized. However, Mr. Rivera also arranged that even after the rooms were opened, the collection reside in the Casa Azul for all time (preventing the photographs from travelling). The public was first given access to this previously closed collection in 2007 upon the 100<sup>th</sup> Anniversary of Frida Kahlo's birth and the 50<sup>th</sup> Anniversary of Diego Rivera's death. Since then yearly exhibits have been scheduled featuring unpublished works by Ms. Kahlo, Mr. Rivera and other artists. In the last exhibit, "Frida Kahlo: Her Photos," parts of the photographic collection of both artists were displayed and a book was published in five languages and distributed in five countries, making it a resounding success. This exhibit will be offered for free at Artisphere.

"Frida Kahlo: Her Photos" was curated by the photographer Pablo Ortiz Monasterio, who selected 259 photographs from the previously closed collection and grouped them into six themes including the parents of Ms. Kahlo, the Casa Azul, the torn body, Ms. Kahlo's loved ones, photographic works by prominent authors, and Mr. Rivera's "eye". Gabriel Figueroa, one of the foremost experts in the field of photography and reproduction in Mexico, created carefully printed single facsimiles of each photograph which can travel and be displayed outside the Casa Azul (unlike the original documents). Grouped together, these pieces demonstrate the importance of the photographic medium in the life and work of Ms. Kahlo and Mr. Rivera, both as a working tool and as a reflection of the political and intellectual commitment both artists had with their time. As the Sister City of Coyoacán, Mexico, it will be exciting for Arlington to share in their cultural wealth and to further educate American audiences about two of Mexico's most famous artists.

**DISCUSSION:** Frida Kahlo and Diego Rivera enjoy cult status, and gallery shows focusing on their work have attracted record-breaking audience attendance (in 2002, a show on Frida Kahlo at the National Museum of Women in the Arts drew over 28,000 visitors). Many have expressed enthusiasm and excitement that Arlington will be the location of this exhibit. Members of the Arlington Commission for the Arts, Artisphere Advisory Board and Artisphere donors are eagerly awaiting the show's opening.

The costs of exhibiting this show are nominal, given the expected wide public interest. The Diego Rivera and Frida Kahlo Museums, through the photos' owners, are loaning the exhibit "rent free" because Arlington is a Sister City of Coyoacán. Normally, it would be the responsibility of the exhibiting institution to pay for shipping the work and the exhibit rent-fee. Because the exhibit is being provided to Arlington rent-free, a special request is being made that the Curator receive a per diem of \$80 for six days during the exhibit's installation and six days during the exhibit's deinstallation. Eighty Dollars per diem is higher than the standard rate designated by the County. This would be offered as a sign of respect to our Sister City and the Museums for all the effort they have made to execute this exhibit in Arlington. Additionally, the Curator's hotel accommodations will be provided by the County for six nights during exhibit installation and six nights during deinstallation.

**FISCAL IMPACT:** The exhibition will be funded from Artisphere's FY 2012 operating budget in the General Fund. Expenses include the curator's per diem of \$80 per day for 12 days to install and de-install exhibition (\$960), 12 days of lodging for the curator (\$2,400), an opening reception and a VIP reception (\$1,500), and printed materials and signage (\$1,600). The County's total non-insurance expense for hosting the exhibition is estimated to be \$6,460. The County's annual insurance premium is \$1,800 for fine-art insurance coverage for this exhibit and others. Some hotel expenses may be donated and may not be an expense to the County.

## EXHIBITION AGREEMENT

This EXHIBITION AGREEMENT (hereinafter “Agreement”) is entered into by and between the **County Board of Arlington County, Virginia** (hereinafter “County”), a body politic and a political subdivision of the Commonwealth of Virginia, United States of America, and **Banco de México**, a legal entity under public law with autonomous capacity, governed by its Law of December 23, 1993, with an address in Mexico City, Federal District, and the **Trust of the Diego Rivera “Anahuacalli” and Frida Kahlo Museums**, by and through José Luis Pérez Arredondo and Luis Rodrigo Saldaña Arellano, trustees (hereinafter collectively “Owners”). The County and the Owners may be referred to individually as “Party” or collectively as “the Parties”.

### Recitals

WHEREAS, Arlington County, Virginia, and Coyoacán, a borough of the Federal District of Mexico City, are “sister cities” under the auspices of Sister Cities International, Incorporated; and

WHEREAS, Coyoacán is home to the Frida Kahlo Museum, which museum owns and exhibits the artistic photographs hereinafter discussed; and

WHEREAS, the Owners jointly have complete right, title and interest in and to **two hundred and fifty-nine (259)** reprinted, framed photographs originally produced by the artists Frida Kahlo and Diego Rivera, and from their collection of photographs taken by others over the course of Kahlo’s and Rivera’s lifetimes; and

WHEREAS, copies of the photographs (hereinafter “Photos”) in miniature, together with the Owners’ opinion of the value of each photo, are contained in **Exhibit A**, attached hereto and incorporated into this Agreement by this reference; and

WHEREAS, the Owners desire to further the appreciation and understanding of art of other cultures by exhibiting the Photos at the County’s Artisphere, an arts and cultural center located at 1101 Wilson Boulevard in Arlington County, Virginia, United States of America; and

WHEREAS, the County desires to host an exhibition of the Photos at Artisphere,

NOW, THEREFORE, in consideration of the Parties’ mutual desires to exhibit the Photos in Artisphere during the dates and at the times described herein, the Parties agree that the Owners will provide the Photos to the County for exhibition at Artisphere on the following terms and conditions:

### Terms and Conditions

1. Title. The Owners covenant that they jointly have all legal right, title and interest necessary to execute this Agreement and to loan the Photos to the County for exhibition at Artisphere. During the Photos’ exhibition in Arlington County, and beginning at the time hereinafter provided, the County shall have custody and possession of the Photos.

2. Exhibition Space. The County agrees that it will exhibit the Photos in exhibition space at Artisphere, a facility leased by the County from others at 1101 Wilson Boulevard, Arlington, Virginia, U.S.A., 22209.

3. Loan. The Owners agree to loan the Photos to the County on the terms and conditions of this Agreement. The execution of this Agreement by the County does not obligate the County to borrow or exhibit the Photos. If the County, in its sole discretion after execution of this Agreement and before the Owners place the Photos in the possession of a freight carrier for shipping to Arlington County, decides not to exhibit the Photos, then the County promptly will notify the Owners, in accordance with section **19.H.** of this Agreement, of the County's decision not to exhibit the Photos. Thereupon, the County will have no further obligation, pursuant to this Agreement or otherwise, to the Owners or to any one or more of them. If the County proceeds with the exhibition, then the County's custody of the Photos shall begin when the Photos are delivered to Artisphere by the Owners or their agent or agents.

4. Term; Effective Date; Exhibition Dates and Related Matters.

A. The term of this Agreement (hereinafter "Term") shall begin on the date on which this Agreement is last signed by one of the Parties ("Effective Date") and shall end on April 4, 2012.

B. The exhibition of the Photos shall begin at Artisphere at 11:00 a.m. Eastern Standard Time on Thursday, February 23, 2012, and shall end at 9:00 p.m. Eastern Daylight Time on Sunday, March 25, 2012. The exhibition may be extended by mutual agreement of the Parties. Any such agreed extension shall address the extension of insurance and all other requirements of this Agreement for the extended duration of the exhibition. If the exhibition is unable to begin on or about the date set forth in this section, this Agreement shall terminate immediately.

C. The title for the exhibition shall be "FRIDA KAHLO: HER PHOTOS".

D. A private, invitation-only opening reception shall occur on Thursday, February 23, 2012, from 6:00 p.m. to 7:00 p.m. Eastern Standard Time, and a public opening reception shall occur on Thursday, February 23, 2012, from 7:00 p.m. to 10:00 p.m. Eastern Standard Time. If the opening receptions are unable to occur, then the opening receptions will not be rescheduled.

E. The Owners agree that they will arrange for Pablo Ortiz Monasterio to present a lecture at Artisphere on or about February 24, 2012. The date and time of this lecture may be changed only by the Parties by mutual agreement. If the Parties are unable or unwilling to agree to another date and time for the lecture, then the lecture shall not occur. The Owners shall be solely responsible for any and all costs (including accommodations, per diem, and hospitality) related to Mr. Monasterio travelling to and from Artisphere and presenting his lecture, and for the costs of the lecture itself.

F. The County's custody of the Photos shall begin upon delivery of the Photos to Artisphere, and shall end upon the pick up of the packed Photos by the Owners' designated freight carrier from Artisphere.

G. This Agreement is not subject to renewal.

5. Delivery of the Photos to the County.

A. The Owners shall prepay, to the freight carrier or carriers chosen by the Owners, all costs (including customs fees, broker fees, and other handling charges) for shipping and delivering the Photos to the County.

B. The Owners, and not the County, shall be liable for any injury, loss, damage or destruction to the Photos during the Photos' transit and delivery to Artisphere.

6. Condition of the Photos upon Arrival at Artisphere

A. Upon the unpacking of the Photos and placement of the Photos in the exhibition, the Owners shall, at their sole expense, certify to the County, in the form prescribed in **Exhibit B** ("Condition Report"), that the Photos are, in the Owners' opinion, in good condition except as specified in **Exhibit B**. Once completed by the Owners, the Condition Report shall be incorporated into this Agreement by this reference.

B. The Owners warrant that the Photos, at the time that they are shipped to the County, will be in good condition, suitable for travel and shipping, and that proper packing procedures will be followed by the Owners and their agents in preparing the Photos for shipping to the County.

C. The Owners shall, at their sole expense and with the assistance of County staff:

1. unpack the Photos upon arrival of the Photos at Artisphere;
2. inspect the Photos;
3. make the Photos ready for exhibition;
4. stage and lay out the exhibition;
5. hang or otherwise place the Photos in the exhibition; and
6. label and proofread all labels, utilizing the numbers on a printed exhibition checklist.

Completion by the Owners of the six (6) tasks above, with the assistance of County staff, shall constitute final placement of the Photos in the exhibition for the purposes of this Agreement.

D. The Owners shall, at least two (2) months prior to the Photos' arrival at Artisphere, provide the County with instructions (written in English) that specifically describe all special care in handling and/or presentation of the Photos after final placement in the exhibition. Such special handling instructions shall be in the form of a Microsoft Word document in English.

E. If the County disagrees with the Owners' opinions in **Exhibit B**, or if the County determines that the Photos have been placed into the exhibition in a deteriorating or deteriorated condition, then the County will in writing (by email or hard copy) notify the Owners of this determination. The County's sole obligation regarding the Photos' condition upon their placement into the exhibition shall be to notify the Owners of the County's determination made pursuant to this subsection. The Photos' condition after final placement and immediately prior to the exhibition's opening, as jointly documented by **Exhibit B** and the County's written determination, shall constitute the baseline condition of the Photos for the purposes of determining liability for changes in the Photos' condition during the exhibition.

F. If the Owners and County staff determine during the placement of the Photos that there is insufficient space for all of the Photos to be displayed, then the Owners, with input from County staff, shall decide which of the Photos will not be placed in the exhibition. Any Photo that is not displayed in the exhibition shall be jointly identified by the Parties in writing (by email or hard copy), repacked by the Owners with the assistance of County staff, and insured and stored by the County during the Term.

G. The County, as of the date of its execution of this Agreement, designates Cynthia Connolly, Visual Arts Curator, as project officer ("Project Officer"). The Project Officer shall be the County's on-site representative at Artisphere during the exhibition and the person to whom the Owners or their agents or contractors address concerns during the unpacking of the Photos and final placement of the Photos into the exhibition, or during the exhibition.

## 7. Care of the Photos by the County; Emergency Preservation

A. The County shall ensure that only responsible and trained County staff and contractors handle the Photos after they are unpacked and installed by the Owners or their agents. The County shall have its employees or contractors present at times when the Photos are being unpacked and installed by the Owners and their agents. The County, through its employees and agents, will make decisions jointly with the Owners regarding the Photos' presentation and positioning.

B. After the Photos are finally placed, by the Owners or their agents and County staff, in exhibition at Artisphere, the County shall maintain the Photos, for the exhibition's duration, in the condition in which they existed upon the date on which the County provided the Owners with the County's determination in response to the Owners' Condition Report. The County will not unframe, unglaze or remove the Photos from any mat, mount or frame, or clean or transport the Photos, except:

1. with the Owners' prior written (meaning email) permission; or
2. when necessary to preserve and protect the Photos.

C. During the exhibition, the County shall not expose the Photos to direct sunlight, strong artificial light, and close proximity to heat sources. The Photos will be displayed in

galleries that are temperature-controlled. The Parties agree that the County will arrange for the Photos to be illuminated by dim lighting. Notwithstanding this subsection or any provision of this Agreement to the contrary, the County will not provide any particularized humidity or other ambient air controls in the spaces in which the Photos are exhibited, and the Owners acknowledge that the spaces will not be climate-controlled other than in the manner described in this subsection.

D. During the exhibition, the County shall at all times provide protection to the Photos against theft, fire and damage from any cause. During times when Artisphere is closed to visitors, the County shall cause Artisphere's doors to be locked. The County shall have no obligation to provide any security for the Photos that exceeds the security at all other times used by the County in the Mezzanine and Terrace Galleries where the Photos will be placed at Artisphere.

E. Notwithstanding any provision of this Agreement to the contrary, namely the section of this Agreement that allows the County to use digital images for exhibition-publicity and educational purposes, the County's sole use of the Photos during the exhibition shall be for display. The exhibition will be placed in the Mezzanine and Terrace Galleries of Artisphere, with four (4) parts of the exhibition in the Terrace Gallery and two (2) parts of the exhibition in the Mezzanine Gallery.

F. Except in the event of an emergency that does not require the County to obtain the prior written (email or hard copy) consent of the Owners, the County shall obtain the Owners' written (meaning email) consent prior to:

1. touching up, reframing, repairing or restoring the Photos;
2. cleaning, repairing or removing the Photos from their frames; or
3. otherwise changing or altering the Photos' physical condition.

G. The County may apply any emergency preservation measure to the Photos or dispose of the Photos without the Owners' prior written (email or hard copy) permission if:

1. in the County's sole opinion immediate action is required
  - a. to protect the Photos or to protect other property in the County's custody or control; or
  - b. because the Photos have become a health hazard;

and

2. the Parties are unable to cooperatively address the emergency because
  - a. the County is unable to obtain the Owners' written (meaning email) consent prior to the time at which such emergency preservation measure must be used or applied; or

b. the Owners do not consent to such measure and are unwilling or unable to remove the Photos from Artisphere prior to the time at which such measure must be used or applied by the County.

H. If the County uses or applies any emergency preservation measure to the Photos or disposes of the Photos pursuant to subsection 7.G. above, then

1. the County has a right to perfect a lien on the Photos and on any proceeds from any disposition of that lien for any related cost that the County incurs; and

2. the County is not and will not be liable to the Owners or any third party for injury or loss to the Photos if:

a. the County had a reasonable belief at the time that the action was taken that:

i. the action was necessary to protect the Photos or other property in Artisphere; or

ii. the Photos constituted a hazard to the health and safety of the public or to the County's staff or agents; or

b. while applying the emergency preservation measure, the County exercised reasonable care in choosing and applying that emergency preservation measure (any technique applied must be reversible).

And

3. the County must use any insurance proceeds, to the extent that they are paid to the County, to cover the Owners' loss.

8. Curator's Services.

From February 14 to 20, 2012, for six (6) nights, the County shall provide hotel accommodations (excluding incidental expenses), at a hotel of the County's choosing and proximate to Artisphere, and a per diem of Eighty Dollars (\$80.00) to one (1) curator representing the Owners at Artisphere. From March 26, 2012, to April 1, 2012, for six (6) nights, the County shall provide hotel accommodations (excluding incidental expenses), at a hotel of the County's choosing and proximate to Artisphere, and a per diem of Eighty Dollars (\$80.00) to one (1) curator representing the Owners at Artisphere. The County shall pay for the accommodations (excluding incidental expenses) by direct payment to the hotel and for the per diem by payment to the Owners' curator in the form of two (2) electronic funds transfers, one delivered to the Owners' designated bank account upon the curator's arrival at Artisphere by February 14, 2012, and another delivered to the Owners' designated bank account upon the curator's arrival at Artisphere by March 26, 2012. In no event shall the County be required to

provide more than six (6) nights' accommodation or six (6) days' per diem on two occasions - during unpacking and placement of the Photos in the exhibition and during removal of the Photos from the exhibition and the packing of the Photos for shipment. The County shall have no obligation to provide for any costs incurred by the Owners' curator, agents or employees, except as provided in this section.

9. Reproduction and Examination.

A. The Owners authorize the County to reproduce any one or more of the Photos before, during and after the exhibition contemplated by this Agreement, for the purpose of reporting the Photos' condition, documenting installation, or publicizing the exhibition.

B. The Owners hereby agree to make available to the County, by December 1, 2011, photographic reproductions of ten (10) of the Photos for use by the County in publicity and educational material for the exhibition. Those ten (10) photographic reproductions may be used for in-house materials and media, and for external media, such as newspapers, blogs, websites, magazines, etc. Such reproductions shall not be for sale by the County. The Owners' reproductions made available to the County shall be in digital (\*.jpg or \*.jpeg) format and at least five (5) inches by eight (8) inches in size and have a resolution of at least 300 dpi, and be provided through a FTP site or other file transfer protocol. The Owners shall, by email, provide the title and appropriate credit for each of the ten (10) Photos to be used in publicity and for educational purposes.

C. The Owners agree to provide to the County all written material in English for creating a promotional postcard, press release and creation of the exhibition checklist by December 1, 2011. If such information and materials are not provided by December 1, 2011, the County may use information and materials already provided to it to create promotional postcard, press release and any other materials to communicate information about the exhibition in-house and to the public.

D. The Owners agree that they will provide an email response to the County within two (2) business days of receiving a proposed press release or other material sent to the Owners for proof reading before distribution to the public or otherwise. If no response is received by the County within two (2) business days of the County emailing such material to the Owners, the County nonetheless may proceed with distributing such material in any form.

10. Identification of the Photos; Publicity and Sponsorships; Visitor Statistics.

A. The County will label the photographs by using a numbering system. Exhibit photographs will be numbered and will correspond to a checklist of titles that will be photocopied for the public to read and take, if they prefer. The checklist will be in English, with titles of each work and possible explanations of each photograph. The checklist shall be delivered to the County by the Owners at least eight (8) weeks prior to the date on which the Photos will be delivered to Artisphere. The credits stated in subsection B. below shall be included at the end of each listing.

B. The County shall include the Owners' logo, if it has been provided by the Owners to the County, and the following ownership credit in all advertising, invitations, catalogs, posters, leaflets, and museography relating to the exhibition:

These facsimile photographs come from the collection of the Frida Kahlo Museum, Coyoacán, Mexico. They are reproductions of the original photographs owned by the Frida Kahlo Museum and Banco de México, Fiduciary in the Trust of the Museums Diego Rivera and Frida Kahlo.

C. All typography and signage in the galleries shall appear in gray type in Artisphere's font, "din".

D. Walls will remain painted the color "Pat o' Butter" (McCormick Paint OW-122) in flat finish.

E. The County shall be solely responsible for all costs incurred in presenting the Photos after they are unpacked and placed into exhibition by the Owners. Such costs may include, but are not limited to, in-house costs related to promotion of the exhibition, publicity, previews, in-house educational programs, in-house entertainment, and opening receptions. The County may seek sponsorships, from whatever persons or entities the County chooses, to defray the costs that the County incurs in presenting the exhibition. The County shall have no obligation to share sponsorship money with the Owners or with any third party.

F. The County shall take reasonable precautions to prevent visitors to the exhibition from filming, photographing, or otherwise reproducing the Photos.

G. The County shall provide to the Owners the following reports regarding the exhibition:

1. Statistics of visitors
2. Printed material produced regarding the exhibition (five copies)
3. Published articles; and
4. Photographic documentation of the installation.

11. Insurance and Risk of Loss.

A. The Owners' claimed values for the Photos, for the Owners' insurance purposes, are listed in **Exhibit A**.

B. Upon delivery of the Photos to Artisphere, the County shall insure the Photos as part of the County's fine arts property insurance. The County's insurance shall name "Banco de México Fideicomiso Museos Diego Rivera y Frida Kahlo" as an additional insured. The County's obligation to provide insurance and bear any risk of loss shall begin when the Photos are delivered to Artisphere and shall end when the Photos are delivered to the destination designated by the Owners after the Photos are picked up from Artisphere by the Owners' designated freight carrier.

C. Any insurance obligation of the County is subject to the following conditions:

1. If the Photos may be replaced to the Owners' specifications, then the insured amount is limited to the cost of such replacement.

2. If the Photos are fragile or otherwise difficult to insure, then, at the County's sole option, the Owners must either self-insure the Photos during the exhibition or maintain a separate policy or policies of insurance throughout the exhibition.

3. The County's endorsement of this Agreement or provision of insurance coverage pursuant to the terms of this Agreement shall not constitute endorsement or approval by the County of the Owners' claimed value for any Photo.

a. The County, in its sole discretion, may require an appraisal or other reasonable evidence of the Photos' values for insurance purposes.

b. If the Owners do not state a value for a Photo or fail to produce reasonable evidence of a Photo's value, then the County, in its sole discretion, may either:

i. require the Owners to maintain their own insurance, with an insurance company acceptable to the County, on the Photos throughout the exhibition; or

ii. insure the Photos in any amount that the County determines (but such amount shall not constitute an appraisal).

c. The County shall not be liable to the Owners or any third party for any risk of loss beyond the insurance coverage provided by the County for the exhibition. Upon any loss or damage to the Photos during the exhibition, the Owners' recovery shall be limited to the amount of any insurance settlement from the property insurance policy covering the exhibition, and such payment by the County shall release the County and its officers, employees, and agents from liability for any claim arising out of such loss or damage.

4. Any self-insurance provided by the County in fulfillment of its insurance obligations set forth herein will contain exclusions for loss or damage due to war, invasion, hostilities, rebellion, insurrection, civil unrest, confiscation by order of any court, government or public authority, risks of contraband or illegal transpiration and/or trade, nuclear or atomic detonation or accident, act of terrorism, wear and tear, gradual deterioration, insects, vermin and inherent vice, and for damage sustained due to or resulting from any repairing, restoration or retouching process unless caused by fire or explosion.

12. Return of the Photos to the Owners.

A. Upon the conclusion of the exhibition, the Owners (through their curator) and the County shall deinstall the exhibition and place the Photos and all related exhibition equipment or materials in shipping containers that shall be provided to the County by the Owners. The County shall bear all costs for deinstalling the exhibition and crating the Photos and related materials and equipment. The Owners shall bear all costs for transporting the packed Photos and related equipment and materials (including customs fees, broker fees, and other handling charges) from Artisphere to the destination selected by the Owners. The County shall by April 2, 2012, make the Photos available for pick up at Artisphere by a freight carrier selected by the Owners. The Owners shall notify the County in writing by email in accordance with section 19.H. of this Agreement not later than March 26, 2012, of the precise date and time at which the Photos will be picked up by the Owners' freight carrier.

B. The County, with the assistance of the Owners' curator, shall have until 11:59 p.m. Eastern Time on March 31, 2012, to deinstall the exhibition and pack the Photos and related materials and equipment.

C. The County shall bear the risk of loss for the Photos from the time when all of the Photos are collectively delivered to Artisphere by the Owners or their freight carrier, until the point in time that all of the Photos are picked up at Artisphere by the Owners or their agents.

13. Notice of Change in Ownership or Owners' Address.

If at any time prior to or during the Term the legal or equitable title to any or all of the Photos shall change or pass from the Owners to any other person or entity, then the Owners immediately shall provide written (meaning by both email and hard copy) notice of the change to the County, together with the name(s) and address(es) of the new owner or owners of the Photos. If the Owners' address should change at any point during the Term, the Owners shall notify the County in writing (meaning by both email and hard copy) of that change and the Owners' new address.

14. Termination. This Agreement shall terminate upon the occurrence of any of the following acts or events:

A. For Convenience. Any Party has the right to terminate this Agreement for convenience by giving the other Party written notice (meaning by both email and hard copy) of the termination of this Agreement. Notwithstanding any provision of this Agreement to the contrary, the termination pursuant to this subsection shall be effective three (3) days after the date on which the terminating Party sends the written notice to the other Party.

B. Due to Fault. Upon breach of any term of this Agreement by any Party, this Agreement may be terminated by any non-breaching Party. The non-breaching Party shall notify the other Party of such termination by written notice (meaning by both email and hard copy) to the breaching Party. The written notice shall describe the alleged breach.

Notwithstanding any provision of this Agreement to the contrary, any termination pursuant to this subsection shall be effective three (3) days after the date on which the terminating Party sends the written notice to the other Party.

C. By Conclusion of the Term. Upon the conclusion of the Term, as defined hereinabove, this Agreement shall terminate automatically, without the necessity of notice by or from either Party.

15. Post-Termination Obligations of the County. When this Agreement is terminated, whether during the Term or at the end of the Term or any extension thereof, the County, with the assistance of the Owners' curator, shall deinstall the exhibition and pack the Photos and related equipment and materials. Notwithstanding any provision of this Agreement to the contrary, the Owners shall inform the County, by email, of the Owners' designated freight carrier by March 26, 2012, or the effective date of the termination, whichever is sooner. If the Owners do not inform the County by email of the Owners' designated freight carrier and shipping destination as required by this section, regardless of whether the termination occurs at or prior to the end of the Term, then the County, in its sole discretion, may take one or more of the following actions:

- A. place the Photos in storage;
  - B. charge the Owners for the County's costs incurred for storage and insurance;
- and
- C. perfect and enforce a lien for the County's storage and insurance costs.

The Owners covenant and agree that they are not and shall not be entitled to claim or receive consequential damages from the County for any termination of this Agreement.

16. Statutory Notice Required by Virginia Law.

The County hereby informs the Owners of the provisions of Title 55, Chapter 11.2, §§ 210.31 through 210.38 of the Code of Virginia, 1950, as amended, namely § 55-210.33, and the Owners hereby acknowledge their receipt of this notice. The name, address, and telephone number of the appropriate office or official to be contacted at Artisphere for information regarding this Agreement is set forth hereinbelow.

17. Force Majeure.

For the purposes of this Agreement, "force majeure" means any strike, lockout, labor dispute, act of God, inability to obtain labor or any material or reasonable substitute for that labor or material, governmental restriction, change in law, governmental control, enemy or hostile government action, civil commotion, act of terrorism, fire or other casualty, or other cause beyond the reasonable control of the County or the Owners, except for financial matters. Any prevention, delay, stoppage, or failure to perform due to force majeure shall excuse the Party suffering from such force majeure for as long as such force majeure exists.

18. Title and Copyright; Intellectual Property Indemnification.

The Owners warrant to the County that the Owners have full legal title and copyright to the Photos. The Owners indemnify and hold harmless the County from and against any liability, including the costs of claims, demands, threatened litigation or actual litigation, including damages and the County's and the Owners' attorneys' fees, arising out of any allegation or claim by any individual, institution or other entity claiming full or partial title to, or intellectual property right, including copyright, in any or all of the Photos or any reproduction thereof, arising under the laws of the United States of America or Mexico, international law, treaty or convention, the Commonwealth of Virginia, or common law.

19. Miscellaneous Provisions.

A. No officer, employee, agent or contractor of the County shall be personally liable to the Owners for the County's or such person's actions in fulfilling the County's obligations set forth in this Agreement.

B. The Owners must obtain the County's prior written (by email and hard copy) consent before:

1. assigning this Agreement or any right or obligation of the Owners that is set forth herein, in whole or in part; or

2. delegating any duty arising under this Agreement, in whole or in part.

C. This Agreement is for benefit only of the County and the Owners, and shall inure to the benefit of and bind the County and the Owners and their respective heirs, successors, and assigns (if assignment is authorized as provided herein).

D. Governing Law; Jurisdiction, Forum and Venue. This Agreement, and any dispute regarding it, shall be governed in every respect by the laws of the Commonwealth of Virginia and of the United States of America, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws theory or doctrine. Any legal action relating to this Agreement or the subject matter hereof must be brought in the Circuit Court of Arlington County, Virginia, or in the United States District for the Eastern District of Virginia, Alexandria Division, and in no other court or jurisdiction.

E. Nothing in this Agreement shall constitute or be considered to constitute a joint venture, partnership or agency relationship between the County and the Owners.

F. Survival of Terms. If a court of competent jurisdiction finds that any provision of this Agreement is invalid or unenforceable, the remainder of this Agreement shall not be affected by such finding, and every remaining provision of this Agreement shall remain and be valid and enforceable to the fullest extent permitted by law. If any provision of this Agreement is capable of more than one construction, meaning or interpretation, and such constructions, meanings or interpretations would have the effect of rendering the provision valid under one

interpretation and invalid under another, then such provision shall have the construction, meaning or interpretation that renders it valid and enforceable.

G. No Waiver. No provision of this Agreement or breach of any provision of this Agreement will be deemed waived by either Party unless the Party against whom such provision or breach is claimed has agreed in writing (by both email and hard copy) to such waiver. Any waiver shall not be a waiver of any other provision of this Agreement. One Party's acceptance of another Party's performance after that performance became due shall not constitute the accepting Party's waiver of the breach or failure to timely perform unless the accepting Party expressly indicates otherwise in writing (by both email and hard copy).

H. Notices.

1. A Party's notice that is provided to the other Party pursuant to the terms of this Agreement shall be valid only if such notice is in writing (in the form or forms specified herein) and delivered in person or by public or private courier service or by certified mail with return receipt requested. Notice shall be deemed effective upon the first to occur of (i) the recipient's acknowledgement of receipt or the sender's receipt from the carrier, or (ii) five (5) business days after the notice is sent by the sender. A Party shall address each notice to the other Party at the following addresses or at any other address designated in writing (by both email and hard copy) by a Party pursuant to section 13 of this Agreement:

a. If to the County:

Mr. José Ortiz, Executive Director  
Artisphere  
1101 Wilson Blvd., Ste. 932  
Arlington, VA 22209  
(703) 875-1112

b. If to the Owners:

Mr. Carlos Phillips Olmedo, Director  
Ms. Hilda Trujillo Soto, Associate Director  
Museums Diego Rivera "Anahuacalli" and Frida Kahlo  
Avenida Cinco de Mayo 2, Colonia Centro  
Código Postal 06059  
Delegación Cuauhtémoc  
México, Distrito Federal  
[telephone 04455-4063-1040]

2. Any such notice provided pursuant to this Agreement shall be deemed to have been given on the earlier of:

- a. the date of actual delivery to the receiving Party or the date on which such receiving Party refuses to accept delivery; or
- b. the date on which the notice is mailed by certified mail.

I. Hold Harmless. The Owners covenant, for themselves, their employees, contractors, and subcontractors, to save, defend, hold harmless and indemnify the County, and all of its elected and appointed officials, officers, current and former employees, contractors, agents, departments, agencies, boards, and commissions (collectively the “County” for purposes of this section) from and against any and all claims made by third parties or by the County for any and all losses, damages, injuries, fines, penalties, costs (including reasonable court costs and attorney’s fees), charges, liability, demands or exposure, however caused, resulting from, arising out of, or in any way connected with, the Owners’ acts or omissions, including the acts or omissions of their employees, agents, and contractors, in performance or nonperformance of the Owners’ duties and obligations set forth in this Agreement. This duty to save, defend, hold harmless and indemnify shall survive the termination of this Agreement. If, after notice by the County, the Owners fail or refuse to fulfill their obligations contained in this section, the Owners shall be liable for and shall reimburse the County for any and all expenses, including, but not limited to, reasonable attorneys’ fees incurred and any settlements or payments made. The Owners shall pay such expenses upon demand by the County.

J. Non-Appropriation. All of the County’s obligations under this Agreement are subject to the appropriation of funds by the County Board of Arlington County, Virginia, for the specific purpose of satisfying the payment and performance of such obligations.

K. No Waiver of Sovereign Immunity. Notwithstanding any other provisions of this Agreement to the contrary, nothing in this Agreement nor any action taken by the County pursuant to this Agreement nor any document which arises out of this Agreement shall constitute or be construed as a waiver of either the sovereign or governmental immunity of the County, or of its elected and appointed officials, officers and employees, arising out of any international, federal, or state law.

L. No Rights in Third Parties. The Parties mutually agree that no provision of this Agreement shall create in the public, or in any person other the Parties, rights as a third-party beneficiary hereunder or authorize any person or entity that is not a Party hereto to maintain any action for personal injury, property damage, or breach of contract pursuant to the terms of this Agreement or otherwise.

M. Use of the English Language. The Parties covenant and agree that this Agreement is in the English language and that they will sign this Agreement in the English language. The Parties covenant and agree that the English language alone shall be used for the interpretation of this Agreement.

N. Incorporation; Meaning of “day”. The Recitals contained hereinabove are expressly incorporated into these terms and conditions by this reference. The term “day” when used in this Agreement shall mean “calendar day”.

O. Entire Agreement; Merger. This Agreement, including any attachments or exhibits hereto, constitutes the entire agreement of the County and the Owners regarding the exhibition of the Photos. This Agreement supersedes any prior or contemporaneous agreement between the County and the Owners regarding the exhibition, whether such agreement was oral or written. Any oral representation between the Parties is not binding on the Parties unless it is set forth in this Agreement or a written attachment or exhibit hereto. The Parties have not entered any warranty, representation or other agreement in connection with the exhibition other than as set forth in this Agreement. Any supplement, amendment, alteration, modification, waiver or termination of this Agreement shall be binding only if the Parties have agreed to it in writing (in the form or forms specifically prescribed herein, or otherwise by both email and hard copy).

WITNESS THE FOLLOWING SIGNATURES reflecting the Parties' agreement to the terms and conditions hereinabove, indicating their intent to be legally bound thereby, and representing that they are authorized to enter into this Agreement and to bind the respective entities:

**The County Board of Arlington County, Virginia**

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

Printed name: \_\_\_\_\_

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

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

**Banco de México**, a legal entity under public law with autonomous capacity, governed by its Law of December 23, 1993

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

Printed name: \_\_\_\_\_

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

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

**Trust of the Diego Rivera "Anahuacalli" and Frida Kahlo Museums**

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

Printed name: José Luis Pérez Arredondo or Luis Rodrigo Saldaña Arellano, either of whom may act pursuant to § \_\_\_\_\_ of the Trust

Title: General Trust Delegate

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

APPROVED AS TO FORM:

\_\_\_\_\_  
County Attorney

**EXHIBIT A**

**List of Photos**

For the purposes of this Exhibit, the term “USD” shall mean “United States Dollars”.

**ROOM 1 - “ORIGINS”**

				
\$900 USD	\$150 USD	\$150 USD	\$150 USD	\$450 USD
				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$450 USD
				
\$150 USD	\$450 USD	\$450 USD	\$450 USD	\$450 USD
				
\$450 USD	\$450 USD	\$450 USD	\$450 USD	\$450 USD

				
\$450 USD	\$450 USD	\$450 USD	\$450 USD	\$450 USD

				
\$450 USD	\$450 USD	\$450 USD	\$450 USD	\$450 USD

				
\$450 USD	\$450 USD	\$450 USD	\$450 USD	\$450 USD

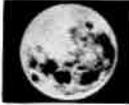
				
\$450 USD	\$450 USD	\$450 USD	\$450 USD	\$450 USD

				
\$450 USD	\$450 USD	\$450 USD	\$450 USD	\$150 USD

				
\$450 USD	\$450 USD	\$450 USD	\$150 USD	

**ROOM 2 - "THE BLUE HOUSE"**

				
\$150 USD	\$900 USD	\$900 USD	\$900 USD	\$900 USD
				
\$900 USD	\$900 USD	\$150 USD	\$900 USD	\$150 USD
				
\$900 USD	\$150 USD	\$900 USD	\$150 USD	\$150 USD
				
\$900 USD	\$900 USD	\$900 USD	\$900 USD	\$150 USD
				
\$150 USD	\$900 USD	\$900 USD	\$900 USD	\$900 USD

				
<p>\$900 USD</p>	<p>\$900 USD</p>	<p>\$900 USD</p>	<p>\$900 USD</p>	<p>\$150 USD</p>

**ROOM 3 - "THE TORN BODY"**

				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD
				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$900 USD
				
\$150 USD	\$1,350 USD	\$150 USD	\$150 USD	\$150 USD
				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD

				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD

				
\$900 USD	\$900 USD	\$900 USD	\$900 USD	\$900 USD
				
\$900 USD	\$900 USD	\$900 USD	\$900 USD	\$900 USD
				
\$900 USD	\$900 USD	\$900 USD	\$150 USD	\$150 USD
				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD
				
\$900 USD	\$900 USD	\$150 USD	\$150 USD	\$150 USD

**ROOM 4 - "FRIDA'S LOVED ONES"**

				
\$150 USD	\$150 USD	\$900 USD	\$150 USD	\$150 USD
				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD
				
\$900 USD	\$150 USD	\$150 USD	\$900 USD	\$150 USD
				
\$900 USD	\$3,000 USD	\$150 USD	\$150 USD	\$150 USD
				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD

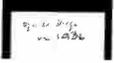
				
\$150 USD	\$900 USD	\$150 USD	\$150 USD	\$150 USD
				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD
				
\$600 USD	\$150 USD	\$900 USD		

### ROOM 5 - "PHOTOGRAPHY"

				
\$150 USD	\$900 USD	\$900 USD	\$900 USD	\$900 USD
				
\$150 USD	\$1,500 USD	\$1,500 USD	\$150 USD	\$900 USD
				
\$900 USD	\$9,000 USD	\$1,500 USD	\$9,000 USD	\$1,500 USD
				
\$150 USD	\$6,000 USD	\$1,500 USD	\$1,500 USD	\$150 USD
				
\$1,500 USD	\$1,500 USD	\$450 USD		

**ROOM 6 - "DIEGO'S EYE"**

				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD
				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD
				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD
				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD
				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD

 				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD

				
\$150 USD	\$150 USD	\$150 USD	\$150 USD	\$150 USD

				
\$150 USD	\$150 USD	\$150 USD		

**The total value of the Photos is \$122,550 USD.**



**EXHIBIT B**

**CONDITION REPORT**

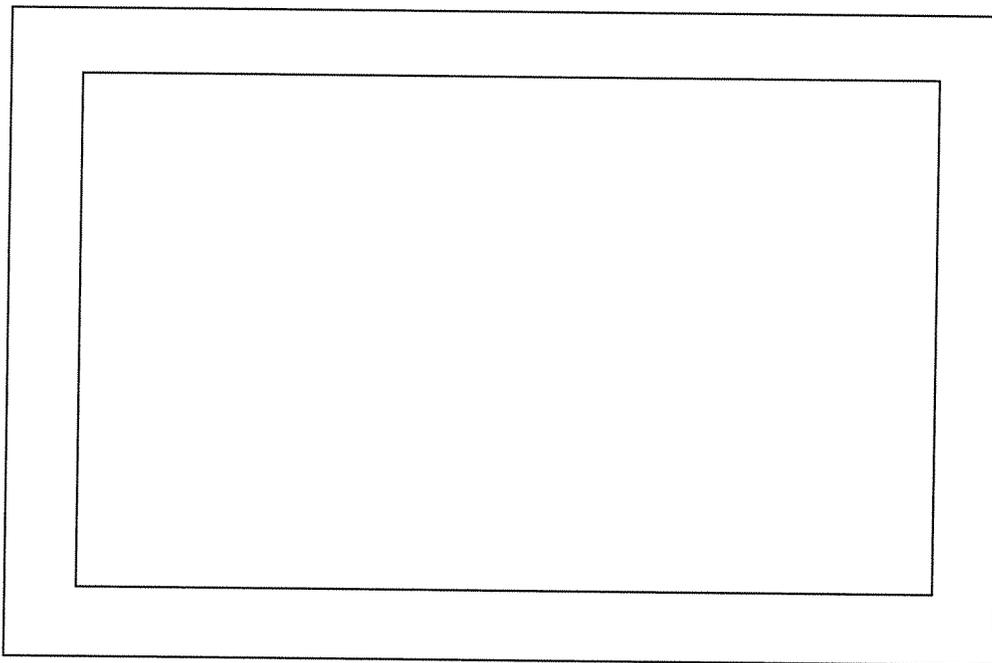
Exhibition title: **FRIDA KAHLO: HER PHOTOS**  
Exhibition dates: **February 23, 2012 to March 25, 2012**

Artist: **FRIDA KAHLO, DIEGO RIVERA, AND OTHERS**

Work title: \_\_\_\_\_

Work date: \_\_\_\_\_

Work size (HxWxD): \_\_\_\_\_



**Comments:**       Incoming     Outgoing

Made by: \_\_\_\_\_

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

**Comments:**       Incoming     Outgoing

Made by:

Date:

**Work Supports:**    Framed     Un-framed     Matted     Paper     Canvas   
Aluminum     Wood   
Other:

**Materials:**

Oil  Acrylic  Ink  Watercolor  Charcoal/ Pastel   
Pencil  Photograph  Type: \_\_\_\_\_  
 Multimedia or Other: \_\_\_\_\_

**Protected:**

Varnished  Un-varnished  Glass  Plexi-glass   
Other:  \_\_\_\_\_

**COMMENTS:**

Artisphere is managed by Arlington County and supported by the Rosslyn BID.

