

CONTRACT

ACTUARIAL SERVICES AGREEMENT

THIS AGREEMENT is made this _____ day of _____, 2010, by and between **Board of Sumter County Commissioners** (hereafter referred to as "Board"), whose address is 910 North Main Street, Bushnell, Florida 33513, and **Milliman, Inc.** (hereafter referred to as "Consultant"), with an office located at 1000 North Central Expressway, Suite 1500, Dallas, TX 75231.

RECITALS

WHEREAS, the Board has need for SUMTER COUNTY ACTUARIAL SERVICES services; and

WHEREAS, Professional Strategic Plan provides professional services; and

WHEREAS, the parties desire to enter into a written agreement outlining the duties and responsibilities and compensation of the Strategic Plan based on the Consultant's response to RFP # 150-0-2010/AT – Request for Proposal for SUMTER COUNTY ACTUARIAL SERVICES;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, it is agreed as follows:

1. The relationship of the Consultant to the Board will be that of a professional consultant and the Consultant will provide the professional and technical services required under this agreement in accordance with acceptable professional practices and ethical standards applicable to Consultant's profession, and will endeavor to provide to the Board prompt and efficient consulting services to the best of its ability.
2. Consultant is hereby retained and employed as the SUMTER COUNTY ACTUARIAL SERVICES consultant to work with the Board to provide said Server Hosting services in accordance with the scope of work outlined in RFP # 150 -0-2010/AT.
3. Consultant agrees to prepare and complete the deliverables to the Board. Consultant may be asked to present the deliverables in person for review by staff or for discussion at a scheduled Board meeting.
4. The term of this Agreement shall commence on the day and year as shown above and continue in force through January 31, 2012. This Agreement may be renewed on an annual basis if agreed to in writing by both parties. The term of this Agreement does not relieve the Consultant of any future responsibility as described in paragraph eight (8) of this Agreement.
5. This Agreement may be terminated by either party upon thirty (30) days prior written notice. If this agreement is terminated, Consultant shall be paid for all work performed up to the date of termination.
6. With regard to compensation paid to Consultant, Consultant shall furnish to the Board on a monthly basis an itemized invoice of the hours, services, products and other services utilized

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during the preceding month. Invoice shall be itemized per the attached Fee Schedule (Exhibit "A"). Consultant shall compute the total amount due for the preceding month and all amounts due Consultant shall be paid on a monthly basis pursuant to the provisions of the Local Government Prompt Payment Act, F.S. 218. Consultant acknowledges that and agrees that the rates set forth in the Fee Schedule shall remain fixed throughout the duration of the Agreement and thereafter shall only be adjusted by mutual written agreement of both parties.

7. General Considerations.

- a. ~~Subject to Section 18 and Section 19, all reports, drawings, designs, specifications, notebooks, computations, details, calculations documents prepared by Consultant and presented to the Board pursuant to this Agreement are and remain the property of the Board as instruments of service.~~
- b. ~~Subject to Section 18 and Section 19, all analyses, data, documents, models, modeling, reports and tests performed or utilized by Consultant shall be made available to the Board upon request and shall be considered public records.~~
- c. Consultant shall keep all books, records, files, drawings, plans and other documentation, including all electronically stored items, which concern or relate to the services required hereunder, for a minimum of three (3) years from the date of expiration or termination of this Agreement, or as otherwise required by any applicable law, whichever date is later. ~~At a mutually agreed date and time, and upon the execution of a mutually agreed to non-disclosure agreement, the~~ Board shall have the right to order, inspect and copy all such Records as often as it deems necessary during any such period of time. This right to audit, inspect and copy records shall include all of the records of the Subconsultants (if any).
- d. Consultant shall, at all times, comply with the Florida Public Records Law, the Florida Open Meeting Law and all other applicable laws, rules and regulations of the State of Florida.
- e. Consultant shall, at all times, carry Professional Liability, General Liability, Automobile and Worker's Compensation Insurance pursuant to the insurance requirements in RFP # 150-0-2010/AT.
- f. Upon Consultant's written request, the Board will furnish, or cause to be furnished, such reports, studies, instruments, documents, and other information as Consultant and Board mutually deem necessary, and Consultant may rely upon same in performing the services required under this agreement.
- g. The Board and Consultant each binds itself and its successors, legal representatives and assigns to the other party to this agreement and to the partners, successors, legal representatives and assigns of such other party to this agreement, in respect to all covenants of this agreement; and neither the Board nor Consultant shall assign or transfer their interest in this agreement without the prior written consent of the other party.

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8. Should any other professional services be called for by the Board, the charges shall be agreed upon in advance by the parties hereto. The Consultant may be required to provide additional services to the Board on challenges, public protests, administrative hearings or similar matters. The consultant shall be available to represent the Board, serve as an expert witness and provide supporting documentation as necessary.

9. The Contract Documents, which comprise the entire Contract between Board and Consultant and which are made part hereof by this reference, consist of the following:

- a. Request for Proposal (RFP)

- b. Instructions, Terms, and Conditions
- c. RFP Forms
- d. Vendor's Certification
- e. General Terms and Conditions
- f. Drug Free Workplace Certificate
- g. References
- h. Scope of Work / Specifications
- i. Agreement for Services
- j. Permits / Licenses
- k. All Proposal Addenda Issued Prior to RFP Opening Date
- l. All Modifications and Change Orders Issued
- m. Notice of Award / Notice to Proceed

10. Consultant does hereby specifically promise and agree to "hold harmless", defend and indemnify the Board and the agents, servants, employees, officers, and officials thereof from and against any and all liability or responsibility for damage to property or person that may arise in connection with the services to be provided hereunder, including reasonable attorney fees and expenses.

11. Consultant, its agents, servants or employees shall, in no manner, whatsoever be construed as the employees, agents, servants or representatives of the Board and shall have not expressed or implied power or authority to act in any manner whatsoever for or on behalf of the Board, except as provided in the scope of services called for herein. Consultant is hereby designated as an independent contractor to the Board and none of the employees, agents or servants of the Consultant shall have any of the fringe benefits applicable to employees of the Board.

12. In the event of default by ~~the Board hereto, the Board~~ shall be liable for all costs and expenses, including reasonable attorney's fees, incurred by the ~~Consultant~~ and enforcing it rights hereunder, whether litigation be instituted or not, and at the trial court and appellate court level. ~~Consultant agrees to indemnify, defend and hold the Board, its officers, directors, agents and employees harmless from and against any liability, damages, losses, judgment, and other expense (including but not limited to reasonable attorney's fees and court costs) for any third party claim brought against the Board arising out of or resulting from Consultant's grossly negligent act or omission in the performance of services hereunder. The Board agrees that it will promptly notify and tender the defense to Consultant of any indemnified claim, provided that the Board's failure to provide prompt notice shall not relieve Consultant from liability herein except to the extent Consultant is prejudiced by such failure, and Consultant shall, at its sole expense, defend, and at its sole discretion, settle any such indemnifiable claim, provided that, Consultant shall obtain the Board's consent in the event of any settlement, which consent shall not be unreasonably withheld. The Board may participate in the defense of any indemnified claim at its own expense.~~

13. ~~This contract shall be governed under the laws of the State of Florida, without regard to its conflict of laws provisions and any action for the enforcement, construction or interpretation of this agreement shall be maintained in Sumter County, Florida. It is the intention of the parties that the Limitation of Liability paragraph below shall be enforceable. In the event that the Limitation of Liability clauses is not enforceable, then the parties agreed that New York law, and not Florida law, shall apply to that clause. 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.~~

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Deleted: other party

Deleted: Consultant does hereby waive "venue privilege" and or "diversity of citizenship privileges" and agrees specifically that

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Comment [JK1]: Milliman has been advised by outside counsel that the courts in the State of Florida do not enforce limits on liability in professional services contracts. The limitation of liability is a clause required by our risk management policies and therefore we must be able to include the clause but also enforce the clause in the event that it needs to be applied. New York law is limited only to the enforcement of the limitation of liability clause, the rest of the contract will be enforced and governed by Florida law.

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Deleted: Consultant hereby specifically waives its right to institute any action of any kind or nature whatsoever against the Board in any other State or Federal Court or administrative tribunal.

If any dispute occurs between the parties, they shall attempt in good faith to resolve the dispute by mediation. In such mediation, the parties thereto will choose a mutually acceptable mediator with a background in insurance, actuarial science or law. If such mediation fails after a good-faith effort has occurred, only then may a party institute litigation. If a party files a lawsuit, and both a state and a federal court have subject matter jurisdiction over all of the claims to be filed, then the party shall file such suit in the Middle District court of Florida, Tampa Division. Both parties agree to waive the right to a trial by jury.

14. This Agreement represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations or agreements, either written or verbal. If any provision of the Agreement is declared invalid or unenforceable, the remainder shall continue in full force and effect.

15. This Agreement cannot be changed or modified, unless by written agreement signed by all parties hereto.

16. In performing services hereunder, Consultant shall comply with all applicable federal, state and local laws and regulations. Consultant shall be responsible for identifying and obtaining all permits necessary to complete the scope of services. Consultant shall be responsible for obtaining, at its sole cost and expense, all necessary licenses and other governmental approvals required in order for Consultant to provide the type of services required hereunder.

17. Consultant shall notify Board in writing of any commitments during the term of this Agreement which may constitute a potential or actual conflict of interest with respect to the scope of services to be performed for the Board.

18. 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 Consultant or developed during the course of the provision of the Services provided such generic documents or templates do not contain any Board Confidential Information or proprietary data. Rights and ownership by Consultant of original technical designs, methods, ideas, concepts, know-how, and techniques shall not extend to or include all or any part of Board's proprietary data or Board Confidential Information. To the extent that Consultant may include in the materials any pre-existing Consultant proprietary information or other protected Consultant materials, Consultant agrees that Board shall be deemed to have a fully paid up license to make copies of the Consultant owned materials as part of this engagement for its internal business purposes and provided that such materials cannot be modified or distributed outside the Board without the written permission of Consultant or except as otherwise permitted hereunder.

19. Consultant's work is prepared solely for the use and benefit of Board in accordance with its statutory and regulatory requirements. Consultant recognizes that materials it delivers to Board may be public records subject to disclosure to third parties, however, Consultant does not intend to benefit and assumes no duty or liability to any third parties who receive Consultant's work and may include disclaimer language on its work product so stating. To the extent that Consultant's work is not subject to disclosure under applicable public records laws, Board agrees that it shall not disclose Consultant's work product to third parties without Consultant's prior written consent; provided, however, that Board may distribute Consultant's work to (i) its

professional service providers who are subject to a duty of confidentiality and who agree to not use Consultant's work product for any purpose other than to provide services to Board, or (ii) any applicable regulatory or governmental agency, as required.

20. Consultant will perform all services in accordance with applicable professional standards. The parties agree that Consultant, its officers, directors, agents and employees, shall not be liable to Board, under any theory of law including negligence, tort, breach of contract or otherwise, for any damages in excess of three (3) times the professional fees paid to Consultant with respect to the work in question. In no event shall Consultant be liable for lost profits of Board 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 Consultant.

21. Board agrees that it shall not use Consultant's name, trademarks or service marks, or refer to Consultant directly or indirectly in any media release, public announcement or public disclosure, including in any promotional or marketing materials, customer lists, referral lists, websites or business presentations without Consultant's prior written consent for each such use or release, which consent shall be given in Consultant's sole discretion. Subject to Section 19, to the extent that the use of Consultant's services is subject to disclosure under applicable public records laws, the Board may disclose Consultant's name or refer to Consultant directly or indirectly in such public disclosure but only to the extent necessary to meet applicable laws.

IN WITNESS WHEREOF, the parties have signed this agreement the day and year first above written.

ATTEST:

SUMTER COUNTY
BOARD OF COUNTY COMMISSIONERS

By: _____

By: Doug Gilpin, Chairman

Date Signed: _____

ATTEST:

Consultant

By: _____

By:

Date Signed: _____

NOTICE OF AWARD

TO: _____

Project Description: **RFP #150-0-2010/AT SUMTER COUNTY ACTUARIAL SERVICES**

The OWNER has considered the RFP submitted by you for the above described work in response to its Request for Proposals dated _____.

You are hereby notified that your RFP has been accepted for the unit prices for the listed items in the REQUEST FOR PROPOSAL.

You are required by the Instruction for Bidders to execute the Agreement and furnish the required certificates of insurance within ten (10) calendar days from the date of this Notice to you.

If you fail to execute said Agreement and to furnish said insurance within ten (10) days from the date of this Notice, said OWNER will be entitled to consider all your rights arising out of the OWNER'S acceptance of your RFP as abandoned. The OWNER will be entitled to such other rights as may be granted by law.

Please acknowledge the NOTICE OF AWARD and return to:

Mr. Bradley Arnold
Sumter County Board of County Commissioners
910 North Main Street Suite 201
Bushnell, FL 33513

Dated this _____ day of _____, 2010.

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By: _____

Title: County Administrator

ACCEPTANCE OF NOTICE _____

Receipt of the above NOTICE OF AWARD is hereby acknowledged by _____ this _____ day of _____, 200__.

By: _____ Title: _____

NOTICE TO PROCEED

To: _____ Date: _____

Project: **RFP #150-0-2010/AT SUMTER COUNTY ACTUARIAL SERVICES**

You are hereby notified to commence WORK in accordance with the Agreement dated _____, 200__, on or before _____, 200__, and you are to complete the WORK within 365 consecutive calendar days thereafter. The date of completion of all WORK is therefore _____, 200__

Please acknowledge the NOTICE TO PROCEED and return to:

Mr. Bradley Arnold, County Administrator
Sumter County Board of County Commissioners
910 North Main Street Suite 201
Bushnell, FL 33513

| Dated this _____ day of _____ 2010

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By: _____

Title: County Administrator

ACCEPTANCE OF NOTICE

Receipt of the above NOTICE TO PROCEED is hereby acknowledged by _____, this _____ day of _____, 200__.

By: _____ Title: _____