

1 RESOLUTION NO. 2015-056

2
3 SPONSOR Mr. Pry

4
5 DATE February 9, 2015

COMMITTEE Rules

6
7 **A Resolution confirming the award by the Board of Control of Change Order No. 2 to a**
8 **professional service contract with Fisher & Phillips, LLP, to provide legal representation**
9 **services related to an appeal of a senior staff determination to the Ohio Public Employees**
10 **Retirement System Board concerning the status of former employees of the Edwin Shaw**
11 **Hospital for Rehabilitation, in an amount not to exceed \$25,000.00 (for an increase of**
12 **50%), for a total amount of \$75,000.00, for the Executive's Department of Law, Insurance**
13 **and Risk Management, and declaring an emergency.**

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

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

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

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

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

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

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

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1 RESOLUTION NO. 2015-056

2 PAGE TWO

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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

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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 an increase of
13 50%), for a total amount of \$75,000.00; and

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

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18 WHEREAS, at its January 21, 2015 meeting, the Board of Control approved Change
19 Order No. 2 to the professional service contract with Fisher & Phillips, LLP, in the amount of
20 \$25,000.00 (for an increase of 50%), for a total amount of \$75,000.00, to provide legal
21 representation and services to the County related to an appeal of a senior staff determination to
22 the OPERS Board concerning the status of former employees of ESHR; and

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24 WHEREAS, this Council finds and determines, after reviewing all pertinent information,
25 that it is necessary and in the best interest of the County of Summit to confirm the award of
26 Change Order No. 2 to the professional service contract with Fisher & Phillips, LLP, in the
27 amount of \$25,000.00 (for an increase of 50%), for a total amount of \$75,000.00, for the
28 aforementioned reasons;

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30 NOW, THEREFORE, BE IT RESOLVED, by the Council of the County of Summit,
31 that:

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33 SECTION 1

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35 The Board of Control's award of Change Order No. 2 to a professional service contract
36 with Fisher & Phillips, LLP, to provide legal representation and services to the County of
37 Summit related to an appeal of a senior staff determination to the Ohio Public Employees
38 Retirement System Board concerning the status of former employees of the Edwin Shaw
39 Hospital for Rehabilitation, in an amount not to exceed \$25,000.00 (for an increase of 50%), for
40 a total amount of \$75,000.00, is hereby confirmed and the County Executive is authorized to
41 execute any documents necessary to effect Change Order No. 2.

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43 SECTION 2

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45 This Resolution is hereby declared to be an emergency in the interest of the health, safety
46 and welfare of the citizens of the County of Summit and for the further reason that it is necessary
47 to immediately authorize Change Order No. 2 to a professional service contract with Fisher &
48 Phillips, LLP, to represent the County in a pending appeal to the OPERS Board.
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1 RESOLUTION NO. 2015-056

2 PAGE THREE

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4 SECTION 3

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

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10 SECTION 4

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

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19 INTRODUCED January 26, 2015

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21 ADOPTED February 9, 2015

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25 CLERK OF COUNCIL


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33 PRESIDENT OF COUNCIL

APPROVED February 10, 2015


EXECUTIVE

ENACTED EFFECTIVE February 10, 2015

Voice Vote: 11-0: YES: Comunale, Crawford, Donofrio, Feeman, Kostandaras,
Kurt, Lee, Prentice, Rodgers, Schmidt, Shapiro