STAFF REPORT

MEETING DATE:	**11/30/12**
SUBJECT:	**Award Audit Contract to DH Scott and Company**
AGENDA ITEM:	**3**
STAFF CONTACT:	**Dave Wallace**

STAFF RECOMMENDATION:
It is recommended that the board:
1. Award a three-year audit engagement to the firm of DH Scott and Company for annual audits and triennial performance audits;
2. Authorize the executive director to execute a personal services agreement (PSA) with DH Scott and Company, not to exceed $86,000, for a term ending December 31, 2014; and
3. Authorize the executive director to execute an audit engagement letter consistent with the PSA.

DISCUSSION:
Transportation Development Act regulations require annual financial and compliance audits of all claimant funds administered by the agency as well as triennial performance audits of the agency and the Redding Area Bus Authority.

In September 2012 Hathaway, Ksenzulak and Lapp, LLC withdrew from a three-year engagement approved by the board on May 22, 2012. At the board meeting of October 23, 2012, the board authorized staff to seek new proposals for the three-year audit.

In November 2012 staff issued a request for proposal (RFP) to twenty-six certified public accounting firms throughout the state that have performed similar audits. Only DH Scott and Company submitted a proposal. The following is the proposed audit fee from DH Scott and Company for the three-year period:

	DH Scott
Performance Audit – 2012	$ 9,000
2012 Financial Audit	$31,000
2013 Financial Audit	$24,000
2014 Financial Audit	$22,000
Total Proposal	$86,000

ALTERNATIVES:
The board could choose to circulate another RFP. A similar lack of interest is anticipated and the circulation of a new RFP could jeopardize audit completion by June 30.

OTHER AGENCY INVOLVEMENT:
Audits are due to the California State Controller's Office and Caltrans by June 30 of each year.

FINANCING:
The agency budgeted $40,000 in the 2012/13 Overall Work Program for the 2012 performance and financial audit. The proposal is within the budget.

Daniel S. Little, AICP, Executive Director

Attachments: Draft Personal Services Agreement

NO WITHHOLDING

PERSONAL SERVICES AGREEMENT BETWEEN THE SHASTA REGIONAL TRANSPORTATION AGENCY AND DH SCOTT & COMPANY

This agreement is entered into between the Shasta Regional Transportation Agency ("SRTA") and DH Scott & Company ("FIRM"), for audit services for the years ending June 30, 2012, 2013 and 2014.

1. RESPONSIBILITIES OF FIRM

A. Pursuant to the terms and conditions of this agreement, FIRM shall perform financial and compliance audits for the years ending June 30, 2012, 2013 and 2014 for the agency and claimants, and as specified in the Letter of Engagement, financial and compliance audits shall be completed by November 30 for the years ending June 30, 2013 and 2014; and February 15 for the year ending June 30, 2012. The performance audit shall be due May 30, 2013.

B. FIRM shall conduct an audit of a comprehensive annual financial report for the years ending June 30, 2013 and 2014 that includes:

1) Management discussion and analysis
2) Financial section
3) Supplementary information and schedules
4) Schedule of federal awards
5) Schedule of findings and questioned costs
6) Supplemental schedule of revenues and expenses
7) Single audit

C. FIRM shall conduct individual fund audits for the year ending June 30, 2012 that include:

1) Metropolitan Planning Organization Fund
2) State Transit Assistance Fund
3) Local Transportation Fund
4) Transportation Development Act Fund-City of Shasta Lake
5) Transportation Development Act Fund-County of Shasta

D. FIRM shall determine the agency and claimant's compliance or non-compliance with the Transportation Development Act (TDA) in accordance with TDA statutes subsection 6666 and 6667. The audit report must include certification of compliance with the TDA.

E. The triennial performance audits should conform to the requirements contained in the TDA, California Public Utilities Code and the California Code of Regulations concerning transportation planning agencies and transit operators. Performance audits should be complete by May 31, 2013.

2. RESPONSIBILITIES OF THE SRTA

The SRTA agrees to provide the FIRM with audit information necessary to conduct financial and compliance audits by September 15 of each year for the years ending June 30, 2013 and 2014. Delivery of audit information for the year ending June 30, 2012, will be by December 20, 2012. The SRTA shall compensate FIRM as prescribed in Sections 3 and 4 of this agreement and shall monitor the outcomes achieved by FIRM.

3. COMPENSATION

A. FIRM shall submit a monthly statement to the SRTA accountant for time, materials expended, and the total expended to date. SRTA shall compensate FIRM at the hourly rates specified in the engagement letter.

B. Compensation paid to FIRM shall not exceed $86,000.

4. BILLING AND PAYMENT

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

5. TERM OF AGREEMENT

This agreement shall commence as of the date signed by both parties and shall end on June 30, 2015.

6. TERMINATION OF AGREEMENT

A. If FIRM materially fails to perform FIRM's responsibilities under this agreement to the satisfaction of SRTA, 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 SRTA shall have the right to terminate this agreement for cause effective immediately upon SRTA giving written notice thereof to FIRM. If termination for cause is given by SRTA 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. SRTA may terminate this agreement without cause on 30 days written notice to FIRM.

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

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

E. Should this agreement be terminated, FIRM shall promptly provide to SRTA 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 SRTA 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 SRTA. The waiver by SRTA 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 SRTA 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 SRTA 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 SRTA employee. SRTA 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 SRTA's workers' compensation insurance plan nor shall FIRM be eligible for any other SRTA 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 SRTA, 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 SRTA Counsel and counsel retained by SRTA, 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 SRTA) 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 SRTA. FIRM shall also indemnify SRTA 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 SRTA with respect to FIRM's "independent contractor" status that would establish a liability on SRTA for failure to make social security deductions or contributions or income tax withholding payments, or any other legally mandated payment.

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 SRTA 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 SRTA.

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 SRTA 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 SRTA 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 *SRTA, 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 SRTA.* The additional insured's 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 SRTA 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, SRTA 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 SRTA a certificate of insurance reflecting those limits.

12. NOTICE OF CLAIM/APPLICABLE LAW/VENUE

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 SRTA, FIRM shall give prompt and timely notice thereof to SRTA. 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. COMPLIANCE WITH LAWS; NON-DISCRIMINATION

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.

a. 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.

C. The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of SRTA 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.

14. ACCESS TO RECORDS/RETENTION

SRTA, 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 SRTA. Except where longer retention is required by federal or state law, FIRM shall maintain all records for five years after SRTA 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 SRTA 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 SRTA. 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 SRTA.

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 SRTA:	Executive Director Shasta Regional Transportation Agency 1255 East St Suite 202 Redding, CA 96001
If to FIRM:	Keith Hunting DH Scott and Company 900 Market Street Redding, CA 96002

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 SRTA'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 SRTA decisions which may affect FIRM's financial interests. If required by SRTA'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. SCOPE AND OWNERSHIP OF WORK

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 SRTA and be delivered to SRTA upon completion of its authorized use pursuant to this agreement. SRTA 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 SRTA 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. USE OF SRTA PROPERTY

FIRM shall not use SRTA 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. SEVERABILITY

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 SRTA 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.

IN WITNESS WHEREOF, 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

____
Keith Hunting
DH Scott & Company

Tax I.D. 68-0397834

Approved as to form:

John Kenny, Counsel
Shasta Regional Transportation Agency

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John Kenny