

1 RESOLUTION NO. 2016-040

2
3 SPONSOR Mr. Pry

4
5 DATE February 8, 2016

COMMITTEE Rules

6
7 **A Resolution confirming the award by the Board of Control of Change Order No. 3 to a**
8 **professional service contract with Fisher & Phillips LLP, to provide legal representation**
9 **and services to the County of Summit related to an appeal of a senior staff determination to**
10 **the Ohio Public Employees Retirement System Board concerning the status of former**
11 **employees of the Edwin Shaw Hospital for Rehabilitation, in an amount not to exceed**
12 **\$5,000.00 (for a cumulative increase of 220%), for a total amount of \$80,000.00, for the**
13 **Executive's Department of Law, Insurance and Risk Management, and declaring an**
14 **emergency.**

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16 WHEREAS, in 2007, the Ohio Public Employees Retirement System ("OPERS") filed a
17 lawsuit against the County, Edwin Shaw Hospital for Rehabilitation ("ESHR") and Akron
18 General Medical Center ("AGMC"), Ohio Public Employees Retirement System v. Akron
19 General Medical Center, County of Summit and Edwin Shaw Hospital for Rehabilitation, Case
20 No. 07DVH 11-15705, in the Franklin County Court of Common Pleas, seeking a declaratory
21 judgment as to which party is responsible for making employer contributions on behalf of ESHR
22 employees hired by AGMC; and

23
24 WHEREAS, on September 21, 2011, the Franklin County Court of Common Pleas issued
25 a final order granting OPERS' motion for summary judgment holding that the County and ESHR
26 are jointly liable for making employer contributions on behalf of these employees, which the
27 County and ESHR have determined should be appealed; and

28
29 WHEREAS, upon a joint application by the County Executive and County Prosecutor
30 pursuant to Section 305.14 of the Ohio Revised Code, the County Court of Common Pleas issued
31 an order, attached hereto as Exhibit A and incorporated herein as if fully restated, authorizing the
32 hiring of outside counsel to represent the County in the appeal; and

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34 WHEREAS, the Board of Control and County Council awarded a professional service
35 contract to Fisher & Phillips LLP, to represent the County in the appeal to the 10th District Court
36 of Appeals; and

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38 WHEREAS, on August 21, 2013, the 10th District Court of Appeals reversed the decision
39 of the Franklin County Court of Common Pleas in the County's favor, which required OPERS to
40 issue a senior staff determination concerning the former ESHR employees hired by AGMC,
41 which may be appealed to the OPERS Board; and

42
43 WHEREAS, on November 13, 2013, OPERS issued a senior staff determination finding
44 that the County is responsible for making employer contributions on behalf of ESHR employees
45 hired by AGMC; and

46
47 WHEREAS, at its January 8, 2014 meeting, the Board of Control approved Directive No.
48 004-14, which awarded a professional service contract to Fisher & Phillips LLP, in an amount
49 not to exceed \$25,000.00, to provide legal representation and services to the County related to an
50 appeal of a senior staff determination to the OPERS Board concerning the status of former
51 employees of ESHR; and

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4 WHEREAS, on January 13, 2014, on behalf of the County, Fisher & Phillips LLP, filed
5 an appeal of the senior staff determination to the OPERS Board; and

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7 WHEREAS, in order to continue the appeals process, additional funds were required, in
8 the amount of \$25,000.00; and

9
10 WHEREAS, County Council previously adopted Resolution No. 2014-417, which
11 confirmed the award by the Board of Control of Change Order No. 1 to the professional service
12 contract with Fisher & Phillips LLP, in an amount not to exceed \$25,000.00 (for a cumulative
13 increase of 100%), for a total amount of \$50,000.00; and

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15 WHEREAS, in order to continue the appeals process, further additional funds were
16 required, in the amount of \$25,000.00; and

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18 WHEREAS, County Council previously adopted Resolution No. 2015-056, which
19 confirmed the award by the Board of Control of Change Order No. 2 to the professional service
20 contract with Fisher & Phillips LLP, in an amount not to exceed \$25,000.00 (for a cumulative
21 increase of 200%), for a total amount of \$75,000.00; and

22
23 WHEREAS, on May 21, 2015, Hearing Examiner Paul Stehura issued his Report and
24 Recommendation recommending to the OPERS Board that the County's appeal be denied and
25 the senior staff determination be upheld; and

26
27 WHEREAS, on June 5, 2015, the County filed objections to the Hearing Examiner's
28 Report and Recommendations and will appear before the OPERS Board; and

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30 WHEREAS, in order to continue the appeals process, further additional funds are
31 required, in the amount of \$5,000.00; and

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33 WHEREAS, at its January 13, 2015 meeting, the Board of Control approved Change
34 Order No. 3 to the professional service contract with Fisher & Phillips LLP, in the amount of
35 \$5,000.00 (for a cumulative increase of 220%), for a total amount of \$80,000.00; and

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37 WHEREAS, this Council finds and determines, after reviewing all pertinent information,
38 that it is necessary and in the best interest of the County of Summit to confirm the award of
39 Change Order No. 3 to the professional service contract with Fisher & Phillips LLP, in the
40 amount of \$5,000.00 (for a cumulative increase of 220%) for a total amount of \$80,000.00, for
41 the aforementioned reasons;

42
43 NOW, THEREFORE, BE IT RESOLVED, by the Council of the County of Summit,
44 that:

45
46 SECTION 1

47
48 The Board of Control's award of Change Order No. 3 to a professional service contract
49 with Fisher & Phillips LLP, to provide legal representation and services to the County of Summit
50 related to an appeal of a senior staff determination to the Ohio Public Employees Retirement
51 System Board concerning the status of former employees of the Edwin Shaw Hospital for
52 Rehabilitation, in an amount not to exceed \$5,000.00 (for a cumulative increase of

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2 PAGE THREE

3
4 SECTION 1 (Cont.)

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6 220%), for a total amount of \$80,000.00, is hereby confirmed and the County Executive is
7 authorized to execute any documents necessary to effect Change Order No. 3.

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9 SECTION 2

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11 This Resolution is hereby declared to be an emergency in the interest of the health, safety
12 and welfare of the citizens of the County of Summit and for the further reason that it is necessary
13 to immediately authorize Change Order No. 3 to a professional service contract with Fisher &
14 Phillips LLP, to represent the County in a pending appeal to the OPERS Board.

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16 SECTION 3

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18 Provided this Resolution receives the affirmative vote of eight members, it shall take
19 effect immediately upon its adoption and approval by the Executive; otherwise it shall take effect
20 and be in force at the earliest time provided by law.

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22 SECTION 4

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24 It is found and determined that all formal actions of this Council concerning and relating
25 to the adoption of this Resolution were adopted in an open meeting of this Council, and that all
26 deliberations of this Council and any of its committees that resulted in such formal action were in
27 meetings open to the public, in compliance with legal requirements, including Section 121.22 of
28 the Ohio Revised Code.

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31 INTRODUCED January 25, 2016

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33 ADOPTED February 8, 2016

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38 CLERK OF COUNCIL

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45 PRESIDENT OF COUNCIL

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47 APPROVED February 9, 2016

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Voice Vote: YES: 8-0 YES: Crawford, Donofrio, Feeman, Kostandaras
Rodgers, Schmidt, Shapiro, Walters
ABSENT: Lee, Prentice