

GASB 45

Proposal to Provide GASB 45 Analysis for Tom Green County

February 6, 2013



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A. MILLIMAN'S ACTUARIAL CONSULTING SERVICES

Milliman differentiates itself in the delivery of actuarial consulting services by seeking out and developing professionals who are not only technically sound, but who can also communicate complex actuarial and accounting concepts in an understandable way. As a result, we bring measurable value to our client's ability to make sound decisions.

Public Sector Experience

Milliman is nationally recognized for our substantial commitment to the public sector, which includes publication of our PERiScope newsletter, active participation in national meetings and advisory committees, and the funding of specialized research. With one of the largest groups of public-sector clients in the U.S., our consultants are extremely well versed in the GASB standards relating to post-employment benefit arrangements. They are also mindful of the impact that state and local law has on public employer benefit plans as they consider and analyze the effect that applicable law may have on current and future liabilities.

We have been retained by numerous public employers to perform GASB 45 valuations and consult on issues related to GASB 43 and 45 (please see [Exhibit 2](#) for a representative client list).

Milliman also provides a broad range of other services to public plan sponsors, including actuarial services, benefits consulting, compliance, recordkeeping, employee communication and investment advisory services.

Health and Welfare Expertise

For many years, our Health Practice has been considered the premier provider of health actuarial services in the U.S. This expertise and experience are particularly important since employers' GASB 45 liability is highly dependent on the cost structure of the health plan offered to its retirees and due to anticipated medical inflation.

In addition to serving as actuary for some of the nation's larger healthcare providers, Milliman's healthcare group publishes the *Healthcare Cost Guidelines*, an invaluable tool for developing per capita claims costs and medical inflation assumptions for post-employment medical benefit valuations. The *Guidelines* were first developed in 1954 as a result of Milliman's continuing research on healthcare costs and the publication has been updated and expanded annually ever since and are continually monitored as they are utilized in measuring the experience and evaluating the rates of our clients, and comparing the information to other data sources.

The *Guidelines* also provide a flexible but consistent basis for the determination of claim costs for a wide variety of health benefit plans and may be used to estimate future claim levels, set provider budgets, set service category budgets, evaluate past experience, and establish interrelationships between different health coverages.

Independence

Recognized as an industry leader, Milliman is an independent firm of consultants and actuaries. We are not affiliated with other organizations that might impair our objectivity or our focus on your needs. We deliver top-quality service because our flexible internal structure allows us to assemble collaborative project teams that provide broad expertise under the guidance of an assigned consultant who understands Tom Green County and your unique needs.

Milliman has clients across the entire spectrum of public sector organizations, including:

- City, County and State Governments
- School Districts
- Law Enforcement Agencies
- Hospital Districts
- Transportation Authorities
- Power and Utilities Organizations

State-of-the-Art Valuation System

Milliman has developed a state-of-the-art valuation system for GASB 45 valuations that allows our consultants to effectively analyze and maintain data, produce valuation results and project anticipated future GASB costs. Because no two plans are alike, our system is flexible. Accordingly, we are equipped to serve all types of clients with a broad spectrum of plan designs.

Client Commitment

We have worked hard to earn the trust of our public-sector clients by being very approachable and accessible, using technology to simplify and support all services, and by delivering on our commitments. We intend to follow the same client service model for Tom Green County and earn the same high level of trust.

B. GASB 45 ANALYSIS – PROJECT STEPS

Assess Your Needs

The GASB 45 analysis is expected to accomplish the following objectives:

1. *Data Collection* – We will gather requested information from Tom Green County related to other post-employment benefits (OPEBs) offered to retirees. This will include the prior actuarial valuation report, so that we may assess the reasonability of the baseline assumptions and valuation results. Upon the review of the prior valuation, we will discuss any proposed changes in advance of completing the updated results.
2. *Valuation* – We will perform calculations in accordance with GASB guidance and current actuarial standards of practice. Key computations will include the OPEB liability, the annual required contribution, and projected future benefit payments.
3. *Sensitivity Analysis* – We will provide sensitivity analysis to demonstrate the impact of variation in the assumed discount rate and other key assumptions. This information will be valuable in identifying the key drivers of expected cost associated with providing OPEBs to retirees.
4. *Meeting to Present Results* – We will meet with you via WebEx or Conference Call to present valuation results and discuss important issues.
5. *Financial Statement Preparation* – We will assist your auditors, as necessary, to review the GASB 45 section of the financial statement to assure that the disclosed information is consistent with our valuation results.

Strategy and Implementation

Based on conclusions drawn from the valuation, we will be ready to discuss next steps. Those next steps typically include analysis of strategies you may want to explore prior to the effective date of disclosing GASB 45 information in employer financial statements. Key considerations may include:

- The effect of potential plan design changes on GASB cost
- The impact of changes in employee cost-sharing provisions
- Whether advance funding of benefits in a trust is appropriate

Ongoing Reporting

After completion of the valuation and additional analysis, as needed, we will be well-positioned to provide OPEB valuations on an ongoing basis as required under GASB 45. The steps involved in performing ongoing valuations will be similar to the steps described above for this valuation, except in the case where a more simplified approach may be used for interim valuations. Following completion of the valuation, we will meet with you to discuss results and follow with issuance of a formal valuation report.

Services Agreement

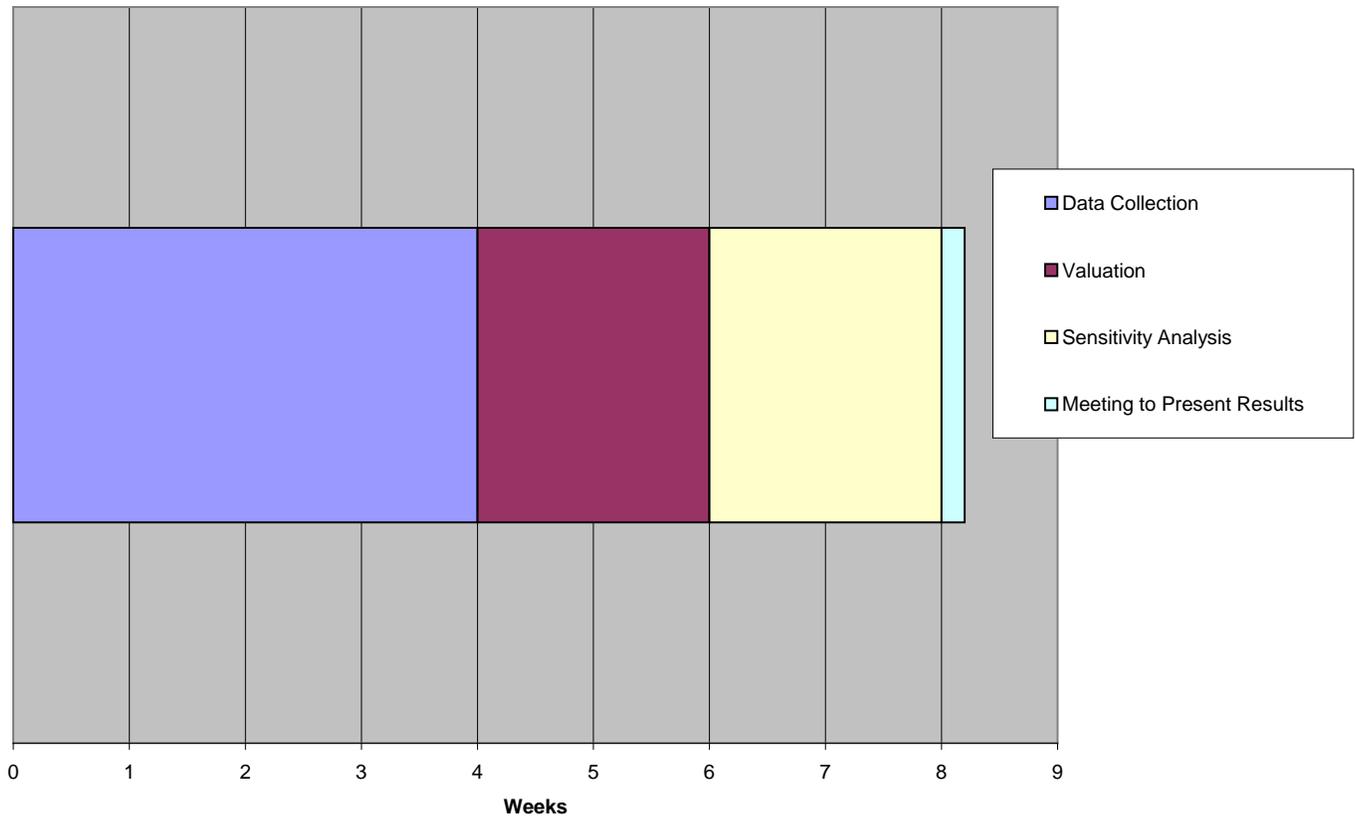
A service agreement is provided as [Exhibit 4](#). If you wish to engage us to provide the GASB 45 consulting services as described herein, please sign this document and return the agreement to us. We will then sign the agreement, provide a copy to you and begin work on the project.

To complete your valuation, we will need certain census and plan information. The enclosed [Exhibit 3](#) provides a list of this information.

Timing for Completion of Valuation

From the time we receive the requested information and a completed service agreement, we expect to complete your valuation within six to eight weeks and schedule a meeting to discuss the results with you.

GASB Analysis Timeline



C. PROJECT TEAM

Lead Actuary

Mr. Morin is a Principal and Consulting Actuary in the Dallas office of Milliman. He has been with the firm since 1977. He practices in the employee benefits field, working with a wide variety of employee retirement benefit plans.

Mr. Morin works with various types of employers in both the public and private sector, focusing on plan implementation and ongoing administrative requirements of a broad range of qualified and nonqualified retirement programs and retiree medical plans (including GASB 45 valuations for public plans). His experience spans traditional retirement plans to “cutting-edge” hybrid plans. In addition, he is involved with retirement plan outsourcing and all facets of plan redesign, conversion and termination.

Professional Designations

- Associate, Society of Actuaries
- Enrolled Actuary
- Member, American Academy of Actuaries
- Member, SouthWest Benefits Association

Degrees

- BS (Mathematics; minors in Economics and Actuarial Science), University of Nebraska

Plan Actuary

Mr. Goodman is an Actuary in the Dallas office of Milliman. He has been with the firm since 1994 and practices in the employee benefits field, working with a wide variety of employee retirement plans.

Mr. Goodman works with various types of employers, focusing on plan implementation and ongoing administrative requirements for a broad range of qualified and nonqualified retirement programs, including international pension plans and cash balance plans.

In addition to pensions, Mr. Goodman also has experience working with retiree medical and other post-employment benefit plans. This includes the design as well as valuation of such plans under FAS 106 and GASB 45.

Instrumental in the development of Milliman’s valuation software, Mr. Goodman has served on Milliman’s national System Enhancement Committee, which focuses on the innovation, design and enhancement of valuation software and other software applications.

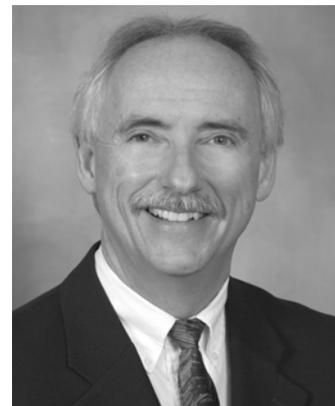
Professional Designations

- Associate, Society of Actuaries
- Member, American Academy of Actuaries
- Member, American Academy of Actuaries

Degrees

- BA (Mathematics), University of Texas at Austin

Michael M. Morin, ASA
Relationship Manager and
Consulting Actuary



Christian Goodman, ASA
Plan Actuary



Actuarial Associate

Mark is an Actuarial Associate in Milliman's Dallas office. He assists clients in the designing, funding, and financial reporting of their retirement programs.

Mr. Guajardo has worked in the retirement consulting field since 1996 including eleven years as a senior associate at Mercer where he specialized in welfare benefit plans. His extensive experience includes the following areas:

- Actuarial valuations for defined benefit plans
- Cost projections to evaluate future business conditions and their impact on benefit programs
- Assisting plan sponsors with plan design strategies and cost implications
- Funding of retiree welfare plans

Professional Designations

- Pursuing Enrolled Actuary
- Pursuing Associate of the Society of Actuaries

Education

- BS, Mathematics, University of Texas at Austin

Mark Guajardo
Actuarial Associate



Health Actuary

Ms. Noonan is an Actuarial Consultant with the Employee Benefits Health and Welfare practice in the Dallas office. As a credentialed actuary, Stephanie is responsible for actuarial reports and analysis for medical, dental, life, disability, paid time off, and other ancillary plans. Stephanie's main responsibility is direct consulting to large employers. She also assists on our platform of services for fully insured plans.

Prior to joining Milliman in 2007, Stephanie had almost 10 years of extensive actuarial experience in the insurance industry working in areas such as asset / liability management, financial reporting, and product development. Her primary areas of expertise include:

- Asset / Liability cash flow testing
- Asset / Liability duration / convexity studies
- Due Diligence
- Valuation of liabilities for insurance and annuities
- Price / Develop insurance and annuity products
- XXX / AXXX reserve financing

In her current position as an Actuarial Consultant, Stephanie specializes in the following:

- Large, complex actuarial projects such as *HP Assist*, *FSA Assist*
- Calculating IBNR reserves
- Benchmarking plan designs and recommending changes
- Calculating the value of plan design changes using Milliman's proprietary actuarial cost model, *Health Cost Guidelines and Dental Cost Guidelines*
- Performing retiree medical valuations (FASB / GASB)

Stephanie M. Noonan
FSA, CERA, MAAA
Health Actuary



- Evaluating the feasibility of self-insurance
- Performing Medicare Part D Attestations

Professional Designations

- Fellow, Society of Actuaries
- Chartered Enterprise Risk Analyst
- Member, American Academy of Actuaries

Education

- BS, Biology / Chemistry / Mathematics, college of Saint Mary, Omaha, NE

D. FEE SCHEDULE

Fee Assumptions

The estimated fees are based on the following assumptions:

- There are approximately 580 active employees
- There are approximately 5 retirees and beneficiaries
- There is one medical option available to retirees
- Data provided is usable without audit or significant follow up

Estimated Fees

Phase		Fee*
▪	Valuation	\$7,950
▪	Plan Design and Funding Analysis	Provided as needed and based on scope

If a material difference in fees becomes evident due to a change in the scope of the assignment, we will advise you. Travel and other out-of-pocket expenses are billed separately.

*If you prefer that Milliman make an on-site final presentation, our fees will be an additional \$1,000 (out-of-pocket travel expenses to be billed separately).

EXHIBIT 1 – MILLIMAN FACT SHEET

Milliman Facts 2012

Milliman is among the world's largest independent actuarial and consulting firms. With more than 2,600 employees and revenues of US\$723 million in 2011, the firm serves the full spectrum of business, governmental, and financial organizations. Milliman was founded in 1947 and today has 55 offices in principal cities worldwide, covering markets in North America, Latin America, Europe, Asia and the Pacific, and the Middle East.

Primary practice areas

- Employee benefits, investment, and compensation consulting services
- Health consulting services and Milliman Care Guidelines
- Life and financial consulting services
- Property and casualty consulting services

Organization

Milliman is owned and managed by approximately 400 principals, who have been elected in recognition of their technical, professional, and business achievements.

Leadership

Patrick J. Grannan, president and CEO
Bradley M. Smith, chairman

Firm highlights

Our consultants have served in leading roles in the actuarial profession, including as presidents of the American Academy of Actuaries, the Brazilian Institute of Actuaries, the Casualty Actuarial Society, the Institute of Actuaries, and the Society of Actuaries, and as board members for the Institute of Actuaries of India, the Staple Inn Actuarial Society, The Actuarial Foundation, and the Actuarial Standards Board. Currently, Milliman Chairman Brad Smith is president of the Society of Actuaries, Rajish Sagoenie is president of the Dutch Actuarial Association, Gary Josephson is president-elect of the Casualty Actuarial Society, and Eduardo Lara is president-elect of the Mexican Association of Actuaries.

Milliman is the leading provider of actuarial and related products and services to insurance markets worldwide.

milliman.com

EXHIBIT 2 – REPRESENTATIVE GASB 45 CLIENTS IN YOUR AREA

Alabama

- City of Athens
- City of Florence
- City of Gadsden
- City of Montgomery
- City of Scottsboro
- Montgomery County

Arkansas

- Arkansas Tech University
- State of Arkansas

Florida

- Bay County
- City of Apopka
- City of Dania Beach
- City of Eustis
- City of Haines City
- City of Madeira Beach
- City of Miami
- City of North Port
- City of Ocoee
- City of Port St. Lucie
- Escambia County
- Gulf County
- Jacksonville Aviation Authority
- North Naples Fire Control & Rescue
- Okaloosa County
- Pinellas Juvenile Welfare Board
- Putnam County

- Santa Rosa County School Board
- St. John River Water Management District
- St. Lucie County School Board
- State of Florida
- Southwest Florida Water Management
- Sumter County
- Union County School Board
- Village of North Palm Beach

Georgia

- Camden County
- City of College Park
- City of Smyrna
- Consolidated Government of Columbus
- Georgia Ports Authority
- Gordon County
- Troup County

Louisiana

- 16th Judicial District Court
- Acadia Parish School Board
- Allen Parish Police Jury
- Allen Parish School Board
- Allen Parish Sheriff's Office
- Assumption Parish Sheriff's Office
- Bayou Lafourche Freshwater District
- Caddo Parish School Board
- Calcasieu Parish Police Jury
- Calcasieu Parish Sheriff's Office
- Calcasieu Parish School Board

Louisiana (cont'd)

- Caldwell Parish School Board
- City of Abbeville
- City of Baton Rouge/Parish of E. Baton Rouge
- City of Bunkie
- City of DeRidder
- City of DeQuincy
- City of Lake Charles
- City of Leesville
- City of Scott
- City of Ville Platte
- Claiborne Parish Schools
- Concordia Parish School Board
- DeSoto Parish Schools
- East Baton Rouge Parish Sheriff's Office
- East Carroll Parish School Board
- East Feliciana Parish Sheriff's Office
- Evangeline Parish Assessor's Office
- Evangeline Parish School Board
- Evangeline Parish Sheriff's Office
- Franklin Parish School Board
- Grant Parish School Board
- Greater New Orleans Expressway Commission
- Iberia Parish Sheriff's Office
- Iberville Parish Sheriff's Office
- Jackson Parish School Board
- Lafayette Parish Clerk of Court
- Lafayette Parish School System
- Lafayette Parish Sheriff's Department
- Lake Charles Harbor & Terminal District
- LaSalle Parish School Board
- Lincoln Parish School Board
- Livingston Parish Sheriff's Office
- Louisiana Assessor's Association (50 offices)
- Madison Parish School Board
- Madison Parish Sheriff's Office
- Monroe City Schools
- Morehouse Parish School Board
- Ouachita Parish Police Jury
- Plaquemines Parish School Board
- Plaquemines Parish Sheriff's Office
- Rapides Parish Library
- Rapides Parish Police Jury
- Red River Parish Sheriff's Office
- Richland Parish School Board
- Richland Parish Sheriff's Office
- St. Charles Parish School Board
- St. Charles Parish Sheriff's Office
- St. Helena Parish School Board
- St. James Parish Sheriff's Office
- St. John the Baptist Parish Sheriff's Office
- St. Landry Parish Sheriff's Office
- St. Martin Parish Schools
- St. Martin Parish Sheriff's Office
- St. Mary Parish School Board
- Tangipahoa Parish Government

Louisiana (cont'd)

- Tangipahoa Parish Con. G. D. Dist. #1
- Tensas Parish School Board
- Terrebonne Parish Sheriff's Office
- Union Parish School Board
- Vermillion Parish Police Jury
- Vernon Parish Clerk of Court
- Vernon Parish Government
- Vernon Parish School Board
- West Baton Rouge Parish School Board
- West Carroll Parish School Board
- Winn Parish School Board

Oklahoma

- Grand River Dam Authority
- Oklahoma County Commission
- City of Owasso

South Carolina

- City of Aiken

Texas

- Bowie County
- Brazos County
- Brownsville Public Utilities Board
- Cameron County
- City of Allen
- City of Brenham
- City of Deer Park
- City of Denton
- City of Euless

- City of Jasper
- City of Katy
- City of Laredo
- City of Midlothian
- City of Mount Pleasant
- City of Plano
- City of Port Arthur
- City of Temple
- City of Webster
- Cameron County
- Collin County
- Fort Bend County
- Gulf Coast Waste Disposal
- Jefferson County
- Lower Neches Valley Authority
- Metropolitan Transit Authority of Harris County
- North Texas Municipal Water District
- Port of Houston Authority
- Potter County
- San Jacinto River Authority
- Tarrant Appraisal District
- Texarkana Water Utilities
- Travis County
- Pecos County
- Port of Corpus Christi Authority
- Trinity River Authority
- Williamson County

EXHIBIT 3 – REQUESTED INFORMATION

Data is preferred in an Excel format whenever possible.

1. Employee/Retiree information (see layout below)

ACTIVE EMPLOYEE DATA	
Data Element	Format
Identification Number	Alpha/Numeric
Group Code <i>(if applicable)</i>	Alpha/Numeric
Zip Code	Numeric
Gender	Alpha
Date of Birth	mm/dd/yyyy
Original Date of Hire	mm/dd/yyyy
Date of Rehire <i>(if applicable)</i>	mm/dd/yyyy
Date of Termination	mm/dd/yyyy
Benefit Coverages (medical plan if more than one, dental etc.)	Alpha
Medical Plan Design (PPO1, PPO2, etc.)	Alpha/Numeric
Tier (Employee Only, Employee & Spouse, etc.)	Alpha/Numeric
Dental Plan Design (DMO, indemnity, etc.)	Alpha/Numeric
Tier (Employee Only, Employee & Spouse, etc.)	Alpha/Numeric
Annual Compensation <i>(if applicable)</i>	999999.99
TERMINATED PARTICIPANTS (Eligible for Future Benefits)	
Data Element	Format
Identification Number	Alpha/Numeric
Group Code <i>(if applicable)</i>	Alpha/Numeric
Gender	Alpha
Date of Birth	mm/dd/yyyy
Date of Termination	mm/dd/yyyy
Benefit Coverages	Alpha
Tier (Employee Only, Employee & Spouse, etc.)	Alpha/Numeric
Life Insurance <i>(if applicable)</i>	99999999
RETIRED PARTICIPANT DATA	
Data Element	Format
Identification Number	Alpha/Numeric
Group Code <i>(if applicable)</i>	Alpha/Numeric
Zip Code	Numeric
Gender	Alpha
Date of Birth	mm/dd/yyyy
Participant Contribution Rate	9999.99
Benefit Coverages	Alpha
Medical Plan Design (PPO1, PPO2, etc.)	Alpha/Numeric
Tier (Employee Only, Employee & Spouse, etc.)	Alpha/Numeric
Dental Plan Design (DMO, indemnity, etc.)	Alpha/Numeric
Tier (Employee Only, Employee & Spouse, etc.)	Alpha/Numeric
Life Insurance <i>(if applicable)</i>	99999999
Beneficiary Identification Number	Alpha/Numeric
Beneficiary Date of Birth	mm/dd/yyyy

2. Summary of plan provisions and any plan changes over the past three years.

- Type of Insurance: self-insured, fully insured or partially insured (ASO agreement)
Please note if the type of insurance is different for actives, pre-65 retirees and post-65 retirees
- Medical benefits (for each medical plan)
 - Deductible
 - Co-insurance
 - Office visit co-pay
 - Out-of-pocket maximum
- Prescription drug benefits (for each Rx plan)
 - Copay
 - Other
- Other post-employment benefits (other than retirement), including life insurance, vision, dental, etc.
- For Medicare eligible retirees
 - Are all post-65 retirees required to enroll in Medicare Parts A and B? Part D?
 - How does the Plan coordinate with Medicare?
 - Do retirees over 65 continue to receive health, life insurance, vision, dental, etc?
 - Are post-65 retirees on a Medicare Advantage Plan?

3. Contribution Schedule (for actives, pre-65 retirees, and post-65 retirees as applicable)

- Include both the employer and participant rates separately as well as the total monthly rate

4. Claims information – 24-36 months needed (if self-insured)

- Employee groups – active and retirees/beneficiaries
- Is the group rated as one entity or are actives and retirees rated separately?
- Type of benefit – medical, prescription drug, other
- Time period – information for the most recent full year needed; claims information for prior three years preferred
- Data should include:
 - Monthly/annual employee counts or membership
 - Claim lags (groups over 2000) or annual paid claims
 - State if claims are net of stop loss recoveries
 - Specific and Aggregate Stop Loss premiums and recoveries (if not adjusted in claims)
 - Administrative expenses

5. Groups not covered by Medicare – if any

6. Most recent pension valuation report (if available)

7. Anticipated plan design changes (if applicable)

8. Name and Contact information of your Auditor

EXHIBIT 4 – CONSULTING SERVICES AGREEMENT

This document will serve as the Service Agreement between Milliman and Tom Green County for the provision of actuarial services required to meet GASB 43/45 requirements and other services, as requested.

Terms and Conditions

- Limitation of Liability.** Milliman will perform all services in accordance with applicable professional standards. The parties agree that Milliman, its officers, directors, agents and employees, shall not be liable to Tom Green County, under any theory of law including negligence, tort, and breach of contract or otherwise, for any damages which exceed 3 times the total professional fees paid in the previous 12-month period. In no event shall Milliman be liable for lost profits of Tom Green County 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 Milliman.
- Disputes.** In the event of any dispute arising out of or relating to the engagement of Milliman by Tom Green County, the parties agree that the dispute will be resolved by final and binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The arbitration shall take place before a panel of three arbitrators. Within 30 days of the commencement of the arbitration, each party shall designate in writing a single neutral and independent arbitrator. The two arbitrators designated by the parties shall then select a third 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 Federal Rules of Civil Procedure. The arbitrators shall have no power or authority to award punitive or exemplary damages. The arbitrators may, in their discretion, award the cost of the arbitration, including reasonable attorney fees, to the prevailing party. Any award made may be confirmed in any court having jurisdiction. Any arbitration shall be confidential, and except as required by law, neither party may disclose the content or results of any arbitration hereunder without the prior written consent of the other parties, except that disclosure is permitted to a party's auditors and legal advisors.
- Choice of Law.** The construction, interpretation, and enforcement of this Agreement shall be governed by the substantive contract law of the State of New York without regard to its conflict of laws provisions. In the event any provision of this agreement is unenforceable as a matter of law, the remaining provisions shall stay in full force and effect.
- No Third Party Distribution.** Milliman's work is prepared solely for the internal business use of Tom Green County. Milliman's work may not be provided to third parties without Milliman's prior written consent. Milliman does not intend to benefit any third party recipient of its work product, even if Milliman consents to the release of its work product to such third party.
- Terms of Agreement.** This Agreement will become effective upon the signature of both parties, and will remain in effect until terminated by either party as provided herein. Either party may terminate this Agreement upon ninety (90) days prior written notice. Milliman will retain any records it has relating the Services provided under this Agreement for a period of three years following the termination of this Agreement.

This Service Agreement will take effect upon the signature of both parties below.

TOM GREEN COUNTY	
I have read and agree to the terms and conditions of this Agreement.	
Accepted by: _____	
Printed Name: _____	
Title: _____	Date: _____

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

EXHIBIT 5 – BUSINESS ASSOCIATE AGREEMENT (HIPAA COMPLIANCE)

**MILLIMAN, INC.
BUSINESS ASSOCIATE AGREEMENT**

This BUSINESS ASSOCIATE AGREEMENT ("Agreement") is entered into effective the ____ day of _____, 2013 by and between Tom Green County and certain of its member offices ("Client") and Milliman, Inc. ("Milliman").

RECITALS

- A. Client is a Covered Entity as defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and is therefore subject to HIPAA and its implementing regulations, including the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule") and the Security Standards for the Protection of Electronic Protected Health Information (the "Security Rule"), and Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("HITECH") enacted as part of the American Recovery and Reinvestment Act of 2009 (collectively, HIPAA, the Privacy Rule, Security Rule and HITECH shall be referred to herein as the "HIPAA Regulations").
- B. Protected Health Information received from Client or created or received by Milliman on behalf of Client ("PHI") may be needed for Milliman to perform the services (the "Services") requested by Client and described in any underlying agreement between the parties (the "Underlying Agreement").
- C. To the extent Milliman needs to access PHI to perform the Services, it will be acting as a Business Associate of Client and will be subject to certain provisions of the HIPAA Regulations.
- D. Milliman and Client wish to set forth their understandings with regard to the use and disclosure of PHI by Milliman so as to comply with the HIPAA Regulations.

AGREEMENTS

In consideration of the Recitals and the mutual agreements below, the parties agree as follows:

1. Defined Terms. Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations.
2. Milliman's Obligations and Permitted Activities.
 - (a) Milliman agrees to not use or further disclose PHI other than as required to perform the Services, requested by Client or Required By Law, or as otherwise permitted herein.
 - (b) Milliman agrees to use reasonable safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, and shall develop, implement, maintain and use appropriate administrative procedures, and physical and technical safeguards, to reasonably preserve and protect the confidentiality, integrity and availability of electronic PHI.
 - (c) Milliman agrees to report to Client, without unreasonable delay and in no case later than five (5) business days following actual knowledge by Milliman:
 - (i) Any use or disclosure of PHI not provided for by this Agreement.
 - (ii) Any Security Incident of which Milliman becomes aware; provided, however, that the parties acknowledge and agree that this section constitutes notice by Milliman to Client of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents of which no additional notice to Client shall be required. Unsuccessful Security Incidents shall include, but not be limited to, pings and other broadcast attacks on Milliman's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as such incidents do not result in unauthorized access, use or disclosure of Client's electronic PHI.
 - (iii) Any Breach of Unsecured PHI, as defined in 45 CFR 164.402. Following the initial notification of any such Breach, Milliman shall provide a report to Client that includes, to the extent possible: [A] a brief description of what

happened, including the date of occurrence and the date of the discovery by Milliman; [B] a description of the PHI affected, including the names of any Individuals whose PHI has been or is reasonably believed to have been accessed, acquired or disclosed and the types of PHI involved (such as full name, social security number, date of birth, home address, account numbers, etc.); and [C] a brief description of what Milliman has done to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches. Milliman also shall provide to Client any other available information Client is required to include in its notification to affected Individual(s).

(d) Milliman agrees to ensure that any agent or subcontractor to whom it provides PHI agrees to the same or substantially similar restrictions and conditions as those that apply to Milliman through this Agreement with respect to such PHI.

(e) Milliman shall make its internal policies, procedures and records relating to the use and disclosure of PHI reasonably available to the Secretary or to Client if necessary or required to assess Milliman's or the Client's compliance with the HIPAA Regulations.

(f) It is not anticipated that Milliman will maintain a Designated Record Set on behalf of Client; however, if Milliman maintains a Designated Record Set on behalf of Client, Milliman agrees to, at Client's written request: (i) provide access to such PHI in order to assist Client in meeting its obligations under the Privacy Rule, and (ii) make any amendment(s) to such PHI as Client so directs or agrees to pursuant to the Privacy Rule.

(g) So that Client may meet its disclosure accounting obligations under the HIPAA Regulations, Milliman agrees to document disclosures of PHI made by Milliman which are not excepted from disclosure accounting requirements under the HIPAA Regulations.

(h) Milliman may use PHI for Milliman's proper management and administration or to carry out its legal responsibilities. Milliman may disclose PHI for Milliman's proper management and administration, provided that: (i) Milliman obtains reasonable assurances from the person to whom PHI is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person; and (ii) the person notifies Milliman of any instances of which it is aware in which the confidentiality of PHI has been breached. Milliman also may make disclosures that are required by law.

(i) Milliman may use PHI to provide Data Aggregation services to Client as permitted by the Privacy Rule.

(j) Milliman may, at its option:

(i) Deidentify PHI in accordance with the requirements of the Privacy Rule and maintain such deidentified health information indefinitely; provided that all identifiers are destroyed or returned in accordance with this Agreement.

(ii) Create a Limited Data Set for the purpose of providing the Services, provided that Milliman:

- [a] Does not use or further disclose PHI contained in the Limited Data Set except as necessary to provide the Services or as provided for in this Agreement or otherwise Required By Law;
- [b] Uses appropriate safeguards to prevent the use or disclosure of PHI contained in the Limited Data Set other than as provided for by this Agreement;
- [c] Reports to Client any use or disclosure of PHI contained in the Limited Data Set of which Milliman becomes aware that is not provided for by this Agreement;
- [d] Ensures that any agents or subcontractors to whom it provides access to the Limited Data Set agree to the same restrictions and conditions that apply to Milliman under this Agreement; and
- [e] Does not re-identify PHI or contact the Individuals whose information is contained within the Limited Data Set.

3. Client's Obligations.

(a) Client shall not request Milliman to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Client.

(b) Client shall not provide Milliman with more PHI than that which is minimally necessary for Milliman to provide the Services and, where possible, Client shall provide any PHI needed by Milliman to perform the Services in the form of a Limited Data Set, in accordance with the HIPAA Regulations.

(c) Client shall clearly and conspicuously designate all PHI as such before providing it to Milliman.

(d) Client acknowledges and agrees that neither this Agreement nor the Underlying Agreement requires Milliman to make any disclosure for which an accounting would be required under the HIPAA Regulations. Client further agrees that it shall be solely responsible for tracking and providing Individuals an accounting of any disclosures made by Client to Milliman.

(e) Client acknowledges and agrees that the provisions of section 2(j)(ii) of this Agreement shall constitute a Data Use Agreement between the parties.

4. Term and Termination.

(a) Term. This Agreement shall be effective as of the date first written above, and shall terminate when all PHI is destroyed or returned to Client. If Milliman determines, in accordance with subsection 4(c)(ii) below, that it is infeasible to return or destroy PHI, the protections of this Agreement with respect to such PHI shall remain in effect until such PHI is returned or destroyed.

(b) Termination. Upon a party's knowledge of a material breach by the other party, the nonbreaching party shall either:

(i) Provide an opportunity for the breaching party to cure the breach or end the violation and terminate this Agreement if the breaching party does not cure the breach or end the violation within the time specified by the nonbreaching party; or

(ii) Immediately terminate this Agreement if the breaching party has breached a material term of this Agreement and cure is not possible.

(c) Effect of Termination.

(i) Except as otherwise provided in subsection 4(c)(ii) below, upon termination of this Agreement for any reason, Milliman shall return or destroy all PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Milliman.

(ii) If Milliman determines that returning or destroying any or all PHI is infeasible, the protections of this Agreement shall continue to apply to such PHI, and Milliman shall limit further uses and disclosures of PHI to those purposes that make the return or destruction infeasible, for so long as Milliman maintains such PHI. Client hereby acknowledges and agrees that infeasibility includes Milliman's need to retain PHI for purposes of complying with its work product documentation standards.

5. Miscellaneous.

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Regulations means the section as in effect or as amended, and for which compliance is required.

(b) Amendment. Upon the effective date of any final regulation or amendment to the HIPAA Regulations, this Agreement shall be deemed automatically amended so that the obligations it imposes on the parties remain in compliance with such regulations. Following amendment of the Agreement in this manner, the parties shall, as necessary, work together to clarify their respective obligations with respect to any new requirements under the modified HIPAA Regulations.

(c) Independent Contractors. Milliman and Client are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise or agency between Milliman and Client. Neither Milliman nor Client will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent, except as otherwise expressly provided in this Agreement.

(d) Conflicts. In the event that any terms of this Agreement are inconsistent with the terms of the Underlying Agreement, then the terms of this Agreement shall control.

(e) Entire Agreement. This Agreement shall constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties hereto relating to such subject matter.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

MILLIMAN, INC.

TOM GREEN COUNTY

By _____

By _____

Title _____

Title _____