

EMPLOYMENT AGREEMENT for CITY FACILITIES CUSTODIAN of the CITY of HAWK COVE, TEXAS, BETWEEN the CITY of HAWK COVE, TEXAS and TERESA BANNISTER

This Agreement ("Agreement") entered into on the 25th day of May, 2023 by and between the City of Hawk Cove, Texas, a municipal corporation ("City"), by unanimous vote of all five (5) voting members of the City of Hawk Cove City Council ("Council"), and Teresa Bannister, an Independent Contractor ("Contractor").

WITNESSETH:

WHEREAS City desires to continue to employ the services of Contractor in the positions and performing the duties of Facilities Custodian of the City of Hawk Cove, Texas ("Facilities Custodian"); and

WHEREAS Contractor is willing to continue and perform the duties of Facilities Custodian;

NOW, THEREFORE, for mutual consideration, the parties agree as follows:

1. COUNCIL ACTION REQUIREMENTS

1.1 All actions taken by or on behalf of City on, or relating to, this Agreement and/or Contractor's positions of Facilities Custodian shall be by unanimous vote of all five (5) voting members of the Council sitting in Regular or Special Session.

2. DUTIES

2.1 Upon the Council's vote accepting this Agreement, this Agreement supersedes and replaces all previous employment agreements ("Employment Agreement/s") between City and Contractor for the positions of Facilities Custodian.

2.2 City agrees to **continue** to employ Contractor as Facilities Custodian for the period from the date of this Agreement until the anniversary of this Agreement in the year 2033 or any extension of this Agreement, to perform the **legally permissible and proper duties and functions** of Facilities Custodian. City specifically recognizes that Contractor works for clients other than City and agrees to make all reasonable accommodations to enable Contractor to continue doing so.

2.3 The **legally permissible and proper duties and functions** of Facilities Custodian are guided by: the past and current actions, responsibilities and course of dealing of Facilities Custodian; presently-applicable City ordinances, resolutions and policies; applicable provisions in the Texas Constitution; Texas Disciplinary Rules of Professional Conduct; Texas Government Code; Texas Local Government Code; Texas Occupations Code; Texas Administrative Code; Texas Penal Code; other applicable individual Texas statutes; and any and all applicable United States Constitution and validly enacted statutes, codes and laws. Contractor agrees to act during Contractor's employment in accordance with these guidelines.

3. TERM

Employment Agreement for Facilities Custodian of the City of Hawk Cove, Texas, between the City of Hawk Cove, Texas and Teresa Bannister

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3.1 Contractor agrees to remain Facilities Custodian during the term of this Agreement and any extensions of this Agreement. Contractor may accept other additional or other employment or become employed by any other client, so long as the same does not conflict with Contractor's duties, obligations and responsibilities under this Agreement, until and unless Contractor's termination occurs under the provisions of this Agreement. The term "employed" shall not be construed to include Contractor's work with clients other than City, nor occasional teaching, writing, consulting or off-duty assignments performed on Contractor's time off. Nothing in this paragraph shall limit, restrict or be construed to prevent Contractor's work for or employment by City in any other lawful position or employment within or by City.

3.2 If, by actions of City as required herein, this Agreement will not be renewed upon its expiration, City shall provide one hundred and eighty (180) calendar days advance written notice by certified mail, return receipt requested, and the same will be effective only upon proof of receipt by Contractor. If such advance notice is not given, then this Agreement and the Facilities Custodian's term of appointment shall automatically renew for a six (6) year term to begin from and after the year 2033 anniversary of this Agreement or as determined by any extensions of this Agreement.

3.3 "Employment Year" throughout this Agreement shall be from the date, or the applicable anniversary, of this Agreement or the latest extension hereof in any given year, to the next anniversary of this Agreement or latest extension hereof in the following year.

4. HOURS OF WORK

4.1 Contractor's weekly hours of employment shall consist of such time as is reasonable and necessary for Contractor to conduct the business and properly respond to the demands of the position, including, but not limited to, City hours of operation.

5. CONTRACT COMPENSATION

5.1 Contractor's positions as Facilities Custodian shall each be as an exempt executive for the purposes of the Federal Fair Labor Standards Act, 29 U.S.C. Section 201, et seq.

5.2 City shall continue to pay Employee an averaged gross monthly salary of at least Six Hundred Ninety-Three Dollars and 33/100 (\$693.32). Employee's salary shall be payable in installments at the same time, on the same bases and in the same manner as other City employees are paid.

5.3 Commencing on the date the Council accepts this Agreement, Contractor may, at any time, request that City reopen this Agreement solely for the purpose of discussion of this Section 5. Contract Compensation, and such reopening shall be in the sole and absolute discretion of Contractor.

6. VACATION, SICK AND/OR OTHER LEAVE TIME

6.1 As an independent contractor, Contractor shall not be required to provide or advise City of Contractor's calendar or work with other clients: Contractor shall independently determine whether to

advise City's Administrator or City's Secretary when Contractor will be absent or unavailable for any period of time and shall not be required to explain to City any reason for such absence or unavailability.

7. HEALTH INSURANCE AND OTHER BENEFITS

7.1 So long as Contractor is an independent contractor, City may, but shall not be required to, provide health insurance or other employment benefits to Contractor.

8. EQUIPMENT ALLOWANCE

8.1 As an independent contractor, and except in unusual circumstances or situations in which Contractor must rely on City's equipment, materials and supplies to perform City's business, Contractor will supply and work from Contractor's own equipment, materials and supplies. City agrees it will not withhold the use of necessary equipment, materials and supplies from Contractor if a circumstance or situation arises that creates Contractor's necessity of such use.

8.2 City and Contractor understand and agree that the position of Facilities Custodian may require Facilities Custodian to be available to City administrative officers outside of the City's business hours. In recognition of the same and upon approval of City's Administrator, the City may provide to Contractor, and pay for all maintenance and other expenses associated with the position of Facilities Custodian insofar as the City's Administrator deems reasonable and necessary to the position of Facilities Custodian, and insurance thereon of the City's Administrator's choosing ("Equipment Allowance"). As determined solely by City's Administrator, Contractor shall reimburse the City for any cost of repair or replacement of any items of Equipment Allowance that are lost or damaged after issuance to Contractor.

8.3 Any Equipment Allowance issued to contractor by the City is a business use and expense of the City, and therefore is tax-exempt to Contractor.

9. GENERAL EXPENSES

9.1 City recognizes that certain expenses of a non-personal and generally job-affiliated nature must be, have been and will be incurred by Contractor, and, upon approval solely by City's Administrator or City's Secretary, City hereby agrees to reimburse Contractor or directly to pay said general expenses according to past and present accepted City practices.

9.2 City shall pay for any bond required for this position.

9.3 All such expenses are business use and expenses of City, and therefore are tax-exempt to Contractor.

10. PROFESSIONAL DEVELOPMENT

10.1 City recognizes its obligation to encourage Contractor's professional development related solely to Contractor's work on behalf of City and agrees that Contractor shall be given adequate opportunity to develop, maintain and continue to develop, Contractor's skills and abilities as Facilities Custodian.

Accordingly, and upon approval solely by City's Administrator or City's Secretary, City shall allow and pay all fees, costs and expenses for Contractor to attend such courses and seminars as City's Administrator deems reasonable and necessary during this Agreement. City's Administrator and City's Secretary shall not unreasonably withhold such approval. Any such fees, costs and expenses, if paid by City, are business use and expenses of City, and therefore are tax-exempt to Contractor.

10.2 The City shall allow and pay for such of Contractor's professional dues and subscriptions as are related to Contractor's position with City; upon approval solely by City's Administrator or City's Secretary and as Contractor deems are reasonable and necessary for Contractor's continuation and full participation in job-related and/or professionally required or recommended national, regional, state, and local associations and organizations. City's Administrator and City's Secretary shall not unreasonably withhold such approval. If paid by City, any such expenses are a business use and expense of City, and therefore are tax-exempt to Contractor.

11. PERFORMANCE EVALUATION

11.1 In addition to Section 22.042(b), Local Government Code, City hereby continues the City Administrator of the City of Hawk Cove, Texas ("Administrator")'s exclusive appointment to oversee Contractor's performance, including Contractor's job-related day-to-day activities. City's Administrator may, no more than annually and no sooner than May 1 of each year following Contractor's employment under this Agreement, evaluate Contractor's performance, and may report the result of any such evaluation to the Council. Failure of the Administrator to evaluate Contractor's performance shall in no way prejudice any of either, City's or Contractor's, other rights, including under this Agreement.

11.2 Contractor's job performance review and evaluation is limited to: determining any remedies related to improving that job performance, including education and/or training; determining whether City should consider City actions to further, promote, support and foster the positions of Facilities Custodian; and, to the extent possible, determining mutually-agreeable goals by and between City's Mayor and/or City's Administrator, and Contractor.

11.3 Upon any favorable evaluation of Contractor, the Council may, in Executive Session from a recessed Regular or Special Session, and by vote of the Council in immediately reconvened Regular or Special Session, extend, but not decrease, this Agreement to an expiration date later, but not sooner, than that stated in this Agreement or any extensions hereof. Such a vote to extend this Agreement will extend the most recent expiration date, as previously determined by either this Agreement, or by any extension vote of the Council occurring after the date of this Agreement.

12. INDEMNIFICATION

12.1 To the extent allowed by Texas law, City shall defend, save harmless and indemnify Contractor against any tort, professional liability claim, demand, or other legal action, whether groundless or otherwise, arising out of an alleged act or omission occurring in the performance of Contractor's duties as Facilities Custodian.

12.2 City shall not be required to indemnify Contractor for any claims arising out of conduct determined by a court of competent jurisdiction to be outside the scope of Contractor's duties to City or to be the result of gross negligence or willful, criminal, or malicious misconduct.

12.3 City shall obtain Contractor's written consent to settle any indemnified claim, and Contractor shall not unreasonably withhold such consent. Upon receipt of Contractor's written consent, City may compromise and settle any claim or suit for which Contractor is indemnified and shall pay the amount of any settlement or judgment rendered thereon.

12.4 City shall not indemnify Contractor for any costs associated with any claims or actions resulting in Involuntary Termination as is provided under Section 13 of this Agreement. If, however, any judicial proceeding undertaken by City to cause Contractor's Involuntary Termination results in any final judgment favoring Contractor, within fourteen (14) calendar days of City's receipt of any invoice or statement for applicable fees, costs and expenses incurred by or on behalf of Contractor, City shall pay Contractor or Contractor's attorney, as applicable, the entirety of the same.

13. TERMINATION AND SEVERANCE

13.1 Nothing in this Agreement shall prevent, limit, or otherwise interfere with Contractor's right to resign at any time from the either, or both, positions of Facilities Custodian, subject only to the Voluntary Termination provisions set forth in this Agreement.

13.2 Nothing in this Agreement shall prevent, limit or otherwise interfere with the right of City to terminate Contractor's services subject only to the provisions set forth in this Agreement.

13.3 City may terminate Contractor only as follows:

13.3.1 City and Contractor jointly and voluntarily agree to such termination ("Voluntary Termination"); or

13.3.2 City may terminate Contractor without voluntary agreement ("Involuntary Termination") pursuant to this Agreement, which includes Chapter 21, Subchapter B, Texas Local Government Code by this reference.

13.4 If City terminates Contractor by Voluntary Termination pursuant to this Agreement before the expiration of this Agreement and any extensions hereunder, City agrees to pay Contractor, in City's sole discretion, either:

13.4.1 a lump sum cash payment equal to the preceding twelve (12) months' aggregate compensation shall be paid by City to Contractor on or before ten (10) calendar days following the date of Voluntary Termination; or,

13.4.2 the amount reflected in 13.4.1 shall be paid by City to Contractor in no more than four (4) installments following the date of Voluntary Termination, to be paid at the same time, on the same bases and in the same manner as City employees are paid, except that City, in Contractor's sole discretion, shall make such payments to Contractor in any

manner that Contractor designates in writing upon such termination, or as Contractor may thereafter designate in writing from time to time.

13.5 If Contractor voluntarily resigns the positions of Facilities Custodian before the expiration of this Agreement or any extensions hereunder, then Contractor shall give City at least thirty (30) calendar days written notice in advance, unless the parties agree otherwise. If Contractor voluntarily resigns the positions of Facilities Custodian, all terms of Voluntary Termination in Section 13.4 of this Agreement apply in the same manner and with equal force and effect unless the parties agree otherwise.

13.6 If City eliminates or disbands the position of Facilities Custodian, the terms of Voluntary Termination in Section 13.4 of this Agreement apply in the same manner and with equal force and effect.

13.7 Any action by City relating to Involuntary Termination shall be preceded by City's advance notice to Contractor of any Executive Session in which the Council will consider taking action/s for such termination. Such notice shall be by certified mail, return receipt requested, and the same shall be effective only on the date of proof of Contractor's receipt of the same. Such notice shall contain certified copies of any materials, including all complaints, statements and/or affidavits, and full summaries of any oral or verbal conversations, on which City bases such Executive Session and/or such Involuntary Termination.

13.8. Any Executive Session relating to Involuntary Termination of Contractor shall be held not less than ten (10) calendar days after Contractor actually receives notice of the date of Executive Session and the materials on which City bases such Involuntary Termination.

13.9 Contractor shall be afforded all rights provided by and under Texas Law, for and at any Executive Session convened to consider Involuntary Termination. Contractor shall have the sole option of being present, and/or requiring Contractor's and City's attorney to be present at, any such Executive Session, and all, Contractor, Contractor's attorney and City's attorney, shall be fully heard at any such Executive Session.

13.10 If City terminates Contractor by Involuntary Termination before the expiration of this Agreement and any extensions hereunder, City agrees to pay Contractor a lump sum cash payment equal to the amount which would have been due and payable had the Agreement, and any extensions, not been terminated, such amount to be paid by the City to Contractor within thirty (30) calendar days of the effective date of the termination.

13.11 Upon Contractor's termination under any process, or Contractor's resignation, in this Section 13, City shall provide Contractor, or, in Contractor's sole discretion, Contractor's designated representative, with a complete copy of any evaluation or personnel files relating to Contractor within three (3) calendar days of any such termination or resignation. In addition, within such time as is reasonably necessary but not longer than thirty (30) calendar days, City shall permit Contractor, or, in Contractor's sole discretion Contractor's designated representative, to remove all personal property and effects belonging to Contractor from City's offices, any and all City departments, and/or all City and City department vehicles.

13.12 If Contractor dies during the term of this Agreement, the employment relationship created by this Agreement will terminate, and any compensation due to Contractor be paid, through the end of the month in which Contractor's death occurs, to Contractor's designated beneficiary or, if none is designated by Contractor by written direction, Will or other document, or as is determined by Texas statutes relating to intestate succession, then to Contractor's estate representative.

14. OTHER TERMS AND CONDITIONS OF EMPLOYMENT

14.1 City, by agreement with Contractor, may determine any other and additional terms and conditions of employment as the parties may determine by agreement/s from time to time, including but not limited to that which may relate to Contractor's performance, provided such terms and conditions are not inconsistent or in conflict with any provisions of this Agreement, or any other law.

15. NO REDUCTION OF BENEFITS

15.1 City shall not at any time during the term of this Agreement reduce any portion of Contractor's compensation or other financial benefits, except by mutual consent and agreement of the parties. This Agreement may be amended at any time by mutual consent and agreement of the parties, except as specifically provided in this Agreement and/or by any written additional agreements, amendments or extensions entered into by agreement of the parties from time to time.

16. NOTICES

16.1 Any and all notices required or permitted to be given under this Agreement and any extensions hereof will be sufficient if furnished in writing, sent by certified or registered mail, return receipt requested, to Contractor's last known address, in the case of Contractor; and to City's address at 1585 Maria Street, Hawk Cove, TX 75474 (or such other official address for City, should it change in the future), in the case of City. No notice shall be effective without the sender's proof of receipt by the recipient, and no expiration times shall begin until the date shown on the proof of receipt, including proof of receipt provided from records of the United States Postal Service.

17. GENERAL PROVISIONS

17.1 The text of this Agreement, and/or any written additional agreements or amendments entered into by agreement of the parties from time to time, shall constitute the entire agreement between the parties. If any provision, or portion thereof, contained in this Agreement and/or any written additional agreements, amendments or extensions entered into by agreement of the parties from time to time, is held by a court of competent jurisdiction to be unconstitutional, invalid, or unenforceable, then that provision or portion shall be deemed severable from this Agreement and/or any written additional agreements, amendments or extensions entered into by agreement of the parties from time to time, and the remainder of this Agreement and/or any written additional agreements, amendments or extensions entered into by agreement of the parties from time to time shall remain valid and enforceable, and in full force and effect.

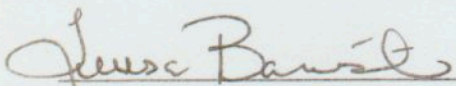
17.2 This Agreement may be amended or extended at any time only by mutual written consent of the parties, except as is otherwise provided herein.

17.3 Contractor understands and agrees that all compensation and/or any benefits provided under this Agreement are subject to appropriation by budget from year to year by City. City agrees that it shall fund the monetary provisions of this Agreement in every budget adopted by the Council.

17.4 This Agreement supersedes all previous contracts and agreements which the parties hereto by their signatures declare are rendered null and void upon the effective date of this Agreement.

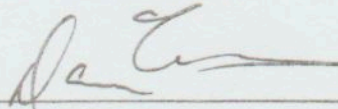
IN WITNESS THEREOF, City of Hawk Cove has caused this Agreement to be executed in its corporate name by its City Council, by and through the hands and signatures of its Mayor and Mayor Pro-Tem, and TERESA BANNISTER has set her hand and signature, as of the day and year first written above.

TERESA BANNISTER

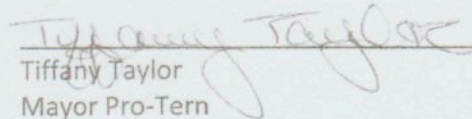


Teresa Bannister,
Facilities Custodian

CITY OF HAWK COVE



Darren Evans
Mayor



Tiffany Taylor
Mayor Pro-Tern