



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of December 10, 2011

DATE: November 16, 2011

SUBJECT: Approval of a Standard Form Exhibition Agreement for Use by County Staff, and Delegation of Authority to the County Manager or Her Designee to Execute Certain Exhibition Agreements on Behalf of the County Board.

C.M. RECOMMENDATIONS:

1. Approve the Standard Form Exhibition Agreement (attached as **Attachment 1**) for use by County staff in hosting exhibitions at County-owned or County-leased venues.
2. Authorize the County Manager or her designee to execute exhibition agreements on behalf of the County Board, so long as each such exhibition agreement is (a) based on the Board-approved standard form Exhibition Agreement, (b) not executed until each such agreement is approved by the County Attorney, and (c) within the following parameters:
 - i. the exhibition addressed by such agreement is limited to County-owned or County-leased venues and does not relate to an exhibition at any another venue or location;
 - ii. the payment paid by the County to the owner or owners of the thing or things exhibited does not exceed Twenty-Five Thousand Dollars (\$25,000.00) per exhibition;
 - iii. the monies expended by the County for installation-related costs do not exceed Five Thousand Dollars (\$5,000.00) for the exhibition;
 - iv. the duration of the exhibition will not exceed ninety (90) days;
 - v. the cost of shipping and delivering (including taxes, duties, carnet fees, customs fees, broker fees, and other handling charges) the exhibition materials to the County, if such costs are to be borne by the County, does not exceed Ten Thousand Dollars (\$10,000.00);

County Manager:

BMD/mjs

County Attorney:

BRC

[Signature]

27.

Staff: Cynthia Connolly, Visual Arts Curator, AED

- vi. the County employee identified as the Project Officer in such agreement is designated in writing by the County Manager or her designee;
- vii. the per diem amount paid by the County to the curator or curators representing the owner or owners of the thing or things exhibited at the County venue does not exceed Seventy-One Dollars (\$71.00) per recipient per day and Nine Hundred Ninety-Four Dollars (\$994.00) total per exhibition;
- viii. the other expenses to be paid by the County to the owner or owners or their agents for other expenses (accommodations, travel, incidentals, etc.) do not exceed Three Thousand Dollars (\$3,000.00) total per exhibition;
- ix. the owner's or owners' opinion of the value of the thing or things exhibited does not exceed Five Hundred Thousand Dollars (\$500,000.00) per exhibition

ISSUES: County Board approval is required to delegate to the County Manager or her designee the Board's authority to execute agreements in the name of the Board.

SUMMARY and BACKGROUND: During the development of an Exhibition Agreement for the "Frida Kahlo: Her Photos" exhibition that is expected at Artisphere in 2012, County staff recognized the need for the development of a standard form Exhibition Agreement for use by County staff for future exhibitions. Because the County Board would be a party to any such agreement, and Board approval is necessary for any agreement in its name (unless a prior delegation of authority has been made by the Board), County staff also recognized the need for a delegation of executory authority to a County staff person so that certain exhibition agreements need not be approved by the Board or subject to the Board authorizing a case-by-case signature on its behalf. With the Board's approval of the standard form Exhibition Agreement and delegation of executory authority within certain parameters, County staff expects to be able to more flexibly arrange for exhibitions at Artisphere and other County venues in the future.

DISCUSSION: The Board's approval of the standard form Exhibition Agreement that is attached to this Report as **Attachment 1** will provide County staff with an approved form that they are able to use for arranging exhibitions at Artisphere and other County venues. The standard form Exhibition Agreement is substantially based on the Exhibition Agreement developed for the Frida Kahlo exhibition, which the Board approved at its September 2011 meeting, with changes made to make it a "tailorable" form. The form is designed to be used under circumstances like the Kahlo exhibition, where the owner or owners of the thing or things to be exhibited are willing to loan the material to the County for a finite period of time on certain terms and conditions. While each Exhibition Agreement based on the standard form will be unique, many of the details will be exhibition-specific and within the existing purview of County staff. These variables include exhibition locations, publicity, receptions, wall colors, display details, and standard artistic and planning details.

The blanks in the standard form also reflect more significant exhibition details that require guidance and parameters from the Board. These details include exhibitions' durations, values, and costs to the County. It therefore is recommended that the Board limit, within certain

parameters, its delegation of authority for executing such agreements. These parameters are reflected in the subparts of County Manager recommendation #2 above.

The parameters in recommendation #2 above are based on customary and maximum expenses that would be possible if an exhibition were rented for Artisphere or another County venue. Per diems and hotel room rates are based on rates regularly seen in the Arlington area. Fee rates for exhibitions vary greatly and the rate given is an average of industry norms. County staff considers the rates to be fair considering the variable parameters that might be presented for any rented exhibition.

The County Manager recommends that the Board require that all Exhibition Agreements be subject to the review and approval of the County Attorney. Furthermore, the Board's approval of the standard form Exhibition Agreement and adoption of the resolution authorizing the County Manager or her designee to execute certain agreements on the Board's behalf are not intended or expected to in any way avoid or negate the obligation of the County, through its Purchasing Agent, to comply with the Virginia Public Procurement Act.

FISCAL IMPACT: The actions recommended by the County Manager in this Report are not expected to have any fiscal impact. As discussed above, if a given exhibition exceeds the parameters noted above or exceeds amounts budgeted to any County department for such exhibition, then County staff will return to the County Board for further action as necessary.

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 _____, a _____ [enter state or country of residence and the business entity type], with an address at _____ (hereinafter individually “Owner” or collectively “Owners”). The County and the Owner or Owners may be referred to individually as “Party” or collectively as “the Parties”.

Recitals

WHEREAS, _____; and

WHEREAS, _____; and

WHEREAS, the Owner or Owners have complete right, title and interest in and to _____ (_____) [insert number of pieces of artwork, in both narrative words and numbers] _____ [insert narrative description of the artwork] (“Artwork”); and

WHEREAS, images of the artwork, together with the Owner’s or Owners’ opinion of the value of each piece of the Artwork, are contained in **Exhibit A**, attached hereto and incorporated into this Agreement by this reference; and

WHEREAS, the Owner or Owners desire to further the appreciation and understanding of art by exhibiting the Artwork at _____ [insert name of County facility at which the Artwork will be exhibited], at a County venue at _____ [insert street address of County facility at which the Artwork will be exhibited] in Arlington County, Virginia, United States of America (hereinafter “the Venue”); and

WHEREAS, the County desires to host an exhibition of the Artwork at the Venue,

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

Terms and Conditions

1. Title. The Owner or Owners covenant that he, she, it, or they jointly have all legal right, title and interest necessary to execute this Agreement and to loan the Artwork to the County for exhibition at the Venue. During the Artwork’s exhibition at the Venue, and beginning at the time hereinafter provided, the County shall have custody and possession of the Artwork.

2. Exhibition Space. The County agrees that it will exhibit the Artwork at the Venue.

3. Loan; Payment to Owner or Owners [IF APPLICABLE].

A. The Owner or Owners agree to loan the Artwork 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 Artwork. If the County, in its sole discretion after execution of this Agreement and before the Owner or Owners place the Artwork in the possession of a freight carrier for shipping to Arlington County, decides not to exhibit the Artwork, then the County promptly will notify the Owner or Owners, in accordance with section **18.H.** of this Agreement, of the County's decision not to exhibit the Artwork. Thereupon, the County will have no further obligation, pursuant to this Agreement or otherwise, to the Owner or Owners or to any one or more of them. If the County proceeds with the exhibition, then the County's custody of the Artwork shall begin when the Artwork is delivered to the Venue by the Owner or Owners or their agent or agents.

B. In exchange for the Owner's or Owners' loan of the Artwork to the County, the County agrees to remit payment to the Owner or Owners in the amount of _____ Dollars (\$____.00) in the form of an electronic bank transfer to the Owner's or Owners' designated bank account no later than 11:59 p.m Eastern Time on _____, 20__.
[Other payment terms to be added as necessary (i.e. staggered payments, payment form, etc.)]

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 _____, 20__ **[insert Term ending date (not necessarily exhibit ending date)]**.

B. The exhibition of the Artwork shall begin at the Venue at _____ a.m. / p.m. **[insert start time]** Eastern Time on _____ **[insert start date]**, and shall end at _____ a.m. / p.m. **[insert end time]** Eastern Time on _____ **[insert end date]**. 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.

C. The title for the exhibition shall be _____.
The subtitle for the exhibition shall be _____.

D. The County's custody of the Artwork shall begin upon delivery of the Artwork to the Venue, and shall end upon the pick up of the packed Artwork by the Owner's or Owners' designated freight carrier from the Venue.

E. This Agreement is not subject to renewal.

5. Delivery of the Artwork to the County.

A. The County shall pay, to the freight carrier or carriers chosen by the Owner or Owners, all costs (including taxes, duties, carnet fees, customs fees, broker fees, and other handling charges) for shipping and delivering the Artwork to the Venue.

B. The Owner or Owners, and not the County, shall be liable for any injury, loss, damage or destruction to the Artwork during its or their transit and delivery to the Venue.

6. Condition of the Artwork upon Arrival at the Venue.

A. Upon the unpacking of the Artwork and placement of the Artwork in the exhibition, the Owner or Owners shall, at its or their sole expense, certify to the County, in the form of **Exhibit B** (“Condition Report”), that the Artwork is, in the Owner’s or Owners’ opinion, in good condition except as specified in **Exhibit B**. Once completed by the Owner or Owners, the Condition Report shall be incorporated into this Agreement by this reference.

B. The Owner or Owners warrant that the Artwork, 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 Owner or Owners and their agents in preparing the Artwork for shipping to the County.

C. If special installation hardware, exhibition display cases or a specialized installer are needed, they will be paid for by the County [**OR**] by the Owner or Owners [**depending on the agreement negotiated by County staff with the Owner or Owners**].

D. If additional registrar services are needed for the handling of particular artwork, (i.e. paperwork related to storage of work, additional crating services, etc.), then such services shall be paid for by County [**OR**] Owner or Owners [**depending on the agreement negotiated by County staff with the Owner or Owners**].

E. Travel expenses for the Owner or Owners, or their curators, artists or speakers shall be paid for by County [**OR**] Owner or Owners [**depending on the agreement negotiated by County staff with the Owner or Owners**].

F. The Owner or Owners shall, at least two (2) months prior to the date of the Artwork’s arrival at the Venue, provide the County with instructions, written in English, that specifically describe all special care in handling and/or presentation of the Artwork after final placement in the exhibition.

G. If the County disagrees with the Owner’s or Owners’ opinions in **Exhibit B**, or if the County determines that the Artwork has been placed into the exhibition in a deteriorating or deteriorated condition, then the County will in writing (by email or hard copy) notify the Owner or Owners of this determination. The County’s sole obligation regarding the Artwork’s condition upon its placement into the exhibition shall be to notify the Owner or Owners of the County’s determination made pursuant to this subsection. The Artwork’s 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 Artwork for the purposes of determining liability for changes in the Artwork's condition during the exhibition.

H. If the Owner or Owners and County staff determine during the placement of the Artwork that there is insufficient space for all of the Artwork to be displayed, then the Owner or Owners, with input from County staff, shall decide which of the Artwork will not be placed in the exhibition. Any piece of the Artwork that is not displayed in the exhibition shall be jointly identified by the Parties in writing (by email or hard copy) and insured and stored by the County during the Term. In the event that the County is unable or unwilling to store the remaining Artwork at the Venue and the County chooses to store the remaining Artwork at a location other than the Venue, the County shall pay for the costs of such storage or shall pay for the remaining Artwork to be packed and shipped to a location of the Owner's or Owners' choosing. In the event that the County places any portion of the Artwork in storage during the Term or during the course of the exhibition, the County will not be responsible for any damage to the Artwork that occurs during such storage.

I. The County, as of the date of its execution of this Agreement, designates _____ [insert County employee name], _____ [insert County employee title], as project officer ("Project Officer"). The Project Officer shall be the County's on-site representative at the Venue during the exhibition and the person to whom the Owner or Owners or their agents or contractors address concerns during the unpacking of the Artwork and final placement of the Artwork into the exhibition, or during the exhibition.

7. Care of the Artwork by the County; Ongoing Maintenance; Emergency Preservation

A. The County shall ensure that only responsible and trained County staff and contractors handle the Artwork after it is unpacked and installed by the County.

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

1. with the Owner's or Owners' prior written (by email or hard copy) permission; or
2. when necessary to preserve and protect the Artwork.

C. The Artwork will be displayed in galleries that are temperature-controlled and at light levels that are appropriate. 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 Artwork is exhibited, and the Owner or Owners

acknowledge that the spaces will not be climate-controlled other than in the manner described in this subsection.

D. The County will provide ongoing maintenance of the exhibition and to the Artwork while the Artwork is installed at the Venue. This includes, without limitation, maintenance of digital / new media and cleaning and dusting of the Artwork. If digital media requires new hard drives, CDs, DVDs, etc., these must be provided by the Owner or Owners.

E. During the exhibition, the County shall at all times provide protection to the Artwork against theft, fire and damage from any cause. During times when the Venue is closed to the general public, the County shall cause the Venue's doors to be locked. The County shall have no obligation to provide any security for the Artwork that exceeds the security at all other times used by the County in the _____ **[insert names of Venue galleries or other spaces where the Artwork will be displayed]** where the Artwork will be placed at the Venue.

F. 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 Artwork during the exhibition shall be for display. The exhibition will be placed in the _____ **[insert names of Venue galleries or other spaces where the Artwork will be displayed]**.

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

1. repairing or restoring the Artwork;
2. removing the Artwork from its frames; or
3. otherwise changing or altering the Artwork from the original physical condition in which it was received.

H. The County may apply any reversible emergency preservation measure to the Artwork without the Owner's or Owners' prior written (by email or hard copy) permission if:

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

and

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

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

I. If the County uses or applies any emergency preservation measure to the Artwork pursuant to subsection **7.H.** above, then

1. the County has a right to perfect a lien on the Artwork 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 Owner or Owners or any third party for injury or loss to the Artwork 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 Artwork or other property inside the Venue; or

ii. the Artwork 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 Owner's or Owners' loss.

8. Reproduction and Examination.

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

B. The Owner or Owners hereby agree to make available to the County, by _____, 20__ **[insert date]**, photographic reproductions of _____ (____) **[insert number of pieces]** of the Artwork for use by the County in publicity and educational material for the exhibition. Those _____ (____) **[insert number of pieces from above]** photographic reproductions may be used by the County in its sole discretion 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 Owner's or 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 Owner or Owners shall, by email, provide the title and appropriate credit for each of the _____ (____) [**insert number of pieces from above**] pieces of Artwork to be used in publicity and for educational purposes.

C. The Owner or Owners agree to provide to the County, by _____, 20__ , all written material in English for creating a promotional postcard, press release and the exhibition checklist. If such information and materials are not provided by _____, 20__ [**insert date from above**], 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. If a catalogue or larger publication is created for this exhibition, the costs of creating the catalogue or publication, and the sharing of such costs, will be determined by the Owner or Owners and the County. Such costs may include: design, research/writing, photography, illustration and back-end creation of a dedicated microsite within the County's website. Such costs shall be borne by the Parties as follows: [**allocation of costs between the parties to be described here**].

E. The Owner or Owners agree that they will provide an email response to the County within five (5) business days of receiving a proposed press release or other material sent to the Owner or Owners for proofreading before distribution to the public or otherwise. If no response is received by the County within five (5) business days of the County emailing such material to the Owner or Owners, the County nonetheless may proceed with distributing such material in any form.

9. Identification of the Artwork; Publicity and Sponsorships.

A. The County will label the Artwork by using a numbering system. If a numbering system is used, artwork in the exhibition 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 piece of Artwork. If a label system is created, these labels will be created from the checklist provided to the County by the Owner or Owners, which checklist will be presumed to be correct. The County assumes no responsibility if the information on the checklist is incorrect and results in misinformation in the form of Artist's name, Title or value of artwork. The checklist shall be delivered to the County by the Owner or Owners at least eight (8) weeks prior to the date on which the Artwork will be delivered to the Venue. The credits stated in subsection B. below shall be included at the end of each listing.

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

[INSERT OWNERSHIP CREDIT HERE]

C. If the Venue is Artisphere, then all typography and signage pertaining to the Artwork shall use Artisphere’s font, “Dinot”, and no other font, unless otherwise agreed by the County and the Owner or Owners in writing. If the Venue is a County facility other than Artisphere, then all typography and signage pertaining to the Artwork shall use the font _____, and no other font [**selection to be made by County staff case-by-case**], unless otherwise agreed by the County and the Owner or Owners in writing.

D. Walls will be painted the color _____ [**insert color and manufacturer identifier, if applicable**].

E. The County shall be solely responsible for all costs incurred in presenting the Artwork after it is unpacked and placed into exhibition by the Owner or 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 Owner or Owners may provide pre-printed material to the County for use in association with the exhibition, and such material may be used by the County in its sole discretion.

F. 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 Owner or Owners or with any third party.

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

H. The County may rent the Venue to any third party for a special event while the exhibition contemplated by this Agreement is occurring. Any use of the Venue by a third party during the exhibition shall adhere to the County’s safety and precautionary guidelines, and the County shall ensure that such third party’s guests maintain a safe distance from the Artwork.

10. Insurance and Risk of Loss.

A. The Owner’s or Owners’ claimed values for the Artwork are listed in **Exhibit A**.

B. Upon delivery of the Artwork to the Venue, the County shall insure the Artwork as part of the County’s fine-arts property insurance. The County’s insurance shall name “_____” [**insert Owner’s or Owners’ name(s)**] as (an) additional insured(s). The County’s obligation to provide insurance and bear any risk of loss shall begin when the Artwork is delivered to the Venue and shall end when the Artwork is delivered to the destination designated by the Owner or Owners after the Artwork is picked up from the Venue by the Owner or Owners or their designated freight carrier.

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

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

2. If the Artwork is fragile or otherwise difficult to insure, then, at the County's sole option, the Owner or Owners must either self-insure the Artwork 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 Owner's or Owners' claimed value for any piece of the Artwork.

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

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

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

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

c. The County shall not be liable to the Owner or 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 Artwork during the exhibition, the Owner's or 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.

11. Return of the Artwork to the Owner or Owners.

A. Upon the conclusion of the exhibition or termination of this Agreement, the County shall deinstall the exhibition and place the Artwork and all related exhibition equipment or materials in shipping containers that shall be provided to the County by the Owner or Owners. The County shall bear all costs for deinstalling the exhibition and crating the Artwork and related materials and equipment. The County shall bear all costs (including customs fees, broker fees, and other handling charges) for transporting the packed Artwork and related equipment and materials from the Venue to the destination selected by the Owner or Owners. The Owner or Owners shall notify the County in writing (by email or hard copy), in accordance with section **18.H.** of this Agreement, not later than _____, 20__ [**insert date**], of the precise street address to which the County is to ship the Artwork.

B. In the event that the exhibition is terminated on the exhibition's scheduled conclusion date, then the County shall have until 11:59 p.m. Eastern Time on _____, 20__ [**insert date**], to deinstall the exhibition and pack the Artwork and related materials and equipment. The County shall ensure that the crated Artwork departs the Venue by 11:59 p.m. Eastern Time on _____, 20__ [**insert date**], en route to the destination address provided to the County by the Owner or Owners.

C. In the event that the exhibition is terminated prior to the exhibition's scheduled conclusion date, then the Owner or Owners shall notify the County in writing (by email or hard copy), in accordance with section **18.H.** of this Agreement, by the seventh (7th) calendar day following the early-termination date, of the precise street address to which the County is to ship the Artwork. The County shall ship the crated Artwork to the destination address provided to the County by the Owner or Owners no later than 11:59 p.m. Eastern Time on the fifteenth (15th) business day after the early-termination date.

D. The County shall bear the risk of loss for the Artwork from the time when all of the Artwork is collectively delivered to the Venue by the Owner or Owners or their freight carrier, until the point in time that all of the crated Artwork departs the Venue.

12. Notice of Change in Ownership or Owner's or Owners' Address.

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

13. 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 (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 (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.

14. 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 Owner's or Owners' curator(s), shall deinstall the exhibition and pack the Artwork and related equipment and materials. The County shall ship the Artwork to the Owner or Owners at the designated street address pursuant to section 11 of this Agreement. If the Owner or Owners do not inform the County of the Owner's or Owners' designated destination address as required by section 11, 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 Artwork in storage;
- B. charge the Owner or Owners for the County's costs incurred for Artwork storage and insurance; and
- C. perfect and enforce a lien for the County's storage and insurance costs.

The Owner or 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.

15. Statutory Notice Required by Virginia Law.

The County hereby informs the Owner or 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 Owner or Owners hereby acknowledge their receipt of this notice. The name, address, and telephone number of the appropriate office or official to be contacted at the Venue for information regarding this Agreement is set forth hereinbelow.

16. 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 Owner or 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.

17. Title; Intellectual Property Indemnification.

The Owner or Owners warrant to the County that the Owner or Owners have full legal title to the Artwork and all permissions necessary from the Artwork’s artist or artists, or their heirs, successors or assigns, to agree to the exhibition of the Artwork in the manner described in this Agreement. The Owner or 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 Owner’s or 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 Artwork or any reproduction thereof, arising under the laws of the United States of America, any foreign country, international law, treaty or convention, the Commonwealth of Virginia, or common law.

18. Miscellaneous Provisions.

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

B. The Owner or 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 Owner or 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 Owner or Owners, and shall inure to the benefit of and bind the County and the Owner or 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 Owner or 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 12 of this Agreement:

a. If to the County:

_____ [County recipient's name]
_____ [County recipient's title]
Arlington County, Virginia
_____ [street, number and suite]
Arlington, Virginia _____ [ZIP code]
United States of America
_____ [Telephone Number]
_____ [Email Address]

b. If to the Owner or Owners:

_____ [notice recipient's name]
_____ [notice recipient's title]
_____ [Owner's or Owners' name]
_____ [street and number]
_____ [City]
_____ [State or Province]
_____ [Country]
_____ [Telephone Number]
_____ [Email Address]

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 Owner or 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 Owner's or Owners' acts or omissions, including the acts or omissions of their employees, agents, and contractors, in performance or nonperformance of the Owner's or 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 Owner or Owners fail or refuse to fulfill their obligations contained in this section, the Owner or 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 Owner or 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 Owner or Owners regarding the exhibition of the Artwork. This Agreement supersedes any prior or contemporaneous agreement between the County and the Owner or 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: _____

[OWNER OR OWNERS; IF MORE THAN ONE, THEN ONE SIGNATURE SECTION SHOULD BE INCLUDED HERE FOR EACH OWNER]

By: _____

Printed name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

County Attorney

RIDER 1

Registrar Services

The County [**OR**] Owner or Owners [**depending on the determination regarding which party is to for shipping**] shall ensure that the Artwork is registered with a registrar service acceptable to both the County and the Owner or Owners during the Artwork's shipping and transit to the Venue.

RIDER 2

Services Provided by the Owner's or Owners' Curator, Curators or Specialist(s)

- A. From _____ to _____, 20__, for _____ (__) nights, the County shall provide hotel accommodations (excluding incidental expenses), at a hotel of the County's choosing and proximate to the Venue, and a per diem of _____ Dollars (\$____.00) to _____ (__) [**insert number of curators or specialists**] curator(s) or specialist(s) representing the Owner or Owners at the Venue. From _____, 20__, to _____, 20__, for _____ (__) nights, the County shall provide hotel accommodations (excluding incidental expenses), at a hotel of the County's choosing and proximate to the Venue, and a per diem of _____ Dollars (\$____.00) to _____ (__) [**insert number of curators or specialists**] curator(s) and / or specialist(s) representing the Owner or Owners at the Venue.
- B. 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 Owner or Owners in the form of two (2) electronic funds transfers, one delivered to the Owner's or Owners' designated bank account upon the curator's, curators', specialist's, or specialists' arrival at the Venue by _____, 20__, and another delivered to the Owner's or Owners' designated bank account upon the curator's, curators', specialist's, or specialists' arrival at the Venue by _____, 20__.
- C. In no event shall the County be required to provide more than _____ (__) nights' accommodation or _____ (__) days' per diem on _____ (__) [**insert number of occasions**] occasions - during unpacking and placement of the Artwork in the exhibition and during removal of the Artwork from the exhibition and the packing of the Artwork for shipment.
- D. [**add additional terms here as necessary regarding travel or other expenses**]
- E. The County shall have no obligation to pay for any costs incurred by the Owner's or Owners' curators, specialists, agents or employees, except as provided in this section.

EXHIBIT A

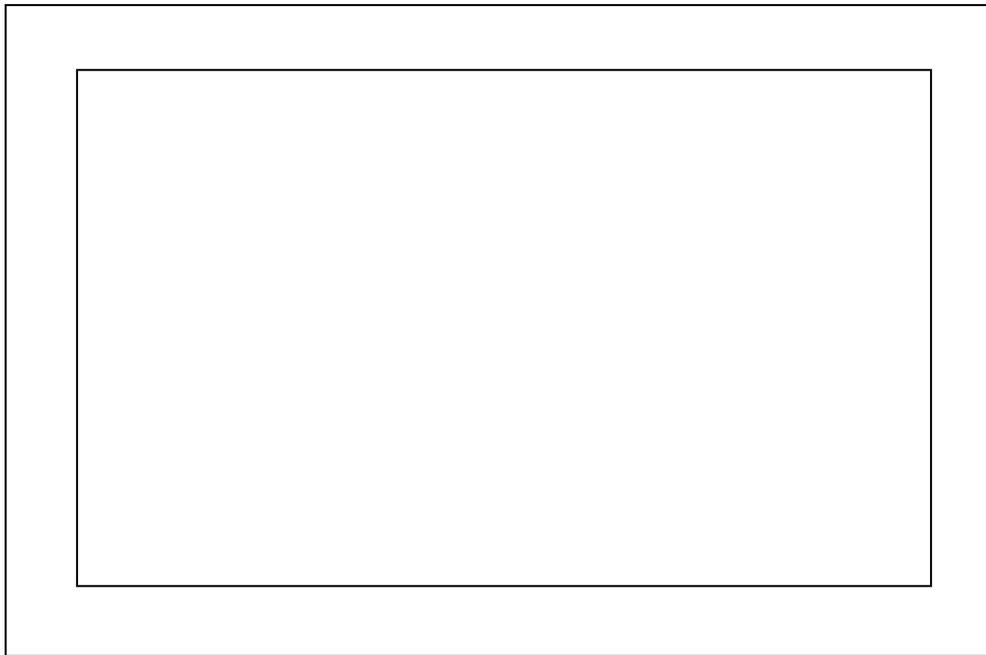
List, Description and Owner's or Owners' Claimed Values of the Artwork

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

EXHIBIT B
CONDITION REPORT

Exhibition title: _____
Exhibition dates: _____

Artist: _____
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: