

Plan Sponsor:	Overland Park, Kansas Municipal Employees Pension Plan and Trust Agreement	
Contact:	Mike Russo, Manager Retirement Plans	
Address:	8500 Santa Fe Drive Overland Park, Kansas 66212-2866	
Telephone:	913-895-6130	Fax: 913-890-1130
Milliman Office:	Minneapolis, MN	RPSA Effective Date: February 1, 2011

This Retirement Plan Services Agreement (“RPSA” or “Agreement”), effective as of the RPSA Effective Date, describes the engagement of Milliman, Inc. (“Milliman”) by the City of Overland Park, Kansas (“City/Employer”), a city organized and existing under the laws of the State of Kansas with an office at 8500 Santa Fe Drive, Overland Park, Kansas 66212-2866, sponsor of the Overland Park, Kansas, Municipal Employees Pension Plan and Trust Agreement (“Plan”), a participant directed money purchase pension plan created for the benefit of City employees, to provide services as described herein. While Milliman serves at the pleasure of the City, the services provided pursuant to this Agreement are subject to and strictly limited by the provisions contained in this Agreement. Under no circumstances is the engagement of Milliman intended to relieve the City/Employer, the Plan Administrator and/or the Trustee of their applicable respective fiduciary and other responsibilities under the Internal Revenue Code and regulations promulgated thereunder.

Subject to the terms of this Agreement, City/Employer hereby engages Milliman to provide the services described herein and as set forth in Schedule A attached hereto (“Services”), and Milliman hereby accepts such engagement.

## 1. Services

Milliman acknowledges and warrants that it is an established provider of administrative and record keeping services for public sector pension plans and understands the nature of the work involved in providing the services the City/Employer has requested through its RFP, attached hereto as Exhibit A, for administrative and record keeping services. More specifically, Milliman acknowledges and warrants that it shall provide those Services as set forth herein and in Schedule A, attached hereto and as more fully described in Milliman’s response to the City/Employer’s RFP. Further, Milliman warrants that it shall provide the City/Employer with an independent record keeping platform that provides maximum investment flexibility, to include an open investment architecture structure with no proprietary fund requirements and with no investment revenue considerations. All administrative and record keeping responsibilities shall be provided for the Plan in a daily environment.

Except to the extent this Agreement specifically requires Milliman to have the responsibility for a Plan administrative function, the City/Employer has total responsibility for the Plan for

purposes of this Agreement, including its benefit design and compliance with any laws that apply to the Plan. Milliman shall provide Plan Services to the City/Employer in compliance with the requirements for plans which satisfy the qualification requirements of Section 401 of the Internal Revenue Code and other applicable federal law; provided, however, Milliman shall not be responsible for the qualified status of the Plan in the event that the City/Employer directs Milliman to administer the Plan or disburse assets in a manner inconsistent with the requirements of Section 401 or otherwise causes the Plan not to be carried out in accordance with its terms. The City/Employer hereby appoints Milliman as record keeper of the Plan to perform all nondiscretionary functions necessary for the administration of the Plan in accordance with the provisions of the Plan and with respect to assets in the Plan invested through an agreed upon Trustee, and as more fully set forth herein.

The City/Employer shall provide to Milliman a copy of the Plan. The City/Employer shall notify Milliman in writing within a reasonable period of time if the Plan document is to be amended. Upon amendment, the City/Employer shall provide Milliman with a copy of the amendment.

The parties acknowledge that for the purpose of this Agreement, the City/Employer intends to contract with Wilmington Trust Retirement and Institutional Services Company as the Plan Trustee.

## 2. Fees and Expenses

- (a) **Payment of Fees and Expenses.** For the Services provided on or after the RPSA Effective Date, the City/Employer will pay or cause to be paid to Milliman the fees and expenses specified for such Services. Milliman will invoice the City/Employer monthly and all invoices will be paid within thirty (30) days of its receipt of the invoice.
- (b) **Out-of-Pocket Expenses.** Unless otherwise excepted, Milliman's fee schedule is exclusive of direct expenses, including reasonable travel expenses, printing, shipping, trustee stop and repayment charges, IRS 1099R reversal fees, and express mail charges, all of which are charged at cost; provided, however, that all such out-of-pocket expenses will be first approved by the City/Employer and limited to reasonable costs and airline travel expenses will be limited to nonrestricted coach fares.
- (c) **Additional Fees.** Subject to prior notice and approval by the City/Employer, Milliman may assess additional fees for any Services requested by the City/Employer which are beyond the scope of the Services described in the attached schedule(s). Such fees will be determined based on standard hourly rates unless another basis is agreed to by the parties. Milliman may assess additional fees at standard hourly rates for Services it performs as a result of inaccurate or incomplete data that is provided to Milliman by or on behalf of the City/Employer.
- (d) **Cash Basis Law.** The parties acknowledge that the City/Employer is obligated only to make payments under this Agreement as may be lawfully made from funds budgeted and appropriated for the purposes as set forth in this Agreement during the City/Employer's current budget year. In the event the City/Employer does not so budget and appropriate the funds, City/Employer shall send written notice to Milliman of the lack of budgeted funds for this Agreement and the parties shall be relieved from all further obligations, without penalty under this Agreement except that the City/Employer shall pay Milliman

for all services rendered under this Agreement prior to the date the written notice is received by Milliman.

### 3. Plan Data

- (a) **Ownership of Plan Data.** Milliman acknowledges that all data with respect to the Plan provided by the City/Employer or obtained by Milliman pursuant to this Agreement will be and will remain the property of the City/Employer. Upon the City/Employer's request at any time or times while this Agreement is in effect, Milliman will deliver to the City/Employer all data in an electronic format.
- (b) **Accuracy of Plan Data.** Milliman will have no obligation to determine whether data received is inaccurate or incomplete. Milliman cannot warrant the correctness of data supplied by the City/Employer, the Plan Administrator, third parties or other authorized persons, nor can Milliman be responsible for the failure of the City/Employer, the Plan Administrator, third party or other authorized persons to provide data in a timely manner.
- (c) **Completeness of Plan Data.** For any in-scope Services that Milliman performs, but must perform using Plan data that is incomplete and requires City/Employer intervention, Milliman will assess fees for such work using standard hourly rates.
- (d) **Confidentiality of Plan Data.** Except as required by law, Milliman agrees to treat Plan data in a confidential manner. Milliman will inform its employees of the confidential nature of such data and will instruct them not to disclose any such data to any non-Milliman-affiliated third party whatsoever without the City/Employer's express approval, except as may be necessary in connection with the provision of Services or as may be required by law. This provision survives the termination of this Agreement. Notice will be provided in writing to the City/Employer prior to disclosure to any third party required by law. Milliman shall immediately notify the City/Employer once it is known that Plan data has been improperly disseminated or there is a breach of confidentiality of Plan or participant data.

### 4. Limitation of Liability

- (a) **Limitation of Liability.** Milliman's obligations under this Agreement will be limited to providing the Services contained herein. Milliman will have no responsibility for any acts or omissions that occurred prior to the RPSA Effective Date. Milliman will not be liable for the accuracy, completeness, timeliness or correct sequencing of information obtained from generally accepted sources external to Milliman that in turn are used to create values reported to the City/Employer or Plan participants.

Milliman shall be liable to the Plan for losses to Plan assets, and any related expenses and damages, resulting from losses to Plan assets, to the extent such losses result from the negligence, or wrongful or criminal act by any employees, agents or personnel of Milliman or its affiliates, including without limitation any agent retained by Milliman. In the event of Milliman's discovery or notification of any such loss of assets, to include losses to Plan assets held in custody by a third-party Trustee, Milliman shall immediately notify the City/Employer of such loss, providing all known particulars about such losses

Milliman will perform all services in accordance with applicable professional standards. Milliman will in no event be liable to the Plan or Plan Sponsor under any theory of law for any damages in the aggregate in excess of twenty million dollars (\$20,000,000). In no event will Milliman be liable for incidental, special, indirect, or consequential damages (including, but not limited to, lost profits).

The foregoing limitations will not apply in the event of Milliman's gross negligence, intentional fraud, willful misconduct or breach of a fiduciary duty under ERISA.

- (b) **Delays.** Neither Milliman nor the City/Employer will be liable for any delay in performance of this Agreement resulting directly or indirectly from any cause beyond their control, including, without limitation, acts of nature, acts of war, governmental actions, fire, labor strikes, work stoppages, civil disturbances, interruptions or unavailability of power or other utilities.
- (c) **Recovery of Overpayments.** In the event of an overpayment to a participant in the Plan, City/Employer agrees to take all reasonable steps to assist Milliman to recover the overpayment, and Milliman will have no liability to reimburse the Plan with respect to any overpayment that is not recovered if City/Employer refuses to assist Milliman in its reasonable recovery efforts.

## 5. Term and Termination of Agreement

- (a) **Term.** This Agreement will become effective as of the RPSA Effective Date and will remain in effect until terminated by either party as provided herein.
- (b) **Termination by Parties.** Either party may terminate this Agreement upon sixty (60) days' prior written notice. Milliman will retain any records it has relating to the Services provided under this Agreement for a period of no less than three years following the termination of this Agreement and at the end of the three year period shall dispose of the records as directed by the City/Employer.
- (c) **Termination Assistance.** In the event that this Agreement is terminated for any reason, Milliman will cooperate with the City/Employer to provide an orderly transfer of Services and will provide the staff, services and assistance reasonably required for such orderly transfer. Such transition services will be provided without expense to the City/Employer, unless there are extraordinary efforts and expenses necessary to complete the transition and further, provided, if termination is due to Milliman's failure to perform its duties under this Agreement in a competent and timely manner, the City/Employer will not be obligated to pay Milliman for any fees associated with such transfer.

## 6. Notices

Any notice or demand that Milliman or the City/Employer may desire to serve upon each other will be deemed served three (3) days after depositing in the United States mail, postage prepaid and certified or registered; delivered to a nationally recognized courier service; or hand delivered to the following addresses:

**City of Overland Park, Kansas**  
Manager Retirement Plans  
8500 Santa Fe Drive  
Overland Park, Kansas 66212-2866

**Milliman, Inc.**  
8500 Normandale Lake Blvd  
Suite 1850  
Minneapolis, MN 55437

## 7. Dispute Resolution

- (a) In the event of any dispute arising out of or relating to the engagement of Milliman by the City/Employer, the parties agree first to try in good faith to settle the dispute voluntarily.
- (b) **No right to trial by jury.** In the event of any litigation between the parties, if a federal court has subject matter jurisdiction over all of the claims to be filed, then the party shall file such suit in federal district court. Both parties agree to waive the right to a trial by jury in any court action.

Either party shall be free to take such steps as it deems necessary to protect its interests; provided, however, that notwithstanding any such dispute (other than for either party's breach of this Agreement or either party's claim of fraud) Milliman shall proceed with the work as per this Agreement as if no dispute existed and unless the City/Employer indicates in writing it does not want Milliman to continue with the work; and provided further that no dispute will be submitted to arbitration without the City/Employer's express written consent.

## 8. Miscellaneous

- (a) **Nature of Milliman's Services.** The Services to be performed by Milliman are ministerial in nature and will be performed within the framework of policies, interpretations, rules, practices and procedures made or established by the City/Employer. Milliman will not have discretionary authority with respect to the management of the Plan or the investment of Plan assets. It is understood that Milliman is not a "plan administrator" within the meaning of ERISA. Milliman cannot be relied upon to discover errors, irregularities or illegal acts, including fraud or falsifications that may exist in the administration of the Plan by the City/Employer, the Plan Administrator or other person(s). Therefore, Milliman will not be liable for any actions taken, or not taken, as directed by or caused by actions of the City/Employer, the Plan Administrator, or any other person(s) authorized to provide directions to Milliman.
- (b) **Milliman Tool Development.** Milliman will retain all rights, title and interest to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates that have been developed previously by Milliman or developed during the course of the provision of the Services. Such rights and ownership will not extend to or include all or any part of the Plan's proprietary data. To the extent that

Milliman may include in the materials any Milliman proprietary information or other protected Milliman materials, Milliman agrees that the City/Employer will be deemed to have a fully paid up license to make copies of the Milliman-owned materials as part of this engagement for its internal business purposes, provided that such materials cannot be modified.

- (c) **Payment by Plan.** Any statement in the Agreement that, or to the effect that, an amount will be paid by the City/Employer will not preclude such amounts being a Plan expense under the Plan's trust agreements and other documents and will not have any effect on the City/Employer's rights to direct the Plan's trustee to pay such amount from Plan assets.
- (d) **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, all other provisions will nevertheless continue in full force and effect.
- (e) **Modification and Waiver.** By mutual written agreement, Milliman and the City/Employer may revise this Agreement (including any of the attached schedules) from time to time. Any modification or waiver of any of the provisions of this Agreement will be effective only if made in writing and signed by both parties. Notwithstanding the foregoing, the waiver of a breach of any provision of this Agreement will not operate or be construed as a waiver of any subsequent breach, and any subsequent performance will not constitute a waiver of any preceding breach.
- (f) **No Third-party Beneficiaries.** This Agreement is between the City/Employer and Milliman, and neither this Agreement nor the performance of the Services or the relationship between the City/Employer and Milliman will create any rights in any third parties. The parties expressly agree that there are no third-party beneficiaries hereto.
- (g) **No Third-party Distribution.** Milliman's Reports (as defined below) are prepared solely for the internal business use of City/Employer. Milliman recognizes that the Reports it delivers to City/Employer may be public records subject to disclosure to third parties; however, Milliman does not intend to benefit and assumes no duty or liability to any third parties who receive Milliman's Reports in this fashion and may include disclaimer language on its Reports so stating. To the extent that Milliman's Reports are not subject to disclosure under applicable public records laws, City/Employer agrees that it shall use its best efforts to not disclose Milliman's Reports to third parties without giving Milliman an opportunity to seek a judicial order preventing such disclosure to a third party; provided, however, that City/Employer may distribute Milliman's Reports in their entirety to (i) its professional service providers who are subject to a duty of confidentiality, or (ii) any applicable regulatory or governmental agency, as required. "Reports" shall include the Executive Summary Report, the Summary of Accounts Report, and Revenue Sharing Reports provided by Milliman.
- (h) **Assignability.** No party will be entitled to assign its rights or obligations under this Agreement without the written consent of the other party, such consent not to be unreasonably withheld.
- (i) **Applicable Law.** This Agreement will be deemed to have been entered into in the State of Kansas, and all duties, obligations and rights there under will be governed by the laws of the State of Kansas. In the event any provision of this Agreement is unenforceable as a matter of law, the remaining provisions will stay in full force and effect.
- (j) **Entire Agreement.** This Agreement (which includes the attached schedules and exhibits) constitutes the entire Agreement between the parties with respect to the subject matter hereof, and there are no representations, warranties, covenants or understandings, other than those expressly set forth herein. This Agreement supersedes and replaces all



prior Agreements entered into between Milliman and the City/Employer with regard to the Services to be provided to the Plan(s) by this Agreement after the RPSA Effective Date.

(k) **Headings.** Headings and captions hereunder are for convenience only and will not affect the interpretation or construction of this Agreement.

(l) **Insurance.** Milliman agrees to maintain insurance coverage of the type, with the amounts of deductibles and limits, and for the duration, as set forth below. Upon request, Milliman shall furnish to the City/Employer a Certificate of Insurance or other proof of insurance satisfactory to the City/Employer verifying coverage in compliance with this Agreement.

1. Professional Liability Insurance

- Claims-Made Basis
- Duration of this Contract and Three Years Thereafter
- Providing Coverage for Acts, Errors and Omissions with Respect to the Services that are the Subject of this Agreement
- Milliman shall be solely responsible for any Deductible
- Limits No Less Than \$5,000,000 per Claim and Aggregate

2. Commercial General Liability

Each Occurrence	\$500,000
Personal & Advertising Injury	\$500,000
Products/Completed Operations	
Aggregate	\$500,000
General Aggregate	\$500,000

3. Industry Ratings

The City/Employer will only accept coverage from an insurance carrier which offers proof that the carrier:

- a) Is licensed to do business in the State of Kansas
  - b) Carries a Best's Policyholder rating of A or better; and
  - c) Carries at least a Class VII financial rating;
- Or
- d) Is a company mutually agreed upon by the City/Employer and Milliman.

(l) **Compliance With Equal Opportunity Laws, Regulations and Rules.**

Milliman agrees that:

1. Milliman shall observe the provisions of the Kansas Act Against Discrimination (K.S.A. 44-1001 et seq.) and shall not discriminate against any person in the performance of work under the present Agreement because of race, religion, color, sex, national origin, ancestry or age;
2. In all solicitations or advertisements for employees Milliman shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission ("Commission");
3. If Milliman fails to comply with the manner in which it reports to the Commission in accordance with the provisions of K.S.A. 44-1031 and amendments thereto, it shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City/Employer;
4. If Milliman is found guilty of a violation of the Kansas Act Against Discrimination under a decision or order of the Commission which has become final, Milliman shall be deemed to have breached the present Agreement, and it may be canceled, terminated or suspended, in whole or in part, by the City/Employer; and
5. Milliman shall include the provisions of paragraphs (1) through (4) above in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

Milliman further agrees that it shall abide by the Kansas Age Discrimination In Employment Act (K.S.A. 44-1111 et seq.) and the applicable provision of the Americans With Disabilities Act (42 U.S.C. 12101 et seq.) as well as all other federal, state and local laws, ordinances and regulations applicable to this project and shall furnish any certification required by any federal, state or local laws, ordinances and regulations applicable to this project and shall furnish any certification required by any federal, state or local governmental agency in connection therewith.

- (m) **City/Employer's Right to Access Information and Milliman's Cooperation.** The City/Employer may audit any of Milliman's Services related to the performance of this Agreement. Milliman shall cooperate with all reasonable requests for information received from the City/Employer, its auditors, or its representatives in connection with all audits. Parties shall bear their respective costs and expenses associated with all audits. Milliman shall provide requested documents and data on a timely basis at no cost to the City/Employer or Plan Participants.
- (n) **SAS 70 Reports.** Milliman shall provide the City the most recent SAS70 report annually.
- (o) **Authorized Instructions.** The City/Employer shall furnish Milliman an authorization certificate, signed by the City/Employer, designating the members of the City/Employer and/or employees of the Employer ("Authorized Persons") having authority to act for and on



behalf of the City/Employer in connection with this Agreement. The City/Employer's authorization certificate shall not only identify the name of the person(s) authorized to act on behalf of the City/Employer but shall also include the specific authority granted to that person(s).

<b>THE CITY/EMPLOYER</b>	<b>MILLIMAN, INC.</b>
I have read and agree to the terms and conditions of this Agreement.	I have read and agree to the terms and conditions of this Agreement.
Accepted by: _____	Accepted by: _____
Title: _____ Date: _____	Title: <u>Principal</u> Date: _____