

Ratified 12/10/15

# InnoVative CAPITAL®

FHA Mortgage Banking & Financial Advisory Services for the Healthcare Industry

## SENT VIA ELECTRONIC MAIL

November 6, 2015

Horace Daniel  
Chairman  
Washington County Board of Commissioners  
P.O. Box 271  
119 Jones Street  
Sandersville, Georgia 31082

Re: Washington County Board of Commissioners - Financial Advisory Services Agreement

Dear Mr. Daniel:

The Washington County Board of Commissioners (the "County") has retained InnoVative Capital, LLC ("InnoVative Capital") as its financial advisor to provide the services listed herein (the "Engagement"). This letter (the "New Letter Agreement") sets forth the terms and conditions under which InnoVative Capital agrees to provide its financial advisory services (the "Financial Services") in connection with InnoVative Capital's representation of the County, specifically, as it pertains to Washington County Regional Medical Center ("WCRMC"). It is expected by both parties, that while the Engagement is between InnoVative Capital and the County, during the course of the Engagement, InnoVative Capital may be required to have direct interaction with the WCRMC board (the "Hospital Authority") and management of WCRMC. In order for InnoVative Capital to complete the Engagement, the County will be responsible for facilitating any such interaction and access.

## **I - OUR UNDERSTANDING**

WCRMC is presently operating under a management agreement (the "Management Agreement") with University Health Care System of Augusta, Georgia ("University") executed in December 2014, under which, among other things, University provides WCRMC with an onsite CEO. University's Management Agreement expires in December 2015, but University has agreed to provide continued management services on a month to month basis, if requested by WCRMC. With this in mind, WCRMC has been working to procure proposals from prospective replacement entities to provide management services upon the release of University from its current role as hospital manager. InnoVative Capital is being asked to provide financial advisory services to the County, work to evaluate the current situation at WCRMC, and assist in the assessment of any proposals already submitted to WCRMC, as well as work to develop alternative hospital management opportunities to present to WCRMC and the County.

## **II - THE ENGAGEMENT**

Listed below is a summary of the Financial Advisory process under which InnoVative Capital expects to represent the County. It should be noted that in addition to any requirement the County may have to be represented by outside counsel during the course of the Engagement, additional independent consultants may be required to be retained by the County.

- 1- Due diligence review of the current situation confronting WCRMC, including it's recent and present financial and operational performance. InnoVative Capital will request and review certain financial and operational information as well as documentation relating to WCRMC, including its contracts with

InnoVative Capital, LLC

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Horace Daniel, Chairman  
Washington County Board of Commissioners  
November 6, 2015  
Page 2 of 7

University, and pertinent regulations. InnoVative Capital will also research similar hospital situations in the State of Georgia.

- 2- As required, lead strategy sessions with representatives of the County and Hospital Authority in Sandersville.
- 3- If requested, interface with key parties such as: attorneys, hospital management, potential hospital suitors, the Hospital Authority, consultants, the County and the State.
- 4- Periodically review the financial condition of WCRMC.
- 5- Assess the debt and liabilities of WCRMC.
- 6- Evaluate any existing proposals made by to manage, lease or purchase WCRMC.
- 7- Ascertain the economic impact WCRMC provides to the County, and if requested at the County's expense, engage an independent GA-based economic consulting firm to complete a detailed economic impact analysis.
- 8- Identify potential partners for the County and Authority and work to make the process competitive, if possible.
- 9- Define the required and recommended level of County capital contribution, if any.
- 10- Solicit additional proposals for submission to the Authority and the County.
- 11- If requested, provide assistance in negotiations with prospective hospital partners, and management firms.
- 12- Assist in the execution of a hospital management contract, lease or purchase.

### III - TERM OF ENGAGEMENT

This Engagement shall begin immediately following execution of the New Letter Agreement and receipt by InnoVative Capital of its initial fee of \$10,000 due for the month of November 2015, as discussed in Section IV below. The New Letter Agreement shall expire on July 31, 2016, with InnoVative Capital's last monthly fee payment for July 2016 due and payable on July 1, 2016.

### IV - PROFESSIONAL FEES & EXPENSES

#### Financial Advisory Fee:

Monthly Payments - InnoVative Capital shall be paid \$10,000 per month during the term of the Engagement by the County. These payments shall be made pursuant to the terms of the New Letter Agreement and shall be due



Horace Daniel, Chairman  
Washington County Board of Commissioners  
November 6, 2015  
Page 3 of 7

and payable at the first of each month. The initial monthly payment shall be due for the month of November 2015 and payable upon the execution of the New Letter Agreement.

**Out-of-Pocket Expenses:**

In addition to its Financial Advisory Fees, the County agrees to reimburse InnoVative Capital monthly for its out-of-pocket expenses relating to the Engagement, which is expected to be limited to its travel costs and the costs associated with any required purchase of research-related data. In all cases, InnoVative Capital agrees to obtain the County's approval before incurring any individual item expense exceeding \$1,500.

**V - MISCELLANEOUS**

**Confidentiality:**

Unless obligated by law, neither the County or InnoVative Capital shall disclose the contents of the New Letter Agreement, or any proprietary information received during the Engagement, to any third party, including, without limitation, any financial institution or intermediary, without the other party's prior consent. The County and InnoVative Capital agree to inform all such third parties who receive information concerning the New Letter Agreement that such information is confidential, may not be disclosed to any other person, and obtain such third party's agreement to keep such information confidential. Notwithstanding the foregoing, the County may make such limited disclosures of the New Letter Agreement as may be required to lawfully enter into the New Letter Agreement. Furthermore, InnoVative Capital and the County maintain the right to disclose a summary of the nonproprietary parts of the transaction in their corporate marketing efforts.

In entering the foregoing, InnoVative Capital and the County agree and understand that the County is subject to the Georgia Open Records and Open Meetings Laws, OCGA § 50-8-40 *et seq.* Pursuant to that law, InnoVative Capital hereby states and asserts that its conclusions, analyses, and recommendations performed pursuant to this engagement with the County are considered by InnoVative Capital to be "Trade Secrets" as defined by OCGA § 10-1-761 and other provisions of the Georgia Code. Specifically, InnoVative Capital expresses a desire to ensure that its valuable work is protected to the extent possible by law from appropriation by entities not a party to the New Letter Agreement. Therefore, should the County receive a request for documents or other materials reflecting such analyses, conclusions, and recommendations, the parties shall follow the procedure outlined in OCGA § 50-18-72(a)(34), which specifically provides:

"An entity submitting records containing trade secrets that wishes to keep such records confidential under this paragraph shall submit and attach to the records an affidavit affirmatively declaring that specific information in the records constitute trade secrets pursuant to Article 27 of Chapter 1 of Title 10. If such entity attaches such an affidavit, before producing such records in response to a request under this article, the agency shall notify the entity of its intention to produce such records as set forth in this paragraph. If the agency makes a determination that the specifically identified information does not in fact constitute a trade secret, it shall notify the entity submitting the affidavit of its intent to disclose the information within ten days unless prohibited from doing so by an appropriate court order. In the event the entity wishes to prevent disclosure of the requested records, the entity may file an action in superior court to obtain an order that the requested records are trade secrets exempt from disclosure. The entity filing such action shall serve the requestor with a copy of its court filing. If the agency makes a determination that the specifically identified information does constitute a trade secret, the



Horace Daniel, Chairman  
Washington County Board of Commissioners  
November 6, 2015  
Page 4 of 7

agency shall withhold the records, and the requester may file an action in superior court to obtain an order that the requested records are not trade secrets and are subject to disclosure;"

**Data Access Concerns Regarding WCRMC:**

Since the Engagement is contracted between InnoVative Capital and County, and not WCRMC or the Hospital Authority, InnoVative Capital and the County acknowledge that for InnoVative Capital to be able to complete the Engagement, the County must facilitate InnoVative Capital's access to any pertinent WCRMC data and information regarding the Hospital Authority that InnoVative Capital may request, including, coordinate the cooperation of WCRMC's executive management and staff and Hospital Authority board members.

**Proprietary Nature of InnoVative Capital's Analytics:**

The County acknowledges that any InnoVative Capital generated analytics shall be done solely for the purposes stated herein, as required by InnoVative Capital in its execution of the Engagement. Further, the County agrees that it shall not rely on these reports for any other purpose, or distribute InnoVative Capital's work product or findings to any party, without either the expressed prior written consent of InnoVative Capital or resort to the procedures outlined in the "Confidentiality" subsection above. However, any factual information from the reports generated by InnoVative Capital shall be deemed the property of the County to be used for its own purposes.

**Indemnification:**

The County will indemnify, hold harmless and defend (by employment of competent legal counsel approved by InnoVative Capital) InnoVative Capital, and any of its employees, officers, directors, representatives and other agents (collectively "the InnoVative Capital Indemnities") from and against any and all third party claims, demands, actions, losses, liabilities, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees incurred in connection with InnoVative Capital's enforcement of the New Letter Agreement against the County) that may be asserted against or incurred by the InnoVative Capital Indemnities and which is/are based upon, arise out of or result in any way from the services that are provided to the County by InnoVative Capital, except that provisions of this paragraph will not apply to any claims, demands, actions, losses, liabilities, costs or expenses that InnoVative Capital incurs due to its own gross negligence or intentional misconduct.

**Arbitration:**

Any controversy or claim arising out of or relating to the New Letter Agreement, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. The award of the arbitrator(s) shall be accompanied by a reasoned opinion, including findings of fact and conclusions of law. Each party shall be solely responsible for its own attorney fees and expenses incurred in arbitration. However, the prevailing party shall be entitled to an arbitration award, which can include the costs of arbitration (plus filing fees), attorney fees and expenses as part of any award. The place of arbitration shall be Atlanta, Georgia and the New Letter Agreement shall be governed by the laws of the State of Georgia.



Horace Daniel, Chairman  
Washington County Board of Commissioners  
November 6, 2015  
Page 5 of 7

**Severability; Waiver:**

Any part, provision, representation or warranty of the New Letter Agreement which is prohibited or which is held to be void or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof. Neither the failure nor any delay by any party in exercising any right, power, or privilege under the New Letter Agreement or any of the documents referred to in the New Letter Agreement will operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege.

**Termination:**

***With Cause Termination by InnoVative Capital:*** If during the Engagement there has been a material breach of the New Letter Agreement by the County, including the County's inability or unwillingness to facilitate the cooperation of WCRMC and the Hospital Authority, InnoVative Capital may terminate the New Letter Agreement and the Engagement by delivering written notice to the County. Upon InnoVative Capital's termination of the New Letter Agreement and the Engagement, the County shall immediately pay InnoVative Capital: (i) any fees due and expenses then outstanding; plus; (ii) the sum of all monthly fees which InnoVative Capital would have received under the New Letter Agreement, through the end of the term of the New Letter Agreement. In addition, InnoVative Capital will have no further obligation to provide any services under the terms of the New Letter Agreement.

***Termination by Washington County:***

***With Cause:*** In the event InnoVative Capital materially breaches any provision of the New Letter Agreement, the County shall have the right to terminate the New Letter Agreement upon InnoVative Capital's receipt of thirty (30) days prior written notice setting forth the basis for the material breach giving rise to the termination. However, InnoVative Capital shall be given a thirty (30) day period to cure said breach before the County may terminate this Letter Agreement. In all instances, the County shall be required to pay InnoVative Capital all of its outstanding expenses and past fees due.

***Without Cause:*** In the event the County terminates the New Letter Agreement and the Engagement Without Cause, InnoVative Capital shall be entitled to the following: (i) the payment of any fees due and expenses then outstanding; plus; (ii) the sum of all monthly fees which InnoVative Capital would have received under the term of the New Letter Agreement.

**Assignability:**

The New Letter Agreement shall be binding upon the parties hereto and not be assignable.

**No Agency:**

The relationship between InnoVative Capital and the County with respect to the New Letter Agreement is that of independent contractor, and nothing herein shall create a principal/agent relationship or an employer/employee relationship between the County and InnoVative Capital.



Horace Daniel, Chairman  
Washington County Board of Commissioners  
November 6, 2015  
Page 6 of 7

**No Third Party Beneficiaries:**

The provisions of the New Letter Agreement shall not entitle any party not a signatory to the New Letter Agreement to any rights as a third party beneficiary, or otherwise, it being the specific intention of the parties hereto to preclude any and all nonsignatory parties from any such third party beneficiary rights, or any other rights whatsoever.

**Reliance Upon Information Provided by Washington County:**

The County understands that InnoVative Capital will rely upon information provided to InnoVative Capital, by the County or WCRMC and therefore, the County hereby affirms that to the best of its knowledge and belief all of the information and statements given are and shall be complete and accurate as of the date of their submittal. The County agrees to notify InnoVative Capital in writing immediately of any material change in the information so provided.

**Survival:**

Along with any provision which indicates by its terms that it is intended to be operative beyond the term of the Engagement, the Indemnification, Confidentiality, Fee and Expense provisions of the New Letter Agreement shall survive any actual or purported termination of the New Letter Agreement.

**Approval; Acceptance:**

Any individual executing the New Letter Agreement on behalf of the County represents and warrants that: (i) he or she is duly authorized to execute and deliver this Letter Agreement on behalf of the County in accordance with the governing documents of Washington County; (ii) the New Letter Agreement is binding on Washington County in accordance with its terms; (iii) the New Letter Agreement is not in violation of, or inconsistent with, or contrary to provisions of any other agreement to which the County is a party; (iv) the terms and execution of the New Letter Agreement comport with applicable laws, regulations, requirements, ordinances, and procurement codes; and (v) no other proceedings or actions by the County are necessary to authorize the execution, delivery and performance of the New Letter Agreement.

**Counterparts:**

The New Letter Agreement may be executed simultaneously in any number of counterparts. Each counterpart shall be deemed to be an original and such counterparts shall constitute one and the same instrument.

**Entire Agreement:**

The New Letter Agreement represents the entire agreement of the parties and there are no oral representations, express or implied warranties, other agreements, or promises pertaining to the New Letter Agreement that are not incorporated in writing in the New Letter Agreement. Each party expressly warrants, represents and hereby states that it is not relying upon any statement or representation of the other party or any agent of the other party in deciding to enter the New Letter Agreement. Rather, each party is relying upon their own judgment to enter the New Letter Agreement. The New Letter Agreement may not be modified or amended except by an instrument in writing signed by an authorized officer of each party hereto. The New Letter Agreement



Horace Daniel, Chairman  
Washington County Board of Commissioners  
November 6, 2015  
Page 7 of 7

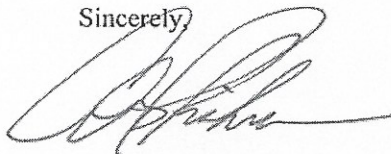
specifically supersedes the previous agreement executed between the County and InnoVative Capital, dated April 7, 2015, (the "2015 Letter Agreement"), and both parties agree that, with the exception of the Indemnification Section contained within the 2015 Letter Agreement, which shall remain in force and operative concurrently with the execution of the New Letter Agreement, the remainder of the 2015 Letter Agreement is will be null and void, upon the County's acceptance and execution of the New Letter Agreement and payment to InnoVative Capital of \$10,000.

**Acceptance:**

To indicate your acceptance of this Letter Agreement and the terms and conditions as defined herein, please deliver to InnoVative Capital the following (i) a signed copy of this Letter Agreement; (ii) InnoVative Capital's payment of \$10,000 for its Financial Advisory Services for the month of November 2015, and (iii) a copy of the County minutes from its meeting and a resolution approving the Engagement. Unless so accepted in writing, this Letter Agreement shall expire thirty days after the date indicated herein.

We appreciate the opportunity to be of assistance and look forward to working with you.

Sincerely,

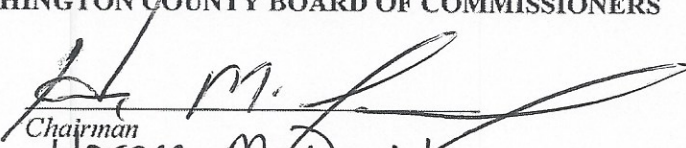


Alan P. Richman  
President & CEO  
InnoVative Capital, LLC

**Approved and Accepted by its Authorized Representative:**

WASHINGTON COUNTY BOARD OF COMMISSIONERS

By:

  
Chairman  
Name: Horace M. Daniel

Date: November 13, 2015

cc. Chris Hutchings  
Administrator / Clerk  
Washington County Board of Commissioners