Kalamazoo Foundation for Excellence

Agenda
FFE Board of Directors

Monday, October 28, 2024 2:00 PM

Mayors Riverfront Park - 251 Mills St, Kalamazoo, MI 49048

A. CALL TO ORDER

1. Roll Call
2. Approve Agenda
3. Welcome Guests

B. APPROVAL OF MINUTES

1. Approve the Minutes of September 23, 2024

C. REPORTS AND COMMUNICATIONS

1. Imagine Kalamazoo 2035 Strategic Planning Engagement

D. REGULAR AGENDA

1. Approve the 2025 Public Meeting Schedule
2. Approve Amending the At-Large Director Eligibility
3. Approve Amending Officer Eligibility in the Bylaws and Articles
4. Approve an Updated Endowment Investment Allocation
5. Approve the 2025 Budget
6. Approve the 2025 Aspirational Grant Agreement with the City of Kalamazoo
7. Approve Renewal of the Annual Service Agreeement with the City of Kalamazoo

8. Approve Renewal of Legal Services Agreement with Miller Johnson Attorneys

9. Approve Renewal of Liability and Director and Officer Insurance through the Nonprofit Insurance Alliance

E. PUBLIC COMMENTS

F. BOARD MEMBER COMMENTS

G. ADJOURNMENT

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.

KALAMAZOO FOUNDATION OF EXCELLENCE

PUBLIC COMMENT RULES

1. Persons attending a regular or special meeting of the Board of Directors of the Kalamazoo Foundation for Excellence shall be permitted to address the Board in conformity with this rule and the Michigan Open Meetings Act.

2. An individual wishing to address the Board shall wait to be recognized by the presiding officer.

3. A person addressing the Board shall provide their name and whether they are a resident of the City.

4. Remarks by a speaker shall be confined to matters within the purview of the Board and KFFE.

5. The chairperson of the meeting or a majority of the Board in attendance may permit individuals to speak once, for up to four (4) minutes, on specific matters being considered on the meeting agenda of the Board, except no comment is permitted on secondary or procedural motions to a main motion.

6. A speaker is permitted to address the Board once during the Public Comment portion of the meeting for up to four (4) minutes.

7. A speaker is not permitted to yield any unused portion of speaking time to other speakers.

8. A speaker may be ruled out of order for conduct that interrupts or disrupts the meeting.

Updated October 23, 2023

MINUTES
FFE Board of Directors

Monday, September 23, 2024 2:00 PM

Mayor's Riverfront Park – 251 Mills Street, Kalamazoo, MI 49048

A. CALL TO ORDER - by President Sandra Calderon-Huezo – 2:11pm

ROLL CALL

Staff present: Legal Counsel/Recording Secretary - Richard Cherry & Jacob Eccleston from Miller Johnson; FFE Executive Director ("ED")- Steve Brown; Chief Financial Officer – Steve Vicenzi

Guests present: Adrian Vazquez

PRESENT- Anderson, Decker, Hoffman, Calderon-Huezo, Bostrom, Balkema, McKague, Lonberg, Parker

ABSENT- Ritsema (Excused), Bogan, Carrel (Excused), Salas (Excused), Taylor

B. APPROVAL OF AGENDA

ACTION: Director Balkema moved to approve the agenda. Motion was seconded by Director Bostrom. The agenda of the September 23, 2024 meeting was approved by unanimous voice vote. There was no discussion.

C. APPROVAL OF MINUTES

ACTION: Director Balkema moved to approve the April 22, 2024 Meeting Minutes with slight modifications. Motion was seconded by Director Bostrom. The minutes of the April 22, 2024 meeting were approved by unanimous voice vote. There was no discussion.

D. REPORTS AND COMMUNICATIONS

1. (No Action) 2024 FFE Aspirational Funded Project Progress Report
   - ED Brown reviewed 2024 Aspirational Funded Project Progress Report.
   - He noted that ARPA money was included as part of funding chart.
   - There is no demand for the clouded title project.
   - Green affordable housing needs changes to scope.
   - Several projects on hold are due to staffing issues with partner organization.

- Will be on reimbursement basis and not an upfront payment in the future.
- Director Balkema asked question regarding funding for foreclosure stay. ED Brown stated that he will follow up with Treasurer regarding whether that is still needed.

2. (No Action) Draft 2025 Budget
   - ED Brown noted that the budget was created in collaboration with CFO Vicenzi.
   - Reviewed aspirational investments for 2025.
   - Made correction to page 14 that date is 1/6/25 not 1/6/24.
   - Director Balkema noted questions about the Home Share Pilot program.
   - Discussion by Director Balkema, Director Hoffman, Director Parker, President Calderon-Huezo, and Director Decker regarding Critical Code Repair requirements and what should be required to support repairs.
   - ED Brown noted Board has the right to ask questions. If Board disagrees with how money will be used, FFE can put conditions on grant money.
   - Discussion regarding Event Support by President Calderon-Huezo, Director Hoffman, and Director Decker.

3. (No Action) Amending the At-Large Description of the FFE Bylaws and Articles
   - President Calderon-Huezo felt requirement that voting elector was exclusionary for the At-Large Description.
   - Attorney Cherry noted language not required. Attorney Cherry advised that this language could be removed to be more inclusive.
   - President Calderon-Huezo: Must now be a resident of the City of Kalamazoo for the At-Large Description.

4. (No Action) Amending the Officer Eligibility Guidelines in the FFE Bylaws
   - ED Brown: Because the Board has two City commissioners and mayor, recommendation to change how officers of the Board are chosen.
   - Modification would be to recommend to avoid a concentration of power.

E. REGULAR AGENDA

1. Approve an Increase in the Executive Director's Base Salary to the Board of Directors

   - Director Decker would like to see the Executive Director's review more streamlined.
   - Director Balkema noted the need to evaluate based on SWOT review.

ACTION: Director Balkema moved to approve an increase in the Executive Director's base Salary. Motion was seconded by Director Bostrom and unanimously approved by voice vote.

2. Approve Draft Chief Financial Officer (CFO) Description to the Board
    - ED Brown noted that CFO Vicenzi was appointed by Board. Organization does not currently have description of CFO. Took description from national sources. Individual has voting powers. Must disclose conflict of interest.
    - Director Lonberg: would like the description to note that role is fractional
    - Director Balkema noted the need to add audit committee to Board and Committee Assignments ad an attendee
    - Director Lonberg noted a need to change a reference to remove he/she and use "CFO"

ACTION: Director Balkema moved to the draft Chief Financial Officer (CFO) Description, but amended to include "Audit Committee: Attendee" remove "he or she" in favor of "CFO", and add reference to variable time commitment. Motion was seconded by Director Bostrom and unanimously approved by voice vote.

3. Approve the appointment of Adrian Vazquez to the Vacant Affinity Director Position
    - Mr. Vazquez introduced himself as Director of El Concilio

ACTION: Director Decker moved to approve the appointment of Adrian Vazquez to the vacant Affinity Director Position. Motion was seconded by Director Hoffman and unanimously approved by voice vote.

F. PUBLIC COMMENTS

No members of the Public present.

G. BOARD MEMBER COMMENTS

- Director Balkema thanked ED Brown for his hard work.
- President Calderon-Huezo thanked ED Brown and was pleased with how the board is changing
- Director Decker welcomed Mr. Vazquez.
- Director Parker welcomed Mr. Vazquez and thanked ED Brown for his attentiveness and responsiveness. She expressed that she is proud of the work this group is doing. She also stated that she is happy to review any documents and make sure we are helping the people of the city and be partners of the city.

H. ADJOURNMENT – 3:17pm

____
Richard O. Cherry
Recording Secretary

FFE Board of Directors Staff Report

Kalamazoo Foundation for Excellence

TO: Foundation for Excellence Board of Directors

FROM: Steve Brown, Executive Director

DATE: October 28, 2024

SUBJECT: Imagine Kalamazoo 2035 Strategic Planning Engagement

RECOMMENDATION:

(No Action) Imagine Kalamazoo 2035 Strategic Planning Engagement Kick-Off.

BACKGROUND:

Imagine Kalamazoo 2035 engagement support materials will be provided separately from the packet for the sake of length.

Kalamazoo Foundation for Excellence

FFE Board of Directors Staff Report

TO: Foundation for Excellence Board of Directors

FROM: Executive Committee

DATE: October 28, 2024

SUBJECT: Approve the 2025 Public Meeting Schedule

RECOMMENDATION:

Approve the 2025 public meeting schedule attached to this item in the packet.

BACKGROUND:

Each fall, the FFE Board must approve a meeting schedule for the subsequent year to be forwarded to the Kalamazoo City clerk for public posting and to be uploaded to the City's portal for public meetings. FFE meetings where official action can be taken must abide by the Open Meetings Act (OMA). FFE Bylaws state: Section 3.02 establishes the FFE as a "public body" for purposes of Michigan's Open Meetings Act; Section 4.05 establishes the allowable characteristics of meetings; Section 4.06 establishes rules for notifying the public.

The attached draft 2024 FFE meeting schedule is a general update on previous years, which were successful according to feedback. It is important to schedule FFE committee meetings on a cadence to prepare agendas for Board and City Commission meetings to effectively conduct business. New meetings can be added throughout the year and canceled as needed in accordance with the Open Meetings Act (OMA).

Kalamazoo Foundation for Excellence

241 W. South Street, Kalamazoo, MI 49007
www.kalamazooffe.org | (269) 337-8047

2025 Schedule of Public FFE Board and Committee Meetings

Board meetings are held in Parks & Recreation Headquarters at Mayor's Riverfront Park, 251 Mills Street. Finance and Executive Committee meetings and Audit Subcommittee meetings are held in Kalamazoo City Hall, 241 W. South Street. Agendas can be viewed online beginning no later than the Friday prior to a meeting via the "Meetings" section of FFE's website.

	Committees & Subcommittees			**Board of Directors**
Date	**Finance Committee**	**Audit Subcommittee**	**Executive Committee**	
January 27	2:00 p.m.		3:00 p.m.	
February 24				2:00 p.m.
March 24		2:00 p.m.		
March 31	2:00 p.m.		3:00 p.m.	
April 28				2:00 p.m.
September 8	2:00 p.m.		3:00 p.m.	
September 15		2:00 p.m.		
September 22				2:00 p.m.
October 6	2:00 p.m.		3:00 p.m.	
October 27				2:00 p.m.
December 8	2:00 p.m.		3:00 p.m.	
December 15		2:00 p.m.		
Approved: Published:				

Kalamazoo Foundation for Excellence

FFE Board of Directors
Staff Report

TO: Foundation for Excellence Board of Directors

FROM: Executive Committee

DATE: October 28, 2024

SUBJECT: Approve Amending the At-Large Director Eligibility in the Bylaws

RECOMMEDATION:

Approve amending Section 4.03 Qualifications of the FFE Bylaws and Article IV, Section C, Qualifications of the Articles of Incorporation, to replace "registered elector" with "resident," and recommend these changes to the City Commission for concurrence.

BACKGROUND:

The original intention of using the "registered elector" status of a candidate was to ensure residency within the City of Kalamazoo for the At Large Director. This status, however, has the unintended consequence of preventing residents who are not United States citizens from eligibility. Use of a simple residency requirement, verified as for all other candidates using property tax records, is therefore clearer and more inclusive aligned with the desired standard of the Board and City Commission. This amendment has been discussed with Directors and FFE Counsel.

Current Language:
The At-Large City Director shall be a registered elector of the City of Kalamazoo.

Proposed Language:
The At-Large City Director shall be a resident of the City of Kalamazoo.

Kalamazoo Foundation for Excellence

CITY OF KALAMAZOO
FOUNDATION FOR EXCELLENCE
241 West South St.
Kalamazoo, Michigan 49007

NOTICE OF PROPOSED AMENDMENTS TO ARTICLES AND BYLAWS

The annual meeting of the Foundation for Excellence Board of Directors will take place on October 28, 2024, at 2 p.m., in the Community Room at Mayor's River Front Park. At this meeting the Board will consider the following amendments to its Articles and Bylaws:

1. **Amend Section 4.03 Qualifications of the FFE Bylaws and Article IV, Section C, Qualifications of the Articles of Incorporation, to replace "registered elector" with "resident."**

   The KFFE will recommend this change to City Commission for approval.

   The language in both the FFE Bylaws and Articles shall state the following:

   "The At-Large City Director shall be a resident of the City of Kalamazoo."

   Reason: To ensure that the language in the FFE Bylaws and Articles is inclusive of all City of Kalamazoo residents.

2. **Amend officer eligibility guidelines in Section 5.01 of the Bylaws to the Board and City Commission to include the following clause:**

   "Best effort shall be made to prioritize Stakeholder or At-Large Directors in Officer elections (President, Secretary, Treasurer and including the optional Vice President position) to prevent duplication and concentration of voting powers among the Mayor, City Commissioners, and City Manager."

   The KFFE Board will recommend this change to the City Commission for approval.

   Reason: To promote best practices in board governance and avoid concentration of power among one or more Directors which could create negative dynamics on the Board of Directors and could shape policies, strategies, budgets, and succession choices averse to the overall will of the Board.

Posted on September 30, 2024
2:00 p.m.

Scott A. Borling
Scott A. Borling, City Clerk

ROC

Kalamazoo Foundation for Excellence

FFE Board of Directors Staff Report

TO: Foundation for Excellence Board of Directors

FROM: Executive Committee

DATE: October 28, 2024

SUBJECT: Approve Amending Officer Eligibility in the Bylaws and Articles

RECOMMEDATION:

Approve, and recommend to the City Commission for concurrence, amending the officer eligibility guidelines in Section 5.01 of the Bylaws to include the following statement: "Best effort shall be made to prioritize Stakeholder or At-Large Directors in Officer elections to prevent duplication and concentration of voting powers among the Mayor, City Commissioners, and City Manager."

BACKGROUND:

It has been recognized that a concentration of power among one or more Directors would create negative dynamics on the Board of Directors and could shape policies, strategies, budgets, and succession choices averse to the overall will of the Board. Currently, the Mayor and City Commission Directors posses ultimate control of the City's programming and budgeting decisions and have voting roles on the FFE Board. However, were they to become Officers, they would be ex officio leaders of all FFE Committees and Subcommittees, possessing not only agenda-setting powers but also voting powers, thus concentrating power non-optimally. Therefore, it is prudent to create. This language echoes five other instances in the Bylaws where a behavior is encouraged in order to align decisionmaking with FFE values and priorities, such as in Section 4.02.B.7.h., where Neighborhood Director selection is guided as follows: "Best efforts shall be made to seek stakeholders from the various neighborhoods on a revolving basis, with priority given to those neighborhoods where at least 51% of households have incomes at or below 80% of the area median income."

Following the Proposed Changes, Section 5.01 Officers would read as follows:

Current Language:
"The Officers of the Corporation shall be a President, a Treasurer and a Secretary and may

include the office of Vice President, which is optional (the preceding positions are referred to collectively as the "Officers"). The Officers shall be elected by the Board of Directors at its first meeting and at each annual meeting thereafter. The Board of Directors of the Corporation may from time to time elect or appoint other Officers including Vice Presidents, Assistant Treasurers and Assistant Secretaries, as the Board may deem advisable, and such Officers shall have such authority, and shall perform such duties as from time to time may be prescribed by the Board of Directors. Any two or more offices, except that of President and Secretary, may be held by the same person. In addition to the powers and duties of the Officers of the Corporation as set forth in these Bylaws, the Officers shall have such authority and shall perform such duties as from time to time may be determined by the Board of Directors. No Officer shall execute, acknowledge or verify any instrument in more than one capacity if the instrument is required by law or the Articles of Incorporation or Bylaws to be executed, acknowledged or ve1ified by two (2) or more Officers.

Each Officer shall be elected for a term extending until the next annual meeting of the Board of Directors or until his or her resignation or removal.

In voting to elect Officers, each Officer position shall be elected by a plurality of the votes cast at an election.

Proposed Added Language:
Best effort shall be made to prioritize Stakeholder or At-Large Directors in Officer elections to prevent duplication and concentration of voting powers among the Mayor, City Commissioners, and City Manager."

Kalamazoo Foundation for Excellence

FFE Board of Directors Staff Report

TO: Foundation for Excellence Board of Directors

FROM: Finance Committee

DATE: October 28, 2024

SUBJECT: Approve an Updated Endowment Investment Allocation

RECOMMEDATION:

Approve an update to the investment allocation described in the background and attached table of this packet item.

BACKGROUND:

The FFE Investment Subcommittee (FFEIS) is responsible for formulating and recommending to the Finance Committee investment policies, strategies, and guidelines for approval by the Board. At the August 28th meeting, the Investment Subcommittee approved a recommendation to the Finance Committee to update the investment allocation for the FFE Endowment with the assistance from advisors from Zhang Financial; the Finance Committee subsequently approved a recommendation to the Board for an allocation amendment per the table in the attached document.

The recommendation would diversify and overall reduce US Large Equity holdings from 70% to 60%, increase Small US Equity holdings from 0% to 5%, and increase International Equity holdings from 0% to 5%. Bond holdings would remain unchanged at 25% and Real Estate at 5%.

This recommendation seeks to increase the diversity within the portfolio, which as a whole is intended to provide steady income for FFE with a strong focus on capital preservation. An additional recommendation from the Investment Subcommittee to the Finance Committee for similar incremental increases in diversification is anticipated in the next year.

Kalamazoo Foundation for Excellence			
KFFE FISC Asset Allocation Recommendation of 28Aug2024			
Investment	**Ticker/Symbol**	**Current**	**Proposed**
Blackrock S&P 500 (Equity Index B)	CTF	70.00%	55.00%
DFA US Large Cap Value I	DFLVX	0.00%	5.00%
Total US Large Equity		70.00%	60.00%
DFA US Small Cap Value I	DFSVX	0.00%	5.00%
Total Small US		**0.00%**	**5.00%**
Total US Equity		**70.00%**	**65.00%**
DFA International Small Cap Value I	DISVX	0.00%	2.50%
DFA Emerging Markets Value I	DFEVX	0.00%	2.50%
Total International Equity		**0.00%**	**5.00%**
Total Equity		**70.00%**	**70.00%**
Jennison Intermediate Bonds (FI Core Active)	SepAcct	25.00%	25.00%
Total US Bonds		**25.00%**	**25.00%**
Vanguard REIT Index	VGSNX	5.00%	5.00%
Total Real Estate		**5.00%**	**5.00%**
Total		**100.00%**	**100.00%**

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File_FISC Recommendation 28Aug2024.xlsx
Tab_Summary

FFE Board of Directors
Staff Report

Kalamazoo Foundation for Excellence

TO: Foundation for Excellence Board of Directors

FROM: Finance Committee

DATE: October 28, 2024

SUBJECT: Approve the 2025 Budget

RECOMMEDATION:

Approve the 2025 Budget of $26,923,302 attached to this packet item.

BACKGROUND:

The draft budget was presented to the Board at their September 23, 2024, meeting for discussion and comment. No changes were recommended by Directors, but three minor adjustments were needed in the interim:

Grants: The City of Kalamazoo grant request transmittal letter is attached. Minor adjustments have been made to the Budget Stabilization Grant to the City, from $4.93 million to $4.88 million.

Operations: The salary line has been finalized.

Payments: FFE tax reduction and budget stabilization grant payments to the City were reduced from four to two as reflected in the attached updated transmittal memo.

Review and Approval Timeline:
8/26/24 - FFE Finance Committee: Recommend draft for Board review
9/23/24 - FFE Board: Review 10/7/24 - FFE Finance Committee: Recommend final draft
10/7/24 - City Commission: Review (Grants)
10/28/24 - FFE Board: Approve and recommend to City Commission
1/6/24 - City Commission: Approve (Grants)

FFE Budgets

30-Sep-24

Account Title	2025 Expenses Endowment Withdrawals	2025 Expenses Net of Fees Costs	
BASE PAY - FULL TIME	$145,422		
BASE PAY - PART TIME			
TEMPORARY PAY - REGULAR			
OVERTIME PAY			
OVERTIME - PART TIME			
TEMPORARY PAY - OVERTIME			
PREMIUM PAY			
BONUS PAY			
ALLOWANCES	$5,400		
EMPLOYER SOCIAL SECURITY	$11,232		
HEALTH BENEFIT ALLOCATION	$12,112		
HSA CONTRIBUTION			
DENTAL INSURANCE	$893		
GROUP LIFE INSURANCE	$226		
OTHER FRINGE BENEFIT	$3,010		
WORKERS COMPENSATION	$910		
DEFERRED COMPENSATION	$2,202		
DEFINED RETIREE HEALTH	$2,600		
OFFICE SUPPLIES AND FORMS	$200		
MEETING SUPPLIES	$200		
POSTAGE	$8,610		
PROFESSIONAL AND CONTRACTUAL SERVICES	$21,355		
BANK FEES	$700		
INVESTMENT MANAGEMENT FEES		$230,000	
CONSULTING SERVICES AND FEES	$200,078		
AUDIT FEES	$16,500		
CUSTODIAN FEES		$171,600	
PLANNING AND STUDIES			
LEGAL SERVICES	$80,000		
OTHER OPERATIONAL			
BUSINESS AND EMERGENCY MEALS			
MEMBERSHIPS AND SUBSCRIPTIONS	$385		
DUE DILIGENCE	$20,000		
PROFESSIONAL DEVELOPMENT	$8,000		
SOFTWARE AND APPLICATIONS	$9,700		
LIABILITY and FIDUCIARY INSURANCE	$42,008		
ADMINISTRATIVE FEES	$51,500		2025 Tax Est.: $15,904,940
CONTRIBUTION TO GENERAL FUND	$20,878,459		2024 Tax True-up: $86,660
ASPIRATIONAL PROJECT	$5,000,000		Budget Stabilization: $4,886,859
Operations Subtotal	$643,243		
Subtotals	$26,521,702	$401,600	
TOTAL EXPENSES	**$26,923,302**		

From 15-Year Projection Targets	
Operations Subtotal	*$710,000*
Total Expenses	*$26,760,000*

Department of Management Services
241 West South Street
Kalamazoo, MI 49007-4796
Phone: 269.337.8020
Fax: 269.337.8448
www.kalamazoocity.org

September 27, 2024 (Modified 10/14/2024)

Steve Brown
Executive Director, Kalamazoo Foundation For Excellence (FFE)

Mr. Brown,

I am writing on behalf of the City of Kalamazoo to formalize the initial budget request for 2025. We are requesting the following amounts for the 2025 budget.

$15,904,940 – Tax reduction
$86,660 – Tax reduction reconciliation payment
$4,886,859 – Budget Stabilization
$5,000,000 – Aspirational from Endowment (Any remaining Grant funds expended first)

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 2024 Projected Effective Taxable Value = $2,146,436,174.

Projected difference in taxes under 19.2705 mills and current 12 mills = $15,904,940.

TAX REDUCTION RECONCILIATION PAYMENT

Due to the timing of the Foundation for Excellence's budget timeline, the City provides an estimate for the upcoming year's tax valuations. The City sets taxable values less exemptions after the March Board of Review. The values are then created by assessing for the tax bills to be sent out in July.

The final personal property tax value to be reimbursed for the prior year is provided by the State of Michigan in October.

Due to the timing of the estimates and the State's reporting, this calculation is done on a lookback basis that can span multiple years.

Prior payments to the City for tax reduction - $29,718,730

Current projected calculation of property taxes eligible to be reimbursed through 2024 - $29,805,390.

This difference equals $86,660.

THE CITY OF Kalamazoo

Department of Management Services
241 West South Street
Kalamazoo, MI 49007-4796
Phone: 269.337.8020
Fax: 269.337.8448
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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. This year's request is calculated using the amount provided in 2024, $4,739,921 increased by 3.1%.

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 (…)

Our proposed 2025 aspirational projects will utilize any remaining grant dollars first and endowment funds as needed on a reimbursement basis. These funds will be utilized as described in the chart on the next page.

I am also proposing the following draw schedule from the endowment for 2025.

March 1	$4,886,859 – Budget Stabilization
June 3	$15,991,600 – Tax Reduction and reconciliation

Aspirational and operational funds reimbursed quarterly.

Stephen Vicenzi
Chief Financial Officer
City of Kalamazoo

Proposed 2025 Aspirational Projects, Alignment, and Details

New or Returning	Request Name	Project Details	IK2025 Goal Alignment	FFE Goal Alignment	Amount
Returning/New	Housing Development Fund	Supports affordable housing opportunities through three strategies: mixed income multi-family gap financing, housing rehabilitation, and appraisal gap/rental subsidy.	Complete Neighborhoods	Capital and Human Infrastructure	$1,706,000
Returning	Pedestrian Sidewalk Improvements	Supports a Connected City by removing and replacing sidewalk sections, ramps, curbs, and gutter and other items to promote connectivity and pedestrian access to amenities.	Connected City	Capital and Human Infrastructure	$1,360,000
Returning	MyCITY Summer Youth Employment	Partnership with KRESA to employ youth ages 14-21 and teach employability skills.	Youth Development	Promote Youth Development	$619,000
Returning	Super Rec	Provides nine week of free summer camp for city youth ages 6-12 at five neighborhood sites in Kalamazoo.	Youth Development	Address Generational Poverty	$230,000
New	Critical Code Repair	Partnership with Community Homeworks which provides free critical repairs to low income households to bring their homes into code compliance.	Safe Community	Capital and Human Infrastructure	$138,000
Returning	All Things Possible	Supports a program for students transitioning from Middle to High school during the summer to eliminate "summer slide" and build social emotional learning.	Youth Development	Promote Youth Development	$116,000
New	HomeShare Program Pilot	Feasibility and Impact study for potential HomeShare program in Kalamazoo County, where two or more unrelated people share a house or apartment - generating income and utilizing space more efficiently to create housing opportunities.	Complete Neighborhoods	Neighborhood Improvement to Attract and Connect	$80,000
New	Capacity Building Small Business Support	Supports two Workforce Development projects, Core 60 and the Black Entrepreneur Training Academy (BETA) program who will provide free training to City of Kalamazoo residents.	Economic Vitality	Remove Barriers to Employment	$50,000
Returning	Counselor In Training	Supports up to 30 youth who serve as leaders in Parks and Rec summer youth programming, receiving stipends and learning life and leadership skills.	Youth Development	Neighborhood Improvement to Attract and Connect	$24,000
Returning	Youth Action Council	Supports Parks and Recreation department's Youth Advisory Board providing input and leadership for programs, activities, and events.	Youth Development	Promote Youth Development	$15,000
New	Event Support	Supports cost recovery of fees for events hosted by non-profits which are open to all residents and free to attend.	Strength through Diversity	Neighborhood Improvement to Attract and Connect	$10,000
	Total Project Budget				$4,348,000
	Project Administration	In accord with Federal de minimus rates, supports implementation, evaluation, and administration of projects.	Good Governance		$652,000
	Total 2025 FFE Aspirational Budget				$5,000,000

Kalamazoo Foundation for Excellence

FFE Board of Directors Staff Report

TO: Foundation for Excellence Board of Directors

FROM: Executive Committee

DATE: October 28, 2024

SUBJECT: Approve the 2025 Aspirational Grant Agreement with the City of Kalamazoo

RECOMMEDATION:

Approve the 2025 Aspirational Grant Agreement between FFE and the City of Kalamazoo.

BACKGROUND:

The attached aspirational grant agreement between the FFE and City is unchanged from the previous year and sets the desired alignment, working relationship, and accountability tools for 2025. The aspirational grant requested from FFE by the City will not exceed $5,000,000 between 1.1.2025 and 12.31.2025. Full information can be found in the attached agreement.

ANNUAL AGREEMENT

Between the Kalamazoo Foundation for Excellence and The City of Kalamazoo

THIS AGREEMENT, entered this _____ day of January, 2025 by and between the Kalamazoo Foundation for Excellence (the "FFE"), a registered 501c3 type 3 Michigan non-profit corporation located at 241 W. South Street, Kalamazoo, and the City of Kalamazoo (the "City") a Michigan municipal corporation located at 241 W. South Street, Kalamazoo.

WHEREAS, the FFE was created in 2017 to support the City by stabilizing its budget, reducing property taxes, and annually committing resources for aspirational programs as endowment resources allow;

NOW, THEREFORE, it is agreed between the parties that;

I. PURPOSE OF INVESTMENT

Consistent with the FFE's Articles of Incorporation, the FFE and City agree to:

I. collaborate to (a) develop and commit resources to address generational poverty, promote youth development and remove barriers to employment opportunities for youth, under-employed and unemployed individuals, and persons seeking re-entry to the Kalamazoo community; (b) address capital and human infrastructure improvement and/or maintenance needs as identified by ongoing studies and by the City of Kalamazoo's designated Capital Improvement Program; and (c) develop and implement neighborhood improvement efforts and projects which reimagine and reinvest public spaces to attract and connect people;

II. collaborate on the shared goals of the City, including Imagine Kalamazoo 2025 and subsequent or related plans.

II. SCOPE OF SERVICES

The FFE will be responsible for:

I. Annually approving a grant to the City delivered with a detailed budget (Annual Transmittal Memo);

II. Making grant payments on a quarterly basis to the City using the Endowment Draw Schedule set forth in Section IV.II of this Agreement.

The City will be responsible for:

I. Selecting programs to propose for FFE funding based on the FFE Aspirational Process and City needs;

II. Approving an annual City FFE budget;

III. Delivering aspirational programs and associated data as described in the annual FFE Workbook (Annual Workbook);

III. DURATION OF AGREEMENT

This Agreement is effective upon the date first written above and will continue in full force and effect as contemplated in Section V.I, below, unless extended by the mutual agreement of the parties. This Agreement may be terminated at any time and for any reason by the mutual agreement of the parties.

IV. BUDGET AND PAYMENT

I. Total Budget

It is expressly agreed and understood that the total amount to be paid to the City for aspirational programs under this Agreement shall not exceed $5,000,000. Any monies received by the City from the FFE pursuant to this Agreement will be used in furtherance of the operations of the program described in the Scope of Services and enumerated Appendices.

II. Payments

The City, on a quarterly basis, must submit, in writing, request for reimbursement of documented expenses associated with the implementation of aspirational programing to the FFE Executive Director or appointee. Each documented expense must but itemized for review. .

V. PERFORMANCE

The City agrees to comply with all timeliness requirements and work towards achieving the goals outlined in Section II - Scope of Services and as required below:

I. Time Period

Services funded by the FFE and provided by the City under this Agreement will begin on the 1st day of January 2025 and end on the 31st day of December 2025. The term of this Agreement and the provisions herein shall cover any additional period during which The City remains in control of FFE funds or other FFE assets.

II. Tracking and Progress Reports

In addition to basic descriptive information for each program, the following list will be tracked in the Workbook by the City and available for quarterly reviews by FFE:

- i. The logic model of impact that establishes the need for the work and explains why the City's activities will achieve desired results specifically addressing at least one aspect of Section I;
- ii. Quantitative annual objectives and outputs proving results;
- iii. Personal testimonials of impacted and/or involved community members;
- iv. Multi-year data where relevant; and
- v. Communications and public relations plan

III. Modifications

- i. The City may request modification to the Scope of Services or the required budget if circumstances change throughout the year. The City must submit a written request to the FFE for review, and the FFE has 15 business days to respond to the request.
- ii. Mid-Year emergency requests of specific amounts may be made by a majority vote of the City Commission requesting support from the FFE Board and approved by a majority vote of the FFE Board.

VI. SPECIFIC CONDITIONS

The money being granted by the FFE to the City is subject to the following terms and conditions:

I. The City shall take all reasonable steps to ensure that 100% or people intended to benefit directly from FFE-funded programs will be residents of the City at the time of the program. Participant information obtained by the City (and made available to the FFE in its reporting) will include the participants' addresses and such other non-confidential demographic information (race, gender identity, income, age, household information) that would assist in assessing that the programs and services are involving residents.

II. The City shall operate its programs and activities consistent with the program description as set forth herein and as set forth in the Scope of Services. If at any time during the duration of this Agreement, the City makes significant changes in its program, those changes must be communicated to the FFE.

III. The FFE Workbook will be the repository for all summary and quantitative data pertaining to Aspirational projects and serve as the final source of information once approved by departments or partners.

VII. COMMUNICATIONS AND PROMOTION

I. The City shall acknowledge the FFE's involvement in all projects funded in part, or in entirety, through FFE funds. Such acknowledgement shall apply to all public statements, whether written or verbal. The appropriate credit line will be that "This activity is funded, in part, by the Foundation for Excellence."

II. The City shall include a requirement to acknowledge "This activity is funded, in part, by the Foundation for Excellence" in all agreements with third parties delivering FFE-funded scope items on its behalf.

III. The City shall provide quantitative, narrative, and audio/visual proof of delivering aspirational programs in a single public report by the end of each calendar year with projected numbers allowed where actual numbers are not available.

IV. At least one public presentation will be made each year in areas of major investment, including Youth Development, Great Neighborhoods, Economic Development, Affordable Housing, Shared Prosperity, Good Governance, Safe Community, and any others identified in the annual budget.

VIII. NON-COMPLIANCE

I. Accountability will be based on a concept of non-compliance using objective program measures of the City's responsibilities recorded in the Workbook, appropriate supporting information, and a qualitative review or factors such as major changes to the conditions underlying the premise of a funded program or so-called acts of God.

II. There will be quarterly reviews with departments and program partners as needed to review the Workbook and determine areas of progress, needed improvement, or non-compliance. In the event of a single year of non-delivery of required reporting, the non-delivering programs will be placed on probation. Such programs on probation will be lowest priority for following year funding. FFE funding will not be permitted to continue for at least one year in the event of two consecutive years of non-delivery.

III. If, during the Agreement period, the City is in non-compliance with the terms and conditions herein, the annual goals and objectives, or that the funds being made available to the City are not being expended consistent with this Agreement, the FFE will send notification specifying the issues and concerns and will stop any payments to the City. Within thirty (30) days of receipt of the notification, the City shall provide a written response to each issue cited. If the issues are resolved to the satisfaction of the FFE, payment to the City will resume.

IV. However, if after ninety (90) days past the notification the issues are not satisfactorily resolved, the FFE reserves the right to terminate its aspirational program funding with the City.

IX. CONTACT / NOTICES

Communication and details concerning this Agreement shall be directed to the following Agreement representatives:

City
Laura Lam
Chief Operating Officer

FFE
Steve Brown
Foundation for Excellence Manager

X. MISCELLANEOUS

I. Nothing in this Agreement shall be construed as requiring FFE to take any action that may conflict with its Articles of Incorporation or otherwise jeopardize its tax-exempt status.

II. Unless otherwise expressly agreed between the parties, each party shall bear its own expenses in connection with the drafting, interpretation and enforcement of this Agreement.

III. This Agreement contains the entire understanding of the parties with respect to the subject matter hereof, and supersedes all prior and contemporaneous written or oral understandings, agreements, representations, and warranties with respect to such subject matter. The invalidity, illegality, or unenforceability of any provision herein does not affect any other provision herein or the validity, legality, or enforceability of such provision in any other jurisdiction. The parties may not amend this Agreement except by written instrument signed by the parties. No waiver of any right, remedy, power, or privilege under this Agreement ("Right(s)") is effective unless contained in a writing signed by the party charged with such waiver. No failure to exercise, or delay in exercising, any Right operates as a waiver thereof. No single or partial exercise of any Right precludes any other or further exercise thereof or the exercise of any other Right. The Rights under this Agreement are cumulative and are in addition to any other rights and remedies available at law or in equity or otherwise. Neither party may directly or indirectly assign, transfer, or delegate any of or all of its rights or obligations under this Agreement, voluntarily or involuntarily, including by change of control, merger, operation of law, or any other manner, without the prior written consent of the other party. Any purported assignment or delegation in violation of this Section shall be null and void. This Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns. Except for the parties, their successors and permitted assigns, there are no third-party beneficiaries under this Agreement. This Agreement may be executed in counterparts.

Signatures on following page.

The parties have agreed to be bound to the terms and conditions of this Agreement, and a duly authorized representative from each party has signed below.

KALAMAZOO FOUNDATION FOR EXCELLENCE

Signature: ____
Name: Sandra Calderon-Huezo
Its: President
Date: ____

CITY OF KALAMAZOO

Signature: ____
Name: James K. Ritsema, ICMA-CM
Its: City Manager
Date: ____

Kalamazoo
Foundation for
Excellence

FFE Board of Directors
Staff Report

TO: Foundation for Excellence Board of Directors

FROM: Executive Committee

DATE: October 28, 2024

SUBJECT: Approve Renewal of the Annual Service Agreeement with the City of Kalamazoo

RECOMMENDATION:

Approve the Service Agreement between the FFE and City for a period from January 1, 2025, to December 31, 2025.

BACKGROUND:

The FFE and City have agreed to continue partnering for support services to the FFE in key areas of operations. The attached agreement provides detailed information on the scope of services and itemized cost breakdown for the ($51,500) agreement. Service areas covered in the agreement are unchanged from previous years:

- Human Resources
- Annual Reporting and Annual Independent Audit Support
- General Ledger
- Payroll and Benefits
- Information Technology
- City Clerk (public meetings)
- Purchasing and Risk Management
- Facilities
- A provision for hourly compensation to the City for other services as needed.

FFE-City Support Services Agreement

1/1/2025 – 12/31/2025

Kalamazoo Foundation for Excellence ("FFE") Attn: Executive Director 241 West South Street Kalamazoo, Michigan 49007	City of Kalamazoo ("City") Attn: Chief Financial Officer 241 West South Street Kalamazoo, Michigan 49007

The City and FFE agree:

1. Term of Agreement.

It is agreed that the City shall perform certain accounting and financial functions, benefits processing, treasury, information technologies, human resources, and purchasing/risk management, for FFE for a one-year period beginning on January 1, 2025, and ending on December 31, 2025. The term of this Agreement may be extended by the mutual agreement of the Parties.

2. City Responsibilities.

The City shall perform the following accounting services and financial support functions for FFE:

a. Leased Employees

i. Subject to the Parties' leased employee agreement attached as Exhibit A.

b. Annual Reporting

i. Coordinate with auditors used by the City, to the extent necessary, to complete the annual financial statements and single audit of federal awards in accordance with generally accepted accounting practices and applicable statutes.

ii. Consult with FFE on financial policies and procedures.

c. General Ledger

i. Prepare and maintain a year-to-date general ledger and provide detailed information supporting financial statement numbers to FFE, including recording financial activity in the City's financial enterprise resource program (Eden, or another system) and balancing the general ledger module with subsidiary systems.

ii. Bank account and balance sheet account reconciliations including inventory, and prepaid asset accounts.

d. Information Technology

i. Provide the following: computers, emails services, Office 365, Exchange, Active Directory Licensing, server availability, VoIP phone service, network devices, Antivirus software, current software maintenance, IT security and data.

ii. Provision and administer the accounts as necessary and respond to requests within 24 hours.

iii. FFE agrees to abide by the IT security rules and policies enacted by City IT.

iv. FFE agrees to share all data from City supported systems with City IT. City agrees to require all staff that handle sensitive FFE data including confidential FFE donor and donation information to sign FFE Confidentiality Policy forms.

e. City Clerk

i. The City Clerk will provide records maintenance according to the retention and destruction schedules established by the City and/or FFE and provide records to FFE as requested by FFE.

f. Human Resources

i. Provide recruitment and management of leased employees' pay and benefits subject to the Parties' employee lease agreement.

ii. Provide support of annual FFE Staff review systems as needed in a timely manner.

g. Purchasing & Risk Management

i. Purchasing, including support, review and approval of purchase orders, requisitions, competitive bidding, contract management, and vendor qualification.

ii. Notwithstanding termination rights under Section 9 of this Agreement, services under this section may be discontinued in whole or in part at the discretion of FFE at any time upon notification to the City.

h. Facilities

i. The City will provide well-maintained facilities for office space.

i. Timeliness

i. City staff is to be provided 48 business hours to respond to any information request from FFE; reasonable requests for expedition by FFE will be honored by the City.

j. Planning Meetings

i. The City's Grants Manager and Management Services Director or their designee and the FFE's Executive Director and any appropriate staff and/or consultants will meet on a regular basis to identify outstanding issues, their resolutions and the resources assigned to the same within the scope of this Agreement.

3. <u>FFE Responsibilities.</u>

FFE agrees to do the following to assist the City in performing the services and functions being provided under this Agreement:

i. Provide general information on a timely basis to the City to allow the City to perform its tasks.

ii. Timely submission of approved accounts payable documents in a manner provided by the City.

iii. Assist with the annual FFE audit.

4. <u>Compensation.</u>

FFE payment in fiscal year 2025 to the City of Kalamazoo for this agreement will be $51,500.

In the event that FFE requests that the City perform any additional services not enumerated in this Agreement, including any transition services and related costs, such services shall be billed to FFE at the cost of $50.00 per hour plus the actual costs of materials and services and shall be payable with the next scheduled Service Agreement payment installment. Additional services shall not be provided by the City without prior written approval from FFE. The City can decline to provide any additional services requested by FFE.

5. <u>City as Independent Contractor.</u>

The City, in providing the services set forth in this Agreement, shall be acting as an independent contractor and not as an agent, partner, joint venturer or employee of the FFE. FFE is not responsible for any compensation, FICA, withholding taxes, employment compensation or any other similar payment for the leased employees.

6. <u>Non-Discrimination.</u>

The City and FFE agree not to discriminate against any employee or applicant for employment with respect to hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment, because of sex, color, age, national origin, religion, height, weight, marital status, disability, political affiliation, sexual orientation, or gender identity. The City further agrees to require compliance with this paragraph of the Agreement by any of its subcontractors providing services under this Agreement. Breach of this paragraph of the Agreement may be regarded as a material breach of the Agreement.

7. <u>No Third-Party Rights.</u>

This Agreement is made solely for the benefit of the Parties who are signatories to it and is not for the benefit of any third party. No third party can enforce any obligations under this Agreement.

8. Termination Rights.

This Agreement may be terminated by either party at any time, either with or without cause, by providing the other party with the required written notice of the same. The right to terminate this Agreement is not an exclusive remedy.

a. Termination For Cause

i. For purposes of this Agreement, "for cause" is deemed to be a material breach by either party of the terms of this Agreement.

ii. For purposes of terminating this Agreement for cause, the terminating party shall provide the non-terminating party with written notice of the default and at least fifteen (15) days to cure the same. The fifteen (15) day period to cure the default shall begin to run when written notice of the default is deemed received by the non-terminating party as determined by paragraph 13 of this Agreement. If, at the end of this fifteen (15) day period, the non-terminating party has failed to cure the default, this Agreement will terminate.

b. Termination Without Cause

i. Either party may terminate this Agreement at any time without cause by providing the other party with sixty (60) days advance written notice of the same. This Agreement shall be deemed to terminate sixty (60) days from the date that written notice is deemed received by the non-terminating party as determined by paragraph 12 of this Agreement.

c. Compensation

i. If this Agreement is terminated by either party, FFE shall have no obligation to pay the City for any work done by the City after the date the Agreement is deemed terminated.

9. Hold Harmless.

City agrees to hold harmless FFE and its employees, officers, directors, and representatives from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, including reasonable attorney fees arising from or relating to any proceedings, actions, demands, causes of action, liability and suits of any kind and nature, made upon FFE directly or indirectly in any way arising out of or resulting from the willful acts or negligence of City, its agents, employees or contractors.

FFE agrees to hold harmless City and its employees, officers, directors, and representatives from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, including reasonable attorney fees arising from or relating to any proceedings, actions, demands, causes of action, liability and suits of any kind and nature, made upon City directly or indirectly in any way arising out of or resulting from the willful acts or negligence of FFE, its agents, employees or contractors.

10. Severability.

If any provision of this Agreement is determined to be invalid or unenforceable, the other provisions of the Agreement will remain valid and enforceable in accordance with their respective terms, and any such invalid or unenforceable provision will be deemed to be modified with retroactive effect to render such provision valid and enforceable.

11. FFE Documents.

During the course of this Agreement, the City will have access to information of FFE. The City agrees that this information will not be used for any purpose other than to carry out the terms of this Agreement. In the event the City receives a Freedom of Information Act ("FOIA") request for any public record of FFE in the City's possession, the City shall immediately advise FFE of the FOIA request. The City agrees to work with FFE and FFE attorneys in preparing a response to the FOIA request.

12. Notice.

Any notice, consent or approval required or permitted to be given under this Agreement shall be:

i. in writing;

ii. addressed to the recipient at the address of the recipient set forth on this Agreement's first page, or to such other address as that party may hereafter designate in writing to the other party; and

iii. deemed to have been received upon (i) personal delivery, (ii) one business day after being deposited with Federal Express or another reliable, nationally-recognized overnight courier service for next day delivery or transmission, or (iii) two business days after being deposited in the United States mail, registered or certified mail, postage prepaid, return receipt required.

13. Miscellaneous.

This Agreement shall be governed by the laws of the State of Michigan. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This Agreement is personal to each of the parties and neither party may assign or delegate any of its rights or obligations under this Agreement without first obtaining the other party's written consent. This Agreement may not be amended, altered, or modified except by written agreement signed by both of the parties. The headings contained in this Agreement are for convenience only and shall not affect the interpretation or construction of this Agreement.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the parties hereto as of the date first above written.

CITY OF KALAMAZOO

Dated: _________________ By: _________________________________
James K. Ritsema
Its: City Manager

KALAMAZOO FOUNDATION FOR EXCELLENCE

Dated: ________ By: ______________
Sandra Calderon-Huezo
Its: Board President

Kalamazoo Foundation for Excellence

FFE Board of Directors Staff Report

TO: Foundation for Excellence Board of Directors

FROM: Executive Committee

DATE: October 28, 2024

SUBJECT: Approve Renewal of Legal Services Agreement with Miller Johnson Attorneys

RECOMMEDATION:

Approve a one-year renewal of the Miller Johnson Attorneys agreement, in an amount not to exceed $80,000, for general legal services.

BACKGROUND:

Staff and Board Members agree on the value and excellence of Miller Johnson's legal services to FFE under the leadership of attorney Richard O. Cherry and would therefore like to renew the agreement for a second year. The FFE's adopted Purchasing Policy outlines the Board's ability to renew contracts without a bidding process for up to five consecutive years. The attached agreement provides detailed information on the scope of services and itemized cost breakdown for the ($80,00) agreement. Service areas covered in the agreement are unchanged from previous years.

MILLER JOHNSON Attorneys

Radisson Plaza Hotel & Suites
100 West Michigan Avenue
Suite 200
Kalamazoo, MI 49007-3960

MERITAS LAW FIRMS WORLDWIDE

RICHARD O. CHERRY
Attorney at Law

269.226.2987
269-226-2951 fax
cherryr@millerjohnson.com

September 30, 2024

VIA EMAIL TO BROWNS@KALAMAZOOCITY.ORG

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

Re: Engagement Letter re: Foundation Attorney Services for 2024-2025

Dear Steve:

It has been a pleasure to represent the Kalamazoo Foundation for Excellence ("FFE") over this past year. Thank you for considering Miller Johnson to represent the FFE for yet another year. This letter contains the basic terms of our representation. The terms stated here are supplemented by our **Standard Terms of Engagement**, a copy of which is provided with this engagement letter. Those terms are also important and you should read them closely.

As stated before, it is our goal to represent the FFE efficiently and effectively. You should be informed about the progress of the representation and comfortable with our services and the people who provide them, so please call us if you ever have a question, suggestion or issue.

Who Is The Client? Identifying our client is important. Our duty of representation runs to our client, not to any other person. Michigan Rule of Professional Conduct 1.13(a) explains that a lawyer who is retained to represent an organization represents the organization as distinct from its directors, officers, employees or other constituents. That is why we think it is important to explain that our client is the FFE. Although we will be communicating with the FFE through its officers, agents, officials or employees, our client is the FFE and not to those individuals. The attorney-client privilege belongs to the FFE and not to those individuals. Please contact us if there is any confusion about this.

Please advise which FFE representatives with whom we are authorized to communicate and from whom we may accept instructions during our engagement as the FFE's legal counsel.

What Is The Scope Of Our Representation? Again, it is our understanding that we will be assisting the FFE Board of Directors and the FFE Manager in the following areas:

- As Recording Secretary for Full Board meetings and meetings of the Investment Subcommittee;

- Annual facilitation of stakeholder groups to vet and select new Board Directors;
- Compliance support with regard to the Michigan Freedom of Information and Open Meetings Act;
- 501(c)(3) Type III non-profit governance and compliance support;
- General contract creation and administration;
- Planned Giving Legal Consultation;
- Counsel on needed policies/policy updates and adherence to generally accepted best practices;
- Legal mediation with the City of Kalamazoo as needed;
- Preparation of reports as assigned; and
- Other legal representation and consultation as needed.

How Will We Communicate With Each Other? We will keep the FFE informed of the status of our representation and on matters that impact any decisions the FFE must make. Should the FFE at any time have questions or need for information, we will respond promptly. In return, the 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 the FFE, we may communicate with FFE personnel in person or by phone, email, letter or fax. The FFE will provide us with the contact information and e-mail addresses for all FFE personnel with whom we are authorized to communicate and from whom we are authorized to accept instructions. Please understand that our communications to those email addresses will likely be privileged or confidential and that it is the FFE's responsibility to secure those addresses from unauthorized users.

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

a. Give us direction as we may request from time to time.

b. Give us complete and accurate information throughout our representation. We will rely on the completeness and accuracy of that information in performing our services.

c. Notify us of changes in the FFE's structure so we may adequately identify potential conflicts.

d. Notify us of any change of our primary contact or communication addresses or methods.

How Do We Charge For Our Services?

a. **Background on Fees**. Unless other arrangements are made, 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.

b. **Monthly Retainer**. The FFE will pay a monthly retainer fee of $6,667 ($80,000 annually based on 250 hours of work per year) covering all services to be provided for each year of the contract. We understand that the FFE reserves the right to increase or decrease the quantity, service, or requirements or make any changes necessary at any time and that price adjustments due to any of the foregoing changes will be negotiated and mutually agreed upon by the Firm and the FFE.

c. **Hourly Rates**. Miller Johnson will adjust our discount from 15% to 20% off of our standard hourly rates. I will again serve as the lead attorney with whom the FFE Manager will have primary contact. Members of the FFE Legal Team and their discounted hourly rates are as follows:

Team Member	Legal Services	Standard Rate	Discounted Fees (2023-2024)
Richard Cherry, Member	Lead Attorney	$435	$348
Aimee Jachym, Member	Corporate, Business, Governance	$555	$444
John McFarland, Member	Trusts, Gifts, Etc.	$565	$452
Associate work will be assigned as needed by lead attorney	Associate Work	$300	$240
Paralegals	Paralegal Work	$250	$200

I will involve others at Miller Johnson as required to effectively and efficiently serve the FFE's needs. We understand that departure, reassignment or substitution of any member of the FFE attorney team shall not be made without the prior written approval of the FFE.

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.

d. **Out of Pocket Expense Reimbursement.** The 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 the FFE but the FFE will be responsible for payment of the cost of the outside service providers who the FFE has approved. Travel and mileage will be billed and compensated in conformance with policies applicable to employees of the FFE.

e. **Monthly Billing.** We will send the FFE monthly invoices via email to browns@kalamazoocity.org or to the FFE Manager at 241 W. South Street, Kalamazoo, MI 49007. Invoices will also be sent to apinvoice@kalamazoocity.org. The invoices will show the amount of time spent by the lawyers and paralegals and the discounted hourly rates for those hours. However, the FFE will pay only the monthly retainer plus any itemized out of pocket expenses. The monthly bills are a 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 preferred, the FFE may pay our invoices and other fees through our secure website at:

https://www.millerjohnson.com/onlinepayments.

The FFE will make payment within 30 days of receipt of each invoice.

f. **Yearly True-Up.** At the end of each one-year term, the actual billed hours at the discounted rates will be compared with the annual retainer amount paid. If at the conclusion of the one-year term, the discounted billings are less than the annual fee, Miller Johnson will refund the difference. If the annual discounted billing amount is more than 20% above the annual fee, the FFE will make an additional payment to our firm by the amount the discounted hourly billings exceed the annual fee by more than 20%.

Conflicts. Our firm represents many other companies and individuals. Our initial conflict check shows no apparent conflicts to representing the FFE.

If there are other individuals, entities or potentially adverse parties for whom conflicts should be evaluated, you will so inform us. If we learn of a conflict, we will notify you and take appropriate action.

Entire Agreement and Effective Date. This letter and the Miller Johnson Standard Terms of Engagement contain the entire agreement between the FFE and our firm regarding this representation. Kindly sign a copy of this agreement in the space provided for that purpose below and return a signed copy to me as soon as possible. An email copy is fine.

If anything in this engagement letter is not clear or is unsatisfactory, please call me. I will be happy to discuss any aspect of this letter with you.

Thank you again for selecting Miller Johnson to represent the FFE for its Foundation attorney services.

Sincerely,

MILLER JOHNSON

Richard O. Cherry

ROC/tlc

Acknowledgement and Acceptance of Terms

By my signature below, I acknowledge that I have read and accept the terms of this Engagement Letter.

KALAMAZOO FOUNDATION FOR EXCELLENCE

____
Steve Brown, FFE Manager

____

Date:_______________________, 2024

Kalamazoo
Foundation for
Excellence

FFE Board of Directors
Staff Report

TO: Foundation for Excellence Board of Directors

FROM: Executive Committee

DATE: October 28, 2024

SUBJECT: Approve Renewal of Liability and Director and Officer Insurance

RECOMMENDATION:

Approve a One-Year Renewal of Liability and Directors and Officers Insurance.

BACKGROUND:

FFE's insurance customer representative has conveyed that the contract and renewal are on schedule to be provided for Board review before the October 28, 2024, meeting. Terms of renewal are unchanged and costs are anticipated to increase slightly with inflation. Staff are seeking a recommendation of contract renewal.