Report to the Auburn City Council

Action Item
Agenda Item No.
City Manager's Approval

To:	Honorable Mayor and City Council Members
From:	Robert Richardson, City Manager
Date:	February 23, 2009
Subject:	Public Works Department Consulting Services Agreement

The Issue

Shall the City Council execute an agreement with Jack Warren, P.E. to provide consulting services related to the delivery of the City's Capital Improvement Plan?

Conclusions and Recommendations

By RESOLUTION, authorize the City Manager or his designee to execute a Consulting Services Agreement with Jack Warren to provide consulting services related to the delivery of the City's Capital Improvement Plan.

Background

Since December of 2005, Jack Warren has served as both an Interim Director of Public Works and a Public Works Consultant for the City of Auburn. During this time, Mr. Warren has been diligently focused on the delivery of projects outlined in the City's Capital Improvement Plan while overseeing management responsibility for the City's Public Works Department.

Under the terms of this agreement, Mr. Warren will only serve as a consultant to the City. Management oversight of the City's Public Works Department will be assumed by the City Manager's Office and Public Works Management staff.

Alternatives Available to Council; Implications of Alternatives

1. Adopt a resolution to execute an agreement with Jack Warren to provide consulting services related to the delivery of the City's Capital Improvement Plan
2. Do not adopt a resolution to execute an agreement with Jack Warren, resulting in a possible delay in the delivery of Citywide Capital Projects.

Fiscal Impact

The hourly rate for Mr. Warren's services will be $100, with no benefits. The expenditure appropriation for Public Works consulting services has been considered as part of the Public Works Department's base budget.

Attachment – Consulting Services Agreement with Jack Warren, P.E.

PROFESSIONAL SERVICES AGREEMENT
(City of Auburn / Jack Warren, P.E.)

1. IDENTIFICATION

THIS PROFESSIONAL SERVICES AGREEMENT ("Agreement") is entered into by and between the City of Auburn, a California municipal corporation ("City") and Jack Warren, P.E., an Independent Contractor ("Consultant").

2. RECITALS

2.1 City has determined that it requires an Engineer, acting in the capacity of an independent contractor, to serve as a consultant to the City assisting with development of the City's Capital Improvement Plan; evaluation and forecasting of the City's capital improvement needs; design and development of capital improvement projects; and assist with the construction inspection of capital improvement projects (as specifically described in Exhibit A – Scope of Services).

2.2 Consultant represents that he is fully qualified to perform such professional services by virtue of his experience, training, and education. Consultant further represents that he is willing to accept responsibility for performing such services in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the mutual covenants and conditions herein contained, City and Consultant agree as follows:

3. DEFINITIONS

3.1 "Scope of Services": Such professional services as are set forth in Exhibit A and incorporated herein by this reference.

3.2 "Approved Fee Schedule": Such compensation rates as are set forth in Exhibit B and incorporated herein by this reference.

3.3 "Commencement Date": February 27, 2009.

3.4 "Expiration Date": December 31, 2009.

4. TERM

The term of this Agreement shall commence at 12:00 a.m. on the Commencement Date and shall expire at 11:59 p.m. on the Expiration Date unless extended by written agreement of the parties or terminated earlier in accordance with Section 17 ("Termination") below.

5. CONSULTANT'S SERVICES

5.1 Consultant shall perform the services identified in the Scope of Services. City shall have the right to request, in writing, changes in the Scope of Services. Any such changes mutually agreed upon by the parties, and any corresponding increase or decrease in compensation, shall be incorporated by written amendment to this Agreement. In no event shall the total compensation and costs payable to Consultant under this Agreement exceed the sum of Sixty Thousand dollars ($60,000.00) unless specifically approved in advance and in writing by City.

5.2 Consultant shall obtain a City business license prior to commencing performance under this Agreement.

5.3 Consultant shall perform all work to the highest professional standards of Consultant's profession and in a manner reasonably satisfactory to City. Consultant shall comply with all applicable federal, state and local laws and regulations, including the conflict of interest provisions of Government Code Section 1090 and the Political Reform Act (Government Code Section 81000 *et seq.*).

5.4 During the term of this Agreement, Consultant shall not perform any work for another person or entity for whom Consultant was not working at the Commencement Date if both (i) such work would require Consultant to abstain from a decision under this Agreement pursuant to a conflict of interest statute and (ii) City has not consented in writing to Consultant's performance of such work.

6. COMPENSATION

6.1 City agrees to compensate Consultant for the services provided under this Agreement, and Consultant agrees to accept in full satisfaction for such services, payment in accordance with the Approved Fee Schedule.

6.2 Consultant shall submit to City an invoice, on a monthly basis or less frequently, for the services performed pursuant to this Agreement. Each invoice shall itemize the services rendered during the billing period and the amount due. City shall not withhold applicable taxes or other authorized deductions from payments made to Consultant.

6.3 Payments for any services requested by City and not included in the Scope of Services shall be made to Consultant by City on a time-and-materials basis using Consultant's standard fee schedule.

7. OWNERSHIP OF WRITTEN PRODUCTS

All reports, documents or other written material ("written products" herein) developed by Consultant in the performance of this Agreement shall be and remain the property of City without restriction or limitation upon its use or dissemination by City. Consultant may take and retain copies of such written products as desired, but no such written products shall be the subject of a copyright application by Consultant.

8. RELATIONSHIP OF PARTIES

Consultant is, and shall at all times remain as to City, a wholly independent contractor. Consultant shall have no power to incur any debt, obligation, or liability on behalf of City or otherwise to act on behalf of City as an agent. Neither City nor any of its agents shall have control over the conduct of Consultant or any of Consultant's employees, except as set forth in this Agreement. Consultant shall not represent that he is, or that any of his agents or employees are, in any manner employees of City. While Consultant may give general policy direction to City staff in fulfilling the Scope of Services, he will not have supervisory responsibility for any City employee and, should control of City employees be needed for Consultant's services hereunder, Consultant agrees to look to the City Manager of City, or his designee, to exercise that control.

9. CONFIDENTIALITY

All data, documents, discussion, or other information developed or received by Consultant or provided for performance of this Agreement designated by the City as confidential shall not be disclosed by Consultant without prior written consent by City. City shall grant such consent if disclosure is legally required. Upon request, all City data shall be returned to City upon the termination or expiration of this Agreement.

10. INDEMNIFICATION AND INSURANCE

City agrees to defend, indemnify and hold harmless Consultant from any alleged or actual liability arising from his service under this Agreement to the same extent as it is obligated to defend, indemnify and hold harmless its employees pursuant to Government Code Section 825 and related law. City shall maintain its participation in the Northern California Cities Self Insurance Fund Joint Power Authority and extend that pooled self-insurance to cover the liabilities it assumes for Consultant under this paragraph.

11. INSURANCE

11.1 During the term of this Agreement, Consultant shall carry, maintain, and keep in full force and effect insurance against claims for death or injuries to persons or damages to property that may arise from or in connection with Consultant's

performance of this Agreement. Such insurance shall be of the types and in the amounts as set forth below:

11.1.1 Automobile Liability Insurance for vehicles used in connection with the performance of this Agreement with minimum limits of One Hundred Thousand Dollars ($100,000) per claimant and Three Hundred Thousand dollars ($300,000) per incident.

11.1.2 Worker's Compensation insurance if and as required by the laws of the State of California.

11.2 Consultant shall require each of its subcontractors to maintain insurance coverage that meets all of the requirements of this Agreement.

12. MUTUAL COOPERATION

12.1 City shall provide Consultant with all pertinent data, documents and other requested information as is reasonably available for the proper performance of Consultant's services under this Agreement.

12.2 In the event any claim or action is brought against City relating to Consultant's performance in connection with this Agreement, Consultant shall render any reasonable assistance that City may require in the defense of that claim or action.

13. RECORDS AND INSPECTIONS

Consultant shall maintain full and accurate records with respect to all matters covered under this Agreement for a period of three years after the expiration or termination of this Agreement. City shall have the right to access and examine such records, without charge, during normal business hours. City shall further have the right to audit such records, to make transcripts therefrom and to inspect all program data, documents, proceedings, and activities.

14. PERMITS AND APPROVALS

Consultant shall obtain, at its sole cost and expense, professional licenses necessary for Consultant's performance of this Agreement.

15. NOTICES

Any notices, bills, invoices, or reports required by this Agreement shall be deemed received on: (i) the day of delivery if delivered by hand, facsimile or overnight courier service during Consultant's and City's regular business hours; or (ii) on the third business day following deposit in the United States mail if delivered by mail, postage prepaid, to

the addresses listed below (or to such other addresses as the parties may, from time to time, designate in writing).

If to City

City of Auburn
c/o Robert Richardson, City Manager
1225 Lincoln Way, Room 9
Auburn CA 95603
Telephone: (530) 823-4211 x192
Facsimile: (530) 823-4216

If to Consultant:

Jack Warren, P.E.
Notification to:
The most recent address for Consultant reflected in the records of the City at the time notice is given.

With courtesy copy to:

Michael G. Colantuono, Esq.
Auburn City Attorney
Colantuono & Levin, PC
11406 Pleasant Valley Road
Penn Valley, CA 95946-9024

Telephone: (530) 432-7359
Facsimile: (530) 432-7356

16. SURVIVING COVENANTS

The parties agree that the covenants contained in Section 9, Section 10, Paragraph 12.2 and Section 13 of this Agreement shall survive the expiration or termination of this Agreement.

17. TERMINATION

17.1. City shall have the right to terminate this Agreement for any reason on five calendar days' written notice to Consultant. Consultant shall have the right to terminate this Agreement for any reason on thirty calendar days' written notice to City. Consultant agrees to cease all work under this Agreement on or before the effective date of any notice of termination. All City data, documents, objects, materials or other tangible things shall be returned to City upon the termination or expiration of this Agreement.

17.2 If City terminates this Agreement due to no fault or failure of performance by Consultant, then Consultant shall be paid based on the work satisfactorily performed at the time of termination. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the services required by this Agreement.

18. GENERAL PROVISIONS

18.1 Consultant shall not delegate, transfer, subcontract or assign its duties or rights hereunder, either in whole or in part, without City's prior written consent, and any attempt to do so shall be void and of no effect. City shall not be obligated or liable under this Agreement to any party other than Consultant.

18.2 In the performance of this Agreement, Consultant shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, sexual orientation, national origin, ancestry, age, physical or mental disability, medical condition or any other unlawful basis.

18.3 The captions appearing at the commencement of the sections hereof, and in any paragraph thereof, are descriptive only and for convenience in reference to this Agreement. Should there be any conflict between such heading, and the section or paragraph thereof at the head of which it appears, the section or paragraph thereof, as the case may be, and not such heading, shall control and govern in the construction of this Agreement. Masculine or feminine pronouns shall be substituted for the neuter form and vice versa, and the plural shall be substituted for the singular form and vice versa, in any place or places herein in which the context requires such substitution(s).

18.4 The waiver by City or Consultant of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or of any subsequent breach of the same or any other term, covenant or condition herein contained. No term, covenant or condition of this Agreement shall be deemed to have been waived by City or Consultant unless in writing.

18.5 Consultant shall not be liable for any failure to perform if Consultant presents acceptable evidence, in City's sole judgment, that such failure was due to causes beyond the control and without the fault or negligence of Consultant.

18.6 Each right, power and remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise shall be cumulative and shall be in addition to every other right, power, or remedy provided for herein or now or hereafter existing at law, in equity, by statute, or otherwise. The exercise, the commencement of the exercise, or the forbearance of the exercise by any party of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by such party of any of all of such other rights, powers or remedies. In the event legal action shall be necessary to enforce any term, covenant or condition herein contained, the party prevailing in such action, whether reduced to judgment or not, shall be entitled to its reasonable court costs, including accountants' fees, if any, and attorneys' fees expended in such action.

The venue for any litigation shall be Placer County, California and Consultant hereby consents to jurisdiction in Placer County for purposes of resolving any dispute or enforcing any obligation arising under this Agreement.

18.7 If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then such term or provision shall be amended to, and solely to, the extent necessary to cure such invalidity or unenforceability, and in its amended form shall be enforceable. In such event, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

18.8 This Agreement shall be governed and construed in accordance with the laws of the State of California.

18.9 All documents referenced as exhibits in this Agreement are hereby incorporated into this Agreement. In the event of any material discrepancy between the express provisions of this Agreement and the provisions of any document incorporated herein by reference, the provisions of this Agreement shall prevail. This instrument contains the entire Agreement between City and Consultant with respect to the transactions contemplated herein. No other prior oral or written agreements are binding upon the parties. Amendments hereto or deviations herefrom shall be effective and binding only if made in writing and executed by City and Consultant.

TO EFFECTUATE THIS AGREEMENT, the parties have caused their duly authorized representatives to execute this Agreement on the dates set forth below.

"City"	**"Consultant"**
City of Auburn	**Jack Warren, P.E.**
By_____	By: Jack Warren
Robert Richardson, City Manager	Jack Warren, P.E.
	Date: 2-17-09

Attest:

By_____
Anne Cooey, Deputy City Clerk

Date:_____

Approved as to Form:

By_____
Michael Colantuono, City Attorney

Date:_____

EXHIBIT A
SCOPE OF WORK

The scope of work under this agreement consists of the following:

Jack Warren, a registered engineer and acting in the capacity of an independent contractor, agrees to serve as a consultant to the City assisting with:

- Development of the City's Capital Improvement Plan;
- Evaluation and forecasting of the City's capital improvement needs;
- Design, development and management of capital improvement projects;
- Providing expertise in the area of construction inspection as it relates to the undertaking of citywide capital improvement projects; and
- Capital project coordination with contractors, developers, other government officials, and other professionals with regard to the approval, development, preparation, monitoring and coordinating of projects of a public works/engineering nature and in regard to the operations and maintenance of public works facilities.

Consultant will be required to present periodic progress and status reports to the City Manager and/or City Council during the term of this agreement.

EXHIBIT B
APPROVED FEE SCHEDULE

The fee schedule in effect during the term of this agreement is as follows:

- Total aggregate compensation paid during the term of this agreement shall not exceed Sixty Thousand Dollars ($60,000.00).
- Consultant hourly rate for services rendered shall be One Hundred Dollars ($100.00).
- Consultant shall, at least monthly, submit an itemized invoice to the City for hours worked on applicable items listed in Exhibit A – Scope of Work.
- City agrees to provide suitable vehicle for use by Consultant in the performance of this agreement, including fuel and maintenance.
- Consultant shall be paid by the City as an independent contractor and assume all responsibility for payment of any applicable federal, state and local income and social security taxes.
- During the term of this agreement, the City shall not be liable for any other compensation or benefits unless noted in Exhibit A above including, but not limited to, medical or pension benefits.