

COUNCIL COPY

PLANNING AND ECONOMIC DEVELOPMENT COMMITTEE

13-0610R

RESOLUTION AUTHORIZING A PROFESSIONAL SERVICES AGREEMENT WITH FRYBERGER, BUCHANAN, SMITH & FREDERICK, P.A. FOR LEGAL FINANCING SERVICES RELATED TO THE MAURICES OFFICE BUILDING PROJECT AND THE CITY PARKING FACILITY PROJECT IN AN AMOUNT NOT TO EXCEED \$100,000.

CITY PROPOSAL:

RESOLVED, that the proper city officials are hereby authorized to enter into a professional services agreement substantially in the form of that on file in the office of the city clerk as Public Document No. _____, with Fryberger, Buchanan, Smith & Frederick, P.A. for the provision of legal financing services related to the maurices office building project and the city parking facility project in an amount not to exceed \$100,000.00, payments payable from Fund 450-030-5441 CP2013-1316b (Capital Improvement Fund, Finance Department, Other Services & Charges, Corporate Tower Project Public Improvements).

Approved:



Department Director

Approved for presentation to council:



Chief Administrative Officer

Approved as to form:



Attorney

Approved:



Auditor

BD CE/SLW:bel 12/03/2013

STATEMENT OF PURPOSE: This resolution authorizes the city to enter into a professional services agreement with Fryberger, Buchanan, Smith & Frederick for the provision of legal financing services related to the maurices office building project and the city parking facility project. The legal services include (i)

reviewing the state grant agreement, (ii) creation of tax increment district no. 26, and (iii) the issuance and sale of the tax increment and parking facility revenue note to finance a portion of the costs for the public parking facility, skywalks and related redevelopment costs. The fee for this service will become part of the TIF note to be paid to the city up-front by maurices and will be reimbursed to maurices over the life of the Tax Increment District.

AGREEMENT FOR PROFESSIONAL SERVICES

This agreement ("Agreement") effective as of the date of attestation of the City Clerk, by and between Fryberger, Buchanan, Smith & Frederick, P.A. (herein called the "firm") and the City of Duluth, Minnesota (herein called the "City") for the purpose of rendering services to the City.

Whereas 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 legal financing services to the City of Duluth in connection with the Maurice's office building project and the City parking facility project, including the State grant agreement, creation of Tax Increment District No. 26 and the issuance and sale of the Tax Increment and Parking Facility Revenue Note to finance a portion of the costs for the public parking facility, skywalks and related redevelopment costs.

2. Delivery of Service. Robert Toftey shall assume primary responsibility for delivering the professional services required by this Agreement. The foregoing sentence shall not preclude other employees of the Firm from providing support to Mr. Toftey in connection with the Firm's obligations hereunder. Services requested by the City pursuant to this Agreement shall be communicated to Mr. Toftey by the Director of Business & Economic Development, Chris Eng.

3. Time of Performance. Notwithstanding the date of execution of this Agreement, the Services of the Firm shall begin October 12, 2012, and shall continue until December 31, 2014, unless earlier terminated as set out herein. This Agreement may be extended by mutual agreement.

4. Fees: It is agreed between the parties that the Firm's maximum fee for the Services shall not exceed the sum of One Hundred Thousand and 00/100th dollars (\$100,000) inclusive of all travel and other expenses (costs of reproduction of documents, delivery services, postage, long distance telephone call charges, travel, and required meals) associated with the Services, payable from Fund 450-030-5441 CP2013-1316b (Capital Improvement Fund, Finance Department, Other Services & Charges, Corporate Tower Project Public Improvements). All invoices for services rendered shall be submitted to the attention of Chris Eng, Director of Business & Economic Development, Room 402 City Hall, Duluth, Minnesota 55802. A copy of the Firm's hourly rate schedule is attached as Exhibit A. Services will be invoiced as incurred on a quarterly basis. Payment of expenses is subject to the City's receipt of reasonable substantiation/back-up supporting such expenses.

5. Indemnification and Insurance.

- a. Firm shall defend, indemnify and hold City and its employees, officers, and agents harmless from and against any and all cost or expenses, claims or liabilities, including but not limited to, reasonable attorneys' fees and expenses in

connection with any claims resulting from the Firm's a) breach of this agreement or b) its negligence or misconduct or that of its agents or contractors in performing the Services hereunder or c) any claims arising in connection with Firm's employees or contractors, or d) the use of any materials supplied by the Firm to the City unless such material was modified by City and such modification is the cause of such claim. This paragraph shall survive the termination of this Agreement for any reason.

- b. Firm shall provide evidence of Professional Liability Insurance in an amount not less than \$1,500,000 per claim; provided further that in the event the professional malpractice insurance is in the form of claims made, insurance, 30 days notice prior to any cancellation shall be required; and in such event, Firm agrees to provide the City with either evidence of new insurance coverage conforming to the provisions of this paragraph which will provide unbroken protection to the City, or, in the alternative, to purchase at its cost, extended coverage under the old policy for the period the state of repose runs; the protection to be provided by said claims made insurance shall remain in place until the running of the statute of limitations for claims related to this Agreement.

6. 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.

7. 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 Director of Business & Economic Development as set forth above. Firm shall be entitled to compensation for time expended by it prior to the termination of this Agreement.

8. 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.

SIGNATURES APPEAR ON THE FOLLOWING PAGE

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

CITY OF DULUTH

By: _____
Its Mayor

Attest:

By: _____
City Clerk
Date:

Countersigned:

City Auditor

Approved as to form:

City Attorney

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

By _____

Its _____
Title of Representative

Date: _____

EXHIBIT A
HOURLY RATE SCHEDULE

EXHIBIT A

HOURLY RATE SCHEDULE

Name	Status	Standard Hourly Billing Rate	City of Duluth Hourly Billing Rate (15% off base rate)
Robert E. Toftey	Attorney	\$260	\$221.00
Mary Frances Skala	Attorney	\$260	\$221.00
Daniel D. Maddy	Attorney	\$255	\$216.75
Christopher J. Virta	Attorney	\$165	\$140.25
Carol M. Walczak	Paralegal	\$135	\$114.75
Susan L. Maki	Paralegal	\$120	\$102.00
Laura A. Bennett	Paralegal	\$120	\$102.00