

**MONTEREY COUNTY BOARD OF SUPERVISORS**

<b>MEETING:</b>	<b>April 6, 2010</b>	<b>AGENDA NO.:</b>
<b>SUBJECT:</b>	Authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute the Agreement with Total Renal Care, Inc. for Dialysis services at NMC in an amount not to exceed \$1,500,000 for the period March 1, 2010 to December 31, 2013.	
<b>DEPARTMENT:</b>	Natividad Medical Center	

**RECOMMENDATION:**

It is recommended the Board of Supervisors authorize the Purchasing Manager for Natividad Medical Center (NMC) to execute the Agreement with Total Renal Care, Inc. for Dialysis services at NMC in an amount not to exceed \$1,500,000 for the period March 1, 2010 to December 31, 2013.

**SUMMARY/DISCUSSION:**

Total Renal Care has been the NMC provider for comprehensive dialysis services for the past several years. Total Renal Care has been negotiating with NMC over the past year in good faith in order to continue providing us with this essential service for patients with kidney malfunction. The Total Renal Care program offers a comprehensive array of resources necessary for patients requiring the gamut of dialysis services. These services include providing dialysis trained RN staff to safely manage care of the patient and the equipment in the process of filtering wastes from patients whose kidney cannot provide this vital function for them. Total Renal Care's program meets the quality standards required by NMC and mechanisms are in place to measure compliance with NMC standards as required by the state, the government, Center for Medicare and Medicaid Services (CMS) and The Joint Commission.

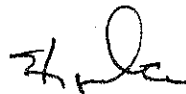
**OTHER AGENCY INVOLVEMENT:**

The Agreement has been reviewed and approved by County Counsel, the Auditor/Controller's office, and the Natividad Medical Center Board of Trustees' Finance Committee.

**FINANCING:**

The cost for this Agreement is \$1,500,000 and is included in the Fiscal Year 2009/2010 approved budget. This action will not require any additional General Fund subsidy.

Prepared by:  
Carol Jordan  
February 22, 2010  
Attachments: Agreement, Board Order



\_\_\_\_\_  
Harry Weis  
Chief Executive Officer

**Before the Board of Supervisors in and for the  
County of Monterey, State of California**

**Agreement No: A - 11673**

Authorize the Purchasing Manager for Natividad Medical Center to )  
execute the Agreement with Total Renal Care, Inc. for Dialysis )  
services at NMC in an amount not to exceed \$1,500,000 for the )  
period March 1, 2010 to December 31, 2013. )

Upon motion of Supervisor Potter, seconded by Supervisor Parker, and carried by those members present, the Board hereby:

Authorized the Purchasing Manager for Natividad Medical Center to execute the Agreement with Total Renal Care, Inc. for Dialysis services at NMC in an amount not to exceed \$1,500,000 for the period March 1, 2010 to December 31, 2013.

PASSED AND ADOPTED this 6<sup>th</sup> day of April, 2010, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, Parker, Potter

NOES: None

ABSENT: None

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 75 for the meeting on April 6, 2010.

Dated: April 6, 2010

Gail T. Borkowski, Clerk of the Board of Supervisors  
County of Monterey, State of California

By           *Potter*          *Parker*            
Deputy

COUNTY OF MONTEREY AGREEMENT FOR ACUTE DIALYSIS SERVICES  
(MORE THAN \$100,000)

This Acute Dialysis Services Agreement (hereinafter "Agreement") is made by and between Natividad Medical Center ("NMC"), a general acute care teaching hospital wholly owned and operated by the County of Monterey, which is a political subdivision of the State of California and Total Renal Care, Inc., a California corporation (hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1. SERVICES TO BE PROVIDED. NMC hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in Exhibits A through D in conformity with the terms of the Agreement. The services are generally described as follows: CONTRACTOR provides NMC with necessary non-physician professional personnel to perform acute dialysis services set forth in Exhibits A through D, attached hereto (the "Patient Services").
2. PAYMENTS BY NMC. NMC shall pay the CONTRACTOR in accordance with the payment provisions set forth in Exhibit A, subject to the limitations set forth in this Agreement. The fee schedule set forth in Exhibit A shall be increased on each yearly anniversary of the effective date by five (5%) percent. The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of one million five hundred thousand dollars (\$1,500,000.00) total. If the above amount is surpassed during any fiscal year, the Contractor shall have the right to immediately terminate the Agreement if the parties do not amend the Agreement to increase the funding for any service ordered.
3. TERMS OF AGREEMENT. The term of this Agreement is entered into as of the later of the last date of execution of this Agreement or March 1, 2010, and ends on December 31, 2013 unless sooner terminated pursuant to the terms of this Agreement.
4. PERFORMANCE STANDARDS.
  - 4.1. CONTRACTOR warrants that CONTRACTOR and Contractor's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of NMC, or immediate family of an employee of NMC.
  - 4.2. CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
  - 4.3. CONTRACTOR shall furnish, at its own expense, all dialysis related materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use NMC premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

5. PAYMENT CONDITIONS.

5.1. CONTRACTOR shall submit to the NMC Accounts Payable Department an invoice on a form acceptable to NMC. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, according to the fee schedule in Exhibit D. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for Administrator or his or her designee to certify the invoice. The County Auditor-Controller shall pay the amount certified within thirty (30) from the date of Contractor's certified invoice submission. NMC acknowledges and agrees that NMC's call to Contractor with Orders for Services is NMC's authorization for Contractor to provide such Services on NMC's behalf and that said Administrator at NMC shall promptly submit such invoice to the County Auditor-Controller for payment. NMC shall not adjust, short pay, offset, retract, recoup, or otherwise, any claims against any fees owed to CONTRACTOR for Services as set forth in Exhibit D, except in the case of adjustments for mistakes by CONTRACTOR in calculating any fees charged. In that case, any and all allowable adjustments shall be identified by NMC to CONTRACTOR in writing, accompanied by full and complete documentation explaining and justifying any and all such adjustments, on or before the date payment is due to CONTRACTOR herein; provided however, that NMC shall still be obligated to timely pay in full all fees owed, along with any proper adjustments taken by NMC, by the due date set forth below. Otherwise, upon reasonable demonstration by CONTRACTOR of any such untimely and/or undocumented adjustments, offsets, retractions, recoupments or other improper claims asserted by NMC against CONTRACTOR's fees for Services as set forth in Exhibit D, NMC shall immediately make the appropriate payment to CONTRACTOR.

5.2. CONTRACTOR shall not receive reimbursement for travel expenses unless set forth in this Agreement; and then only in accordance with all applicable County policies.

6. TERMINATION.

6.1. Without Cause Termination. Either party may terminate the Agreement for any reason by giving written notice of termination to the other party at least ninety (90) days prior to the effective date of termination.

6.2. This Agreement may be terminated for cause by either party following written notice by the non-breaching party to the breaching party, if the breach in question has not been rectified within thirty days of the initial notice.

7. INDEMNIFICATION.

(a) Contractor Indemnity. NMC hereby agrees to defend, indemnify and hold harmless CONTRACTOR and its shareholders, affiliates, officers, directors, employees, and agents for, from and against any claim, loss, liability, cost and expense (including, without limitation, costs of investigation and reasonable attorney's fees), directly or indirectly relating to, resulting from or arising out of any action or failure to act arising out of this Agreement by NMC and its staff regardless of whether or not it is caused in part by CONTRACTOR or its officers, directors, agents, representatives, employees, successors and assigns. This indemnification

provision shall not be effective as to any loss attributable exclusively to the negligence or willful act or omission of CONTRACTOR.

(b) NMC Indemnity. CONTRACTOR hereby agrees to defend, indemnify and hold harmless NMC and its shareholders, affiliates, officers, directors, employees, and agents for, from and against any claim, loss, liability, cost and expense (including, without limitation, costs of investigation and reasonable attorney's fees), directly or indirectly relating to, resulting from or arising out of any action or failure to act arising out of this Agreement by CONTRACTOR and its staff regardless of whether or not it is caused in part by NMC or its officers, directors, agents, representatives, employees, successors and assigns. This indemnification provision shall not be effective as to any loss attributable exclusively to the negligence or willful act or omission of NMC.

(c) The obligations of the parties under this Section 7 shall survive termination of this Agreement.

(d) Evidence of Coverage: Prior to commencement of this Agreement, the CONTRACTOR shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the CONTRACTOR upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to NMC's Contracts/Purchasing Department, unless otherwise directed. The CONTRACTOR shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and NMC has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

Qualifying Insurers: All coverage's except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A-VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by NMC's Contracts/Purchasing Director.

Insurance Coverage Requirements: Without limiting Contractor's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Exemption/Modification (Justification attached; subject to approval).

Workers' Compensation Insurance, If CONTRACTOR employs other in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

Exemption/Modification (Justification attached; subject to approval).

Professional liability insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

Exemption/Modification (Justification attached; subject to approval).

Other Insurance Requirements:

All insurance required by this Agreement shall be with a company acceptable to NMC and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that NMC shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for CONTRACTOR and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional insureds with respect to liability arising out of the Contractor's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insureds shall not be called upon to contribute to a loss covered by the Contractor's insurance. The required endorsement from for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85

or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement from for Automobile Additional Insured Endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by NMC, CONTRACTOR shall file certificates of insurance with NMC's Contracts/Purchasing Department, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by NMC, annual certificates to NMC's Contracts/Purchasing Department. If the certificate is not received by the expiration date, NMC shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles NMC, at its sole discretion, to terminate the Agreement immediately.

8.3 NMC Insurance. NMC shall, at its expense, provide and maintain workers' compensation, medical malpractice and commercial general liability insurance or equivalent coverage for its employees who perform any work, duties or obligations in connection with this Agreement, and public liability and property damage insurance, during the Term and thereafter, in amounts not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) per annual aggregate. NMC reserves the right to self-insure all or part of this coverage. NMC's obligation under this Section shall survive termination of this Agreement.

9. RECORDS AND CONFIDENTIALITY.

9.1. Confidentiality: Both parties and its officers, employees, agents and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. Neither party shall disclose any confidential records or other confidential information received from the other or prepared in connection with the performance of this Agreement, unless either party has given written disclosure to release such records or information. Neither party shall use any confidential information in the performance of this Agreement except for the sole purpose of carrying out the obligations under this Agreement unless the other party has given written permission to release such records or information. Each party shall promptly transmit to the other any and all requests for disclosure of any such confidential records or information. Neither party shall use any confidential information gained by it in the performance of this Agreement except for the sole purpose of carrying out its obligations under this Agreement.

9.2. CONTRACTOR shall cause to be prepared and filed with NMC's medical records administrator, reports of all Services rendered by CONTRACTOR. At the request of NMC, such reports and records shall be prepared on forms proposed by CONTRACTOR and approved by NMC. NMC shall maintain an accurate and complete file of all such records and reports, including but not limited to treatment orders and treatment record and make available to CONTRACTOR such records at CONTRACTOR's request. CONTRACTOR may maintain a copy of these records and reports. CONTRACTOR shall prepare such additional or supplementary reports as NMC's medical records administrator may reasonably request or as CONTRACTOR may deem necessary or appropriate. If preparation of additional reports as a result of NMC's requests materially increases CONTRACTOR's expenses in providing the Services, CONTRACTOR shall be entitled to recover its expenses or require NMC to prepare said reports.

9.3 Ownership. The ownership and right of control of all reports, records, and supporting documents prepared at the request of NMC in connection with the Services shall rest exclusively in NMC. CONTRACTOR shall have access to and the right to maintain a copy of any such report, record or document.

10. ACCESS TO AND AUDIT OF RECORDS. NMC shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess or \$10,000, the parties to this Agreement may be subject, at the request of NMC or as part of any audit of NMC, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.

11. NON-DISCRIMINATION. All services provided by both parties hereunder shall be in compliance with all federal and state laws prohibiting discrimination on the basis of race, color religion, sex national origin, handicap, or veteran status.



12. INDEPENDENT CONTRACTOR.

In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent CONTRACTOR and not as an employee of NMC. No offer or obligation of permanent employment with NMC or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from NMC any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of Contractor's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold NMC and the County of Monterey harmless from any and all liability, which NMC may incur because of Contractor's failure to pay such taxes.

13. NOTICES.

Notices required under this Agreement shall be delivered personally or by first-class, postage per-paid mail to NMC and Contractor's contract administrators at the addresses listed below.

FOR NATIVIDAD MEDICAL CENTER:

Contracts Manager  
1441 Constitution Blvd.  
Salinas, CA. 93906  
Attention:

FOR CONTRACTOR:

DaVita Inc.  
15253 Bake Parkway  
Irvine, CA 92618  
Attention: Acute Paralegal

14. MISCELLANEOUS PROVISIONS.

14.1. Conflict of Interest. Each party represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

14.2. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by NMC and the CONTRACTOR.

14.3. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by NMC and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

14.4. CONTRACTOR. The term "CONTRACTOR" as used in this Agreement includes Contractor's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.

## 15. ASSIGNMENT AND SUBCONTRACTING.

15.1 The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of NMC, except that CONTRACTOR may assign this Agreement to any of its subsidiaries, affiliates, or successors without the other party's consent. None of the services covered by this Agreement shall be subcontracted without the prior written approval of NMC. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

15.2. SUCCESSORS AND ASSIGNS. This Agreement and the rights, privileges, duties, and obligations of NMC and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

15.3 COMPLIANCE WITH APPLICABLE LAW. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

15.4. HEADINGS. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

15.5. TIME IS OF THE ESSENCE. Time is of the essence in each and all of the provisions of this Agreement

15.6. GOVERNING LAW. This Agreement shall be governed by and interpreted under the laws of the State of California.

15.7. CONSTRUCTION OF AGREEMENT. NMC and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement.

15.8. INTEGRATION. This Agreement, including the exhibits, represents the entire Agreement between NMC and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede any and all other agreements, either oral or written, between the parties (including, without limitation, any prior agreement between NMC and CONTRACTOR or any of its subsidiaries or affiliates) with respect to the subject matter hereof. In addition, the parties acknowledge and agree that that certain acute agreement dated December 1, 1998 by and between the parties is hereby terminated in its entirety and all obligations of both parties are extinguished from and after the effective date hereof, except for those obligations that necessarily must survive termination, such as payment of fees, indemnification and insurance,

provisions relating to records and reports, audits, confidentiality obligations and any other obligations the context of which indicates that they are intended to survive termination.

## 16. PROVISION OF SERVICES

16.1 Performance of Services. CONTRACTOR will perform Services in accordance with generally recognized standards of care as outlined by federal, state and local applicable laws and regulations, as such may be amended from time to time.

16.2 Rules and Regulations. All Staff (as defined below) shall comply with the ethical and administrative rules, regulations, policies and procedures of NMC in effect on the date hereof that relate to the provision of Services, to the extent not inconsistent with applicable laws or regulations, provided that copies of same are delivered to CONTRACTOR as evidenced by a written receipt signed by CONTRACTOR Administrator (as defined below). During the Term of this Agreement (as defined below), NMC may provide CONTRACTOR Administrator, from time to time, with additional ethical and administrative policies and procedures as they become effective, and with updates and/or additional information related to same, at least thirty (30) days prior to the effective date of each such policy, and CONTRACTOR shall evidence receipt of same by a written receipt signed by CONTRACTOR Administrator. If CONTRACTOR determines, in its reasonable discretion, that any such policies or procedures are not acceptable for material reasons, CONTRACTOR may terminate this Agreement by providing at least thirty (30) days prior written notice to NMC. NMC shall provide orientation to Staff providing the Services regarding applicable NMC policies and procedures prior to their participation in the provision of the Services, at no cost to CONTRACTOR or its Staff.

16.3 Quality Assurance. CONTRACTOR agrees, at NMC's request, to participate in NMC's Quality Assurance Program, in order to comply with applicable standards of the Joint Commission ("JOINT COMMISSION") and Medicare. CONTRACTOR may provide survey forms to patients regarding the Services.

16.4 Regulatory Approval. CONTRACTOR will reasonably assist NMC in obtaining all necessary regulatory approvals with respect to provision of Services in NMC.

(a) Additional Orientation or Training. If NMC requires that CONTRACTOR Staff attend on-site NMC orientation or other on-site training, then NMC shall provide such additional orientation and training at its own expense and reimburse CONTRACTOR for any labor costs incurred by CONTRACTOR incident to such additional orientation, described in Exhibit D herein, consistent with all applicable Monterey County policies, including without limitation the Travel Policy. Additionally, NMC will memorialize its request for additional orientation and training in writing prior to its implementation and CONTRACTOR will utilize NMC's written request and documentation of CONTRACTOR Staff completion of on-site NMC orientation and training to bill NMC for such Services in accordance with the fee schedule set forth as Exhibit D.

(b) Additional Health Monitoring. If, subject to all applicable state and federal laws, NMC desires or requires that CONTRACTOR provide monitoring of the

health of CONTRACTOR's Staff beyond that which is required by CONTRACTOR's Human Resources Department's policies and procedures and federal, state, and local law, in such respect, then NMC shall request that CONTRACTOR provide such additional health monitoring and then reimburse CONTRACTOR for all expenses incurred by CONTRACTOR or its personnel (including, without limitation, labor costs). Additionally, NMC will memorialize any request for additional Health Monitoring in writing thirty (30) days prior to its implementation and CONTRACTOR will utilize NMC's written request and documentation of CONTRACTOR Staff completion of Health Monitoring and other expenses incurred for additional Health Monitoring to bill NMC for such Services in accordance with the fee schedule set forth as Exhibit D. To the extent NMC requests for documentation concerning the health monitoring of its personnel, NMC shall comply with the terms of Section 16.9, below, concerning the maintenance of such documentation.

16.5 Orders. CONTRACTOR shall provide Services only upon receipt of an order ("Order") of a nephrologist or physician who has been authorized by NMC to make such requests. NMC shall provide CONTRACTOR with a list of nephrologists or physicians authorized and qualified to order Services (the "Physicians"), which list NMC shall update from time to time. In order to initiate treatment, NMC agrees to promptly contact CONTRACTOR upon receipt of an Order and after the patient has received a functioning vascular or peritoneal access for treatment. If contact is made by telephone, NMC will call the dedicated phone number CONTRACTOR will give to NMC for placing an Order. NMC's call to CONTRACTOR with Orders for Services is NMC's authorization for CONTRACTOR to provide such Services on NMC's behalf. CONTRACTOR agrees to demonstrate commercially reasonable efforts in providing Services within four (4) hours following the receipt of an Order from NMC for treatment, or within a later specified time frame as set by a patient's physician. If CONTRACTOR receives a verbal or read back Order for the provision of Services, NMC shall provide to CONTRACTOR a written Order from the Physician within forty-eight (48) hours of such verbal or read-back Order. NMC shall ensure that necessary, appropriate and proper written informed consent specific to the Services has been obtained. NMC shall make such documents available to CONTRACTOR Staff immediately prior to the performance of the Services. NMC and CONTRACTOR agree that the Physician(s) shall be responsible for discussing the risks and benefits of treatments involving any of the Services in conjunction with obtaining the written informed consent. If questions arise from any documentation to be provided under this Section, CONTRACTOR may delay the performance of the Services until it has the required information. The Staff will be responsible for provision of the ordered Services, including: (a) set-up and safety check of machine and water treatment system; (b) initiating treatment, monitoring of treatment, and termination of treatment; (c) documentation of treatment on NMC approved forms; and (d) clean-up of dialysis equipment and proper storage of machine and supplies.

16.6 Authority. Pursuant to California Code of Regulations, Title 22, Section 70713, Use of Outside Services, At all times NMC and the patient's Physician shall retain ultimate authority over and responsibility for each patient's care and treatment.

16.7 Hours. CONTRACTOR shall make its Staff available on an "on call" basis seven (7) days per week, twenty-four (24) hours per day to provide Services ordered in accordance with the terms of this Agreement.

16.8 Location. CONTRACTOR shall provide the ordered Services at patient bedside or in a designated dialysis room made available by NMC. The determination of the medically

appropriate location of each treatment shall be made in the sole and absolute discretion of a particular patient's Physician and shall be expressed in an Order. In the event that the Physician orders CONTRACTOR to provide Services to a patient in the dialysis treatment room, NMC shall be solely responsible for transferring the patient to and from the dialysis treatment room.

16.9 Staff. CONTRACTOR shall provide properly trained and qualified non-physician personnel (the "Staff"), which may include but is not limited to, registered nurses, licensed vocational nurses and state-certified dialysis technicians practicing under the supervision of CONTRACTOR's registered nurses, in adequate numbers to provide the ordered Services. Upon request by NMC, CONTRACTOR shall provide information and documentation regarding the licensure, certification, and experience of its Staff. If NMC requires the CONTRACTOR to supply it with information regarding CONTRACTOR employees, including but not limited to background checks and evaluations, NMC will guarantee the confidentiality of such information in compliance with the Fair Credit Reporting Act Title VII, the Americans with Disabilities Act, the California Fair Employment and Housing Act, and all other applicable state and federal laws, rules, and regulations, including those governing the maintenance and destruction of such information. NMC shall treat these records as though they were the records of their own employees.

16.10 Treatment. Whenever patients are receiving Services, CONTRACTOR shall provide on duty at least one (1) nurse currently licensed in NMC's state and experienced in rendering Services, to oversee the provision of Services and such additional Staff to maintain an appropriate patient/staff ratio. The Staff shall monitor and regulate the Services in conformity with Physician's orders and the patient's condition. The duties and responsibilities of the Staff providing Services hereunder are set forth in Exhibit A. NMC shall provide nurses who will provide backup nursing support during each treatment for each patient receiving Services. These nurses shall be responsible for the non-Service related care of the patient during the treatment, which may include responsibility for administering medications, performing ADLs and baseline assessments, and assisting the Staff in achieving hemodynamic stability in the event the patient becomes unstable during the treatment.

16.11 Service Administrator.

(a) CONTRACTOR Obligation. CONTRACTOR shall designate a member of its Staff as the administrator (the "Administrator"). The Administrator shall meet, as reasonably requested, with NMC's administrators and physician-directors of dialysis and related services to discuss matters affecting the provision of Services.

(b) NMC Obligation. NMC will designate one NMC employee to act as the liaison between the parties (the "Liaison"). The Liaison shall meet, as reasonably requested, with CONTRACTOR's Administrator, NMC's administrators, NMC's physicians and others as required to discuss matters affecting the provision of Services. Unless otherwise specified in the Agreement, the Liaison will receive from CONTRACTOR all reports and documents required by the Agreement.

16.12 Equipment.

(a) CONTRACTOR Obligation. CONTRACTOR shall provide, maintain in good operating condition, and repair all dialysis and related equipment necessary for the

provision of Services. NMC will provide CONTRACTOR with a CONTRACTOR approved locked area for storage of equipment. NMC acknowledges and agrees that items of equipment may require repair from time to time, and NMC agrees to make available to CONTRACTOR's Staff and its authorized agents appropriately located work areas that are suited to the making of such repairs. All equipment provided by CONTRACTOR will be maintained by CONTRACTOR to meet requirements of applicable codes.

(b) NMC Obligation. NMC shall be responsible for the maintenance of its own equipment which is not provided by CONTRACTOR, including, without limitation, maintenance and water testing of equipment owned by NMC. NMC owns and will maintain the water system that supplies the water CONTRACTOR utilizes in providing the services contemplated herein. NMC acknowledges and assumes full responsibility for all water quality testing. NMC agrees to provide water at a quality level that meets or exceeds Association for the Advancement of Medical Instrumentation (AAMI) guidelines. NMC acknowledges and assumes full and exclusive liability for any injury or liability to any patients arising out of the quality of the water. NMC specifically agrees to indemnify CONTRACTOR against any and all claims relating to the quality of the water, and waives sovereign immunity and any other immunity for any such indemnification claims. NMC agrees to make all periodic water testing results and water system maintenance records available to CONTRACTOR upon request.

16.13 Items Provided by CONTRACTOR. CONTRACTOR shall provide those specific items listed in Exhibit B at no additional cost and expense to NMC. NMC will provide CONTRACTOR with a CONTRACTOR approved locked area for storing supplies.

16.14 Items Provided by NMC. NMC shall provide those specific items listed in Exhibit C at its sole cost and expense.

16.15 CONTRACTOR Education Program. Upon approval by NMC, CONTRACTOR will provide dialysis related education to patients and family members. CONTRACTOR will provide to NMC for its review and approval, the content of CONTRACTOR's chronic kidney disease education program. Once it is acceptable to NMC, CONTRACTOR agrees that the patients' response to its educational program will be documented in their medical record.

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CONTRACTOR

NATIVIDAD MEDICAL CENTER

By: [Signature]

JUL 10 2009

Stacy Saeths  
~~William Liu~~, Deputy County Counsel

Date: 2/18/10

By: Stacy Saeths

Signature of Secretary, Asst. Secretary,  
CFO, Treasurer or Asst. Treasurer

By: [Signature] CNO

Total Renal Care, Inc.

By: [Signature]  
Misha Palecek

Divisional Vice President

Date: 6/23/09

APPROVED AS TO FORM ONLY

[Signature]  
By: Jon Kweiler, Vice President & Deputy General Counsel  
Date: 7/6/09

Reviewed as to fiscal provisions  
[Signature]  
Auditor-Controller  
County of Monterey  
218-10

***EXHIBIT A***

**General Duties and Responsibilities for Dialysis Staff Performing Services under this Agreement**

1. The Staff will communicate with NMC nurse at time of arrival and departure from location where procedure is being performed.
2. Communication between NMC and Staff will include but not be limited to the following specific information:
  - a. Patient's pertinent condition;
  - b. Tolerance of procedure and medications;
  - c. Medications given; and
  - d. Lab tests or other services required by NMC staff to be performed for dialysis patients during dialysis.
3. The Staff will complete any and all reports required in accordance with Section 4.1. Also, the Staff will document any fluids and medications added to dialysate, and any other medications administered.
4. The Staff will secure all equipment and supplies in the storage area designated within NMC when procedure is completed.
5. The Staff will be available to NMC personnel for continuing education and training as reasonably necessary to maintain a current technological and clinical knowledge base for acute dialysis patient care.
6. CONTRACTOR may provide dialysis and/or chronic kidney disease related education to patients and family members.



*Exhibit B*

**Items Provided by CONTRACTOR**

1. Commercially available dialysate solutions ordered for Services.
2. Tubing Sets required for CONTRACTOR provided equipment or for the provision of Services.
3. Dialyzers.
4. Filters required for CONTRACTOR provided equipment including Transducer Protectors and filters for portable RO equipment.
5. Fistula Needles, dialysis end caps and catheter adaptors, if applicable.
6. Water Quality Analysis Supplies.

## *Exhibit C*

### *Items Provided by NMC*

1. Adequate space, consistent with all applicable guidelines and regulations, to store sufficient equipment, water systems and medical supplies required, at CONTRACTOR's sole discretion, by the patient volume, complexity of Services, and consistent with response time and scheduling requirements set forth in this Agreement.
2. NMC may provide three (3) NMC beds in a dedicated dialysis space with such equipment, furniture and other equipment and devices as are necessary for the proper care of patients during the provision of Services, as determined by CONTRACTOR.
3. All patient transport.
4. Access to and all necessary connections to obtain incoming water appropriate for the provision of dialysis treatments. Incoming water shall be at the appropriate temperature, and quantity, delivered with adequate pressure for the proper functioning of the dialysis machines and related equipment.
5. Access to and all necessary code-compliant connections to a drain into a sewer system appropriate for the disposal of effluent solutions from dialysis procedures.
6. Utilities, including electricity, gas and HVAC. Access to sufficient dedicated GFI electrical outlets necessary for the proper functioning of dialysis equipment, water purification devices and any other electrical device that may be required for patient care.
7. Telecommunications including emergency call systems. Telephone and fax lines will include outside line usage located in the space provided for the provision of the Services. Direct access to the public internet via a publicly routable ip address that is assigned to CONTRACTOR by NMC's Internet Service Provider or a private ip address from NMC network with appropriate accommodations made on NMC's internet firewall to allow connectivity to CONTRACTOR's VPN. CONTRACTOR will pay for the connectivity charges and network change requirements.
8. NMC's biomedical or maintenance department shall monitor electrical safety of dialysis equipment according to Joint Commission requirements.
9. Adequate and Safe Space (as defined herein), consistent with all applicable guidelines and regulations, to perform Services. "Safe Space" shall mean that CONTRACTOR personnel will be free from any real or threatened acts of physical violence from, but not limited to, NMC patients. If CONTRACTOR has reason to believe its personnel may be subject to any kind of physical abuse, NMC agrees to work with CONTRACTOR to establish and maintain "Safe Space" by, for example, providing security personnel, though the exact measures taken will be mutually agreed upon by both parties at that specific time.

10. All physical restraints, chemical restraints and other personnel/equipment necessary or appropriate to restrain patients to protect the safety of the Staff and other patients.
11. Emergency support services including emergency facility personnel, equipment and supplies.
12. Free parking within close proximity to NMC for all CONTRACTOR personnel.
13. Janitorial, in-house messenger, laundry, medical records, transcription, and environmental services, all as related to the Services including, without limitation, medical and hazardous waste removal.
14. Pharmaceuticals, medical supplies and other supplies not listed in Exhibit 3.13 that are necessary and appropriate for the provision of the Services, including all intravenous replacement solutions, saline, peripheral fluids and plasma.
15. Blood banking, laboratory, x-ray services as required for patient care both on an emergent and non-emergent basis.
16. NMC nurses shall provide the Staff with a daily listing of inpatients requiring dialysis or related services.
17. All necessary medical record charting forms.
18. All equipment and supplies necessary for CONTRACTOR to comply with all NMC policies and procedures with respect to the treatment of patients with communicable diseases and/or infections in conjunction with the provision of Services, as long as such policies and procedures are consistent with CONTRACTOR's policies and procedures for the provision of Services.
19. Orientation to all CONTRACTOR Staff with respect to NMC's policies and procedures applicable to the provision of the Services (e.g. fire safety, evacuation procedure, hazardous materials, communication, safety, etc.), so long as such policies and procedures are consistent with those of CONTRACTOR.
20. Pre and post dialysis weights for patients.
21. A mutually agreed upon STAT protocol.

## Exhibit D

### Fee Schedule

*NOTE: the fees listed in the schedule set forth below include services provided to non-admitted persons who are kept at NMC for observational purposes for a period of less than twenty-four (24) hours without being admitted at that time.*

1. Hemodialysis:
  - (a) Hemodialysis 1:1 (up to 4 hours) \$480 per treatment
  - (b) Hemodialysis (additional charge per hour for txs ordered longer than 4 hours) \$100 per hour
  
2. Peritoneal Dialysis (PD: CAPD, CCPD)
  - (a) CCPD (per treatment visit) (1) \$350 per treatment visit
  - (b) CAPD (per treatment visit) (1) \$350 per treatment visit
  
3. Nursing Services
  - (a) Declotting Central Venous Catheters (TPA) \$50 per ½ hour
  - (b) RN Consultation (2) \$50 per ½ hour
  
4. Miscellaneous
  - (a) Cancellation (Nurse Arrives, Treatment Cancelled) \$250 per cancellation
  - (b) Differential: Same Day Service Called in After 4 pm (3) \$100 per treatment
  - (c) Differential: Weekends and Holidays (4) \$100 per treatment
  - (d) **Waiting Time (per ½ hour) (5)** \$50 per ½ hour

#### Footnoted Descriptions

- (1) Includes CCPD equipment, dialysate, supplies and labor with minimum of 2 nursing visits per day
- (2) Any service authorized in writing by NMC that is not otherwise described in Exhibit D.
- (3) Same Day Service begins at 4PM and ends at 6AM
- (4) Observed Holidays are New Years Eve, New Years Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day, Christmas Eve, and Christmas Day
- (5) Any delay in treatment not the fault of the dialysis nurse

**HIPAA  
BUSINESS ASSOCIATE AGREEMENT**

This HIPAA Business Associate Agreement is made effective as of the date of final signature below, by and between County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, ("Covered Entity"), and Total Renal Care, Inc. ("Business Associate"), (individually, a "Party" and collectively, the "Parties") and supercedes and amends any prior Business Associate Agreement, and any amendments thereto, between the Parties ("Underlying Agreement").

RECITALS

WHEREAS, Business Associate will create or receive from or on behalf of Covered Entity, or have access to, Protected Health Information ("PHI") in the course of providing services ("Services").

WHEREAS, pursuant to the Health Insurance Portability and Accountability Act of 1996 and its implementing administrative simplification regulations (45 CFR §§ 160-164) ("HIPAA"), Covered Entity is required to enter into this Agreement with Business Associate;

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties, intending to be legally bound, agree as follows:

I. DEFINITIONS

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 C.F.R. §§ 160.103, 164.103, 164.304 and 164.501.

II. EFFECT OF AGREEMENT

To the extent that any provisions of this Agreement conflict with provisions contained in the Underlying Agreement, the provisions of this Agreement shall control. The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA.

III. BUSINESS ASSOCIATE OBLIGATIONS

- (A) Permitted Uses and Disclosures: Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the this Agreement, provided that such use or disclosure would not violate HIPAA if made by Covered Entity or (2) as required or permitted by applicable law, rule, regulation, or regulatory agency or by any accrediting or credentialing organization to whom a Party is required to disclose such PHI. In addition,

- (i) Business Associate may use PHI, if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
  - (ii) Business Associate may disclose PHI, if necessary, if the following requirements are met:
    - (a) the disclosure is Required by Law; or
    - (b) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
  - (iii) Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by HIPAA.
- (B) Restrictions: Business Associate shall not use or disclose PHI for any other purpose not described herein.
- (C) Business Associate Agents: Business Associate shall ensure that its agents, including subcontractors, to whom it provides PHI agree to the same restrictions and conditions that apply to Business Associate pursuant to this HIPAA Amendment with respect to the PHI and Electronic PHI.
- (D) Appropriate Safeguards; Security: Business Associate shall implement appropriate and commercially reasonable safeguards to prevent use or disclosure of PHI other than as permitted in this HIPAA Amendment. Effective as of the date Covered Entity is required to comply with 45 C.F.R. Part 164 Subpart C, Business Associate shall implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the Integrity, Availability, and Confidentiality of the Electronic PHI. The Business Associate shall promptly report any Security Incident to Covered Entity of which it becomes aware.
- (E) Government Access to Records: Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered entity available to the Secretary of Health and Human Services for purposes of determining Covered Entity's compliance with HIPAA. Business Associate shall provide Covered Entity with a copy of any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary.

- (F) Reporting of Improper Use or Disclosure: Business Associate shall report to Covered Entity in writing any use or disclosure of PHI of which it becomes aware that is not in compliance with the terms of this Agreement.
- (G) Mitigation: Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- (H) Availability of PHI: To the extent that the Parties mutually agree in writing that PHI is part of a Designated Record Set, and that such Designated Record Set (or a portion thereof) is to be maintained by Business Associate, as set forth and agreed to in Schedule A, Business Associate shall within ten (10) days after a written request from Covered Entity:
  - (i) provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to such PHI to Covered Entity or, as directed by the Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524; and
  - (ii) make amendments to such PHI as directed or agreed to by Covered Entity in accordance with the requirements of 45 CFR § 164.526.
- (I) Accounting Rights: Business Associate shall document such disclosures of PHI and information related to such disclosures and, within ten (10) days after Covered Entity's written request, shall provide to Covered Entity or to an Individual, in time and manner designated by Covered Entity, information collected in accordance with this Section, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

IV. COVERED ENTITY'S OBLIGATIONS

- (A) Notice: Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any subsequent changes to the notice of privacy practices.
- (B) Changes in Access by Individual: Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (C) Restrictions on Use and Disclosure of PHI: Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

V. TERMINATION

- (A) Term: The Term of this Agreement shall be effective as of the date set forth above and shall terminate when Business Associate ceases to perform the Services as set forth above; provided, however, that certain obligations shall survive termination of this Agreement as set forth in Section V(C).
- (B) Termination for Cause: Covered Entity may immediately terminate this Agreement in the event that Business Associate materially breaches any provision of this Agreement. In its sole discretion, Covered Entity may permit Business Associate the ability to cure or take substantial steps to cure such material breach to Covered Entity's satisfaction within thirty (30) days after receipt of written notice from Covered Entity.
- (C) Return or Destruction of PHI: Upon termination, if feasible, Business Associate shall return or destroy all PHI received from, or created or received by Business Associate on behalf of, Covered Entity that Business Associate still maintains in any form and shall retain no copies of such information. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is infeasible to return or destroy PHI, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction of PHI infeasible. Business Associate shall continue to extend the protections of this Agreement to such PHI, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

VI. MISCELLANEOUS

- (A) Amendment to Comply with Law: The Parties acknowledge that it may be necessary to amend this Agreement to comply with modifications to HIPAA, including but not limited to statutory or regulatory modifications or interpretations by a regulatory agency or court of competent jurisdiction. No later than sixty (60) days after the effective date of any such modifications, the Parties agree to use good faith efforts to develop and execute any amendments to this Agreement as may be required for compliance with HIPAA.
- (B) Amendment: This Agreement may be amended or modified only in writing signed by the Parties.
- (C) No Third Party Beneficiaries: Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.



- (D) Governing Law: This Agreement shall be governed by and construed in accordance with the substantive law of the State of \*3 without regard to conflicts of laws principles.
- (E) Paragraph Headings: The paragraph headings in this Agreement are for convenience only. They form no part of this Agreement and shall not affect its interpretations.

## VII. INDEMNIFICATION

The Parties agree to indemnify, defend and hold harmless each other and each other's respective employees, directors, officers, subcontractors, agents or other members of each other's workforce (collectively referred to as the "Indemnified Party"), against all costs suffered by the Indemnified Party, including but not limited to any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys' fees), arising from or in connection with a material breach of this HIPAA Amendment by the Indemnifying Party. This provision shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this HIPAA Amendment as of the day and year written above.

COVERED ENTITY:

County of Monterey, a political of  
the State of California, on behalf of  
Natividad Medical Center

By: [Signature]  
Title: CEO  
Date: \_\_\_\_\_

BUSINESS ASSOCIATE:

Total Renal Care, Inc

By: [Signature]  
Title: Divisional Vice President  
Date: 6/23/09

JUL 10 2009

**Schedule A**

**Identification of Designated Record Set**

As contemplated in Section III(H), the Parties agree to the provision marked below:

- The PHI that Business Associate creates or receives from or on behalf of Covered Entity, or has access to, in the course of providing the Services constitutes a Designated Record Set (or a part thereof), and such Designated Record Set (or portion thereof) shall be maintained by Business Associate.
  
- X The PHI that Business Associate creates or receives from or on behalf of Covered Entity, or has access to, in the course of providing the Services DOES NOT constitute a Designated Record Set (or a part thereof), and NO such Designated Record Set (or portion thereof) shall be maintained by Business Associate.