

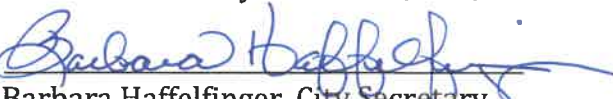
**NOTICE OF A MEETING**  
**OF THE CITY COUNCIL OF THE CITY OF HEMPSTEAD**

Notice is hereby given that a Regular Meeting of the City Council of the City of Hempstead will be held on **Monday, the 1<sup>st</sup> day of November, A.D., 2021 at 6:00 P.M.** at the **Hempstead Recreation Center, 635 Business Highway 290 E, Second Floor, Hempstead, Texas**, at which time the following subjects will be discussed, to-wit:

1. Call to order and invocation.
2. Pledge of Allegiance.
3. Public Comments.
4. Consideration and action on awarding bid for TxCDBG Contract No. 7220162 for ADA Sidewalks.
5. Consideration and action on Resolution for Casting Vote Entitlement on the Election of Directors of the Waller County Appraisal District.
6. Consideration and action on a Resolution of the City Council of the City of Hempstead, Texas, authorizing participation in the National Opioid Settlement Agreements secured by the Office of the Attorney General as a "Non-Litigating Subdivision"; and, authorizing the Mayor to execute certain settlement participation documents.
7. Consideration and action on an Ordinance of the City of Hempstead, Texas, providing that the Employee Guide be amended by substituting "Driving City Vehicles" with "Vehicle Use Policy", providing an effective date; providing a savings clause.
8. Notice is hereby given that a Meeting of the Hempstead City Council will be held on November 1, 2021 at the Hempstead Recreation Center, 635 Business Highway 290 E, Second Floor, Hempstead, Texas 77445 for the purpose of considering and taking action on all matters on the Agenda for the Meeting, including an Ordinance approving of a revised agreement with the Potts Law Firm as Special Counsel to perform all legal services necessary regarding gas services to the City by Symmetry Gas and any affiliates and authorizing the execution of such agreement; levying an ad valorem tax to pay attorneys fees and expenses; making other provisions and findings related to the subject.
9. Adjourn City Council Meeting.


The City Council of the City of Hempstead reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed below authorized by Texas Government Code, Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices), 551.087 (Economic Development), and 551.086 (Certain Public Power Utilities: Competitive Matters). Council may act in Open Session on any item listed for Executive Session.

Dated this the 29<sup>th</sup> day of October, A.D., 2021.

By:   
Barbara Haffelfinger, City Secretary

I, the undersigned authority, do hereby certify that the above Notice of a Regular Meeting of the governing body of the City of Hempstead is a true and correct copy of said Notice, and that a true and correct copy of said Notice was posted on the City Hall bulletin board and entrances to City Hall, in the City Hall of said City of Hempstead, Texas, a place convenient and readily accessible to the general public at all times, and that said Notice was posted on October 29, 2021 at 1:00 P.M. and remained so posted continuously for at least 72 hours preceding the scheduled time of said meeting.

Dated this the 29<sup>th</sup> day of October, A.D., 2021.

By:   
Barbara Haffelfinger, City Secretary

## **PUBLIC PARTICIPATION BY TELEPHONE**

The City of Hempstead City Council **may** conduct the meeting scheduled at **6:00 P.M. on Monday the 1<sup>st</sup> day of November at the Hempstead Recreation Center, 635 Business Highway 290 E, Second Floor, Hempstead, Texas.** The public will be permitted to offer public comments telephonically as provided by the agenda and as permitted by the presiding officer during the meeting. A recording of the telephonic meeting will be made and will be available to the public upon written request.

The toll-free dial-in number to participate in the meeting telephonically is:

**1-346-248-7799; Access Code 989-478-2100**

**IF CITY COUNCIL MEMBERS ARE GOING TO APPEAR BY VIDEOCONFERENCE A QUORUM OF COUNCILMEMBERS MUST BE PRESENT AT THE LOCATION.**

## **NOTICE OF MEETING BY VIDEO CONFERENCE**

The City of Hempstead City Council **may** conduct the meeting scheduled at **6:00 P.M. on Monday, the 1<sup>st</sup> day of November at the Hempstead Recreation Center, 635 Business Highway 290 E, Second Floor, Hempstead, Texas** by videoconference in addition to allowing in person attendance. A quorum of the City Council will be physically present at the Hempstead Recreation Center, 635 Business Highway 290 E, Second Floor, Hempstead. The public may participate in the City Council Meeting by using the following information:

**1-346-248-7799, Access Code 979-478-2100**



Strand Associates, Inc.®  
1906 Niebuhr Street  
Brenham, TX 77833  
(P) 979.836.7937

October 28, 2021

Honorable Dave Shelburne  
City of Hempstead  
1125 Austin Street  
Hempstead, TX 77445

Re: 2020 TxCDBG-DRP  
TxCDBG Contract No. 7220162  
Contract 1-2021  
City of Hempstead, Texas

Dear Mayor Shelburne:

Bids for the above-referenced project were opened on September 16, 2021. Three bids were received with the resulting bid tabulation enclosed. The low bid of \$409,316.00 was from Palasota Contracting, LLC. It is our understanding from the attached letter dated October 25, 2021, that the City of Hempstead deemed Palasota Contracting, LLC to not be a responsible bidder. The second bid of \$441,953.50 was approximately 5 percent higher than ENGINEER's opinion of probable construction cost.

Palomares Construction of Bryan, Texas, was the apparent lowest responsible bidder at \$441,945.50. This bid amount is corrected from the apparent bid of \$441,953.50. The bid included a bid bond for five percent. The bid is deemed to be responsive.

Strand Associates, Inc.® has previously worked with Palomares Construction on an ongoing project in the City of Hempstead. For that project, the owner determined Palomares Construction to be responsible.

If you determine that Palomares Construction is a responsible bidder after your evaluation of their qualifications, we recommend proceeding with award of the Contract.

Sincerely,

STRAND ASSOCIATES, INC.®

Jared D. Engelke, P.E.

Enclosures

TBPE No. F-8405  
TBPLS No. 10030000

4371.009UDE.mds\R\BRBDocuments\Specifications\Archive\2021\Hempstead, City of\4371.009.1-2021.JDE(16) Specification Letters(a) Resulting Bid Tabulation\102821.docx



# City of Hempstead

1125 Austin Street • Hempstead, Texas 77445 • Tel: 979-826-2486 • Fax: 979-826-6703

## RESOLUTION NO. 21- \_\_\_\_\_

### CASTING VOTE ENTITLEMENT ON THE ELECTION OF DIRECTORS OF THE WALLER COUNTY APPRAISAL DISTRICT

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HEMPSTEAD,  
TEXAS:**

That the 61 votes allotted to the City of Hempstead be cast in the election of the Board of Directors for the Waller County Appraisal District for the two year term of January 1, 2022 through December 31, 2023, as follows:

Barnett, Paulette	_____ Votes
Davis, Jamie	_____ Votes
Parks, William C.	_____ Votes
Rape, Royce	_____ Votes
Welch, Rick	_____ Votes

**PASSED AND APPROVED** this the 1<sup>st</sup> day of November, A.D., 2021.

**APPROVED:**

\_\_\_\_\_  
**Dave Shelburne, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Barbara Haffelfinger, City Secretary**

WALLER COUNTY APPRAISAL DISTRICT

MEMORANDUM

TO: PRESIDING OFFICERS OF WALLER COUNTY TAXING UNITS

FROM: BECKY GURROLA, CHIEF APPRAISER

SUBJECT: ELECTION OF BOARD OF DIRECTORS OF THE  
WALLER COUNTY APPRAISAL DISTRICT

DATE: OCTOBER 18, 2021

This letter is to inform you of your entity's right to participate in the election of Board of Directors for the Waller County Appraisal District. The governing body of each taxing unit entitled to vote shall determine its votes by resolution and submit it to the chief appraiser before December 15, 2021.

The nomination period for board candidates ended October 15, 2021. The names of all candidates officially nominated to me on or before that date are reflected on the enclosed "Official Ballot" form.

A governing body may cast all its votes for one candidate or distribute them among candidates for any number of directorships.

The vote must be by resolution. The resolution, or a certified copy thereof, together with the complete OFFICIAL BALLOT, must be delivered to Becky Gurrola, Chief Appraiser, at 900 13<sup>th</sup> Street, Hempstead, Texas 77445 (mailing address P.O. Box 887, Hempstead, Texas 77445), before Wednesday, December 15, 2021.

Section 6.03(a), Texas Property Tax Code, states that "The appraisal district is governed by a board of directors. Five directors are appointed by the taxing units that participate in the district as provided by this section".

Before December 31, 2021, the chief appraiser will count all timely cast votes and declare elected the candidates which receive the highest number of votes. The election results will be submitted to the governing body of each voting taxing unit and to the candidates.

If you have questions about the election process, please call me at 979-921-0060.

Attachments

c: WCAD Board Members  
Tax Assessors

**WALLER COUNTY APPRAISAL DISTRICT  
SELECTION OF APPRAISAL DISTRICT DIRECTORS  
JUNE 17, 2021  
FOR 2022 AND 2023**

**Per Section 6.03, Texas Property Tax Code**

SEPTEMBER	30	Chief Appraiser certifies number of votes for each taxing unit. (Before October 1)
OCTOBER	15	Chief Appraiser receives nominations by written resolution for each taxing unit.
DECEMBER	15	Each taxing unit submits vote(s) by written resolution to the Chief Appraiser.
DECEMBER	31	Chief Appraiser counts votes; declares winners; notifies all taxing units and candidates.

**WALLER COUNTY APPRAISAL DISTRICT  
VOTE ALLOCATION FOR BOARD  
OF DIRECTORS ELECTION  
FOR 2022 - 2023 TERM**

<b><u>Jurisdiction</u></b>	<b><u>Number of Votes</u></b>
Waller ISD	1,086
Waller County	1,349
Royal ISD	838
Katy ISD	925
Hempstead ISD	323
City of Brookshire	96
City of Katy	196
City of Hempstead	61
City of Prairie View	61
City of Waller	<u>65</u>
Total Number of Votes	5,000

WALLER COUNTY APPRAISAL DISTRICT

**OFFICIAL BALLOT**

ELECTION OF BOARD OF DIRECTORS  
FOR THE TWO YEARS TERM FROM  
JANUARY 1, 2022 THROUGH DECEMBER 31, 2023

Barnett, Paulette	_____	VOTES
Davis, Jaime	_____	VOTES
Parks, William C.	_____	VOTES
Rape, Royce	_____	VOTES
Welch, Rick	_____	VOTES



# BOARD OF DIRECTORS

## WALLER COUNTY APPRAISAL DISTRICT

2022-2023 TERM  
NOMINEES

<u>NOMINEES</u>	<u>ENTITY</u>
BARNETT, PAULETTE	WALLER COUNTY
DAVIS, JAIME	WALLER ISD
PARKS, WM C.	WALLER COUNTY
RAPE, ROYCE	WALLER ISD
WELCH, RICK	WALLER COUNTY

Dear Ms. Haffelfinger,

Your City should have recently received an email regarding the National Opioid Settlement (“Settlement”). This memo is intended to give you general information on what the Settlement is and how it may affect your City. This memo will also inform you of what you need to do to obtain the potential settlement funds already allocated to your City. This memo is *not* intended to encompass every detail of the Settlement and we encourage you to contact us with further questions.

This Settlement is essentially a *conditional* Settlement between the Manufacturer and Distributors (collectively “Defendants”) of certain opioids and the Nation which their product has harmed. The Settlement is contingent on state and local participation and incentive opt in. This opt in requires that states and local municipalities (not private parties) release all present and future claims against said Defendants and in return, receive an allocated Settlement amount to be used to prevent and mitigate the harmful effects of the opioid crisis. Note that there will be specific requirements for spending the allocated Settlement amount.

Your City does not have pending litigation against these Defendants. Any citizen or business in your City that may have pending litigation or future claims against these Defendants will not be affected by your City’s participation in this settlement.

Phase one of the Settlement dealt with state participation. Texas, along with 41 other states, opted into this conditional settlement. These 42 “Settling States” qualified as a “critical mass” and has allowed this Settlement to proceed to phase two: subdivision participation. The subdivisions of each Settling State (including your City) will have 120 days to determine whether they will participate the settlements. **The deadline to opt in is January 2, 2022.** The Defendants will then have 30 days to determine whether the percentage of participating subdivisions qualifies as a “critical mass”. If so, the Consent Judgments will be finalized. If the percentage of participating subdivisions does not qualify as a “critical mass”, those in litigation will remain the and the Settlement will not take effect.

The total Settlement amount is approximately \$26 billion. Texas could potentially receive up to approximately \$1.5 billion. Your City has been allocated \$21,240.00.

We encourage your City to participate in this Settlement. Because your City is not involved in pending litigation, there are no current claims to release. Additionally, the City is not stripping any private right of individuals in your City to continue a claim or pursue a claim against these Defendants. By participating in this Settlement, you will contribute to the effort to get a “critical mass” enabling the Settlement to move forward, and in turn, receive the allocated funds.

To receive these funds, the City will need to submit three documents to [opioids@oag.texas.gov](mailto:opioids@oag.texas.gov). The first is a Resolution authorizing the City to participate in the Settlement. The second and third documents are the “Subdivision Participation Form (JNJ)” and “Subdivision Participation Form (Distributors)”. These participation forms along with a draft Resolution are attached. Finally, the Texas Term Sheet will be incorporated and attached as an exhibit to your Resolution. Please follow normal Resolution protocol. It is important to note that this Resolution needs to be considered sooner rather than later because the deadline to opt into participation in this Settlement is **January 2, 2022**. We recommend adding this matter to the agenda for one of your upcoming meetings.

We appreciate your attention to this matter. Please do not hesitate to reach out to our office with questions or concerns.



# City of Hempstead

1125 Austin Street • Hempstead, Texas 77445 • Tel: 979-826-2486 • Fax: 979-826-6703

## RESOLUTION NO. 21- \_\_\_\_\_

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HEMPSTEAD, TEXAS, AUTHORIZING PARTICIPATION IN THE NATIONAL OPIOID SETTLEMENT AGREEMENTS SECURED BY THE OFFICE OF THE ATTORNEY GENERAL AS A “NON-LITIGATING SUBDIVISION”; AND, AUTHORIZING THE MAYOR TO EXECUTE CERTAIN SETTLEMENT PARTICIPATION DOCUMENTS.**

**WHEREAS**, the City of Hempstead, Texas (the “City”) obtained information indicating that certain drug companies and their corporate affiliates, parents, subsidiaries, and such other defendants as may be added to the litigation (collectively, the “Defendants”) have engaged in fraudulent or reckless marketing or distribution of opioids that have resulted in addictions and overdoses; and

**WHEREAS**, these actions, conduct and misconduct have resulted in significant financial costs to the United States and the State of Texas; and

**WHEREAS**, on May 13, 2020, the State of Texas, through the Office of the Attorney General, and a negotiation group representing political subdivisions in the State of Texas entered into an Agreement entitled, “Texas Opioid Abatement Fund Council and Settlement Allocation Term Sheet” (the “Texas Term Sheet”), approving the allocation of any and all opioid settlement funds within the State of Texas, with the Texas Term Sheet being attached to this Resolution as Exhibit “A”; and

**WHEREAS**, the City desires to adopt and approve the Texas Term Sheet in its entirety; and **NOW, THEREFORE,**

**BE IT RESOLVED BY THE CITY COUNCIL OF CITY OF HEMPSTEAD, TEXAS:**

**SECTION 1. THAT** the statements provided in the caption and the recitals of this Resolution are true and correct and are adopted herein for all intents and purposes.

**SECTION 2. THAT** the City Council of the City (the “Council”) hereby finds that there is a substantial need for repayment of opioid-related expenditures and payment to abate opioid-related harms in and about the City.

**SECTION 3. THAT** the Council hereby acknowledges that the purpose of the Texas Term Sheet is to permit collaboration between the State of Texas and political subdivisions to explore and potentially effectuate resolution of the Opioid Litigation against Pharmaceutical Supply Chain Participants, as defined therein.

**SECTION 4. THAT** the Council hereby acknowledges that an additional purpose of the Texas Term Sheet is to create an effective means of distributing any potential settlement funds obtained under the Texas Term Sheet between the State of Texas and political subdivisions in a manner and means that would promote an effective and meaningful use of the funds in abating the opioid epidemic in the City and throughout the State of Texas.

**SECTION 5. THAT** the Texas Term Sheet be approved and adopted in its entirety, including the allocation method for opioid settlement proceeds.

**PASSED AND APPROVED ON THE 1<sup>ST</sup> DAY OF NOVEMBER, 2021.**

**FOR THE CITY:**

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**DAVE SHELBURNE, MAYOR**

**ATTEST:**

---

**Barbara Haffelfinger, City Secretary**



# City of Hempstead

1125 Austin Street • Hempstead, Texas 77445 • Tel: 979-826-2486 • Fax: 979-826-6703

## ORDINANCE NO. 21-\_\_\_\_\_

**AN ORDINANCE OF THE CITY OF HEMPSTEAD, TEXAS, PROVIDING THAT THE EMPLOYEE GUIDE BE AMENDED BY SUBSTITUTING “DRIVING CITY VEHICLES” WITH “VEHICLE USE POLICY”; PROVIDING AN EFFECTIVE DATE; PROVIDING A SAVINGS CLAUSE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HEMPSTEAD, TEXAS:**

**Section 1.** That provisions of the City of Hempstead’s Employee Guide is hereby amended by substituting “Driving City Vehicles” with “Vehicle Use Policy” as follows:

### **“Vehicle Use Policy**

All employees authorized to operate City of Hempstead vehicles and motorized equipment, or who operate personal vehicles on City of Hempstead - related business, shall be subject to the standards established in this policy.

This policy establishes minimum standards for the qualification of employees and applicants to operate City of Hempstead vehicles and motorized equipment.

#### **A. Application**

1. This policy shall apply to:
  - a. Employees driving City of Hempstead owned, leased, or rented vehicles or motorized equipment.
  - b. Employees receiving a monthly car allowance, or who use personal vehicles for City of Hempstead related business.

#### **B. Requirements for Operations**

Employees operating a vehicle during the course of City business must:

1. Have a current valid Texas driver's license in the appropriate class as established on the official description for the position;
2. Comply with State law and not be under the influence of alcohol, illegal drugs, or other drugs that may impair judgment or motor skills;
3. Refrain from using tobacco products (including smokeless) while operating and/or being a passenger in City owned vehicles and/or equipment;
4. Be physically qualified to hold a driver's license and to safely operate a City of Hempstead vehicle or motorized equipment;
5. Wear seat belts and other relevant safety equipment when operating City of Hempstead vehicles or motorized equipment when appropriate;
6. Operate the vehicle in accordance with all traffic laws and vehicle regulations;
7. Observe all laws and ordinances relating to the operation of City vehicles or motorized equipment.
8. Have their driving record reviewed for violations on an annual basis;
9. Not have been convicted or placed on deferred adjudication/disposition for an offense involving driving while intoxicated or driving under the influence, or charged with this offense more than once, during the last 5 (five) years;
10. Maintain an acceptable driving record as established by the City;
11. Be responsible for the proper care and use of vehicles or motorized equipment. This includes maintaining City vehicle/motorized equipment interiors and exteriors, regularly servicing these items and reporting maintenance needs to the supervisor, and operating all City vehicles/motorized equipment in a manner that conserves fuel and reduces depreciation.

Failure to adhere to any of the above may result in disciplinary action up to and including termination.

### **C. Passengers**

1. Employees may not allow non-City-employee passengers to ride in a City owned vehicle without prior permission from the Chief of Staff with the exception of:

- a. Persons in custody or persons necessary to an investigation being conducted by a Police Officer;
  - b. Persons being transported to a hospital or other medical facility in an emergency medical vehicle; and
  - c. Emergency situations where it is not practical or safe to secure prior authorization.
2. During the course of City business, an employee may allow public officials to ride in their assigned vehicle.

#### **D. Reporting Citation**

1. In the event an employee receives a citation for a moving violation, is arrested for DUI/DWI, or has their driver's license suspended/revoked, they must notify the Chief of Staff and the City Secretary immediately. Failure to report may result in disciplinary action up to and including termination.

#### **E. Accident Procedures**

When an employee is involved in an accident while driving a City owned vehicle or while driving a personal vehicle on City business, they must:

1. Immediately stop and, where appropriate, render aid to injured persons and identify themselves to other involved persons.
2. Immediately notify their supervisor.
3. Complete an accident/incident report.
4. Submit to a drug/alcohol test.

When appropriate, an investigation may be conducted by the Police Department in conjunction with their Department Head. When it is determined an employee contributed to an accident as the result of carelessness or reckless/unsafe action the employee may be disciplined up to and including termination.

Under no circumstances will an employee use a City owned vehicle to push or tow another vehicle unless the City vehicle is specifically equipped to perform such a function.

#### **F. Take Home Vehicles**

1. A City vehicle may be assigned to a position or employee when it is more economical than payment of a car allowance or mileage reimbursement. To be eligible for assignment of take-home vehicle, an employee must be subject to emergency call back during off duty hours to locations other than the employee's normal workstation. City-owned vehicles may be used only for City business, except if approved by the Department Head. No one other than employee assigned to the vehicle may drive the vehicle."

**Section 2.** That if any provision of this Ordinance shall be held to be invalid or unconstitutional, the remainder of such Ordinance shall continue in full force and effect the same as if such invalid or unconstitutional provision had never been a part hereof.

**Section 4.** All ordinances or parts of ordinances inconsistent or in conflict herewith, are to the extent of such inconsistency or conflict, hereby repealed.

**Section 5.** It is hereby found and determined that the meeting at which this Ordinance is passed is open to the public, as required by law.

**Section 6.** That this Ordinance shall take effect upon passage.

**PASSED AND APPROVED** this the 1<sup>st</sup> day of November, A.D., 2021.

**APPROVED:**

\_\_\_\_\_  
**Dave Shelburne, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Barbara Haffelfinger, City Secretary**





# City of Hempstead

1125 Austin Street • Hempstead, Texas 77445 • Tel: 979-826-2486 • Fax: 979-826-6703

## ORDINANCE

NO. 21-\_\_\_\_\_

### NOTICE OF A PUBLIC MEETING

**NOTICE IS HEREBY GIVEN THAT A MEETING OF THE HEMPSTEAD CITY COUNCIL WILL BE HELD ON NOVEMBER 1, 2021 AT HEMPSTEAD RECREATION CENTER, 635 BUSINESS HIGHWAY 290 E, SECOND FLOOR, HEMPSTEAD, TX 77445 FOR THE PURPOSE OF CONSIDERING AND TAKING ACTION ON ALL MATTERS ON THE AGENDA FOR THE MEETING, INCLUDING AN ORDINANCE APPROVING OF A REVISED AGREEMENT WITH THE POTTS LAW FIRM AS SPECIAL COUNSEL TO PERFORM ALL LEGAL SERVICES NECESSARY REGARDING GAS SERVICES PROVIDED TO THE CITY BY SYMMETRY GAS AND ANY AFFILIATES AND AUTHORIZING THE EXECUTION OF SUCH AGREEMENT; LEVYING AN AD VALOREM TAX TO PAY ATTORNEYS FEES AND EXPENSES; MAKING OTHER PROVISIONS AND FINDINGS RELATED TO THE SUBJECT.**

**WHEREAS**, after exercising due diligence and having provided adequate notice as required by Sec. 2254.1036 of the Texas Government Code, the City Council of the City of Hempstead, Texas hereby finds and determines the following:

1. The Potts Law Firm is fully qualified to provide this representation the Potts law firm possesses legal expertise that the City of Hempstead does currently possess the specialized legal services required by this agreement cannot be adequately performed by the attorneys and supporting personnel of the City of Hempstead;
2. The Potts Law Firm is experienced in the handling cases and issues that the City of Hempstead is currently facing. The City of Hempstead does not have any previous experience with the Potts law firm or any of its lawyers but has performed due diligence in seeking an attorney for the City that will protect and defend the rights of the citizens of Hempstead;

3. The Potts Law Firm will be compensated on a contingent fee basis as provided in the amount of at the greater of (a) 40% of the gross monetary amount reduced on Client's pending utility bill from Symmetry Energy Solutions after the effective date of this contract; or (b) 40% of gross damages. A contract to pay inside or outside attorneys on an ongoing hourly basis, without regard to the outcome, would represent an additional cost to the City of Hempstead that is avoided by utilizing the proposed contingent fee structure;
4. Entering into the proposed agreement is in the best interests of the residents of the City of Hempstead because City of Hempstead's interests will be professionally and competently protected without the additional costs to the City of Hempstead of employing in-house personnel or paying outside counsel on an hourly fee basis, which would otherwise be required;
5. There is a substantial need for the legal services;
6. The legal services cannot be adequately performed by the attorneys and supporting personnel of the City of Hempstead; and
7. The legal services cannot reasonably be obtained from attorneys in private practice under a contract providing only for the payment of hourly fees, without regard to the outcome of the matter, because of the nature of the matter for which the services will be obtained or because City of Hempstead entity does not have appropriated funds available to pay the estimated amounts required under a contract providing only for the payment of hourly fees.
8. The City Council, pursuant to Section III, CONTINGENT FEE ARRANGEMENT, (hereafter "Section III") of the Contract agrees that, in the event that the anticipated litigation in which the Potts Law Firm represents the City of Hempstead is *not certified* as a class action, and the Potts Law firm obtains a reduction of the gross monetary amount on the City's pending utility bill from Symmetry Energy Solutions, the City agrees to pay the Potts Law firm the greater of (a) 40% of the gross monetary amount reduced on Client's pending utility bill from Symmetry Energy Solutions after the effective date of this contract; or (b) 40% of gross damages during each year while the Contract is outstanding and unpaid.

In the event the anticipated litigation *is certified* as a class action, pursuant to Section III, the Potts Law Firm agrees to petition the Court to recover the City's share of the Potts Law Firm attorney's fees and expenses *provided, however*, that in no event shall the City's share of the Potts Law Firm attorneys' fees exceed the greater of (a) 40% of the gross monetary amount reduced on City's pending utility bill from Symmetry Energy Solutions after the effective date of this contract; or (b) 40% of City's gross damages, provided, further that in the event there is no recovery, the City owes the Potts Law Firm nothing.

In order to pay the following described Potts Law Firm legal fees (the "Payment") in the event that (1) the anticipated litigation is not certified as a class action or (2) in the event the anticipated litigation is certified as a class action, and the City is not awarded its attorney's fees, the City Council covenants and agrees that the City shall compute and ascertain a rate and amount of ad valorem tax that will be sufficient to raise and produce the funds required to pay the interest on the Payment as such interest comes due, and to provide and maintain a sinking fund adequate to pay the principal of the Payment due under Section III of the Contract, as such principal matures (but never less than 2% of the original principal amount of the total contract payment as a sinking fund each year); and said tax shall be based on the latest approved tax rolls of the City, with full allowance being made for tax delinquencies and the cost of tax collection.

Said rate and amount of ad valorem tax is hereby levied, and is hereby ordered to be levied, against all taxable property within the City's jurisdiction for each year while any Payment under the Contract is outstanding and unpaid; and said tax shall be assessed and collected each such year and deposited to the credit of the Interest and Sinking Fund (defined below). Said ad valorem taxes sufficient to provide for the payment of the interest on and principal of the Potts Law Firm Contract Obligation, as such interest comes due and such principal matures, are hereby pledged to such payment, within the limits prescribed by law. The amount of taxes to be levied annually for the payment of principal of and interest on the Contract shall be determined and accomplished in the following manner:

- (a) The City's annual budget, beginning the year in which this Agreement becomes effective, shall reflect (i) the amount of principal and interest on the Contract to become due in the next succeeding City Fiscal Year, and (ii) the amount of ad valorem tax revenues or other lawfully available funds estimated and budgeted to be available for the payment of the principal of and interest on the Contract Payment during the next succeeding City Fiscal Year.
- (b) The amount required to be provided each Fiscal Year throughout the duration of this Agreement shall be the amount, if any, by which the principal and interest to be paid on the Contract in the next succeeding City Fiscal Year exceeds the sum of (i) the amount of Pledged Revenues shown to be on deposit in the Interest and Sinking Fund (after giving effect to any payments required to be made during the remainder of the then current Fiscal Year) at the time the annual budget is prepared, and (ii) the Pledged Revenues or other lawfully available funds shown to be budgeted and available (subject to the requirements of any prior lien obligations) for payment of said debt service requirements.

- (c) The City shall budget an amount of ad valorem tax revenue sufficient to pay the annual payment under the Contract. Following the final approval of the annual City budget, the City Council shall levy an ad valorem tax at a rate sufficient to produce taxes in the amount determined in paragraph (b) above, to be utilized for purposes of paying the principal of, and interest on the Contract in the next succeeding City Fiscal Year.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HEMPSTEAD, TEXAS:**

Section 1. The Hempstead City Council approves and authorizes the Mayor to enter into a contingent fee agreement with the Potts Law Firm in accordance with the terms and conditions set forth in this Ordinance and the Agreement attached hereto as Exhibit A and incorporated herein for all purposes.

**PASSED AND APPROVED** this the 1<sup>st</sup> day of November, A.D., 2021.

**APPROVED:**

---

**Dave Shelburne, Mayor**

**ATTEST:**

---

**Barbara Haffelfinger, City Secretary**