COMMITTEE OF THE WHOLE

10-0657R

RESOLUTION APPROVING AGREEMENT WITH FRYBERGER, BUCHANAN, SMITH AND FREDERICK, P.A., FOR LEGISLATIVE SERVICES NOT TO EXCEED $44,940.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to execute an agreement, substantially the same as that on file with the city clerk as Public Document No. _____, with Fryberger, Buchanan, Smith and Frederick, P.A., under which that firm will provide professional services related to the city's 2011 state legislative program, at a cost to the city not to exceed $44,940 for the year 2011, and ability for the administration to renew for a second year, which shall be payable from Fund 100-700-1402-5312.

Approved for presentation to council:

Chief Administrative Officer

Approved as to form:

Attorney

Approved:

Auditor

ADM/ATTY GBJ:blj 12/10/2010

STATEMENT OF PURPOSE: This resolution is a renewal of the city's arrangement for legislative lobbying services. The rate is the same as for years 2009 and 2010. There is a clause that allows the administration to renew for a second year.

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT, entered into this _____ day of _____, 2010, between FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A. (herein called the "Firm") and the CITY OF DULUTH, MINNESOTA (herein called the "City").

WITNESSETH, that the City desires to engage the Firm to render certain professional services and both parties agree as follows:

1. Scope of Services. The Firm shall provide the following professional services: Provide the City with professional services related to the City's annual State legislative program. These professional services shall include research and analysis of legal, financial, and general government issues, drafting legislation, legal service, and technical assistance on related public policy issues, monitoring legislation of importance to the City, and direct legislative presentation.

2. Delivery of Service. Mr. Kevin Walli shall assume primary responsibility for delivering the professional services required by this Agreement. Services requested by the City pursuant to this Agreement shall be communicated to Mr. Walli by Mayor Don Ness, the Chief Administrative Officer David Montgomery, or the City Council President.

3. Time of Performance. The services of the Firm shall be provided upon request of the City starting January 1, 2011, and shall continue until December 31, 2011, unless earlier terminated as set out herein.

4. Compensation: Method of Payment. For the services provided for hereunder, it is agreed that the Firm shall be paid monthly fees on the following schedule:

January, 2011	$4,000.00
February, 2011	$4,000.00
March, 2011	$4,000.00
April, 2011	$4,000.00
May, 2011	$4,000.00
June, 2011	$4,000.00
July, 2011	$3,490.00
August, 2011	$3,490.00
September, 2011	$3,490.00
October, 2011	$3,490.00
November, 2011	$3,490.00
December, 2011	$3,490.00.

In addition, Firm shall be entitled to reimbursement for all reasonable out-of-pocket expenses incurred in the performance of its services hereunder including, but not limited to, the reasonable costs of reproduction of documents, delivery services, postage, long distance telephone call charges, travel, and required meals. The total cost of all payments under this Agreement to Firm for services rendered and reimbursement of expenses during the year 2011 shall not exceed the sum of Forty-four Thousand Nine Hundred Forty Dollars ($44,940), which shall be payable from the General Fund 100-700-1402-5312.

All bills for services performed or for reimbursement of expenses shall be submitted no more frequently than monthly to the City in care of the Chief Administrative Officer, Room 402 City Hall, Duluth, Minnesota 55802, Attention: David Montgomery. Such billings shall be accompanied by documentation as shall be reasonably requested by the City or its auditors. Upon approval of billings and supporting documentation, Firm's bills shall be promptly paid.

5. Additional Services and Compensation. The services enumerated in paragraph 1 above can be expanded by mutual written agreement between the Firm and City; provided, however, Firm shall not be required to provide such additional services without the agreement on the part of the City to provide additional compensation therefor.

6. Reports. The Firm shall report to the City in writing, which may also be sent via electronic transmission, on a biweekly basis, the services provided pursuant to this Agreement.

7. Assignability. Firm shall not in any way assign or transfer any of its rights or interests under this Agreement in any way whatsoever without the prior consent of the City. Further, Firm shall not assign any other person as being primarily responsible for the delivery of services hereunder, other than as provided for in paragraph 2 above, without the prior written consent of the City representatives referred to in that paragraph.

8. Termination of Services. City may, by giving written notice specifying the effective date thereof, terminate this Agreement in whole or in part without cause. Firm may terminate this Agreement in whole or in part without cause upon giving fifteen (15) days prior notice to City of its desire to do so. In the event of termination, all property and finished or unfinished documents and other writings prepared by Firm under this Agreement shall become the property of City, and Firm

shall promptly deliver the same to the Department of Finance as set forth above. Firm shall be entitled to compensation for time expended by it prior to the termination of this Agreement.

9. Renewal. The term of this Agreement may be extended for one year commencing January 1, 2012 and ending December 31, 2012, upon written action by both the City's Chief Administrative Officer and the Firm.

10. The parties intend to create an independent contractor status and no third party beneficiaries are intended. City shall not be liable to any agent or employee of Firm for Workers' Compensation benefits.

IN WITNESS WHEREOF, the City and the Firm have executed this Agreement as of the date written above.

THE CITY OF DULUTH, MINNESOTA

By_____
Mayor

ATTEST:_____
City Clerk

COUNTERSIGNED:

_____
City Auditor

APPROVED AS TO FORM:

_____
City Attorney

FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A.

By_____
KEVIN T. WALLI