MEMORANDUM

TO: Agency Commissioners
FROM: Tiffany Bohee, Interim Executive Director
SUBJECT: Authorizing a Second Amendment to the Personal Services Contract with Helene Fried & Associates, a sole proprietorship, to extend the contract term by one year, expand the scope of services provided under the Contract, and to increase the contract amount by an amount not to exceed $99,500, for a total aggregate contract amount not to exceed $399,500, to provide consulting and support services for fabrication, installation and maintenance of public art for Hunters Point Shipyard, Parcel A; Hunters Point Shipyard Redevelopment Project Area.

EXECUTIVE SUMMARY

On May 19, 2009, the Agency Commission authorized a Personal Services Contract ("Contract") with a consultant team led by Helene Fried & Associates (collectively "HFA") to work with the Agency to facilitate the selection, installation and maintenance of public art ("Shipyard Public Art") for Parcel A of the Hunters Point Shipyard ("Shipyard"). The Contract was amended on May 18, 2010 per Commission Resolution 55-2010.

HPS Public Art is the public art element of the Cultural Historic Recognition Program ("CHRP"). The CHRP is one of eleven community benefit programs included in the Community Benefits Agreement of the Shipyard's Phase 1 Disposition and Development Agreement for the redevelopment of the Shipyard ("DDA").

The art to be installed on the Shipyard will be funded with an approximately $1 million grant from the United States Department of Commerce, Economic Development Administration ("EDA"). The grant was to expire in August 2012. However, an extension of the EDA grant deadline will allow for an extended use of funds for HPS public art until August 2013.

Due to the extended project timeline and addition of support services, HFA's contract needs to be amended. The contract amendment will extend the contract term to September 2013 and will increase the budget by $99,500, for a total aggregate amount of $399,500.

Staff recommends that the Executive Director be authorized to amend the Contract with HFA to extend the contract term to September 2013, expand the scope of work and increase the Contract amount by an amount not to exceed $99,500 for a total aggregate Contract amount not to exceed $399,500.
BACKGROUND:

CHRP is one of eleven community benefit programs included in the Community Benefits Agreement of the Shipyard Phase 1 DDA and is a critical component in the Agency’s strategy to restore the Shipyard’s role in supporting the economic vitality of the Bayview Hunters Point (“BVHP”) community. In addition to improving the quality of life for the residents who live there, the Program will ensure that the future Shipyard is not disconnected from the historic and cultural elements of its past. The CHRP will also underscore the level of public investment in the area, making it a more attractive location to own a home or locate a business.

CHRP aims to create an art program that identifies opportunities for recognizing cultural components of the Shipyard and surrounding community in the development of the Shipyard, integrates cultural features and facilities throughout the Shipyard, and provides opportunities for local artists to participate in creating public art for the Shipyard.

Over time, several consultants have supported the Agency and the Hunters Point Shipyard Citizens Advisory Committee (“CAC”) with the planning of CHRP. Documents prepared in the past include a conceptual report entitled “Remembering our Past for the Future” (produced by Myles Stevens and Association in 2004) and the Hunters Point Shipyard, Phase I, Parcel A, Open Space & Streetscape Master Plan (approved by the Commission on January 17, 2009) that identified potential locations to place public art and to tell the story of the Shipyard and the surrounding BVHP community through interpretive features.

DISCUSSION:

Shipyard Public Art is the first CHRP project and focuses on the public art aspect of the program by commissioning nine public art pieces for the Shipyard. As a first step, on May 19, 2009 the Agency Commission authorized a Personal Services Contract with a consultant team lead by HFA to work with the Agency to facilitate the selection, commissioning and installation of public art for Parcel A.

Since 2009, HFA has supported the Agency to achieve the following milestones:

- Completed a broad local land nationwide outreach effort to attract a wide range of suitable artist applications.
- Concluded a jury-led (three art professionals, a representative of the Shipyard CAC, a community member who is not a member of the CAC, a member of the Agency Commission and senior staff representatives from the Agency, the San Francisco Art Commission and the Developer) selection process which resulted in the selection of nine artists with a diverse mix of backgrounds and use of media.
- Negotiated Artist contracts for the design and fabrication for public artworks for Shipyard Parcel A
- Determined optimal locations for public artworks based on artist vision and park construction schedule limitations.
• Supported artists in the design phase which included a 50% construction drawing review, design adjustments were necessary, and a final 100% construction drawings review.
• Coordinated with the City’s Americans with Disabilities Act (“ADA”) compliance person, to ensure all artworks meet ADA guidelines.
• Conducted 50% Mid-point fabrication visits for artist who have reached this milestone as part of the ongoing monitoring of the fabrication progress.
• Prepared draft bid documents for an invitation to bid on the installation of artworks.
• Successfully concluded the Shipyard Public Art Youth Program, which took place from January through December 2011.

**Contract Term Extension**

The funding source for Shipyard Public Art is a grant from the United States Department of Commerce, Economic Development Administration (“EDA”). This grant, herein referred to as “EDA Grant #5”, was set to expire in August 2012. Due to the continued delay in the construction of Parcel A Parks, Agency staff requested and received a time extension which will allow fund from EDA Grant #5 to be used until August 2013. This change allows for the public art to be installed when parks are constructed.

The Agency wishes to retain HFA throughout the life of the project and thus needs to extend the contract term until September 2013.

**Scope of Work Adjustments and Budget Increase**

In addition to the contract term extension, the Contract amendment also requires a budget increase. The increase in costs is a result of the fact that several tasks under the Contract have required more of HFA’s resources than originally planned. These tasks include:

• Providing the Agency with Installation cost estimates. As a result to EDA’s requirement to separately bid out the installation of art pieces (rather than allowing artist to install their artwork), Agency staff decided to obtain installation cost estimates from a professional cost estimator. These services were an addition to the agreed upon Contract scope.

• Design adjustments to art pieces. Due to the higher than expected installation cost estimates, Agency staff requested that some artists made adjustments to their art work designs to reduce cost of installation. As a result, the Design review process was much more time intensive than originally anticipated. The resulting cost savings for installation (which will be carried by the Agency through separate installation contracts), however, will offset the additional cost incurred from the time invested in re-engineering of artworks.

• Conservation advice. To address Commissioner concerns pertaining to the long-term maintenance of artworks, the Agency expanded the services of a conservation expert to
review artist designs and make suggestions to optimize durability and minimize maintenance cost of artworks.

- Additional Youth Program expenses. The Shipyard Public Art Youth Program was a great success, with both youth and artist showing great enthusiasm and strong participation in the program. Many artists invited the youth to their studios for hands-on projects, which lead to additional costs such as bus rentals and hospitality expenses. These costs were covered by HFA's budget.

In order to successfully finish the project the following tasks need to be completed:

**Task 1: Management and Artist Support during Fabrication Phase:**
The Contractor will provide ongoing technical support and oversight during the fabrication of artworks. This will include responding to artist questions and concerns as well as ensuring that fabrication of artworks is progressing as scheduled. A final review of completed art pieces prior to transportation to Shipyard may be required for all or some artworks.

**Task 2: Transfer of Ownership and Insurance Recommendations**
Artists are responsible for transporting the artwork to a to-be-determined site at the Shipyard. Contractor will be present at the hand-off to the Agency or the Agency’s successor entity. After a thorough on-site review of the artwork by Contractor, ownership will be transferred to the Agency. In anticipation of the transfer of ownership, the Contractor will research best practices for the transfer of ownership and adequate insurance of publicly accessible pieces of artwork and recommend Agency appropriate approaches.

**Task 3: Preparation for Installation of Artwork**
Installation of artwork will be procured by an invitation to bid which complies with federal and local procurement guidelines. The Contractor will work with staff of the Agency or its successor entity and artists to prepare for the installation of the art pieces, including assisting with obtaining any necessary permits for installation, identifying potential contractors for installation, developing a schedule and check-list for the installation of all art pieces, and assist with the selection of the installation contractor.

**Task 4: Technical Support during Installation**
The Contractor will work with staff of the Agency or its successor entity, artists and installation contractor to facilitate the installation of the art pieces. Contractor will coordinate with artists and troubleshoot when necessary.

**Task 5: Maintenance and Conservation Manual**
The art will be publicly owned and as such, the Contractor will be required to develop a maintenance plan and budget for the installed art pieces and ensure that an acceptable maintenance schedule is established and that all parties with designated responsibilities are aware and agree to the terms and conditions of the plan. The maintenance budget itself will be covered from the HPS Phase One Maintenance Community Facilities District.
Task 6: Artwork Plaques and Signage
Artwork requires acknowledgement and information signage that includes details about the artwork and artist and identifies artwork as part of the Agency’s collection. In collaboration with staff of the Agency or its successor entity, Contractor will work with a sub-contractor to design, fabricate and place ADA compliant artwork plaques on site that will allow disabled individuals to experience the artwork.

Task 7: Project Documentation, Marketing and PR
Project accomplishments are to be documented in written and in photographic form by Contractor, staff of the Agency or its successor entity and artists and compiled into attractive collateral, such as a Shipyard Public Art website (to be hosted on the Agency website or the website of its successor entity), brochures or pamphlets for Marketing and PR purposes and material for the main branch of the public library. Wherever required, published material shall follow the guidelines of the Americans with Disabilities Act (“ADA”). Photographic material includes pictures of the fabrication process (to be provided by artists) and photographic documentation of the final installed artwork (to be provided by HFA).

Task 8: Celebration
The Contractor will plan a community celebration in summer/fall 2013 to commemorate the successful completion of Shipyard Public Art. A broad range of stakeholders will be invited to an outdoor reception to enjoy the newly constructed parks and the public art. The Contractor will provide support by coordinating the planning and the public relations for the event.

Budget summary
The total new budget to complete the remaining tasks requires a budget increase of $99,500 for an aggregate Contract amount, not to exceed $399,500.

Funding Source
HFA’s services, as well as the art to be installed on the Shipyard are funded from a grant from the EDA, which must be spent no later than August 15, 2013. The goal of the EDA grant is to generate jobs, help retain existing jobs, and stimulate industrial and commercial growth in economically distressed areas of the United States.

AB 26X Compliance
Assembly Bill 26, passed in June 2011, has suspended the Agency’s ability to enter into new contracts. This bill, codified in relevant part in California’s Health and Safety Code Sections 34161 – 34169, prohibits redevelopment agencies from entering into new contracts or amending old contracts, unless such contracts or amendments fall within very specific exceptions. One of the exceptions to the general ban on new contracting is a provision that would permit agencies to enter into contracts where such contracts are required in order to “perform obligations required pursuant to any enforceable obligations.” Another requires a redevelopment agency to take all actions necessary to “preserve, to the maximum extent possible, the revenues and assets” of that agency. Additionally, Section 34169 (f) requires the
Agency Commissioners

Agency to take all reasonable measures to avoid triggering an event of default under any enforceable obligation as defined in subdivision (d) of Section 34167.

As noted previously, the CHRP is funded through a grant from the EDA. EDA grants are contractual agreements which require completion of agreed upon actions within a certain time period. Failure to complete projects set forth in the grant is a default that may result in termination of the award. Moreover, failure to complete such projects by the grant deadline is also considered a default that may result in termination of the award. Any default, including a default resulting from delay, could hamper the ability of the Agency (or a successor entity) to receive grant funds in the future.

Fulfillment of the grant scope requires the Agency to 1) develop a public art program 2) enter into contracts with public artists to create artwork for Parcel A of the Shipyard 3) install the artwork by August of 2013. Agency staff does not have the technical expertise to undertake some of the tasks necessary to complete this project. As a result the Agency must enter into or amend the contracts with third parties, like HFA, who can perform certain project-related tasks that go beyond in-house expertise. Amendment of the personal services contract with Helene Fried & Associates is therefore necessary to fulfill the scope of this EDA#5 funded project and is therefore an enforceable obligation on the part of the Agency under Health and Safety Code Section 34167(b). As such, amending the Contract to allow for timely completion of the Grant requirements should be considered an enforceable obligation under AB 26 and thus exempt from the existing suspension of the ability of redevelopment agencies to enter into contracts.

California Environmental Quality Act

The Second Amendment to the HFA Contract would allow for an increase of the Contract budget and duration, and administrative changes to the scope of work under the Contract as described above, but would not change the public work that would be installed on Parcel A of Hunters Point Shipyard. Agency authorization of the Second Amendment is an Agency administrative activity that is not a “Project”, as defined by the California Environmental Quality Act (“CEQA”) Guidelines Section 15378(b)(5). The Second Amendment will not independently result in a physical change in the environment and is not subject to environmental review under CEQA.

(Originated by Amabel Akwa-Asare, Assistant Project Manager)

Tiffany Bonee
Interim Executive Director

Attachment:
1) Second Amendment to the Personal Services Contract with Helene Fried & Associates
2) Shipyard Public Art Youth Program Booklet
SAN FRANCISCO REDEVELOPMENT AGENCY

SECOND AMENDMENT TO THE PERSONAL SERVICES CONTRACT

This SECOND AMENDMENT ("Second Amendment") to the San Francisco Redevelopment Agency Personal Services Contract, originally dated May 19, 2009, by and between the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic ("Agency"), and HELENE FRIED AND ASSOCIATES, a sole proprietorship, ("Contractor") is entered into as of January 18, 2012 ("Effective Date").

RECITALS

This Second Amendment is made with reference to the following facts and circumstances:

1. On May 19, 2009, the Agency entered into a Personal Services Contract ("Original Contract") with Helene Fried and Associates (collectively "HFA") to work with the Agency to facilitate the selection, commissioning and installation of public art for Parcel A ("HPS Public Art") as part of the Hunters Point Shipyard ("Shipyard") Cultural Historic Recognition Program ("CHRP").

2. In June 2010, the Agency and HFA entered into an amendment to the Contract ("First Amendment") to include (i) a contract term extension from August 2010 to September 2012, (ii) an enhanced contract scope and (iii) a budget increase of $70,000 for a total aggregate Contract amount not to exceed $300,000.

3. Due to additional construction delays of Parcel A parks and additional unexpected occurrences, including unanticipated need for additional resources caused by the need to re-design some art pieces, additional review of art design by a conservation and maintenance expert and additional expenses for the Shipyard Public Art Youth Program, the parties thus desire to extend the contract until September 2013, adjust the scope of the contract, and increase the contract budget by $99,500 for a total aggregate Contract amount not to exceed $399,500.

4. For purposes of this Second Amendment references to the "Contract" will be deemed to reference the Original Agreement as amended.

AGREEMENT

NOW, THEREFORE, the Agency and the Contractor agree as follows:

1. **Section 2. TIME OF COMPLETION** is hereby amended and restated to read as follows:

"The contract will terminate no later than September 1, 2013."
2. The first sentence of Section 3.A COMPENSATION AND METHOD OF PAYMENT is hereby amended and restated to read as follows:

"The maximum amount payable under this Contract is $399,500."

3. As of the Effective Date of this Second Amendment, Attachment #1A, SCOPE OF SERVICES set forth in the Original Contract and Attachment A SCOPE OF WORK, set forth in the First Amendment shall be deemed replaced with Attachment A – Amended Scope of Work, which attachment is attached hereto.

4. Attachment B, BUDGET, is hereby amended to include the Budget attached hereto as Amended Attachment B. To the extent that Amended Attachment B conflicts with the Budgets set forth in the Original Agreement or the First Amendment, the Amended Attachment B will control.

5. Except as otherwise amended hereby, all terms, covenants, conditions and provisions of the Contract shall remain in full force and effect.

6. All capitalized terms used but not defined herein shall have the meanings assigned thereto in the Contract.

7. This Second Amendment is binding upon and shall inure to the benefit of the successors and assigns of the Agency and Contractor, subject to the limitations set forth in the Contract.

8. This Second Amendment may be executed in any number of counterparts, each of which shall be considered an original, and all of which shall constitute one and the same instrument.

9. The Contract shall continue in full force and effect, without amendment or modification except as herein expressly set forth.
IN WITNESS WHEREOF the Agency and Contractor have executed this Second Amendment as of the date first above written.

HELENE FRIED AND ASSOCIATES, a sole proprietorship

By: ________________________________
   Helene Fried
   Owner and Operator
   Federal Tax Identification No. EIN #27-2169756

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic

By: ________________________________
   Amy Lee
   Deputy Executive Director
   Finance and Administration

APPROVED AS TO FORM:

By: ________________________________
   James B. Morales
   Agency General Counsel

Authorized by Resolution No. __________, adopted January 17, 2012.
ATTACHMENT A – AMENDED SCOPE OF WORK

As of January 18, 2012 the Contractor shall provide the following services:

**Task 1: Management and Artist Support during Fabrication Phase:**
The Contractor will provide ongoing technical support and oversight during the fabrication of artworks. This will include responding to artist questions and concerns as well as ensuring that fabrication of artworks is progressing as scheduled. A final review of completed art pieces prior to transportation to Shipyard may be required for all or some artworks.
**Deliverables:** Fabricated art pieces which are ready for delivery to the Shipyard

**Task 2: Transfer of Ownership**
Artists are responsible for transporting the artwork to a to-be-determined site at the Shipyard. Contractor will be present at hand-off. After a thorough on-site review of the artwork by Contractor, ownership will be transferred to the Agency. In anticipation of the transfer of ownership, the Contractor will research best practices for the transfer of ownership and adequate insurance of publicly accessible pieces of artwork and recommend Agency appropriate approaches.
**Deliverables:** Transfer of Ownership and Insurance recommendations, On-site artwork review, Transfer of Ownership to the Agency.

**Task 3: Preparation for Installation of Artwork**
Installation of artwork will be procured by an invitation to bid which complies with federal and local procurement guidelines. The Contractor will work with Agency staff and artists to prepare for the installation of the art pieces, including assisting with obtaining any necessary permits for installation, identifying potential contractors for installation, developing a schedule and check-list for the installation of all art pieces, and assist with the selection of the installation contractor.
**Deliverables:** DBI permits, list of potential installation contractors, schedule of deliverables and check-list for each art piece, selected installation contractor(s).

**Task 4: Technical Support during Installation**
The Contractor will work with Agency staff, artists and installation contractor to facilitate the installation of the art pieces. Contractor will coordinate with artists and troubleshoot when necessary.
**Deliverables:** Ongoing support with installation

**Task 5: Maintenance and Conservation Manual**
The art will be publicly owned and, as such, the Contractor will be required to develop a maintenance plan and budget for the installed art pieces and ensure that an acceptable maintenance schedule is established and that all parties with designated responsibilities are aware and agree to the terms and conditions of the plan. The maintenance budget will have a separate source of funds.
**Deliverables:** Maintenance and Conservation plan and schedule, maintenance agreement with relevant parties for signatures.
Task 6: Artwork Plaques and Signage
Artwork requires acknowledgement and information signage that includes details about the artwork and artist and identifies artwork as part of the Agency’s collection. In collaboration with Agency staff, Contractor will work with a sub-contractor to design, fabricate and place ADA compliant artwork plaques on site that will allow disabled individuals to experience the artwork.
Deliverables: Plaques for artwork located in vicinity of artwork

Task 7: Project Documentation, Marketing and PR
Project accomplishments are to be documented in written and in photographic form by Contractor, Agency staff and artists and compiled into attractive marketing materials, such as a Shipyard Public Art website (to be hosted on the Agency website), brochures or pamphlets for Marketing and PR purposes and material for the main branch of the public library. Wherever required, published material shall follow the guidelines of the Americans with Disabilities Act (“ADA”). Photographic material includes pictures of the fabrication process (to be provided by artists) and photographic documentation of the final installed artwork (to be provided by HFA).
Deliverables: Shipyard public art website, marketing materials, ADA compliant documentation for main library.

Task 8: Celebration
The Contractor will plan a community celebration in summer/fall 2013 to commemorate the successful completion of Shipyard Public Art. A broad range of stakeholders will be invited to an outdoor reception to enjoy the newly constructed parks and the public art. The Contractor will support with the planning and the public relations for the event.
Deliverables: List of invitees, announcements and press releases, completed event planning
## ATTACHMENT B – AMENDED BUDGET (January 2012 – September 2013)

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Hunters Point Shipyard Public Art Youth Program
January – December 2011

Final Report
January 17, 2012

Shipyard Public Art Youth Program

a program of the San Francisco Redevelopment Agency
in collaboration with California Lawyers for the Arts
and Helene Fried Associates