

RESOLUTION NO. 2005-24

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ELK GROVE
AUTHORIZING THE CITY MANAGER OR HIS DESIGNEE TO SIGN AN
AGREEMENT WITH BARNES & THORNBURG LLP
FOR FEDERAL LOBBYING REPRESENTATION**

WHEREAS, the legislative and political environment to obtain federal earmarks from Congress is very competitive; and

WHEREAS, the City of Elk Grove has a number of priority projects for which federal funding would be beneficial to the people and businesses of Elk Grove, including the Sheldon Road/SR 99 interchange improvements, Intelligent Transportation System, Park & Ride facility improvements, Old Town Elk Grove revitalization, and an Emergency Operations Center, among others; and

WHEREAS, using his considerable knowledge of the federal appropriations process and legislative expertise, Mr. Kevin Ring has helped the City navigate the federal appropriations maze and obtain \$4.8 million in federal earmarks for three of the projects mentioned above; and

WHEREAS, Mr. Ring has relocated to Barnes & Thornburg LLP with which the City Council now needs to authorize the City Manager or his designee to sign an agreement for federal lobbying representation.

NOW, THEREFORE, BE IT RESOLVED, by the City Council of the City of Elk Grove that the City Manager or his designee is hereby authorized to sign an agreement with Barnes & Thornburg LLP for federal lobbying representation.

PASSED AND ADOPTED by the City Council of the City of Elk Grove this 2nd day of February 2005.



DANIEL BRIGGS, MAYOR of the
CITY OF ELK GROVE

APPROVED AS TO FORM:



ANTHONY B. MANZANETTI,
CITY ATTORNEY

ATTEST:



PEGGY E. JACKSON, CITY CLERK



**AGREEMENT
BETWEEN BARNES & THORNBURG, LLP
AND THE CITY OF ELK GROVE**

The CITY OF ELK GROVE (CITY) wishes to engage the services of BARNES & THORNBURG, LLP, ("CONSULTANT"), to provide services in legislative advocacy and governmental affairs in matters affecting cities in California.

The purpose of this Agreement is to state the terms and conditions under which CONSULTANT will provide services to the client, the CITY OF ELK GROVE.

CONSULTANT is designated and authorized by the CITY OF ELK GROVE to act as the official legislative advocate with the United States and its Agencies affecting the CITY OF ELK GROVE. The terms and conditions of this Agreement shall include the Scope of Services, but not be limited to, the following:

1. CONSULTANT will assist in securing needed federal funding assistance for the CITY. CONSULTANT will provide timely information to CITY on emerging funding opportunities for projects for which the CITY may be seeking funding. In particular, CONSULTANT will help the City obtain appropriations from the U.S. Congress for transportation, aviation, wastewater, public safety, economic development, housing, infrastructure and other projects. CONSULTANT will work with federal departments and agencies to ensure that the CITY receives proper consideration for various federal grants.
2. CONSULTANT will provide CITY with timely information on proposed legislation or regulations that may affect CITY. CONSULTANT will represent the CITY's interest and position on federal proposed legislation or regulations before congressional committees and regulatory agencies, and when directed, will draft legislation or amendments to existing legislation, as they may be needed to fulfill the CITY's mission.
3. CONSULTANT will provide evaluation and advice on existing legislation and regulations that may impact CITY's operations or services.
4. To facilitate CONSULTANT's representation, CITY will provide a preliminary list of projects for which the CITY seeks funding through grants or federal appropriations. CONSULTANT will review the list and provide input as to the feasibility of funding for the projects on the list. In consultation with CONSULTANT, CITY will provide a final list of



priority projects for the current federal fiscal year. Annually, CONSULTANT will consult with CITY representatives to revise and prioritize this list, based on the CITY's priorities and CONSULTANT's input as to feasible funding opportunities.

5. CONSULTANT will provide periodic, but no less than semi-annual, reports of CONSULTANT's activities provided pursuant to the agreement, and will provide more frequent information to the CITY if emerging issues require the CITY's attention. At the conclusion of each federal fiscal year, CONSULTANT will provide a recap of the prior year's activities, including the appropriations and grants CITY has received as a result of CONSULTANT's representation.
6. Kevin Ring will personally be in charge of CONSULTANT's role and will assure that all necessary tasks are undertaken and completed. CONSULTANT anticipates that several of its attorneys and lobbyists will be involved in this representation. CONSULTANT will assign tasks in such a way as to ensure this representation is conducted in the most effective but efficient manner.
7. The representation may entail some work that is considered lobbying under the federal lobbying disclosure law. Consequently, CONSULTANT will register and report its activities on the CITY's behalf under the Lobbying Disclosure Act of 1995. CONSULTANT's representation is subject to rules of professional conduct. The rules of professional conduct applicable to CONSULTANT's representation will be those in effect in and for the District of Columbia.
8. CONSULTANT will conduct a review to ensure that no conflict of interest exists between its representation of CITY and any representation of any other clients. CONSULTANT in its entirety represents a number of clients, both private and government entities, with multifaceted interests in many issues. CONSULTANT does not currently, and would not in the future, represent another client in connection with any of the specific matters in which CONSULTANT is representing the city, if that other client's interest in those matters was adverse to the CITY's interest.
9. It is possible, however, that existing or new clients may in the future seek CONSULTANT's services as counsel in connection with matters which are not substantially related to its work for CITY, and which the interests of those clients may be adverse to CITY's. CONSULTANT cannot undertake to represent the CITY without assurance that the CITY will not seek, on the basis of this representation, to disqualify CONSULTANT from representing other clients in any matter that is not substantially related to its work for CITY. CONSULTANT agrees that CITY's consent to conflicting representation contained in the proceeding sentence shall not



- be required in any instance, where, as the result of the CONSULTANT's representation of CITY, CONSULTANT has obtained sensitive proprietary or otherwise confidential information that, if known to any other client, could be used in another such matter by that client, to CITY's material disadvantage.
10. CONSULTANT shall arrange meetings with legislative representatives for CITY OF ELK GROVE elected officials and staff when necessary.
 11. CONSULTANT shall initiate legislative proposals on behalf of the CITY OF ELK GROVE.
 12. CONSULTANT shall attend and provide testimony on behalf of the CITY OF ELK GROVE in legislative hearings.
 13. The CITY OF ELK GROVE shall pay to CONSULTANT the monthly sum of \$7,500.00 payable in advance on the first day of each month.
 14. The CITY OF ELK GROVE shall reimburse CONSULTANT for any travel and other expenses directly related to a request by the CITY OF ELK GROVE for CONSULTANT to participate in any meetings or activities outside of Sacramento. Such reimbursement requests shall be in writing with documented proof of the expense and identification of the purpose of the expense.
 15. CONSULTANT agrees to indemnify and save harmless the CITY OF ELK GROVE, its officers, agents, independent contractors and employees from any and all claims, suits, losses or actions of every name, kind and description (Claims") brought forth accruing or resulting to any persons, firms, or corporations in connection with the performance of this Agreement, and from any and all Claims accruing or resulting to any person, firm or corporation who may be injured or damaged by CONSULTANT's performance of this Agreement as a result of the negligence or willful misconduct of CONSULTANT, except those claims arising from the CITY's sole negligence. The Parties intend that this provision be construed broadly to protect the City.
 16. Professional Liability. The CONSULTANT and its contractors and subcontractors shall secure and maintain in full force, during the term of this Contract professional liability insurance policies appropriate to the respective professions and the work to be performed as specified in this Contract. The limits of such professional liability insurance coverage shall not be less than one million dollars (\$1,000,000) per claim and two million dollars (\$2,000,000) aggregate. As an alternative there may be a limit of not less than one million dollars (\$1,000,000) per claim and one million dollars (\$1,000,000) per project aggregate. If any professional



liability policy is written on a "claims made" basis, such policy, and any succeeding policy must be specifically endorsed to show that "prior acts" occurring at anytime after the inception date of this Contract will be covered. Upon termination of the Contract with the City, the same professional liability insurance requirements will apply for a three (3) year period following such termination. A "tail" policy may be purchased as an alternative to satisfy this requirement.

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve CONSULTANT for liability in excess of such coverage, nor shall it preclude CITY from taking such other actions as are available to it under any other provision of this Agreement or law.

Should CONSULTANT fail to maintain insurance as required, CITY may in its discretion obtain for CONSULTANT the required insurance, apply payments due to the CITY's acquisition of insurance for CONSULTANTS and/or withhold all payments due, in addition to any other remedy provided by law.

17. No cancellation provision in any insurance policy shall be construed in derogation of the continuous duty of CONSULTANT to furnish insurance during the term of this Agreement.
18. Duly authorized representatives of CITY shall have right of access to CONSULTANT's files and records relating to the work done for the CITY and may review the work at appropriate states during performance of the work.
19. CONSULTANT will comply with all federal, state and local laws and ordinances as may be applicable to the performance of work under this Agreement.
20. This is an integrated Agreement and contains all of the terms, considerations, understanding and promises of the parties. It shall be read as a whole.
21. CONSULTANT agree that it has the time, ability and professional expertise to perform the services required under this Agreement.
22. CONSULTANT is employed to perform unique personal services. There shall be no assignment or transfer of this Agreement by CONSULTANT without prior written consent of CITY, which consent may be withheld at the CITY's sole discretion.
23. This Agreement shall continue in full force and effect until terminated by thirty (30) day written notice from either party to the other. Notice of



Termination under this Agreement shall be given by certified mail. Any notices to parties required by this Agreement shall be delivered or mail. Any notices to parties required by this Agreement shall be delivered or mail, U.S. first class postage prepaid, addressed as follows:

CITY OF ELK GROVE	CONSULTANT
City Manager 8E80 Laguna Palms Way Elk Grove, CA 95758	Kevin Ring BARNES & THORNBURG, LLP 750 17 th Street, N.W. , Ste 900 Washington, DC 20006-4675

Either party may amend its address for notice by sending notice to the other party.

24. CONSULTANT shall act as an independent contractor, and covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be an officer or employee of the CITY by reason of the Agreement.
25. CONSULTANT shall at all times perform duties customarily performed by legislative advocates and governmental affairs representatives on behalf of the CITY to best of their abilities, experience and talents.
26. CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this Agreement, and that it has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift or any other consideration, contingent upon or resulting from the award or making this Agreement. For breach or violation of this warranty, CITY shall have the right to annul this Agreement without liability, or, in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such fee, commission, percentage, brokerage fee, gift of contingent fee.
27. This Agreement shall be binding upon the heirs, successors, executors, administrator and assigns of the respective parties hereto.
28. This Agreement shall be governed by the laws of the State of California. It constitutes the entire Agreement between parties regarding its subject matter. If any provision in this Agreement is held by any court to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force.

JAN-20-2005 THU 05:09 PM ELK GROVE CITY HALL

FAX NO. 9166862001

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BARNES & THORNBURG, LLP
Contract For Legislative Services - Federal



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

Date: _____

CITY OF ELK GROVE, A Municipal Corporation ("City")

City Manager

Date: 1/21/05

BARNES & THORNBURG, LLP
(Consultant)

By: [Signature]

Approved As To Content:

Assistant City Manager Date

Approved As To Form:

City Attorney Date

Attests:

City Clerk Date

Funding Available:

Finance Director Date

**CERTIFICATION
ELK GROVE CITY COUNCIL RESOLUTION NO. 2005-24**

STATE OF CALIFORNIA)
COUNTY OF SACRAMENTO) ss
CITY OF ELK GROVE)

I, Peggy E. Jackson, City Clerk of the City of Elk Grove, California, do hereby certify that the foregoing resolution was duly introduced, approved, and adopted by the City Council of the City of Elk Grove at a regular meeting of said Council held on the 2nd day of February 2005 by the following vote:


AYES 4: COUNCILMEMBERS: Briggs, Leary, Scherman, Soares

NOES 0: COUNCILMEMBERS:

ABSTAIN 0: COUNCILMEMBERS:

ABSENT 1: COUNCILMEMBERS: Cooper





**Peggy E. Jackson, City Clerk
City of Elk Grove, California**