

647



SUBMITTAL TO THE BOARD OF SUPERVISORS COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

FROM: Riverside County Regional Medical Center

SUBMITTAL DATE:
July 27, 2010

SUBJECT: Acceptance of Unused Funds from Academic Capital Group, LLC to release to Riverside County Regional Medical Center (RCRMC)

RECOMMENDED MOTION: Move that the Board of Supervisors:

- 1) Accept the unused funds from Academic Capital Group, LLC in the amount of \$1,846,586.59; and
- 2) Authorize the Chairman of the Board to approve and sign the attached agreement with Academic Capital Group, LLC; and
- 3) Authorize the Director of RCRMC to administer the contract.

BACKGROUND:

On December 17, 1996, Agenda Item #3.73, the Board approved the Agreement entered between the County of Riverside (Riverside County Health Services Agency), now known as Riverside County Regional Medical Center (RCRMC) and Shared Medical Systems (SMS) Corporation to finance the acquisition of products. (continued on page 2)

Douglas D. Bagley, Hospital Director

FINANCIAL DATA

Current F.Y. Total Cost:	\$1,846,586.59	In Current Year Budget:	Yes
Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	No
Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/2011

SOURCE OF FUNDS: 100% Academic Capital Group, LLC

Positions To Be Deleted Per A-30	<input type="checkbox"/>
Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY: Debra Cournoyer

County Executive Office Signature

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD
 FORM APPROVED COUNTY COUNSEL BY: Dale A. Gardner 7/14/10
 DATE: 7/14/10
 Departmental Concurrence
 Dept's Recomm.:
 Per Exec. Ofc.:
 Consent Policy
 Consent Policy

3.67

SUBJECT: Acceptance of Unused Funds from Academic Capital Group, LLC to release to Riverside County Regional Medical Center (RCRMC)

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BACKGROUND: (Continued)

SMS assigned all of its right, title, and interest in and to the Lease to Morcroft Capital Corporation. On July 13, 1999, Agenda Item #3.18, the Board approved the amendment recognizing the name change of Morcroft Capital Corporation to Fleet Healthcare Finance Corporation, which in turn assigned its interests in the Lease to Academic Capital, LLC, a predecessor to Academic Capital Group, Inc. SMS has been paid in full under its contract with RCRMC; however, funds still remained in the original fund.

RCRMC is requesting the issuance of the unused funds to be deposited into RCRMC Enterprise Funds.

The agreement will be executed upon receipt of the signed agreement from Academic Capital Group, LLC.

FINANCIAL DATA:

Total funding for deposit into RCRMC Enterprise Funds is \$1,846,586.59.

REVIEW/APPROVAL:

County Counsel

DB:ns

AGREEMENT

THIS AGREEMENT ("Agreement") is made effective as of April 27, 2010, by and between County of Riverside d/b/a Riverside County Regional Medical Center (f/k/a Riverside Health Services Agency) (collectively, "Riverside") and ACADEMIC CAPITAL GROUP, INC. (successor to Academic Capital, L.L.C.) ("Academic").

WITNESSETH:

WHEREAS, Riverside was a party along with SMS Credit Corporation ("SMS") to that certain Initial Leasing Schedule No. 1 dated as of December 17, 1996, to that Master Lease/Purchase Agreement No. 460 ("Lease") which Lease was eventually assigned to Academic, which in turn assigned all of its rights, title, and interest in and to the Lease to State Street Bank and Trust Company ("State Street") on December 31, 1997.

NOW, THEREFORE, in consideration of the mutual covenants herein contained together with other good and valuable consideration, the receipt and sufficiency of which is hereby specifically acknowledged, the parties hereto, intending to be legally bound hereby, do agree as follows:

1. Terms not otherwise defined herein shall have the meaning ascribed to them in the Lease.

2. At the request of Riverside and in reliance upon the representations, warranties, covenants, and Indemnities (as defined below) made herein by Riverside, Academic shall take action to transfer, as soon as practical, any and all principal held to pay vendors, manufacturers, or suppliers of the Equipment financed under the Lease to Riverside. As of the date of this Agreement, such principal totals \$1,846,586.59. No interest or further credit on account of principal shall be due Riverside.

3. Riverside hereby represents, warrants, and covenants to Academic the following as of the date hereof:
 - a. All payments due and owing under the Lease, including but not limited to all Rental Payments and late fees, have been paid in full by Riverside to the owner of the Lease.
 - b. The final Rental Payment under the Lease in the amount of \$61,500.00 was made by Riverside to the owner of the Lease on or before June 1, 2004.
 - c. There exist no further obligations or duties owed by Riverside under the Lease to the owner of the Lease or to any vendors, manufacturers, or suppliers of Equipment under the Lease.

- d. Riverside has possession of, as well as full unencumbered title, free of all liens, to all of the Equipment financed under the Lease.
- e. All Equipment under the Lease has been received, inspected, and accepted for all purposes under the Lease.
- f. Riverside is not currently in default under the Lease and is not aware of any fact or circumstance which with the passage of time or the granting of notice would be considered an event of default under the Lease.
- g. Riverside has not exercised its right of non-appropriation of funds under Section 8 of the Lease.
- h. All vendors, manufacturers, or suppliers of the Equipment have been paid in full by Riverside.
- i. The Lease has not been modified, altered, or amended since being made effective as of December 17, 1996.
- j. The Lease or the Equipment is not the subject of any dispute, lawsuit, or other legal proceeding, either actual or threatened.

4. Upon payment of the funds set forth in paragraph 2 above and subject to the provisions of the following paragraph, Riverside and Academic do hereby remise, release and forever discharge, and by these presents, do for their successors and assigns remise, release and forever discharge each other, their successors and assigns, and any and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated, together with any and all other persons, firms or corporations of and from any and all past, present, or future claims, demands, obligations, actions, causes of actions, rights, damages, costs, expenses, interest, and compensation of any nature whatsoever, whether based on a tort, contract or other theory of recovery, which either Riverside or Academic now has, or which may hereafter accrue or otherwise be acquired on account of, in any way growing out of or which have resulted or may result from the alleged negligent or intentional acts or omissions of Riverside or Academic, as the case may be, pursuant to the Lease or any escrow agreement to which Academic may be a party.

5. Notwithstanding the provisions set forth in the previous paragraph, Riverside hereby agrees to unconditionally indemnify, defend, pay on behalf of and hold Academic, its officers, directors, agents, employees (current and former), successors and assigns harmless of, from and against all losses, claims, costs (including reasonable attorney's fees on a current basis), liabilities, judgments, penalties, directly incurred, suffered or sustained by Academic or its predecessor company, its officers, agents, directors, employees (current and former), successors or assigns, by reason of or arising from, in whole or in part, any assertion by any party, including without limitation, State Street, SMS or any of its assigns, escrow agent, or any vendors, manufacturers, or suppliers of the Equipment financed under the Lease (including, without limitation, Shared Medical Systems and its successors and assigns) or any of their successors or assigns of any right or claim, including without limitation any right or

claim to any payment under the Lease or any escrow agreement or account (including, without limitation, any interest or any portion of the remaining principal balance cited above) to which Academic may be a party ("Indemnity" or "Indemnities") which it ever had, or now has, or which its respective officers, directors, employees, shareholders, successors or assigns, or any of them, hereafter can, shall or may have, for, or by reason of any cause whatsoever, matter or thing whatsoever, from the beginning of the world to the date of these presents. Riverside shall pay all Indemnities which have been indemnified against under this Agreement promptly upon demand by Academic or any party listed in this paragraph. In the event that such payment is not made, Academic or any other party listed in this paragraph, at its sole discretion, may proceed to file suit against Riverside to compel such payment, or use such other remedies as available hereunder, at law or in equity shall be cumulative and concurrent and may be pursued singly, successively or together at the sole option of Academic or any party listed in this paragraph, and may be exercised from time to time as often as occasion therefor shall occur.

6. It is acknowledged and agreed by the parties hereto that Riverside shall not be responsible to Academic for any administrative costs, fees, or expense previously charged by the escrow agent related to the establishment, operation, or maintenance of any of the funds held to pay vendors, manufacturers, or suppliers of the Equipment financed under the Lease.

7. Riverside hereby directs Academic to wire or cause to be wired the remaining principal balance described in paragraph 2 above according to the following wire instructions:

Bank Name:	<u>Union Bank of California</u>
Bank Address:	<u>1980 Saturn Street, Monterey Park, CA 91755</u>
Account Number:	<u>2740018593</u>
ABA Number:	<u>122000496</u>
OBI:	<u>Riverside County Regional Medical Center</u>

8. This Agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings relating thereto. No other agreements will be effective to change, modify or terminate this Agreement in whole or in part unless such agreement is in writing and duly executed by the parties hereto. No representations, inducements, promises or agreements, oral or otherwise, that are not embodied herein (or any other written instrument or document delivered pursuant hereto or in connection herewith) will be of any force or effect.

9. This Agreement shall inure to the benefit of and be binding on the parties hereto and their predecessors, successors and assigns.

10. The substantive laws of the State of California shall govern the validity, construction, enforcement and interpretation of this Agreement and the rights of the parties hereunder.

11. The Agreement may be executed in any number of separate counterparts by the parties hereto and each counterpart when so executed shall be deemed to be our original and all such counterparts when taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement by one of their respective officers thereunto duly authorized, as of the date first above written.

ACADEMIC CAPITAL GROUP, INC.

COUNTY OF RIVERSIDE

By: X
Name: _____
Title: _____

By: X
Name: _____
Title: _____

FORM APPROVED COUNTY COUNSEL
BY: Dale A. Gardner 7/15/10
DALE A. GARDNER DATE

RIVERSIDE COUNTY
REGIONAL MEDICAL CENTER

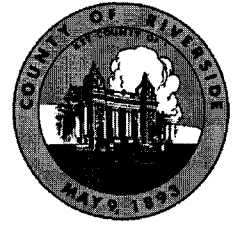
By: X
Name: _____
Title: _____

PAMELA J. WALLS
County Counsel

Assistant County Counsel
KATHERINE A. LIND

OFFICE OF COUNTY COUNSEL
COUNTY OF RIVERSIDE

3960 ORANGE STREET, FIFTH FLOOR
RIVERSIDE, CA 92501-3674
TELEPHONE: 951/955-6300
FAX: 951/955-6322 & 951/955-6363



July 27, 2010

Academic Capital Group, Inc.
40 N. Wells, Suite 500
Chicago, IL 60606

Re: Opinion in Respect of That Certain Agreement (“Agreement”) dated as of April 27, 2010 by and Between County of Riverside d/b/a Riverside County Regional Medical Center (f/k/a Riverside Health Services Agency) (“Riverside”) and Academic Capital Group, Inc. (successor to Academic Capital, L.L.C.) (“Academic”)

To Whom It May Concern:

I have acted as counsel to Riverside. Based upon my examination of such documents and matters of law as I have deemed necessary or appropriate, I am of the opinion that:

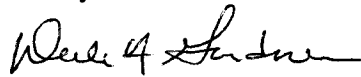
- 1.) Riverside is a county duly organized and legally existing as a political subdivision, municipal corporation or similar public entity under the Constitution and laws of the State of California with full power and authority to enter into the Agreement.
- 2.) The Agreement has been duly authorized, executed and delivered by Riverside and, assuming due execution by Academic, constitutes the legal, valid and binding obligation of Riverside, enforceable against Riverside in accordance with its terms.
- 3.) The minute order adopted by Riverside’s Board of Supervisors authorizing the execution and delivery of the Agreement and certain other matters was adopted at a meeting that was held in compliance with all applicable laws relating to the holding of open and public meetings.
- 4.) The person executing the Agreement on behalf of Riverside is authorized to do so and holds the title listed under his signature.

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- 5.) This opinion may be relied upon by Academic's successors and assigns, as well as any party listed in paragraph 5 of the Agreement who is entitled to Indemnities (as defined therein).

Respectfully submitted,

PAMELA J. WALLS
County Counsel



Dale A. Gardner
Deputy County Counsel

DAG:cm