

**TOWN OF ADDISON, TEXAS**

**RESOLUTION NO. \_\_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS, RATIFYING THE SETTLEMENT OF TOWN OF ADDISON, TEXAS V. LANDMARK STRUCTURES I, L.P., URBAN GREEN ENERGY AND FREESE AND NICHOLS, INC. - CAUSE NO. DC-15-07691, IN THE 44<sup>TH</sup> JUDICIAL DISTRICT COURT OF DALLAS COUNTY, TEXAS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Addison, Landmark Structures I, L.P., Urban Green Energy and Freese and Nichols, Inc. have been engaged in the ongoing litigation between the parties, styled as *Town of Addison, Texas v. Landmark Structures I, L.P., Urban Green Energy and Freese and Nichols, Inc.*, Cause No. DC-15-07691, in the 44<sup>th</sup> Judicial District Court of Dallas County, Texas (the “Lawsuit”); and

**WHEREAS**, at the February 27, 2018 City Council meeting, the City Council met in executive session in accordance with the Texas Open Meetings Act regarding the Lawsuit; and

**WHEREAS**, following the executive session, the City Council reconvened in open session and authorized the City Manager to settle the Lawsuit on the terms discussed in executive session; and

**WHEREAS**, on April 11, 2018, City Manager, Wesley S. Pierson, executed documents reflecting the terms authorized by the City Council on February 27, 2018, and settling all matters between the parties to the Lawsuit.

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

**Section 1.** The Mayor and City Council of the Town of Addison, Texas hereby ratify the settlement of the Lawsuit, and the execution of settlement documents by the City Manager, including the Settlement and Release Agreement attached hereto as **Exhibit A.**

**Section 2.** This resolution shall be effective from and after its passage date.

**PASSED AND APPROVED** by the City Council of the Town of Addison, Texas this 24th day of April, 2018.

\_\_\_\_\_  
Joe Chow, Mayor

ATTEST:

APPROVED AS TO FORM:

\_\_\_\_\_  
Christie Wilson, Interim City Secretary

\_\_\_\_\_  
Brenda N. McDonald, City Attorney

# EXHIBIT A

CAUSE NO. DC-15-07691

TOWN OF ADDISON, TEXAS,	§	IN THE DISTRICT COURT
	§	
v.	§	
	§	
LANDMARK STRUCTURES I, L.P.	§	
URBAN GREEN ENERGY, and	§	44TH JUDICIAL DISTRICT
FREESE AND NICHOLS, INC.	§	
	§	
v.	§	
	§	
SWG ENERGY, INC.,	§	DALLAS COUNTY, TEXAS

## SETTLEMENT AND RELEASE AGREEMENT

Town of Addison, Texas ("Addison"), Landmark Structures I, LP ("Landmark"), and Freese & Nichols, Inc. ("F&N") enter this settlement and release agreement (the "Agreement"). Addison, Landmark, and F&N are sometimes collectively referred to as the "Parties."

WHEREAS in February 2011 Landmark was awarded a contract by Addison to construct a 1.5 million gallon water tank and install a group of eight wind turbines atop the water tank's roof (the "Project"). F&N was the engineer of record for the Project and served as Addison's representative. Urban Green Energy, Inc. ("UGE") supplied the vertical axis wind turbines ("VAWT") for the Project;

WHEREAS in 2015 a lawsuit was filed by Addison against Landmark, F&N, and UGE in the 44<sup>th</sup> Judicial District Court of Dallas County, Texas with the style and cause number identified above (the "Lawsuit"), and counterclaims were made by Landmark against Addison in the Lawsuit; and

WHEREAS the Parties desire to finally and forever settle and compromise all disputes and matters of controversy between them concerning or relating to the VAWT, the Lawsuit, and the claims they may possess arising from or relating thereto;

NOW, THEREFORE, for the foregoing purposes and the consideration listed herein, the receipt and sufficiency of which is hereby acknowledged, the Parties enter this Agreement to resolve the Lawsuit and their disputes.

1. At no cost to Addison, Landmark will remove the VAWT and secure the residual rooftop components under the scope of work terms listed in Exhibit 1. Addison agrees that this is the sole performance consideration to be received from Landmark or any other party to resolve the Lawsuit. This work will be performed within 120 days of the complete execution of this agreement – provided that reasonable access is granted to Landmark to perform the work.

## EXHIBIT A

2. Landmark will tender payment to Addison within 30 days of the complete execution of this Agreement in a check in the amount of \$550,000. F&N will tender payment to Addison within 30 days of the complete execution of this Agreement in a check in the amount of \$250,000.00. Addison agrees that this is the entire monetary consideration to be received from the Parties to resolve the Lawsuit. Addison acknowledges and accepts the settlement payment and the performance as an accord and satisfaction.

3. Promptly after receipt of the payments mentioned in paragraph 2, the Parties will file the joint motion to dismiss the Lawsuit with prejudice and the agreed order of dismissal (both attached as Exhibit 2). The dismissal will provide that each Party is responsible for their own interest, court cost, legal fees, expert fees, and other expenses. The failure of either defendant to make payment described above shall not invalidate this Agreement as to the paying party.

4. Addison hereby releases and forever discharges Landmark, F&N, UGE, and their Related Parties from Claims (as those terms are defined below). Landmark and F&N hereby release and forever discharge Addison and Addison Related Parties from Claims (as those terms are defined below). These releases do not include the release of the ability to enforce the terms of this Agreement. This release does not release the obligation of Landmark to remove the VAWT per the attached Exhibit 1. The Town can specifically enforce this right or sue for damages if Landmark breaches this obligation.

5. "Claims" means those factual and legal complaints, demands, liabilities, and causes of actions relating to or covering the VAWT, any and all issues with the VAWT, the role or performance of F&N or Landmark with respect to the VAWT and/or issues with the VAWT, any express or implied warranties on the VAWT, any allegations made in the Lawsuit, performance or breach of the 2014 Decommissioning Agreement pursuant to which Landmark counterclaimed against Addison, and any other disputes raised or that could be raised between the parties relating to the VAWT up to the date

## EXHIBIT A

of execution of this Agreement.

The releases of Claims covers the rights to recover or seek recovery of money, damages, fines, awards, injunctive relief, offset rights, equitable relief, warranty or maintenance performance services, legal fees, costs, court costs, rescission, interest, or other relief under available contracts, equity, statutes, common law, or other applicable law. The releases are intended to be global for any and all claims relating to the VAWT, covering any Parties' rights which they have or might have, whether known or unknown, accrued or un-accrued, now existing or that might arise hereafter, directly or indirectly. The releases do not apply to the right to enforce this Agreement.

"Related Parties" means Landmark and F&N and their attorneys, officers, owners, directors, stockholders, agents, servants, representatives, employees, licensed and/or registered engineers and/or architects, predecessors, successors, assigns, parents, affiliates, partners, subcontractors, sub-consultants, and affiliated or subsidiary corporations.

"Addison Related Parties" means the city and its managers, attorneys, council members, agents, servants, representatives, and employees.

6. Each Party shall bear its own attorneys' fees, costs, and expenses in connection with the Lawsuit.

7. The Parties acknowledge that no statement or representation, written or oral, express or implied, has been made to it or any of its agents, representatives, employees, attorneys, or any other person, by the other Parties or any of their agents, representatives, employees, attorneys, officers, directors, members, managers, partners, insurers or any other person regarding any matter involving this Agreement.

8. The Parties represent and warrant that no other person or legal entity has or has had any interest in the matters referred to and released herein. Each of the Parties further represent and warrant that it has not sold, assigned, transferred, conveyed, or otherwise disposed of any claim or



## EXHIBIT A

demand relating to any matters referred to in this Settlement Agreement.

9. The Parties hereto understand and acknowledge that this Settlement Agreement is intended to constitute a complete and final release of the claims regarding the VAWT, any issues relating to the VAWT, and claims alleged or that could have been alleged regarding the VAWT in the Lawsuit and that no further consideration, other than that described in this Settlement Agreement, is to be paid or received on account of any cause of action which has accrued, may accrue, or be hereafter acquired to or by the representative parties herein.

10. The Parties hereby warrant that they have read this Settlement Agreement and fully understand it to be a compromise, settlement, and release of all claims, known or unknown, past or present, that they have or may have against each other regarding the VAWT. The Parties are legally competent and fully authorized to execute this Settlement Agreement, and that they execute this Settlement Agreement of their own free will and accord without reliance upon any representation of any kind or character not expressly set forth herein.

11. Nothing contained herein shall be construed to relate to claims which may arise from the Parties' performance of the terms of this Settlement Agreement.

12. This Settlement Agreement may be executed in any number of identical counterparts, each of which shall be deemed an original for all purposes. This Settlement Agreement shall be binding upon and inure to the benefit of each of the Parties hereto and their respective heirs, executors, administrators, representatives, successors and assigns and will be interpreted under and subject to Texas law.

13. Neither the Parties nor their related parties will disparage each other or the related parties regarding the Project, the Lawsuit, or their Claims.

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## EXHIBIT A

TOWN OF ADDISON

BY: 

ITS: City Manager

LANDMARK STRUCTURES I, LP

BY: 

ITS: Vice President

FRESE & NICHOLS, INC.

BY: 

ITS: Chief Operating Officer

## EXHIBIT A

### Exhibit 1: Scope of Work

1. Addison will make the tower available to Landmark during normal working hours on \_\_\_ consecutive week days at a time equally convenient to the parties, but falling between May 15, 2018 to July 15, 2018. Landmark will complete the work within \_\_\_ days of commencement, subject to force majeure events. Force majeure events includes adverse weather conditions, interruptions or delays caused by Addison, injuries or property damages occurring during the work,
2. Landmark will remove the VAWT, cut the masts at approximately \_\_\_ inches above to roof, and cut the lightening protection poles approximately \_\_\_ inches above the roof. The cable trays, roof-top crane, wiring, and \_\_\_ shall remain on the roof. Landmark will paint any metal that is exposed as a result of this removal.
3. Landmark will provide all required labor, supervision, tools, equipment, scaffolding, and cranes it deems needed. Landmark intends to utilize a LinkBelt \_\_\_ crane, and Addison will allow access on the \_\_\_ side parking lot for the crane placement.
4. Addison shall not require any special inspections, engineering support, or other work from Landmark.
5. Landmark shall maintain commercial general liability insurance during the performance of the removal with at least \$ 2 million in coverage (which may be through a combination of primary and umbrella coverage). Addison will be named as an additional insured for damages caused by Landmark in the course of performing the removal work. Landmark will maintain worker's compensation insurance conforming to the standards of Texas law. Landmark is not required to provide payment or performance bonds for this work.