

CITY MANAGER PERFORMANCE EVALUATION COMMITTEE

WEDNESDAY, AUGUST 27, 2025

6:00 pm

10 N. Division St.

City Hall – Room 302A

AGENDA

Call to Order

Public Comment

Approval of Minutes from August 28, 2024 Meeting

City Manager Employment Contract

Committee Discussion

Adjournment

City Manager Performance Evaluation Committee
City Hall
10 N. Division Street
Via Zoom
Battle Creek, MI 49014
Wednesday, August, 28, 2024
3:00 p.m.

Committee Members Present: Vice Mayor Sherry Sofia, Commissioners Jenasia Morris, Jim Lance and Carla Reynolds, all attending remotely from Battle Creek, MI.

Committee Members Absent:

Staff Present: Alicia Greene, Deputy City Clerk; Rebecca Fleury, City Manager; Michelle Hull, HR Director

Call to Order: Comm. Sofia called the meeting to order at 3:00 pm.

Public Comment: None

Approval of Minutes:

A motion was made by Comm. Lance, supported by Comm. Reynolds, to approve the June 17, 2024 City Manager Performance Evaluation Committee minutes. All in favor, none opposed. Motion approved.

City Manager Retirement-Next Steps:

Ms. Fleury reviewed the RFP process to choose a search firm to recruit potential candidates, noting information may be shared with this committee prior to going to City Commission with a recommendation. Ms. Fleury noted process may take about 6 months.

Committee Discussion:

The committee discussed how to move forward with their recommendation.

Ms. Fleury stated the RFP will typically require responses from interested firms, in 30-45-60 or 90 days.

The committee recommended a 30 day time frame proposals, and does not require the RFP be brought back to this committee before posting.

Ms. Fleury will work with Purchasing to create the RFP proposal and provide to all City Commissioners for review, the RFP likely being posted after Labor Day.

Next Meeting: Vice Mayor Sofia requested the City Manager's office work on next meeting dates.

Adjournment: Vice Mayor Sofia adjourned the meeting at 3:16pm.

CITY MANAGER EMPLOYMENT AGREEMENT

This Employment Agreement (“AGREEMENT”) between the City of Battle Creek (“City”), a Michigan municipal corporation, and Amanda E. Zimmerlin (“Ms. Zimmerlin”) (collectively, “Parties”) is entered into on this __ day of September, 2025.

RECITALS

The Battle Creek City Commission (“Commission”) voted on August 12, 2025, to conditionally appoint Amanda E. Zimmerlin as the City Manager for the City of Battle Creek, subject to the negotiation of mutually acceptable terms and conditions of employment; and

Amanda E. Zimmerlin 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 her employment as City Manager; and

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

Section 1. Duties and Responsibilities.

The City Commission agrees to employ Amanda E. Zimmerlin as City Manager 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

This Agreement shall be effective as of Ms. Zimmerlin’s first day of active employment, which shall be October 6, 2025, and shall continue, except as modified or amended pursuant to Section 17, until separated as provided for in this Agreement. The parties agree that Ms. Zimmerlin 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 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. Zimmerlin agrees to devote full time to her duties as City Manager.

Section 3. Duties

- A. Ms. Zimmerlin 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. Zimmerlin must devote a great deal of time outside the normal office hours on business for the City, and to that end Ms. Zimmerlin shall be allowed to establish an appropriate work schedule satisfactory to the City Commission.
- B. Except as set forth below, Ms. Zimmerlin 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. Zimmerlin may engage in civic and charitable activities, including but not limited to serving on the board of non-profit professional organizations such as MLGMA or ICMA, 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. Zimmerlin 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.
- C. Ms. Zimmerlin is encouraged to reside within the City limits. Ms. Zimmerlin 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 within 30 days of her first day of active employment.

Section 4. Salary and Compensation.

- A. The City Commission agrees to pay Ms. Zimmerlin, and Ms. Zimmerlin shall accept as full compensation for all services rendered or contemplated by this Agreement, a base salary at the annual rate of \$190,000.00 per year, payable in approximately equal installments at such intervals as are consistent with the City's pay periods for regular salaried employees. After six (6) months of employment, Ms. Zimmerlin's base salary shall be increased by 5%.
- B. Future adjustments to Ms. Zimmerlin's base salary shall be at the discretion of the City Commission, except that any reductions in salary shall be limited to those that may be applied generally to non-represented employees of the City.

Ms. Zimmerlin shall be entitled to annual COLA increases equivalent to those provided to other non-represented employees.

- C. On an annual basis, the City Commission may, in its sole discretion, award Ms. Zimmerlin 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, in Resolution 80, and as may be amended from time to time (the "Evaluation Policy"). The bonus shall be paid as a one-time lump sum payment and shall be included in the earnings history of Ms. Zimmerlin'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. Zimmerlin a bonus, then it 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. Zimmerlin.

Section 5. Job Performance Evaluation.

The City Commission shall complete an evaluation of Ms. Zimmerlin's job performance on at least an annual basis. The 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. Zimmerlin, and communicated to Ms. Zimmerlin at the beginning of the evaluation period. Said criteria may be added to or deleted from as the City Commission may determine in its discretion, in consultation with Ms. Zimmerlin. In conformity with the Michigan Open Meetings Act, MCL 15.268(a), Ms. Zimmerlin may request that the City Commission or any committee appointed to evaluate her meet in Closed Session as permitted under the statute.

Section 6. Benefit Plans.

- A. Deferred Compensation

City agrees to make a contribution to Ms. Zimmerlin's 457 savings retirement plan in an amount equal to 10% of Ms. Zimmerlin's base salary, 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. Zimmerlin may make any additional contributions to the plan as allowed or permitted by the Internal Revenue Code and regulations.

B. Pension/Retirement Benefit.

Ms. Zimmerlin shall participate in the Employee Retirement System upon commencement of her employment with the City on the same terms and conditions, as adopted by the City and as may be amended from time to time, 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. Zimmerlin'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, Dental Insurance, and Other Benefits.

Ms. Zimmerlin 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, including but not limited to health and dental insurance, longevity pay, holidays, vacation leave, disability and health insurance, term life insurance and other fringe benefits, 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. These benefits may not be reduced except as may be generally applied to all non-represented employees of the City.

Ms. Zimmerlin 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. Paid Time Off ("PTO")

Ms. Zimmerlin shall be provided with a lump sum of 120 hours upon her start date, and shall accrue additional hours in accordance with City policy. At no time will Ms. Zimmerlin take more than two consecutive weeks (10 working days) of vacation time without the City Commission's prior approval.

Section 7. Automobile.

Ms. Zimmerlin requires use of an automobile in carrying out her duties as City Manager. In consideration of the cost of operating her personal vehicle, a \$500.00 per month car allowance is granted, payable in installments at the same time as other City

employees are paid. In addition, for round trips of 100 miles or more, Ms. Zimmerlin will be entitled to mileage payments as allowed under the applicable City Travel Policy. Ms. Zimmerlin 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 8. Professional Development.

The City will pay for or reimburse Ms. Zimmerlin'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. Zimmerlin 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. Zimmerlin's automobile shall be limited to that provided in above Section 8. Ms. Zimmerlin 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. Zimmerlin, 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 9. Separation

- A. Ms. Zimmerlin shall have the right to voluntarily terminate this Agreement and voluntarily resign or retire (if eligible) from the position of City Manager by giving at least 30 calendar days advance written notice to the City Commission. If Ms. Zimmerlin voluntarily resigns or retires, the City shall have no obligation to pay a separation payment as set forth in subsection B below, however Ms. Zimmerlin shall be paid for any unused PTO accumulated as of her resignation or retirement date pursuant to City policy. The City retains the right to relieve Ms. Zimmerlin of all job obligations and performance at any time during the 30-day period by paying Ms. Zimmerlin the base salary installments and benefits that would be earned during the remainder of the 30-day notice period.
- B. The City Commission shall, upon giving written notice to Ms. Zimmerlin, have the right to immediately terminate this Agreement, the parties' employment relationship, and the services of Ms. Zimmerlin, 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. Zimmerlin without cause, she shall receive a lump sum severance payment equal to six (6) months' salary ("severance"), plus one month for every full year of service, to a maximum of twelve (12) months, provided that the City Manager has completed 6 months in the position. In addition, Ms. Zimmerlin shall be paid for any unused PTO accumulated as of the Agreement's effective termination date pursuant to City policy. If termination without cause occurs between and including October 1 and December 31 of a calendar year, the City Manager may elect to receive this severance payment in the first regularly scheduled payroll in the next calendar year.

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. Zimmerlin shall have the right to declare that such amendments constitute termination; 2) the majority of the City Commission votes to terminate Ms. Zimmerlin for any reason at a duly authorized public meeting (excluding circumstances outlined in paragraph C of this section).

- C. The City Commission shall, upon giving written notice to Ms. Zimmerlin, have the right to immediately terminate this Agreement, the Parties' employment relationship, and the services of Ms. Zimmerlin for cause. If the City Commission terminates this Agreement for cause, Ms. Zimmerlin will not receive any separation payment except that she shall be paid for any unused PTO accumulated as of the Agreement's effective termination date pursuant to City policy.

For purposes of this Agreement, "cause" will exist if Ms. Zimmerlin 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 for a misdemeanor (expressly excluding civil infractions) 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.

- D. “Termination” under this section shall include if, without Ms. Zimmerlin’s consent, the City assigns to Ms. Zimmerlin duties substantially inconsistent with the City Manager’s position, responsibility, and status or substantially changed Ms. Zimmerlin’s authority, duties or reporting responsibilities.
- E. Regardless of which party exercises its right to terminate the Agreement and the parties’ employment relationship, Ms. Zimmerlin 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. Zimmerlin’s employment immediately by giving notice to her, or if Ms. Zimmerlin 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. Zimmerlin 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. Zimmerlin’s disability, the City shall not be obligated to make a separation payment under this Agreement. Upon exhausting PTO, any remaining portion of the six-month period will be without pay, unless Ms. Zimmerlin is eligible for benefit payments pursuant to City benefit plans or programs referenced in Section 7.
- G. Ms. Zimmerlin’s employment shall terminate automatically and without notice upon her death. In the event of Ms. Zimmerlin’s death, the City will have no obligation to make any separation payment to Ms. Zimmerlin’s estate, but the City shall pay to Ms. Zimmerlin’s estate any unused PTO that she has accumulated pursuant to City policy.

Section 10. 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 11. Indemnification and Hold Harmless.

- A. Except as otherwise provided in this Section, the City agrees to defend, save harmless and indemnify Ms. Zimmerlin 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.

Zimmerlin's duties as City Manager or resulting from the exercise of judgment or discretion in connection with the performance of program duties or responsibilities.

- B. The City shall provide legal representation at the City's selection and expense. Legal representation, as provided by the City for Ms. Zimmerlin pursuant to this Section, shall extend until the final determination of the legal action including any appeals brought by any party.
- C. The City shall indemnify Ms. Zimmerlin 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. Zimmerlin 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, to be available.
- D. Ms. Zimmerlin 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. Zimmerlin.
- E. The City agrees to pay all reasonable litigation expenses of Ms. Zimmerlin throughout the pendency of any litigation with Ms. Zimmerlin as a party, witness or advisor to the City pursuant to this Section. Such expense payments shall continue beyond Ms. Zimmerlin's service to the City as long as litigation is pending. Further, the City agrees to pay Ms. Zimmerlin's reasonable and necessary consulting fees and travel expenses (in accordance with the applicable City policies) when Ms. Zimmerlin serves as a witness, advisor or consultant to the City regarding pending litigation.
- F. 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. Zimmerlin gives rise to a claim asserting a criminal action, an intentional tort, willful or wanton misconduct, or gross negligence.

Section 12. Arbitration and Limitations of Remedies.

- A. All disputes, controversies, or claims arising out of, in connection with, or relating to this employment Agreement or any breach or alleged breach of the

Agreement, and any claim that the City or its officials and/or employees violated any state or federal statute (including discrimination/civil rights claims) or Michigan common-law doctrine or committed any tort regarding Ms. Zimmerlin in relation to their employment shall, on the request of the party involved, be submitted to and settled by arbitration in the State of Michigan, as described in this Agreement, and as provided in the Michigan Uniform Arbitration Act. The parties specifically agree to arbitration with the other party in a joint proceeding for all common issues and disputes. This Agreement to arbitrate shall be specifically enforceable under the prevailing arbitration law.

- B. Notice of the demand for arbitration shall be filed, in writing, with the other party to this Agreement. The demand for arbitration shall be made within a reasonable time after the claim, dispute, or other matter in question arose when the party asserting the claim should reasonably have been aware of it, but in no event later than one year after the claim arose for a state law claim and no later than the applicable statute of limitations for a federal law claim.
- C. The Parties will mutually select a neutral arbitrator who is licensed to practice law in the State of Michigan. If the Parties cannot reach an agreement, the arbitrator will be selected by the Chief Judge of the Calhoun County Circuit Court. The arbitration hearing shall take place in or near Calhoun County, Michigan. The arbitration shall be held in accordance with the procedures adopted by the arbitrator. The arbitrator shall apply any applicable state and federal laws.
- D. The Parties may elect to be represented by an attorney or other representative of their choice. Each Party shall have the right to prehearing discovery in the time and manner provided by the then-applicable Michigan Court Rules. Each Party shall have the right to subpoena witnesses and documents for the arbitration hearing.
- E. The arbitrator shall have no power to add to, subtract from, or alter the terms of this Agreement, and shall render a written decision setting forth findings and conclusions only about the claims or disputes at issue. The expenses of any arbitration shall be born by the City except for that portion that is equal to the current civil filing fee in federal court. Each party shall pay for and bear the costs of its own experts, evidence, and counsel fees. However, if any party prevails on a statutory claim allowing for fee-shifting, the arbitrator may award reasonable costs and fees, including the portion of the arbitrator's fees paid by the party, and attorney fees to the prevailing party in accordance with such statute.

- F. Any award by the arbitrator shall be final and conclusive on the parties, and a judgment may be entered in the highest court for the forum, state or federal, having jurisdiction. Any arbitral award regarding compensation due to the Ms. Zimmerlin because of an involuntary termination shall be limited to an amount equal to the salary that she would have received during the remaining term of this Agreement, less the amount of severance pay received by her pursuant to the terms of this Agreement. All statutory remedies shall be available to the Ms. Zimmerlin.
- G. Ms. Zimmerlin 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. Zimmerlin agrees to waive any statutory or common law rights to the contrary.

Section 13. Choice of Law.

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

Section 14. 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 15. Assignment.

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

Section 16. 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 17. Entire Agreement.

This Agreement constitutes the entire agreement between the parties relating to the City's employment of Ms. Zimmerlin 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. Zimmerlin.

In particular, but without limitation, Ms. Zimmerlin 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: _____

Amanda E. Zimmerlin
City Manager

Dated: _____

Mark A. Behnke, Mayor
City of Battle Creek

Agreement drafted by:
William Y. Kim (P76411)
Battle Creek City Attorney

Approved as to Form:

William Y. Kim, City Attorney