

TOWN OF ADDISON, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS APPROVING AN AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN THE TOWN OF ADDISON AND WISS, JANNEY, ELSTNER ASSOCIATES, INC. FOR ENGINEERING SERVICES RELATED TO WIND TURBINE STRUCTURAL TESTING IN AN AMOUNT NOT TO EXCEED \$109,200.00, AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT, AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The Agreement for Professional Services between the Town of Addison and Wiss, Janney, Elstner Associates, Inc. for engineering services related to wind turbine structural testing in an amount not to exceed \$109,200.00 and substantially in the form of **Exhibit A**, attached hereto and incorporated herein, is hereby approved subject to final approval of the City Manager and the City Attorney. The City Manager is hereby authorized to execute the final agreement.

Section 2. This Resolution shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this the 11th day of April, 2017.

Todd Meier, Mayor

ATTEST:

By: _____
Laura Bell, City Secretary

APPROVED AS TO FORM:

By: _____
Brenda N. McDonald, City Attorney

EXHIBIT A



Wiss, Janney, Elstner Associates, Inc.
9511 North Lake Creek Parkway
Austin, Texas 78717
512.257.4800 tel | 512.219.9883 fax
Texas Registered Engineering Firm F-0093
www.wje.com

Via E-mail: dlukasik@sloanmatney.com

March 8, 2017

Mr. Doug Lukasik
Sloan Matney
3838 Oak Lawn Avenue, Suite 1200
Dallas, Texas 75219

Re: Proposal for Professional Services
Town of Addison: Wind Turbine Deconstruction
WJE No. 2014.5873

Dear Mr. Lukasik:

At your request, Wiss, Janney, Elstner Associates, Inc. (WJE) is pleased to provide this proposal for professional services related to wind turbine structural testing for the Town of Addison water tower located at the intersection of Arapaho Road and Surveyor Boulevard in Addison, Texas. The following provides a description of the anticipated scope of services and associated budget for WJE professional services.

Background

WJE has been providing structural engineering consulting services for the ongoing litigation case on behalf of the Town of Addison. We understand that William Vachon, of WA Vachon & Associates, Inc., has also been retained as a mechanical engineering consultant on behalf of the Town of Addison. From recent discussions amongst the project team, we understand an additional investigation is being considered, which would result in greater certainty of failure causation than the dynamic testing approach described in our previous proposal dated February 20, 2017. The following scope of services describes our recommended approach in continuing consulting services to determine the cause of the third failure of the wind turbines.

Scope of Services

Task 1 - Document Review

WJE recently received access to the production folder with the documents produced by all parties. We will review the documents received to further understand the design, manufacture, and construction of the wind turbines, and the series of events related to the turbine failures.

Task 2 - Site Visit and Turbine Removal

WJE will perform a two day site visit as a follow up to our previous site visit performed in May of 2016. The intent of this site visit will be to document the level of damage visually evident in the turbines and compare to previous observations from our 2016 site visit, as well as previous photographic documentation revealed from Task 1. While onsite, we would also request to review the blade debris from the third failure as described by UGE in their *Addison Water Tower Turbine AG0275 Incident Report* dated March 25, 2014. During our site visit, we will also coordinate the removal, disassembly, and shipment of two wind turbines from the water tower roof for laboratory testing in the following task.

Headquarters & Laboratories—Northbrook, Illinois
Atlanta | Austin | Boston | Chicago | Cleveland | Dallas | Denver | Detroit | Honolulu | Houston | Los Angeles
Minneapolis | New Haven | New York | Princeton | San Francisco | Seattle | South Florida | Washington, DC

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Task 3 - Laboratory Examination and Reporting

The intent of our laboratory effort will be to closely examine the wind turbine components to understand the damage and failure characteristics. Laboratory examination methods would likely include unaided visual, magnified stereo microscope, and metallurgical examination of the failure surfaces, as well as other selected sections in the turbine components. The examination would involve dissecting portions of the turbine components and render the turbine unfit for re-assembly.

We anticipate performing the laboratory examination on one of the turbines received and the other turbine would be retained for potential follow up investigation as warranted. The preferred turbine for laboratory examination is Turbine #1, which had the third failure incident, if the associated blade debris is available. Otherwise another turbine may be selected for the laboratory examination.

This task will also include the development of a report that describes our investigation and findings.

Additional Services

The anticipated scope of services has been identified herein. Additional services, such as additional field investigations, material testing, additional deliverables, litigation services, and/or meetings that are not included in the scope described above will be considered additional services. WJE can provide such additional services on an as-requested basis and can develop an additional proposal with relevant budgets for these services, if requested.

Budget and Terms

Based on the proposed scope of services, WJE recommends performing the work on a time and expense basis with an estimated budget as shown below. The estimated cost below includes a contractor's expense of \$22,000 for crane rental and shipping costs to send the removed turbines to our laboratory.

Estimated Budget for Professional Services

Task	Description	Estimated Cost
1	Document Review	\$ 14,000
2	Site Visit and Turbine Removal	\$ 44,800
3	Laboratory Examination and Reporting	\$ 50,400
TOTAL		\$ 109,200

All services will be performed in accordance with our *Terms and Conditions for Professional Services*, attached. Additional services will be performed on a time and expense basis at the rates that are in effect at the time the work is performed. Our current rates are included below for your reference.

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Schedule of Hourly Time Charges

Professional Staff		Professional Support Staff	
Senior Principal	\$315.00	Senior Specialist	\$140.00
Principal	265.00	Specialist	120.00
Associate Principal	215.00		
Senior Associate	190.00	Senior Technician	\$105.00
Associate III	170.00	Technician II	90.00
Associate II	145.00	Technician I	75.00
Associate I	120.00		

Authorization

You may acknowledge formal authorization for the above described services by signing in the space provided below and returning a signed copy to our office. Thank you for the opportunity to provide this proposal; please contact us if you have any questions. We look forward to working with you on this project.

Sincerely,

WISS, JANNEY, ELSTNER ASSOCIATES, INC.

Aaron Sterns, PE
Senior Associate and Project Manager

Attachment: *Terms and Conditions for Professional Services*

Proposal for WJE No. 2014.5873
Town of Addison: Wind Turbine Deconstruction
Acceptance:

Signature

Printed Name

Date

Acting for (Company Name)



Terms and Conditions for Professional Services

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Wiss, Janney, Elstner Associates, Inc. or WJE Engineers & Architects, P.C. (WJE) has been requested to perform certain professional and other services. The parties agree that these services shall be performed under the following Terms and Conditions, and that Client's acceptance of WJE's proposal or its direction for WJE to commence any services constitutes acceptance of these Terms.

1. Independent Contractor. WJE is an independent contractor, and all persons employed to furnish services hereunder are employees of WJE or its subcontractors/subconsultants and not of the Client. WJE and Client agree to be solely responsible for compliance with all federal, state, and local laws, rules and regulations, and ordinances that apply to their own respective employees.

2. Performance. The standard of care for all professional services performed or furnished by WJE will be the skill and care ordinarily used by members of WJE's professions performing similar services and practicing under similar circumstances at the same time and in the same locality. WJE makes no guarantees or warranties, express or implied, with regard to the performance of its services. WJE shall not have control over or be in charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures or for construction safety precautions and programs since these are the responsibilities of others. WJE agrees to perform its services in as timely a manner as is consistent with the professional standard of care and to comply with applicable laws, regulations, codes and standards that relate to WJE's services and that are in effect as of the date when the services are provided. Client agrees that no claim may be brought against any WJE employee individually for any claim involving performance of services.

3. Client Duties. In order for WJE to perform the services requested, the Client shall, at no expense to WJE, (1) provide all necessary information regarding Client's requirements as necessary for the orderly progress of the work; (2) designate a person to act as Client's representative for the services who shall have the authority to transmit instructions, receive instructions and information, and interpret and define Client's policies and requests for WJE's services; and (3) provide access to and make all provisions for WJE to enter, without cost, limitation, or burden to WJE, the specific property as required to perform the work, including the use of scaffolds or similar mechanical equipment. WJE is entitled to rely upon the information and services provided by the Client.

4. Safety. Field work will be performed only under conditions deemed safe by WJE personnel. Charges may be made for safety or security measures required by hazardous job conditions that WJE may encounter. Client understands that WJE is only responsible for the safety of its own employees and those of its subconsultants and is not responsible for the safety of other persons or property.

5. Compensation and Expenses. Client agrees to pay for WJE's requested services in accordance with WJE's standard hourly rate schedule or negotiated fee. Charges generally will be billed in monthly intervals with applicable taxes included. Travel, subsistence, and expenses incurred; communications; reproduction; and shipping charges will be billed at cost plus 5 percent and invoiced as an expense service fee. Use of vehicles will be billed at \$0.60 per mile. Expended materials for field and laboratory work, rental equipment, and any fees advanced on Client's behalf will be billed at cost plus 10 percent and invoiced as

an expense service fee. WJE equipment used in field or laboratory work is billed at WJE's equipment usage rate schedule in effect at the time the work is performed, subject to adjustment for minimum or extended usage. Portal-to-portal equipment usage rates are comparable to prevailing commercial rental rates (if available). Billing rates may be increased annually. Any subcontracted service will be billed at cost plus 10 percent providing the subcontract firm has in place adequate insurance coverage determined by WJE; otherwise, the cost will be marked up 20 percent and invoiced as an expense service fee. Client agrees to pay WJE's then-current time charges, attorneys' fees, and other expenses resulting from required attendance at depositions, administrative proceedings, or responding to subpoenas or court orders relating to the Project, but not for such expenses attributed to WJE's negligent performance of its services.

Payment for WJE's services is expected in full in US dollars upon receipt of the invoice. Invoices more than 30 days past due are subject to a 2% interest charge per month (but no more than the maximum extent allowed by law) compounded annually and any related attorneys' fees and collection expenses. WJE reserves the right to suspend its services if the Client fails to make payment when due. In such an event, WJE shall have no liability to the Client for delay or damage caused the Client because of such suspension.

6. Termination. Both the Client and WJE have the right to terminate WJE's services for convenience upon seven calendar days' written notice to the other party. In the event the Client terminates without cause, WJE shall be entitled to compensation for its services and expenses up to the time of such notification, including fees for any transition services, and shall have no liability for delay or damage to Client because of such termination.

7. Reports, Drawings, and Work Product. WJE retains ownership of reports, drawings, specifications, test data, techniques, photographs, letters, notes, and other work product, including those in electronic form, it has created. These documents or parts thereof may not be reproduced or used by the Client for any purpose other than the purpose for which they were prepared, including, but not limited to, use on other projects or future modifications to this Project, without the prior written consent of WJE. Upon request, WJE will provide Client with a copy of documentation for information and reference purposes and bill for such reproduction in accordance with Paragraph 5 above. Any unauthorized use of WJE's work product shall be at the Client's sole risk and Client shall indemnify WJE for any liability or legal exposure to WJE. To the extent WJE terminates its services due to non-payment of fees by Client, Client shall not be entitled to use the documents described herein for any purpose whatsoever.

8. Environmental Hazards. Client acknowledges that WJE's services do not include the detection, investigation, evaluation, or abatement of environmental conditions that WJE may encounter, such as mold, lead, asbestos, PCBs, hazardous substances, or toxic materials that may be present in buildings and structures involved in this Project. The Client agrees to defend, indemnify, and hold WJE harmless from any claims relating to the actual or alleged



Terms and Conditions for Professional Services

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existence or discharge of such materials through no fault of WJE's employees. WJE reserves the right to suspend its services, without liability for consequential or any other damages, if it has reason to believe that its employees may be exposed to hazardous materials and will notify the Client in such event.

9. Dispute Resolution. Prior to the initiation of any legal proceedings (except for WJE initiated claims for nonpayment for services), WJE and the Client agree to submit all claims, disputes, or controversies arising out of or in relation to the services provided by WJE to mediation. Such mediation shall be conducted under the auspices of the American Arbitration Association or such other mediation service or mediator upon which the parties agree. Client consents to suit for nonpayment in the state courts of Illinois.

10. Successors and Assigns. These Terms shall be binding upon Client and WJE and their respective successors, assigns and legal representatives. Neither party may assign, subcontract, or otherwise delegate its responsibilities without the prior consent of the other party, which consent shall not be unreasonably withheld. Additionally, in no instance shall this paragraph be interpreted to create any rights in any third party.

11. Insurance. WJE maintains commercial general liability, automobile, workers' compensation, and employers' liability and professional liability coverages under policies written by national insurance carriers rated by the A.M. Best Company, evidence of which will be provided upon request. Special endorsements are not allowed. No waiver of subrogation is allowed on WJE's professional liability policy. Upon written request, WJE agrees to name the Client as an additional insured to the commercial general liability and automobile coverages. Any request to add other parties as additional insureds must be made in writing and is subject to certain limitations. All policies are subject to annual renewal. Excess coverage is available for exposures over primary policy limits except for professional liability.

12. Indemnity. To the fullest extent permitted by law, Client and WJE each agree to indemnify and hold the other harmless, and their respective agents, officers and employees, from and against liability for all direct claims, losses, damages, and expenses, including reasonable attorneys' fees, to the extent such claims, losses, damages, or expenses are for bodily injury, sickness, disease, death, or property damage and to the extent they are caused by the negligent acts, errors, or omissions of the indemnifying party, and/or the indemnifying party's agents, officers, employees, independent contractors, or subcontractors of any tier. In the event such claims, losses, damages, or expenses are caused by the joint or concurrent negligence of Client and WJE, or their respective agents, officers, employees, independent contractors, or subcontractors of any tier, they shall be borne by each party in proportion to that negligence.

13. Agreed Remedy. To the fullest extent permitted by law, the total liability, in the aggregate, of WJE and WJE's officers, directors, employees, agents, and consultants to Client and anyone claiming by, through, or under Client, for any and all injuries, claims, losses, expenses, or damages, including, without limitation, attorneys' fees, arising out of or in any way related to WJE's services, the Project, or these Terms, from any cause or causes whatsoever,

including but not limited to, negligence, strict liability, indemnity or breach of contract shall not exceed an amount equal to the proceeds obligated to be paid under WJE's applicable insurance policy for such claims. If, for any reason, the applicable insurance policy does not provide coverage for any particular claim described herein, then the liability amount shall not exceed WJE's fees for the services performed hereunder.

In no event shall WJE be liable in contract, tort, strict liability, warranty or otherwise, for any special, incidental or consequential damages, such as, but not limited to, delay, disruption, loss of product, loss of anticipated profits or revenue, loss of use of equipment or system, non-operation or increased expense of operation of other equipment or systems, cost of capital, or cost of purchase or replacement equipment systems or power.

14. Third-Party Beneficiaries. Nothing contained in these Terms shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Client or WJE. WJE's services hereunder are being performed solely for the benefit of the Client, and no other entity shall have any claim against WJE because of these Terms or WJE's performance or non-performance of services hereunder.

15. Laboratory or Material Testing Services. Material samples not consumed in WJE's work will be discarded 60 days after completion of the project unless the Client requests other disposition in writing. WJE cannot be responsible for material after 60 days and Client shall inform WJE in writing how to dispose of the samples. WJE will exercise reasonable care in safeguarding materials, records, or equipment, but disclaims any liability for loss or damage. Rates for sample storage will vary by sample size but in no event will sample charges be less than \$270 per year accruing upon the 61st day of storage and annually thereafter. Failure to pay for underlying services or storage constitutes permission to dispose of all samples held by WJE.

Any testing done on materials or products shall not prevent WJE from any services involving Client's materials or products in the built world. WJE shall have no liability to third parties for any products or materials developed from WJE's services. WJE's reports, trademarks or other property shall not be used to indicate endorsement of any material or product.

16. Entire Agreement. These Terms together with any written proposal shall constitute the entire understanding of the parties concerning the Project and supersede all prior negotiations and written agreements between them, and any amendment or modification to either WJE's proposal or these Terms may be made only by a written instrument expressly stated to be an amendment and signed by WJE.

17. Severability. If any provisions of these Terms, or portions thereof, are determined to be unenforceable, the remainder shall not be affected thereby and each remaining provision or portion thereof shall continue to be valid and effective and shall be enforceable to the fullest extent permitted by law.

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