



Legislation Text

File #: 48644, **Version:** 1

Fiscal Note

The proposed resolution authorizes an amendment to the contract with Graef-USA, Inc to include \$100,000 for the commissioning, fabrication, and installation of public art at the Capitol East District parking garage, and \$3,800 in additional design services, and authorizing the City to execute an agreement with Actual Size Artworks LLC for the City's ownership and rights of the commissioned public art. The Parking Utility capital budget includes \$17.89 million authorized for this project (Munis project 1627) funded by Parking Utility Reserves (\$3.592m), TIF GO Borrowing (\$8m), Land Acquisition Fund (\$1.213m), General Fund GO Borrowing (\$5m) and expense reimbursement (\$0.085m). Funding is available in the project for the contract amendment.

Title

Authorizing an amendment to the contract with Graef-USA, Inc to include \$100,000 for the commissioning, fabrication, and installation of public art at the Capitol East District parking garage, and \$3,800 in additional design services, and authorizing the City to execute an agreement with Actual Size Artworks LLC for the City's ownership and rights of the commissioned public art.

Body

WHEREAS, the City has a contract with Graef-USA, Inc for architecture and engineering design services for the Capitol East District parking structure for an amount not to exceed \$822,160 and Common Council authorization is required to amend and increase the contract amount; and

WHEREAS, the Capitol East Garage Project budget includes \$100,000 for the commissioning, fabrication, and installation of public art, and funds are available in the Parking Utility 2017 Adopted Capital Budget project 1627; and

WHEREAS, the City Fire Department has requested changes to the parking structure design that would require a building code variance to meet these requests and will require an additional \$3,800 in A/E design services; and

WHEREAS, Actual Size Artworks LLC has been commissioned by Graef-USA, Inc for the public art, and Graef-USA, Inc will provide engineering and architectural design services related to the fabrication and installation of the public art, which will be integrated with the parking structure's architectural screening; and

WHEREAS, the public art design concept by Actual Size Artworks, "Glimpse", was approved by the Madison Arts Commission on June 12, 2017 and the Urban Design Commission on June 28, 2017; and

WHEREAS, Council authorization is required for the City to execute an agreement for the ownership of the public art to be constructed and installed at the Capitol East District public parking garage.

NOW THEREFORE BE IT RESOLVED, that the Common Council does hereby authorize the Mayor and City Clerk to execute a contract amendment with Graef-USA, Inc to increase the authorized contract amount by \$103,800 to include \$100,000 for the commissioning and installation of public art, and \$3,800 for additional services to obtain approval for a building code variance, for a total contract amount of \$925,960; and

BE IT FURTHER RESOLVED that the Common Council does hereby authorize the Mayor and City Clerk to execute an agreement with Actual Size Artworks LLC ("Artist") for the City's ownership and rights of the public

art ("Work") to be installed at the Capitol East District public parking garage substantially on the following terms:

1. Artist shall retain all rights under the Copyright Act of 1976 except as such rights are limited by this Agreement. Until full payment is made to Artist, Artist hereby grants to the City of Madison ("City") and any affiliated or supporting agency an irrevocable non-exclusive license on the terms stated below.
2. City shall have sole ownership and possession of the Work following payment in full to Artist. However, such rights of ownership shall be limited by the terms herein.
3. City shall have the right to photograph and otherwise reproduce, display, distribute, present, and otherwise use the Work, in whole or in approved images, in any media now known or not yet invented, including but not limited to catalogues and other publications, promotional materials, and exhibition products, provided and that such rights are exercised in a tasteful and professional manner. City will not license third parties to use the Work in a commercial manner during the Artist's lifetime, without the prior written approval of the Artist.
4. During the Artist's lifetime, City shall use a two-dimensional photograph of the Work, photographs for which they have used reasonable efforts to obtain approval (hereinafter "Approved Images") from the Artist. Since the Work is located in a public area, the incidental appearance or use of the Work in photographs, video, films, or events using said space shall not be considered commercial use.
5. City agrees to provide the appropriate credit to the Artist with any exercise of City's rights and shall not use the Artist's name or Work in a way that reflects discredit on the name of the Artist or Work.
6. City shall permit Artist and Artist's representatives' reasonable access to the Work, upon prior written notice, for the purpose of photographing the Work.
7. City agrees to consider written recommendations provided by the Artist concerning the maintenance of the Work and shall use reasonable efforts to maintain the Work.
8. City shall not intentionally alter, modify or change the Work during the Artist's lifetime without the Artist's prior permission, which shall not be unreasonably withheld.
9. Notwithstanding any rights conferred under the Visual Artists Rights Act, The Artist expressly agrees that City shall have the following rights:

- i. The right to destroy the Work but prior to destruction, City shall notify Artist and Artist, at Artist's own sole cost and expense, shall have 45 days to remove the Work. If Artist does not remove the WORK within the 45-day periods, City may destroy the Work. For the purposes of this paragraph, City shall only be obligated to notify the Artist by certified mail at address listed in the agreement with Ken Saiki Design for purposes of notification, or an updated address upon notice to the City.

- ii. The right to relocate the Work for a good and a reasonable cause as determined by the City.

BE IT FINALLY RESOLVED that the Mayor and City Clerk are authorized to execute, deliver, and record such documents and take such other actions as shall be necessary or desirable to accomplish the purposes of this resolution all in a form to be approved by the City Attorney.