

**RIVER ROAD INDEPENDENT SCHOOL DISTRICT
BOARD OF EDUCATION
AMARILLO, TEXAS**

Subject: Eligibility Tracking Calculators, LLC **Date:** Monday, August 10, 2015
Agreement

Presented By: Randy Owen, Superintendent **Related Page(s):** This page +8

ACTION

BACKGROUND INFORMATION:

Eligibility Tracking Calculators, LLC is a firm that will provide services to River Road Independent School District for guidance, tracking and compliance with healthcare reform laws under the Affordable Care Act. ETC will assist River Road ISD with the required reporting to the Internal Revenue Service. ETC will complete the 1095-C forms that will be issued to employees by January 31, 2016 to have for their federal tax return filing. ETC will also complete the 1094-C forms that must be submitted to the Internal Revenue Service. ETC will represent the district in HHS and IRS Appeals as needed.

The cost for ETC services is \$237.30 monthly with the fee being calculated as \$1.05 times 226 # of employee count averaged over a twelve month period.

BOARD ACTIONS REQUESTED:

It is requested that the Board approve the agreement with Eligibility Tracking Calculators and authorize the Superintendent, Randy Owen, to sign the agreement as River Road ISD's Authorized Representative.



Eligibility
Tracking
Calculators

CONSULTATION, INTERPRETATION & GUIDANCE SERVICES AGREEMENT

THIS SERVICES AGREEMENT (“Agreement”) is entered into by and between **RIVER ROAD ISD** (“**COMPANY**”) whose address is 9500 US Hwy N-287 Amarillo, TX 79108 and Eligibility Tracking Calculators, LLC (“**CONTRACTOR**” or “**ETC**”), whose address is 55 Vienna, San Antonio, TX 78258.

WHEREAS, **ETC** is a Direct client HR Input System and Consultative Company designed to use **CLIENT**’s direct input of objective payroll data (defined as payroll information used to run employee paychecks) provided by **CLIENT** to identify, based on the objective payroll data, which employees, if any, are interpreted to be eligible for healthcare benefits in accordance with the Healthcare Reform aka Affordable Care Act as well as to provide consultation, interpretation and guidance of the objective data; and

WHEREAS **ETC** desires to become a consultant of **CLIENT** so that **ETC** can perform interpretation, guidance identification/tracking services and assist **CLIENT** in ensuring it offers all eligible employees health insurance coverage in compliance with healthcare reform laws under the Affordable Care Act and assist **CLIENT** in its required reporting to the Internal Revenue Service and provision of information to applicable persons in accordance with the *Forms 1094-C* and *1095-C* pursuant to healthcare reform laws under the Affordable Care Act (collectively “Forms”);

NOW, THEREFORE, in consideration of the mutual agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **CLIENT** and **ETC** agree as follows:

1. Relationship and Term

- 1.01 Term of this contractual relationship is January 1, 2015 through December 31, 2015 to begin upon execution by both Parties. Either party may terminate this Agreement upon 60 days written notice. If this Agreement is terminated prior to the termination date, **ETC** is relieved of providing all Form *1094-C/1095-C* data for any date after the termination of this Agreement. Otherwise, Agreement may be renewed by written agreement of both parties and material terms of Agreement may be changed.
- 1.02 It is expressly understood that **ETC** and **CLIENT** are independent entities and neither is employed by the other. **CLIENT** in no way controls the manner, method or means of **ETC**’s work and **ETC** provides all the tools necessary for services to be rendered for **CLIENT**. **ETC** has been retained by **CLIENT** for a specific term to perform services beyond **CLIENT**’s expertise. Both Parties are responsible for their own tax obligations and insurance obligations.
- 1.03 It is expressly understood that **ETC**’s responsibilities are limited to advising **CLIENT** of eligibility for benefits and tracking hours worked as set forth in more detail herein. **CLIENT** is under **no obligation** to follow **ETC**’s advice and should **CLIENT** decide not to offer benefits to eligible employees, **CLIENT** may do so but may be subject to regulatory fines or penalties. As well, with respect to **CLIENT**’s payments for health insurance, these issues are not controlled in any way under this Agreement but are governed in accordance with the **CLIENT**’s health insurance plan documents.
- 1.04 It is expressly understood that it is the **CLIENT**’s determination as to which employees are Full-Time, Variable Hour employees (inclusive of Part-Time and Seasonal Employees) (herein referred to as “employee designated category”). **ETC** shall provide data interpretation reports regarding hours worked by employees when **ETC** is provided the objective payroll data but **ETC** assumes no liability

for CLIENT's determination and designation of Full-Time or Variable Hour status of employees and ETC shall rely upon CLIENT's employee designated category in making its determinations as to who is eligible for benefits when and reporting this information on behalf of the CLIENT as required by law.

2 ETC's Responsibilities

- 2.01** ETC shall provide CLIENT consultation, interpretation and guidance regarding which employees of CLIENT are eligible for health insurance benefits and when they will be eligible, based on CLIENT's employee designated category, in order to allow the CLIENT sufficient time to offer and enroll eligible employees in health insurance benefits and avoid potential fines and penalties. ETC shall also provide CLIENT consultation, interpretation and guidance in order to prepare data to be filed in accordance with *26 US Code §6056* and shall prepare the *Forms 1094-C* and *1095-C* on behalf of the CLIENT as well as the related "employee statements" for no additional cost. Note: Additional costs will be that of printing/postage depending on the method of delivery chosen by CLIENT. ETC's consultation, interpretation and guidance shall be based on CLIENT's submission of objective and accurate payroll data.
- 2.02 Tax Obligations.** ETC shall be responsible for its own tax obligations and understands that in accordance with this Independent Contractor Relationship with CLIENT, neither party is an employee of the other and that CLIENT assumes no responsibility or obligations in withholding any amounts to be paid to ETC for work performed. Although the Parties do not believe that ETC's services are subject to sales tax, should sales tax be assess, CLIENT understands that the sales tax is CLIENT's responsibility.
- 2.03 Ownership of Proprietary and Confidential Material.** ETC agrees and understands that CLIENT's payroll data and other internal CLIENT information provided or made available to ETC may be sensitive and confidential. Therefore, ETC agrees to hold this information forever in confidence and only to share this information with CLIENT appointed representatives as instructed by CLIENT.
- 2.04** ETC will invoice the CLIENT in accordance with terms set forth in *Exhibit A* attached hereto Parties reserve the right to renegotiate fee every 6 months if CLIENT numbers of employees either increase or decrease over 20%.
- 2.05 DUTY OF DEFENSE AND INDEMNITY. FOR ANY NEGLIGENCE OR GROSS NEGLIGENCE OF ETC AS TO THE ITS CONSULTATION, INTERPRETATION OF OBJECTIVE DATA AND/OR COMMUNICATION WITH CLIENT REGARDING ELIGIBILITY FOR BENEFITS OF VARIABLE HOUR EMPLOYEES WHICH RESULTS IN THE ASSESSMENT OF 4980H FINES/PENALTIES/EXCISE TAXES FOR THE CLIENT OR RESULTS IN ANY OTHER DAMAGES INCURRED BY THE CLIENT (AS LONG AS THE INFORMATION PROVIDED BY CLIENT IS ACCURATE AND IS PROVIDED IN A TIMELY MANNER AS DEFINED IN SECTION 3 BELOW), UPON WRITTEN CLAIM OF DAMAGES FROM CLIENT, ETC SHALL DEFEND AND INDEMNIFY CLIENT AS TO ANY DAMAGES INCURRED BY CLIENT AS A RESULT OF ETC'S NEGLIGENCE. HOWEVER, ETC SHALL BE RELEASED FROM ALL LIABILITY IF CLIENT CHOOSES NOT TO FOLLOW ETC'S CONSULTATION OR FAILS TO ACT ON ALERTS/FEEDBACK PROVIDED BY ETC IN A TIMELY MANNER AS SET FORTH IN THE REGULATIONS GOVERNING THE AFFORDABLE CARE ACT. AS WELL, ETC IS UNDER NO OBLIGATION AND THEREFORE HAS NO LIABILITY WITH RESPECT TO CLIENT'S DETERMINATION AND OFFERING OF BENEFITS (OR LACK THEREOF) TO PERSONS DESIGNATED BY CLIENT AS "FULL-TIME" IN ACCORDANCE WITH SECTION 1.04 HEREIN.**

2.06 ETC shall begin tracking payroll for payroll periods on or after the effective date of this Agreement Section 1.01 and shall only be responsible for identifying persons eligible for benefits thereafter. As CLIENT has indicated that at least a portion of its workforce is considered Variable Hour, CLIENT shall provide ETC with payroll for 12 months prior to the effective date of this Agreement and shall be charged an implementation fee for ETC's loading of this payroll. However ETC shall rely on CLIENT's determination of eligibility, trending towards eligibility and culminated payroll hours for its employees prior to the effective date of this Agreement. Should CLIENT need ETC to perform a Look-Back analysis to identify those persons eligible on January 1, 2015 and moving forward, ETC shall do so but has no liability for those persons not offered coverage in a timely manner prior to the month after ETC provides first reports to CLIENT and additional charges will apply as set forth in *Exhibit A*.

2.07 ETC shall provide consultation, interpretation and guidance alerts, reports and requests for additional information or advisories on need for CLIENT action in accordance with CLIENT's needs which will be determined initially during Implementation and changed thereafter pursuant to CLIENT's requests throughout the term of this Agreement. in a timely manner meaning as follows:

3. CLIENT's Obligations

3.01 Release of Information. CLIENT agrees to provide ETC with all accurate information relating to subject matter of the project as defined herein in a timely manner in order for ETC to perform said Services. Specifically, in order to be considered a timely manner with respect to the release of payroll information, CLIENT will provide ETC with accurate payroll data for all employees no later than **three (3) calendar days** after payroll is run by the CLIENT. If all of the objective payroll data cannot be provided or cannot be provided via Excel or CSV, additional charges may be applied but only after agreed to by CLIENT. ETC shall rely on the information provided in making all determinations as to eligibility. Therefore, if CLIENT learns that any data submitted is inaccurate, CLIENT shall immediately advise ETC and ETC shall not be liable for any formulaic determinations based on inaccurate data.

3.02 Authoritative Transmittal. If ETC is to file the Authoritative Transmittal for the *1094/1095 Forms*, CLIENT must provide ETC all Control Group information for all related entities. Determination of whether a control group exists is the sole responsibility of the CLIENT. Data needed from all entities in order to provide year end reporting in addition to payroll and benefits elections throughout the year includes: 1) lowest cost employee only option; 2) plan determination such as Minimum Value or MEC; 3) all relevant information as to why a person was not offered coverage if applicable; and 4) if self-insured, all covered individuals enrolled in the plan with SSN and/or date of birth. While information must be provided on a monthly basis, all final information must be submitted to ETC no later than January 10, 2016.

3.03 Responses Required: CLIENT will provide necessary data as requested by ETC and shall respond to alerts generated by ETC in a timely manner which is defined as timely in accordance with ACA obligations. CLIENT's failure to respond in a timely manner, if this lack of timely response results in fines/penalties relating to ACA compliance, relieves ETC of all responsibilities and obligations with respect to any and all fines, penalties, and/or damages CLIENT incurs as a result.

3.04 Special Leave. If any employees of CLIENT are out on "special leave" defined as FMLA, USERRA or Jury Duty, CLIENT is responsible for advising ETC of this and ETC is responsible for tracking those persons in accordance with ACA regulations and procedures as to eligibility for benefits. The Parties shall agree upon implementation on the manner in which CLIENT shall provide ETC with this information.

3.05 Should CLIENT choose not to follow ETC's consultation, interpretation and guidance of offering eligible employees and their dependents health insurance coverage in accordance with the mandates

of the Affordable Care Act, that is **CLIENT**'s choice and **ETC** shall be relieved of any and all responsibilities for fines and penalties should there be any assessed. Further, any and all decisions with respect to Plan design, plan coverages, persons eligible for coverages and costs associated with coverage, should it be offered, are outside of the scope of this Agreement in all respects.

- 3.06 Ownership of Proprietary and Confidential Material.** During the term of this Agreement, **ETC** may disclose to **CLIENT** confidential information and trade secrets proprietary to **ETC**, including, but not limited to, systems, methods of operation, marketing and advertising procedures, internal procedures, programs and forms. **CLIENT** acknowledges and agrees that all such information is confidential and is the exclusive property of **ETC**. **CLIENT** covenants and agrees that it shall not disclose to anyone directly or indirectly during the term of this Agreement or at any time thereafter, any such confidential information, nor shall it use any such confidential information nor cause such confidential information to be used for any purpose other than in the course of **CLIENT**'s work with **ETC**. However, upon request by **CLIENT** at any time during the term of this Agreement or thereafter, **ETC** shall provide all data collected and determinations made to **CLIENT** either in Excel or CSV unless the Parties agree to the provision of data in another format.
- 3.07 CLIENT** shall pay **ETC** on a monthly basis within 20 days of receipt of invoice or via ACH terms as set forth and in accordance with the Fee Schedule attached hereto as *Exhibit A*.
- 3.08 Payment upon Termination of Relationship.** Upon termination of this Agreement, **CLIENT** agrees to pay **ETC** amounts earned prior to termination of this Agreement.
- 3.09 Notices.** Should **CLIENT** be notified by any federal regulator or employee of potential non-compliance with ACA, **CLIENT** agrees to immediately (within 48 hours of receipt of notice) notify **ETC** and provide **ETC** with notice via first class mail return receipt requested as well as via email to Alicia@etctracking.com and alerts@etctracking.com **CLIENT shall also call ETC at 210-323-7846 to advise of Notice and confirm receipt of notice by ETC.** Upon receipt of notice, **ETC** agrees to assist in responding to said notice and to consult with **CLIENT** on appropriate method by which response to notice should be handled.
- 4. Miscellaneous**
- 4.01 Amendments.** This Agreement may only be amended by written agreement by either party and only enforceable after countersigned by other party.
- 4.02 Severability.** In the event any provision of this Agreement becomes unenforceable or void, such shall not invalidate any other provision of this Agreement.
- 4.03 Assignability.** No assignment of this Agreement of the rights and obligations hereunder will be valid without the written consent of the non-assigning party.
- 4.04 Entire Agreement.** This Agreement constitutes the entire agreement of the parties and supersedes any prior understandings or oral or written agreements between **CLIENT** and **ETC** on the matter contained herein.
- 4.05 Governing Law.** This Agreement is being executed and delivered and is intended to be performed in the State of Texas, County of Bexar, and the laws of Texas shall govern the validity, construction, enforcement and interpretation of this Agreement.
- 4.06 Captions.** The captions contained herein are for reference purposes only and do not affect the meaning of this Agreement.

CLIENT and **ETC** have acknowledged their understanding of and agreement to the mutual promise written above by executing this Agreement.

AGREED:

By: *Alicia J. Hoff, JD*
Eligibility Tracking Calculators, LLC

Executed: **August 4, 2015**

By: _____
Client Signature

Printed Name: _____
On Behalf of RIVER ROAD ISD

Date: _____

ETC TRACKING EXHIBIT A

SERVICES PROVIDED AND FEE SCHEDULE for RIVER ROAD ISD

To prepare the Client for ACA compliance, ETC must load payroll for all employees (January 1, 2015 -- current).

1. SET UP/IMPLEMENTATION: Waived

2. ELIGIBILITY TRACKING – CONSULTING FEE

Part 1 of Compliance

- Identify potential employees eligible for district contributions that otherwise received unaffordable offer;
- Assist with determining Affordability;
- Collect necessary data and prepare *Forms 1094-C* and *1095-C* for Client filing with the US Department of Treasury;
- Consult with Client regarding ACA obligations and proper reporting; and

Part 2 of Compliance

- Prepare Marketplace Notice with language for eligibility;
- Prepare Business Associate Agreement Created between the two entities; and

Monthly Consulting Fee (Choose One):

- \$237.30 Flat Fee Per Month invoiced and due within 20 days of receipt
- \$225.44 Flat Fee paid via ACH on the ___ of each Month (discounted by approx. 5%).

Client Signature: _____ Printed Name: _____

Date: _____

ETC TRACKING EXHIBIT A1

Eligibility Tracking Calculators, LLC ACH Collections Authorization Form

In consideration for the Services provided to **RIVER ROAD ISD** by **Eligibility Tracking Calculators, LLC** I hereby authorize **Eligibility Tracking Calculators, LLC** to initiate recurrent debit entries as described below at the depository financial institution named below, hereinafter called DEPOSITORY, and to debit the same to such account for the amount and frequency listed below. I acknowledge that the origination of ACH transactions from CLIENT account and to **Eligibility Tracking Calculators, LLC's** account must comply with the provisions of the U.S. law.

Depository Name: _____ Branch _____

City: _____ State: _____ Zip: _____

Routing Number: _____ Account Number: _____

Checking Savings

Amount to be Debited: \$225.44

Frequency: Monthly beginning on the ___ Day of each Month

Beginning Month: January 2015

This authorization is to remain in full force and effect until end of the contract term as outlined in Services Agreement or until **Eligibility Tracking Calculators, LLC** has received written notification from RIVER ROAD ISD of its termination in such time and in such manner as to afford **Eligibility Tracking Calculators, LLC** and DEPOSITORY a reasonable opportunity to act on it. Termination of the ACH Debit in no way relieves CLIENT of its payment obligations to **Eligibility Tracking Calculators, LLC** as previously agreed.

Signature: _____

Date _____

On Behalf of RIVER ROAD ISD

Exhibit B

ETC EXEMPLAR DATED SUMMARY REPORT

RIVER ROAD ISD must provide ETC with data in a specific format as follows:

- Excel or CSV format;
- Organized or able to be organized via payroll period (not via individual employee with totals); and
- Cells are not to be merged and must be sortable for proper mapping by ETC (i.e. no subtotals, no totals, no subcategories breaking up the data).

TEMPLATE DATA NEEDED:

- Total hours for which pay is owed must be included (either in one column or multiple columns). If provided in multiple columns, **CLIENT** is responsible for advising of this so that **ETC** can combine the data accordingly.
- Employee Name that matches payroll records.
- Social Security Number - all 9 digits must be visible to ETC (password protect the file before sending if sent via email).
- Hourly Pay Rate or Salary Amount (assuming 40 hours per week for salaries).
- The **TOTAL** hours the employee was paid for within a pay period.
- Hire Date: First day in which an employee is owed wages.
- Term date is optional.
- If someone is out on Special Leave (USERRA, FMLA, JURY), ETC must be provided leave date and type of leave.
- Those hourly employees designated as Full-Time must be identified. Any formal promotions to Full-Time status must be provided to **ETC**.
- Employees' last known Address (information needed to complete *Forms 1094-C/1095-C*).

You will be provided a sample import file template upon execution of the Agreement. Note, it is not necessary that the columns be in the same order as noted in the template but the data needed in all columns must be included and identified with appropriate headings.

I understand that ETC will work to assist RIVER ROAD ISD in creating the ETC file template for up to 1 hour at no charge. For hours beyond this, I will be invoiced \$35.00 per hour on my first invoice.

Client Signature on behalf of RIVER ROAD ISD

Date

PRINTED NAME