

**KNOX COUNTY RETIREMENT AND PENSION BOARD**

**NOVEMBER 16, 2015**

The Knox County Retirement and Pension Board met in regular session on Monday, November 16, 2015, at 1:00 P.M. in the County Commission Conference Room 640, City County Building, Knoxville, Tennessee. Chairman Trott, presided and called the meeting to order.

The following members were present: Mr. Rick Trott, Chairman, Mr. Nick McBride, Vice Chairman, Ms. Robin Moody, Secretary, Commissioner Ed Brantley, Commissioner Sam McKenzie, Commissioner Jeff Ownby, Commissioner Bob Thomas, and Mr. Chris Caldwell, representing Mayor Tim Burchett. Also present at the meeting were: Mr. Bob Cross and Mrs. Carissa Dunaway, USICG, Mr. William Mason, Mr. John Owings and Mrs. Stephanie Coleman, Legal Counsel, and Retirement staff, Mrs. Kim Bennett, Mrs. Terri Chase, and Mrs. Janet Rowan.

**IN RE: APPOINTMENTS OF COMMITTEES**

Chairman Trott asked if any board member wished to change the Committee they were currently serving and no board member desired to change committees. Commissioner Thomas read the Committee members as matter of record to the board members. A motion wade made by Commissioner Thomas to continue with current membership of the committees. The motion was seconded by Mr. McBride and unanimously carried.

Chairman Trott made the following Committee appointments, noting that assignments would be reviewed when the Schools representative was elected:

DISABILITY COMMITTEE: Commissioner Bob Thomas, Chairman  
Commissioner Sam McKenzie  
Ms. Robin Moody  
Mr. Rick Trott

DOCUMENT COMMITTEE: Mr. Chris Caldwell, Chairman  
Commissioner Bob Thomas  
Mr. Nick McBride  
Ms. Robin Moody  
Commissioner Jeff Ownby

**RETIREMENT AND INVESTMENT**

**EDUCATION**

COMMITTEE: Commissioner Ed Brantley, Chairman  
Mr. Chris Caldwell  
Mr. Nick McBride  
Ms. Robin Moody  
Commissioner Jeff Ownby  
Mr. Rick Trott

TRUST INVESTMENT AND  
ACTUARIAL STUDY

COMMITTEE: Mr. Nick McBride, Chairman  
Commissioner Ed Brantley  
Mr. Chris Caldwell  
Commissioner Jeff Ownby

**IN RE: APPROVAL OF MINUTES OF PREVIOUS MEETING**

Consideration of approval of the minutes of the previous meeting of October 26, 2015, was presented. A motion was made by Commissioner Brantley that the minutes be approved as presented. The motion was seconded by Mr. McBride and unanimously carried.

**IN RE: APPLICATIONS FOR RETIREMENT AS PROVIDED IN THE DEFINED CONTRIBUTION PLAN AND AUTHORIZATION OF CREDITED SERVICE BENEFIT BASED ON COMPLETED YEARS OF SERVICE**

The following applications for retirement and the credited service benefit based upon completed years of credited service at the date of retirement, as provided in the Defined Contribution Plan, were presented for consideration:

<u>NAME</u>	<u>DEPARTMENT</u>	<u>CREDITED SERVICE</u>	<u>EFFECTIVE DATE</u>
Thomas R LePage	Criminal Ct	11 years 3 months	December 1, 2015
Judy Pressley	Schools	8 years 7 months	December 1, 2015
Richard D Rogers Jr	Sheriff	16 years	December 1, 2015
Carl H Singleton	Schools	5 years 11 months	December 1, 2015

After review, a motion was made by Mr. McBride to approve the applications for retirement under the Defined Contribution Plan as presented and authorize the Directed Custodian, Wells Fargo Bank, to make disposition of the benefits upon certification from USI. The motion was seconded by Commissioner Ownby and unanimously approved.

After review, a motion was made by Mr. McBride to approve the credited service benefits as presented and authorize the Directed Custodian, State Street Bank, to make disposition of the benefits as provided by the Plan. The motion was seconded by Commissioner Ownby and unanimously approved.

**IN RE: REPORT OF EXECUTIVE DIRECTOR**

Mrs. Bennett reported on the conversion to the new server; stating it is ready for testing. Mrs. Bennett stated the conversion should be completed before the Christmas holidays. Once complete, imaging will begin in 2016.

Mrs. Bennett stated there are two meetings this week before Open Enrollment for active employees ends November 20<sup>th</sup>. She stated there is one meeting for Medicare Advantage Plan information this week and the deadline for Medicare enrollment is December 7<sup>th</sup>. Mrs. Bennett stated thus far, there have been approximately 150 retirees at the meetings and 99% are enrolling in Humana due to

the exclusive contract Summit Health has with Humana. She stated the Retirement Office will be contacting those retirees that haven't attended a meeting and advising them again of the deadline of December 7<sup>th</sup>.

Mrs. Bennett stated the cost of living adjustment for 2016 for the Defined Benefit Plan and the Uniformed Officers Pension Plan will be 3%, as specified in those plans. She stated, in accordance with the terms of that Plan, there will be no cost of living adjustment for the Teacher's Plan as CPI for the last 12-months ending September 30<sup>th</sup> was zero.

Mrs. Bennett stated there is a correction of a Uniformed Officer Pension Plan retirement benefit due to an error in the calculation as the retiree had taken a refund distribution in connection with a prior break in service and did not repay the funds in 2007 to receive credited service for that time worked. She stated the error has been communicated to the retiree after discussion with Legal Counsel. Mrs. Bennett stated she will report the results at the December Board Meeting.

Mrs. Bennett stated the preliminary audit report contains no findings or issues. She stated Pugh & Co will be releasing a draft of the audit report for the Pension Board by the end of November.

**IN RE: REPORT OF ELECTION COMMITTEE**

Mrs. Bennett stated the Election Committee, consisting of Mr. Chris Caldwell, Chairman, Ms. Krisden Parrott, Ms. Kristen Blanton, Knox County Schools and Tech Support from Knox County and Knox County Schools met last week to discuss the election. She stated Knox County Schools Tech Support is currently building a program for online voting. Mrs. Bennett stated the announcement of the election for the Knox County Schools representative was emailed on Friday, November 13<sup>th</sup> to Knox County Schools' employees. She also stated the advertisement was in the News Sentinel on Sunday November 15<sup>th</sup>. She stated the deadline for petitions is December 17, 2015. Mrs. Bennett stated the election will be held online on January 14, 2016.

**IN RE: CONSIDERATION OF ADOPTION OF 2016 BOARD MEETING SCHEDULE**

Mrs. Bennett presented the proposed 2016 Board Meeting Schedule. After discussion, a motion was made by Mr. Caldwell that the Board Meeting schedule for 2016 be approved as presented. The motion was seconded by Commissioner Ownby and unanimously carried.

**IN RE: REPORT OF LEGAL COUNSEL**

Mr. Mason stated there was no business to report at this time.

Mrs. Coleman stated the following Charter School agreement has been approved/

**MEMORANDUM OF UNDERSTANDING**

**Knox County Board of Education  
Emerald Charter Schools  
and  
Knox County Retirement and Pension Board**

This Memorandum of Understanding is made and entered at Knox County, Tennessee on the \_\_\_ day of \_\_\_\_\_, 2015, by and between the Knox County Board of Education ("KCBE"), the Emerald Charter Schools ("Emerald"), a nonprofit corporation, and the Knox County Retirement and Pension Board ("Retirement Board"), existing pursuant to Article VII of the Charter of Knox County, Tennessee.

**WHEREAS**, KCBE and Emerald have entered into a Charter School Agreement dated April 1, 2015 ("Charter Agreement"), concerning the opening and operation of a public, nonsectarian, nonreligious charter school known as Emerald Academy within Knox County, Tennessee; and

**WHEREAS**, KCBE, Emerald, and the Retirement Board seek to formalize their arrangement under which the KCBE and Emerald engage the Retirement Board for purposes of administering benefits for the non-certified employees of Emerald, specifically retirement benefits, on the terms set out in this Memorandum of Understanding ("MOU"); and

**WHEREAS**, the purpose of this MOU is to provide said benefits in compliance with the requirements of Tennessee Code Annotated § 8-35-242 and other related state law, while recognizing the Retirement Board's independent authority and fiduciary responsibility for the System.

**NOW THEREFORE**, in consideration of the foregoing premises and valuable consideration in the form of services provided, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**1. Plans.** The Parties agree that the Retirement Board shall provide administrative and other related services for KCBE and Emerald by administering the Asset Accumulation Plan, the 457 Plan, and the Medical Expense Retirement Plan under the Restatement of the Knox County Employee Benefit System effective January 1, 2014, as amended (the "System"), for participation in the System by the Eligible Employees of Emerald as defined below.

**2. Fees.** The following fees payable to the Retirement Board with respect to the services provided are set forth in the Fee Schedule attached hereto as Schedule A, which may be modified by the Retirement Board upon 60 days written notice to KCBE and Emerald:

- a. **Initiation Fee-** the Retirement Board shall charge a fee to offset the costs of adding Emerald as an employer in the System.
- b. **Maintenance Cost-** the Retirement Board shall charge the per person cost attributable to administering benefits for each Emerald employee within the System to Emerald on an ongoing basis.

**3. Services Provided.** The Retirement Board will administer the System according to the Knox County Charter and the plan's governing documents. All direct employees of Emerald who do not hold an Educator License from the State of Tennessee are eligible to participate in the System. Eligible Emerald employees will participate in the Asset Accumulation Plan as administered by the Retirement Board. Eligible Emerald employees shall have the opportunity to participate in the 457 Plan and the Medical Expense Retirement Plan as administered by the Retirement Board. The Emerald employees who are eligible for participation in the System shall not be eligible for election as participant members of the Retirement Board.

**4. Services Not Provided.** The Retirement Board is not responsible for and does not provide or perform investment advisory services. The Retirement Board will not provide life insurance benefits, disability insurance, or health insurance benefits for the Emerald employees.

**5. Payment.** Upon a determination by the Retirement Board of the applicable Initiation Fee, pursuant to Paragraph 2(a) of this MOU, the Retirement Board shall submit an invoice to Emerald for the Initiation Fee, which shall be due upon receipt. Additionally, the Retirement Board shall bill Emerald, in advance, on an annual basis for the Maintenance Cost due and owing pursuant to Paragraph 2(b) of this MOU. Emerald shall have 10 days from the date of the bill to pay the Retirement Board for said costs.

In the event that any payment due from Emerald is not made with good funds when due under this MOU, Emerald shall pay a late charge of five percent (5%) on any amount owing. Additionally, if any amount becomes overdue at any time by more than 15 days, KCBE shall be responsible to pay the full

amount due and owing, including any late charges, within five (5) days thereof, in accordance with the Charter Agreement.

**6. Relationship.** Nothing in this MOU shall be construed to create any relationship, partnership, employment, or joint venture between the Retirement Board and Emerald other than that of independent contractors. Except as expressly set forth herein, the Retirement Board shall not be responsible for any fees, costs, expenses, or other obligations in any way related to or connected with Emerald or Emerald Academy. The Parties agree that nothing in this MOU shall be construed to modify or restrict the Retirement Board's Executive Director from directing payment of Retirement Board operating expenses from the System assets in line with the annual budget approved by the Retirement Board.

**7. Representations.** Emerald represents that it has been legally formed and will operate according to state and federal law in such a manner that it will not disqualify the System as a "governmental plan" as that term is used by the Internal Revenue Service of the United States.

**8. Interpretation.** In the event of any question arising under this MOU, the matter shall be referred to the Retirement Board and the Board of Emerald for consideration. The parties agree to work in good faith for a period of at least thirty (30) days to reach a resolution before taking legal action.

**9. Amendment.** This MOU may be amended by agreement of the parties in writing at any time

**10. Term and Termination.** This MOU will continue for a period of a one-year term from the date hereof but may be extended for an additional nine (9) terms of one year each, as stated herein. At the end of each one-year term, this agreement will automatically be extended for an additional one-year term, unless a party gives sixty-day's prior notice of termination. Notice shall be given in writing to the person identified in paragraph 21 below. In the event any party wishes to terminate this MOU due to the another party's failure to satisfactorily perform its obligations in accordance with this MOU, the defaulting party will have fifteen (15) days to cure such unsatisfactory performance following receipt of written notice from the other party. Such written notice will detail each alleged default. If the default has not been remedied by the conclusion of this fifteen (15) day period, the non-defaulting party may terminate this MOU without further notice and seek whatever legal remedies are available.

**11. Closure and Dissolution.** In the event that Emerald is required to cease operation for any reason, under no circumstances shall the Retirement Board be responsible for payment of any debts, obligations, or liabilities incurred at any time by Emerald, including, but not limited to, the cost of any ongoing Emerald employee benefits, whether incurred or owing before or after such closure or dissolution. In the course of its winding up, Emerald shall make arrangements to fund any and all such debts, obligations, or liabilities.

**12. Binding Effect.** This MOU shall inure to the benefit of, and shall be binding upon, each of the parties hereto, and their respective successors and assigns.

**13. Survival.** Each and every provision of this MOU shall survive the termination of the MOU for a period of two (2) years.

**14. Governing Law and Venue of Disputes.** This MOU shall be deemed to be made in and shall in all respects be interpreted, construed and governed by and in accordance with the laws of the State of Tennessee (without giving effect to the conflict of law principles thereof). The parties understand and agree that any and all legal proceedings relating to the subject matter of this MOU shall be maintained in the Circuit or Chancery Courts of Knox County, Tennessee, which courts shall have exclusive venue for such purposes.

**15. Severability.** The terms and conditions set forth in this MOU shall be considered and construed as separate and independent. Should any part or provision of any term or condition be held invalid, void, or unenforceable in any court of competent jurisdiction, such invalidity, voidness or unenforceability shall not render invalid, void or unenforceable any other part or provision of this MOU.

**16. Construction.** Parties agree that although this MOU was drafted by the Retirement Board, its agents and attorneys, this MOU reflects the terms as agreed by the parties, and the Retirement Board should merely be considered the scrivener for the document. No provision of this MOU or any related document shall be construed against, or interpreted to the disadvantage of, any party hereto, by any court or any governmental or judicial authority by reason of such party having or being deemed to have structured or drafted such provision.

**17. Entire Agreement.** Subject to any amendments made to the System, this MOU is intended by the parties hereto to be the final expression of their agreement with respect to the subject matter hereof and represents the complete and exclusive statement of the terms of their agreement, notwithstanding any representations, statements or agreements to the contrary heretofore made. This MOU supersedes any former agreements between the parties governing the same subject matter. Only a written instrument signed by each of the parties hereto may modify or otherwise amend this MOU.

**18. Miscellaneous.** The waiver of any provision of this MOU shall not be deemed a waiver of any other provision unless such waiver is supported by separate consideration and is in writing signed by all parties. The use of the singular or plural in any portion of this MOU shall include the other when the context dictates. Further, the use of the masculine, feminine or neuter shall include the other gender or neuter when appropriate.

**19. Counterparts.** This MOU may be executed in three or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**20. Force Majeure.** The parties shall not be liable for any loss or delay resulting from any force majeure event, including acts of God, fire, natural disaster, labor stoppage, lockouts, riots, epidemics, government regulations imposed after the fact, communication line failures, acts of war or military hostilities, or inability of carriers to make scheduled deliveries, and any payment or delivery date shall be extended to the extent of any delay resulting from any force majeure event.

**21. Notices.** All notices (including requests, consents, or waivers) made under this MOU will be in writing and delivered by prepaid means providing proof of delivery. Notices are effective upon receipt, and will be sent to the addresses shown below:

Knox County Retirement and Pension Board: Kim Bennett, Executive Director  
400 Main Street  
Suite 371  
Knoxville, TN 37902

With a copy to: Stephanie D. Coleman  
Robertson Overbey  
900 S. Gay St., Suite 800  
Knoxville, TN 37902

Knox County Board of Education: Knox County Board of Education  
Attention: Chair  
Andrew Johnson Building  
912 S Gay St  
Knoxville, TN 37902

Emerald Charter Schools: President, Emerald Charter Schools, Inc.  
220 Carrick St.  
Knoxville, TN 37921

With a copy to:

Michael S. Kelley  
KENNERLY, MONTGOMERY & FINLEY, P.C.  
4<sup>th</sup> Floor, Bank of America Building  
550 Main Street  
Knoxville, Tennessee 37902

Any party may change its address upon notice as required by this paragraph.

**22. Books and Records.** The parties shall maintain all books, documents, accounting records and other evidence pertaining to their obligations under this agreement and make such materials available at their offices at all reasonable times during the contract period and for two (2) years from the termination date hereof for inspection, upon reasonable notice, by the parties or by any other governmental entity or agency participating in the funding of this project, or any authorized agents thereof; copies of said records to be furnished if requested in accordance with law.

**23. Captions/Headings.** The captions and headings of the various sections in this MOU are intended solely for convenience of reference and are not intended for any other purpose whatsoever, or to explain, modify or place any construction upon any of the provisions of this MOU.

**24. Remedies.** Without limiting any other provisions in this MOU with respect to remedies upon default or breach, in the event that any party breaches this MOU or defaults in the performance of any terms, agreements or conditions stated in this entire MOU, the parties shall in addition have any and all remedies as may be allowed or available by law or equity, including but not limited to the right of specific performance.

**25. Assignment.** Except as otherwise expressly provided in this MOU, no party may assign any right, obligation or liability arising under this MOU without the other parties' prior written consent. Any such assignment or attempt at assignment shall be null and void.

**26. Time of Essence.** Time is of the essence of this MOU and the performance of all the terms, covenants and agreements hereof.

The Parties have executed this Memorandum of Understanding on the day and year first set forth herein for the purposes set out herein as approved by the Retirement Board, Emerald, and the KCBE.

**KNOX COUNTY RETIREMENT AND PENSION BOARD**

**BY:** \_\_\_\_\_  
Kim Bennett, Executive Director  
Knox County Retirement and Pension Board  
Date

**BY:** \_\_\_\_\_  
Richard Trott, Chairman  
Knox County Retirement and Pension Board  
Date

**KNOX COUNTY BOARD OF EDUCATION**

**BY:** \_\_\_\_\_  
Doug Harris, Chairman  
Knox County Board of Education  
Date

**EMERALD CHARTER SCHOOLS**

**BY:** \_\_\_\_\_

Steve Diggs, President  
Emerald Charter Schools

\_\_\_\_\_  
Date

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Knox County Law Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
General Counsel  
Knox County Retirement & Pension Board

\_\_\_\_\_  
Date

**Schedule A: Fee Schedule**

1. Initiation Fee

BenXL programming cost to add new employer	\$10,400
Other Cost	--
<b>Total Initiation Fee</b>	<b>\$10,400</b>

2. Maintenance Cost

Number of Active Employees	Annual Fee
1-15	\$1000
16-30	\$2000

- The number of active employees is calculated based on the maximum number of employees on payroll participating in the system for at least 30 non-consecutive days of any calendar year.
- Annual payments are due on or before January 30 of each year.

Additionally, any other direct cost associated with this MOU, Emerald, or the participation of its Eligible Employees in the System will be invoiced directly to Emerald. Emerald shall be notified in advance of any such costs when possible. Payment of such invoice for direct costs shall be due 30 days from receipt.



A motion was made by Mr. McBride to approve the MOU for Charter Schools. The motion was seconded by Commissioner Ownby and unanimously approved.

Mr. Owings stated in the divorce case of Justin Stafford, he and Mrs. Coleman had met with Judge McMillan who suggested that we file a declaratory judgment action by way of a motion to intervene to clarify the issue concerning the lien on Mr. Stafford's pension funds. Mr. Owings stated that what we don't want to do is to be in violation of an existing Court order if we distribute all funds to Mr. Stafford.

A motion was made by Commissioner Ownby for counsel to file the motion to intervene to seek guidance from the Court and take any other necessary action to pursue this issue in the Stafford case so that it may be brought to a conclusion. The motion was seconded by Commissioner McKenzie and unanimously approved.

Mr. McBride requested an updated report on Mr. Johnny Haun, former employee of Trustee. Mr. Mason stated he and Mrs. Bennett had met with the District Attorney and the Law Department and provided a breakdown of the account for forfeiture and tax purposes; however, details among the Court, the prosecutor and the defendant have not been fully worked out as yet. Ms. Bennett said the System was ready to forfeit the appropriate amounts, as soon as arrangements have been completed by the other parties.

**IN RE: REPORT OF ACTUARY**

Mr. Cross stated there was no business to report at this time.

**IN RE: REPORT OF INVESTMENT COMMITTEE**

Mr. McBride advised the Investment Committee met on November 10<sup>th</sup> to discuss Asset Allocation and the possibility of receiving additional education as recommended by Wilshire on the advantages and disadvantages of investing a portion of the Pension funds in Master Limited Partnerships (MLPs). He stated Legal Counsel is currently evaluating the tax consequences. Per Ms. Bennett and Mr. McBride, if the tax consequences are not an issue, there will be a workshop with Wilshire Consulting scheduled in January 2016 for the Board regarding investing in MLPs and the investment characteristics.

Mr. McBride presented the rates of return as of October 31, 2015, from USI that were distributed to the Board Members at the meeting.

**IN RE: STATEMENT OF ACCOUNTS AS AUDITED AND RECOMMENDED FOR PAYMENT BY KIM BENNETT, EXECUTIVE DIRECTOR**

The following statement of accounts for professional services was presented for consideration of approval of payment, as in accordance with agreements and audited and recommended for payment by Mrs. Bennett:

Invoices for November 2015

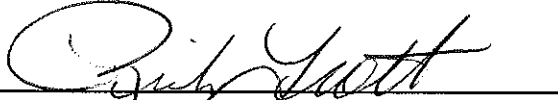
KENNERLY, MONTGOMERY & FINLEY, P.C. Invoice #195058	\$11,965.50
KENNERLY, MONTGOMERY & FINLEY, P.C. Invoice #195060	\$280.50

KENNERLY, MONTGOMERY & FINLEY, P.C. Invoice #195061	\$270.00
ROBERTSON OVERBEY Account #9816M	\$3,552.56
Totals for November 2015	\$16,068.56

After review of the statement of accounts and invoices, a motion was made by Commissioner Ownby that the Board authorize the payment indicated above to be paid from the designated State Street funds. The motion was seconded by Commissioner Brantley and unanimously approved.

**ADJOURNMENT**

As there was no further business to come before the Board, the meeting was adjourned in order.



RICK TROTT, CHAIRMAN



NICK MCBRIDE, VICE CHAIRMAN