

A G R E E M E N T

THIS AGREEMENT dated the _____ day of _____, 2018, is by and between the **CITY OF STAMFORD**, a municipal corporation organized and existing pursuant to the laws of the State of Connecticut with a principal place of business located at 888 Washington Boulevard, Stamford, Connecticut (hereinafter “The City”), acting herein by David R. Martin, its duly authorized Mayor, and **MILLIMAN, INC.**, a foreign (WA) corporation with a local place of business located at 80 Lambert Road, Windsor, Connecticut (hereinafter “The Consultant”), acting herein by Rebecca A. Sielman, its duly authorized Principal.

W I T N E S S E T H

WHEREAS, The City solicited Request for Proposals No. 738 for Consultant for Actuarial Services;

WHEREAS, The Consultant submitted a proposal in response to said Request for Proposals; and

WHEREAS, The City has accepted The Consultant’s proposal for said work pursuant to the terms hereinafter set forth;

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. INCORPORATION OF RECITALS. The above terms and conditions are contractual in nature and not merely recitals and are hereby incorporated into this Agreement;

2. SCOPE OF SERVICES. The scope of services shall consist of those duties, functions, obligations, responsibilities, and tasks set forth in:

Exhibit A – The City’s Request for Proposals No. 738, issued February 6, 2018;

Exhibit A-1 – The City’s Addendum No. 1, dated March 6, 2018, to its Request for Proposals No. 738;

Exhibit B – The Consultant’s Proposal, dated March 15, 2018; and

Exhibit B-1 - Email string between Rebecca Sielman and Erik Larson re: Transition Services;

all attached hereto and hereby made a part hereof as if fully set forth herein;

3. COMPENSATION. The Consultant and its subconsultants, if any, shall be compensated for the services set forth in Section 2, above, as follows:

Period	Pension Valuation and GASB 67/68	OPEB Valuation and GASB 74/75	Hourly Rate of Work Outside the Allowance
2018-2019	\$75,000.00	\$37,000.00	\$280.00
2019-2020	\$77,000.00	\$38,000.00	\$290.00
2020-2021	\$79,000.00	\$39,000.00	\$300.00

As set forth in greater detail in the Consultants Fee Proposal included in its Proposal, attached hereto as Exhibit B, and subject to the terms, conditions, rates and assumptions contained therein.

Fees for Transition Services shall be:

- \$400.00 for standard vested terminations and retirement calculations/estimates;
- \$150.00 for each additional retirement date for situations where a member requests estimated benefits at multiple dates;
- \$150.00 discount for repeat calculations where one has been prepared for the member within the past 6 months;
- \$200.00 for returns of employee contributions; and
- \$3,500.00 per report for FYE 2018 GASB 67/68 and GASB 74/75 reports;

As set forth in greater detail in the Email string between Rebecca Sielman and Erik Larson re: Transition Services, attached hereto as Exhibit B-1, and subject to the terms, conditions, rates and assumptions contained therein.

4. TERM. The Term of the Agreement shall commence, retroactively, on July 1, 2018, and terminate on June 30, 2021. The parties may thereafter mutually extend the Term of this Agreement for two (2) additional Option Years. No such extension shall exceed one (1) year and the total Term of this Agreement, including any Option Years, shall not exceed five (5) years;

5. REVIEW OF WORK. The Consultant shall permit The City, its agents and/or employees to review, at any time, all work performed pursuant to the terms of this Agreement at any stage of the work;

6. INDEMNIFICATION. The Consultant shall indemnify and hold harmless The City, its officers, agents and employees, from any third party loss, cost, damage, or claim for personal injury to or death of a person, including employees of The Consultant or loss of or damage to property, resulting directly or indirectly from The Consultant's negligent performance pursuant to this Agreement, or by any omission to perform some duty imposed by law or this Agreement upon The Consultant, its officers, agents and employees. The foregoing indemnity shall include reasonable attorneys' fees and costs of

suit, if applicable, and shall not be limited by reason of any insurance coverage required pursuant to this Agreement;

7. LIMITATION OF LIABILITY. In no event shall the Consultant be liable for lost profits of the City or any other type of incidental or consequential damages. The foregoing limitations shall not apply in the event of the intentional fraud or willful misconduct of the Consultant.

8. ASSIGNMENT. The Consultant shall not assign or transfer any portion of the work set forth herein without the prior written approval of The City;

9. BOOKS AND RECORDS. The Consultant shall maintain or cause to be maintained all records, books, or other documents relative to charges, costs, expenses, fees, alleged breaches of this Agreement, settlement of claims, or any other matter pertaining to The Consultant's demand for compensation by The City for a period of not less than three (3) years from the date of the final payment for work performed under this Agreement;

10. INSURANCE. The Consultant shall procure, at its sole expense, and maintain for the entire term of this Agreement, including any extensions, insurance coverages as set forth in the City of Stamford Insurance Provisions included in The City's Request for Proposals No. 738, attached hereto as **Exhibit A**;

11. REPRESENTATIONS. The Consultant represents that it is qualified in relation to the work to be performed under this Agreement and further represents that it has the requisite skill, expertise, and knowledge necessary to perform the scope of services required under the terms of this Agreement. The Consultant hereby acknowledges that The City has relied upon said representations in entering into this Agreement;

12. INTERPRETATION. The Consultant agrees that, in the event of any ambiguity between the terms of this Agreement and any of the incorporated Exhibits, this Agreement shall prevail and take precedence;

13. SUBCONTRACTING. Aside from those subconsultants disclosed in The Consultant's Proposal, attached hereto as **Exhibit B**, the Consultant is prohibited from further subcontracting the work of this Agreement or any part of it unless The City first approves such subcontracting in writing and approves, in writing, of the specific subconsultant(s) The Consultant proposes to be used. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void. Should The City approve of a proposed subconsultant, The Consultant agrees to comply with The City's Code of Ordinances § 103.4;

14. CONTRACT EXTRAS. Pursuant to The City's Code of Ordinances, Section 23-18.4 C., it is specifically understood and agreed by The Consultant that all contract extras regarding this Agreement shall be governed by The City's Charter and/or Code of Ordinances. The City shall not be liable for payment of any additional costs, except as otherwise expressly set forth in this Agreement, unless the provisions of The City's

Charter and/or Code of Ordinances are fully complied with. The City's Charter and Code of Ordinances can be found at www.municode.com;

15. NON-APPROPRIATION. The Consultant acknowledges that The City is a municipal corporation, that The City's obligation to make payments under this Agreement is contingent upon the appropriation by The City's Board of Representatives of funds sufficient for such purposes for each budget year in which the Agreement is in effect, and that The City may terminate this Agreement by way of written notice to The Consultant if sufficient funds to prove for the payment(s) hereunder are not so appropriated;

16. COMPLIANCE WITH CITY CODE PROVISIONS. The Consultant hereby agrees to fully comply with the requirements of The City's Code of Ordinances, Sections 103-1 through 103-10, regarding contractors in general. Failure to so comply shall constitute a material breach of the terms of this Agreement, for which The City may unilaterally terminate this Agreement by way of written notice to The Consultant. The provisions of the City Code can be found at www.municode.com ;

17. TERMINATION.

A. TERMINATION FOR CAUSE. If, through any cause, The Consultant shall fail to fulfill, in a timely and proper manner, its obligations under this Agreement, or if The Consultant shall violate any laws or any of the covenants, agreements, or stipulations of this Agreement, The City shall thereupon have the right to terminate this Agreement for cause by giving written notice to The Consultant of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In that event, all finished or unfinished reports, documents, data, studies, photographs, or other material prepared by The Consultant pursuant to its performance under this Agreement shall, at the option of The City, become The City's property. The Consultant shall be entitled to receive just and equitable compensation for any satisfactory services completed up to the effective date of termination. The Consultant makes no express or implied warranty and shall have no liability of any type whatsoever with respect to any draft or unfinished work product that is clearly marked as or otherwise clearly indicated to be a draft and delivered to the City pursuant to this clause and the City shall not attribute any such draft/unfinished work as a Consultant work product;

The term "cause" includes, without limitation the following:

- 1) If The Consultant furnished any statement, representation, warranty or certification in connection with this Agreement, which is materially false, deceptive, incorrect, or incomplete;
- 2) If The Consultant fails to perform to The City's satisfaction any material requirement of this Agreement or is in violation of any specific provision thereof or any State or Federal law or requirement; or

- 3) If The City reasonably determines that satisfactory performance of this Agreement is substantially endangered or can reasonably anticipate such an occurrence or default.

Should The City terminate this Agreement for cause, The Consultant shall not be relieved of liability to The City for any damages sustained by The City by virtue of any breach of this Agreement by The Consultant and The City may withhold any payment to The Consultant for the purposes of setoff until such time as the exact amount of damages due The City from The Consultant is determined by a court or arbitration panel.

- B. **TERMINATION FOR CONVENIENCE.** The City may terminate this Agreement at any time The City determines that the purposes of the distribution of monies under the Agreement would no longer be served by the services provided. The City shall effect such termination by giving written notice of termination to The Consultant and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination. In that event, all finished or unfinished documents and other materials as described Subsection A shall, at the option of The City, become property of The City, provided that the Consultant makes no express or implied warranty and shall have no liability of any type whatsoever with respect to any draft or unfinished work product that is clearly marked as or otherwise clearly indicated to be a draft and delivered to the City pursuant to this clause and the City shall not attribute any such draft/unfinished work as a Consultant product. If the Agreement is terminated by The City as provided herein, The Consultant shall be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed to the effective date of termination bear to the total services of The Consultant pursuant to the terms of the Agreement, less payments of compensation previously made, and subject to The City's right of set off for any damages pursuant to the terms of the Agreement;

18. DISPUTE RESOLUTION.

- A. **EXECUTIVE MEETING.** The parties shall endeavor to resolve all claims, disputes, or other matters in controversy arising out of or related to this Agreement (“Claims”) through a meeting of the chief executives of each party, or their respective designees (“Executive Meeting”).

A request for an Executive Meeting shall be made by a party in writing and delivered to the other party. The request may be made concurrently with the filing of a non-binding mediation as set forth herein. The Executive Meeting shall be a condition precedent to mediation unless 30 days have passed after the Executive Meeting has been requested with no meeting having been held.

The Executive Meeting shall be held in the place where the Project is located, unless another location is mutually agreed upon.

- B. **MEDIATION.** Any Claim subject to, but not resolved by, an Executive Meeting shall be subject to mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. A request for mediation shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the mediation.

The request may be made concurrently with the filing of arbitration but, in such event, mediation shall proceed in advance of arbitration, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration is stayed pursuant to this Section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

- C. **ARBITRATION.** Any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its applicable rules and procedures in effect on the date of this Agreement. The arbitration shall be held before a panel of three arbitrators. Each party shall designate in writing its own, single arbitrator within 30 days of the arbitration commencement. The two arbitrators designated by the parties shall then select a third neutral arbitrator. The arbitrators shall have a background in either insurance, actuarial science, or law. The arbitrators shall have the authority to permit limited discovery, including depositions, prior to the arbitration hearing and such discovery shall be conducted consistent with the most recent Connecticut Practice Book. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.

A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the

arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

The arbitrators shall have no power or authority to award punitive or exemplary damages. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law.

Any judgment will be entered or court action will be brought in a court of competent jurisdiction within the State of Connecticut.

D. **PERFORMANCE DURING DISPUTE.** Unless otherwise directed by The City, The Consultant shall continue performance under this Agreement while matters in dispute are being resolved.

E. **CLAIMS FOR DAMAGES.** Should either party to this Agreement suffer injury or damage to person or property because of any act or omission of the other party or of any of its employees, agents or others for whose acts it is legally liable, a claim for damages therefor shall be made in writing to such other party within a reasonable time after the first observance of such injury or damage.

19. GOVERNING LAWS. This Agreement shall be governed by the laws of the State of Connecticut and the parties hereby waive any choice of law provisions contained therein. Any action arising out of the duties and obligations of this Agreement shall be brought in either the Connecticut Superior Court in Stamford, Connecticut, or the Federal District Court in Bridgeport, Connecticut;

20. GIFTS: During the term of this Agreement, including any extensions, The Consultant shall refrain from making gifts of money, goods, real or personal property or services to any appointed or elected official or employee of The City or the Stamford Board of Education or any appointed or elected official or employee of their Boards, Commissions, Departments, Agencies or Authorities. All references to The Consultant shall include its members, officers, directors, employees, and owners of more than 5% equity in The Consultant. Violation of this provision shall constitute a material breach of this Agreement, for which this Agreement may be summarily terminated; and

21. CODE OF ETHICS. The Consultant shall comply with the Stamford Municipal Code of Ethics as codified in Chapter 19 of the City of Stamford Code of Ordinances and shall be considered an “employee”, as defined in that Chapter, strictly for the purpose of compliance thereto. The Consultant is prohibited from using its status as a consultant to The City to derive any interest(s) or benefit(s) from other individuals or organizations.

22. THIRD PARTY DISTRIBUTION. The Consultant’s work is prepared solely for the internal business use of the City. To the extent that the Consultant’s work is not subject to disclosure under applicable public records laws, the Consultant’s work may not be provided to third parties without the Consultant’s prior written consent. The Consultant

does not intend to benefit or create a legal duty to any third party recipient of its work product, and the Consultant may include a legend on its reports so stating. The City agrees not to remove any such disclaimer language from the Consultant's work. The Consultant's consent to release its work product to any third party may be conditioned on the third party signing a Release, subject to the following exception(s): (a) the City may provide a copy of the Consultant's work, in its entirety, to the City's professional service advisors who are subject to a duty of confidentiality and who agree to not use the Consultant's work for any purpose other than to benefit the City; (b) the City may provide a copy of the Consultant's work, in its entirety, to other governmental entities, as required by law. No third-party recipient of the Consultant's work product should rely upon the Consultant's work product. Such recipients should engage qualified professionals for advice appropriate to their own specific needs.

23. TOOL DEVELOPMENT. The Consultant shall retain all rights, title and interest (including, without limitation, all copyrights, patents, service marks, trademarks, trade secret and other intellectual property rights) in and to all technical or internal designs, methods, ideas, concepts, know-how, techniques, generic documents and templates that have been previously developed by the Consultant or developed during the course of the provision of the Services provided such generic documents or templates do not contain any City Confidential Information or proprietary data ("Consultant Tools"). Rights and ownership by the Consultant of Consultant Tools shall not extend to or include all or any part of the City's proprietary data or City Confidential Information. To the extent that the Consultant may include in the work product any Consultant Tools, the Consultant agrees that the City shall be deemed to have a fully paid up license to make copies of the Consultant Tools as part of its use of this work product for its internal business purposes and provided that such Consultant Tools cannot be modified or distributed outside the City without the written permission of the Consultant or as otherwise permitted herein.

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SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first above written.

Signed, sealed and delivered in the presence of:

CITY OF STAMFORD

Print:
Witness

By: _____
David R. Martin, Mayor

Date: _____

Print:
Witness

MILLIMAN, INC.

Print:
Witness

By: _____
Rebecca A. Sielman, Principal

Date: _____

Print:
Witness

Approved as to Form:

Approved as to Insurance:

Chris Dellaselva
Asst. Corp. Counsel

David Villalva
Acting Risk Manager

Date: _____

Date: _____