VENDOR CONTRACT
(Goods and Services)

THIS VENDOR CONTRACT FOR GOODS AND SERVICES ("this Contract") is between RIVERSIDE ASSESSMENTS, LLC DBA RIVERSIDE INSIGHTS (the "Vendor") and the EL PASO INDEPENDENT SCHOOL DISTRICT ("District"). The Effective Date of this Contract is August 20, 2024 regardless of when executed. For and in consideration of the mutual covenants herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. **Term.**

1.1 Term. The term of this Contract shall be for a period from August 20, 2024 through August 19, 2025, [with 0 year(s) annual renewal(s)] unless earlier terminated in accordance with this Contract. Annual renewals, if any, shall be at the sole discretion of the District.

1.2 Non-Appropriation. In the event the Contract is awarded for a term greater than one year or extending beyond the District's current budget period, it will be subject to approval at the commencement of each of the District's budget years. Vendor agrees that the District has the continuing right to terminate this Contract without notice at the end of a District budget period in which funds for this Contract are not appropriated. In such event the Contract may be terminated as soon as practicable after the event of non-appropriation or upon 30-days' prior written notice whichever provides the longest notice.

2. **Cancellation/Termination.**

2.1 Termination. This Contract may be terminated as follows: (a) by either party in the event of material breach of this Contract by the other party which continues more than thirty (30) days after written notice of default from the non-breaching party to the breaching party; or (b) by the District at its option: (i) if Vendor fails, as determined by the District's representative, to satisfactorily perform the duties set out in this Contract, comply with any covenant herein required or breach any warranty provided herein; becomes insolvent, files or has filed against it a petition in bankruptcy, proposes or accomplishes any dissolution, liquidation, composition, financial reorganization or recapitalization with creditors; (ii) if a receiver, trustee, custodian, or similar agent is appointed or takes possession of any property or business of Vendor; (iii) if, at the expiration of each District budget period occurring during the term of this Contract, funds for this Contract are not appropriated as provided in Section 1.2 above; or (iv) with or without cause upon thirty days prior written notice from the District to Vendor. In the event of early termination of the Contract for any reason, the total compensation which may be claimed by Vendor under this Contract shall be limited [subject to other limitations in this Contract or applicable law] to the payment for the conforming Goods and/or Services timely provided by the date of termination.

2.2 Effect. Within forty-five (45) calendar days of the effective date of completion, or termination or expiration of this Contract, Vendor shall submit to District its claims, in detail, for the monies owed by District for Services satisfactorily performed or Goods delivered and accepted under this Contract through the effective date of termination. **Failure by Vendor to submit its claims within forty-five (45) calendar days shall negate any liability on the part of District and constitute a waiver by Vendor of any and all right or claims to collect monies that Vendor may rightfully be otherwise entitled to for Services satisfactorily performed or Goods delivered under this Contract.** Regardless of how this Contract is terminated, Vendor shall effect an orderly transfer to District or to such person(s) or firm(s) as the District may designate, at no additional cost to District. Upon the effective date of expiration or termination of this Contract, Vendor shall cease all operations of Services being performed or delivery of Goods by Vendor, or any of its subcontractors, pursuant to this Contract. All completed or partially completed documents, papers, records, charts, reports, and any other materials or information produced, or provided to Vendor, in connection with the Services rendered by Vendor under this Contract, regardless of storage medium, shall be transferred to District. Such record transfer shall be completed within thirty (30) calendar days of the termination date and shall be completed at Vendor's sole cost and expense. Payment of compensation due or to become due to Vendor is conditioned upon delivery of all such documents.

3. **Right to Assurance.** Whenever the District in good faith has reason to question the Vendor's intent to perform, the District may demand that the Vendor give written assurance of its intent to perform. In the event that a demand is made and no assurance is given within five business (5) days, the District may treat this failure as an anticipatory repudiation of the Contract.

4. **Remedies.** In the event of default of this Contract by Vendor, the District shall have all of, and may exercise one or more of, the following rights and remedies: (a) the right to recover damages; (b) the right to seek injunctive relief; (c) the right to seek declaratory relief; (d) the right to off-set and/or retain from payments otherwise due to Vendor damages, fees, and costs sustained or incurred by the District in connection with such breach; (e) the right to terminate this Contract as provided herein; and (f) any of its rights and remedies in law or equity. In no event shall District's action of terminating this Contract, whether for cause or otherwise, be deemed an election of District's remedies, nor shall such termination limit, in any way, at law or at equity, District's right to seek damages from or otherwise pursue Vendor for any default hereunder or other action.

5. **Force Majeure.** If by reason of Force Majeure (i.e. acts of God, strikes, lockouts, or other industrial disturbances, etc.), either party hereto shall be rendered unable, wholly or in part, to carry out its obligations under this Contract, then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

6. **Goods and Services to Be Delivered.**

6.1 Delivery, Packaging and Acceptance of Goods.

A. Vendor agrees to provide the Goods listed and described in Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes [or any subsequent Goods required to be delivered to the District under this Contract] (collectively, the "Goods"). Unless otherwise stated in Exhibit "A", the Goods shall be delivered in accordance with the following Standard Delivery Terms:

(i) F.O.B. District's James Gamble Facility, 4900 Woodrow Bean Drive, El Paso, Texas 79924.

(ii) Goods will be packed in accordance with good commercial practice and in a manner which will facilitate securing the lowest transportation costs, conform to requirements of common carriers and any applicable specifications. Each shipping container shall be clearly and permanently packed and identified with: (a) Vendor's name and address; (b) if applicable, consignee's name, address and purchase order and bid number; (c) container number and total number of containers, e.g. box 1 of 4 boxes; and (d) the number of the container bearing the packing slip. Vendor shall bear cost of packaging unless otherwise provided. The District's count or weight determination shall be final and conclusive on shipments not accompanied by packing slips/lists. The Goods will be delivered with an Operator's Manual and a Maintenance and Parts Manual, if one exists.

(iii) The District assumes no liability for Goods delivered in damaged or in unacceptable condition. The Vendor shall handle all claims with insurance carriers, and in the event that Goods are damaged in transit shall ship replacement Goods immediately upon notification by the District of damage. Delivery will be made between the hours of 8:00 a.m. and 3:30 p.m. (MDT/MST) unless otherwise specified by the District in writing. Vendor is not authorized to ship the Goods under reservation and no tender of a Bill of Lading will operate as a tender of Goods. The District shall have the right to inspect the Goods at delivery before accepting them and no Goods will be accepted until written acceptance is provided by authorized District Representative. Any written warranties will commence upon acceptance of the Goods by the District.

(iv) Repair and Replacement Information. As the situation requires, the Vendor shall provide alternative quotes for both repair and replacement of any damaged Goods, if

appropriate to the request. In the event the cost of repair is equal to or greater than seventy-five percent (75%) of the price of a new item, Vendor shall provide a written recommendation to the District representative regarding the relative merits of repair or replacement of the item. Failure to adhere to these requirements may be grounds for the termination of the Contract.

6.2 Delivery of Services and Standard of Care.

A. Delivery. Vendor agrees to provide the Services listed and described in Exhibit "B," which is attached hereto and incorporated herein by reference for all purposes (collectively, the "Services"). Nothing contained in this Contract shall require District to pay for any unsatisfactory Services, as determined by District's representative, or for work that does not comply with the terms of this Contract.

B. Standard of Care. If the Services are performed by a non-professional Vendor, Vendor represents, covenants, and warrants that it will devote its good faith, best efforts in provision of the Services and will provide the Services with reasonable care and skill and in a good and workmanlike manner. If the Services are considered Professional Services, the Vendor further represents, covenants and warrants that it will provide the Services using the degree of care and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances in the same locale. Services will be provided in a manner consistent with industry standards and will conform to the required specifications set out herein, and shall be delivered in compliance with all applicable laws, rules, regulations, procedures and consistent with industry standards.

6.3 Warranties for Goods and Services.

A. Express Warranties. Vendor expressly represents, warrants and covenants, that:

(i) Vendor will devote its good faith, best efforts in provision of the Goods and/or Services.

(ii) Vendor has and will retain sufficient financial condition, working capital, experience, expertise, personnel, licenses, certifications, and authority to provide the Goods and/or Services, that it will provide copies of its licenses and certifications to the District upon request, and will comply with the vendor ethics policies of the District.

(iii) The Goods furnished conform with the specifications, drawings, descriptions and that the Services promised will adequately address the Scope of Services set forth in the Contract and its exhibits, the District's Request for Proposal, Request for Competitive Sealed Proposal or other solicitation for the Goods and/or Services contracted for herein (the "Solicitation Document"), and to any sample(s) furnished by Vendor, if any, in connection with the Contract or in response to the District's Request for Proposal.

(iv) The Goods and/or Services shall be delivered in compliance with all applicable laws, rules, and regulations, with District policies and procedures, and consistent with industry standards.

(v) In the event of a conflict between the specifications, drawings and descriptions of Goods to be provided, the specifications shall govern. In the event of a conflict between the Solicitation Document and the Contract, the Contract shall prevail.

(vi) All Goods are new and the quality of the Goods is consistent with or better than industry standard.

B. Implied Warranties.

(i) The Goods comply with all implied warranties, including but not limited to, the implied warranty of merchantability and fitness for the particular purpose for which they were obtained. The Vendor agrees to provide the Services agreed to herein in a good and workmanlike manner.

(ii) No implied warranties for Goods and/or Services or provided in connection with this Contract are waived modified or excluded by any provision of this Contract, or any terms

and conditions included in any document prepared by the Vendor, and any provision so intended, or interpreted shall be treated as void *ab initio*.

C. Safety Warranty and Provision of Material Safety Data Sheets. As applicable, the Goods supplied to the District under this Contract shall conform to applicable standards promulgated by the U.S. Department of Labor under the Occupational Safety and Health Act ("OSHA") of 1970. In the event the Goods do not conform to OSHA standards, the District will be permitted to refuse or return the non-conforming Goods for correction or replacement at the Vendor's expense. Where Goods to be delivered under this Contract require the maintenance of Material Safety Data Sheets ("MSDS"), a copy of the relevant MSDS will be made available to the District's representative prior to delivery of the relevant Goods.

6.4 No Warranties by District. No review, consent, or approval by the District of any documents prepared by Vendor shall constitute a representation or warranty by the District of the legality, suitability, or quality of the same or content thereof.

6.5 Reservation of Rights. The District reserves the right to use its own staff or any other third-party to provide the same or similar goods and/or services to the Goods and/or Services described herein.

7. **Tax Exemption**. The District is exempt from Federal Excise, State or City Sales Tax under State Law and such obligations are included in the price under this Contract. The District will furnish a tax exemption certificate, if required.

8. **Invoicing and Payment.** Compensation to Vendor is set forth on Exhibit "C," attached hereto and incorporated herein. Except as otherwise provided in Exhibit "C," Vendor shall invoice the District on or before the thirtieth (30^{th}) day of each month, for the portions of the Goods delivered and accepted and/or Services performed during the preceding month at rates set forth on Exhibit "C." Reimbursable Expenses are included in the hourly rate or not to exceed pricing for Services unless specifically excluded. If excluded, Reimbursable Expenses will be itemized separately and documented by receipts for invoicing purposes. Invoices for Goods and/or Services shall not include Federal Excise, State or City Sales Tax for which an Independent School District is exempt under State law. The District shall furnish a tax exemption certificate, if required. The aggregate compensation from the District to Vendor for the Goods and/or Services shall not exceed the maximum figures stated in Exhibit "C." Vendor shall not be entitled to receive payments or amounts under the Contract in excess of the amounts appropriated for the then-current budget period of the District. The District shall make payment to the Vendor for amounts determined to be properly due, not later than thirty (30) days after its receipt of the Vendor's invoice or as required by the Texas Prompt Payment Act (Chapter 2251 of the Texas Government Code) or its successor. The maximum interest rate on any past due payments by the District to Vendor shall be limited to the rate provided by Section 2251.025 of the Texas Government Code or its successor. The District shall not be required to make any payments to Vendor at any time Vendor is in default under this Contract.

9. **Confidential/Proprietary Information.**

9.1 Confidential Information/Materials. Vendor understands that, during the term of this Contract, Vendor will have access to certain information belonging to the District and designated as confidential by the District or not generally known by non-District personnel (collectively, the "Confidential Information"). During the term of this Contract and at all times thereafter, Vendor shall not, without the prior written consent of the District, do any of the following, directly or indirectly: (a) use any of the Confidential Information for Vendor's own purposes or for the purposes of any person or entity other than the District; and/or (b) disclose any of the Confidential Information to any third party, except as reasonably and in good faith required in connection with performance of this Contract by Vendor. Vendor further shall take all steps necessary to prevent disclosure of Confidential Information by any other person or entity, during the term of this Contract and at all times thereafter, without the prior written consent of the District. All data, disks, lists, financial records, other records, documents, property, information, specifications, and materials of the District relating to the Goods and/or Services provided to Vendor during the term of this Contract, as well as all copies thereof (collectively the "Materials"), shall be and remain the sole and exclusive

property of the District. None of the Materials shall be retained by Vendor, or shall be transmitted to anyone at any time, either now or in the future, except as reasonably and in good faith required in connection with performance of this Contract by Vendor. Upon termination of this Contract, or upon request by the District, Vendor shall promptly return the Materials to the District. The Materials are included within the definition of Confidential Information. Vendor further agrees that, if it receives information or records concerning any student, it shall not disclose the same, except as permitted by the Family Educational Rights and Privacy Act a/k/a FERPA.

9.2 Intellectual Property Rights. If Vendor, as part of the delivery of the Goods and/or Services, will be working with the District, [all references to Vendor and District in this paragraph shall include their respective agents, employees and representatives], to create and/or develop materials or other work products, including visual, audio, written and graphic material (the "Resulting Work Product") for which the Vendor will receive any consideration provided for in this Contract, the Resulting Work Product (including all of Vendor's contributions to the creation or development of the Resulting Work Product), and any state or federal trademark rights, copyrights, patents or other intellectual property rights associated with the Resulting Work Product (collectively, the "Intellectual Property Rights") will at all times remain the exclusive property of the District. Vendor agrees to assist the District in any way necessary, including executing any assignments or other documents, required to document the District's ownership rights in the Resulting Work Product and the associated Intellectual Property Rights, as applicable; including taking any action necessary for the District to secure state or federal registration of its Intellectual Property Rights in the name of the District. No separate or additional consideration, other than the consideration paid under this Contract, will be provided by the District for any provision of any assignments or conveyance of the Resulting Work Product, or of Intellectual Property Rights associated with the Resulting Work Product. The Vendor shall assure that its authorized subcontractors or agents, not under its control as employees, are aware of this provision and are contractually bound thereby.

10. **Vendor Records and Retention.** The District or its authorized representative shall be afforded unrestricted access to and be permitted to inspect and copy all of the Vendor's records, which shall include but not be limited to accounting records (hard copy as well as computer readable data), correspondence, instructions, drawings, receipts, vouchers, memoranda and similar data relating to this Contract. The Vendor shall preserve all such records for a period of five (5) years, after the District makes final payment and all other pending matters are closed, or for such longer period as may be required by law, after final payment under this Contract, including any extension thereof. To the extent that the requirements of 2 CFR § 200.333 apply to the Contract, financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award, must be retained for the Vendor for only the period required by 2 CFR § 200.333 and the five (5) year requirement of this provision shall apply to all other documents. If no federal funds are expended by the District for the Contract, the five (5) year retention requirement provided herein will apply.

For a Contract involving at least $1 million in Goods/Services, the following provision shall apply: Vendor shall preserve for the duration of this Contract all "contracting information" within the meaning of Texas Government Code Section 552.003(7) et. seq. relating to this Contract (the "Contracting Information") as provided by the records retention requirements applicable to the District. Vendor shall provide to the District, upon its request, any Contracting Information that is in the custody or possession of Vendor. Upon completion of this Contract, Vendor shall either provide at no cost to the District all Contracting Information in the custody or possession of Vendor or instead preserve all Contracting Information as provided by the records retention requirements applicable to the District. Pursuant to Texas Government Code Section 552.372(b), the following notice is given to Vendor: The requirements of Subchapter J, Chapter 552, Government Code, may apply to this Contract, and Vendor agrees that the Contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that Subchapter.

11. **Indemnification.**

11.1 **General Indemnification. Vendor agrees to INDEMNIFY, DEFEND, AND HOLD HARMLESS the District and its trustees, officers, agents, representatives and employees (collectively, the "Indemnified Parties") from and against, any and all claims, causes of action, liability, lawsuits, judgments, costs, liens, losses, expenses, fees (including reasonable attorney's fees**

and costs of defense), proceedings, actions, demands, and suits of any kind and nature, including but not limited to, personal injury (including death), property damage, or other harm for which recovery of damages is sought that may arise out of or be caused by the negligent or intentional act, error, or omission of Vendor, or that of its agent, officer, representative, employee, or sub-consultant (collectively "Vendor Affiliate") while in the exercise or performance of the rights or obligations under this Contract. The indemnity provided for in this paragraph shall not apply to any liability resulting from the negligence of the Indemnified Parties, in instances where such negligence causes personal injury, death, or property damage. In the event Vendor and/or a Vendor Affiliate and any Indemnified Party are found jointly liable by a Court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the District, its employees/officials under Texas law and without waiving any defenses of District its employees/officials under the Texas Tort Claims Act or other Texas law. Vendor shall promptly advise District, in writing, of any claim or demand against an Indemnified Party, Vendor and/or a Vendor Affiliate known to Vendor, related to or arising out of activities of Vendor and/or a Vendor Affiliate under this Contract. The provisions of this Section are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

11.2 **Intellectual Property Rights Indemnification. Vendor shall INDEMNIFY, DEFEND, AND HOLD HARMLESS the District, its elected officials, employees, officers, and representatives harmless from and against any and all liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees) for infringement of any patent, copyright or similar property right including, but not limited to, misappropriation of trade secrets and any infringement by Vendor and its employees and consultants, in connection with any license provided, any deliverable or any Service furnished hereunder, and used by either the District or Vendor within the scope of this Contract (unless said infringement results directly from Vendor's compliance with District's written standards or specifications).**

11.3 Defense Counsel. In connection with any indemnification obligation in this Section 11, District, in its sole discretion shall have the right to approve or select defense counsel to be retained by Vendor in fulfilling its indemnity obligation hereunder, unless such right is expressly waived by District in writing. District reserves the right to provide a portion, or all of its own defense, at its own expense; however, District is under no obligation to do so. Any such action by District is not to be construed a waiver of Vendor's obligation to defend District or a waiver of Vendor's obligation to indemnify District pursuant to this Section. Vendor shall retain District-approved defense counsel within seven (7) business days of District's written notice that District is invoking its right to indemnification under this Contract. If Vendor fails to retain counsel within such time period, District shall have the right to retain defense counsel on its own behalf, and Vendor shall be responsible for all costs incurred by District until such time as the Vendor provides a defense.

11.4 Indemnity Survival. The provisions of this Section 11 are solely for the benefit of the parties hereto, and not intended to create or grant any rights, contractual or otherwise, to any other person or entity and the obligations herein shall survive the termination or expiration of this Contract.

12. **Work On School District Campuses.**

12.1 Notice Before Entry During School Hours and Decorum on District Campuses. Vendor acknowledges that work may be performed in connection with an educational facility that is currently occupied and in use. It is imperative that Vendor's deliveries and/or performance of Services not interfere with, interrupt, disturb, or disrupt District's normal operations or facilities. During school hours, when entry is not made on an emergency basis, Vendor shall notify the District in advance and arrange an escort for Vendor's representative.

12.2 Compliance with Campus Rules. Vendor agrees to and shall comply with all rules, regulations and requirements of the District and the school campus on which work is to be performed, and shall take all steps necessary to protect and guard the safety of the employees, students and invitees of District. Vendor recognizes the ongoing school activities in proximity with its onsite activities shall result in the need for prompt and effective coordination of its Services with those involved in the ongoing use of the

premises. The Vendor shall not permit employment of unfit persons or persons not skilled in tasks assigned to them. The Vendor shall be responsible for the actions of its employees and its subcontractors. The Vendor recognizes the site is a public-school campus, and will prohibit the possession or use of alcohol, controlled substances, tobacco, and any prohibited weapons on the site and shall require adequate dress of the Vendor's forces consistent with the nature of the work being performed.

13. **Criminal Background Checks.** Vendor shall comply at its sole expense with the requirements of Section 22.0834 of the Texas Education Code, "Criminal History Record Information Review of Certain Contract Employees," any applicable rule(s) adopted by the Texas Commissioner of Education, District Board Policy CH (Legal) and (Local), and other policies and administrative requirements relating to or arising from such statute and rule(s); shall ensure that no covered employee of Vendor or of any subcontractor [if authorized] with a disqualifying criminal history performs Services under the award at or for the District; and shall timely provide written certifications thereunder in such form and substance as requested by the District. Vendor understands that any failure to comply with the requirements of this Section may be grounds for termination of its Contract with the District.

14. **Relationship. This Contract does not constitute a joint venture or partnership of any kind between the parties hereto. In addition, the parties expressly understand and agree the provision of Goods and/or Services is and shall be considered independent contractor work performed by Vendor, using Vendor's own talents, contacts, tools, vehicles, and equipment, and that nothing in this Contract in any way creates an express or implied contract of employment between the District and Vendor. Vendor is not and shall not be an employee of the District for any purpose. Vendor is exclusively responsible for all administrative matters relating to its status hereunder or the Goods and/or Services, including without limitation, travel, lodging, and other expenses, any withholding and payment of all federal, state and local income taxes, FICA, FUTA, or other employment-related taxes, workers' compensation insurance, fringe benefit programs, or other benefits of any kind. Vendor represents that it is an independent contractor providing goods and/or services for hire similar to the Goods and/or Services to the general public, that it has full authority and capacity to enter into this Contract and provide the Goods and/or Services, and that execution or performance of this Contract by Vendor shall not violate any other agreement or covenant or any law.**

15. **Federal Edgar Provisions.** Vendor acknowledges in the event federal funds are used to fund the Goods and/or Services delivered under the Contract, Vendor will abide by all applicable federal laws, rules, and regulations, executive orders, and policies, procedures and directives applicable to the Contract, including but not limited to the following:

15.1 Contractual Remedies. Vendor agrees that it will comply with all administrative, contractual, legal remedies, sanctions, and penalties for violation or breach that are included in this Contract.

15.2 Wage and Hour Requirements. To the extent this Contract involves the employment of mechanics or laborers, Vendor agrees to comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5), which requires Vendor to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. This provision will not apply to the District's purchases from Vendor of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

15.3 Clean Air Act and EPA. Vendor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401 -7671q) and the Federal Water Pollution Control Act, as amended (33 USC 1251-1387) and agrees to promptly notify the District of any violation.

15.4 Debarment and Suspension. Vendor has certified that neither the Vendor nor its principals were listed on the government-wide exclusions in the System for Award Management ("SAM") that neither the Vendor nor its principals are debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549 at the time this Contract was executed. Vendor further agrees on behalf of itself and its principals, to immediately provide written notification to the District if, at any time following execution of this Contract, Vendor or one of its principals

learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances, or if Vendor or one of its principals is later listed on the government-wide exclusions in SAM, or is debarred, suspended, or otherwise excluded by agencies or declared ineligible under statutory or regulatory authority other than Executive Order 12549. Failure to notify the District of erroneous information within five (5) business days of change in circumstances shall be grounds for immediate termination, but termination of Vendor shall not be an election of remedy by the District.

15.5 Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352. Vendor confirms its certification to the District that:

A. No Federal appropriated funds have been paid or will be paid, by or on behalf of Vendor, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

B. Vendor further certifies that if any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Vendor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, Vendor understands and agrees that the provisions of 31 U.S.C. § 3801 et seq., providing administrative remedies for false statements, apply to this certification and disclosure, and that this certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Finally, Vendor agrees that it will require the language of this certification be included in the award documents for all lower-tier contractors it hires, and that it will ensure all subcontractors make the same certification in connection with work done under the Contract. The certification in this Section is a material representation of fact upon which the District has placed its reliance.

15.6 Compliance with Mandatory Provisions of State Energy Conservation Plan. Vendor shall comply with the all mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6201), if any.

15.7 Compliance with Solid Waste Disposal Act. If the District purchased the same item or items from the Vendor under this Contract, which were purchased by the District during the preceding fiscal year, and the prior purchase exceeded $10,000, Vendor agrees that it will comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, where applicable, and that it will provide information and certifications required by the District confirming estimates and otherwise evidencing such compliance.

15.8 Equal Employment Opportunity Clause. Vendor represents, warrants and certifies that, during the performance of the Contract:

A. it will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Vendor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Vendor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination;

B. it will, in all solicitations or advertisements for employees placed by or on behalf of the Vendor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin;

C. it will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with Vendor's legal duty to furnish information;

D. it will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the commitments under Section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment;

E. it will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor;

F. it will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders;

G. in the event of Vendor's non-compliance with the nondiscrimination clauses of the Contract or with any of such rules, regulations, or orders, the Contract may be canceled, terminated or suspended in whole or in part and the Vendor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law; and

H. it will include the provisions of paragraphs (A) through (G) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. Vendor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event Vendor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the Vendor may request the United States to enter into such litigation to protect its interests.

15.9 Termination for Convenience. Notwithstanding any provision to the contrary contained in this Contract, if federal funds are used to fund the purchase represented by this Contract, the District reserves the right to terminate this Contract for convenience. In such event, the District agrees it will be responsible for all legitimate charges with respect to periods prior to the termination.

16. **Miscellaneous.**

16.1 Assignment/Delegation. Without the prior written consent of the other party, no party shall have right or power to assign this Contract in whole or in part, or to delegate or sub-contract any duties hereunder in whole or part. Any attempted assignment or delegation by Vendor shall be wholly void and ineffective for all purposes unless made in the conformity with this paragraph.

16.2 Governing Law and Venue. **THIS CONTRACT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, AND IS PERFORMABLE IN EL PASO COUNTY, TEXAS.**

16.3 No Waiver of Immunity. The District reserves, and does not waive, its rights of sovereign/governmental immunity and similar rights, immunities and rights of its officials and employees, under the Texas Tort Claims Act. Nothing herein shall be a consent to suit.

16.4 No Third-Party Beneficiaries. This Contract, and every provision thereof, shall be binding upon and shall inure to the benefit of the parties and their respective successors and permitted assigns. No term or provision of this Contract shall benefit or obligate any person or entity not a party to it. The parties hereto shall cooperate fully in opposing any attempt by any third person or entity to claim any benefit, protection, release or other consideration under this Contract.

16.5 Context. Wherever the context shall require, the singular shall include the plural, and the male gender shall include the female gender and the neuter, and vice versa.

16.6 Attorney's Fees. In the event that either party brings an action to enforce or interpret any provision of this Contract, the prevailing party will be entitled to recover its costs and expenses including, without limitation, reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which it shall be entitled to receive, as determined by the trier of fact in such dispute.

16.7 Waiver. No waiver, change, modification or discharge by either party hereto of any provision of this Contract shall be deemed to have been made or shall be effective, unless expressed in writing and signed by the party to be charged. A waiver by either party of a breach of any of the terms, conditions, covenants or guarantees of this Contract shall not be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, condition, covenant or guarantee herein contained. Further, any failure of either party to insist in any one or more cases upon the strict performance of any of the covenants of this Contract, or to exercise any option herein contained, shall in no event be construed as a waiver or relinquishment for the future of such covenant or option. No act or omission by a party shall in any manner impair or prejudice any right, power, privilege, or remedy available to that party hereunder or by law or in equity, such rights, powers, privileges, or remedies to be always specifically preserved hereby.

16.8 Severability. Any provision, or part thereof, of this Contract held by a court of competent jurisdiction to be invalid or unenforceable shall not impair or invalidate the remainder of this Contract and the effect thereof shall be confined to the provision, or part thereof, so held to be invalid or unenforceable.

16.9 Time of Essence. Time is of the essence with respect to Vendor's obligations hereunder.

16.10 Public Records. Records relating to this Contract may be subject to disclosure pursuant to the Texas Public Information Act f/k/a Open Records Act, Section 552.001 et. seq. of the Texas Government Code. To the extent any of the Goods and/or Services under this Contract involve the exchange or creation of Public Information as defined by such Act, the Vendor shall make any such information, not otherwise exempted from disclosure under such Act, available in writing and electronically in Microsoft Word, Microsoft Excel and or Adobe Acrobat.

16.11 Notices. All notices to a party under this Contract shall be provided by certified mail, return receipt requested, to the address set forth for the respective party beneath its signature block in this Contract, or such other address as later provided by a party through written notice to the other party.

16.12 Advertising. Vendor shall not advertise or publish, without the District's prior consent, the fact that the parties have entered into this Contract, except to the extent necessary to comply with proper requests for information from a representative of the federal, state, or local government.

16.13 Right to Audit and Records Access. The District, or its authorized representative (including Texas Education Agency and the Comptroller General), shall be given reasonable access to records and rights to perform audits by the District's own personnel and/or an outside firm of consultants/auditors, in order to investigate the District's claims, the Services, and/or evaluate the performance of the Vendor. The Vendor agrees to provide full cooperation during this process. Performance of these functions shall be

conducted with proper notification per customary industry standards. Vendor agrees to maintain all required records for five (5) years after the District makes final payment and all other pending matters are closed.

16.14 Israel Certification. Pursuant to Texas Government Code Chapter 2271, if this Contract is valued at $100,000 or more and if the Vendor has at least ten (10) full time employees, then the Vendor represents and warrants to the District that the Vendor does not boycott Israel and will not boycott Israel during the term of this Contract. Vendor means an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations that exists to make a profit. Vendor does not include a sole proprietorship.

16.15 Firearms Certification. The Vendor represents, warrants, and covenants to the District that the Vendor: (a) does not have any practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association; and (b) will not discriminate against a firearm entity or firearm trade association during the term of this Contract. For purposes of this provision, the terms "firearm entity", "firearm trade association" and "discriminate against a firearm entity or a firearm trade association" shall have the same meaning as set forth in Government Code Section 2274.001 et. seq.

16.16 Energy Company Certification. Pursuant to Texas Government Code Chapter 2274, if this Contract is valued at $100,000 or more and if the Vendor has at least ten (10) full time employees, then the Vendor represents, warrants, and covenants to the District that the Vendor, within the meaning of Texas Government Code Section 809.001, (a) does not boycott energy companies; and (b) will not boycott energy companies during the term of this Contract.

16.17 Entire Contract/Modification. **THIS CONTRACT IS THE FINAL, COMPLETE, AND ENTIRE CONTRACT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER AND SUPERSEDES ALL PRIOR COMMUNICATIONS, ORAL OR WRITTEN, BETWEEN THE PARTIES RELATING TO MATTERS HEREIN. THIS CONTRACT MAY BE MODIFIED OR RESCINDED ONLY BY A WRITTEN INSTRUMENT SIGNED BY BOTH PARTIES TO THE CONTRACT BY AND THROUGH THEIR DULY AUTHORIZED AGENTS. Changes to this Contract may only be made by mutual written agreement of the parties, which must contain the authorized signature of the District's Superintendent or the President of the District's Board of Trustees.** No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract shall not be relevant to determine the meaning of this Contract even though the accepting or acquiescing party has knowledge of the performance and opportunity for objection. In the event of any conflict between this Contract and the General Terms and Conditions of the contract attached to the Solicitation Document, the terms of this Contract shall control.

[Signatures on next page]

EXECUTED as of the 29 day of July, 2024.

EL PASO INDEPENDENT SCHOOL DISTRICT

By: _____
Diana Sayavedra, Superintendent

APPROVED AS TO FORM

By: _____
Jeanne C. Collins, General Counsel

Signed: Wednesday, July 31, 2024

ADDRESS FOR NOTICE:

El Paso Independent School District
Attn: Superintendent
1014 N. Stanton Street
El Paso, Texas 79902

With Copy to:
General Counsel
El Paso Independent School District
1014 N. Stanton Street
El Paso, Texas 79902

VENDOR: RIVERSIDE ASSESSMENTS, LLC
DBA RIVERSIDE INSIGHTS

By: Jim Bowler
Jim Bowler, General Manager, Classroom

ADDRESS FOR NOTICE:

One Pierce Place Suite 900W
Itasca, IL 60143

EXHIBIT "A"
Goods to Be Delivered and Pricing

If Delivery By Unit Pricing:

Item Description	Unit	Units Required	Price Per Unit	Total Price
Cognitive Abilities Test (CogAT) Form 8 Online Testing Levels 5/6-17/18	Per Test	6,500	$15.95	$103,675.00
ONSITE COGAT	Per Professional Development	1	$3,500.00	$3,500.00
			TOTAL	**$107,175.00**

Other Description of Goods To Be Delivered:
Vendor will also provide District with Custom Webinars at no charge.

See Exhibit "B".

EXHIBIT "B"
Scope of Services and Deliverables

Scope of Services:

Place(s) of Provision of Services:
Districtwide: All elementary, PK-8, middle, and high school campuses in the District.

Date(s)/Period of Provision of Services:
August 20, 2024 – August 19, 2025

Description of Services:

Vendor will provide District with the Cognitive Abilities Test (CogAT) which is a standardized test designed to measure a student's reasoning abilities in three key areas: verbal, quantitative, and nonverbal reasoning. These abilities are essential for academic success and are not necessarily tied to the specific content learned in school.

The CogAT can be administered to students from kindergarten through 12th grade. The test is a tool designed to assess and support the cognitive development of students, which will help educators and parents make informed decisions about a child's educational needs and potential. Cogat can also be used to identify students who may benefit from gifted and talented programs by assessing their potential rather than just their academic achievements.

CogAT professional development is entirely customizable. The professional development will include:

Custom Webinar	1 hour; can accommodate 100 people	Customizable webinar (CogAT)	Custom webinar tailored to the District's specific requirements and interests. Webinar will offer targeted insights and strategies designed to address your unique challenges and goals. Topics include custom onboarding, proctoring, assessing and understanding report data.
Custom Webinar Data Workshop	Up to 3 hours; can accommodate 100 people	Customizable webinar (CogAT)	Custom data workshop is designed to specifically work with District and District's data. There will be a dive deep into the assessment results to uncover insights to drive student success. A guide through data analysis and interpretation strategies will be provided to empower the participants to make informed decisions for students.
Onsite Training	Up to 6 hours; can accommodate 75-80 people	Customizable onsite training (CogAT)	Personalized onsite instruction and collaborative discussions tailored to the District's goals.

Deliverables:

Report or Other Deliverable	Expected Delivery Date
Cognitive Abilities Test (CogAT)	August 20, 2024
Onsite CogAT (Includes Custom Webinars)	At the District Discretion and before August 19, 2025

EXHIBIT "C"
Compensation

Compensation [mark/complete one or more as applicable]:

N/A $_____ (Lump Sum/Fixed Price)

N/A Payable at completion.

N/A Quarterly Payments of $_____ beginning _____.

N/A Payable as follows:

$_____on _____

$_____on _____

$_____on _____

N/A $_____ per _____, (with a not to exceed cap of $_____)

N/A $_____ per hour, (with not to exceed cap of $_____, based on rates below) payable monthly based upon hours and types of Goods and Services provided and documented in invoice.

X Other [please explain]: District will pay a total of $103,675.00 for the Cognitive Abilities Test (CogAT) to be paid within 30 days after receipt of invoice and after satisfactory delivery and/or activation of all online materials. Additionally, District will pay $3,500.00 for Onsite CogAT professional development to be paid within 30 days after receipt of invoice and after receipt of all professional development services.

Expenses: [Description]: N/A

Total Compensation for Goods and Services Permitted under this Contract: Not to Exceed $107,175.00.

FOR ANY INITIAL TERM, THIS CONTRACT IS CONTINGENT UPON ITS UNDERLYING PROCUREMENT (BUY BOARD CONTRACT #653-21) BEING VALID FOR THE ENTIRE CONTRACT TERM; CONTRACT AND TOTAL COMPENSATION THEREIN BEING PROPERLY BUDGETED, WITH APPROVAL BY THE DISTRICT BOARD OF TRUSTEES AS APPLICABLE AND HAVING THE BENEFIT OF BETTER PRICING AS AVAILABLE DURING THE CONTRACT TERM.