STAFF REPORT

MEETING DATE:	**5/8/13**
SUBJECT:	**Amend Agreement with John Kenny (Kenny, Snowden & Norine)**
AGENDA ITEM:	**5-5**
STAFF CONTACT:	**Dan Little**

STAFF RECOMMENDATION:
It is recommended that the board of directors authorize the executive director to amend the personal services agreement (PSA) for legal services with Kenny, Snowden and Norine to extend the term to June 30, 2016, with total compensation not to exceed $60,000 over the three-year term.

DISCUSSION:
In October 2009, the SRTA board authorized the executive director to enter into a PSA with Kenny, Snowden and Norine for John Kenny to serve as SRTA legal counsel. The agreement was extended by Amendment #1 and will expire June 30, 2013. Staff is satisfied with the services performed to date and it is recommended that the PSA be extended for a three-year term expiring June 30, 2016. The rate of compensation and the three-year $60,000 limit remains unchanged. Actual annual costs have averaged $5,000 but vary each year according to need.

ALTERNATIVES:
The board of directors may suggest other specific amendments to the PSA or require a request for proposals to consider a different legal firm.

OTHER AGENCY INVOLVEMENT:
The Technical Advisory Committee (TAC) concurs with the staff recommendation.

FINANCING:
Adequate funds are budgeted annually in the SRTA Overall Work Program for legal services.

Daniel S. Little, AICP, Executive Director

Attachments: Personal Services Agreement Second Amendment
Personal Services Agreement

SECOND AMENDMENT TO AGREEMENT BETWEEN SHASTA REGIONAL TRANSPORTATION AGENCY AND KENNY, SNOWDEN & NORINE

This second amendment is entered into between Shasta Regional Transportation Agency ("SRTA") and Kenny, Snowden & Norine ("FIRM").

The personal services agreement between SRTA and FIRM for the purpose of providing professional legal services executed on October 28, 2009, is hereby amended in the following respect:

1. The term of the agreement, set forth in Section 1, Subsection 1 is extended to and shall terminate on June 30, 2016.
2. Total compensation may exceed $20,000 annually but shall not exceed $60,000 over the three-year term.

The new name and address of the agency shall be as follows:

Shasta Regional Transportation Agency (SRTA)
1255 East Street, Suite 202
Redding, CA 96001

All other terms of the personal services agreement remain unchanged by this amendment.

IN WITNESS WHEREOF, the SRTA 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 Regional Transportation Agency

Date:____________________

____
Daniel S. Little, AICP
Executive Director

Date:____________________

____
John Kenny, Counsel
Shasta Regional Transportation Agency

Tax I.D.# 94-2672591

PERSONAL SERVICES AGREEMENT BETWEEN THE SHASTA COUNTY REGIONAL TRANSPORTATION PLANNING AGENCY AND KENNY, SNOWDEN & NORINE

This Personal Services Agreement (Agreement) is entered into between the Shasta County Regional Transportation Planning Agency ("SCRTPA") and Kenny, Snowden & Norine ("FIRM"), a law corporation, for the purpose of providing professional legal services.

1. **PERIOD OF PERFORMANCE**

This Agreement shall begin October 28, 2009, and shall continue for two years unless extended by the SCRTPA.

2. **FIRM'S SERVICES AND RESPONSIBILITIES**

FIRM shall act as counsel to SCRTPA and its officers and employees in matters or cases assigned to firm.

FIRM shall make every effort to provide the most cost-effective services possible to SCRTPA and shall suggest options and techniques to dispose of cases without unnecessary pleadings or discovery.

FIRM shall provide SCRTPA with the necessary representation by staff qualified to perform the legal tasks at the least costly billing category.

FIRM shall coordinate with SCRTPA in performing services under this Agreement and shall report to SCRTPA's Board, or to the Executive Director of SCRTPA ("Director"), as requested, regarding the matters or cases it is handling.

FIRM shall obtain SCRTPA Director's written approval before retaining any consultant or expert witness.

FIRM shall assist SCRTPA Director in settlement evaluations and negotiations, and shall obtain SCRTPA Director's authority before making any settlement proposal on SCRTPA's behalf or to the Court or to any other party to the case(s).

FIRM shall immediately notify Director verbally and in writing when a judgment, verdict or other award is rendered.

FIRM shall provide to SCRTPA copies of all substantive pleadings and motions filed with the court or other administrative body, including those submitted by another party. FIRM shall also submit copies of all court rulings.

FIRM shall compile and maintain all backup documentation to support all entries included in its billings.

3. **REPORTING REQUIREMENTS**

In order to contain costs, many of FIRM's communications with SCRTPA will be by way of electronic mail or telephone to SCRTPA. However, certain information must be provided in writing.

A. FIRM shall provide SCRTPA with the following reports for any cases including SCRTPA:

1. **Case Evaluation, Plan and Budget**

   (a) The *Case Evaluation, Plan and Budget* is a confidential independent evaluation of the case that will serve as the basis for developing SCRTPA's legal position and strategy and for controlling litigation costs. It will include a budget of foreseeable defense costs and the other information set forth in Attachment A.

   (b) The *Case Evaluation, Plan and Budget* shall be submitted to SCRTPA as soon as possible after FIRM's initial analysis of the case, but no later than 60 days after FIRM first appears in the case.

2. **Case Status Reports**

   (a) A *Case Status Report* is a summary of the significant actions and developments in the case since the last report or since the submission of the *Case Evaluation, Plan and Budget*, as applicable.

   (b) The *Case Status Report* shall contain the information set forth in Attachment B.

   (c) FIRM shall ordinarily provide *Case Status Reports* every six months. Between reports, FIRM shall advise SCRTPA by electronic mail or telephone of important case developments or re-assessment of SCRTPA's exposure and, if requested, prepare a *Case Status Report*.

4. **COMPENSATION**

FIRM shall be paid at the hourly rate for the hours actually expended and for expenses actually incurred as identified in this Section of the Agreement. This Agreement shall not exceed $20,000 in any fiscal year unless circumstances arise where additional services are required. As provided by SCRTPA resolution, the Director shall have the authority to approve additional services providing funding is available in the SCRTPA's annual Overall Work Program budget.

A. **Fees**

FIRM shall provide legal services at the following billing rates:

Supervising Attorney: John S. Kenny	$150 per hour
Associate:	$135 per hour
Paralegal:	$ 75 per hour

These rates may be negotiated for adjustment as part of any Agreement extension.

B. **Expenses**

SCRTPA shall reimburse FIRM for its actual out-of-pocket expenses but without any additional costs for having advanced the funds.

1. Reimbursable ordinary expenses shall include, but not be limited to:

   (a) Deposition fees.

   (b) Transcript fees.

   (c) Messenger service.

   (d) Process service.

   (e) Document reproduction by an outside vendor.

2. Reimbursable extraordinary expenses shall include charges for which FIRM has obtained SCRTPA's prior approval. Such expenses shall include, but not be limited to:

   (a) Consultants' fees.

   (b) Expert witnesses' fees.

   (c) Expenses for travel outside the counties of Shasta and the County in which the case is filed.

   (d) Investigative services costs.

   (e) Other expenses approved in advance by SCRTPA.

3. Non-reimbursable expenses shall include, but not be limited to:

   (a) Staff time or overtime for performing secretarial, clerical, or word processing functions.

   (b) Charges for time spent to provide necessary information for SCRTPA audits or billing inquiries.

   (c) Charges for work performed which had not been authorized by SCRTPA. Such work shall be a gratuitous effort by FIRM.

5. **BILLINGS AND PAYMENTS**

A. **Billings**

1. FIRM shall submit its itemized billing statement monthly to SCRTPA.

The original billing statement(s) and one copy shall be submitted to:

Executive Director
Shasta County Regional Transportation Planning Agency
1855 Placer Street
Redding, California 96001

3. Each billing statement shall be itemized in a time reporting format acceptable to SCRTPA and shall include original invoices for reimbursement of expenses. FIRM understands that SCRTPA will not reimburse FIRM for expenses unless the original invoice is submitted.

4. FIRM shall have and maintain all backup documentation to support all entries included in the monthly billing statement. Such documentation shall be in a form subject to audit and in accordance with generally accepted accounting principles. FIRM shall make such documentation available to auditors upon request and in accordance with paragraph 12E.

B. **Payments**

1. SCRTPA's staff shall review all billing statements.

2. SCRTPA shall make its best effort to process payments promptly after receiving FIRM's monthly billing statement. SCRTPA shall not pay interest or finance charges on any outstanding balance(s).

6. TERMINATION

This Agreement may be terminated in whole or in part at any time by SCRTPA, in its sole discretion, if it deems termination to be in its best interest. SCRTPA shall terminate services by delivering to FIRM a written Termination Notice specifying the extent to which services are terminated and the effective termination date. FIRM may terminate on sixty (60) days' written notice. During the sixty (60) day notice period, FIRM shall at SCRTPA's request, transfer pending files or complete specified services, which may include a final report.

7. TERMINATION DUE TO CONFLICT OF INTEREST

If either FIRM or SCRTPA determines a matter of professional conflict has arisen which should not or could not be postponed until the conclusion of the litigation, FIRM or SCRTPA may give written notice of immediate termination of this Agreement subject to FIRM's duty to provide adequate representation until the appropriate substitutions can be made.

8. CLOSING REPORT UPON TERMINATION

Upon SCRTPA's request, FIRM shall deliver a *Closing Report* to SCRTPA in the format required by SCRTPA, after termination of this Agreement.

9. **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.

10. **NOTICES**

All notices and required reports shall be written and hand-delivered or mailed by first class, postage prepaid, addressed to SCRTPA or FIRM at the addresses below, or at any other address SCRTPA or FIRM shall provide in writing to each other:

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

If to FIRM: Kenny, Snowden & Norine
2701 Park Marina Drive
Redding, CA 96001
or
P.O. Box 994608, Redding, CA 96099

11. **ASSIGNMENT**

A. No part of this Agreement or any right or obligation arising from it is assignable without SCRTPA's written consent.

B. However, FIRM may retain outside firms and experts as FIRM deems appropriate after receiving SCRTPA's written approval.

12. **STANDARD TERMS AND CONDITIONS**

A. **Indemnification**

FIRM shall indemnify, defend, and save harmless SCRTPA, its agents, officers and employees from and against any and all liability expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to losses resulting from FIRM's errors or omissions or any bodily injury, death, personal injury, or property damage (including FIRM's property), in connection with FIRM'S operations or its services, including any workers' compensation suits, liability or expense, arising from or connected with services performed under this Agreement.

B. **Insurance**

FIRM shall indemnify, defend, and save harmless SCRTPA, its agents, officers and employees from and against any and all liability (including defense costs and reasonable attorney fees) and claims for damages of any nature whatsoever, including, but not limited to FIRM's negligent acts or omissions, arising out of the performance of this Agreement, except liabilities and claims for damages (including reasonable attorneys fees) resulting from FIRM's professional negligence which may be covered by FIRM's professional liability insurance and except for any liabilities and claims for damages (including reasonable attorneys fees) caused by SCRTPA's negligence or willful misconduct.

Such insurance shall be primary to and not contributing with any other insurance maintained by SCRTPA, and shall include, but not be limited to:

1. Comprehensive General Liability Insurance endorsed for Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than $500,000 per occurrence.

   If the above insurance is written on a Claims Made Form, the insurance shall be endorsed to provide an extended reporting period of not less than five years following termination of this Agreement.

2. Professional liability insurance with a liability limit of at least $1,000,000 per claim.

C. **Independent Contractor Status**

1. This Agreement is between the SCRTPA and FIRM and is not intended, and shall not be construed, to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between SCRTPA and FIRM.

2. FIRM understands and agrees that all FIRM personnel furnishing services to SCRTPA under this Agreement are employees solely of FIRM and not of SCRTPA for purposes of workers' compensation liability.

3. FIRM shall bear the sole responsibility and liability for furnishing workers' compensation benefits to any FIRM personnel for injuries arising from services performed under this Agreement.

D. **Governing Laws**

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

E. **Record Retention and Inspection**

Within ten (10) days of SCRTPA's written request, FIRM shall allow SCRTPA or authorized State or Federal agencies or any duly authorized representative to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards or other records relating to this Agreement. FIRM shall keep such material, including all pertinent cost accounting, financial records and proprietary data for a period of five (5) years after termination or completion of this Agreement unless SCRTPA's written permission is given to dispose of material prior to the end of such period or until such time as all audits are complete, whichever is later.

F. **Communications with SCRTPA**

FIRM understands that the SCRTPA is the legally empowered representative of the SCRTPA and its officers and employees and FIRM shall not without specific direction from the SCRTPA communicate with, advise or represent the SCRTPA, its Board or any other officers or employees.

G. **Validity**

The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision.

H. **Waiver**

No waiver of a breach of any provision of this Agreement by either party shall constitute a waiver of any other breach of the provision or any other provision of this Agreement. Failure of either party to enforce any provision of this Agreement at any time shall not be construed as a waiver of that provision.

I. **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.

13. **CONTRACT DOCUMENTS**

A. Attachments A and B are attached and incorporated as part of this

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Agreement. The attachments are titled as follows:

1. Attachment A - Information required for *Case Evaluation, Plan and Budget*

2. Attachment B - Information required for *Case Status Report*

B. This Agreement shall constitute the complete and exclusive statement of understanding between SCRTPA and FIRM which supersedes all previous written or oral Agreements, and all prior communications between the SCRTPA and FIRM relating to the subject matter of this Agreement.

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: 10-27-09

Daniel S. Little, AICP
Executive Director

JOHN KENNY
TAX I.D.# 94-2672591

Approved as to form:

Liz Johnson, Counsel
Shasta County Regional
Transportation Planning Agency

Elizabeth W. Johnson
Elizabeth Johnson

ATTACHMENT A

TO THE PERSONAL SERVICES AGREEMENT BETWEEN THE SHASTA COUNTY REGIONAL TRANSPORTATION PLANNING AGENCY AND KENNY, SNOWDEN & NORINE

CASE EVALUATION, PLAN AND BUDGET

This report shall provide a thorough evaluation of the case based on the information then available to FIRM, within 60 days of FIRM's first appearance in the case.

The evaluation shall contain a brief summary of Plaintiff's allegations, without lengthy quotations from the complaint. It shall also contain a succinct evaluation of SCRTPA's defenses, with citations to the controlling legal authorities, but without unnecessary detail.

The evaluation shall include a case plan explaining FIRM's recommended case strategy, including FIRM's suggestions for motions to limit issues or dispose of the case in its entirety, as well as necessary discovery.

The report shall include a defense budget which indicates the projected cost of each major case activity, including trial.

The report shall contain suggestions to contain defense costs, with the potential benefits and disadvantages of each cost-saving technique.

FIRM shall also give its recommendations regarding settlement.

Reports for cases with complex fact patterns, multiple parties, or numerous causes of action will be lengthier and more detailed than the reports for simpler cases.

ATTACHMENT B

TO THE PERSONAL SERVICES AGREEMENT BETWEEN THE SHASTA COUNTY REGIONAL TRANSPORTATION PLANNING AGENCY AND KENNY, SNOWDEN & NORINE

CASE STATUS REPORT

The *Case Status Report* is intended to update SCRTPA on major case developments and to modify, when necessary, FIRM's defense budget or its recommendations regarding case strategy.

The SCRTPA does not want to receive page-by-page deposition or medical record summaries or lengthy analyses of the authorities FIRM is relying on in SCRTPA's defense. Instead, a summary of the controlling facts and authorities is sufficient.

The report should indicate FIRM's charges to date and state whether its billings for its activities remain within the previously-established defense budget.

The report should also state the FIRM's estimate of the SCRTPA's exposure in the case and the likely dollar ranges for settlement and verdict.