

M E M O R A N D U M   O F   U N D E R S T A N D I N G  
San Francisco Arts Commission—Emerald Fund, Inc.

This Memorandum of Understanding (“MOU”) made and entered into as of October 18, 2016, constitutes a mutual agreement between the San Francisco Arts Commission, a department of the City and County of San Francisco (“SFAC”), and Emerald Fund, Inc., a San Francisco-based real estate development company (“Emerald Fund”) regarding application of Section 429 of the San Francisco Planning Code to the Emerald Fund residential development projects located at 101 Polk Street and 150 Van Ness Avenue (together the “Projects”).

Recital of Facts and Circumstances

This MOU is made with reference to the following facts and circumstances.

- A. Whereas, Emerald Fund, as the Projects’ sponsor, elected to fulfill the public art fee requirements of Section 429 *et seq.* generated by the Projects by paying the 1% Public Art Fee, totaling \$1.5 million, to the Public Artwork Trust Fund established in Section 10.100-29 of the San Francisco Administrative Code for the purposes set forth therein and in Section 429.5(b) of the Planning Code, which purposes include the creation and installation of public art and reasonable administrative expenses of SFAC staff for such public art projects; and
- B. Whereas, Emerald Fund, as developer of the Projects, and on behalf of its equity partners in the Projects, the National Electric Benefit Fund and Washington Capital Management, facilitated the contribution of the \$1.5 million Public Art Fee generated by the Projects to the Public Art Trust for the purpose of commissioning a permanent public art work to be installed upon portions of the Polk and Hayes Street elevations of the Bill Graham Civic Auditorium (“Site”); and
- C. Whereas, the San Francisco Arts Commission oversees the Public Artwork Trust Fund through its Public Art Trust Director; and
- D. Whereas, the Public Art Trust Director has consulted with Department of Real Estate staff and the Historic Preservation division of the Department of City Planning to investigate the possibility of installing a permanent public art work at the Site; and the Department of Real Estate has further consulted with Another Planet Entertainment, the facility managers and operators of the Bill Graham Civic Auditorium to vet this idea; and
- E. Whereas, the responses from the Department of Real Estate, Historic Preservation staff and Another Planet Entertainment have been positive and receptive to the idea; and
- F. Whereas, the Historic Preservation staff have provided SFAC with Guidelines for the Placement of an Artwork on the Bill Graham Civic Auditorium within the Civic Center Historic District; and
- G. Whereas, the Public Art Trust Director presented the above information to the Visual Arts Committee of the Arts Commission on June 30, 2014, and requested authorization from the Committee to designate the Site for a permanent public art project funded by the Public Artwork Trust Fund; and

- H. Whereas, the Visual Arts Committee passed a motion of authorization on June 30, 2014 which authorization was approved by Resolution 0714-14-182 passed by the full Arts Commission at the July 14, 2014 Arts Commission meeting ;and
- I. Whereas, the purpose of this MOU is to memorialize Emerald Fund's elections under Planning Code Section 429 and to define the rules that will govern the working relationship between SFAC and Emerald Fund concerning the proposed public art project;

NOW, THEREFORE, IN CONSIDERATION of the foregoing, SFAC and Emerald Fund hereby agree as follows:

1. **Term.** The term of this MOU begins on the date of the last signature set forth below and continues in effect until completion of the public art project at the Site. The parties may extend this MOU in a writing signed by both parties.
2. **Responsibilities.** SFAC and Emerald Fund agree to perform the following responsibilities relative to the development and implementation of the public art project at the Site.

**a. The Project Developer (Emerald Fund) will:**

- i. Review and comment on the Request for Qualifications ("RFQ") developed by SFAC to announce the public art project opportunity.
- ii. Serve on the Artist Selection panel.
- iii. Participate in an orientation meeting with finalists who shall be invited to develop public art project proposals.
- iv. Participate in the public art project dedication upon completion of installation of the artwork.

**b. The Public Art Trust Director (SFAC) will:**

- i. Obtain the necessary site approvals from SFAC and other City departments as required.
- ii. Prepare the public art project budget including: selection panel honoraria and costs, payments to finalists and travel reimbursement, contingency, maintenance reserve, signage allocation and SFAC project management fee.
- iii. Maintain the project budget and track expenditures.
- iv. Prepare the draft RFQ and solicit comments and feedback from Historic Preservation, the Emerald Fund and Department of Real Estate prior to its public distribution.
- v. Propose a slate of selection panelists for SFAC approval.
- vi. Publicize the public art project opportunity and conduct curatorial research to obtain a strong slate of artist candidates.
- vii. Conduct the selection panel meeting and present a pre-screened selection of artists to the selection panel to identify up to three finalists.
- viii. Present panel recommendations to the Visual Arts Committee for motion of approval which shall be voted upon by the full Arts Commission.

- ix. Upon authorization and approval from the full Arts Commission, prepare a Memorandum of Understanding with each finalist for the submission of a site-specific proposal for a fee of \$2,000 plus pre-authorized travel expenses.
- x. Organize a project orientation for finalists and invite key stakeholders such as representatives from Emerald Fund, Historic Preservation, Department of Real Estate, Another Planet Entertainment and Civic Center Community Benefits District.
- xi. Conduct a selection panel meeting for the finalists to present conceptual approaches to the panel.
- xii. Present the proposal recommended by the selection panel to the Visual Arts Committee of the Arts Commission for approval of proposal and authorization to enter into an agreement with the selected artist for design, fabrication, transportation and insurance of the artwork.
- xiii. Negotiate the artist's contract and submit the contract to the City Attorney for review.
- xiv. Monitor the work in progress through the following stages: proposal design development and engineering, final design, shop drawings, review of samples and submittals, specific milestones in the fabrication process.
- xv. Consult with the SFAC's Senior Registrar and fine art conservator when appropriate regarding conservation and maintenance issues.
- xvi. Conduct final inspection of the artwork in studio or at fabricator's shop prior to authorizing transportation and installation of the artwork.
- xvii. Coordinate the installation plan with the Department of Real Estate, Another Planet Entertainment and other City agencies as appropriate.
- xviii. Prepare interpretive signage for the artwork and arrange for installation of plaque upon completion.
- xix. Oversee installation of artwork on site.
- xx. Provide SFAC's Senior Registrar with project file and project/object information for cataloging upon completion.
- xxi. Complete and/or procure all paperwork associated with project completion.
- xxii. Submit a motion requesting a Resolution from the Visual Arts Committee for formal acceptance of a completed work of art into the public art collection as part of the accessioning, documentation, and cataloging of the work.
- xxiii. Prepare a press release regarding the public art project and arrange for a dedication ceremony.

### **3. Emerald Fund Payments to the Public Artwork Trust Fund**

In accordance with Section 429 of the Planning Code, payments to the Public Artwork Trust Fund from developers are made through the Department of Building Inspection and maintained by the Controller for use by the Arts Commission. Transactions processed by the Department of Building Inspection may be subject to a fee. If the Public Artwork Trust Fund monies are to be used by SFAC to commission a permanent public artwork for the developer's property or for a public site, SFAC may charge an administrative fee up to 20% for project management.

**4. Miscellaneous**

- a. Notices.** All notices, demands, requests or other communications given under this MOU shall be in writing to the following addresses:

If to SFAC:

Jill Manton  
 San Francisco Arts Commission  
 401 Van Ness Avenue, Suite 325  
 San Francisco, CA 94102

If to Emerald Fund:

Marc Babsin  
 The Emerald Fund  
 235 Montgomery Street  
 San Francisco, CA 94105

- b. Entire Agreement.** All recitals set forth above are hereby incorporated into the body of this MOU. This MOU, including all exhibits attached, constitutes the entire agreement between the parties and supersedes all prior agreements, promises and understandings, whether oral or written. This MOU shall not be modified, amended, supplemented or revised, except by a written document signed by both parties.
- c. Counterparts.** This MOU may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned have indicated their approval.

Approved by:

\_\_\_\_\_  
 Tom DeCaigny  
 Director of Cultural Affairs

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Developer, Emerald Fund, Inc.

\_\_\_\_\_  
 Date