

ON CALL AGREEMENT FOR PROFESSIONAL SERVICES

This Agreement, effective upon the last signature of a party to it (the **"Effective Date"**), is between:

Owner: Name: Town of Addison
 Address: P.O. Box 9010
 Addison, Texas 75001

Representative: Lisa A. Pyles
Email: lpyles@addisontx.gov
Phone: 972-450-2878

Consultant: Accessology Too, LLC
301 W. Louisiana Street, McKinney, TX 75069
Federal ID # 26-3977642

Representative: Kristi Avalos
Email: kjavalos@accessology.com
Phone: 972-434-0068

(Individually a "Party" and collectively the "Parties")

RECITALS

WHEREAS, Owner issued certain Solicitation Documents inviting consulting firms to provide professional services to Owner; and

WHEREAS, Owner having received and evaluated the responses to the Solicitation Documents, now desires to award an On-Call Agreement to Consultant; and

WHEREAS, Consultant desires to provide professional services to Owner; and

WHEREAS, Consultant is willing and able to directly perform the types of professional services stated in Consultant's response to the Solicitation Documents;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties, intending to be legally bound agree as follows:

1. AGREEMENT DOCUMENTS

Consultant agrees to provide on an on-call basis to Owner, in accordance with this Agreement. Capitalized terms not otherwise defined in this On Call Agreement shall have the meanings ascribed to them in the Accessology Too, LLC Terms and Conditions.

Work shall be performed in accordance with the requirements set forth in each Task Order or Work Authorization issued under this Agreement, according to the Task Order form attached hereto as Exhibit "A" and incorporated herein for all purposes ("Task Order"). This Agreement embodies the agreement of Owner and Consultant to terms and conditions which will govern any work that may be prescribed under a Task Order that may be issued by Owner and agreed to by Consultant.

Consultant acknowledges and agrees that Owner does not warrant or guarantee that any work will be requested or authorized under this On Call Agreement, it being the Parties' intent that both Parties must mutually agree to any specific work before a Task Order may be issued. No work shall be undertaken by Consultant pursuant to this Agreement without a fully executed Task Order, detailing the specific work associated with a Project.

This Agreement may be amended by mutual consent, reduced to writing, and signed by the Parties.

Consultant and Owner agree that the terms and conditions of this Agreement and subsequent Task shall be governed by this Agreement and the following documents, which are incorporated by reference in this Agreement and made a part hereof, and the terms below:

A. TASK ORDERS

- a. Work under this Agreement shall be issued by means of Task Orders, samples of which are attached hereto and incorporated herein by reference as "Exhibit A." Task Orders are written agreements between the Owner and the Consultant for work to be performed under this Agreement for a specific, mutually agreed upon scope of work, schedule and price. Performance of the work shall be undertaken only upon receipt of a Task Order signed by the Owner. The work shall be carried out in strict accordance with technical specifications, drawings and schedule of work developed in each Task Order.
- b. For directly awarded work, scope of work, location, drawings or technical specifications will be sent to Consultant to request a quote for the work. An Owner's representative can be made available to review the conditions with the Consultant. A response to the request for quote shall be required within five calendar days after receiving it from Owner. The Owner shall respond to Consultant's quote in a timely fashion. The Owner may accept the Consultant's quote and award a Task Order, reject the Consultant's quote altogether, or negotiate with the Consultant. In no case will the Owner be required to compensate the Consultant for any costs incurred in preparing the quote.
- c. Quotes shall include the following breakdown for the Consultant and all Sub-Consultants:
 - i. Estimate of labor hours for this work and related hourly rate
 - ii. Estimate of materials needed and costs
 - iii. Estimated date of completion
 - iv. Not to exceed value amount for the work
- d. Upon issuance of a Task Order which has been signed by the Owner, work shall proceed in accordance with the schedule specified. Work Authorizations shall require the signatures of the Consultant and Owner. Generally, work is expected to commence within seven calendar days of the execution of each Task Order and to proceed without delay until its completion.
- e. Owner and Consultant may elect to change the terms of a Task Order by means of an Amendment to the Task Order, or to change the scope of work, schedule, or compensation by means of a Change Order to the Task Order. Each such Change Order or Amendment shall be incorporated into the Agreement Documents upon full execution thereof. Task Orders shall not be changed by an Amendment or Change Order.

B. TERMS AND CONDITIONS

- a. Terms and conditions not otherwise provided in this Agreement, shall be governed by the Terms and Conditions, attached hereto as Exhibit "B" and incorporated herein for all purposes.

C. ORDER OF PRECEDENCE

- a. In the event of conflict between this Agreement, and the provisions of Exhibit "A" and Exhibit "B," the terms of this Agreement shall prevail, and then Exhibit "A" and then Exhibit "B," in that order.

2. COMPENSATION

Owner agrees to compensate Consultant for work performed in accordance with the Accessology TOO, LLC Terms and Conditions on an on-call basis, for an amount not-to-exceed Twenty-Five Thousand Dollars and 00/100 Cents (\$25,000.00).

Invoices must include the associated Task Order number. Task Orders will be issued on a time and materials not-to-exceed basis, invoices shall list all hours worked, job title, rate, materials, and quantities. Invoices may be mailed to P.O. Box 9010, Addison, Texas 75001, ATTN: Lisa A. Pyles or emailed to lpyles@addisontx.gov.

No work will be compensated unless authorized by Owner pursuant to a Task Order.

3. TERM

This Agreement shall become effective when signed by both Parties and shall terminate on September 30, 2019 unless otherwise terminated by either Party. Task Orders and Work Authorizations may be issued at any time during the Term of this Agreement and shall remain effective until completion of Consultant's work occurs, even if such completion occurs after expiration of the term. This Agreement will remain in full force and effect during the performance of any Task Order or Work Authorization.

4. INSURANCE

(a) At all times in connection with this Agreement, the Consultant shall purchase, provide and maintain in a company or companies lawfully authorized to do business in Texas such insurance coverages as set forth below:

- (i) Commercial General Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence and \$2,000,000 general aggregate for bodily injury and property damage, which coverage shall include products/completed operations (\$1,000,000 products/completed operations aggregate) and contractual liability. Coverage for products/completed operations must be maintained for at least two years after the construction work has been completed. Coverage must be amended to provide for an each-project aggregate limit of insurance.
- (ii) Workers' Compensation insurance at statutory limits, including Employers Liability coverage a minimum limits of \$1,000,000 each-occurrence each accident/\$1,000,000 by disease each-occurrence/\$1,000,000 by disease aggregate.
- (iii) Commercial Automobile Liability insurance at minimum combined single limits of \$1,000,000 per-occurrence for bodily injury and property damage, including owned, non-owned, and hired car coverage.
- (iv) Professional Liability coverage at minimum limits of \$2,000,000 covering claims resulting from negligent engineering errors and omissions. This coverage must be maintained for at least four years after the project for which Consultant's services are being provided is finally completed. If coverage is written on a claims-made basis, a policy retroactive date equivalent to the inception date of this Agreement (or earlier) must be maintained during the full term of this Agreement and for the four-year period thereafter described herein.

(b) With reference to the foregoing insurance, Consultant shall specifically endorse applicable insurance policies as follows:

- (i) The Town of Addison, Texas shall be named as an additional insured with respect to General Liability and Automobile Liability.
- (ii) All liability policies shall contain no cross liability exclusions or insured versus insured restrictions applicable to the claims of the Town of Addison.
- (iii) A waiver of subrogation in favor of the Town of Addison, Texas shall be contained in all policies.
- (iv) All insurance policies shall be endorsed to require the insurer to immediately notify the Town of Addison of any material change in the insurance coverage.
- (v) All insurance policies shall be endorsed to the effect that the Town of Addison will receive at least sixty days' notice prior to cancellation or non-renewal of the insurance.
- (vi) All insurance policies, which name the Town of Addison as an additional insured, must be endorsed to read as primary coverage regardless of the application of other insurance.

- (vii) Required limits may be satisfied by any combination of primary and umbrella liability insurances.
 - (viii) Consultant may maintain reasonable and customary deductibles, subject to approval by the Town of Addison.
 - (ix) Insurance must be purchased from insurers that are financially acceptable to the Town of Addison.
- (c) All insurance must be written on forms filed with and approved by the Texas Department of Insurance. Certificates of Insurance, satisfactory to Client and including the applicable endorsement for each policy required herein, shall be prepared and executed by the insurance company or its authorized agent, delivered to Client simultaneously with the execution of this Agreement (and updated as needed), and shall contain provisions representing and warranting the following:
- (i) List each insurance coverage described and required herein. Such certificates will also include a copy of the endorsements necessary to meet the requirements and instructions contained herein.
 - (ii) Shall specifically set forth thirty-day written notice-of-cancellation or termination provisions to the Town of Addison.
- (d) Upon request, Consultant shall furnish the Client with complete copies of all insurance policies certified to be true and correct by the insurance carrier.
- (e) Client reserves the right to review the insurance requirements contained herein and to adjust coverages and limits when deemed necessary and prudent by Client.

5. TERMINATION/RIGHTS OR REMEDIES

This Agreement may be terminated (a) by either party upon fifteen days' written notice in the event of default by the other party to perform in accordance with the terms hereof through no fault of the terminating party, unless the non-terminating party corrects such default or presents a mutually agreeable plan to cure such default within such time, or (b) upon thirty days' written notice for the convenience of the terminating party for any reason or no reason. If any change occurs in the ownership of the Client, the Consultant shall have the right to immediately terminate this Agreement. In the event of any termination, the Consultant shall be paid for all services rendered and expenses incurred to the effective date of termination, except for those services in dispute, in accordance with and subject to the other terms and provisions of this Agreement. If the Consultant's compensation is a fixed fee, the amount payable for services will be a proportional amount of the total fee based on the ratio of the amount of the services performed, as reasonably determined by the Consultant, to the total amount of services which were to have been performed. Client's exercise of any rights or remedies provided in this Agreement do not in any way prevent or diminish Client's right to exercise any right or remedy available at law or in equity.

6. EQUAL EMPLOYMENT COMPLIANCE REQUIREMENT; COMPLIANCE WITH TOWN OF ADDISON POLICIES; PROFESSIONAL STANDARD OF CARE

By signing this Agreement, the Consultant certifies conformance to the applicable federal, state and local laws, acts, executive orders, statutes, administrative rules, regulations, ordinance and related court rulings concerning Affirmative Action toward Equal Employment Opportunities. All information and reports required by the Federal or Texas State or local Governments, having responsibility for the enforcement of the foregoing, shall be supplied to Town of Addison upon request for purposes of investigation to ascertain compliance with the foregoing.

Pursuant to executed Task Order, by signing this Agreement, the Consultant certifies that it has not discriminated against Minority, Women or Emerging Small Business Enterprises in obtaining any required subcontracts.

The Consultant and its personnel performing work under this Agreement are required to fully comply with all applicable policies, rules, and regulations of Town of Addison including the policies below. It is the Consultant's responsibility to ensure its personnel fully observe these policies and other applicable policies. Any violation of state/federal regulations by the Consultant or Consultant's personnel shall result in appropriate disciplinary actions, up to and including termination of the Agreement for cause.

Professional Standards of Conduct

The standard of care applicable to Consultant's services will be the degree of professional care and skill ordinarily exercised by consultants performing the same or similar services in the same locality at the time the services are provided. Consultant warrants and represents that its services shall, to the best of Consultant's knowledge, information and belief in accordance with the standards, duties, and obligations set forth herein, be free from material error. In accordance with the standard of care set forth herein, Consultant agrees that if it shall recommend unsuitable methodology for assessing Americans with Disabilities Act (ADA) compliance in connection with the project or this Agreement or if its services should be defective in any way, Consultant will assume sole responsibility for any damages, loss, claims, or expenses to the extent caused by Consultant's failure to meet the standard of care set forth herein or methodology for assessing ADA compliance, materials, or defective design. Except as may be set forth in this Agreement, no other warranty, express or implied, is made or intended by the Consultant's undertaking herein or its performance of services, and it is agreed that the Consultant is not a fiduciary with respect to the Client.

7. INDEMNIFICATION

ACCESSOLOGY SHALL INDEMNIFY, AND HOLD HARMLESS THE TOWN OF ADDISON, ITS OFFICERS, AGENTS AND EMPLOYEES FROM ANY LOSS, DAMAGE, LIABILITY OR EXPENSE, INCLUDING REASONABLE ATTORNEY FEES, ON ACCOUNT OF DAMAGE TO PROPERTY AND INJURIES, INCLUDING DEATH, TO ALL PERSONS, INCLUDING EMPLOYEES OF ACCESSOLOGY OR ANY ASSOCIATE CONSULTANT, BUT ONLY TO THE EXTENT CAUSED BY THE NEGLIGENT ACTS, ERRORS OR OMISSIONS ON THE PART OF ACCESSOLOGY, ITS EMPLOYEES, AGENTS, CONSULTANTS OR SUBCONTRACTORS, IN PERFORMANCE OF THIS AGREEMENT, OR ANY BREACH OF ANY OBLIGATION UNDER THIS AGREEMENT. NEITHER PARTY SHALL BE OBLIGATED TO INDEMNIFY THE OTHER PARTY'S OWN NEGLIGENCE. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

8. EQUITY AND DIVERSITY

Consultant is certified as a Minority/Women/Emerging Small Business enterprise.

9. TAX COMPLIANCE CERTIFICATION

By signature on this Agreement, the undersigned hereby certifies under penalty of perjury that the undersigned is authorized to act on behalf of Consultant and that Consultant is, to the best of the undersigned's knowledge, not in violation of any state/federal tax laws.

10. MERGER

The Agreement Documents constitute the entire agreement between the Parties. There are no other understandings, agreements or representations, oral or written, not specified herein regarding this Agreement. **Consultant, by the signature below of its authorized representative, hereby acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and conditions.**

11. ASSIGNMENT AND SUBLETTING

Nothing under this Agreement shall be construed to give any rights or benefits in this Agreement to anyone other than the Client and the Consultant, and all duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of the Client and the Consultant and not for the benefit of any other party. Neither party hereto shall assign, sublet, convey or otherwise transfer any rights or duties under, or interest in this Agreement, without the written consent of the other party. The Consultant may, with Client's prior written consent, augment its staff with subconsultants as it deems appropriate due to project logistics, schedules, or

market conditions. If the Consultant does so, the Consultant will maintain the agreed-upon billing rates for services identified in the contract, regardless of whether the services are proved by in-house employees, contract employees, or independent subconsultants.

12. CONFIDENTIALITY

If any facts, data or information are specifically identified in writing by the Client as confidential, the Consultant shall use reasonable care to maintain the confidentiality of that material.

13. MISCELLANEOUS PROVISIONS

- (a) This Agreement is to be governed by the law of the State of Texas, without regard to choice of laws rules of any jurisdiction. In the event of any dispute under this Agreement, Client and Consultant agree to mediation as outlined in the Terms and Conditions document (Exhibit B). The parties agree that venue for any action arising out of this Agreement shall be in a court of appropriate jurisdiction in Dallas County, Texas. This Agreement contains the entire and fully integrated agreement between the parties, and supersedes all prior and contemporaneous negotiations, representations, agreements or understandings, whether written or oral. This Agreement can be supplemented or amended only by a written document executed by both parties. Provided, however, that any conflicting or additional terms on any purchase order issued by the Client shall be void and are hereby expressly rejected by the Consultant. Any provision in this Agreement that is unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such unenforceability without invalidating the remaining provisions or affecting the enforceability of the provision in any other jurisdiction. The non-enforcement of any provision by either party shall not constitute a waiver of that provision or affect the enforceability of that provision or the remainder of this Agreement.
- (b) Consultant is and shall in all events be an independent contractor exercising control over its work and services and the manner in which they are performed. Nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture, a joint enterprise relationship, or to allow Client to exercise discretion or control over the professional manner in which Consultant performs the services which are the subject matter of this Agreement; provided always however that the services to be provided by Consultant shall be provided in a manner consistent with all applicable laws, rules, standards and regulations governing such work and services.
- (c) The terms and provisions of this Agreement are severable, and if any term or provision is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision is not a part hereof, and the remaining provisions hereof shall remain in full force and effect. In lieu of any illegal, invalid or unenforceable provision herein, the parties agree to seek to negotiate the insertion of a provision as similar in its terms to such illegal, invalid or unenforceable provision as may be possible, with the intent that such added provision is legal, valid and enforceable.
- (d) Notwithstanding any other provision of this Agreement, nothing in this Agreement shall or may be deemed to be, or shall or may be construed to be, a waiver or relinquishment of any immunity, defense, or tort limitation to which the Client, its officials, officers, employees, representatives, and agents are or may be entitled, including, without limitation, any waiver of immunity to suit.
- (e) The persons signing this Agreement on behalf of the parties have the authority to do so.
- (f) For purposes of this Agreement, "includes" and "including" are terms of enlargement and not of limitation or exclusive enumeration, and use of the terms does not create a presumption that components not expressed are excluded. Section headings herein are for convenience only and shall not be used in interpretation of this Agreement.

- (g) For purposes of this Agreement, notices and all other communications provided for herein shall be in writing, addressed as provided hereinafter to the party to whom the notice or request is given, and shall be either (i) delivered personally, (ii) sent by United States certified mail, postage prepaid, return receipt requested, or (iii) placed in the custody of Federal Express Corporation or other nationally recognized carrier to be delivered overnight. Notice shall be deemed given when received if delivered personally or if sent by Federal Express or other nationally recognized carrier; or seventy-two hours after deposit if sent by certified mail. Addresses for notices and communications are as follows:

To Consultant:
Accessology Too, LLC
301 W. Louisiana Street
McKinney, TX 75069
Attn: Kristi Avalos

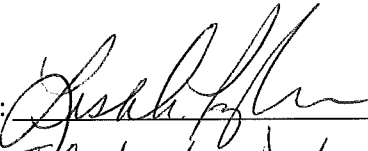
To Client:
Town of Addison, Texas
P.O. Box 9010
Addison, Texas 75001
ATTN: Lisa A. Pyles


- (h) From time to time either party may designate another address and person to whom attention is to be sent within the State of Texas for all purposes of this Agreement by giving the other party not less than ten days advance notice of such change of address in accordance with the provisions hereof.
- (i) Pursuant to Texas Government Code Chapter 2270, Consultant's execution of this Agreement shall serve as verification that the Consultant does not presently boycott Israel and will not boycott Israel during the term of this Agreement.
- (j) If the performance of any covenant or obligation to be performed hereunder by any party is delayed as a result of circumstances which are beyond the reasonable control of such party (which circumstances may include, without limitation, pending litigation, acts of God, war, acts of civil disobedience, fire or other casualty, shortage of materials, adverse weather conditions [such as, by way of illustration and not of limitation, severe rain storms or below freezing temperatures, or tornados] labor action, strikes or similar acts, moratoriums or regulations or actions by governmental authorities), the time for such performance shall be extended by the amount of time of such delay, but no longer than the amount of time reasonably occasioned by the delay. The party claiming delay of performance as a result of any of the foregoing "force majeure" events shall deliver written notice of the commencement of any such delay resulting from such "force majeure" event not later than seven days after the claiming party becomes aware of the same, and if the claiming party fails to so notify the other party of the occurrence of a "force majeure" event causing such delay and the other party shall not otherwise be aware of such "force majeure" event, the claiming party shall not be entitled to avail itself of the provisions for the extension of performance contained in this subsection.
- (k) The relationship between the Town and the Consultant is that of independent contractor, and the Town and the Consultant by the execution of this Agreement do not change the independent status of the Consultant. The Consultant is an independent contractor, and no term or provision of this Agreement or action by the Consultant in the performance of this Agreement is intended nor shall be construed as making the Consultant the agent, servant or employee of the Town, or to create an employer-employee relationship, a joint venture relationship, or a joint enterprise relationship.
- (l) The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.

In witness whereof, _____ executes this Agreement and the Consultant does execute the same as of the Effective Date.

TOWN OF ADDISON, TEXAS

ACCESSOLOGY TOO, LLC

By: 
ITS: Infrastructure & Development Services Director
Date: 2-18-19

By: 
ITS: President/CEO
Date: 2-15-19

**EXHIBIT A
SAMPLE TASK ORDER**

TASK ORDER # _____	TASK ORDER DATE _____
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Consultant: Reference the above number on invoices.

CONSULTANT _____ WORK REQUEST # _____

CONTACT NAME _____ PHONE _____ EMAIL _____

ESTIMATED COMPLETION DATE OF WORK _____

SCOPE OF WORK: _____ (the Work).

The intent is that Consultant will provide all services including drawings, documents, plans and specifications prepared by Consultant and/or sub-consultants required to complete all activities necessary for a completed Project, consistent with the professional skill, care and standards of other professionals performing similar services under similar conditions, and according to the terms and conditions of the On-Call Agreement.

AUTHORIZED FIXED FEE (OR TIME & MATERIALS NOT-TO-EXCEED) AMOUNT: \$25,000

Authorized amounts shall not exceed \$25,000. The same work may not be split into multiple Task Orders.

Invoices must include the associated Task Order Number. Charges shall not exceed rates and terms listed in Exhibit C on the On Call Agreement referenced below. If the fee is based on a time and materials not-to-exceed basis, invoices shall list all hours worked, job title, rate, materials, quantities and mark-ups.

CANCELLATION: Owner may terminate this task order under the conditions specified in the Consultant Terms and Conditions.

OWNER'S AUTHORIZED REPRESENTATIVE WHO SHALL BE RESPONSIBLE FOR SUPERVISING THE PROJECT AND ACCEPTING THE COMPLETED WORK: Lisa Pyles, Director, Infrastructure and Development Services 972 450 2878
lpyles@addisontx.gov

This Work shall be performed (the attached proposal dated _____ is accepted) according to the terms of On Call Agreement.

Signature

Lisa Pyles
Printed Name

Director
Title

Date

Signature

Kristi J. Avalos
Printed Name

President/CEO
Title

Date

EXHIBIT B

Accessology Too, LLC Terms and Conditions

- 1. Modifications to the Scope of Services.** Either Accessology or the Town of Addison may initiate a written request for a Modification to the Scope of Services/Task Order when in the opinion of the requesting Party, the needs and conditions of the Project warrant a modification. Upon the receipt of a request by either Party, Accessology and the Town of Addison shall review the conditions associated with the request and determine the necessity of a modification. When the Parties agree that a modification is warranted, Accessology and the Town of Addison shall negotiate the specific modification(s) and any changes in the Total Maximum Fee or Project Schedule resulting from the modification(s). Approval of a modification shall be in the form of a written Modification to the Scope of Services/Task Order which clearly defines the changes to the previously approved Scope of Services, Fee and/or Project Schedule. Said written Task Order/Modification shall be approved by Accessology, authorized by the Town of Addison Council, if required, and issued by the Town of Addison. Issuance of the approved Scope of Services/Task Order modification shall constitute a notice to proceed with the Project in accordance with the modified Scope of Services. The Town of Addison may issue written Modifications to the Scope of Services without prior approval of the Town Council when the modifications are to be accomplished within the authorized *Total* Maximum Fee and do not materially or substantively alter the overall scope of the Project, the Project Schedule or the Services provided by Accessology.
- 2. Partnering.** The Town shall encourage participation in a partnering process that involves the Town, Accessology and his or her sub-consultants, and other supporting jurisdictions and/or agencies. This partnering relationship shall begin upon execution and continue for the duration of this Agreement. By engaging in a partnership, the parties do not intend to create a legal partnership, to create additional contractual relationships, or to in any way alter the legal relationship which otherwise exists between the Town and Accessology. The partnering effort shall be structured to draw on the strengths of each organization to identify and achieve reciprocal goals. The objectives of partnering are effective and efficient contract performance and completion of the Project within budget, on schedule, in accordance with the Scope of Services, and without litigation. Participation in partnering shall be totally voluntary and all participants shall have equal status.
- 3. Disputes.** The Town of Addison shall act as referee in all disputes under the terms of this Agreement between the Parties hereto. In the event the Town of Addison and Accessology are unable to reach acceptable resolution of disputes concerning the Scope of Services to be performed under this Agreement, the Town of Addison and Accessology shall negotiate in good faith toward resolving such disputes. In an effort to resolve any conflicts that arise during the project, the Town and Accessology agree that all disputes between them arising out of or relating to this Agreement or the Project shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

4. **Liability.** Approval of the Plans, Specifications, and Estimate (PS&E) by the Town shall not constitute nor be deemed a release of the responsibility and liability of Accessology, its employees, subcontractors, agents and consultants for the accuracy and competency of their designs, working drawings, tracings, magnetic media and/or computer disks, estimates, specifications, investigations, studies or other documents and work; nor shall such approval be deemed to be an assumption of such responsibility by the Town for any defect, or omission in the studies or other documents prepared by Accessology, its employees, subcontractors, agents and consultants. Accessology shall indemnify Town for damages resulting from such defects, errors or omissions and shall assume, pay for and maintain in force during the term of this Agreement sufficient errors and omissions insurance in the amount of \$250,000.00 single limit, with certificates evidencing such coverage to be provided to the Town. The parties further agree that this liability provision shall meet the requirements of the express negligence rule adopted by the Texas Supreme Court and hereby specifically agree that this provision is conspicuous.

5. **Delays and Failure to Perform.** Accessology and the Town understand and are aware that many factors outside Accessology's control may affect Accessology's ability to complete the services to be provided under this Agreement. Accessology will perform these services with reasonable diligence and expediency consistent with sound professional practices and that any failure of Accessology to complete the Services of this Agreement within the agreed Project Schedule shall constitute material breach of this Agreement. Accessology shall be fully responsible for its delays or for failures to use diligent effort in accordance with the terms of this Agreement. Where damage is caused to the Town due to Accessology's failure to perform in these circumstances, the Town may withhold, to the extent of such damage, Accessology's payments hereunder without waiver of any of partnering the Town's additional legal rights or remedies. Accessology shall not be responsible for delays associated with review periods by the Town in excess of the agreed Project Schedule.

6. **Quality Control.** Accessology agrees to maintain written quality control procedures. Accessology further agrees to follow those procedures to the extent that, in the Accessology's judgement, the procedures are appropriate under the circumstances.

7. **Ownership.** All of Accessology's work product under this Agreement, including but not limited to tracings, drawings, electronic or magnetic media and/or computer disks, estimates, specifications, investigations, studies and other documents, completed or partially completed, shall be the property of the Town to be used as Town desires, without restriction; and Accessology specifically waives and releases any proprietary rights or ownership claims therein and is relieved of liability connected with any future use by the Town. Copies may be retained by Accessology and Accessology shall be liable to Town for any loss or damage to such documents while they are in the possession of or while being worked upon by the Accessology or anyone connected with the Accessology, including agents, employees, consultants or subcontractors. All documents so lost or damaged while they are in the possession of or while being worked upon by Accessology shall be replaced or restored by Accessology without cost to the Town.

8. **Project Records and Right to Audit.** Accessology shall keep, retain and safeguard all records relating to this Agreement or work performed hereunder for a minimum period of three years following the

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Project completion, with full access allowed to authorized representatives of the Town upon request for purposes of evaluating compliance with provisions of this Agreement. Should the Town of Addison deem it necessary, Accessology shall make all its records and books related to this Agreement available to Town for inspection and auditing purposes.

9. **Non-Discrimination.** As a condition of this Agreement, Accessology shall take all necessary action to ensure that, in connection with any work under this Agreement it shall not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or physical impairment unrelated to experience, qualifications or job performance, either directly, indirectly or through contractual or other arrangements.
10. **No Waiver.** No action or failure to act on the part of either Party at any time to exercise any rights or remedies pursuant to this Agreement shall be a waiver on the part of that Party of any of its rights or remedies at law or contract.
11. **Compliance with Laws.** Accessology shall comply with all Federal, State and local laws, statutes, Town Ordinances, rules and regulations, and the orders and decrees of any courts, or administrative bodies or tribunal in any matter affecting the performance of this Agreement, including without limitation, workers' compensation laws, minimum and maximum salary and wage statutes and regulations, and licensing laws and regulations. When required, Accessology shall furnish the Town with satisfactory proof of compliance therewith.
12. **Severability.** In case one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
13. **Prior Negotiations.** This Agreement supersedes any and all prior understandings and agreement by and between the Parties with respect to the terms of this Agreement and the negotiations preceding execution of this Agreement.