



DEPARTMENT OF HEALTH AND HUMAN SERVICES  
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER  
GOVERNOR

MANDY COHEN, MD, MPH  
SECRETARY

MARK PAYNE  
DIRECTOR

VIA EMAIL ONLY

March 8, 2018

William B. James

**Exempt from Review – Replacement Equipment**

**Record #:** 2534  
**Facility Name:** Lexington Medical Center  
**FID #:** 943307  
**Business Name:** Lexington Memorial Hospital, Inc.  
**Business #:** 1093  
**Project Description:** Replace existing linear accelerator equipment  
**County:** Davidson

Dear Mr. James:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), determined that based on your letter of March 5, 2018 and additional information received on March 6, 2018, the above referenced proposal is exempt from certificate of need review in accordance with N.C. Gen. Stat. §131E-184(a)(7). Therefore, you may proceed to acquire without a certificate of need the 2008 Varian Clinac iX linear accelerator to replace the 2003 Varian 21EX linear accelerator, Serial # 1700. This determination is based on your representations that the existing unit will be sold or otherwise disposed of and will not be used again in the State without first obtaining a certificate of need if one is required.

Moreover, you need to contact the Agency's Construction, Radiation Protection and Acute and Home Care Licensure and Certification Sections to determine if they have any requirements for development of the proposed project.

It should be noted that the Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this office and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Celia C. Inman  
Project Analyst

Martha J. Frisone  
Chief, Healthcare Planning and  
Certificate of Need Section

cc: Construction Section, DHSR  
 Radiation Protection Section, DHSR  
 Sharetta Blackwell, Program Assistant, Healthcare Planning, DHSR  
 Acute and Home Care Licensure and Certification Section, DHSR

**HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION**  
 WWW.NCDHHS.GOV

TELEPHONE 919-855-3873

LOCATION: EDGERTON BUILDING • 809 RUGGLES DRIVE • RALEIGH, NC 27603

MAILING ADDRESS: 2704 MAIL SERVICE CENTER • RALEIGH, NC 27699-2704

March 5, 2018

Ms. Martha Frisone, Chief  
Ms. Celia Inman, Project Analyst  
Healthcare Planning and Certificate of Need Section  
Division of Health Service Regulation  
809 Ruggles Drive  
Raleigh, NC 27603



**Re: Request for Confirmation of Exemption for Lexington Medical Center (FID # 943307) Linear Accelerator Replacement**

Dear Ms. Frisone and Ms. Inman,

Pursuant to NC G.S. § 131E-184 (g), Exemptions from Certificate of Need Review, I am writing to request confirmation that the project described below for Lexington Medical Center (Facility ID # 943307) is exempt from review.

Lexington Medical Center ("LMC") plans to replace the existing 2003 Varian 21EX linear accelerator with a 2008 Varian Clinac iX linear accelerator. The equipment that is being replaced was purchased in 2003 and has reached the end of its useful life. LMC has experienced multiple machine faults resulting in down time and repairs during this past year. The current linear accelerator is being sold for parts. The Varian Clinac iX has On-Board Imaging capabilities that makes image guided therapies more efficient and ensures improved patient alignment. The total capital cost of the project including equipment, installation, and related construction expenditures totals \$994,000. The existing Varian 21EX linear accelerator will be removed and disposed of by the equipment vendor. Please see Exhibit 1 for the capital budget. Please see Exhibit 2 for the equipment quote which includes documentation on pages 1 and 8 related to equipment removal and disposal.

LMC believes this project is exempt from review, as described below. Pursuant to NC G.S. § 131E-184 (a) and (7), *"The Department shall exempt from certificate of need review a new institutional health service if it receives prior written notice from the entity proposing the new institutional health service, which notice includes an explanation of why the new institutional health service is required for any of the following: ... (7) To provide replacement equipment ..."*

NC G.S. § 131E-176 (22a) defines replacement equipment as *"equipment that costs less than two million dollars (\$2,000,000) and is purchased for the sole purpose of replacing comparable medical equipment currently in use which will be sold or otherwise disposed of when replaced. In determining whether the replacement equipment costs less than two million dollars (\$2,000,000), the costs of equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the replacement equipment shall be included. The capital*

*expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater."*

The replacement 2008 Varian Clinac iX linear accelerator is being purchased for the sole purpose of replacing the existing Varian 21EX linear accelerator, which was purchased in 2003 and is need of replacement due to outdated technology and multiple equipment issues and repairs. The existing Varian 21EX linear accelerator will be sold for parts. The total cost of the replacement, including the costs of equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the replacement equipment is \$994,000 and falls below the \$2,000,000 threshold set forth in NC G.S. § 131E-176 (22a). Please see Exhibit 1 for the capital budget. Please see Exhibit 2 for the equipment quote which includes documentation on pages 1 and related to equipment removal and disposal.

LMC respectfully requests that the facts stated above, as well as the information included in the Exhibits, serve as prior written notification to the Department that the LMC linear accelerator replacement meets all of the exemption criteria in NC G.S. § 131E-184 (a) and (7).

Please let me know if you have any questions or if additional information is needed.

Sincerely,

A handwritten signature in black ink, appearing to read "William B. James". The signature is fluid and cursive, with a large initial "W" and "J".

William B. James, FACHE  
President

CAPITAL INVESTMENT COSTS

Health (Literature) Ltd	Spread	Sales	Forecast	Forecast	Forecast	
Default	Override	Method	Tax	2018	2019	Total

Equipment Default Spread  
Calculated

**Equipment Freight**  
 Subtotal (including monthly adjustments) 0 0 Default 0.00% \$ 5 5 \$  
 Sales Tax \$-\$ \$-\$ \$-\$ \$-\$ \$-\$ \$-\$  
**Equipment Freight Total** \$-\$ \$-\$ \$-\$ \$-\$ \$-\$ \$-\$

**Equipment Installation**  
 Subtotal (including monthly adjustments) 0 0 Default 0.00% \$ 571,500 \$71,500 \$71,500  
 Sales Tax \$-\$ \$-\$ \$-\$ \$-\$ \$-\$ \$-\$  
**Equipment Installation Total** \$-\$ \$-\$ \$-\$ \$-\$ \$-\$ \$-\$

**Equipment Attachments-Accessories-SW**  
 Subtotal (including monthly adjustments) 10 10 Default 0.00% \$ 5 5 \$ 5  
 Sales Tax \$-\$ \$-\$ \$-\$ \$-\$ \$-\$ \$-\$  
**Equipment Attachments-Accessories-SW Total** \$-\$ \$-\$ \$-\$ \$-\$ \$-\$ \$-\$

**Equipment Trade-in Allowance**  
 Subtotal (including monthly adjustments) 0 0 Default 0.00% \$ 5 5 \$ 5  
 Sales Tax \$-\$ \$-\$ \$-\$ \$-\$ \$-\$ \$-\$  
**Equipment Trade-in Allowance Total** \$-\$ \$-\$ \$-\$ \$-\$ \$-\$ \$-\$

**Equipment Other**  
 Subtotal (including monthly adjustments) 0 0 Default 0.00% \$ 5 5 \$ 5  
 Sales Tax \$-\$ \$-\$ \$-\$ \$-\$ \$-\$ \$-\$  
**Equipment Other Total** \$-\$ \$-\$ \$-\$ \$-\$ \$-\$ \$-\$

**Equipment Total**  
 \$ 571,500 \$71,500 \$71,500

**Base Equipment**  
 Cost Per Item 5 5 Default 0.00%  
 Quantity 1331250 1393750  
 Subtotal (including monthly adjustments) \$131,250 \$139,375  
 Sales Tax \$-\$ \$-\$ \$-\$ \$-\$ \$-\$ \$-\$  
**Base Equipment Total** \$131,250 \$139,375 \$521,000 \$-\$

Blade Equipment Total  
 Exhibit-176-172509-40580-406900 - 2008 Vendor Change in Buyer Authorization - Capital Investment

Exhibit 1: Capital Budget

Useful Life/Serial Life	Spread Method	Sales Tax	Forecast 2018	Forecast 2019	Forecast Total
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CAPITAL INVESTMENT COSTS

IT	Default	Override	Spread Method	Sales Tax	Forecast 2018	Forecast 2019	Forecast Total
<b>Vendor Travel</b>					\$131,250	\$99,750	\$525,000
Subtotal (including monthly adjustments)					\$	\$	\$-
Sales Tax				0.00%	\$-	\$-	\$-
Vendor Travel Total					\$-	\$-	\$-
<b>Capitalized Salaries</b>					\$	\$	\$-
Subtotal (including monthly adjustments)					\$-	\$-	\$-
Sales Tax					\$-	\$-	\$-
Capitalized Salaries Total					\$-	\$-	\$-
<b>Cabling</b>					\$	\$	\$-
Subtotal (including monthly adjustments)					\$-	\$-	\$-
Sales Tax					\$-	\$-	\$-
Cabling Total					\$-	\$-	\$-
<b>Interfaces</b>					\$	\$	\$-
Subtotal (including monthly adjustments)					\$-	\$-	\$-
Sales Tax					\$-	\$-	\$-
Interfaces Total					\$-	\$-	\$-
<b>Hardware</b>					\$	\$	\$-
Subtotal (including monthly adjustments)					\$-	\$-	\$-
Sales Tax					\$-	\$-	\$-
Hardware Total					\$-	\$-	\$-
<b>Software</b>					\$	\$	\$-
Subtotal (including monthly adjustments)					\$-	\$-	\$-
Sales Tax					\$-	\$-	\$-
Software Total					\$-	\$-	\$-
<b>Renewal Reservations</b>					\$	\$	\$5,000
Subtotal (including monthly adjustments)					\$-	\$-	\$-
Sales Tax					\$-	\$-	\$-
Renewal Reservations Total					\$-	\$5,000	\$5,000

CAPITAL INVESTMENT COSTS

	Capital Investment Life	Spread Method	Sales Tax	Forecast 2018	Forecast 2019	Forecast Total
Subtotal (including monthly adjustments)	10	Default	0.00%	\$	\$	\$
Sales Tax				\$-	\$	\$-
Software Installation Total				\$-	\$	\$-
Software Implementation	5	Default	0.00%	\$	\$	\$
Subtotal (including monthly adjustments)				\$-	\$	\$-
Sales Tax				\$-	\$	\$-
Software Implementation Total				\$-	\$	\$-
Vendor Software-Lifetime License	0	Default	0.00%	\$	\$187,500	\$187,500
Subtotal (including monthly adjustments)				\$-	\$-	\$-
Sales Tax				\$-	\$	\$-
Vendor Software-Lifetime License Total				\$-	\$187,500	\$187,500
IT Related Costs	5	Default	0.00%	\$	\$8,000	\$8,000
Subtotal (including monthly adjustments)				\$-	\$-	\$-
Sales Tax				\$-	\$	\$-
IT Related Costs Total				\$-	\$8,000	\$8,000
<b>IT Total</b>				\$-	\$200,500	\$200,500
<b>Construction</b>						
General Construction-Renovation	20	Default	0.00%	\$	\$100,000	\$100,000
Subtotal (including monthly adjustments)				\$-	\$-	\$-
Sales Tax				\$-	\$	\$-
General Construction Renovation Total				\$-	\$100,000	\$100,000
Building Fees-Professional Services	20	Default	0.00%	\$	\$	\$-
Subtotal (including monthly adjustments)				\$-	\$-	\$-
Sales Tax				\$-	\$	\$-
Building Fees-Professional Services Total				\$-	\$	\$-
Permitting-HVAC	20	Default	0.00%	\$	\$50,000	\$50,000
Subtotal (including monthly adjustments)				\$-	\$-	\$-
Sales Tax				\$-	\$	\$-
Permitting HVAC Total				\$-	\$	\$-

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Exhibit 1: Capital Budget

**Exhibit 1: Capital Budget**

	Justification/Use		Spread Method	Sales Tax	Forecast	Forecast	Forecast
	Default	Override			2018	2019	Total
<b>ELECTRICAL-WIRING</b>					\$	\$14,000	\$30,000
Subtotal (including monthly adjustments)	20	20	Default	0.00%	\$	\$45,000	\$45,000
Sales Tax					\$	\$	\$
<b>Electrical Wiring Total</b>					\$	\$45,000	\$45,000
<b>TELECOMMUNICATIONS INFRASTRUCTURE</b>							
Subtotal (including monthly adjustments)	20	20	Default	0.00%	\$	\$	\$
Sales Tax					\$	\$	\$
<b>Telecomm-Network Infrastructure Total</b>					\$	\$	\$
<b>INTERIOR FINISHES</b>							
Subtotal (including monthly adjustments)	20	20	Default	0.00%	\$	\$	\$
Sales Tax					\$	\$	\$
<b>Interior Finishes Total</b>					\$	\$	\$
<b>SIGNAGE</b>							
Subtotal (including monthly adjustments)	20	20	Default	0.00%	\$	\$	\$
Sales Tax					\$	\$	\$
<b>Signage Total</b>					\$	\$	\$
<b>CONSTRUCTION OTHER</b>							
Subtotal (including monthly adjustments)	20	20	Default	0.00%	\$	\$	\$
Sales Tax					\$	\$	\$
<b>Construction Other Total</b>					\$	\$	\$
<b>LAND IMPROVEMENTS</b>							
Subtotal (including monthly adjustments)	20	20	Default	0.00%	\$	\$	\$
Sales Tax					\$	\$	\$
<b>Land Improvements Total</b>					\$	\$	\$
<b>LAND</b>							
Subtotal (including monthly adjustments)	20	20	Default	0.00%	\$	\$	\$
Sales Tax					\$	\$	\$
<b>Land Total</b>					\$	\$	\$
<b>CONSTRUCTION CONTINGENCY</b>							
Subtotal (including monthly adjustments)	20	20	Default	0.00%	\$	\$	\$
Sales Tax					\$	\$	\$
<b>Land Total</b>					\$	\$	\$

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**Equipment:  
Machine Sale Agreement**

**EXECUTIVE SUMMARY**

**Client Contact**

Wake Forest Baptist Health - Lexington Medical Center  
250 Hospital Dr.  
Lexington, NC 27292

**RS&A Contact**

David Stith | [dstith@rsainc.net](mailto:dstith@rsainc.net)  
465 Forum Parkway  
Rural Hall, NC 27045  
P: (800) 320-4332

**Statement of Work**

<b>Scope:</b>	Remove existing linear accelerator, procure, install, and warranty a new linear accelerator. <b>Not included</b> in this proposal are the following items... <ul style="list-style-type: none"> <li>• Room prep or construction-related items to receive new machine.</li> <li>• Machine commissioning, license transfer, and quality audit (as applicable from OEM).</li> <li>• Integration to OIS and TPS platforms or other software licensure.</li> </ul>
<b>Current Equipment:</b>	Varian 21EX (S/N 1700) with 120-leaf MLC, PV, 4D/ITC, and Exact Couch
<b>New Equipment:</b>	2008 Varian Clinac iX Linear Accelerator (S/N: 4158) <ul style="list-style-type: none"> <li>• 6, 15 MV photon energy, 6-20 MeV electron energies</li> <li>• OBI KV imager with CBCT package</li> <li>• 120-leaf Millennium with DMLC software package</li> <li>• ASI-1000 (IDU20) portal vision w/ E-Arm &amp; 4D workstation</li> <li>• Dual Independent Jaws</li> <li>• Software Revision: 13.0</li> <li>• Rapid-Arc software</li> <li>• AFS software package</li> <li>• Stereotactic package and accessories</li> <li>• IGRT Exact couch and turntable with remote couch option</li> <li>• All original accessories, test phantoms, complete set of Cone/wedges</li> <li>• Type-3 accessories</li> <li>• Standard spares kit per manufacture specifications.</li> </ul>
<b>Install Timing:</b>	To be coordinated with Client
<b>Reference #:</b>	OP-005868

**Pricing**

ACTIVITIES	PRICING
<i>Included in this agreement.</i>	
1 Purchase of new linac (S/N 4158)	\$ 525,000
2 Storage of new linac (\$300 per month, estimated six months).	\$ Monthly
3 Decommissioning, removal, and disposal of existing linear accelerator (S/N 1700).	\$ Included
4 Transport and delivery of new linac.	\$ Included
5 Installation of new linear accelerator through acceptance test procedure.	\$ 71,500
6 Training on new linear accelerator (non-clinical).	\$ 8,000
7 Project travel and expenses	\$ Included
<b>Total</b>	<b>\$ 604,500</b>

**Note:** The warranty associated with the purchase of this equipment will be included in a separate maintenance agreement.

Exhibit 2: Equipment Quote



**Equipment:  
Machine Sale Agreement**

**Acceptance of Agreement**

By signing below, the Client hereby agrees to the pricing, terms, and conditions of this agreement:

<b>Client:</b>	Wake Forest Baptist Health - Lexington Medical Center ("Client") 250 Hospital Dr. Lexington, NC 27292	
<b>Authorized Signature:</b>		<b>Date:</b>
<b>Printed Name:</b>		
<b>Contract PO #:</b>		
<b>Tax Number (if exempt):</b>		
<b>Provider:</b>	R&A, Inc. ("R&A") 465 Forum Parkway Rural Hall, NC 27045	
<b>Authorized by:</b>		<b>Date:</b>
	Kenneth C. Wolff President and CEO	

**Attachments:**

- Terms and Conditions
- Project Roles & Responsibilities



**Equipment:  
Machine Sale Agreement**

Client and R&S&A (collectively, the "Parties") enter into this Equipment Services ("Contract" or "Agreement") and agree as follows. Additional qualifications or adjustments are to be included by addendum only.

**1. PROJECT EXECUTION**

**1.1 Project Coordinator.** R&S&A will appoint a project coordinator (the "Project Coordinator") to work with the Client and manage the installation of the Equipment. The Project Coordinator will be the main contact for Client and is charged with overseeing the project which may include: (i) Coordinating project activities, (ii) Developing an Installation Schedule, (iii) Attending project meetings and preparing meeting summaries (progress to date, next steps, issues log), (iv) Establishing a project contact list, (v) Supporting the Client with change management exercises (e.g. communications plan), (vi) Executing installation procedures to perform and verify the work, and (vii) Issuing project milestone acceptance letters.

**1.2 Installation Schedule.** The Parties will meet and prepare an installation schedule (the "Installation Schedule"). Both Parties shall use commercially reasonable efforts to comply with the Installation Schedule.

**1.3 Site Preparation.** R&S&A will work with the Client to prepare the Site ("Site Preparation") to install the Equipment. The Site Preparation may include, but is not limited to, the following:

**1.3.1 Removal of Existing Equipment.** If a machine is currently installed at the Facility and is being replaced (the "Existing Equipment"), R&S&A will remove and disposition the Existing Equipment as it deems appropriate. R&S&A will manage any disposal requirements for radiative material associated with the removal of the Existing Equipment. Accessories such as photon wedges, accessory trays, electron cones, couch top panels and treatment accessories will be removed with the Existing Equipment. Unless otherwise noted, Client transfers ownership of equipment to R&S&A who will take possession (in full) of any removed equipment, spare parts, and accessories (associated with the equipment) as part of this agreement.

**1.3.2 Disconnection of Utilities.** Client is responsible for disconnecting the electrical, air, and plumbing systems from the Existing Equipment prior to removal of the Existing Equipment and installation of the Equipment.

**1.3.3 Construction Activities.** Client is responsible for any activities required to configure the Facility to install the Equipment at the Facility. Such items may include without limitation (i) electrical, plumbing or other utility requirements, (ii) vault preparation and requirements, (iii) additional shielking, (iv) floor or wall repairs, (v) any code compliance requirements, (vi) chiller installations, (vii) IT requirements and configurations or (viii) any other infrastructure/construction requirements to install the selected Equipment. See the Attachment below for a breakdown of roles/responsibilities (Note: This may be altered to meet the needs of this Agreement and should be included by addendum).

**1.3.4 Permits.** Client is responsible for (i) obtaining any required permits to possess and install the Equipment and (ii) complying with all state, federal and local regulations in connection with Equipment.

**1.3.5 Radiation Controls.** The radiation control regulations in several regions prohibit R&S&A from delivering equipment until the Client can provide evidence of meeting certain requirements. This may include verifying that the Client has licensed or registered their equipment and/or registered their facility. Client shall obtain their license or file their registration in a timely manner to avoid delivery and installation delays, which may occur if these requirements have not been met.

**1.3.6 Facility Plan.** Certain regions require that R&S&A must verify the Client has had their facility plan review approved by the regional radiation control agency before the delivery of equipment can be authorized.

**1.4 Delivery and Install of Equipment.** Once the Site Preparation is complete (including permitting), R&S&A will finalize the acquisition, removal and delivery of the Equipment to the Facility. Delivery is defined as when the equipment is either physically placed at the install location -or- arrives at an R&S&A facility for storage on behalf of the Client. At the time of delivery, ownership of the asset changes from R&S&A to the Client. R&S&A will install the Equipment to operate within manufacturer specifications. Upon completion of the mechanical and electrical installation process, R&S&A will be present with the Facility's designated staff (e.g., Physics) to administer manufacturer acceptance testing procedures. The completion of the installation process is defined as when acceptance testing is done and signed off by the Client (acceptance letter).

**2. PRICING AND PAYMENT TERMS**

**2.1** The price for the services rendered under this Agreement shall be equal to the "Total Pricing" as outlined in the Executive Summary above (the "Fee").

**2.2 Payment.** Payments shall be made by certified check payable to R&S&A, Inc. or by wire transfer. Payments for services rendered as part of this agreement are due in the following sequence:

## Exhibit 2: Equipment Quote



### Equipment: Machine Safe Agreement

2.2.1 25% non-refundable deposit is due upon acceptance of this agreement. This is based on the total line pricing listed in Activity #1 and is equivalent to \$131,250.

2.2.2 Remaining balance for Activity #1 (machine safe) is due on 12/15/2017. This is equivalent to \$525,000 - \$131,250 = \$393,750.

2.2.3 Storage of machine will be billed monthly at \$300 per month until unit is delivered to client facility. Storage fee will begin on 1/01/2018.

2.2.4 75% of the remaining balance is due five (5) days prior to equipment delivery or by June 31<sup>st</sup>, 2018, whichever comes first (for installation). This is equivalent to \$59,625.

2.2.5 Remaining balance is due within seven (7) days post acceptance of the Equipment. This is equivalent to \$19,875.

2.3 **Past Due Balances.** Past due balances are subject to a service charge of the maximum amount permitted by law. If collection action is required to collect any amount due under this Agreement, then Client agrees to be responsible for the payment of all past dues, late fees, accrued interest and reasonable attorneys' fees by R&S&A to collect such sums.

2.4 **Exclusions.** Pricing does not include (i) any construction related costs in the vault (e.g., additional shielding or floor repair), (ii) compliance issues, utility services, chiller installs, IT requirements, etc., (iii) local, state, and federal taxes or (iv) any construction, demolition, or repair work that might be required.

2.5 **License.** Client may be subject to relicensing fees associated with the transfer of ownership on used equipment. The Original Equipment Manufacturer (OEM) regulates license transfer policies and only the OEM can supply license transfers. R&S&A shall not be responsible for any license fees subsequently charged by the Original Manufacturer, unless specifically agreed upon.

2.6 **Refund Policy.** Client may elect to terminate this Agreement by providing written notice to R&S&A. Once R&S&A has entered into a binding contract with the Seller, all funds paid under this Agreement shall be non-refundable.

### 3. REPRESENTATIONS AND WARRANTIES

3.1 **R&S&A Representations and Warranties.** R&S&A represents and warrants as follows:

3.1.1 The services will conform to the Equipment manufacturer's specifications and applicable laws and regulations.

3.1.2 R&S&A has full power and authority to enter into and to perform its obligations hereunder.

3.1.3 The execution, delivery and performance of this Contract by R&S&A have been duly authorized by all necessary action. This Contract and all other documents delivered to Client will be duly executed and delivered on behalf of R&S&A by duly authorized agents of R&S&A, and the legal, valid and binding obligations of R&S&A enforceable in accordance with their respective terms.

3.1.4 This agreement does not include an extended parts or labor warranty. The Client assumes all machine liabilities at the time of acceptance.

3.2 **Client Representations and Warranties.** Client represents and warrants as follows:

3.2.1 By entering into this Contract, Client shall not be in violation of any contract with another party including without limitation, any exclusive right by the manufacturer to service the Equipment.

3.2.2 Client has full power and authority to enter into and to perform its obligations hereunder.

3.2.3 The execution, delivery and performance of this Contract by Client have been duly authorized by all necessary action. This Contract and all other documents delivered to R&S&A will be duly executed and delivered on behalf of Client, and the legal, valid and binding obligations of Client enforceable in accordance with their respective terms.

### 4. MISCELLANEOUS

4.1 **Disclaimer of Warranties.**

4.1.1 THE WARRANTY FOR MATERIALS AND EQUIPMENT IS A MANUFACTURER'S WARRANTY ONLY, AND R&S&A PROVIDES NO OTHER WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, ANY IMPLIED WARRANTY OF FITNESS FOR A

R&S&A | Patient Focused. Quality Driven.

Page 4 of 8

This document is confidential.



**Equipment:  
Machine Sale Agreement**

**PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES OTHERWISE ARISING FROM COURSE OF DEALING OR TRADE.**

**4.2 Limitation of Liability.**

4.2.1 Notwithstanding anything in this Agreement to the contrary, R&S&A shall have no responsibility or liability for delays however caused. In no event shall R&S&A be liable for any indirect, special, incidental, consequential or punitive damages, losses or expenses including, but not limited to, loss of use, loss of profits, or loss of goodwill. Any liability of R&S&A is expressly limited to payments actually received by R&S&A under this Contract.

4.2.2 Client hereby agrees to hold harmless R&S&A and its respective officers, employees, agents, representatives, and their respective successors and assigns from and against any and all loss, liability, damages, claims, causes of action, costs, and expenses, including but not limited to attorney's fees and other types of liability, whether accrued, absolute, contingent or otherwise, arising out of or related to use of any of the Equipment at any time. Client alone is responsible for costs required to comply with all requirements imposed by law or regulation relating in any way to personal safety prior to use or operation of Equipment.

4.3 **Computer Software.** Computer software (including, without limitation, source code, object code, application software, server and Client software, operating system software, and software implemented as firmware) provided with the Equipment remains the property of the original equipment manufacturer (the "OEM") or the OEM's licensors. All software licensing and registration fees, including machine licensing and portal imaging licensing must be addressed with the OEM. R&S&A agrees to work with the Client to obtain all necessary software for the Equipment.

4.4 **Third Party Beneficiary.** Nothing in this Agreement is intended or should be construed to give any third person, including a patient of Client, any legal or equitable rights under this Agreement.

4.5 **Entire Agreement.** This Agreement, including any schedules, price lists and exhibits that may be attached hereto, constitutes the entire understanding and agreement between the parties and supersedes any and all prior and contemporaneous oral or written representations, communications, understandings and agreements between the parties with respect to the subject matter contained herein and in the schedules, price lists and exhibits attached hereto. A modification of the terms and conditions hereof by any separate terms and conditions offered by Client must be signed by R&S&A in order to become binding on R&S&A and enforceable by Client. The parties acknowledge and agree that neither party is entering into this Agreement on the basis of any representation, understanding, agreement or promise not expressly set forth in this Agreement.

4.6 **Confidential Information.** Each Party agrees not to use any Confidential Information of the other party for any purpose except for performing their respective obligations pursuant to this Agreement. Each Party agrees to limit disclosure of any Confidential Information of the other party to those agents, business consultants, representatives or employees of the receiving party who are required to have the information in order to evaluate or engage in discussions concerning the contemplated business relationship. Neither Party shall reverse engineer, disassemble or decompile any software or other tangible objects which are provided as the other party's Confidential Information. "Confidential Information" means any information relating to, available to, or disclosed pursuant to this Agreement, including, but not limited to, information relating to either party's products, services and/or service plans, trade secrets, inventions, data, designs, reports, analyses, costs, prices and names, patients, patient information, customer lists, finances, marketing plans, business plans, strategic plans or business opportunities.

4.7 **Attorney's Fees.** If any legal action is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party or parties shall be entitled to recover their reasonable attorney's fees and other costs incurred in that action or proceeding, in addition to any other relief to which they may be entitled.

4.8 **Counterparts and Facsimile Signatures.** This Agreement may be executed in any number of counterparts, each of which shall be deemed in original, but all of which taken together shall constitute one and the same Agreement. For purposes of this Agreement, signatures sent via facsimile shall be deemed original and shall have the same force and effect as if they were originals.

4.9 **Force Majeure.** Neither party shall be liable in damages or have the right to terminate this Agreement for any delay or default in performing hereunder if such delay or default is caused by conditions beyond its control including, but not limited to Act(s) of God, government restrictions (including the denial or cancellation of any export or other necessary license), wars, adverse weather conditions, insurrections and/or any other cause beyond the reasonable control of the party whose performance is affected.

**Exhibit 2: Equipment Quote**



**Equipment:  
Machine Sale Agreement**

4.10 **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the state of North Carolina. Client hereby irrevocably consents to the venue and jurisdiction of the courts in Forsyth County, North Carolina.

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**Project Roles and Responsibilities (Typical)**

**Purpose**

Open communication and alignment of everybody's role during an equipment project is integral to its overall success. This is especially important when construction or renovation activities are required within a department/facility. Below is a suggested assignment of key roles to help provide clarity throughout.

Responsibility Matrix <i>(as applicable)</i>		Client	Architect	Contractor	RSEA
<b>1</b>	<b>Preparation</b>				
a	Provide as-built documentation.	X	X		
b	Provide complete architectural and engineering construction documents for review.	X	X		
c	Provide review of all construction related documents.			X	
d	Provide review of equipment related items/considerations on construction documents.				X
e	Provide seismic testing documentation for all supportive anchoring (if applicable).	X	X	X	
f	Provide all permits, regulatory, and facility plan approvals prior to beginning construction/install.	X		X	
g	Verify that the pre-installation checklist is completed.	X		X	X
<b>2</b>	<b>Site Coordination</b>				
a	Provide equipment and material storage during construction.	X		X	
b	Provide unloading space for forklift, crane (if needed), and truck.	X			
c	Provide access requirements (badges, forms, etc.).	X			
d	Provide ample parking for project team members.	X			
e	Provide supervision (as needed) during installation.	X	X	X	
f	Provide clear rigging route from the drop-off point to the room; includes verifying room is clear, floor/structure can handle load, etc.	X		X	
<b>3</b>	<b>Construction</b>				
a	Provide room shielding and shielded door in alignment with architect/engineer specifications.			X	
b	Provide and connect mechanical/electrical utilities, as required for the linear accelerator operation, to an interface point.			X	
c	Provide mechanical/electrical systems as required for room occupancy, including plumbing, fire protection systems, HVAC, compressed air, lighting and power distribution.			X	
d	Provide monitoring systems including radiation detection, CCTV and intercom/telephone as selected by Client.			X	
e	Prepare base frame pit for installation activities.			X	

Exhibit 2: Equipment Quote

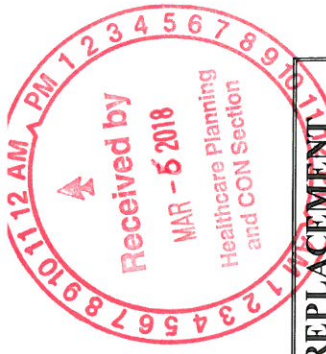


**Equipment:  
Machine Sale Agreement**

Responsibility Matrix <i>(as applicable)</i>		Client	Architect	Contractor	RS&A
f	Provide casework, cabinetry, doors or other millwork.			X	
<b>4</b>	<b>Installations and Removals</b>				
a	Disconnect facility utilities as needed (water, air, electricity)	X			
b	Remove existing equipment (as needed).				X
c	Request base frame for shipment.			X	
d	Receive and install base frame.				X
e	Pour and grout base frame.			X	
f	Pull linear accelerator interconnect cables.			X	X
g	Provide and pull network cables (where required)			X	
h	Provide and deliver linear accelerator equipment.				X
i	Install linear accelerator equipment; provide oversight during installation.				X
j	Coordinate acceptance testing protocols with Physics staff.	X			X
k	Maintain treatment room and control equipment area in a dust free and vandal-proof condition during linear accelerator assembly and acceptance testing.			X	
l	Ensure housekeeping standards are being met.			X	X
m	Remove all shipping crates and material when complete.			X	X
<b>5</b>	<b>Project Coordination</b>				
a	Schedule and facilitate regular project meetings.			X	
b	Provide ongoing progress updates.			X	
c	Monitor and report on progress; ensure conformance approved construction documents.			X	
d	Provide structural/engineering alterations throughout project (as required)			X	
e	Provide a safe and secure working environment	X		X	
f	Provide periodic on-site inspections to ensure construction related activities meet specifications.				X
<b>6</b>	<b>Project Close-Out</b>				
a	Provide punch list and resolution (construction-related items).	X	X	X	
b	Provide follow-up on all warranty related items.	X			
c	Complete final cleaning of the facility	X			



**EQUIPMENT COMPARISON**  
 Lexington Medical Center (FID # 943307) Linear Accelerator Replacement  
 March 2018



	<b>EXISTING EQUIPMENT</b>	<b>REPLACEMENT EQUIPMENT</b>
Type of Equipment (List Each Component)	Linear Accelerator	Linear Accelerator
Manufacturer of Equipment	Varian	Varian
Tesla Rating for MRIs	N/A	N/A
Model Number	Varian 21EX	Varian Clinac iX
Serial Number	S/N 1700	S/N 4158
Provider's Method of Identifying Equipment	L000216	N/A
Specify if Mobile or Fixed	Fixed	Fixed
Mobile Trailer Serial Number/VIN #	N/A	N/A
Mobile Tractor Serial Number/VIN #	N/A	N/A
Date of Acquisition of Each Component	2008-09	2018
Does Provider Hold Title to Equipment or Have a Capital Lease?	Title	Title
Specify if Equipment Was/Is New or Used When Acquired	Used	Used
Total Capital Cost of Project (Including Construction, etc.) <Use Attached Form>	NA	\$994,000
Total Cost of Equipment	\$748,000	\$525,000
Fair Market Value of Equipment	NA	\$525,000
Net Purchase Price of Equipment	NA	\$525,000
Locations Where Operated	107 Medical Park Drive Suite 101, Lexington, NC 27292	107 Medical Park Drive Suite 101, Lexington, NC 27292
Number Days In Use/To be Used in N.C. Per Year	Approx 251 Open on business days	Approx 251 Open on business days
Percent of Change in Patient Charges (by Procedure)	NA	5%
Percent of Change in Per Procedure Operating Expenses (by Procedure)	NA	0%
Type of Procedures Currently Performed on Existing Equipment	3D, IMRT	NA
Type of Procedures New Equipment is Capable of Performing	NA	Cone Beam CT Imaging (CBCT)