

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

347



FROM: Riverside County Regional Medical Center

SUBMITTAL DATE:
3/17/09

SUBJECT: Multi-year agreement between Davita, dba Renal Treatment Center and Riverside County Regional Medical Center (RCRMC).

RECOMMENDED MOTION: That the Board of Supervisors:

- 1) Approve the multi-year agreement with Davita, dba Renal Treatment Center and RCRMC, for the period through June 30, 2014; and
- 2) Authorize the Chairman to execute the agreement; and
- 3) Direct the Clerk of the Board to retain one original and return two (2) original copies of the amendment to Riverside County Regional Medical Center - Contract Administration.

BACKGROUND: The California Department of Corrections and Rehabilitations' Title XV requires that all inmates have access to medical care. The Riverside County Regional Medical Center's Detention Health Services (DHS) utilizes Renal Treatment Center as the only area provider to provide renal dialysis services to inmates incarcerated in the five county jails. Inmates enter the jail system with chronic renal disease and therefore, require continuation of medical treatment during their period of incarceration.

(Continued)

DB: cm

Douglas D. Bagley

Douglas D. Bagley, Hospital Director

FINANCIAL DATA

Current F.Y. Total Cost:	\$ 234,000.00	In Current Year Budget:	Yes
Current F.Y. Net County Cost:	0	Budget Adjustment:	No
Annual Net County Cost:	0	For Fiscal Year:	08/09

SOURCE OF FUNDS: Hospital Enterprise Funds

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

C.E.O. RECOMMENDATION:

APPROVE
Debra Cournoyer
BY: Debra Cournoyer
Debra Cournoyer

County Executive Office Signature

FORM APPROVED COUNTY COUNSEL
BY: TANNY V. LIEU
DATE: 3/30/09
Departmental Concurrence

Purchasing:
Mark Sailer, Assistant Director

Consent
 Policy
 Consent
 Policy
 Dep't Recomm.:
 Per Exec. Ofc.:

11-11-08
11-11-08

Prev. Agn. Ref.: District: Agenda Number:

ATTACHMENTS FILED WITH THE CLERK OF THE BOARD

3.29

SUBJECT: Multi-year agreement between Davita, dba Renal Treatment Center and Riverside County Regional Medical Center

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BACKGROUND (cont.):

On other occasions, inmates are newly diagnosed after incarceration in the jails and require medical treatment and dialysis is initiated as life-saving measures.

PRICE REASONABLENESS:

This new agreement will provide for an all inclusive reduced rate for the Chronic Dialysis Treatments required as opposed to billed charges. Renal Treatment Center certifies that the prices offered are the lowest, or equal to those offered to customers in San Bernardino or Riverside Counties whose annual treatment volume is comparable to RCRMC, and/or offered to Federal, State, or Local Government contracts.

FINANCIAL IMPACT:

All costs for this Agreement will come from RCRMC Enterprise Funds.

The maximum annual cost of this agreement is in the amount of \$312,000.
The current fiscal year cost is for nine months in the amount of \$234,000.

This is a multi-year agreement, for a total of five years.

- 28 a. Transporting and accompanying patient(s) to and from
29 CONTRACTOR's facility;
- 30 b. Ensuring that COUNTY's staff accompanies patient(s) to
31 CONTRACTOR's facility, to ensure that care is rendered safely and that
32 patient(s) remain under care of COUNTY;
- 33 c. Ensuring that COUNTY's staff is present during the provision
34 of Services in order to maintain custody and control of patients and ensure safety
35 of CONTRACTOR's staff;
- 36 d. Cooperating with CONTRACTOR in the provision of
37 Services to patients, including assisting CONTRACTOR's staff in the provision of
38 dialysis services; and
- 39 e. Contacting CONTRACTOR to pre-schedule patient(s) for
40 Service, as consistent with patient care needs.

41 **2.0 TERM AND TERMINATION**

42 2.1 TERM: This Agreement will be effective as of final
43 execution through June 30, 2009, and automatically continue, on a year to year
44 basis until June 30, 2014, unless terminated as otherwise provided herein.

45 2.2 TERMINATION: Either party may terminate this
46 Agreement with cause upon 30 days written notice (if breach is not cured during
47 such thirty-day period), or without cause upon 90 days written notice, served
48 upon either party stating the effective date of termination.

49 2.3 POST TERMINATION: In the event of termination of this
50 Agreement for any reason, COUNTY will provide a written guarantee of payment

51 with a mutually agreed upon rate for services rendered after the
52 effective termination date of the this Agreement.

53 **3.0 COMPENSATION**

54 3.1 In consideration of Services provided by Contractor pursuant
55 to this Agreement, CONTRACTOR shall be entitled to receive payment as
56 specified in Exhibit A, consisting of six (6) pages attached hereto and by
57 reference incorporated herein.

58 3.2 Maximum payments by COUNTY to CONTRACTOR shall
59 not exceed three hundred and twelve thousand (312,000.00) dollars annually.

60 3.3 The COUNTY shall pay CONTRACTOR within thirty (30) working days of
61 receipt of a claim for Services provided to an individual patient in accordance
62 with a bill submitted to COUNTY by CONTRACTOR within 180 days following
63 the date of the initial billed service, during a single course of treatment. If
64 COUNTY believes that payments to CONTRACTOR were made incorrectly,
65 COUNTY shall request return of such amounts from CONTRACTOR within one
66 hundred, eighty (180) calendar days of the date of payment of any claim for
67 Services. COUNTY shall request any recovery in writing and shall specify (1) the
68 amount of recovery sought and (2) the justification for the recovery, including at a
69 minimum the specific claim(s) at issue, claim identifier(s), patient name(s),
70 patient identification, and date(s) of services ("Requests"). Such Requests shall
71 be resolved in accordance with the procedures specified in the dispute resolution
72 section of this Agreement. Any Requests shall be finalized within twelve (12)
73 months after the date of service for the claim. In no event and under no
74 circumstances shall COUNTY deduct, retract, or offset amounts it believes it has

75 overpaid from payments otherwise due CONTRACTOR. Any such attempted
76 deduction, retraction, or offset by COUNTY shall result in forfeiture of any
77 discounted rate otherwise specified in this Agreement, and COUNTY shall then
78 be required to pay CONTRACTOR's billed charges upon notice from
79 CONTRACTOR of such unauthorized deduction.

80 3.4 CONTRACTOR certifies that the prices offered are in the
81 same range as the prices offered for other prison services contracts in San
82 Bernardino or Riverside Counties whose annual treatment volume is comparable
83 to Riverside County Regional Medical Center. In the event that CONTRACTOR
84 shall agree to provide prison services within those counties under a prison
85 services contract where the annual treatment volume is comparable to Riverside
86 County Regional Medical Center's volume at lower rates, it shall, effective on the
87 first (1st) day of the next month, notify the COUNTY and initiate rate discussions
88 with the COUNTY accordingly.

89 3.5 County shall be responsible for notifying Contractor of any
90 third party insurance coverage for patients. When County is the primary payer
91 (i.e. patient does not have any active third party insurance coverage for the
92 applicable date(s) of service), County agrees to pay Contractor in accordance
93 with this Agreement.

94 3.6 When patient has active third party insurance coverage for
95 the applicable date(s) of service, Contractor agrees to bill such third party. If the
96 amount paid by the third party insurance coverage is less than the amount due to
97 Contractor under this Agreement, then County shall be responsible for paying

98 Contractor the difference between the third party's payments and the total
99 compensation due Contractor under this Agreement. In addition,
100 CONTRACTOR agrees COUNTY will only be held responsible for any applicable
101 coinsurance, deductible and/or copayments if the Patient has Medicare and/or
102 Medi-Cal third party insurance coverage as his/her primary insurance.

103 **4.0 HOLD HARMLESS/INDEMNIFICATION**

104 4.1 CONTRACTOR shall indemnify and hold harmless
105 Riverside County Regional Medical Center, the County of Riverside, its
106 Agencies, Districts, Special Districts and Departments, their respective directors,
107 officers, Board of Supervisors, elected and appointed officials, employees,
108 agents and representatives (the "Riverside County Regional Medical Center's
109 Indemnified Parties") from any liability whatsoever, including but not limited to,
110 property damage, bodily injury, or death, based or asserted upon any services of
111 CONTRACTOR, its officers, employees, subcontractors, agents or
112 representatives arising out of or in any way relating to this Agreement and
113 CONTRACTOR shall defend at its sole expense and pay all costs and fees,
114 including but not limited to, attorney fees, cost of investigation, defense and
115 settlements or awards, on behalf of the Riverside County Regional Medical
116 Center's Indemnified Parties in any claim or action based upon such liability.

117 Riverside County Regional Medical Center shall indemnify and hold harmless the
118 CONTRACTOR, its officers, employees, subcontractors, agents or
119 representatives (the "CONTRACTOR'S Indemnified Parties") from any liability
120 whatsoever, including but not limited to, property damage, bodily injury, or death,
121 based or asserted upon any services of Riverside County Regional Medical
122 Center, its Agencies, Districts, Special Districts and Departments, their

123 respective directors, officers, Board of Supervisors, elected and appointed
124 officials, employees, agents and representatives including, without limitation,
125 those arising out of or in any way relating to this Agreement and Riverside
126 County Regional Medical Center shall defend at its sole expense and pay all
127 costs and fees, including but not limited to, attorney fees, cost of investigation,
128 defense and settlements or awards, on behalf of the CONTRACTOR'S
129 Indemnified Parties in any claim or action based upon such liability. With respect
130 to any action or claim subject to indemnification herein, the indemnifying party
131 shall, at their sole cost, have the right to use counsel of their choice. The
132 indemnifying party shall have the right to adjust, settle, or compromise any such
133 action or claim upon the prior consent of the indemnified party, such consent not
134 to be unreasonably withheld, conditioned or delayed; provided, however, that any
135 such adjustment, settlement or compromise in no manner whatsoever limits or
136 circumscribes the indemnifying party's obligation to indemnify as set forth herein.
137 Indemnifying party's obligation hereunder shall be satisfied when they have
138 provided the indemnified party the appropriate form of dismissal relieving the
139 indemnified party from any liability for the action or claim involved. The specified
140 insurance limits required in this Agreement shall in no way limit or circumscribe
141 the indemnifying party's obligation to indemnify as set forth herein. In the event
142 there is conflict between this clause and California Civil Code Section 2782, this
143 clause shall be interpreted to comply with Civil Code 2782. Such interpretation
144 shall not relieve the indemnifying party's obligation to provide indemnification to
145 the fullest extent allowed by law.

146 **5.0 INSURANCE**

147 5.1 Without limiting or diminishing the CONTRACTOR'S
148 obligation to indemnify or hold the COUNTY harmless, CONTRACTOR shall
149 procure and maintain or cause to be maintained, at its sole cost and expense,
150 the following insurance coverage's during the term of this Agreement.

151 5.2 WORKERS' COMPENSATION:

152 If the CONTRACTOR has employees as defined by the
153 State of California, the CONTRACTOR shall maintain statutory Workers'
154 Compensation Insurance (Coverage A) as prescribed by the laws of the State of
155 California. Policy shall include Employers' Liability (Coverage B) including
156 Occupational Disease with limits not less than **\$1,000,000** per person per
157 accident. The policy shall be endorsed to waive subrogation in favor of The
158 County of Riverside.

159 5.3 COMMERCIAL GENERAL LIABILITY:

160 Commercial General Liability insurance coverage, including
161 but not limited to, premises liability, contractual liability, products and completed
162 operations liability, personal and advertising injury covering claims which may
163 arise from or out of CONTRACTOR'S performance of its obligations hereunder.
164 Policy shall name all Agencies, Districts, Special Districts, and Departments of
165 the County of Riverside, their respective directors, officers, Board of Supervisors,
166 employees, elected or appointed officials, agents or representatives as Additional
167 Insured's. Policy's limit of liability shall not be less than **\$1,000,000** per
168 occurrence combined single limit. If such insurance contains a general
169 aggregate limit, it shall apply separately to this agreement or be no less than two
170 (2) times the occurrence limit.

171 5.4 VEHICLE LIABILITY:

172 If CONTRACTOR'S vehicles or mobile equipment are used
173 in the performance of the obligations under this Agreement, then CONTRACTOR
174 shall maintain liability insurance for all owned, non-owned or hired vehicles so
175 used in an amount not less than **\$1,000,000** per occurrence combined single
176 limit. If such insurance contains a general aggregate limit, it shall apply

177 separately to this agreement or be no less than two (2) times the occurrence
178 limit. Policy shall name all Agencies, Districts, Special Districts, and Departments
179 of the County of Riverside, their respective directors, officers, Board of
180 Supervisors, employees, elected or appointed officials, agents or representatives
181 as Additional Insured's.

182 5.5 PROFESSIONAL LIABILITY INSURANCE:

183 Contractor shall maintain Professional Liability Insurance
184 providing coverage for the Contractor's performance of work included within this
185 Agreement, with a limit of liability of not less than **\$1,000,000** per occurrence and
186 **\$2,000,000** annual aggregate. If Contractor's Professional Liability Insurance is
187 written on a claims made basis rather than an occurrence basis, such insurance
188 shall continue through the term of this Agreement and CONTRACTOR shall
189 purchase at his sole expense either 1) an Extended Reporting Endorsement
190 (also known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with
191 a retroactive date back to the date of, or prior to, the inception of this Agreement;
192 or 3) demonstrate through Certificates of Insurance that CONTRACTOR has
193 Maintained continuous coverage with the same or original insurer. Coverage
194 provided under items; 1), 2) or 3) will continue for a period of five (5) years
195 beyond the termination of this Agreement.

196 5.6 GENERAL INSURANCE PROVISIONS - ALL LINES:

197 A. Any insurance carrier providing insurance coverage
198 hereunder shall be admitted to the State of California and have an A M BEST
199 rating of not less
200 than A: VIII (A:8) unless such requirements are waived by the County Risk
201 Manager. If the County's Risk Manager waives a requirement for a particular
202 insurer such waiver is only valid for that specific insurer and only for one policy
203 term.

204 B. The CONTRACTOR'S insurance carrier(s) must declare
205 its insurance deductibles or self-insured retentions. If such deductibles or self-
206 insured retentions exceed \$1,000,000 per occurrence such deductibles and/or

207 retentions shall have the prior written consent of the County Risk Manager before
208 the commencement of operations under this Agreement.

209 C. CONTRACTOR shall cause CONTRACTOR'S insurance
210 carrier(s) to furnish the County of Riverside with a properly executed original
211 Certificate(s) of Insurance showing such insurance is in full force and effect.
212 Further, said Certificate(s) shall contain the covenant of the insurance carrier(s)
213 that thirty (30) days written notice shall be given to the County of Riverside prior
214 to any material modification, cancellation, expiration or reduction in coverage of
215 such insurance. In the event of a material modification, cancellation, expiration,
216 or reduction in coverage, this Agreement shall terminate forthwith, unless the
217 County of Riverside receives, prior to such effective date, another properly
218 executed original Certificate of Insurance evidencing coverage's set forth herein
219 and the insurance required herein is in full force and effect. **CONTRACTOR shall**
220 **not commence operations until the COUNTY has been furnished original**
221 **Certificate (s) of Insurance as required in this Section.**

222 D. It is understood and agreed to by the parties hereto and
223 the insurance company(s), that the Certificate(s) of Insurance and policies shall
224 so covenant and shall be construed as primary insurance, and the COUNTY'S
225 insurance and/or deductibles and/or self-insured retention's or self-insured
226 programs shall not be construed as contributory.

227 E. The COUNTY'S Reserved Rights--Insurance. If, during
228 the term of this Agreement or any extension thereof, there is a material change in
229 the scope of Services; or, there is a material change in the equipment to be used
230 in the performance of the scope of work (such as the use of aircraft or watercraft)
231 the COUNTY reserves the right to adjust the types of insurance required under
232 this Agreement and the monetary limits of liability for the insurance coverage's
233 currently required herein, if, in the County Risk Manager's reasonable judgment,
234 the amount or type of insurance carried by the CONTRACTOR has become
235 inadequate.

236 F. CONTRACTOR shall pass down the insurance
237 obligations contained herein to all tiers of subcontractors working under this
238 Agreement.

239 G. The insurance requirements contained in this Agreement
240 may be met with a program(s) of self-insurance acceptable to the COUNTY.

241 **6.0 AVAILABILITY OF FUNDING**

242 It is mutually agreed and understood that the obligation of the
243 COUNTY to pay fees is limited by and contingent upon the availability of
244 COUNTY of Riverside funds for the reimbursement of CONTRACTOR'S fees. In
245 the event that such funds are not forthcoming for any reason, COUNTY shall
246 immediately notify CONTRACTOR in writing. This Agreement shall be deemed
247 terminated and have no further force in effect immediately on receipt of
248 COUNTY'S notification by CONTRACTOR. In the event of such termination,
249 CONTRACTOR shall be entitled to reimbursement in accordance with Exhibit A,
250 Payment Provisions for Services provided prior to the effective termination date.
251 Compensation is based upon completion of Services provided.

252 **7.0 RECORDS AND DOCUMENTS**

253 CONTRACTOR shall make available, upon written request by any
254 duly authorized Federal, State or COUNTY agency, a copy of this Agreement
255 and such books, documents and records as are necessary to certify the nature
256 and extent of the billed charges of the Services provided by CONTRACTOR.
257 CONTRACTOR shall maintain all such books and records for at least five (5)
258 years from the termination of this Agreement.

259 7.1 CONTRACTOR to provide COUNTY with reports and
260 information relative to this Agreement and in accordance with terms set forth
261 herein, as may be requested by COUNTY.

262 **8.0 MONITORING**

263 CONTRACTOR hereby agrees to establish procedures for self-
264 monitoring and shall permit an appropriate official of the COUNTY, State or
265 Federal government to monitor, access, or evaluate CONTRACTOR'S

266 performance under this Agreement upon reasonable notice to CONTRACTOR
267 and at any reasonable time.

268 **9.0 CONFIDENTIALITY**

269 CONTRACTOR agrees to protect from unauthorized disclosure
270 names and other identifying information concerning either persons receiving
271 Services under this Agreement or persons whose names or other identifying
272 information becomes known to CONTRACTOR as a result of Services performed
273 under this Agreement, except statistical information not identifying any such
274 person.

275 9.1 CONTRACTOR shall not disclose, except as otherwise
276 specifically permitted by this Agreement, as authorized by the client or client's
277 representative, or as required by law, any such identifying information to anyone
278 other than authorized COUNTY without prior written authorization from the
279 COUNTY.

280 9.2 For the purpose of this paragraph, "identify" shall include, but
281 not limited to, name, identifying number, symbol, or other identifying particular
282 assigned to the individual, such as finger or voiceprint or photograph.

283 **9.3 HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY**

284 **ACT (HIPAA)**: The Contractor in this Agreement is subject to all
285 relevant requirements contained in the Health Insurance Portability and
286 Accountability Act of 1996 (HIPAA), Public Law 104-91, enacted August 21,
287 1996, and the laws and regulations promulgated subsequent thereto. The
288 Contractor hereto agrees to cooperate in accordance with the terms and intent of
289 this Agreement for implementation of relevant law(s) and/or regulation(s)
290 promulgated under this Law. The Contractor further agrees that it shall be in
291 compliance, and shall remain in compliance with the requirements of HIPAA, and
292 the laws and regulations promulgated subsequent hereto, as may be amended
293 from time to time.

294 **10.0 POLICY AND PROCEDURE**

295 CONTRACTOR hereby agrees that, where applicable, Services
296 provided hereunder will be performed in harmony with COUNTY policy and

297 procedure. CONTRACTOR shall comply with all requirements of the Joint
298 Commission on Accreditation of Healthcare Organizations (JCAHO) relative to
299 this Agreement and shall maintain compliance with applicable JCAHO
300 requirements during the term of this Agreement.

301 **11.0 LICENSE**

302 CONTRACTOR shall, through the term of this Agreement, maintain
303 all licenses necessary for the provision of the Services hereunder and required
304 by the laws and regulations of the United States, the State of California, County
305 of Riverside, and all other governmental agencies. CONTRACTOR shall notify
306 COUNTY immediately, in writing, of inability to obtain or maintain such license.
307 Said inability shall be cause for termination of this Agreement.

308 11.1 CONTRACTOR shall ensure that CONTRACTOR'S
309 employees, agents, and subcontractors performing Services under the terms of
310 this Agreement are in compliance with all relevant licensing requirements.
311 CONTRACTOR hereby agrees to notify COUNTY immediately, in writing, of
312 inability of any of CONTRACTOR'S employees, agents and subcontractors to
313 obtain or maintain such license(s). Said inability shall be cause for termination of
314 this Agreement.

315 11.2 COPY REQUIRED. A copy of each such license, permit,
316 approval, waiver, exemption, registration, accreditation, and certificate shall be
317 provided to Contracts Administration.

318 11.3 Further, CONTRACTOR hereby agrees to abide by the
319 standards of medical practice of the profession when performing Services
320 hereunder.

321 **12.0 NONDISCRIMINATION AND ELIGIBILITY**

322 The CONTRACTOR shall not discriminate in the provision of
323 Services, allocation of benefits, accommodation in facilities, or employment of
324 personnel, on the basis of ethnic group identification, race, color, creed, ancestry,
325 religion, national origin,
326 sexual preference, sex, age (over 40), marital status, medical attention, or
327 physical or mental handicap, and shall comply with all other requirements of law

328 regarding non discrimination and affirmative action including those laws
329 pertaining to the prohibition of discrimination against qualified handicapped
330 persons in all programs or activities.

331 12.1 For the purpose of this Agreement, distinctions on the
332 grounds of race, religion, color, sex, national origin, age, or physical or mental
333 handicap include but at not limited to the following:

334 A. Denying an eligible person or providing to an eligible
335 person any Services or benefit which is different, or is provided in a different
336 manner or at a different time from that provided to other eligible persons under
337 this Agreement.

338 B. Subjecting an eligible person to segregation or
339 separate treatment in any matter related to his receipt of any service, except
340 when necessary for infection control.

341 C. Restricting an eligible person differently in any way in
342 the enjoyment of any advantage or privilege enjoyed by others receiving similar
343 service or benefit.

344 D. Treating an eligible person differently from others in
345 determining whether he satisfied any eligibility, membership, or other
346 requirement or condition which individuals must meet in order to be provided a
347 similar service or benefit.

348 E. The assignment of times or places for the provision of
349 Services on the basis of race, religion, color, sex, national origin, age, or physical
350 or mental handicap of the eligible person to be served.

351 **13.0 CONFLICT OF INTEREST**

352 CONTRACTOR and CONTRACTOR'S employees shall have no
353 interest, and shall nor acquire any interest, direct or indirect, which will conflict in
354 any manner or degree with the performance of Services required under this
355 Agreement.

356 **14.0 ALTERATION**

357 No alteration or variation of the terms of this Agreement shall be
358 valid unless made in writing and signed by the parties hereto, and no oral

359 understanding or agreement not incorporated herein, shall be binding on any of
360 the parties hereto.

361 14.1 Only the County Board of Supervisors or County Purchasing
362 Agent may authorize the alteration or revision of this Agreement. The parties
363 expressly recognize that COUNTY personnel are without authorization to either
364 change or waive any requirements of this Agreement.

365 **15.0 ASSIGNMENT**

366 CONTRACTOR may not delegate the obligations hereunder, either
367 in whole or in part, without prior written consent of COUNTY provided, however,
368 obligations undertaken by CONTRACTOR pursuant to this Agreement may be
369 carried out by means of subcontracts if approved by COUNTY. No subcontract
370 shall terminate or alter the responsibilities of the CONTRACTOR to COUNTY
371 pursuant to this Agreement. CONTRACTOR may not assign the rights
372 hereunder, either in whole or in part, without prior written consent of COUNTY,
373 except that CONTRACTOR may assign its rights and delegate its obligations
374 hereunder to any affiliate of CONTRACTOR. Any attempted assignment or
375 delegation in derogation of this paragraph shall be void. A change in the
376 business structure of CONTRACTOR, including but not limited to, change in the
377 majority ownership, change in the form of CONTRACTOR'S business
378 organization,, CONTRACTOR'S ownership of other business dealing with
379 CONTRACTOR under this Agreement, or filing of bankruptcy by
380 CONTRACTOR, shall be deemed an assignment for purposes of this paragraph.

381 **16.0 ADMINISTRATION**

382 The County of Riverside Purchasing Agent, or designee, shall
383 administer this Agreement on behalf of the COUNTY. The Purchasing
384 department is to serve as its liaison with CONTRACTOR in connection with this
385 agreement.

386 **17.0 WAIVER**

387 Any waiver by either party of any breach of any one or more of the
388 terms of this Agreement shall not be construed to be a waiver of any subsequent
389 or other breach of the same or of any other term thereof. Failure on the part of a

390 party to require exact, full and complete compliance with any terms of this
391 Agreement shall not be construed as in any manner changing the terms hereof or
392 stopping such party from enforcement hereof.

393 **18.0 JURISDICTION, VENUE, ATTORNEY FEES, SEVERABILITY**

394 This Agreement and its construction and interpretation as to validity,
395 performance and breach shall be construed under the laws of the State of
396 California. Any legal action related to this Agreement shall be filed in the
397 appropriate court (Municipal or Superior) of the State of California located in
398 Riverside, California. In the event any provision in this Agreement is held by a
399 court of competent jurisdiction to be invalid, void, or unenforceable, the remaining
400 provisions will nevertheless continue in full force without being impaired or
401 invalidated in any way.

402 **19.0 INDEPENDENT CONTRACTOR**

403 The CONTRACTOR is, for purposes arising out of this contract, an
404 Independent CONTRACTOR and shall not be deemed an employee of the
405 COUNTY. It is expressly understood and agreed that the CONTRACTOR shall
406 in no event, as a result of this contract, be entitled to any benefits to which
407 COUNTY employees are entitled, including but not limited to overtime, any
408 retirement benefits, worker's compensation benefits, and injury leave or other
409 leave benefits. CONTRACTOR hereby holds COUNTY harmless from any and
410 all claims that may be made against COUNTY based upon any contention by any
411 third party that an employer-employee relationship exists by reason of this
412 agreement.

413 19.1 It is further understood and agreed by the parties hereto that
414 CONTRACTOR in the performance of its obligation hereunder is subject to the
415 control or direction of COUNTY merely as to the result to be accomplished by the
416 Services hereunder agreed to be rendered and performed and not as to the
417 means and methods for accomplishing the results.

418 **20.0 SUBCONTRACT FOR WORK OR SERVICES**

419 No contract shall be made by the CONTRACTOR with any party for
420 furnishing any of the work or Services herein contained without the prior written
421 approval of the COUNTY Contract Administrator but this provision shall not
422 require the approval of contracts of employment between the CONTRACTOR
423 and personnel assigned for Services there under, or for parties named in the
424 proposal and agreed to under any resulting contract.

425 **21.0 INTEREST OF CONTRACTOR**

426 The CONTRACTOR covenants that it presently has no interest,
427 including but not limited to, other projects or independent contracts, and shall not
428 acquire any such interest, direct or indirect, which would conflict in any manner or
429 degree with the performance of Services required to be performed under this
430 contract. The CONTRACTOR further covenants that in the performance of this
431 contract, no person having any such interest shall be employed or retained by it
432 under this contract.

433 **22.0 CONDUCT OF CONTRACTOR**

434 22.1 The CONTRACTOR agrees to inform the COUNTY of all the
435 CONTRACTOR's interest, if any, which are or which the CONTRACTOR
436 believes to be incompatible with any interest of the COUNTY.

437 22.2 The CONTRACTOR shall not, under circumstances, which
438 might reasonably be interpreted as an attempt to influence the recipient in the
439 conduct of his duties, accept any gratuity or special favor from individuals or
440 organizations with whom the CONTRACTOR is doing business or proposing to
441 do business, in accomplishing the work under the contract.

442 22.3 The CONTRACTOR shall not use for personal gain or make
443 other improper use of privileged information, which is acquired in connection with
444 his contract. In this connection, the term 'privileged information' includes, but is
445 not limited to, unpublished information relating to technological and scientific
446 development; medical, personnel, or security records of the individuals;

447 anticipated materials requirements or pricing actions; and knowledge of selection
448 of CONTRACTOR or subcontractors in advance of official announcement.

449 22.4 The CONTRACTOR or employees thereof shall not offer
450 gifts, gratuity, favors, entertainment directly or indirectly to COUNTY employees.

451 **23.0 DISALLOWANCE**

452 In the event the CONTRACTOR receives payment for Services
453 under this contract which is later disallowed for nonconformance with the terms
454 and conditions herein by the COUNTY, the CONTRACTOR shall promptly refund
455 the disallowed amount to the COUNTY on request.

456 **24.0 RIGHT TO ACQUIRE EQUIPMENT AND SERVICES**

457 Nothing in this agreement shall prohibit the COUNTY from
458 acquiring the same type or equivalent equipment and/or service from other
459 sources, when deemed by the COUNTY to be in its best interest.

460 **25.0 FORCE MAJEURE**

461 25.1 In the event CONTRACTOR is unable to comply with any
462 provision of this agreement due to causes beyond their control such as acts of
463 God, acts of war, civil disorders, or other similar acts, CONTRACTOR shall not
464 be held liable to COUNTY for such failure to comply for so long as such causes
465 shall endure.

466 25.2 In the event COUNTY is unable to comply with any provision
467 of this agreement due to causes beyond its control relating to acts of God, acts of
468 war, civil disorders, or other similar acts, COUNTY shall not be held liable to
469 CONTRACTOR for such failure to comply for so long as such causes shall
470 endure.

471 **26.0 EDD REPORTING REQUIREMENTS**

472 In order to comply with child support enforcement requirements of
473 the State of California, the County of Riverside may be required to submit a
474 Report of Independent Contractor(s) form **DE 542** to the Employment

475 Development Department. The selected contractor agrees to furnish the
476 required Contractor data and certifications to the County of Riverside within 10
477 days of notification of award of contract when required by the EDD.

478 It is expressly understood that this data will be transmitted to
479 governmental agencies charged with the establishment and enforcement of child
480 support orders and for no other purposes and will be held confidential by those
481 agencies. Failure of the contractor to timely submit the data and/or certificates
482 required may result in contract being awarded to another Contractor. In the
483 event a contract has been issued, failure of the Contractor to comply with all
484 federal and state reporting requirements for child support enforcement or to
485 comply with all lawfully served Wage and Earnings Assignments Orders and
486 Notices of Assignment shall constitute a material breach of contract. Failure to
487 cure such breach within 60 calendar days of notice from the County shall
488 constitute grounds for termination of the contract.

489 If you have any questions concerning this reporting requirement, please
490 call (916) 657-0529. You may also contact your local Employment Tax Customer
491 Service Office listed in your telephone directory in the State Government section
492 under "Employment Development Department," or you may access their Internet
493 site at www.edd.ca.gov.

494 **27.0 ENTIRE AGREEMENT**

495 This Agreement, including any Statement(s) of Work entered into
496 pursuant to it and all Exhibits attached hereto, constitutes the entire agreement of
497 the parties hereto with respect to its subject matter and supersedes all prior and
498 contemporaneous representations, proposals, discussions and communications,
499 whether oral or in writing. This contract may be modified only in writing and shall
500 be enforceable in accordance with its terms when signed by each of the parties
501 hereto.

502 **28.0 CAPTIONS AND PARAGRAPH HEADINGS**

503 Captions and paragraph headings used in this Agreement are for
504 convenience only and are not a part of this Agreement and shall not be used in
505 construing this Agreement.

506 **29.0 NOTICES**

507 All correspondence and notices required or contemplated by this Agreement
508 shall be delivered to the respective parties at the addresses set forth below and
509 are deemed submitted one day after their deposit in the United States mail,
510 postage prepaid, certified or registered mail, return receipt requested:

“CONTRACTOR”

Renal Treatment Centers - California,
Inc.
c/o DaVita, Inc.
601 Hawaii Street
El Segundo, CA 90245

“COUNTY”

Riverside County Regional Medical Ctr
26520 Cactus Ave.
Moreno Valley, CA 92555

511

512 **30.0 CONFIDENTIALITY.** As a result of this Agreement, each Party
513 may have access to certain of the other Party's confidential and proprietary
514 information, including but not limited to this Agreement. Neither Party will
515 disclose to a patient, other health care providers, or any other third parties any of
516 the following information (except as required by an agency of the government),
517 whether contained in this Agreement or discussed during negotiations:

518 (a) any proprietary business information, not available to the general
519 public, obtained by one Party from the other Party; or

520 (b) any reimbursement amounts provided for under this Agreement; or

521 (c) any other material terms, rights or obligations under this
522 Agreement.

523 This section regarding confidentiality does not preclude the disclosure of
524 information to a third party for an appropriate business purpose, provided that the
525 disclosure is pursuant to a confidentiality agreement and the recipient of the
526 disclosure is not a competitor of either Party. Prior to making such disclosure,
527 the disclosing Party shall provide prior written notice to the other Party and obtain
528 that Party's approval, which shall not be unreasonably withheld. This
529 confidentiality provision survives the expiration or termination of this Agreement,
530 and either Party may seek injunctive relief or specific performance in order to
531 enforce its terms, as well as seeking any other remedy to which the Party is
532 entitled by law.

533 31.0 USE OF NAME. Any use of CONTRACTOR's name,
534 trademark, or service mark by COUNTY will be made solely upon prior written
535 approval by CONTRACTOR.

536 Or to such other address(es) as the parties may hereafter designate:

537 **IN WITNESS WHEREOF**, the parties have executed this Agreement.

538 **CONTRACTOR**
539 By: 

540 Robert Badal
541

542 Type or Print Name

543 Date: March 10, 2009

544

COUNTY
By: _____

Jeff Stone
Chairman, Board of Supervisors

Date: _____


FORM APPROVED COUNTY COUNSEL
BY:  4/14/09
TAWNY V. LIEU DATE

EXHIBIT A

RENAL TREATMENT CENTERS – CALIFORNIA, INC.

Compensation shall be paid to CONTRACTOR by COUNTY pursuant solely to the terms of the Agreement and shall not include any discounts or decreases to such compensation in any manner by COUNTY (including but not limited to discounts related to changes in payment policies and/or provider manuals, or discounts related to any other contractual relationships of COUNTY.)

COUNTY acknowledges that all decisions regarding the provision and administration of specific medically necessary services, supplies, and pharmaceuticals shall be made solely by the Prisoner's treating physician. Such decisions include, but are not limited to, the modality to be used, frequency and/or length of treatment, and choice of pharmaceuticals necessary in connection with the furnishing of treatment. The Prisoner's treating physician shall make such decisions based on the treating physician's clinical judgment that a service or procedure is medically necessary in accordance with medical ethics governing the physician.

All services (including pharmaceuticals) provided by CONTRACTOR shall be billed with the then current, nationally recognized CPT/HCPC codes for such service(s). The codes listed in this Exhibit are current codes for dialysis treatment(s) as of the effective date of this Exhibit; new codes shall be utilized by CONTRACTOR as implemented, in accordance with industry standards, but claims utilizing the codes specified here shall nevertheless still be considered clean claims for purposes of this Agreement.

<u>Chronic Dialysis Treatment</u>	<u>Agreement</u>	<u>CPT</u>	<u>Revenue</u>
	<u>Rate</u>		<u>Code</u>
Hemodialysis In-center	\$400	90999	821
Ultrafiltration	\$400	90999	881
CAPD Supplement Day	\$400	90945	841
CCPD Supplement Day	\$400	90945	851

The rates set forth above are all-inclusive and represent payment for the provision of all services to Prisoners that are generally provided as part of each specified dialysis modality, as determined by CONTRACTOR, including:

- all routine and non-routine ESRD pharmaceuticals and administration,

- all routine and non-routine ESRD laboratory tests performed by Total Renal Laboratories, Inc. and/or DVA Laboratory Services, Inc.,
- 15 PD training treatment sessions, and
- 12 PD monthly visit/support services visits

Additional training treatment sessions and additional monthly visit/support services shall be reimbursed at:

<u>Chronic Dialysis Treatment</u>	<u>Agreement</u>	<u>CPT</u>	<u>Revenue</u>
	<u>Rate</u>		<u>Code</u>
CAPD Training Treatment	\$412	90993	841
CAPD Monthly Visit/Support Services	\$288	90999	845
CCPD Training Treatment	\$420	90993	851
CCPD Monthly Visit/Support Services	\$288	90999	855

Additional services not generally provided as part of each specified dialysis modality and any modalities not listed above may be billed separately by CONTRACTOR and shall be reimbursed by COUNTY at 65% of CONTRACTOR's billed charges.

Any injectable or administered drug prescribed by a physician or other professional authorized under state law will be furnished to a Prisoner by CONTRACTOR in connection with the provision of end-stage renal disease services. CONTRACTOR shall provide anemia management pharmaceuticals (including but not limited to Epogen and Epogen equivalents) and/or services to Prisoners as ordered for Prisoners by prescribing physicians or other authorize professionals, and shall not be required to procure an authorization or pre-approval for provision of such pharmaceuticals or services. Prisoners shall not bring (or be required to bring) pharmaceuticals into CONTRACTOR, as CONTRACTOR shall furnish all dialysis-related administered or injectable pharmaceuticals to Prisoners. CONTRACTOR has sole discretion to make decisions regarding the supplier for, and procurement of, pharmaceuticals provided to Prisoners in conjunction with the provision of dialysis services.

Total Renal Laboratories, Inc. and/or DVA Laboratory Services, Inc. will provide laboratory tests for Prisoners for whom CONTRACTOR provides services under this Agreement, excluding STAT laboratory tests. Laboratory tests that (i) are excluded from the Chronic Dialysis Treatment rates, (ii) are performed on an immediate "STAT" basis, (iii) performed by independent laboratories contracted with CONTRACTOR, and (iv) have a diagnostic code other than 585 (ESRD), shall be billed directly to COUNTY by an independent laboratory to whom CONTRACTOR sends such laboratory tests. In addition, certain laboratory tests that are performed by a contracted reference laboratory with a modifier (90)

following the five digit CPT code shall also be billed by Total Renal Laboratories and/or DVA Laboratory Services, Inc. The reimbursement for said tests shall be the billed amount, i.e., the same amount Total Renal Laboratories and/or DVA Laboratory Services, Inc. must pay for the tests.

SERVICES EXCLUDED FROM AGREEMENT:

- A. Treatment/Services received outside of a CONTRACTOR facility (except for CAPD and CCPD, to be reimbursed at the per treatment/session rates listed above).
- B. All Physician Professional Services.
- C. Vascular Access Services.
- D. Apheresis.
- E. Nocturnal hemodialysis and home hemodialysis.
- F. Services CONTRACTOR is not authorized to provide.
- G. Laboratory services that are provided on a STAT basis.

NEW TECHNOLOGY AND COST INCREASES

For purposes of this Agreement, New Technology is defined as a service, medicine, procedure, device, test, or other item that, as of the effective date of this Agreement (i) is not performed by CONTRACTOR, or (ii) for which there is no CPT or other relevant code defined. New Technology does not include a new code that is assigned as a change to an existing service, medicine, procedure, device, test, or other item. In the event the Centers for Medicare and Medicaid Services (“CMS”) approves the use of a new

technology, medication or service that is also considered a covered service by CONTRACTOR and COUNTY, CONTRACTOR shall administer and reimbursement will be set at 65% of CONTRACTOR's billed charges.

If the price to CONTRACTOR of any item furnished by CONTRACTOR to Prisoners in accordance with this Agreement (including but not limited to pharmaceuticals) increases by more than 7%, the compensation rate in the table above that includes such item shall automatically be increased by the same amount of the increase in price, upon notice to COUNTY from CONTRACTOR.

RATE ADJUSTMENT

On the annual anniversary date of each year following the Effective Date of this Agreement, the compensation rates provided in the table above shall increase automatically by 7%.