

HEALTH AFFAIRS COMMITTEE
ADDITIONAL ITEM
FEBRUARY 13, 2003

2. U. T. M. D. Anderson Cancer Center: Final Authorization for Execution of Certain Documents to Complete Transaction for the Construction and Operation of a Proton Therapy Center; Request to Approve an Additional Direct Investment in Proton Therapy Center - Houston, Ltd., L.L.L.P.; Approval of U. T. M. D. Anderson Cancer Center as a Member of PTC-Houston Investors L.L.C.; Approval to Execute Related Agreements; Finding of Fact and Determination of Public Purpose; and Authorization for the Institutional President to Take All Actions Related Thereto

RECOMMENDATION

The Chancellor concurs in the recommendation of the President of The University of Texas M. D. Anderson Cancer Center, the Acting Executive Vice Chancellor for Health Affairs and the Vice Chancellor and General Counsel of the University of Texas System, on behalf of The University of Texas M. D. Anderson Cancer Center, that the Board approve and give final authorization of the execution documents related to the operation of a proton therapy center as previously authorized by the Board (the "Approved Documents"). Additionally, it is recommended that the following matters, representing additional refinements of the transaction, be approved by the Board:

- a. Approval of an additional direct investment of up to, but not to exceed, \$3 million of unrestricted gift funds in Proton Therapy Center – Houston, Ltd., L.L.L.P. by The University of Texas M. D. Anderson Cancer Center as additional capitalization in such limited partnership for the purpose of securing any licenses or final disposition of intellectual property rights for operation of the facility.
- b. The entry of The University of Texas M. D. Anderson Cancer Center as a member of PTC-Houston Investors L.L.C., a limited liability company ("PTC"), by contribution of the originally authorized investment amount of \$2.5 million to PTC for the single purpose of PTC investing as a limited partner in Proton Therapy Center – Houston, Ltd., L.L.L.P.
- c. Execution of the Limited Liability Company Agreement of PTC and the Investment Agreement with respect to such Limited Liability Company Agreement of PTC.
- d. Determination by the Board that the leasing of 4.2 acres land to Proton Therapy Center – Houston, Ltd., L.L.L.P. for the purpose of construction and operation of a proton therapy

center is for the public purpose of providing cancer therapy to the citizens of the State of Texas and others and that the \$2.5 million rental payable under Ground Lease described below is adequate consideration for such lease.

It is further recommended that the institutional President be authorized to take any and all actions necessary or desirable to carry out the purpose and intent of the foregoing agreements including, without limitation, the authority to sublicense trademarks owned by the U. T. Board of Regents for the specific purposes set forth in the Sublicense Agreement and the authority to take any and all such actions necessary to fulfill the rights and obligations and receive the benefits provided in each of the above listed agreements.

BACKGROUND INFORMATION

The Board of Regents in August of 2001 approved M. D. Anderson's participation in a transaction to enter into a limited liability limited partnership with Sanders, Morris, Harris, Houston, Texas, and other investors for the purpose of securing the equity and debt sufficient to construct and commence operations of a proton therapy center.

Sanders, Morris, Harris, as the investment banker and general partner, has now secured debt and equity totaling \$126 million including transaction costs, construction interest and a budgeted amount for securing all necessary intellectual property agreements for operation of the facility. The Board previously authorized execution of the following documents (the "Approved Documents"), which have now been reviewed in their final forms and approved as to form:

- a. A Ground Lease of land on Old Spanish Trail in Houston, Harris County, Texas, between the U. T. Board of Regents, on behalf of U. T. M. D. Anderson Cancer Center, and the Proton Therapy Center-Houston, Ltd., L.L.L.P.
- b. A Limited Partnership Agreement between PTC Houston Management, L.P., PTC-Houston Investors, L.L.C., and U. T.M. D. Anderson Cancer Center, and the contribution of \$2.5 million to such partnership by U. T.M. D. Anderson Cancer Center.

- c. Related agreements with Proton Therapy Center – Houston, Ltd., L.L.L.P. as follows:
1. Medical Direction Agreement which, for a fee equal to the cost of employing the Medical Director for the Proton Therapy Center to be received by the Cancer Center, provides that the Division Head for Radiation Oncology be appointed as the Medical Director of the facility;
 2. Professional Services Agreement under which the Cancer Center provides the doctors, dosimetrists, and physicists for the delivery of proton therapy and bills and collects the professional fees generated;
 3. Staffing and Operations Agreement which provides for other services that will be purchased by the Limited Liability Limited Partnership (LLLP) from the Cancer Center for support services (such as triage nurses and other support personnel);
 4. Utilization Agreement which provides certain obligations of the LLLP to provide facilities and resources to Cancer Center researchers; and
 5. Sublicense Agreement for the use of the Cancer Center name for the promotion of proton therapy services.