

December 15, 2016

Lauren Curry, Esq.
Deputy City Attorney
City and County of San Francisco
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4682

Asian Art Museum Foundation of San Francisco

Dear Lauren:

You have asked that I confirm in writing the reasoning behind the request that the pending Grant Acceptance Agreement include a provision in which the City and County of San Francisco would indemnify the trustees, officers and employees of the Asian Art Museum Foundation of San Francisco against liabilities related to the construction of improvements to the Asian Art Museum of San Francisco.

As you know, the Museum is a collaboration between the City, acting through the Asian Art Commission established under the City Charter, and the Foundation. The City owns the collection and the Museum building and supports the Museum in numerous important ways, including annually contributing generous funding to the operation of the Museum.

The Foundation supports the Museum via fundraising and volunteer time. These contributions are substantial: over the past 5 years, the Foundation has raised over \$55 million in private funding for Museum operations and endowment, for exhibitions and public programs, including school programs, for the acquisition and conservation of art objects, for the Museum's library and for other needs not funded by the City. At June 30, 2016, 69% of the Museum's employees were Foundation employees, and 31% were City employees. In addition to the time of many volunteers, various supporters of the Foundation also provide substantial in kind contributions.

Museum Commissioners are appointed by the Mayor of the City. We are advised that, when acting in the scope of their responsibilities, City Commissioners and employees are indemnified by the City against all liabilities related to their service. Because they are not City Commissioners or employees, Foundation trustees, officers and employees do not receive similar indemnification.

The Foundation is in the midst of a major capital campaign, still in its quiet phase. For the construction project alone, we have so far raised almost \$27 million in cash and pledges. Additional funds are being raised to build capacity and increase the endowment to put the

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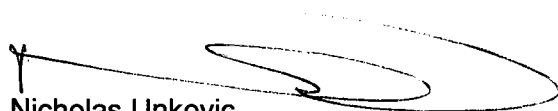
Museum on a firmer financial footing and increase its impact. Because the City owns the collection and the building, it will directly benefit from the major gifts given by the people of the Foundation and through their fundraising efforts. The Grant Acceptance Agreement provides the terms on which the City accepts this gift, now expected to exceed \$30 million, for the construction of improvements; its primary provisions govern how the construction will be contracted and carried out so as to insulate the City to the extent possible from construction related liabilities and risks.

Because it is the people of the Foundation who are raising this major gift to the City, because construction projects necessarily involve risks to the building and the collection beyond those involved in every day operations, and because we live in a litigious and highly politicized culture, in our view it is appropriate and simple fairness that the Foundation's trustees, officers and employees be protected to the same degree as the Commissioners and City employees working side by side with them on the project. This applies to all of the Foundation's people, but the trustees are also volunteers who spend substantial time and effort, give generously and raise additional support from their networks. Failure to accord them equal treatment with the people of the Commission would discourage them from continuing to contribute, jeopardize the success of a campaign that seeks to make the City better and be inequitable to some of our most generous citizens.

For our part, as you know the Foundation is planning to triple our D&O liability insurance policy to \$15 million, so I hope that provides some comfort to the City. Thank you for your continuing consideration of this request – it's been a pleasure working with you on the Agreement.

Sincerely,

Squire Patton Boggs (US) LLP



Nicholas Unkovic

NCU/dmf

cc: Ms. Joanne Chou

Diane L. Gibson, Esq.

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