

**CONTRACT BY AND BETWEEN**  
**CITY OF DENTON, TEXAS AND FLYCAST PARTNERS, INC.**  
**(RFP #6321)**

**THIS CONTRACT** is made and entered into this \_\_\_\_\_, by and between **FLYCAST PARTNERS, INC.**, a corporation, whose address is 329 South Elerson Road, DeSoto, Texas 75115, hereinafter referred to as "Contractor," and the **CITY OF DENTON, TEXAS**, a home rule municipal corporation, hereinafter referred to as "City," to be effective upon approval of the Denton City Council and subsequent execution of this Contract by the Denton City Manager or his duly authorized designee.

For and in consideration of the covenants and agreements contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**SCOPE OF SERVICES**

Contractor shall provide products and/or services in accordance with the City's document RFP 6321 – Supply of Cherwell Service Manager and Implementation Services, a copy of which is on file at the office of Purchasing Agent and incorporated herein for all purposes. The Contract consists of this written agreement and the following items which are attached hereto and incorporated herein by reference:

- (a) Special Terms and Conditions (**Exhibit "A"**);
- (b) Request for Proposal (**Exhibit "B" on File at the Office of the Purchasing Agent**);
- (c) City of Denton Standard Terms and Conditions (**Exhibit "C"**);
- (d) Insurance Requirements (**Exhibit "D"**);
- (e) Certificate of Interested Parties Electronic Filing (**Exhibit "E"**);
- (f) Form CIQ – Conflict of Interest Questionnaire (**Exhibit "F"**);
- (g) Contractor's Proposal (**Exhibit "G"**);
- (h) Cherwell End-User Subscription Agreement (**Exhibit "H"**).

These documents make up the Contract documents and what is called for by one shall be as binding as if called for by all. In the event of an inconsistency or conflict in any of the provisions of the Contract documents, the inconsistency or conflict shall be resolved by giving precedence first to the written agreement then to the contract documents in the order in which they are listed above. These documents shall be referred to collectively as "Contract Documents."

**INDEMNITY**

**THE CONTRACTOR REPRESENTS AND WARRANTS TO THE CITY THAT THE INTELLECTUAL PROPERTY SUPPLIED BY CONTRACTOR IN ACCORDANCE WITH THE SPECIFICATIONS IN THE CONTRACT WILL NOT INFRINGE, DIRECTLY OR CONTRIBUTORILY, ANY PATENT, TRADEMARK, COPYRIGHT, TRADE SECRET, OR ANY OTHER INTELLECTUAL PROPERTY RIGHT OF ANY KIND OF ANY THIRD PARTY, AND THAT NO CLAIMS HAVE BEEN MADE BY ANY PERSON OR ENTITY WITH RESPECT TO THE OWNERSHIP OR OPERATION OF THE INTELLECTUAL PROPERTY. MOREOVER, THE CONTRACTOR DOES NOT**

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KNOW OF ANY VALID BASIS FOR ANY SUCH CLAIMS. THE CONTRACTOR SHALL, AT ITS SOLE EXPENSE, DEFEND, INDEMNIFY, AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL LIABILITY, DAMAGES, AND COSTS (INCLUDING COURT COSTS AND REASONABLE FEES OF ATTORNEYS AND OTHER PROFESSIONALS) ARISING OUT OF OR RESULTING FROM ANY CLAIM THAT THE CITY'S EXERCISE OF ITS LICENSE RIGHTS, AND ITS USE OF THE INTELLECTUAL PROPERTY, THE SUBJECT OF THIS CONTRACT, INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, OR THE BREACH OF ANY OF REPRESENTATIONS OR WARRANTIES STATED IN THE CONTRACT DOCUMENTS. IN THE EVENT OF ANY SUCH CLAIM, THE CITY SHALL HAVE THE RIGHT TO MONITOR SUCH CLAIM OR AT ITS OPTION ENGAGE ITS OWN SEPARATE COUNSEL TO ACT AS CO-COUNSEL ON THE CITY'S BEHALF.

IN WITNESS WHEREOF, the parties of these presents have executed this agreement in the year and day first above written.

### CONTRACTOR

BY: \_\_\_\_\_  
AUTHORIZED SIGNATURE

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

PHONE NUMBER \_\_\_\_\_

EMAIL ADDRESS \_\_\_\_\_

TEXAS ETHICS COMMISSION  
CERTIFICATE NUMBER \_\_\_\_\_

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**CITY OF DENTON, TEXAS**

ATTEST:

JENNIFER WALTERS, CITY SECRETARY

BY: \_\_\_\_\_

TODD HILEMAN  
CITY MANAGER

BY: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO LEGAL FORM:  
AARON LEAL, INTERIM CITY ATTORNEY

BY: \_\_\_\_\_

**Exhibit A**  
**Special Terms and Conditions**

**1. Total Contract Amount**

The contract total for services shall not exceed \$139,827.60. Pricing shall be per **Exhibit G** attached.

**2. Contract Terms**

The contract term will be one (1) year, effective from the date that the City provides notice of the award to Contractor ("effective date"). The contract shall automatically renew each year on the month and day of the effective date ("renewal date"), unless either party notifies the other party in writing prior to the renewal date that the contract will not be renewed or the contract is otherwise terminated or completed. This contract may only be automatically renewed for an additional two (2) one-year periods, subject to the terms herein, without City Council approval.

**3. Price Escalation and De-escalation**

On Contractor's request in the form stated herein, the City will implement an escalation/de-escalation price adjustment annually based on these special terms. The escalation/de-escalation will be based on the U.S Department of Labor, Bureau of Labor Statistics, Producer Price Index (PPI) for Data processing, hosting and related services (PCU5182105182105). The stated eligible bid price will be increased or decreased based upon the annual percentage change in the PPI so long as the change is greater than the minimum threshold value of +/- 1%. The maximum escalation will not exceed +/- 8% for any individual year. **The Contractor must submit or make available the manufacturers pricing sheet used to calculate the bid proposal, to participate in the escalation/de-escalation clause.**

The Contractor's request must be submitted in writing with supporting evidence for need of such increase to the Purchasing Manager at least 60 days prior to the contract renewal date for each year. The Contractor should provide documentation as a percentage of each cost associated with the unit prices quoted for consideration. If no request is made, then it will be assumed that the current contract price will be in effect.

Upon receipt of such request, the City of Denton, at its sole option, reserves the right to either: (1) accept the escalation as competitive with the general market price at the time, and become effective upon the renewal date of the contract award; or, (2) reject the increase within thirty (30) calendar days after receipt of a properly submitted request. If a properly submitted increase is rejected, the Contractor may request cancellation of such line items from the contract by giving the City of Denton written notice. Cancellation will not go into effect for 15 calendar days after a determination has been issued. The prices in effect prior to the increase request must be honored on orders dated up to the official date of the City of Denton approval and/or cancellation.

The request can be sent by e-mail to: [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) noting the solicitation number.

The City of Denton reserves the right to accept, reject, or negotiate the proposed price changes.

**Exhibit C**  
**Standard Purchase Terms and Conditions**

These standard Terms and Conditions and the Terms and Conditions, Specifications, Drawings and other requirements included in the City of Denton's contract are applicable to contracts/purchase orders issued by the City of Denton hereinafter referred to as the City or Buyer and the Seller or respondent herein after referred to as Contractor or Contractor. Any deviations must be in writing and signed by a representative of the City's Procurement Department and the Contractor. No Terms and Conditions contained in the seller's proposal response, invoice or statement shall serve to modify the terms set forth herein. If there is a conflict between the provisions on the face of the contract/purchase order these written provisions will take precedence.

The Contractor agrees that the contract shall be governed by the following terms and conditions, unless exceptions are duly noted and fully negotiated. Unless otherwise specified in the contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a solicitation to purchase goods, and sections 9, 10, 11, 22 and 32 shall apply only to a solicitation to purchase services to be performed principally at the City's premises or on public rights-of-way.

**1. CONTRACTOR'S OBLIGATIONS.** The Contractor shall fully and timely provide all deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.

**2. EFFECTIVE DATE/TERM.** Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.

**3. CONTRACTOR TO PACKAGE DELIVERABLES:** The Contractor will package deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform to all the requirements of common carriers and any applicable specification. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.

**4. SHIPMENT UNDER RESERVATION PROHIBITED:** The Contractor is not authorized to ship the deliverables under reservation and no tender of a bill of lading will operate as a tender of deliverables.

**5. TITLE & RISK OF LOSS:** Title to and risk of loss of the deliverables shall pass to the City only when the City actually receives and accepts the deliverables.

**6. DELIVERY TERMS AND TRANSPORTATION CHARGES:** Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and

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Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the deliverables. The point of delivery shall be that set forth as F.O.B. Destination the purchase order.

**7. RIGHT OF INSPECTION AND REJECTION:** The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the deliverables at delivery before accepting them, and to reject defective or non-conforming deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.

**8. NO REPLACEMENT OF DEFECTIVE TENDER:** Every tender or delivery of deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.

**9. PLACE AND CONDITION OF WORK:** The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

The contractor shall, at all times, exercise reasonable precautions for the safety of their employees, City Staff, participants and others on or near the City's facilities.

### 10. WORKFORCE

A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Denton contract or on the City's property .

- i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
- ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

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C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

**Immigration:** The Contractor represents and warrants that it shall comply with the requirements of the Immigration Reform and Control Act of 1986 and 1990 regarding employment verification and retention of verification forms for any individuals hired on or after November 6, 1986, who will perform any labor or services under the Contract and the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA) enacted on September 30, 1996.

**11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL CLAIMS, DEMANDS, SUITS, ACTIONS, JUDGMENTS, FINES, PENALTIES AND LIABILITY OF EVERY KIND ARISING FROM THE BREACH OF THE CONTRACTOR'S OBLIGATIONS UNDER THIS PARAGRAPH.**

**Environmental Protection:** The Respondent shall be in compliance with all applicable standards, orders, or regulations issued pursuant to the mandates of the Clean Air Act (42 U.S.C. §7401 *et seq.*) and the Federal Water Pollution Control Act, as amended, (33 U.S.C. §1251 *et seq.*).

### 12. INVOICES:

A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.

B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name, remittance address and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.

C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.

D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all

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Subcontract and other authorized expenses at actual cost without markup.

E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

### 13. PAYMENT:

A. All proper invoices need to be sent to Accounts Payable. Approved invoices will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice being received in Accounts Payable, whichever is later.

**B. If payment is not timely made, (per paragraph A); interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.

D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:

- i. delivery of defective or non-conforming deliverables by the Contractor;
- ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
- iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
- iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
- v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or damages for the anticipated delay;
- vi. failure of the Contractor to submit proper invoices with purchase order number, with all required attachments and supporting documentation; or
- vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- viii. City shall notify Contractor within fourteen (14) days of failure(s) to the aforementioned reasons for payment withholding and give Contractor the opportunity to cure within fourteen (14) days.

E. Notice is hereby given that any awarded firm who is in arrears to the City of Denton for delinquent taxes, the City may offset indebtedness owed the City through payment withholding.

F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.

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G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of none or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

**14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract shall be paid by the Contractor, unless otherwise stated in the contract terms. During the term of this contract, the contractor shall bill and the City shall reimburse contractor for all reasonable and approved out of pocket expenses which are incurred in the connection with the performance of duties hereunder. Notwithstanding the foregoing, expenses for the time spent by the contractor in traveling to and from City facilities shall not be reimbursed, unless otherwise negotiated.

### **15. FINAL PAYMENT AND CLOSE-OUT:**

A. If a DBE/MBE/WBE Program Plan is agreed to and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Purchasing Manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements as accepted by the City.

B. The making and acceptance of final payment will constitute:

i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

**16. SPECIAL TOOLS & TEST EQUIPMENT:** If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

### **17. RIGHT TO AUDIT:**

A. The City shall have the right to audit and make copies of the books, records and computations pertaining to the Contract. The Contractor shall retain such books, records, documents and other evidence pertaining to the Contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available,

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within ten (10) business days of written request. Further, the Contractor shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents and other evidence pertaining to the Contract, and to allow the City similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Denton. The cost of the audit will be borne by the City unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by the Contractor which must be payable within five (5) business days of receipt of an invoice.

B. Failure to comply with the provisions of this section shall be a material breach of the Contract and shall constitute, in the City's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

### 18. SUBCONTRACTORS:

A. If the Contractor identified Subcontractors in a DBE/MBE/WBE agreed to Plan, the Contractor shall comply with all requirements approved by the City. The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Procurement Manager, no later than the tenth calendar day of each month.

B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

- i. require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
- ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
- iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
- iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
- v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions.

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Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

### 19. WARRANTY-PRICE:

A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.

C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like deliverables under similar terms of purchase.

**20. WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all deliverables furnished under the Contract, and that the deliverables are free and clear of all liens, claims, security interests and encumbrances. **THE CONTRACTOR SHALL INDEMNIFY AND HOLD THE CITY HARMLESS FROM AND AGAINST ALL ADVERSE TITLE CLAIMS TO THE DELIVERABLES.**

**21. WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the deliverables shall be new or recycled merchandise, and not used or reconditioned.

A. Recycled deliverables shall be clearly identified as such.

B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.

C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the deliverables or from the date of acceptance of any replacement deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming deliverables, or replace the non-conforming deliverables with fully conforming deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within

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thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.

D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such deliverables from another source. This provision does not apply if the non-conforming or defective deliverable is due to limitations within the software application.

E. If the Contractor is not the manufacturer, and the deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.

**22. WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.

B. Unless otherwise specified in the Contract, the warranty period shall be at least one year, any changes/modifications to the work product once the contractor has completed the SOW, by the City or any other third party will void this warranty, from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

**23. ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective, incomplete, or non-conforming deliverables, the City prefers to accept it, the City may do so.

**24. RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written

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assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

**25. STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

**26. DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.

**27. TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. In addition to any other remedy available under law or in equity, the City shall be entitled to recover actual damages, costs, losses and expenses, not to exceed the maximum amount of the Contractor's commercial general liability insurance policy, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. Additionally, in the event of a default by the Contractor, the City may remove the Contractor from the City's vendor list for three (3) years and any Offer submitted by the Contractor may be disqualified for up to three (3) years. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

**28. TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.

**29. FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

### **30. DELAYS:**

A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The

## EXHIBIT 4

Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 49. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

### 31. INDEMNITY:

#### A. Definitions:

i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for: (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties), ii. "Fault" shall include the sale of defective or non-conforming deliverables, negligence, willful misconduct or a breach of any legally imposed strict liability standard.

**B. THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

**32. INSURANCE:** The following insurance requirements are applicable, in addition to the specific insurance requirements detailed in **Appendix A** for services only. The successful firm shall procure and maintain insurance of the types and in the minimum amounts acceptable to the City of Denton. The insurance shall be written by a company licensed to do business in the State of Texas and satisfactory to the City of Denton.

## EXHIBIT 4

### A. General Requirements:

- i. The Contractor shall at a minimum carry insurance in the types and amounts indicated and agreed to, as submitted to the City and approved by the City within the procurement process, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
- ii. The Contractor shall provide Certificates of Insurance with the coverage's and endorsements required to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.
- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The Contractor must submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of **A- VII or better**. The City will accept workers' compensation coverage written by the Texas Workers' Compensation Insurance Fund.
- vi. All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall contain the solicitation number and the following information:

City of Denton  
Materials Management Department  
901B Texas Street  
Denton, Texas 76209

- vii. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- viii. If insurance policies are not written for amounts agreed to with the City, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- ix. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- x. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

## EXHIBIT 4

- xi. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xii. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.
- xiii. The Contractor shall endeavor to provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverage's indicated within the Contract.
- xiv. The insurance coverage's specified in within the solicitation and requirements are required minimums and are not intended to limit the responsibility or liability of the Contractor.

**B. Specific Coverage Requirements:** Specific insurance requirements are contained in the solicitation instrument.

**33. CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Denton City Attorney. Personal delivery to the City Attorney shall be to City Hall, 215 East McKinney Street, Denton, Texas 76201.

**34. NOTICES:** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at 901B Texas Street, Denton, Texas 76209 and marked to the attention of the Purchasing Manager.

**35. RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL:** All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, and Texas Government Code.

**36. NO WARRANTY BY CITY AGAINST INFRINGEMENTS:** The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the deliverables and (ii) the deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the deliverables and the Contractor does not know of any valid basis for any such claims. **THE CONTRACTOR SHALL, AT ITS SOLE EXPENSE, DEFEND, INDEMNIFY, AND HOLD**

**THE CITY HARMLESS FROM AND AGAINST ALL LIABILITY, DAMAGES, AND COSTS (INCLUDING COURT COSTS AND REASONABLE FEES OF ATTORNEYS AND OTHER PROFESSIONALS) ARISING OUT OF OR RESULTING FROM: (I) ANY CLAIM THAT THE CITY'S EXERCISE ANYWHERE IN THE WORLD OF THE RIGHTS ASSOCIATED WITH THE CITY'S OWNERSHIP, AND IF APPLICABLE, LICENSE RIGHTS, AND ITS USE OF THE DELIVERABLES INFRINGES THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY; OR (II) THE CONTRACTOR'S BREACH OF ANY OF CONTRACTOR'S REPRESENTATIONS OR WARRANTIES STATED IN THIS CONTRACT.** In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such deliverables will not impact such warranties of Contractor.

**37. CONFIDENTIALITY:** In order to provide the deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information. Notwithstanding this paragraph, the City is subject to the public information requirements under chapter 552 of the Texas Government Code and related exceptions.

**38. OWNERSHIP AND USE OF DELIVERABLES:** The City shall own all rights, titles, and interests throughout the world in and to the deliverables.

A. Patents. As to any patentable subject matter contained in the deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.

B. Copyrights. As to any deliverables containing copyrightable subject matter, the Contractor agrees that upon their creation, such deliverables shall be considered as work made-for-hire by the

## EXHIBIT 4

Contractor for the City and the City shall own all copyrights in and to such deliverables, provided however, that nothing in this Paragraph 38 shall negate the City's sole or joint ownership of any such deliverables arising by virtue of the City's sole or joint authorship of such deliverables. Should by operation of law, such deliverables not be considered works made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of) all worldwide right, title, and interest in and to such deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge, and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-made-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such deliverables to the City or at such other time as the City may request.

**C. Additional Assignments.** The Contractor further agrees to, and if applicable, cause each of its employees to, execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns and nominees, the sole and exclusive right, title, and interest in and to the deliverables. The Contractor's obligations to execute, acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 38 a., b., and c. shall continue after the termination of this Contract with respect to such deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the deliverables, but should desire to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph 37 above.

**39. PUBLICATIONS:** All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

**40. ADVERTISING:** The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

**41. NO CONTINGENT FEES:** The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

**42. GRATUITIES:** The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Denton with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract.

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In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

**43. PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS:** No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City. The Contractor shall complete and submit the City's Conflict of Interest Questionnaire.

**44. INDEPENDENT CONTRACTOR:** The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City of Denton, Texas for the purposes of income tax, withholding, social security taxes, vacation or sick leave benefits, worker's compensation, or any other City employee benefit. The City shall not have supervision and control of the Contractor or any employee of the Contractor, and it is expressly understood that Contractor shall perform the services hereunder according to the attached specifications at the general direction of the City Manager of the City of Denton, Texas, or his designee under this agreement. The contractor is expressly free to advertise and perform services for other parties while performing services for the City.

**45. ASSIGNMENT-DELEGATION:** The Contract shall be binding upon and inure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City, as it is a Contract personal to the Contractor. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there are no third party beneficiaries to the Contract.

**46. WAIVER:** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

**47. MODIFICATIONS:** The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

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**48. INTERPRETATION:** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

**49. DISPUTE RESOLUTION:**

A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option; the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Denton County Alternative Dispute Resolution Program (DCAP). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

**50. JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Denton County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

**51. INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the

## EXHIBIT 4

Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

**52. HOLIDAYS:** The following holidays are observed by the City:

New Year's Day (observed)
MLK Day
Memorial Day
4th of July
Labor Day
Thanksgiving Day
Day After Thanksgiving
Christmas Eve (observed)
Christmas Day (observed)
New Year's Day (observed)

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday. Normal hours of operation shall be between 8:00 am and 4:00 pm, Monday through Friday, excluding City of Denton Holidays. Any scheduled deliveries or work performance not within the normal hours of operation **must be approved** by the City Manager of Denton, Texas or his authorized designee.

**53. SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

**54. NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Denton is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Denton Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Denton.

**55. EQUAL OPPORTUNITY**

**A. Equal Employment Opportunity:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice. No person shall, on the grounds of race, sex, age, disability, creed, color, genetic testing, or national origin, be refused the benefits of, or be otherwise subjected to discrimination under any activities resulting from this RFQ.

**B. Americans with Disabilities Act (ADA) Compliance:** No Offeror, or Offeror's agent, shall engage in any discriminatory employment practice against individuals with disabilities as defined in the ADA.

**56. BUY AMERICAN ACT-SUPPLIES (Applicable to certain federally funded**

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**requirements).** The following federally funded requirements are applicable:

**A. Definitions.** As used in this paragraph –

- i. "Component" means an article, material, or supply incorporated directly into an end product.
- ii. "Cost of components" means -
  - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
  - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
- iii. "Domestic end product" means-
  - (1) An unmanufactured end product mined or produced in the United States; or
  - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
- iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
- v. "Foreign end product" means an end product other than a domestic end product.
- vi. "United States" means the 50 States, the District of Columbia, and outlying areas.

**B. The Buy American Act (41 U.S.C. 10a - 10d)** provides a preference for domestic end products for supplies acquired for use in the United States.

**C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.**

**D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".**

**57. RIGHT TO INFORMATION:** The City of Denton reserves the right to use any and all information presented in any response to this contract, whether amended or not, except as prohibited by law. Selection of rejection of the submittal does not affect this right.

**58. LICENSE FEES OR TAXES:** Provided the solicitation requires an awarded contractor or supplier to be licensed by the State of Texas, any and all fees and taxes are the responsibility of the respondent.

**59. PREVAILING WAGE RATES:** The contractor shall comply with prevailing wage rates as

## EXHIBIT 4

defined by the United States Department of Labor Davis-Bacon Wage Determination at <http://www.dol.gov/whd/contracts/dbra.htm> and at the Wage Determinations website [www.wdol.gov](http://www.wdol.gov) for Denton County, Texas (WD-2509).

**60. COMPLIANCE WITH ALL STATE, FEDERAL, AND LOCAL LAWS:** The contractor or supplier shall comply with all State, Federal, and Local laws and requirements. The Respondent must comply with all applicable laws at all times, including, without limitation, the following: (i) §36.02 of the Texas Penal Code, which prohibits bribery; (ii) §36.09 of the Texas Penal Code, which prohibits the offering or conferring of benefits to public servants. The Respondent shall give all notices and comply with all laws and regulations applicable to furnishing and performance of the Contract.

**61. FEDERAL, STATE, AND LOCAL REQUIREMENTS:** Respondent shall demonstrate on-site compliance with the Federal Tax Reform Act of 1986, Section 1706, amending Section 530 of the Revenue Act of 1978, dealing with issuance of Form W-2's to common law employees. Respondent is responsible for both federal and State unemployment insurance coverage and standard Workers' Compensation insurance coverage. Respondent shall ensure compliance with all federal and State tax laws and withholding requirements. The City of Denton shall not be liable to Respondent or its employees for any Unemployment or Workers' Compensation coverage, or federal or State withholding requirements. **CONTRACTOR SHALL INDEMNIFY THE CITY OF DENTON AND SHALL PAY ALL COSTS, PENALTIES, OR LOSSES RESULTING FROM RESPONDENT'S OMISSION OR BREACH OF THIS SECTION.**

**62. DRUG FREE WORKPLACE:** The contractor shall comply with the applicable provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701 ET SEQ.) and maintain a drug-free work environment; and the final rule, government-wide requirements for drug-free work place (grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 280, Subpart F) to implement the provisions of the Drug-Free Work Place Act of 1988 is incorporated by reference and the contractor shall comply with the relevant provisions thereof, including any amendments to the final rule that may hereafter be issued.

**63. RESPONDENT LIABILITY FOR DAMAGE TO GOVERNMENT PROPERTY:** The Respondent shall be liable for all damages to government-owned, leased, or occupied property and equipment caused by the Respondent and its employees, agents, subcontractors, and suppliers, including any delivery or cartage company, in connection with any performance pursuant to the Contract. The Respondent shall notify the City of Denton Procurement Manager in writing of any such damage within one (1) calendar day.

**64. FORCE MAJEURE:** The City of Denton, any Customer, and the Respondent shall not be responsible for performance under the Contract should it be prevented from performance by an act of war, order of legal authority, act of God, or other unavoidable cause not attributable to the fault or negligence of the City of Denton. In the event of an occurrence under this Section, the Respondent will be excused from any further performance or observance of the requirements so affected for as long as such circumstances prevail and the Respondent continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. The Respondent shall immediately notify the City of Denton Procurement Manager by telephone (to be confirmed in writing within five (5) calendar

## EXHIBIT 4

days of the inception of such occurrence) and describe at a reasonable level of detail the circumstances causing the non-performance or delay in performance.

**65. NON-WAIVER OF RIGHTS:** Failure of a Party to require performance by another Party under the Contract will not affect the right of such Party to require performance in the future. No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under the Contract shall operate to limit, impair, preclude, cancel, waive or otherwise affect such right or remedy. A waiver by a Party of any breach of any term of the Contract will not be construed as a waiver of any continuing or succeeding breach.

**66. NO WAIVER OF SOVEREIGN IMMUNITY:** The Parties expressly agree that no provision of the Contract is in any way intended to constitute a waiver by the City of Denton of any immunities from suit or from liability that the City of Denton may have by operation of law.

**67. RECORDS RETENTION:** The Respondent shall retain all financial records, supporting documents, statistical records, and any other records or books relating to the performances called for in the Contract. The Respondent shall retain all such records for a period of four (4) years after the expiration of the Contract, or until the CPA or State Auditor's Office is satisfied that all audit and litigation matters are resolved, whichever period is longer. The Respondent shall grant access to all books, records and documents pertinent to the Contract to the CPA, the State Auditor of Texas, and any federal governmental entity that has authority to review records due to federal funds being spent under the Contract.

**Should a conflict arise between any of the contract documents, it shall be resolved with the following order of precedence (if applicable). In any event, the final negotiated contract shall take precedence over any and all contract documents to the extent of such conflict.**

1. **Final negotiated contract**
2. **RFP/Bid documents**
3. **City's standard terms and conditions**
4. **Purchase order**
5. **Contractor terms and conditions**

## EXHIBIT 4

### Exhibit D

#### INSURANCE REQUIREMENTS AND WORKERS' COMPENSATION REQUIREMENTS

*Upon contract execution, all insurance requirements shall become contractual obligations, which the successful contractor shall have a duty to maintain throughout the course of this contract.*

#### STANDARD PROVISIONS:

***Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall provide and maintain until the contracted work has been completed and accepted by the City of Denton, Owner, the minimum insurance coverage as indicated hereinafter.***

***Contractor shall file with the Purchasing Department satisfactory certificates of insurance including any applicable addendum or endorsements, containing the contract number and title of the project. Contractor may, upon written request to the Purchasing Department, ask for clarification of any insurance requirements at any time; however, Contractor shall not commence any work or deliver any material until he or she receives notification that the contract has been accepted, approved, and signed by the City of Denton.***

***All insurance policies proposed or obtained in satisfaction of these requirements shall comply with the following general specifications, and shall be maintained in compliance with these general specifications throughout the duration of the Contract, or longer, if so noted:***

- Each policy shall be issued by a company authorized to do business in the State of Texas with an A.M. Best Company rating of at least **A or better**.
- Any deductibles or self-insured retentions shall be declared in the proposal. If requested by the City, the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the City, its officials, agents, employees and volunteers; or, the contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- Liability policies shall be endorsed to provide the following:
  - Name as Additional Insured the City of Denton, its Officials, Agents, Employees and volunteers.
  - That such insurance is primary to any other insurance available to the Additional Insured with respect to claims covered under the policy and that this insurance applies separately to each insured against whom claim is made or suit is brought. The inclusion of more than one insured shall not operate to increase the insurer's limit of liability.
  - Provide a Waiver of Subrogation in favor of the City of Denton, its officials, agents, employees, and volunteers.
- ***Cancellation: City requires 30 day written notice should any of the policies described on the certificate be cancelled or materially changed before the expiration date.***

## EXHIBIT 4

- Should any of the required insurance be provided under a claims made form, Contractor shall maintain such coverage continuously throughout the term of this contract and, without lapse, for a period of three years beyond the contract expiration, such that occurrences arising during the contract term which give rise to claims made after expiration of the contract shall be covered.
- Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit providing for claims investigation or legal defense costs to be included in the general annual aggregate limit, the Contractor shall either double the occurrence limits or obtain Owners and Contractors Protective Liability Insurance.
- Should any required insurance lapse during the contract term, requests for payments originating after such lapse shall not be processed until the City receives satisfactory evidence of reinstated coverage as required by this contract, effective as of the lapse date. If insurance is not reinstated, City may, at its sole option, terminate this agreement effective on the date of the lapse.

### SPECIFIC ADDITIONAL INSURANCE REQUIREMENTS:

***All insurance policies proposed or obtained in satisfaction of this Contract shall additionally comply with the following marked specifications, and shall be maintained in compliance with these additional specifications throughout the duration of the Contract, or longer, if so noted:***

A. **General Liability Insurance:**

General Liability insurance with combined single limits of not less than **\$1,000,000.00** shall be provided and maintained by the Contractor. The policy shall be written on an occurrence basis either in a single policy or in a combination of underlying and umbrella or excess policies.

If the Commercial General Liability form (ISO Form CG 0001 current edition) is used:

- Coverage A shall include premises, operations, products, and completed operations, independent contractors, contractual liability covering this contract and broad form property damage coverage.
- Coverage B shall include personal injury.
- Coverage C, medical payments, is not required.

If the Comprehensive General Liability form (ISO Form GL 0002 Current Edition and ISO Form GL 0404) is used, it shall include at least:

- Bodily injury and Property Damage Liability for premises, operations, products and completed operations, independent contractors and property damage resulting from explosion, collapse or underground (XCU) exposures.
- Broad form contractual liability (preferably by endorsement) covering this contract, personal injury liability and broad form property damage liability.

## EXHIBIT 4

**Automobile Liability Insurance:**

Contractor shall provide Commercial Automobile Liability insurance with Combined Single Limits (CSL) of not less than \$500,000 either in a single policy or in a combination of basic and umbrella or excess policies. The policy will include bodily injury and property damage liability arising out of the operation, maintenance and use of all automobiles and mobile equipment used in conjunction with this contract.

Satisfaction of the above requirement shall be in the form of a policy endorsement for:

- any auto, or
- all owned hired and non-owned autos.

**Workers' Compensation Insurance**

Contractor shall purchase and maintain Workers' Compensation insurance which, in addition to meeting the minimum statutory requirements for issuance of such insurance, has Employer's Liability limits of at least \$100,000 for each accident, \$100,000 per each employee, and a \$500,000 policy limit for occupational disease. The City need not be named as an "Additional Insured" but the insurer shall agree to waive all rights of subrogation against the City, its officials, agents, employees and volunteers for any work performed for the City by the Named Insured. For building or construction projects, the Contractor shall comply with the provisions of Attachment 1 in accordance with §406.096 of the Texas Labor Code and rule 28TAC 110.110 of the Texas Workers' Compensation Commission (TWCC).

**Owner's and Contractor's Protective Liability Insurance**

The Contractor shall obtain, pay for and maintain at all times during the prosecution of the work under this contract, an Owner's and Contractor's Protective Liability insurance policy naming the City as insured for property damage and bodily injury which may arise in the prosecution of the work or Contractor's operations under this contract. Coverage shall be on an "occurrence" basis and the policy shall be issued by the same insurance company that carries the Contractor's liability insurance. Policy limits will be at least \$500,000.00 combined bodily injury and property damage per occurrence with a \$1,000,000.00 aggregate.

**Fire Damage Legal Liability Insurance**

Coverage is required if Broad form General Liability is not provided or is unavailable to the contractor or if a contractor leases or rents a portion of a City building. Limits of not less than \_\_\_\_\_ each occurrence are required.

**Professional Liability Insurance**

Professional liability insurance with limits not less than \$1,000,000.00 per claim with respect to negligent acts, errors or omissions in connection with professional services is required under this Agreement.

**Builders' Risk Insurance**

Builders' Risk Insurance, on an All-Risk form for 100% of the completed value shall be

## EXHIBIT 4

provided. Such policy shall include as "Named Insured" the City of Denton and all subcontractors as their interests may appear.

[ ] **Environmental Liability Insurance**

Environmental liability insurance for \$1,000,000 to cover all hazards contemplated by this contract.

[ ] **Riggers Insurance**

The Contractor shall provide coverage for Rigger's Liability. Said coverage may be provided by a Rigger's Liability endorsement on the existing CGL coverage; through and Installation Floater covering rigging contractors; or through ISO form IH 00 91 12 11, Rigger's Liability Coverage form. Said coverage shall mirror the limits provided by the CGL coverage

[ ] **Commercial Crime**

Provides coverage for the theft or disappearance of cash or checks, robbery inside/outside the premises, burglary of the premises, and employee fidelity. The employee fidelity portion of this coverage should be written on a "blanket" basis to cover all employees, including new hires. This type insurance should be required if the contractor has access to City funds. Limits of not less than \$ \_\_\_\_\_ each occurrence are required.

[ ] **Additional Insurance**

Other insurance may be required on an individual basis for extra hazardous contracts and specific service agreements. If such additional insurance is required for a specific contract, that requirement will be described in the "Specific Conditions" of the contract specifications.

## EXHIBIT 4

### ATTACHMENT 1

[ ] **Workers' Compensation Coverage for Building or Construction Projects for Governmental Entities**

A. Definitions:

Certificate of coverage ("certificate")-A copy of a certificate of insurance, a certificate of authority to self-insure issued by the commission, or a coverage agreement (TWCC-81, TWCC-82, TWCC-83, or TWCC-84), showing statutory workers' compensation insurance coverage for the person's or entity's employees providing services on a project, for the duration of the project.

Duration of the project - includes the time from the beginning of the work on the project until the contractor's/person's work on the project has been completed and accepted by the governmental entity.

Persons providing services on the project ("subcontractor" in §406.096) - includes all persons or entities performing all or part of the services the contractor has undertaken to perform on the project, regardless of whether that person contracted directly with the contractor and regardless of whether that person has employees. This includes, without limitation, independent contractors, subcontractors, leasing companies, motor carriers, owner-operators, employees of any such entity, or employees of any entity which furnishes persons to provide services on the project. "Services" include, without limitation, providing, hauling, or delivering equipment or materials, or providing labor, transportation, or other service related to a project. "Services" does not include activities unrelated to the project, such as food/beverage vendors, office supply deliveries, and delivery of portable toilets.

- B. The contractor shall provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all employees of the Contractor providing services on the project, for the duration of the project.
- C. The Contractor must provide a certificate of coverage to the governmental entity prior to being awarded the contract.
- D. If the coverage period shown on the contractor's current certificate of coverage ends during the duration of the project, the contractor must, prior to the end of the coverage period, file a new certificate of coverage with the governmental entity showing that coverage has been extended.
- E. The contractor shall obtain from each person providing services on a project, and provide to the governmental entity:
  - 1. a certificate of coverage, prior to that person beginning work on the

## EXHIBIT 4

project, so the governmental entity will have on file certificates of coverage showing coverage for all persons providing services on the project; and

2. no later than seven days after receipt by the contractor, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project.

F. The contractor shall retain all required certificates of coverage for the duration of the project and for one year thereafter.

G. The contractor shall notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the contractor knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project.

H. The contractor shall post on each project site a notice, in the text, form and manner prescribed by the Texas Workers' Compensation Commission, informing all persons providing services on the project that they are required to be covered, and stating how a person may verify coverage and report lack of coverage.

I. The contractor shall contractually require each person with whom it contracts to provide services on a project, to:

1. provide coverage, based on proper reporting of classification codes and payroll amounts and filing of any coverage agreements, which meets the statutory requirements of Texas Labor Code, Section 401.011(44) for all of its employees providing services on the project, for the duration of the project;
2. provide to the contractor, prior to that person beginning work on the project, a certificate of coverage showing that coverage is being provided for all employees of the person providing services on the project, for the duration of the project;
3. provide the contractor, prior to the end of the coverage period, a new certificate of coverage showing extension of coverage, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
4. obtain from each other person with whom it contracts, and provide to the contractor:
  - a. a certificate of coverage, prior to the other person beginning work on the project; and

## EXHIBIT 4

- b. a new certificate of coverage showing extension of coverage, prior to the end of the coverage period, if the coverage period shown on the current certificate of coverage ends during the duration of the project;
- 5. retain all required certificates of coverage on file for the duration of the project and for one year thereafter;
- 6. notify the governmental entity in writing by certified mail or personal delivery, within 10 days after the person knew or should have known, of any change that materially affects the provision of coverage of any person providing services on the project; and
- 7. Contractually require each person with whom it contracts, to perform as required by paragraphs (1) - (7), with the certificates of coverage to be provided to the person for whom they are providing services.

J. By signing this contract or providing or causing to be provided a certificate of coverage, the contractor is representing to the governmental entity that all employees of the contractor who will provide services on the project will be covered by workers' compensation coverage for the duration of the project, that the coverage will be based on proper reporting of classification codes and payroll amounts, and that all coverage agreements will be filed with the appropriate insurance carrier or, in the case of a self-insured, with the commission's Division of Self-Insurance Regulation. Providing false or misleading information may subject the contractor to administrative penalties, criminal penalties, civil penalties, or other civil actions.

K. The contractor's failure to comply with any of these provisions is a breach of contract by the contractor which entitles the governmental entity to declare the contract void if the contractor does not remedy the breach within ten days after receipt of notice of breach from the governmental entity.

## EXHIBIT 4

### Exhibit E Certificate of Interested Parties Electronic Filing

In 2015, the Texas Legislature adopted House Bill 1295, which added section 2252.908 of the Government Code. The law states that the City may not enter into this contract unless the Contractor submits a disclosure of interested parties (Form 1295) to the City at the time the Contractor submits the signed contract. The Texas Ethics Commission has adopted rules requiring the business entity to file Form 1295 electronically with the Commission.

**Contractor will be required to furnish an original notarized Certificate of Interest Parties before the contract is awarded, in accordance with Government Code 2252.908.**

The contractor shall:

1. Log onto the State Ethics Commission Website at :  
[https://www.ethics.state.tx.us/whatsnew/elf\\_info\\_form1295.htm](https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm)
2. Register utilizing the tutorial provided by the State
3. Print a copy of the completed Form 1295
4. Enter the Certificate Number on page 2 of this contract.
5. Sign and notarize the Form 1295
6. Email the notarized form to [purchasing@cityofdenton.com](mailto:purchasing@cityofdenton.com) with the contract number in the subject line. (EX: Contract 1234 – Form 1295)

The City must acknowledge the receipt of the filed Form 1295 not later than the 30th day after Council award. Once a Form 1295 is acknowledged, it will be posted to the Texas Ethics Commission's website within seven business days.

## EXHIBIT 4

### ATTACHMENT E-CONFLICT OF INTEREST QUESTIONNAIRE

#### CONFLICT OF INTEREST QUESTIONNAIRE -

#### FORM CIQ

##### For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See Section 176.006(a-1), Local Government Code.*

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1**  Name of vendor who has a business relationship with local governmental entity.

**2**  Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3**  Name of local government officer about whom the information in this section is being disclosed.

\_\_\_\_\_  
Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes  No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes  No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes  No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4**  I have no Conflict of Interest to disclose.

**5** 

March 2, 2017

Signature of vendor doing business with the governmental entity

Date

# EXHIBIT 4

## Best and Final Offer (BAFO)

Respondent's Name: **Flycast Partners**  
 Respondent's City and State: **Desoto, TX**

### RFP 6321 - Pricing Sheet for Cherwell Service Manager and Implementation Services

*The respondent shall complete the following section, which directly corresponds to the specifications. The contractor shall not make changes to this format.*

#### Product Proposal Pricing (FOB DESTINATION):

Item #	ESTIMATED QTY.	UOM	Product Description	Description 2	BAFO Unit Price	BAFO Extended Price	Implementation Schedule (# of business days)
<b>SECTION A - SOFTWARE</b>							
1	12	EA	Service Manager License	Annual Subscription	\$ 108.00	\$ 1,296.00	

#### SECTION B - REMOTE TRAINING

2	2	EA	Service Management Foundations	<p>We are prepared to offer a spacial tranning package.... you will get unlimited access to the Video Learning Library, a Deep dive course, and pre-conference workshops at the Cerwell Global Conference at no cost. Training for two people was previously quoted at \$5,700 (2850*2), so this is \$300 more, but if you added everything up, it's a tremendous deal! You can get two people admin trained, a deep dive and full access to all the content in the Video Learning Library with over 80 video courses on a variety of topics. The CSM Foundations Course gives you the basics for your design workshop participants and Cherwell administrators. Topics covered include Dashboard Design, Report Writer, Change Management, One Steps, Portal Design, and Mobile Application Configuration and more.</p> <p><b>10 days of training delivered virtually, self-paced or live at the Cherwell facility, including:</b></p> <ul style="list-style-type: none"> <li>• Cherwell Service Management Foundations <b>(uses 4 days)</b></li> <li>• Cherwell Service Management Deep Dives <b>(uses 1 day)</b></li> <li>• Cherwell Asset Management self-paced modules <b>(unlimited access)</b></li> <li>• Video Learning Library <b>(unlimited access)</b></li> <li>• Pre-Conference Workshops at Cherwell Global Conference <b>(uses 1 day)</b></li> </ul>	\$ 3,000.00	\$ 6,000.00	
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#### SECTION C - CONSULTING SERVICES, as described in Exhibit 3 - Scope of Work

3	45	EA	Implementation Services		\$ 1,600.00	\$ 72,000.00	45

<b>SECTION D - TRAVEL COST, as described in Exhibit 3 - Scope of Work</b>							Onsite Work (# of business days)	Remote Work (# of business days)
4	1	EA	Estimated Travel Expenses for Implementation		\$ 2,460.00		6	39

Total Cost of Products and Labor: **\$ 81,756.00**

**\*NOTE: PLEASE EMAIL THIS EXHIBIT 1 AS AN EXCEL FILE TO CYNTHIA.ALONZO@CITYOFDENTON.COM**

**\*NOTE: The Extended Licenses price on column G8 is the **per month** price for 12 licenses. City Of Denton will need to multiply that price by 12 in order to arrive at the **Annual cost (\$ 15,552)** and multiply by 3 (subscription pricing based on a 3 year non-cancellable contract term) to determine the 3 year **Total License Costs of \$ 46,656**. Therefore the **The Total Cost of Products and Labor is \$ 127,116** and NOT the figure listed in column G20.**

**RFP RESPONSE**  
**CHERWELL SERVICE MANAGEMENT SOFTWARE & SERVICES**  
**For:**

**City Of Denton  
Materials Management Department  
901-B Texas Street  
Denton, Texas 76209**

**REQUEST FOR PROPOSALS  
RFP 6321**



*Innovative Technology Built upon Yesterday's Values*

**Flycast Partners Inc,  
329 S Elerson Road, DeSoto, TX 75115**

**Noel Daniel  
Account Manager  
Direct: 817 984 3369  
Mobile: 817 880 9065  
[noel.daniel@flycastpartners.com](mailto:noel.daniel@flycastpartners.com)  
[www.flycastpartners.com](http://www.flycastpartners.com)**

## EXHIBIT 4

### Executive Summary

March 2, 2017

Dear members of the Evaluation Team:

Flycast Partners would like to thank City of Denton for the opportunity to be considered as your IT Service Management partner. Flycast Partners Inc., and Cherwell Software, LLC are excited about the possibility of partnering with such an impressive organization. Cherwell's tagline, ***Innovative Technology Built on Yesterday's Values***, is indicative of our vision to provide next-generation IT Service Management technology coupled with a brand of service and customer care rarely seen in business in today's business climate.

Flycast Partners is committed to providing technology, services and support that ensure the progressiveness, longevity, and success of your service management objectives. We are confident that Cherwell Software will be the last service management solution City of Denton will ever require and we look forward to helping you achieve your organizational goals.

As information technology organizations move from the traditional support model towards a proactive and valued "Business Partner" model, it is imperative they build on a foundation that will survive the test of time. Cherwell Service Management (CSM) was architected with this underlying principle. CSM is more than a software application; it includes a framework with built-in workflow and content to support your immediate and future business requirements.

Built to incorporate industry best practice standards such as ITIL, CSM not only provides comprehensive "out of the box" functionality, but also has the flexibility to assist you in becoming a responsive, agile, and proactive organization that can quickly respond to the challenges that arise daily at City of Denton. By utilizing our unique Codeless Business Application Technology (CBAT), City of Denton's IT department won't require programmers. The end result: **Enterprise Power without Enterprise Cost and Complexity**.

Cherwell utilizes a SaaS 3.0 model which allows both On-Premise and Hosted deployments as well as hybrid deployments (On-Demand deployment and On-Premise pricing as well as On-Premise deployment and On-Demand pricing). As requested, we have provided Cherwell software and services pricing for City of Denton.

Flycast Partners has a very clear understanding of your requirements and the work to be accomplished. Upon being awarded the contract, Flycast will perform all services as documented in a mutually agreed upon Statement-Of-Work within the required timeframe. Flycast believes that CSM is a tremendous fit for City of Denton, and look forward to a long term, mutually beneficial relationship with you.

On behalf of your team and Flycast Partners and Cherwell Software, we look forward to meeting each and every one of you in person and discussing how to achieve each of your specific objectives.

Respectfully,

**Noel Daniel**

Account Executive

Flycast Partners, Inc

Phone: 817 984 3369 Cell: 817 880 9065

Email: [noel.daniel@flycastpartners.com](mailto:noel.daniel@flycastpartners.com)

<http://www.flycastpartners.com>

## EXHIBIT 4

### EXHIBIT 1 – PRICING SHEET

#### Exhibit 1

Respondent's Name: **Fyecast Partners Inc**  
 Respondent's City and State: **Desoto, TX**

#### RFP 6321 - Pricing Sheet for Cherwell Service Manager and Implementation Services

*The respondent shall complete the following section, which directly corresponds to the specifications. The contractor shall not make changes to this format.*

##### Product Proposal Pricing (FOB DESTINATION):

Item #	ESTIMATED QTY.	UOM	Product Description	Description 2	Unit Price	Extended Price	Implementation Schedule (# of business days)
<b>SECTION A - SOFTWARE</b>							
1	12	EA	Service Manager License	Annual Subscription	\$ 108.00	\$ 1,296.00	
<b>SECTION B - REMOTE TRAINING</b>							
2	2	EA	Service Management Foundations		\$ 2,850.00	\$ 5,700.00	
<b>SECTION C - CONSULTING SERVICES, as described in Exhibit 3 - Scope of Work</b>							
3	45	EA	Implementation Services		\$ 1,650.00	\$ 74,250.00	45
<b>SECTION D - TRAVEL COST, as described in Exhibit 3 - Scope of Work</b>							
4	1	EA	Estimated Travel Expenses for implementation		\$ 2,460.00	6	39
Total Cost of Products and Labor: <b>\$ 83,706.00</b>							

**\*NOTE: PLEASE EMAIL THIS EXHIBIT 1 AS AN EXCEL FILE TO EBIDS@CITYOFDENTON.COM**

**\*NOTE:** The Extended Licenses price on column G8 is the **per month** price for 12 licenses. City Of Denton will need to multiply that price by 12 in order to arrive at the **Annual cost** (\$ 15,552) and multiply by 3 (subscription pricing based on a 3 year non-cancellable contract term) to determine the 3 year Total License Costs of \$ 46,656. Therefore the The Total Cost of Products and Labor is \$ 129,066 and NOT the figure listed in column G20.

## EXHIBIT 4

### SOLICITATION CHECKLIST

Check when Completed	Task to be Completed by Respondent
√	Exhibit 1 – Pricing sheet
√	Review Exhibit 2 – General Provisions and Terms and Conditions
√	Review Exhibit 3 – Scope of Work/Technical Specifications
N/A	Review Exhibit 4 – Technical Drawings and Plans (if applicable)
N/A	Submission of Exhibit 5 – FTP Site Form (if applicable)
N/A	Review Exhibit 6 – Federal Grant Requirements (if applicable)
√	Cover sheet
√	Solicitation number
√	Solicitation name
√	Firm name
√	Firm address
√	Contact name
√	Contact phone
√	Contact fax
√	Website address
√	Contact email address
√	Solicitation Checklist
√	Attachment A- Business Overview Questionnaire
√	Document how firm meets minimum qualifications (Section 3)
√	Detail to support evaluation criteria
√	Attachment B – Exception Form
N/A	Attachment C – Safety Record Questionnaire (if applicable)
√	Attachment D – Reference Form
√	Attachment E – Conflict of Interest Questionnaire Form – <b>with signature</b>
√	Attachment F - Acknowledgment
√	Acknowledgment of Addenda
√	Submission signed by authorized officer, in the order specified below
N/A	<b>Hard Copy Submission:</b> If submitting a hard copy, the City requires one (1) original and three (3) copies, with the pricing sheet submitted electronically <b>in excel</b> or emailed <b>in excel</b> to <a href="mailto:Ebids@cityofdenton.com">Ebids@cityofdenton.com</a> with the Solicitation # and name in the subject line.
√	<b>Electronic Submission:</b> If submitting an electronic proposal only, email to <a href="mailto:Ebids@cityofdenton.com">Ebids@cityofdenton.com</a> with the Solicitation # and name in the subject line. The pricing sheet (Exhibit 1) must be <b>in excel</b> format.

## EXHIBIT 4

### ATTACHMENT A-BUSINESS OVERVIEW QUESTIONNAIRE AND FORMS

1. Contract Information (for formal contracting purposes):

*The following information will be used to write a contract, should your firm be selected for award.*

- Firm's Legal Name: **Flycast Partners, Inc.**
- Address: **329 S Elerson Rd, DeSoto TX 75115**
- Agent Authorized to sign contract (Name): **Kim Gagnon, Director of Operations**
- Agent's email address: **[kim.gagnon@flycastpartners.com](mailto:kim.gagnon@flycastpartners.com)**

2. Subsidiary of: **N/A**

3. Organization Class (circle):

Partnership

**Corporation**

Individual

Association

4. Tax Payer ID#: **45-0664423**

5. Date Established: **Mar 15, 2011**

6. Historically Underutilized Business: Yes or **No**

7. Does your company have an established physical presence in the State of Texas, or the City of Denton? **Yes** or No, in which? **State of Texas**

8. Please provide a detailed listing of all products and/or services that your company provides.

- a. **IT Service Management Software & Services**
- b. **IT Asset Management Software & Services**
- c. **Enterprise Service Management (Process Assessment/Engineering/Best practice)**
- d. **ITIL Education & Simulations**

9. Has your company filed or been named in any litigation involving your company and the Owner on a contract within the last five years under your current company name or any other company name? If so provide details of the issues and resolution if available. Include lawsuits where Owner was involved. (Notice: Failure to disclose this information during proposal submission, and later discovered, may result in contract termination at the Owner's option.)

**Flycast Partners has no pending litigation and no pending material legal claims against our company.**

10. Have you ever defaulted on or failed to complete a contract under your current company name or any other company name? If so, where and why? Give name and telephone number of Owner.

**No**

11. Have you ever had a contract terminated by the Owner? If so, where and why? Give name and telephone number (s) of Owner (s).

**No, 100% success on implementations**

12. Has your company implemented an Employee Health and Safety Program compliant with 29 CFR 1910 “General Industry Standards” and/or 29 CFR 1926 “General Construction Standards” as they apply to your Company’s customary activities?

## EXHIBIT 4

[http://www.osha.gov/pls/oshaweb/owasrch.search\\_form?p\\_doc\\_type=STANDARDS&p\\_toc\\_level=1&p\\_keyvalue=1926](http://www.osha.gov/pls/oshaweb/owasrch.search_form?p_doc_type=STANDARDS&p_toc_level=1&p_keyvalue=1926)

NA

13. Resident/Non-Resident Bidder Determination:

Texas Government Code Section 2252.002: Non-resident bidders. Texas law prohibits cities and other governmental units from awarding contracts to a non-resident firm unless the amount of such a bid is lower than the lowest bid by a Texas resident by the amount the Texas resident would be required to underbid in the non-resident bidders' state. In order to make this determination, please provide the name, address and phone number of:

- a. Responding firms principle place of business:

**329 S Elerson Rd, DeSoto TX 75115**

- b. Company's majority owner principle place of business:

**329 S Elerson Rd, DeSoto TX 75115**

- c. Ultimate Parent Company's principle place of business:

NA

14. Identify all travel costs associated with onsite implementation work including, but not limited to, the following expenses: transportation, lodging, meals, and sundries.

Listed below is estimated travel expenses for a contiguous 3 day onsite engagement. As per the attached sow, two such trips are required for the planning activities.

**Air Fair - \$450**

**Hotel- \$405 @ \$135 per night**

**Car- \$100**

**Per Diem- \$175**

**Airport Parking- \$70**

**Gas- \$30**

**Total- \$1230 x 2 trips = \$2460 for two 3 day engagements**

15. **Provide details to support the evaluation criteria, including experience and delivery.**

Flycast Partners provide best-of-value ITSM solutions. As a Cherwell Preferred Partner operating in North America and Canada, we deliver innovative, cost-effective solutions to solve today's IT Service Management challenges. The combined expertise and experience of our highly trained professionals deliver and support ITSM solutions based on industry standards and best-practices. Our comprehensive solutions portfolio includes products from the leading ITSM vendors with deployment options ranging from conventional on-premises implementation to our unique on Premise and Managed-SaaS offerings.

As premier suppliers of on-premise and cloud technologies we deliver sustainable change at the right time and at the right cost. While solution providers have come and gone or have changed their way of doing business, we have maintained our customer-focused values despite continuous shifts in technology in the marketplace. Flycast Partners provides a range of services designed to help organizations irrespective of where they are in their ITSM improvement initiative. We are committed to providing services that balance the people, process and technology perspectives unique to every organization.

## EXHIBIT 4

Flycast Partners works with organizations to identify, implement and continuously improve their delivery of IT Service Management services which increases their return on investment. We align our goals with yours to help you meet and exceed your business objectives.

Flycast Pastners has over 50 employees with an average of approximately 10+ years in the ITSM industry. We are 100% focused on the Service and Support Industry representing best-of-breed IT service management solutions based on specific customer requirements utilizing Cherwell, Easy Vista, BMC FootPrints, BMC RemedyForce, TrackIt!, and Service Desk Express.

Flycast Partners has approximately 250 customers, of which approximately 50 utilize the Cherwell Service Management platform. In 2013, 2014 and 2015, Flycast Partners was named Cherwell Software's #1 partner in North America in terms of sales and delivery. Flycast Partners is a partner in good standing with Cherwell Software and maintains relationships at the corporate, delivery, and field sales organizational levels.

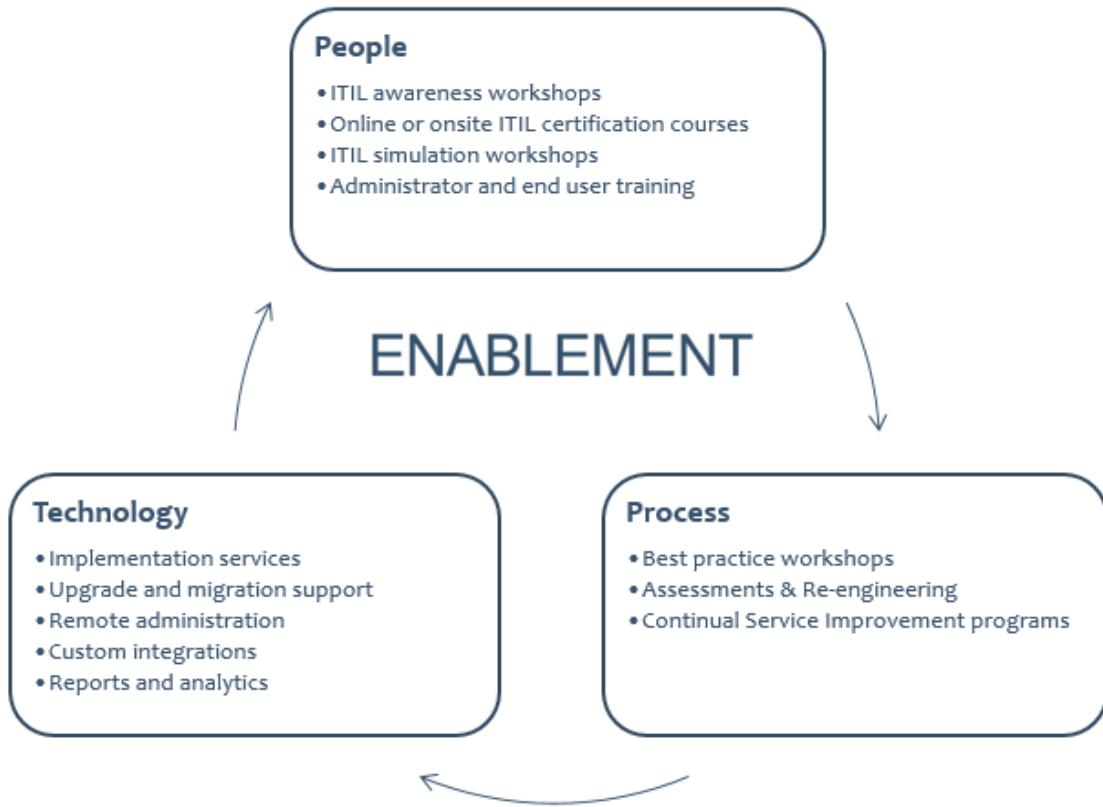
Flycast Partners look forward to including The City of Denton to the representative list of our other Cherwell customers; **NASCAR, Epicor Software, Shasta County, CA, Bank of the West, Virgin America, Innova Systems, Vantage Data Centers, Webster University, D R Horton, Rust-Oleum, Lincoln Electric Systems, Lumenate, St. Luke Health Systems, American Heart Association, Menninger Clinic, Trinity River Energy, Loan Depot, Inalfa Roof Systems, Alliance Healthcare Services, MOGAS, Fortna.**

### **FLYCAST PARTNERS' PROJECT METHODOLOGY & STATEMENT OF WORK**

Many ITSM improvement programs fail when employees struggle to apply a best practice theory to daily work activities and new processes. Getting a technology or compliance program ready for go-live is only half the challenge - and it's generally the easy half. Make no mistake; the transition to ITSM for most IT organizations takes time. It's a significant journey that requires not only the adoption of new processes and the technologies to support them, but also behavioral changes in IT staff.

To ensure a more successful ITSM implementation, our Enablement Methodology includes an incremental, people-oriented approach that provides a solid road on which to make the journey. This road, grounded on ITIL principles and built on best in class solutions, offers a structure that guides IT staff in the right direction, facilitating the desired behavioral changes required to meet your ITSM requirements.

## EXHIBIT 4



The specific blend of activities from our enablement approach can be tailored to each customer's requirement and is governed by timeframe/urgency; organizational maturity; in-house technical skill set and budget.

Flycast Partners employs a team of trainers, consultants and account managers who have many years combined experience of delivering successful service management solutions. This team utilizes Flycast's implementation model to ensure we follow best practices for successful solution delivery:

Flycast Partner's Client Services team is entirely centered on providing best practices in Cherwell solution delivery and aftercare including:

- Project Engagement/Management Team
- Implementation Consultancy
- Customization and Integration Services
- Education and Training
- Software Support/Remote Administration Services

Flycast cannot know the schedules and availability of specific consulting resources at the time of engagement until time of contract award with City of Denton. Upon award of the project, Flycast Partners will assign a Senior Consultant and Project Manager. For your reference, we have provided a bio of a typical Cherwell consultant.

## EXHIBIT 4



### **Consultant Bio for** **John Gross**

#### **PROFESSIONAL EXPERIENCE**

ITSM Solutions Consultant  
Flycast Partners, McKinney, Texas

A Consultant with over 20 years of extensive experience in IT Service Management Professional Services, Educations Services and Support Services. Responsible for the entire gamut of the product life cycle including Pre-Sales, Design Workshops, Implementations, Training and on-going customer support of vast customizations and best practices. Using standard and customized ITSM ITIL framework and years of experience to accommodate a wide variety of public and private customers in the Americas, EMEA and APAC.

- Design Workshops and ITSM Consulting
- Educations Services to both Customers and Principle Partner Boot Camp Instructor
- Complete Implementation Management, including Project Management
- Wrote complete Educational Manuals for 3 versions BMC SDE for each module of the application suite
- Implemented a wide variety of Integrations, using Integration tools as well as MSSQL DTS (pre- 2008) and SQL Integration Services
- Custom Report writing expert in both Crystal Reports and MSSQL
- Delivered services in English, German and Spanish
- Additional conversational skills in Russian and intermediate skills in French and Dutch

#### **EDUCATION**

Baylor University	Foreign Service and German	1986
University of Salzburg, Austria	Certificate in Linguistics and Language (English and German)	1989

#### **PROFESSIONAL DEVELOPMENT**

Cherwell	CSM Foundation	2013
Cherwell	CSM Basic Design	2013
Cherwell	Technical Implementer	2013
Hornbill	Supportworks Engineer	2012
BMC Software	Remedy AR System 7 Admin Part II Trainer	2009
BMC Software	SDE (formerly Magic) inclusive ITSM with CMDB	2005
BMC Software	Crystal Reports Designer	2000
BMC Software	Remedy AR System 7 Admin Part II Trainer	2009
Network Associates	Magic – 4.5 – 8.0 (afterwards SDE)	2000

## EXHIBIT 4

### CERTIFICATIONS

ITPreneurs	ITIL Foundation v3	2013
Cherwell	Cherwell Certified Consultant	2013
Cherwell	Accredited Cherwell Trainer	2013
BMC Software	ITIL Foundation v1	2004
BMC Software	Certified BMC Service Desk Express Consultant (formerly Magic)	2000 – 2013
BMC Software	Certified BMC SDE Educational Services Consultant (formerly Magic)	2000 – 2013
BMC Software	Accredited Foot Prints Asset Core Consultant	2013
Hornbill	Certified Supportworks Consultant	2012
McAfee	Certified McAfee Help Desk Instructor	1993

### KEY TECHNICAL SKILLS

SQL 6.5 - 2012  
IIS Configuration, including Web Sites and SMTP Settings  
Web Services Publishing and Consuming  
Windows Servers Configurations  
Windows Workstations Configurations  
Standard Client/Server Browser Applications Configurations  
Data Manipulation in MS Access and Excel

### RECENT PROJECTS

#### **Virtual Instruments**

Completed a project for 4 distinct Service Desks within Cherwell. Designed a solution to support Corporate, Engineers, HR, and Facilities. Each Service Desk maintains their own Service Catalog and Customer base. Also designed integrations with Solar Winds, SCCM and Active Directory.

#### **GameStop**

Project is in progress and requires support for Corporate, Manufacturing and Retail Store Support. Project will include a Configuration Management Database with several interfaces for discovery and automation. Key integrations include SCCM, VMWare Orchestrator, Active Directory, and Bomgar for Chat and Remote Control.

#### **Tarrant County Community College**

Implemented Cherwell Service Management to support Staff and Faculty. Delivered ITSM Design Workshops and completed Design Documentation. Implemented Phase I Processes of Incident, Problem, Service Request Management, Change Management and Service Catalog. Phase II will include Asset and Configuration Management which is in progress.

#### **Dallas, Texas; Hong Kong; Tel Aviv, Israel; Sao Paolo, Brazil, Berlin, Germany, London, UK 2005 - 2012**

Delivered Partner Boot Camps for BMC Software Service Desk Express versions 8 – 10.2 (last SDE Version). Wrote all documentation for the training from version 9.x to 10.x. The Boot Camps were primarily delivered in English but help and some overviews were also provided in German and Spanish.

#### **US Navy, (NCDOC – Navy Cyber Defense Operations Command, Norfolk, VA) 2012**

Implemented BMC Service Desk Express in the NIPR environment over a 6 month period with on-site escort. This included Incident, Change, Problem, Purchase Requests and CMDB management. Created several integrations to CMDB systems and provided training on all modules to be implemented in SIPR by Navy personnel. Created and delivered a variety of custom Crystal Reports.

## EXHIBIT 4

### **National Academy of Sciences (Washington, D.C.) 2011 - present**

Implemented SDE for the IT Department and HR Department, including a variety of integrations and web services applications. The implementation included Incident and Change Management. Continue to provide on-going as-needed application support for an end-of-life product. Created and delivered a variety of custom Crystal Reports.

### **City of Garland (Texas) 2000 - present**

Implemented and customized Magic and then its predecessor Service Desk Express. The application is used by the IT Department of the City of Garland, Facilities, HR, Fire and Police Departments and the city Library system. All modules of SDE were implemented, including Incident, Change, Problem, Work Order, Configuration Management and Purchasing. Created many custom reports as well as a functions and triggers to manage the reporting requirements. Continue to provide on-going as-needed application support for an end-of-life product.

### **NATO Warfare Division (Stavanger, Norway) 2010**

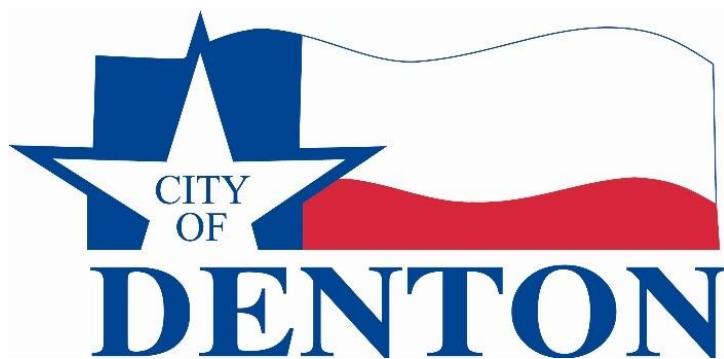
Provided BMC SDE Administrator version 9.x training to EMEA staff, both military and civilian, at the Stavanger, Norway IT center.

### **Renaissance Reinsurance (RenRe) (Bermuda and London) 2009 - present**

Implemented BMC SDE for Incident, Change and Configuration Management for Global Service Desk. Implementation included best practices as well as ITIL requirements and SOX compliance rules and processes. RenRe eventually implemented Hornbill's Supportworks, on which I also became certified and configured the system for go-live and post go-live. Continue to provide services for Supportworks for the London, Dublin and the Bermuda IT centers.

**Statement of Work**  
Cherwell Services

Prepared for  
City of Denton



## EXHIBIT 4

### Purpose

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The following agreement by and between Flycast Partners (“Flycast” or “Consultant”) and City of Denton (“Customer”) is a Statement of Work (“SOW”) detailing the engagement requested by the Customer to integrate and effectively utilize the Cherwell Software solution (“Software” or “Services”) into the Customer’s business model.

### Executive Summary

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This Statement of Work proposes services for the Customer on the Cherwell product(s). The services include the planning and implementation of the following services/processes:

- *Incident and Service Request (Service Desk)*
- *Problem Management*
- *Change Management*
- *Self Service Portal*
- *Knowledge Management*
- *Surveys*
- *SCCM & Cisco Call Manager Integration*
- *UAT*
- *Go Live Support*

Flycast services are designed to advise and train the IT Service Management (“ITSM”) Project Team, and Cherwell Administrator(s) on the best practices for their Cherwell solution. The Senior Consultant will review current and future ITSM process(s) and suggest how to best architect and automate the solution.

## EXHIBIT 4

### Overview

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Service Description	Element	Days	Sub Totals
<b>Core Components</b>			
<b>Core Component Setup - SaaS</b> <span style="float: right;">1.00</span>			
SaaS – Staging & Component Provisioning	Provisioning	1.00	
<b>Security Model</b> <span style="float: right;">1.00</span>			
Security Model Design Workshop	Design Workshop	0.50	
Security Model Design Limited Configuration	Configuration	0.50	
<b>Major Processes</b>			
<b>Self-Service &amp; Service Catalog</b> <span style="float: right;">5.00</span>			
Self-Service Portal Design Workshop	Design Workshop	0.50	
Self-Service Portal Configuration	Configuration	2.00	
Service Catalog Design Workshop	Design Workshop	0.50	
Service Catalog Configuration	Configuration	2.00	
<b>Incident Management and Service Request (Service Desk)</b> <span style="float: right;">7.50</span>			
Service Desk Design	Design Workshop	1.00	
Service Desk Documentation	Design Documentation	0.50	
Service Desk Configuration	Configuration	5.00	
Go-Live Support	UAT Assistance	1.00	
<b>Problem Management</b> <span style="float: right;">3.00</span>			
Problem Management Design	Design Workshop	0.50	
Problem Management Configuration	Configuration	2.00	
Go-Live Support	UAT Assistance	0.50	
<b>Change Management</b> <span style="float: right;">7.50</span>			
Change Management Design	Design Workshop	1.00	
Change Management Documentation	Design Documentation	0.50	
Change Management Configuration	Configuration	5.00	
Go-Live Support	Go-Live Support	1.00	

## EXHIBIT 4

<b>Service Asset &amp; Configuration Management</b>			<b>6.00</b>
SA & CM Design	Design Workshop	1.00	
SA & CM Documentation	Design Documentation	0.50	
SA & CM Configuration	Configuration	4.00	
Go-Live Support	Go-Live Support	0.50	
<b>Knowledge Management</b>			<b>2.00</b>
Knowledge Management Design	Design Workshop	0.50	
Knowledge Management Configuration	Configuration	1.50	
<b>Customer Satisfaction Survey Management</b>			<b>2.00</b>
Survey Design	Design Workshop	0.50	
Survey Configuration	Configuration	1.50	
<b>Mobile Optimization</b>			<b>1.00</b>
Mobile Planning	Design Workshop	0.25	
Mobile Configuration	Configuration	0.75	
<b>Cherwell Consulting</b>			
<b>Cherwell Consultant Assistance</b>			<b>1.00</b>
UAT Workshop	UAT Assistance	1.00	
<b>Integrations</b>			
<b>Standard Integrations</b>			<b>3.00</b>
SCCM Asset Inventory Assistance	Design & Configuration	2.00	
Cisco Call Manager Screen Pop	Design & Configuration	1.00	
<b>Project Management</b>			
<b>Project Management</b>			<b>5.00</b>
Flycast Project Management	Project Management	5.00	
<b>Total Days:</b>			<b>45.00</b>
<ul style="list-style-type: none"> <li>• The summary listed in the matrix above is intended only to identify what elements will be delivered, not the delivery order. Actual scheduling will be handled by the Customer's Engagement Manager once all required paperwork has been completed.</li> <li>• Data Migration is not included in this estimate. If data migration is required Flycast will setup a separate scoping call to evaluate the requirements.</li> </ul>			

## EXHIBIT 4

### Engagement Detail

<b>SaaS – Staging &amp; Component Provisioning (1-Instance)</b>	
Project Phase: Implementation Assistance	Work Effort: 1-Day(s)
<u>Delivery Synopsis:</u> The purpose of this session is assist the Customer with the staging of their Cherwell Service Management Solution. If the Customer required additional environments to be configured additional time will be required, please contact the Engagement Manager if another instance is needed.	
<u>Delivery Activities:</u> <ul style="list-style-type: none"><li>• Install Cherwell Service Management®<ul style="list-style-type: none"><li>◦ Configure Cherwell software services</li><li>◦ Configure Cherwell Auto-deploy</li><li>◦ Test Cherwell software installation</li></ul></li><li>• Setup and configure Email and Event Monitor<ul style="list-style-type: none"><li>◦ Setup connectivity to POP3 email server and SMTP server.</li><li>◦ Configure Event Monitor to receive incoming e-mail to create, update, and close Incidents.</li><li>◦ Email notification of assignment to relevant group or technician.</li></ul></li><li>• Setup and configure Active Directory<ul style="list-style-type: none"><li>◦ Configure integration with LDAP to load employee/customer table.</li><li>◦ Configure Cherwell Users (Technicians) logins for single sign-on.</li></ul></li><li>• Setup and configure Scheduler<ul style="list-style-type: none"><li>◦ Configure scheduler for scheduled process.</li></ul></li><li>• Setup and configure Auto Deploy<ul style="list-style-type: none"><li>◦ Configure Auto Deploy to install client software.</li></ul></li></ul>	
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): Systems Administrator, applicable technical resources for platform/application
<u>Customer Responsibility</u>	<ul style="list-style-type: none"><li>▪ Coordinate internal Customer resources and logistics for scheduled activities as needed</li><li>▪ Ensure that internal Customer resources assist with the installation of the Cherwell Service Management application as needed</li><li>▪ Plan, manage and execute all internal communications with internal Customer resources</li></ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"><li>▪ Flycast will work with the Customer to stage and provision the Cherwell Service Management product from a SaaS platform. A fully staged CSM application is the deliverable for this session.</li></ul>
<b>Security Model</b>	
Project Phase: Plan	Work Effort: 0.5-Day(s)
<u>Delivery Synopsis:</u> The purpose for this session is for Flycast to conduct an interactive, onsite Security Model design workshop with the Customer's Process Owners to review their desired business requirements. Emphasis will be placed on transferring knowledge to customer staff related to best practices in designing and configuring Cherwell to meet their current and on-going requirements.	
<u>Delivery Activities:</u> <ul style="list-style-type: none"><li>• Review Customer's documented process</li><li>• Forms, fields, logic, validation rules for any forms to be implemented</li><li>• Determine design to be used in Cherwell</li><li>• Determine what will be performed by Flycast and what will be performed by Customer</li></ul>	
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator

## EXHIBIT 4

<b>SaaS – Staging &amp; Component Provisioning (1-Instance)</b>	
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Provide approved Business Requirement documentation that details the Customer's Security Model process. These documents can include current policies, processes and work instruction related to the Security Model process requirements.</li> <li>▪ Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for scheduled activities as needed</li> <li>▪ Ensure that engagement sponsor(s), stakeholder(s), and other internal Customer resources attend the Security Model Design Workshop session(s)</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer during the Design workshop. The Customer is responsible to complete the documentation of the Design workshop.</li> </ul>
<b>Incident Management and Request Fulfillment</b>	
Project Phase: Plan	Work Effort: 1-Day(s)
<p><u>Delivery Synopsis:</u></p> <p>The purpose for this session is for Flycast to conduct an interactive, onsite design workshop with the Customer's Process Owners to review their desired workflows, and business processes to determine a feasible design for CSM that meets the Customer's business requirements. Emphasis will be placed on transferring knowledge to customer staff related to best practices in designing and configuring Cherwell to meet their current and on-going requirements.</p>	
<p><u>Delivery Activities:</u></p> <ul style="list-style-type: none"> <li>• Review out-of-the-box (OOTB) – discuss gaps between OOTB and desired functionality</li> <li>• Review Customer's documented process(s)</li> <li>• Forms, fields, logic, validation rules for any forms to be implemented</li> <li>• Services, categories, sub-categories</li> <li>• Status codes and descriptions</li> <li>• SLAs or Service Level Targets</li> <li>• Determine design to be used in Cherwell</li> <li>• Determine what will be performed by Flycast and what will be performed by Customer</li> </ul>	
<u>Required Resources</u>	<p>Flycast Resource(s): Senior Consultant</p> <p>Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator</p>
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Provide approved Business Requirement documentation that details the Customer's Incident Management and Request Fulfillment process. These documents can include current policies, processes and work instruction related to the Customer's Incident Management and Request Fulfillment process requirements.</li> <li>▪ Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for scheduled activities as needed</li> <li>▪ Ensure that engagement sponsor(s), stakeholder(s), and other internal Customer resources attend the Incident Management and Request Fulfillment Design Workshop session(s)</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer to begin the Planning Workbook based on the feedback and recommendations of the Planning session. The Planning Workbook is the responsibility of the customer to complete, the Customer must obtain the appropriate approvals and will own the document moving forward</li> </ul>
<b>Problem Management</b>	
Project Phase: Plan	Work Effort: 0.5-Day(s)
<p><u>Delivery Synopsis:</u></p> <p>The purpose for this session is for Flycast to conduct an interactive, onsite Problem Management design workshop with the Customer's Process Owners to review their desired workflows, and business processes to determine a feasible design for CSM that meets the Customer's business requirements. Emphasis will be placed on transferring knowledge to customer staff related to best practices in designing and configuring Cherwell to meet their current and on-going requirements.</p>	
<p><u>Delivery Activities:</u></p> <ul style="list-style-type: none"> <li>• Review OOTB – discuss gaps between OOTB and desired functionality</li> <li>• Review Customer's documented process(s)</li> </ul>	

## EXHIBIT 4

<b>SaaS – Staging &amp; Component Provisioning (1-Instance)</b>	
<ul style="list-style-type: none"> <li>Forms, fields, logic, validation rules for any forms to be implemented</li> <li>Determine design to be used in Cherwell</li> <li>Determine what will be performed by Flycast and what will be performed by Customer</li> </ul>	
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>Provide approved Business Requirement documentation that details the Customer's Problem Management process. These documents can include current policies, processes and work instruction related to the Customer's Problem Management process requirements.</li> <li>Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for scheduled activities as needed</li> <li>Ensure that engagement sponsor(s), stakeholder(s), and other internal Customer resources attend the Problem Management Design Workshop session(s)</li> <li>Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>Flycast will work with the Customer to begin the Planning Workbook based on the feedback and recommendations of the Planning session. The Planning Workbook is the responsibility of the customer to complete, the Customer must obtain the appropriate approvals and will own the document moving forward</li> </ul>
<b>Change Management</b>	
Project Phase: Plan	Work Effort: 1-Day(s)
<u>Delivery Synopsis:</u> <p>The purpose for this session is for Flycast to conduct an interactive, onsite Change Management design workshop with the Customer's Process Owners to review their desired workflows, and business processes to determine a feasible design for CSM that meets the Customer's business requirements. Emphasis will be placed on transferring knowledge to customer staff related to best practices in designing and configuring Cherwell to meet their current and on-going requirements.</p>	
<u>Delivery Activities:</u> <ul style="list-style-type: none"> <li>Review OOTB – discuss gaps between OOTB and desired functionality</li> <li>Review Customer's documented process(s)</li> <li>Forms, fields, logic, validation rules for any forms to be implemented</li> <li>Review approval process(s)</li> <li>Review impact assessment</li> <li>Determine design to be used in Cherwell</li> <li>Determine what will be performed by Flycast and what will be performed by Customer</li> </ul>	
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>Provide approved Business Requirement documentation that details the Customer's Change Management process. These documents can include current policies, processes and work instruction related to the Customer's Change Management process requirements.</li> <li>Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for scheduled activities as needed</li> <li>Ensure that engagement sponsor(s), stakeholder(s), and other internal Customer resources attend the Change Management Design Workshop session(s)</li> <li>Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>Flycast will work with the Customer to begin the Planning Workbook based on the feedback and recommendations of the Planning session. The Planning Workbook is the responsibility of the customer to complete, the Customer must obtain the appropriate approvals and will own the document moving forward</li> </ul>
<b>Service Asset and Configuration Management (CMDB)</b>	
Project Phase: Design Workshop	Work Effort: 1-Day(s)

## EXHIBIT 4

### SaaS – Staging & Component Provisioning (1-Instance)

#### Delivery Synopsis:

The purpose for this session is for Flycast to conduct an interactive, onsite Service Asset and CMDB design workshop with the Customer's Process Owners to review their desired workflows, and business processes to determine a feasible design for CSM that meets the Customer's business requirements. Emphasis will be placed on transferring knowledge to customer staff related to best practices in designing and configuring Cherwell to meet their current and on-going requirements.

#### Delivery Activities:

- Review OOTB – discuss gaps between OOTB and desired functionality
- Forms, fields, logic, validation rules for any forms to be implemented
- Determine where data is located in existing systems and how it will be accessed for import or linking into CSM
- Determine data mapping between existing systems and CSM
- CI types
- CI attributes
- Determine design to be used in Cherwell
- Determine what will be performed by Flycast and what will be performed by Customer

<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator
<u>Customer Responsibility</u>	<ul style="list-style-type: none"><li>▪ Provide approved Business Requirement documentation that details the Customer's Service Asset and Configuration Management (CMDB) process. These documents can include current policies, processes and work instruction related to the Customer's Service Asset and Configuration Management (CMDB) process requirements.</li><li>▪ Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for scheduled activities as needed</li><li>▪ Ensure that engagement sponsor(s), stakeholder(s), and other internal Customer resources attend the Service Asset and Configuration Management (CMDB) Design Workshop session(s)</li><li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li></ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"><li>▪ Flycast will work with the Customer during the Design workshop. The Customer is responsible to complete the documentation of the Design workshop.</li></ul>

### Self-Service Portal & Service Catalog (Internal)

Project Phase: Plan

Work Effort: 1-Day(s)

#### Delivery Synopsis:

The purpose for this session is for Flycast to conduct an interactive, onsite Self-Service Portal & Service Catalog design workshop with the Customer's Process Owners to review their desired workflows, and business processes to determine a feasible design for CSM that meets the Customer's business requirements. Emphasis will be placed on transferring knowledge to customer staff related to best practices in designing and configuring Cherwell to meet their current and on-going requirements.

#### Delivery Activities:

- Review OOTB – discuss gaps between OOTB and desired functionality
- Review Customer's documented process
- Forms, fields, logic, validation rules for any forms to be implemented
- Review link functionality for password reset.
- Determine design to be used in Cherwell
- Determine what will be performed by Flycast and what will be performed by Customer

<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator
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## EXHIBIT 4

<b>SaaS – Staging &amp; Component Provisioning (1-Instance)</b>	
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Provide approved Business Requirement documentation that details the Customer's Self-Service Portal &amp; Service Catalog processes. These documents can include current policies, processes and work instruction related to the Self-Service Portal process requirements.</li> <li>▪ Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for scheduled activities as needed</li> <li>▪ Ensure that engagement sponsor(s), stakeholder(s), and other internal Customer resources attend the Self-Service Portal Design Workshop session(s)</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer during the Design workshop. The Customer is responsible to complete the documentation of the Design workshop.</li> </ul>
<b>Knowledge Management</b>	
Project Phase: Design Workshop	Work Effort: 0.5-Day(s)
<p><u>Delivery Synopsis:</u></p> <p>The purpose for this session is for Flycast to conduct an interactive, onsite Knowledge Management design workshop with the Customer's Process Owners to review their desired business requirements. Emphasis will be placed on transferring knowledge to customer staff related to best practices in designing and configuring Cherwell to meet their current and on-going requirements.</p>	
<p><u>Delivery Activities:</u></p> <ul style="list-style-type: none"> <li>• Review OOTB – discuss gaps between OOTB and desired functionality</li> <li>• Review existing knowledge sources and how they will be used with CSM</li> <li>• Review Customer's documented process</li> <li>• Determine design to be used in Cherwell</li> <li>• Determine what will be performed by Flycast and what will be performed by Customer</li> </ul>	
<u>Required Resources</u>	<p>Flycast Resource(s): Senior Consultant  Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator</p>
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Provide approved Business Requirement documentation that details the Customer's Knowledge Management process. These documents can include current policies, processes and work instruction related to the Knowledge Management process requirements.</li> <li>▪ Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for scheduled activities as needed</li> <li>▪ Ensure that engagement sponsor(s), stakeholder(s), and other internal Customer resources attend the Knowledge Management Design Workshop session(s)</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer during the Design workshop. The Customer is responsible to complete the documentation of the Design workshop.</li> </ul>
<b>Customer Satisfaction Survey</b>	
Project Phase: Design Workshop	Work Effort: 0.5-Day(s)
<p><u>Delivery Synopsis:</u></p> <p>The purpose for this session is for Flycast to conduct an interactive, onsite Customer Satisfaction Survey design workshop with the Customer's Process Owners to review their desired business requirements. Emphasis will be placed on transferring knowledge to customer staff related to best practices in designing and configuring Cherwell to meet their current and on-going requirements.</p>	
<p><u>Delivery Activities:</u></p> <ul style="list-style-type: none"> <li>• Review OOTB – discuss gaps between OOTB and desired functionality</li> <li>• Review existing survey(s)/questions if any</li> <li>• Review Customer's documented process for how to process surveys</li> <li>• Determine design to be used in Cherwell</li> <li>• Determine what will be performed by Flycast and what will be performed by Customer</li> </ul>	

## EXHIBIT 4

<b>SaaS – Staging &amp; Component Provisioning (1-Instance)</b>	
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Provide approved Business Requirement documentation that details the Customer's Customer Satisfaction Survey process. These documents can include current policies, processes and work instruction related to the Customer Satisfaction Survey process requirements.</li> <li>▪ Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for scheduled activities as needed</li> <li>▪ Ensure that engagement sponsor(s), stakeholder(s), and other internal Customer resources attend the Customer Satisfaction Survey Design Workshop session(s)</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<i>▪ Flycast will work with the Customer during the Design workshop. The Customer is responsible to complete the documentation of the Design workshop.</i>
<b>System Level “Echo Back” Documentation</b>	
Project Phase: Documentation	Work Effort: 1.5-Day(s)
<u>Delivery Synopsis:</u>	The purpose of this session is to document the System level configuration that has been proposed in the prior Design Workshops. This documentation will be in Word format. Flycast will provide this information to the Customer, the Customer is responsible for owning and maintaining this documentation once it has been completed.
<u>Delivery Activities:</u>	<ul style="list-style-type: none"> <li>• Review and document the results of the prior Design Workshops and provide an output “Echo Back” documentation (in word format) that will be used for the remaining configuration and implementation engagements.</li> </ul>
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): Systems Administrator
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for activities as needed</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	Flycast will produce an “Echo Back” word document as described above.
<b>Security model</b>	
Project Phase: Implementation Assistance	Work Effort: 0.5-Day(s)
<u>Delivery Synopsis:</u>	The purpose for this session is for Flycast to perform implementation assistance of basic out-of-the-box (“OOTB”) Cherwell Service Management functionality. Flycast will make as many configuration changes to meet the Customer's processes requirements as are possible within the time scoped for this session. The Flycast consultant will provide guidance to ensure that any design or configuration requests from the customer are feasible and can be accomplished within the amount of time scoped.
<u>Delivery Activities:</u>	<ul style="list-style-type: none"> <li>• Design and configure security settings.</li> <li>• Coach Customer on configuration and maintenance of security settings including users, roles, teams, and security groups as identified in the design workshop.</li> </ul>
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Review the configured functionality to ensure that it meets the Customers expectation</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<i>▪ Flycast will work with the Customer to review the implemented functionality. This is a Time and Material engagement, Flycast will configure as much of the functionality as time allows.</i>

## EXHIBIT 4

<b>SaaS – Staging &amp; Component Provisioning (1-Instance)</b>		
<b>Incident Management and Request Fulfillment</b>		
Project Phase: Implementation Assistance		Work Effort: 5-Day(s)
<p><u>Delivery Synopsis:</u></p> <p>The purpose for this session is for Flycast to perform implementation assistance of basic out-of-the-box (“OOTB”) Cherwell Service Management functionality. Flycast will make as many configuration changes to meet the Customer’s processes requirements as are possible within the time scoped for this session. The Flycast consultant will provide guidance to ensure that any design or configuration requests from the customer are feasible and can be accomplished within the amount of time scoped.</p>		
<p><u>Delivery Activities:</u></p> <ul style="list-style-type: none"> <li>• Implement basic out-of-the-box Incident Management and Request Fulfillment with minor modifications to support design developed in the design workshop.</li> <li>• Implement basic SLAs in support of Incident Management and Request Fulfillment.</li> </ul>		
<u>Required Resources</u>	<p>Flycast Resource(s): Senior Consultant</p> <p>Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator</p>	
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Provide the required data needed to populate the applicable tables, forms, emails, etc. needed to configure the process. The Customer must also be available to provide input and make decisions on processes and layouts.</li> <li>▪ Coordinate the user acceptance testing team and other internal resources and logistics for testing the configured Incident Management &amp; Request Fulfillment workflow processes.</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>	
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer to configure the process. This is a Time and Material engagement, Flycast will configure as much of the process as time allows. The configuration will be based on the Design Workshop planning session which is the responsibility of the customer to approve and finalize.</li> <li>▪ Flycast will Coach the Customer’s Administration team, as time permits, in how to best configure Cherwell Service Management specific to this session’s processes.</li> <li>▪ Flycast is not responsible for data modification, cleansing, or alteration before, during, or after any applicable data being imported.</li> </ul>	
<b>Problem Management</b>		
Project Phase: Implementation Assistance		Work Effort: 2-Day(s)
<p><u>Delivery Synopsis:</u></p> <p>The purpose for this session is for Flycast to perform implementation assistance of basic out-of-the-box (“OOTB”) Cherwell Service Management functionality. Flycast will make as many configuration changes to meet the Customer’s processes requirements as are possible within the time scoped for this session. The Flycast consultant will provide guidance to ensure that any design or configuration requests from the customer are feasible and can be accomplished within the amount of time scoped.</p>		
<p><u>Delivery Activities:</u></p> <ul style="list-style-type: none"> <li>• Implement basic out-of-the-box Problem Management with minor modifications to support design developed in the design workshop.</li> <li>• Implement basic SLAs in support of Problem Management.</li> </ul>		
<u>Required Resources</u>	<p>Flycast Resource(s): Senior Consultant</p> <p>Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator</p>	
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Provide the required data needed to populate the applicable tables, forms, emails, etc. needed to configure the process. The Customer must also be available to provide input and make decisions on processes and layouts.</li> <li>▪ Coordinate the user acceptance testing team and other internal resources and logistics for testing the configured Problem Management workflow process.</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>	

## EXHIBIT 4

<b>SaaS – Staging &amp; Component Provisioning (1-Instance)</b>	
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer to configure the process. This is a Time and Material engagement, Flycast will configure as much of the process as time allows. The configuration will be based on the Design Workshop planning session which is the responsibility of the customer to approve and finalize.</li> <li>▪ Flycast will Coach the Customer's Administration team, as time permits, in how to best configure Cherwell Service Management specific to this session's processes.</li> <li>▪ Flycast is not responsible for data modification, cleansing, or alteration before, during, or after any applicable data being imported.</li> </ul>
<b>Change Management</b>	
Project Phase: Implementation Assistance	Work Effort: 5-Day(s)
<u>Delivery Synopsis:</u>	
<p>The purpose for this session is for Flycast to perform implementation assistance of basic out-of-the-box ("OOTB") Cherwell Service Management functionality. Flycast will make as many configuration changes to meet the Customer's processes requirements as are possible within the time scoped for this session. The Flycast consultant will provide guidance to ensure that any design or configuration requests from the customer are feasible and can be accomplished within the amount of time scoped.</p>	
<u>Delivery Activities:</u>	
<ul style="list-style-type: none"> <li>• Implement basic out-of-the-box Change Management with minor modifications to support design developed in the design workshop.</li> <li>• Implement basic SLAs in support of Change Management.</li> </ul>	
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Provide the required data needed to populate the applicable tables, forms, emails, etc. needed to configure the process. The Customer must also be available to provide input and make decisions on processes and layouts.</li> <li>▪ Coordinate the user acceptance testing team and other internal resources and logistics for testing the configured Change Management workflow process.</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer to configure the process. This is a Time and Material engagement, Flycast will configure as much of the process as time allows. The configuration will be based on the Design Workshop planning session which is the responsibility of the customer to approve and finalize.</li> <li>▪ Flycast will Coach the Customer's Administration team, as time permits, in how to best configure Cherwell Service Management specific to this session's processes.</li> <li>▪ Flycast is not responsible for data modification, cleansing, or alteration before, during, or after any applicable data being imported.</li> </ul>
<b>Service Asset and Configuration Management Database (CMDB)</b>	
Project Phase: Implementation Assistance	Work Effort: 4-Day(s)
<u>Delivery Synopsis:</u>	
<p>The purpose for this session is for Flycast to perform implementation assistance of basic out-of-the-box ("OOTB") Cherwell Service Management functionality. Flycast will assist with the implementation of up to 8 OOTB Configuration Item ("CI") types. The Flycast consultant will provide guidance to ensure that any design or configuration requests from the customer are feasible and can be accomplished within the amount of time scoped.</p>	
<u>Delivery Activities:</u>	
<ul style="list-style-type: none"> <li>• Implement basic out-of-the-box Service Asset and Configuration Management with minor modifications to support design developed in the design workshop.</li> <li>• Implement basic SLAs in support of Service Asset and Configuration Management.</li> </ul>	
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator

## EXHIBIT 4

<b>SaaS – Staging &amp; Component Provisioning (1-Instance)</b>	
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Provide the required data needed to populate the applicable tables, forms, emails, etc. needed to configure the process. The Customer must also be available to provide input and make decisions on processes and layouts.</li> <li>▪ Coordinate the user acceptance testing team and other internal resources and logistics for testing the configured Service Asset and Configuration Management Database (CMDB) workflow processes.</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer to configure the process. This is a Time and Material engagement, Flycast will configure as much of the process as time allows. The configuration will be based on the Design Workshop planning session which is the responsibility of the customer to approve and finalize.</li> <li>▪ Flycast will Coach the Customer's Administration team, as time permits, in how to best configure Cherwell Service Management specific to this session's processes.</li> <li>▪ Flycast is not responsible for data modification, cleansing, or alteration before, during, or after any applicable data being imported.</li> </ul>
<b>IT Portal (Self Service)</b>	
Project Phase: Implementation Assistance	Work Effort: 2-Day(s)
<u>Delivery Synopsis:</u> The purpose for this session is for Flycast to perform implementation assistance of basic out-of-the-box ("OOTB") Cherwell Service Management functionality. Flycast will make as many configuration changes to meet the Customer's processes requirements as are possible within the time scoped for this session. The Flycast consultant will provide guidance to ensure that any design or configuration requests from the customer are feasible and can be accomplished within the amount of time scoped.	
<u>Delivery Activities:</u> <ul style="list-style-type: none"> <li>• Implement basic out-of-the-box Self-Service using dashboards as landing pages with minor modifications to enable users to enter incidents and requests online via the Web interface.</li> <li>• Configure a link to Customer's password reset website.</li> </ul>	
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Review the configured functionality to ensure that it meets the Customers expectation</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer to review the implemented functionality. This is a Time and Material engagement, Flycast will configure as much of the functionality as time allows.</li> </ul>
<b>Service Catalog</b>	
Project Phase: Implementation Assistance	Work Effort: 2-Day(s)
<u>Delivery Synopsis:</u> The purpose for this session is for Flycast to perform implementation assistance of basic out-of-the-box ("OOTB") Cherwell Service Management functionality. Flycast will make as many configuration changes to meet the Customer's processes requirements as are possible within the time scoped for this session. The Flycast consultant will provide guidance to ensure that any design or configuration requests from the customer are feasible and can be accomplished within the amount of time scoped.	
<u>Delivery Activities:</u> <ul style="list-style-type: none"> <li>• Implement basic out-of-the-box Service Catalog with minor modifications to support design developed in the design workshop.</li> </ul>	
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Review the configured functionality to ensure that it meets the Customers expectation</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer to review the implemented functionality. This is a Time and Material engagement, Flycast will configure as much of the functionality as time allows.</li> </ul>

## EXHIBIT 4

<b>SaaS – Staging &amp; Component Provisioning (1-Instance)</b>		
<b>Knowledge Management</b>		
Project Phase: Implementation Assistance		Work Effort: 2-Day(s)
<p><u>Delivery Synopsis:</u></p> <p>The purpose for this session is for Flycast to perform implementation assistance of basic out-of-the-box (“OOTB”) Cherwell Service Management functionality. Flycast will make as many configuration changes to meet the Customer’s processes requirements as are possible within the time scoped for this session. The Flycast consultant will provide guidance to ensure that any design or configuration requests from the customer are feasible and can be accomplished within the amount of time scoped.</p>		
<p><u>Delivery Activities:</u></p> <ul style="list-style-type: none"> <li>• Implement basic out-of-the-box Knowledge Management.</li> <li>• Configure approval process</li> <li>• Set to Read-Only after approval</li> <li>• Configure review process</li> </ul>		
<u>Required Resources</u>	<p>Flycast Resource(s): Senior Consultant            Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator</p>	
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Review the configured functionality to ensure that it meets the Customers expectation</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>	
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer to review the implemented functionality. This is a Time and Material engagement, Flycast will configure as much of the functionality as time allows.</li> </ul>	
<b>Customer Satisfaction Survey</b>		
Project Phase: Implementation Assistance		Work Effort: 1-Day(s)
<p><u>Delivery Synopsis:</u></p> <p>The purpose for this session is for Flycast to perform implementation assistance of basic out-of-the-box (“OOTB”) Cherwell Service Management functionality. Flycast will make as many configuration changes to meet the Customer’s processes requirements as are possible within the time scoped for this session. The Flycast consultant will provide guidance to ensure that any design or configuration requests from the customer are feasible and can be accomplished within the amount of time scoped.</p>		
<p><u>Delivery Activities:</u></p> <ul style="list-style-type: none"> <li>• Implement basic out-of-the-box Customer Satisfaction Surveys</li> <li>• Configure Customer’s questions</li> <li>• Configure process to control throttling surveys (how and when surveys get sent)</li> </ul>		
<u>Required Resources</u>	<p>Flycast Resource(s): Senior Consultant            Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator</p>	
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Provide the required data needed to populate the applicable tables, forms, emails, etc. needed to configure the process. The Customer must also be available to provide input and make decisions on processes and layouts.</li> <li>▪ Coordinate the user acceptance testing team and other internal resources and logistics for testing the configured Customer Satisfaction Survey.</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>	
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer to configure the process. This is a Time and Material engagement, Flycast will configure as much of the process as time allows. The configuration will be based on the Design Workshop planning session which is the responsibility of the customer to approve and finalize.</li> <li>▪ Flycast will Coach the Customer’s Administration team, as time permits, in how to best configure Cherwell Service Management specific to this session’s processes.</li> <li>▪ Flycast is not responsible for data modification, cleansing, or alteration before, during, or after any applicable data being imported.</li> </ul>	

## EXHIBIT 4

<b>SaaS – Staging &amp; Component Provisioning (1-Instance)</b>	
<b>Browser Client &amp; Mobile Device Support</b>	
Project Phase: Implementation Assistance	Work Effort: 1-Day(s)
<p><u>Delivery Synopsis:</u></p> <p>The purpose for this session is for Flycast to configure the basic Browser Client &amp; Mobile Devices Support out-of-the-box ("OOTB") Cherwell Service Management functionality. Flycast will make as many configuration changes to meet the Customer's requirements as are possible within the time scoped for this session. The Flycast consultant will provide guidance to ensure that any design or configuration requests from the customer are feasible and can be accomplished within the amount of time scoped.</p>	
<p><u>Delivery Activities:</u></p> <ul style="list-style-type: none"> <li>Enables technicians to log into Cherwell in a browser (Internet Explorer, Firefox, Safari, etc.) and work with Incidents or any other major business objects (Problems, Changes, etc.). Users can search in an ad-hoc manner or run existing searches, create new records and edit existing records.</li> <li>Implement basic out-of-the-box support for mobile devices with minor modifications to enable users to work with data from supported mobile devices.</li> </ul>	
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): Systems Administrator
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>Review the configured functionality to ensure that it meets the Customers expectation</li> <li>Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>Flycast will work with the Customer to review the implemented functionality. This is a Time and Material engagement, Flycast will configure as much of the functionality as time allows.</li> </ul>
<b>UAT Workshop</b>	
Project Phase: UAT Planning	Work Effort: 1-Day
<p><u>Delivery Synopsis:</u></p> <p>The purpose of this session is to assist the Customer in the planning of the User Acceptance Testing. While the actual UAT will be done by the Customer this workshop is designed to assist in helping the Customer devise the proper UAT plan and roadmap following best practices and Customer requirements for the various processes</p>	
<p><u>Delivery Activities:</u></p> <ul style="list-style-type: none"> <li>Review the current process standing and discuss when the UAT testing should begin.</li> <li>Work to develop a list of metrics and test requirements that must be met for each process to be successful.</li> <li>Develop a timeframe for the Customer to perform these tasks.</li> <li>Discuss remediation of potential problems along with how to put in Change Orders as needed to adjust days within this SOW.</li> <li>Provide recommendations for the next phase in the Customers environment, if applicable</li> </ul>	
<p>The result of this engagement will be a simple UAT checklist of requirements that must be met for each process (e.g. Service Desk, Change Management, etc...) to production.</p>	
<p><b>Please Note:</b> The actual UAT testing will be performed by the Customer.</p>	
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator; Workspace Agents, End Customers
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for UAT planning activities as needed</li> <li>Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>Flycast will work with the Customer to develop a simple UAT checklist of requirements that must be met in order for each process to begin the transition to production.</li> </ul>

## EXHIBIT 4

<b>SaaS – Staging &amp; Component Provisioning (1-Instance)</b>	
<b>Go-Live Support</b>	
Project Phase: Go-Live	Work Effort: 3-Day(s)
<u>Delivery Synopsis:</u> The purpose of this session is to assist the Customer with the “Go-Live” of their fully configured Cherwell Service Management environment. Flycast Senior Consultant will work with the Customer’s Administration Team to address any technical or functional issues that may arise during the operational transition.	
<u>Delivery Activities:</u> <ul style="list-style-type: none"><li>• Review the completed process and identify issues that may arise due to the large volume of tickets</li><li>• Provide functional support and triage technical issues that may arise</li><li>• Provide best practices recommendations based on end Customer feedback from the implemented process(s)</li><li>• Provide recommendations for the next phase in the Customers environment, if applicable</li><li>• Facilitate transition from “engagement/project” to the appropriate “technical support staff”</li></ul>	
<u>Required Resources</u>	Flycast Resource(s): Senior Consultant Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator; Agents, End Customers
<u>Customer Responsibility</u>	<ul style="list-style-type: none"><li>▪ Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for “Go-Live” activities as needed</li><li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li></ul>
<u>Flycast Responsibility</u>	Flycast will work with the Customer to transition their environment from staging to production. This is a Time and Material engagement with no specific deliverable.

## EXHIBIT 4

<b>SCCM Integrations</b>	
Project Phase: Design and Configuration	Work Effort: 2-Day(s)
<u>Delivery Activities:</u>	
<ul style="list-style-type: none"> <li>• 1-Day SCCM Integration</li> <li>• 1-Day Configuration Session – (Standing up CMDB to house the Asset Information)</li> <li>• Determine what will be performed by Flycast and what will be performed by Customer</li> </ul>	
<p><b>Please Note:</b> Scripts (provided by Flycast) must be run on the SCCM SQL server to present the views required by Cherwell. A SQL subject matter expert must be available to do this step at the beginning of this engagement.</p>	
<u>Required Resources</u>	<p>Flycast Resource(s): Senior Consultant  Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator</p>
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Provide approved Business Requirement documentation that details the Customer's Dashboard and Report requirements. These documents can include current reports, and other such metrics related to the Integrations.</li> <li>▪ Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for scheduled activities as needed</li> <li>▪ Ensure that engagement sponsor(s), stakeholder(s), and other internal Customer resources attend the Dashboards and Reports Design Workshop session(s)</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> <li>▪ Customer will have Services, Categories, Sub-categories, Default routing teams, Approvers, rules for routing approvals and notifications well defined before the start of the design workshop.</li> <li>▪ Work with Flycast consultant to ensure designs are feasible and can be accomplished within the amount of time scoped.</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer during the Design workshop. The Customer is responsible to complete the documentation of the Design workshop.</li> </ul>
<b>Cisco Call Manager – Screen Pop</b>	
Project Phase: Design and Configuration	Work Effort: 1-Day(s)
<u>Delivery Activities:</u>	
<ul style="list-style-type: none"> <li>• Configure Cherwell to open when an incoming call to Cisco Call Manager comes in.</li> </ul>	
<p><b>Please Note:</b> The Customer will need to provide a Cisco Call Manager subject matter expert (SME) for this engagement. Flycast Consultants are not knowledgeable about Cisco Call Manager.</p>	
<p><b>Please Note:</b> Flycast Partners assumes that Cisco Call Manager has the technical capabilities to initiate a screen pop as described.</p>	
<u>Required Resources</u>	<p>Flycast Resource(s): Senior Consultant  Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator</p>
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Provide approved Business Requirement documentation that details the Customer's Dashboard and Report requirements. These documents can include current reports, and other such metrics related to the Integrations.</li> <li>▪ Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for scheduled activities as needed</li> <li>▪ Ensure that engagement sponsor(s), stakeholder(s), and other internal Customer resources attend the Dashboards and Reports Design Workshop session(s)</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> <li>▪ Customer will have Services, Categories, Sub-categories, Default routing teams, Approvers, rules for routing approvals and notifications well defined before the start of the design workshop.</li> <li>▪ Work with Flycast consultant to ensure designs are feasible and can be accomplished within the amount of time scoped.</li> </ul>

## EXHIBIT 4

SCCM Integrations	
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer's Cisco Call Manager SME to configure Cherwell to open via an incoming call.</li> </ul>
Project Management	
Project Phase: Plan	Work Effort: 5-Day(s)
<u>Delivery Synopsis:</u> For the duration of the engagements as defined within this SOW, Flycast will provide a remote Project Manager to assist the Customer in scheduling services, providing regular updates, and helping manage the engagement. These days are delivered over the course of the engagements defined within this SOW. The Project Manager will also act as the Customer's primary point of contact ("POC") for issue escalation.	
<u>Delivery Activities:</u> <ul style="list-style-type: none"> <li>• <u>Project Work Plan:</u> This will consist of tasks to be completed and is broken down by Phase, Summary Tasks, and sub tasks. It will show a visual representation of percentage of task completion and will show scheduled start and end dates for Summary Tasks on the project. It will be provided before the start of the engagements, and updated accordingly throughout the engagement.</li> <li>• <u>Status Report:</u> The Status Report will outline tasks and phases completed since the last update, tasks scheduled to be completed, and list obstacles or roadblocks to the completion of tasks. The Status Report will be provided by PM at a time agreed upon by both Flycast and the Customer.</li> <li>• <u>Action / Issues Log:</u> This will identify risks to the successful completion of engagements along with proposed solutions to mitigate the risks. The Action / Issues Log will be provided prior to the start of an engagement. Risks identified by the Consultant after the engagement has started will be addressed to the Customer directly and documented in the Status Report.</li> <li>• <u>Status Calls:</u> The Project Manager will facilitate weekly checkpoint calls. There will also be Milestone calls at the end of the completion of each implemented process. A project meeting is held each reporting interval with the project team and stakeholders to discuss the Status Report and provide an opportunity for questions and answers.</li> </ul>	
<u>Required Resources</u>	<p>Flycast Resource(s): Project Manager  Customer Resource(s): ITSM Sponsor; Process Owner; Systems Administrator</p>
<u>Customer Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Coordinate internal Customer resources and logistics for scheduled activities</li> <li>▪ Assist with the development of Project Work Plan and with the monitoring and reporting of progress for the engagement</li> <li>▪ Coordinate engagement sponsor(s), stakeholder(s), and other internal Customer resources and logistics for scheduled activities as needed</li> <li>▪ Plan, manage and execute all internal communications with engagement sponsor(s), stakeholder(s), and other internal Customer resources</li> </ul>
<u>Flycast Responsibility</u>	<ul style="list-style-type: none"> <li>▪ Flycast will work with the Customer to complete the following deliverables,</li> <li>▪ Project Work Plan (at least one)</li> <li>▪ Status Report (as needed)</li> <li>▪ Actions / Issues Logs (if applicable)</li> </ul>

## Assumptions and Exclusions

### Work Schedule

- Unless otherwise noted in this SOW, all work will be performed during customer's normal business hours in the time zone of the location where the work is being delivered.
  - If the work is being delivered remotely, then delivery time will be agreed upon during the pre-call or sooner.
  - If work is being delivered remotely and with customers who are in multiple time zones, then a common schedule will be determined either through mutual agreement between the Flycast and the customer project managers during initial scheduling OR through mutual agreement between the Consultant and the customer participants during the pre-call which generally takes place approximately two weeks prior to the engagement.

## EXHIBIT 4

### Minimum Delivery Blocks

- If the work is to be performed onsite, it is assumed that work will be delivered in minimum continuous blocks of eight hours.
  - If the Flycast Partners Consultant is onsite and available to deliver content, the customer will be billed for the full eight-hour block of time, even if for whatever reason, customer resources are unable to participate.
  - Also, if customer decides for any reason that the session should be terminated prior to the delivery of the full eight hours, the customer will be billed for the full eight-hour block of time.
- If the work is to be performed remotely, it is assumed that work will be delivered in minimum continuous blocks of four hours.
  - If the Flycast Partners Consultant is online and available to deliver content, the customer will be billed for the full four-hour block of time, even if for whatever reason, customer resources are unable to participate. Also, if customer decides for any reason that the session should be terminated prior to the delivery of the full four hours, the customer will be billed for the full four-hour block of time.
  - Remote engagements must start no later than 15 minutes from the pre-determined start time, and end no later than 15 minutes after the pre-determined end time. Flycast Consultant will be under no obligation to make up time lost if customer is late to join the remote session or if the customer fails to join the session at all.

### Misc. Assumptions

- This SOW assumes that only the following application(s) are in scope: SaaS Cherwell 8.x .
- A test environment will be available and used throughout the entire engagement.
- The Customer personnel, hardware, software, and network resources referenced in this SOW remain available and consistent. Changes or unplanned delays due to necessary resources that are unavailable may impact the estimated schedule and cost.
- If a product problem is encountered during the course of the engagement that does not impair the defined scope of work, Customer will work with Cherwell Support to resolve the issue.
- Unless otherwise specified all configurations will leverage OOTB features and functionality. Customization of the Software underlying core code is out of scope.

### Customer Responsibilities

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In order to meet the objectives of this Statement of Work, please review the following requirements as they apply to your engagement:

- Fully comply with the latest Cherwell HW\SW requirements.
- Ensure a test environment is available and accessible throughout the entire engagement.
- If a test environment is not available and a production environment is to be used, it is the Customer's responsibility to notify internal stakeholders of the possibility of unplanned downtime.
- Customer is responsible for scheduling the appropriate resources for the planning and training sessions. Flycast Partners can assist with this prior to the engagement starting.
- If portions of this engagement are conducted at the Customer's physical location Flycast will require a meeting room with projector and Internet access for those portions.
- Provision Flycast Consultant with appropriate access based on Corporate Security policy.
- If necessary, provision VPN access to Flycast Consultant to support remote support and configuration.
- Provide timely response to requested information, including pre-visit information.

### Remote Services

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Some work may be performed remotely if agreed to by both Flycast Partners and Customer. For approved remote delivery sessions, the customer is required to provide:

- A minimum 3-week notice is required to schedule resources for remote service delivery.
- A minimum internet connection of T1, non-fractional must be available for remote service delivery.
- A minimum of 4 consecutive hours must be scheduled for remote service delivery.
- Any necessary approvals to allow the Consultant to remotely connect to the Customer's application using a VPN or similar connection.
- Verification that the remote control functionality on the server as well as any desktops to be used is functional.
- Remote engagements must start and end within 15 minutes of the times specified in the confirmation email.

### Time and Materials

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This Statement of Work reflects a time and materials engagement. We expect completion of the engagement defined in this document at the agreed upon schedule. We are, however, committing only to the length of time specified and are not responsible for failure to deliver specific or anticipated services due to issues with installation, availability of Customer staff or resources (including equipment and network connectivity), verbal or written Customer requested scope changes during the engagement, regardless of cause including but not limited to; improper or inadequate preparation, unknown compatibility or configuration issues, or unplanned or planned conflicting activities.

### Change Control

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We will, within reason, modify deliverables at your request and focus our efforts on the item(s) that you deem critical. In doing so, you acknowledge that such changes may impact the delivery of other deliverables.

To control changes to the Statement of Work and changes to any previously approved deliverables, the following process will be used:

- All Project Change Requests (PCRs) will be submitted in writing. They will describe the change and include whatever rationale and/or estimated effect the change will have on the Statement of Work.
- Customer Project Manager and Flycast Partners Project Manager will weigh the merits of the proposed change and approve it for investigation or reject it.
- Approved changes will be incorporated into the statement of work through written change authorizations (change orders), as appropriate.
- Any changes agreed upon by both parties will be facilitated by this Change Control Process.
- Customer is responsible for all penalties and charges resulting from changes to travel plans associated with the requested schedule change.

### Project Scheduling

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The Project Manager is the liaison and central point of contact for customers, consultants, and partners throughout the service engagement. The Project Manager is responsible for communication between customers and consultant resources/partners to proactively manage expectations on an ongoing basis and ensure customer satisfaction. Specific duties include:

- Oversee successful execution of multi-phase, multi-dimensional, multi-resource small to Enterprise customer projects
- Thorough understanding of scope
- Develop timeline estimates and identify resource requirements to meet deadlines
- Secure necessary technical resources
- Manage potential risks and delivery quality
- Track performance and quality of project deliverables
- Ensure that project adheres to timeline
- Effectively communicate with project teams, customers, legal, sales and internal SME
- Proactively recognize and resolve customer needs

## EXHIBIT 4

### Cancellation Policy

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<i>Hours cancelled or rescheduled...</i>	<i>Billable Costs</i>
...15 business days or more prior to the scheduled engagement dates.	Billed at 0% of time and materials cost Plus actual cost of all non-refundable or change fees incurred for engagement travel expenses.
...6-14 business days prior to the scheduled engagement dates.	Billed at 50% of time and materials cost Plus actual cost of all non-refundable or change fees incurred for engagement travel expenses.
<b>...Less than 6 business days prior to the scheduled engagement dates.</b>	Billed at 100% of time and materials cost Plus actual cost of all non-refundable or change fees incurred for engagement travel expenses.

### Payment Terms

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Flycast Partners will provide weekly invoices for services incurred during the previous week. All Invoices shall include the appropriate purchase order number provided by the Customer. Customers will have fifteen days to dispute invoiced services in writing. Invoices are payable by the Customer 30 days from Invoice.

All expenses and travel related expenses will be billed separately and are not included.

Some work may be performed remotely if agreed to by both Flycast Partners and Customer.

## EXHIBIT 4

### Statement of Work Approval and Contacts

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Service(s)	Cherwell
Total Days	45
Product(s)	Cherwell
Quote #	NJCDQ1195
Service Performed By:	Flycast Partners, Inc. PO Box 4194 Cedar Hill, TX 75106
Account Manager	Noel Daniel (817) 984-3369
Service Performed For:	City of Denton 215 E. Mckinney St Denton, TX 76201
Customer Contact	Curis Conrad (940) 349-7787

This Statement of Work is agreed and accepted by:

**Flycast Partners, Inc.**

Signature:\_\_\_\_\_

Name: Kim Gagnon

Title: Director of Operations

Date:

**City of Denton**

Signature:\_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**16. Provide details on how firm meets the minimum qualifications stated in this Main document**

**Section 3.**

- a. The details must be completed on this form, and shall not point to another document in the respondent's proposal.
- b. Sign below and return form with final submission.

- Three (3) years' experience providing similar products or services.

**Flycast Partners** was established in 2011 and focus on providing best-of-value ITSM solutions. As a Cherwell Preferred Partner operating in North America and Canada, we deliver innovative, cost-effective solutions to solve today's IT Service Management challenges. The combined expertise and experience of our highly trained professionals deliver and support ITSM solutions based on industry standards and best-practices. Our comprehensive solutions portfolio includes products from the leading ITSM vendors with deployment options ranging from conventional on-premises implementation to our unique on Premise and Managed-SaaS offerings.

Flycast Partners has over 50 employees with an average of approximately 10+ years in the ITSM industry. We are 100% focused on the Service and Support Industry representing best-of-breed IT service management solutions based on specific customer requirements utilizing Cherwell, Easy Vista, BMC FootPrints, BMC RemedyForce, TrackIt!, and Service Desk Express.

Flycast Partners has approximately 250 customers, of which approximately 50 utilize the Cherwell Service Management platform. In 2013, 2014 and 2015, Flycast Partners was named Cherwell Software's #1 partner in North America in terms of sales and delivery. Flycast Partners is a partner in good standing with Cherwell Software and maintains relationships at the corporate, delivery, and field sales organizational levels.

Flycast Partners look forward to including The City of Denton to the representative list of our other Cherwell customers; **NASCAR, Epicor Software, Shasta County, CA, Bank of the West, Virgin America, Innova Systems, Vantage Data Centers, Webster University, D R Horton, Rust-Oleum, Lincoln Electric Systems, Lumenate, St. Luke Health Systems, American Heart Association, Menninger Clinic, Trinity River Energy, Loan Depot, Inalfa Roof Systems, Alliance Healthcare Services, MOGAS, Fortna.**

- Three (3) references from governmental entities for the products or services requested. The City prefers references from municipalities of similar size.

**Shasta County**

**Val Verde Unified School District**

**St Lukes Health Systems**

**Full details for these references are provided in Attachment D – References.** Due to the increasing number of RFP's that Flycast Partners is requested to participate in and to protect our clients from being contacted by organizations requesting reference checks, we would respectfully ask that City of Denton do not contact these reference until such time as Flycast Partners is shortlisted.

- Authorized manufacturer or distributor authorized by the manufacturer for products identified in the Technical Specifications to sell to the City of Denton, Texas. Attach documentation such as a letter from the manufacturer or a line card.

Please see **Appendix 2- Certification** for details.

- Approved Cherwell Partner for implementation services.

Please see **Appendix 2- Certification** for details.

## EXHIBIT 4

- The responding individual or business must be registered in the State of Texas, or the County of Denton, to provide the products or services required in the solicitation, and the individual or business must have all licensure required by the State to provide any services required under this contact.

To learn how to obtain information about filing with the State of Texas, or obtaining copies or certificates from the Secretary of State visit Webpage: <http://www.sos.state.tx.us/corp/copies.shtml>; Phone 512-463-5578; or email [corpcert@sos.state.tx.us](mailto:corpcert@sos.state.tx.us).

**Flycast Partners is registered in the State of Texas.**

I certify that our firm meets the minimum qualifications as stated in this Main document, Section 3.

Kim Guignon \_\_\_\_\_ Signature      Flycast Partners, Inc \_\_\_\_\_ Company      March 2, 2017 \_\_\_\_\_ Date

## **EXHIBIT 4**

**ATTACHMENT B-SUBMISSION EXCEPTIONS/CLARIFICATIONS**

**Any exceptions or clarifications taken to this solicitation (**including terms and conditions in Exhibit 2, the General Provisions and Terms and Conditions**) must be itemized on the lines below. Additional pages may be added as needed. If there are no exceptions or clarifications, please sign where indicated at the bottom of the page.**

Item #      Description

Page 15. #8 No replacement of defective tender. Request 14 business days to cure any non-conforming deliverable if contract time has expired

Page 16, #13. Payment Section D Withhold Payment- v. Contractor Obligations Not Completed: vi- Failure of Contractor to submit proper invoice; vii- Failure to Comply with any Material requirements. Request notification of failures to allow for corrections within 10 business days of notice.

Page 19 Item D. Unwilling/unable to repair or replace defective or non-conforming deliverable. No penalty if non-conforming or defective deliverable is due to limitations within the software application.

Page 19 # 22- Warranty Item B- Warranty Period 1 year from acceptance. Change to 90 days from acceptance provided to changes have been made by City to deliverable work product.

Page 19 #23- Acceptance Incomplete or Non-Conforming- negotiate no penalty if City accepts incomplete or non-conforming deliverable.

Page 20- Termination for Cause: negotiate – negotiate no penalty for damages for loss, damages, expenses etc.

### Clarification:

## CHERWELL SOFTWARE HOSTING SERVICES ADDENDUM (Appendix 3) and CHERWELL END-USER SUBSCRIPTION AGREEMENT (appendix 4)

The above exceptions and clarifications (and any additional pages identified) are the ONLY exceptions/clarifications to the specifications, General Provisions and Terms and Conditions in Exhibit 2, and sample contract to this solicitation. I understand that the City may not accept additional exceptions produced after final submission of this proposal.

Kim Gagnon  
Signature

## Flycast Partners, Inc Company

March 2, 2017  
Date

**No Exceptions are taken to this solicitation or the General Provisions and Terms and Conditions in Exhibit 2.**

Signature

## Company

– Date

## EXHIBIT 4

### ATTACHMENT D-REFERENCES

Please list three (3) Government references, **other than the City of Denton**, who can verify the quality of service your company provides. The City prefers customers of similar size and scope of work to this solicitation.

#### REFERENCE ONE

GOVERNMENT/COMPANY NAME: [Shasta County](#)

LOCATION: [California](#)

CONTACT PERSON AND TITLE: [Kile Koschnick, IT Manager-SW Development](#)

TELEPHONE NUMBER: [Number provided upon being shortlisted](#)

SCOPE OF WORK: [ITIL Simulation, Readiness Assessment and Awareness Training; Replaced sunset ITSM system with Cherwell Service Management including onsite Administrative Training and implementation assistance for Incident, Problem, Change and Configuration Management along with a custom purchasing application built on the Cherwell platform](#)

CONTRACT PERIOD: [2015 Master Services Agreement for 1 year has been renewed for two additional years](#)

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#### REFERENCE TWO

GOVERNMENT/COMPANY NAME: [Val Verde Unified School District](#)

LOCATION: [California](#)

CONTACT PERSON AND TITLE: [Matthew Penner, CTO](#)

TELEPHONE NUMBER: [Number provided upon being shortlisted](#)

SCOPE OF WORK: [Incident, Request management, CMDB/Integration with Dell KACE, HR Request Management, Cherwell Administrator Training, Best practice consulting, Reports](#)

CONTRACT PERIOD: [2014](#)

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#### REFERENCE THREE

GOVERNMENT/COMPANY NAME: [St Lukes Health Systems](#)

## EXHIBIT 4

LOCATION: [Idaho](#) \_\_\_\_\_

CONTACT PERSON AND TITLE: [Kelson ONeil, Cherwell Administrator](#) \_\_\_\_\_

TELEPHONE NUMBER: [Number provided upon being shortlisted](#) \_\_\_\_\_

SCOPE OF WORK: [Incident, Problem, Change, CMDB, Knowledge, Self Service and looking to add Cherwell Asset Management](#) \_\_\_\_\_

CONTRACT PERIOD: [2014](#) \_\_\_\_\_

## EXHIBIT 4

### ATTACHMENT E-CONFLICT OF INTEREST QUESTIONNAIRE

#### CONFLICT OF INTEREST QUESTIONNAIRE -

#### FORM CIQ

##### For vendor or other person doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local government entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. *See Section 176.006(a-1), Local Government Code.*

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**1**  Name of vendor who has a business relationship with local governmental entity.

**2**  Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7<sup>th</sup> business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3**  Name of local government officer about whom the information in this section is being disclosed.

\_\_\_\_\_  
Name of Officer

This section, (item 3 including subparts A, B, C & D), must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes  No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes  No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership of one percent or more?

Yes  No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4**  I have no Conflict of Interest to disclose.

**5** 

March 2, 2017

Signature of vendor doing business with the governmental entity

Date

**ATTACHMENT F-ACKNOWLEDGEMENT**

The undersigned agrees this submission becomes the property of the City of Denton after the official opening.

The undersigned affirms he has familiarized himself with the specification, drawings, exhibits and other documents; the local conditions under which the work is to be performed; satisfied himself of the conditions of delivery, handling and storage of materials and equipment; and all other matters that will be required for the work before submitting a response.

The undersigned agrees, if this submission is accepted, to furnish any and all items/services upon which prices are offered, at the price(s) and upon the terms and conditions contained in the specification. The period for acceptance of this submission will be 120 calendar days unless a different period is noted.

The undersigned affirms that they are duly authorized to execute this contract, that this submission has not been prepared in collusion with any other respondent, nor any employee of the City of Denton, and that the contents of this submission have not been communicated to any other respondent or to any employee of the City of Denton prior to the acceptance of this submission.

Respondent hereby assigns to the City any and all claims for overcharges associated with this contract which arise under the antitrust laws of the United States, 15 USCA Section 1 *et seq.*, and which arise under the antitrust laws of the State of Texas, Tex. Bus. & Com. Code, Section 15.01, *et seq.*

The undersigned affirms that they have read and do understand the specifications, all exhibits and attachments contained in this solicitation package.

The undersigned agrees that the solicitation package posted on the website are the official specifications and shall not alter the electronic copy of the specifications and/or pricing sheet (Exhibit 1), without clearly identifying changes.

The undersigned understands they will be responsible for monitoring the City of Denton Purchasing Website at: <http://www.cityofdenton.com/index.aspx?page=397> to ensure they have downloaded and signed all addendum(s) required for submission with their response.

I certify that I have made no willful misrepresentations in this submission, nor have I withheld information in my statements and answers to questions. I am aware that the information given by me in this submission will be investigated, with my full permission, and that any misrepresentations or omissions may cause my submission to be rejected.

Acknowledge receipt of following addenda to the solicitation:

Addendum No 1 Dated \_\_\_\_\_

Received \_\_\_\_\_

Addendum No 2 Dated \_\_\_\_\_

Received \_\_\_\_\_

Addendum No 3 Dated \_\_\_\_\_

Received \_\_\_\_\_

**NAME AND ADDRESS OF COMPANY:**

Flycast Partners Inc \_\_\_\_\_

**AUTHORIZED REPRESENTATIVE:**

Signature Kim Gagnon \_\_\_\_\_

PO Box 4194, Cedar Hill \_\_\_\_\_

Date March 2, 2017 \_\_\_\_\_

Texas 75106 \_\_\_\_\_

Name Kim Gagnon \_\_\_\_\_

\_\_\_\_\_  
Tel. No. 1 (844) 359 – 2278

Title Director of Operations \_\_\_\_\_

Email. [Kim.gagnon@flycastpartners.com](mailto:Kim.gagnon@flycastpartners.com)

Fax No. 970-300-2666 \_\_\_\_\_

**APPENDIX 2 - CERTIFICATION**



Cherwell Software has a global network of valued partners with specialized expertise in IT Service Management and beyond who are committed to providing excellent service from the initial engagement through implementation. These industry experts will guarantee valuable guidance and best practices on how to utilize Cherwell Software to meet your specific business needs.

Flycast Partners is a certified implementation partner for Cherwell Software Inc.,



**Flycast Partners**

329 S Elerson Road, DeSoto, TX 75115

1-844-FLYCAST (359-2278)

[www.flycastpartners.com](http://www.flycastpartners.com)

Flycast Partners provides IT consulting and implementation services to organizations across North America. Our clients remain ahead of the curve on technology adoption while maintaining the basic principles of ITIL and other best practices frameworks in practical, focused projects. We offer on premise and cloud technologies and services that deliver sustainable change at the right time and at the right cost. Our professional services team provides best practice consulting, training, and technical support for ITSM and market vertical solutions. With offices in the United States and Canada, we offer the right tailored solution to all organizations in North America.

A handwritten signature in black ink that reads "Lenore Faraly".