

CITY MANAGER AMENDED EMPLOYMENT AGREEMENT

An Employment Agreement was entered into between the City of Battle Creek ("City"), Michigan, a home rule city and a municipal corporation organized pursuant to the laws of the State of Michigan, and Rebecca L. Fleury, ("Ms. Fleury") on September 16, 2014 with an effective date of October 1, 2014. The parties have entered into this Amended Employment Agreement to amend Section 4, "Salary," on this ~~1st~~³ day of ~~October 2018~~^{March, 2015}. All other contract terms remain unchanged and in full force and effect.

Recitals

The Battle Creek City Commission (City Commission) voted on August 26, 2014, to appoint Rebecca L. Fleury as City Manager for the City, subject to negotiation of mutually acceptable terms and conditions of employment; and

Rebecca L. Fleury desires to be employed by the City Commission as its City Manager, and the City Commission desires to provide certain benefits and establish certain terms and conditions of Ms. Fleury's employment as City Manager;

The City Manager Evaluation Committee recommended, and the City Commission agreed by Resolution 80 approved on February 3, 2015 to allow the Commission to consider awarding additional compensation in the form of a one-time lump sum bonus to Ms. Fleury based on an annual job performance evaluation as is provided for in below Section 5;

THEREFORE, in consideration of the mutual covenants contained in this Agreement, the City and Ms. Fleury agree to the following:

Terms and Conditions of Employment:

Section 1. Duties and Responsibilities.

The City Commission agrees to employ Rebecca L. Fleury and she agrees to be employed as City Manager and perform all the duties, responsibilities, and functions of City Manager as set forth in the City Charter, the City Code of Ordinances, and as otherwise directed by the City Commission and applicable law.

Section 2. Term of Employment; Termination.

This Agreement shall be effective as of Ms. Fleury's first day of active employment, which shall be on October 1, 2014, and shall continue in effect, except as modified or amended pursuant to Section 18, unless and/or until terminated pursuant to Paragraphs, B, C, D, F or G below.

- A. The parties agree that Ms. Fleury shall at all times hold the office of City Manager at the will and pleasure of the City Commission and that she will not be covered by any other agreement, civil service provisions or labor contract unless termination or

resignation is effected as provided in this agreement. She is deemed to be an at-will employee of the City Commission and this Agreement shall not be interpreted as creating an agreement or contract of employment for any specific term of days, months or years. Ms. Fleury agrees to devote full time to her duties as City Manager.

Ms. Fleury agrees to carry out the duties of City Manager in an efficient and conscientious manner and exercise her discretion and judgment in the best interests of the City at all times in accordance with generally accepted standards applicable to her position. It is recognized that Ms. Fleury must devote a great deal of time outside the normal office hours on business for the City, and to that end Ms. Fleury shall be allowed to establish an appropriate work schedule satisfactory to the City Commission.

- B. Ms. Fleury shall have the right to voluntarily terminate this Agreement, and voluntarily resign or retire from the position of City Manager by giving 30 calendar days advance written notice to the City Commission. The City shall have no obligation to pay a separation payment as set forth in below subsection C if Ms. Fleury voluntarily resigns or retires. The City retains the right to relieve Ms. Fleury of all job obligations and performance at any time during the 30-day period by paying Ms. Fleury the base salary installments that would be earned during the remainder of the 30-day notice period.
- C. The City Commission shall, upon giving written notice to Ms. Fleury, have the right to immediately terminate this Agreement, the parties' employment relationship, and the services of Ms. Fleury, without cause or reason ("at-will"). Nothing in this Agreement shall be construed as interfering with or altering this right. If the City Commission terminates the Agreement and the services of Ms. Fleury without cause, she shall receive a lump sum separation payment equal to six (6) months' salary (the "separation payment"). In addition, Ms. Fleury shall be paid for any unused vacation days that she has accumulated (as set forth in Section 7) as of the Agreement's effective termination date. Termination without cause, for purposes of this agreement, shall include, but not be limited to, the following circumstances: 1) should the citizens or legislature act to amend any provisions of the City Charter, or enabling legislation that substantially changes the current manager-council form of government, Ms. Fleury shall have the right to declare that such amendments constitute termination; 2) the majority of the City Commission votes to terminate Ms. Fleury for any reason at a duly authorized public meeting (excluding circumstances outlined in paragraph D of this section).
- D. The City Commission shall, upon giving written notice to Ms. Fleury, have the right to immediately terminate this Agreement, the parties' employment relationship, and the services of Ms. Fleury for cause or reason. If the City Commission terminates this Agreement for cause, Ms. Fleury will not receive any separation payment except that she shall be paid for any unused earned vacation days that she has accumulated (as set forth in Section 7) as of the Agreement's effective termination date.

For purposes of this Agreement, "cause" will exist if Ms. Fleury commits/engages in an illegal act in connection with her employment as City Manager, any breach of this Agreement, is insubordinate (defined as intentionally refusing to perform a directive

of a majority of the City Commission, through a vote at a legally constituted meeting, that is within its authority under State law and the City Charter), any act of moral turpitude, any felony charge, any conviction of a misdemeanor which a majority of the City Commission determines reflects negatively upon the City, misuse of the position of City Manager for personal gain or benefit, or falsification of City records. Additionally, for purposes of this section, “cause” means, without Ms. Fleury’s consent, the City shall have (i) assigned to Ms. Fleury duties substantially inconsistent with the City Manager’s position, responsibility, and status or substantially changed Ms. Fleury’s authority, duties or reporting responsibilities, or (ii) the City reduces Ms. Fleury’s compensation and/or benefits.

- E. Regardless of which party exercises its right to terminate the Agreement and the parties' employment relationship pursuant to either (B), (C) or (D) above or (F) or (G) below, Ms. Fleury understands and acknowledges that all benefits described herein (or any other benefits that she may be receiving from the City), shall cease and be discontinued effective on the last day of the month in which the Agreement and the parties' employment relationship is terminated (except as otherwise required by law).
- F. Except as otherwise provided in this Agreement the City may, at its option, terminate Ms. Fleury’s employment immediately by giving notice to her, or if Ms. Fleury is, or may be, unable to read and understand the notice, to her spouse or legal representative, following passage of a period of six months in which Ms. Fleury is unable to perform the essential functions of the job of City Manager with or without reasonable accommodation by the City. In the event of termination of this Agreement due to Ms. Fleury’s disability, the City shall not be obligated to make a separation payment under this Agreement. Upon exhausting paid vacation days, any remaining portion of the six-month period will be without pay, unless Ms. Fleury is eligible for benefit payments pursuant to City benefit plans or programs referenced in Section 6.
- G. Ms. Fleury’s employment shall terminate automatically and without notice upon her death. In the event of Ms. Fleury’s death, the City will have no obligation to make any separation payment to Ms. Fleury’s estate, but the City shall pay to Ms. Fleury’s estate any unused earned vacation days that she has accumulated (as set forth in Section 7 and subject to the same terms and conditions).
- H. Ms. Fleury is encouraged to reside within the City limits. Ms. Fleury is required, consistent with Michigan Public Act 212 of 1999, to establish a residence no more than 20 miles from the nearest corporate boundary of the City.

Section 3. Other Employment Prohibited.

Except as set forth below, Ms. Fleury agrees that she may not be an employee, consultant, independent contractor, director, or the agent (whether paid or unpaid) of any other person, firm, corporation, or municipal, political, or other legal entity of any kind during her employment with the City. However,

Ms. Fleury may engage in civic and charitable activities that do not interfere with her employment under this Agreement and that do not conflict with the City's interests. This section shall not be construed to prohibit, after approval of the City Commission, occasional teaching or writing for which Ms. Fleury may be compensated and which is performed on her own time provided such does not materially interfere with her employment and duties as City Manager.

Section 4. Salary.

The City Commission agrees to pay Ms. Fleury, and Ms. Fleury shall accept as full compensation for all services rendered or contemplated by this Agreement, a base salary at the annual rate of \$1~~43,463.00~~^{25,000} per year (subject to all legally required withholdings), payable in approximately equal installments at such intervals as are consistent with the City's pay periods for regular salaried employees.

Ms. Fleury's base salary shall be reviewed in 2015 and thereafter on an annual basis. It may be adjusted upward or downward on an annual basis thereafter at the discretion of the City Commission. Also on an annual basis, the City Commission may, in its discretion, award Ms. Fleury a bonus based upon meritorious performance for the year to be paid in accordance with the City's "City Manager Evaluation Process" adopted by the City Commission on February 3, 2015, by Resolution 80 (the "Evaluation Policy"). The bonus shall be paid as a one-time lump sum payment and shall be included in the earnings history of the City Manager's salary when calculating the "final average compensation" (FAC). If, in accordance with the Evaluation Policy, the City Commission decides, in its discretion, to award Ms. Fleury a bonus at the time of any 2015 job performance evaluation, then it shall be based upon performance beginning March 3, 2015 through the date of the job performance evaluation. No bonus payment shall be based upon job performance prior to March 3, 2015. Thereafter, consideration of a bonus shall be based upon the full year of job performance being evaluated. The performance evaluation described in Section 5 and City budgetary constraints will each be considered by the City Commission when making its decision regarding yearly salary and compensation adjustments for Ms. Fleury.

Section 5. Job Performance Evaluation.

The City Commission shall complete an evaluation of Ms. Fleury's job performance on an annual basis. The annual review process shall include the opportunity for both parties to: (1) prepare a written evaluation, (2) meet and discuss the evaluation, and (3) present a written summary of the evaluation results. The evaluation shall be in accordance with specific criteria developed jointly and approved by the City Commission and Ms. Fleury, and communicated to Ms. Fleury at the beginning of the evaluation period. Said criteria may be added to or deleted from as the City Commission may from time to time determine, in consultation with Ms. Fleury.

In conformity with the Michigan Open Meetings Act, MCL 15.268(a), Ms. Fleury may request that the City Commission or any committee appointed to evaluate the Employee meet in Closed Session for all purposes permitted under the statute.

Section 6. Benefit Plans.

- A. **Deferred Compensation.**
City agrees to make a contribution to Ms. Fleury's ICMA/RC 457 deferred compensation plan in an amount equal to 3% of Ms. Fleury's base salary, not to exceed the caps and limitations of the Economic Growth and Reconciliation Act of 2001, and paid at such intervals as are consistent with the City's pay periods for regular salaried employees during her employment but not during any period of separation or disability payments. Ms. Fleury may make any additional contributions to the plan as allowed or permitted by the Internal Revenue Code and regulations.
- B. **Pension/Retirement Benefit.**
Ms. Fleury shall participate in the Employee Retirement System upon the commencement of her employment with the City on the same terms and conditions as other non-bargaining City of Battle Creek employees in Division 15, City Manager, of the City Pension Plan, which the City recognizes as a separate and distinct division for pension benefits. Except as provided above, Ms. Fleury's pension benefit shall be calculated consistent with and paid out in the same manner as that provided to other non-bargaining unit Retirement System members retiring at the same time. The provisions of this paragraph shall survive the termination of this Agreement.
- C. **Health Care and Dental Insurance and Other Benefits.**
Ms. Fleury shall be entitled to all benefits provided to the non-represented employee group as set forth in provisions of the City Charter and City Administrative Code, and shall be subject to all of the same conditions and restrictions including, but not limited to, health and dental insurance, longevity pay, holidays, vacation leave, disability and health insurance, and other fringe benefits (including, but not limited to, a cell phone stipend in accordance with the current City policy, the amount of which is treated as taxable income to Ms. Fleury, and the use of a City-owned laptop and "tablet" device, which shall remain the property of the City), and working conditions as they now exist or hereafter may be amended, in addition to benefits enumerated specifically in this agreement for the benefit of Employee, except as otherwise modified by this Agreement.
- Ms. Fleury shall be required to participate in the Retirement Health Savings Plan provided by the City, subject to the terms and conditions set forth in the plan document.
- D. **Life Insurance.**
The City agrees to provide Ms. Fleury during her employment with the City pursuant to the terms of this Agreement a term life insurance policy in the amount of \$125,000, with the amount of the premium for that portion of the policy value exceeding \$50,000 (subject to adjustment consistent with IRS code revisions) being treated as taxable income to Ms. Fleury.

Section 7. Paid Vacation.

Notwithstanding the provisions of §294.04 of the Battle Creek Ordinances, Ms. Fleury will be granted three weeks (120 hours) of paid vacation upon beginning her employment pursuant to this Agreement and each year thereafter on the anniversary date of her beginning employment. This amount shall be

increased to four weeks (160 hours) of paid vacation after two full years of employment with the City pursuant to this Agreement until such time as she has reached the next increase based upon her years of service as provided in §294.04. Paid vacation hours shall be subject to the same limitations as set out in the City's Vacation Policy for non-represented employees effective 1/01/08. Vacation hours accumulated in excess of the limit set out in this policy shall be deemed forfeited by Ms. Fleury at no cost to the City. At no time will Ms. Fleury be permitted to take more than two consecutive weeks (10 working days) of vacation time without the City Commission's prior approval.

Section 8. Automobile.

Ms. Fleury requires use of an automobile in carrying out her duties as City Manager. In consideration of the cost of operating her personal vehicle, a \$300.00 per month car allowance is granted, payable in installments at the same time as other City employees are paid. In addition, only for round trips of 100 miles or more, Ms. Fleury is granted mileage payments as allowed under the Travel Policy of the City. Ms. Fleury shall be solely responsible for the payment of any income tax liability that may arise from the benefits provided to her under this section.

Section 9. Professional Development.

The City will pay for or reimburse Ms. Fleury's reasonable costs of attending (a) conferences, conventions, seminars and meetings (including, but not limited to, registration and travel and subsistence expenses) for professional development related to the administration and management of the City including, but not limited to, International City Manager's Association (ICMA) Annual Conference, Michigan Municipal League, and such other national, regional, state, and local governmental groups and committees of which Ms. Fleury is a member and which specifically benefit the City, and (b) official functions for and on behalf of the City; however, any reimbursement for the use of Ms. Fleury's automobile shall be limited to that provided in above Section 8. Ms. Fleury commits to securing certification through ICMA as a Credentialed Manager as soon as practicable. The City agrees, subject to budgetary constraints, to pay for professional dues and subscriptions, for the continuation and full participation by Ms. Fleury, specifically including ICMA and Michigan Local Government Management Association (MLGMA) and others as may be desirable for her continued professional participation, growth and advancement, and for the good of the City.

Section 10. Moving Expenses.

Ms. Fleury shall be reimbursed reasonable moving expenses associated with the move of her primary residence from Richland to within the corporate limits of the City of Battle Creek. Reimbursement shall not exceed the sum of Three Thousand Dollars (\$3,000), and is conditioned on Ms. Fleury establishing residency inside the corporate limits of the City of Battle not later than October 1, 2016; provided, however, that Ms. Fleury shall be permitted additional time to move beyond October 1, 2016, if she demonstrates best efforts to sell her existing residence and the City Commission waives or grants an extension of time for such relocation to the City. If at any time during the term of this employment Agreement Ms. Fleury shall move out of the corporate limits of the City of Battle Creek

after having been reimbursed for moving expenses as provided in this paragraph, then she shall be obligated to repay said reimbursement to the City within 30 days of written demand by the City.

Section 11. Bonding.

The City shall bear the full cost of any fidelity or any other bonds required of the City Manager under law or ordinance.

Section 12. Indemnification and Hold Harmless.

Except as otherwise provided in this Section, the City agrees to defend, save harmless and indemnify Ms. Fleury against any tort, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Ms. Fleury's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities. The City shall provide legal representation at the City's selection and expense. Legal representation, as provided by the City for Ms. Fleury pursuant to this Section, shall extend until the final determination of the legal action including any appeals brought by any party. The City shall indemnify Ms. Fleury against all losses, damages (except punitive damages), judgments, interest, settlements, fines, court costs and any other reasonable costs and expenses of legal proceedings including attorney's fees, and any other liabilities incurred by, imposed upon, or suffered by Ms. Fleury in connection with or resulting from any claim, action, suit or proceeding, whether actual or threatened, arising out of or in connection with the performance of her duties. Any settlement of any claim must be made with prior approval of the City in order for indemnification, as provided in this Section 12, to be available.

Ms. Fleury recognizes that the City shall have the right to compromise and settle any claim or suit unless said compromise or settlement is of a personal nature to Ms. Fleury. Further, the City agrees to pay all reasonable litigation expenses of Ms. Fleury throughout the pendency of any litigation with Ms. Fleury as a party, witness or advisor to the City pursuant to this Section. Such expense payments shall continue beyond Ms. Fleury's service to the City as long as litigation is pending. Further, the City agrees to pay Ms. Fleury's reasonable and necessary consulting fees and travel expenses (subject to the limitations set out in above Section 8) when Ms. Fleury serves as a witness, advisor or consultant to the City regarding pending litigation.

Notwithstanding any other provision of this Section, the obligations of the City under this Section do not exist if an act or omission on the part of Ms. Fleury gives rise to a claim asserting a criminal action, an intentional tort, willful or wanton misconduct, or gross negligence.

Section 13. Limitations of Remedies.

Ms. Fleury agrees that, because of the high level position that she holds, reinstatement of employment as City Manager shall not be available as a remedy for any claimed breach of this Agreement or other dispute arising from or out of the termination of the employment relationship. Pursuant to this Agreement, Ms. Fleury agrees to waive any statutory or common law rights to the contrary.

In addition, in the interests of speedily resolving any disputes arising hereunder or regarding the employment relationship in general (including Ms. Fleury's separation from employment), both

parties agree that they are precluded from commencing any action or suit in any judicial or quasi-judicial forum more than six months after the date of termination of this Agreement and/or Ms. Fleury's employment, and both parties specifically agree to waive any applicable statute of limitations periods to the contrary.

Section 14. Choice of Law.

This Agreement shall be construed and enforced in accordance with the laws of the State of Michigan.

Section 15. Severability.

If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then the unenforceable provision shall be severed from the Agreement and the remaining provisions shall be enforced as though the unenforceable provision were not a part of the Agreement.

Section 16. Assignment.

This Agreement shall benefit the City and its successors and assigns. This Agreement, however, is personal to Ms. Fleury, upon whose reputation and skill the City is relying by entering this Agreement, and may not be assigned by Ms. Fleury.

Section 17. No Implied Waivers.

The failure of either party to insist upon strict performance of any portion of this Agreement shall not be considered a waiver of either party's right to such performance and shall not prevent either party from subsequently insisting upon strict performance of any provision.

Section 18. Entire Agreement.

This Amended Agreement constitutes the entire agreement between the parties relating to the City's employment of Ms. Fleury as City Manager of the City. Any and all prior or contemporaneous understandings, promises, representations, or agreements, written or oral, are void and unenforceable, and barred by execution of this Agreement. No modification or amendment to this Agreement shall be effective unless formal action is taken by the City Commission to so modify and/or amend this Agreement and such modification or amendment is reduced to writing and signed by the Mayor and Ms. Fleury.

In particular, but without limitation, Ms. Fleury acknowledges that no oral representations concerning the length or other terms of her employment were made prior to the execution hereof, that she has not been furnished any conflicting handbook or policy applicable to her in her capacity as an employee of the City, and that she shall not rely on any assurance or promises relating to her employment relationship with the City (whether written or oral) made hereafter unless they are the product of a formal action taken by the City Commission and thereafter reduced to a writing signed by the Mayor of the City.

Dated: _____

Rebecca L. Fleury
City Manager

Dated: _____

Mayor ~~Deborah Owens~~ Mark A. Behnke
For the City of Battle Creek

Agreement ~~Drafted By~~ Amended by:
~~Jill Humphreys Steele (P53335)~~ Nancy Mullett
~~City Labor Relations~~ Attorney
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