



## Legislation Text

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**File #:** 13-0791, **Version:** 1

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Community Development Services, Administration and Finance Division, recommending the Board approve the following:

- 1) Authorize the County Purchasing Agent to sign retroactive Agreement for Services 228-S1411 with Barnes & Thornburg LLP, for Storm Water Pollution Prevention Regulatory Compliance Services for the Placerville and Georgetown Airports, for a not-to-exceed amount of \$29,500, for the period of July 1, 2013, to July 31, 2017; and
- 2) Authorize the County Purchasing Agent to sign Agreement for Services 066-S1810 with Barnes & Thornburg LLP, for Storm Water Pollution Prevention Regulatory Compliance Services for the Placerville and Georgetown Airports, for a not-to-exceed amount of \$30,000, with an effective date retroactive to July 1, 2017, for contract period through July 31, 2020.

**FUNDING:** Airport Enterprise Funds. (100% Local)

### **DEPARTMENT RECOMMENDATION**

Community Development Services (CDS), Administration and Finance Division, recommending the Board approve, subject to review and approval by County Counsel and Risk Management, the following:

- 1) Authorize the County Purchasing Agent to sign retroactive Agreement for Services 228-S1411 (Agreement 228-S1411) with Barnes & Thornburg LLP (Barnes & Thornburg), for Storm Water Pollution Prevention Regulatory Compliance Services for the Placerville and Georgetown Airports, for a not-to-exceed amount of \$29,500, for the period of July 1, 2013, to July 31, 2017; and
- 2) Authorize the County Purchasing Agent to sign Agreement for Services 066-S1810 (Agreement 066-S1810) with Barnes & Thornburg, for Storm Water Pollution Prevention Regulatory Compliance Services for the Placerville and Georgetown Airports, for a not-to-exceed amount of \$30,000, with an effective date retroactive to July 1, 2017, for contract period through July 31, 2020.

### **DISCUSSION / BACKGROUND**

Facilities that discharge storm water associated with industrial activity as defined by the Federal Code of Regulations (40 Code of Federal Regulations [CFR] Parts 122, 123, and 124) are required to comply with the requirements of the State Water Resources Control Board Water Quality Order 97-03 -DWQ National Pollutant Discharge Elimination System (NPDES) General Permit CAS000001 (1997 General Permit) for the time period of July 1, 2013, to June 30, 2015; and the State Water Resources Control Board Water Quality Order 2014-0057-DWQ NPDES General Permit CAS000001 (2014 General Permit) for the time period of July 1, 2015, to the expiration of these Agreements.

The 1997 and 2014 General Permits allow group monitoring through which facilities with similar activities may meet their monitoring and reporting requirements. These Permits also require that a qualified group leader be designated to coordinate, schedule, and prepare the annual Group Evaluation Report to ensure storm water pollution prevention compliance. Barnes & Thornburg is the designated group leader of the Airport California Monitoring Group. The County Airports in Placerville and Georgetown have participated in the Airport California Monitoring Group for several years. Barnes & Thornburg was contracted initially by the County's General Services Department, and these

Agreements are a continuation of the services this company has provided to the County since 1992.

The services provided by Barnes & Thornburg are required to comply with State law regarding the protection of water resources. This type of regulatory compliance is highly monitored and penalties are levied for non-compliance.

In late 2013, the Contract Services Unit for the Community Development Agency (CDA), now known as the CDS Contracts and Procurement Unit (Contracts Unit), prepared and processed Agreement 228-S1411 for renewal purposes; however, Barnes & Thornburg questioned language in the indemnity clause and refused to sign this Agreement without changes. The Contracts Unit began working with County Counsel in 2014 on the indemnity issue, as Counsel did not accept the alternative indemnity language proposed by Barnes & Thornburg. Due to staffing changes and multiple competing priorities within both County Counsel and CDA/CDS, resolving the issues with this Agreement started and was halted multiple times in the last three years, and was finally resolved in early June of this year. For services going forward, the Contracts Unit has quickly produced Agreement 066-S1810 to cover the next three years. This Agreement requires Board approval as it is retroactive by several weeks.

While County Counsel and CDS worked with Barnes & Thornburg to resolve the issues with Agreement 228-S1411, Barnes & Thornburg continued to provide these required services, and it was understood by all involved that the outstanding invoices for the services they performed would be processed for payment when this Agreement was finalized.

With a combination of limitations in the Scope of Services and several minor wording changes to the Indemnity and Insurance Articles, County Counsel and Barnes & Thornburg have resolved the disagreements in language. Other minor changes to these Agreements include adjustments to the fees, clarification on the use of subconsultants, and changes to update the County's notice recipient and Contract Administrator.

The County did not seek the services of another vendor because Barnes & Thornburg is the designated Compliance Group Leader of the Airport California Monitoring Group, a consortium of California airports benefiting from the efficiencies of group monitoring under the 1997 and 2014 General Permits.

Consultants with Barnes & Thornburg are knowledgeable experts on California storm water regulations; the County is kept informed of changes in State requirements through regular conference calls with Barnes & Thornburg and the Airport California Monitoring Group. Participating in the Airport California Monitoring Group allows the County to reduce water sampling frequency at the Placerville and Georgetown Airports from four to two times per year and reduces costs, while providing access to experts with extensive experience in the subject area. Barnes & Thornburg is also familiar with issues within El Dorado County due to the length of time the County has utilized their services.

Not participating in the Airport California Monitoring Group would require the County to develop and implement specific monitoring programs for the Placerville and Georgetown Airports that satisfy all State requirements and would need to be approved by the State Water Resources Control Board, increasing costs and possibly increasing the risk of noncompliance if using another vendor without the resources associated with being part of the Airport California Monitoring Group.

## **ALTERNATIVES**

The Board could choose not to approve retroactive Agreement 228-S1411, which would result in non-payment to Barnes & Thornburg for mandatory State regulatory compliance services already provided.

The Board could choose not to approve the subsequent Agreement 066-S1810; however, the County would not have a consultant to assist with complicated State regulations regarding the protection of water resources and would be at risk of not complying with State law. This type of regulatory activity is highly monitored and penalties are levied for non-compliance.

## **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

County Counsel and Risk Management.

## **CAO RECOMMENDATION**

It is recommended that the Board approve this item.

## **FINANCIAL IMPACT**

Funding for these Agreements will be provided by Airport Enterprise Funds, and shall not exceed \$59,500 for both Agreements. CDS programs adequate appropriations each fiscal year for these required services in the budgets for the Placerville and Georgetown Airports.

## **CLERK OF THE BOARD FOLLOW UP ACTIONS**

N/A

## **CDS FOLLOW UP ACTIONS**

- 1) Upon approval by County Counsel and Risk Management, CDS will route two (2) original copies of Agreement 228-S1411 and two (2) original copies of Agreement 066-S1810 to the Purchasing Agent for signature.
- 2) Upon receipt from the Purchasing Agent, CDS will forward one (1) fully executed original copy of Agreement 228-S1411 and Agreement 066-S1810 to Barnes & Thornburg.
- 3) CDS will process for payment the outstanding invoices authorized under Agreement 228-S1411.

## **STRATEGIC PLAN COMPONENT**

Infrastructure and Healthy Communities

## **CONTACT**

Creighton Avila, Deputy Chief Administrative Officer