

1 RESOLUTION NO. 2016-188

2  
3 SPONSOR Mr. Pry

4 May 16, 2016

5 DATE \_\_\_\_\_

COMMITTEE Rules

6  
7 **A Resolution authorizing the County Executive to execute a Memorandum of**  
8 **Understanding between the County of Summit and other parties concerning the**  
9 **performance of a traffic impact study related to two consolidated lawsuits before Judge**  
10 **Alison McCarty in the County of Summit Court of Common Pleas, for the Planning**  
11 **Commission, the Engineer, the Prosecutor and the Executive, and declaring an**  
12 **emergency.**

13  
14 WHEREAS, two consolidated lawsuits involving the construction of a Wal-Mart and a  
15 Sam's Club in Copley Township, in Council District 5 (the "Project"), *West Market Plaza*  
16 *Limited Partnership, et al. v. Greg Bachman, Summit County Engineer, et al.*, Case No. CV  
17 2008-10-7231, and *West Market Plaza Limited Partnership, et. al. v. Summit County Planning*  
18 *Commission, et al.*, Case No. CV 2011-11-6286 (the "Consolidated Cases") are currently  
19 pending before Judge Alison McCarty in the County of Summit Court of Common Pleas; and

20  
21 WHEREAS, in consultation with the County Prosecutor, the County Executive, the  
22 County Planning Commission and the County Engineer have negotiated a Memorandum of  
23 Understanding with West Market Limited Partnership ("West Market"), Montrose Retail  
24 Associates Limited Partnership ("Montrose Retail") and Wal-Mart Real Estate Business Trust  
25 ("Wal-Mart"), pursuant to which the County will solicit, pursuant to Section 177.08 of the  
26 Codified Ordinances of the County of Summit, proposals from five qualified engineering firms  
27 for a traffic impact study related to the Project; and

28  
29 WHEREAS, said engineering firms, which shall include the GPD Group, HNTB and  
30 EMH&T Consulting Engineers, shall be advised that the total budget for the traffic impact  
31 study shall not exceed \$200,000.00 and that the study shall be contingent upon the receipt by  
32 the County of funding from West Market, Montrose Retail and Wal-Mart; and

33  
34 WHEREAS, the purpose of the Memorandum of Understanding is to lay the  
35 groundwork for the settlement of the Consolidated Cases; and

36  
37 WHEREAS, this Council finds and determines, after reviewing all pertinent  
38 information, that it is necessary and in the best interest of the County to authorize the County  
39 Executive to execute the a Memorandum of Understanding between the County of Summit and  
40 West Market, Montrose Retail and Wal-Mart for the aforementioned reasons;

41  
42 NOW, THEREFORE, BE IT RESOLVED, by the Council of the County of Summit,  
43 State of Ohio, that:

44  
45 SECTION 1

46  
47 The County Executive is hereby authorized to execute a Memorandum of  
48 Understanding between the County of Summit and West Market Limited Partnership, Montrose  
49 Retail Associates Limited Partnership and Wal-Mart Real Estate Business Trust concerning the  
50 performance of a traffic impact study related to the construction of a Wal-Mart and a Sam's  
51 Club in Copley Township, in Council District 5 (the "Project"), which is the subject of two

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4 SECTION 1 (Cont.)

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6 consolidated lawsuits, *West Market Plaza Limited Partnership, et al. v. Greg Bachman, Summit*  
7 *County Engineer, et al.*, Case No. CV 2008-10-7231, and *West Market Plaza Limited*  
8 *Partnership, et al. v. Summit County Planning Commission, et al.*, Case No. CV 2011-11-6286  
9 (the “Consolidated Cases”) that are currently pending before Judge Alison McCarty in the  
10 County of Summit Court of Common Pleas. The County Executive is hereby authorized to  
11 execute said Memorandum of Understanding in substantially the form attached hereto as  
12 Exhibit A. The Memorandum of Understanding is approved with changes therein not  
13 inconsistent with this Resolution and not substantially adverse to the County which shall be  
14 approved by the County Executive; provided that the approval of those changes by the County  
15 Executive and the character of such changes as not being substantially adverse to the County  
16 shall be evidenced conclusively by the execution of the Memorandum of Understanding.

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18 SECTION 2

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21 This Resolution is hereby declared an emergency in the interest of the health, safety and  
22 welfare of the citizens of the County of Summit and for the further purpose of immediately  
23 authorizing the Executive to execute a necessary Memorandum of Understanding involving the  
24 performance of a traffic impact study related to the Project to lay the groundwork, for the  
25 settlement of the Consolidated Cases.

26  
27 SECTION 3

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

32  
33 SECTION 4

34  
35 It is found and determined that all formal actions of this Council concerning and  
36 relating to the adoption of this Resolution were adopted in an open meeting of this Council, and  
37 that all deliberations of this Council and of any of its committees that resulted in such formal  
38 action, were in meetings open to the public, in compliance with all legal requirements,  
39 including Section 121.22 of the Ohio Revised Code.



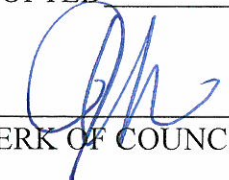
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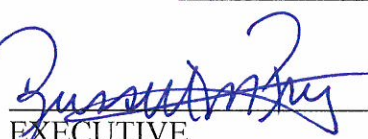
INTRODUCED May 9, 2016

ADOPTED May 16, 2016

  
\_\_\_\_\_  
CLERK OF COUNCIL

  
\_\_\_\_\_  
PRESIDENT OF COUNCIL

May 17, 2016  
APPROVED \_\_\_\_\_

  
\_\_\_\_\_  
EXECUTIVE

May 17, 2016  
\_\_\_\_\_  
ENACTED EFFECTIVE

Voice Vote YES: 10-0: Crawford, Donofrio, Feeman, Kostandaras,  
Prentice, Rodgers, Schmidt, Shapiro, Walters, Wilhite  
ABSENT: Lee