

**CITY OF MILPITAS
SUPPORT AND MAINTENANCE AGREEMENT**

THIS AGREEMENT made as of the 1st day of July 2020

BETWEEN:

N. HARRIS COMPUTER CORPORATION
("Harris") with a business address of 4200 North Fraser Way,
Suite 201, Burnaby, BC, Canada V5J 5K7

- And -

City of Milpitas
("Organization", "City")

RECITALS

1. Harris has licensed to Organization certain Software pursuant to a Software License Agreement;
2. The Organization wishes to receive support and maintenance services related to the Software;
3. Harris shall provide the support and maintenance services related to the Software;

NOW THEREFORE, in consideration of the mutual covenants set out in this support and maintenance agreement (the "Support and Maintenance Agreement") and for other good and valuable consideration (the receipt and sufficiency of which is hereby acknowledged), the parties agree as follows:

Definitions

Throughout the Support and Maintenance Agreement, except as otherwise expressly provided, the following words and expressions shall have the following meaning

- (a) **"Designated Computer System"** shall mean the City's platform and operating environment which is operating the Software.

- (b) **“Documentation”** means collectively: (i) all of the written, printed, electronic or other format materials published or otherwise made available by Harris that related to the functional, operations and/or performance capabilities of the Designated Computer System and/or any Software; and (ii) all user guides, operator manuals, educational materials, product descriptions and specifications, technical manuals, supporting manuals and materials, system administration manuals, and other manuals and information regardless of the media on which it is provided, and all other written, printed, electronic or other format materials published or otherwise made available by Harris that describe the functional, operational, and/or performance capabilities of the Designated Computer System and/or any Software; and (iii) any and all amendments, modifications, and supplements thereto. Documentation shall not include Source Code.
- (c) **“Professional Services Agreement”** means that certain Professional Services Agreement between the City of Milpitas and Cayenta, a division of N. Harris Computer Corporation, dated January 28, 2019, as may be amended from time to time.
- (d) **“Software”** means the Cayenta Utilities software products 7.9.0 and newer including releases of upgrades.
- (e) **“Start Date”** means July 1, 2020.
- (f) **“Support Services”** means the support services to be provided by Harris in accordance with Exhibit 1.
- (g) **“Third Party Software”** means the third party software products licensed to the City by Actuate, MicroFocus (AcuCobol) and Loris, or other vendors. Future Releases of the Software may require alternate Third Party Software to be licenced by the City, which will be subject to a third party license agreement between the City and the relevant Third Party Software licensor.
- (h) **“Update”** means a minor modification or enhancement to the Software related to a bug fix, minor additional functionality or legislative changes.
- (i) **“Upgrade”** means a major overhaul of the Software which is a completely new version of the Software

1. This Support and Maintenance Agreement is the exclusive statement of the entire support and maintenance agreement between Harris and Organization.

2. Harris shall provide Software Support Services primarily via telephone, electronic mail and Cayenta.com in addition to site visits only when necessary. The Organization shall be provided “After Hours” Support for P1 issues (as described in Exhibit 1 below) in addition to Support Services described in Exhibit 1 hereto for effective 24 hour coverage which are in effect as of the Start Date of this contract. Services may, by mutual agreement, be modified or supplemented from time to time. An After Hours Support telephone number will be provided. To enable Harris to provide effective support, the Organization will establish remote access procedures compatible with Harris’s then current practices which may be revised over time.
3. In consideration for the Support Services specified in Exhibit 1, Organization shall pay the “Support and Maintenance Fee” as detailed in point 14 below. The Support and Maintenance Fee will be billed annually in advance and due on July 1st or on an alternative date mutually agreed to by both parties. If the Organization would like to match the annual invoicing of the Support and Maintenance Fee to its fiscal year or any other period it may request, during the initial term of this Support and Maintenance Agreement, that Harris issue a prorated invoice for the portion of the year remaining during the initial term. Organization shall only be billed once per year.
4. In addition to the Support and Maintenance Fee, Organization shall reimburse Harris for its direct expenses in providing support services (“Billable Fees”) pursuant to this Support and Maintenance Agreement, which include as of the Start Date:
 - (1) Its direct travel expenses that are excluded from the total fees amount including hotel, airfare, car rental, tolls, meal per diem, parking and airline and travel agents fees will be reimbursed based on the City’s Travel policy 4004.7. Meal per diem is limited to IRS and GSA reimbursement guidelines for our region.

The City may update its reimbursement policies and rates related to the Billable Fees from time to time, in which case such updated policies shall apply for purposes of this Support and Maintenance Agreement, provided that such updated reimbursement policies must generally apply to all vendors of the City. The City will provide notice of any changes in rates.
5. Harris shall supply all Upgrades to Organization at no additional charge other than the payment of the Support and Maintenance Fee. Upgrades may require additional services to be performed by Harris outside of the scope of those services provided by Harris including additional training not covered by the Professional Services Agreement for the installation and implementation of the Upgrade that will be subject to the Harris’s then-prevailing policies, terms and Billable Fees related to pricing and hourly rates. All such services shall be performed subject to a newly negotiated Scope of Work that will be subject to the terms of the Professional Services Agreement.
6. All Updates of the Software and all those services listed on the attached invoice which are included as part of Organization’s Software support will be made available to

Organization at no additional charge other than the payment of the Support and Maintenance Fee.

7. All payments hereunder shall be in U.S. dollars

Term and Fees.

8. This Agreement shall commence on the Effective Date and shall continue for a period of three (3) years (the “**Initial Term**”). Thereafter, this Support and Maintenance Agreement shall automatically renew for further one year periods (each a “**Renewal Term**”) unless one party gives written notice to the other party not less than ninety (90) days prior to the end of the then current term of its intention not to renew. The Initial Term and the Renewal Terms shall collectively be referred to as the “**Term**”.
9. Title to and ownership of all proprietary rights in the Releases and all related proprietary information supplied by Harris in providing the services pursuant to this Support and Maintenance Agreement shall at all times remain with Harris, and Organization shall acquire no proprietary rights by virtue of this Support and Maintenance Agreement, except as otherwise provided in the Software License Agreement or in that certain Professional Services Agreement.
10. Unless otherwise agreed to by the parties, all notices required hereunder shall be made in accordance with the provisions of the Software License Agreement.
11. Either party’s lack of enforcement of any provision in this Support and Maintenance Agreement in the event of a breach by the other shall not be construed to be a waiver of any such provision and the non-breaching party may elect to enforce any such provision in the event of any repeated or continuing breach by the other.
12. The parties agree that the terms and conditions contained herein shall prevail notwithstanding any variations on any orders, e-mails or other correspondence submitted by Organization.
13. Reserved.
14. Fees: July 1 2020 – June 30 2021 fees are below and have been broken out in an attached invoice. Increases may be applied annually and shall not exceed three percent (3%).

2020-21 Cayenta Maintenance	\$247,718.83
2021-22 Cayenta Maintenance	\$255,150.39
2022-23 Cayenta Maintenance	\$262,804.91

15 Termination

1. Harris shall have the right to terminate this Support and Maintenance Agreement immediately if:
 - (a) Organization attempts to assign this Support and Maintenance Agreement or any of its rights hereunder, or undergoes a Reorganization, without complying with the Software License Agreement; or
 - (b) Organization has not paid an invoice within ninety (90) days of the start of a renewal term.

2. “TERMINATION FOR LACK OF FUNDING

- a. The Organization’s performance and obligation to pay under this Agreement is contingent upon an annual appropriation by the City Council. In the event the City Council does not appropriate funds in a sufficient amount for Organization to perform its obligations hereunder, Organization may terminate this Agreement upon thirty (30) days written notice to Harris.”

3. This Agreement may be terminated as follows:

- i. In addition to any other rights and remedies available to it, either party may immediately terminate this Agreement in the event of **material breach** by the other party of its obligations hereunder that is not cured within thirty (30) days of receipt of written notice from the other party to that effect;
- ii. Except as provided in paragraph (15)(1)(b) above, if Organization has failed to pay the Fees or other amounts due then Harris shall have the right to terminate this Agreement effective immediately upon written notice to Organization to that effect. This provision shall not apply in the event of a bona fide billing dispute, which the parties shall seek to resolve within 30 days. If the parties are unable to resolve a bona fide billing dispute within 30 days then Harris shall have the right to terminate this Agreement effective immediately upon written notice to Organization;
- iii. Upon sixty (60) days written notice prior to expiration of a Term; and
- iv. Either party may terminate this Agreement effective immediately upon written notice to the other party if the other party: (i) becomes insolvent; (ii) becomes the subject of any proceeding under any bankruptcy, insolvency or liquidation law, whether domestic or foreign, and whether voluntary or involuntary, which is not resolved favourably to the subject party within ninety (90) days of commencement thereof; or (iii) becomes subject

to property seizure under court order, court injunction or other court order which has a material adverse effect on its ability to perform hereunder.

4. **Effects of Termination.** In the event of termination of this Agreement:

Organization shall immediately pay all outstanding Fees and other amounts owing to Harris under this Agreement at a pro-rated payment for "Term used." The termination of this Support and Maintenance Agreement by Organization shall not affect the License or the Software License Agreement. Harris shall immediately refund a pro-rated amount of the Fees pre-paid for the unused portion of the Term.

(a) Termination of this Support and Maintenance 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.

(b) The Organization and Harris recognize that circumstances may arise entitling the Organization to damages for breach or other fault on the part of Harris arising from this Support and Maintenance Agreement. The parties agree that in all such circumstances the Organization's remedies and Harris'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 Support and Maintenance Agreement.

(c) FOR BREACH OR DEFAULT BY HARRIS OR OTHERWISE IN CONNECTION WITH THIS SUPPORT AND MAINTENANCE AGREEMENT, REGARDLESS OF THE NATURE OF THE CAUSE OF ACTION WHETHER IN CONTRACT OR IN TORT, INCLUDING FUNDAMENTAL BREACH OR NEGLIGENCE OR STRICT LIABILITY, THE ORGANIZATION'S EXCLUSIVE REMEDY, IN ADDITION TO ELECTING IF SO ENTITLED TO RESCIND OR BE DISCHARGED FROM THE PROVISIONS OF THIS SUPPORT AND MAINTENANCE AGREEMENT, SHALL BE (1) ACCESS TO THE ESCROWED SOURCE CODE IN ACCORDANCE WITH THE SOFTWARE LICENSE AGREEMENT (2) PAYMENT BY HARRIS OF THE ORGANIZATION'S DIRECT DAMAGES TO A MAXIMUM AMOUNT EQUAL TO, AND HARRIS SHALL IN NO EVENT BE LIABLE IN EXCESS OF, THE AMOUNT OF FEES ACTUALLY PAID BY THE ORGANIZATION TO HARRIS UNDER THIS SUPPORT AND MAINTENANCE AGREEMENT DURING THE THEN-CURRENT TERM (NOT TO EXCEED 12 MONTHS) OF THE SUPPORT AND MAINTENANCE AGREEMENT UP TO AND INCLUDING THE DATE OF TERMINATION, EXCLUDING COSTS AND EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) INCURRED BY THE ORGANIZATION IN CONNECTION WITH OBTAINING A COPY OF THE SOURCE CODE IN ACCORDANCE WITH THE ESCROW AGREEMENT BETWEEN THE PARTIES WHICH SHALL BE REIMBURSED BY HARRIS IF AN EVENT OF DEFAULT OCCURS.

IN NO EVENT SHALL ANY DAMAGES INCLUDE, NOR SHALL HARRIS BE LIABLE FOR, ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES EVEN IF HARRIS HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, HARRIS SHALL NOT BE LIABLE FOR LOST PROFITS, LOST BUSINESS REVENUE, FAILURE TO REALIZE EXPECTED SAVINGS, OTHER COMMERCIAL OR ECONOMIC LOSS OF ANY KIND, OR FOR ANY CLAIM WHATSOEVER AGAINST THE ORGANIZATION BY ANY OTHER PARTY.

16. The parties hereby confirm that the waivers and disclaimers of liability, releases from liability, limitations and apportionments of liability, and exclusive remedy provisions expressed throughout this Support and Maintenance Agreement shall apply even in the event of default, negligence (in whole or in part), strict liability or breach of contract of the person released or whose liability is waived, disclaimed, limited, apportioned or fixed by such remedy provision, and shall extend to such person's affiliates and to its shareholders, directors, officers, employees and affiliates.
17. Where remedies are expressly afforded by this Support and Maintenance Agreement, such remedies are intended by the parties to be the sole and exclusive remedies of the Organization for liabilities of the Harris arising out of or in connection with this Support and Maintenance Agreement, notwithstanding any remedy otherwise available at law or in equity.
18. The Organization may, at Organization's option, enter into an escrow arrangement with Harris. Upon the Organization's request:
 - (i) Organization shall be presented with the standard escrow beneficiary enrollment document for participation in Harris's source code escrow arrangement with an escrow agent (the "**Escrow Arrangement**")
 - (ii) By entering into this Escrow Arrangement, the Organization shall have all the rights as stipulated in escrow agreement.
19. This Agreement shall be governed by the laws of the State of California. Any legal action taken by either party arising out of this Agreement shall be filed in a court of competent jurisdiction in the State of California, Santa Clara County.
20. This Support and Maintenance Agreement may not be assigned by the Organization unless, concurrently with any such assignment, the Organization assigns its rights under, and complies with the provisions of the License Agreement.
21. This Support and Maintenance Agreement shall be binding upon the successors and assigns of the parties and ensure to the benefit of the successors and permitted assigns of the parties.
22. The invalidity or unenforceability of any provision or covenant contained in this Support and Maintenance Agreement shall not affect the validity or enforceability of any other provision or covenant herein contained and any such invalid provision or covenant shall be

deemed to be severable.

23. This Support and Maintenance Agreement may be executed in counterparts (whether by facsimile signature or in PDF format via e-mail or otherwise), each of which when so executed shall constitute an original and all of which together shall constitute one and the same agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have executed this Support and Maintenance Agreement to be effective as of the date first written above.

CITY OF MILPITAS

Approved By:

Steven G. McHarris, City Manager

Date

Approved As To Form:

Christopher J. Diaz, City Attorney

Approved:

Walter C. Rossmann, Risk Manager/Director
of Finance

**N. HARRIS COMPUTER
CORPORATION**

Signature

Name

Title

Date

DIR Registration Number (If Applicable)

Exhibit 1
Standard Support and Maintenance Services – Standard Guidelines

The purpose of this Exhibit 1 is to provide our customers with information on our standard coverage, the services which are included as part of your annual software support, a listing of Support Ticket priorities, an outline of our escalation procedures and other important details.

Harris reserves the right to make modifications to this document as required; provided, however, Harris shall not reduce the scope of support provided hereunder without the prior written consent of the Organization.

The services listed below are services that are included as part of your software support.

- 800 Toll Free Telephone support
- Scheduled assistance for installations, upgrades & other special projects (there may be charges depending on the scope of work)
- Technical & Functional troubleshooting & issue resolution
- E-mail support Ticket logging and notification
- Free Cayenta Support Portal access 24 x 7 with the following on-line benefits:
 - Log & close Tickets
 - View & update Tickets
 - Update contact information
 - Access published documentation
 - Access available downloads
 - Access Support knowledge base
 - Participate in Discussion Forums
 - Report on metrics
- Standard software releases and updates
 - Defect corrections (as warranted)
 - Planned enhancements
 - State and/or Federal mandated changes
 - Payroll regulated changes
 - Participation in BETA program, optional at CPU's discretion
 - Release notes
 - Updated documentation as available
- Limited training questions (15 minute guideline)
 - Customer Care Program
 - Quarterly News Letter with support tips
 - Technical support bulletins
 - Communication on new products and services
 - On-site visits (as required)
- Design review for potential enhancements or custom modifications
- Design review for potential configuration changes

- Outstanding Tickets Report with conference call (as required)
- Ability to attend the annual customer conference (attendance fees apply)

Helpdesk Hours

Our standard hours of support are from 8:00 a.m. EST to 8:00 p.m. EST, Monday to Friday, excluding designated statutory holidays. After Hours Support is available from 8:00 p.m. EST through to 8:00 a.m. EST and is billable on an hourly basis. Weekend assistance is available and must be scheduled in advance and in most cases is billable.

Response Times

Response times will vary and are dependent on the priority of the call. We do our best to ensure that we deal with incoming Tickets in the order that they are received, however Tickets will be escalated based on the urgency of the issue reported. Our response time guidelines are as follows:

Priority 1: Within 1 hour

Priority 2: 1 - 4 hours

Priority 3: 1 - 8 hours

Priority 4: 1 - 24 hours

Ticket Priorities

In an effort to assign our resources to incoming Tickets as effectively as possible, we have identified four types of Ticket priorities, 1, 2, 3 and 4. A Priority 1 Ticket is deemed by our support staff to be an Urgent or High Priority Ticket, Priority 2 is classified as a Medium Priority and Priority 3 is deemed to be a Low Priority. The criteria used to establish guidelines for these Tickets are as follows:

Priority 1 – Critical

- System Down (Software Application, Hardware, Operating System, Database)
- Inability to process payroll checks
- Inability to process accounts payable checks
- Inability to process bills
- Inability to process work orders
- Inability to process payments

Priority 2 - High

- Program errors without workarounds
- Incorrect calculation errors impacting a majority of the current bill cycle records

- Aborted postings or error messages preventing data integration and update
- Performance issues of severe nature impacting critical processes
- Hand-held interface issues preventing billing or creating billing errors
- Security issues

Priority 3 – Medium

- System errors that have workarounds
- Calculation errors impacting a minority of records
- Reports calculation issues
- Printer related issues (related to interfaces with our software and not the printer itself)
- Hand-held issues not preventing billing
- Performance issues not impacting critical processes
- Usability issues
- Workstation connectivity issues (Workstation specific)

Priority 4 - Low

- Report formatting issues
- Training questions, how to, or implementing new processes
- Aesthetic issues
- Issues with workarounds for large majority of accounts
- Recommendations for enhancements on system changes
- Questions on documentation

Support Ticket Process

All issues or questions reported to support are tracked via a support Ticket; our support analysts cannot provide assistance unless a support Ticket is logged. Our current process for logging Tickets includes the following: Cayenta Support Portal (via website), email, and phone.

- Your Ticket must contain at a minimum: your organization name, contact person, software product and version, module and/or menu selection, nature of issue, detailed description of your question or issue and any other information you believe pertinent.
- Our support system or one of our support analysts will provide you with a Ticket id to track your issue and your Ticket will be logged into our support tracking database.
- Your Ticket will be stored in a queue and the first available support representative will be assigned to deal with your issue.
- As the support representative assigned to your Ticket investigates your issue, you will be contacted and advised as to where the issue stands and the course of action that will be

taken for resolution. If we require additional information, you will be contacted by the assigned support representative to supply the information required.

- All correspondence and actions associated with your Ticket will be tracked against your all in our support database. At any time, if available to you, you may log onto our website to see the status of your Ticket.
- Once your Ticket has been resolved, you will receive an automated notification by email that your Ticket has been closed. This email will contain the entire event history of the Ticket from the time the Ticket was created and leading up to the resolution of the Ticket. You also have the option of viewing both your open and closed Tickets, if available to you, via our website.
- If your issue needs to be escalated to a development resource or programmer for resolution, your issue will be logged into our development tracking database and you will be provided with a separate id number to track the progress of the issue. Your Support Ticket is linked to your Development issue. The development issue id number will remain open until your issue has been completely resolved. Issues escalated to development will be scheduled for resolution and may not be resolved immediately depending on the nature and complexity of the issue.
- Contact the support department at your convenience for a status update on your development issues, or log onto our website (if available to you) to view your issues on-line.

Escalation Process

Our escalation process is defined below. This process has been put in place to ensure that issues are being dealt with appropriately. If at any time you are not completely satisfied with the resolution of your issue, you are encouraged to escalate with the support department as follows:

Level 1: Contact the support representative working on your issue

Level 2: Contact the support supervisor or group lead

Level 3: Contact the director of support

Level 4: Contact the vice president of support

Level 5: Contact the CEO of Harris

Holiday Schedule

Below is a listing of statutory holidays. Please note that support services will be closed on designated days as outlined below.

New Year's Eve	Early Closure
New Year's Day	Closed
Labor Day	Closed
Christmas Eve	Early Closure
Christmas Day	Closed

Billable Support Services

The services listed below are services that are out of scope of your support and maintenance agreement and are therefore considered billable services.

- Extended telephone training (beyond 15 minutes per call)
- Performing Forms redesign or creation (includes Bill Prints, Notice Prints and Letters)
- Performing Setup & changes to hand-held interface or creation of new interface
- Performing Setup of new services or changes to services (PAP, ACH, etc)
- Setup or Creating File imports/exports - Interfaces to other applications
- Performing Refreshes, backups, restores, setting up test areas
- Setup of new printers, printer setup changes
- Performing Custom modifications (reports, bills, forms, reversal of customizations)
- Setting up additional companies / agencies / tokens / general ledgers
- Performing Data conversions / global modification to setup table data
- Performing Database maintenance, repairs & optimization
- Extended Hardware & Operating System support
- Performing Upgrades & support of third party software
- Performing Installations / re-installations (workstations, servers)

Test Databases & Environments

We support customers in the maintenance of independent Test Environments for testing purposes. This allows customers the opportunity to test fixes, modifications, new business processes and/or scenarios without risking any potentially unwanted changes to the live environment. The creation of Test Databases & Environments is a billable service unless otherwise noted in the implementation SOW, quotations & incremental maintenance rates will be provided on request.

Connection Methods

To ensure we can effectively support our clients, we require that a communication link is established and maintained between our two sites. It is the client's responsibility to ensure the connection is valid at your location so that we can connect to your site and resolve any issues. Our supported methods of connection are: Direct internet, Virtual Private Network (VPN), Remote Access Server (RAS), Direct Connection (modem) and Terminal Services (a backup connection may be required for file transfers).

Hardware and Third Party Support – if applicable

The purpose of this section is to provide our customers with information on our standard coverage and the services which are included as part of your annual hardware and third party software support (if applicable). This section serves as a guideline for the support department but is superseded by an existing third party or other agreement.

Standard Hardware and Third Party Software Support Services

- 800 telephone support – first line phone support for troubleshooting (note more complex issues will be escalated to the actual vendor of the products)
- “on call” after hours support (scheduled assistance for installations, upgrades and other special projects – there may be charges depending on the scope of work)
- remote connection support
- technical troubleshooting
- limited training questions (15 minute guideline)
- assistance with creation of backup scripts / backup recovery
- assistance with recovering data resulting from system crashes (charges may apply)
- recommendations on specific hardware requirements
- support provided for installed database issues (30 minute guideline)
- ODBC installation and connection to database assistance
- updating databases to support new versions of installed applications
- assistance with database installation, configuration and updating

The services listed below are services that are out of scope and are therefore considered billable – please note that we do not provide hardware support for any printers:

- on-site installation or upgrade of hardware and third party software
- extended telephone training (beyond 15 minutes)
- performing reconfiguration of hardware and file servers
- recovering data resulting from client error
- upgrading of hardware systems
- preventative maintenance monitoring or other services
- recommending or assisting with disaster recovery plans
- re-establishment of ODBC connection if connection was lost due to actions of customer
- ODBC connections to other third party products due to the customer or third party software
- creation of custom reports
- report writer training, upgrades and installations (other than at time of initial purchase)