

CC 07-06-2023

#11

Award Construction  
Contract Regnart Road  
Improvements

Desk Item



## PUBLIC WORKS DEPARTMENT

CITY HALL  
10300 TORRE AVENUE • CUPERTINO, CA 95014-3255  
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### CITY COUNCIL STAFF REPORT DESK ITEM

Meeting: July 6, 2023

#### Agenda Item # 11

##### Subject

Award a construction contract for the Regnart Road Improvements Phase 1 Project to Brannon Corporation for road reconstruction to mitigate roadway embankment failure.

##### Recommended Action

1. Award a construction contract for the Regnart Road Improvements Phase 1 Project (Project No. 2019-08) in the amount of \$1,290,120 to Brannon Corporation;
2. Authorize the City Manager to execute the contract;
3. Authorize the Director of Public Works to execute any necessary construction change orders up to a construction contingency amount of \$129,012 (10%) for a total authorized contract amount of \$1,419,132; and
4. Adopt Resolution No. 23-082 approving budget modification #2324-285, increasing appropriations in the Capital Improvement Program Capital Projects Fund (420-99-068) and ~~Capital Reserve (429-90-001)~~ by \$876,765.99, and transferring said funds from the Capital Reserve (429-90-001) to Capital Improvement Program Capital Projects Fund (420-99-068).

##### Background:

This Desk Item includes revised versions of the Staff Report and Attachment A - Draft Resolution, Exhibit A. The changes include:

- The Draft Resolution is revised to correct the amount and to match the revised action item #4.
- Action Item #4 is corrected to reflect the correct budget units.
- The Financial Summary table in the Staff Report is updated to reflect the correct budget unit.

Attachments Provided with Original Staff Report:

*A – Draft Resolution*

*B – Draft Contract*  
*C – Project Manual*  
*D – Project Drawings*  
*E – Project Addendum 1*  
*F – Project Addendum 2*

Revised Attachments Provided with Desk Item:

*Staff Report\_amended*  
*A – Draft Resolution\_ amended*



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### CITY COUNCIL STAFF REPORT

Meeting: July 6, 2023

*(Report amended on July 6, 2023)*

#### Subject

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#### Recommended Action

1. Award a construction contract for the Regnart Road Improvements Phase 1 Project (Project No. 2019-08) in the amount of \$1,290,120 to Brannon Corporation;
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#### Reasons for Recommendation

Regnart Road Improvements Phase 1 Project (Project) has an adopted budget of \$1,405,235 for the investigation and repair of various stability concerns along Regnart Road.

Regnart Road has experienced numerous failures in the past 40 years due to slope stability issues. The most recent failures occurred in 2017 due to extreme rain events that Santa Clara County experienced in January of that year. The City of Cupertino initiated two projects in response to these failures. The first, the 2017 Outfall Repair and Slope Stabilization project, was conducted under an emergency response, and the City was able to receive Federal Emergency Management Act (FEMA) and California Office of Emergency Services (Cal OES) funding for approximately 88% of the project total. The second was the 2018 Regnart Road Retaining Wall project that replaced approximately 130 linear feet of retaining wall that had failed.

As a result of these failures, the City initiated a geotechnical reconnaissance investigation in 2018. The investigation identified numerous deficiencies along Regnart Road including many areas where existing drainage patterns were causing excessive erosion, as well as numerous trees that were unstable and which could result in extensive road failures. The investigation also identified six locations where repairs are necessary to address existing stability concerns. The City, in response to this investigation, removed the unstable trees identified in the report and installed asphalt berms along portions of Regnart Road to direct drainage to established stormwater inlets. These efforts have helped to mitigate or lessen some of the stability concerns. The investigation, tree removals, and asphalt berm installation efforts cost approximately \$107,320 of the authorized budget.

The Project will repair and stabilize the two highest-priority sites identified in the geotechnical reconnaissance report consisting of approximately 140 linear feet of Regnart Road. This work will address an undermined embankment by constructing a retaining wall, asphalt pavement, and drainage facilities. The proposed improvements will prevent costly road and slope failures, lengthy road closures, and the potential for extreme hardship to the residents beyond this portion of Regnart Road.

Environmental permitting for the Project has taken longer than was originally anticipated, and the cost for this clearance and permitting has also been higher than expected. The delay has also resulted in higher construction costs than were originally estimated since the project budget was adopted.

Due to the condition of the existing road, the results of the bid proposals, and effort and expenditures to date to attain the necessary environmental clearances and permits, staff recommends that the budget adjustment be made, and that the construction contract be approved so that the project can be completed.

Discussion

The City advertised the Regnart Road Improvements Phase 1 Project for bid on June 15. Two responsive bids were received for the Project as detailed in the table below. The low bid was submitted by Brannon Corporation, which is approximately 15.7 % above the Engineer’s Estimate.

<b>Bidder</b>	<b>Total Bid Amount</b>
Brannon Corporation	\$1,290,120.00
Granite Construction Company	\$1,779,029.90
<i>Engineer’s Estimate</i>	<i>\$1,115,080</i>

The Department of Public Works reviewed the Brannon Corporation bid documents for completeness and confirmed the contractor’s experience and qualifications and

determined the bid to be the lowest responsive and responsible bid per the Instruction to Bidders and Cupertino Municipal Code. Construction is expected to begin in August.

Therefore, staff recommends awarding a construction contract to Brannon Corporation for the contract amount of \$1,290,120.00 and a 10% construction contingency in the amount of \$129,012.00 for a total contract amount not-to-exceed \$1,419,132.00. Construction contingency allows for unforeseen conditions and are a typical contracting best practice. It is recommended that the Council authorize the award of the construction contract to the low bidder, Brannon Construction. A Draft Construction Contract is included as Attachment B, and the other bid documents are included as Attachments C, D, E, and F.

#### Sustainability Impact

This project enhances public health, safety, and resiliency while being environmentally responsible, consistent with the Climate Action Plan.

#### Fiscal Impact

The Capital Improvement Programs (CIP) project fund for the Regnart Road Improvements Phase 1 Project (budget unit 420-99-068) contains \$891,095.69. This budget is inadequate to implement the project due to the overall increase in costs of materials and services since project initiation, as well as the expenditures to date for other road improvements and for environmental permits. Due to these factors, there is an additional fund appropriation request for \$876,765.99. The Capital Reserve Fund will supply the additional appropriations through a transfer from (budget unit 429-90-001) to (budget unit 420-99-068). If approved, the total project budget will be \$2,282,000.99.

Current Fiscal Summary:

<b>Current Funding Status</b>	<b>Amount</b>
Budgeted Funds for Regnart Road Improvements ( <del>Capital Reserve</del> <u>CIP Project Fund</u> )	\$1,405,235.00
Expenses/Encumbered to Date (Investigations, Remediation Work, Geotechnical and Construction design, Environmental Clearance)	(\$514,139.31)
<b>Subtotal</b>	<b>\$891,095.69</b>

<b>Proposed Funding Impact</b>	<b>Amount</b>
Projected Construction Management Costs	(\$157,157.00)
Projected Misc. Costs (Special, Geotechnical, and Environmental Inspections)	(\$191,572.68)
Projected Construction Total, including Contingency ( <i>this agreement</i> )	(\$1,419,132.00)
<b>Subtotal</b>	<b>(\$1,767,861.68)</b>
<b>Deficiency Total</b>	<b>(\$876,765.99)</b>

**Requested Budget Modification Amount: \$876,765.99**

California Environmental Quality Act (CEQA)

The project is categorically exempt under CEQA Guideline, sections 15301 (b) (existing facilities), 15302 (c) (replacement or reconstruction of existing structures), and 15304 (d) (minor alterations to land).

Prepared by: Evelyn Moran, Project Manager

Reviewed by: Susan Michael, Capital Improvement Programs Manager

Reviewed by: Chad Mosley, Interim Director of Public Works

Reviewed by: Matt Morley, Assistant City Manager

Approved for Submission by: Pamela Wu, City Manager

Attachments:

A – Draft Resolution amended

B – Draft Contract

C – Project Manual

D – Project Drawings

E – Project Addendum 1

F – Project Addendum 2

**RESOLUTION NO. 23-082**

**A RESOLUTION OF THE CUPERTINO CITY COUNCIL  
AMENDING THE CAPITAL IMPROVEMENT BUDGET FOR FISCAL YEAR  
2023-2024 BY APPROPRIATING MONIES FOR THE REGNART ROAD  
IMPROVEMENTS PHASE 1 PROJECT**

WHEREAS, the orderly administration of municipal government depends on a sound fiscal policy of maintaining a proper ratio of expenditures within anticipated revenues and available monies; and

WHEREAS, accomplishing City Council directives, projects, and programs and performing staff duties and responsibilities likewise depends on the monies available for that purpose; and

WHEREAS, the City Manager has determined that the balances from the funds specified in this resolution are adequate to cover the proposed amended appropriations, and therefore recommends the fund reallocations described herein.

NOW, THEREFORE, BE IT RESOLVED that the City Council does hereby approve the recommended fund allocations and ratifies the attached amended appropriations as set forth in Exhibit A.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 6<sup>th</sup> day of July 2023, by the following vote:

Members of the City Council

AYES:

NOES:

ABSENT:

ABSTAIN:



<p>SIGNED:</p> <p>_____</p> <p>Hung Wei, Mayor City of Cupertino</p>	<p>_____</p> <p>Date</p>
<p>ATTEST:</p> <p>_____</p> <p>Kirsten Squarcia, City Clerk</p>	<p>_____</p> <p>Date</p>

Exhibit A

Amendment	Revenue	Appropriation
Capital <u>Reserve</u> Funds <u>420-90-001</u> (Revenue Amendment)	<u>\$876,765.99</u>	\$0
Capital Budget Funds 420-99-068 (Appropriation Amendment)	\$0	<u>\$876,765.99</u>
TOTAL	<u>\$876,765.99</u>	<u>\$876,765.99</u>

CC 07-06-2023

#13

Regulation of Lobbying  
Activities Ordinance

Desk Item



## CITY MANAGER'S OFFICE

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### CITY COUNCIL STAFF REPORT

#### DESK ITEM

Meeting: July 6, 2023

#### Agenda Item #13

#### Subject

Introduction of Ordinance No. 23-2249, amending Municipal Code Chapter 2.100 (Regulation of Lobbying Activities).

#### Recommended Action

Conduct a first reading of Ordinance No. 23-2249: "**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CUPERTINO AMENDING CITY CODE CHAPTER 2.100**" (Regulation of Lobbying Activities).

#### Background:

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

Q1: What much legal fees the City has spent in response to the LWV-Cupertino-Sunnyvale lawsuit? How many city staff hours have spent in response to the lawsuit? **(Chao)**

*Staff response: Through June 15, 2023, the City has incurred \$47,217 in legal fees in defending against the lawsuit filed by the League of Women Voters of Cupertino-Sunnyvale ("LWVCS"). The City does not have an estimate of the amount of staff time spent on the response to the lawsuit.*

Q2: From the staff report, it is unclear that the City in fact has been successful in defending the lobbying ordinance adopted in February 2020. Please clarify. The staff reports reads: "The City moved to dismiss the complaint on the grounds that it failed to state a claim for relief under the federal or state constitutions, and the court granted the City's motion on May 1, 2023. LWVCS was granted leave to file an amended complaint."

My understanding is that the court found the LWVCS complaint has no legal basis and dismissed the complaint. But it is not clear from the staff report. Please clarify. **(Chao)**

*Staff response: The staff report notes that LWVCS's complaint was dismissed with leave to amend because it failed to state a claim for relief under the U.S. or California constitutions.*

Q3: **(Chao)** *[omitted – the question discloses attorney-client communications]*

Q4: Why is the City negotiating with LWVCS if the court has dismissed their complaint? (This is the question on the mind of a few members of the public. So, I feel I cannot sufficiently answer their questions with appropriate languages) **(Chao)**

*Staff response: The City's litigation strategy is confidential and privileged and cannot be disclosed in open session.*

Q5: The staff report states: "The City Attorney's Office has also consulted with LWVCS, which has provided input on clarifying language and various policy issues." What input has been provided beyond the lawsuit? **(Chao)**

*Staff response: The City Council has been provided with a confidential memorandum that discusses the proposed revisions to the ordinance. The content of discussions between the City Attorney's Office and LWVCS are confidential settlement communications, and any attempt to characterize the discussions as requested would require disclosure of confidential attorney work product. The proposed ordinance provided with the agenda materials reflects the recommendations of the City Attorney's Office, which are based on its own analysis of the ordinance.*

Q6: Prior to the adoption of the Lobbying Ordinance in February 2020 or shortly after, has the LWV-Cupertino-Sunnyvale sent any communication to the City to express their concerns? If so, please provide any relevant communication to and from LWV. **(Chao)**

*Staff response: Staff is not aware of any such communication. It is unclear why such correspondence would be germane to the ordinance amendments presently before the City Council.*

Q7: At any time before the lawsuit was filed on July 19, 2022, has there been any communication from the LWV-Cupertino-Sunnyvale to the City to express any concerns on the Lobbying Ordinance? If so, please provide any relevant communication to and from LWV. **(Chao)**

*Staff response: Staff is not aware of any such communication. It is unclear why such correspondence would be germane to the ordinance amendments presently before the City Council.*

Q8: Since the City's Lobbying Ordinance is based on the City of Santa Clara's and some from San Jose's. Has there been any lawsuit challenging other lobbying ordinance? **(Chao)**

*Staff response: The City of San José's lobbying ordinance was upheld against a similar constitutional challenge. (See Smith v. City of José, 2013 WL 6665712 (Cal. Ct. App. 6th Dist. Dec. 17, 2013).) The City Attorney's Office is not aware of any litigation involving the City of Santa Clara's lobbying ordinance.*

Q9: Please provide all the court documents to/from the City and the LWV if they are public records. **(Chao)**

*Staff response: It would not be practicable to include all of the court documents from LWVCS's lawsuit in the agenda materials, and the parties' legal arguments are not a proper subject for discussion in open session.*

Q10: To this date, I am still confused as to which part of the Lobbying Ordinance the LWV-Cupertino-Sunnyvale takes issue with, which must be addressed in a lawsuit. Please summarize the issues raised by the July 19, 2022 if it is appropriate to do so. Or please point me to any previous summary or news release from the city with such information. **(Chao)**

*Staff response: The City Council has been provided with a confidential memorandum that includes a summary of LWVCS's arguments.*

Q11: Which part of the recommended revisions would address the concerns raised by the LWV-Cupertino-Sunnyvale? What other issues they have requested , but are not included in the recommendation What other issues they have raised that have no legal basis? **(Chao)**

*Staff response: The City Council has been provided with a confidential memorandum that discusses the proposed revisions to the ordinance. Addressing these questions in open session would require the disclosure of confidential attorney work product.*

Q12: What other cities and counties in Bay Area have lobbying ordinances? If the information is readily available. **(Chao)**

*Staff response: Among jurisdictions in Santa Clara County, staff is aware of lobbyist registration requirements in the cities of Santa Clara, San José, Milpitas, and Gilroy and in Santa Clara County.*

Q13: In order to determine which option to choose below, I need more information on the current registration statistics. How many registrations are there and their compensation levels. **(Chao)**

Section 2.100.030: Revises the definitions of Lobbying and Lobbyist, including the deletion of the registration requirements for "Expenditure Lobbyists."

Option A: Retain the existing \$1,000 threshold compensation for registration as a Contract Lobbyist.

Option B: Increase the threshold compensation to \$5,000 threshold for registration.

*Staff response: For the most recent reporting period, two contract lobbyists submitted quarterly reports. Neither reported receiving any compensation during the quarter.*

Q14: Would there be any impact on staff time between quarterly versus semi-annual reporting? I heard that the City of Santa Clara is the only one with semi-annual reporting, is that true? What's the reporting period for other cities, like San Jose and Santa Clara County? **(Chao)**

Section 2.100.100: Replaces quarterly reporting requirements with semi-annual reporting, consistent with the City of Santa Clara ordinance, in order to reduce the burden of administering the ordinance

*Staff response: Jurisdictions in Santa Clara County have reporting periods that range from weekly (San José) to semi-annually (City of Santa Clara). Staff recommends that Council adopt a semi-annual reporting requirement due to the small number of lobbyists registered under the ordinance. The reduced reporting frequency would reduce the administrative burden on the Clerk's Office.*

Attachments Provided with Original Staff Report:

- A. Draft Ordinance Amending Chapter 2.100 (clean)
- B. Draft Ordinance Amending Chapter 2.100 (blackline)