



ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

Los Angeles County
Board of Supervisors

36 June 6, 2012

June 06, 2012

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

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Don Knabe
Fourth District

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Fifth District

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

Mitchell H. Katz, M.D.
Director

Hal F. Yee, Jr., M.D., Ph.D.
Chief Medical Officer

Christina Ghaly, M.D.
Deputy Director, Strategic Planning

**APPROVAL OF AN AMENDMENT TO AGREEMENTS FOR RADIATION
THERAPY SERVICES
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

SUBJECT

Request approval of an Amendment to extend the term of Agreements with five providers for the continued provision of radiation therapy services.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Approve and authorize the Director of Health Services (Director), or his designee, to execute Amendment No. 1, to extend the term and update required County provisions of Agreements with five contractors, identified on Attachment I, effective upon Board approval, for the period July 1, 2012 through June 30, 2013, with no increase in rates, for a total estimated cost of \$1,321,000 during the extension period, with an option to extend the Agreement term on a month-to-month basis for a period not to exceed an additional six months, through December 31, 2013.

2. Delegate authority to the Director or his designee, to execute future amendments to Agreements to a) exercise the option to extend the Agreement term on a month-to-month basis for up to six additional months, b) incorporate provisions consistent with County Code, Board policy, and Chief Executive Office contracting requirements, and c) adjust reimbursement rates by up to no more than 10 percent, subject to review and approval by County Counsel, with

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notice to the Chief Executive Office and your Board.

3. Approve continued delegated authority to the Director or his designee, to execute Agreements with other interested radiation therapy providers who meet the Department of Health Services (DHS or Department) contracting criteria and accept County rates for these services during the term of the Agreements.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Approval of the first recommendation will allow the Director or his designee to execute an Amendment, substantially similar to Exhibit I, to the Radiation Therapy Services Agreements. The current agreements are slated to expire on June 30, 2012. The extension of these Agreements is essential to sustaining capacity and geographic coverage for these services.

Approval of the second recommendation will allow DHS to extend the Agreement term, if necessary, add or revise standard agreement provisions and re-negotiate rates, to ensure continued access to as-needed radiation therapy services for oncology patients referred by DHS facilities.

Approval of the third recommendation will allow DHS to expand geographic coverage and capacity of such services if necessary during the extended term. Any agreements executed under this delegated authority will be co-terminus with the current Agreement term.

Radiation therapy services were obtained through an open solicitation process that allows contracting with additional providers who can meet the geographic access needs and contracting criteria of DHS, and agree to the County rates. To create operational efficiencies, DHS intends to establish master agreements for radiation therapy and other related services through a single solicitation process during the extended term.

Implementation of Strategic Plan Goals

The recommended action supports support Goal 1, Operational Effectiveness, of the County's Strategic Plan.

FISCAL IMPACT/FINANCING

The total estimated cost for the extension period effective July 1, 2012 through June 30, 2013 is \$1,321,000 (Attachment I provides estimated costs for services provided by each contractor in FY 2012-13). Funding for these services is included in the FY 2012-13 Recommended Budget and will be requested in future years as necessary.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On June 5, 2007, your Board approved new agreements with four contractors (Santa Clarita Radiotherapy Medical Group, St. Francis Medical Center, St. Vincent Medical Center, and South Bay Cancer Center, LLC) selected through the DHS Request for Proposals process to provide as-needed radiation therapy services for patients referred by all DHS medical facilities. Your Board also delegated authority to the Director to ensure adequate geographic coverage for such services by

executing agreements with other interested radiation therapy providers who meet DHS' certification/questionnaire criteria and accept County rates for these services. In 2008, DHS exercised its delegated authority for one additional contractor (Valley Radiotherapy Associates Medical Group, Inc.) to expand coverage in underserved areas of the San Fernando Valley and Santa Clarita Valley areas.

The Amendment includes all of the latest Board-required provisions.

County Counsel has approved Exhibit I as to form.

The Radiation Therapy service is not a Proposition A Agreement, as the services are intermittent and as needed and, therefore, not subject to the Living Wage Program (Los Angeles County Code Chapter 2.201).

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of the recommendation will ensure the continued and uninterrupted provision of radiation therapy services patients referred by DHS facilities.

Respectfully submitted,

A handwritten signature in black ink that reads "Mitchell Katz". The signature is written in a cursive, slightly slanted style.

Mitchell H. Katz, M.D.

Director

MHK:ck

Enclosures

c: Chief Executive Office
County Counsel
Executive Office, Board of Supervisors

ATTACHMENT I

**RADIATION THERAPY SERVICES AGREEMENTS
CONTRACT BUDGET FOR FY 2012-13
July 1, 2012 through June 30, 2013***

| CONTRACTOR | CONTRACT NO. | ESTIMATED COST |
|--|---------------------|-----------------------|
| Santa Clarita Radiotherapy Medical Group | H-702965 | 290,000 |
| South Bay Cancer Center, LLC | H-702803 | 200,000 |
| St. Francis Medical Center | H-702801 | 136,000 |
| St. Vincent Medical Center | H-702799 | 65,000 |
| Valley Radiotherapy Associates Medical Group, Inc. | H-703020 | 630,000 |
| | TOTAL | 1,321,000 |

* Note: The budget will be prorated accordingly after the initial expiration date of June 30, 2013, if Director or his designee exercises option to extend the Agreement term on a month-to-month basis for a period not to exceed an additional six months, through December 31, 2013.

Contract No. H-_____

RADIATION THERAPY SERVICES AGREEMENT

AMENDMENT NO. 1

This Amendment is made and entered into this _____ day of _____, 2012 by and between the COUNTY OF LOS ANGELES (hereafter "County"), and _____ (hereafter "Contractor").

WHEREAS, reference is made to that certain document entitled "RADIATION THERAPY SERVICES", dated _____, and any amendments thereto, all further identified as County Contract No. H-_____ (all hereafter "Contract"); and

WHEREAS, on _____ the County and Contractor, entered into Contract to provide Radiation Therapy Services at various practice location as identified in Exhibit __; and

WHEREAS, Contract is slated to expire on June 30, 2012; and

WHEREAS, it is the intent of the parties to amend the Contract to extend the term of the Contract through June 30, 2014, and

WHEREAS, Contract provides that changes may be made in accordance with Paragraph 18, "ALTERATION OF TERMS" in the form of an Amendment which is formally approved and executed by the parties; and

NOW, THEREFORE, the parties agree as follows:

1. Paragraph 1, TERM AND TERMINATION, shall be deleted in its entirety and replaced as follows:

"1. TERM OF AGREEMENT: The term of this Agreement shall be effective _____, unless sooner canceled or terminated, in whole or in part, as provided in this Agreement and shall continue in full force and effect to midnight June 30, 2013.

The County shall have the sole option to extend this Agreement term for up to six (6) months, for a maximum total Agreement term of six (6) years and six (6) months. Each such option and extension shall be exercised at the sole discretion of the Director or his/her designee as authorized by the Board of Supervisors. To implement an extension of time, an Amendment to the Agreement shall be prepared by the County and then executed by the Contractor and by the Director or his designee.

The Contractor shall notify DHS when this Agreement is within six (6) months from the expiration of the term as provided for hereinabove. Upon

occurrence of this event, the Contractor shall send written notification to the DHS at the address herein provided in the NOTICES Paragraph of this Agreement.”

2. Paragraph 10, GENERAL INSURANCE REQUIREMENTS, shall be deleted in its entirety and replace it as follows:

“10. GENERAL PROVISIONS FOR ALL INSURANCE COVERAGE: Without limiting Contractor's indemnification of County, and in the performance of this Agreement and until all of its obligations pursuant to this Agreement have been met, Contractor shall provide and maintain at its own expense insurance coverage satisfying the requirements specified in Sections 8.29 and 8.30 of this Agreement. These minimum insurance coverage terms, types and limits (the “Required Insurance”) also are in addition to and separate from any other Contractual obligation imposed upon Contractor pursuant to this Agreement. The County in no way warrants that the Required Insurance is sufficient to protect the Contractor for liabilities which may arise from or relate to this Agreement.

A. Evidence of Coverage and Notice to County

1. Certificate(s) of insurance coverage (Certificate) satisfactory to County, and a copy of an Additional Insured endorsement confirming County and its Agents (defined below) has been given Insured status under the Contractor’s General Liability policy, shall be delivered to County at the address shown below and provided prior to commencing services under this Agreement.
2. Renewal Certificates shall be provided to County not less than 10 days prior to Contractor’s policy expiration dates. The County reserves the right to obtain complete, certified copies of any required Contractor and/or Sub-Contractor insurance policies at any time.
3. Certificates shall identify all Required Insurance coverage types and limits specified herein, reference this Agreement by name or number, and be signed by an authorized representative of the insurer(s). The Insured party named on the Certificate shall match the name of the Contractor identified as the contracting party in this Agreement. Certificates shall provide the full name of each insurer providing coverage, its NAIC (National Association of Insurance Commissioners) identification number, its financial rating, the amounts of any policy deductibles or self-insured retentions exceeding fifty

thousand (\$50,000.00) dollars, and list any County required endorsement forms.

4. Neither the County's failure to obtain, nor the County's receipt of, or failure to object to a non-complying insurance certificate or endorsement, or any other insurance documentation or information provided by the Contractor, its insurance broker(s) and/or insurer(s), shall be construed as a waiver of any of the Required Insurance provisions.

Certificates and copies of any required endorsements shall be sent to:

County of Los Angeles
Department of Health Services
Contracts and Grants Division
313 N. Figueroa Street, 6E
Los Angeles, CA 90012
Attention: Kathy K. Hanks, C.P.M.
Director, Contract Administration & Monitoring

And

County of Los Angeles
Department of Health Services
Centralized Contract Monitoring Division
5555 Ferguson Drive, Suite 210
Commerce, CA 90022

Contractor also shall promptly report to County any injury or property damage accident or incident, including any injury to a Contractor employee occurring on County property, and any loss, disappearance, destruction, misuse, or theft of County property, monies or securities entrusted to Contractor. Contractor also shall promptly notify County of any third party claim or suit filed against Contractor or any of its Sub-Contractors which arises from or relates to this Agreement, and could result in the filing of a claim or lawsuit against Contractor and/or County.

B. Additional Insured Status and Scope of Coverage: The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Contractor's General Liability policy with respect to liability arising out of Contractor's ongoing and completed operations performed on behalf of the County. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising

out of the Contractor's acts or omissions, whether such liability is attributable to the Contractor or to the County. The full policy limits and scope of protection also shall apply to the County and its Agents as an additional insured, even if they exceed the County's minimum Required Insurance specifications herein. Use of an automatic additional insured endorsement form is acceptable providing it satisfies the Required Insurance provisions herein.

C. Cancellation of or Changes Insurance: Contractor shall provide County with, or Contractor's insurance policies shall contain a provision that County shall receive, written notice of cancellation or any change in Required Insurance, including insurer, limits of coverage, term of coverage or policy period. The written notice shall be provided to County at least ten (10) days in advance of cancellation for non-payment of premium and thirty (30) days in advance for any other cancellation or policy change. Failure to provide written notice of cancellation or any change in Required Insurance may constitute a material breach of the Contract, in the sole discretion of the County, upon which the County may suspend or terminate this Contract.

D. Failure to Maintain Insurance: Contractor's failure to maintain or to provide acceptable evidence that it maintains the Required Insurance shall constitute a material breach of the Contract, upon which County immediately may withhold payments due to Contractor, and/or suspend or terminate this Contract. County, at its sole discretion, may obtain damages from Contractor resulting from said breach.

E. Insurer Financial Ratings: Coverage shall be placed with insurers acceptable to the County with A.M. Best ratings of not less than A:VII unless otherwise approved by County.

F. Contractor's Insurance Shall Be Primary: Contractor's insurance policies, with respect to any claims related to this Agreement, shall be primary with respect to all other sources of coverage available to Contractor. Any County maintained insurance or self-insurance coverage shall be in excess of and not contribute to any Contractor coverage.

G. Waivers of Subrogation: To the fullest extent permitted by law, the Contractor hereby waives its rights and its insurer(s)' rights of recovery against County under all the Required Insurance for any loss arising from or relating to this Agreement. The Contractor shall require its insurers to execute any waiver of subrogation endorsements which may be necessary to effect such waiver.

H. Sub-Contractor Insurance Coverage Requirements: Contractor shall include all Sub-Contractors as insureds under Contractor's own policies, or shall provide County with each Sub-Contractor's separate evidence of insurance coverage. Contractor shall be responsible for verifying each Sub-Contractor complies with the Required Insurance provisions herein, and shall require that each Sub-Contractor name the County and Contractor as additional insureds on the Sub-Contractor's General Liability policy. Contractor shall obtain County's prior review and approval of any Sub-Contractor request for modification of the Required Insurance.

I. Deductibles and Self-Insured Retentions (SIRs): Contractor's policies shall not obligate the County to pay any portion of any Contractor deductible or SIR. The County retains the right to require Contractor to reduce or eliminate policy deductibles and SIRs as respects the County, or to provide a bond guaranteeing Contractor's payment of all deductibles and SIRs, including all related claims investigation, administration and defense expenses. Such bond shall be executed by a corporate surety licensed to transact business in the State of California.

J. Claims Made Coverage: If any part of the Required Insurance is written on a claims made basis, any policy retroactive date shall precede the effective date of this Agreement. Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following Agreement expiration, termination or cancellation.

K. Application of Excess Liability Coverage: Contractors may use a combination of primary, and excess insurance policies which provide coverage as broad as ("follow form" over) the underlying primary policies, to satisfy the Required Insurance provisions.

L. Separation of Insureds: All liability policies shall provide cross-liability coverage as would be afforded by the standard ISO (Insurance Services Office, Inc.) separation of insureds provision with no insured versus insured exclusions or limitations.

M. Alternative Risk Financing Programs: The County reserves the right to review, and then approve, Contractor use of self-insurance, risk retention groups, risk purchasing groups, pooling arrangements and captive insurance to satisfy the Required Insurance provisions. The County and its Agents shall be

designated as an Additional Covered Party under any approved program.

N. County Review and Approval of Insurance Requirements:

The County reserves the right to review and adjust the Required Insurance provisions, conditioned upon County's determination of changes in risk exposures."

3. Paragraph 11, INSURANCE COVERAGE REQUIREMENTS, shall be deleted in its entirety and replace it as follows:

"11. INSURANCE COVERAGE:

A. Commercial General Liability insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

| | |
|----------------------------------|-------------|
| General Aggregate: | \$2 million |
| Products/Completed Operations | |
| Aggregate: | \$1 million |
| Personal and Advertising Injury: | \$1 million |
| Each Occurrence: | \$1 million |

B. Automobile Liability insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Contractor's use of autos pursuant to this Agreement, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

C. Workers Compensation and Employers' Liability insurance or qualified self-insurance satisfying statutory requirements, which includes Employers' Liability coverage with limits of not less than \$1 million per accident. If Contractor will provide leased employees, or, is an employee leasing or temporary staffing firm or a professional employer organization (PEO), coverage also shall include an Alternate Employer Endorsement (providing scope of coverage equivalent to ISO policy form WC 00 03 01 A) naming the County as the Alternate Employer, and the endorsement form shall be modified to provide that County will receive not less than thirty (30) days advance written notice of cancellation of this coverage provision. If applicable to Contractor's operations, coverage also shall be arranged to satisfy the

requirements of any federal workers or workmen's compensation law or any federal occupational disease law.

D. Sexual Misconduct insurance covering actual or alleged claims for sexual misconduct and/or molestation with limits of not less than \$2 million per claim and \$2 million aggregate, and claims for negligent employment, investigation, supervision, training or retention of, or failure to report to proper authorities, a person(s) who committed any act of abuse, molestation, harassment, mistreatment or maltreatment of a sexual nature.

E. Professional Liability/Errors and Omissions insurance covering Contractor's liability arising from or related to this Agreement, with limits of not less than \$1 million per claim and \$3 million aggregate. Further, Contractor understands and agrees it shall maintain such coverage for a period of not less than three (3) years following this Agreement's expiration, termination or cancellation.

4. Paragraph 12, PROHIBITION AGAINST ASSIGNMENT AND DELEGATION, shall be deleted in its entirety and replace it as follows:

"12. ASSIGNMENT AND DELEGATION: The Contractor shall not assign its rights or delegate its duties under this Agreement, or both, whether in whole or in part, without the prior written consent of County, in its discretion, and any attempted assignment or delegation without such consent shall be null and void. For purposes of this sub-paragraph, County consent shall require a written amendment to the Agreement, which is formally approved and executed by the parties. Any payments by the County to any approved delegate or assignee on any claim under this Agreement shall be deductible, at County's sole discretion, against the claims, which the Contractor may have against the County.

Shareholders, partners, members, or other equity holders of Contractor may transfer, sell, exchange, assign, or divest themselves of any interest they may have therein. However, in the event any such sale, transfer, exchange, assignment, or divestment is effected in such a way as to give majority control of Contractor to any person(s), corporation, partnership, or legal entity other than the majority controlling interest therein at the time of execution of the Agreement, such disposition is an assignment requiring the prior written consent of County in accordance with applicable provisions of this Agreement.

Any assumption, assignment, delegation, or takeover of any of the Contractor's duties, responsibilities, obligations, or performance of same by any entity other than the Contractor, whether through assignment, subcontract, delegation, merger, buyout, or any other mechanism, with or without consideration for any reason whatsoever without

County's express prior written approval, shall be a material breach of the Agreement which may result in the termination of this Agreement. In the event of such termination, County shall be entitled to pursue the same remedies against Contractor as it could pursue in the event of default by Contractor."

5. Paragraph 13, SUBCONTRACTING, shall be deleted in its entirety and replace it as follows

"13. SUBCONTRACTING:

A. The requirements of this Agreement may not be subcontracted by the Contractor **without the advance approval of the County**. Any attempt by the Contractor to subcontract without the prior consent of the County may be deemed a material breach of this Agreement.

B. If the Contractor desires to subcontract, the Contractor shall provide the following information promptly at the County's request:

- A description of the work to be performed by the subcontractor;
- A draft copy of the proposed subcontract; and
- Other pertinent information and/or certifications requested by the County.

C. The Contractor shall indemnify and hold the County harmless with respect to the activities of each and every subcontractor in the same manner and to the same degree as if such subcontractor(s) were the Contractor employees.

D. The Contractor shall remain fully responsible for all performances required of it under this Agreement, including those that the Contractor has determined to subcontract, notwithstanding the County's approval of the Contractor's proposed subcontract.

E. The County's consent to subcontract shall not waive the County's right to prior and continuing approval of any and all personnel, including subcontractor employees, providing services under this Agreement. The Contractor is responsible to notify its subcontractors of this County right.

F. The Director or his/her designee is authorized to act for and on behalf of the County with respect to approval of any subcontract and subcontractor employees. After approval of the subcontract by the County, Contractor shall forward a fully executed subcontract to the County for their files.

G. The Contractor shall be solely liable and responsible for all payments or other compensation to all subcontractors and their officers, employees, agents, and successors in interest arising through services performed hereunder, notwithstanding the County's consent to subcontract.

H. The Contractor shall obtain certificates of insurance, which establish that the subcontractor maintains all the programs of insurance required by the County from each approved subcontractor. The Contractor shall ensure delivery of all such documents to:

County of Los Angeles
Department of Health Services
Contracts and Grants Division
313 N. Figueroa Street – 6E
Los Angeles, CA 90012
Attention: Kathy K. Hanks, C.P.M.
Director, Contract Administration & Monitoring

before any subcontractor employee may perform any work hereunder.”

6. Paragraph 22, CONTRACTOR'S WARRANTY OF COMPLIANCE WITH COUNTY'S DEFAULTED PROPERTY TAX REDUCTION PROGRAM, shall be added to the Agreement as follows:

“22. Contractor acknowledges that County has established a goal of ensuring that all individuals and businesses that benefit financially from County through contract are current in paying their property tax obligations (secured and unsecured roll) in order to mitigate the economic burden otherwise imposed upon County and its taxpayers.

Unless Contractor qualifies for an exemption or exclusion, Contractor warrants and certifies that to the best of its knowledge it is now in compliance, and during the term of this contract will maintain compliance, with Los Angeles Code Chapter 2.206.

Failure of Contractor to maintain compliance with the requirements set forth in this paragraph shall constitute default under this Agreement. Without limiting the rights and remedies available to County under any other provision of this Agreement, failure of Contractor to cure such default within 10 days of notice shall be grounds upon which County may terminate this Agreement and/or

pursue debarment of Contractor, pursuant to County Code Chapter 2.206.

7. Paragraph 23, FEDERAL ACCESS TO RECORDS, shall be added to the Agreement as follows:

“23. If, and to the extent that, Section 1861(v)(1)(I) of the Social Security Act (42 U.S.C. Section 1395x(v)(1)(I)) is applicable, Contractor agrees that for a period of five (5) years following the furnishing of services under this Agreement, Contractor shall maintain and make available, upon written request, to the Secretary of the United States Department of Health and Human Services or the Controller General of the United States, or to any of their authorized representatives, the Agreements, books, documents and records of Contractor which are necessary to verify the nature and extent of the costs of services provided hereunder. Furthermore, if Contractor carries out any of the services provided hereunder through any subcontract with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related organization (as that term is defined under Federal law), Contractor agrees that each such subcontract shall provide for such access to the subcontract, books, documents and records of the subcontractor.

8. Additional Provisions, Paragraph 18, COMPLIANCE WITH THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996, shall be replaced with the following:

“18. The parties acknowledge the existence of the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health Act (HITECH) and their implementing regulations. Contractor understands and agrees that, as a provider of medical treatment services, it is a “covered entity” under HIPAA/HITECH and, as such, has obligations with respect to the confidentiality, privacy, and security of patients’ medical information, and must take certain steps to preserve the confidentiality of this information, both internally and externally, including the training of its staff and the establishment of proper procedures for the release of such information, including the use of appropriate consents and authorizations specified under HIPAA/HITECH.

The parties acknowledge their separate and independent obligations with respect to HIPAA/HITECH, and that such obligations relate to transactions and code sets, privacy, and security. Contractor understands and agrees that it is separately and independently

IN WITNESS WHEREOF, the Board of Supervisors of the County of Los Angeles has caused this Amendment to be executed by its Chair and Contractor has caused this Amendment to be executed in its behalf by its duly authorized officer, the day, month, and year first above written.

COUNTY OF LOS ANGELES

By: _____
Mitchell H. Katz, M.D.
Director of Health Services

CONTRACTOR

By: _____
Signature

Printed Name

Title

APPROVED AS TO FORM:

John Krattli
Acting County Counsel

By _____
(Name and Title of County Counsel)