**MINUTES OF THE MEETING**

**Arkansas Section 529 Plan Review Committee**

Thursday, May 31, 2018 at 10:30am

Victory Building Conference Room, Suite 275 -- Little Rock, AR 72201

A special meeting of the Arkansas Section 529 Plan Review Committee (“Committee”) was held on Thursday, May 31, 2018 at 10:30am in the Victory Building Conference Room, Suite 275. Present at the meeting were Treasurer Dennis Milligan; Rod Graves, serving as the voting representative for Director George Hopkins of the Arkansas Teacher Retirement System; Grant Wallace with the Treasurer’s Office; Director of 529 Programs and Financial Education Emma Willis; AR 529 Assistant Chris Scott; Jonathan Coleman, serving as the voting representative for Dr. Markham with the Arkansas Department of Higher Education; John Peace with Dover Dixon Horne

The press was notified in compliance with the Freedom of Information Act.

Grant Wallace called the meeting to order at 10:30am.

Grant Wallace started the meeting explaining that there was a Project Management Agreement with Ascensus in regards to the mobile application that is being developed.

John Peace explained that the agreement provides Ascensus to work with companies that we contract with, such as Central 25, to provide data and information to them. He explained that the original agreement had a cross- indemnity agreement where if Ascensus breeched, they would indemnify that the committee had breached, and it would indemnify Ascensus and also included an agent or sub-contractor of each party, which probably includes Central 25, but Ascensus wanted to make it clear that it does include Central 25. He explained that Ascensus wanted unlimited indemnity, but we were able to get that reduced to just any amount in our operating funds, the same limitation that is in the original program management agreement, and that this would be the seventh amendment to the program management agreement in regards to the GIFT Plan.

Grant Wallace asked if, on the indemnification, the State of Arkansas cannot indemnify itself. John explained that we would indemnify Ascensus for any security breach that is caused by us or Central 25, but limited to the amount that we have in our administrative accounts. He stated that with the conference call this morning earlier with them, he believes there is going to be a provision in the agreement between Ascensus and Central 25, for Central 25 to indemnify Ascensus.

Grant asked that from the Committee’s standpoint, how we get around the constitutional prohibition of the state indemnifying itself. John Peace responded that the original amendment has been there since the beginning of the program. Grant stated that while things that occurred in the past are out of his control, since Treasurer Milligan has taken office, the committee has followed the law that we could not indemnify that state of Arkansas.

John Peace advised that he could try to have that removed from the agreement if that is what the Committee decides, and stated again that Ascensus had wanted unlimited indemnity and that we were able to get that reduced to the amount in the committee’s administrative accounts. John went on to say that he believes that Ascensus would be willing to remove that provision if they receive direct indemnity from Central 25, which he felt they would.

John proposed that the Committee could defer action on the proposed amendment until it is determined what indemnity agreement is reached between Ascensus and Central 25. Grant responded that with the tight deadline, and the possibility of doing Committee actions over email, he would be hesitant to pursue that course of action.

Rod Graves asked that with that if there is an issue already in place with the state of Arkansas being indemnified, if that should be part of this proposed amendment as well. Grant replied that he does not believe Ascensus would agree to change anything that would weaken the original agreement out of their favor. John also replied that cross indemnification is a common practice, and is only used if the breach of contract causes damage to the other party.

Grant asked if the amendment applies strictly to Central 25. John responded that while it only applies to Central 25, it would also apply to any other subcontractor the Committee hires in the future that Ascensus would have to provide data to.

John Peace explained that he would be comfortable taking the indemnity clause out altogether and explain to Ascensus that the Committee does not want to go that far, and that he thinks it would still be covered under the original, as technically, Central 25 is a sub-contractor of the Committee.

Grant stated that he would be fine with approving the amendment with the caveat that John Peace returns to Ascensus to exclude the indemnity of the state of Arkansas, relying that the current language in the original agreement and push anything that would need to be specifically indemnified with Central 25 onto Ascensus’s agreement, which he believes would be resolved. John echoed Grant’s beliefs on the resolution.

Grant Wallace made a motion to approve the amendment with the caveat that John Peace returns to Ascensus to exclude the indemnity of the state of Arkansas, relying that the current language in the original agreement and push anything that would need to be specifically indemnified with Central 25 onto Ascensus’s agreement. Rod Graves seconded that motion, and the motion carried.

Grant Wallace proceeded with the next order of business, approval of a $35,000 agreement for NWA Brand for social media for a seven month trial. He stated that this would allow MHP, which currently oversees our social media, to switch focus and oversee other marketing aspects. Rod Graves made a motion for approval, Jonathan Coleman seconded the motion, and the motion carried.

There being no further business, Grant Wallace moved to adjourn the meeting and the meeting adjourned at 10:42am.

Respectfully submitted,

Emma Willis, Director of 529 Programs and Financial Education