



OFFICE OF THE
STATE AUDITOR

February 10, 2022

Dear Audit Firm:

Attached is a request for proposal for audit services for the Utah Educational Savings Plan (UESP), dba my529 for the years ending June 30, 2022 through 2026.

Your proposal must be submitted to Jason Allen, Audit Director, Office of the State Auditor, no later than 5:00 p.m. MST on March 9, 2022 as indicated on page 1 of the Request for Proposal. Selection of the contractor is anticipated to be made by March 16, 2022 and will be posted on the contracting page of our website at auditor.utah.gov/about-us/contracting/.

To be considered in the solicitation process, the proposing independent auditing firm must meet the following minimum criteria:

1. The firm must meet the *Government Auditing Standards'* continuing professional education, independence, peer review, and licensing requirements. The firm's most recent peer review report must be submitted as part of the proposal.
2. The firm, as well as managers and above assigned to the engagement, must hold current CPA licenses and maintain those in good standing for the duration of the audit. CPA license numbers must be provided for the firm (registration) as well as the individuals assigned to this engagement.
3. The firm must have experience in auditing financial statements prepared in accordance with *Governmental Accounting Standards*.
4. The firm must exhibit access to thought and technical leadership resources on emerging issues with GASB and other current accounting issues.
5. The ability to meet firm deadlines is critical. The firm must demonstrate an ability to meet these deadlines both for the performance of interim work as well as for meeting deadlines to complete the audit.

We look forward to working with you as we continue our commitment to quality audits in a timely and professional manner by utilizing the excellent services the auditing profession has to offer.

Sincerely,

Jason Allen, CPA, CFE
Audit Director
801-808-0716
jasonallen@utah.gov

REQUEST FOR PROPOSAL

Financial Audit of the Utah Educational Savings Plan

OSA Solicitation No. 2022-UESP

PURPOSE OF REQUEST FOR PROPOSAL

The purpose of this request for proposal (RFP) is to enter into a contract with a qualified independent auditing firm (Contractor) to provide audit services for the Utah Educational Savings Plan, dba my529 (UESP or Entity) which is a fiduciary component unit (private purpose trust fund) of the State of Utah (State).

This RFP is designed to provide interested Offerors with sufficient basic information to submit proposals meeting minimum requirements. It is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability under any agreement.

BACKGROUND

The Office of the State Auditor (OSA) is required by statute (*Utah Code 67-3-1*) to superintend the audit of UESP. This requirement includes a financial statement audit of the Entity in accordance with generally accepted auditing standards and *Government Auditing Standards*.

For an overview and background information regarding the Entity, see Attachment B of this RFP.

Prior year financial reports for UESP are available on the OSA website at the following link: reporting.auditor.utah.gov/searchreport (key word search "Utah Educational Savings Plan").

SUBMITTING YOUR PROPOSAL

NOTICE: By submitting a proposal in response to this RFP, the Offeror is acknowledging that the requirements, scope of work, and evaluation process outlined in the RFP are fair, equitable, not unduly restrictive, understood, and agreed to. Any exceptions to the content of the RFP must be protested to the OSA prior to the closing date and time for submission of the proposal.

Proposals must be received by the submission deadline of March 9, 2022 no later than 5:00 p.m. MST. Proposals received after the deadline will be late and ineligible for consideration.

The preferred method of submitting your proposal is electronically in PDF format to: jasonallen@utah.gov. However, if you choose to submit hard copies, one original and four copies of your proposal must be submitted to the OSA at the address shown below:

Jason Allen, CPA, CFE, Audit Director
Office of the State Auditor
Utah State Capitol Complex
East Office Building, Suite E310
Salt Lake City, Utah, 84114-2310

OSA anticipates selecting the Contractor by March 16, 2022. Announcement of the awarded contract will be posted to the OSA website at auditor.utah.gov/about-us/contracting/.

LENGTH OF CONTRACT

The audit contract resulting from this RFP will cover the annual audits for each of the fiscal years ending June 30, 2022 through June 30, 2026, subject to an annual performance evaluation, and the needs of UESP and the OSA.

The OSA reserves the right to review the contract on a regular basis regarding performance and cost analysis and may negotiate price and service elements during the term of the contract. The OSA will also consult with UESP's management regarding these reviews.

STANDARD CONTRACT TERMS AND CONDITIONS

Any contract resulting from this RFP will include but not be limited to the Standard Terms and Conditions (see Attachment A). Exceptions and or additions to the Standard Terms and Conditions are strongly discouraged.

Exceptions and additions to the Standard Terms and Conditions must be submitted with the proposal. Exceptions, additions, service level agreements, etc. submitted after the date and time for receipt of proposals will not be considered. Website URLs, or information on website URLs, must not be requested in the RFP document and must not be submitted with a proposal. URLs provided with a proposal may result in that proposal being rejected as non-responsive. URLs are also prohibited from any language included in the final contract document.

The OSA retains the right to refuse to negotiate on exceptions should the exceptions be excessive or not in the best interest of UESP or the OSA, or if the negotiations could result in excessive costs to the OSA and, by extension, UESP or could adversely impact existing time constraints.

DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION)

An oral presentation by an Offeror to clarify a proposal may be required at the sole discretion of the OSA. However, the OSA may award a contract based on the initial proposals received without discussion with the Offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the Offerors' expense.

QUESTIONS AND ANSWERS

Questions arising subsequent to the issuance of this RFP, that could have a significant impact on the responses to the RFP, should be submitted via email to Jason Allen (jasonallen@utah.gov) referencing OSA Solicitation No. 2022-UESP. Failure to comply with this requirement will result in the disqualification of your proposal. The submitted questions and associated answers will be posted on the OSA website, specifically at auditor.utah.gov/about-us/contracting/. All such questions should be received by **the questions due date of February 28, 2022 no later than 5 p.m. MST**. Responses to questions submitted by this due date will be posted to the above OSA contracting page by 5 p.m. on March 2, 2022.

DETAILED SCOPE OF WORK

The Contractor shall provide the following audit services:

A. FINANCIAL AUDIT ENGAGEMENTS

For the State of Utah Annual Comprehensive Financial Report (ACFR) purposes, the Contractor will function as a component auditor 1) issuing a separate report for the UESP audit within the State of Utah group financial audit. The OSA functions as the group auditor. The Contractor shall perform the following engagements:

1. Entrance and Exit Conferences – The Contractor will, prior to beginning audit work, meet with UESP’s Senior Director of Operations to discuss the approach for the audit, timing of work, items to be provided by the Entity’s management, and any new accounting issues expected for the year. New accounting issues will be discussed separately and in advance of the entrance conference with the Senior Director of Operations. An exit conference will be held each year with UESP’s management and the Board of Directors’ audit committee to discuss any findings or issues that arose during the audit.
2. Financial Reports – For each fiscal year ending June 30, 2022 through June 30, 2026, the Contractor shall audit the financial statements prepared in accordance with generally accepted accounting principles (Governmental Accounting Standards Board (GASB)) and records of UESP and, unless circumstances prevent such issuance, shall issue an audit opinion on those financial statements. Such opinions shall be prepared in conformity with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in Government Auditing Standards, issued by the Comptroller General of the United States.

UESP will prepare the financial statements in accordance with generally accepted accounting principles and will include a Management’s Discussion and Analysis, Statement of Fiduciary Net Position, Statement of Changes in Fiduciary Net Position, Notes to the Financial Statements, and Supplementary Information. In addition to the Supplementary Information required by GASB, the financial statements include a Combining Statement of Fiduciary Net Position and Combining Statement of Changes in Fiduciary Net Position.

3. Independent Auditor’s Report on Internal Control Over Financial Reporting and on Compliance and Other Matters – For each fiscal year ending June 30, 2022 through June 30, 2026, the Contractor shall issue reports on internal control over financial reporting and on compliance and other matters in accordance with Government Auditing Standards for each of the audited financial statements.
4. Management Letter – As appropriate, the Contractor shall prepare a comprehensive management letter which includes the audit findings and recommendations relative to the internal control over financial reporting, compliance with laws and regulations, as applicable, and adherence to generally accepted accounting principles.

The Contractor shall request written responses from UESP officials for each recommendation and shall include such responses in the report or management letter. If UESP declines the opportunity to respond, the Contractor shall so state in their report.

5. Reporting Deadlines – The financial audit reports must be completed and submitted by

September 30th each year.

PROPOSAL REQUIREMENTS

Interested Offerors should include the following information in their proposal to perform the audits. Proposals should be written in a manner to allow anonymization by providing the information in section A and B below separately from the information in section C, D, E, and F below. The Offeror's name should only appear on the cover page and should not appear on other pages of the Offeror's proposal.

A. Profile of the Independent Contractor

Provide general background information which includes:

1. The organization and size of the Offeror, whether it is local, regional, national, or international in operations.
2. The location of the office from which the work is to be done and the number of professional staff, by staff level, employed at that office.
3. A positive statement that the following mandatory criteria are satisfied:
 - a) An affirmation that the Offeror is properly licensed for practice as a certified public accountant in the State of Utah.
 - b) An affirmation that the Offeror meets the independence requirements. The Offeror should specifically address the Offeror's ability to satisfy independence requirements related to audit staff participation including:
 - The AICPA *Code of Professional Conduct*, including ET 1.240.070 – Section 529 Plans; and
 - *Government Auditing Standards*.
 - c) An affirmation that the Offeror meets continuing professional education requirements contained in the Government Auditing Standards.
4. A copy of the Offeror's most recent peer review report.

B. Offeror's Qualifications

The Offeror must include the following information in their RFP:

1. The Offeror's response to the mandatory qualifications as described in the cover letter of this RFP must be included. Responses that do not meet all of the mandatory qualifications will not be evaluated and will be deemed non-responsive.
2. Identification of the audit partners, audit managers, field supervisors and other staff who will work on the audit, including staff from other than the local office. Résumés should be included which outline relevant experience for members at the manager level and above.
3. If other Contractors will participate in the audit, those Contractors will be required to provide similar information. A justification for using subcontractors must be provided describing the work that will be done by the subcontractor and how that arrangement augments the services provided by the CPA firm.

4. Certification that neither it nor any proposed subcontractors have:
 - a) Any affiliations with person(s) recognized by law enforcement officers as being habitual criminals or members of criminal cartels.
 - b) Any convictions or judgments (civil or criminal) for fraud, deceit, or crimes involving moral turpitude.
 - c) A petition under the Bankruptcy Act, or any State insolvency law, filed by or against any of the named.
 - d) Any order, judgment, or decree of any federal or State authority barring, suspending, or otherwise limiting the right or license of the bidder to engage in any business practice or activity.
5. At least three (3) references for clients which have used services similar to those required are to be provided. Include business name, address, phone number and contact person for each reference. The OSA or its designee reserve the right to contactor visit any of the Offeror's current and/or past customers to evaluate the level of performance and customer satisfaction.

NOTE: The OSA will assess its experience with offerors previously providing auditing services to the OSA in terms of customer service, compliance with GAAS, stability of audit staff from year to year, understanding of GAAP (including GASB), and the Offeror's ability to work collaboratively with the OSA. If the OSA does not have prior experience with a particular Offeror, the OSA will place more reliance on checking references for feedback on these issues.

C. Offeror's Approach to the Engagement

Submit a general audit work plan to accomplish the scope defined in these guidelines. The audit work plan should demonstrate the Offeror's understanding of the audit requirements and the audit tests and procedures to be applied in completing the audit plan. Include a description of the length, timing, and type of work to be performed on-site at UESP. The plan must detail the expected number of audit hours, on an annual basis, for each fiscal year being audited. The plan must also identify the breakdown of total hours between staff, in-charges, and higher levels. The planned use of specialists, if any, should also be identified.

D. Time Requirements

Detail how the reporting deadline requirements of the audit will be met.

E. Comprehensive Not-To-Exceed Fee

Separate from the other sections of the proposal, supply the billing rates, estimated number of billable hours, and a comprehensive "not-to-exceed" fee, inclusive of other billable expenses, travel, per diem and all other out-of-pocket expenses. The billable hours and fee information requested above should be provided as **separate amounts for each of the five fiscal years being audited.** The Offeror's approach to reducing expenses while performing high quality work should be described.

F. Terms and Conditions

An Offeror's concerns, if any, with the terms and conditions outlined in this proposal,

including the State of Utah Standard Terms and Conditions for Services (Attachment A), must be disclosed in the proposal. Identify the term and condition that causes concern and provide an explanation for the concern and a proposed modification for the term and condition for consideration.

CONTRACTUAL ARRANGEMENTS

A. Compensation for Services

1. Billings for audit services are to be sent directly to the OSA and will be expected to differentiate hours, fees, and expenses. The OSA will be responsible for billing the Entity.
2. Separate progress billings are allowed for time and expense incurred during the audit with the stipulation that progress billings cannot exceed 75% of the annual fee stated above. A statement of the current and cumulative hours incurred shall be submitted with each billing.
3. Final payment for audit services shall be made by the OSA upon the following:
 - a) Completion of the audit;
 - b) Receipt of the required reports as stipulated in the Detailed Scope of Work section above and any other information requested by the OSA;
 - c) Completion of the OSA's review of the reports and any work papers deemed necessary; and
 - d) Receipt of a statement of actual hours incurred and a final billing statement.

B. Significant Contract Provisions

As part of the contract to be awarded, the Contractor will be required to:

1. Retain all work papers and reports for a minimum of six years from the audit report release date, and make available all work papers, audit programs, and time control records associated with the audit during performance of the audit and/or at the completion of the audit for review by the OSA and for a verification of key personnel obligated in the proposal, or other reasonable and valid purposes. The Contractor will be subject to the OSA work paper review process (done for all local government and OSA contract audits). The results of that review will be added to the OSA website. Work papers are confidential and proprietary of the Contractor, regardless of whether specifically so marked. The Contractor acknowledges the Government Records Access and Management Act (GRAMA), Section 63G-2 of the Utah Code, as it relates to disclosure of OSA records. To the extent the OSA receives a request under GRAMA related to the Contractor's work papers, the Contractor and OSA will coordinate to evaluate the request under GRAMA, including the relevant exceptions within GRAMA related to confidential and proprietary information. If the Contractor receives a request under GRAMA regarding work papers, the Contractor will forward the request to the OSA.
2. Immediately inform both the OSA and the UESP Senior Director of Operations regarding any indication of material fraud or illegal acts that may come to their attention in connection with the audit.

3. Notify the OSA, in advance, of all opening and exit conferences between the UESP and the Contractor, as well as all significant conferences concerning audit exceptions, accounting issues, internal control findings, or scope limitations. The Contractor must hold an opening and exit conference with UESP.
4. Refrain from assigning, subcontracting, or delegating any portion of the audit without prior written authorization by the OSA.
5. Notify the OSA, in writing, prior to entering into a contract for auditing or non-auditing engagements with the UESP or any other State agency, department, or division.
6. Strive to have continuity in audit staff from year to year. The Contractor further, in accordance with generally accepted auditing standards, shall assure staff have the appropriate skills and experience and are trained, supervised, and competent to do the work.
7. Notify the OSA and the UESP, in writing, prior to changes of partner, manager, supervisor, or senior personnel obligated in the proposal. (Typically referred to as Key Personnel. Contracts often require disclosure of Key Personnel and notification of any change in Key Personnel.)
8. Provide UESP with Letters of Engagement in accordance with professional standards to specify the responsibilities of the Contractor and UESP as they relate to the conduct of the audits. The terms of the Letters of Engagement shall be consistent with the terms of the Contract. In the event there are inconsistencies, the terms of the Contract shall govern and control. Copies of the Letters of Engagement must be sent to the OSA.
9. Carry and maintain liability insurance, add the State of Utah as an additional insured, and provide proof of this insurance to the OSA, as required by No. 16 of the Standard Terms and Conditions for Services (Attachment A).
10. Under no circumstances will the Contractor be allowed to retain confidential and sensitive data. This includes, but is not limited to, social security numbers, credit card numbers, or personal identifying information.
11. The UESP will provide the Contractor copies of imaged documentation supporting transactions, as needed.

EVALUATION OF PROPOSALS

Best and final offers may be allowed as provided in *Utah Code 63G-6a-707.5* from responsible Offerors who submit responsive proposals that meet the minimum qualifications, evaluation criteria, or applicable score thresholds identified in the RFP.

A committee will evaluate proposals against the following weighted criteria:

% OF SCORING WEIGHT	EVALUATION CRITERIA
Mandatory	Licensing, independence, CPE, peer review, expected audit hours by staffing levels, and ability to meet audit deadlines.
25%	Technical Experience of the Independent Auditing Firm including experience with GASB standards, as well as size and structure of the firm.
20%	Qualifications of Staff
25%	Responsiveness of the proposal in clearly stating an understanding of the audit services to be performed: (1) Appropriateness and adequacy of proposed procedures. (2) Reasonableness of time estimates and total audit hours. (3) Appropriateness of assigned staff levels.
30%	Cost of the Audit

Right to Reject – The OSA reserves the right to reject any and all proposals submitted and to request additional information from all proposing firms. Any contract awarded will be made to the independent auditing firm who, based on evaluation of all responses (applying all criteria and oral interviews if necessary), is determined to be the best to perform the audit.

OTHER INFORMATION

The individual listed below may be contacted for information. However, before making contact we request you review the UESP prior year financial reports and Auditor's reports. Please also review carefully the Detailed Scope of Work (SOW) in this RFP. The most recent copies of prior year financial statements can be found on the OSA's website at the following link: reporting.auditor.utah.gov/searchreport (key word search “Utah Educational Savings Plan”).

Office of the State Auditor:
 Jason Allen, CPA, CFE,
 Audit Director
 Phone: 801-808-0716
 Email: jasonallen@utah.gov

STATE OF UTAH STANDARD TERMS AND CONDITIONS FOR SERVICES
(with changes by the Office of the State Auditor (OSA) for items specific to this contract)

This is for a contract for services (including professional services) meaning the furnishing of labor, time, or effort by a contractor.

1. **DEFINITIONS:** The following terms shall have the meanings set forth below:
 - a) **"Confidential Information"** means information that is deemed as confidential under applicable state and federal laws, including personal information. The OSA reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws.
 - b) **"Contract"** means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. The term "Contract" may include any purchase orders that result from this Contract.
 - c) **"Contract Signature Page(s)"** means the State of Utah cover page(s) that the OSA and Contractor sign.
 - d) **"Contractor"** means the individual or Entity delivering the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, and partners.
 - e) **"Services"** means the furnishing of audit services pursuant to this Contract performed under the delegated authority of the State Auditor pursuant to the State Auditor's constitutional duty (Utah Constitution Article VII, Section 15).
 - f) **"Proposal"** means Contractor's response to the OSA's Solicitation.
 - g) **"Solicitation"** means the documents used by the OSA to obtain Contractor's Proposal.
 - h) **"OSA"** means the department, division, office, bureau, agency, or other organization identified on the Contract Signature Page(s).
 - i) **"State of Utah"** means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
 - j) **"Subcontractors"** means subcontractors or subconsultants at any tier that are under the direct or indirect control or responsibility of the Contractor, and includes all independent contractors, agents, employees, authorized resellers, or anyone else for whom the Contractor may be liable at any tier, including a person or Entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
 - k) **"Work Product"** means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the OSA. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any OSA intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third-Party intellectual property. It is also understood that all workpapers produced and/or compiled by the Contractor in anticipation of rendering or in support of the Contractor's audit opinion related to the financial statements of the Entity shall not be deemed to be work product and shall remain the sole property of the Contractor.
2. **GOVERNING LAW AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all Services performed under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements. If this Contract is funded by federal funds, either in whole or in part, then any federal regulation related to the federal funding, including CFR Appendix II to Part 200, will supersede this Attachment A.
4. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by the OSA to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, the State of Utah, federal Contractors, and OSA staff, access to all such records.
5. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** The Status Verification System, also referred to as "E-verify", only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
 1. Contractor certifies as to its own Entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws.
 2. Contractor shall require that each of its Subcontractors certify by affidavit, as to their own Entity, under penalty of perjury, that each Subcontractor has registered and is participating in the Status Verification System to verify the work eligibility status of Subcontractor's new employees that are employed in the State of Utah in accordance with applicable

immigration laws.

3. Contractor's failure to comply with this section will be considered a material breach of this Contract.
6. **CONFLICT OF INTEREST:** Contractor represents that none of its personnel are officers or employees of the OSA or the State of Utah, unless disclosure has been made to the OSA.
7. **INDEPENDENT CONTRACTOR:** Contractor and Subcontractors, in the performance of this Contract, shall act in an independent capacity and not as officers or employees or agents of the OSA or the State of Utah.
8. **INDEMNITY:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the OSA and the State of Utah from all third-party claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract to the extent caused by any intentional, wrongful act or gross negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the OSA. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
9. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by federal and state employment laws, including: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e), which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90, which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990, which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order 2019-1, dated February 5, 2019, which prohibits unlawful harassment in the workplace. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind by any of Contractor's employees.
10. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, provided that the amendment is within the Scope of Work of this Contract and is within the scope/purpose of the original solicitation for which this Contract was derived. The amendment will be attached and made part of this Contract. Automatic renewals will not apply to this Contract, even if listed elsewhere in this Contract.
11. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, or proposed for debarment by any governmental department or agency, whether international, national, state, or local. Contractor must notify the OSA within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
12. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and is subject to the remedies listed below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the OSA, upon thirty (30) days written termination notice being given to the Contractor. The OSA and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing. On termination of this Contract, all accounts and payments will be processed according to the financial arrangements set forth herein for approved Services ordered prior to date of termination.

Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the OSA or the State of Utah is limited to full payment for all Services properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract. In no event shall the OSA be liable to the Contractor for compensation for any services neither requested by the State nor satisfactorily performed by the Contractor. In no event shall the OSA's exercise of its right to terminate this Contract for convenience relieve the Contractor of any liability to the OSA for any damages or claims arising under this Contract.

13. **NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the OSA, if the OSA reasonably determines that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects the OSA's ability to pay under this Contract. A change of available funds as used in this paragraph includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.

If a written notice is delivered under this section, the OSA will reimburse Contractor for the Services properly ordered until the effective date of said notice. The OSA will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.

14. **SUSPENSION OF WORK:** Should circumstances arise which would cause the OSA to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by written notice. Contractor's responsibilities may be reinstated upon advance formal written notice from the OSA.
15. **SALES TAX EXEMPTION:** The Services under this Contract will be paid for from the OSA's funds and used in the exercise

of the OSA's essential functions as a State of Utah Entity. Upon request, the OSA will provide Contractor with its sales tax exemption number. It is Contractor's responsibility to request the OSA's sales tax exemption number. It also is Contractor's sole responsibility to ascertain whether any tax deduction or benefits apply to any aspect of this Contract.

16. **CONTRACTOR'S INSURANCE RESPONSIBILITY.** Contractor shall maintain the following insurance coverage:
- a. Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
 - b. Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate. Such limits may be achieved through a combination of primary and excess liability policies
 - c. Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
 - d. Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the OSA before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

17. **RESERVED**

18. **PUBLIC INFORMATION:** Contractor agrees that this Contract, related purchase orders, related pricing documents, and invoices will be public documents and may be available for public and private distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the OSA and the State of Utah express permission to make copies of this Contract, related sales orders, related pricing documents, and invoices in accordance with GRAMA. Except for sections identified in writing by Contractor and expressly approved by the OSA, Contractor also agrees that the Contractor's Proposal to the Solicitation will be a public document, and copies may be given to the public as permitted under GRAMA. The OSA and the State of Utah are not obligated to inform Contractor of any GRAMA requests for disclosure of this Contract, related purchase orders, related pricing documents, or invoices.
19. **DELIVERY:** All deliveries under this Contract will be F.O.B. destination with all transportation and handling charges paid for by Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the OSA, except as to latent defects or fraud. Contractor shall strictly adhere to the delivery and completion schedules specified in this Contract.
20. **ACCEPTANCE AND REJECTION:** The OSA shall have thirty (30) days after the performance of the Services to perform an inspection of the Services to determine whether the Services conform to the standards specified in the Solicitation and this Contract prior to acceptance of the Services by the OSA. Notwithstanding the foregoing, the parties acknowledge and agree that the determination as to (1) whether to issue an audit opinion relating to the financial statements of the Entity for the fiscal year under contract; and (2) the form of any such opinion issued by the Contractor is at the sole discretion of the Contractor.

If Contractor delivers nonconforming Services, the OSA may, at its option and at Contractor's expense: (i) return the Services for a full refund; (ii) require Contractor to promptly correct or reperform the nonconforming Services subject to the terms of this Contract; or (iii) obtain replacement Services from another source, subject to Contractor being responsible for any cover costs.

21. **INVOICING:** Contractor will submit invoices within thirty (30) days of Contractor's performance of the Services to the OSA. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to this Contract. The prices paid by the OSA will be those prices listed in this Contract, unless Contractor offers a prompt payment discount within its Proposal or on its invoice. The OSA has the right to adjust or return any invoice reflecting incorrect pricing.
22. **PAYMENT:** Payments are to be made within thirty (30) days after a correct invoice is received. All payments to Contractor will be remitted by mail or electronic transfer. If payment has not been made after sixty (60) days from the date a correct invoice is received by the OSA, then interest may be added by Contractor as prescribed in the Utah Prompt Payment Act. The acceptance by Contractor of final payment, without a written protest filed with the OSA within ten (10) business days of receipt of final payment, shall release the OSA and the State of Utah from all claims and all liability to the Contractor. The OSA's payment for the Services shall not be deemed an acceptance of the Services and is without prejudice to any and all claims that the OSA or the State of Utah may have against Contractor. The State of Utah and the State Entity will not allow the Contractor to charge end users electronic payment fees of any kind.
23. **TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence. Contractor shall be liable for all reasonable damages to the OSA, the State of Utah, and

anyone for whom the State of Utah may be liable as a result of Contractor's failure to timely perform the Services required under this Contract.

24. **CHANGES IN SCOPE:** Any changes in the scope of the Services to be performed under this Contract shall be in the form of a written amendment to this Contract, mutually agreed to and signed by both parties, specifying any such changes, fee adjustments, any adjustment in time of performance, or any other significant factors arising from the changes in the scope of Services.
25. **PERFORMANCE EVALUATION:** The OSA may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors. Results of any evaluation may be made available to Contractor upon request.
26. **STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract. Contractor shall be liable to the OSA and the State of Utah for claims, liabilities, additional burdens, penalties, damages, or third-party claims (e.g., another Contractor's claim against the State of Utah), to the extent caused by wrongful acts, errors, or omissions that do not meet this standard of care.
27. **REVIEWS:** The OSA reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor. Such reviews do not waive the requirement of Contractor to meet all of the terms and conditions of this Contract.
28. **ASSIGNMENT:** Contractor may not assign, sell, transfer, subcontract or sublet rights, or delegate any right or obligation under this Contract, in whole or in part, without the prior written approval of the OSA.
29. **REMEDIES:** Any of the following events will constitute cause for the OSA to declare Contractor in default of this Contract: (i) Contractor's non-performance of its contractual requirements and obligations under this Contract; or (ii) Contractor's material breach of any term or condition of this Contract. The OSA may issue a written notice of default providing a ten (10) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains after Contractor has been provided the opportunity to cure, the OSA may do one or more of the following: (i) exercise any remedy provided by law or equity; (ii) terminate this Contract; (iii) impose liquidated damages, if liquidated damages are listed in this Contract; (iv) debar/suspend Contractor from receiving future contracts from the OSA or the State of Utah; or (v) demand a full refund of any payment that the OSA has made to Contractor under this Contract for Services that do not conform to this Contract.
30. **FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, act of God, and/or war which is beyond that party's reasonable control. The OSA may terminate this Contract after determining such delay will prevent successful performance of this Contract.
31. **CONFIDENTIALITY:** If Confidential Information is disclosed to Contractor, Contractor shall: (i) advise its agents, officers, employees, partners, and Subcontractors of the obligations set forth in this Contract; (ii) keep all Confidential Information strictly confidential in accordance with applicable professional standards; and (iii) not disclose any Confidential Information received by it to any third parties. Contractor will promptly notify the OSA of any potential or actual misuse or misappropriation of Confidential Information.

Contractor shall be responsible for any breach of this duty of confidentiality, including any required remedies and/or notifications under applicable law. Contractor shall indemnify, hold harmless, and defend the OSA and the State of Utah, including anyone for whom the OSA or the State of Utah is liable, from claims related to a breach of this duty of confidentiality, including any notification requirements, by Contractor or anyone for whom the Contractor is liable.

Upon termination or expiration of this Contract, Contractor will return all copies of Confidential Information to the entity that originally provided the information or certify, in writing, that the Confidential Information has been destroyed, provided that the Contractor may retain its work papers in accordance with applicable professional standards. This duty of confidentiality shall be ongoing and survive the termination or expiration of this Contract.

32. **PUBLICITY:** Contractor shall submit to the OSA for written approval all advertising and publicity matters relating to this Contract. It is within the OSA's sole discretion whether to provide approval, which must be done in writing.
33. **RESERVED**
34. **INDEMNIFICATION RELATING TO INTELLECTUAL PROPERTY:** Contractor will indemnify and hold the OSA and the State of Utah harmless from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities, and costs in any action or claim brought against the OSA or the State of Utah for infringement by the Contractor of a third party's copyright, trademark, trade secret, or other proprietary right. The parties agree that if there are any limitations of Contractor's liability, such limitations of liability will not apply to this section.
35. **RESERVED**
36. **OWNERSHIP IN INTELLECTUAL PROPERTY:** The OSA and Contractor agree that each has no right, title, interest, proprietary or otherwise in the intellectual property owned or licensed by the other, unless otherwise agreed upon by the parties in writing.
37. **WAIVER:** A waiver of any right, power, or privilege shall not be construed as a waiver of any subsequent right, power, or privilege.

38. **ATTORNEY'S FEES:** In the event of any judicial action to enforce rights under this Contract, the prevailing party shall be entitled its costs and expenses, including reasonable attorney's fees incurred in connection with such action.
39. **PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or to any person in any official capacity participates in the procurement of such supplies, services, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
40. **DISPUTE RESOLUTION:** Prior to either party filing a judicial proceeding, the parties agree to participate in the mediation of any dispute. The OSA, after consultation with the Contractor, may appoint an expert or panel of experts to assist in the resolution of a dispute. If the OSA appoints such an expert or panel, OSA and Contractor agree to cooperate in good faith in providing information and documents to the expert or panel in an effort to resolve the dispute.
41. **ORDER OF PRECEDENCE:** In the event of any conflict in the terms and conditions in this Contract, the order of precedence shall be: (i) this Attachment A; (ii) Contract Signature Page(s); (iii) the State of Utah's additional terms and conditions, if any; (iv) any other attachment listed on the Contract Signature Page(s); and (v) Contractor's terms and conditions that are attached to this Contract, if any. Any provision attempting to limit the liability of Contractor or limit the rights of the OSA or the State of Utah must be in writing and attached to this Contract or it is rendered null and void.
42. **SURVIVAL OF TERMS:** Termination or expiration of this Contract shall not extinguish or prejudice the OSA's right to enforce this Contract with respect to any default or defect in the Services that has not been cured.
43. **SEVERABILITY:** The invalidity or unenforceability of any provision, term, or condition of this Contract shall not affect the validity or enforceability of any other provision, term, or condition of this Contract, which shall remain in full force and effect.
44. **ENTIRE AGREEMENT:** This Contract constitutes the entire agreement between the parties and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
45. **ANTI-BOYCOTT ISRAEL:** In accordance with Utah statute 63G-27-101, Contractor certifies that it is not currently engaged in a boycott of the State of Israel and agrees not to engage in a boycott of the State of Israel for the duration of the contract.

(Revision Date: 15 April 2021)

(OSA Revision Date: February 10, 2022)

BACKGROUND AND OVERVIEW

The Utah Educational Savings Plan, dba my529 (UESP), was formed in April 1996 for the purpose of providing account owners with an opportunity to save for the future educational expenses of designated beneficiaries. On June 30, 1996, UESP began operations as a component unit of the State of Utah established by Utah statute. UESP is designed to comply with Section 529 of the Internal Revenue Code of 1986, as amended. Section 529 allows states and state entities (and in limited circumstances, eligible educational institutions) to create, maintain and administer qualified tuition programs (529 plans) which are tax-advantaged savings vehicles to help individuals save for the costs of higher education, K-12 tuition, registered apprenticeships and limited repayment of qualified education loans.

As set forth in *Utah Code*, Title 53B, Chapter 12, UESP is administered and managed by the Utah Board of Higher Education. The Utah Board of Higher Education, acting in its capacity as the Utah Higher Education Assistance Authority (UHEAA) appoints member to the UHEAA Board of Directors to oversee the operations of UESP. UESP is a fiduciary component unit (private purpose trust fund) included in the State of Utah's Annual Comprehensive Financial Report.

UESP operates as Utah's official nonprofit 529 college savings plan and is currently the fourth largest 529 plan in the nation. UESP helps families save for higher education by offering numerous flexible low fee investment options. Assets under management consist of more than 482,000 accounts totaling \$21.1 billion as of December 31, 2021. UESP currently has 90 employees. Additional information about UESP can be found online at my529.org.