

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

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE SOLE SOURCE AGREEMENT WITH CAYENTA, A DIVISION OF N. HARRIS COMPUTER CORPORATION, FOR CONSULTANT SERVICES TO IMPLEMENT THE UPGRADE TO THE FINANCIAL AND UTILITY SOFTWARE SYSTEMS FOR A TOTAL AMOUNT NOT-TO- EXCEED ONE HUNDRED FIFTY THOUSAND DOLLARS (\$150,000)**

**WHEREAS**, the City of Milpitas entered into a license agreement in 1996 with Cayenta, an unincorporated division of N. Harris Computer Corporation, to implement a fully integrated financial and utility software system; and

**WHEREAS**, periodically, the integrated financial and utility software system needs to be upgraded due to technological and software changes; and

**WHEREAS**, the current version of the City’s existing financial and utility software system is a 2009 version which uses Windows XP and Internet Explorer 8, both of which are no longer supported by Microsoft; and

**WHEREAS**, the integrated financial and utility software system needs to be upgraded to version 7.7 in order to be compatible with Microsoft’s latest operating system; and

**WHEREAS**, Section I-2-3.09 of the Milpitas Municipal Code authorizes the City Council to award contracts without competition when the Purchasing Agent determines that there is only one source for the required supply or service; and

**WHEREAS**, Cayenta, a division of N. Harris Computer Corporation, is the proprietary owner of the software for the financial and utility software systems for the City of Milpitas and is the only source for the service and installation of the upgrade for the software; and

**WHEREAS**, after conducting a good faith review of the available sources and pursuant to Milpitas Municipal Code Section I-2-3.09, the City’s Purchasing Agent has determined that Cayenta, a division of N. Harris Computer Corporation, is the only source for the service for upgrade implementation of the City of Milpitas’ integrated financial and utility software systems.

**NOW, THEREFORE**, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.
2. Cayenta, a division of N. Harris Computer Corporation, is approved as the sole source provider for the upgrade implementation of the City of Milpitas’ integrated financial and utility software system pursuant to Milpitas Municipal Code Section I-2-3.09.
3. The City Council hereby approves the Agreement with Cayenta, a division of N. Harris Computer Corporation, for the implementation of the upgrade to the integrated financial and utility software systems in the amount not to exceed One Hundred Fifty Thousand

dollars (\$150,000) and for a term period from October 21, 2014 to June 30, 2015. A copy of said Agreement is attached to this resolution..

PASSED AND ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND  
CAYENTA**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and Cayenta, an unincorporated division of N. Harris Computer Corporation ("Consultant") as of October 21, 2014.

**AGREEMENT**

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services ("Services") described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 **Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end on June 30, 2015, the date of completion specified in Exhibit A, and Consultant shall complete all the work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 **Standard of Performance.** Consultant shall perform all Services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a substantial, first-class manner and shall conform to the standards of quality normally observed by a person practicing in Consultant's profession.
- 1.3 **Assignment of Personnel.** Consultant shall assign only competent personnel to perform Services pursuant to this Agreement. Exhibit A shall name any specific personnel who shall be performing Services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall, immediately upon receiving notice from City of such desire of City, reassign such person or persons.
- 1.4 **Time.** Consultant shall devote such time to the performance of Services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1.1 above and to complete Consultant's obligations hereunder.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant a guaranteed maximum price not to exceed One Hundred and Fifty Thousand Dollars (\$150,000) for all Services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for Services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below

shall be the only payments from City to Consultant for Services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the Services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Hourly rates for personnel performing Services shall be as shown in Exhibit A. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

**2.1 Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for Services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills;
- The beginning and ending dates of the billing period;
- A Milestone Summary containing the milestones being billed as outlined in the Statement of Work.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for Services satisfactorily performed, and for authorized reimbursable costs incurred. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

**2.3 Total Payment.** City shall pay for the Services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event that Consultant identifies additional work outside the Scope of Services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work.

- 2.4 Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit A.
- 2.5 Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit A, and shall not exceed Seven Thousand Nine Hundred and Thirty Five Dollars (\$7,935.00). Expenses not listed in Exhibit A are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.
- 2.6 Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.
- 2.7 Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.
- 2.8 Authorization to Perform Services.** The Consultant is not authorized to perform any Services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide Certificates of Insurance satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City.

Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

**4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office Commercial General Liability occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office Automobile Liability form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant;

products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant.

- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. With respect to the Commercial General Liability Policy, coverage shall not be canceled by either party except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City.

**4.3 Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

**4.3.1** Any deductible or self-insured retention shall not exceed \$500,000 per claim.

**4.3.2** The policy must contain a cross liability clause.

**4.3.3** The following provisions shall apply if the professional liability coverages are written on a claims-made form:

- a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
- b. Insurance must be maintained and evidence of insurance must be provided for at least three years after completion of the Agreement or the work, unless waived in writing by the City.
- c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and

expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.

- d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

#### **4.4 Requirements for All Policies.**

**4.4.1 Acceptability of insurers.** All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.

**4.4.2 Verification of coverage.** Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by the authorized broker of the Consultant's global insurance program. The City reserves the right to request verification of specific language in the policies that directly pertain to the Consultant's coverage under this Agreement, provided the City shall be responsible for reproduction and redaction costs, where applicable.

**4.4.3 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.4.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to City the self-insured retentions and deductibles before beginning any of the Services for any term of this Agreement.

**4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

- 4.6 Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

## **Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.**

5.1 Subject to the limitations set forth in Section 5.2, Consultant shall indemnify, defend and save harmless the City, its successors and assigns together with its officers, directors, employees, agents and those for whom it is in law responsible, from and against any and all third-party losses, liabilities, damages, costs, assessments, expenses (including, without limitation, interest, penalties, fines, expert fees and reasonable attorneys' fees), incurred in connection with any and all third-party causes of action, claims, demands, actions, suits, proceedings, settlements and judgments (collectively, "Claims") which the City may incur or suffer arising directly from any material breach, violation or non-performance by Consultant of any obligation contained in this Agreement, or any wrongful act or willful misconduct of Consultant or its agents or employees which relates to this Agreement, howsoever arising.

This indemnity is only effective where (i) City has provided prompt notice of the claim, action or demand to Consultant, (ii) City has not made any admissions of liability or settlement offers either prior to or after providing notice to Consultant of the applicable claim except with Consultant's prior written consent, except to the extent required by applicable law, (iii) Consultant has sole control of the defense of any claim or proceeding and all negotiations for its compromise or settlement; (iv) City provides reasonable assistance to Consultant, at Consultant's expense, throughout the action or proceeding, and (v) City has not modified the Software in any manner whatsoever except where permitted under this Agreement, or with the prior written consent of Consultant, provided the Claims directly relate to the modified Software.

It is understood by the parties that the duty of the Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code with the following exceptions:

- (i) The duties set forth in Section 2778(1), Section 2778(2), Section 2778(3) and Section 2778(5) shall be subject to the limitations set forth in Section 5.2 of this Agreement; and
- (ii) Section 2778(4) shall not apply to the indemnity in this Section 5.1 and the parties agree that said indemnity shall be subject to the conditions noted in this Section 5.1 of the Agreement

Any material breach by City of its covenants under this Section 5 shall nullify this indemnity. Consultant will not settle or compromise any applicable Claim or consent to the entry of any judgment that (i) adversely affects any of the rights of the City, (ii) imposes any obligations on the City, (iii) imposes any costs on the City that are not indemnified by Consultant, or (iv) would admit fault by the City. City may, at City's sole cost and expense – which is outside the scope of this indemnity – retain counsel of its own choosing who shall be permitted to attend all settlement conferences and hearings or other court appearances (except where the court has specifically made an order against such attendance) related to the proceeding.

Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance

policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

In the event that Consultant or any employee, agent, or subcontractor of Consultant providing Services under this Agreement is determined by a court of competent jurisdiction or the California Public Employees Retirement System (PERS) to be eligible for enrollment in PERS as an employee of City, Consultant shall indemnify, defend, and hold harmless City for the payment of any employee and/or employer contributions for PERS benefits on behalf of Consultant or its employees, agents, or subcontractors, as well as for the payment of any penalties and interest on such contributions, which would otherwise be the responsibility of City.

5.2 Termination of this Agreement shall not affect any right of action of either party arising from anything which was done or not done, as the case may be, prior to the termination taking effect. The City and Consultant recognize that circumstances may arise entitling the City to damages for breach or other fault on the part of Consultant arising from this Agreement. The parties agree that in all such circumstances the City's remedies and Consultant's liabilities will be limited as set forth below and that these provisions will survive notwithstanding the termination or other discharge of the obligations of the parties under this Agreement.

EXCEPT FOR DAMAGES ARISING OUT OF (a) DAMAGE TO REAL OR TANGIBLE PROPERTY, (b) INJURY OR DEATH TO PERSONS, (c) CONSULTANT'S INTENTIONAL MISREPRESENTATION, GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR (d) THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, BOTH PARTIES AGREE THAT THE AGGREGATE LIABILITY OF EITHER PARTY FOR ALL CLAIMS, SUITS, ACTIONS AND PROCEEDINGS HOWSOEVER ARISING, DIRECTLY OR INDIRECTLY, UNDER OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, INCLUDING THOSE BASED ON BREACH OR RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY SHALL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID BY CITY TO CONSULTANT PURSUANT TO THE RELEVANT STATEMENT OF WORK.

IN ADDITION TO THE FOREGOING, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY CLAIMS FOR CONSEQUENTIAL DAMAGES, INCIDENTAL DAMAGES, INDIRECT DAMAGES, SPECIAL DAMAGES, AGGRAVATED DAMAGES, LOSS OF REVENUE, LOSS OF PROFITS, FAILURE TO REALIZE EXPECTED SAVINGS, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY EITHER UNDER OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER BASED ON BREACH OR RESCISSION OF CONTRACT, TORT, BREACH OF TRUST, OR BREACH OF FIDUCIARY DUTY EVEN IF SUCH OTHER PARTY HAS BEEN ADVISED OF THE LIKELIHOOD OF THE OCCURRENCE OF SUCH DAMAGES.

The parties agree that the limitation of liability as set out in this Section 5.2 shall apply under any circumstances (including as a result of a default under this Agreement, a tort related claim or breach of contract). For the purposes of this Section 5.2 only, a party relying on the limitation of liability shall be deemed to include that party's shareholders, directors, officers, employees, elected officials and affiliates.

Where remedies are expressly afforded by this Section 5, such remedies are intended by the parties to be the sole and exclusive remedies of the either party arising out of or in connection with this Agreement, notwithstanding any remedy otherwise available at law or in equity.

**Section 6.**      **STATUS OF CONSULTANT.**

- 6.1      **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's Services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes Services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing Services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2      **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

**Section 7.**      **LEGAL REQUIREMENTS.**

- 7.1      **Governing Law.** The laws of the State of California shall govern this Agreement.
- 7.2      **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.
- 7.3      **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.
- 7.4      **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are

legally required to practice their respective professions and to perform this Agreement. In addition to the foregoing, Consultant and any subcontractors shall obtain and maintain during the term of this Agreement valid business license from City.

- 7.5 Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any Services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any Services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

## **Section 8. TERMINATION AND MODIFICATION.**

- 8.1 Termination. For Convenience.** City may terminate this Agreement at any time and without cause upon thirty (30) days written notification to Consultant. In the event of termination, Consultant shall be entitled to compensation for Services performed and non-refundable expenses incurred prior to the effective date of termination as provided in Section 2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all City owned: documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.
- 8.2 Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall require a written amendment to this Agreement, as provided for herein. Consultant understands and agrees that, if City grants such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.
- 8.3 Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.
- 8.4 Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized

personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City.

**8.5 Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

**8.6 Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement and has not cured said breach within thirty (30) days of notification of said breach by the City, the City's remedies shall include, but not be limited to, any or all of the following:

**8.6.1** Retention of the plans, specifications, drawings, reports, design documents, and any other work product provided.

**8.6.2** Retention of a different consultant at Consultant's cost to complete the work described in Exhibit A not finished by Consultant provided said cost associated with retaining a different consultant shall be included as direct damages of the City and subject to Section 5.2.

## **Section 9. KEEPING AND STATUS OF RECORDS.**

### **9.1 Records Created as Part of Consultant's Performance.**

The parties agree that no materials or documents are being created for City by Consultant under this Agreement as of the effective date. All materials and documents which were developed or prepared by Consultant for general use and which are not the copyright of any other party or publicly available, including educational materials, the software and any other computer applications related to this Agreement, shall continue to be the property of Consultant. Where the City requests custom materials or documents, the parties shall enter into a new duly executed Scope of Work, which explicitly sets forth the custom materials or documents and the associated ownership rights. The City shall be the exclusive owner of all such custom materials and documents which are developed or prepared by Consultant specifically for the City so long as such customer materials and documents are specifically described as being deliverables that are subject to same in the relevant Scope of Work, except to the extent to which such materials or documents may contain pre-existing Consultant materials, in which case the Scope of Work will describe the license for such pre-existing Consultant materials.

**9.2 Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for Services or expenditures and disbursements charged

to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.

- 9.3 Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

## **Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place

Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this Agreement is made in violation of Government Code §1090 *et seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for Services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

**10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9 Contract Administration.** This Agreement shall be administered by Jane Corpus who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10 Notices.** Any written notice to Consultant shall be sent to:

Scott MacKendrick  
Vice President, Professional Services  
N. Harris Computer Corporation  
201-4200 North Fraser Way  
Burnaby BC, V5J 5K7  
Canada

Any written notice to City shall be sent to:  
Jane Corpus, Accounting Services Manager  
455 East Calaveras Boulevard  
Milpitas, California 95035

- 10.11 Professional Seal.** Where applicable in the determination of the City, the first page of a technical report, first page of design specifications, and each page of construction drawings shall be stamped/sealed and signed by the licensed professional responsible for the report/design preparation.
- 10.12 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.
- 10.13 Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.
- 10.14** Neither party shall be liable for delay or failure in performance resulting from acts beyond the control of such party including, but not limited to, acts of God, acts of war or of the public enemy, riots, fire, flood, or other natural disaster, acts of government, strike, walkout, communication line or power failure, failure in operability or destruction of the City's computer (unless by reason of the negligence of a party to this Agreement). Any applicable delivery schedule shall be extended by a period of time equal to the time lost because of any such delay.

CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Thomas C. Williams, City Manager

\_\_\_\_\_  
**Scott MacKendrick, VP Professional Services**

APPROVED AS TO CONTENT:

98 - 0141520

\_\_\_\_\_  
Taxpayer Identification Number

\_\_\_\_\_  
(Emma Karlen, Finance Director)

\_\_\_\_\_  
City of Milpitas Business License Number

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael J. Ogaz, City Attorney

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# **EXHIBIT A**

## **STATEMENT OF WORK**

## **Project Introduction**

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Cayenta, a division of N. Harris Computer Corporation, is the entity expected to deliver the services defined within this SOW. HARRIS and MILPITAS shall perform in accordance with this SOW.

## **Project Goals and Objectives**

The goal of this project is to deliver the software and services defined in this SOW to MILPITAS for the Cayenta ERP upgrade project in 2014 and 2015.

## **Scope of Work**

The scope of this upgrade is:

- Upgrade ERP Software to version 7.7 from 7.5.0 of Cayenta Utilities, Cayenta Financials and Cayenta Personnel with all going live at the same time;
- Review and configuration of some new features and functionality of version 7.7:
  - Cayenta Utilities:
    - Core release of CIS Inquiry.
    - Data migration from current production.
  - Cayenta Financials:
    - New year-end process;
    - Configuration of one custom workflow;
    - Core release of Financials and Purchasing Inquiry.
    - Data migration from current production.
  - Cayenta Personnel
    - Mapping of HR/Payroll processes to new configuration options;
    - Configuration one custom HR workflow;
    - Core release of Personnel/Payroll Inquiry.
    - Data migration from current production.

MILPITAS to provide testing on CU 7.7 for the new items listed above along with testing of existing business processes, with Cayenta providing support and assistance with issues resolution:

- MILPITAS to update training documentation for HR to account for the new application look and feel for v7.7
- Harris to create test and production instances (for example: CAYTEST, CAYPROD) of all products and databases on new MILPITAS hardware/environment.

- Harris to upgrade the reporting environment to Actuate version 11.
- Implementation of the new security portals across all products, and migration from User Portals to Business Function Portals including training on menu structure setup and privilege maintenance.

Not in scope:

- CSS upgrade/enhancements
- Changes to custom reporting (bills, S/O, W/O, letters, portals, reports, financial templates)
- Miscellaneous Receivables implementation

## **Project Assumptions & Responsibilities**

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### **Project Assumptions**

The following assumptions have been used in the creation of scope and schedule for this project.

#### **General Assumptions:**

1. MILPITAS will strive to minimize the impact of competing initiatives within MILPITAS that may have a negative impact to the Project.
2. Prompt decision-making and problem resolution will be required to achieve an on-time, on-budget project completion.
3. MILPITAS and HARRIS understand the project scope and project timelines and agree to communicate and adhere to that scope and the timeline, thus setting the proper expectation level.
4. There is not any undisclosed software product or business information that could have a substantial impact on this agreement with MILPITAS.
5. MILPITAS is willing to implement HARRIS "Best Practices" in order to minimize the need for software customizations. This may not always be possible, but MILPITAS will approach configuration decision-making from this perspective.
6. A project of this nature has inherent risks that could result in delays to putting the Solution in production. Both parties agree to engage in a formal risk management process to minimize the impact of any and all risks identified.
7. Both parties acknowledge that a Project is different from daily operations and requires a higher level of oversight/management and higher levels of effort to meet the agreed to milestones.
8. Communications is a vital part of managing a project and information sharing between all team members, and management, is crucial to success. HARRIS and MILPITAS will create an environment that facilitates and simplifies communications using formal (email, CayStone, etc.) and informal (co-location, discussions, etc.) methods.

#### **Staffing and Assumptions:**

1. Both parties will provide sufficient qualified resources to meet the mutually agreed-upon project schedule and milestones for upgrade of the Solution.
2. HARRIS project team members will work remotely the majority of the time, but when on-site will be co-located at a MILPITAS facility with MILPITAS team members.
3. HARRIS application consultants, technical consultants and project manager will utilize a combination of on-site visits and mostly remote support to guide the MILPITAS team through the upgrade process.
4. Both parties agree to work a reasonable, 5-10 hours per week per person, amount of added hours (when required) to complete project deliverables and to meet project timelines.

5. All MILPITAS and HARRIS Project Team members are expected to take normal vacation and holiday days throughout the course of the project except during stages of the project where their presence is critical. The Project Managers will review any requests for their respective staff for time away from the project before approval is granted.

**Technical Assumptions:**

1. MILPITAS is planning to upgrade the Solution server hardware;
2. The upgraded Solution will run on Windows XP or Windows 7 for workstations;
3. The upgraded Solution will function with IE7 & 8 for XP workstations and IE8 & 9 for Win 7.
4. MILPITAS will perform the installation, configuration, and testing of user PC workstations necessary to support the Solution's front-end environment.
5. The upgrade project will only require creation of CAYTEST and CAYPROD instances.

**Project Management Assumptions:**

1. MILPITAS is willing to incorporate HARRIS' proven project management methodology and documentation into their own project management processes to permit HARRIS to execute this SOW in the most efficient and effective manner possible.

**HARRIS Project Responsibilities**

**General:**

1. HARRIS will utilize the current versions of Microsoft products (Office 2010 or 2013), including MS Word, MS Excel, MS Project, MS Visio, MS PowerPoint and MS SharePoint, to produce deliverables according to HARRIS technical standards. Should HARRIS not operate at the same versions as MILPITAS, HARRIS will make reasonable efforts, within Microsoft product capabilities, to save documents and deliverables to a level that would be accessible by MILPITAS and requests MILPITAS to do the same for HARRIS.
2. HARRIS will install Cayenta Software, additional modules and related Third Party Software, as defined in the Agreement and/or required to support the Solution, on MILPITAS's environment.

**Staffing:**

1. HARRIS will be responsible for coordinating third party vendors for products and services that have been subcontracted for by HARRIS.

2. Work will be conducted by HARRIS project team members at both on-site and off-site facilities with remote access to the computing environment.
3. HARRIS will provide on-site post Go-live Support for one (2) weeks that will include assistance/support production activities, before transitioning to regular HARRIS Support.

**Project Management:**

1. HARRIS will share responsibility for the successful execution of this SOW including the management of all HARRIS, HARRIS subcontracted resources and related project activities.
2. HARRIS will assume overall responsibility for conducting project related administration activities including the development and maintenance of a Microsoft Project based schedule.
3. HARRIS will work with MILPITAS to establish the electronic project office including: project directories, calendars, work program, status reporting and other items as agreed to.
4. During the project, any effort required to research software notes and apply patches is HARRIS's responsibility under the terms of this fixed price contract. HARRIS will work with the MILPITAS project team to complete these activities, to keep them informed, and to transfer knowledge.

**Development:**

1. HARRIS assumes responsibility for managing any new interface configuration, testing and roll-out for the Solution side of the interface as defined in Section 9 on Interfaces and Modifications. (MILPITAS is responsible for the interface on the side of the other systems being integrated to.)
2. HARRIS is responsible for any modifications to the System to meet MILPITAS's requirements as agreed to herein.
3. HARRIS will be responsible for performing quality assurance of all product modifications, interfaces, reports and/or forms developed by HARRIS.

**System Testing:**

1. HARRIS will provide a test tracking and incident management tool for the MILPITAS team to utilize (Caystone).
2. HARRIS will provide scenario templates for testing. (MILPITAS will be responsible for the creation of customized test scenarios.) This will be accomplished in CayStone.
3. HARRIS will provide resources for product fixes resulting from Defects identified during the system testing process.
4. *HARRIS will respond to incidents via CayStone* regarding problems or questions that the MILPITAS testers encounter. This is the preferred method of communication when it comes to

testing and managing other aspects of the project such as training needs, cut-over tasks, business process changes, etc. Email should be kept to a minimum so that the history of every incident is captured in one place and is accessible to all.

**Training:**

1. HARRIS will provide training on the new menu structure setup and privilege maintenance.
2. HARRIS will support MILPITAS with the development of the end-user training plan.
3. End-user training will be the sole responsibility of MILPITAS, both from the training materials development and delivery standpoint.

**Post Implementation Support:**

1. HARRIS will provide on-site support for one week to MILPITAS following Go-live.
2. HARRIS will assist MILPITAS to transition on-site support to standard remote support as agreed to in the Support and Maintenance Agreement, within the week following Go-live.

**Client Project Responsibilities**

**General:**

1. MILPITAS will provide the hardware and network infrastructure necessary to execute the project, including the necessary database product licenses and licenses for other products not specifically supplied by HARRIS.
2. MILPITAS will have the Windows environment set up and ready at the start of the project and will upgrade the test environment to v7.7.
3. MILPITAS will provide HARRIS with access (local and remote) to the hardware and network environments necessary for the implementation of the Solution as well as access to the appropriate legacy environments.

**Staffing:**

1. MILPITAS will provide a dedicated project team (same team members) for the duration of the project. The make-up of MILPITAS's team will be reviewed with HARRIS during the Initiation phase of the upgrade implementation. These resources will be required for varying periods during the project. The number of MILPITAS personnel required and the dates on which each of those persons starts work may be adjusted as a result of the development of or adjustment to the Project Schedule by the PMs.
2. MILPITAS will staff the project with qualified resources that are familiar with MILPITAS's business processes and practices and the existing Cayenta software. These resources will possess the necessary knowledge, skills and abilities to efficiently test the Solution.

3. MILPITAS will appoint a dedicated project manager to lead the MILPITAS upgrade project implementation and the MILPITAS project team.
4. MILPITAS will empower MILPITAS's project team members to make decisions related to configuration and business processes. For some key decisions the MILPITAS team may be required to elevate the decision process to the executive team. MILPITAS will work to minimize the escalation of decisions to keep the decision process as streamlined as possible so that it doesn't hold up progress.
5. MILPITAS's executive team is supportive of the SOW and will establish an Executive Sponsor(s) for overseeing the project.
6. MILPITAS will adopt a formal change control process for business processes and project scope decisions that have been elevated from the project team, to ensure organizational adherence to the change.
7. MILPITAS's Executive Sponsor will ensure that key business and contractual decisions are made in a timely fashion.
8. MILPITAS is responsible for the coordination of the hardware supplier and other 3<sup>rd</sup> party product vendors under direct contract to MILPITAS.
9. MILPITAS will be responsible for coordinating third party vendors for services that have been subcontracted for by MILPITAS.
10. MILPITAS will be responsible for providing facilities to accommodate both MILPITAS and HARRIS project team members.

**Project Management:**

1. MILPITAS is responsible for a master project plan (charter), communication plan and organizational/business change management process as is necessary for a successful implementation and user adoption.
2. MILPITAS should anticipate and plan for organizational adjustments. MILPITAS will be responsible for evaluating and managing any business process and technical environment changes, managing and executing the organizational/business change plan and developing new performance measures for MILPITAS.

**Database Migration:**

1. MILPITAS will assign technical resources to provide HARRIS with the required access to current system data tables and will perform back-up and restore functions as required to facilitate the transfer.
2. MILPITAS will be responsible for data validation through the testing process.
3. MILPITAS will be responsible for all subsequent data migrations (following the HARRIS performed initial migration), as required by the testing and go-live activities.

**Development:**

1. MILPITAS will take the lead and be responsible for the development of forms, reports, and portals not otherwise identified as being HARRIS' responsibility in this SOW.
2. MILPITAS assumes responsibility for managing the interface design, development, testing and roll-out of new interfaces (excluding core interfaces on the Solution side) developed by MILPITAS as defined in Section 9 on Interfaces and Modifications.

**System Testing:**

1. MILPITAS will assume responsibility for conducting unit testing, integrated testing and business process testing, focusing on how well the business processes flow with the Solution.
2. MILPITAS will review and perform testing activities under the guidance of HARRIS, per the jointly developed test plan and utilizing CayStone to accomplish this.
3. MILPITAS is responsible for the day-to-day leadership of the testing efforts, ensuring that testing is progressing at a pace to meet the deadlines imposed by the project schedule.
4. MILPITAS is responsible for establishing test instances of the other systems to be integrated to by HARRIS. This is necessary for the complete and thorough testing of all system interfaces. In lieu of a test instance, MILPITAS can elect testing with the production instance of these other systems or foregoing the testing. In doing so, MILPITAS assumes the risk when the HARRIS system goes live that the integration may not work.
5. MILPITAS is responsible for the creation of any additional test instances deemed necessary beyond the 2 created by HARRIS (CAYTEST, CAYPROD).

**Training:**

1. MILPITAS is responsible for prerequisite education and training such as basic PC skills, MS windows training, and/or fundamental knowledge of the business processes.
2. MILPITAS will modify, with guidance, the standard training program and all training materials to reflect MILPITAS's specific business activities performed in the System.
3. MILPITAS has the facilities and will provide the necessary logistics support for all training sessions, including: class schedules, meeting rooms, training rooms, material reproduction, overhead projectors, training workstations, and any other necessary training supplies.
4. MILPITAS will ensure end-user attendance at training.
5. End-user training will be the sole responsibility of MILPITAS. The MILPITAS trainer(s) will be a project team member(s) that has gained experience with new features in the application through their testing efforts.

**Production Readiness and Cut-over:**

1. HARRIS will develop the cutover plan along with MILPITAS and deliver the plan to the PMO no later than 30 days prior to the planned cut-over.
2. MILPITAS will be responsible for conducting an acceptance review of the completed System as delivered by HARRIS at the completion of integrated testing activities.
3. MILPITAS will perform any manual data conversion activities as required as part of production cut-over.

**Post Implementation Support:**

1. A MILPITAS support group will be assembled prior to cut-over to monitor user adoption, and provide production support services, including refresher training, coaching and user authorizations and security support.

## Definitions

In addition to the definitions contained elsewhere in this Statement of Work, the following terms shall have the following meanings. Where any word or phrase defined below, or a pronoun used in place thereof, is used in any part of the Statement of Work, it shall have the meaning herein set forth. These definitions apply to this Statement of Work.

<b>Definition/Term Name</b>	<b>Definition/Term Description</b>
Additional Products	Additional Products are modules or standalone applications that MILPITAS has purchased as part of this project.
MILPITAS	City of Milpitas
Business Process	Business Process Procedures that will provide documentation of process steps and system transactions to facilitate testing and training.
Best Practices	Cayenta Techniques, process and settings that enable services to be delivered more effective and efficiently.
Cayenta ERP	Cayenta Financials, Cayenta Utilities and Cayenta Human Resources/Payroll.
Change Control	The process that will be used throughout the project for controlling project scope, schedule, and cost. This will be agreed to by both parties.
Change Order	A formal document, agreed to by both MILPITAS and HARRIS, which authorizes a change to the terms of this Agreement or its subsidiary documents. Changes can be monetary or non-monetary depending on the nature of the change. The Change Order is part of the Change Control process.
Change Management	The activities, events, processes and procedures that are employed for handling transformation of the organization from one system environment to another. This relates mainly to the people and business processes.
Client	References MILPITAS for the purposes of this document.
Configuration	Process of performing table updates and algorithm changes to the System in order to have the system perform MILPITAS's specific user requirements. Configuration does not require programmatic software changes.
Dedicated	Dedicated does not refer to full-time, but rather to the same person or persons performing the work. There needs to be continuity in the team members from both organizations so that the project can be executed as efficiently as possible without having to introduce new people to the process being followed, project progress and history and the features of the system being implemented.
Defect	Any process, button, inaccuracy that fails or is deficient in operating as specified (by MILPITAS – agreed to by Cayenta).
Full-time	Full-time refers to an individual investing 30 hours or more on the project. A full-time resource is expected to treat this project as their primary responsibility and any non-project work will be performed when it does not interfere with project activities and deadlines.

<b>Definition/Term Name</b>	<b>Definition/Term Description</b>
Courseware	End-User Training Materials that will be developed to facilitate end-user training execution.
Cut-over	The Cut-over includes all activities required to prepare for the transition of testing the new Solution to production processing with the new Solution.
Data Extract	A consistent set of data extracted from the legacy system for transfer into the new Solution.
Data Mapping	The process of assigning source system data elements to target data elements in the Solution data model for purpose of transfer.
Data Model	Conceptual description of data objects, their attributes, and the relationships between them.
Fit Gap	The difference between MILPITAS's requirements and the core functionality of the HARRIS Solution.
Go-live	The point at which MILPITAS starts maintaining customer information in the Solution in production and stops using the legacy system.
Modification	A Modification shall be defined as custom code that is inserted into the standard Solution to meet the specific business needs of MILPITAS.
Fall Back Plan	Cut-over planning includes risk and contingency planning. A component of the contingency planning will include processes and procedures in the event that MILPITAS needs to roll back to prior system after the Go-live.
Fixed Price	The total cost for implementation expenses to deliver the scope and schedule noted in this SOW.
Functional/Unit Test	Singular test of an object such as a screen, report or batch program. These tests will focus on specific functions and not entire business processes.
Functional Requirements	Document that contains MILPITAS's functional requirements to be delivered by HARRIS for this upgrade. For any undocumented requirements that become known after the signing of this Agreement, an analysis of how that requirement can best be met will be performed and agreement reached by both MILPITAS and HARRIS before being implemented. If the requirement cannot be met through configuration of the Solution, then a Change Order will be processed.
Interface	Passing of data between two separate and distinct systems; can be accomplished via real time or in batch mode.
Integrated Test	The integrated testing will utilize formal test plans and scripts that will define how to test a singular feature and business process based on pre-defined expected results. Integrated tests will be formal in nature, cover multiple scenarios of a feature and process; based on the variations of MILPITAS's business. From the inception of the test data through all of the components of Cayenta to the final disposition of the data. Integrated testing will utilize a copy of legacy production data in a test environment.
Legacy System	References MILPITAS's existing ERP system that is being upgraded. In this case the legacy system is version 7.5.0 of Cayenta's ERP Suite and is referred

<b>Definition/Term Name</b>	<b>Definition/Term Description</b>
	to as the legacy system.
PMO	Project Management Office.
Quality Assurance	The process of verifying that the proper processes and procedures have been adhered to on the project from a methodology as well as project management perspective and that the deliverables produced on the project include the appropriate content and meet defined requirements.
Solution	Means the integrated combination of the HARRIS software and Third Party software that are required to build a system that meets and operates in accordance with the specifications set forth in this SOW.
System Acceptance	Execution of a document by which MILPITAS acknowledges and agrees that the System is performing acceptably and that HARRIS has completed all deliverables.
Test Plan	Document that outlines a strategy or approach for testing a particular test script of group test scripts. Describes key set-up issues, dependencies and other general factors.
Third Party	A third party is any organization, other than HARRIS and MILPITAS, which is contractually involved in this project and its successful Go-live by supplying products and/or services.

## Scope of Services

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### Service Overview

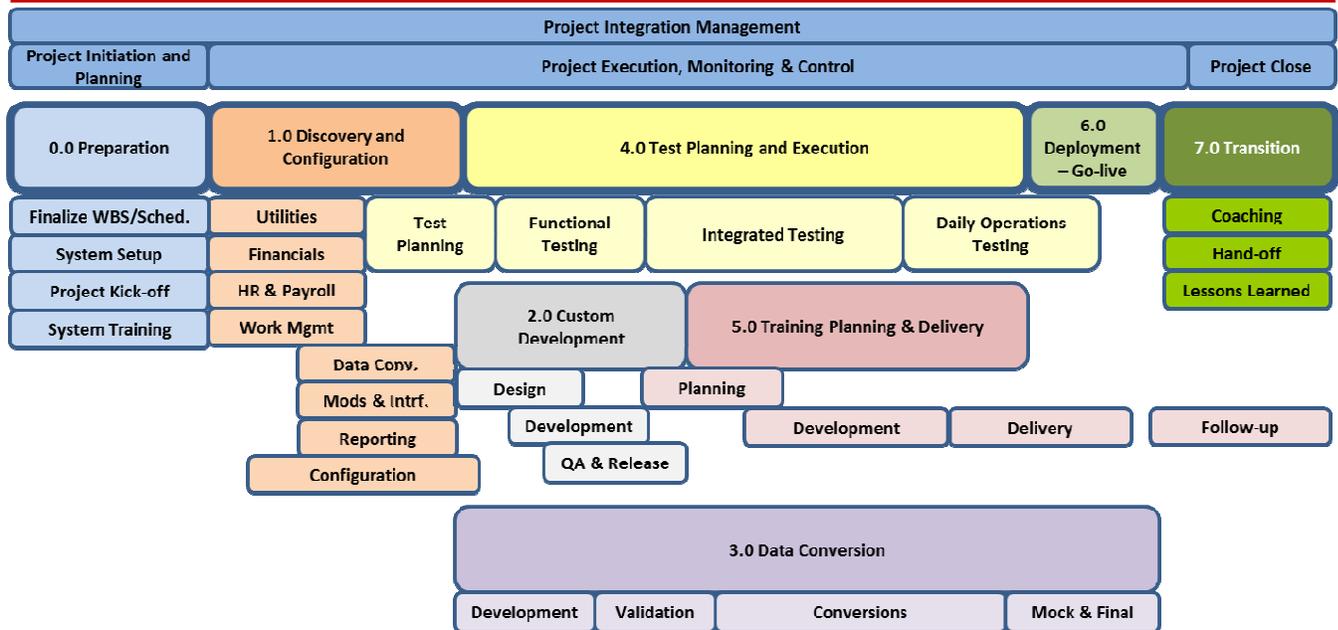
This is an upgrade for Cayenta ERP with the additional configuration of new functionality as specifically outlined in this Statement of Work (SOW). The configuration of functions, features and modifications not currently in use by MILPITAS and not identified in this SOW are considered out-of-scope.

HARRIS will provide project management services, and professional services to assist MILPITAS as defined by the effort outlined in the MS Project Schedule and this SOW. The scope of this project is based on HARRIS' understanding of MILPITAS's requirements as outlined in this document. The activities and budget as detailed in this SOW are fixed for the defined scope of work and will not be modified without prior approval of a mutually agreed upon change in the scope of work. Sign-off of a Change Order must be made before the change in scope work can begin.

HARRIS shall use its implementation methodology to deliver the System. The methodology encompasses:

- Project Management and Project Governance
- Phase 0 – Project Planning and Installation
- Phase 1 – Discovery and Configuration
- Phase 2 – Custom Development
- Phase 3 – Data Migration
- Phase 4 – Test Planning and Execution
- Phase 5 – Training Planning and Delivery
- Phase 6 – Deployment - Go-live
- Phase 7 - Transition

# Cayenta Implementation Methodology



These 8 phases define the scope of project activities that will be provided by both HARRIS and MILPITAS. These activities are further described in the following sections.

## Project Management and Project Governance

The HARRIS and the MILPITAS Project Managers shall be responsible for the planning and execution of the project. The Project Managers will jointly be responsible for project management activities throughout the project, and the delivery of change management. The Project Managers overall management objective will be to quickly establish an effective project structure leveraging established HARRIS methods, templates and tools while working within MILPITAS's project management framework, to provide an effective and efficient management structure.

The project shall have a MILPITAS Executive Sponsor(s). The Executive Sponsor will meet monthly or more often as required with the project managers. The purpose of the Executive Sponsor is to provide overall project oversight, executive management involvement and strategic project decisions. If desired by MILPITAS, the role of the Project Sponsor may be shared by more than one executive, thus forming an Executive Steering Committee (ESC).

## Phase 0 – Project Planning and Installation

## **Purpose**

The Planning and Installation phase of the upgrade is the initial period when the project organization is set up and information gathered to allow for the finalization of the project schedule that clearly defines the timeline of the project. During the initial project preparation, MILPITAS and HARRIS teams are formed and the resources scheduled to ensure that there are no resource conflicts.

The general infrastructure of project governance within MILPITAS's project management office (consists of MILPITAS's and HARRIS's Project Manager, and project support resources) is defined as:

- Identify an Executive Sponsor;
- Establish the Project Team and reporting relationships;
- Establish the business process change process;
- Establish and adopt the Change Control process;
- Establish Go/No-go criteria for cut-over;
- Finalize the Project Schedule;
- Set up the tools needed to manage the implementation;
- Install the new System and related components.

Additionally, the purpose of Phase 0 is to create an updated testing environment by performing technical tasks required for the upgrade to the Solution. MILPITAS will provide an environment for this testing instance.

This environment will be used throughout the project for configuration and testing. MILPITAS will be responsible for maintaining the environment with HARRIS providing technical support. In addition the special Instructions for the new release are reviewed.

The final step in this phase is to set up CayStone, the project tracking tool, implementation database, test tracking database and the incidents database. CayStone is a web-based tool that is critical to managing all Cayenta projects.

## **Deliverables**

HARRIS will deliver the following as part of this phase:

- Provide the finalized project schedule;
- Provide the recommended Change Control process;
- Provide the Go/No-go criteria;
- Verification of core basic Solution functionality;
- Set up of MILPITAS Upgrade SharePoint site;

- Kick-off Session delivered.

MILPITAS will deliver the following as part of this phase:

- Identify the Executive Sponsor and the Team;
- Agree to the Change Control process;
- Agree to the finalized project schedule;
- Agree to the Go/No-go criteria;
- Setup of a project room with all necessary equipment required by the team;
- Create computing environments as required;
- Confirmation of remote access to the upgrade test instances and project folder or site;
- Confirmation of external access to the internet, including VPN access to HARRIS systems for HARRIS personnel when working on-site.

### **Constraints and Assumptions**

- MILPITAS will have any new hardware, or virtual Windows environments, in place before the HARRIS work will begin.
- MILPITAS will provide connectivity information for the hardware environment to the HARRIS Technical Consultant prior to the start of the HARRIS technical tasks.

### **Phase 1: Discovery and Configuration**

#### **Purpose**

The purpose of this phase is two-fold: to review new functionality that MILPITAS has purchased and to gather the specific information needed to complete an initial configuration of the Solution that will be readied for testing.

A HARRIS application consultant will lead Discovery and Configuration sessions involving appropriate MILPITAS business process experts in order to complete any necessary matrices and setup forms. These sessions and resulting documentation will be used to provide an initial configuration of the Solution.

Throughout the Discovery and Configuration sessions HARRIS and MILPITAS will jointly identify the initial business process changes required or desired. MILPITAS will document these changes and analyze for impacts to current processes and stakeholders. MILPITAS will get approval for the changes, communicate and implement the business process changes.

The Discovery and Configuration sessions will result in work being assigned to the appropriate MILPITAS resources. HARRIS and MILPITAS will use the HARRIS's incident tracking tool (CayStone) throughout the implementation in order to track and report on:

- Business process changes;
- Project Issues (ERP Issues; Business Process Issues; Database Migration Issues; Reporting Issues; Environment Issues, Interface Issues);
- Cut-over Tasks and Assignments;
- End User Training Items.

During HARRIS off-site periods, the HARRIS and MILPITAS team members will continue to share information via Caystone, email, telephone and web-conferencing as necessary.

### **Deliverables**

HARRIS will deliver the following as part of this phase:

- One week onsite review of CIS 7.7 Functionality
- One week onsite review and training for the configuration of one (1) custom CIS Generic Inquiry tab and one (1) simple custom CIS workflow.
- One week onsite review of CF 7.7 Functionality
- One week onsite review and training for the configuration of CF and PO Inquiry and one (1) simple CF workflow.
- One week onsite review of HR 7.7 Functionality
- One week onsite mapping HR processes to new Config options and configure HR Inquiry.

MILPITAS will deliver the following as part of this phase:

- Team members to participate in the review and understanding of new features;
- Subject Matter Experts (SMEs) to take part in reviews of software functionality and document recommended changes to the processes reviewed;
- Business processes reviewed for impact, and decisions made as to how to proceed;

### **Constraints and Assumptions**

- The review sessions will precede the configuration activities for the new functionality and will not necessarily be held all at once or prior to testing the like-to-like upgraded products.
- MILPITAS team members will be available to take part in the process review sessions

and will be empowered to implement agreed to business process changes.

- MILPITAS team members will be available to complete review activities, outside of the review sessions with assistance from HARRIS, in order to keep the project on schedule.

## **Phase 2 – Custom Development**

No new modifications have been identified as part of this upgrade.

If additional modifications are identified during the upgrade then a change order will be required for the modification and the steps defined below will be followed to implement the modification.

This phase begins during Phase 1 – Review and Configuration portion of the implementation and will be completed during integrated testing during Phase 4 – Test Development and Execution.

HARRIS will follow the following five -step process to gather the necessary information and to properly develop all essential Modifications or custom work for the Solution:

- Step 1: Conduct a Discovery session(s) in order to define the requirements of the modification and assemble a Business Requirements Document (BRD).
- Step 2: Prepare Functional Requirements Document (“FRD”) and obtain MILPITAS sign-off
- Step 3: Schedule Development in coordination with the Project Schedule
- Step 4: Develop Modifications/custom work
- Step 5: Conduct initial Acceptance Testing prior to delivery

See Section 9 for a complete listing of modifications and interfaces that are covered under this SOW.

## **Phase 3 – Data Migration**

The HARRIS Migration Methodology is a proven process designed to facilitate the porting of data from any previous version of Cayenta ERP into v7.7 successfully. HARRIS as part of this SOW will be performing both the data extract from the Cayenta ERP v7.5.0 database and loading to the new v7.7 database.

The Database migration steps are:

1. Design
2. Perform
3. Verify
4. Testing Validation

## Phase 4 – Test Planning and Execution

### Purpose

The purpose of Phase 4 is to test the upgraded Solution to ensure that it continues to meet the business needs of MILPITAS. Also during this phase any new functionality will be tested as specifically outlined in this SOW.

The Testing Methodology is based on the following approach:

- Integrated Test Scenarios - Pass 1 (Like-to-Like)
- Integrated Test Scenarios for all functionality and reporting – Pass 2 (including year-end payroll test)

Fundamental to the testing methodology are a jointly-developed Integrated Testing Plan. Although the project schedule provides an outline of integrated testing for resource allocation and scheduling, test plans are developed at the beginning of each testing phase and must be approved before testing commences. These test plans provide a week-by-week outline of the major tasks and the team members responsible for them, and constitutes the testing roadmap.

HARRIS's testing methodology is based on:

- Understanding MILPITAS's requirements;
- Tracking to MILPITAS's requirements by monitoring progress and any issues that arise;
- Continuous plan refinement based on testing metrics.

Testing is repeated until results defined in the test plans and scenarios are achieved. During the testing activity, HARRIS and MILPITAS staff shall refine testing scenarios and data to address system problems and issues. Testing results are recorded in testing documentation output from CayStone and a final report is produced that contains HARRIS and MILPITAS's project team approval to proceed to the next phase.

The main purpose of the test phase is to establish that decisions made during the configuration phase of the project are in line with MILPITAS's business requirements. Testing will take place on a copy of production data for the purpose of testing a business process scenario.

Testing utilizes scripted scenarios that are common to most HARRIS clients. The scenarios are broken into two categories:

**Primary Scenarios** – These scenarios involve functionality relating to the core business processes of Cayenta's ERP Solution. These primary scenarios perform the most common end-user and back end functionality. These scenarios also access the key database tables, are

common for most client configurations, access a wide range of functionality in the Solution and test business processes of many different departments. Finally, the primary scenarios use date changes as a key parameter, result in an easy to determine pass/fail outcomes and provide the tester with validation data and process log information while testing. In short, these all-encompassing scenarios are the most effective way to ‘touch’ the Solution in its entirety, and identify any major configuration or non-fit issues as early as possible.

**Secondary Scenarios** – These scenarios involve testing a broader spectrum of functionality in Cayenta’s ERP Solution. These scenarios build on the functionality tested using the primary scenarios. Through primary scenario testing, testers will have gained a deeper knowledge of the Solution functionality and learned testing techniques that will assist them to test more complex scenarios. The scenarios are designed to test unique, client-specific functionality, infrequent or less common processes, and derivatives or combinations of the primary scenarios. HARRIS and MILPITAS must jointly review the library of available scenarios to determine their applicability.

The goal of Integrated Testing is to ensure that Cayenta ERP Solution is ready for production. HARRIS’s methodology recommends the following three fundamental principles in order to optimize both time and resources throughout Integrated Testing:

- Recreate a realistic “production-like” environment. Using production data choose a sub-set of data and scenarios to represent the production system. In creating the ‘pseudo-production’ environment, we ensure all components of the production system have been identified and incorporated into the Integrated Testing Plan. In addition to the system itself, this includes the procedures and processes that need to be in place for the system to run properly, the production reports that supplement the system, the documentation, and training of the operations personnel, and all interfaces to other internal and/or external systems.
- Manage the focus and momentum of Integrated Testing. Ensure all team members are clear on their activities, when they are supposed to be doing them, and whether or not they have completed their task(s) successfully.
- Ensure all activities move the team toward the final goal – successful Go-live. The activities of all team members and project issues must be managed closely. Key timely metrics for testing progress and issue resolution must be established and monitored closely. Deviations from the plan will be identified by reviewing testing activity metrics frequently and adjusting the plan and strategies accordingly when applicable.

HARRIS uses a structured Integrated Testing approach to ensure the previously described principles are followed. This approach involves having multiple database instances and multiple groups of test team members performing key integrated testing activities in these areas:

- Integrated Testing scenarios inclusive of primary and secondary scenarios;

- Unit testing interfaces and modifications;
- Unit testing reports.

Each cycle of testing takes the system one step closer to Go-live. Functionality, Interfaces, and reports are tested in this phase. From Integrated Testing, metrics are derived to ensure the system is production ready.

The key success criteria for completing Testing are as follows:

- Satisfactory closure of software deficiencies:
  - All P1 & P2 Defect Jiras will be resolved, tested and closed. HARRIS defines Jira priorities in the following manner:
    - (a) P1 – System is effectively unworkable. No workaround. Generally reserved for live clients, but can on rare occasions be used during project implementations if problem affects critical implementation path.
    - (b) P2 – Major issue with key functionality that does not have an effective workaround. Will be fixed with a patch rather than as part of regular release process.
    - (c) P3 – Issue has a viable workaround, and will be addressed during additional implementation testing or in a future release as agreed to by MILPITAS.
    - (d) P4 - Minor issues not affecting daily operations. Will be addressed during additional implementation testing in a future release as agreed to by MILPITAS.
- Completion of Test scenarios:
  - All Primary scenarios tested
  - All Critical and High priority secondary scenarios tested, 90% of medium severity secondary scenarios tested
  - All interfaces tested (for integrated test)
  - All modifications and interfaces tested
  - All reports tested

## **Deliverables**

HARRIS will deliver the following as part of this phase:

- Test plan and core test scenarios for joint review and modification;
- CayStone is also used for testing execution and results documentation by MILPITAS;
- Assistance with core CU, CF, HR and year-end Payroll functionality testing issues;

- Weekly issues review meetings for each functional area (CU, CF and HR);
- Weekly PM meeting to review project status;
- Progress reporting based on incidents and testing results captured in CayStone by MILPITAS;

MILPITAS will deliver the following as part of this phase:

- Dedicated team members (same team members), removed from most or all other responsibilities during the time they are required on the project;
- Team members to develop customized testing scenarios (with guidance from HARRIS) and perform the testing activities;
- Sufficient team members to conduct the testing in the time frame allocated;
- Team member discipline to record testing results and incidents in CayStone to ensure a controlled testing process and one where issues are not forgotten;
- Validate that results and other information are accurate;
- Updated business processes and other operational documentation.
- Adjustment to user/group security to meet MILPITAS's needs for newly implemented functions and new Inquiry structure on all products.
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### **Constraints and Assumptions**

- Sufficient MILPITAS staff will be available to take part in the ERP testing such that the testing can be completed per the agreed project schedule.
- MILPITAS has the facilities appropriate for the testing team to work together in ones space to accomplish the testing.
- All systems that will be integrated with ERP will have test instances available to test the interfaces during this phase.

### **Phase 5 - Training Planning and Delivery**

#### **Purpose**

A fundamental factor in the success of this implementation is MILPITAS's ability to manage the organizational change process – transitioning from 7.5.0 to 7.7. The primary 'tool' in this transition is the Training Plan. From the end users' perspective, the goal is to make the transition

to Cayenta ERP v7.7 smooth with a widespread adoption across all user levels regardless of function or experience.

The Training Plan provides a blueprint for the depth and timeline of the training deployed based on MILPITAS's assessment of the learning requirements of the user groups at MILPITAS. MILPITAS Team Members will develop and conduct the end user training. The benefits for MILPITAS:

- **Credibility** – MILPITAS representatives will have greater credibility since their process knowledge and experiences will be much greater.
- **Familiarity** – MILPITAS staff will have greater familiarity of the individual trainees, and awareness of individual requirements and nuances.
- **On-going** – Training is an on-going need and responsibility, and therefore to have internal staff trained is both expedient and cost effective. As business changes and functionality are added, there will be a need to continually develop in-house training expertise.

### **Deliverables**

HARRIS will deliver the following as part of this phase:

- Advise on developing the training plan and training materials.
- Provide most current 7.7 training templates

MILPITAS will deliver the following as part of this phase:

- Team member selection for training and to work as coaches following Go-live;
- Develop the end-user training plan;
- Modification of training materials;
- Deliver end-user training.

### **Constraints and Assumptions**

- MILPITAS has the facilities and equipment necessary to effectively deliver end-user training.
- MILPITAS has selected capable/qualified team members to perform the testing who will transition into the training role prior to Go-live.

### **Phase 6 – Deployment and Go-live**

## Purpose

The deployment phase is the point at which MILPITAS and HARRIS decide whether all critical pieces are in place in order to turn the Solution over to production. This phase includes a production readiness evaluation, cut-over planning, and the cut-over execution.

HARRIS and MILPITAS will develop a detailed Cut-over Plan prior to the proposed Go-live date. HARRIS and MILPITAS will stage all aspects of the system in preparation for production cut-over, including any manual conversion activities that are required.

The Deployment and Go-live phase focuses on four critical areas:

- 1. System Readiness.** Is the Solution tested and ready for production? For MILPITAS this may or may not include modifications, interfaces and reports.
- 2. Data Readiness.** Is the data ready for production operations? Have all data issues been resolved or planned for during the cut-over period?
- 3. Process Readiness.** Have the business processes and their variations been reviewed? Have all business process re-engineering tasks been completed and made ready for production operations?
- 4. Resource Readiness.** Are all the end-users trained? Is MILPITAS's staff trained to deal with problem-solving during the business cycle?

A checklist of issues pertaining to the achievement of operational stability is developed. This checklist is based on the experiences gathered from other HARRIS production cut-overs, an on-going evaluation of best practices in the industry, and specific issues that arose during the configuration and testing of the software for MILPITAS (captured in CayStone for reference).

An assessment of this checklist and evaluation of the business model provides enough information to determine "production readiness". If so, a cut-over plan is finalized and the cut-over to production takes place on the agreed date.

## Deliverables

HARRIS will deliver the following as part of this phase:

- Assistance with Go-live preparation as a supplement to MILPITAS in-house planning and preparation;
- Data refresh from production data and support for upgrade;
- Assistance with cut-over activities.

MILPITAS will deliver the following as part of this phase:

- Updated MILPITAS business process documentation;
- Staff, for Go-live weekend, to carry out updated production testing as a confirmation of Go-live readiness;
- Review and complete cut-over instructions;
- Back-up of the legacy production system;
- Upgrade the production environment to v7.7;
- Review and complete cut-over Special Instructions;
- Both technical and non-technical staff on call and available for Go-live weekend.

### **Constraints and Assumptions**

- Go-live will occur over a weekend.

### **Phase 7 – Transition**

#### **Purpose**

The final phase is designed to ensure a smooth transition into production. Once the Solution is in production, HARRIS application consultants stay engaged to assist MILPITAS production staff to ensure the Solution is functioning properly. The application consultants will have been part of the upgrade team. A team of Canada-based personnel (developers, analysts, report writers, and technical specialists) will provide support to the application consultant as required.

The Transition phase will encompass two weeks for CU, CF and HR. The purpose of the Transition Phase is ensure complete and successful transfer to the System as described in this SOW and to provide MILPITAS with direct access to an application consultant before transitioning to standard remote Maintenance and Support as per the existing agreement.

If the above referenced items do not occur within the 2-week period, HARRIS agrees to provide support at the request of MILPITAS at the negotiated hourly cost arrived and agreed to within this SOW.

At the end of this phase, the HARRIS Project Manager prepares an Operations Audit and a 'hand-off' to HARRIS Support. The audit report outlines all outstanding issues, operational risks, and relevant action items to ensure the stability of your operations. HARRIS and MILPITAS will review and sign-off on the audit report before it is submitted.

#### **Deliverables**

HARRIS will deliver the following as part of this phase:

- Assistance with functionality issues which may arise during this period;
- Structured hand-off to the standard Harris Support;
- Audit Report.

MILPITAS will deliver the following as part of this phase:

- Set up a new 7.7 Test Environment;
- Point of contact(s) for standard Harris Support;
- Acceptance of Operations Audit Report.

### **Constraints and Assumptions**

- MILPITAS will switch to standard HARRIS Support after the Transition period as outlined in the existing Support Agreement.
- MILPITAS will be the first point of contact for end-user issue resolution.

## **HARRIS Project Management Methodology**

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HARRIS will provide project management services through all phases of this project. HARRIS will administer and manage the schedule as outlined by the scope of work defined within this SOW; HARRIS does not assume MILPITAS' responsibility for management of its obligations, or the management of other vendors and suppliers retained by MILPITAS.

HARRIS will assist MILPITAS's Project Manager by providing advice and updates as well as attending scheduled meetings/calls.

### **Deliverables:**

The HARRIS Project Manager is responsible for the following deliverables:

1. HARRIS resource scheduling;
2. Project Schedule;
3. Leadership of HARRIS resources;
4. Monthly project status reports;
5. Contract and Change Orders (delivery, scheduling and compliance) ;

### **Project Scope and Change Management**

Successful implementation of the software requires a coordinated effort by HARRIS and MILPITAS. Each party contributes an essential piece of the project: HARRIS will provide the product knowledge, the methodology and the implementation expertise; MILPITAS will provide the business knowledge, appropriate implementation testing team members and timely business decisions.

By carefully managing all aspects of this project, HARRIS, and MILPITAS will be able to implement the system on time, within scope and on budget. To achieve this, MILPITAS will provide a Project Manager responsible for the direction of MILPITAS' team members assigned to this project as well as all administrative matters associated with managing the project. HARRIS will provide a Project Manager responsible for planning and coordinating all HARRIS resources and deliverables described within this SOW.

The key to the success of this implementation approach is executive and management commitment on the part of MILPITAS and HARRIS. All management teams must work together to manage the scope of the project and to quickly address project risks and resolve issues brought to them by MILPITAS and HARRIS Project Managers.

The HARRIS Project Manager will prepare an initial project schedule. Together, MILPITAS and HARRIS Project Managers will refine the project schedule so that it meets the requirements of MILPITAS' implementation processes.

The project managers will conduct regular progress reviews of the project and milestones and adjust the schedule as required. Although deviations from schedule are not necessarily scope change, if the Project Manager believes that scope change is likely to happen, then he or she will prepare an overview and analysis for review by the management of both organizations.

When a scope change falls outside of the Project Managers area of responsibility, management is responsible for deciding if a scope change should be approved. Once a scope change has been confirmed, the HARRIS Project Manager will prepare a change control document that is signed by management and becomes an addendum to this SOW. A management decision on a scope change must be made prior to commencement of the work, so quick and thorough decision-making is essential.

### **MILPITAS Project Team**

HARRIS requires that MILPITAS provide qualified resources that shall be responsible for meeting the mutually agreed upon project schedule and milestones for this upgrade. Potential project delays or missed milestones should be reviewed by management and the appropriate scope changes or adjustments considered.

MILPITAS is required to supply the following resources to the project team:

#### **Project Manager**

MILPITAS Project Manager should be experienced in the implementation of large software projects. The Project Manager must be capable of initiating appropriate changes to the hardware, software, personnel and business processes, if required.

#### **Core Team Member**

The Core team Member is a MILPITAS employee with sufficient experience and knowledge to fully participate in the revision of business processes and any new configuration for this implementation.

Team members are assigned to the project for all aspects of configuration, testing and cut-over to production. A team member should be capable of reviewing and revising business processes.

#### **Business Analyst**

MILPITAS should provide a business analyst from the IT department who is responsible for the Cayenta ERP Solution on an operational basis. This individual(s) may serve as a core team member or more in an SME capacity to contribute knowledge regarding system configuration and operation, to influence the setup of the new Solution and any necessary business process changes.

**Subject Matter Expert (SME)** The SME is a MILPITAS employee or representative that possesses expertise in a certain business process area and will contribute that knowledge and decision when required. This is not a full-time role, but ad hoc as requested by the Project Managers.

**IT Technician** The role of the technician is to support the project with regards to the environment and infrastructure. This role may be filled by multiple people depending on their expertise. The Project Managers will request their support as needed. This is not a full-time role.

### **HARRIS Project Team**

The HARRIS Project Team will be comprised of the following team members:

**Project Manager** A dedicated project manager from HARRIS will be responsible for managing the upgrade. The HARRIS project manager will work closely with the MILPITAS Project Manager to ensure that the project completes on time, in scope and on budget.

**Application Consultant** The application consultant(s) is a dedicated resource responsible for configurations and issues relating to the Solution.

**Technical Consultant** The HARRIS technical consultant will provide the following support throughout the length of the upgrade project:

- Installation of the test environment software
- Support for upgrade of Production to v7.7 at Go-live

**System Analysts & Developers (as required)** As system modifications are required, HARRIS developers will be used to design and implement the contracted changes or fixes to the system.

**Report Analysts & Developers (as required)** A Report Analyst / Developer will be available to support any report issues during the length of the upgrade project and also for any new custom reports contracted.

## **Staffing Replacements**

Staffing issues will be resolved between MILPITAS and HARRIS Project Managers. Both parties will make every reasonable effort to maintain stable project staffing for the life of the project and minimize disruption and therefore risk to the project.

MILPITAS will have the right to make reasonable requests that a HARRIS resource be replaced. HARRIS will make every effort to replace these resources as soon as possible, but not longer than ten (10) business days after written notification and acknowledgement by HARRIS. MILPITAS recognizes that the changing of resources can place strain on the HARRIS organization and will not make these decisions without a thorough review by MILPITAS prior to the reasonable request. New resources are with the approval of MILPITAS.

HARRIS will not be permitted to reassign resources from MILPITAS's project to another HARRIS project unless mutually agreed by MILPITAS and HARRIS. It is understood that if a HARRIS consultant leaves employment with HARRIS or is otherwise incapacitated; such change will be outside the control of HARRIS. In such case, HARRIS will replace the consultant within ten (10) business days with another suitable candidate.

Likewise, HARRIS may request a MILPITAS resource be removed from the project if in HARRIS's opinion the individual is detrimental to the success of the project. This request would be made in writing and be discussed with appropriate MILPITAS management representative(s) before any action would be taken.

## **Business Hours**

MILPITAS's regular working hours are 8:00 a.m. to 5:00 p.m. (Pacific Time), Monday through Friday and HARRIS consultants will match these work hours when on-site. When off-site, the HARRIS consultants' hours will be similar in the time zone of their respective locations. HARRIS consultants will deliver approximately 32 hours per week of work in the time that they are on-site and make themselves accessible to MILPITAS's project team during the regular business hours so that their availability will not be the cause of project delays. Typically, HARRIS's personnel will be on site Monday (half day) thru Friday (half day) with Monday morning and Friday afternoon being allotted to travel.

When off-site, HARRIS consultants will deliver support per the project plan agreed to.

## **Conflict Resolution**

As conflict occurs with any project HARRIS and MILPITAS must have a clear conflict resolution process – mutually agreed upon and understood before the conflicts arise. The plan must be discussed early in the project and documented accordingly.

HARRIS recommends three levels of conflict escalation:

- Project Managers to;
- Sponsors/Director to;
- Executive

One representative from HARRIS and representatives from MILPITAS are designated at each level. All issues must be in written form – providing details, impacts and alternative resolutions. Decisions are based on project documents, such as the contract, and SOW.

Basic points:

- Issues must be raised by project members through the respective Project Managers;
- An issue must be entered into CayStone and is not considered ‘logged’ unless this is done.

On a weekly basis, the Project Managers will meet, either in person or via a conference call to review the status of the outstanding issues.

HARRIS strongly recommends that any escalation of an issue first be discussed between the parties at the level the escalation is occurring, before the next level up is involved. In this way no one is surprised that the escalation has occurred. These issues need to be dealt with in a matter of fact manner and it is recognized that the escalation is occurring because agreement cannot be reached by the parties doing the escalating.

### **Acceptance of Project Deliverables**

A deliverable will be accepted by MILPITAS if:

- It satisfies the scope of the work described in this document and if it contains the content described in the Deliverables section; or
- Achievement of the specified test result for each test specified in the Test Plan; or
- The System or Additional Products is put into production mode by MILPITAS or forms the basis for on-going work either by the HARRIS or another party.

Both parties will adhere to the following steps for deliverable review and acceptance:

- HARRIS completes the deliverable and delivers it, in the specified format, to the MILPITAS Project Manager and conducts a walk-through to orient responsible project personnel.

- HARRIS will perform quality assurance testing on documents and functionality prior to delivery. Joint testing to ensure final acceptance is required.
- Within five (5) MILPITAS business days from receipt of the deliverable, MILPITAS will use all reasonable efforts to review the deliverable, and assess the deliverable to determine whether it conforms to the specifications. Within the 5 days MILPITAS will inform HARRIS in writing if this deadline will not be met and provide a new date.
- In the event that the deliverables are incomplete, unclear or deficient, within the 5 days MILPITAS will provide a detailed list in writing of the deficiencies and concerns.
- HARRIS will provide a response resolving the deficiencies and/ or concerns within five (5) MILPITAS business days from receipt of the deliverables. Within the 5 days HARRIS will inform MILPITAS in writing if this deadline will not be met and provide a new date.
- MILPITAS and HARRIS may, by mutual written agreement, extend the review period. However, all attempts should be made to meet the 5-day objective so that the overall project can remain on schedule. Failure to do this could result in a Change Order affecting schedule, cost and scope.
- Deliverables will be delivered to MILPITAS as they are developed and not grouped unless by agreement.
- In the event that MILPITAS does not provide written notification of its rejection or acceptance of a deliverable within five (5) MILPITAS business days, by end-of-business, such deliverable shall be deemed to be accepted by MILPITAS unless an extension is accepted by HARRIS.

## **Project Facilities**

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### **Office Space & Supplies**

MILPITAS will provide desk space for each HARRIS consultant that is on-site at MILPITAS. Space will also be made available for HARRIS consultants that are on-site less frequently; however, these consultants may be required to share space with another HARRIS consultant. HARRIS will require desk space for a minimum of two Consultants.

MILPITAS will provide the HARRIS consultants with all basic office supplies required to work efficiently and effectively while on-site. Basic office supplies include items such as paper, pens, whiteboard, staplers, file folders and tape.

### **Computers**

MILPITAS will provide access to the environment via MILPITAS provided virtual computers, inside MILPITAS's firewall while the consultants are on-site. This should include the access to several printers within the facility, all network drives required for the shared project resources, project servers, all instances of the System and full external internet access, including unimpeded access to HARRIS' VPN. For remote access, MILPITAS will provide a secure connection via Citrix or VPN.

MILPITAS also will make available a wired or wireless internet connection outside the firewall to permit on-site consultants utilizing their HARRIS provided laptops to access HARRIS sites as well as other common business sites that are needed for information gathering and planning. This also includes sites used for travel.

### **Communication**

MILPITAS will provide an internet connection to allow HARRIS consultants to access the web and their own e-mail accounts outside of MILPITAS's firewall, consistent with MILPITAS security policies.

### **Conference Rooms**

MILPITAS will also have one conference/project room available full time for the project. Other meeting spaces will be scheduled / reserved as needed. The conference room will be equipped with a white board and markers, flip chart, projector, conference phone and internet connection. MILPITAS will have available a computer for each member of the test / core team in the project room (dual monitors are recommended).

### **Training Facilities**

MILPITAS shall establish a training room that will provide space, computers (with necessary software) and access to the System for up to eight users. The training room will be equipped with a white board and markers, flip chart, projector, conference phone and internet connections.

## Budget and Travel Expenses

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The services described are quoted on a Fixed Price basis for the defined scope of work. This quote is in United States currency.

CU Version 7.7 Upgrade	Amount
Project Management	\$21,630
Phase 0: Project planning and Installation	\$13,755
Phase 1: Discovery and Configuration	\$33,600
Phase 2: Custom Development	\$0
Phase 3: Data Migration	\$2,100
Phase 4: Test Planning and Execution	\$42,280
Phase 5: Training Planning and Delivery	\$0
Phase 6: Deployment – Go-live	\$13,860
Phase 7: Transition	\$14,840
Travel (see section 8)	\$7,935
<b>TOTAL</b>	<b>\$150,000</b>

## Payment Schedule

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### Payment Schedule

The services listed are provided at a fixed price basis for the defined scope of work.

MP#	Milestone Description	Month	Services Billed
MP1	Contract Signing	TBD	21,630
MP2	Project Planning and Installation	TBD	13,755
MP3	CU Discovery & Config	TBD	11,200
MP4	CF Discovery & Config	TBD	11,200
MP5	CP Discovery & Config	TBD	11,200
MP6	Test Planning	TBD	1,680
MP7	Integrated Testing Pass 1	TBD	22,400
MP8	Integrated Testing Pass 2	TBD	18,200
MP9	Deployment - Go-live	TBD	15,960
MP10	Post Go-live Support	TBD	14,840
	Travel Expenses*		7,935
	Total (not including travel expenses)		142,065

\*Only includes up to four (4) on-site visits to the City of Milpitas.

Actual travel and living costs will be billed as incurred. HARRIS will make every effort to minimize travel and living expenses, and will not exceed \$7,935 without execution of a Change Order with MILPITAS. Travel and living expenses include:

- Airfare
- Lodging
- Per Diem (\$55/day for week days (\$110 for weekends and holidays)
- Ground Transportation (taxis, rental cars, fuel, tolls, parking)

## Modifications and Interfaces

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### Requirement Confirmation

During the Review phase HARRIS will work with MILPITAS to evaluate the modifications identified in this SOW and confirm whether each modification is needed. In addition, the Review workshops and the testing scenarios may identify the need for additional modifications.

*NOTE: The initial draft of this document includes no MILPITAS requested modifications or additional interfaces. However this section is left in the SOW to ensure these needs are fully explored prior to finalizing this document and can be modified via change orders once the project has started.*

During this process, a Business Requirements Document (BRD) is written to document the requirements for each modification. Software Jiras are created to track the software enhancement requests and details of the modification are entered into CayStone for tracking during the testing phases. The BRDs are written by HARRIS and then reviewed and agreed with MILPITAS.

### Functional Requirements Document / Thin Specification

Once a modification has been confirmed as a requirement and the Jira created, the HARRIS Research & Development department will review the requested modification. This review is done by senior software designers to examine the required business requirements against the current application to determine the optimal design and implementation method for delivering the required functionality. Once this assessment is complete, a Functional Requirements Document (FRD) is completed. This document provides the detailed information including proposed application forms, data model changes, and process modifications, from which Developers will design and code software, from which QA will develop test cases, and from which Documentation updates will be identified. If more details are required, R&D will mark the tracker status as Open – PS (Professional Services). This means that an HARRIS Consultant will discuss the requirement with MILPITAS staff in more detail.

For modifications that require only minor changes, such as adding a preference code, change to a report header or a simple screen field label change, Thin Specifications, or additions to the BRD, will be used instead of FRDs. The FRD or Thin Specification is then reviewed and agreed with MILPITAS.

### Development and Unit Testing

Once functional requirements are approved, the required development tasks are scheduled through the HARRIS Development Contract process and delivery dates for the proposed solution are determined.

HARRIS will be responsible for all coding for the development object. Upon code completion, Development will perform Unit Testing based on the standard Unit Test Cases, as well as the requirements identified in the Functional Requirements Document. According to the complexity of requirements, additional Unit Test Cases may be developed and included as part of the overall Unit Testing process.

**Release and Delivery**

Upon successful unit testing, the required software components, data model changes, and configuration parameters will be incorporated in a regularly scheduled product Feature Release. These releases are delivered through the Harris eSupport website, and installed with HARRIS’s assistance if required using the Installation Wizard.

**Interfaces**

The Cayenta Application Programming Interface (API) allows external systems to access Cayenta application functionality and data through a supported and secure mechanism.

By integrating with Cayenta applications via the API, external systems ensure they follow the business rules established within the System. Using the API also insulates external systems from changes within Cayenta applications, ensuring that subsequent versions of Cayenta applications may be implemented without requiring extensive reintegration effort.

The API functions contain application requests for data or functions from Cayenta applications. Direct HTTP posts or batch interfacing through a database table is available to connect to the Cayenta API that receives these requests and replies appropriately. Requests and replies are in XML format, allowing for integration with other XML-based interfaces with relatively little integration effort.

Where an interface does not have the ability to use the API, bulk extracts and imports will be developed.

The following interfaces are included in the scope of this SOW:

#	Purpose	Interface to:	Core / Custom	HARRIS Notes/Comments
				(none)

### Custom Modifications

The following modifications are included in the scope of this SOW:

ID	Description	Comments	Price
		(none)	

### Custom Interfaces

The following modifications are included in the scope of this SOW:

ID	Description	Comments	Price
		(none)	

## Project Schedule

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### Project Schedule

Following is a sample high-level schedule for the entire project as outlined in this Statement of Work. This high level timeline is purely for illustrative purposes and subject to change with the development of the Project Schedule.

Cost	Task Name	Duration	Start	Finish	Notes
\$142,065.00	<b>Cayenta Upgrade for Milpitas to ERP 7.7</b>	103 days	Mon 9/29/14	Wed 2/18/15	
\$0.00	Project Start	0 days	Mon 9/29/14	Mon 9/29/14	
\$21,630.00	+ Project Management and Project Governance	103 days	Mon 9/29/14	Wed 2/18/15	
\$13,755.00	+ 0 - Project Planning and Installation	15 days	Mon 9/29/14	Fri 10/17/14	
\$33,600.00	+ 1 - Discovery and Configuration	11 days	Mon 10/20/14	Mon 11/3/14	
\$0.00	+ 2 - Custom Development	3 days	Mon 9/29/14	Wed 10/1/14	
\$2,100.00	+ 3 - Data Migration	75 days	Mon 10/20/14	Fri 1/30/15	
\$42,280.00	+ 4 - Test Planning and Execution	50 days	Mon 10/20/14	Fri 12/26/14	
\$0.00	+ 5 - Training Planning and Delivery	25 days	Mon 12/8/14	Fri 1/9/15	
\$13,860.00	+ 6 - Deployment - Go-Live	29 days	Mon 12/29/14	Thu 2/5/15	
\$14,840.00	+ 7 - Transition	9 days	Fri 2/6/15	Wed 2/18/15	

## Supplemental Services

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Additional services will be made available at HARRIS's then current standard rates if MILPITAS requirements change or the scope of the project is altered. HARRIS reviews its rates annually effective January 1<sup>st</sup> of each year. Such increases will reflect the cost of retaining and attracting the core of expertise.

MILPITAS can request supplemental services through the project Change Control process.

### **Rates of as January 1, 2014:**

Project Manager	\$185.00/hr USD
Technical Consultant	\$185.00/hr USD
Application Consultant	\$185.00/hr USD
Report Developer	\$185.00/hr USD

### **Rates of as January 1, 2015:**

Project Manager	\$190.00/hr USD
Technical Consultant	\$190.00/hr USD
Application Consultant	\$190.00/hr USD
Report Developer	\$190.00/hr USD

### **Extended Support**

Extended Support is available to HARRIS customers when software support is required outside of HARRIS business hours.

Extended Support Services can be arranged by contacting your Customer Relations Manager. At least 72 business-hours' notice should be given to guarantee support staff availability.

Support for the requested time period will be provided by a HARRIS employee(s) equipped with a pager or cell phone. HARRIS employees providing the on-call service will have dial-in capabilities to the HARRIS Canada offices and, if possible, to the Customer's system.

There is a minimum charge of \$250 per day for any pre-arranged Extended Support Services, per HARRIS employee on call (carrying a pager or cell phone). For work performed in response to a pager/cell call, the rate of US\$200 per hour will be charged for each hour or portion of an hour spent time by HARRIS staff on actual problem resolution.

### **Continuance**

The above Project Services fees include implementation assistance as described above. These are based on the assumption that the Live Operation dates for the products remain as specified in the Project Schedule section of this Statement of Work. In the event that the MILPITAS unreasonably extends the project beyond these dates or requests work beyond the scope as specified in this Statement of Work, MILPITAS agrees that additional fees for implementation assistance along with reimbursement for related travel and living expenses incurred may apply.

These proposed fees would be mutually considered and agreed between HARRIS and MILPITAS.