STAFF REPORT

Shasta County
Regional Transportation
Planning Agency

MEETING DATE:	**3/15/12**
SUBJECT:	**Personal Services Agreement (PSA) with Aiello, Goodrich & Teuscher for Professional Accounting Services**
AGENDA ITEM:	**4-4**
STAFF CONTACT:	**Dan Little**

STAFF RECOMMENDATION:

It is recommended that the board authorize the executive director to execute a PSA with Aiello, Goodrich & Teuscher (AGT) for professional accounting services, not to exceed $48,125, for a term ending November 1, 2012.

DISCUSSION:

In February, the RTPA issued a request for proposals for professional accounting services. AGT was the only responsive firm and is well-qualified to perform the work. Development of the following key deliverables will take place during the transition phase to an independent RTPA:

- Administrative operating procedures and internal controls
- Procurement of complete payroll service
- Procurement of banking services
- Assist in transfer of funds from the county treasury
- Assist in procurement and setup of governmental accounting software

The term of the agreement extends past the July 1, 2012, transition target date to allow for resolution of any implementation issues. The board will approve the administrative operating procedures and internal controls no later than the June 26, 2012, RTPA meeting.

ALTERNATIVES:

The board could decline the agreement or modify the scope of work.

FINANCING:

This work will be funded with accumulated interest earning reserves or Programming, Planning & Monitoring reserves, subject to an administrative amendment to the 2011/12 Overall Work Program.

Daniel S. Little, AICP, Executive Director

Attachment: Personal Services Agreement

NO WITHHOLDING

PERSONAL SERVICES AGREEMENT BETWEEN THE SHASTA COUNTY REGIONAL TRANSPORTATION PLANNING AGENCY AND AIELLO, GOODRICH & TEUSCHER

This agreement is entered into between the Shasta County Regional Transportation Planning Agency ("SCRTPA") and Aiello, Goodrich & Teushcer ("FIRM") for professional accounting services.

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1. <u>RESPONSIBILITIES OF FIRM</u>.

A. FIRM shall perform the following services, consistent with work described in the cost proposal dated March 12, 2012:

(1) Conduct initial interview of operating procedures;
(2) Examine financial reports to determine necessity and prioritize;
(3) Review accounting systems and software, including evaluation of reports;
(4) Determine management use of budgets and reporting requirements;
(5) Review cash flow management;
(6) Review accounting policies and procedures for incorporation into new accountings manual;
(7) Conduct risk management related to internal controls and financial reporting based on current staffing;
(8) Draft and final administrative operating procedures related to basic internal controls, financial reporting, accounting, records maintenance, board ethics and responsibilities, sub-recipient monitoring, grant compliance and other required areas;
(9) Procurement of complete payroll service;
(10) Procurement of banking services;
(11) Transfer of funds from the County treasury;
(12) Assist in procurement and set up of governmental accounting software; and
(13) Review agency cost allocation plan.

B. FIRM will perform services in accordance with the Statement on Standards for Consulting Services and applicable professional standards promulgated by the American Institute of Certified Public Accountants. This engagement is limited to the professional services outlined above. FIRM, in its sole professional judgment, reserve the right to refuse to take any action that could be construed as making management decisions or performing management functions.

C. As required by Government Code Section 7550, each document or report prepared by FIRM for or under the direction of the SCRTPA pursuant to this agreement shall contain the numbers and dollar amount of the agreement and all subcontracts under the agreement relating to the preparation of the document or written report. If multiple documents or written reports are the subject of the agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports. FIRM shall label the bottom of the last page of the document or report as follows: agency name, agreement number, and dollar amount.

2. <u>RESPONSIBILITIES OF THE SCRTPA</u>.

A. The SCRTPA shall compensate FIRM as prescribed in Sections 3 and 4 of this agreement. SCTPA will establish and maintain internal controls over the procedures and monitor ongoing activities of the outcomes achieved by FIRM.

B. The SCRTPA shall designate and individual who possesses suitable skill, knowledge and/or experience to oversee services. SCRTPA shall provide data and information to FIRM for required services

C. SCRTPA will evaluate the adequacy and results of the services performed and accept responsibility for the results of these services.

D. SCRTPA agrees that services are not for audit, review or compilation of financial statements. FIRM will not be relied on to disclose errors, irregularities or illegal acts, including fraud or theft.

3. <u>COMPENSATION.</u>

A. FIRM shall submit a monthly statement to the SCRTPA contract administrator for time, materials expended, and the total expended to date. SCRTPA shall compensate FIRM at the following hourly rates:

Partner $225/hour
Manager/Lead Consultant $175/hour
Staff Accountant $136/hour
Payroll Consultant $120/hour

B. SCRTPA shall reimburse mileage at no more than the Internal Revenue Service standard mileage rate applicable at the time of travel.

C. SCRTPA shall reimburse general office expenses such as postage, copy paper, phone calls, etc. at the direct cost.

D. Notwithstanding Section 3.E. below, compensation paid to FIRM shall not exceed $38,500.

E. FIRM agrees to perform additional related work if directed to do so by the Executive Director. Such work shall be performed at the rates set forth in Section 3.A. In no event shall additional work exceed $9,625 resulting in total compensation of $48,125.

4. <u>BILLING AND PAYMENT</u>.

The SCRTPA shall make payment within 30 days of receipt of FIRM's correct and approved statement or invoice.

5. <u>TERM OF AGREEMENT</u>.

This agreement shall commence as of the date signed by both parties and shall end on November 1, 2012.

6. <u>TERMINATION OF AGREEMENT</u>.

A. If FIRM materially fails to perform FIRM's responsibilities under this agreement to the satisfaction of the SCRTPA, or if FIRM fails to fulfill in a timely and professional manner FIRM's responsibilities under this agreement, or if FIRM violates any of the terms or provisions of this agreement, then the SCRTPA shall have the right to terminate this agreement for cause effective immediately upon the SCRTPA giving written notice thereof to FIRM. If termination for cause is given by the SCRTPA to FIRM and it is later determined that FIRM was not in default or the default was excusable, then the notice of termination shall be deemed to have been given without cause pursuant to Paragraph B of this section.

B. The SCRTPA may terminate this agreement without cause on 30 days written notice to FIRM.

C. The SCRTPA may terminate this agreement immediately upon oral notice should funding cease or be materially decreased during the term of this agreement.

D. The SCRTPA's right to terminate this agreement may be exercised by the Executive Director.

E. Should this agreement be terminated, FIRM shall promptly provide to the SCRTPA any and all finished and unfinished reports, data, studies, photographs, charts, and other documents prepared by FIRM pursuant to this agreement.

F. If this agreement is terminated, FIRM shall only be paid for services satisfactorily completed and provided prior to the effective date of termination.

7. **ENTIRE AGREEMENT; AMENDMENTS; HEADINGS.**

A. This agreement supersedes all previous agreements relating to the subject of this agreement and constitutes the entire understanding of the parties hereto. FIRM shall be entitled to no other benefits other than those specified herein. FIRM specifically acknowledges that in entering into and executing this agreement, FIRM relies solely upon the provisions contained in this agreement and no others.

B. No changes, amendments or alterations to this agreement shall be effective unless in writing and signed by both parties. However, minor amendments that do not result in a substantial or functional change to the original intent of this agreement and do not cause an increase to the maximum amount payable under this agreement may be agreed to in writing between FIRM and the SCRTPA Executive Director.

C. The headings that appear in this agreement are for reference purposes only and shall not affect the meaning or construction of this agreement.

8. **NONASSIGNMENT OF AGREEMENT; NON-WAIVER.**

Inasmuch as this agreement is intended to secure the specialized services of FIRM, FIRM may not assign, transfer, delegate, or sublet any interest herein without the prior written consent of the SCRTPA. The waiver by the SCRTPA of any breach of any requirement of this agreement shall not be deemed to be a waiver of any other breach.

9. **EMPLOYMENT STATUS OF FIRM.**

FIRM shall, during the entire term of this agreement, be construed to be an independent contractor, and nothing in this agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship, or to allow the SCRTPA to exercise discretion or control over the professional manner in which FIRM performs the work or services that are the subject matter of this agreement; provided, however, that the work or services to be provided by FIRM shall be provided in a manner consistent with the professional standards applicable to such work or services. The sole interest of the SCRTPA is to insure that the work or services shall be rendered and performed in a competent, efficient, and satisfactory manner. FIRM shall be fully responsible for payment of all taxes due to the State of California or the federal government that would be withheld from compensation if FIRM were the SCRTPA employee. The SCRTPA shall not be liable for deductions for any amount for any purpose from FIRM's compensation. FIRM shall not be eligible for coverage under the SCRTPA's workers' compensation insurance plan nor shall FIRM be eligible for any other SCRTPA benefits. FIRM must issue W-2 and 941 Forms for income and employment tax purposes, for all of FIRM's assigned personnel under the terms and conditions of this agreement.

10. INDEMNIFICATION.

FIRM shall hold harmless and indemnify SCRTPA, its elected officials, officers, employees, agents, and volunteers against all claims, suits, actions, costs, expenses (including but not limited to reasonable attorney's fees of the SCRTPA Counsel and counsel retained by the SCRTPA, expert fees, litigation costs, and investigation costs), damages, judgments, or decrees by reason of any person's or persons' injury, including death, or property (including property of the SCRTPA) being damaged by the negligent acts, willful acts, or errors or omissions of the FIRM or any of FIRM's subcontractors, any person employed under FIRM, or under any subcontractor, or in any capacity during the progress of the work or the provision of services pursuant to this agreement, except when the injury or loss is caused by the negligence or intentional wrongdoing of the SCRTPA. FIRM shall also indemnify the SCRTPA for any adverse determination made by the Internal Revenue Service or the State Franchise Tax Board and/or any other taxing or regulatory agency and shall indemnify and hold harmless the SCRTPA with respect to FIRM's "independent contractor" status that would establish a liability on the SCRTPA for failure to make social security deductions or contributions or income tax withholding payments, or any other legally mandated payment.

For professional services provided under this agreement, FIRM shall indemnify and hold harmless the SCRTPA, its elected officials, officers, employees, agents, and volunteers from and against any and all claims, demands, actions, losses, liabilities, damage, and costs, including reasonable attorneys' fees, arising out of or resulting from the negligent performance of the professional services provided under this agreement or from recklessness or willful misconduct.

11. INSURANCE COVERAGE.

A. FIRM and any subcontractor shall obtain, from an insurance carrier authorized to transact business in the State of California, and maintain continuously during the term of this agreement Commercial General Liability Insurance, including coverage for owned and non-owned automobiles, and other insurance necessary to protect the SCRTPA and the public with limits of liability of not less than $1 million combined single limit bodily injury and property damage; such insurance shall be primary as to any other insurance maintained by the SCRTPA.

B. FIRM and any subcontractor shall obtain and maintain continuously required Workers' Compensation and Employer's Liability Insurance to cover FIRM, subcontractor, FIRM's partner(s), subcontractor's partner(s), FIRM's employees, and subcontractor(s) employees with an insurance carrier authorized to transact business in the State of California covering the full liability for compensation for injury to those employed by FIRM or subcontractor. FIRM hereby certifies that FIRM is aware of the provisions of Section 3700 of the Labor Code, which requires every employer to insure against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and FIRM shall comply with such provisions before commencing the performance of the work or services prescribed in this agreement.

C. FIRM shall obtain and maintain continuously a policy of Errors and Omissions coverage with limits of liability of not less than $1 million.

D. FIRM shall require subcontractors to furnish satisfactory proof to the SCRTPA that liability and workers' compensation and other required types of insurance have been obtained and are maintained similar to that required of FIRM pursuant to this agreement.

E. With regard to all insurance coverage required by this agreement:

(1) Any deductible or self-insured retention exceeding $25,000 for FIRM or subcontractor shall be disclosed to and be subject to approval by the SCRTPA Risk Manager prior to the effective date of this agreement.

(2) If any insurance coverage required hereunder is provided on a "claims made" rather than "occurrence" form, FIRM or subcontractor shall maintain such insurance coverage with an effective date earlier or equal to the effective date of this agreement and continue coverage for a period of three years after the expiration of this agreement and any extensions thereof. In lieu of maintaining post-agreement expiration coverage as specified above, FIRM or subcontractor may satisfy this provision by purchasing tail coverage for the claims-made policy. Such tail coverage shall, at a minimum, provide coverage for claims received and reported three years after the expiration date of this agreement.

(3) All insurance (except workers' compensation and professional liability) shall include an endorsement or an amendment to the policy of insurance that names *the SCRTPA, its elected officials, officers, employees, agents, and volunteers as additional insureds* and provides that coverage *shall not be reduced or canceled without 30 days' written prior notice to the SCRTPA.* The additional insureds coverage shall be equal to Insurance Service Office endorsement CG 20 10 for on-going operations, and CG 20 37 for completed operations.

(4) Each insurance policy (except for workers' compensation and professional liability policies), or endorsement thereto, shall contain a "separation of insureds" clause which shall read:

"Separation of Insureds.
Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each suit insured against whom a claim is made or suit is brought."

(5) FIRM shall provide the SCRTPA with an endorsement or amendment to FIRM's policy of insurance as evidence of insurance protection before the effective date of this agreement.

(6) The insurance required herein shall be in effect at all times during the term of this agreement. In the event any insurance coverage expires at any time during the term of this agreement, FIRM shall provide, at least 20 days prior to said expiration date, a new endorsement or policy amendment evidencing insurance coverage as provided for herein for not less than the remainder of the term of this agreement or for a period of not less than one year. In the event FIRM fails to keep in effect at all times insurance coverage as herein provided and a renewal endorsement or policy amendment is not provided within 10 days of the expiration of the endorsement or policy amendment in effect at inception of this agreement, the SCRTPA may, in addition to any other remedies it may have, terminate this agreement upon the occurrence of such event.

(7) If the endorsement or amendment does not reflect the limits of liability required by this agreement provided by the policy of insurance, FIRM shall provide the SCRTPA a certificate of insurance reflecting those limits.

12. <u>NOTICE OF CLAIM/APPLICABLE LAW/VENUE</u>.

A. If any claim for damages is filed with FIRM or if any lawsuit is instituted concerning FIRM's performance under this agreement and that in any way, directly or indirectly, contingently or otherwise, affects or might reasonably affect the SCRTPA, FIRM shall give prompt and timely notice thereof to the SCRTPA. Notice shall be prompt and timely if given within 30 days following the date of receipt of a claim or 10 days following the date of service of process of a lawsuit.

B. Any dispute between the parties, and the interpretation of this agreement, shall be governed by the laws of the State of California. Any litigation shall be venued in Shasta County.

13. <u>COMPLIANCE WITH LAWS; NON-DISCRIMINATION</u>.

A. FIRM shall observe and comply with all applicable federal, state, and local laws, ordinances, and codes that relate to the work or services to be provided pursuant to this agreement.

B. FIRM shall not discriminate in employment practices or in the delivery of services on the basis of race, color, creed, religion, national origin, sex, age, marital status, sexual orientation, medical condition (including cancer, HIV and AIDS) physical or mental disability or use of family care leave.

C. FIRM represents that FIRM is in compliance with and agrees that FIRM shall continue to comply with the Americans with Disabilities Act of 1990(42 U.S.C. Sections 12101, *et seq.*), the Fair Employment and Housing Act (Government Code Sections 12900, *et seq.*), and regulations and guidelines issued pursuant thereto.

D. The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the SCRTPA to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 9% percent race-neutral has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in 49 CFR Part 26 (Appendix A), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

14. **ACCESS TO RECORDS/RETENTION.**

The SCRTPA, federal, and state officials shall have access to any books, documents, papers, and records of FIRM that are directly pertinent to the subject matter of this agreement for the purpose of auditing or examining the activities of FIRM or the SCRTPA. Except where longer retention is required by federal or state law, FIRM shall maintain all records for five years after the SCRTPA makes final payment hereunder.

15. **FIRM'S COMPLIANCE WITH CHILD, FAMILY AND SPOUSAL SUPPORT REPORTING OBLIGATIONS.**

FIRM's failure to comply with state and federal child, family, and spousal support reporting requirements regarding FIRM's employees or failure to implement lawfully served wage and earnings assignment orders or notices of assignment relating to child, family, and spousal support obligations shall constitute a default under this agreement. FIRM's failure to cure such default within 90 days of notice by the SCRTPA shall be grounds for termination of this agreement.

16. **LICENSES AND PERMITS.**

FIRM shall possess and maintain all necessary licenses, permits, certificates, and credentials required by the laws of the United States, the State of California, the County of Shasta, and all other appropriate governmental agencies, including any certification and credentials required by the SCRTPA. Failure to maintain the licenses, permits, certificates, and credentials shall be deemed a breach of this agreement and constitutes grounds for the termination of this agreement by the SCRTPA.

17. **PERFORMANCE STANDARDS.**

FIRM shall perform the services required by this agreement in accordance with the industry and/or professional standards applicable to FIRM's services.

18. **CONFLICTS OF INTEREST.**

FIRM and FIRM's officers and employees shall not have a financial interest, or acquire any financial interest, direct or indirect, in any business, property, or source of income that could be financially affected by or otherwise conflict in any manner or degree with the performance of the work or services required under this agreement.

19. NOTICES.

A. Except as provided in Section 6.C. of this agreement (oral notice of termination due to insufficient funding), any notice required to be given pursuant to the terms and provisions of this agreement shall be in writing and shall be sent first-class mail to the following addresses:

If to the SCRTPA: Executive Director
Shasta County Regional Transportation
Planning Agency
1855 Placer Street
Redding, CA 96001

If to FIRM: Steven Drageset, CPA
Aiello, Goodrich & Teuscher
P.O. Box 158
Mt. Shasta, CA 96067

B. Written notice shall be deemed to be effective two days after mailing. Any oral notice authorized by this agreement shall be deemed to be effective immediately.

20. AGREEMENT PREPARATION.

It is agreed and understood by the parties that this agreement has been arrived at through negotiation and that neither party is to be deemed the party which created any uncertainty in this agreement within the meaning of Civil Code Section 1654.

21. COMPLIANCE WITH POLITICAL REFORM ACT.

FIRM shall comply with the California Political Reform Act (Government Code Sections 87100, *et seq.*), with all regulations adopted by the Fair Political Practices Commission pursuant thereto, and with the SCRTPA's Conflict of Interest Code, with regard to any obligation on the part of FIRM to disclose financial interests and to recuse from influencing any SCRTPA decisions which may affect FIRM's financial interests. If required by the SCRTPA's Conflict of Interest Code, FIRM shall comply with the ethics training requirements of Government Code Section 53234 *et seq*.

22. CONFIDENTIALITY.

During the term of this agreement, both parties may have access to information that is confidential or proprietary in nature. Both parties agree to preserve the confidentiality of and to not disclose any such information to any third party without the express written consent of the other party or as required by law. This provision shall survive the termination, expiration, or cancellation of the agreement.

23. <u>SCOPE AND OWNERSHIP OF WORK</u>.

The scope of work shall be as prescribed in Paragraph 1. All research data, reports, and every other work product of any kind or character arising from or related to the scope of work of this agreement shall become the property of the SCRTPA and be delivered to the SCRTPA upon completion of its authorized use pursuant to this agreement. The SCRTPA may use such work products for any purpose whatsoever. All works produced under this agreement shall be deemed works produced by a contractor for hire, and all copyright with respect thereto shall vest in the SCRTPA without payment of royalty or any other additional compensation. Notwithstanding anything to the contrary contained in this agreement, FIRM shall retain all of FIRM's rights in FIRM's own proprietary information, including, without limitation, FIRM's methodologies and methods of analysis, ideas, concepts, expressions, know how, methods, techniques, skills, knowledge, and experience possessed by FIRM prior to, or acquired by FIRM during the performance of this agreement and FIRM shall not be restricted in any way with respect thereto.

24. <u>USE OF SCRTPA PROPERTY</u>.

FIRM shall not use SCRTPA premises, property (including equipment, instruments and supplies), or personnel for any purpose other than in the performance of FIRM's obligations under this agreement.

25. <u>SEVERABILITY</u>.

If any portion of this agreement or application thereof to any person or circumstance is declared invalid by a court of competent jurisdiction or if it is found in contravention of any federal or state statute or regulation or SCRTPA ordinance, the remaining provisions of this agreement, or the application thereof, shall not be invalidated thereby and shall remain in full force and effect to the extent that the provisions of this agreement are severable.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the SCRTPA and FIRM have executed this agreement on the day and year set forth below. By their signatures below, each signatory represents that he/she has the authority to execute this agreement and to bind the party on whose behalf his/her execution is made.

Shasta County Regional
Transportation Planning Agency

Date: ______________________________

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Daniel S. Little, AICP
Executive Director

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Steven Drageset, CPA

Tax I.D: 68-0146027

Approved as to form:
John Kenny, Counsel
Shasta County Regional
Transportation Planning Agency

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John Kenny