

CC 3-5-2024

#4

Second Reading
Ordinance
Amending Chapters
3.22 and 3.23

Supplemental Report



ADMINISTRATIVE SERVICES DEPARTMENT

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CITY COUNCIL STAFF REPORT SUPPLEMENTAL 1

Meeting: March 5, 2024

Agenda Item #4

Subject

Second reading of an ordinance to make amendments to the Cupertino Municipal Code Chapter 3.22 (Purchase of Supplies, Materials, Equipment and Services) and Chapter 3.23 (Public Works Contract and Bidding Procedures) of Title 3 (Revenue and Finance)

Recommended Action

Conduct the second reading of Ordinance No. 24-2255: "An Ordinance of the City Council of the City of Cupertino Amending Chapters 3.22 and 3.23."

Background:

The proposed Ordinance Section 3.22.070 (B). 2. contained an error that is corrected with this supplemental report. It omits the term "section". This will be included administratively before the Ordinance is signed. This Section will now read as follows:

Specialized Services Purchase. Specialized services and advice, in accordance with Government Code **Section** 37103, for financial, economic, accounting, or administrative matters are exempt from a competitive process.

Attachments Provided with Original Staff Report:

A. *Draft Ordinance*

CC 3-5-2024

#5

Richard Yau Second
Amendment to
Master Agreement

Supplemental Report



PUBLIC WORKS DEPARTMENT

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CITY COUNCIL STAFF REPORT

SUPPLEMENTAL 1

Meeting: March 5, 2024

Agenda Item #05

Subject

Second Amendment to the master agreement with Richard Yau to provide program and project management consultant services on various Capital Improvement Program (CIP) projects, for a not-to-exceed amount of \$470,000.

Recommended Action

Authorize the City Manager to execute a Second Amendment to the master agreement with Richard Yau to provide program and project management consultant services on various Capital Improvement Program projects, increasing the contract amount by \$300,000 for a new total not-to-exceed contract amount of \$470,000 and extending the term of the agreement to June 30, 2027.

Staff's responses to questions received from councilmember are shown in italics.

Q1: I have pulled up all accounts payable and agreements with Richard Yau, the CSG project management agreement (and attached the pages showing which projects they are contracted for), and found some, but definitely not all of the Service Orders from 4Leaf.

Some observations:

1. The 4Leaf contracts that would cover construction management do not specify projects. See the following agreements:
 - a. 20-093
 - b. 20-138
 - c. 23-132
2. There are several missing service orders in the records, gaps in numbering with each of these entities

3. There is the appearance of having two contractors performing management duties which is awkward.

(Moore)

Staff response:

Master Agreements differ from stand-alone agreements: Master Agreements establish the terms of the legal relationship for future contracts (service orders) on specific projects. The Master Agreements are not typically limited to one project. Of the three contracts listed above, #20-093 is a stand-alone agreement initiated by CDD for Inspections. The other two (20-138 and 23-132) are PW Master Agreements.

4Leaf, Inc. and CSG provide different scopes and services than Richard Yau. All have the capability to provide Project Management and/or Construction Management services. However, on the projects mentioned above and others where the City has contracted with these entities to work on CIP projects, 4Leaf, Inc. and CSG have provided Construction Management services and Richard Yau has provided Project Management services. These are administrative and operational aspects of project delivery that the project teams review and implement based on their experience in where services are required.

In short, Construction Management (CM) services include management of construction such as organizing and documenting meetings, making sure inspections are scheduled, reviewing submittals, RFIs, etc. Project Management (PM) is less specific to construction: observing construction meetings and site visits, reviewing project documentation, ensuring the project is on schedule and within budget, managing the CM firm, ensuring City ordinances are being met, and in this case, providing assistance to the City's Capital Improvement Program Manager.

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4 Leaf's Service Orders to date, from the 2020 Master Agreement:

S.O. #	Description	Account No.	S.O. Amount Encumbered	Amount Expensed
1	Orange Avenue Sidewalk	270-90-958 900-905 ST 013.03.02	153,114	144,330.40
2	CIP Software Application Testing	100-32-308 700-702	1,408	835.00
3	Wilson Park BB Court	420-99-252 900-905 PVAR 012.03.02	66,175	66,175.00
4	Wilson Park Garden	420-99-083 900-905 PVAR 009.03.02	57,919	57,919.00
5	Regnart Rd Improvement - Ph 1	420-99-068 900-905 ST 033.03.02	157,157	9,233.63
6	Wilson Comm Garden (additional services)	420-99-083 900-905 PVAR 009.03.02	10,000	8,400.37
7	Wilson Park BB Court (additional services)	420-99-252 900-905 PVAR 012.03.02	20,000	19,876.40
8	McClellan Rd Bikeway Ph 3	420-99-036 ST 047	180,449	15062.72 to date

With the exception of SO#2, all the service orders are for construction management services.

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CSG's Service Orders to date, from the 2020 Master Agreement:

S.O. #	Description	Account No.	S.O. Amount Encumbered	Amount Expensed
1	SCB Bike Ph 1 (2/2)	420-99-036-900-905-ST036-03-02	68,860.00	29,285.00
2	BBF Pole Assessment	420-99-047-700-702	8,800.00	4,400
3	VOIDED			
4	Regnart Creek Trail	420-99-036-900-905-ST0369-03-02	135,410.00	43,045
5	Bubb Rd Improvements	420-99-036-900-905-ST036-03-02	46,200.00	33,263.50
6	Memorial Park Pond	420-99-047-700-702	800.00	VOIDED
7	Regnart Creek Trail (additional services)	420-99-036-900-905-ST 039-03-02	187,550.00	185,494
8	Regnart Creek Fencing	420-99-036-900-905-ST 054-03-02	36,800.00	36,781.00
9	Regnart Creek Fencing (additional services)	420-99-036-900-905-ST 054-03-02	73,600.00	73,455.00
10	Regnart Creek Trail (additional services)	420-99-036-900-905-ST 039-03-02	75,000.00	74,986.25
11	BBF Pole Inspection Yr 2	100-82-804-700-702	2,640.00	1,980.00
12	Regnart Creek Trail (additional services)	420-99-036-900-905-ST 039-03-02	25,000.00	11,773.75
13	Memorial Park Ponds Repurposing	280-99-254 900-905	65,520.00	65,502.50
14	Homestead-N. De Anza Traffic Signal Modification	270-99-856 900-905 ST 060-00-03	71,420.00	30,580.00
15	Memorial Park Pond CM (additional services)	280-99-254 900-905	10,000.00	10,000.00
16	Memorial Park Pond CM (additional services)	280-99-254 900-905 MEM 002.03.02	10,900.00	10,900.00
17	Regnart Creek Fencing (additional services)	420-99-036-900-905 ST 054	57,600.00	57,599.00
18	Service Center Gate	100-87-829 900-905	18,000.00	13,474.00
19	Memorial Park Pond CM (additional services)	280-99-254 900-905 MEM 002.03.02	8,500.00	8,482.50
20	RCT Fencing Final	420-99-036-900-905-ST 054-03-02	18,000.00	14,610.00
21	Pumpkin-Fiesta SD	210-99-256 900-905 SC 005.03.02	89,850.00	89,707.50
22	SCB/Calabazas Creek SD Emergency Work	420-99-266 900-905 SD 007	38,800.00	35,970.00 to date(open)

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Richard Yau's Service Orders to date, from the 2021 Master Agreement:

S.O. #	Description	Account No.	S.O. Amount Encumbered	Amount Expensed
1	Tamien Innu (Junipero Serra Trail)	420-99-036-900-905-ST-046-02-03	15,000.00	15,000.00
2	Regnart Rd Improvements – Phase 1	420-99-068-900-905-ST 033-02-03	15,000.00	13,275.00 to date (Open)
3	Regnart Creek Trail	420-99-036-900-905-ST 039-03-03	15,000.00	15,000.00
4	Bubb Road Separated Bikeways	420-99-080-900-905-ST 041-03-03	7,500.00	7,500.00
5	SCB CI 4 Phase 2	420-99-036-900-905-ST 053-02-03	15,000.00	15,000.00
6	Regnart Creek Privacy Fencing	420-99-036-900-905-ST 054-03-03	15,000.00	15,000.00
7	Orange Avenue Sidewalk	270-90-958-900-905-ST-013-02-03	7,500.00	7,500.00
8	McClellan Rd Bikeway Ph 3	420-99-036-900-905-ST047-03-03	11,250.00	11,250.00
9	Regnart Creek Privacy Fencing	420-99-036-900-905 ST054-03-03	10,500.00	10,500.00
10	Orange Avenue Sidewalk (additional services)	270-90-958-900-905-ST-013-02-03	5,250.00	5,250.00
11	Memorial Park Specific Plan	420-99-255-700-702 MEM 004-02-03	3,000.00	3000.00,
12	Pumpkin-Fiesta Storm Drain Phase 1	210-99-256 900-905	2,500.00	2,475.00
13	SCB CI 4 Ph 2 (additional services)	420-99-036-900-905 ST053-02-03	2,500.00	2,475.00
14	Memorial Park Specific Plan (additional services)	420-99-083 900-905 PVAR 09.03.02	1,500.00	1,500.00
15	Wilson Garden	420-99-252 900-905 PVAR 012.03.02	1,500.00	1,500.00
16	Wilson BB Court		1,500.00	1,500.00
17	Capital Project Support	420-99-048	15,000.00	15,000.00
18	Pumpkin-Fiesta Storm Drain Phase 1 (additional services)	210-99-256 900-905	4,500.00	4,500.00
19	SCB-Calabazas SD	420-99-266 900-905 SD007	3,000.00	3,000.00

Attachments Provided with Original Staff Report:

A - Draft Second Amendment

B – Exemption Request

Attachments Provided with Supplemental 1:

CC 3-5-2024

#7

City Commissions and
Committees

Desk Item



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CITY COUNCIL STAFF REPORT DESK ITEM

Meeting: March 5, 2024

Agenda Item #7

Subject

Revisions to City commission and committee administration, procedure, and governance, including an ordinance to regularize commissioner appointments and revise commissioner qualifications; and resolutions adopting revisions to advisory bodies appointment process and Commissioners' Handbook.

Recommended Action

1. Conduct the first reading of Ordinance No. 24-2256 "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO TO REGULARIZE CITY COMMISSION AND COMMITTEE TERMS AND REVISE COMMISSIONER QUALIFICATIONS."
2. Adopt Resolution No. 24-022 to repeal and replace Resolution No. 16-137, regarding City advisory bodies.
3. Adopt Resolution No. 24-023 revising the Commissioners' Handbook.

Background:

Staff's responses to questions received from councilmember are shown in italics.

Q1: 1) Thank you for quoting the relevant sections. According to these documents quoted, the "mandatory" training referenced in the Commissions' Handbook is about the mandatory training based on the Commission's Handbook. It does not refer to additional trainings, such as cybersecurity, right? 2) For the "mandatory training" referenced in Resolution No. 23-021, Council Procedures Manual: "4.3 Performance Expectations. ... This will include ... a mandatory annual training session for all Commission and Committee members," I thought that would include the Brown Act and the conflict of interest and likely also Public Records Act. I am confused with this statement in the answer to Q1, where the Brown Act and the conflict of interest and likely also Public Records Act are "administratively required": "Additionally, new Commission and Committee member orientations are administratively required to make sure the new members are aware of their new obligations and to understand requirements under the Brown Act and conflict of interest rules."

I could understand that the cybersecurity training might be "administratively required", since it is not specified in any city resolution. **(Chao)**

Staff response:

- 1) *Correct, the Commissioners' Handbook does not refer to additional trainings, such as cybersecurity.*
- 2) *Orientation is a onetime administratively required session for new members covering the Brown Act and conflict of interest rules, as well as the Commissioners' Handbook; annual training is an ongoing Council mandated (Council Procedures Manual, Section 4.3) session for all members covering similar topics.*

Q2: Thank you for the answer: "The City Clerk maintains ethics training records for five years. Other training records are maintained by the City Clerk's Office, Human Resources, and/or Innovation & Technology per the City's Records Retention Schedule (City Council Resolution No. 20-002). My question was hoping to get the records referenced above since I would like to assess how's the compliance level and whether there is a need to include enforcement measures as some commissioners have suggested in their emails to the Council. **(Chao)**

Staff response: Staff will be available to answer questions regarding compliance levels but is unable to compile these voluminous records at this time.

Q3: Thank you for your answer: "This is not germane to the agenda item. Disciplinary actions for City employees are covered under the Administrative Rules and Regulation Section 15." To me, it is germane as some Commissioners' suggestions to the Council was enforcement by removing from the Commission Then, I am curious what's the consequence of employees when mandatory trainings are not completed in time as a potential reference point? Please let me know where do I find "the Administrative Rules and Regulation Section 15". **(Chao)**

Staff response:

The City Council adopted [Resolution No. 12-123](#) approving amendments to the Administrative Rules and Regulations of the Personnel Code.

Q4: Thank you for providing the list. It seems the Ethics training appears under both the legally required trainings and the mandatory trainings. Are they the same training or two different versions of ethics training?

- Ethics training is required by state law (AB 1234) for local agency officials.
- Ethics training (Council Procedures Manual, Section 5.6) => refers to the AB 1234 training too, right?
- Harassment prevention training is required by state law (AB 1661) for local agency officials.
- Antiharassment training (Council Procedures Manual, Section 5.6) => refers to the AB 1661 training too, right? **(Chao)**

Staff response:

Yes, the training module is the same.

Q5: The answer includes "Orientation for newly appointed (Administratively required)". Oh, I am guessing this training "Orientation for newly appointed (Administratively required)" is meant to include the "Brown Act and the conflict of interest", mentioned in the answer to Q1. Likely the new Commissioners also need some training on Public Records Act and Rosenberg's Rules. Perhaps, such trainings should be mandatory, rather than only "administratively required"?

Staff response:

Orientation for new members also covers the Commissioners' Handbook which includes resources on the Public Records Act (and Technology Use Policy) and Rosenberg's Rules of Order.

Attachments Provided with Original Staff Report:

Staff Report

A - Draft Ordinance No. 24-2256 (Clean)

B - Draft Ordinance No. 24-2256 (Redline)

C - Draft Resolution No. 24-022 (Clean)

D - Draft Resolution No. 24-022 (Redline)

E - Draft Resolution No. 24-023

F - Draft Commissioners' Handbook (Redline)

Attachments Provided with Supplemental 1:

None

Additional Attachments Provided with Desk Item:

None

CC 3-5-2024

#7

City Commissions and Committees

Supplemental Report



CITY MANAGER'S OFFICE

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CITY COUNCIL STAFF REPORT SUPPLEMENTAL 1

Meeting: March 5, 2024

Agenda Item # 7

Subject

Revisions to City commission and committee administration, procedure, and governance, including an ordinance to regularize commissioner appointments and revise commissioner qualifications; and resolutions adopting revisions to advisory bodies appointment process and Commissioners' Handbook.

Recommended Action

1. Conduct the first reading of Ordinance No. 24-2256 "AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO TO REGULARIZE CITY COMMISSION AND COMMITTEE TERMS AND REVISE COMMISSIONER QUALIFICATIONS."
2. Adopt Resolution No. 24-022 to repeal and replace Resolution No. 16-137, regarding City advisory bodies.
3. Adopt Resolution No. 24-023 revising the Commissioners' Handbook.

Background:

Staff's responses to questions received from councilmember are shown in italics.

Q1: Which document decides what trainings are mandatory for commissioners? Is it a resolution adopted by the Council? Or an administrative policy adopted by the City Manager? (**Councilmember Chao**)

Staff response:

The requirement is governed by Resolution No. 23-021, A Resolution of the Cupertino City Council Adopting Cupertino City Council Procedures Manual, see the following Sections:

4.3 Performance Expectations. *The Council shall make certain that all commissions and committees are properly instructed on their responsibilities and performance expectations. This will include the issuance of a Council approved Commission and Committee Handbook and a mandatory annual training session for all Commission and Committee members.*

5.6 Council Training. *Any member of the City Council and City commissions or advisory*

committees formed by the City Council shall receive ethics and antiharassment training required by state law. New members must receive the training within their first year of service and shall comply with ongoing training requirements imposed by state law. Members shall attend training sessions that are offered locally in the immediate vicinity of Santa Clara County, by completing online a state-approved public service ethics education program, or through a state- approved training which may be provided at a conference attended by the member. The City Clerk shall keep ethics training records for five years.

The requirement is also governed by Resolution No. 23-122, A Resolution of the City Council Adopting the City of Cupertino Code of Ethics and Conduct for Elected and Appointed Officials, see the following Section:

24. Ethics Training for City Officials.

City Officials must comply with state or City mandated requirements for ethics training, as set forth in Section 5.6 of the City Council Procedures Manual. Ethics training must be completed prior to representing the City on intergovernmental assignments or Council subcommittees. Commissioners who fail to complete required ethics training shall be subject to removal from office by the City Council.

Additionally, new Commission and Committee member orientations are administratively required to make sure the new members are aware of their new obligations and to understand requirements under the Brown Act and conflict of interest rules.

Q2: Any record on the status of legally required and mandatory trainings of commissioners? Maybe for the last 4 years? (**Councilmember Chao**)

Staff response:

The City Clerk maintains ethics training records for five years. Other training records are maintained by the City Clerk's Office, Human Resources, and/or Innovation & Technology per the City's Records Retention Schedule (City Council Resolution No. 20-002).

Q3: What is the city policy currently, if there is any, when an employee does not complete a legally required trainings like harassment prevention? (**Councilmember Chao**)

Staff response:

This is not germane to the agenda item. Disciplinary actions for City employees are covered under the Administrative Rules and Regulation Section 15.

Q4: What is the city policy currently, if there is any, when an employee does not complete one of the mandatory trainings like cyber security? (**Councilmember Chao**)

Staff response:

This is not germane to the agenda item. Disciplinary actions for City employees are covered under the Administrative Rules and Regulation Section 15.

Q5: Is there a list of legally required trainings? (**Councilmember Chao**)

Staff response:

- *Ethics training is required by state law (AB 1234) for local agency officials.*
- *Harassment prevention training is required by state law (AB 1661) for local agency officials.*

Q6: Is there a list of mandatory trainings? (**Councilmember Chao**)

Staff response:

The following apply to commission and committee members:

- *Annual training (Council Procedures Manual, Section 4.3)*
- *Ethics training (Council Procedures Manual, Section 5.6)*
- *Orientation for newly appointed (Administratively required)*
- *Cybersecurity training (Administratively required)*
- *Antiharassment training (Council Procedures Manual, Section 5.6)*

Attachments Provided with Original Staff Report:

Staff Report

A - Draft Ordinance No. 24-2256 (Clean)

B - Draft Ordinance No. 24-2256 (Redline)

C - Draft Resolution No. 24-022 (Clean)

D - Draft Resolution No. 24-022 (Redline)

E - Draft Resolution No. 24-023

F - Draft Commissioners' Handbook (Redline)

Attachments Provided with Supplemental 1:

None