

Agenda

FFE Board of Directors

Kalamazoo Foundation for Excellence

Monday, September 12, 2022

2:00 PM

City Hall – Community Room, Second Floor - 241 West South Street

A. CALL TO ORDER

B. APPROVAL OF MINUTES

1. Approve Minutes of April 25, 2022

C. REPORTS AND COMMUNICATIONS

1. Finance Committee Report
2. Executive Committee Report

D. REGULAR AGENDA

1. Approve Legal Services Agreement
2. Creation of Nominating Committee
3. Draft FFE Development Proposal
4. Proposed Updates to FFE Articles of Incorporation and Bylaws
5. Update Budget approval deadline in the Bylaws
6. 2023 Draft Budget Review

E. PUBLIC COMMENTS

F. BOARD MEMBER COMMENTS

G. ADJOURNMENT

KALAMAZOO FOUNDATION OF EXCELLENCE

PUBLIC COMMENT RULES

General information about the Foundation for Excellence (FFE) including board meeting schedules, meeting agendas and minutes, bylaws, and much more can be accessed at: <https://www.kalamazoocity.org/ffe>.

Agendas and previous minutes and video streams for FFE meetings are available directly at: <https://kalamazoomi.civicclerk.com/>.

Questions regarding agenda items may be answered prior to the meeting by contacting the FFE Manager at 269.337.8047 or ffe@kalamazoocity.org.

Meetings are held in person in the Community Room on the second floor of City Hall at 241 W. South St. 49007. They are also streamed live and archived on the City's Facebook page (<https://www.facebook.com/KalamazooCity/>) and YouTube Channel (www.kalamazoocity.org/youtube).

Persons attending a regular or special meeting of the Board of Directors of the Kalamazoo Foundation for Excellence are permitted to address the Board at the noted time on the Agenda and in conformity with this rule and the Michigan Open Meetings Act.

An individual wishing to address the Board shall wait to be recognized by the presiding officer. A person addressing the Board shall provide their name and whether they are a resident of the City. Remarks by a speaker shall be confined to matters within the purview of the Board and FFE. An individual may comment once for up to three (3) minutes. No comment is permitted on secondary or procedural motions to a main motion. A speaker is not permitted to yield any unused portion of speaking time to other speakers. A speaker may be ruled out of order for conduct that interrupts or disrupts the meeting.

Individuals also have the option to provide public comments over the phone at 888.382.9556 during the public comment period announced by staff during the meeting. Callers will enter a queue and be prompted to offer comments in turn. Callers will be given three minutes to comment live.

Updated April 5, 2022.

KALAMAZOO FOUNDATION FOR EXCELLENCE BOARD OF DIRECTORS

MINUTES

Annual Meeting of April 25, 2022

The Annual Meeting of the Kalamazoo Foundation of Excellence (KFFE) Board on April 25, 2022, held in the Community Room of City Hall, 241 W. South St, Kalamazoo, MI was called to order by President Calderon-Huezo at 2:06 pm.

Board members present: Calderon-Huezo, Ritsema, Anderson, Hess, Lonberg, Miller, C. Taylor, Washington, Hopewell, Carrel, A. Taylor, Harrison; Director Hoffman was absent.

Nominated Board members present: Balkema, Bostrom, Salas.

City staff present: FFE Manager Steve Brown, City Management Services Director/CFO Steve Vicenzi, Deputy City Manager Laura Lam, and City Grants Specialist Kerry Lyn Williams. Legal Counsel/Recording Secretary Clyde J. Robinson joined the meeting at 2:55 pm.

The minutes of the Board Meeting held February 15, 2022, were moved for approval by Director Washington and seconded by Director A. Taylor. The motion to approve the minutes was adopted by unanimous voice vote.

Mr Brown and CFO Vicenzi presented the Finance Committee Report. Director Hopewell inquired about the FFE policy requiring periodic review of auditing accounting firm contract and Finance Committee meeting with auditors to discuss the report.

Mr Brown presented the Executive Committee Report item of updated public comment rules imposing a 3 minute limit per speaker for future Board agendas. Director Hess moved and Secretary Miller seconded the motion to approve the rules. The motion was adopted by unanimous voice vote.

Director Washington moved, and Director C. Taylor seconded, a motion to accept the appointment and reappointment of the presented slate of new Directors Balkema, Bostrom and Salas, the appointment of City Commission nominated Directors Hoffman and Harrison, and the reappointment of Directors Calderon-Huezo and Lonberg. The motion was adopted by unanimous voice vote.

Director Washington moved, and Director C. Taylor seconded, a motion to appoint the presented slate of Officers: President Calderon-Huezo, Vice President Ritsema, Treasurer Carrel, and Secretary Miller, for a term of one year. The motion was adopted by unanimous voice vote.

Director Balkema moved, and Director Bostrom seconded, a motion to appoint the presented slate of Executive and Finance Committee Members, for a term of one year: Executive Committee will comprise President Calderon-Huezo, Vice President Ritsema, Treasurer Carrel, and Secretary Miller, Director Hess, and Director Washington; Finance Committee will comprise President Calderon-Huezo, Treasurer Carrel, CFO Vicenzi, Vice President Ritsema, Director Washington, and Director Balkema. The motion was adopted by unanimous voice vote.

President Calderon-Huezo asked if there were any Board Member Comments. Director Anderson welcomes a new generation of Board Directors and said it proved positive things about the governance and administration of the Board. Director Hopewell reiterated that all Board members and members of the public can donate to the FFE and its cause. He also emphasized that the Board exists solely to help the City of Kalamazoo serve Kalamazoo. President Calderon-Huezo commented that she was very glad to welcome the new members and emphasized the importance of “collaboration and participation.”

President Calderon-Huezo adjourned the meeting at 3:03 pm

Minutes Drafted: April 28, 2022

Minutes Approved: _____

Clyde J. Robinson, Recording Secretary

Date: **9/12/2022**

FFE

Item: **C.1.**

Foundation for Excellence

Agenda Report

Kalamazoo Foundation for Excellence

TO: Foundation for Excellence Board of Directors

FROM: Prepared by: Steve Brown, FFE Manager

DATE: September 12, 2022

SUBJECT:

Finance Committee Report

RECOMMENDATION:

No action is requested.

BACKGROUND:

At its August 29, 2022, meeting, the Finance Committee took four (4) actions:

- 1) approved the 2021 independent audit, stated the committee had received IRS form 990 and reviewed it, and directed the CFO to sign the 990 and file it with the IRS;
- 2) created the Audit Subcommittee of three (3) or five (5) Board Directors to serve one-year terms or until removed by a vote of the Board, beginning and ending each April Board Meeting;
- 3) approved the Q1 and Q2 2022 FFE Investment Subcommittee Reports;
- 4) approved the draft 2023 FFE budget for presentation to the Board (including updates as needed), presented under Regular Agenda in this packet.

STRATEGIC VISION ALIGNMENT:



Good Governance- Ensuring the City organization has the capacity and resources to effectively implement the community's Strategic Vision in a way that is sustainable over the long term.

FISCAL IMPACT:

Date: **9/12/2022**

FFE

Item: **C.2.**

Foundation for Excellence

Agenda Report

Kalamazoo Foundation for Excellence

TO: Foundation for Excellence Board of Directors

FROM: Prepared by: Steve Brown, FFE Manager

DATE: September 12, 2022

SUBJECT:

Executive Committee Report

RECOMMENDATION:

No action is requested.

BACKGROUND:

At its August 29, 2022, meeting, the Executive Committee took action on several items that:

- 1) recommended Board approval of a legal services agreement with Miller Johnson Attorneys on the Regular Agenda;
- 2) recommended Board creation of a Nominating Committee;
- 3) recommended the Board take up the topic of Ongoing FFE Development specifically pertaining to creating the position of Executive Director;
- 4) recommended the Board take up a roster of changes to the Bylaws and Articles of Incorporation deemed necessary;
- 5) recommended changing the Budget approval date in the Bylaws from October 31 to December 31 each year.

STRATEGIC VISION ALIGNMENT:



Good Governance- Ensuring the City organization has the capacity and resources to effectively implement the community's Strategic Vision in a way that is sustainable over the long term.

FISCAL IMPACT:

Date: **9/12/2022**

FFE

Item: **D.1.**

Foundation for Excellence

Agenda Report

Kalamazoo Foundation for Excellence

TO: Foundation for Excellence Board of Directors

FROM: Prepared by: Steve Brown, FFE Manager
Reviewed by: Clyde J. Robinson, FFE Legal Counsel

DATE: September 12, 2022

SUBJECT:

Approve Legal Services Agreement

RECOMMENDATION:

It is recommended that the Board approve Miller Johnson Attorneys' proposal for legal services to the Foundation for Excellence and the President sign all necessary documents.

BACKGROUND:

A memorandum is attached to this agenda item for the Board's consideration.

STRATEGIC VISION ALIGNMENT:



Good Governance- Ensuring the City organization has the capacity and resources to effectively implement the community's Strategic Vision in a way that is sustainable over the long term.

FISCAL IMPACT:



MEMORANDUM

08/5/2022

TO: FFE Board President, Sandra Calderon-Huezo
Member, Miller Johnson, Rich Cherry

FROM: FFE Legal Counsel, Clyde J. Robinson
FFE Manager, Steve Brown

RE: Foundation for Excellence Legal Services Agreement Approval

Need for Legal Counsel

City Attorney and FFE Legal Counsel Clyde J. Robinson gave notice of his pending retirement in the spring of 2022. He had originally received an allowance from the City Commission and FFE Board of Directors waiving concerns of conflicts of interest in holding the two offices. Over an approximately five-year period Attorney Robinson served the FFE Board dutifully with superlative integrity. Given the significant advances in developing the FFE since its founding in 2017, his recommendation was to take the opportunity for the FFE Board to contract its own independent counsel. This would create a healthy separation of City and FFE needs and roles and would eliminate concerns related to conflicts of interest.

In response, staff acted to define the scope of services needed and release a request for proposals (RFP) (attached) for legal services. On June 1, with a deadline of July 15, staff released the RFP to the public, posted it on the FFE website as a news article, and targeted two Michigan law firms that clearly possessed the skills and capacity needed for the work the FFE needs. The scope of the RFP was:

- Services as Recording Secretary for Board meetings (approx. four, two-hour long meetings annually) and the Investment Subcommittee (approx. four hour-long meetings annually);
- annual facilitation of stakeholder groups to vet and select new Board Directors;
- compliance with Michigan Freedom of Information and Open Meetings Acts;
- 501c3 Type III non-profit governance and compliance support;
- general contract creation and administration;
- counsel on needed policies/policy updates and adherence to generally accepted best practices;
- legal mediation with the City of Kalamazoo as needed;
- prepare reports as assigned;
- other legal representation and consultation as needed.

Responses

There were two responses to the RFP, both complete, one from Warner, Norcross & Judd, and one from Miller Johnson. An ad hoc review committee was formed comprised of City Attorney Robinson, Grant Specialist Williams, and FFE Manager Brown, and FFE Board Directors Miller and Balkema.

Review and Recommendation

The team independently reviewed the submitted proposals and then convened to discuss them in the scoring framework set out in the RFP. The scoring team was unanimous in scoring the recommended firm higher, 191 compared to 176. This was based on the larger number of retained hours included and therefore lower hour-unit cost, the focus on one point person to contact, but especially a more significant experience with municipal and non-profit law.

Therefore, the review team unanimously recommends Miller Johnson's proposal for approval by the FFE Board for a term of November 1, 2022, to November 1, 2023, with this memorandum and the Miller Johnson proposal serving as the terms and conditions of the agreement between the parties.

FFE Board President, Sandra Calderon-Huezo

Date

Member, Miller Johnson, Rich Cherry

Date

Proposal for Legal Services
Presented To



Kalamazoo
Foundation for
Excellence

ATTN: Clyde Robinson, City Attorney
241 W. South Street
Kalamazoo, MI
49007

July 15, 2022

DuMouchelles Building

405 E. Jefferson Ave
Fifth Floor
Detroit, MI 48226
Phone: 248.258.2850
Fax: 248.258.2851

Arena Place

45 Ottawa Ave SW
Suite 1100
Grand Rapids, MI 49503
Phone: 616.831.1700
Fax: 616.831.1701

Radisson Plaza Building

100 West Michigan Ave
Suite 200
Kalamazoo, MI 49007
Phone: 269.226.2950
Fax: 269.226.2951

Table of Contents

01

Engagement
Letter
pg. 3

02

Firm Background
and Qualifications
pg. 4

03

Scope of Work

pg. 10

04

Your Team

pg. 11

05

Experience

pg. 13

06

Price & Structure

pg. 18

07

Value Add
Services
pg. 20

08

Client References &
Project Experience
pg. 21

09

Communication

pg. 22

10

Conflict
Navigation
pg. 23

11

Attorney
Biographies
pg. 24

Kalamazoo Foundation for Excellence
ATTN: Clyde Robinson, City Attorney
241 W. South Street
Kalamazoo, MI
49007

Kalamazoo Foundation for Excellence
ATTN: Steve Brown, Manager
241 W. South Street
Kalamazoo, MI
49007

RE: Foundation Attorney Services

Gentlemen:

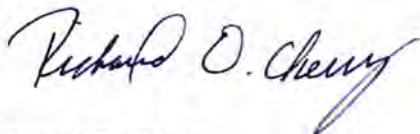
Thank you for the opportunity to respond to the Request for Proposal for Foundation Attorney Services for The Kalamazoo Foundation for Excellence (FFE). We are pleased to submit the attached proposal. Our proposal shows that we are uniquely suited to provide the legal services needed by FFE.

We are a local business. Our Kalamazoo office is situated in the Radisson Hotel & Suites. Our success is built on our clients, so our priority is client service and satisfaction. We understand that timeliness of response and accessibility to the lead attorney is an important aspect of our service. If selected as the Foundation Attorney for FFE, I would be accessible with short notice for in-person meetings, virtual meetings, phone, fax and e-mail during business hours, evenings, weekends and holidays.

Miller Johnson would be honored and pleased to partner with and provide legal services for the FFE. We would be willing to make an oral presentation of our proposal if that would be helpful to the FFE in making its determination for Foundation Attorney services.

If I am selected as Foundation Attorney, you can count on our firm's commitment to excellence in the services we provide. We look forward to having an opportunity to exceed the FFE's expectations. If you have any questions or would like to discuss the attached proposal, please feel free to contact me at any time. My cell is 312.890.8814. My e-mail address is cherryr@millerjohnson.com.

Sincerely,



Richard O. Cherry
Member, Miller Johnson



Miller Johnson at a Glance

Since opening our doors in 1959, Miller Johnson attorneys and staff have committed themselves to excellence in the practice of law; transparency and integrity in client relationships; efficiency and responsiveness in the delivery of services; and active leadership in the communities we serve. Today, we have attorneys and staff in offices located in Kalamazoo, Grand Rapids, Detroit, and many remote environments throughout the Midwest.

Committed to excellence in service to our business, institutional and individual clients, we work in partnership with our clients to promote their success by providing innovative, solution-oriented, cost-effective legal services. We attract, develop and retain exceptional people with a passion for life. By valuing and promoting diversity of thought, background and culture, we foster leaders who enrich the culture of our firm and the communities in which we live and work.

We are passionate about what we do, and that passion has been a central ingredient in not just our firm's success, but also our clients'. We've never strived to be one of the biggest law firms in the state. Instead, Miller Johnson's standard has always been, simply, to be the best. Our clients like knowing that their law firm is innovative, aggressive, consistent, responsive, and efficient.

Business & Corporate Law

Our thriving business practice makes up the core of the firm's work. The varied needs of the small, medium, and large businesses we represent drive our practice. We serve many business organizations, ranging from publicly-traded corporations to non-profits and family-owned businesses. Our clients represent virtually every profession and industry.

Our services are equally comprehensive, and each is tailored to the specific nature of the client. We provide a complete array of services in the following broadly categorized areas of law:

- Administrative
- Agriculture
- Antitrust
- Automotive
- Aviation
- Banking
- Bankruptcy - Creditors/Debtors Rights
- Business Succession Planning
- Commercial
- Computers
- Construction
- Contracts
- Copyright
- Corporate
- Distribution and Dealerships
- Employee Benefits
- Executive Compensation
- Environmental
- Family Owned and Closely Held
- Finance
- Franchising
- Government Relations
- Health Care
- Immigration
- Insurance
- Intellectual Property
- International
- Mergers and Acquisitions
- Municipal
- Nonprofit and Tax Exempt
- Oil and Gas Interests
- Partnerships
- Privacy and Data Security
- Real Estate
- Reorganizations
- Securities
- Tax Litigation
- Tax Planning
- Telecommunications
- Trade Associations
- Trademark and Trade Name
- Transportation

02

Employment & Labor Relations

We provide a full range of legal services to public and private employers, both union-free and organized, in every aspect of employment relations. Our clients include businesses of all sizes in the manufacturing, retail, construction, transportation, and health care industries and school districts, colleges, cities, counties, non-profits and other public employers.

We offer our knowledge and experience to develop policies, practices, and preventive programs that foster long-term profitability and positive employment relations, while achieving our client's goals.

- Affirmative Action Plans and Audits
- Arbitration
- Business Closings and Relocations
- Business Expansions and Acquisitions
- Civil Rights and EEO, including Sections 1981 & 1983
- Collective Bargaining
- Disabilities and Accommodations
- Employee Benefits
- Employment Contracts
- Employment Discrimination
- Employee Handbooks and Personnel Policies
- Employment - Health Care
- FMLA Solutions
- Immigration
- Injunctive Relief
- Occupational Safety and Health Matters
- OFCCP
- Teacher Tenure
- Trade Secret Protection and Noncompetition Agreements
- Unemployment Compensation
- Unfair Labor Practice Cases and All Matters Before the NLRB
- Union Avoidance
- Union Negotiations
- Wage and Hour
- Workers' Compensation
- Workplace Harassment

Litigation

We handle cases in all state and federal courts, representing multinational corporations, local businesses, and individuals in cases ranging from simple to highly complex.

We view litigation as one means of dispute resolution, not as an end, counseling clients on risk assessment and cost benefit before suit. When our clients are sued, we search for the most expeditious and least expensive means of resolution. Our lawyers have extensive experience with virtually every form of alternative dispute resolution (ADR).

If trial is a necessary or desired tool, our trial lawyers are among the most capable, experienced, and respected in the country.

- Antitrust
- Appellate
- Banking
- Civil Rights
- Class Action
- Commercial
- Computer
- Condemnation
- Construction
- Contracts
- Criminal
- Election Law
- Employment
- Environmental
- ERISA
- Family Law
- First Amendment
- Government Investigations
- Health Care
- Insurance Policy Holder
- Counseling and Recovery
- Intellectual Property
- Personal Injury
- Products Liability
- Professional Malpractice
- Real Estate
- Securities
- Workers' Compensation

02

Professional Standing

Our lawyers have been trained at some of the nation's leading law schools and our quality is reflected in the many honors achieved, including:

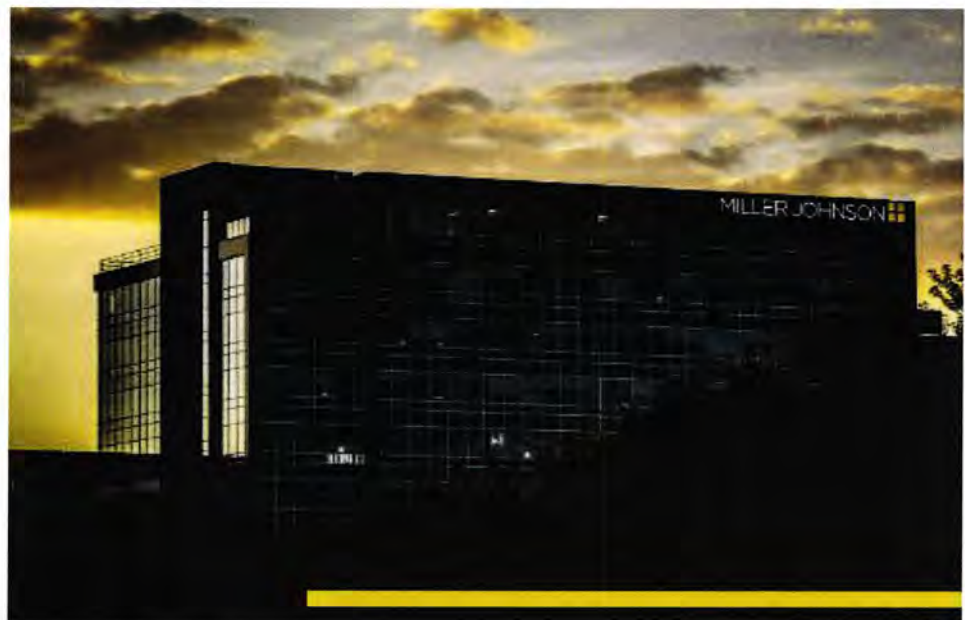


In addition, The Best Lawyers in America 2021 recognized 47 attorneys selected by their peers to be included in categories from Closely Held Companies and Family Business Law to Bet-The-Company Litigation and Employment Law - Management. Ten attorneys were selected "Lawyer of the Year" by Best Lawyers.

Bold Mission Statement

We proactively provide meaningful solutions and peace of mind at a great value for our clients.

We do this as trusted thought leaders collaborating with our clients, each other, and our communities.





FIRM BACKGROUND AND QUALIFICATIONS OVERVIEW

02

Our Approach

We work with our clients to promote their success by providing timely, innovative, solution-oriented, cost-effective legal services. We use our experience to proactively identify relevant legal issues and craft business solutions.

Our success originates from our problem-solving approach that recognizes the essential importance of our clients' organizational mission, culture, and core values. We do not assume the same approach will work for each client. Instead, we tailor our advice to each client and to each occasion.

We hire people who generally care about what they do. We think this difference is apparent to our clients and is a foundational element of our success. We are committed to:

- Partnering with our clients to help them achieve their goals and meet their diverse needs;
- Providing exceptional, innovative, solution-oriented and cost-effective services;
- Anticipating and adapting to different or additional client needs;
- Creating an environment that fosters integrity, innovation, excellence, teamwork and leadership; and
- Enhancing the communities in which we live and work through volunteerism and giving

Facilities

If awarded the contract, Miller Johnson can provide private, confidential, and secure conference rooms, virtual meeting space, and data exchange services for the FFE. We will be able to host meetings and more. In addition, we have office support staff, including paralegals, administrative assistants, and information technology experts as needed as well. We have offices in Detroit, Grand Rapids and Kalamazoo.

Kalamazoo Attorneys

In addition to Rich Cherry, we have 15 other lawyers based out of our Kalamazoo office who would be available to assist on a wide range of services as needed, including: David Buday (the Firm's Managing Member) – Employment & Labor; Jason Colvin and Julie Sullivan – Domestic; Aimee Jachym – Business and Corporate; John Koryto – Immigration; Craig Lubben – Employment Litigation; Dan Perk – Immigration and Tax Appeals; Teresa Rajala – Estate and Probate; Chris Rork – Med Recovery; Rebecca Strauss – Employment and Employment Litigation; Matt Van Dyk – Real Estate; Sarah Willey – Employment and Employment Litigation; Leigh Schultz – Labor and Employment and Litigation; and Associates Barbara Moore (Labor and Employment/Litigation) and Wei Wang (Corporate and M&A).

Diversity, Equity & Inclusion

We see the world as it is – full of change, full of challenges and full of possibility. We are part of an increasingly diverse, multicultural and global marketplace. Diversity and inclusion are central to how we serve our clients and how we contribute to our community. Through embracing diversity, we can:

1. Better understand and serve the unique legal and business needs of our clients.
2. Attract and develop a highly skilled, uniquely talented team.
3. Create an inclusive culture that values differences, fosters forward thinking and inspires individuals to do their best work.
4. Provide creative, innovative and ultimately successful solutions to our clients.
5. More fully live our core values of honesty, integrity and respect for others.

Our Diversity Mission guides our approach and our workplace. By cultivating a diverse and inclusive culture, we seek to reflect those we serve and engage the perspectives, ideas and innovative thoughts that inspire outstanding legal solutions and exceptional service. The firm's Diversity Council oversees our many recruiting and outreach initiatives, cultivating an inclusive culture, offering training and development opportunities, and contributing to our community.

We are not a "one-size-fits-all" kind of place and we look for talented professionals who bring diverse perspectives, backgrounds and skills to the firm. You will find us recruiting at university events, through association involvement and with our clerkship programs.

Miller Johnson is a member of the Leadership Council on Legal Diversity (LCLD), which comprises the general counsels of the nation's preeminent corporations and of the managing partners of the nation's leading law firms. We promote an inclusive policy of diversity in conducting business because we recognize that diversity yields significant benefits for our clients, professional contacts, the firm, and the community. Our proposed 4 member team includes a mix of female, males, minority, and differences in age to assure diversity in our staffing. If these matters would require any additional support, we would continue to staff based on merit.



02

Project Giveback Program

In 2021, Miller Johnson launched Project Giveback, a pro bono service initiative providing access, resources, and solutions to those in the community historically underserved by the legal system. The program includes attorneys from multiple practices with wide-ranging support for personal, business, protective, and financial needs of individuals.

"Project Giveback is intended to serve as part of the firm's response to the numerous cultural and political events that we have witnessed and participated in throughout 2020 and into 2021," said Stephen J. van Stempvoort, co-chair of the firm's Pro Bono Committee. "Miller Johnson has played a key role in our communities' response to the COVID crisis and many firm clients have commented on the excellent and valuable work that arose out of the team-based initiatives that Miller Johnson rolled out in response to the pandemic. Project Giveback is intended to build upon those experiences and leverage Miller Johnson's resources in a way that will enable us to continue to serve our communities."





SCOPE OF WORK

03

The Client

The Foundation for Excellence (FFE) is an innovative 501(c)3 non-profit support corporation that was created in 2017 to address systemic challenges to the prosperity of Kalamazoo. The FFE was originally announced alongside a commitment of \$70.3 million to support its creation, and to stabilize the City's budget, lower the property tax rate, and invest in aspirational community projects. To-date, the FFE has supported many City projects and programs that have the potential to impact the lives of all residents, including infrastructure, affordable housing, economic development, and youth development.

Since being founded in 2017 the Foundation for Excellence (FFE) has budgeted nearly \$150 million towards the success of Kalamazoo's people and neighborhoods. This has allowed the City to lower taxes while still significantly increasing investments in our community. These investments in youth programming, parks, infrastructure, career development, transportation, economic and business support, and housing have a positive impact in every neighborhood. FFE funding has also stabilized the City of Kalamazoo budget so the City can focus on our community's needs and vision.

Scope of Work

Miller Johnson is proposing to provide general counsel services for the period of remainder 2022, through December 31, 2023. The FFE may opt to extend the contract upon mutual agreement of both parties made in writing for up to three (3) one-year periods.

General Counsel Services will include:

- Services as Recording Secretary for Full Board meetings (approx. four, two-hour long meetings annually) and meetings of the Investment Subcommittee (approx. four hour-long meetings annually)
- Annual facilitation of stakeholder groups to vet and select new Board Directors
- Compliance with Michigan Freedom of Information and Open Meetings Acts
- 501c3 Type III non-profit governance and compliance support
- General contract creation and administration
- Counsel on needed policies/policy updates and adherence to generally accepted best practices
- Legal mediation with the City of Kalamazoo as needed
- Prepare reports as assigned
- Other legal representation and consultation as needed

YOUR TEAM

04

Miller Johnson has the knowledge and experience to handle your legal issues. The significant number of attorneys who specialize in key practice areas provides a wealth of experience and allows us to be proactive and responsive while covering the full spectrum of specific legal needs for the clients we serve. Rich Cherry would serve as the first-point-of-contact on most matters and effectively and efficiently coordinate communication with you. Complete attorney biographies are included at the end.

Let's meet your team...



Primary Relationship Attorney:

Rich Cherry

Rich Cherry is a highly accomplished public sector attorney, having spent 14 years of his career practicing municipal and criminal law in the City of Kalamazoo, at the City Attorney's Office, and at the Cook County State's Attorney's office in Chicago, Illinois.

Rich advises on the Freedom of Information Act, Open Meetings Act, Brownfield Redevelopment Act, economic development, ordinance drafting, labor and employment matters, general counsel, public safety and political matters.

Assist Partners:



Aimee Jachym



John McFarland

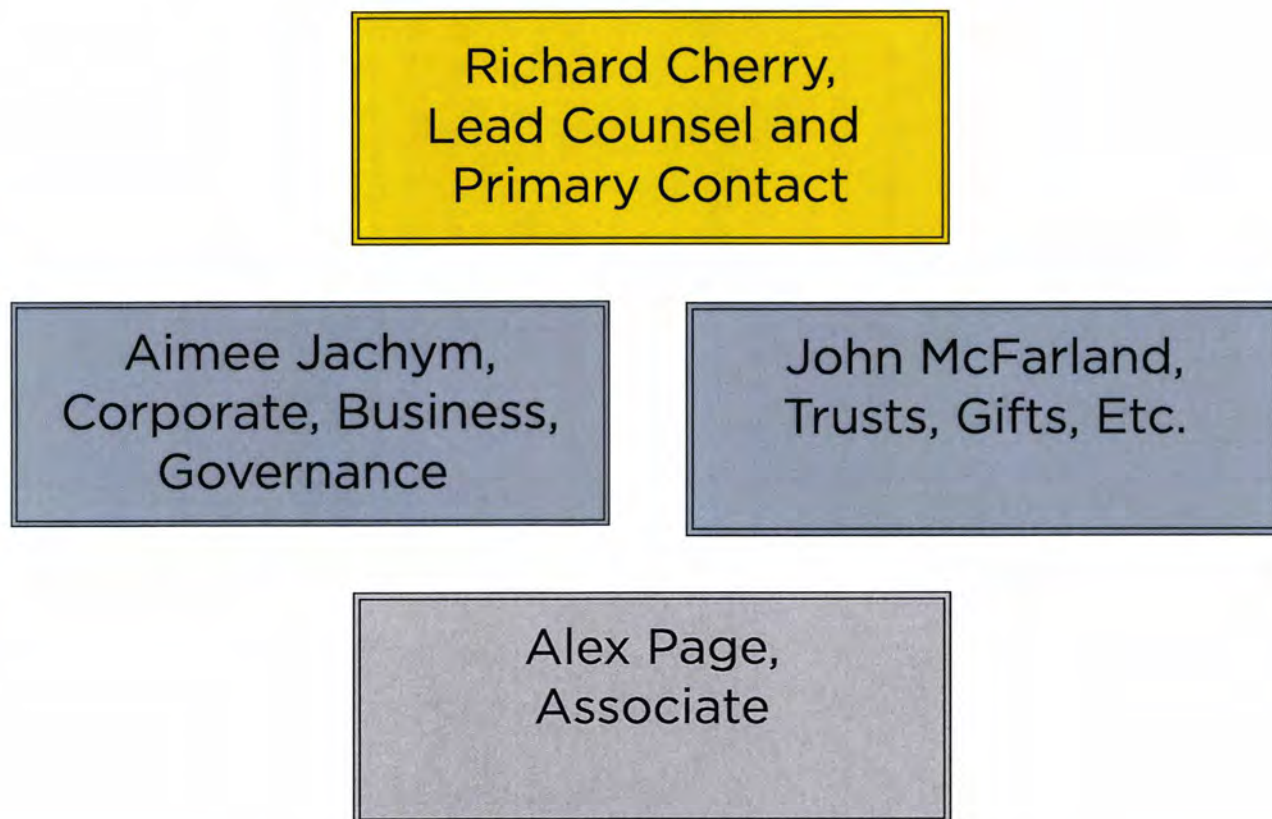
Assist Associate:



Alex Page

Although this is the initial team, there are other partners, associates, and paralegals in the group at the ready to jump in if needed. As indicated previously, the skillset and experience required for this work is at the core of what we do here at Miller Johnson, and as such, every member of our team is competent to assist as needed.

Organizational Chart



Richard Cherry will be the primary contact at Miller Johnson and will perform the central legal services for FFE. Aimee Jachym, John McFarland and one or more of our paralegals will also perform legal services for FFE. It is anticipated that this team will remain the same throughout the duration of this Agreement. However, additional attorneys may be added to the team as necessary to meet the legal needs of FFE.

Public Sector

Our clients include counties, cities, villages, townships, service commissions and governmental entities. If governmental operations run smoothly, we have served our clients well.

The significant services we provide to our Public Sector clients are as follows:

- *Civil Rights*
- *Economic Development*
- *Elections*
- *Environmental*
- *Employment / Collective Bargaining*
- *Finance*
- *Litigation*
- *Non-Profit Corporate Governance*
- *Planning and Zoning*
- *Property Tax & Special Assessments*
- *Public Contracting*
- *Public Meetings*
- *Utilities*

Current Public Sector Clients of Miller Johnson include:

Ada Township	Holland, City of
Allegan County	Illinois Agricultural Association
Ann Arbor Area Transportation Authority	Kalamazoo County Road Commission
Antrim County Road Commission	Kalamazoo, County of
Antwerp Township	Kent County
Area Agency on Aging	Kentwood, City of
Caledonia Township	Lake Odessa, Village of
Calhoun County	Lenawee County Road Commission
Cass County Road Commission	Mason County Rural Fire Authority
Cedar Area Fire and Rescue	Meridian Township
City of Coldwater	Muskegon County Road Commission
City of Dowagiac	Newaygo County Mental Health
City of Kalamazoo BRA/EDC	Pentwater, Village of
City of Kalamazoo	Pines Behavioral Health Services
City of Marshall	St. Joseph County
City of Saint Joseph	The City of Muskegon Heights
City of Sturgis	The Village of Lawrence
City of the Village of Douglas	Van Buren County
County of Washtenaw	Woodlands Behavioral Healthcare Network
Crawford County	Wyoming, City of
East Grand Rapids, City of	Zeeland, City of
Herrick District Library	

Our Public Sector Practice Group has experience in the unique problems of governmental bodies, which can never act without weighing a whole range of constituent interests against each other, or without weighing local interests against federal and state laws and regulations. We act as both advisors and expeditors by helping governments frame clear and effective policies, and by seeing that policies are executed efficiently.

Open Meetings Act and Freedom of Information Act (FOIA)

We ensure compliance and provide strategic guidance so requirements are met regarding public notice, keeping minutes, creating access, and regulatory permissible actions with sessions are adhered to.





EXPERIENCE

05

Additional Public Sector Experience

- Civil litigation in all substantive areas of governmental practice, including personal injury, contract disputes, civil rights, condemnation, and land use matters
- Economic development, including development agreements, tax increment financing, property tax abatement, and the alphabet soup of local economic development: TIFA, LDFA, DDA, EDC, EDA, MSF, IDB, etc.
- Election law practice, including referendums, initiatives, and advisory votes
- Employee benefits counseling
- Employment relations, including personnel matters, collective bargaining negotiations, Act 312 arbitrations, and civil rights matters
- Environmental matters, including solid waste management and local waste collection and disposal
- Inter-governmental relations, including contracting with other municipal entities and representing entities created through inter-governmental agreements
- Monitoring legislation related to local governmental interests
- Municipal franchise and public utility matters
- Ordinance and resolution review, interpretation, and drafting
- Parliamentary procedure and other operating policies related to planning and conducting meetings
- Planning, zoning, and related land use matters
- Property tax matters, including annual assessments, special assessments, and Tax Tribunal practice
- Prosecution of ordinance violations, including municipal civil infractions, appearance citations, and complaint and warrant requests
- Public contracting, including bidding requirements, purchase and sale procedures, contract negotiations and drafting, and bonding
- Public finance matters, including permitted uses of public funds, inter-fund transfers, restricted use funds, bonding, and other budget and finance issues
- Water, sewer, and wastewater contracting, treatment, ratemaking, and compliance with state and federal regulations



EXPERIENCE

05

Nonprofit Governance Structure

Whether your mission is to support the arts or the environment, to deliver education or health care, to protect the vulnerable or advance a profession, we can assist you so you can focus on attaining your organizational goals.

Nonprofit entities are very different from their for-profit counterparts. They have unique structures, governance, goals, resources and restrictions. We help these organizations navigate through the nonprofit sector enabling them to thrive and succeed. We provide guidance on legal matters and regulatory compliance to educational institutions, both private and public, and tax-exempt institutions.

Some of the administrative functions and compliance issues we provide help with are:

- Formation, consolidation, mergers, and dissolution
- Tax issues including annual reports, tax returns and compliance requirements
- Governance from board formation to administration duties
- Real estate issues including leases and financing
- Planned giving from establishing a program to drafting the documents
- Business matters from vendor contracts to insurance coverage
- Employment counsel ranging from hiring practices to employee benefits to discrimination claims
- Litigation services include risk management, resolving disputes through mediation, and trying conflicts of all kinds

Experience with Written Gift Acceptance Policies for Not For Profit Entities

Miller Johnson attorneys have extensive experience representing tax exempt and nonprofit organizations. We represent churches, educational institutions, hospitals, medical research organizations, governmental units, public charities, and private foundations. We routinely work with clients with the formation of public charities, private foundations, both operating and nonoperating, Type I, Type II, and Type III supporting organizations. We facilitate board meetings, handle corporate governance matters, coordinate state and federal filings, and oversee tax and compliance matters.

We also work with our clients to facilitate all types of gifts from cash and marketable securities to gifts of complex assets. We assess and analyze potential gifts which may involve issues related to debt, environmental risks, excess business holdings, prearranged sales, and unrelated business taxable income liability. We create and implement gift acceptance policies for our charitable organization clients. We represent charitable clients in contested estate matters. Our fiduciary litigation team and trust and estate attorneys diligently work to protect the interests of our clients. We provide such services in a professional manner understanding the importance of maintaining positive donor relationships for our clients while simultaneously protecting the charitable organization from liability and risk. Miller Johnson attorneys have experience with various types of gifts, including:

- Outrights Gifts
 - Cash
 - Marketable Securities
 - Insurance
 - Gifts of Inventory
 - Partnership and LLC interests
 - C Corporations
 - Subchapter S Corporations
 - Patents, Trademarks, and
 - Royalties
 - Gifts of Real Property
 - Land and Buildings
- Tangible Personal Property
 - Collectibles
 - Artwork
 - Antiques
 - Firearms
 - Livestock
 - Crops
 - Automobile collections
- Planned Gifts
 - Charitable Remainder Annuity Trusts
 - Charitable Remainder Unitrusts
 - Bequests
 - IRA Qualified Charitable Distributions (QCD)
 - Charitable Gift Annuities
 - Charitable Lead Annuity Trusts
 - Life Estate Reserved Gifts
 - Pooled Income Funds
 - Bargain Sale Gifts

We assist our clients with questions involving income tax, gift tax, estate tax, and generation-skipping tax matters. We work with our clients with questions related to qualified appraisals, the valuation of gifts, gift substantiation, quid quo pro rules, charity raffles, gift administration for planned giving programs, and charitable gift annuity state regulations. We have extensive experience drafting charitable gift annuity contracts, charitable remainder trusts, charitable lead trusts, charitable pledges, and scholarship and endowment agreements.

Miller Johnson also advises clients on compliance with a variety of privacy and cybersecurity laws governing private and government organizations. Our attorneys assist clients with the formation of information security policies and procedures, data collection practices, website privacy policies, and terms of use, advertising and email/text message marketing, and data retention and destruction. We negotiate and obtain cybersecurity insurance coverage for our clients, manage risk, and respond to data breaches. We negotiate and secure Directors and Officers (D&O) liability coverage for our clients. We handle corporate governance matters, and we counsel our clients on all aspects of employment and labor law.

Our broad understanding of the issues and challenges facing our nonprofit clients allows Miller Johnson attorneys to provide excellent client service, formulate policies and procedures that work for our clients, protect their institutions, and help them focus their efforts on carrying out the mission of their organization.

Current Non-Profit Clients

Agora Flats Inc.
 Agudath Israel of Illinois
 Babywearing Grand Rapids
 Bay Tower Condominium Association
 Billy Bear Hug
 Bob Ferrin Foundation
 Boy Scouts of America
 Campus Child Care, Inc.
 CARES
 Center for Sound Literacy Foundation
 Charles Robert Evenson Foundation
 Cheff Therapeutic Riding Center
 Child and Family Charities
 Christian Workers Foundation
 Community Action of Allegan County
 Community Healing Centers
 Courtside Condominium Association
 D.A. Blodgett - St. John's
 Disability Network Southwest Michigan
 Discipling Marketplace Leaders
 Dwelling Place
 Eagle Village
 Faraday Trust for Science and Religion
 Flat River Outreach Ministries, Inc.
 Galesburg Country Homes Association
 Gleaners Community Food Bank
 Goodwill Industries/Central MI Heartland
 Goshorn Lake Cottage Condominium Assn.
 Great Lakes Urban Restoration Network
 Hand2Hand
 Highland Field Trial Grounds Association
 Hillsdale County Senior Services Center
 Huntington Hills Condominium Association
 InterAct of Michigan, Inc.
 Interlochen Center for the Arts
 InterVarsity Christian Fellowship
 Issachar Fund
 Judson Center
 Just One More
 Kinexus
 Lakes of the North Association
 Lakes of Woodbridge Condominium Assn.
 Lakeside Condominium Association
 Legal Aid of Western Michigan
 Life Recreation Therapy
 Living Atl for Developmentally Disabled
 Marina Grand Resort Association
 Mars Hill Bible Church

Michigan Disability Rights Coalition
 Michigan GOP
 Moors of Portage Association, The
 MSU Foundation
 Northeast Mich. Community Service Agency
 Northwest Education Services
 Parkinson's Association of West Michigan
 Paul Martin Home for Boys
 Reformed Benefits Association
 Reformed Partnership Cong Renewal
 Rescue Health Foundation
 Rishika Foundation
 Ronald McDonald House of Outstate MI
 Shelterhouse
 Shine Foundation
 Six Companies Global LLC
 South Beach Condominiums
 South Haven Area Chamber of Commerce
 Speaks Out Foundation
 St. Vincent Catholic Charities
 Streams of Hope
 Student Statesmanship Institute
 Sunny Crest Youth Ranch
 Tall Turf Ministries
 Talsma Family Foundation
 Ten Directions
 The Bluffs of Frankfort Association
 The Cord Group
 The Dominican Sisters of Marywood
 The Peter and Joan Secchia Family, Inc.
 The Reformed Journal
 The Right Door for Hope, Recovery
 TrueNorth Community Services
 United Way of Genesee County
 United Way of Northwest Michigan
 United Way of the Battle Creek/Kalamazoo
 Vibrant Futures
 Victors Foundation
 Victory Management Family Homes
 Vista Maria
 Volunteer Center of Southwest Michigan
 West Grand Neighborhood Organization
 West Michigan Miracle League
 White Tent
 Wingshadow Ministries
 Work Skills Corporation
 YMCA of Greater Grand Rapids
 YWCA Kalamazoo

Background on Fees

We compute our service fees primarily on the time spent by our lawyers and paralegals to deliver services. Ethical rules require that our hourly rates and the overall fee take into account the complexity of the work, our efficiency, the results achieved, the special expertise and experience of the lawyers and paralegals involved, the time limitations imposed by you or the circumstances, and other relevant factors. *We are proposing to offer 15% Discounted Rate to FFE for the legal services provided in this RFP.*

Hourly Rates

Proposed Subject Areas for Legal Services	Assigned Attorney	Hourly Rate	Discounted Hourly Rate
Lead Attorney	Rich Cherry	\$370	\$315
Assist Partner	Aimee Jachym	\$480	\$408
Assist Partner	John McFarland	\$480	\$408
Assist Associate	Alex Page	\$260	\$221
Paralegal Work		\$245	\$209



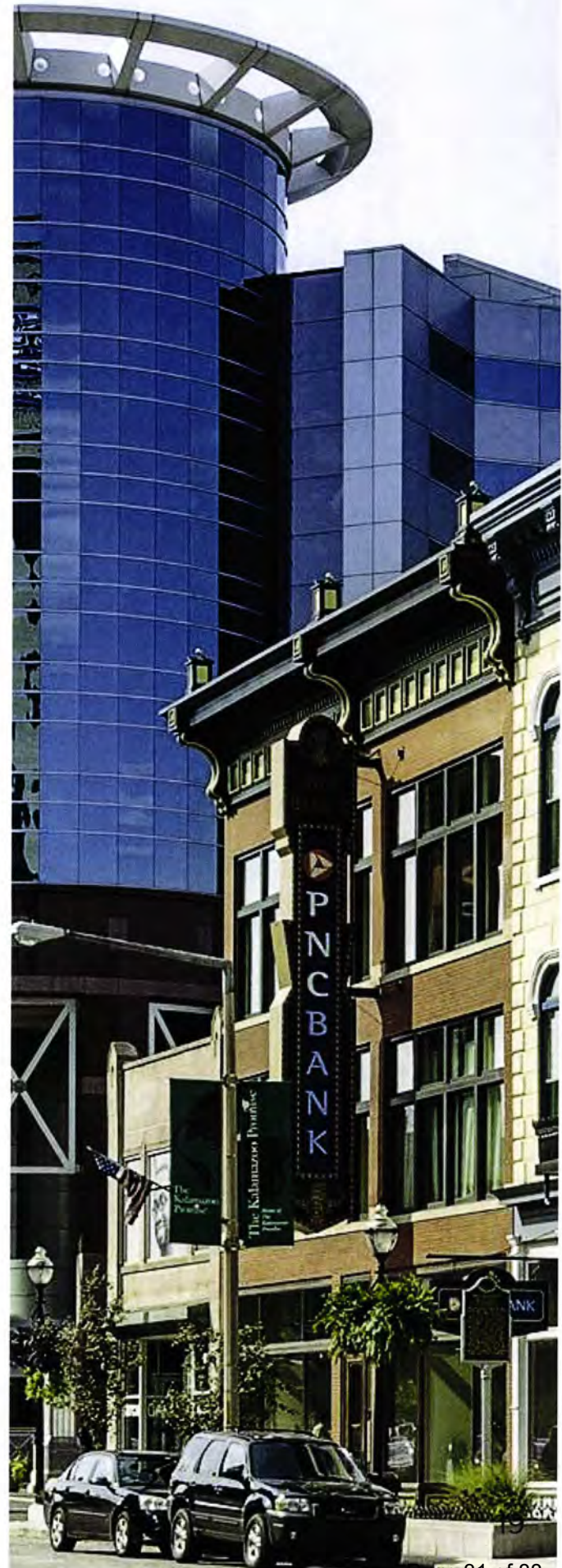
Out of Pocket Expense Reimbursement

FFE will reimburse us for reasonable out-of-pocket expenses incurred by us in delivering our services. We charge the reimbursement at our actual cost without any premium or mark-up. Examples of expenses are computer research, overnight mail service, document delivery service, copies, filing fees, secretarial overtime, and travel. We will not retain outside service providers, such as expert witnesses, local counsel and other consultants, without first obtaining approval from FFE but FFE will be responsible for payment of the cost of the outside service providers who FFE has approved. Travel and mileage will be billed and compensated in conformance with policies applicable to employees of The Kalamazoo Foundation for Excellence.

Monthly Billing

We will send FFE monthly invoices itemizing our services and expenses. The monthly bills are convenient means to track our activities. If there is anything on the bill or the activities it describes that you have questions about, please ask us promptly.

If it prefers, FFE may pay our invoices and other fees through our secure website at <https://www.millerjohnson.com/onlinepayments>.



Value-Added Resources

Miller Johnson provides a variety of value-added resources to its clients, The Foundation for Excellence (FFE) included. These resources are designed to communicate with and educate clients on current and vital business and employment-related topics. Some of these educational resources include: client alerts, webinars, podcasts, blogs, newsletters and video updates.

Miller Johnson also takes pride in the training opportunities we offer. These include Miller Johnson's Annual Employment Law Seminar for management and human resources professionals to stay current with major changes in the law. We invite FFE managers and supervisors to attend and take advantage of all such opportunities. Our Annual Employment Law Seminar is free to clients.



08

THE CITY OF



Organization Name: City of Kalamazoo
Address: 241 W. South Street
Kalamazoo, MI 49007

Contact Person: Clyde Robinson
Years Served: 1



Organization Name: City of St. Joseph
Address: 700 Broad Street
St. Joseph, MI 49085

Contact Person: John Hodgson
Years Served: 11



Organization Name: Kalamazoo College
Address: 1200 Academy Street
Kalamazoo, MI 49006

Contact Person: Jorge Gonzalez
Years Served: 33



COMMUNICATION

09

Effective Communication

We will keep FFE informed of the status of our representation and on matters that impact any decisions FFE must make. Should FFE at any time have questions or need for information, we will respond promptly. In return, FFE agrees to keep Miller Johnson attorneys reasonably informed of any developments that materially affect Miller Johnson's representation and to be available for necessary consultation with Miller Johnson attorneys on legal matters within the scope of this agreement.

Unless otherwise limited by FFE, we may communicate with FFE personnel in person or by phone, email, letter or fax. FFE will provide us with the contact information and e-mail addresses for all FFE personnel with whom we are authorized to communicate. Please understand that our communications to those email addresses will likely be privileged or confidential and that it is FFE's responsibility to secure those addresses from unauthorized users.

Your Obligations

FFE's cooperation is essential for a good working relationship in this representation. Accordingly, FFE will:

- Give us direction as we may request from time to time.
- Give us complete and accurate information throughout our representation. We will rely on the completeness and accuracy of that information in performing our services.
- Notify us of changes in FFE's structure so we may adequately identify potential conflicts.
- Notify us of any change of our primary contact or communication addresses or methods.



CONFLICT NAVIGATION

10

Conflict Navigation

Miller, Johnson's process for identifying potential conflicts between our firm's clients begins before we agree to begin work on a new matter. A Conflict Search Form containing the potential new client or existing client information is completed and the data is entered into the conflict database module which is integrated with our financial accounting system. This information includes but is not limited to potential new or existing client name, affiliated organizations, adverse parties and other related parties (e.g., Board members, organization owners). Then a conflict search is run. If no potential conflicts are flagged by the system, the matter is approved and a file is opened.

However, if a potential conflict is noted, the attorney requesting the conflict check receives a report detailing the nature of the potential conflict. It is the responsibility of the attorney who ran the conflict check to contact the attorney noted on the report as managing the potential conflicting matter and determine if a true conflict exists.

Every attempt will be made to accommodate the concerns of our clients consistent with the highest standards of our profession. When a potential conflict in representation of our clients cannot be resolved between the attorneys involved and the clients, Miller, Johnson's General Counsel will take the matter under consideration and make an appropriate recommendation.

If it is determined that a conflict exists, the attorney who would have opened the new matter file explains to the potential new client or existing client why Miller Johnson is unable to represent them in this matter.



Richard O. Cherry

Member

Kalamazoo

T: 269.226.2987

F: 269.226.2951

cherryr@millerjohnson.com

Richard Cherry is a highly accomplished public sector attorney, having spent over 14 years of his career practicing municipal law and criminal prosecution in both Kalamazoo, Michigan and Chicago, Illinois. Mr. Cherry represents public and privately held companies, family-owned businesses, non-profit organizations, health care providers, municipalities, company executives, and private individuals.

Litigation

Mr. Cherry has experience in all aspects of civil litigation, including claims involving breach of contract, commercial tax appeals, arbitrations, employment discrimination, and administrative procedures. As the Deputy City Attorney for Kalamazoo, Mr. Cherry defended the municipality as well as its officials and employees in both state and federal court claims. Mr. Cherry achieved summary judgments, favorable jury verdicts, and successfully negotiated settlements. Mr. Cherry also has municipal finance experience and has served as counsel for the Kalamazoo Brownfield Redevelopment Authority and Economic Development Corporation.

Public Sector

Mr. Cherry advises on the Freedom of Information Act, Open Meetings Act, Brownfield Redevelopment Act, economic development, ordinance drafting, labor and employment matters, general counsel, public safety and political matters.

Professional Affiliations and Activities

Mr. Cherry is admitted to the bar in both Michigan and Illinois. He currently serves as a Board Member of the Kalamazoo County Bar Association. Additionally, he is a both a member and former President of the Judge Charles A. Pratt Bar Association. Mr. Cherry is also a member of Michigan Association of Municipal Attorneys (MAMA).

Community Activities

Mr. Cherry is the former Board President of the Douglass Community Association. He also organized the Kalamazoo County Amnesty Day events in 2018 and 2019, and has served on the board of directors for Crescendo Academy. Additionally Mr. Cherry has participated in several speaking engagements throughout the community, including Kalamazoo College, Mt. Zion Baptist Church, and Kalamazoo area high schools. Mr. Cherry also teaches at the Kalamazoo Valley Community College Police Academy.

Education

Mr. Cherry is a graduate of the Wayne State University Law School, where he graduated with honors in legal writing. He earned his law degree in 2005. He received a Bachelor of Arts degree in Political Science from Kalamazoo College in 2001.

Aimee J. Jachym

Member

Kalamazoo

T: 269.226.2984

F: 269.978.2984

jachyma@millerjohnson.com

Aimee J. Jachym is a Member in Miller Johnson's Business practice representing clients in commercial transactions, mergers and acquisitions, corporate governance and compliance matters.

Corporate Law

Using her background in business and international affairs to meet the needs of local and global clients, Ms. Jachym counsels businesses of all sizes, including public institutions and start-ups, in diverse matters ranging from contract negotiations to regulatory matters and complex agreements. She serves as outside general counsel to several corporate clients and advises owners of privately-held entities on ownership issues, corporate governance, and succession planning.

Investment Advisory Practice

Ms. Jachym represents financial industry professionals and registered investment advisory (RIA) firms throughout the United States and provides counsel on mergers and acquisitions, succession planning, and other business matters. She also advises RIAs on SEC and state registration, compliance matters, and client and partner transitions.

International

Ms. Jachym works on many cross-border and international trade matters. She represents Korean and other international clients doing business in the United States and also advises domestic clients looking to expand their business into new markets. Ms. Jachym is proficient in verbal and written communication in Korean.

Health Care

Ms. Jachym also represents physicians and physician practice groups in all areas of their practices, including physician contract review, healthcare fraud and abuse compliance, and general legal issues. Well-versed in the ins-and-outs of the Health Portability and Accountability Act ("HIPAA"), Ms. Jachym helps clients understand HIPAA compliance and related health care matters.

Professional Affiliations, Activities, and Honors

Ms. Jachym is admitted to practice in Michigan and Illinois. She is a member of the State Bar of Michigan Pro Bono Honor Roll.

Her community and organizations service includes:

- Southwest Michigan First, Board of Directors, 2022-present
- Kalamazoo Symphony Orchestra, Board of Directors, 2021-present
- Community Homeworks, Board of Directors, 2020-present
- Korean Kids & Orphanage Outreach Mission (KKOOM), Co-Founder, Past President, and Board of Directors, 2007-present
- Read and Write Kalamazoo, Fund Development Committee, 2018-2020
- Korean Connection, Board of Directors, 2013-2016
- Leadership Kalamazoo, Class of 2018

She was the Western Michigan University, Haworth College of Business Young Alumni Award Recipient in 2015.

Education

Ms. Jachym earned her J.D., *cum laude*, from Wayne State University Law School, was a member of Law Review, received the Dean's Scholarship and was a Lombard Fellow. She earned a B.B.A. and a B.A., *magna cum laude*, from Western Michigan University and was a U.S. State Department Fulbright Grant recipient to South Korea. She was a University-Endorsed Nominee for a Rhodes Scholarship and also a Medallion Scholarship recipient.



John T. McFarland

Member

Grand Rapids

T: 616.831.1795

F: 616.988.1795

mcfarlandj@millerjohnson.com

John T. McFarland is a Member at Miller Johnson and has been practicing law since 2000. He concentrates his practice in the areas of estate planning, trust and estate administration (including fiduciary litigation), business succession planning, nonprofit and tax-exempt organizations, and tax law. Mr. McFarland has extensive experience in the area of charitable giving and planned giving and advises both individuals and nonprofit and tax-exempt organizations.

Nonprofit and Tax-Exempt

Mr. McFarland advises charitable organizations, families, and individuals on a broad range of matters. He has extensive experience advising charities about planned giving programs. He counsels charities and individuals on various charitable planning techniques and strategies. Mr. McFarland assists clients with the formation of charitable remainder unitrusts (CRUTs), including standard charitable remainder unitrusts (STAN-CRUTs), net income charitable remainder unitrusts (NICRUTs), net income with make-up charitable remainder unitrust (NIMCRUTs), and FLIP CRUTs. He also assists clients with the formation of charitable remainder annuity trusts (CRATs), charitable lead annuity trusts (CLATs), and charitable lead unitrusts (CLUTs). He counsels charities on charitable gift annuity programs, including state registration requirements and filings. He represents private foundations and public charities on corporate governance matters, conflict of interest policies, annual filings, unrelated business income tax issues, and tax filings.

Community Activities

Mr. McFarland is a member of the Economic Club of Grand Rapids. Mr. McFarland also currently serves on the Hillsdale College Alumni Board. He also serves on the Catholic Charities West Michigan Planned Giving Advisory Council. In the past, he served on the Board of Directors of the Lingap Children's Foundation in Jackson, Michigan. The Lingap Children's Foundation is a United States based charity with a mission to help street children and orphans in Toledo City, Cebu, Philippines. Mr. McFarland also served as a Trustee of the Barney Family Foundation in Chicago, Illinois.

Education

Mr. McFarland received his law degree from Wake Forest University School of Law and an LL.M. in Taxation from Villanova University School of Law. He received his undergraduate degree from Hillsdale College. Mr. McFarland is licensed to practice law in Michigan and Illinois.

Mr. McFarland received his Probate and Estate Planning Certificate, issued by the Institute of Continuing Legal Education (ICLE). He is also a CERTIFIED FINANCIAL PLANNER™. The Certified Financial Planner Board of Standards, Inc. sets and enforces the requirements for CFP® certification. He is fluent in Spanish and spent time studying at La Universidad de Belgrano in Buenos Aires, Argentina. He also served on a project for the director of The Buenos Aires Stock Exchange.



Alexandra S. Page

Associate

Grand Rapids

T: 616.831.1763

F: 616.988.1701

pagea@millerjohnson.com

Alex Page is an Associate in the firm's Litigation practice representing clients in matters involving the Cannabis industry, commercial litigation, and criminal matters.

Cannabis Law

Alex focuses much of her practice on the cannabis industry. She has represented businesses with entity formation, licensing with Michigan's Cannabis Regulatory Agency, permitting and compliance, and operational matters.

Litigation and Appellate

Alex has worked on the criminal defense side of cases and has experience with the appellate process throughout Michigan. Her research and advocacy on behalf of clients has created successful outcomes on matters of expungement, restoration of licensing and certification, and performing the appeals process.

Professional Affiliations, Activities and Honors

Alex is on the State Bar of Michigan Bar Journal Committee. She is also a member of the Young Lawyers Division and Cannabis section of the State Bar. She is an active member of the Women Lawyers Association of Michigan and frequently volunteers her time at local expungement fairs.

Education, Bar and Court Admissions, Clerkships

Ms. Page received her J.D., *cum laude*, from the Michigan State University College of Law. She was the Senior Articles Editor of the *Michigan State Law Review*, Diversity Chair of the Women's Law Caucus, a member of the Criminal Defense Society, and spent a summer studying abroad in Bialystok, Poland with other law students from Michigan, Poland, and Belarus. She earned her B.A. in Political Science and International Studies, *with honors*, from the University of Michigan.

While in law school, Alex was a law student extern in the State of Michigan Appellate Defender Office. She also was an extern to the Honorable Amy Ronayne Krause of the Michigan Court of Appeals.



REQUEST FOR PROPOSALS (RFP)

The Kalamazoo Foundation for Excellence (FFE) is soliciting proposals for:

Project Name: Foundation Attorney Services

RFP date: June 1, 2022

Responses accepted as PDFs by email.

RFP Due: July 15, 2022, at 3:00 p.m. EST

Questions about this RFP should be directed to:

Clyde Robinson, City Attorney

(269) 337-8185

robinsonc@kalamazoocity.org

241 W. South Street

Kalamazoo, MI 49007

You are invited to submit a proposal for this project. Specifications, terms, conditions, and instructions for submitting proposals are contained herein. This Request for Proposal with all pages, documents and attachments contained herein, or subsequently added to and made a part hereof, submitted as a fully and properly executed proposal shall constitute the contract between the Kalamazoo Foundation for Excellence (FFE) and the successful proposer when approved and accepted by the FFE Board of Directors. Please review the proposal document as soon as possible and note the deadline for questions and submission deadline in the Instructions to Proposers. late proposals will not be considered.

SECTION I INSTRUCTIONS TO PROPOSERS

1. **EXAMINATION OF PROPOSAL DOCUMENT** - Before submitting a proposal, proposers should carefully examine the specifications and shall fully inform themselves as to all existing conditions and limitations. The proposer shall indicate in the proposal the sum to cover the cost of all items included on the proposal form.
2. **PREPARATION OF PROPOSAL** - The proposal shall be submitted by email as a PDF. Facsimile bids will not be accepted.
4. **WITHDRAWAL OF PROPOSALS** - Proposals may be withdrawn by email to the Foundation Manager.
5. **LATE PROPOSALS**-Any proposal received at the office designated herein after the exact time specified for receipt will not be considered.
6. **UNIT PRICES**-If there is a discrepancy between unit prices and their extension, unit prices shall prevail.

SECTION II

PROPOSAL AND AWARD

The undersigned having become thoroughly familiar with and understanding all of the proposal/contract documents incorporated herein, agrees to provide attorney services as specified herein:

LEGAL COUNSEL SERVICES: **See Attached**

A.	Retainer	Monthly Retainer	Annual Retainer
	2022	\$ _____ X 12	\$ _____
	2023	\$ _____ X 12	\$ _____
	Total Contract		\$ _____

B. Discounted Billing Rates **See Attached.**

	2022	2023
Principal/Lead Attorney	\$ _____ /hr	\$ _____ /hr
Associate Attorneys	\$ _____ /hr	\$ _____ /hr
Paralegals	\$ _____ /hr	\$ _____ /hr

All prices and fees are stated in U.S. dollars.

Price stated shall be firm for the full term of this Contract.

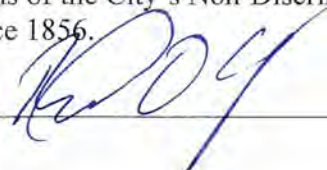
Proposer/Contractor has examined and carefully studied the bidding documents and attachments, and acknowledges receipt of the following addenda:

Addendum No: N/A

Dated: _____

Proposer shall provide all of the information as requested herein with their proposal. **Failure to do so and/or failure to provide post-proposal requested information may be cause for rejecting the proposal as non-responsive.**

By my signature below, I certify that the firm bidding on this contract, when making hiring decisions, does not use a past criminal conviction as a bar to or preclude a person with a criminal conviction from being considered for employment with the bidding firm unless otherwise precluded by federal or state law. I further certify that I have read and agree to be bound by the provisions of the City's Non-Discrimination Clause found in Appendix A and as updated by City Ordinance 1856.

Signed:  _____

Name: Richard O. Cherry

Title: Member

QUALIFICATIONS QUESTIONNAIRE

Please answer the following questions completely. You may submit answers on this form or as an attachment to this document, additional information (brochures, illustrations, etc.) will also be used in determining qualifications. If not using this form, please follow its format.

1. Firm name: Miller Johnson Attorneys
2. Established: Year 1959 State MI
3. Type of organization:
 - a. Individual _____
 - b. Partnership X
 - c. Corporation X
 - d. Other _____
4. Former firm name(s) if any, and year(s) in business:
Miller, Johnson, Snell, & Cummiskey, PLC
5. Home office business address and telephone number where work will be performed.
Radisson Plaza Building 100 West Michigan Ave. Suite 200, Kalamazoo, MI 49007
Main Telephone No.: 269.226.2950 Rich Cherry Direct No.: 269.226.2987 Main Fax No.: 269.226.2951
6. Branch office(s) if work will be performed there:
Arena Place 45 Ottawa Ave SW, Suite 1100, Grand Rapids, MI 49503 Phone No. 616.831.1700 Fax No.: 616.831.1701
DuMouchelles Building 405 E. Jefferson Ave Fifth Floor Detroit, MI 48226 Phone No.: 248.258.2850 Fax No.: 248.258.2851
7. Personnel of firm who will be working on this project. Attach resumes of key personnel:

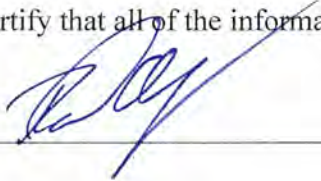
NAME AND TITLE	SPECIALTY	EXPERIENCE	EXPECTED ROLE
Rich Cherry, Member	Municipal and Non-Profit Corporate	17 years	Lead
Aimee Jachym, Member	Non-Profit Corporate Governance	13 years	Assist Partner
John McFarland, Member	Foundations	19 years	Assist Partner
Alex Page, Associate	Municipal	2 years	Assist Associate
8. Total personnel of firm:
 - a. Professional: 120
 - b. Non-professional: 100

9. Provide a description of the firm and the general experience of the firm in the field of municipal and nonprofit corporation law. **See attached.**
10. Attach a list of similar projects performed over the last five (5) years. Include: description of professional services provided, project size, contact person and phone number. Projects should demonstrate experience in the types of public entity consulting services you wish to provide. **See attached.**
11. Identify projects in Item 9 which most closely match the work required by the FFE. See **See Attached** _____

12. Provide your understanding of the project and any special qualifications you bring to this project. **See attached.**
13. Identify any additional consulting service(s) you will utilize to work on this project and their expected role(s).

14. Provide the address for your website.
millerjohnson.com _____

I hereby certify that all of the information provided is true and answered to the best of my ability.

Signed:  _____ Name: Richard O. Cherry _____
Type or Print

Title: Member _____ Date: July 15, 2022 _____

I hereby state that all of the information I have provided is true, accurate and complete. I hereby state that I have the authority to submit this proposal which will become a binding contract if accepted by the FFE. I hereby state that I have not communicated with nor otherwise colluded with any other proposer, nor have I made any agreement with nor offered/accepted anything of value to/from an official or employee of the FFE that would tend to destroy or hinder free competition.

The firm's identification information provided will be used by the FFE for purchase orders, payment and other contractual purposes. If the contractual relationship is with, or the payment made to, another firm please provide a complete explanation on your letterhead and attach to your bid. Please provide for accounts payable purposes:

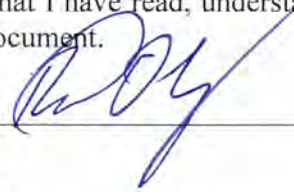
Tax Identification Number (Federal ID): 38-1603110

Remittance Address: 45 Ottawa Avenue, SW, Suite 1100, Grand Rapids, MI 49503

Financial Contact Name: Andrea L. Myers, CFO Financial Phone Number: 616.831.1924

Financial Contact Email Address: myersa@millerjohnson.com

I hereby state that I have read, understand and agree to be bound by all terms and conditions of this proposal document.

SIGNED:  NAME: Richard O. Cherry
(Type or Print)

TITLE: Member DATE: July 15, 2022

FIRM NAME:

Miller Johnson

(if any)

ADDRESS:

Radisson Plaza Hotel & Suites, 100 W. Michigan Avenue, Suite 200, Kalamazoo, MI 49007

(Street address)

(City)

(State)

(Zip)

PHONE: 269.226.2987

FAX: 269.226.2951

EMAIL ADDRESS:

cherryr@millerjohnson.com

SECTION III INDEMNITY AND INSURANCE

Contractor, or any of their subcontractors, shall not commence work under this contract until they have obtained the insurance required under this paragraph, and shall keep such insurance in force during the entire life of this contract. All coverage shall be with insurance companies licensed and admitted to do business in the State of Michigan and acceptable to the FFE within ten (10) days of the Notice of Award. The requirements below should not be interpreted to limit the liability of the Contractor. All deductibles and SIR's are the responsibility of the Contractor.

The Contractor shall procure and maintain the following insurance coverage:

Workers' Compensation Insurance including Employers' Liability Coverage, in accordance with all applicable statutes of the State of Michigan.

Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000 per occurrence and aggregate. Coverage shall include the following extensions: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent, if not already included and (E) XCU coverage if the nature of the contract requires XC or U work.

Automobile Liability in accordance with all applicable statutes of the State of Michigan, with limits of liability not less than \$1,000,000 per occurrence, combined single limit for Bodily Injury, and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

Additional Insured: Commercial General Liability and Automobile Liability, as described above, shall include an endorsement stating that the following shall be *Additional Insureds*: The FFE, all elected and appointed officials, all employees and volunteers, all boards, commissions, and/or authorities and board members, including employees and volunteers thereof. It is understood and agreed that by naming the FFE as additional insured, coverage afforded is considered to be primary and any other insurance the FFE may have in effect shall be considered secondary and/or excess.

To the fullest extent permitted by law the Contractor agrees to pay on behalf of, indemnify, and hold harmless the FFE, its elected and appointed officials, and employees against any claims, demands, suits, or loss, including all costs connected therewith, and for any damages which may be asserted, claimed, or recovered against or from the FFE, by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof, caused in whole or part by any negligent act or omission by the Contractor, its employees, agents, or officers which arises out of, or is in any way connected or associated with, this contract.

Cancellation Notice: All policies, as described above, shall include an endorsement stating that it is understood and agreed that thirty (30) days, or ten (10) days for non-payment of premium, Advance Written Notice of Cancellation, Non-Renewal, Reduction, and/or Material Change shall be sent to: FFE, 241 W. South Street, Kalamazoo, MI 49007.

Proof of Insurance Coverage: The Contractor shall provide the FFE at the time that the contracts are returned by him/her for execution, or within 10 days of Notice of Award, whichever is earlier, a Certificate of Insurance as well as the required endorsements. In lieu of required endorsements, if applicable, a copy of the policy sections where coverage is provided for additional insured and cancellation notice would be acceptable. Copies or certified copies of all policies mentioned above shall be furnished, if so requested.

If any of the above coverages expire during the term of this contract, the Contractor shall deliver renewal certificates and/or policies to FFE at least ten (10) days prior to the expiration date.

Scope of Coverage: The above requirements and conditions shall not be interpreted to limit the liability of the Contractor under this Contract but shall be interpreted to provide the greatest benefit to the FFE and its officers and employees. The above listed coverages shall protect the Contractor, its employees, agents, representatives, and subcontractors against claims arising out of the work performed. It shall be the Contractor's responsibility to provide similar insurance for each subcontractor or to provide evidence that each subcontractor carries such insurance in like amount prior to the time such subcontractor proceeds to perform under the contract.

SPECIAL INSURANCE REQUIREMENTS

The selected Consultant/Professional Firm shall provide insurance coverage as follows:

- A. Comprehensive professional (errors and omissions) liability insurance with limits no less than \$1,000,000 aggregate which shall insure against acts which are in the nature of professional services. If a contract is entered into, the Firm shall maintain such insurance during the life of the contract.

SECTION IV SCOPE OF WORK – LEGAL SERVICES

1. INTRODUCTION

The FFE is seeking proposals from firms and individuals licensed and in good standing to provide legal services in the State of Michigan to provide general counsel services. The successful proposer will assist the FFE Board of Directors and FFE Manager in the areas of:

- Services as Recording Secretary for Full Board meetings (approx. four, two-hour long meetings annually) and meetings of the Investment Subcommittee (approx. four hour-long meetings annually)
- Annual facilitation of stakeholder groups to vet and select new Board Directors
- Compliance with Michigan Freedom of Information and Open Meetings Acts
- 501c3 Type III non-profit governance and compliance support
- General contract creation and administration
- Counsel on needed policies/policy updates and adherence to generally accepted best practices
- Legal mediation with the City of Kalamazoo as needed
- Prepare reports as assigned
- Other legal representation and consultation as needed

2. CONTRACT PERIOD AND EXTENSIONS

The FFE desires to retain general counsel services for the period of January 1, 2022, through December 31, 2023. The FFE may opt to extend the contract upon mutual agreement of both parties made in writing for up to three (3) one-year periods.

3. BACKGROUND

About the Kalamazoo Foundation for Excellence

The Foundation for Excellence (FFE) is an innovative 501(c)3 non-profit support corporation that was created in 2017 to address systemic challenges to the prosperity of Kalamazoo. The FFE was originally announced alongside a commitment of \$70.3 million to support its creation, and to stabilize the City's budget, lower the property tax rate, and invest in aspirational community projects.

To-date, the FFE has supported many City projects and programs that have the potential to impact the lives of all residents, including infrastructure, affordable housing, economic development, and youth development.

Since being founded in 2017 the Foundation for Excellence (FFE) has budgeted nearly \$150 million towards the success of Kalamazoo's people and neighborhoods. This has allowed the City to lower taxes while still significantly increasing investments in our community. These investments in youth programming, parks, infrastructure, career development, transportation, economic and business support, and housing have a positive impact in every neighborhood. FFE funding has also stabilized the City of Kalamazoo budget so the City can focus on our community's needs and vision.

4. SERVICES TO BE PROVIDED

The items listed represent the minimum services expected to be performed. In your response to the Request for Proposals ("RFP"), identify other related services that you will provide, if applicable.

5. FEES AND PAYMENT

Payment will be made monthly for services rendered by the successful firm. A fee structure should be proposed meeting the following format:

- 5.1. A monthly retainer fee covering all services to be provided for each year of the contract.
- 5.2. Discounted hourly rates for principal/lead attorney services and for associate attorney services.

The successful firm will submit monthly billings showing the amount of time spent by lawyers and paralegals and the discounted hourly rates for those hours. The FFE will pay the monthly retainer proposed plus itemized out of pocket expenses such as telephone costs, copy charges, out of town mileage, etc.

At the end of each one-year term of this contract, the actual billed hours at the discounted rates will be compared with the annual retainer amount. If at the conclusion of each one-year term of this contract the discounted billings would have been at least 20% less than the annual fee, the successful firm will refund the difference between the annual fee for that year and the annual discounted billing amount to the FFE. For example, if the annual fee is \$50,000 and the discounted hourly billings are \$38,000, the firm will refund the FFE an amount of \$12,000. If the annual discounted billing amount is no more than 20% above or below the annual fee, there will be no adjustment to the retainer amount. If the actual discounted billing amount for any one-year term is more than 20% above the annual fee, the FFE will make an additional payment to the successful bidder in the amount the discounted hourly billings exceed the annual fee by more than 20%. For example, if the annual fee for the year is \$50,000 and the actual discounted billing amount to the FFE is \$62,000, the FFE will

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pay the successful firm \$2,000.

Invoices are to be submitted at the end of each month to the FFE Manager. The FFE will make payment within 30 days of receipt of the invoice.

6. **BILLABLE HOURS**

During the past four years, the billable hours demonstrated a range of time between 100 to 250 billable hours per year.

7. **LEAD ATTORNEY**

The proposal shall identify the lead attorney with whom the FFE Manager will have primary contact. Timeliness of response and accessibility to the lead attorney is an important aspect of the service.

8. **PROPOSAL REQUIREMENTS**

Applicant should include the following in proposal:

Cover Letter

Within the one-page cover letter, include your firm's full company name, address, phone number and the email address for your firm's contact person for the RFP.

Project Experience

Identify three (3) projects where you were the primary consultant. Demonstrate the experience of your firm and/or proposed team, including all subconsultants, on projects same/similar to that described in this solicitation for same/similar services. The projects submitted should also demonstrate that the consultant and/or the team have performed a same/similar type of services to be considered relevant. Also include any licensing, accreditations and affiliations.

Experience of Key Personnel

For each key person identified, list their length of time with the firm and at least two comparable projects in which they have played a primary role. There are no limitations on the number of key positions the firm may provide. However, at a minimum, the firm must provide the primary consultant and at least one (1) person from each sub-consultant identified. Each resume is limited to two (2) pages.

Include an organizational chart (maximum 2 pages) that depicts the project team organization and lines of authority at the end of this tab; chart may be submitted in 8.5"X11" or 11"X17". Clearly indicate superior/subordinate reporting relationships. Provide names of each position and identify the firm or sub-consultant.

Project Understanding and Approach

Describe the firm's approach to performing the required services in the Services to be Provided section described above. Describe the opportunities and constraints involved with the performance of the associated tasks.

9. **EVALUATION CRITERIA**

The following criteria will be used for selecting the Firm to provide legal counsel services:

10.1. **Experience of the Firm. (40 Points)**

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- 10.2. Experience and qualifications of the Lead Attorney, particularly with Michigan municipal and federal nonprofit corporations and organization issues
.(50 Points)
- 10.3. Experience and qualification of firm's personnel assigned to this contract. (50 Points)
- 10.4. Depth and stability of the Firm. (30 Points)
- 10.5. Accessibility and responsiveness of attorneys and staff. (20 Points)
- 10.6. Cost. (10 Points)

10. **SELECTION PROCESS**

An evaluation team will be formed to review the proposals received. After ranking the firms based on the included Evaluation Criteria, the FFE reserves the prerogative to interview one or more firms. A final recommendation will be prepared for FFE Board approval.

No rating or evaluation under the terms of this RFP shall be construed as a guarantee or promise of a contract and no such contract shall be binding on the FFE absent approval through the FFE's approval process.

The requested information is intended to provide information that will assist the FFE in the selection of the most qualified, competent, experienced, responsive, and economical Consultant, who will best serve its needs. During the evaluation process, where it may serve its best interest, the FFE reserves the right to request additional information or clarifications from proposers, to reject any or all proposals or unauthorized modifications, to allow corrections of errors or omissions, or to waive irregularities. The FFE is not obligated to award the contract based on cost alone. The selected firm will be required to enter into a written agreement with the FFE that will detail the specifics of the relationship and include scope of work, compensation, insurance requirements and other matters. If an agreement cannot be reached, the FFE reserves the right to render the proposal invalid and may award the contract to another qualified proposer in its sole discretion.

This RFP does not commit the FFE to pay for direct or indirect costs incurred in the preparation and/or presentation of a response. All finalists will pay their own costs incurred in preparing for, traveling to and attending interviews. The FFE reserves the right to accept or reject any or all proposals in part or in its (their) entirety.

The FFE reserves the right to make an award without further discussion of the submittal with the offeror. Therefore, the proposal should be submitted initially on the most favorable terms that the firm or individual might propose.

11. **POST PROPOSAL INFORMATION**

After review of proposals, the FFE may request further information or clarifications. Requested information shall be provided by the respondent either in writing or by oral presentation, at no cost to the FFE.

12. **ECONOMY OF PREPARATION**

Each proposal should be prepared simply and economically providing a straightforward concise description of the proposer's ability to meet the requirements of the RFP. Decorative bindings, colored displays, promotional material, etc., are discouraged and they may result in loss of evaluation credit. Emphasis should be on completeness and clarity of the contents.

13. **PAYMENT DEFAULT**

No bid or proposal shall be accepted from any party (contractor) who is in default on the payment of taxes, licenses or other monies due to the City of Kalamazoo.

14. **CONFLICT OF INTEREST**

Submitting firms shall notify the FFE of any potential conflicts of interest in their proposal submittal.

15. **ASSURANCE OF DESIGNATED PROJECT TEAM**

Proposer shall assure that the designated project team, is used for this project. Departure or reassignment of, or substitution for, any member of the designated project team or sub-consultant(s) shall not be made without the prior written approval of the FFE.

16. **QUESTIONS**

Questions relative to general proposal requirements may be addressed to Steve Brown, FFE Manager, browns@kalamazoo.city.org. Questions regarding the operational aspects of the FFE's requirements may be addressed to Clyde Robinson, City Attorney at (269) 337-8185. This does not relieve the proposers, however, from the requirements of Item 3, Page 1.

**SECTION V
TERMS AND CONDITIONS**

1. **AWARD OF CONTRACT**

- A. The contract will be awarded to that responsible proposer whose proposal, conforming to this solicitation, will be most advantageous to the FFE according to the criteria outlined herein. The FFE reserves the right to accept or reject any or all proposals and waive informalities and minor irregularities in proposals received.
- B. Notification of award will be in writing by the FFE Manager. Upon notification, the Consultant/ Professional Firm (hereinafter Firm) shall submit to the FFE Manager all required insurance certificates and such other documentation as may be requested or required hereunder. Upon their receipt and subsequent approval by the FFE, the FFE Manager will forward to the Firm a written **NOTICE TO PROCEED**. Work shall **NOT** be started until such **NOTICE TO PROCEED** is received by the Firm.
- C. Unilateral changes in proposal prices by the proposer shall not be allowed. However, the FFE, at its sole option, reserves the right to negotiate with proposers.

2. **REQUEST FOR PROPOSAL AS CONTRACT**

Should modifications (after proposal opening) NOT be necessary; this Request for Proposal (RFP) together with its addenda, amendments, attachments and modifications will be executed as the contract. In the event modifications of any nature do occur, a separate agreement shall be negotiated containing mutually agreeable terms and conditions from this Request for Proposal and any addenda.

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3. SUBCONTRACTORS – NON-ASSIGNMENT

Proposers shall state in writing any and all sub-contractors to be associated with this proposal, including the type of work to be performed. The Firm shall cooperate with the FFE in meeting its commitments and goals with regard to maximum utilization of minority and women-owned business enterprises.

The Firm hereby agrees and understands that the contract resulting from this proposal shall not be transferred, assigned or sublet without prior written consent of the FFE.

4. TAXES

The FFE is exempt from all federal excise tax and state sales and use taxes.

5. INVOICING

All original invoice(s) will be sent to the FFE Manager, 241 W. South Street, Kalamazoo, MI 49007 or via email at browns@kalamazoo-city.org

The vendor is responsible for supplying the FFE with a copy of their W9.

6. PAYMENTS

Unless otherwise specified by the FFE the Firm will be paid not more than thirty (30) days after receipt of a properly executed invoice, the sum stipulated herein for supplies delivered and accepted, or service rendered and accepted.

7. CHANGES AND/OR CONTRACT MODIFICATIONS

The FFE reserves the right to increase or decrease quantities, service or requirements, or make any changes necessary at any time during the term of this contract, or any negotiated extension thereof. Price adjustments due to any of the foregoing changes shall be negotiated and mutually agreed upon by the Firm and the FFE.

Changes of any nature after contract award which reflect an increase or decrease in requirements or costs shall not be permitted without prior approval by the FFE Manager. FFE Board approval may also be required.

ANY CHANGES PERFORMED IN ADVANCE OF PURCHASING AGENT APPROVAL MAY BE SUBJECT TO DENIAL AND NON-PAYMENT.

8. LAWS, ORDINANCES AND REGULATIONS

The Firm shall keep itself fully informed of all local, state and federal laws, ordinances and regulations in any manner affecting those engaged or employed in the work and the equipment used. Firm and/or employees shall, at all times, serve and comply with such laws, ordinances and regulations.

Any permits, licenses, certificates or fees required for the performance of the work shall be obtained and paid for by the Firm.

This contract shall be governed by the laws of the State of Michigan.

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9. **RIGHT TO AUDIT**

The FFE or its designee shall be entitled to audit all of the Firm's records, and shall be allowed to interview any of the Firm's employees, throughout the term of this contract and for a period of three years after final payment or longer if required by law to the extent necessary to adequately permit evaluation and verification of:

- A. Firm's compliance with contract requirements.
- B. Compliance with provisions for pricing change orders, invoices or claims submitted by the Firm or any of their payees.

10. **HOLD HARMLESS**

If the negligent acts or omissions of the Firm/Vendor or its employees, agents or officers, cause injury to person or property, the Firm/Vendor shall indemnify and save harmless the FFE, its agents, officials, and employees against all claims, judgments, losses, damages, demands, and payments of any kind to persons or property to the extent occasioned from any claim or demand arising therefrom.

11. **DEFAULT**

The FFE may at any time, by written notice to the Firm, terminate this contract and the Firm's right to proceed with the work, for just cause, which shall include, but is not limited to the following:

- A. Failure to provide insurance and bonds (when called for), in the exact amounts and within the time specified or any extension thereof.
- B. Failure to perform the services within the time specified herein, or any extension thereof.
- C. Failure to make progress if such failure endangers performance of the contract in accordance with its terms.
- D. Failure to perform in compliance with any provision of the contract.
- E. **Standard of Performance** - Firm guarantees to perform the services rendered herein in accordance with the accepted standards of the industry or industries concerned herein, except that if the specifications calls for higher standards, then such higher standards shall be provided.

Upon notice by the FFE of the Firm's failure to comply with such standards or to otherwise be in default of this contract in any manner following the Notice to Proceed, the Firm shall immediately remedy said defective performance in a manner acceptable to the FFE. Should the Firm fail to immediately correct said defective performance, said failure shall be considered a breach of this contract and grounds for termination of the same by the FFE.

In the event of any breach of this contract by the Firm, the Firm shall pay any cost to the FFE caused by said breach including but not limited to the replacement cost of such services with another Firm.

The FFE reserves the right to withhold any or all payments until any defects in performance have been satisfactorily corrected.

In the event the Firm is in breach of this contract in any manner, and such breach has not been satisfactorily corrected, the FFE may bar the Firm from being awarded any future FFE contracts.

- F. All remedies available to the FFE herein are cumulative and the election of one remedy by the FFE shall not be a waiver of any other remedy available to the FFE, either listed in this contract or available by operation of law.

12. INDEPENDENT CONTRACTOR

At all times the Firm, any of its employees, or its sub-contractors, and their subsequent employees shall be considered independent contractors and not as FFE employees. The Firm shall exercise all supervisory control and general control over all workers' duties, payment of wages to Firm's employees and the right to hire, fire and discipline their employees and workers. As an independent contractor, payment under this contract shall not be subject to any withholding for tax, social security or other purposes, nor shall the Firm or its employees be entitled to FFE paid sick leave, pension benefit, vacation, medical benefits, life insurance or workers' unemployment compensation or the like.

13. MEETINGS

The Firm and/or Project Supervisor shall be available to meet with the FFE Manager at a mutually agreeable time to discuss problems, issues or concerns relative to the contract. Either party may call a meeting at any time. When such a request for a meeting is made, the meeting date shall, in no case exceed five (5) working days after the request; and, if in the sole opinion of the FFE Manager, the severity of the circumstance warrants, no more than one (1) working day.

14. FFE'S RESPONSIBILITIES

The FFE agrees to provide full, reliable information regarding its requirements for the services to be provided. In addition, the FFE agrees to provide, at its expense and in a timely manner, the cooperation of its personnel and such additional information with respect to this agreement as may be required from time to time, to be provided by the FFE for the performance of the Firm's work.

15. TERMINATION

This Agreement may be terminated by either the FFE or the Firm by giving written notice at least thirty (30) days prior to the date of termination.

- A. In the event of such termination by the Firm, the FFE, together with any other remedies which are legally available, may withhold any subsequent payment due under this agreement until such time as the services required to be performed under this Agreement have been completed by the FFE or another firm. In the event that the FFE incurs additional expenses caused directly or indirectly by the termination of this Agreement, together with such other remedies as are legally available, the FFE shall be entitled to deduct such expenses from any unpaid amount due to the Firm under this agreement.
- B. In the event of such termination by the FFE, the FFE shall pay the Firm for services and reimbursable expenses performed or incurred prior to the termination date plus all costs and expenses directly attributable to such termination for which the Firm is not otherwise compensated.

16. NO WAIVER

Either party's failure to insist on strict performance of any term or condition of the contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

APPENDIX A NON-DISCRIMINATION CLAUSE

The Contractor agrees to comply with the Federal Civil Rights Act of 1964 as amended; the Federal Civil Rights Act of 1991 as amended; the Americans With Disabilities Act of 1990 as amended; the Elliott-Larson Civil Rights Act, Act. No. 453, Public Act of 1976 as amended; the Michigan Handicappers Civil Rights Act, Act No. 220, Public Act of 1976 as amended, City Ordinance 1856 and all other applicable Federal and State laws.

ATTACHMENT TO RESPONSE TO REQUEST FOR PROPOSAL
BY THE KALAMAZOO FOUNDATION FOR EXCELLENCE
(FFE)

PROPOSAL AND AWARD

LEGAL COUNSEL SERVICES:

A. Monthly/Annual Retainer

Retainer Year	Monthly Retainer	Annual Retainer
2022 (estimated 5 months)	\$6,552 ¹	\$32,760*
2023	\$6,552 x 12	\$78,624*
	Total Contract	\$111,384

*Miller Johnson proposes that immediately following the end of each calendar year, the parties will total Miller Johnson's monthly billing statements for the preceding year (the "Annual Actual Legal Fees"). If the Annual Actual Legal Fees are less than the projected Annual Retainer, Miller Johnson shall return the difference to FFE or credit the difference to the next year's retainer, at FFE's preference.

B. Proposed Discounted Billing Rates

	2022	2023
Principal/Lead Attorney	\$315	\$315
Other Member Attorneys	\$408	\$408
Associate Attorneys	\$221	\$221
Paralegals	\$209	\$209
Blended Rate:	\$312	\$312

C. Standard Billing Rates of Proposed Legal Team

As stated above, we propose a 15% discount off the 2022 standard billable rates of our proposed Legal Team set forth below. Our blended discounted rate is \$312/hour.

	Current Hourly Rates
Principal/Lead Attorney:	
1. Richard Cherry	\$370
Other Member Attorneys:	
1. Aimee Jachym	\$480
2. John McFarland	\$480
Associate Attorneys:	
1. Alex Page	\$260
Paralegals	\$245
Blended Rate:	\$367
Less 15% Nonprofit Discount:	(\$55)
Blended Rate:	\$312

All prices and fees are stated in U.S. dollars. Prices stated shall be firm for the full term of this Contract. We understand that FFE reserves the right to decrease quantities, service or requirements, or make any changes

¹ The proposed retainer was calculated based on an estimated 21 hours per month (250 hours per year) x our blended rate of \$312/hour.

necessary at any time during the term of the contract, or any negotiated extension thereof. Price adjustments due to any of the foregoing changes will be negotiated and mutually agreed upon by the parties.

9. *Provide a description of the firm and the general experience of the firm in the field of municipal and nonprofit corporation law.*

Description of the Firm and General Experience

Miller Johnson is a Professional Limited Liability Company licensed to operate in the State of Michigan. Since our firm was established in 1959, our attorneys and staff have committed themselves to the purpose of doing challenging legal work, utilizing all of our skills, training, and creativity to solve our clients' problems.

Today, we have over 120 lawyers and 100 staff members serving clients from our Grand Rapids, Detroit, and Kalamazoo, Michigan offices.

Miller Johnson is a full spectrum law firm including the following Practice Groups: Probate and Estate Planning, Employee Benefits, Mergers & Acquisitions, General Corporate, Bankruptcy, Labor and Employment, Education, Immigration, Litigation (including Domestic, Personal Injury and Criminal), Real Estate, Healthcare Reimbursement, Intellectual Property and Public Sector Work. In addition, within those practice groups, we have attorneys who specialize in all areas, including, but not limited to, welfare and retirement benefits, union / management relations, collective bargaining, labor arbitrations, mediation, civil and criminal litigation, affirmative action, tax law, contracts and IT/technology, licensing and regulatory compliance, commercial real estate (including acquisitions, sales, leasing, land use, and zoning), human resource policies and procedures, environmental law, tax increment financing and business agreements, wage and hour law, workers' compensation, OSHA, FMLA/ADA solutions, and governmental affairs. The significant number of attorneys who specialize in key practice areas provides a wealth of experience and allows Miller Johnson to be proactive and responsive while covering the full spectrum of specific legal needs for the clients we serve. Accordingly, Miller Johnson has the additional resources available to meet special or unusual needs of the City.

Expertise in Municipal Law

Our Public Sector practice has experience in the unique problems of governmental bodies, which can never act without weighing a whole range of constituent interests against each other, or without weighing local interests against federal and state laws and regulations. We act as both advisors and expeditors by helping governments frame clear and effective policies, and by seeing that policies are executed efficiently.

If governmental operations run smoothly, we have served our clients well.

Current public sector clients of Miller Johnson include the following:

1. City of Wyoming
2. City of Kentwood
3. City of East Grand Rapids
4. City of Holland

5. City of St. Joseph
6. City of Sturgis
7. City of Kalamazoo
8. Village of Lake Odessa
9. Allegan County
10. Kent County
11. Calhoun County
12. Washtenaw County
13. Kalamazoo County Transportation Authority (KCTA)
14. Central County Transportation Authority (CCTA)
15. Gerald R. Ford International Airport Authority
16. Holland Board of Public Works
17. Macatawa Area Express Transportation Authority (MAX)
18. Lakewood Wastewater Authority
19. Yates Township Transit System

Expertise with Nonprofits

Miller Johnson has a Nonprofit and Tax-Exempt Organizations Practice Group to help address all legal matters and regulatory compliance issues. Attorneys represent the well-established practice areas that earned Miller Johnson top rankings in U.S. News and World Report's 2021 "Best Law Firms" list including corporate law, employment law, trusts and estates law, tax law, education law, health care law, real estate law, construction law, mergers and acquisitions law, mediation and litigation.

Among the many clients we serve are:

- Charitable organizations of all sizes
- Educational institutions both private and public
- Family, community, and private operating foundations
- Professional, trade, and social associations
- Religious organizations including churches
- Tax-exempt institutions including hospitals

Some of the administrative functions and compliance issues we can provide help with are:

- Formation, consolidation, mergers, and dissolution
- Tax issues including annual reports, tax returns and compliance requirements
- Governance from board formation to administration duties
- Real estate issues including leases and financing
- Planned giving from establishing a program to drafting the documents
- Business matters from vendor contracts to insurance coverage
- Employment counsel ranging from hiring practices to employee benefits to discrimination claims
- Litigation services include risk management, resolving disputes through mediation, and trying conflicts of all kinds

The breadth of experience and qualifications of the attorney members enables us to be a valued and effective resource for our clients and professional contacts. In addition, our flexible, responsive, and proactive philosophy is intended to meet our clients' needs and exceed our clients' expectations.

Current nonprofit clients of Miller Johnson include the following:

Agora Flats Inc.	Charles Robert Evenson Foundation
Agudath Israel of Illinois	Cheff Therapeutic Riding Center
Babywearing Grand Rapids	Child and Family Charities
Bay Tower Condominium Association	Christian Workers Foundation
Billy Bear Hug	Community Action of Allegan County
Bob Ferrin Foundation	Community Healing Centers
Boy Scouts of America	Courtside Condominium Association
Campus Child Care, Inc.	D.A. Blodgett - St. John's
CARES	Disability Network Southwest Michigan
Center for Sound Literacy Foundation	Discipling Marketplace Leaders

Dwelling Place
Eagle Village
Faraday Trust for Science and Religion
Flat River Outreach Ministries, Inc.
Galesburg Country Homes Association
Gleaners Community Food Bank
Goodwill Industries/Central MI Heartland
Goshorn Lake Cottage Condominium Assn.
Great Lakes Urban Restoration Network
Hand2Hand
Highland Field Trial Grounds Association
Hillsdale County Senior Services Center
Huntington Hills Condominium Association
InterAct of Michigan, Inc.
Interlochen Center for the Arts
InterVarsity Christian Fellowship
Issachar Fund
Judson Center
Just One More
Kinexus
Lakes of the North Association
Lakes of Woodbridge Condominium Assn.
Lakeside Condominium Association
Legal Aid of Western Michigan
Life Recreation Therapy
Living At! for Developmentally Disabled
Marina Grand Resort Association
Mars Hill Bible Church
Michigan Disability Rights Coalition
Michigan GOP
Moors of Portage Association, The
MSU Foundation
Northeast Mich. Community Service Agency
Northwest Education Services
Parkinson's Association of West Michigan
Paul Martin Home for Boys
Reformed Benefits Association
Reformed Partnership Cong Renewal

Rescue Health Foundation
Rishika Foundation
Ronald McDonald House of Outstate MI
Shelterhouse
Shine Foundation
Six Companies Global LLC
South Beach Condominiums
South Haven Area Chamber of Commerce
Speaks Out Foundation
St. Vincent Catholic Charities
Streams of Hope
Student Statesmanship Institute
Sunny Crest Youth Ranch
Tall Turf Ministries
Talsma Family Foundation
Ten Directions
The Bluffs of Frankfort Association
The Cord Group
The Dominican Sisters of Marywood
The Peter and Joan Secchia Family, Inc.
The Reformed Journal
The Right Door for Hope, Recovery
TrueNorth Community Services
United Way of Genesee County
United Way of Northwest Michigan
United Way of the Battle Creek/Kalamazoo
Vibrant Futures
Victors Foundation
Victory Management Family Homes
Vista Maria
Volunteer Center of Southwest Michigan
West Grand Neighborhood Organization
West Michigan Miracle League
White Tent
Wingshadow Ministries
Work Skills Corporation
YMCA of Greater Grand Rapids
YWCA Kalamazoo

10. Attach a list of similar projects performed over the last five (5) years. Include: description of professional services provided, project size, contact person and phone number. Projects should demonstrate experience in the types of public entity consulting services you wish to provide.

City of Kalamazoo Brownfield Redevelopment Authority and Economic Development Corporation

Contact - Rebekah Kik, Director Community Planning & Economic Development of City of Kalamazoo

Scope of services

- Provided board counsel services on matters such as Open Meetings Act, Brownfield Redevelopment Authority Act, Economic Development Corporation Act
- Drafted agreements
- Negotiated contracts

City of Kalamazoo

Contact - Clyde Robinson, City Attorney for City of Kalamazoo

Scope of Services

- City Attorney experience
- FOIA coordinator
- Advised on Open Meeting Act
- Drafted agreements
- Negotiated contracts
- General Counsel services
- Litigation
- Ordinance/Code enforcement
- Drafting ordinances

Kalamazoo Valley Community College Foundation

Contact - Linda Depta, Executive Director of KVCC Foundation.

Scope of Services

- Corporate governance issues
- Converting from a member-based organization to a directorship nonprofit corporation
- Amending and restating its articles of incorporation and bylaws
- Updating board governance policies and procedures

Foundation and Public Charity Project Experience

- Established a private operating foundation whose mission is to engage in charitable programs to provide training for unemployed individuals, support services, and impact investments to economically disadvantaged minority businesses and community based organizations combating community deterioration.
- Representation of a private college with over \$1 billion in net assets and a \$150 million planned giving program. Responsible for overseeing the administration of charitable trust and charitable gift annuity program. Work with college officials with gifts of complex assets including, farmland, commercial real estate, split interest gifts, business interests, and artwork.
- Established a Type II Supporting Organization whose mission is to support a private classical Catholic School. The organization is operated, exclusively for the benefit of, to perform the functions of, or to

- carry out the educational purposes of the private classical Catholic School. The organization is supervised and controlled in connection with the private Catholic School.
- Ongoing representation of multiple private family and corporate foundations in West Michigan. Oversee due diligence and tax matters. Handle work related to employment matters. Draft gift agreements, consent resolutions, amend corporate governance documents, and oversee state and federal filings.
- Established a private nonoperating foundation for a regional bank. The corporate foundation makes grant distributions for local community initiatives.
- Established a private operating foundation whose mission is to provide services in the form of strategic consulting, research, coaching, and foundation management training and education to charitable donors and nonprofit organizations.

11. Identify projects in Item 9 which most closely match the work required by the FFE.

See answer to question 10.

12. Provide your understanding of the project and any special qualifications you bring to this project.

With Richard Cherry's experience working in the Kalamazoo City Attorney Office, Miller Johnson can provide over 9 years' of experience with the City of Kalamazoo, its officials, and its processes that will aid in negotiations with City and other community partners.

Further, Miller Johnson is fully committed to the Kalamazoo community, and wishes to aid in the furtherance of FFE's ultimate goal of empowering the citizens of the City of Kalamazoo to achieve the lives each citizen wants for themselves and their families.

Miller Johnson is pleased to have you as a client. The foundation of a good relationship is a clear understanding of the legal services we will provide and the business terms of our engagement. We want you to be an informed and involved client and encourage your questions, suggestions and concerns at any time. These terms supplement those found in your engagement letter and are an integral part of our agreement.

THE ATTORNEY-CLIENT RELATIONSHIP

The person or entity we represent is that identified in the engagement letter and does not include, unless specifically stated, any affiliates, corporate parents, subsidiaries, officers, directors, shareholders, employees, partners or commonly owned entities. If the client is a corporation, a professional corporation or limited liability company, you must notify us in writing promptly upon the start of the engagement if there are individuals who are so closely involved with the ownership of the entity that we should consider them personally in any future analysis of conflicts of interest.

This representation shall end at the completion of the specific service(s) you have retained us to perform. If you later retain us to perform additional or different services, those shall be considered a separate engagement, regardless of whether we issue a new engagement letter, even if they bear some relationship to earlier work. We may send you a closing letter evidencing the completion of the representation or may communicate with you regarding the disposition of files and documents, but these activities are not considered a part of the engagement and the representation shall have ended on the date of last substantive legal service. Should we inform you from time to time of developments in the law which may be of interest to you, by email, newsletter, or otherwise, such communication is not a revival of an attorney-client relationship.

FUTURE REPRESENTATION

If our relationship has ended, we have no obligation to represent you in connection with related matters unless we have agreed to do so in writing. For example, in the event our engagement involves preparation of an agreement which provides for ongoing rights and obligations on your part, a dispute concerning the interpretation or enforceability of that agreement may subsequently arise after our engagement has been terminated. In the absence of our express written agreement, you may not assume that we will continue to be free to represent you in such a future dispute. Moreover, we have no obligation to inform you of deadlines, option rights, expiration dates or developments in the law, or to file UCC continuation statements or other documents that are required to continue or preserve your rights, unless we have agreed in writing to do so.

EXPRESSIONS OF PROFESSIONAL JUDGMENT

Any statements we may make concerning the outcome of your legal matters are expressions of our professional judgment and are not guarantees. Any estimate of the total amount of your legal fees and expenses for the engagement is likewise an expression of our professional judgment at the time and not a guarantee or a cap. Estimates of cost, particularly in litigated or contentious matters, are always inexact, depending very much upon the activities and positions of other parties and the scheduling of events by courts or tribunals.

HOW FEES ARE SET

Our fees are set by agreement with you. There is a variety of possible fee arrangements, including hourly billing, a flat fee, a contingent fee, and a variety of mixed or hybrid billing arrangements. Our customary fee agreement is based upon hourly billing for services rendered with adjustments as may be appropriate to the circumstances of the representation. Unless otherwise agreed, hours are billed at standard rates, which are set from time to time for each of our billing attorneys and paralegals. Upon your request at any time we shall be pleased to provide you with the rates for the personnel working on your matter. Our standard hourly rates are adjusted from time to time, usually annually, to reflect market conditions and the growing expertise of individual lawyers and paralegals. The hourly rate you are charged shall be the one in effect at the time the service is rendered. We shall track time in one quarter hour increments.

When we travel on your behalf, we generally charge portal-to-portal for our travel time. Whenever possible, we shall endeavor to work on your matter while traveling. If we work on matters for other clients while traveling on your behalf, that time shall be deducted from our charges to you.

It is important to the success of our relationship that we communicate accurately and fully regarding our charges and the basis for them. Likewise, you should tell us whenever you have any questions or issues about a billing statement and should address them to us within a reasonable time after receipt of our invoice (which we would ordinarily expect to be no more than 60 days). If you are not satisfied with the outcome of discussions about such matters with the attorney with whom you are dealing, please call the firm's general number and ask for the Chief Operating Officer, who will see that the appropriate person addresses your concern.

ATTORNEY CONFERENCES / MEETINGS

From time to time, internal conferences shall take place among the professionals who are participating in your representation. Although this approach might seem to result in duplication of effort, it is our belief that this practice facilitates communication, improves the quality of the work by allowing us to utilize specialists and a proper mix of personnel, and thus ultimately provides you with the best value. If, at any time, you are concerned about the efficiency or cost-effectiveness of our efforts, please express those concerns promptly so that we can address the issue in a timely fashion.

COSTS AND REIMBURSABLE EXPENSES

We often find it necessary to incur certain expenses on our client's behalf, such as travel (transportation, food and lodging), filing, recording and certification fees, title searches, court reporters, long distance telephone charges outside the contiguous 48 states, conference calling services, printing, photocopying and document production, computerized legal research, faxes, electronic litigation support, messenger and overnight courier services, and, in situations that may require it, non-lawyer staff overtime. These expenses are charged, insofar as possible, at our actual out-of-pocket cost.

Generally, you shall be directly invoiced for significant third party expenses, such as the invoices of other professionals whose assistance is required (e.g. accountants, consultants, forensic specialists, economists, planners, experts, etc.), court reporters, transcripts, investigations, photographs and other graphic exhibits and materials, and the like. In the event that we pay these expenses on your behalf, the cost shall be included with other reimbursable charges on our invoice to you.

On rare occasions we may not have adequate legal or paralegal staff available to handle the demands of your representation. In that event, we may at our discretion retain independent contractors and charge their services to you at comparable rates for Miller Johnson employees.

TERMS OF PAYMENT / COLLECTION

Unless otherwise agreed in writing, we typically bill monthly. Payment is due upon receipt. Any invoices not paid when due accrue interest at the maximum rate permitted by Michigan law, not to exceed 7% per annum, from the beginning of the month following the due date. In the event we must take legal action to collect a fee, you shall be responsible for paying the costs of collecting the debt, including court or arbitration tribunal costs, filing fees, and actual attorney fees (regardless of whether Miller Johnson in-house counsel are used).

CLIENT BILLING POLICIES AND PROCEDURES

We sometimes receive statements from clients of billing policies, procedures, guidelines or the like, that we are instructed to follow. In the event that you give such instructions, to the extent that they merely

supplement the understandings in this Agreement, unless we notify you to the contrary, we shall take reasonable steps to honor them. However, in the event that the terms of the instructions conflict with this Agreement, this Agreement shall govern unless we otherwise expressly agree in writing.

ATTORNEY'S LIEN

If a monetary judgment or award is made in your favor, we shall have a lien on the proceeds to the extent of any unpaid fees, disbursements or other charges. All payments by way of recovery, award, settlement or the like to you from third parties shall be made jointly payable to you and to us.

In divorce matters, you hereby award us a valid and perfected lien on the property (including proceeds) awarded pursuant to a Judgment of Divorce, and we may, but are not required to, file any documents we deem appropriate to give notice of this lien (including recording a copy of this engagement letter, Judgment of Divorce, and UCC financing statements), in the real property records where the property subject to the Judgment of Divorce is located as well as with the appropriate Secretary of State's office.

CLIENT FILES

We maintain a file of the items reasonably necessary to your representation ("Client Files"), such as correspondence, pleadings, deposition transcripts, exhibits, physical evidence and expert reports. The Client File is our property. Any of your own documents or items that you have provided to us ("Client Documents") remains your property. We also generate, and sometimes temporarily place in the Client File, documents containing our attorney work product, mental impressions, precedents, legal or factual research, notes, and other materials that we find helpful or useful but that is not essential to the representation ("Work Product"). We also maintain Administrative Records, which include time and expense reports, billing memoranda or invoices, personnel and staffing materials, credit and accounting records and collection records. Work Product and Administrative Records are also our property.

After our engagement ends, we may or, upon your request, shall return any Client Documents to you. You agree that we may retain copies of those materials at our expense so as to insure that we have a complete record of the engagement. With respect to the Client Files, the Work Product and the Administrative Records, including electronic documents, you agree that we may adopt reasonable retention policies and may in furtherance of such retention policies delete and destroy such documents.

At any time you may request and shall be entitled to receive a copy of the Client Files for which you have compensated us. You agree to pay the cost of copying and transmittal.

If we receive a subpoena for your files in any matter in which you are a party, you agree to pay our reasonable and necessary costs and attorney fees for compliance.

If you request that your Client File and your Client Documents be transferred to another lawyer or returned to you, you understand that, unless otherwise agreed in writing, we shall retain a copy of the complete file, so as to have a record of our representation, and you agree that you shall pay the reasonable and necessary costs of file preparation and transfer, including the costs of copying and shipping the file and the services of personnel assigned to the task. If at the time you request such a transfer you have not fully satisfied all of your obligations to us under this agreement, including the payment of all fees and costs, we shall be entitled to hold the Client Files as security for performance of those obligations to the full extent permitted by the rules of professional conduct.

CLIENT TRUST ACCOUNT

We shall comply with all applicable ethical standards regarding the handling of funds belonging to you. Pursuant to those requirements, we shall not deposit any funds belonging to you in firm operating accounts. Rather, all such funds shall be deposited in a trust bank account that complies with our obligations under Michigan Rule of Professional Conduct 1.15 (Interest on Lawyers Trust Accounts).

TERMINATION OF PROFESSIONAL RELATIONSHIP

You may terminate our representation at any time by notifying us.

We may also withdraw from providing services to you upon giving you reasonable notice. The ethics rules governing the practice of law list several types of conduct or circumstances that require or allow us to withdraw from representing a client. Among those reasons are: (1) non-payment of our fees; (2) your failure to be forthright, cooperative or supportive of our efforts; (3) your misrepresentation of, or failure or refusal to disclose, material facts to us; (4) your failure or refusal to accept our advice; or (5) the discovery of a conflict of interest with another client. We shall try to identify in advance and discuss with you any situation which may lead to our withdrawal and, if withdrawal becomes necessary, we shall give you written notice of our withdrawal.

Termination of our professional relationship shall not affect your responsibility for payment for our services rendered or for costs and expenses incurred. Upon termination of our representation, we shall submit a statement for services rendered to date of termination, payable in full upon receipt.

In the event of termination or withdrawal, you shall pay the reasonable and necessary costs, including attorney time and the costs of copying the Client files, required to transfer the file to new counsel. Work Product shall not be transferred without our written approval, which may be given or not at our sole discretion.

CONFIDENTIALITY / PRIVILEGE

We shall protect your confidences and shall not divulge confidential information concerning your business, personal or legal matters, except as required by law, regulation or court order or as permitted by professional ethical standards.

An important feature of our relationship is the attorney/client privilege, which protects most confidential communications with us from disclosure to third persons. You should bear in mind, however, that this important safeguard may be lost as to a given matter if you disclose or authorize disclosure to any privileged information to any third party.

CONFIDENTIALITY OF PROTECTED HEALTH INFORMATION (HIPAA)

If our representation of you requires us to receive and use health information that is protected by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), we shall protect this information as required of business associates under the HIPAA privacy and security standards.

AUDIT LETTER RESPONSES

You may request that we provide your auditors certain information in connection with your auditors' examination of your financial statements. We shall charge you for our services in doing so and each such response shall be considered an engagement separate and distinct from any of the matters reported upon. For your benefit and to protect the attorney-client privilege, our responses shall only be made in accordance with the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December 1975), including all of the limitations contained therein. You consent to our adherence to the ABA Statement and agree not to request additional information.

SECURITIES LAW ADVICE

Unless specifically requested and agreed by us in writing, we shall not provide any advice with respect to the securities laws of the United States or any other jurisdiction or any related rules or regulations. You shall not, without our prior written consent, include any documents or information we provide to you in any filings with federal or state securities regulators.

FEDERAL TAX ADVICE

Unless specifically requested and agreed by us in writing, we shall not provide any advice that is intended or written to be used, and without such specific written consent cannot be used, for the purpose of (a) avoiding federal tax penalties that may be imposed upon a taxpayer or (b) promoting, marketing, or recommending to another party any tax-related matters addressed by us.

GENERAL PROVISIONS

You may not assign, transfer or otherwise convey rights or obligations under this agreement without our consent. This agreement is governed by Michigan law.

This document involves important legal agreements between us. We are not acting as your attorney with respect to this agreement and you may wish to consult independent counsel in deciding whether or not to agree to it.

HIPAA BUSINESS ASSOCIATE/SUBCONTRACTOR PROVISIONS

These provisions outline the obligations of Miller Johnson under the privacy, security, breach notification and enforcement rules of the Health Insurance Portability and Accountability Act ("HIPAA") where Miller Johnson is acting as a "business associate" of a Client who is a "covered entity," or where Miller Johnson is acting as a "subcontractor" of a Client who is a "business associate." The terms "covered entity," "business associate" and "subcontractor" are defined under HIPAA. With respect to each such Client, these provisions set forth Miller Johnson's obligations, activities, and permitted uses and disclosures of protected health information ("PHI"), as that term is defined under HIPAA. **These provisions do not apply unless Miller Johnson is acting as a "business associate" or a "subcontractor" of a Client as described above.**

MILLER JOHNSON'S OBLIGATIONS AND ACTIVITIES

- Miller Johnson agrees not to use or disclose PHI other than as permitted or required herein or as required by law.
- Miller Johnson agrees to use appropriate safeguards and comply with federal regulations with respect to electronic PHI, and to prevent the use or disclosure of PHI other than as provided for in this HIPAA section.
- Miller Johnson agrees to mitigate, to the extent practicable, any harmful effect that is known to Miller Johnson of a use or disclosure of PHI by Miller Johnson in violation of the requirements of the HIPAA provisions herein.
- Miller Johnson agrees to report to Client any use or disclosure of PHI not provided for herein of which Miller Johnson becomes aware and/or any security incident of which Miller Johnson becomes aware.
- If Miller Johnson discovers a breach of unsecured PHI, Miller Johnson shall notify Client as soon as reasonably practicable. The notification will include identification of each individual whose unsecured PHI has been breached (or Miller Johnson reasonably believes to have been breached), and any other available information in Miller Johnson's possession which the Client is required to include in any required notice to the affected individuals.
- Miller Johnson agrees to ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits PHI on behalf of Miller Johnson regarding Client agrees in writing to the same restrictions, conditions and requirements that apply herein to Miller Johnson with respect to such information. Moreover, Miller Johnson shall ensure that any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect Client's electronic PHI.
- Miller Johnson agrees to make its internal practices, books, and records including policies and procedures relating to the use and disclosure of PHI received from, or created or received by Miller Johnson on behalf of, Client reasonably available to the federal government for purposes of determining Client's compliance with HIPAA.
- Miller Johnson agrees to document such disclosures of PHI required for Client to respond to a request by an individual for an accounting of disclosures of PHI and to provide the information to permit Client to respond to such a request in accordance with applicable federal regulations.

MILLER JOHNSON'S PERMITTED USES AND DISCLOSURES

Miller Johnson may use or disclose PHI to perform legal services for Client, provided that such use or disclosure would not violate HIPAA if done by Client. Miller Johnson also agrees to make its uses and disclosures and requests for PHI consistent with Client's minimum necessary policies and procedures which Client has communicated to Miller Johnson. Miller Johnson may use PHI for our proper management and administrative purposes or to carry out our legal responsibilities. Miller Johnson may also disclose PHI for our proper management and administrative purposes or to carry out our legal responsibilities, provided that the disclosures are required by law, or Miller Johnson obtains reasonable written assurances from the person to whom the PHI is disclosed that the PHI will remain confidential and used or disclosed only as required by law or for the purpose for which it was disclosed, with the recipient agreeing to notify Miller Johnson of any instances where the recipient becomes aware the PHI has been breached.

OTHER HIPAA TERMS

These provisions relate solely to Miller Johnson's compliance with HIPAA with respect to PHI relating to Client. It does not govern any other aspect of the parties' relationship nor does it confer any rights or obligations on any other person or entity other than Miller Johnson and Client. These provisions replace and take precedence over any prior HIPAA business associate agreements or subcontractor agreements entered into between the parties and are binding on each party's successor.

The HIPAA terms will stay in effect until terminated by Client due to Miller Johnson's violation of a material term, or if otherwise agreed to in writing between Miller Johnson and Client. If Client determines that Miller Johnson has violated a material HIPAA provision, Client may provide Miller Johnson an opportunity to cure any breach or end the violation and terminate if Miller Johnson doesn't cure the breach or end the violation within a reasonable time. Alternatively, Client may immediately terminate if it determines that a cure is not possible. Upon termination Miller Johnson will return or destroy all PHI received from or on behalf of Client. If Miller Johnson determines that return or destruction isn't feasible, Miller Johnson will continue to safeguard the PHI in accordance with HIPAA.

This document involves important legal agreements between us. We are not acting as your attorney with respect to this agreement and you may wish to consult independent counsel in deciding whether or not to agree to it.

Date: **9/12/2022**

FFE

Item: **D.2.**

Foundation for Excellence

Agenda Report

Kalamazoo Foundation for Excellence

TO: Foundation for Excellence Board of Directors

FROM: Prepared by: Steve Brown, FFE Manager
Reviewed by: Clyde J. Robinson, Legal Counsel

DATE: September 12, 2022

SUBJECT:

Creation of Nominating Committee

RECOMMENDATION:

It is recommended that the Board create a Standing Nominating Committee of three (3) to five (5) members to fill Board vacancies, appoint Board volunteers or nominees to the Committee with hiring, management, assessment, or comparable experience, to serve for terms of office of one year or until removed by a simple majority vote of the Board, beginning and ending each April Board Meeting.

BACKGROUND:

History

The FFE Bylaws require a Governance Facilitator to help the FFE in filling Board vacancies. In this role, the Kalamazoo Community Foundation (KCF) has been instrumental in helping craft and administer a process that achieves this goal annually. The FFE Board is an outstanding example of diversity across various sectors which make up the Kalamazoo community.

The agreement with KCF was renewed in 2021 for one year in anticipation of KCF's desire to move on from its role as Governance Facilitator. Simultaneously, the FFE successfully completed five years of operation and continues to develop its capacity for permanent independent operations of integrity. Staff did conduct market research into locating a new Governance Facilitator as a matter of due diligence with Michigan Nonprofit Association, Nonprofit Network of Michigan, and Council of Michigan Foundations, but discovered that

qualified providers are lacking in that space. The FFE was perhaps unique in resorting to a Governance Facilitator and its needs have evolved since its 2017 founding.

Simultaneously, Board members have expressed interest in assuming these duties themselves as an independent organization. The components of this work include coordinating, identifying, and recommending a slate of potential new and renewing Stakeholder Directors to the City Commission and filling Board of Directors vacancies annually, as described throughout the Bylaws. It is anticipated that the Board and staff will continue to use the process developed by KCF due to its significant success and continual improvement over the past several years.

The Executive Committee recommended at its August 29, 2022, meeting that this item be presented for consideration by the Board.

The Executive Committee’s Role in Creating a Nominating Committee

The Bylaws clearly outline the Executive Committee’s powers to recommend committee creation to the board and in developing and recruiting leadership:

- Section 6.03 Executive Committee: The Executive Committee shall undertake such matters as may be assigned to it by the Board of Directors and identify strategic issues for Board discussion, recommend committees that should be created, work to develop and recruit new leadership on the Board and make recommendations to the Board on best governance practices that can be implemented by the Board of Directors.

The Rules for the Board to Create Committees

Section 6.01 General: If a committee is created by the Board of Directors, the Board resolution that creates the committee shall state the purposes of the committee, the terms and qualifications of committee members, and the ways in which committee members are selected and removed. Membership on committees can include individuals who are and are not Directors or Officers of the Corporation. The President, with the consent of the Board of Directors, shall designate the persons to serve on each committee, fill vacancies on committees, and serve as Chairperson of the committee.

The Powers of a Nominating Committee

The Nominating Committee would have the general role to replace the Governance Facilitator in scope: it would coordinate, identify, and recommend a slate of Stakeholder Directors to the City Commission and Board of Directors to fill vacancies. Following its creation by the Board and full appointments, the Nominating Committee would draft a full description of its scope and power to the Board for approval.

- Section 6.04 Powers: Any committee shall exercise such powers and perform such duties as are permitted by the Act and stated in these Bylaws or as the Board of Directors may, from time to time authorize. However, no committee shall have the power or authority to: (...) Fill vacancies in the Board of Directors.

Section 6.05 Rules for Committees: The Board of Directors may adopt rules regarding the

conduct of committees and their meetings, including rules for the calling of meetings, quorum requirements and voting. To the extent it is not inconsistent with the rules adopted by the Board of Directors or the requirements of these Bylaws that apply to committees, each committee may establish its own rules to govern the conduct of its activities.

Alternative

The Executive Committee may alternatively request that the Board direct it to conduct the scope of work outlined in the nominating committee description itself within its existing agendas and meetings per Section 6.03 of the Bylaws and update the board-approved Executive Committee description to include nominating duties: "The Executive Committee shall undertake such matters as may be assigned to it by the Board of Directors and also identify strategic issues for Board discussion, recommend committees that should be created, work to develop and recruit new leadership on the Board (...)." A resolution to this effect would be: "It is recommended that the Executive Committee begin conducting the work outlined in the proposed nominating committee description as part of its standard operating scope and annual procedures."

Impact on FFE Bylaws

The FFE Bylaws would require an official update conducted according to the Bylaws Section 11.01 to replace the eleven (11) references to a Governance Facilitator with the appropriate reference to a new body.

Section 11.01 Amendments:

A. Subject to its Articles of incorporation, the Corporation's Bylaws may be altered or amended by the affirmative vote of three quarters (3/4) of all Directors then in office, which must include the affirmative vote of a majority of the City Directors present at the meeting, provided a quorum exists and that notice of the meeting has been given to all Directors at least twenty one (21) days before the meeting together with a copy of the proposed amendment. The type of notice shall be that which is allowed for a regular meeting of the Board of Directors, as provided in Section 4.06A.

B. Any such amendment to these Bylaws can only be effective with the concurrence of the City Commission and the approval of the Michigan Attorney General's Charitable Trust Division or its successors.

STRATEGIC VISION ALIGNMENT:



Good Governance- Ensuring the City organization has the capacity and resources to effectively implement the community's Strategic Vision in a way that is sustainable over the long term.

FISCAL IMPACT:

Date: **9/12/2022**

FFE

Item: **D.3.**

Foundation for Excellence

Agenda Report

Kalamazoo Foundation for Excellence

TO: Foundation for Excellence Board of Directors

FROM: Prepared by: Steve Brown, FFE Manager
Reviewed by: Clyde J. Robinson, Legal Counsel

DATE: September 12, 2022

SUBJECT:

Draft FFE Development Proposal

RECOMMENDATION:

It is recommended that the Board of Directors create the position of Executive Director and direct staff to create a detailed job description and hiring proposal for Executive Committee review.

BACKGROUND:

History

The Foundation for Excellence (FFE) was incorporated in October 2017, with a sole purpose of supporting the City of Kalamazoo.

Beginning with Articles of Incorporation and Bylaws, the 16-member Board of Directors in conjunction with the FFE governance facilitator and other City staff, approved a full suite of policies and committee descriptions, undertaken four successful years of programming, independent financial compliance, industry recognition, and awareness building in Kalamazoo. The goal of creating a permanent, durable institution of superlative integrity and stability have remained key considerations since the FFE's founding.

Ongoing Development

Following Board conversations in the winter of 2022 regarding ongoing development of the FFE, staff has worked to clarify organizational improvements that could build the highest operational integrity. These have led to a draft proposal, attached to this agenda item, for discussion by the Executive Committee for possible recommendation to the Board of Directors. This falls within

the Executive Committee’s responsibilities outlined in the Bylaws Section 6.03 to “make recommendations to the Board on best governance practices that can be implemented by the Board of Directors.”

Multiple factors were considered in researching possible proposals, including: 1) reducing the possibility and appearance of conflicts of interest for staff serving both the City and FFE, namely the City FFE Manager position, 2) building fundraising capacity for the viability and sustainability of the FFE endowment, 3) managing the annual grant agreement between the FFE Board and City, 4) increasing administrative time and focus on ensuring exceptional strategic staff support to the Board, and 5) prioritizing possibilities that would be most feasible given the complex policy and regulatory environment surrounding the FFE relative to the City Commission.

Proposal Summary

The proposal focuses on several key factors: 1) hiring an Executive Director 2) hiring a fundraising and development support position 3) and retaining the administrative support and benefit services of the City using a proven contractual model.

The FFE Bylaws specify the ability of the Board to hire an Executive Director, with the “advice and consent” of the City Commission, who would directly report to the Board and conduct all business declared by the Board including daily operations, governance support, staff management (if any), report production, financial compliance coordination, public relations, fundraising, and other duties as assigned.

Staff met individually with all Board Directors in July and August of 2022 to discuss developments outlined above. Support was unanimous among Directors with no major concerns noted, based on discussion being needed and planned at the Executive Committee and Board level.

Next Steps

Next steps would include the Executive Committee advancing this item in its report for discussion of the next Board meeting. The Board would not be asked for action but could decide to take no action at that time or document a non-binding consensus for desired changes. From that point the Executive Committee would work with Staff to generate a full budget for the changes, job description(s), and pursue candidates. Following this, the Board would interview and offer a position pending City Commission approval and take the nomination to the City Commission for approval. This process would require thoughtful timing and coordination and could require four to six months from initial Board engagement to final staffing.

The complete Bylaws section discussing this matter are quoted here in full for clarity. In brief, the Bylaws instruct the Board to seek the “advice and consent of the City Commission,” which FFE legal counsel has clarified to mean binding approval in one (1) action by City Commission to approve the candidate proposed by the Board.

Section 4.01 Functions

The Directors shall have the right, with the advice and consent of the City Commission to select, hire, supervise and fire an Executive Director for the Corporation who shall be responsible for the Corporation's day-to-day operations in consultation with the Corporation's Officers, including the hiring and termination of employees and agents (if any) to carry out the work of the Corporation, establishing their duties, and performing any duties and functions as are specified by the Board or by any person to whom the Board has given authority to supervise and direct the Executive Director.

To obtain the "advice and consent" of the City Commission requires that the Board of Directors provide such information to the City Commission as it may request about the action to be taken and that the City Commission give its prior approval to this action before it is acted upon by the Board of Directors.

With respect to obtaining the City Commission's advice and consent concerning the selection, hiring, supervision and firing of an Executive Director, the Board of Directors shall provide the City Commission with information it requests about potential candidates to be hired for an Executive Director position, and about the Executive Director's job performance and about any plan to terminate the employment of the Executive Director. The Board of Directors shall not take action to hire or fire the Executive Director or significantly alter the duties of this position until after this is first approved by the City Commission.

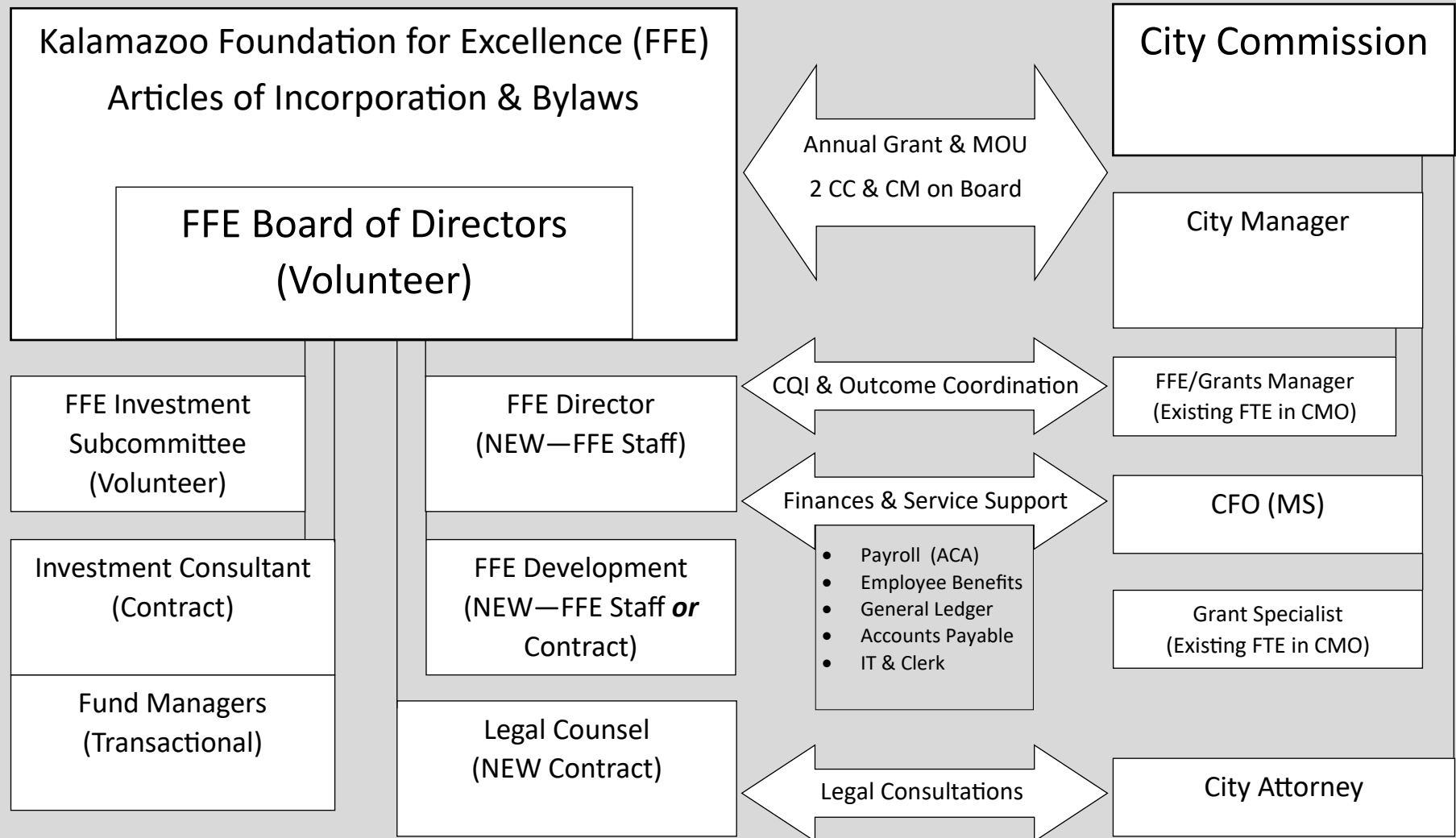
STRATEGIC VISION ALIGNMENT:



Good Governance- Ensuring the City organization has the capacity and resources to effectively implement the community's Strategic Vision in a way that is sustainable over the long term.

FISCAL IMPACT:

DRAFT FFE Organization and Relationship with City



Imagine Kalamazoo!

Date: **9/12/2022**

FFE

Item: **D.4.**

Foundation for Excellence

Agenda Report

Kalamazoo Foundation for Excellence

TO: Foundation for Excellence Board of Directors

FROM: Prepared by: Steve Brown, FFE Manager
Reviewed by: Clyde J Robinson, Legal Counsel

DATE: September 12, 2022

SUBJECT:

Proposed Updates to FFE Articles of Incorporation and Bylaws

RECOMMENDATION:

It is recommended that the Board review and approve all updates to the FFE Bylaws and Articles of incorporation outlined in the attached memo that it deems relevant.

BACKGROUND:

The FFE's Articles of Incorporation (AOI) outline its purpose, organization, and aspects of governance while the Bylaws set forth detailed rules and procedures for managing decisions and operations. Both documents were written with the best information available and attempted to balance present and possible future needs. Over the five years since FFE was founded the organization has been professionalized with an engaged board, full policies, and multiple years of programming and auditing. In that time certain aspects of the Bylaws and AOI have become obsolete and need updating. The attached memo outlines the list of changes that staff recommend for Board action. Each item includes the reason for the recommended changes, the relevant passages of text, and edits needed.

STRATEGIC VISION ALIGNMENT:



Good Governance- Ensuring the City organization has the capacity and resources to effectively implement the community's Strategic Vision in a way that is sustainable over the long term.

FISCAL IMPACT:



MEMORANDUM

8/22/2022

To: President Sandra Calderon-Huezo and the Board of Directors

From: Steve Brown, Foundation for Excellence Manager

Subject: Overview of proposed changes to the FFE Bylaws and Articles of Incorporation

OVERVIEW

The FFE's Articles of Incorporation (AOI) outline its purpose, organization, and aspects of governance while the Bylaws set forth detailed rules and procedures for managing decisions and operations. Both documents were written with the best information available and attempted to balance present and possible future needs. Over the five years since FFE was founded the organization has been professionalized with an engaged board, full policies, and multiple years of programming and auditing. In that time certain aspects of the Bylaws and AOI have become obsolete and need updating. The following memo outlines the list of changes that staff recommend for Board action. Each item includes the reason for the recommended changes, the relevant passages of text, and edits needed.

PROCESS FOR BYLAWS

Section 11.01 Amendments:

- A. *Subject to its Articles of incorporation, the Corporation's Bylaws may be altered or amended by the affirmative vote of three quarters (3/4) of all Directors then in office, which must include the affirmative vote of a majority of the City Directors present at the meeting, provided a quorum exists and that notice of the meeting has been given to all Directors at least twenty one (21) days before the meeting together with a copy of the proposed amendment. The type of notice shall be that which is allowed for a regular meeting of the Board of Directors, as provided in Section 4.06A.*
- B. *Any such amendment to these Bylaws can only be effective with the concurrence of the City Commission and the approval of the Michigan Attorney General's Charitable Trust Division or its successors.*

SPECIFIC BYLAW ITEMS

1. Remove "Grant Making Committee"
 - a. Reason: Language should not have been approved in final draft. It could confuse decisionmakers and the public.
 - b. Appears in Section 6.02 one time.
 - c. Recommendation: Remove "and Grant Making" from sentence.
 - d. Status: Board approved on 10.22.2018; pending approval by State of Michigan
2. Remove "Governance Facilitator"
 - a. Reason: This language is obsolete. The Governance Facilitator helped establish the FFE but the FFE Board has been established and built capacity for this work.
 - b. Appears ten (10) times in Bylaws: Section 4.02, Item B. numbers 2, 3, 5, and 6; Section 4.04; Section 4.08

- c. Recommendation: In all instances replace the words “a Governance Facilitator” or “the Governance Facilitator” with “The Board or appointed Committee”
 - d. Status: Pending Board action and approval by State of Michigan
- 3. Remove “Kalamazoo Community Foundation”
 - a. Reason: This language is obsolete. In the process of navigating numerous challenges and opportunities to establish the FFE Endowment it was determined that the City would be the fiduciary for funds to be invested in their current manner. The current language needs to be changed to avoid confusing decisionmakers and the public.
 - b. Appears two (2) times in Bylaws: Section 4.02.B.2 and 9.06.
 - c. Recommendation:
 - i. 4.02.B.2: Remove “, such as the Kalamazoo Community Foundation,”
 - ii. 9.06: Remove “Kalamazoo Community Foundation”
 - d. Status: Pending Board action and approval by State of Michigan
- 4. Adjust Budget Approval Deadline
 - a. Reason: The City has found inefficiencies in creating separate workflows for an FFE draft budget to be done by October 31 and the larger comprehensive City’s budget due December 31. This can create rework for the City and FFE that can be avoided.
 - b. Appears in Section 4.05
 - c. Recommendation: Replace “October 31” with “December 31”
 - d. Status: Pending Board action and approval by State of Michigan

PROCESS FOR ARTICLES OF INCORPORATION

ARTICLE XII - These Articles of Incorporation, as they now exist and as they may be further amended, may be amended upon unanimous vote of the Board of Directors and the concurrence of the City Commission and the Michigan Attorney General's Charitable Trust Division or its successor. This reservation of powers to the City Commission is granted pursuant to MCL 450.2209(E) and is intended to limit the discretion or powers of the Corporation's Board of Directors on those specific matters which are to be decided by the City Commission or on which the City Commission has the power to act.

- 1. Remove “Governance Facilitator”
 - a. Reason: This language is obsolete. The Governance Facilitator helped establish the FFE but the FFE Board has been established and built capacity for this work.
 - b. Appears fourteen (14) times in Bylaws: Article IV item B number 2 points a, b, c; numbers 3, 5, and 6; and item D.
 - c. Recommendation: In all instances replace the words “a Governance Facilitator” or “the Governance Facilitator” with “The Board or appointed Committee”
 - d. Status: Pending Board action and approval by State of Michigan
- 2. Remove “Kalamazoo Community Foundation”
 - a. Reason: This language is obsolete. In the process of navigating numerous challenges and opportunities to establish the FFE Endowment it was determined that the City would be the fiduciary for funds to be invested in their current manner. The current language needs to be changed to avoid confusing decisionmakers and the public.
 - b. Appears in Article IV.B.2.a.
 - c. Recommendation: Remove “, such as the Kalamazoo Community Foundation,”
 - e. Status: Pending Board action and approval by State of Michigan

Date: **9/12/2022**

FFE

Item: **D.5.**

Foundation for Excellence Agenda Report

Kalamazoo Foundation for Excellence

TO: Foundation for Excellence Board of Directors

FROM: Prepared by: Steve Brown, FFE Manager

DATE: September 12, 2022

SUBJECT:

Update Budget approval deadline in the Bylaws

RECOMMENDATION:

Update Budget approval deadline in the Bylaws.

BACKGROUND:

Please refer to the Memo in this packet related to Bylaws changes for more details.

STRATEGIC VISION ALIGNMENT:



Good Governance- Ensuring the City organization has the capacity and resources to effectively implement the community's Strategic Vision in a way that is sustainable over the long term.

FISCAL IMPACT:

Date: **9/12/2022**

FFE

Item: **D.6.**

Foundation for Excellence

Agenda Report

Kalamazoo Foundation for Excellence

TO: Foundation for Excellence Board of Directors

FROM: Prepared by: Steve Brown, FFE Manager
Reviewed by: Steve Vicenzi, CFO

DATE: September 12, 2022

SUBJECT:

2023 Draft Budget Review

RECOMMENDATION:

No action is requested at this time.

BACKGROUND:

The attached Draft 2023 Fiscal Year City FFE Budget contains currently available information regarding program and operations costs. The process of formally conveying the budget begins with this meeting and moves through an initial full presentation to the FFE Board on September 12, 2022. A similar presentation will subsequently take place at a City Commission meeting in October. Following both presentations, questions and concerns will be taken into account and reflected in an updated budget as needed. Adjustments will also be made to individual costs and the bottom line is based in part on updated information from City departments. The final budget will then be presented to the FFE Board on October 24, 2022, for formal recommendation to the City Commission. The recommended City FFE budget would then be included in the draft City budget for approval by the City Commission as part of its annual budgeting process in January, 2023. This budget follows the method of determining the amount of the annual distribution set forth in section 9.03 of the bylaws and supports the FFE's crucial mission to "support the goals of the City of Kalamazoo, fund aspirational investments in the city, and empower Kalamazoo residents to achieve the lives they want for themselves and their families."

"Section 6.02 Finance: (...) meet prior to the September meeting of the Board of Directors to review the Corporation's finances and speak with representatives of the City of Kalamazoo to discuss its need for funding for the upcoming year and its plans for aspirational projects and

make a recommendation to the Board of Directors on the amount of a grant that the Corporation shall make that year to the City of Kalamazoo (...)"

STRATEGIC VISION ALIGNMENT:



Good Governance- Ensuring the City organization has the capacity and resources to effectively implement the community's Strategic Vision in a way that is sustainable over the long term.

FISCAL IMPACT:

DRAFT 2023 Foundation for Excellence City Budget

For planning purposes only. Program and Operation categories and expenses are not final.

9.7.22

Category	IK2025 Goal Alignment	Dept.	Request Name	Fund Balance	Endowment	All Sources
STRUCTURAL GRANTS						
	City Property Tax Relief		Projected Taxable Values = \$1,923,755,188		13,986,662	
			Projected difference 19.2705 - 12 mills.			
	City Budget Stabilization		Rolling two-year CPI of 3.3% as of 12.2021		4,514,210	
					18,500,872	
PROGRAMS GRANT						
	Youth Development	Parks	Summer Youth Employment	825,000		
	Youth Development	Parks	Super Rec Summer Camp	195,219		
	Youth Development	Parks	All Things Possible Summer Camp	135,725		
	Youth Development	Parks	Youth Development Stipend Payments	20,000		
	Youth Development	Parks	Youth Action Council	15,000		
	Shared Prosperity	CPED	Kalamazoo Continuum of Care	30,000		
	Safe Community	CPED	Downtown Kalamazoo Ambassador Program	150,000		
	Environmental Responsibility	CPED	322 Stockbridge Continued Planning	100,548		
	Environmental Responsibility	CPED	Kalamazoo Roots	50,000		
	Economic Vitality	CPED	BDF Technical Assistance Grants	300,000		
	Economic Vitality	CPED	BDF Capacity Building Training Program	50,000		
	Connected City	Pub Serv	Sidewalk Projects - Compliance, Gaps, GIS Inventory	1,565,000		
	Connected City	Pub Serv	Portage Street Shared Use Path Survey and Design	85,000		
	Complete Neighborhood	CPED	Site Acquisition	250,000		
	Complete Neighborhood	Pub Serv	Traffic Calming	100,000		
				3,871,492		
OPERATIONS - FIXED COSTS						
	Personnel	City	Four (4) full-time equivalent City positions	379,508	143,492	
	Legal Services Agreement	FFE	Retainer for one-year of services (1.1.-12.31)		80,000	
	D&O Insurance	FFE	Director and Officer Insurance		25,000	
	<u>Professional Development</u>	<u>FFE</u>	<u>Ongoing personnel development</u>		10,000	
	<u>Communications and Engagement</u>	<u>FFE</u>	<u>Communications and marketing strategies</u>		20,000	
	<u>Fund Management</u>	<u>FFE</u>	<u>Fund Mngr. Fees (Black Rock, Jennison)</u>		160,000	
	<u>Endowment Custody Fees</u>	<u>FFE</u>	<u>Custody Fees (State Street)</u>		135,000	
	<u>Endowment Investment Mgmt.</u>	<u>FFE</u>	<u>Consulting Fees (Marion Capital)</u>		185,000	
	Independent Audit	FFE	Independent Audit and 990 service		12,000	
				379,508	770,492	
OPERATIONS FUNDRAISING - POTENTIAL*						
	Personnel (2)	FFE	Two (2) full-time equivalent FFE positions		235,000	
	Endowment Development services	FFE	One-year agreement for development planning		25,000	
	<u>Development supports</u>	<u>FFE</u>	<u>Meeting and engagement expenses</u>		20,000	
					280,000	
SUBTOTAL				4,251,000	19,551,364	
TOTAL						23,802,364

Underlined items have been added since first presentation at Finance Committee on August 29.

* Certain Non-Fixed Operations Costs are contingent on Board actions at the September and October meetings but are included here to establish the anticipated maximum expense scenario given current information.



MEMORANDUM

9/8/2022

To: President Sandra Calderon-Huezo and the Board of Directors

From: Steve Brown, Foundation for Excellence Manager

Subject: **Fiscal Year 2023 City FFE Budget**

I am pleased to present the amended Fiscal Year 2023 City FFE Budget for recommendation to the City Commission by the Board of Directors.

The proposed budget is **\$23,802,364**, which includes \$4,514,210 for budget stabilization, \$13,986,662 for tax reduction to City property taxpayers, and \$3,871,492 for aspirational activities as outlined in the budget detail. This budget follows the method of determining the annual distribution set forth in section 9.03 of the bylaws and supports the FFE's mission to support the goals of the City of Kalamazoo, fund aspirational investments in the city, and empower Kalamazoo residents to achieve the lives they want for themselves and their families.

Between 2017 and 2022, \$20.5 million contributed to support the FFE's goals have provided unprecedented financial stability for the City. With a stable budget, City services are being maintained and adapted to community needs based on the Imagine Kalamazoo 2025 Strategic Vision. Kalamazoo City property taxpayers have experienced relief from \$74 million of tax liability since 2017 following the reduction of the City's property tax millage from 19.2705 mills to 12.0000 mills. This reduction makes Kalamazoo more competitive in retaining and attracting residents, businesses, and jobs.

Finally, \$53.3 million has been budgeted for aspirational projects since 2017 for innovative projects and programs that align with the Imagine Kalamazoo vision, including the Youth Mobility Fund, affordable housing initiatives, complete streets and park improvements, assistance to small businesses. Visit www.kalamazoocity.org/ffedashboard to interact with and map data about FFE program investments.

On behalf of the City of Kalamazoo I would like to thank the Board of Directors for its commitment to realizing the unique vision and impact of the Foundation for Excellence.

Respectfully Yours,

A handwritten signature in blue ink, appearing to read 'Steve Brown'.



DRAFT Fiscal Year 2023 FFE Budget

Budget Stabilization

Total 2017-2022

Proposed 2023

Tax Reduction

Subtotal

Aspirational Projects

Safe Community

Lead Services Replacements

\$2,500,000

Safe Housing

\$406,000

Complete Neighborhoods, Connected City, Inviting Public Places

Great Neighborhoods: Infrastructure

\$11,762,500

\$1,750,000

Great Neighborhoods: Park Enhancements

\$4,234,500

Neighborhood Engagement and Activation

\$636,500

Downtown Investment or Ambassador Program

\$500,000

\$150,000

Youth Development

MyCity Summer Youth Employment

\$4,800,000

\$825,000

All Things Possible (ATP)

\$594,474

\$135,725

SuperRec

\$758,758

\$195,219

Youth Action Council, Youth Development Stipends

\$35,000

Youth Mobility Fund (YMF)

\$750,000

Digital Access for All (DAFA) & Learning Hubs

\$300,000

Childhood Savings and Wealth Building

\$50,000

Shared Prosperity

Shared Prosperity High Impact Fund & DRF**

\$2,744,000

United Way Partnership Continuum of Care

\$30,000

Economic Vitality

Business Development Fund (BDF), KSBLF/KMEG**

\$11,029,700

\$350,000

Affordable Housing – Site Acquisition

\$9,245,000

\$250,000

Environmental Responsibility

322 Stockbridge Site Assessment and Planning

\$100,548

Kalamazoo Roots

\$35,000

\$50,000

Home Energy Efficiency Audits

\$158,000

Tire Blitz

\$14,000

Good Governance, Program Costs

Personnel (Historical and proposed)

\$2,265,688

\$758,000

FFE Projected Expenses (Itemized in budget detail)

\$236,500

\$672,000

Total 1% Contingency per Goal Area

\$97,983

Subtotal

\$53,283,620

\$5,301,492

TOTAL

\$147,798,524

\$23,802,364

**Disaster Relief Fund; Kalamazoo Small Business Loan Fund; Kalamazoo Micro-Enterprise Grants



APPENDIX A

Budget Descriptions

1. TAX REDUCTION

Bylaws, Section 9.03, Subsection A: “Equal to the difference between the amount that the City would have received in real estate tax and personal property tax revenue for the fiscal year-in-question calculated using a millage rate of 19.2705 mills (\$19.2705 per \$1000 of taxable value) less the amount of real and personal property taxes that the City is budgeted to receive for the fiscal year-in-question under the City's proposed millage rate, so as to provide the City a tax rate that is correlative to other municipalities in the Kalamazoo area (...)”

- Total 2023 Projected Taxable Values = \$1,923,755,188
- Projected difference in taxes under 19.2705 mills and current 12 mills = \$13,986,662

2. BUDGET STABILIZATION

Bylaws, Section 9.03, Subsection B: \$4 million for budget fiscal 2019 and thereafter adjusted annually by the Municipal Cost Index developed by the American City & County Magazine, or another credible model addressing the price of the unique market basket of goods and services purchased by local governments, to address the structural revenue imbalance to City finances due to Michigan's broken municipal finance system. Historic stabilization: 2017, N/A; 2018, \$3.8M; 2019, \$4M; 2020, \$4.12M; 2021, \$4.23M; 2022, \$4.37; 2023 \$4.51M.

3. ASPIRATIONAL PROJECTS AND PROGRAMS

Bylaws, Section 9.03, Subsection C: Additional annual distributions may be approved (...) (i) consistent with the purposes set forth in Article II in the Articles of Incorporation of this Corporation; and, (ii) consistent with donor intent as specified in the Statement of Donor Intent (...)

A. Complete Neighborhoods, Inviting Public Places, Connected City

- a. Great Neighborhoods: Infrastructure: More than \$1.5 million is requested to continue the historic investment in Kalamazoo's distressed sidewalks with a priority and emphasis placed within one-quarter mile of community assets and daily needs. There are an estimated 300 miles of sidewalk in the City of Kalamazoo. Depending on the mix of new sidewalk and repaired sidewalk, the City is able to update between 5-15 miles each year.
- b. Downtown Ambassadors: This program was created as a direct result of the growing downtown area and the needs of the community. The program will meet the cleaning and hospitality needs downtown seven days a week as the district continues to attract new businesses, residents, and visitors.

B. Youth Development

- a. MyCITY: This program of the Kalamazoo Regional Educational Service Agency (KRESA) has partnered with the City since 2006. MyCITY Kalamazoo was modified because of COVID-19 to a predominantly virtual model for 2020 to allow for a safe and productive paid career exploration experience for youth ages 14-21 in the City of Kalamazoo. The CareerNOW pathway of MyCITY Kalamazoo provided short term training opportunities in Certified Nurse Aide, Construction Trades, and Early Childhood Education through a combination of in-person and virtual classroom sessions.



- b. All Things Possible (ATP): A middle to high school summer transition program designed to eliminate skill gaps from the “summer slide.” Each day consists of work skills, life skills, recreational activities, talent development, and career/educational exposure. Attendance of ATP grew from 30 to 50 participants in 2018 and 2019.
 - c. SuperRec: SuperRec works in City neighborhoods to offer free, socially enriching experiences to children aged 7 to 14, primarily those from underprivileged communities and backgrounds. Unique participants grew from 290 in 2017 and 304 in 2018 to 400 in 2019. Because of COVID-19, capacity was reduced to 50% at each site and a total of 146 unique were served youth throughout six, one-week sessions.
 - d. Youth Action Council, Youth Development Stipends: 30-40 Councilor In Training (CIT) participants receive \$500.00 stipends each. The program helps teach teens leadership, teamwork, build self-confidence, patience with working with younger kids, and communication skills that will eventually contribute to their transition to the workforce. These youth typically serve 40 hours each week for the nine-week period, or a total of 360 hours.
- C. Economic Vitality, Shared Prosperity
 - a. Continuum of Care: This coordinates efforts to address homelessness and oversees the strategic deployment of resources.
 - b. Economic Development
 - i. Business Development Fund (BDF) Technical Assistance: This program will offer \$5,000 grants to small businesses (less than 10 employees) prioritized toward SPK Neighborhoods and women / minority-owned businesses. This grant can be used for website development, brand or logo consultation, hiring a bookkeeper, purchase of point-of-sale platform (Square), inventory software, purchase of a laptop or preparing past year taxes. Additionally, funds can also be used to prepare architectural drawings to prepare a business for code compliance during expansion or renovation.
 - ii. Business Development Fund (BDF) Capacity Building: These funds are used to support small businesses with training opportunities facilitated in small groups led by a professional in the field.
 - c. Affordable Housing: This project supports site acquisition in priority places to rebuild housing and mixed-use buildings. This funding will be used to acquire properties that meet specific goals of other CPED and City programs: Infill housing strategy, anti-gentrification efforts, natural features protection, and the implementation of pre-permitted plans and the land bank partnership plans.
- D. Environmental Responsibility: Kalamazoo Roots helps increase access to healthy food and foster skills. Three neighborhoods (Oakwood, Vine, and Eastside) are prioritized based on actions listed in their Neighborhood Plans surrounding access to healthy food options. The program is currently in its second year (2022) and has expanded to include the Edison Neighborhood and 150 new participants and 60 returning participants. In 2023, the program would expand to include the Northside Neighborhood.