



State of West Virginia

OFFICE OF THE STATE TREASURER
PHONE: 304-558-5000 or 1-800-422-7498
www.wvtreasury.com

RILEY MOORE
STATE TREASURER

STATE CAPITOL, ROOM E-145
1900 KANAWHA BOULEVARD, EAST
CHARLESTON, WV 25305

Bid Opportunity Notice

Solicitation Number: ARFP STO2200000002
Solicitation Description: Savings Plans Consulting Services
Deadline for Q&A: 10/13/2021 3:30 PM EST
Bid Closing Date and Time: 10/29/2021 11:00 AM EST

Dear Potential Bidder:

Your business has been identified as a potential vendor for the solicitation noted above.

Should your business be interested in this bid opportunity, please visit www.wvOASIS.gov, and click on the Vendor Self Service (VSS) Portal. At the welcome screen, please review announcements and log into your account or click on *View Published Solicitations* at the top portion of the page in order to view the *West Virginia Purchasing Bulletin*. You may view all bid opportunities, or you may search for the solicitation noted above by typing the solicitation number in the "keyword search" box. Additional information may be accessed by clicking on the summary or details of the solicitation. All modifications to solicitations prior to award will be noted as an "addendum" and also available at this same location; please make sure to review for Addenda before submitting a final response to a solicitation.

The above Solicitation is also cross-posted to the WV State Treasurer's Office web page. Please visit <https://www.wvtreasury.com/RFP-RFQ> and review this same page for Addenda or other information before submitting your final bid response.

Should you decide to bid on this opportunity, you may submit a response through the acceptable delivery methods including electronic submission via wvOASIS system, hand delivery, delivery by courier, secure email, or by facsimile; however, wvOASIS **does not** currently accept bids for Request for Proposals.

Solicitations prefaced with an "A" are agency-delegated bid opportunities expected to be \$25,000 or less, or, are considered exempt from the requirements of the WV Purchasing Division pursuant to W.Va. Code §12-3A-3 and §5-10B-3. Those prefaced with a "C" are central Purchasing Division solicitations that are expected to exceed \$25,000.

Should you have any questions regarding becoming a registered vendor with the State of West Virginia, please visit the vendor registration webpage within the WV State Purchasing Division at <http://www.state.wv.us/admin/purchase/VendorReg.html>.

WV State Treasurer's Office – Purchasing Division
Email: purchasing@wvsto.com / Phone: 304-558-5000



State of West Virginia
Agency Request for Proposals
Consulting

Proc Folder: 945944

Doc Description: Savings Plans Consulting Services

Reason for Modification:

Proc Type: Agency Master Agreement

Date Issued	Solicitation Closes	Solicitation No	Version	Phase
2021-09-30	2021-10-29 11:00	ARFP 1300 STO2200000002	1	Final

BID RECEIVING LOCATION

WEST VIRGINIA STATE TREASURERS OFFICE
322 70TH ST SE

CHARLESTON WV 25304
US

VENDOR

Vendor Customer Code:

Vendor Name :

Address :

Street :

City :

State :

Country :

Zip :

Principal Contact :

Vendor Contact Phone:

Extension:

FOR INFORMATION CONTACT THE BUYER

Alberta Kincaid
(304) 341-0723
alberta.kincaid@wvsto.com

**Vendor
Signature X**

FEIN#

DATE

All offers subject to all terms and conditions contained in this solicitation

INVOICE TO	SHIP TO
WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE CHARLESTON WV 25304 US	WEST VIRGINIA STATE TREASURERS OFFICE 322 70TH ST SE CHARLESTON WV 25304 US

Line	Comm Ln Desc	Qty	Unit of Measure	Unit Price	Total Price
1	Consulting Services for Financial Savings Plans	500.00000	HOUR		

Comm Code	Manufacturer	Specification	Model #
80171906			

Extended Description:
See Attached Specifications / Cost Sheet for further details.

SCHEDULE OF EVENTS		
<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	Vendor Questions Due 3:30pm	2021-10-13

	Document Phase	Document Description	Page 3
STO2200000002	Final	Savings Plans Consulting Services	

ADDITIONAL TERMS AND CONDITIONS

See attached document(s) for additional Terms and Conditions

REQUEST FOR PROPOSAL
West Virginia State Treasurer's Office
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SECTION ONE: GENERAL INFORMATION

- 1.1 Purpose:** The West Virginia State Treasurer's Office ("STO" or "Agency") is soliciting proposals from qualified vendors to establish a contract to provide consulting services on behalf of the following STO savings programs and/or their Boards, as set forth below.
- i. The West Virginia College Prepaid Tuition and Savings Program ("College Savings Program") established by West Virginia Code §18-30-1 et. seq. and the West Virginia College Prepaid Tuition and Savings Board of Trustees ("College Savings Board").
 - ii. The West Virginia Jumpstart Savings Program ("Jumpstart") established by the West Virginia Jumpstart Savings Act, codified at West Virginia Code §18-30A-1 et. seq. The Jumpstart Savings Program is presently in development and will begin operation on or about July 1, 2022. The statutorily established Board will undertake all prescribed duties and responsibilities for the program.
 - iii. The West Virginia Achieving a Better Life Experience Able Savings Program ("WV ABLE Program") established pursuant to West Virginia Code §16-48-1 et. seq. The WV ABLE Program does not have a Board.

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An RFP is generally used for the procurement of services in situations where price is not the sole determining factor and the award will be based on a combination of cost and technical factors (Best Value). Through its proposal, the bidder offers a solution to the objectives, problem, or need specified in the RFP, and defines how it intends to meet (or exceed) the RFP requirements.

By signing and submitting its proposal, the successful Vendor agrees to be bound by all the terms contained in this Request for Proposal ("RFP").

- 1.2 Term:** The initial term will be for three (3) years with the option of renewing upon the mutual written agreement of the parties for up to three (3) additional one (1) year periods, or until such time as the Treasurer awards a purchase order pursuant to a solicitation for the Services.

1.3 Schedule of Events:

Vendor's Written Questions Submission Deadline	Oct. 13, 2021 / 3:30pm EST
Addendum Issued (Tentative, as applicable)	Oct. 14, 2021
Technical Bid Opening Date	Oct. 29, 2021
Technical Bid Opening Time	11:00am EST
Cost Bid Opening Date	TBD
Oral Presentation	TBD

The STO will make effort to notify vendors originally included in the invitation notice of any addenda to this solicitation through direct notification; **however**, it is the Vendor's responsibility to check for updates in both wvOASIS.gov and the STO public web page before it responds with a proposal.

The **STO webpage address** is: <http://www.wvtreasury.com/RFP-RFQ>

The **wvOASIS webpage (Vendor Self Service Portal) address**, and general information for bid opportunities is <https://prod-fin-vss.wvoasis.gov/webapp/prdvss11/AltSelfService>.

Note: Responses for RFP Solicitations are not currently accepted via wvOASIS.

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SECTION TWO: INSTRUCTIONS TO VENDORS SUBMITTING BIDS

Instructions are attached.

INSTRUCTIONS TO VENDORS SUBMITTING BIDS

West Virginia State Treasurer's Office

1. **REVIEW DOCUMENTS THOROUGHLY:** The attached documents contain a solicitation for bids. Please read these instructions and all documents attached in their entirety. These instructions provide critical information about requirements that if overlooked could lead to disqualification of a Vendor's bid. All bids must be submitted in accordance with the provisions contained in these instructions and the Solicitation. Failure to do so may result in disqualification of Vendor's bid.
2. **MANDATORY TERMS:** The Solicitation may contain mandatory provisions identified by the use of the words "must," "will," and "shall." Failure to comply with a mandatory term in the Solicitation will result in bid disqualification.
3. **PREBID MEETING:** The item identified below shall apply to this Solicitation.

☒ A pre-bid meeting will not be held prior to bid opening.

☐ A **NON-MANDATORY PRE-BID** meeting will be held at the following place and time:

☐ A **MANDATORY PRE-BID** meeting will be held at the following place and time:

All Vendors submitting a bid must attend the mandatory pre-bid meeting. Failure to attend the mandatory pre-bid meeting shall result in disqualification of the Vendor's bid. No one person attending the pre-bid meeting may represent more than one Vendor.

An attendance sheet provided at the pre-bid meeting shall serve as the official document verifying attendance. The State will not accept any other form of proof or documentation to verify attendance. Any person attending the pre-bid meeting on behalf of a Vendor must list on the attendance sheet his or her name and the name of the Vendor he or she is representing.

Additionally, the person attending the pre-bid meeting should include the Vendor's E-Mail address, phone number, and Fax number on the attendance sheet. It is the Vendor's responsibility to locate the attendance sheet and provide the required information. Failure to complete the attendance sheet as required may result in disqualification of Vendor's bid.

All Vendors should arrive prior to the starting time for the pre-bid. Vendors who arrive after the starting time but prior to the end of the pre-bid will be permitted to sign in, but are charged with knowing all matters discussed at the pre-bid.

Questions submitted at least five business days prior to a scheduled pre-bid will be discussed at the pre-bid meeting if possible. Any discussions or answers to questions at the pre-bid meeting are preliminary in nature and are non-binding. Official and binding answers to questions will be published in a written addendum to the Solicitation prior to bid opening.

4. **VENDOR QUESTION DEADLINE:** Vendors may submit questions relating to this Solicitation to the STO Purchasing Division. Questions must be submitted in writing. All questions must be submitted on or before the date listed below and to the address listed below in order to be considered. A written response will be published in a Solicitation addendum if a response is possible and appropriate. Non-written discussions, conversations, or questions and answers regarding this Solicitation are preliminary in nature and are nonbinding.

Submitted emails should have the solicitation number in the subject line.

Question Submission Deadline: October 13, 2021 by 3:30pm

Submit Questions to: Alberta Kincaid

Physical Address: 322 70th Street S.E., Charleston, WV 25304

Fax: (304) 340-1518

Email: purchasing@wvsto.com

5. **VERBAL COMMUNICATION:** Any verbal communication between the Vendor and any State personnel is not binding, including verbal communication at the mandatory pre-bid conference. Only information issued in writing and added to the Solicitation by an official written addendum by the State Treasurer's Office (STO) Purchasing Division is binding.
6. **BID SUBMISSION:** All bids must be submitted electronically through wvOASIS, or, signed and delivered by the Vendor to the STO Purchasing Division at the address listed below on or before the date and time of the bid opening. Any bid received by the STO Purchasing Division staff is considered to be in the possession of the STO Purchasing Division and will not be returned for any reason. The STO Purchasing Division will not accept bids, modification of bids, or addendum acknowledgment forms via e-mail. Acceptable delivery methods include electronic submission via wvOASIS, hand delivery, delivery by courier, or facsimile.

The bid delivery address is:

WV State Treasurer's Office

Attn: Purchasing Division

322 70th Street S.E.

Charleston, WV 25304

A bid that is not submitted electronically through wvOASIS should contain the information listed below on the face of the envelope or the bid may be rejected by the STO Purchasing Division:

Note: Items in italics are for informational purposes only as a means of assisting Vendor in marking their bid submissions that may be physically delivered.

SEALED BID: *Brief Description of Project/Item*

BUYER: *Buyer Name listed above in item 4*

SOLICITATION NO.: *Document number from Solicitation*

BID OPENING DATE: *As stated in Solicitation and/or item 7*

BID OPENING TIME: *As stated in Solicitation and/or item 7*

FAX NUMBER: 304-340-1518 *(if submitting Bid via facsimile)*

Vendor accepts the risk of its Bid not being completely transmitted if sent via facsimile. Agency will not confirm bid/Solicitation details of any related documentation received via facsimile prior to bid opening and/or evaluation.

The STO Purchasing Division may prohibit the submission of bids electronically through wvOASIS at its sole discretion. Such a prohibition will be contained and communicated in the wvOASIS system resulting in the Vendor's inability to submit bids through wvOASIS. Submission of a response to an Agency Expression of Interest or Agency Request for Proposal is currently not permitted in wvOASIS.

For Agency Request For Proposal ("ARFP") Responses Only: In the event that Vendor is responding to a request for proposal, the Vendor shall submit one original technical and one original cost proposal plus 3 convenience copies of each to the STO Purchasing Division at the address shown above. Additionally, the Vendor should identify the bid type as either a technical or cost proposal on the face of each bid envelope submitted in response to a request for proposal as follows:

BID TYPE: **(This only applies to ARFP's)**

☐ Technical

☐ Cost

7. **BID OPENING:** Bids submitted in response to this Solicitation will be opened at the location identified below on the date and time listed below. Delivery of a bid after the bid opening date and time will result in bid disqualification. For purposes of this Solicitation, a bid is considered delivered when confirmation of delivery is provided by wvOASIS (in the case of electronic submission) or when the bid is time stamped by the official STO Purchasing time clock (in the case of hand delivery).

Bid Opening Date and Time: OCTOBER 29 2021 at 11:00 AM **EST**

Bid Opening Location: WV State Treasurer's Office
STO Purchasing Division
322 70th Street S.E.
Charleston, WV 25304

8. **ADDENDUM ACKNOWLEDGEMENT:** Changes or revisions to this Solicitation will be made by an official written addendum issued by the STO Purchasing Division. Vendor should acknowledge receipt of all addenda issued with this Solicitation by completing an Addendum Acknowledgment Form, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.
9. **BID FORMATTING:** Vendor should type or electronically enter the information onto its bid to prevent errors in the evaluation. Failure to type or electronically enter the information may result in bid disqualification.
10. **ALTERNATES:** Any model, brand, or specification listed in this Solicitation establishes the acceptable level of quality only and is not intended to reflect a preference for, or in any way favor, a particular brand or vendor. Vendors may bid alternates to a listed model or brand provided that the alternate is at least equal to the model or brand and complies with the required specifications. The equality of any alternate being bid shall be determined by the State at its sole discretion. Any Vendor bidding an alternate model or brand should clearly identify the alternate items in its bid and should include manufacturer's specifications, industry literature, and/or any other relevant documentation demonstrating the equality of the alternate items. Failure to provide information for alternate items may be grounds for rejection of a Vendor's bid.
11. **EXCEPTIONS AND CLARIFICATIONS:** The Solicitation contains the specifications that shall form the basis of a contractual agreement. Vendor shall clearly mark any exceptions, clarifications, or other proposed modifications in its bid. Exceptions to, clarifications of, or modifications of a requirement or term and condition of the Solicitation may result in bid disqualification. The STO is under no obligation to consider or negotiate any terms and conditions or alternative terms and conditions contained in the Vendor's proposals.
12. **COMMUNICATION LIMITATIONS:** Communication with the STO or any of its employees regarding this Solicitation during the solicitation, bid, evaluation or award periods, except through the STO Purchasing Division, is strictly prohibited without prior STO Purchasing Division approval.
13. **REGISTRATION:** Prior to Contract award, the apparent successful Vendor must be properly registered with the West Virginia Purchasing Division and must have paid the \$125 fee, if applicable.
14. **UNIT PRICE:** Unit prices shall prevail in cases of a discrepancy in the Vendor's bid.

15. PREFERENCE: Vendor Preference may be requested in purchases of motor vehicles or construction and maintenance equipment and machinery used in highway and other infrastructure projects. Any request for preference must be submitted in writing with the bid, must specifically identify the preference requested with reference to the applicable subsection of W. Va. Code § 5A-3-37, should include with the bid any information necessary to evaluate and confirm the applicability of the requested preference. A request form to help facilitate the request can be found at: <http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.

15A. RECIPROCAL PREFERENCE: The State of West Virginia applies a reciprocal preference to all solicitations for commodities and printing in accordance with W. Va. Code § 5A-3-37(b). In effect, non-resident vendors receiving a preference in their home states will see that same preference granted to West Virginia resident vendors bidding against them in West Virginia. A request form to help facilitate the request can be found at: <http://www.state.wv.us/admin/purchase/vrc/Venpref.pdf>.

16. SMALL, WOMEN-OWNED, OR MINORITY-OWNED BUSINESSES: For any solicitations publicly advertised for bid, in accordance with W.Va. Code § 5A-3-37(a)(7) and W.Va. CSR § 148-22-9, any non-resident vendor certified as a small, women-owned, or minority-owned business under W.Va. CSR § 148-22-9 shall be provided the same preference made available to any resident vendor. Any non-resident small, women-owned, or minority-owned business must identify itself as such in writing, must submit that writing to the STO Purchasing Division with its bid, and must be properly certified under W.Va. CSR § 148-22-9 prior to contract award to receive the preferences made available to resident vendors. Preference for a non-resident small, women-owned, or minority-owned business shall be applied in accordance with W. Va. § CSR § 148-22-9.

17. WAIVER OF MINOR IRREGULARITIES: The STO Director of Purchasing reserves the right to waive minor irregularities in bids or specifications.

18. ELECTRONIC FILE ACCESS RESTRICTIONS: Vendor must ensure that its submission in wvOASIS can be accessed and viewed by the STO Purchasing Division staff immediately upon bid opening. The STO Purchasing Division will consider any file that cannot be immediately accessed and viewed at the time of the bid opening (such as, encrypted files, password protected files, or incompatible files) to be blank or incomplete as context requires, and are therefore unacceptable. A Vendor will not be permitted to unencrypt files, remove password protections, or resubmit documents after bid opening if those documents are required with the bid. A Vendor may be required to provide document passwords or remove access restrictions to allow the STO Purchasing Division to print or electronically save documents provided that those documents are viewable by the STO Purchasing Division prior to obtaining the password or removing the access restriction.

19. NON-RESPONSIBLE: The STO Purchasing Director reserves the right to reject the bid of any vendor as Non-responsible when it is determined that the vendor submitting the bid does not have the capability to fully perform, or lacks the integrity and reliability to assure good-faith performance.

20. RFP/RFQ WITHDRAWAL, MODIFICATION, and CANCELLATION: The STO may withdraw, cancel, or modify an RFP/RFQ at any time. Submission of proposals or receipt of proposals by the STO confer no rights upon the Vendor and do not obligate the STO in any manner. Further, the STO may accept or reject any bid in whole, or in part.

21. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are considered public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia and the Freedom of Information Act found in West Virginia Code § 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the STO Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal or document. The STO Purchasing Division will disclose any document labeled "confidential", "proprietary", "trade secret", "private", or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by W.Va. Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

22. INTERESTED PARTY DISCLOSURE: West Virginia § 6D-1-2 requires that the vendor submit to the Purchasing Division a disclosure of interested parties to the contract for all contracts with an actual or estimated value of at least \$1 Million. That disclosure must occur on the form prescribed and approved by the WV Ethics Commission prior to contract award. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above. A copy of that form is available from the Agency Buyer designated in Section 4 above.

23. WITH THE BID REQUIREMENTS: In instances where these specifications require documentation or other information with the bid, and a vendor fails to provide it with the bid, the STO Director of Purchasing reserves the right to request those items after bid opening and prior to contract award. This does not apply to instances where state law mandates receipt with the bid.

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SECTION THREE: GENERAL TERMS AND CONDITIONS

Terms and conditions are attached.

GENERAL TERMS AND CONDITIONS
West Virginia State Treasurer's Office

1. **CONTRACTUAL AGREEMENT:** Issuance of an Award Document signed by the Treasurer, or his designee, and approved as to form by the Agency's Counsel constitutes acceptance of this Contract made by and between the State of West Virginia, WV State Treasurer's Office ("STO") and the Vendor. Vendor's signature on its bid signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.
2. **DEFINITIONS:** As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.
 - 2.1. **"Agency"** means the West Virginia State Treasurer's Office ("STO").
 - 2.2. **"Bid"** or **"Proposal"** means the vendors submitted response to this solicitation
 - 2.3. **"Contract"** means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.
 - 2.4. **"Director"** means the Deputy Treasurer of STO Purchasing/Director of STO Purchasing Division
 - 2.5. **"Award Document"** means the document issued by the Agency that identifies the Vendor as the contract holder.
 - 2.6. **"Solicitation"** means the official notice of an opportunity to supply the State with goods or services that is published by the STO Purchasing Division.
 - 2.7. **"Vendor"** or **"Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.
 - 2.8. **"Exempt"** means the solicitation/purchase is exempt from the requirements of the West Virginia Dept. of Administration - Purchasing Division.
 - 2.9. **"Vendor"** or **"Vendors"** means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.
3. **CONTRACT TERM; RENEWAL; EXTENSION:** The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:



Term Contract

Initial Contract Term: This Contract becomes effective on UPON AWARD and extends for a period of 3 year(s).

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency and the Vendor. A request for Contract renewal should be submitted to the STO Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract.

Unless otherwise specified below, Renewal of this Contract is limited to Three (3) successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited.

☐ **Alternate Renewal Term** – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. **Automatic renewal of this Contract is prohibited.** Renewals must be approved by the Agency and the Vendor.

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days.

Upon completion, the vendor agrees that maintenance, monitoring, or warranty services will be provided for one year thereafter with an additional _____ successive one-year renewal periods or multiple renewal periods of less than one year provided that the multiple renewal periods do not exceed _____ months in total. Automatic renewal of this Contract is prohibited.

☐ **One Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Other:** See attached.

4. **NOTICE TO PROCEED:** Vendor shall begin performance of this Contract immediately upon receiving notice to proceed unless otherwise instructed by the Agency. Unless otherwise specified, the fully executed Award Document/Purchase Order will be considered notice to proceed.
5. **QUANTITIES:** The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☒ **Open End Contract:** Quantities listed in this Solicitation are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☒ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☐ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor and Agency.

6. **EMERGENCY PURCHASES:** The STO Deputy Treasurer of Purchasing, or their designee, may authorize the purchase of goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the STO Deputy Treasurer of Purchasing, or their designee, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the STO from fulfilling its obligations under a One Time Purchase contract.

7. **REQUIRED DOCUMENTS:** All of the items checked below must be provided to the STO Purchasing Division by the Vendor as specified below.

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W.Va. § Code 5-22-1(c), all Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia/STO. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of _____. The performance bond must be received by the STO Purchasing Division prior to Contract award. On construction contracts, the performance bond must be 100% of the Contract value.

- ☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the STO Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, W.Va. Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted

- ☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section entitled Licensing, of the General Terms and Conditions, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits prior to Contract award, in a form acceptable to the STO Purchasing Division.

[]

[]

The apparent successful Vendor shall also furnish proof of any additional licenses or certifications contained in the Specifications prior to Contract award regardless of whether or not that requirement is listed above.

8. **INSURANCE:** The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of the contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with the immediately notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of:
ONE MILLION DOLLARS _____ per occurrence.

☒ **Automobile Liability Insurance** in at least an amount of: ONE MILLION DOLLARS per occurrence.

☒ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of:
ONE MILLION DOLLARS _____ per occurrence.

☐ **Commercial Crime and Third Party Fidelity Insurance** in at least an amount of:
_____ per occurrence.

☐ **Cyber Liability Insurance** in at least an amount of: _____ per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: _____ per occurrence.

☐ **Aircraft Liability** in an amount of: _____ per occurrence.

[]

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Notwithstanding anything contained in this section to the contrary, the STO Deputy Treasurer of Purchasing reserves the right to waive the requirement that the STO be named as an additional insured on one or more of the Vendor's insurance policies if he/she finds that doing so is in the STO's best interest.

9. WORKERS' COMPENSATION INSURANCE: The apparent successful Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. LIQUIDATED DAMAGES: Vendor shall pay liquidated damages in the amount of NOT APPLICABLE _____ for _____.
This clause shall in no way be considered exclusive and shall not limit the Agency's right to pursue any other available remedy.

☐ Liquidated Damages Contained in the Specifications

11. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the STO that cannot be unilaterally withdrawn, signifies that the product or service proposed by Vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in Solicitation unless otherwise indicated.

12. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the STO. A Vendor's inclusion of price adjustment provisions in its bid, without express authorization from the STO in the Solicitation to do so, may result in bid disqualification.

- 13. PAYMENT IN ARREARS:** Payment in advance is prohibited under this Contract. Payment may only be made after the delivery and acceptance of goods or services. The Vendor shall submit itemized invoices, in arrears.
- 14. PAYMENT METHODS:** Vendor must accept payment by electronic funds transfer and/or a State issued credit card, also known as P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards)
- 15. TAXES:** The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
- 16. ADDITIONAL FEES:** Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State Treasurer's Office or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.
- 17. FUNDING:** This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available.
- 18. CANCELLATION:** The STO Deputy Treasurer of Purchasing Division reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The STO Deputy Treasurer of Purchasing Division may also cancel any purchase order or Contract upon 30 days written notice to the Vendor.
- 19. TIME:** Time is of the essence with regard to all matters of time and performance in this Contract.
- 20. APPLICABLE LAW:** This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code or West Virginia Code of State Rules is void and of no effect.
- 21. COMPLIANCE WITH LAWS:** Vendor shall comply with all applicable federal, state, and local laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable law.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to

comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

22. **ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.
23. **MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary, no modification of this Contract shall be binding without mutual written consent of the Agency and the Vendor. Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the STO Purchasing Division and/or Agency's Counsel as to form prior to the implementation of the change or commencement of work affected by the change. No Change shall be implemented by the Vendor until such time as the Vendor receives an approved written change order from the STO Purchasing Division.
24. **WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.
25. **SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by the Vendor to the Agency such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.
26. **ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, and any other government agency or office that may be required to approve such assignments.
27. **WARRANTY:** The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.
28. **STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.
29. **BANKRUPTCY:** In the event the Vendor files for bankruptcy protection, the State Treasurer's Office may deem this Contract null and void, and terminate this Contract without notice.
30. **PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential

information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

- 31. YOUR SUBMISSION IS A PUBLIC DOCUMENT:** Vendor's entire response to the Solicitation and the resulting Contract are considered public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia and the Freedom of Information Act found in West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the STO Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal or document. The STO Purchasing Division will disclose any document labeled "confidential", "proprietary", "trade secret", "private", or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by W. Va. Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

- 32. LICENSING:** Vendor must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the STO Purchasing Division to verify that the Vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state and local obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

- 33. ANTITRUST:** In submitting a bid to, signing a contract with, or accepting an Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency renders the initial payment to Vendor.

- 34. VENDOR CERTIFICATIONS:** By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

- 35. VENDOR RELATIONSHIP:** The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

- 36. INDEMNIFICATION:** The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

- 37. PURCHASING AFFIDAVIT:** Vendors are required to sign, notarize, and submit the Purchasing Affidavit affirming under oath that it is not in default on any monetary obligation owed to the State

or a political subdivision of the State. The affidavit must be submitted prior to award, but should be submitted with the Vendor's bid. The STO has adopted the use of this Affidavit while the referenced W.Va. Code citation is not applicable to the STO. A copy of the Purchasing Affidavit is included herewith.

- 38. ADDITIONAL AGENCY AND LOCAL GOVERNMENT USE:** This Contract may be utilized by and extends to other agencies, spending units, and political subdivisions of the State of West Virginia; county, municipal, and other local government bodies; and school districts ("Other Government Entities"), provided that both the Other Government Entity and the Vendor agree. Any extension of this Contract to the aforementioned Other Government Entities must be on the same prices, terms, and conditions as those offered and agreed to in this Contract, provided that such extension is in compliance with the applicable laws, rules, and ordinances of the Other Government Entity. A refusal to extend this Contract to the Other Government Entities shall not impact or influence the award of this Contract in any manner.
- 39. CONFLICT OF INTEREST:** Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.
- 40. REPORTS:** Vendor shall provide the Agency with the following reports identified by a checked box below:
- ☒ Such reports as the Agency/STO may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures, etc.
 - ☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by the agency. Unless otherwise provided for upon Contract award, quarterly reports should be delivered to the STO Purchasing Division via email at purchasing@wvsto.com.
- 41. BACKGROUND CHECK:** In accordance with W.Va. Code § 15-2D-3, the Director of the Division of Protective Services shall require any service provider whose employees are regularly employed on the grounds or in the buildings of the Capitol complex or who have access to sensitive or critical information to submit to a fingerprint-based state and federal background inquiry through the state repository. The service provider is responsible for any costs associated with the fingerprint-based state and federal background inquiry.

After the contract for such services has been approved, but before any such employees are permitted to be on the grounds or in the buildings of the Capitol complex or have access to sensitive or critical information, the service provider shall submit a list of all persons who will be physically present and working at the Capitol complex to the Director of the Division of Protective Services for purposes of verifying compliance with this provision.

The State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

42. JOINT PROPOSALS AND SUBCONTRACTING: Joint Proposals are not permitted. Subcontracting is permitted subject to STO authorization. The purchase order/contract shall be awarded to the Vendor submitting the proposal. The Vendor awarded the purchase order/contract shall be the sole point of contact with regard to the purchase order and shall be solely responsible for all matters provided pursuant to the purchase order/contract, including without limitation, any tangible or intangible items provided by a subcontractor or other party.

43. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the (WV Dept. of Administration) Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open hearth, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- d. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

44. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL:

In accordance with W.Va. Code § 5-19-1 et seq., and W.Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is

unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a “substantial labor surplus area”, as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

- 45. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE:** W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$100,000, the vendor must submit to the Agency a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-award interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission.
- “Interested parties” means: (1) A business entity performing work or service pursuant to, or in furtherance of, the applicable contract, including specifically subcontractors; (2) the person(s) who have an ownership interest equal to or greater than 25% in the business entity performing work or service pursuant to, or in furtherance of, the applicable contract; and (3) the person or business entity, if any, that served as a compensated broker or intermediary to actively facilitate the applicable contract or negotiated the terms of the applicable contract with the state agency: Provided, That subdivision (2) shall be inapplicable if a business entity is a publicly traded company: Provided, however, That subdivision (3) shall not include persons or business entities performing legal services related to the negotiation or drafting of the applicable contract. The Agency shall submit a copy of the disclosure to the Ethics Commission within 15 days after receiving the supplemental disclosure of interested parties

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

(Printed Name, Title)

(Address)

(Phone Number) / (Fax Number)

(Email address)

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

(Company Name)

Printed Name / Title

(Authorized Signature) _____ Date _____

(Phone Number)

(Fax Number)

(Email)

FEIN _____

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

CONSTRUCTION CONTRACTS: Under W. Va. Code § 5-22-1(i), the contracting public entity shall not award a construction contract to any bidder that is known to be in default on any monetary obligation owed to the state or a political subdivision of the state, including, but not limited to, obligations related to payroll taxes, property taxes, sales and use taxes, fire service fees, or other fines or fees.

ALL CONTRACTS: Under W. Va. Code §5A-3-10a, no contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and: (1) the debt owed is an amount greater than one thousand dollars in the aggregate; or (2) the debtor is in employer default.

EXCEPTION: The prohibition listed above does not apply where a vendor has contested any tax administered pursuant to chapter eleven of the W. Va. Code, workers' compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

DEFINITIONS:

"Debt" means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers' compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

"Employer default" means having an outstanding balance or liability to the old fund or to the uninsured employers' fund or being in policy default, as defined in W. Va. Code § 23-2c-2, failure to maintain mandatory workers' compensation coverage, or failure to fully meet its obligations as a workers' compensation self-insured employer. An employer is not in employer default if it has entered into a repayment agreement with the Insurance Commissioner and remains in compliance with the obligations under the repayment agreement.

"Related party" means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceeds five percent of the total contract amount.

AFFIRMATION: By signing this form, the vendor's authorized signer affirms and acknowledges under penalty of law for false swearing (*W. Va. Code §61-5-3*) that: (1) for construction contracts, the vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, that neither vendor nor any related party owe a debt as defined above and that neither vendor nor any related party are in employer default as defined above, unless the debt or employer default is permitted under the exception above.

WITNESS THE FOLLOWING SIGNATURE:

Vendor's Name: _____

Authorized Signature: _____ Date: _____

State of _____

County of _____, to-wit:

Taken, subscribed, and sworn to before me this ____ day of _____, 20____.

My Commission expires _____, 20____.

AFFIX SEAL HERE

NOTARY PUBLIC _____

REQUEST FOR PROPOSAL
West Virginia State Treasurer's Office
Solicitation ARFP STO2200000002 – Savings Plan Consulting Services

SECTION FOUR: PROJECT SPECIFICATIONS

4.1. Location: The corporate West Virginia State Treasurer's Office is located at 1900 Kanawha Boulevard, Capitol Complex Building #1, Room E-145, Charleston, West Virginia, 25305. The Program staff is located at 322 70th Street SE, Charleston, West Virginia 25304.

4.2. Background and Current Operating Environment:

i. The Jumpstart Savings Program

The West Virginia Jumpstart Savings Act (“Act”) is established by West Virginia Code §18-30A-1 et. seq., along with companion tax code references for West Virginia residents in West Virginia Code §11-21-12m, West Virginia Code §11-21-25, and West Virginia Code §11-24-10a.

The West Virginia Jumpstart Savings Program is to be operable on or before July 1, 2022. The West Virginia Jumpstart Program will be administered by the Board, of which the State Treasurer is the chairman and presiding officer. The Board’s composition, responsibilities, and duties are outlined in the Act.

The West Virginia Jumpstart Savings Program will allow families and individuals to save money for future expenses like tools, equipment, and business start-up costs involved in a chosen trade or occupation by establishing a Jumpstart Savings Account in accordance with the stipulations found in the Act. The Program also creates several state tax incentives to assist program participants save money by allowing an income tax decreasing modification up to the \$25,000 deduction per year for contributions to a Jumpstart Savings account and distributions that are used for qualifying expenses. Contributions to a Jumpstart Savings Account and the distributions and earnings used for qualified expenses are “tax-free” at the state-level, up to the \$25,000 cap. Employers can also contribute to an employee’s Jumpstart Account. Businesses contributing in this regard are provided a non-refundable state tax credit up to \$5,000 for matching an employee’s own contribution to his or her account each year.

The minimum amount required to establish a Jumpstart Savings Account is \$25. Additionally, if an account is established prior to the beneficiary turning 18 or if the beneficiary enrolls in an apprenticeship or education program in accordance with the Act, the Treasurer will deposit \$100 in the account. Also, the designated beneficiary may be changed at any time without any tax consequences; the owner of a college savings account or ABLE account may roll over the funds into a Jumpstart Savings account without state income tax penalties.

In addition to the enabling legislation for the West Virginia Jumpstart Savings Act, House Concurrent Resolution 24 is a companion resolution to the West Virginia Jumpstart Savings Act adopted April 8, 2021. Its purpose is twofold: to encourage other

REQUEST FOR PROPOSAL
West Virginia State Treasurer's Office
Solicitation ARFP STO2200000002 – Savings Plan Consulting Services

states around the country implement a Jumpstart Savings program in order to incentivize a skilled workforce and to petition the federal government to extend the same benefits that are offered to participants in college savings programs, such as 529 College Savings plans, to participants in Jumpstart Savings programs.

For full details of the Act and its benefits, please consult the West Virginia Jumpstart Savings Act, Exhibit 1A, and companion tax credit stipulations, which can be found in Exhibit 1B.

ii. College Savings Program

The STO administers the Internal Revenue Code §529 ("Section 529") West Virginia College Savings Program for the College Savings Board and provides College Savings Program staff. The College Savings Board was created in 1997 with the passage of Enrolled Committee Substitute for Senate Bill 70, generally codified at West Virginia Code §18-30-1 et seq. The West Virginia College Prepaid Tuition and Savings Program Act (the "Savings Program Act") has undergone numerous amendments. A copy of the Savings Program Act in current effect is attached as Exhibit 2.

a. West Virginia College Prepaid Tuition Plan

In 1998, the College Savings Board began offering prepaid tuition contracts in the State of West Virginia, currently known as the West Virginia College Prepaid Tuition Plan (the "Prepaid Plan"). In 2002, the Prepaid Plan was closed to new enrollment by the State Legislature. However, all then existing accounts were continued. The Board will make full and final payment, on September 30, 2021, to all Prepaid Plan account holders for their remaining account units and close the fund after that time.

b. SMART529 College Savings Plan

In 2002, the College Savings Board opened a college investment and savings plan, known as the SMART529 College Savings Plan, to provide a means of saving to pay for additional costs of attending college.

Program administrative services for the West Virginia College Prepaid Tuition and Savings Program, which includes the Prepaid Plan until its closure and the SMART529 Savings Plan, are managed by Hartford Funds ("Program Manager") under contract with the College Savings Board, which maintains investment policies for the College Savings Program.

As of September 17, 2021, there were 122,622 SMART529 accounts with \$3,174,946,943.72 assets under management. The Savings Plan Trust Fund assets are managed by Hartford Funds and Dimensional Fund Advisors. The funds contractually provided by Hartford Funds for the Savings Program are detailed in Exhibit 3. NEPC, LLC of Boston, Massachusetts currently provides investment consulting services.

REQUEST FOR PROPOSAL
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Solicitation ARFP STO2200000002 – Savings Plan Consulting Services

Additional College Savings Program information may be accessed at www.SMART529.com.

iii. West Virginia Achieving a Better Life Experience (WVABLE) Savings Program

The STO administers the West Virginia Achieving a Better Life Experience (WVABLE) Savings Program and provides program staff. WV ABLE is made possible by the federal Stephen Beck, Jr., Achieving a Better Life Experience (“ABLE”) Act, passed in December of 2014, which aims to increase financial independence and improve quality of life for individuals with disabilities and their families by making tax-advantaged savings accounts available in which contributions may be made to pay for qualified disability expenses. ABLE savings accounts allow many eligible individuals to save beyond imposed asset limits while maintaining eligibility for certain federal and state benefits that are critical to their health and well-being. The ABLE Act is included in Section §529A of the Internal Revenue Code of 1986, as amended (“Section 529A”). The West Virginia ABLE Act, otherwise known as the “Achieving a Better Life Experience in West Virginia Act,” is codified at West Virginia Code §16-48-1 et seq. Pursuant to the WV ABLE Act, the STO arranged to make WVABLE available to eligible West Virginia residents through a partnership agreement with the State of Ohio and their national ABLE program, which provides the STABLE Account. STABLE Account program manager services are provided by Sunday Administration, LLC. The WV ABLE Act is attached as Exhibit 4.

Additional WVABLE program information may be accessed at www.wvable.com.

4.3 Qualifications and Experience: Attachment A, Vendor Response Sheet, must be completed by vendor to provide firm information, such as staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan for project; descriptions of past projects completed, including the location of the project, project manager name and contact information, type of project, project goals and objectives and how they were met.

4.3.1 Vendor should provide an overview and history of its organization, including parent and or subsidiary companies and number of employees. Provide the address of the office locations that will serve the STO.

4.3.2 Vendor should provide at least five (5) references using **Attachment D**. Any of these references may be contacted by members of the Evaluation Committee to determine the Vendor’s ability and/or the reference’s satisfaction with the Vendor’s performance. The STO further reserves the right to contact any person or entity it believes necessary or prudent to inquire about the Vendor.

List of references should include the following information for each:

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- a. Entity name and contract manager with current contact information;
- b. Start and end dates of services provided;
- c. List of services provided that are like those sought through this RFP.

4.3.3 Explain any current or anticipated litigation, or other legal proceedings or government investigation to which vendor is a party.

4.3.4 Vendor should provide a resume for each staff member who will be responsible to render services to STO, including the anticipated role of each staff person on the STO account. Include years of experience working with the vendor firm, years in the industry and years of experience working with public entities. Vendor should indicate who will have ultimate responsibility for this contract.

4.4. Project and Goals: The STO's goals and objectives for this project are:

4.4.1. Provide general strategic consulting advice for the STO savings programs, including, but not limited to: recommendations on the structure and design of these programs; updates, information and insight on the Section 529 industry; and recommendations on improvements for the STO savings programs.

4.4.2. Advise the STO savings programs of new or different strategies that could be employed to increase participation in their respective plans.

4.4.3. Provide guidance on STO savings program marketing strategies and implementation, strategies or advice to enhance STO savings program participation and distribution, and advise and update on current marketing trends.

4.4.4 Analyze rating criteria by applicable ratings agencies to any and/or all STO savings programs, if applicable, and advise on best industry practices.

4.4.5 Participate in the development of requests for proposals, selection process, contract terms and negotiations to acquire a program manager for any STO savings program, if selection of a new program manager is made or if changes are made to existing program management relationships.

4.4.6 Work with the STO savings program managers, external and internal consultants and STO savings program staff to identify and implement approved program improvements.

4.4.7 Attend STO savings program board meetings, in person or virtually, as needed and/or requested.

4.4.8 Educate the STO savings program boards by reporting on industry trends relating to the programs, including best practices and standards for board oversight, as requested.

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- 4.4.9** Provide telephone consultations within a 24-hour period of request and meet with STO savings program staff or the appropriate boards, as necessary, with 10 days' notice.
- 4.4.10** Be available to consult with the State Treasurer and savings program staff from 8:00 AM to 5:00 PM, Eastern Standard Time, Monday through Friday.
- 4.4.11** Provide second opinion to those of primary program investment consultants on investment performance if bidder is qualified.
- 4.4.12** Collaborate with and assist the STO to begin full operation of the Jumpstart Savings Program, on or before July 1, 2022, and provide a suggested hypothetical timeline to accomplish the Program's launch.
- 4.4.13** Provide strategic consulting on leveraging other states to implement a Jumpstart Savings program as well as advice on obtaining passage of federal legislation to extend the same or similar benefits that are offered to participants in college savings programs, such as 529 College Savings plans, to participants in Jumpstart Savings programs.
- 4.4.14** Identify and describe how it previously consulted with and assisted savings plans, including Section 529 savings plans, with general strategic consulting advice on its program on four (4) separate occasions, including details on how Vendor provided assistance with the specific matters/assignments detailed in this RFP.

4.5 Mandatory Requirements

The following mandatory requirements must be met by the Vendor as a part of the submitted proposal. Failure on the part of the Vendor to meet any of the mandatory specifications shall result in the disqualification of the proposal. The terms "must," "will," "shall," "minimum," "maximum" or "is/are required" is a mandatory requirement, item or factor. Decisions regarding compliance with any mandatory requirements shall be at the sole discretion of the STO Purchasing Division.

- 4.5.1** The lead senior consultant responsible for and performing the Services for the Board must:
 - a. Be a Municipal Advisor, licensed with the Securities Exchange Commission and Municipal Securities Rulemaking Board. Vendor must hold and maintain all licenses and registrations required by applicable federal and state laws for businesses offering municipal advisory services for the duration of the agreement;
 - b. Possess a minimum of fifteen (15) years of college savings industry specific experience providing consulting services to state administrators of Section 529 college savings plans, including experience advising on;

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- c. Possess a minimum of three years (3) years of experience providing consulting services to state administrators involved in promoting or offering of ABLE savings plans.
- d. Possess the minimum experience necessary to provide strategic consulting services to savings programs generally, including, but not limited to implementation, advisory services, program mechanics, marketing, and any additional programmatic consulting necessary for expansion and further development.
- e. Describe how it will collaborate with and assist the STO to begin full operation of the Jumpstart Savings Program, on or before July 1, 2022 and provide a suggested hypothetical timeline to accomplish the program's launch.

4.5.2 Vendor must have previously provided consulting services for the development of a Section 529 Program Manager RFP on at least four (4) separate occasions.

4.5.3 Vendor must have previously consulted and assisted a Section 529 college savings plan or providing strategic consulting services on 529 program operation, development and improvement on at least four (4) separate occasions.

4.5.4 Vendor shall ensure that the credentials and quality of its staff are maintained throughout the term of the project and that any staff initially assigned to this contract who are replaced, will be replaced by staff with substantially the same qualifications and experience as the original staff, or better.

4.6 Oral Presentations: The Agency has the option of requiring oral presentations of all Vendors participating in the RFP process. If this option is exercised, it would be listed in the Schedule of Events (Section 1.3) of this RFP. During oral presentations, if any, the Vendor may not amend or add to its submitted proposal but clarify information. Vendor description of requirements for Oral Presentation follow:

4.6.1 Materials and Information Required at Oral Presentation:

4.6.1.1. Vendor must specifically describe previous, relevant engagements with a state savings programs, particularly with 529 College savings programs, ABLE programs, or other similar state savings programs and be prepared to answer questions on these engagements.

4.6.1.2. Vendor must specifically describe previous, relevant engagements related to the development of RFPs for external consultants and/or program managers and in negotiating contracts for same. Vendor must come prepared to discuss the experience in detail specifying any transition obstacles that were encountered.

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SECTION FIVE: VENDOR PROPOSAL

- 5.1 Preparation:** Proposals should be prepared simply, providing a straightforward, concise description of the Vendor's abilities to satisfy the requirements of the RFP, with attention to completeness and clarity.

**** NOTE ** Vendors proposals should not exceed 75 pages.**

- 5.2 Incurring Cost:** Neither the State, nor its employees or officers shall be held liable for any expenses incurred by Vendors responding to this RFP, including but not limited to preparation, delivery, or travel.

- 5.3 Proposal Format:** Vendors should provide responses in the following format:

Title Page: State the RFP subject, number, Vendor's name, business address, telephone number, fax number, name of contact person, e-mail address, and Vendor signature and date.

Table of Contents: Clearly identify the contents by section and page number.

Attachment A: Using **Attachment A: Vendor Response Sheet**, provide the following: firm and staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed, including the location of the project, project manager name and contact information, type of project, project goals and objectives and how they were met.

Also, describe the approach and methodology proposed for this project, including how each of the goals and objectives listed is to be met.

Attachment B: Complete **Attachment B: Mandatory Specification Checklist**. By executing this attachment, the Vendor verifies that it meets or exceeds the specifications outlined at Section Four Project Specifications, subsection 4.5. At its discretion, the State reserves the right to require documentation that the Vendor meets the required specifications.

Attachment C: Complete **Attachment C: Cost Sheet** of this RFP. Submit cost sheet in a sealed envelope, separate from other submissions. Cost should be clearly indicated.

Oral Presentations: If established by the Agency in the Schedule of Events (Section 1.3), all Vendors participating in this RFP will be required to provide an oral presentation, based on the criterion set forth at Section 4.6.

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During oral presentations, Vendors may not amend or add to their written proposal, but may clarify information therein.

5.4 Proposal Submission: Proposals must contain **two distinct parts**: technical and cost.

- **Technical proposals** must not contain any cost information relating to the project.
- **Cost proposals** shall be sealed in a separate envelope and will not be opened initially.

Vendor is to provide ONE (1) original Technical and ONE (1) original Cost proposal.

Vendor is to provide Three (3) convenience copies of the Technical proposal.

All proposals must be submitted to the STO Purchasing Division **prior** to the date and time stipulated in the RFP as the opening date. All bids will be date and time stamped as verification of timeliness of Vendor proposals. All submissions must be in accordance with the provisions set forth below and “Section Two: Instructions to Bidders Submitting Bids,” set forth above.

Vendor is requested to provide an exact copy of the Technical response (if sending physical responses/delivery) on a diskette, CD-ROM, DVD or USB flash drive in Adobe PDF or Microsoft Word with its proposal, or immediately upon request by the designated buyer/contact person named within the solicitation document.

5.4.1 The electronic submission through the State’s ERP System known as WVOASIS will not be available for this solicitation. Proposals may be submitted via US Postal Service, Courier Service, etc. or Agency-provided email address upon Vendor Request.

- a. Each email submission cannot exceed 25Mb per transmission. Vendors wishing to submit their proposals via email must include the RFP Solicitation number and brief description in the subject line (in this case: it should be *ARFP STO22*002 Savings Plan Consulting Services*)
- b. If Technical responses are expected to exceed 25mb, they must be sent in multiple submissions, each with the designation, *Response ARFP STO22*002 and indicate Part 1 of 1, Part 2 of 2, etc.*
- c. The Cost Sheet is to be sent separately from the Technical submission and designate in the subject line, *Cost Response ARFP STO22*002.*
- d. **The Technical and Cost responses must be received in their entirety regardless of submission/delivery method used by the Bid Closing date and time established; there will be no exceptions to this requirement.**

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- e. **Note:** The designated buyer upon inquiry will only inform a vendor that an email response, or package, has been received but will not review or provide further information as to its content or completeness prior to the Bid Closing date and time.

5.5 Technical Bid Opening: The STO Purchasing Division will open and announce only the technical proposals received prior to the date and time specified in the Request for Proposal. The technical proposals shall then be provided to the Agency evaluation committee.

5.6 Cost Bid Opening: The STO Purchasing Division shall schedule a date and time to publicly open and announce cost proposals when the STO Purchasing Division has approved the technical recommendation of the evaluation committee. All cost bids for qualifying proposals will be opened. Cost bids for non-qualifying proposals will also be opened but shall not be considered. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's technical proposal fails to meet the minimum acceptable score and the bidder's technical proposal fails to meet a mandatory requirement of the contract. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award.

SECTION SIX: EVALUATION AND AWARD

6.1 Evaluation Process: Proposals will be evaluated by a committee of three (3) or more individuals against the established criteria with points deducted for deficiencies. The Vendor who demonstrates that they meet all of the mandatory specifications required; and has appropriately presented within their written response and/or during the oral demonstration (if applicable) their understanding in meeting the goals and objectives of the project; and attains the highest overall point score of all Vendors shall be awarded the contract. The selection of the successful Vendor will be made by a consensus of the evaluation committee.

6.2 Evaluation Criteria: All evaluation criteria is defined in the specifications section and based on a 100 point total score. Cost shall represent a minimum of 30 of the 100 total points.

The following are the evaluation factors and maximum points possible for technical point scores:

- | | |
|---------------------------------|---------------------------|
| • Qualifications and Experience | 15 Points Possible |
| • Approach and Methodology | 45 Points Possible |
| • Oral Interview | 10 Points Possible |
| • Cost | <u>30 Points Possible</u> |

Total 100 Points Possible

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Each cost proposal cost will be scored by use of the following formula for all Vendors who attained the minimum acceptable score:

$$\frac{\text{Lowest price of all proposal}}{\text{Price of Proposal being evaluated}} \times 30 = \text{Price Score}$$

6.2.1 Technical Evaluation: The Agency evaluation committee will review the technical proposals, deduct points where appropriate, and make a final written recommendation to the STO Purchasing Division.

6.2.2 Minimum Acceptable Score: Vendors must score a minimum of 70% (49 points) of the total technical points possible. All Vendors not attaining the minimum acceptable score (MAS) shall be considered as non-qualifying. A proposal may be deemed non-qualifying for a number of reasons including, but not limited to, the bidder's technical proposal failing to meet the minimum acceptable score and the bidder's technical proposal failing to meet a mandatory requirement of the contract. Cost bids for non-qualifying proposals will also be opened but shall not be considered. Certain information, such as technical scores and reasons for disqualification, will not be available until after the contract award.

6.2.3 Cost Evaluation: The Agency evaluation committee will review the cost proposals, assign appropriate points, and make a final recommendation to the STO Purchasing Division.

SECTION SEVEN: VENDOR PROTESTS

7.1 Types of Protests

7.1.1 Protests of Requirements, Specifications or Terms

By issuing the RFP, the STO intends to encourage competition among eligible Vendors. Any protest, complaint or problem with the RFP, including any requirement, specification or term contained in the RFP or any combination thereof, must be filed in writing with the Deputy Treasurer of Purchasing no later than three (3) working days prior to the Proposal Opening Date specified in the RFP. Protests received after that date will not be considered.

7.1.2 Protests of Award

After selection of the apparent successful Vendor, the Deputy Treasurer of Purchasing will send a written Notice to each Vendor regarding the award. Each Vendor will have until the date specified in the notice to file a written protest as to the award. Protests received after that date will not be considered.

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7.2 Written Letter of Protest

The written letter of protest must contain the name and address of the protesting Vendor, the RFP number, a statement explaining why the protest has been filed, the relief sought, and any other information that may assist the Deputy Treasurer of Purchasing in reaching a decision on the matter. The Deputy Treasurer of Purchasing must receive the letter of protest by the appropriate deadline to be considered.

7.3 Review of Protest and Issuing Decision

The STO will review the letter of protest and issue a written decision. The STO may contact the protestor or any other entity he or she considers necessary to reach a decision. Opening of the proposals, evaluation of the proposals or award of the purchase order may be delayed, as considered appropriate by the STO.

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ATTACHMENT A: Vendor Response Sheet

Section 4.3 Qualifications and Experience

Provide firm and staff qualifications and experience in completing similar projects; references; copies of any staff certifications or degrees applicable to this project; proposed staffing plan; descriptions of past projects completed entailing the location of the project, project manager name and contact information, type of project, and describe project goals and how they were met.

Vendor Response:

Subsection 4.3.1: Vendor should provide an overview and history of its organization, including parent and or subsidiary companies and number of employees. Provide the address of the office locations that will serve the STO.

Vendor Response:

Subsection 4.3.2: Vendor should provide at least five (5) references using **Attachment D**. Any of these references may be contacted by members of the Evaluation Committee to determine the Vendor's ability and/or the reference's satisfaction with the Vendor's performance. The STO further reserves the right to contact any person or entity it believes necessary or prudent to inquire about the Vendor.

List of references should include the following information for each:

- a. Entity name and contract manager with current contact information;
- b. Start and end dates of services provided;
- c. List of services provided that are like those sought through this RFP.

Vendor Response:

Subsection 4.3.3: Explain any current or anticipated litigation, or other legal proceedings or government investigation to which vendor is a party.

Vendor Response:

Subsection 4.3.4: Vendor should provide a resume for each staff member who will be responsible to render services to STO, including the anticipated role of each staff person on the STO account. Include years of experience working with the vendor firm, years in the industry and years of experience working with public entities. Vendor should indicate who will have ultimate responsibility for this contract.

Vendor Response:

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Section 4.4 Project Goals

Provide a response to each of the stated goals and objectives per Section 4.4 on how each of them will be met.

Subsection 4.4.1: Provide general strategic consulting advice for the STO savings programs, including, but not limited to: recommendations on the structure and design of these programs; updates, information and insight on the Section 529 industry; and recommendations on improvements for the STO savings programs.

Vendor Response:

Subsection 4.4.2: Advise the STO savings programs of new or different strategies that could be employed to increase participation in their respective plans.

Vendor Response:

Subsection 4.4.3: Provide guidance on STO savings program marketing strategies and implementation, strategies or advice to enhance STO savings program participation and distribution, and advise and update on current marketing trends.

Vendor Response:

Subsection 4.4.4: Analyze rating criteria by applicable ratings agencies to any and/or all STO savings programs, if applicable, and advise on best industry practices.

Vendor Response:

Subsection 4.4.5: Participate in the development of requests for proposals, selection process, contract terms and negotiations to acquire a program manager for any STO savings program, if selection of a new program manager is made or if changes are made to existing program management relationships.

Vendor Response:

Subsection 4.4.6: Work with the STO savings program managers, external and internal consultants and STO savings program staff to identify and implement approved program improvements.

Vendor Response:

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Subsection 4.4.7: Attend STO savings program board meetings, in person or virtually, as needed and/or requested.

Vendor Response:

Subsection 4.4.8: Educate the STO savings program boards by reporting on industry trends relating to the programs, including best practices and standards for board oversight, as requested.

Vendor Response:

Subsection 4.4.9: Provide telephone consultations within a 24-hour period of request and meet with STO savings program staff or the appropriate boards, as necessary, with 10 days' notice.

Vendor Response:

Subsection 4.4.10: Be available to consult with the State Treasurer and savings program staff from 8:00 AM to 5:00 PM, Eastern Standard Time, Monday through Friday.

Vendor Response:

Subsection 4.4.11: Provide second opinion to those of primary program investment consultants on investment performance if bidder is qualified.

Vendor Response:

Subsection 4.4.12: Collaborate with and assist the STO to begin full operation of the Jumpstart Savings Program, on or before July 1, 2022, and provide a suggested hypothetical timeline to accomplish the Program's launch.

Vendor Response:

Subsection 4.4.13: Provide strategic consulting on leveraging other states to implement a Jumpstart Savings program as well as advice on obtaining passage of federal legislation to extend the same or similar benefits that are offered to participants in college savings programs, such as 529 College Savings plans, to participants in Jumpstart Savings programs.

Vendor Response:

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Subsection 4.4.14: Identify and describe how it previously consulted with and assisted savings plans, including Section 529 savings plans, with general strategic consulting advice on its program on four (4) separate occasions, including details on how Vendor provided assistance with the specific matters/assignments detailed in this RFP.

Vendor Response:

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ATTACHMENT B: Mandatory Specification Checklist

Section 4.5

The following mandatory requirements must be met by the Vendor as a part of the submitted proposal. Failure on the part of the Vendor to meet any of the mandatory specifications shall result in the disqualification of the proposal. The terms "must," "will," "shall," "minimum," "maximum" or "is/are required" is a mandatory requirement, item or factor. Decisions regarding compliance with any mandatory requirements shall be at the sole discretion of the STO Purchasing Division.

Subsection 4.5.1: The lead senior consultant responsible for and performing the Services for the Board must:

- a. Be a Municipal Advisor, licensed with the Securities Exchange Commission and Municipal Securities Rulemaking Board. Vendor must hold and maintain all licenses and registrations required by applicable federal and state laws for businesses offering municipal advisory services for the duration of the agreement

Vendor Response:

- b. Possess a minimum of fifteen (15) years of college savings industry specific experience providing consulting services to state administrators of Section 529 college savings plans, including experience advising on

Vendor Response:

- c. Possess a minimum of three years (3) years of experience providing consulting services to state administrators involved in promoting or offering of ABLE savings plans

Vendor Response:

- d. Possess the minimum experience necessary to provide strategic consulting services to savings programs generally, including, but not limited to implementation, advisory services, program mechanics, marketing, and any additional programmatic consulting necessary for expansion and further development

Vendor Response:

- e. Describe how it will collaborate with and assist the STO to begin full operation of the Jumpstart Savings Program, on or before July 1, 2022 and provide a suggested hypothetical timeline to accomplish the program's launch.

Vendor Response:

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Subsection 4.5.2: Vendor must have previously provided consulting services for the development of a Section 529 Program Manager RFP on at least four (4) separate occasions.

Vendor Response:

Subsection 4.5.3: Vendor must have previously consulted and assisted a Section 529 college savings plan or providing strategic consulting services on 529 program operation, development and improvement on at least four (4) separate occasions.

Vendor Response:

Subsection 4.5.4: Vendor shall ensure that the credentials and quality of its staff are maintained throughout the term of the project and that any staff initially assigned to this contract who are replaced, will be replaced by staff with substantially the same qualifications and experience as the original staff, or better.

Vendor Response:

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ATTACHMENT C: COST SHEET

Cost information below as detailed in the Request for Proposal and submitted in a separate sealed envelope. Cost should be clearly marked.

All services shall be calculated and billed at an hourly rate, payable monthly in arrears. There will be no billing or payments for any cost incurred other than the hourly charges. Fees shall be inclusive of any and all costs in providing the services, including, without limitation, travel, clerical and overhead.

If Vendor does not intend to designate a fee for a specific item, mark it as "zero" cost. Areas that are not marked "zero" and do not include a fee, will be priced as "zero." Shaded areas shall not be completed.

Vendor understands that all services will be provided and billed for based upon actual hours. The hours provided are general estimates only and shall only be used for evaluation purposes. The WVSTO makes no guarantee to the actual quantity of services that will be required by the WVSTO.

Staff Level/Title*	Hours	Hourly Rate	Total
a. Lead Senior Consultant or Managing Director (See Specification 4.5.1)	300		
b. Financial Analyst	40		
c. Associate Analyst	120		
d. Senior Consultant - Legal	40		
Total Hours*	500	Total Annual Cost	

* Total shall be calculated assuming 500 total hours of services provided by all levels of staff per year. Vendor may divide/split the hours across multiple staff/titles that is being proposed as a part of the proposal, however, **a total of 500 hours is to be used for all levels.** Titles being used are indicative of past expenditure categories. Vendor may provide actual titles of staff it proposes in its response.

ATTACHMENT D / REFERENCES

Vendor Name: _____

Client	
Nature of Engagement	
Contact Person and Phone Number	
Other Pertinent Information	
Client	
Nature of Engagement	
Contact Person and Phone Number	
Other Pertinent Information	
Client	
Nature of Engagement	
Contact Person and Phone Number	
Other Pertinent Information	
Client	
Nature of Engagement	
Contact Person and Phone Number	
Other Pertinent Information	
Client	
Nature of Engagement	
Contact Person and Phone Number	
Other Pertinent Information	



EXHIBIT 1A

ARTICLE 30A. WEST VIRGINIA JUMPSTART SAVINGS ACT.

§18-30A-1. Short Title.

This article shall be known, and may be cited as, the "West Virginia Jumpstart Savings Act".

§18-30A-2. Findings.

The Legislature recognizes the importance of cultivating an environment in West Virginia where our tradespersons and entrepreneurs can be successful in their careers and remain in their home state. The Legislature finds that a savings and investment program to assist our citizens who wish to embark on a new trade or establish a new business within this state, is an investment in the future of West Virginia and its hardworking citizens.

§18-30A-3. Definitions.

For the purposes of this article, the following terms shall have the following meanings:

- (1) "Account owner" means the person who opens and invests money into a Jumpstart Savings Account, as provided in this article.
- (2) "Beneficiary" means the person designated as a beneficiary at the time an account is established, or the individual designated as the beneficiary when the beneficiary is changed.
- (3) The "board" means the West Virginia Jumpstart Savings Board created in §18-30A-5 of this code.
- (4) "Contribution" means any amount of money deposited into a Jumpstart Savings Account according to the procedures established and required by the board or the Treasurer.
- (5) "Deduction" as used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Deduction means and refers to a deduction allowable under the federal income tax code for the purpose of determining federal taxable income or federal adjusted gross income, unless text clearly indicates otherwise.
- (6) "Distributee" has the same meaning provided in §11-21-12m of this code.
- (7) "Distribution" means any disbursement from an account.
- (8) The term "family member", as used to describe a person's relationship to a designated beneficiary, includes any of the following:
 - (A) The spouse of the beneficiary;
 - (B) A child of the beneficiary or a descendant of the beneficiary's child;
 - (C) A brother, sister, stepbrother, or stepsister of the beneficiary;
 - (D) The father or mother of the beneficiary, or an ancestor of either;
 - (E) A first cousin of the beneficiary;
 - (F) A stepfather or stepmother of the beneficiary;
 - (G) A son or daughter of a brother or sister of the beneficiary;
 - (H) A brother or sister of the father or mother of the beneficiary;
 - (I) A son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the beneficiary; or
 - (J) The spouse of any person described in paragraphs (A) through (I) of this subdivision.
 - (K) Any term set forth in this subdivision means and includes such term as established through a lawful adoption, including, but not limited to, adoptions of a child or children, or other natural person, by a natural person or natural persons who are not the father, mother, or stepparent of the child or person.

(9) "Labor organization" means any organization, agency, association, union, or employee representation committee of any kind that exists, in whole or in part, to assist employees in negotiating with employers concerning grievances, labor disputes, wages, rates of pay, or other terms or conditions of employment.

(10) The "program" refers to the Jumpstart Savings Program established by this article.

(11) The "Treasurer" refers to the West Virginia State Treasurer or his or her designee.

§18-30A-4. West Virginia Jumpstart Savings Program established.

The West Virginia Jumpstart Savings Program is hereby established, to be operable on or before July 1, 2022. The board shall implement and administer the program under the terms and conditions required by this article.

§18-30A-5. West Virginia Jumpstart Savings Board; members; terms; compensation; proceedings generally.

(a) The West Virginia Jumpstart Savings Program shall be administered by the West Virginia Jumpstart Savings Board.

(b) The board consists of seven members and includes the following:

(1) The State Treasurer;

(2) The State Superintendent of Schools, or his or her designee;

(3) The Chancellor of the West Virginia Community and Technical College System, or his or her designee;

(4) Four members, appointed by the Governor, with knowledge, skill, and experience in trade occupations or businesses, to be appointed as follows:

(A) A member representing a labor organization that represents tradespersons in this state;

(B) A member representing a business or entity offering apprenticeships in this state; and

(C) Two private citizens not employed by, or an officer of, the state or any political subdivision of the state.

(c) The members designated in this section to be appointed by the Governor are so appointed with the advice and consent of the Senate.

(d) Only state residents are eligible for appointment to the board.

(e) Members appointed by the Governor serve a term of five years and are eligible for reappointment at the expiration of their terms. If there is a vacancy among appointed members, the Governor shall appoint a person meeting the requirements of this section to fill the unexpired term. Members of the board serve until the later of the expiration of the term for which the member was appointed or the appointment of a successor.

(f) Members of the board serve without compensation. The Treasurer may pay all reasonable expenses, including travel expenses, actually incurred by board members in the conduct of their official duties. Expense payments are made from the Jumpstart Savings Expense Account and are made at the same rates and in the same manner as travel reimbursements are paid to state employees.

(g) The Treasurer is the chairman and presiding officer of the board and shall appoint the employees the board considers advisable or necessary.

(h) The board shall adopt bylaws and rules of procedure at its first official meeting. A majority of the members of the board constitutes a quorum for the transaction of the business of the board.

§18-30A-6. Powers of the board.

The board is authorized to take any lawful action necessary to effectuate the provisions of this article and successfully administer the program, subject to applicable state and federal law, including, but not limited to, the following:

- (1) Adopt and amend bylaws;
- (2) Execute contracts and other instruments for necessary goods and services, employ necessary personnel, and engage the services of private consultants, auditors, counsel, managers, trustees, and any other contractor or professional needed for rendering professional and technical assistance and advice: *Provided*, That selection of these services is not subject to the provisions of §5A-3-1 *et seq.* of this code: *Provided, however*, That all expenditures and monetary and financial transactions shall be subject to periodic audits by the Office of Chief Inspector, or the Legislative Auditor, or both;
- (3) Implement the program through use of financial organizations as account depositories and managers, as provided in §18-30A-9 of this code;
- (4) Develop and impose requirements, policies, procedures, and guidelines to implement and manage the program;
- (5) Establish the method by which funds shall be allocated to pay for administrative costs and assess, collect, and expend administrative fees, charges, and penalties;
- (6) Authorize the assessment, collection, and retention of fees and charges against the amounts paid into and the earnings on the trust funds by a financial institution, investment manager, fund manager, West Virginia Investment Management Board, the Board of Treasury Investments, or other professional managing or investing the trust funds and accounts;
- (7) Invest and reinvest any of the funds and accounts under the board's control with a financial institution, an investment manager, a fund manager, the West Virginia Investment Management Board, the Board of Treasury Investments, or other professional investing the funds and accounts: *Provided*, That investments made under this article shall be made in accordance with the provisions of §44-6C-1 *et seq.* of this code;
- (8) Solicit and accept gifts, including bequests or other testamentary gifts made by will, trust, or other disposition; grants; loans; aid; and property, real or personal of any nature and from any source, or to participate in any other way in any federal, state, or local governmental programs in carrying out the purposes of this article: *Provided*, That the board shall use the property received to effectuate the desires of the donor, and shall convert the property received into cash within 90 days of receipt; and
- (9) Propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code.

§18-30A-7. Powers and duties of the Treasurer.

(a) In order to implement and administer the program, the Treasurer shall:

- (1) Provide support staff and office space for the board;
- (2) Establish and monitor, at the direction of the board, the methods and processes by which the funds held in accounts are deposited and distributed;
- (3) Charge and collect any necessary administrative fees, penalties, and service charges in connection with any agreement, contract, or transaction relating to the program;
- (4) Develop marketing plans and promotional material to ensure that potential program beneficiaries will be aware of the program and the advantages the program offers; and

- (5) Present the annual evaluations and reports required by §18-30A-13 of this code at any meeting or proceeding of the Legislature or the Office of the Governor upon request.
- (b) In order to implement and administer the program, the Treasurer may:
 - (1) Collect all necessary information from program account holders and beneficiaries;
 - (2) Create forms necessary for implementation of the program;
 - (3) Propose legislative rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, that are necessary to effectuate the provisions and purposes of this article; and
 - (4) Perform all other lawful actions necessary to effectuate the provisions of this article, subject to applicable state and federal law.

§18-30A-8. West Virginia Jumpstart Savings Trust; Trust Fund; and Expense Fund created.

- (a) The board shall establish the Jumpstart Savings Program Trust, and a Jumpstart Savings Program Trust Fund Account, titled the Jumpstart Savings Trust Fund, within the accounts held by the Treasurer or with a financial institution, an investment manager, a fund manager, the West Virginia Investment Management Board, the Board of Treasury Investments, or any other person for the purpose of managing and investing the trust fund. Assets of the Jumpstart Savings Program Trust are held in trust for account owners and beneficiaries.
- (b) The Jumpstart Savings Trust Fund shall receive all moneys from account owners on behalf of beneficiaries or from any other source, public or private. Earnings derived from the investment of the moneys in the Jumpstart Savings Trust Fund shall remain in the fund, held in trust in the same manner as contributions, except as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining and administering the program.
- (c) The corpus, assets, and earnings of the Jumpstart Savings Trust Fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by, or any obligation of the board on behalf of and for the benefit of the program, does not constitute a debt or obligation of the state but is solely an obligation of the Jumpstart Savings Trust Fund.
- (d) All interest derived from the deposit and investment of moneys in the Jumpstart Savings Trust Fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in the trust fund may not be credited or transferred to the State General Fund or to any other fund.
- (e) In order to fulfill the charitable and public purposes of this article, neither the earnings nor the corpus of the Jumpstart Savings Trust Fund is subject to taxation by the state or any of its political subdivisions.
- (f) Notwithstanding any provision of this code to the contrary, money in the Jumpstart Savings Trust Fund is exempt from creditor process and not subject to attachment, garnishment, or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge; and is not subject to seizure, taking, appropriation, or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary, or successor in interest.
- (g)
 - (1) The Jumpstart Savings Program Expense Fund is hereby established in the State Treasury.
 - (2) The Jumpstart Savings Expense Fund shall receive all fees, charges, and penalties collected by the board. Expenditures from the fund are authorized from collections subject to appropriations made by the Legislature.

(3) All expenses incurred by the board or the Treasurer in developing and administering the program shall be payable from the Jumpstart Savings Expense Fund.

§18-30A-9. Use of financial organizations as program depositories and managers.

(a) The board may implement the program through use of financial organizations as account depositories and managers. The board may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instruments which will be held in accounts. The board may select more than one financial organization and investment instrument for the program. The board shall select financial organizations to act as program depositories and managers from among the bidding financial organizations that demonstrate the most advantageous combination, both to potential program participants and this state, based on the following criteria:

- (1) The financial stability and integrity of the financial organization;
- (2) The safety of the investment instrument being offered;
- (3) The ability of the financial organization to satisfy recordkeeping and reporting requirements;
- (4) The financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;
- (5) The fees, if any, proposed to be charged to the account owners;
- (6) The minimum initial deposit and minimum contributions that the financial organization will require;
- (7) The ability of the financial organization to accept electronic deposits and withdrawals, including payroll deduction plans; and
- (8) Other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

(b) The board may enter into any contracts with a financial organization necessary to effectuate the provisions of this article. Any management contract shall include, at a minimum, terms requiring the financial organization to:

- (1) Take any action required to keep the program in compliance with requirements of this article and any other applicable state or federal law;
- (2) Keep adequate records of each account, keep each account segregated from each other account, and provide the board with the information necessary to prepare the statements required by this article and other applicable state and federal laws;
- (3) Compile, summarize, and total information contained in statements required to be prepared under this article and applicable state and federal laws and provide such compilations to the board;
- (4) Provide the board with access to the books and records of the program manager and with any other information needed to determine compliance with the contract, this article, and any other applicable state or federal law;
- (5) Hold all accounts for the benefit of the account owner or owners;
- (6) Be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of such audit to the board;
- (7) Provide the board with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the

board and the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance, or securities commission, except to the extent that such report or reports may not be disclosed under law; and

(8) Ensure that any description of the program, whether in writing or through the use of any medium, is consistent with the marketing plan developed pursuant to the provisions of this article.

(c) The board may:

(1) Enter into contracts it deems necessary for the implementation of the program;

(2) Require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the board has any reason to be concerned about the financial position, the record keeping practices, or the status of accounts of such program depository and manager; and

(3) Terminate or decline to renew a management agreement. If the board terminates or does not renew a management agreement, the board shall take custody of accounts held by such program manager and shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.

18-30A-10. Opening a Jumpstart Savings Account; deposits.

(a) Beginning on July 1, 2022, a person may open a Jumpstart Savings Account.

(b) To open a Jumpstart Savings Account, the account owner must:

(1) Provide all information required by the Treasurer;

(2) Make a minimum opening deposit of \$25; and

(3) Name a single person as the designated beneficiary: Provided, That the designated beneficiary may be the account owner himself or herself, or another person: Provided, however, That the beneficiary may not be a business, corporation, or enterprise.

(c) The Treasurer will deposit \$100 from the Jumpstart Savings Expense Fund into a newly opened Jumpstart Savings Account if the following criteria are met:

(1) The designated beneficiary is a resident of West Virginia; and

(2) The account is opened when the designated beneficiary is under 18 years of age; or

(3) The account is opened within the 180 days following the date of the designated beneficiary's enrollment in an apprenticeship or educational program described in §18-30A-11(c)(1)(A) of this code.

(d) Any person may make a contribution to a Jumpstart Savings Account after the account is opened, subject to applicable state and federal laws.

(e) The Treasurer shall prescribe all forms required to open and make deposits to a Jumpstart Savings Account and make the forms available in a prominent location on the Treasurer's website.

§18-30A-11. Distributions; qualified expenses.

(a) A distribution from a Jumpstart Savings Account that was used to pay for qualified expenses, as defined in subsection (c) of this section, shall establish entitlement of the distributee to the personal income tax decreasing modification authorized by §11-21-12m(b) of this code, and such decreasing modification may be applied to determine West Virginia adjusted gross income of the distributee in the taxable year in which such qualified expenses were paid.

(b) A change in the designated beneficiary of a Jumpstart Savings Account is not a distribution for the purposes of this article or §11-21-1 *et seq.* of this code if the new beneficiary is a family member of the prior beneficiary.

(c) *Qualified expenses.* —

(1) For the purposes of this article and §11-21-12m of this code, expenditures of distributions for the following purposes are qualified expenses:

(A) The purchase of tools, equipment, or supplies by the beneficiary to be used exclusively in an occupation or profession for which the beneficiary is required to:

(i) Complete an apprenticeship program registered and certified with the United States Department of Labor, as provided in 29 U.S.C. § 50;

(ii) Complete an apprenticeship program required by any provision of this code or a legislative rule promulgated pursuant to this code;

(iii) Earn a license or certification from an Advanced Career Education (ACE) career center; or

(iv) Earn an associate degree or certification from a community and technical college.

(B) Fees for required certification or licensure for the beneficiary to practice a trade or occupation described in paragraph (A) of this subdivision in this state; and

(C) Costs incurred by the beneficiary that are necessary to establish a business in this state in which the beneficiary will practice an occupation or profession described in paragraph (A) of this subdivision, when the costs are exclusively incurred and paid for the purpose of establishing and operating such business.

(2) In no event shall any dues, fees, subscriptions, or any other payments to a labor organization constitute qualified expenses for the purposes of this article.

§18-30A-12. State tax benefits related to a Jumpstart Savings Account.

(a) As provided in §11-21-12m, §11-21-25, and §11-24-10a of this code, contributions, distributions, and employer matching contributions are eligible for specified decreasing modifications in determining taxable income, or specified tax credits against tax imposed by §11-21-1 *et seq.* and §11-24-1 *et seq.* of this code.

(b) Nothing in this article nor in §11-21-12m, §11-21-25, or §11-24-10a of this code shall be construed to decrease or otherwise impact any person's federal tax obligations or to authorize any act which violates federal law.

§18-30A-13. Reports and account; annual audit.

(a) In addition to any other requirements of this article, the board shall:

(1) Prepare and provide an annual summary of information on the financial condition of the Jumpstart Savings Trust Fund and Expense Fund and statements on the savings program accounts to the respective account owners; and

(2) Prepare, or have prepared, a quarterly report on the status of the program, including the Jumpstart Savings Trust Fund and Expense Fund, and provide a copy of the report to the Joint Committee on Government and Finance.

(b) All accounts administered under the program, including the Jumpstart Savings Trust Fund and Expense Fund, are subject to an annual external audit by an accounting firm, selected by the board, of which all members or partners assigned to head the audit are members of the American Institute of Certified Public Accountants. The audit shall comply with the requirements and standards in §5A-2-33 of this code.

§18-30A-14. Records; confidentiality.

(a) Notwithstanding any other provision of this code, the board and an apprenticeship provider, training or educational institution, or employer, are authorized to exchange information regarding participants in the program to carry out the purposes of this article: *Provided*, That the tax information confidentiality provisions of §11-10-5d of this code shall apply to tax returns and tax return information.

(b) Records containing personally identifying information regarding Jumpstart Savings Account holders and beneficiaries is exempt from disclosure under §29B-1-1 *et seq.* of this code.

§18-30A-15. Limitation on liability.

Nothing in this article creates any obligation of the board, the Treasurer, the state, or any agency or instrumentality of the state to guarantee for the benefit of any account holder or designated beneficiary with respect to the:

- (1) Return of principal;
- (2) Rate of interest or other return on any account; or
- (3) Payment of interest or other return on any account.

§18-30A-16. Legislative rules required.

Prior to the commencement of the program, the board shall promulgate legislative, procedural, or emergency rules, or any combination thereof, in accordance with the provisions of §29A-3-1 *et seq.* of this code, that include at a minimum, the following:

- (1) Requirements for any contract to be entered between the board and an account holder upon opening a Jumpstart Savings Account to ensure compliance with the requirements of this article and applicable state and federal laws;
- (2) Examples of qualified expenses, as described in §18-30A-11 of this code; and
- (3) Procedures for opening Jumpstart Savings Accounts, making contributions thereto, requesting distributions therefrom, and instructions for accessing any necessary forms.

EXHIBIT 1B

§ 11-21-12m. Additional modifications related to a Jumpstart Savings

Account (a) *Modification for contributions.* -

(1) For taxable years beginning on or after January 1, 2022, in addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to § 11-21-12 of this code, a modification reducing federal adjusted gross income is hereby authorized in an amount equal to a West Virginia taxpayer's contribution to a Jumpstart Savings Account for the taxable year in which the payment is made, in accordance with § 18-30A-1 *et seq.* of this code, but only to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year.

(2) The decreasing modification allowed pursuant to this subsection may not exceed \$25,000 in a single taxable year: *Provided*, That the taxpayer may also elect to carry forward the modification over a period not to exceed five taxable years, beginning in the taxable year in which the contribution was made.

(b) *Modification for distributions.* -

(1) For taxable years beginning on or after January 1, 2022, in addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to § 11-21-12 of this code, a modification reducing federal adjusted gross income is hereby authorized in an amount equal to the portion of a distribution from a Jumpstart Savings Account received by a distributee that is used to pay for qualified expenses, as defined in § 18-30A-11 of this code. Such decreasing modification is authorized for the taxable year the distribution is made to the distributee, but only to the extent the distribution amount is not allowable as a deduction when arriving at the distributee's federal adjusted gross income for the taxable year when the distribution was made. Any decreasing modification applied by a distributee shall be subject to disallowance to the extent that the distributed moneys are not used to pay for qualified expenses, as defined in § 18-30A-11 of this code in the taxable year of receipt of the distribution or the next succeeding taxable year.

(2) The decreasing modification allowed pursuant to this subsection may not exceed \$25,000 for the taxable year.

(3) For the purposes of this section, the term "distributee" means the beneficiary or the owner of a Jumpstart Savings Account who is authorized to receive distributions from the account, according to § 18-30A-1 *et seq.* of this code and the legislative rules and procedures adopted by the Jumpstart Savings Board.

(c) *Modification for rollover of certain distributions.* - In addition to amounts authorized to be subtracted from federal adjusted gross income pursuant to § 11-21-12 of this code, a modification reducing federal adjusted gross income is hereby authorized for the account owner, to the extent that the amount is not allowable as a deduction when arriving at the account owner's federal adjusted gross income, in the amount as follows:

(1) An amount equal to a distribution from a Jumpstart Savings Account received in the taxable year, if the account owner deposits such amount into a West Virginia ABLE Account within 30 days of receiving the distribution, according to the requirements of § 18-30A-1 *et seq.* of this code; and

(2) An amount equal to the portion of a distribution received in the taxable year from a college savings account, established pursuant to § 18-30-1 *et seq.* of this code, if the taxpayer deposits the amount into a Jumpstart Savings Account within 30 days of receiving the distribution according to the requirements of § 18-30A-1 *et seq.* of this code.

(d) Nothing in this section shall be construed to decrease or otherwise impact any person's federal tax obligations or to authorize any act which violates federal law.

EXHIBIT 1B

§11-21-25. Nonrefundable credit for matching contribution to employee's Jumpstart Savings Account.

ARTICLE 21. PERSONAL INCOME TAX.

(a) A nonrefundable credit against the tax imposed by the provisions of this article is allowed against the tax liability imposed under this article of a qualified employer, for a matching contribution made to a Jumpstart Savings Account in the taxable year, if the beneficiary of the account is an employee of the taxpayer and a West Virginia resident, subject to the requirements of §18-30A-1 *et seq.* and the following:

- (1) The employer must directly contribute an amount to a Jumpstart Savings Account that is equal to a contribution made by the employee to such account in the same taxable year.
 - (2) The credit allowed by this section may not exceed \$5,000 per employee per taxable year.
 - (3) The amount of the credit may not exceed the portion of the contribution that is attributable to the employer and that would otherwise be derived by the employer as income from his or her business for the taxable year.
 - (4) The employer may not claim the credit if the employer himself or herself is the account beneficiary of the account to which the matching contribution was made.
 - (5) An employer may not claim a credit against more than one type of tax for a single contribution to a Jumpstart Savings Account.
- (b) The credit provided by this section is only allowed to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the contribution is made.
- (c) In order to qualify for the credit provided by this section, an employer must submit any forms or other information, as required by the West Virginia Jumpstart Savings Board or the State Treasurer, and the Tax Commissioner, upon making the contribution.

(d) Conduit Entities and Proprietorships Personal Income Taxes. —

- (1) If the employer directly contributing an amount to a Jumpstart Savings Account is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as a partnership for federal income tax purposes, or a sole proprietorship, then credit authorized pursuant to this section is allowed as a credit against the taxes imposed by this article on the flow through income of S corporation shareholders, partners, owners, and limited liability company members derived from such electing small business corporation, partnership, or limited liability company attributable to business or other activity.
- (2) If the employer directly contributing an amount to a Jumpstart Savings Account is a sole proprietor, then credit authorized pursuant to this section is allowed as a credit against the taxes imposed by this article on the income of the sole proprietor attributable to the business.
- (3) Electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its partners, owners, shareholders, or members in the same manner as profits and losses are allocated for the taxable year.

(4) No credit is allowed under this section against any employer withholding taxes imposed by this article.

(5) Credit allowed under this section must be used in the tax year in which the contribution is made. Credit may not be carried back to a prior tax year nor carried forward to a subsequent tax year. Any amount of unused credit is forfeited.

EXHIBIT 1B

§11-24-10a. Nonrefundable credit for matching contribution to employee's Jumpstart Savings Account.

(a) A nonrefundable credit against the tax imposed by the provisions of this article is allowed for a matching contribution to a Jumpstart Savings Account made in the taxable year if the beneficiary of the account is an employee of the taxpayer and a West Virginia resident, subject to the requirements of §18-30A-1 *et seq.* and the following:

(1) The employer must directly contribute an amount to a Jumpstart Savings Account that is equal to a contribution made by the employee to such account in the same taxable year.

(2) The credit allowed by this section may not exceed \$5,000 per employee per taxable year.

(3) An employer may not claim the credit against more than one type of tax for a single contribution to a Jumpstart Savings Account.

(b) The credit provided by this section is only allowed to the extent the amount is not allowable as a deduction when arriving at the taxpayer's federal adjusted gross income for the taxable year in which the contribution is made.

(c) In order to qualify for the credit provided by this section, an employer must submit any forms or other information, as required by the West Virginia Jumpstart Savings Board or the State Treasurer, or the Tax Commissioner, upon making the contribution.

(d) *Conduit Entities Corporation Net Income Tax.* —

(1) If the employer directly contributing an amount to a Jumpstart Savings Account is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, or a limited liability company that is treated as a partnership for federal income tax purposes, then credit authorized pursuant to this section is allowed as a credit against the taxes imposed by this article on the flow through income of S corporation shareholders, partners, owners, and limited liability company members derived from such electing small business corporation, partnership, or limited liability company attributable to business or other activity.

(2) Electing small business corporations, limited liability companies, partnerships, and other unincorporated organizations shall allocate the credit allowed by this article among its corporate partners, owners, shareholders, or members in the same manner as profits and losses are allocated for the taxable year.

(3) No credit is allowed under this section against any employer withholding taxes imposed by this article.

(4) The credit allowed under this section must be used in the tax year in which the contribution is made. Credit may not be carried back to a prior tax year nor carried forward to a subsequent tax year. Any amount of unused credit is forfeited.



EXHIBIT 2

ARTICLE 30. WEST VIRGINIA COLLEGE PREPAID TUITION AND SAVINGS PROGRAM ACT.

§18-30-1. Title.

This article is known and cited as the "West Virginia College Prepaid Tuition and Savings Program Act."

§18-30-2. Legislative findings and purpose.

The Legislature finds and determines that enhancing the accessibility and affordability of education for all citizens of West Virginia will promote a well-educated and financially secure population to the ultimate benefit of all citizens of West Virginia, and that assisting individuals and families in planning for future educational expenses by making the tax incentives in 26 U.S.C. § 529 available to West Virginians is one of the proper governmental functions and purposes of the state.

The Legislature also finds that continuation of the prepaid tuition plan and creation of a savings plan will further those governmental functions and purposes. It is, therefore, the legislative intent of this article to continue the prepaid tuition plan and to enhance the plan by authorizing the creation of a savings plan so that more students may attend eligible educational institutions.

§18-30-3. Definitions.

For the purposes of this article, the following terms have the meanings ascribed to them, unless the context clearly indicates otherwise or as otherwise provided in 26 U.S.C. §529:

"Account" means a prepaid tuition account or a savings plan account established in accordance with this article.

"Account owner" means the individual, corporation, association, partnership, trust, or other legal entity who enters into a prepaid tuition contract and is obligated to make payments in accordance with the prepaid tuition contract or who enters into a savings plan contract and invests money in a savings plan account.

"Beneficiary" means the individual designated as a beneficiary at the time an account is established, the individual designated as the beneficiary when beneficiaries are changed, the individual entitled to receive distributions from an account, and any individual designated by the account owner, his or her agent, or his or her estate in the event the beneficiary is unable or unwilling to receive distributions under the terms of the contract.

"Board" means the Board of Trustees of the College Prepaid Tuition and Savings Program, as provided in §18-30-4 of this code.

"Distribution" means any disbursement from an account in accordance with 26 U.S.C. §529.

“Eligible educational institution” means an institution of higher education or a private or religious primary, middle, or secondary school that qualifies under 26 U.S.C. §529 as an eligible educational institution.

“Outstanding obligations of the Prepaid Tuition Plan” means the outstanding contract obligations of the board to persons owning Prepaid Tuition Plan accounts. The term also includes any fees, charges, expenses, penalties, or any other obligation or liability of the Prepaid Tuition Trust Fund or plan.

“Prepaid tuition account” means an account established by an account owner pursuant to this article, in order for the beneficiary to apply distributions in accordance with the Prepaid Tuition Plan.

“Prepaid tuition contract” means a contract entered into by the board and an account owner establishing a prepaid tuition account.

“Prepaid Tuition Plan” means the plan that contractually guarantees payment of tuition at an eligible educational institution.

“Program” means the West Virginia College Prepaid Tuition and Savings Program established pursuant to this article and as defined in §18-30-4(a) of this code.

“Qualified education expenses” means expenses treated as “qualified higher education expenses” under 26 U.S.C. §529.

“Savings plan” means the plan that allows account distributions for qualified higher educational expenses and tuition at private or religious primary, middle, and secondary schools.

“Savings plan account” means an account established by an account owner pursuant to this article, in order for the beneficiary to apply distributions toward qualified higher education expenses and tuition expenses at eligible educational institutions.

“Savings plan contract” means a contract entered into by the board or its agent, if any, and an account owner establishing a savings plan account.

“Treasurer” means the West Virginia State Treasurer.

“Tuition” means the quarter, semester, or term charges imposed by an eligible educational institution and all mandatory fees required as a condition of enrollment by all students for full-time attendance.

§18-30-4. Creation of program; board; members; terms; compensation; proceedings generally.

(a) The West Virginia College Prepaid Tuition and Savings Program is continued. The program consists of a savings plan and the outstanding obligations of the Prepaid Tuition Plan.

(b) The Board of the College Prepaid Tuition and Savings Program is continued, and all powers, rights, and responsibilities of the Board of Trustees of the Prepaid Tuition Trust Fund are vested in the Board of the College Prepaid Tuition and Savings Program.

(c) The board consists of nine members and includes the following:

- (1) The State Treasurer, or his or her designee;
- (2) The State Superintendent of Schools, or his or her designee;
- (3) A representative of the Higher Education Policy Commission, who may or may not be a member of the Higher Education Policy Commission, appointed by the commission who serves as a voting member of the board;
- (4) A representative of the Council for Community and Technical College Education, who may or may not be a member of the Council for Community and Technical College Education, appointed by the council who serves as a voting member of the board; and
- (5) Five other members, appointed by the Governor, with the advice and consent of the Senate, as follows:
 - (A) Three private citizens with knowledge, skill, and experience in a financial field, who are not employed by, or an officer of, the state or any political subdivision of the state: *Provided*, That reasonable efforts shall be made to appoint one such citizen to the board who holds a designation of Chartered Financial Analyst, offered by the CFA Institute; and
 - (B) Two members representing the interests of private institutions of higher education located in this state appointed from one or more nominees of the West Virginia Independent Colleges and Universities.
- (d) Only state residents are eligible for appointment to the board.
- (e) Members appointed by the Governor serve a term of five years and are eligible for reappointment at the expiration of their terms. If there is a vacancy among appointed members, the Governor shall appoint a person representing the same interests to fill the unexpired term.
- (f) Members of the board serve until the later of the expiration of the term for which the member was appointed or the appointment of a successor. Members of the board serve without compensation. The Treasurer may pay all expenses, including travel expenses, actually incurred by board members in the conduct of their official duties. Expense payments are made from the College Prepaid Tuition and Savings Program Administrative Account and are made at the same rate paid to state employees.
- (g) The Treasurer may provide support staff and office space for the board.
- (h) The Treasurer is the chairperson and presiding officer of the board and may appoint the employees the board considers advisable or necessary. A majority of the members of the board constitutes a quorum for the transaction of the business of the board.

§18-30-5. Powers of the board.

In addition to the powers granted by any other provision of this article, the board has the powers necessary or appropriate to carry out the provisions and objectives of this article, other methods of

financing post-secondary education as relate to the program, and the powers delegated by any other law of the state or any executive order of the state. The board may also:

- (a) Adopt and amend bylaws;
- (b) Sue and be sued;
- (c) Execute contracts and other instruments for necessary goods and services, employ necessary personnel and engage the services of private consultants, actuaries, Auditors, counsel, managers, trustees, and any other contractor or professional needed. Selection of these services is not subject to the provisions of article three, chapter five-a of this code;
- (d) Operate a prepaid tuition plan in accordance with this article and 26 U.S.C. §529;
- (e) Operate a savings plan in accordance with this article and 26 U.S.C. §529;
- (f) Develop and impose any requirements, policies, procedures and guidelines to implement and manage the program;
- (g) Impose reasonable requirements for residency for beneficiaries at the time of purchase of a prepaid tuition contract. However, nothing in this subdivision establishes residency requirements for matriculation at state eligible educational institutions;
- (h) Assess, collect and expend administrative fees, charges and penalties;
- (i) Authorize the assessment, collection and retention of fees and charges against the amounts paid into and the earnings on the trust funds by a financial institution, investment manager, fund manager, West Virginia Investment Management Board, or other professional managing or investing the trust funds and accounts;
- (j) Invest and reinvest any of the funds and accounts under the board's control with a financial institution, an investment manager, a fund manager, the West Virginia Investment Management Board or other professional investing the funds and accounts. Investments made under this article shall be made in accordance with the provisions of article six-c, chapter forty-four of this code, the West Virginia uniform prudent investor act. No board member, nor any person, financial institution, investment manager, fund manager or the West Virginia Investment Management Board to whom the board delegates any of its investment authority who acts within the standard of care set forth in this section is personally liable for losses suffered by the program on investments made pursuant to this article;
- (k) Solicit and accept gifts, including bequests or other testamentary gifts made by will, trust or other disposition, grants, loans, aid, and property, real or personal of any nature and from any source, or to participate in any other way in any federal, state or local governmental programs in carrying out the purposes of this article. The board shall use the property received to effectuate the desires of the donor, and shall convert the property received into cash within ninety days of receipt;

(l) Propose legislative rules for promulgation in accordance with the provisions of article three-a, chapter twenty-nine-a of this code;

(m) Make all necessary and appropriate arrangements with eligible educational institutions in order to fulfill its obligations under the prepaid tuition contracts and the savings plan contracts; and

(n) Establish a direct-support organization which is a West Virginia corporation, not for profit, organized and operated to receive, hold, invest and administer property and make expenditures to or for the benefit of the purposes of this article, if the board determines a need for the organization exists. The board may authorize the direct-support organization to use program facilities and property, except money. The board may invest funds of the direct-support organization.

§18-30-6. West Virginia prepaid tuition trust.

(a) The Prepaid Tuition Trust Fund is continued within the accounts held by the State Treasurer for administration by the board until such time as the moneys in the fund are depleted and the board elects to close the fund.

(b) Upon the closure of the Prepaid Tuition Trust Fund, the board is authorized to expend moneys from the Prepaid Tuition Trust Escrow Fund for the purpose of satisfying outstanding obligations of the Prepaid Tuition Trust Plan, according to the requirements of subsection (h) of this section.

(c) The corpus, assets, and earnings of the Prepaid Tuition Trust Fund and the Prepaid Tuition Trust Escrow Fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the board on behalf of and for the benefit of the Prepaid Tuition Plan does not constitute a debt of the state but is solely an obligation of the Prepaid Tuition Trust Fund. The state has no obligation to any designated beneficiary or any other person as a result of the Prepaid Tuition Plan. All amounts payable from the Prepaid Tuition Trust Fund are limited to amounts available in the Prepaid Tuition Trust Fund.

(d) Nothing in this article or in any prepaid tuition contract is a promise or guarantee of admission to, continued enrollment in, or graduation from an eligible educational institution.

(e) Effective March 8, 2003, the Prepaid Tuition Plan is closed to new contracts. Closing the plan to new contracts does not affect any Prepaid Tuition Plan contracts in effect on March 8, 2003. All contract owners shall continue to pay any amounts due, including without limitation monthly installments, penalties, and fees. Earnings derived from the investment of moneys in the Prepaid Tuition Trust Fund shall continue to accrue to the fund until the fund is closed in accordance with this section. Upon a determination of the board that all outstanding contract obligations to persons owning Prepaid Tuition Plan accounts have been satisfied as provided in subsection (h) of this section, the plan shall be closed.

(f) The board shall continue to have the actuarial soundness of the Prepaid Tuition Trust Fund evaluated annually until the fund's closure.

(g) On or before December 1, 2003, and each year until the Prepaid Tuition Trust Fund's closure, the chairperson of the board shall submit to the Governor, the President of the Senate, the Speaker of the

House of Delegates, the Joint Committee on Government and Finance, and the unclaimed property administrator a report certified by an actuary of the actuarial status of the Prepaid Tuition Trust Fund at the end of the fiscal year immediately preceding the date of the report.

(h) *Escrow fund; expenditures.* —

(1) The Prepaid Tuition Trust Escrow Fund is continued in the State Treasury to guarantee payment of outstanding obligations of the Prepaid Tuition Plan. The board shall invest the Prepaid Tuition Trust Escrow Fund in accordance with the provisions of this article in fixed income securities, and all earnings of the escrow fund shall accrue to the escrow fund and be available for expenditure in accordance with this section.

(2) In the event the money in the Prepaid Tuition Trust Fund is insufficient to cover the amount of money needed to meet the outstanding obligations of the Prepaid Tuition Trust Plan, the board may withdraw from the Prepaid Tuition Trust Escrow Fund the amount of money needed to meet outstanding obligations of the Prepaid Tuition Trust Plan.

(3) To the extent possible, the board shall satisfy outstanding contract obligations to persons owning Prepaid Tuition Plan accounts, on a pro rata basis as their interests may appear. Any account owner assets presumed abandoned shall be reported and remitted to the unclaimed property administrator in accordance with the Uniform Unclaimed Property Act in §36-8-1 *et seq.* of this code: *Provided*, That notwithstanding the requirements of said article, account owner assets are presumed abandoned 60 days after final payment checks for their remaining plan units are issued and said checks have not been presented for payment.

(i) After all outstanding obligations of the Prepaid Tuition Trust Plan have been satisfied in accordance with this section, any moneys remaining in the Prepaid Tuition Trust Fund and the Prepaid Tuition Trust Escrow Fund shall be allocated as follows:

(1) Five million dollars shall be transferred to the West Virginia Savings and Investment Program Fulfillment Fund, as set forth in §18-30-6a of this code.

(2) Up to \$1,000,000 may be maintained in the Prepaid Tuition Trust Escrow Fund, at the election of the board, for a period not to exceed 10 years following the closure of the Fund for the purpose of satisfying any claims against the Prepaid Tuition Trust Plan arising after the plan's closure: *Provided*, That upon the expiration of 10 years following the date of closure of the Prepaid Tuition Trust Fund or when the balance of the Prepaid Tuition Trust Escrow Fund is zero, whichever occurs first, the account shall be closed and any moneys remaining in the Prepaid Tuition Trust Escrow Fund upon said fund's closure shall revert to the state's General Revenue Fund.

(3) All moneys remaining, after the allocations provided in subdivisions (1) and (2) of this subsection, shall revert to the General Revenue Fund.

(j) To fulfill the charitable and public purpose of this article, neither the earnings nor the corpus of the Prepaid Tuition Trust Fund or the Prepaid Tuition Trust Escrow Fund is subject to taxation by the state or any of its political subdivisions.

(k) Notwithstanding any provision of this code to the contrary, money in the Prepaid Tuition Trust Fund and the Prepaid Tuition Trust Escrow Fund is exempt from creditor process and not subject to attachment, garnishment, or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge; and is not subject to seizure, taking, appropriation, or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary, or successor in interest.

The provisions of this section may not be construed to interfere with the operation of the savings plan authorized under this article.

§18-30-6a. Special revenue account created for fulfillment of savings and investment programs.

(a) There is created in the State Treasury a special revenue account, designated the West Virginia Savings and Investment Program Fulfillment Fund to be administered by the State Treasurer for the purposes authorized by this section.

(b) The West Virginia Savings and Investment Program Fulfillment Fund shall consist of all moneys made available pursuant to §18-30-6(i) of this code; any moneys that may be appropriated to the fund by the Legislature; all interest or other return earned or received from investment of the fund; any moneys which the fund is authorized to receive under any provision of this code for the purposes of this article; and all gifts, grants, bequests, or transfers made to the fund from any source. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund to be expended as authorized by this section.

(c) Moneys in the West Virginia Savings and Investment Program Fulfillment Fund may be used to pay any expenses incurred by the State Treasurer in implementing or administering any savings and investment program with an initial date of operation occurring on or after July 1, 2021. Pending the expenditure of any moneys in the fund, the State Treasurer is authorized to invest and reinvest said moneys, and all interest and earnings of the fund shall accrue to the fund and be available for expenditure in accordance with this section.

§18-30-7. West Virginia Savings Plan Trust.

(a) The board may establish a Savings Plan Trust, and may establish a Savings Plan Trust Fund Account, titled the Savings Plan Trust Fund, within the accounts held by the Treasurer or with a financial institution, an investment manager, a fund manager, the West Virginia Investment Management Board, or any other person for the purpose of managing and investing the trust fund. Assets of the Savings Plan Trust are held in trust for account owners and beneficiaries.

(b) The Savings Plan Trust Fund shall receive all moneys from account owners on behalf of beneficiaries of savings plan contracts or from any other source, public or private. Earnings derived from the investment of the moneys in the college Savings Trust Fund shall remain in the fund, held in trust in the same manner as contributions, except as refunded, applied for purposes of the beneficiaries, and applied for purposes of maintaining and administering the savings plan.

(c) The corpus, assets, and earnings of the Savings Plan Trust Fund do not constitute public funds of the state and are available solely for carrying out the purposes of this article. Any contract entered into by or any obligation of the board on behalf of and for the benefit of the savings plan does not constitute a debt or obligation of the state, but is solely an obligation of the Savings Plan Trust Fund. The state has no obligation to any designated beneficiary or any other person as a result of the savings plan. All amounts payable from the Savings Plan Trust Fund are limited to amounts available in the fund.

(d) Nothing in this article or in any savings plan contract is a promise or guarantee that the distributions available for a beneficiary will cover the cost of qualified education expenses at an eligible educational institution, or as a promise or guarantee of admission to, continued enrollment in, or graduation from an eligible education institution.

(e) The requirements of the provisions of §32-1-101 et seq. of this code do not apply to the sale of a savings plan contract by the board, its employees, and agents.

(f) The savings plan and any Savings Plan Trust Fund shall continue in existence until terminated by the Legislature as it determines or by the board upon determining that continued operation is infeasible. Upon termination of the plan, the balances of savings plan accounts, less any distributions, refunds, fees, charges, and penalties, are sent to account owners, to the extent possible, and any unclaimed assets in the program shall revert to the state in accordance with the Uniform Unclaimed Property Act in §36-8-1 et seq. of this code.

(g) The state pledges to account owners and beneficiaries of the savings plans that the state will not limit or alter the rights under this article which are vested until the obligations are met and discharged. However, nothing in this subsection prohibits the Legislature from discontinuing or terminating a savings plan.

(h) In order to fulfill the charitable and public purposes of this article, neither the earnings nor the corpus of the savings plan trust fund is subject to taxation by the state or any of its political subdivisions.

(i) Notwithstanding any provision of this code to the contrary, money in the Savings Plan Trust Fund is exempt from creditor process and not subject to attachment, garnishment, or other process; is not available as security or collateral for any loan, or otherwise subject to alienation, sale, transfer, assignment, pledge, encumbrance, or charge; and is not subject to seizure, taking, appropriation, or application by any legal or equitable process or operation of law to pay any debt or liability of any account owner, beneficiary or successor in interest.

§18-30-8. College prepaid tuition and savings program administrative account.

There is hereby created a separate account within the State Treasurer's office titled the "college prepaid tuition and savings program administrative account" for the purposes of implementing, operating and maintaining the trust funds and program created by this article. On the effective date of this section, all moneys in the prepaid tuition trust fund administrative account are hereby transferred to the college prepaid tuition and savings program administrative account.

The administrative account shall receive all fees, charges and penalties collected by the board. Expenditures from the fund are authorized from collections subject to appropriations made by the Legislature.

§18-30-9. Income tax deduction for purchasers.

As provided in section twelve-a, article twenty-one, chapter eleven of this code, any payment made under a prepaid tuition contract or other college savings plan administered by the board, pursuant to the provisions of this article, is eligible for a tax deduction.

§18-30-10. Reports and account; annual audit.

(a) In addition to any other requirements of this article, the board shall:

- (1) Provide annually summary information on the financial condition of the prepaid tuition trust fund and statements on the savings plan accounts to the respective account owners;
- (2) Prepare, or have prepared, a quarterly report on the status of the program, including the trust funds and the administrative account, and provide a copy of the report to the Joint Committee on Government and Finance and the Legislative Oversight commission on education accountability; and
- (3) Prepare, or have prepared, an annual actuarial report of the prepaid tuition trust fund and transmit a copy of the report to the Governor, the President of the Senate, the Speaker of the House of Delegates and the Legislative Oversight commission on education accountability.

(b) All accounts of the board, including the trust funds, are subject to an annual external audit by an accounting firm, selected by the board, of which all members or partners assigned to head the audit are members of the American institute of certified public accountants. The audit shall comply with the requirements of section thirty-three, article two, chapter five-a of this code.

§18-30-11. Financial aid eligibility.

The calculations of a beneficiary's eligibility for state student financial aid for higher education may not include or consider the value of distributions available in a prepaid tuition account or the value of distributions available in a savings plan account.

§18-30-12. Confidentiality.

Any information that would tend to disclose the identity of a beneficiary, account owner or donor is exempt from the provisions of chapter twenty-nine-b of this code. Nothing in this section prohibits disclosure or publication of information in a statistical or other form which does not identify the

individuals involved or provide personal information. Account owners are permitted access to their own personal information.

§18-30-13. Board of trustees; authorization of rules.

The legislative rules filed in the state register on September 30, 1997, modified by the board of trustees of the West Virginia prepaid tuition trust fund to meet the objections of the Legislative Oversight commission on education accountability and refiled in the state register on January 30, 1998, relating to the West Virginia prepaid tuition trust fund (rules for the West Virginia prepaid tuition trust fund), are authorized.

§18-30-14.

Repealed.

Acts, 1997 Reg. Sess., Ch. 80.

§18-30-15.

Repealed.

Acts, 1997 Reg. Sess., Ch. 80.

§18-30-16.

Repealed.

Acts, 1997 Reg. Sess., Ch. 80.

§18-30-17.

Repealed.

Acts, 1997 Reg. Sess., Ch. 80.

EXHIBIT 3

Investment Funds of the Savings Plan as of June 30, 2021

Assets in Underlying Funds by Product Line				
Mutual Fund	The Hartford SMART529 \$	SMART529 Select \$	Total \$	Equivalent Shares
	SMART529 WV Direct \$			
DFA Inflationary Protection	-	\$ 48,766,559	\$ 48,766,559	3,697,237
DFA International Core Equity	-	108,385,726	108,385,726	6,732,033
DFA US Core Equity 2	-	262,599,031	262,599,031	8,317,993
DFA Emerging Markets Core	-	43,513,292	43,513,292	1,612,798
DFA One Year Fixed Income	-	69,766,301	69,766,301	6,773,427
DFA Five Yr Global Bond	-	53,580,471	53,580,471	4,911,134
DFA Investment Grade	-	61,837,334	61,837,334	5,276,223
DFA St Ext Qual	-	19,364,955	19,364,955	1,758,852
DFA Global Real	-	21,633,695	21,633,695	1,715,598
DFA Short Duration Inflation	-	19,786,643	19,786,643	1,908,066
Hartford Small Cap Growth	\$ 19,452,282	-	19,452,282	285,937
Hartford Growth Opps	89,929,080	-	89,929,080	1,379,280
Hartford Small Co	21,662,706		21,662,706	656,048
Hartford High Yield	7,157,646		7,157,646	929,564
Hartford Capital Apprec	18,124,188		18,124,188	381,883
Hartford MidCap	92,399,064		92,399,064	2,388,807
Hartford Total Return Bond	80,882,606		80,882,606	7,434,063
Hartford Dividend Growth	367,170,185	-	367,170,185	11,524,488
Hartford International Opps	132,687,430		132,687,430	6,425,541
Hartford MidCap Value	15,420,341		15,420,341	877,152
Hartford Balanced Income	38,723,911		38,723,911	2,356,903
Hartford Inflation Plus	99,603,659		99,603,659	8,549,670
Hartford Equity Income	139,067,480		139,067,480	6,153,428
Hartford Strategic	81,160,457		81,160,457	8,708,204
Hartford World Bond	61,854,758		61,854,758	5,802,510
Hartford Gobal Real Asset	81,712,725		81,712,725	8,278,898
Hartford Core Equity Fund	113,877,270		113,877,270	2,455,310
Hartford Schroders Emerging Mrkt	20,408,598		20,408,598	942,225
Hartford Schroders Intl Multi Cap V	33,181,044		33,181,044	3,154,092
MFS Global Equity	20,821,008		20,821,008	343,128
Vanguard Total Intl Stock	69,853,491		69,853,491	495,696
Vanguard Inflation Protected	16,659,070		16,659,070	1,437,366
Vanguard Total Bond Mkt II	57,108,923		57,108,923	5,117,287
Vanguard Inst Index	44,114,276		44,114,276	117,519
ISHARES RUSSELL 1000 LARGE CAP	18,723,046		18,723,046	654,881
ISHARES RUSSELL MID CAP INDEX	34,271,461		34,271,461	2,310,955
Vanguard Total Stock	141,855,973		141,855,973	697,115
Stable Value	574,691,785		574,691,785	32,842,933
Total Market Value	\$ 2,492,574,462	\$ 709,234,006	\$ 3,201,808,468	
Cash & Investments		\$ 3,201,903,661		
Assets in Underlying Funds		\$ 3,201,808,468		
Difference due to market timing/seed money		\$ 95,193		



EXHIBIT 4

WEST VIRGINIA ABLE ACT. §16-48-1 to §16-48-8

§16-48-1. Short Title.

This article shall be known and may be cited as the "Achieving a Better Life Experience in West Virginia Act" or the "West Virginia ABLE Act".

§16-48-2. Purpose.

The purpose of the West Virginia ABLE Act savings program is to authorize the establishment of savings accounts empowering individuals with a disability and their families to save private funds to support the individual with a disability and to provide guidelines for the maintenance of such accounts.

§16-48-3. Definitions.

(a) "ABLE Act" means the federal legislation codified in Section 529A of the Internal Revenue Code of 1986, 26 U.S.C. § 529A, and related treasury regulations, as amended from time to time. Any references in this article to Section 529A include related treasury regulations.

(b) "Account" or "ABLE savings account" means an individual savings account established in accordance with the provisions of this article.

(c) "Account owner" means designated beneficiary as defined in the ABLE Act.

(d) "Attorney in fact" means a person named in a power of attorney with the authority to open and manage an account.

(e) "Conservator" means a person appointed by the court pursuant to §44A-1-1 et seq. of this code.

(f) "Designated beneficiary" means a West Virginia resident who owns the account and who was an eligible individual when the account was established or who succeeded the former designated beneficiary.

(g) "Eligible individual" means an individual who is entitled to benefits based on blindness or disability under 42 U.S.C. § 401 et seq. or 42 U.S.C. § 1381 et seq., as amended, and such blindness or disability occurred before the date on which the individual attained the age specified in the ABLE Act, or an individual who filed a disability certification, to the satisfaction of the secretary, with the secretary for such taxable year.

(h) "Financial organization" means an organization authorized to do business in the State of West Virginia and is:

- (1) Licensed or chartered by the Insurance Commissioner;
- (2) Licensed or chartered by the Commissioner of the Division of Financial Institutions;
- (3) Chartered by an agency of the federal government; or
- (4) Subject to the jurisdiction and regulation of the securities and exchange commission of the federal government.

(i) "Guardian" means a person appointed by the court pursuant to §44A-1-1 et seq. of this code.

(j) "Management contract" means the contract executed by the Treasurer and a financial organization selected to act as a depository and manager of the program.

(k) "Member of the family" has the meaning contained in the ABLE Act.

(l) "Nonqualified withdrawal" means a withdrawal from an account which is not:

- (1) A qualified withdrawal; or
- (2) A rollover distribution.

(m) "Program" means the West Virginia ABLE Act savings program established pursuant to this article.

(n) "Program manager" means a financial organization selected by the Treasurer to act as a depository and manager of the program.

(o) "Qualified disability expense" means any qualified disability expense included in the ABLE Act.

(p) "Qualified withdrawal" means a withdrawal from an account to pay the qualified disability expenses of the designated beneficiary of the account.

(q) "Rollover distribution" means a rollover distribution as defined in the ABLE Act.

(r) "Savings agreement" means an agreement between the program manager or the Treasurer and the account owner.

(s) "Secretary" means the secretary of the United States Treasury.

(t) "Treasurer" means the State Treasurer.

§16-48-4. Implementation and administration of program; Treasurer's powers and responsibilities.

(a) The Treasurer shall implement and administer the program under the terms and conditions established by this article. In order to implement and administer the program, the Treasurer may:

(1) Engage the services of consultants on a contract basis for rendering professional and technical assistance and advice;

(2) Seek rulings and other guidance from the secretary and the federal Internal Revenue Service relating to the program;

(3) Make changes to the program required for the participants in the program to obtain the federal income tax benefits or treatment provided by Section 529a of the federal Internal Revenue Code of 1986, as amended;

(4) Charge, impose and collect administrative fees and service charges in connection with any agreement, contract or transaction relating to the program;

(5) Develop marketing plans and promotion material;

(6) Establish the methods by which the funds held in accounts shall be dispersed;

(7) Establish the method by which funds shall be allocated to pay for administrative costs;

(8) Do all things necessary and proper to carry out the purposes of this act;

(9) Make an annual evaluation of the ABLE savings program and prepare and submit an annual report of such evaluation to the Governor and Legislature; and

(10) Notify the Secretary when an account has been opened for a designated beneficiary and submit other reports concerning the program required by the Secretary.

(b) The Treasurer may enter into agreements with other states to either allow West Virginia residents to participate in a plan operated by another state or to allow residents of other states to participate in the West Virginia ABLE program.

(c) the Treasurer shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code necessary to implement the provisions of this article.

§16-48-5. Use of financial organizations as program depositories and managers.

(a) The Treasurer may implement the program through use of financial organizations as account depositories and managers. The Treasurer may solicit proposals from financial organizations to act as depositories and managers of the program. Financial organizations submitting proposals shall describe the investment instruments which will be held in accounts. The Treasurer may select more than one financial organization and investment instrument for the program. The Treasurer shall select financial organizations to act as program depositories and managers from among the bidding financial organizations that demonstrate the most advantageous combination, both to potential program participants and this state of the following criteria:

(1) The financial stability and integrity of the financial organization;

(2) The safety of the investment instrument being offered;

(3) The ability of the financial organization to satisfy recordkeeping and reporting requirements;

(4) The financial organization's plan for promoting the program and the investment the organization is willing to make to promote the program;

(5) The fees, if any, proposed to be charged to the account owners;

(6) The minimum initial deposit and minimum contributions that the financial organization will require;

(7) The ability of the financial organization to accept electronic withdrawals, including payroll deduction plans; and

(8) Other benefits to the state or its residents included in the proposal, including fees payable to the state to cover expenses of operation of the program.

(b) The Treasurer may enter into any contracts with a financial organization necessary to effectuate the provisions of this article. Any management contract shall include, at a minimum, terms requiring the financial organization to:

(1) Take any action required to keep the program in compliance with requirements of this article and any actions not contrary to its contract to manage the program to qualify as a "qualified ABLE program" as defined in Section 529a of the federal Internal Revenue Code of 1986, as amended;

- (2) Keep adequate records of each account, keep each account segregated from each other account and provide the Treasurer with the information necessary to prepare the statements required by section six of this article, and amendments thereto;
- (3) Compile and total information contained in statements required to be prepared under section six of this article, and amendments thereto, and provide such compilations to the Treasurer;
- (4) If there is more than one program manager, provide the Treasurer with such information as is necessary to determine compliance with section six of this article;
- (5) Provide the Treasurer with access to the books and records of the program manager to the extent needed to determine compliance with the contract, this article and Section 529a of the federal Internal Revenue Code of 1986, as amended;
- (6) Hold all accounts for the benefit of the account owner or owners;
- (7) Be audited at least annually by a firm of certified public accountants selected by the program manager and provide the results of such audit to the Treasurer;
- (8) Provide the Treasurer with copies of all regulatory filings and reports made by the financial organization during the term of the management contract or while the financial organization is holding any accounts, other than confidential filings or reports that will not become part of the program. The program manager shall make available for review by the Treasurer the results of any periodic examination of such manager by any state or federal banking, insurance or securities commission, except to the extent that such report or reports may not be disclosed under law; and
- (9) Ensure that any description of the program, whether in writing or through the use of any media, is consistent with the marketing plan developed pursuant to the provisions of this article.

(c) The Treasurer may:

- (1) Enter into such contracts as it deems necessary and proper for the implementation of the program;
 - (2) Require that an audit be conducted of the operations and financial position of the program depository and manager at any time if the Treasurer has any reason to be concerned about the financial position, the record keeping practices or the status of accounts of such program depository and manager; and
 - (3) Terminate or not renew a management agreement. If the Treasurer terminates or does not renew a management agreement, the Treasurer shall take custody of accounts held by such program manager and shall seek to promptly transfer such accounts to another financial organization that is selected as a program manager or depository and into investment instruments as similar to the original instruments as possible.
- (d) The Treasurer and the Department of Health and Human Resources are authorized to exchange data regarding eligible individuals to carry out the purposes of this act.

§16-48-6. Establishment of ABLE savings account by designated beneficiary, parent, conservator, guardian or attorney in fact.

(a) Any ABLE savings accounts established pursuant to the provisions of this article shall be opened and managed by a designated beneficiary, or a parent, conservator, guardian or attorney in fact of a designated beneficiary who lacks capacity to enter into a contract and each beneficiary may have only one account. In the absence of a conservator, a guardian may manage an ABLE account regardless of the amount of a designated beneficiary's personal assets. The Department of Health and Human Resources may not manage an ABLE account. The Treasurer may establish a nonrefundable application fee. An application for such account shall be in the form prescribed by the Treasurer and contain:

- (1) The name, address and social security number of the designated beneficiary;
- (2) The name, address and social security number or federal employer identification number of the person or entity opening or managing the ABLE account on behalf of the designated beneficiary;
- (3) A certification relating to no excess contributions; and
- (4) Any additional information as the Treasurer may require.

(b) Any person may make contributions to an ABLE savings account after the account is opened, subject to the limitations imposed by the ABLE Act.

(c) Contributions to ABLE savings accounts may only be made in cash. The Treasurer or program manager shall reject or promptly withdraw:

- (1) Contributions in excess of the limits established pursuant to subsection (b); or
- (2) The total contributions if the:

(A) Value of the account is equal to or greater than the account maximum established by the Treasurer. Such account maximum must be equal to the account maximum for postsecondary education savings accounts established pursuant to §18-30-1 et seq. of this code; or

(B) The designated beneficiary is not an eligible individual in the current calendar year.

(d) (1) An account owner may:

(A) Change the designated beneficiary of an account to an eligible individual who is a member of the family of the prior designated beneficiary in accordance with procedures established by the Treasurer; and

(B) Transfer all or a portion of an account to another ABLE savings account, the designated beneficiary of which is a member of the family as defined in the ABLE Act.

(2) No account owner may use an interest in an account as security for a loan. Any pledge of an interest in an account is of no force and effect.

(e) (1) Distributions may be made from the account for payment of any qualified disability expense for the designated beneficiary of the account made in accordance with the provisions of this article.

(2) Any distribution from an account to any individual or for the benefit of any individual during a calendar year shall be reported to the federal Internal Revenue Service and each account owner, the designated beneficiary or the distributee to the extent required by state or federal law.

(3) Statements shall be provided to each account owner at least four times each year within 30 days after the end of the three-month period to which a statement relates. The statement shall identify the contributions made during the preceding three-month period, the total contributions made to the account through the end of the period, the value of the account at the end of such period, distributions made during such period and any other information that the Treasurer requires to be reported to the account owner.

(4) Statements and information relating to accounts shall be prepared and filed to the extent required by this article and any other state or federal law.

(f) (1) The program shall provide separate accounting for each designated beneficiary. An annual fee may be imposed upon the account owner for the maintenance of an account.

(2) Moneys in an ABLE savings account or a qualified withdrawal:

(A) Are exempt from attachment, execution or garnishment;

(B) Are disregarded for the purposes of determining eligibility for or the amount of a public assistance program, unless required by federal law;

(C) Are not subject to claims by the West Virginia Department of Health and Human Resources unless required by federal law; and

(D) On the death of the designated beneficiary, shall be transferred to the estate of the designated beneficiary, unless prohibited by federal law.

§16-48-7. Limitation on Liability.

(a) Nothing in this act creates any obligation of the Treasurer, the state or any agency or instrumentality of the state to guarantee for the benefit of any account owner or designated beneficiary with respect to the:

(1) Return of principal;

(2) Rate of interest or other return on any account; or

(3) Payment of interest or other return on any account.

(b) The Treasurer may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to provide that every contract, application or other similar document that may be used in connection with opening an account clearly indicates that the account is not insured by the state and that the principal deposited and the investment return are not guaranteed by the state.

§16-48-8. Establishment of savings program trust fund and savings expense fund in State Treasury.

(a) The West Virginia ABLE savings program trust fund is hereby established in the State Treasury. The fund shall be utilized if the Treasurer elects to accept deposits from contributors rather than have deposits sent directly to the program manager. Such fund shall consist of any moneys deposited by contributors in accordance with this article which are not deposited directly with the program manager. All interest derived from the deposit and investment of moneys in such savings trust fund shall be credited to the fund. At the end of any fiscal year, all unexpended and unencumbered moneys in such savings trust fund may not be credited or transferred to the State General Fund or to any other fund.

(b) (1) The West Virginia ABLE Savings Expense Fund is hereby established in the State Treasury. The fund shall consist of moneys received from the ABLE savings program manager, or any governmental or private grants and any state general fund appropriations, if any, for the program.

(2) All expenses incurred by the Treasurer in developing and administering the ABLE savings program shall be payable from the West Virginia ABLE Savings Expense Fund.