

**GOLDENDALE CITY COUNCIL  
REGULAR MEETING  
SEPTEMBER 19, 2022  
7:00 PM**

**NOTE: THIS MEETING IS BEING HELD IN PERSON OR CAN BE ACCESSED REMOTELY BY TELEPHONE AND ZOOM VIDEO. TO PARTICIPATE VIA ZOOM, YOU WILL NEED TO CALL 415-762-9988. THE MEETING ID NUMBER IS 373 290 5204. YOU WILL BE ABLE TO CALL IN AT 6:45. YOU CAN FIND THE INSTRUCTIONS FOR ZOOM ON THE WEBSITE.**

- A. Call to Order
  - 1. Pledge of Allegiance
- B. Roll Call
- C. Public Hearing
- D. Agenda
  - 1. Approval of Agenda
  - 2. Consent Agenda
    - a. Approval of Minutes
    - b. Claims
    - c. Payroll
    - d. Other
- E. Presentations
- F. Department Reports
- G. Council Business
  - 1. Smart Street Light Management and Maintenance Options
  - 2. City Clerk / Treasurer Employment Agreement
  - 3. Affordable Housing
- H. Resolutions
- I. Ordinances
- J. Report of Officers - Council, Mayor
- K. Public Comment – 3 Minute Limit (If you are going to be more than 3 minutes, please request a presentation for the following council meeting)
- L. Executive Session
- M. Adjournment

**NEXT REGULAR COUNCIL MEETING WILL BE ON OCTOBER 3<sup>RD</sup> , 2022 AT 7:00 PM.**

**AGENDA TITLE: CONSENT AGENDA**

**DATE:**

**ACTION REQUIRED:**

ORDINANCE\_\_\_\_\_ COUNCIL INFORMATION\_\_\_\_\_ X  
RESOLUTION\_\_\_\_\_ OTHER\_\_\_\_\_  
MOTION\_\_\_\_\_ X

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**EXPLANATION:**

The consent agenda includes the following:

Minutes of the September 6, 2022 regular council meeting, First pay period September checks #56069 – 56076, 901499 – 901500, direct deposit 9/8/2022 in the amount of \$95,107.91, September 19, 2022 claims checks #56077 – 56116, 901501 - 901503 in the amount of \$253,537.53.

**FISCAL IMPACT:**

Payroll checks in the amount of \$95,107.91, claims checks in the amount of \$253,537.53.

**ALTERNATIVES:**

Approve the consent agenda.

Remove certain items from the consent agenda for further discussion.

**STAFF RECOMMENDATION:**

Approve the consent agenda

**MOTION:**

**I MOVE TO APPROVE THE CONSENT AGENDA.**

**GOLDENDALE CITY COUNCIL  
REGULAR MEETING  
SEPTEMBER 6, 2022  
7:00 PM**

Mayor Michael Canon called to order the regular meeting of the Goldendale City Council followed by the Pledge of Allegiance.

**ROLL CALL**

**Council Present:** Mayor Michael A Canon (Not voting), Council Member Andy Halm, Council Member Ellie Casey, Council Member Dave Jones, Council Member Miland Walling, Council Member Steve Johnston, Council Member Filiberto Ontiveros

**Staff Present (Not Voting):** Police Chief Jay Hunziker, Clerk Treasurer Sandy Wells, City Administrator Patrick Munyan

**Motion:** I move to excuse Council Member Loren Meagher, **Action:** Motion, **Moved by** Council Member Andy Halm, **Seconded by** Council Member Ellie Casey  
Motion Passed Unanimously

Council Member Loren Meagher attended the meeting at 7:07pm

**AGENDA AND CONSENT AGENDA**

**Mayor Michael Canon** would like to add additional item to the agenda. We will be adding G3 Aspect Consulting Contract Change & ASR Pilot Testing

**Motion:** I move to amend tonight's agenda to include an agenda item G3 Aspect Consulting Contract Change and ASR Pilot Testing, **Action:** Motion, **Moved by** Council Member Dave Jones, **Seconded by** Council Member Steve Johnston.  
Motion Passed Unanimously

**Motion:** I move to approve the agenda and consent agenda, **Action:** Motion, **Moved by** Council Member Andy Halm, **Seconded by** Council Member Ellie Casey.  
Motion Passed Unanimously.

**DEPARTMENT REPORTS**

**Police Chief Jay Hunziker**, on September 4<sup>th</sup> Goldendale Police Department hired an entry level new officer. His academy date will be in January and hopefully they can get him in sooner. The new officer's name is Cameron Howell. We had a burglary call and caught the suspects on camera. The video went a long way in identifying the suspects. We arrested a drug dealer in the city, and it is still an ongoing investigation.

**Mayor Canon**, I spoke with Fire Chief Noah Halm earlier today and he wanted me to remind everyone that school is in session now and to watch for children during school hours. We are also having a high fire warning right now. The weather is extremely dry.

**Police Chief Jay Hunziker**, I would like to add to my report. I got an email from dispatch from a lady from California. She wanted some advice for her granddaughter that lives here. She was very pleased with the way Officer Stelljes handled the call.

**City Administrator Pat Munyan**, I have asked Dustin Conroy from Pioneer Engineering to attend the meeting tonight and give the council an update on the Byars Street Project.

**Dustin Conroy from Pioneer Engineering** gave the council an update on the Byars Street Project.

**City Administrator Pat Munyan**, on Thursday we are having an airport preconstruction meeting to move that project forward. Public Works have been painting crosswalks. They did start crack sealing, but the rented machine they were using broke down. We are waiting for another machine. We have been having some park vandalism. Staff will be working with the chief to see what we can do to help with that issue. There will be a public works committee meeting scheduled for tomorrow. Public Works has also been filling potholes. I would like to update some of the Cities Municipal Codes. That will be a timely process, but I would like to improve some of the languages especially for code enforcement.

Council Member Filiberto Ontiveros would like to schedule an Ordinance Committee Meeting.

City Administrator Pat Munyan would also like to schedule a monthly meeting with the planning commission to update the codes.

Council Member Miland Walling would like to know where we are on the grant, we received for the Airport project. Pat look into that and let the council know.

Council Member Steve Johnston wanted to know if they can put up closed parked signs at the parks and maybe surveillance cameras. Pat said he would investigate the cost of surveillance cameras at the parks.

The Council and the Police Chief discussed different issues and options for parking problems.

City Administrator Pat Munyan wanted Council direction on a sidewalk that was installed on Main Street incorrectly and must be removed and replaced. The property owner wanted the City to replace the sidewalk and he would reimburse the city. Council Member Steve Johnston would like Pat to give the property owner the option to have the City complete the work and let him know what the cost will be. But the property

owner should be responsible. The mayor would like to see this topic on another council agenda so we can have a bigger discussion on it.

### **COUNCIL BUSINESS**

**Bulk Water Station by Pat Munyan**, at the prior Council meeting, City Council Members requested additional information regarding the proposed purchase and install of a bulk water fill station. Currently the city has 39 bulk water users. Bulk water users purchase 43,000 cubic feet of water at a rate of \$.22 per cubic foot generating \$9460.00 in annually revenue to the water department. Residence purchase water at a rate of \$.01 per cubic foot and would generate \$1195.63 when purchasing the same 43,000 cubic feet of water amount as the bulk water users. The purchase price and installation cost of the bulk water fill station is estimated at \$50,250.00 in consideration of the current annual income of \$9460.00 from bulk water users, it would take an approximately five and half years for the city to recoup their investment at current estimates. However, it is staff's opinion that bulk water sales will continue to rise. The bulk water station comes with a one-year part warranty and two years of IT and software support. The bulk water station is equipped with a credit or dept payment option which proves 24-hour service to our bulk water customers. The station would be installed in the vacant lot behind City Hall. Currently, it takes 40 hours of staff time monthly to process the bulk water bills. The installation of the fill station would streamline delivery and billing while allowing the public work yard to be secure. Staff recommends approval.

**Motion:** I move to authorize city staff to proceed with purchase of the bulk water fill station and other improvements, **Action:** Motion, **Moved by** Council Member Loren Meagher, **Seconded by** Council Member Steve Johnston.  
Motion Passed Unanimously.

**Smart Street Light Management and Maintenance Options by Pat Munyan**, as discussed at the prior City Council meeting, in 2017 the City of Goldendale purchased and installed Lumewave smart streetlights. Lumewave no longer exists making it difficult to find replacement parts and propriety software support. Dhyan Technologies can supply the city with the needed software management and parts support. Dhyan proved city tow quote options for tech and parts support. The two quotes range from \$8884.00 to \$53380.00. At the prior council meeting a committee was tasked to conduct a meeting with Dhyan Technologies to determine what option would work best for the City of Goldendale. The committee members are present to discuss the options and make a recommendation on how to proceed.

**Motion:** I move to authorize city staff to proceed with contract negotiations and report back to city council for review and vote on proposed contract with Dhyan Technologies, **Action:** Motion, **Moved by** Council Member Filiberto Ontiveros, **Seconded by** Council Member Andy Halm.  
Motion Passed Unanimously.

**Aspect Consulting Contract Change and ASR Pilot Testing by Pat Munyan**, the administration has requested a contract change with Aspect Consulting. The contract change will expand the very narrow area of consulting to broader range of consulting activities. In additions, attached to the packet is an ASR Pilot test draft application to submit to DOE. The contract change will assist staff ability to work in a broader consulting range of activities with Aspect to submit the application for grant fund for the ASR Pilot Testing. Staff recommends approval

**Motion:** I move to authorize the mayor to enter into the Aspect Consulting Contract and proceed with the submittal of the DOE ASR Pilot Testing Grant Request, **Action:** Motion, **Moved by** Council Member Steve Johnston, **Seconded by** Council Member Ellie Casey.  
Motion Passed Unanimously.

## **RESOLUTIONS**

**Resolution 723 Amending Resolution 604 by Pat Munyan**, a resolution authorizes certain city staff members to invest city monies in the local government investment pool. The two employees that are authorized no longer are employed by the city. Resolution 723 replaces and authorizes Sandy Wells and Patrick Munyan to vest city monies in the local government investment pool. Staff recommends the approval.

**Motion:** I move to adopt resolution 723 amending resolution no 604 authorizing investments of the City of Goldendale monies in the local government investment pool, **Action:** Motion, **Moved by** Council Member Miland Walling, **Seconded by** Council Member Loren Meagher.  
Motion Passed Unanimously.

## **REPORT OF OFFICERS**

**Council Member Steve Johnston** would like to see more committee meetings be utilized. I would also like to see a budget workshop when we start going through the budget for next year.

**Council Member Dave Jones**, I am on the parks committee. I would like to reach out to everyone on that committee and see when we can schedule another meeting. I would like us to reach a goal. Pat asked Dave to come by and talk with him about this meeting.

**Council Member Loren Meagher** would like to thank Pat for all his hard work.

**Council Member Filiberto Ontiveros** would like to thank Sandy Wells for her hard work on the meeting minutes. Pat is doing job and I like the communication that I have had with him.

**Council Member Miland Walling** thanked the Public Works crew on the watering of the flowers. Miland gave an update on the Women's Pilot group that came to the Airport.

**Mayor Mike Canon**, I would like to thank Mayor Protem, Andy Halm for filling in for me when I was absent. I have received some complaints about the deer that are running through town. I am going to reach out to Klickitat County and Fish and Wildlife to see what we can do for that problem. I would also like to see a change in the order of the agenda. I would like to add a section of new business so we can get more rules of order and the meetings will go through much smoother.

#### **PUBLIC COMMENT**

**Terry Luth, 116 Chatfield, Goldendale** – would like to see the city have an airport committee meeting.

**Guy Theriault, 323 Byars, Goldendale** – complained about dust, safety, rolling curbs, driveway access, time the project is taking, and contractors breaking his water line on the Byars Street project.

**Raymond Wagner, 606 Krause Lane, Goldendale** – complained about the curbs on the Byars Street project.

**Steve Krause, 603 Krause Lane, Goldendale** – complained about the curbs and sidewalks on the Byars Street project.

**Mike Isaacson, 228 Byars, Goldendale** – complained about dust, curbs and execution and communication on the Byars Street project.

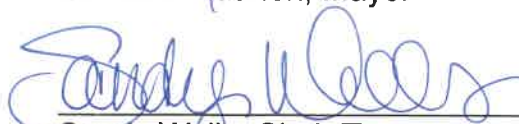
**Tina Krause, 603 Krause Lane, Goldendale** – complained that her private road off Byars is going to have a curb and sidewalk on the road. She also complained about the high curbs.

#### **ADJOURNMENT**

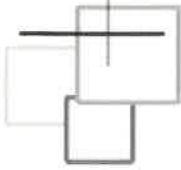
**8:40 PM**

**Motion: I motion to Adjourn the meeting, Action: Motion, Moved by Council Member Steve Johnston, Seconded by Council Member Andy Halm.**

**Motion passed unanimously.**

  
\_\_\_\_\_  
Michael A Canon, Mayor  
\_\_\_\_\_  
Sandy Wells, Clerk-Treasurer

# Register



Fiscal: 2022

Deposit Period: 2022 - Sept 2022

Check Period: 2022 - Sept 2022 - 1st Council Sept 2022

Bank Accounts: Columbia State Bank - 20016310

Register Types: Check

Show Outstanding: All

System Types: Financials

Outstanding Date: 9/15/2022 2:41:47 PM

Show Details: Hide

Number	Name	Print Date	Clearing Date	Amount
<b>Columbia State Bank</b>	<b>20016310</b>			
<b>Check</b>				
56077	A Worksafe Service Inc	9/19/2022		\$110.00
56078	Allyns Building Center	9/19/2022		\$1,227.30
56079	Aramark Uniform Serv Inc	9/19/2022		\$537.58
56080	Aspect Consulting LLC	9/19/2022		\$3,811.25
56081	Basin Feed & Supply	9/19/2022		\$113.89
56082	Carquest Auto Parts	9/19/2022		\$494.48
56083	Eurofins-Cascade Analytical	9/19/2022		\$213.50
56084	Ferguson Portland Waterworks #3011	9/19/2022		\$392.75
56085	Goldendale Auto Supply LLC	9/19/2022		\$68.05
56086	Goldendale Chamber	9/19/2022		\$325.00
56087	Goldendale City of	9/19/2022		\$3,399.71
56088	Goldendale Motorsports Assoc	9/19/2022		\$1,526.49
56089	Gordon Kelsey	9/19/2022		\$119.82
56090	Grainger	9/19/2022		\$56.85
56091	Hattenhauer Energy Co LLC	9/19/2022		\$2,685.28
56092	Holcombs Market	9/19/2022		\$475.14
56093	IBS Incorporated	9/19/2022		\$420.93
56094	Kelsey Rooks	9/19/2022		\$16.46
56095	Klickitat CO Emer Mgmt	9/19/2022		\$10,927.27
56096	Klickitat County PUD	9/19/2022		\$12,410.81
56097	Larry Bellamy	9/19/2022		\$1,440.00
56098	Lori Lynn Hocht Attorney at Law	9/19/2022		\$412.50
56099	Medical Warehouse	9/19/2022		\$23.76
56100	Menke Jackson Beyer LLP	9/19/2022		\$8,209.22
56101	MES Northwest	9/19/2022		\$3,305.63
56102	Norco Inc	9/19/2022		\$66.45
56103	NWSC Northwest Safety Clean	9/19/2022		\$430.82
56104	One Call Concepts Inc	9/19/2022		\$29.96
56105	Pioneer Surveying & Engineering Inc	9/19/2022		\$35,610.00
56106	Radcomp Technologies	9/19/2022		\$5,744.16

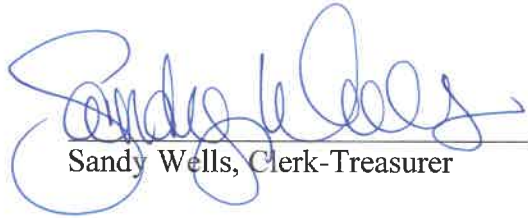


Number	Name	Print Date	Clearing Date	Amount
56107	Regional Transfer Company - 4178A	9/19/2022		\$5.18
56108	Republic Services Inc	9/19/2022		\$1,125.54
56109	RH2 Engineering Inc	9/19/2022		\$4,164.32
56110	Schuknecht's Polygraph Service	9/19/2022		\$200.00
56111	Sherwin-Williams Co, The	9/19/2022		\$1,349.50
56112	Small Engine Specialties	9/19/2022		\$222.36
56113	US Cellular	9/19/2022		\$2,761.74
56114	Vance Law Office	9/19/2022		\$1,435.00
56115	Verizon Wireless	9/19/2022		\$509.83
56116	WA St Dept of Health	9/19/2022		\$138,827.64
901501	WA St Dept of Revenue	9/19/2022		\$8,067.41
901502	HSA Bank Employee Plan Funding	9/19/2022		\$24.75
901503	Invoice Cloud	9/19/2022		\$239.20
	<b>Total</b>	<b>Total</b>	<b>Check</b>	<b>\$253,537.53</b>
		<b>20016310</b>		<b>\$253,537.53</b>
	<b>Grand Total</b>			<b>\$253,537.53</b>

**CITY OF GOLDENDALE  
CLAIMS REGISTER**

I, the undersigned, do hereby certify that the materials have been furnished, the services rendered, or the labor performed as shown on Check numbers 56077 through 56116, 901501 - 901503 in the amount of \$253,537.53, and unpaid obligations against the City of Goldendale, Washington and that I am authorized to certify said claims.

DATED this 15<sup>th</sup> day of September , 2022.



Sandy Wells, Clerk-Treasurer

# Register Activity

Fiscal: 2022  
 Period: 2022 - Sept 2022  
 Council Date: 2022 - Sept 2022 - 1st Council Sept 2022  
 Bank Accounts: Checking Account  
 Transaction Type: Check  
 System Type: Financials

Reference	Date	Amount	Notes
<b>Reference Number: 56077</b>	<b>A Worksafe Service Inc</b>		
32435	8/30/2022	\$110.00	Drug Test
<b>Reference Number: 56078</b>	<b>Allvyn Building Center</b>		
338836	8/1/2022	\$1,227.30	
338884	8/2/2022	\$13.43	Swivel Hasp
338967	8/4/2022	\$191.35	Poly Tube
338970	8/4/2022	\$10.52	Sprinkler
338972	8/4/2022	\$16.04	Risers, PVC parts
338985	8/4/2022	\$3.77	Adapters, pvc pipe
338998	8/4/2022	\$0.85	Flex Pipe Elbow
339115	8/4/2022	\$6.44	Hammer
339128	8/8/2022	\$253.49	Sand White Mesh 100 lb
339321	8/10/2022	\$382.70	Poly Tube
339528	8/15/2022	\$23.64	Lacquer Thinner
339571	8/15/2022	\$41.89	Paint Thinner, Silicone SLNT
339644	8/17/2022	\$11.37	Elastic Strainer
339874	8/22/2022	\$84.96	Couplings & Bushing
339971	8/24/2022	\$16.95	Wood Shims & Sealant
339995	8/24/2022	\$38.24	Sprinklers
340014	8/25/2022	\$47.29	Sprayer
340016	8/25/2022	\$48.77	Enamel, Roller Kit
340184	8/25/2022	\$14.60	Cleaner & Spray Bottle
340242	8/29/2022	\$64.45	Stripping Paint
340297	8/30/2022	\$25.00	Clorox Cleaner, Grout Brush, Scrub Brush
Invoice - 9/13/2022 3:14:48 PM	8/31/2022	\$11.80	Foam CVR, Foam Cover
<b>Reference Number: 56079</b>	<b>Aramark Uniform Serv Inc</b>		
5291054795	8/2/2022	(\$80.25)	Supplies
5291054823	8/2/2022	\$537.58	
5291054828	8/2/2022	\$23.44	Service Maintenance
5291054838	8/2/2022	\$45.72	Uniforms
5291058708	8/2/2022	\$32.61	Service Maintenance
5291058737	8/9/2022	\$16.67	Service Maintenance
	8/9/2022	\$23.44	Service Maintenance
	8/9/2022	\$43.38	Uniforms

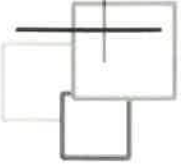
Reference	Date	Amount	Notes
<b>Reference Number: 56079</b>	<b>Aramark Uniform Serv Inc</b>	<b>\$537.58</b>	
5291058747	8/9/2022	\$32.61	Service Maintenance
5291058761	8/9/2022	\$16.67	Service Maintenance
5291063131	8/16/2022	\$47.81	Service Maintenance
5291063150	9/13/2022	\$43.97	Uniforms
5291063157	8/16/2022	\$32.61	Service Maintenance
5291063167	8/16/2022	\$16.67	Service Maintenance
5291067510	8/23/2022	\$23.44	Service Maintenance
5291067554	8/23/2022	\$49.24	Uniforms
5291067569	8/23/2022	\$32.61	Service Maintenance
5291067591	8/23/2022	\$16.67	Service Maintenance
5291072288	8/30/2022	\$23.44	Service Maintenance
5291072491	8/30/2022	\$63.46	Uniforms
5291072501	8/30/2022	\$32.61	Service Maintenance
5291072518	8/30/2022	\$16.67	Service Maintenance
Invoice - 9/13/2022 3:34:48 PM	9/13/2022	(\$96.16)	Service Maintenance
<b>Reference Number: 56080</b>	<b>Aspect Consulting LLC</b>	<b>\$3,811.25</b>	
47766	9/9/2022	\$3,811.25	Well Analysis
<b>Reference Number: 56081</b>	<b>Basin Feed &amp; Supply</b>	<b>\$113.89</b>	
68972	8/2/2022	\$38.66	Scoop
70677	8/24/2022	\$36.54	Gloves
70706	8/25/2022	\$38.69	Gloves
<b>Reference Number: 56082</b>	<b>Carquest Auto Parts</b>	<b>\$494.48</b>	
4993-613744	8/1/2022	\$4.06	knife blades
4993-615047	8/11/2022	\$66.09	Car Wash, Splash
4993-615048	8/11/2022	\$10.20	Smart Straw
4993-615394	8/14/2022	\$44.70	Supplies
4993-615469	8/15/2022	\$33.95	Air
4993-615502	8/15/2022	\$4.59	Splash for spraying
4993-615649	8/16/2022	\$186.09	Argon Mix
4993-615715	8/16/2022	\$23.63	Wiper Blades
4993-615720	8/16/2022	\$27.18	Polish
4993-615791	8/17/2022	\$8.92	Connector
4993-616727	8/25/2022	\$28.81	Spray Paint Wand, Brake Cleaner
4993-616728	8/25/2022	\$33.70	Brake Cleaner
4993-617205	8/30/2022	\$22.56	Gas
<b>Reference Number: 56083</b>	<b>Eurofins-Cascade Analytical</b>	<b>\$213.50</b>	
213.50	9/3/2022	\$213.50	Lab Testing
<b>Reference Number: 56084</b>	<b>Ferguson Portland Waterworks #3011</b>	<b>\$392.75</b>	
1119183	7/21/2022	\$392.75	Repair

Reference	Date	Amount	Notes
<b>Reference Number: 56085</b>	<b>Goldendale Auto Supply LLC</b>	<b>\$68.05</b>	
<u>63642</u>	8/1/2022	\$8.05	Wrench Set
<u>64082</u>	8/8/2022	\$18.07	Adapter
<u>64708</u>	8/16/2022	\$41.93	Wire
<b>Reference Number: 56086</b>	<b>Goldendale Chamber</b>	<b>\$325.00</b>	
<u>130</u>	6/2/2022	\$325.00	Membership
<b>Reference Number: 56087</b>	<b>Goldendale City of</b>	<b>\$3,399.71</b>	
<u>Invoice - 9/15/2022 9:11:07 AM</u>	9/5/2022	\$3,399.71	Water Bills
<b>Reference Number: 56088</b>	<b>Goldendale Motorsports Assoc</b>	<b>\$1,526.49</b>	
<u>2202-1</u>	8/16/2022	\$1,526.49	Tourism Reimbursement
<b>Reference Number: 56089</b>	<b>Gordon Kelsey</b>	<b>\$119.82</b>	
<u>Invoice - 9/15/2022 9:17:37 AM</u>	9/11/2022	\$119.82	Observatory Hill Trail Signs
<b>Reference Number: 56090</b>	<b>Grainger</b>	<b>\$56.85</b>	
<u>9423989251</u>	8/25/2022	\$56.85	Vests
<b>Reference Number: 56091</b>	<b>Hattenhauer Energy Co LLC</b>	<b>\$2,685.28</b>	
<u>CL05598</u>	8/31/2022	\$2,685.28	Fuel
<b>Reference Number: 56092</b>	<b>Holcombs Market</b>	<b>\$475.14</b>	
<u>1070401135</u>	8/22/2022	\$340.00	Water
<u>3025201349</u>	8/22/2022	\$16.32	Plates
<u>4059761015</u>	8/16/2022	\$111.75	Powerade
<u>4062641013</u>	8/17/2022	\$7.07	Ice
<b>Reference Number: 56093</b>	<b>IBS Incorporated</b>	<b>\$420.93</b>	
<u>792395-2</u>	8/30/2022	\$47.85	Socket
<u>794919-1</u>	9/2/2022	\$373.08	Parts
<b>Reference Number: 56094</b>	<b>Kelsey Rooks</b>	<b>\$16.46</b>	
<u>Invoice - 9/15/2022 10:25:36 AM</u>	8/18/2022	\$16.46	Training Lunch
<b>Reference Number: 56095</b>	<b>Klickitat CO Emer Mgmt</b>	<b>\$10,927.27</b>	
<u>2022-01_Quarter 3</u>	2/22/2022	\$10,927.27	Dispatch Services
<b>Reference Number: 56096</b>	<b>Klickitat County PUD</b>	<b>\$12,410.81</b>	
<u>Invoice - 9/15/2022 10:28:20 AM</u>	9/7/2022	\$12,410.81	Electric
<b>Reference Number: 56097</b>	<b>Larry Bellamy</b>	<b>\$1,440.00</b>	
<u>Invoice - 9/15/2022 10:30:35 AM</u>	9/12/2022	\$1,440.00	Services

Reference	Date	Amount	Notes
<b>Reference Number: 56098</b> 310	Lori Lynn Hoxtor Attorney at Law 8/16/2022	<b>\$412.50</b> \$412.50	Public Defender
<b>Reference Number: 56099</b> 215187	Medical Warehouse 8/19/2022	<b>\$23.76</b> \$23.76	Cold Pack
<b>Reference Number: 56100</b> Invoice - 9/15/2022 10:41:49 AM Invoice - 9/15/2022 10:42:38 AM	Menke Jackson Beyer LLP 8/31/2022 9/15/2022	<b>\$8,209.22</b> \$6,310.00 \$1,899.22	044-General Attorney #442 White/ 425 W Darland
<b>Reference Number: 56101</b> In1759037	MES Northwest 8/31/2022	<b>\$3,305.63</b> \$3,305.63	Coat, Pants
<b>Reference Number: 56102</b> 35563256	Norco Inc 8/4/2022	<b>\$66.45</b> \$66.45	Cylinder Rental
<b>Reference Number: 56103</b> 22-33361	NWSC Northwest Safety Clean 9/14/2022	<b>\$430.82</b> \$430.82	Back Patches
<b>Reference Number: 56104</b> Invoice - 9/15/2022 10:56:41 AM	One Call Concepts Inc 9/15/2022	<b>\$29.96</b> \$29.96	Locations Notifications
<b>Reference Number: 56105</b> 21-902-16 22-901-2 22-903-1 22-904-1	Pioneer Surveying & Engineering Inc 8/22/2022 9/15/2022 8/22/2022 8/22/2022	<b>\$35,610.00</b> \$32,455.00 \$370.00 \$2,410.00 \$375.00	Byars Improvement Project Wadsack Sewer Grading EPA Water Project TIB Application
<b>Reference Number: 56106</b> MSP-94857	Radcomp Technologies 9/7/2022	<b>\$5,744.16</b> \$5,744.16	IT Services
<b>Reference Number: 56107</b> 4178-100000856	Regional Transfer Company - 4178A 8/31/2022	<b>\$5.18</b> \$5.18	Transfer Station Dump
<b>Reference Number: 56108</b> 0487-000793884 0487-000794048	Republic Services Inc 8/31/2022 8/31/2022	<b>\$1,125.54</b> \$359.25 \$766.29	Garbage Service Garbage Service
<b>Reference Number: 56109</b> 87385	RH2 Engineering Inc 9/12/2022	<b>\$4,164.32</b> \$4,164.32	SCADA Support
<b>Reference Number: 56110</b> Invoice - 9/15/2022 11:19:21 AM	Schuknecht's Polygraph Service 8/29/2022	<b>\$200.00</b> \$200.00	Polygraph test - Howell

Reference	Date	Amount	Notes
Reference Number: 56111 <u>7807-5</u>	Sherwin-Williams Co, The 8/20/2022	\$1,349.50 \$1,349.50	White Paint
Reference Number: 56112 3948 <u>Sales Receipt#23622</u>	Small Engine Specialties 8/26/2022 7/18/2022	\$222.36 \$104.22 \$118.14	Fuel Gauge Service Kit
Reference Number: 56113 <u>0528382723</u>	US Cellular 8/24/2022	\$2,761.74 \$2,761.74	Cell Phone
Reference Number: 56114 <u>578</u> <u>579</u> <u>581</u> <u>582</u> <u>583</u> <u>584 - Steinfeldt</u>	Vance Law Office 8/18/2022 8/18/2022 8/18/2022 8/18/2022 8/18/2022 8/18/2022	\$1,435.00 \$407.50 \$70.00 \$140.00 \$340.00 \$180.00 \$297.50	Public Defender - David Hamillk Public Defender - David Hamillk Public Defender - Justice Simpson Public Defender - Esmeralda Zaragoza Public Defender - Joey Steinfeldt Public Defender - Joey Steinfeldt
Reference Number: 56115 <u>9914998314</u> <u>9915119879</u>	Verizon Wireless 9/4/2022 9/6/2022	\$509.83 \$360.09 \$149.74	Police Vehicles Chlorination Station
Reference Number: 56116 <u>2713</u> <u>2782</u> <u>2882 - 2022</u>	WA St Dept of Health 9/1/2022 9/1/2022 9/1/2022	\$138,827.64 \$48,079.51 \$9,603.33 \$81,144.80	DWSRF Loan Payment #03-65103-017 DWSRF Loan Payment #05-96300-014 DWSRF Loan Payment #DM12-952-090
Reference Number: 901501 <u>Invoice - 9/12/2022 3:25:21 PM</u>	WA St Dept of Revenue 9/20/2022	\$8,067.41 \$8,067.41	excise Tax
Reference Number: 901502 <u>W408694</u>	HSA Bank Employee Plan Funding 9/6/2022	\$24.75 \$24.75	Service Fee
Reference Number: 901503 <u>Invoice - 9/15/2022 10:21:48 AM</u>	Invoice Cloud 9/15/2022	\$239.20 \$239.20	Credit Card Fees

# Register



Number	Name	Fiscal Description	Cleared	Amount
56069	Johnston, Steve	2022 - Sept 2022 - 1st Council Sept 2022		\$45.76
56070	Council Trust Acct.	2022 - Sept 2022 - 1st Council Sept 2022		\$1,230.07
56071	Deferred Comp Program	2022 - Sept 2022 - 1st Council Sept 2022		\$575.00
56072	Dept of Labor & Industries	2022 - Sept 2022 - 1st Council Sept 2022		\$2,263.69
56073	Dept of Retirement	2022 - Sept 2022 - 1st Council Sept 2022		\$11,876.84
56074	Employment Security	2022 - Sept 2022 - 1st Council Sept 2022		\$159.36
56075	Goldendale, City of	2022 - Sept 2022 - 1st Council Sept 2022		\$90.00
56076	Washington State Support Registry	2022 - Sept 2022 - 1st Council Sept 2022		\$337.50
901499	City of Goldendale	2022 - Sept 2022 - 1st Council Sept 2022		\$21,614.54
901500	Employment Security - PFML	2022 - Sept 2022 - 1st Council Sept 2022		\$353.74
Direct Deposit Run -	Payroll Vendor	2022 - Sept 2022 - 1st Council Sept 2022		\$56,561.41
9/8/2022				<b>\$95,107.91</b>



AGENDA BILL: G-1

AGENDA TITLE: Smart Street Light Management & Maintenance options.

DATE: September 19, 2022

**ACTION REQUIRED:**

ORDINANCE \_\_\_\_\_ COUNCIL INFORMATION \_\_\_\_\_ X \_\_\_\_\_

RESOLUTION \_\_\_\_\_ OTHER \_\_\_\_\_

MOTION \_\_\_\_\_ X \_\_\_\_\_

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**EXPLANATION:** Dhyan Technologies has provided an updated agreement for City Council consideration. The new agreement provides the City with several options in the event Dhyan Technologies or their successors could not continue providing service;

1. Dhyan Technologies would offer to City another software product to perform the same functions as the system and at the same cost provide by Dhyan (see section 9.15); or
2. Dhyan Technologies would release system source code to the City, and City shall have the limited right and license to use, copy and modify source code solely for the purposes of maintenance and support of the system for City internal use only; or
3. Dhyan Technologies will convert the OHN nodes installed at the City into a photo-control model whereby the OHN nodes will turn on the lights at night and turn off lights during the day (see section 2.6)
4. In the event the Dhyan Technologies or their successor were unwell or unable to no longer provide service as provided in option (1) the City would have the right to enter into a Tri-Party Escrow Service Agreement at the time (see attachment).

**STAFF RECOMMENDATION:** Staff recommends approval of the agreements.

**MOTION: I MOVE TO APPROVE THE SERVICE CONTRACT AGREEMENT BETWEEN THE CITY OF GOLDENDALE AND DHYAN TECHNOLOGIES IN THE AMOUNT OF \$58,880.00.**

## PRICE QUOTATION

Quotation Number: 2022-09-02-01

Sep 02, 2022

**City of Goldendale**  
1103 S. Columbus  
Goldendale, WA 98620  
Attn: Pat Munyan

**Dear Pat,**

Subject: Price quote for Dhyan's Ohli Smart Lighting Solution

As you requested, below, I have provided you with the price quote to replace 330 Echelon controls with Ohli Smart Lighting Solution.

#	Description	Price per device (USD)	Quantity	Extended Price (USD)
1	<b>Ohli Smart Lighting Solution (Standard voltage controller)</b>  All-inclusive bundled solution that consists of the following:  (a) Ohli nodes: smart Cellular/NB-IoT light controllers (NEMA- 7 pin, standard 120V ~ 277 VAC, GPS enabled, Tilt Sensor, RTC) with five (5) years of hardware warranty  (b) Ohli Connectivity: Industrial rated e-SIM with five (5) years of data connectivity provided by four major US service provider  (c) Ohli Software: Cloud based easy to use management software to monitor, control and manage controllers including cloud hosting fees fully paid for five (5) years  (d) Ohli Support: Annual Support and Maintenance (AMS) of controllers fully paid for five (5) years  (e) Ohli Monitoring: 24/7 monitoring service of controllers fully paid for five (5) years	\$170  Included  Included  Included  Included  Included	330	\$ 56,100
	SHIPPING	EXTRA		\$2700
	<b>TOTAL AMOUNT</b>			<b>\$58,880</b>

**TERMS & CONDITIONS:**

- (1) Sale of Ohli Smart Lighting Solution is subject to "Ohli Smart Lighting Solution Service and Support" attached to this price quote
- (2) Following shipping options are available: ExWorks (default shipping option), FoB, and CIF.
- (3) All prices are in USD.
- (4) Price quote does not include bank charges, shipment charges, insurance, import duty/tax, local taxes, and installation
- (5) Payment terms: 50% prepayment upon order, 50% balance payment two weeks before delivery
- (6) Product lead time is 8-12 weeks to ship after receiving 50% payment
- (7) Price quote is valid for 90 days from the date of this quote
- (8) To order, please provide a purchase order
- (9) Bank information for Remittances as indicated below.

Beneficiary Bank	: Bank of America – Mission San Jose
Bank Address	: 43591 Mission Boulevard, Fremont, California 94539, USA
Account Name	: Dhyan Networks and Technologies, Inc.
Account Number	: 3250 2778 6147
ABA routing number	: 121 000 358
SWIFT Code	: BOFAUS3N

Please feel free to contact me at +1.650.863.0562 ([pramadass@dhyan.com](mailto:pramadass@dhyan.com)) if you have any questions.

Thank you.

Sincerely,

**Prakash Ramadass**  
VP, Smart Cities  
+1 650.863.0562

**DHYAN NETWORKS AND TECHNOLOGIES, INC.  
OHLI SMART LIGHTING SOLUTION SERVICE AND SUPPORT**

This Agreement is entered as of this 01 day of September, 2022 ("Effective Date") by and between Dhyan Networks and Technologies, Inc., a California corporation, with offices at 160 Stanford Ave, Fremont, CA 94539 ("Dhyan") and City of Goldendale, having its principal place of business at 1103 S. Columbus, Goldendale, WA 98620 ("Customer").

**RECITALS**

**WHEREAS**, Dhyan is in the business of developing smart city solutions and offers the Ohi Smart Lighting Solution (OSLS), comprised of (i) Ohli Hardware Node, (ii) Ohli Connectivity Service, (iii) Ohli Central Management Service, (iv) Ohli Monitoring Service, and (v) Ohli Solution Support and Maintenance Service.

And

**WHEREAS**, Customer wishes to purchase Ohli Smart Lighting Solution (OSLS) consisting of the components mentioned above and specified in Exhibit A;

**NOW, THEREFORE**, for good and valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree as follows:

**AGREEMENT**

**1. DEFINITIONS**

- 1.1. "Customer(s)"** means individuals or entities who have purchased the OSLS.
- 1.2. "Customer Data"** means all electronic data or information submitted by Customers to the OSLS or Dhyan.
- 1.3. "Documentation"** means any and all supporting documentation supporting the OSLS that is provided from time to time by Dhyan.
- 1.4. "End User"** means a person, company or other legal entity that is a user of the OSLS.
- 1.5. "Error"** means a reproducible failure of the OSLS to perform in substantial conformity with the OSLS specifications set forth in the corresponding user guide(s), help files or other printed documentation.
- 1.6. "Initial Support Term"** means that period following the sale of the OSLS to a Customer which extends for a period of five or ten years (depending upon term option selected) from the date of sale. If the date of sale is between Jan 1 and Jun 30 of a given year, then the five (or ten) year period would end on Dec 31<sup>st</sup> of the fifth (or tenth) year. If, on the other hand the date of sale occurs between Jul 1 and Dec 31 of a given year, then the five (or ten) year period would end on Jun 30<sup>th</sup> of the year following the fifth (or tenth) year.
- 1.7. "LORA"** means a 'Long Range' low power wireless technology intended for providing a cellular style low data rate communications network.

- 1.8. "Ohli Smart Lighting Solution (OSLS)"** means (i) Ohli Hardware Node (OHN) (ii) Ohli Connectivity Service (OCS) (iii) Ohli Central Management Service (CMS) (iv) Ohli Monitoring Service (OMS) and (v) Ohli Solution Support and Maintenance Service (SMS), each of which definitions is as follows:
- 1.8.1. "CMS"** means Ohli Central Management Service as described in Exhibit A
- 1.8.2. "OCS"** means Ohli Connectivity Services as described in Exhibit A
- 1.8.3. "OMS"** means Ohli Monitoring Service as described in Exhibit A
- 1.8.4. "OHN"** means Ohli Hardware Node as described in Exhibit A
- 1.8.5. "SMS"** means Ohli Solution Support and Maintenance Service as described in Exhibit A
- 1.9. "Renewal Support Term"** means a successive five -year renewal term following the Initial Support Term as defined at Section 1.3. Unless otherwise specified, all Renewal Support Terms are based on a calendar year beginning on January 1 and ending on December 31 of each year.
- 1.10. "Scheduled Maintenance"** means a regular maintenance window during which Dhyan conducts maintenance on any part of the OSLS
- 1.11. "Services"** means CMS, OCS, OMS, and SMS services that are part of the OSLS.
- 1.12. "Support Incident"** is defined as one specific Error or other technical issue that begins when a customer calls Dhyan Technical Support and ends when either the single specific Error or other technical issue is resolved or Dhyan Technical Support deems it non-resolvable. Each specific Support Incident will generate a "ticket", which can be opened, tracked and closed separately from any other specific Support Incidents.
- 1.13. "Support Plan"** means the specific software support and maintenance plan offered by Dhyan and selected by Customer. Dhyan may offer different plans with specific support levels, number of covered incidents and extent of software maintenance provided.
- 1.14. "Support Times"** means the hours of each day and the days of each week set forth in Exhibit C hereto
- 1.15. "Trademarks"** means all trademarks, service marks or trade names associated with the OSLS, its specific components, or the Documentation

## 2. DHYAN RESPONSIBILITIES

**2.1 Ohli Smart Lighting Solution.** Pursuant to the terms and conditions outlined in this Agreement, Dhyan shall provide Customer with the Ohli Smart Lighting Solution (OSLS) to the Customer. The OSLS shall be comprised of (i) Ohli Hardware Node (OHN) (ii) Ohli Connectivity Service (OCS) (iii) Ohli Central Management Service (CMS) (iv) Ohli Monitoring Service (OMS) and (v) Ohli Solution Support and Maintenance Service (SMS). CMS, OCS, OMS, and SMS shall be made available by Dhyan, subject, however, to any unavailability caused by circumstances beyond Dhyan's reasonable control, including any force majeure events as contemplated in Force Majeure section and any computer, communications, Internet service or hosting facility failures or delays involving hardware, software, power or other systems not within Dhyan's possession or reasonable control, and denial of service attacks. The CMS, OCS, OMS, and SMS may be temporarily limited, interrupted or curtailed due to maintenance, repair, modifications, upgrades or relocation. Dhyan shall attempt to notify Customer of scheduled and unscheduled network outages that are expected to last more than four (4) hours and that may affect the such services. Dhyan shall be entitled to change the services during the Term, provided that Dhyan will not materially reduce the capabilities provided by such services.

**2.2 Third Party Applications.** Dhyan may use third-party applications in combination with the OSLs. In connection with any such third-party application, Customer acknowledges and agrees that Dhyan may allow the third-party providers access to Customer Data as required for the interoperation of such third-party application with the OSLs. The use of a third-party application with the OSLs may also require Customer to agree to a separate agreement or terms and conditions with the provider of the third-party application, which will be subject to Customer's approval and will govern Customer's use of such third-party application. If the Customer chooses not to approve the use of third-party application, the Customer understands and accepts that some of the functionalities and features in the OSLs might not be functional or usable.

**2.3 Ownership and Proprietary Rights.** Dhyan and its suppliers and/or licensors own and shall retain all right, title and interest (including without limitation all patent rights, copyrights, trademark rights, trade secret rights and other intellectual property rights), in and to the OSLs and the Documentation. Customer agrees that only Dhyan shall have the right to maintain, enhance or otherwise modify the OSLs. If Customer provides Dhyan with reports of defects in the OSLs or proposes or suggests any changes or modifications (collectively "Feedback"), Dhyan shall have the right to use and exploit such Feedback including, without limitation, the incorporation of such Feedback into Dhyan's software products and/or services, including, without limitation, the OSLs, without any obligation to Customer. Except as expressly set forth in this Agreement, Dhyan reserves all rights and grants Customer no licenses of any kind, whether by implication, estoppel, or otherwise.

**2.4 End User Subscriptions.** Unless otherwise specified in the applicable order form, (i) access to the CMS and OMS is purchased as End User subscriptions and may be accessed by no more than the specified number of End Users, (ii) additional End User subscriptions may be added during the applicable subscription term at the same pricing as that for the pre-existing subscriptions thereunder, prorated for the remainder of the subscription term in effect at the time the additional End User subscriptions are added, and (iii) the added End User subscriptions shall terminate on the same date as the pre-existing subscriptions. End User subscriptions are for designated End Users only and cannot be shared or used by more than one End User but may be reassigned to new End Users replacing former End Users who no longer require ongoing use of the CMS and OMS. If for some reason Dhyan were to discontinue providing Services (CMS, OCS, OMS, and SMS), then Dhyan will prorate the prepaid subscriptions paid by the Customers for the Services and refund the unused amount to the Customer.

**2.5 Customer Data.** Dhyan shall have the limited right to use the Customer data to provide the OSLs in accordance with this Agreement. Subject to the limited rights granted to Dhyan pursuant to this Agreement, Dhyan acquires no right, title or interest from Customer under this Agreement in or to Customer Data, including any intellectual property rights therein.

**2.6 Further Assurances.** During the term of the contract,

(a) If Dhyan or a successor were to discontinue providing the OSLs, then Dhyan or a successor, until the term of the contract is over, will do the following for the current OSLs Customers (i) continue to honor the hardware warranty for OHN and (ii) continue to provide Services.

(b) If Dhyan or successor ceases to transact business or becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors, then Dhyan or successor will (i) convert the OHN nodes installed at the Customer into a photo-control mode whereby the OHN node will turn on the light at night and turn off the light during the day (ii) transfer the OHN warranty provider from being Dhyan to the manufacturing partner of Dhyan and the manufacturing partner of Dhyan will honor the OHN warranty for the rest of the term of the contract.



### 3. CUSTOMER RESPONSIBILITIES AND RESTRICTIONS

**3.1 Customer Responsibilities.** Customer is responsible for all activity that occurs under Customer's accounts by or on behalf of Customer. Customer agrees to (a) be solely responsible for all End User activity, which must be in accordance with this Agreement and the Documentation, (b) be solely responsible for Customer Data (other than with respect to the Dhyan obligations set forth in the Agreement) (c) obtain and maintain during the Term all necessary consents, agreements and approvals from individuals or any other third parties for all actual or intended uses of information, data or other content Customer will use in connection with the OSLS, (d) use commercially reasonable efforts to prevent unauthorized access to, or use of, the OSLS and notify Dhyan promptly of any known unauthorized access or use, and (e) use the OSLS only in accordance with applicable laws and regulations.

**3.2 Restrictions.** Customer shall not (and shall not authorize any third party to): (a) modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the OSLS except to the extent that enforcement of the foregoing restriction is prohibited by applicable law; (b) circumvent any user limits or other timing, use or functionality restrictions built into the OSLS; (c) remove any proprietary notices, labels, or marks from the OSLS; (d) frame or mirror any content forming part of the OSLS; or (e) access the OSLS in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the OSLS (f) use OSLS for service bureau or time-sharing purposes or in any other way allow third parties to exploit the OSLS; (g) provide OSLS passwords or other log-in information to any third party; (h) share non-public OSLS features or content with any third party; or (i) engage in web scraping or data scraping on or related to OSLS, including without limitation collection of information through any software that simulates human activity or any bot or web crawler. In the event that it suspects any breach of the requirements of this Section 3.2 (Restrictions), including without limitation by End Users, Dhyan may suspend Customer's access to the OSLS without advance notice, in addition to such other remedies as Dhyan may have. This Agreement does not require that Dhyan take any action against Customer or any End User or other third party for violating this Section 3.2 (Restrictions), or this Agreement, but Dhyan is free to take any such action as it sees fit.

**3.3 Privacy and Data Protection.** In the event Customer or any Customer Data is sourced from the European Union ("EU") or the OSLS otherwise involve special privacy or data protection provisions (whether applicable in the EU or otherwise), the parties may agree to a Data Processing Addendum with additional provisions relating to privacy and data protection, which shall be attached to this Agreement or Order Form and become a part of this Agreement.

**3.4 Compliance with Laws.** In its use of the OSLS, Customer shall comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information and other laws applicable to the protection of Customer Data.

**3.5 Availability of Connectivity Services.** The Customer understands that for the OSLS to be functional there must be a cellular or a LORA connectivity service that must be available in the geographical area where they plan on deploying the OSLS. The Customer also agrees that it is their responsibility to ensure such correct type of connectivity services are available in the area where they plan to deploy the OSLS. In the absence of such correct type of connectivity services, the Customer understands and agrees that OHN will operate in the photo-control mode wherein many of the smart features of the OSLS will not be functional.

### 4. ORDERING, PAYMENT, SHIPMENT AND DELIVERY

**4.1 Product Sale.** Customer shall pay all fees specified in each Order Form hereunder (Exhibit B), which shall include all expenses. Except as otherwise specified herein or in an Order Form, (a) Fees will be quoted and paid in United States dollars and (b) payment obligations are non-cancelable and Fees paid are nonrefundable.

**4.2 Invoicing and Payment.** If a purchase order is required by Customer, Customer will provide Dhyan with a valid purchase order within five (5) days from the execution of the applicable Order Form. Any terms and conditions on any purchase order shall not be deemed a part of this Agreement or otherwise binding on Dhyan unless agreed to by Dhyan in writing. Dhyan will invoice Customer in accordance with the relevant Order Form. Unless otherwise stated in the Order Form, Fees are due net thirty (30) days from Customer's receipt of the invoice. Customer is responsible for providing Dhyan with complete, accurate and up to date billing and contact information.

**4.3 Overdue Fees.** If any fees are not received from Customer by the due date, then at Dhyan's discretion, such fees may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid.

**4.4 Suspension of Services.** Except with respect to any Fees disputed in good faith by Customer, if any fees for OSLS or for Professional Services are thirty (30) or more days overdue, Dhyan may, without limiting Dhyan's other rights and remedies, suspend Professional Services and Customer's use of the OSLS until such amounts are paid in full.

**4.5 Payment Disputes.** If an invoiced amount is disputed in good faith by Customer, Customer must notify Dhyan in writing and provide sufficiently detailed support of any invoice dispute within sixty (60) business days of Customer's receipt of invoice. If Customer fails to do so, Customer is deemed to have waived its right to dispute that invoice and the invoice will be deemed accurate and valid. Nothing in this section shall be deemed to waive Customer's obligation to pay any undisputed amounts in accordance with Section 4.2 (Invoicing and Payment).

**4.6 Taxes.** The Fees are exclusive of all taxes, levies, duties or similar governmental assessments of any nature (collectively, "Taxes"). Customer is responsible for paying all taxes associated with Customer purchases hereunder except for those based on Dhyan's net income, property, or employee withholdings. Taxes shall not be deducted from the payments to Dhyan, except as required by law, in which case the amount payable shall be increased as necessary, so that after making all required deductions and withholdings, Dhyan receives and retains (free from any Tax liability) an amount equal to the amount it would have received had no such deductions or withholdings been made.

**4.7 Audit Rights.** Dhyan shall have the right to audit Customer's compliance with this Agreement at any time during the term of this Agreement. Customer shall cooperate following any reasonable request by Dhyan in connection with such audit. If Dhyan determines that Customer has knowingly allowed access to the Services other than as permitted under this Agreement or any Order Form or has otherwise violated any applicable terms hereof or thereof, and as a result additional Fees are owed to Dhyan, Dhyan shall invoice Customer for such discrepancies and such Fees shall be payable pursuant to the terms of this Agreement. The results of any audit shall not limit any other rights or remedies of Dhyan.

## 5. SERVICE AND SUPPORT

**5.1 Support Services.** During the Initial Support Term and any Renewal Support Term, Dhyan Customer Success Team (CST) shall render support services set forth in this Section to Customer subject to: Customer's



compliance with its obligations set forth in Section 2.3 (Ownership and Proprietary Rights) and elsewhere in this Agreement as well as those obligations outlined in Dhyan End User Service Agreement. The software support services to be provided by Dhyan pursuant to this Agreement are as follows:

**5.2 Standard Service Level Agreement (SLA).** Support encompasses technical troubleshooting, functional expertise and instruction on the configuration and use of Dhyan products, and services as well as general customer service. Dhyan recommends that the Customer leverages internal support mechanisms and/or the self-service content in Dhyan website in addition to the CST members for the best experience possible.

The term “System” means all software-as-a-service products subscribed to by Customer. The term “Month” means calendar month.

The terms of the Service Level Agreement (“SLA”) are as follows.

- Uptime – Uptime is the time during any Month that the System is available within reasonable response times. Dhyan has an Uptime guarantee of 905% except for Scheduled Maintenance (as defined below). The calculation used to arrive at the Uptime result is:

$$\text{Uptime Minutes Per Month} = 90\% \times \text{Number of Minutes Per Month}$$

**Uptime Measurement and Exclusions** – Uptime excludes Scheduled Maintenance and any downtime or service interruptions caused by any third-party network or application. Customer will be notified via email or, for some products, by screen notifications within the System at least 2 business days prior to any Scheduled Maintenance that includes System downtime. In the event that the Scheduled Maintenance downtime window needs to be significantly exceeded or altered, Dhyan will notify Customer as soon as possible prior to the planned update.

### 5.3 Dhyan Service and Support Obligations

Dhyan shall offer support to the Customer in the following manner

(a) **Help Desk.** Dhyan will provide Customer with reasonable help desk assistance during the Support Times regarding the installation and implementation of the OSLS, and the identification, diagnosis and correction of Errors. Dhyan will attempt to resolve any support questions posed by Customer. If Dhyan determines that it would be appropriate to do so, Dhyan may defer resolution of a support question until a later time. At its discretion, Dhyan may provide Customer with help desk support during times other than the Support Time and/or beyond the maximum number of monthly and/or annual Support Incident limits (if applicable) at Dhyan’s then standard rates. Customer shall be responsible for paying charges for such additional help desk support.

(b) **Web Site.** Dhyan will provide Customer with access to technical information via its web site(s) on the Internet.

(c) **Procedures for Error Correction Services**

(i) **Notification.** To obtain Error correction services, Customer must notify Dhyan immediately of any suspected Error and must provide Dhyan with reasonable detail of the nature of and circumstances surrounding the Error. “Reasonable detail” includes complete software, hardware and network configuration information as requested by Dhyan.

(ii) **Remote Diagnostics.** Dhyan may perform remote diagnostics to determine the existence and nature of an Error.

(iii) Error Correction. Dhyan will make reasonable commercial efforts to correct and resolve Errors that Customer reports to Dhyan and which Dhyan is able to reproduce. Customer will promptly provide Dhyan with all information requested by Dhyan to reproduce such Errors. For each such Error, Dhyan will use reasonable commercial efforts to provide Customer with a work-around or if Dhyan is unable to provide Customer with either of the foregoing, Dhyan shall provide a specific action plan for addressing the Error, including a good faith estimate of the time required to correct and resolve such Error.

(iv) Remote Correction. Dhyan may perform any Error correction work via remote telecommunications. If such remote support is unavailable, in Dhyan's opinion, to satisfactorily resolve the Confirmed Error, Dhyan may require Customer to provide data files on removable media via overnight courier (or other shipping method that provides end-to-end tracking) or other mutually agreed upon electronic medium at Customer's expense.

(d) Response Times. Dhyan will use reasonable commercial efforts to communicate with Customer, by telephone, e-mail, fax or Dhyan's website within the following targeted response times, regarding Errors that Customer reports to Dhyan during the Support Times; for purposes of this Agreement, a "response" means Dhyan's acknowledgment of an Error, and does not necessarily mean that a resolution will be achieved. The response time shall depend on the priority of the Error identified, as described below:

- Priority 1: There is a critical impact to a business operation. Upon acknowledgement of the Error within two hours (maximum), Dhyan will commit full-time resources around the clock to resolve the situation and provide a fix or work-around within twenty-four (24) hours of problem report to Dhyan.
- Priority 2: Performance is severely degraded or significant aspects of a business operation are negatively impacted by unacceptable network or environment performance. Upon acknowledgement of the Error within four hours (maximum), Dhyan will commit full-time resources during Support Times to resolve the situation and provide a fix or work-around within two (2) business days of the problem report to Dhyan.
- Priority 3: Operational performance is impaired, although most business operations remain functional. Upon acknowledgement of the Error within eight hours (maximum), Dhyan will commit resources during Support Times to restore service to satisfactory levels and provide a fix or work-around within two (2) weeks of the problem report to Dhyan.

(e) Limitation of Dhyan's Support Obligations. Notwithstanding anything to the contrary elsewhere in this Agreement, Dhyan will have no obligation to provide any support services to Customer if:

(i) Such support relates to or involves any products, data, features, devices or equipment not provided by Dhyan:

(ii) Customer or a third party has altered or modified any portion of the OSLS in any manner without the prior written consent of Dhyan;

(iii) Customer has not installed or used the OSLS in accordance with instructions provided by Dhyan, including failure to follow implementation procedures;

(v) A party other than Dhyan (or a party authorized by Dhyan) has serviced the OSLS and the OSLS no longer conforms to its specifications; or

(vi) Customer is not in full compliance with the other terms of this Agreement.

(f) Hardware. If the OHN provided to the Customer is found defective then where possible, pre-replacements shall be provided to the Customer for any OHN that is under warranty. Customer shall have ten (10) business days to return the defective OHN to Dhyan. If Customer fails to return the defective OHN to Dhyan, Customer agrees to pay the costs for the pre-replacement Hardware. Dhyan's support obligations under this Agreement shall include only those hardware devices specified in Exhibit A and does not include computer hardware, computer network, electrical, telephone, interconnection, or the installation or repair of accessories, alterations, parts or devices not furnished by Dhyan.

(g) Additional Services. In its discretion, Dhyan may provide Customer with additional support services for the OSLs not otherwise covered under this Section or specifically excluded pursuant to Section 5.3 above, provided that Customer pays Dhyan for such service at Dhyan's then standard hourly and expense reimbursement rates. Except to the extent specifically otherwise provided in this Agreement, such support service is not included within the terms of this Agreement.

(h) Access. During the Initial Support Term or any Renewal Support Term, Customer will provide Dhyan with reasonable access (via remote telecommunications or on-site access at Customer's premises) to the OSLs to the extent necessary, in Dhyan's discretion, to enable Dhyan to meet its support obligations as set forth in this Agreement.

(i) Communications Link. During the Agreement, Customer, at its sole expense, will provide access via the Internet. Dhyan shall be entitled to use this Internet connection in discharging its responsibilities under this Agreement. Dhyan shall have no liability to Customer if Dhyan's ability to render support is impaired by Customer's inability to provide telecommunications functionality required for remote support.

(j) Support Contact. Customer shall designate one employee and one alternate as its "Support Contacts" to be generally available during the Support Times to confer with Dhyan regarding Errors and other support-related issues. If applicable, Customer shall identify Support Contacts to Dhyan in writing. Customer shall notify Dhyan immediately of any changes in the persons designated as Support Contacts. Dhyan will provide technical support only to Customer's Support Contacts. If Customer requires Dhyan to provide technical support to Customer's employees, representatives or consultants other than Customer's Support Contacts, Dhyan may charge additional fees for such support at its sole discretion.

(k) Language. Customer shall communicate with Dhyan in English only.

(l) Miscellaneous Item. Customer shall bear all costs associated with procuring, installing, and maintaining all equipment, telephone lines and communications interfaces necessary for Customer to obtain Dhyan support services.

## **6. WARRANTY AND LIABILITY**

**6.1 Mutual Warranties.** Each Party represents and warrants that (a) it has the legal power to enter into this Agreement, (b) it will use commercially reasonable efforts through the use of anti-virus protection not to

transmit to the other Party any Disabling Code, and (c) it will comply with all applicable laws with respect to its rights and obligations pursuant to this Agreement.

**6.2 Ohli Hardware Node (OHN) Warranty.** With respect to OHN delivered by Dhyan to Customer, for a period of five years after the Delivery Date (the "Warranty Period"), Dhyan warrants that the products, when used in accordance with the instructions in the applicable Documentation, will operate as described in the Documentation in all material respects. Dhyan does not warrant that Customer's use of the OHN will be error-free or uninterrupted. Dhyan will, at its own expense and as its sole obligation and Customer's exclusive remedy for any breach of this warranty, correct any reproducible Error in the products or replace any defective product provided that such Error is reported to Dhyan by Customer in writing during the Warranty Period and that Customer provides all information that may be necessary to assist Dhyan in resolving the Error, or sufficient information to enable Dhyan to recreate the Error. Dhyan's sole and exclusive liability and Customer's sole remedy under this warranty shall be, at Dhyan's option, to provide repaired or replacement OHN for such defective OHN. The OHN which Customer considers defective shall be returned per Dhyan's standard return material authorization procedures. This warranty shall be void if, in Dhyan's reasonable opinion, such defective condition was caused in whole or in part by Customer's misuse, neglect, testing, attempts to repair, or any other cause beyond normal usage in accordance with Dhyan's written specifications, or by accident, fire, or other hazard. Repair or replacement does not extend the warranty period for such OHN. Dhyan will not be responsible for the removal of the defective OHN and replacing it with a replacement OHN. EXCEPT AS EXPRESSLY SET FORTH ABOVE, THE HARDWARE AND DOCUMENTATION ARE PROVIDED "AS IS". DHYAN HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

**6.3 Ohli Central Management Service (CMS) Warranty.** Dhyan warrants that (i) the CMS shall perform materially in accordance with the CMS user guide, the functionality of the CMS will not be materially decreased during a subscription term, and (iii) Dhyan will not transmit Malicious Code to any Customers provided that a Customer or an End User uploads a file containing Malicious Code into the CMS and later downloads that file, this warranty shall not apply to such file.

**6.4 Support Services Warranty.** The support services (Ohli Monitoring Service (OMS) and Ohli Solution Support and Maintenance Service (SMS)) provided under this Agreement will be provided in a workmanlike manner by individuals who are knowledgeable in the operation of the OSLS.

**6.5 Disclaimer** EXCEPT AS SPECIFICALLY SET FORTH IN Sections 6.2 (Hardware Product Warranty), 6.3 (Ohli Central Management Service (CMS) Warranty) and 6.4 (Support Services Warranty), THE HARDWARE, SOFTWARE, SERVICES AND DOCUMENTATION ARE PROVIDED "AS IS" AND WITHOUT ANY REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS OF ANY KIND. EACH PARTY AND ITS LICENSORS AND/OR SUPPLIERS MAKE NO OTHER REPRESENTATIONS AND GIVE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE REGARDING THE SERVICES AND/OR THE USER GUIDE PROVIDED UNDER THIS AGREEMENT AND EACH PARTY SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, MERCHANTABLE QUALITY, NON-INFRINGEMENT, DURABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. ADDITIONALLY, CUSTOMER ACKNOWLEDGES THAT DHYAN DOES NOT REPRESENT OR WARRANT OR PROVIDE ANY CONDITIONS THAT THE SERVICES AND/OR THE USER GUIDE WILL BE ERROR-FREE OR WORK WITHOUT INTERRUPTIONS. IN ADDITION, CUSTOMER ACKNOWLEDGES THAT SERVICE FEATURES THAT INTEROPERATE WITH THIRD PARTY APPLICATIONS AND THIRD-PARTY SERVICES DEPEND ON THE CONTINUING AVAILABILITY OF THOSE APPLICATIONS AND SERVICES' API AND PROGRAM FOR USE WITH THE OSLS. SERVICES MAY BE IMPACTED, INTERRUPTED OR MAY CEASE IF ANY THIRD-PARTY APPLICATIONS AND SERVICES CEASE TO MAKE ITS API OR PROGRAM AVAILABLE AT ALL OR ON



REASONABLE TERMS OR IF ANY THIRD-PARTY APPLICATION AND SERVICES EXPERIENCE AN OUTAGE, ANY MALFUNCTIONS OR ANY CHANGE IN THEIR SERVICES, PRACTICES OR FUNCTIONALITY.

**6.6 Maximum Liability.** In no event shall Dhyan's cumulative liability for any claim arising in connection with this Agreement exceed the amount of the total fees and charges paid to Dhyan for Support Services by Customer during the six (6) months preceding any such claim.

**6.7 Indemnification by Dhyan.** Dhyan will indemnify, defend and hold Customer, its subsidiaries, and End Users (each, an "Indemnified Party"), harmless from and against any and all claims, losses, costs, liabilities and expenses (including reasonable attorneys' fees), arising as a result of or in connection with any claim that the OSLs or Documentation infringes any intellectual property right of a third party provided: (i) the Indemnified Party promptly gives written notice of any claim to Dhyan; (ii) the Indemnified Party provides any assistance which Dhyan may reasonably request for the defense of the claim (with reasonable out of pocket expenses paid by Dhyan); and (iii) Dhyan has the right to control of the defense or settlement of the claim, provided, however, that the Indemnified Party shall have the right to participate in, but not control, any litigation for which indemnification is sought with counsel of its own choosing, at its own expense. Additionally, if an injunction or order issues restricting the use or access of the OSLs or any of the OSLs components or Documentation, or if Dhyan determines that the OSLs or any of the OSLs components or Documentation are likely to become the subject of a claim of infringement or violation of any proprietary right of any third party, Dhyan shall in its discretion and, at its option (a) procure the right to continue using the OSLs, OSLs components and Documentation; (b) replace or modify the OSLs and OSLs components and Documentation so that they become non-infringing, provided such modification or replacement does not materially alter or affect the specifications of or the use or operation of the OSLs; (d) require the cessation of the use of OSLs and refund any subscription fees relating to the future use of the OSLs.

**6.8 Indemnification by Customer.** Customer shall indemnify and hold Dhyan harmless from and against any and all damages, liabilities, costs and expenses (including reasonable attorney's fees) which Dhyan incurs as a result of any claim based on any breach of any representation or warranty, covenant or agreement by Customer under this Agreement or any breach of this Agreement by Customer; provided: (i) that Dhyan promptly gives written notice of any claim to Customer (ii) at Customer's expense, Dhyan provides reasonable assistance which Customer may reasonably request for the defense of the claim; and (iii) Customer has the right to control the defense or settlement of the claim, provided, however, that Dhyan shall have the right to participate in, but not control, any litigation for which indemnification is sought with counsel of its own choosing, at its own expense

**6.9 Exclusive Remedy.** Sections 6.7 (indemnification by Dhyan) and 6.8 (Indemnification by Customer) sets forth the indemnifying Party's sole liability to, and the indemnified Party's exclusive remedy against, the other Party for any type of claim described in Sections 6.7 and 6.8.

**6.10 Limitation of Liability.** IN NO EVENT SHALL DHYAN'S OR ITS LICENSORS' LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE TOTAL AMOUNT ACTUALLY RECEIVED BY DHYAN HEREUNDER DURING THE PREVIOUS SIX (6) MONTHS. IN NO EVENT SHALL ANY PARTY OR DHYAN'S LICENSORS BE LIABLE TO ANOTHER PARTY OR ANY THIRD PARTY FOR LOSS OF DATA, COSTS OF PROCUREMENTS OF SUBSTITUTE GOODS OR SERVICES OR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES UNDER ANY CAUSE OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF AN ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN

**6.11 Consequential Damages.** REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT SHALL DHYAN BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT,

CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR INCIDENTAL DAMAGES OF ANY KIND AND HOWEVER CAUSED, EVEN IF DHYAN KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE.

## 7. TERM AND TERMINATION

**7.1 Term.** This Agreement commences on the Effective Date and will remain in effect until the earlier of (a) the expiration or termination of all Order Forms under this Agreement or (b) the termination of this Agreement in accordance with this Section. Upon termination of this Agreement for any reason, all rights and subscriptions granted to Customer including all Order Forms will immediately terminate and Customer will cease using the Services. For avoidance of doubt, upon termination of any Order Form, the Services provided pursuant to such Order form shall cease and Customer shall stop using such Services.

**7.2 Automatic Renewal.** Subscriptions for the OSLS commence on the Order Date specified in the applicable Order Form and continue for the subscription Term specified therein, unless otherwise terminated. Except as otherwise specified herein or in the applicable Order Form, all subscriptions will automatically renew for additional periods of one year (each a "Renewal Term") at the list price in effect at the time of renewal unless either Party gives the other Party written notice of non-renewal at least 60 days prior to the end of the applicable Term or Renewal Term.

**7.3 Termination of Agreement.** Either party may terminate this Agreement for convenience by giving at least thirty (30) days written notice of termination to the other party. This Agreement may be terminated by either party in the event of a material breach of this Agreement by the other party that is not cured within thirty (30) days of the other party's receipt of written notice of such breach. If a material breach is cured within a thirty (30) day cure period this Agreement shall remain in effect as if no material breach had occurred. This Agreement shall terminate automatically without notice and without further action by the other party in the event that the other party becomes insolvent, which means it becomes unable to pay its debts in the ordinary course of business as they come due, or makes an assignment of this Agreement for the benefit of creditors.

**7.4 Refund or Payment upon Termination.** Upon any termination for cause by Customer, Dhyan will refund Customer a pro-rata portion of any prepaid OSLS Fees that cover the remainder of the Term after the effective date of termination and a prorata portion of any prepaid Professional Services Fees that cover Professional Services that have not been delivered as of the effective date of termination. Upon any termination for cause by Dhyan, Customer will pay any unpaid Fees for services and subscriptions provided by Dhyan and accepted by Customer prior to the effective date of such termination.

**7.5 Effect of Termination.** Upon termination for any reason the following shall survive termination of this Agreement: Section 1 (Definitions), Section 2.3 (Ownership and Proprietary Rights), Sections 3.4 (Compliance with Applicable Laws), Section 5 (Service and Support), Section 6 (Warranty and Liability), Section 7 (Term and Termination), Section 8 (Confidentiality), and Section 9.4 (Export Compliance)

## 8. CONFIDENTIALITY AND PROTECTION OF CUSTOMER DATA

**8.1 Confidential Information.** Information disclosed by the disclosing party ("Discloser") will be considered confidential by the receiving party ("Recipient") if such information is conspicuously designated as "confidential" in writing, if communicated in writing; or if communicated orally, is identified as "confidential" at time of disclosure and in writing as "confidential" within thirty (30) days after the date of disclosure ("Confidential Information"). Dhyan Confidential Information includes, but is not limited to, the OSLS,

information or technology used in connection with the services, this Agreement and all Order Forms; and Confidential Information of each Discloser includes Discloser's non-public business and marketing plans, technology and technical information, product plans and designs, and business processes. Confidential Information does not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to Discloser, (b) was known to Recipient prior to its disclosure by Discloser without breach of any obligation owed to Discloser, (c) is received from a third party without any obligation of confidentiality, or (d) was independently developed by Recipient without reference to or use of Discloser's Confidential Information. The provisions of this Agreement shall apply retroactively to any Confidential Information that may have been disclosed prior to the Effective Date

**8.2 Confidentiality Period.** For a period of three (3) years after the date on which the certain Confidential Information is disclosed to Recipient or its Representatives (as defined below) by Discloser, Recipient will hold the Confidential Information in strict confidence, using the same degree of care as such party uses to protect its own confidential and proprietary information of similar importance, but in no event less than reasonable care, to prevent the unauthorized use, disclosure, publication or dissemination of Confidential Information. Subject to this Section 10, each party will not disclose to any third party any Confidential Information of the Discloser, except as approved in writing by the Discloser, and will only use the Confidential Information of the Discloser for the Purpose. Each party will only permit access and use of the Confidential Information of the Discloser to those of its employees, officers, directors, attorneys, advisors, accountants or agents (each, a "Representative") having a need to know the Confidential Information for the Purpose and who have signed confidentiality agreements or are otherwise bound by confidentiality obligations at least as restrictive as those set forth herein.

**8.3 Protection of Customer Data.** Without limiting the above, Dhyan will maintain commercially reasonable administrative, physical, and technical safeguards designed to protect the security and confidentiality of Customer Data. Except (a) in order to provide the services, (b) to prevent or address service or technical problems in connection with support matters, or (c) as expressly permitted in writing by Customer, Dhyan will not modify Customer Data or disclose Customer Data (unless compelled by law in accordance with Section 6.4 (Compelled Disclosure)).

**8.4 Confidentiality Exceptions.** The Recipient's obligations of confidentiality and non-use assumed under this Agreement shall not apply with respect to a specific portion of the Discloser's Confidential Information if the Recipient can demonstrate with competent evidence that such Confidential Information:

- (a) at the time of disclosure is in the public domain;
- (b) becomes part of the public domain without the breach of any confidentiality obligation by Recipient but only as of the date such information becomes part of the public domain;
- (c) was in the Recipient's possession free of any obligation of confidence at the time it was disclosed by the Discloser, as established by the Recipient's written records;
- (d) was lawfully disclosed to the Recipient by a third party who does not owe any duty to, and who is not under an obligation of confidentiality to the Discloser with respect to the Confidential Information, but only as of the date such information is lawfully disclosed to Recipient; and
- (e) was developed by employees of the Recipient independently of and without reference to the Confidential Information.

**8.5 Permitted Disclosure.** Recipient may disclose certain Confidential Information of the Discloser without violating the obligations of this Agreement, to the extent the disclosure is required by a valid court order or other governmental body having jurisdiction; provided that Recipient provides the Discloser with reasonable prior written notice of such disclosure and makes a reasonable effort to obtain, or to assist the Discloser in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.

**8.6 Privacy Policy.** The Privacy Policy applies only to OSLS and does not apply to any third-party website or service linked to OSLS or recommended or referred to through OSLS or by Dhyan's staff.

**8.7 Risk of Exposure.** Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using OSLS, Customer assumes such risks. Dhyan offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.

**8.8 Data Accuracy.** Dhyan will have no responsibility or liability for the accuracy of data uploaded to OSLS by Customer, including without limitation Customer Data and any other data uploaded by End Users.

**8.9 Downloading of Customer Data and Data Deletion.** During any Term under an Order Form, on a rolling 24-month basis (unless otherwise provided in any Order Form) and for the period 30 days after termination or expiration of the Agreement or the applicable Order Form, Customer may download Customer Data used in connection with such Order Form. After expiration of the applicable rolling 24 month or 30-day period, Dhyan will have no obligation to maintain or make available the applicable Customer Data and will thereafter, unless legally prohibited, delete or make permanently unreadable all Customer Data in Dhyan systems or otherwise in Dhyan possession or under Dhyan control. In addition, Dhyan may permanently erase Customer Data if Customer's account is delinquent, suspended for 30 days or more.

**8.10 Aggregate and Anonymized Data.** Notwithstanding the provisions above of Section 8.6 (Privacy Policy), Dhyan may use, reproduce, sell, publicize, or otherwise exploit Aggregate Data in any way, in its sole discretion. ("Aggregate Data" refers to Customer Data with the following removed: Customer identifiable information such as names and addresses of Customers and any of its End Users or customers.)

**8.11 Duties Upon Termination.** Recipient agrees that it will, promptly after written request by the Discloser or upon any expiration or termination of this Agreement, return to the Discloser, by commercially reasonable, secure delivery means specified by the Discloser, all documents and tangible Confidential Information of the Discloser that may be in Recipient's possession and which contain any part of the Confidential Information disclosed to the Recipient. In addition, the Recipient will immediately notify the Discloser upon discovery of any loss or unauthorized disclosure of the Confidential Information of the Disclosing Party.

## 9. GENERAL PROVISIONS

**9.1 Governing Law.** This Agreement is created and governed in accordance with the laws of State of California, without giving effect to any choice of law principles that would require the application of the laws of any other jurisdiction.

**9.2 Notices.** Except as otherwise specified in this Agreement, all notices, permissions and approvals hereunder will be in writing and will be deemed to have been given upon: (a) delivery by traceable courier, (b) upon



delivery via mailing (confirmed receipt signature/return receipt requested), or (c) the second business day after sending by confirmed facsimile. Notices to Dhyan will be addressed to the CEO at the address mentioned in this Agreement, or in the case of Customer, sent to the address and contact set forth on the Order Form, or as designated from time to time in writing by the Parties. Billing-related notices will be addressed to the relevant billing contact designated by Customer on the Order Form.

**9.3 No Dependence on Future Functionality.** Customer agrees that Customer is not entering into this Agreement or any Order Form contingent on the provision of any future functionality relating in any way to the OSLS unless expressly provided in any Order Form and no statement or other information made or provided orally or otherwise shall be binding unless specifically set forth in an Order Form.

**9.4 Export Compliance.** Each Party represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports or otherwise restricted from doing business with any U.S. company, and Customer will not access or use the OSLS in violation of any U.S. or international export embargo, prohibition or restriction.

**9.5 Force Majeure.** Neither Party will be in default for failing to perform any obligation hereunder, if such failure is caused solely by supervening conditions beyond the failing Party's reasonable control, including without limitation acts of God, pandemic, civil commotion, strikes, terrorism, failure of third-party networks or services or the public Internet, power outages, labor disputes or governmental demands or restrictions.

**9.6 Non-Solicitation.** During the term of this Agreement, and for a period of two years following the termination of this Agreement, neither party will induce or attempt to induce (i) any customer or supplier of the other party to reduce the business done by such customer or supplier with the other party or (ii) any employee, consultant, sales representative or distributor of the other party to leave the employment of, or otherwise terminate its relationship with, the other party

**9.7 Waiver and Cumulative Remedies.** No failure or delay by either Party in exercising any right under this Agreement will constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a Party at law or in equity.

**9.8 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement will remain in effect.

**9.9 Assignment.** Neither Party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other Party (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, either Party may assign this Agreement in its entirety (including all Order Forms), without consent of the other Party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. This Agreement will bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

**9.10 Construction.** The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship. The titles and headings herein are for reference purposes only and will not in any manner limit the construction of this License Agreement, which will be considered as a whole.

**9.11 Choice of Language.** The parties confirm that it is their wish that this Agreement as well as all other documents relating to this Agreement, including notices, be drawn up in English only.

**9.12 Entire Agreement.** This Agreement, including all exhibits and addenda hereto and all Order Forms, constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter

**9.13 Dispute Resolution.** In the event of any controversy or claim arising out of or relating to this Agreement, or the breach thereof, the parties hereto agree first to try and settle the dispute by mediation, administered by the International Centre for Dispute Resolution under its Mediation Rules. If settlement is not reached within 60 days after service of a written demand for mediation, any unresolved controversy or claim arising out of or relating to this contract shall be settled by arbitration in the State of California in accordance with the rules of the JAMS. A single arbitrator shall be agreed upon by the parties or, if the parties cannot agree upon an arbitrator within thirty (30) days, then the parties agree that a single arbitrator shall be appointed by JAMS. The arbitrator may award attorneys' fees and costs as part of the award. The award of the arbitrator shall be binding and may be entered as a judgment in any court of competent jurisdiction

**9.14 Miscellaneous.** No modification, amendment, or waiver of any provision of this Agreement or any Order Form will be effective unless in writing and signed by each Party. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Dhyan exhibit or Dhyan addendum hereto or any Dhyan Order Form, the terms of such exhibit, addendum or Order Form will prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or other order documentation (excluding Order Forms) will be incorporated into or form any part of this Agreement, and all such terms or conditions will be null and void. This Agreement may be executed in counterparts, each of which, when so executed and delivered (including by electronic transmission), shall be deemed an original, and both of which shall constitute one and the same agreement.

**9.15 Source Code Escrow.** Upon Customer's request, Dhyan will deposit the source code for the System with a third-party escrow agent. The third-party escrow agent will be selected and paid by Customer. Customer will provide Dhyan with any documents necessary to establish the escrow agreement. The purpose of the source code escrow is to provide for retention, administration and controlled access and release of the System source code to Customer under certain conditions listed below (the "Escrow Release Events"). The Escrow Release Events shall consist of the following:

- A. If Dhyan or a successor that assumes its obligations under this Agreement ceases to transact business; or
- B. If Dhyan or a successor that assumes its obligations under this Agreement ceases to provide support for the System as required herein and does not offer to Customer another software product to perform the same functions as the System and at the same cost provided by Dhyan.
- C. If Dhyan becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

In the event of a release of the System source code to Customer, Customer shall have the limited right and license to use, copy and modify the source code solely for the purposes of maintenance and support of the System for Customer's internal use only. Such license shall be non-exclusive and non-transferable. Notwithstanding any terms to the contrary, Customer may disclose the source code to consultants and agents

for the sole purpose of supporting and maintaining the Software, provided such consultants and agents agree to be bound by the confidentiality restrictions that are applicable to Customer hereunder.

IN WITNESS WHEREOF, the authorized representatives of the parties hereby bind the parties by signing below:

Acknowledged and Agreed to:

<b>DHYAN</b> Dhyan Networks and Technologies, Inc.	<b>CUSTOMER</b> <Insert Name>
Authorized Signature	Authorized Signature
Printed Name	Printed Name
Title	Title

## EXHIBIT A: OHLI SMART LIGHTING SOLUTION

Dhyan's Ohli Smart Lighting Solution comprises of the following:

### **Hardware**

Ohli Hardware Node (OHN) is a hardware controller that is attached to a street light that communicates via Ohli Connectivity Services (OCS) to the Ohli Central Management Service (CMS) which is hosted in a cloud. OHN enables the monitoring and controlling of the street light to which it is attached.

### **Software Service**

Ohli Central Management Service (CMS) is software-as-a-service provided by Dhyan's proprietary management software that is hosted in the cloud, in object code format, managing the Ohli Hardware Node (OHN).

### **Connectivity Service**

Ohli Connectivity Services (OCS) is a cellular or a LORA connection provided to Dhyan by a cellular or LORA service provider that allows CMS to communicate with OHN

### **Monitoring Service**

Ohli Monitoring Service (OMS) is a 24 X 7 monitoring service that is provided by Dhyan to the Customer that monitors the health of the OSLS

### **Solution Support and Maintenance Service**

Ohli Solution Support and Maintenance (SMS) is support and maintenance service provided by Dhyan for the hardware and software components of OSLS.

**EXHIBIT B (Sample Order Form)**

**DHYAN NETWORKS AND TECHNOLOGIES, INC.  
Order Form**

**Date:**

**Order Reference:**

**Entity (Name and Address):**

**Bill To:**

**Ordered by (Name, Email):**

**Billing Contact (Name; Email):**

#	Part #	Description	Quantity	Unit Price	Extended Price
				<b>Sub Total</b>	
				<b>Other</b>	
				<b>Final Total</b>	

This Order Form is governed by the terms and conditions of the Dhyan Networks and Technologies, Inc., Ohli Smart Lighting Solution Service and Support. Copy can be requested from [order@dhyan.com](mailto:order@dhyan.com)

## **EXHIBIT C: DHYAN SUPPORT CONTACT AND SUPPORT TIMES**

### **A. Support Contact and Support Times**

1) Dhyan product support can be reached in the following manner:

By Phone: + 1.408.982.6003

By Email: [Ohi\\_Support@dhyan.com](mailto:Ohi_Support@dhyan.com)

2) The Support Times are as follows:

Monday through Friday, 7:00 a.m. through 5:00 p.m. (Pacific Time), excluding the following holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day. Additionally, hours may be limited on other national holidays and/or days preceding or following certain holidays.



<b>Effective Date</b>	
<b>Deposit Account Number</b>	
*Effective Date and Deposit Account Number to be supplied by NCC Group only.	

## **Tri-Party Escrow Service Agreement**

### **1. Introduction**

This Three Party Escrow Service Agreement (the “**Agreement**”) is entered into by and between **DHYAN NETWORKS AND TECHNOLOGIES, INC.**, (the “**Depositor**”), and by **CITY OF GOLDENDALE**. (the “**Beneficiary**”) and by NCC Group Software Resilience (NA) LLC (“**NCC Group**”), a Delaware limited liability company. Depositor, Beneficiary, and NCC Group may be referred to individually as a “**Party**” or collectively as the “**Parties**” throughout this Agreement.

- (a) The use of the term services in this Agreement shall refer to NCC Group services that facilitate the creation, management, and enforcement of software or other technology escrow accounts as described in Exhibit A attached to this Agreement (“**Services**”). A Party shall request Services under this Agreement by selecting such Service on Exhibit A upon execution of the Agreement or by submitting a work request for certain NCC Group Services (“**Work Request**”) via written instruction or websites owned or controlled by NCC Group (collectively the “**NCC Group Website**”).
- (b) The Beneficiary and Depositor have, or will have, entered into a license agreement or other agreement (“**License Agreement**”) conveying intellectual property rights to the Beneficiary, and the Parties intend this Agreement to be considered as supplementary to such agreement, pursuant to Title 11 United States [Bankruptcy] Code, Section 365(n).

### **2. Depositor Responsibilities and Representations**

- (a) It shall be solely the Depositor’s responsibility to: (i) make an initial deposit of all proprietary technology and other materials covered under this Agreement (“**Deposit Material**”) to NCC Group within thirty (30) days of the Effective Date; (ii) make any required updates to the Deposit Material during the Term (as defined below) of this Agreement; and (iii) ensure that a minimum of one (1) copy of Deposit Material is deposited with NCC Group at all times. At the time of each deposit or update, Depositor will provide an accurate and complete description of all Deposit Material sent to NCC Group using the form attached to this Agreement as Exhibit B.
- (b) Depositor represents that it lawfully possesses all Deposit Material provided to NCC Group under this Agreement and that any current or future Deposit Material liens or encumbrances will not prohibit, limit, or alter the rights and obligations of NCC Group under this Agreement. Depositor warrants that with respect to the Deposit Material, NCC Group’s proper administration of this Agreement will not violate the rights of any third parties.
- (c) Depositor represents that all Deposit Material is readable and useable in its then current form; if any portion of such Deposit Material is encrypted, the necessary decryption tools and keys to read such material are deposited contemporaneously.

### **3. Beneficiary Responsibilities and Representations**

- (a) Beneficiary acknowledges that, as between NCC Group and Beneficiary, NCC Group’s obligation is to maintain the Deposit Material as delivered by the Depositor and that, other than NCC Group’s inspection of the Deposit Material (as described in Section 4) and the performance of any of the optional verification Services listed in Exhibit A, NCC Group has no other obligation regarding the completeness, accuracy, or functionality of the Deposit Material.
- (b) It shall be solely the Beneficiary’s responsibility to monitor whether a deposit or deposit update has been accepted by NCC Group.



**4. NCC Group Responsibilities and Representations**

- (a) NCC Group agrees to use commercially reasonable efforts to provide the Services requested by Authorized Person(s) (as identified in the “**Authorized Person(s)/Notices Table**” below) representing the Depositor or Beneficiary in a Work Request. NCC Group may reject a Work Request (in whole or in part) that does not contain all required information at any time upon notification to the Party originating the Work Request.
- (b) NCC Group will conduct a visual inspection upon receipt of any Deposit Material and associated Exhibit B. If NCC Group determines that the Deposit Material does not match the description provided by Depositor represented in Exhibit B, NCC Group will notify Depositor of such discrepancy.
- (c) NCC Group will provide notice to the Beneficiary of all Deposit Material that is accepted and deposited into the escrow account under this Agreement. Either Depositor or Beneficiary may obtain information regarding deposits or deposit updates upon request or through the NCC Group Website.
- (d) NCC Group will follow the provisions of Exhibit C attached to this Agreement in administering the release of Deposit Material.
- (e) NCC Group will hold and protect Deposit Material in physical or electronic vaults that are either owned or under the control of NCC Group, unless otherwise agreed to by the Parties.
- (f) Upon receipt of written instructions by both Depositor and Beneficiary, NCC Group will permit the replacement or removal of previously submitted Deposit Material. The Party making such request shall be responsible for getting the other Party to approve the joint instructions. Any Deposit Material that is removed from the deposit account will be either returned to Depositor or destroyed in accordance with Depositor’s written instructions.
- (g) Should transport of Deposit Material be necessary for NCC Group to perform Services requested by Depositor or Beneficiary under this Agreement or following the termination of this Agreement, NCC Group will use a commercially recognized overnight carrier such as Federal Express or United Parcel Service. NCC Group will not be responsible for any loss or destruction of, or damage to, such Deposit Material while in the custody of the common carrier.

**5. Deposit Material Verification**

- (a) Beneficiary may submit a verification Work Request to NCC Group for one or more of the Services defined in Exhibit A attached to this Agreement and Depositor consents to NCC Group’s performance of any level(s) of such Services. Upon request by NCC Group and in support of Beneficiary’s request for verification Services, Depositor shall promptly complete and return an escrow deposit questionnaire and reasonably cooperate with NCC Group by providing reasonable access to its technical personnel whenever reasonably necessary.
- (b) The Parties consent to NCC Group’s use of a subcontractor to perform verification Services. Such subcontractor shall be bound by the same confidentiality obligations as NCC Group and shall not be a direct competitor to either Depositor or Beneficiary. NCC Group shall be responsible for the delivery of Services of any such subcontractor as if NCC Group had performed the Services. Depositor warrants and Beneficiary warrants that any material it supplies for verification Services is lawful, does not violate the rights of any third parties and is provided with all rights necessary for NCC Group to perform verification of the Deposit Material.
- (c) NCC Group will work with a Party who submits any verification Work Request for Deposit Material covered under this Agreement to either fulfill any standard verification Services Work Request or develop a custom Statement of Work (“**SOW**”). NCC Group and the requesting Party will mutually agree in writing to an SOW on terms and conditions that include but are not limited to: description of Deposit Material to be tested; description of verification testing; requesting Party responsibilities; NCC Group responsibilities; Service Fees; invoice payment instructions; designation of the paying Party; designation of authorized SOW representatives for both the requesting Party and NCC Group with name and contact information; and description of any final deliverables prior to the start of any fulfillment activity. Provided that the requesting Party has identified in the verification Work Request or SOW that the Deposit Material is subject to the regulations of the International Traffic in Arms Regulations (22 CFR 120)(hereinafter “**ITAR**”), NCC Group shall ensure that any subcontractor who is granted access to the Deposit Material for the performance of verification Services shall be a U.S. Person as defined in 8 U.S.C. 1101(a)(20) or who is a protected person as defined in 8 U.S.C. 1324b(a)(3). After the start of fulfillment activity, each SOW may only be amended or modified in writing with the mutual agreement of both Parties, in accordance with the change control procedures set forth in the

SOW. If the verification Services extend beyond those described in Exhibit A, the Depositor shall be a necessary Party to the SOW governing the Services.

**6. Payment**

The Party responsible for payment designated in the Paying Party Billing Contact Table ("**Paying Party**") shall pay to NCC Group all fees as set forth in the Work Request ("**Service Fees**"). All Service Fees are due within thirty (30) calendar days from the date of invoice in U.S. currency and are non-refundable. NCC Group may update Service Fees with a ninety (90) calendar day written notice to the Paying Party during the Term of this Agreement (as defined below). The Paying Party is liable for any taxes (other than NCC Group income taxes) related to Services purchased under this Agreement or shall present to NCC Group an exemption certificate acceptable to the taxing authorities. Applicable taxes shall be billed as a separate item on the invoice. Any Service Fees not collected by NCC Group when due shall bear interest until paid at a rate of one percent (1%) per month (12% per annum) or the maximum rate permitted by law, whichever is less. Notwithstanding the non-performance of any obligations of Depositor to deliver Deposit Material under the License Agreement or this Agreement, NCC Group is entitled to be paid all Service Fees that accrue during the Term of this Agreement.

**7. Term and Termination**

- (a) The term of this Agreement is for a period of one (1) year from the Effective Date ("**Initial Term**") and will automatically renew for additional one (1) year terms ("**Renewal Term**") (collectively the "**Term**"). This Agreement shall continue in full force and effect until one of the following events occur: (i) Depositor and Beneficiary provide NCC Group with sixty (60) days' prior written joint notice of their intent to terminate this Agreement; (ii) Beneficiary provides NCC Group and Depositor with sixty (60) days' prior written notice of its intent to terminate this Agreement; (iii) the Agreement terminates under another provision of this Agreement; or (iv) any time after the Initial Term, NCC Group provides sixty (60) days' prior written notice to the Depositor and Beneficiary of NCC Group's intent to terminate this Agreement. The Effective Date and the Deposit Account Number shall be supplied by NCC Group only. The Effective Date supplied by NCC Group and specified above shall be the date NCC Group sets up the escrow account.
- (b) Unless the express terms of this Agreement provide otherwise, upon termination of this Agreement, NCC Group shall return physical Deposit Material to the Depositor and erase electronically submitted Deposit Material. If reasonable attempts to return the physical Deposit Material to Depositor are unsuccessful, NCC Group shall destroy the Deposit Material.
- (c) In the event of the nonpayment of undisputed Service Fees owed to NCC Group, NCC Group shall provide all Parties to this Agreement with written notice of NCC Group's intent to terminate this Agreement. Any Party to this Agreement shall have the right to make the payment to NCC Group to cure the default. If the past due payment is not received in full by NCC Group within thirty (30) calendar days of the date of such written notice, then NCC Group shall have the right to terminate this Agreement at any time thereafter by sending written notice to all Parties. NCC Group shall have no obligation to perform the Services under this Agreement (except those obligations that survive termination of this Agreement, which includes the confidentiality obligations in Section 10) so long as any undisputed Service Fees due NCC Group under this Agreement remain unpaid.

**8. Infringement Indemnification**

Anything in this Agreement to the contrary notwithstanding, Depositor at its own expense shall defend, indemnify and hold NCC Group fully harmless against any claim or action asserted against NCC Group (specifically including costs and reasonable attorneys' fees associated with any such claim or action) to the extent such claim or action is based on an assertion that NCC Group's administration of this Agreement infringes any patent, copyright, license or other proprietary right of any third party. When NCC Group has notice of a claim or action, it shall promptly notify Depositor in writing. Depositor may elect to control the defense of such claim or action or enter into a settlement agreement, provided that no such settlement or defense shall include any admission or implication of wrongdoing on the part of NCC Group without NCC Group's prior written consent, which consent shall not be unreasonably delayed or withheld. NCC Group shall have the right to employ separate counsel and participate in the defense of any claim at its own expense.

**9. Warranties**

NCC GROUP WARRANTS ANY AND ALL SERVICES PROVIDED HEREUNDER SHALL BE PERFORMED IN A COMMERCIALY REASONABLE MANNER CONSISTENT WITH INDUSTRY STANDARDS. EXCEPT AS SPECIFIED IN THIS SECTION, ALL CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW. AN AGGRIEVED PARTY MUST NOTIFY NCC GROUP PROMPTLY UPON LEARNING OF ANY CLAIMED BREACH OF ANY WARRANTY AND, TO THE EXTENT ALLOWED BY APPLICABLE LAW, SUCH PARTY'S REMEDY FOR BREACH OF THIS WARRANTY SHALL BE SUBJECT TO THE LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES WAIVER IN THIS AGREEMENT. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY AND LIMITED REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

**10. Confidential Information**

NCC Group shall have the obligation to implement and maintain safeguards designed to protect the confidentiality of the Deposit Material and use at least the same degree of care to safeguard the confidentiality of the Deposit Material as it uses to protect its own confidential information, but in no event less than a reasonable degree of care. Except as provided in this Agreement NCC Group shall not use or disclose the Deposit Material. NCC Group shall not disclose the terms of this Agreement to any third party other than its financial, technical, or legal advisors, or its administrative support service providers. Any such third party shall be bound by the same confidentiality obligations as NCC Group. If NCC Group receives a subpoena or any other order from a court or other judicial tribunal pertaining to the disclosure or release of the Deposit Material, NCC Group will promptly notify the Parties to this Agreement unless prohibited by law. After notifying the Parties, NCC Group may comply in good faith with such order or subpoena. It shall be the responsibility of Depositor or Beneficiary to challenge any such order or subpoena; provided, however, that NCC Group does not waive its rights to present its position with respect to any such order or subpoena. NCC Group will cooperate with the Depositor or Beneficiary, as applicable, to support efforts to quash or limit any order or subpoena, at such Party's expense.

**11. Limitation of Liability**

EXCEPT FOR: (I) LIABILITY FOR DEATH OR BODILY INJURY; (II) PROVEN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; OR (III) THE INFRINGEMENT INDEMNIFICATION OBLIGATIONS OF SECTION 8, ALL OTHER LIABILITY RELATED TO THIS AGREEMENT, IF ANY, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, OF ANY PARTY TO THIS AGREEMENT SHALL BE LIMITED TO \$250,000 (USD).

**12. Consequential Damages Waiver**

IN NO EVENT SHALL ANY PARTY TO THIS AGREEMENT BE LIABLE FOR ANY INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, LOST PROFITS, ANY COSTS OR EXPENSES FOR THE PROCUREMENT OF SUBSTITUTE SERVICES (EXCLUDING SUBSTITUTE ESCROW SERVICES), OR ANY OTHER INDIRECT DAMAGES, WHETHER ARISING IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE EVEN IF THE POSSIBILITY THEREOF MAY BE KNOWN IN ADVANCE TO ONE OR MORE PARTIES.

**13. General**

- (a) Purchase Orders. In the event that the Paying Party issues a purchase order or other instrument used to pay Service Fees to NCC Group, any terms and conditions set forth in the purchase order which constitute terms and conditions which are in addition to those set forth in this Agreement or which establish conflicting terms and conditions to those set forth in this Agreement are expressly rejected by NCC Group.
- (b) Right to Make Copies. NCC Group shall have the right to make copies of all Deposit Material as reasonably necessary to perform the Services. NCC Group shall copy all copyright, nondisclosure, and other proprietary notices and titles contained on Deposit Material onto any copies made by NCC Group. Any copying expenses incurred by NCC Group as a result of a Work Request to copy will be borne by the requesting Party. NCC Group may request Depositor's reasonable cooperation in promptly copying Deposit Material in order for NCC Group to perform this Agreement.

- (c) Choice of Law. The validity, interpretation, and performance of this Agreement shall be construed under the laws of the Commonwealth of Massachusetts, USA, without giving effect to the principles of conflicts of laws.
- (d) Authorized Person(s). Depositor and Beneficiary must each authorize and designate one person whose actions will legally bind such Party ("**Authorized Person**" who shall be identified in the Authorized Person(s) Notices Table of this Agreement or such Party's legal representative) and who may manage the NCC Group escrow account through the NCC Group website or written instruction. Depositor and Beneficiary warrant that they shall maintain the accuracy of the name and contact information of their respective designated Authorized Person during the Term of this Agreement by providing NCC Group with a written request to update its records for the Party's respective Authorized Person which includes the updated information and applicable deposit account number(s).
- (e) Right to Rely on Instructions. With respect to release of Deposit Material or the destruction of Deposit Material, NCC Group shall rely on instructions from a Party's Authorized Person. In all other cases, NCC Group may act in reliance upon any instruction, instrument, or signature reasonably believed by NCC Group to be genuine and from an Authorized Person, officer, or other employee of a Party. NCC Group may assume that such representative of a Party to this Agreement who gives any written notice, request, or instruction has the authority to do so. NCC Group will not be required to inquire into the truth of, or evaluate the merit of, any statement or representation contained in any notice or document reasonably believed to be from such representative.
- (f) Force Majeure. No Party shall be liable for any delay or failure in performance due to events outside the defaulting Party's reasonable control, including without limitation acts of God, strikes, riots, war, acts of terrorism, fire, epidemics, or delays of common carriers or other circumstances beyond its reasonable control. The obligations and rights of the excused Party shall be extended on a day-to-day basis for the time period equal to the period of the excusable delay.
- (g) Notices. NCC Group shall have the right to rely on the last known address provided by each the Depositor and Beneficiary for its respective Authorized Person and Billing Contact as set forth in this Agreement or as subsequently provided as an update to such address. All notices regarding Exhibit C (Release of Deposit Material) shall be sent by commercial express mail or other commercially appropriate means that provide prompt delivery and require proof of delivery. All other correspondence, including but not limited to invoices and payments, may be sent electronically or by regular mail. The Parties shall have the right to rely on the last known address of the other Parties. Any correctly addressed notice to the last known address of the other Parties, that is refused, unclaimed, or undeliverable shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by electronic mail, the postal authorities, or commercial express mail.
- (h) No Waiver. No waiver of any right under this Agreement by any Party shall constitute a subsequent waiver of that or any other right under this Agreement.
- (i) Assignment. No assignment of this Agreement by Depositor or Beneficiary or any rights or obligations of Depositor or Beneficiary under this Agreement is permitted without the written consent of NCC Group, which shall not be unreasonably withheld or delayed. NCC Group shall have no obligation in performing this Agreement to recognize any successor or assign of Depositor or Beneficiary unless NCC Group receives clear, authoritative and conclusive written evidence of the change of Parties.
- (j) Severability. In the event any of the terms of this Agreement become or are declared to be illegal or otherwise unenforceable by any court of competent jurisdiction, such term(s) shall be null and void and shall be deemed deleted from this Agreement. All remaining terms of this Agreement shall remain in full force and effect.
- (k) Independent Contractor Relationship. Depositor and Beneficiary understand, acknowledge, and agree that NCC Group's relationship with Depositor and Beneficiary will be that of an independent contractor and that nothing in this Agreement is intended to or should be construed to create a partnership, joint venture, or employment relationship.
- (l) Attorneys' Fees. Any costs and fees incurred by NCC Group in the performance of obligations imposed upon NCC Group solely by virtue of its role as escrow service provider including, without limitation, compliance with subpoenas, court orders, discovery requests, and disputes arising solely between Depositor and Beneficiary, including, but not limited to, disputes concerning a release of the Deposit Material shall, unless adjudged otherwise, be divided equally and paid by Depositor and Beneficiary.

- (m) No Agency. No Party has the right or authority to, and shall not, assume or create any obligation of any nature whatsoever on behalf of the other Parties or bind the other Parties in any respect whatsoever.
- (n) Disputes. Any dispute, difference or question arising among any of the Parties concerning the construction, meaning, effect or implementation of this Agreement or the rights or obligations of any Party will be submitted to, and settled by arbitration by a single arbitrator chosen by the corresponding Regional Office of the American Arbitration Association in accordance with the Commercial Rules of the American Arbitration Association. The Parties shall submit briefs of no more than 10 pages and the arbitration hearing shall be limited to two (2) days maximum. Arbitration will take place in Boston, Massachusetts, USA. Any court having jurisdiction over the matter may enter judgment on the award of the arbitrator. Service of a petition to confirm the arbitration award may be made by regular mail or by commercial express mail, to the attorney for the Party or, if unrepresented, to the Party at the last known business address.
- (o) Interpleader. Anything to the contrary notwithstanding, in the event of any dispute regarding the interpretation of this Agreement, or the rights and obligations with respect to the Deposit Material in escrow or the propriety of any action contemplated by NCC Group hereunder, then NCC Group may, in its sole discretion, file an interpleader or similar action in any court of competent jurisdiction to resolve any such dispute.
- (p) Regulations. Depositor and Beneficiary each represent and covenant that upon the Effective Date of this Agreement and throughout the term of this Agreement, that: (i) it is not identified on any restricted party lists; or located in countries identified on any restricted country lists; or using the Deposit Material or the Services for any restricted end uses; including those promulgated by the U.S. Departments of State, Commerce and Treasury; (ii) it is and shall remain compliant with all laws and regulations applicable to its performance under this Agreement, including, but not limited to ITAR, any export control and economic sanctions or government regulations of any country from or to which the Deposit Material may be delivered in accordance with the provisions of this Agreement; and (iii) it will not take any action that will cause NCC Group to be in violation of such laws and regulations, and will not require NCC Group to directly or indirectly take any action that might cause it to be in violation of such laws and regulations. Depositor will not provide NCC Group with Deposit Material that is subject to export controls and controlled at a level other than EAR99/AT. With respect to Deposit Material containing personal information and data, Depositor agrees to (i) procure all necessary consents in relation to personal information and data; and (ii) otherwise comply with all applicable privacy and data protection laws as they relate to the subject matter of this Agreement. NCC Group is responsible for and warrants, to the extent of their individual actions or omissions, compliance with all applicable laws, rules and regulations to the extent that it is directly regulated by the law, rule or regulation and to the extent that it knows or has been advised that, as a result of this Agreement, its activities are subject to the law, rule or regulation.
- (q) No Third Party Rights. This Agreement is made solely for the benefit of the Parties to this Agreement and their respective permitted successors and assigns, and no other person or entity shall have or acquire any right by virtue of this Agreement unless otherwise agreed to by all of the Parties.
- (r) Entire Agreement. The Parties agree that this Agreement, which includes all attached Exhibits and all valid Work Requests and SOWs submitted by the Parties, is the complete agreement between the Parties concerning the subject matter of this Agreement and replaces any prior or contemporaneous oral or written communications between the Parties. There are no conditions, understandings, agreements, representations, or warranties, expressed or implied, which are not specified in this Agreement. Each of the Parties warrant that the execution, delivery, and performance of this Agreement has been duly authorized and signed by a person who meets statutory or other binding approval to sign on behalf of its organization as named in this Agreement. This Agreement may be modified only by mutual written agreement of all the Parties.
- (s) Counterparts. This Agreement may be executed electronically in accordance with applicable law or in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (t) Survival. Sections 7 (Term and Termination), 8 (Infringement Indemnification), 9 (Warranties), 10 (Confidential Information), 11 (Limitation of Liability), 12 (Consequential Damages Waiver), and 13 (General) of this Agreement shall survive termination of this Agreement or any Exhibit attached to this Agreement.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the Effective Date by their authorized representatives:

DEPOSITOR		BENEFICIARY	
Signature		Signature	
Print Name	DHYAN NETWORKS AND TECHNOLOGIES, INC.	Print Name	
Title		Title	
Date		Date	

NCC GROUP	
Signature	
Print Name	
Title	
Date	

(BALANCE OF THIS PAGE LEFT INTENTIONALLY BLANK — NOTICES TABLES AND EXHIBITS FOLLOW)

**Authorized Person Notices Table**

Please provide the names and contact information of the Authorized Persons under this Agreement. Please complete all information as applicable. Incomplete information may result in a delay of processing.

<b>DEPOSITOR (Required information)</b>		<b>BENEFICIARY (Required information)</b>	
<b>Print Name</b>	Dhyan Networks and Technologies, Inc.	<b>Print Name</b>	
<b>Title</b>		<b>Title</b>	
<b>Email Address</b>		<b>Email Address</b>	
<b>Street Address</b>		<b>Street Address</b>	
<b>City</b>		<b>City</b>	
<b>State/Province</b>		<b>State/Province</b>	
<b>Postal/Zip Code</b>		<b>Postal/Zip Code</b>	
<b>Country</b>		<b>Country</b>	
<b>Phone Number</b>		<b>Phone Number</b>	
<b>Fax Number</b>		<b>Fax Number</b>	

**Paying Party Billing Contact Information Table**  
**(Required information)**

Please provide the name and contact information of the Billing Contact for the Paying Party under this Agreement. All Invoices will be sent to this individual at the address set forth below. Incomplete information may result in a delay of processing.

<b>Company Name</b>	
<b>Print Name</b>	
<b>Title</b>	
<b>Email Address</b>	
<b>Street Address</b>	
<b>City</b>	
<b>State/Province</b>	
<b>Postal/Zip Code</b>	
<b>Country</b>	
<b>Phone Number</b>	
<b>Fax Number</b>	
<b>Purchase Order #</b>	

**NCC GROUP**

All notices should be sent to [SRclientservices@nccgroup.com](mailto:SRclientservices@nccgroup.com) OR NCC Group, Attn: Client Services, 6111 Live Oak Parkway, Norcross, Georgia, 30093, USA. Telephone: 800-875-5669. Facsimile: 770-239-9201

**Exhibit A**  
**Escrow Services Fee Schedule – Work Request**

<b>Deposit Account Number</b>	
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Service	Service Description - Three-Party Escrow Service Agreement All services are listed below. Check the requested service and submit a Work Request to NCC Group for services requested after agreement signature.	One-Time/Per Service Fees	Annual Fees
<input checked="" type="checkbox"/> <b>Setup Fee (Required at Setup)</b>  <input checked="" type="checkbox"/> <b>Deposit Account Fee (Required at Setup)</b>  <input checked="" type="checkbox"/> <b>Beneficiary Fee (Required at Setup)</b>	<p>One-time Setup Fee for NCC Group to setup a standard Three-Party Escrow Service Agreement.</p> <p>NCC Group will set up one deposit account to manage and administrate access to Deposit Material to be secured in a controlled storage environment. NCC Group will provide account services that include unlimited deposits, electronic vaulting, access to NCC Group Website for secure online account management, submission of electronic Work Requests, and communication of status. Release of deposit material is also included in the annual fee. An oversize fee of \$200 USD per 1.2 cubic foot will be charged for deposits that exceed 2.4 cubic feet.</p> <p>NCC Group will fulfill a Work Request to add a Beneficiary to an escrow deposit account and manage account access rights. Beneficiary will have access to NCC Group Website for secure online account management, submission of electronic Work Requests, and communication of status.</p>	\$2,700	       \$1,200       \$950
<input type="checkbox"/> <b>File List Test</b>	NCC Group will perform one (1) File List Test, which includes a Deposit Material media readability analysis, a file listing, a file classification table, virus scan outputs, and confirmation of the presence or absence of a completed escrow deposit questionnaire. A final report will be sent to the requesting Party regarding the Deposit Material. The deposit must be provided on CD, DVD-R, or deposited electronically. If, through no fault of NCC Group, testing cannot be completed within twelve (12) months of being ordered, NCC Group will issue a final failed test report identifying the reason for the failure and the testing shall be considered completed.	\$3,000	N/A
<input checked="" type="checkbox"/> <b>Level 1 Inventory and Analysis Test</b>	NCC Group will perform one (1) Inventory and Analysis Test on the specified deposit, which includes the outputs of the File List Test, identifying the presence/absence of build, setup and design documentation (including the presence or absence of a completed escrow deposit questionnaire), and identifying materials required to recreate the Depositor's application development and production environments. Output includes a report that includes compile and setup documentation, file classification tables and file listings. The report will list required software development materials, including, without limitation, required source code languages and compilers, third-party software, libraries, operating systems, and hardware, and NCC Group's analysis of the deposit. A final report will be sent to the requesting Party regarding the Deposit Material. If, through no fault of NCC Group, testing cannot be completed within twelve (12) months of being ordered, NCC Group will issue a final failed test report identifying the reason for the failure and the testing shall be considered completed.	\$6,000 or based on SOW if custom work required	N/A
<input type="checkbox"/> <b>Dual Vaulting</b>	NCC Group will store and manage a redundant copy of the Deposit Material in one (1) additional location. All Deposit Material (original and copy) must be provided by the Depositor.	N/A	\$800
<input type="checkbox"/> <b>Remote Vaulting</b>	NCC Group will store and manage the Deposit Material in a remote location, designated by the client, outside of NCC Group's primary escrow vaulting location. All Deposit Material (original and copy) must be provided by the Depositor.	N/A	\$800



<input checked="" type="checkbox"/> <b>Custom Contract Fee</b>	Custom contract changes to NCC Group templates are subject to the Custom Contract Fee, which covers the review and processing of custom or modified contracts.	\$950	N/A
<b>Additional Verification Services (Fees based on Statement of Work)</b>			
<b>Level 2 Deposit Compile Test</b>	NCC Group will fulfill a Statement of Work (SOW) to perform a Deposit Compile Test, which includes the outputs of the Level 1 - Inventory and Analysis Test, plus recreating the Depositor's software development environment, compiling source files and modules, linking libraries and recreating executable code, providing a pass/fail determination, and creation of comprehensive compilation documentation with a final report sent to the Paying Party regarding the Deposit Material. The requesting Party and NCC Group will agree on a custom SOW prior to the start of fulfillment. A completed escrow deposit questionnaire is required for execution of this test.		
<b>Level 3 Binary Comparison Test</b>	NCC Group will fulfill a Statement of Work (SOW) to perform one Binary Comparison Test - Binary Comparison, which includes the outputs of the Level 2 test, a comparison of the executable files built from the Deposit Compile Test to the actual executable files in use by the Beneficiary to ensure a full binary-level match, with a final report sent to the Requesting Party regarding the Deposit Material. The Paying Party and NCC Group will agree on a custom SOW prior to the start of fulfillment. A completed escrow deposit questionnaire is required for execution of this test.		
<b>Level 4 Full Usability Test</b>	NCC Group will fulfill a Statement of Work (SOW) to perform one Deposit Usability Test - Full Usability, which includes which includes the outputs of the Level 1 and Level 2 tests (if applicable). NCC Group will confirm that the deposited application can be setup, installed and configured and, when installed, will execute functional tests, based on pre-determined test scripts provided by the Parties, and create comprehensive setup and installation documentation. A final report will be sent to the Paying Party regarding the Deposit Material. The Paying Party and NCC Group will agree on a custom SOW prior to the start of fulfillment. A completed escrow deposit questionnaire is required for execution of this test.		

(REMAINDER OF PAGE LEFT INTENTIONALLY BLANK – PAYING PARTY SIGNATURE PAGE FOLLOWS)

Pursuant to the Agreement, the undersigned hereby issues this Work Request for performance of the Service(s) selected above.

Paying Party – For Future Work Request Use Only	
Paying Party Name	
Signature	
Print Name	
Title	
Date	

**NCC GROUP**

All Work Requests should be sent to [SRclientservices@nccgroup.com](mailto:SRclientservices@nccgroup.com) OR NCC Group, Attn: Client Services, 6111 Live Oak Parkway, Norcross, Georgia, 30093, USA. Telephone: 800-875-5669. Facsimile: 770-239-9201

**Exhibit B**  
**Deposit Material Description**  
(This document must accompany each submission of Deposit Material)

<b>Company Name</b>		<b>Deposit Account Number</b>	
<b>Deposit Name</b>		<b>Deposit Version</b>	

(Deposit Name will appear in account history reports)

**Deposit Media**

(Please Label All Media with the Deposit Name Provided Above)

Media Type	Quantity	Media Type	Quantity
<input type="checkbox"/> CD-ROM / DVD		<input type="checkbox"/> USB Drive	
<input type="checkbox"/> DLT Tape		<input type="checkbox"/> Documentation	
<input type="checkbox"/> DAT Tape(4mm/8mm)		<input type="checkbox"/> Hard Drive / CPU	
<input type="checkbox"/> LTO Tape		<input type="checkbox"/> Circuit Board	
<input type="checkbox"/> Other (please describe):			

	Total Size of Transmission (specify in bytes)	# of Files	# of Folders
<input type="checkbox"/> Electronic Deposit			

**Deposit Encryption**

(Please check either "Yes" or "No" below and complete as appropriate)

Is the media or are any of the files encrypted? ☐ Yes or ☐ No

If yes, please include any passwords and decryption tools description below. Please also deposit all necessary encryption software with this deposit. Depositor at its option may submit passwords on a separate Exhibit B.

<b>Encryption tool name</b>	<b>Version</b>
<b>Hardware required</b>	
<b>Software required</b>	
<b>Other required information</b>	

**Deposit Certification** (Please check the box below to certify and provide your contact information)

<input type="checkbox"/> I certify for Depositor that the above described Deposit Material has been transmitted electronically or sent via commercial express mail carrier to NCC Group at the address below.	<input type="checkbox"/> NCC Group has inspected and accepted the above described Deposit Material either electronically or physically. NCC Group will notify Depositor of any discrepancies.
<b>Print Name</b>	<b>Name</b>
<b>Date</b>	<b>Date</b>
<b>Email Address</b>	
<b>Telephone Number</b>	

**Note: If Depositor is physically sending Deposit Material to NCC Group, please label all media and mail all Deposit Material with the appropriate Exhibit B via commercial express carrier to the following address:**

NCC Group

Attn: Vault Administration, 6111 Live Oak Parkway, Norcross, GA 30093, Telephone: 800-875-5669, Facsimile: 770-239-9201

**Exhibit C**  
**Release of Deposit Material**

<b>Deposit Account Number</b>	
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NCC Group will use the following procedures to process any Beneficiary Work Request to release Deposit Material. All notices under this Exhibit C shall be sent pursuant to the terms of Section 13(g) Notices.

**1. Release Conditions.**

Depositor and Beneficiary agree that a Work Request for the release of the Deposit Material shall be based solely on one or more of the following conditions (defined as “**Release Conditions**”):

- (i) Depositor’s ceasing to do business as a going concern;
- (ii) Depositor is subject to voluntary or involuntary bankruptcy; or
- (iii) Depositor’s general assignment for the benefit of creditors.

**2. Release Work Request.**

A Beneficiary may submit a Work Request to NCC Group to release the Deposit Material covered under this Agreement. To the extent that the Deposit Material is subject to applicable U.S. export control regulations and laws, including ITAR, the Beneficiary Work Request to release the Deposit Material must include Beneficiary’s certification that such release would be compliant with the applicable U.S. export control regulations and laws, including ITAR. NCC Group will send a written notice of this Beneficiary Work Request within five (5) business days to the Depositor’s Authorized Person.

**3. Contrary Instructions.**

From the date NCC Group mails written notice of the Beneficiary Work Request to release Deposit Material covered under this Agreement, Depositor’s Authorized Person shall have ten (10) business days to deliver to NCC Group contrary instructions. Contrary instructions shall mean the written representation by Depositor that a Release Condition has not occurred or has been cured (“**Contrary Instructions**”). Contrary Instructions shall be on company letterhead and signed by a Depositor Authorized Person. Upon receipt of Contrary Instructions, NCC Group shall promptly send a copy to Beneficiary’s Authorized Person. Additionally, NCC Group shall notify both Depositor and Beneficiary Authorized Persons that there is a dispute to be resolved pursuant to the Disputes provisions of this Agreement. NCC Group will continue to store Deposit Material without release pending (i) instructions from Depositor to release the Deposit Material to Beneficiary; or (ii) dispute resolution pursuant to the Disputes provisions of this Agreement; or (iii) withdrawal of Contrary Instructions from Depositor’s Authorized Person or legal representative; or (iv) receipt of an order from a court of competent jurisdiction. The existence of a Release Condition dispute shall not relieve the Paying Party from payment of applicable Service Fees.

**4. Release of Deposit Material.**

If NCC Group does not receive timely Contrary Instructions from a Depositor Authorized Person or receives written instructions directly from Depositor’s Authorized Person to release a copy of the Deposit Material to the Beneficiary, NCC Group is authorized to release Deposit Material to the Beneficiary. NCC Group is entitled to receive any undisputed, unpaid Service Fees due NCC Group from the Parties before fulfilling the Work Request to release Deposit Material covered under this Agreement. Any Party may cure a default of payment of Service Fees.

**5. Termination of Agreement Upon Release.**

This Agreement will terminate upon the release of Deposit Material held by NCC Group.

**6. Right to Use Following Release.**

Beneficiary has the right under this Agreement to use the Deposit Material for the sole purpose of continuing the benefits afforded to Beneficiary by the License Agreement. Notwithstanding, the Beneficiary shall not have access to the Deposit Material unless there is a release of the Deposit Material in accordance with this Agreement. Beneficiary shall be obligated to maintain the confidentiality of the released Deposit Material.

AGENDA BILL: G-2

AGENDA TITLE: City Clerk/Treasurers Employment Agreement

DATE: September 19, 2022

**ACTION REQUIRED:**

ORDINANCE \_\_\_\_\_ COUNCIL INFORMATION \_\_\_\_\_ X \_\_\_\_\_

RESOLUTION \_\_\_\_\_ OTHER \_\_\_\_\_

MOTION \_\_\_\_\_ X \_\_\_\_\_

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**EXPLANATION:** The City Clerk/Treasurer position is a FLSA exempt position. On August 1<sup>st</sup>, 2020, Sandy Wells took over the positions and is performing work without clear terms of her employment with the Employer. The attached City Clerk/Treasurer Employment Agreement provides clear terms of working conditions that will protect the Employer and Employee rights equally and fairly.

**STAFF RECOMMENDATION:** Staff recommends approval

**MOTION: I MOVE TO APPROVE THE CITY CLERK/TREASURER EMPLOYMENT AGREEMENT.**

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## CITY CLERK/TREASURER EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT ("Agreement") is made and entered into this 1<sup>st</sup> day of August 1<sup>st</sup>, 2022, by and between the City of Goldendale, Washington, (hereinafter referred to as the "City" or "Employer") and Sandy Wells. (hereinafter referred to as "Employee").

**SECTION 1. DUTIES:** The City agrees to employ the services of the Employee in the position of City Clerk Treasurer and Public Works Director. The Employee shall work at the direction of the Mayor and shall perform the functions and duties set forth in the job descriptions for the City Clerk/Treasurer (*Attachment I*).

**SECTION 2. TERM:** The term of this Agreement shall start on the 1<sup>st</sup> day of August 2022, and shall continue until terminated as provided by law, or pursuant to the provisions of this Agreement.

**SECTION 3. SALARY:** City agrees to pay Employee a salary of \$6008.91 for the Employee's services as the City Clerk/Treasurer, payable in the same manner as other employees of City. The City and the Employee shall periodically, at least once per year, review the salary and performance of the Employee.

**SECTION 4. BENEFITS:** Employer shall provide Employee the same group health, vision, dental, life, life flight and other insurance benefits as enjoyed by other exempt and non-exempt employees.

**SECTION 5. HOURS OF WORK:** It is recognized that the Employee is serving in the combined position of City Administrator and Public Works Director and as such must devote more than the standard of at least forty (40) hours per week and likely fifty (50) or more hours per week to fulfill these dual responsibilities. It is also recognized that this combined position dedicates substantial time outside the normal office hours on business for Employer, and to that end the Employee shall be allowed to establish an appropriate work schedule that allows time away from the office during normal office hours. The parties recognize that the Employee is exempt from the provisions relating to overtime payment and compensatory time under the Fair Labor Standards Act.

**SECTION 6. VACATION LEAVE:** Employee will thereafter accrue 168 hours of vacation leave annually, accrued at a rate of 14 hours per month. Unused vacation leave more than 240 hours shall be forfeited on December 31 day of each year.

**SECTION 7. GENERAL BUSINESS EXPENSES:**

**A. Professional Organizations and Development.** Subject to sufficient budget resources,

the Employer agrees to budget for and to pay for the following:

1. Professional dues and subscriptions of the Employee necessary for continuation and full participation in national, regional, state, and local associations and organizations necessary and desirable for the Employee's continued professional participation, growth, and advancement, and for the good of the Employer.
2. Travel and subsistence expenses of the Employee for professional and official travel, meetings, and occasions to adequately continue the professional development of the Employee and to pursue necessary official functions for the Employer.
3. Travel and subsistence expenses of the Employee for short courses, institutes, and seminars that are necessary for the Employee's professional development and for the good of the Employer.

**B. General Expenses.** The Employer recognizes that certain expenses of a work-related nature may be incurred by the Employee and agrees to reimburse or to pay said work-related expenses in the same manner as other City employees in accordance with City of Goldendale Personnel Policy Manual.

**C. Civic Organizations.** The Employer acknowledges the value of having the Employee participate and be directly involved in local civic clubs or organizations. Accordingly, the Employer shall pay for the reasonable membership fees, meals, and/or dues to enable the Employee to become an active member in local civic clubs or organizations.

**SECTION 8. OTHER TERMS AND CONDITIONS OF EMPLOYMENT:** The Mayor and the City Council may fix in writing any such other terms and conditions of employment, as they may determine from time to time, relating to the performance of Employee.

**SECTION 9. TERMINATION:** The Employee understands and agrees that the Employee's employment is strictly "at will" meaning the Employee may quit, with or without cause, at any time by providing written notice to the Mayor. The City, through the Mayor, may terminate the Employee's employment, with or without cause, at any time by providing written notice to the Employee. Nothing in this Agreement or in any city manuals, ordinance, etc., shall prevent, limit, or otherwise interfere with the City's "at will" right to terminate this Agreement, with or without cause, at any time. The parties acknowledge and agree that Goldendale Personnel Policy Manual Chapter 10 ("Discipline and Termination") shall not apply.

**SECTION 10. TERMINATION:**

**A. Termination by the City without cause.** Consistent with RCW 35A.12.020 and .090, the Employee may be terminated from employment with the Employer by the mayor for any reason or for no reason at all. In the event the Employee is terminated at any time following the six month probationary period (Goldendale Personnel Policy Manual, § 3.4) for any reason other than for "cause," as defined in Section 10.C of this Agreement, the Employer will be responsible for paying the Employee's compensation, as determined pursuant to Section 3 of this Agreement, as well as medical, dental, and vision benefits, for a period of six months from the effective date of termination.



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5 **B. Termination by the Employee.** The Employee may terminate his employment with the  
6 Employer through voluntary resignation. The Employee shall endeavor to provide at  
7 least forty-five (45) days' notice, but not less than thirty (30) days' notice of his intent to  
8 terminate his employment, unless both Parties agree otherwise. The Employer may, at  
its option, discharge the Employee immediately and pay salary and benefits as if the  
Employee were fully employed until the end of the notice period.

9 **C. Termination for Cause.**

- 10 1. The Employee may be terminated for "cause" if the Employer has a fair and honest  
11 cause or reason to terminate the Employee regulated by good faith on the part of the  
12 Employer and based on facts:  
13 a. that are supported by substantial evidence; and  
14 b. that are not based upon any arbitrary, capricious, or illegal reason. Acts, errors,  
15 or omissions that discredit the City, or materially impair the provision of services  
16 to the citizens of the City, as determined by the mayor, shall constitute "cause."  
17 2. The following are additional examples of the types of conduct that may constitute  
18 "cause" and result in termination for cause-this list is not exhaustive nor is it intended  
19 to identify all possible bases for termination for "cause":  
20 a. Consumption or possession of alcohol, illegal drugs, or controlled substances on  
21 the job, or arriving at work under the influence of alcohol, illegal drugs, or  
22 controlled substances;  
23 b. Violation of a lawful duty;  
24 c. Insubordination;  
25 d. Conviction of a felony or misdemeanor involving moral turpitude;  
26 e. Acceptance of fees, gratuities, or other valuable items in the performance of the  
27 Employee's official duties for the City; or  
28 f. Engaging in any transaction or activity that conflicts with or incompatible with  
the proper discharge of official duties.  
3. The procedure for implementing termination for cause shall be in accordance with  
the principles of due process as hereafter set forth:  
a. Prior to termination, the Employer shall notify the Employee of the reason(s)  
he/she is being terminated for cause and provide the Employee with an  
opportunity to respond prior to any final action being taken. Said response may  
be oral, in writing, or both oral and written.  
b. The purpose of the foregoing procedure is to permit the Employee to intelligently  
respond to the reason(s) for termination for cause before a decision is irreversibly  
made, thus providing the Employer with an opportunity to re-evaluate the  
proposed decision considering the Employee's response.  
4. Upon termination for cause under this Section, this Agreement shall be terminated,  
and no further salary or benefits may be paid to the Employee.

29 **SECTION 11. PERFORMANCE EVALUATION:** The Employee will receive a  
30 performance evaluation on an annual basis from the Mayor after consultation with the City

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4 Council. The Mayor shall counsel Employee from time to time concerning the Employee's  
5 performance, at the discretion of the Mayor and/or City Council.

6 **SECTION 12. ADMINISTRATIVE COOPERATION:** The Employee will coordinate  
7 and cooperate with the Mayor and City Council regarding City business. The Employee will  
8 present verbal and written recommendations first to the Mayor and then to the City Council  
9 prior to and during City business meetings regarding all City activities, projects and plans.  
10 The Employee will coordinate first with the Mayor and then with City Council regarding the  
11 future of the City with regard to planning and development of the City for the betterment of  
12 the community and its future.

13 **SECTION 13. CITY OF GONDENDALE PERSONNEL POLICY MANUAL AND**  
14 **ORDINANCES:** The provisions in the City of Goldendale Personnel Policy Manual and  
15 Ordinances shall be applicable to the Employee except for any provisions which contradict  
16 the terms of this Agreement. In the event of any contradiction between the Manual, the  
17 Ordinances and this Agreement, the terms of this Agreement shall supersede the provisions  
18 in the Manual and any Ordinances.

19 **SECTION 14. ENTIRE AGREEMENT:** This Agreement contains the entire agreement  
20 between the parties respecting the matters set forth herein and supersedes all prior  
21 agreements between the parties hereto respecting such matters.

22 **SECTION 15. GOVERNING LAW:** This Agreement shall be construed in accordance  
23 with the laws of the State of Washington.

24 **SECTION 16. NO WAIVER:** No waiver of any breach by either party of the terms of this  
25 Agreement shall be deemed a waiver of any subsequent breach of the Agreement.

26 **SECTION 17. COUNTERPARTS:** This Agreement may be executed simultaneously in  
27 one or more counterparts, each of which shall be deemed an original, but all of which  
28 together shall constitute one and the same instrument.

29 **SECTION 18. AMENDMENT:** No amendment of this Agreement shall be effective  
30 unless the amendment is in writing, signed by each of the parties.

**SECTION 19. NOTICES:** All notices and demands which either party may be required or  
desires to serve on the other party shall be in writing carried out by either and/or hand  
delivery, U.S. Postal Service, email, facsimile, personal service or by mailing a copy by  
certified or registered mail.

**IN WITNESS WHEREOF,** the Mayor, with the concurrence of the City Council, has been  
authorized to sign and execute this Agreement on behalf of the City of Goldendale and duly  
attested by the City Administrator. The Employee has signed and executed this Agreement,  
both in duplicate, the day and year first above written.

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**CITY OF GOLDENDALE:**

**EMPLOYEE:**

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**MAYOR MICHAEL CANON**

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**SANDY WELLS**

**ATTEST:**

\_\_\_\_\_  
**PATRICK MUNYAN, CITY ADMINISTRATOR**

AGENDA BILL: G-3

AGENDA TITLE: Affordable housing

DATE: September 19, 2022

**ACTION REQUIRED:**

ORDINANCE\_\_\_\_\_ COUNCIL INFORMATION\_\_\_\_\_ X \_\_\_\_\_

RESOLUTION\_\_\_\_\_ OTHER\_\_\_\_\_

MOTION\_\_\_\_\_

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**EXPLANATION:** Affordable housing is a nation-wide issue. The following information is provided to the City Council to start a conversation and direction on how City Council would like the administration to proceed.

**FISCAL IMPACT:**

**ALTERNATIVES:**

**STAFF RECOMMENDATION:**

**MOTION:**

# Increasing Local Housing Supply Through **Missing Middle** Housing

September 14, 2022 by [Steve Butler](#)

Category: [Housing](#)

*Image credit: Steve Butler*

Local governments throughout Washington State are wrestling with the issue of affordable housing. For some communities experiencing high growth rates, it may be an issue of how to accommodate an increased number of housing units. For others, it may be the desire to create a variety of housing options to accommodate the differing needs and household income levels of all residents.

One direct method to allow for more residential growth is to “upzone” land to accommodate a greater amount of housing (i.e., change the zoning of some land from a lower to a higher density level, such as from single-family to medium-density multi-family zoning). This approach is usually controversial, with the public often being concerned about the compatibility of multi-family buildings right next to single-family homes.



As an alternative, several communities are looking at other, less dramatic methods to encourage a type of residential infill development that is lower scale than mid-rise multi-family housing and intended to be more compatible with adjacent properties. This is when “missing middle housing” may be an option worth considering.

This blog is the first of a two-part series, with the first describing some of the different types of missing middle housing (MMH), while the second will provide more details on the actions that local governments may take to encourage MMH within their communities.

## What is Missing Middle Housing?

MMH fills the gap between single-family residences and mid-rise, multi-family development and includes the following housing types:

- New housing on small lots
- Duplexes, triplexes, and fourplexes
- Townhouses,
- Cottage housing
- Courtyard housing

- Live/work units

*Image Credit: © [Opticos Design, Inc.](#) / [Missing Middle Housing](#) term created by Daniel Parolek / For more information visit [www.missingmiddlehousing.com](http://www.missingmiddlehousing.com).*



More communities in our state are exploring MMH as an approach for increasing the diversity of housing options in their communities. While

MMH will not address the housing affordability needs of lower income households, MMH units are typically more affordable to moderate income households (for example, 80-100% area median income, or AMI) than more traditional single-family housing units.

If you are interested in increasing your community's housing supply by promoting neighborhood-compatible infill development in your community, the following options are some MMH approaches to consider.

## **New houses on small, existing lots**

*Image credit: Steve Butler*

In most communities, there are always existing lots created prior to current minimum lot size standards, with the result being that they are nonconforming. Instead of having those small lots stand vacant, some cities have taken steps to encourage development on them.

## **Duplexes, triplexes, and fourplexes**

*Image credit: Steve Butler*





Duplexes, triplexes, and fourplexes provide the opportunity for smaller scale residential development to fill in the gaps between a mid-rise type of multi-family development and single-family residential areas. The units can be side-by-side or stacked on top of one another. Good design can soften the visual impact of the extra number of dwelling units.

The photograph above is an example of a well-designed residential fourplex that would visually fit in and be accepted within most single-family neighborhoods.

Gig Harbor's Design Manual includes design standards for duplexes (as well as for other residential types).

## Townhouses

*Image credits: City of Shoreline*

In certain parts of the U.S., a large percentage of a city's multi-family dwelling units are made up of



townhouses. Until recently, this housing type has not historically been as popular in Washington State.



Townhouses are usually individual dwelling units (on their own parcels of land) that share walls with other residential units, have front stoops/porches and backyards, and are typically owner-occupied. To maximize a positive connection with the surrounding neighborhood, it is important that townhouses be oriented towards the public street (for example, having the primary

entrances doors face the street and not towards an interior parking area).

The cities of SeaTac and Wenatchee have good townhouse regulations.

## **Cottage housing**

*Greenwood Avenue Cottages, Shoreline WA. Photo courtesy of The Cottage Company.*

Cottage housing usually consists of a grouping of small, single-family dwelling units clustered around a common outdoor space and developed as part of a master site plan.

Early successful examples of this development type may be found in the cities of Langley, Shoreline, and Redmond. More recently, Kirkland has encouraged cottage housing.

## **Courtyard housing**

*Image credit: Steve Butler, MRSC*





Some cities allow the development of “courtyard apartments,” which consists of several attached dwelling units (either rental or owner-occupied) arranged on two or three sides of a central courtyard or lawn area. This type of housing is usually one or two stories in height and sometimes serve as buffers between arterial roadways and single-family neighborhoods.

## Live-work buildings

*Image credit: Steve Butler*

Small-scale, live-work buildings

typically contain one or more residential units either attached or detached from a non-residential space. The non-residential workspaces are usually located on the first floor of a building, have tall floor-to-ceiling heights, and can have a storefront appearance.

Live-work options are good for connecting jobs and housing and may become increasingly popular as more people decide to permanently work from home. The non-residential space also provides an opportunity for more small-scale retail to be provided within or next to an existing residential neighborhood.

Tacoma is one of several cities that are encouraging this development type.

## What about accessory dwelling units?



Accessory dwelling units (ADUs) are an important type of infill residential development but are often not categorized as fitting within the MMH definition. This situation is primarily due to ADUs being located on a residential lot with an existing single-family home (and therefore not within the “missing middle” area between single-family and multi-family residential zones.

## General Methods for

### Encouraging MMH

Here are a few ways that local governments can encourage the construction of MMH:

- **Change your regulations:** This step could include revising your zoning code to allow MMH in more locations within your community.
- **Revise your permitting procedures:** It is important that your development project review procedures for MMH proposals (and other types of development projects as well) be clear and user-friendly, which will make it easier for both applicants and permit staff to successfully navigate the development review process.
- **Provide educational information:** The reasons for encouraging MMH development should be clearly articulated and explained to the public, to address any concerns that people may have about this type of housing. Many communities, such as Bellingham’s Infill Housing Toolkit and Tacoma’s tip sheet on live-work units, have easy to understand guidebooks and information on their websites.





**Consider financial incentives:** If your community has enacted a Multi-Family Tax Exemption (MFTE) program, consider whether some types of MMH would be eligible for your MFTE program and determine whether there is a good public policy reason to do so. Other financial incentives may be available for MMH development with units affordable to lower-income households.

**Offer pre-approved plans:** This approach has been gaining popularity for encouraging ADUs and some communities are now exploring using the same approach for MMH. The City of Wenatchee is considering creation of pre-approved plans for some types of MMH.

The Washington Department of Commerce's Growth Management Services Division administers a Middle Housing grant program to local governments in King, Kitsap, Pierce, and Snohomish counties, and recently hired three experienced planners (Shane Hope, Dave Osaki, and Joe Tovar) to provide resources and technical assistance to help encourage new moderate-density, middle housing options within Washington State.

## Conclusion and Webinar Invite

Taking steps to increase options for infill development by a local government may sound easy, but that is usually not the case. Neighborhood concerns about density, increased traffic, and parking impacts are likely to be voiced. Development costs for these new types of infill development may be greater than expected, resulting in a low number of units being constructed.

If you want to diversify your housing options and/or accommodate new residents into your community, exploring ways to achieve well-designed infill development is an important task to undertake. Specific strategies and actions that local governments can take to encourage MMH will be the subject of a future blog. However, if you are interested in hearing more about this topic, you may wish to register for our [Making “Missing Middle” Housing Work in Washington State](#) webinar, scheduled for September 27, 2022, 12:00-1:30 p.m. It will feature speakers with the cities of Bellingham, Kirkland, Olympia, Spokane, and Wenatchee.

## Resources

- [Opticos Design, Inc.’s Missing Middle Housing](#)
- [MRSC Missing Middle Housing](#)
- [MRSC Infill Development](#)

*MRSC is a private nonprofit organization serving local governments in Washington State. Eligible government agencies in Washington State may use our free, one-on-one [Ask MRSC service](#) to get answers to legal, policy, or financial questions.*



## About Steve Butler

Steve joined MRSC in February 2015. He has been involved in most aspects of community planning for over 30 years, both in the public and private sectors. He received a B.A. from St. Lawrence University (Canton, New York) and a M.S. in Urban and Regional Planning from the University of Wisconsin-Madison. Steve has served as president of statewide planning associations in both Washington and Maine, and was elected to the American Institute of Certified Planner's College of Fellows in 2008.

[VIEW ALL POSTS BY STEVE BUTLER](#) ▶

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