



## Monterey County

### Board Order

168 West Alisal Street,  
1st Floor  
Salinas, CA 93901  
831.755.5066

#### Agreement No.: A-11673

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

Approved and directed the Purchasing Manager for Natividad Medical Center (NMC) to execute Renewal and Amendment No. 1 to the Agreement (A-11673) with Total Renal Care, Inc. for Dialysis Services at NMC, for the period January 1, 2014 through June 30, 2017 and adding \$652,000 for a revised total Agreement amount not to exceed \$2,152,000 in the aggregate.

PASSED AND ADOPTED on this 25th day of February 2014, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas and Potter

NOES: None

ABSENT: Supervisor Parker

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 77 for the meeting on February 25, 2014.

Dated: February 26, 2014  
File Number: A 14-014

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

By

Deputy



# COUNTY OF MONTEREY - BOARD OF SUPERVISORS

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File #:	A 14-014	Name:	Total Renal Care Renewal & Amendment #1
Type:	BoS Agreement	Status:	Scheduled PM
File created:	1/31/2014	In control:	Board of Supervisors
On agenda:	2/25/2014	Final action:	
Title:	Approve and direct the Purchasing Manager for Natividad Medical Center (NMC) to execute Renewal and Amendment No. 1 to the Agreement (A-11673) with Total Renal Care, Inc. for Dialysis Services at NMC, for the period January 1, 2014 through June 30, 2017 and adding \$652,000 for a revised total Agreement amount not to exceed \$2,152,000 in the aggregate. (REVISED REPORT SUBMITTED VIA SUPPLEMENTAL)		
Sponsors:	Sid Cato		
Attachments:	1. <a href="#">Total Renal Care Renewal &amp; Amendment #1</a> , 2. <a href="#">Total Renal Care</a> , 3. <a href="#">Total Renal Care Inc. Spend Sheet</a> , 4. <a href="#">Completed Board Order</a>		

[History \(0\)](#)
[Board Report](#)

## Title

Approve and direct the Purchasing Manager for Natividad Medical Center (NMC) to execute Renewal and Amendment No. 1 to the Agreement (A-11673) with Total Renal Care, Inc. for Dialysis Services at NMC, for the period January 1, 2014 through June 30, 2017 and adding \$652,000 for a revised total Agreement amount not to exceed \$2,152,000 in the aggregate.  
(REVISED REPORT SUBMITTED VIA SUPPLEMENTAL)

## Report

### RECOMMENDATION:

It is recommended the Board of Supervisors approve and direct the Purchasing Manager for Natividad Medical Center (NMC) to execute Renewal and Amendment No. 1 to the Agreement (A-11673) with Total Renal Care, Inc. for Dialysis Services at NMC, for the period January 1, 2014 through June 30, 2017 and adding \$652,000 for a revised total Agreement amount not to exceed \$2,152,000 in the aggregate.

### SUMMARY/DISCUSSION:

NMC desires to extend the term of the agreement with Total Renal Care, Inc. (DaVita) through June 30, 2017 and increase the contract by \$652,000. The service includes all inpatient areas in addition to the Acute Rehabilitation Unit. NMC and Total Renal Care leadership meet quarterly and as needed to review quality of care provided (Joint Dialysis Oversight Committee).

Total Renal Care, Inc. has been the NMC provider for comprehensive dialysis services for the past several years. Total Renal Care has been 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 Registered Nurse 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, Center for Medicare and Medicaid Services (CMS) and The Joint Commission.

Agreement/ Amendment	Term Dates	Scope
Initial Agreement	March 1, 2010- December 31, 2013	Inpatient hemodialysis and peritoneal dialysis
Renewal and Amendment #1	January 1, 2014- June 30, 2017	No change in scope from initial agreement

#### **OTHER AGENCY INVOLVEMENT:**

County Counsel has reviewed and approved this Renewal and Amendment No. 1 as to legal form and risk provisions. Auditor-Controller has reviewed and approved this Renewal and Amendment No. 1 as to fiscal provisions. The Renewal and Amendment No. 1 has also been reviewed and approved by Natividad Medical Center's Board of Trustees.

#### **FINANCING:**

The cost for this Renewal and Amendment No. 1 is \$652,000. \$299,900 is included in the Fiscal Year 2014/2015 Adopted Budget. Amounts for remaining years of the Agreement will be included in those budgets as appropriate. NMC's FY2013-2014 appropriation obligations exceeded its budget for the period July 2013 through December 2013 (six months). NMC has received additional Disproportionate Share funding from the State and is forecasted to be back on budget. There is no impact to the General Fund.

Prepared by: Nancy Buscher; Interim Chief Nursing Officer, 783-2560

Approved by: Harry Weis, Chief Executive Officer, 783-2553

Attachments: Agreement, Renewal and Amendment No. 1, Spcnd Sheet

Attachments on file with the Clerk to the Board's Office

**FIRST RENEWAL AND AMENDMENT  
TO COUNTY OF MONTEREY AGREEMENT FOR ACUTE DIALYSIS SERVICES**

**THIS FIRST RENEWAL AND AMENDMENT TO COUNTY OF MONTEREY AGREEMENT FOR ACUTE DIALYSIS SERVICES AGREEMENT** ("First Amendment") is entered into and effective as of the date last signed below ("First Amendment Effective Date"), by and between **Total Renal Care, Inc.** ("Company"), and **Natividad Medical Center** ("Hospital").

**WITNESSETH:**

**WHEREAS**, on March 1, 2010, the parties hereto entered into that certain County of Monterey Agreement for Acute Dialysis Services ("Agreement"), pursuant to which Hospital agreed to engage the services of Company to provide acute dialysis services at the Hospital; and

**WHEREAS**, in accordance with Section 14.2 of the Agreement, the parties wish to amend the Agreement.

**NOW, THEREFORE**, for and in consideration of the mutual agreements contained in this First Amendment, the parties do hereby agree as follows:

1. The second sentence of Section 2 shall be deleted in its entirety and replaced with the following:

"The total amount payable by NMC to CONTRACTOR under this Agreement shall not exceed the sum of Two Million One Hundred Fifty Two Thousand Dollars (\$2,152,000)."

2. Section 3 shall be deleted in its entirety and replaced with the following:

"TERM 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 June 30, 2017 unless sooner terminated pursuant to the terms of this Agreement."

3. The following shall be added to the end of Section 5.1:

"In the event NMC or the County Auditor-Controller, as applicable, fails to pay to CONTRACTOR any amounts due to CONTRACTOR within thirty (30) days, CONTRACTOR may, in its sole discretion, immediately terminate this Agreement by giving written notice to NMC. The parties agree that termination of this Agreement for nonpayment shall not constitute a waiver of any terms or conditions of this Agreement or in any way limit any rights or remedies available to the parties at law or in equity."

4. HIPAA. Company and Hospital acknowledge and agree that Company providing the Services to Hospital may constitute a Business Associate relationship as defined by the Health Insurance Portability and Accountability Act of 1996 and 45 CFR Parts 160 and 164, as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act") (collectively, as amended, "HIPAA"). Terms of such relationship are contained in APPENDIX 1, attached to this First Amendment, which supersedes in its entirety that Business Associates Agreement between the parties dated July 10, 2009. Notwithstanding the terms of the Business Associate Agreement, the parties agree that Company and its affiliates and related entities may utilize such information for on-going treatment purposes of Hospital patients, including when patients are being seen by/at other providers, if such use is otherwise consistent with law (e.g., limited to the minimum amount necessary to achieve its purpose).
5. All capitalized terms not defined herein shall have the meanings ascribed to them in the Agreement.
6. In all other respects, the parties do hereby ratify and reaffirm the provisions of the Agreement, which shall continue in full force and effect, except as amended hereby.
7. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Copies of signatures sent by facsimile transmission or scanned and sent via electronic mail shall be deemed to be originals.

**IN WITNESS WHEREOF**, the parties have executed this First Amendment by their duly authorized representatives:

**Hospital:**  
**Natividad Medical Center**

By: Andrea Rosenberg  
Name: Andrea Rosenberg  
Title: Assistant Administrator  
Date: 1/3/14

**Company:**  
**Total Renal Care, Inc.**

By: Joann Zimmerman  
Name: Joann Zimmerman  
Title: Divisional Vice President  
Date: 12/20/13

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Name: **Margaret Howell Benson**  
Title: **Group General Counsel**

(Reviewed as to fiscal provisions)

[Signature]  
Auditor-Controller  
County of Monterey

1-9-14

[Signature]  
MGT ADALIZ/CONTRACTS  
2-28-14

A.B.  
A. Brereton  
Office of County Counsel  
Jan 9, 2014

## **APPENDIX 1 TO FIRST AMENDMENT**

### **BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is entered into as of the last date of signature (the "Effective Date") by and between Natividad Medical Center ("Covered Entity") and Total Renal Care, Inc., by and on behalf of its affiliates and related organizations (collectively, the "Business Associate").

#### **RECITALS**

WHEREAS, Business Associate provides certain services ("Services") set forth in that certain County of Monterey Agreement for Acute Dialysis Services dated March 1, 2010, as amended, ("Services Agreement") to Covered Entity that may require Business Associate to access, create, receive, maintain, use or transmit health information that is protected by state and/or federal law; and

WHEREAS, the Business Associate is obligated to protect the privacy and security of individually identifiable health information ("Protected Health Information" or "PHI"), including but not limited to electronic protected health information ("EPHI"), created on behalf of, received from, maintained on behalf of, or transmitted by or on behalf of Covered Entity in accordance with the Health Insurance Portability and Accountability Act of 1996 and its implementing privacy and security regulations at 45 C.F.R. Parts 160 and 164 promulgated by the U.S. Department of Health and Human Services ("HHS"), as amended by the federal Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and its implementing regulations, including but not limited to the federal breach notification rule at 45 C.F.R. Part 164, subpart D (collectively "HIPAA"); and

WHEREAS, Covered Entity and Business Associate desire to enter into this Agreement in order to comply with HIPAA, as may be modified or amended, including future issuance of regulations and guidance by HHS, and reflect their understanding of the use, disclosure and general confidentiality obligations of Business Associate regarding PHI that it creates on behalf of, receives from or on behalf of, maintains on behalf of, or transmits by or on behalf of Covered Entity in furtherance of the Services Agreement.

NOW, THEREFORE, in consideration of the mutual promises and other consideration contained in this Agreement, the parties agree as follows:

#### **1. DEFINITIONS**

Capitalized terms used herein but not otherwise defined in this Agreement shall have the same meanings as set forth in HIPAA, as may be modified or amended, including future issuance of regulations and guidance by HHS.

## **2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

2.1 Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement, the Services Agreement or as permitted or Required by Law.

2.2 Business Associate may use and disclose PHI for the proper management and administration of Business Associate; provided that with respect to any disclosures of PHI, such disclosures are Required by Law or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person agrees to notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Business Associate may, in accordance with the Privacy Rule, de-identify Covered Entity's PHI and further use and disclose such de-identified health information without regard to this Agreement or HIPAA. Without limitation of the foregoing, Covered Entity acknowledges that, to the extent Business Associate is also a covered entity (as such term is defined by HIPAA), the legal structure of the Business Associate and its covered entity affiliates affords Business Associate the opportunity to be designated as a participant in an affiliated covered entity arrangement ("HIPAA Arrangement"). Business Associate represents and warrants that it has been designated as a participant in such HIPAA Arrangement. As such, Covered Entity agrees that Business Associate may share Covered Entity's PHI with other participants in the HIPAA Arrangement or their business associates, and that the other participants in the HIPAA Arrangement may use or disclose Covered Entity's PHI in compliance with the terms of this Agreement.

2.3 Business Associate agrees to use appropriate physical, administrative and technical safeguards to prevent the use or disclosure of Covered Entity's PHI for any purpose other than the provision of Services.

2.4 Business Associate agrees to report to Covered Entity, in writing, any use or disclosure of PHI not in compliance with this Agreement.

2.5 In the event Business Associate engages any agent or Subcontractor to perform any Services and discloses PHI to such agent or Subcontractor, Business Associate will require any such agent or Subcontractor to agree to the same restrictions and conditions required in this Agreement that may be applicable to such agent or Subcontractor.

2.6 Upon written request from the Covered Entity, Business Associate agrees to



make PHI available to Individuals in accordance with 45 C.F.R. Section 164.524, governing access of Individuals to their PHI.

2.7 Upon written request from the Covered Entity, Business Associate agrees to make PHI available for amendment and incorporate any amendments in accordance with 45 C.F.R Section 164.526, governing amendments to PHI.

2.8 Upon written request from the Covered Entity, Business Associate agrees to make any and all information available for the purpose of providing Individuals an accounting of disclosures of their PHI in accordance with 45 C.F.R. Section 164.528, governing accounting of disclosures of PHI.

2.9 Business Associate agrees to make its internal practices, books and records related to the use and disclosure of Covered Entity PHI hereunder available to the Secretary of HHS for the purposes of determining Covered Entity's compliance with HIPAA.

2.10 Business Associate shall implement and maintain administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Covered Entity's EPHI in accordance with the Security Rule.

2.11 Business Associate and Covered Entity agree to comply with all applicable rules and regulations promulgated under HIPAA in effect during the Term (as defined herein),

2.12 Business Associate will report to Covered Entity, within a reasonable time period of discovery: (a) any material breach of this Agreement ("material breach"); or (b) Breach as defined at 45 C.F.R. Part 164, Subpart D. Business Associate may supplement its initial report as information becomes available in order to identify:

- (i) The nature of the material breach or Breach, including how such material breach or Breach was made;
- (ii) The PHI that was the target of the material breach, or the unsecured PHI involved in the Breach, including the types of identifiers involved and the likelihood of re-identification;
- (iii) If known, the identity of the person/entity who used or received the PHI;
- (iv) Whether PHI was actually acquired or viewed;

- (v) What corrective action Business Associate took, if any;
- (vi) What Business Associate did to mitigate any risk or deleterious effect; and
- (vii) Such other information as Covered Entity may reasonably request.

2.13 At all times during the Term, Business Associate will comply with all applicable federal, state and local laws, rules and regulations pertaining to patient records and the confidentiality of patient information, including Covered Entity's PHI. To the extent Business Associate is to carry out Covered Entity's obligation under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of the obligation.

### **3. OBLIGATIONS OF COVERED ENTITY**

3.1. Covered Entity will notify Business Associate of any agreement Covered Entity makes regarding any restriction or requirement for confidential communication with respect to the use or disclosure of PHI, to the extent that such restriction agreement or confidential communication requirement may affect Business Associate's use or disclosure of PHI.

3.2. Covered Entity will: (i) use safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate by Covered Entity, until such PHI is received by Business Associate; and (ii) inform Business Associate of any consent or authorization, including any changes in or withdrawal of any such consent or authorization, provided to the Covered Entity by an Individual that would affect Business Associate's use or disclosure of the PHI.

### **4. TERM AND TERMINATION**

4.1. The term of this Agreement (the "Term") shall remain in effect until such time as the Services Agreement expires or is terminated or as otherwise provided herein.

4.1.1. Except for the requirements set forth in Section 4.2, which shall survive as set forth therein, and except as otherwise provided in Section 4.1.2, this Agreement will terminate on the date that the Services Agreement is terminated or expires.

4.1.2. This Agreement may be terminated by Covered Entity upon the breach of any material provision of this Agreement by Business Associate, which breach is not corrected within thirty (30) days after written notice of such breach is given to Business Associate.

4.2. Business Associate agrees that, upon termination of this Agreement, Business

Associate will return or destroy all PHI received from or created or received on behalf of Covered Entity. In the event Business Associate determines that return or destruction is not feasible, Business Associate will extend the protections required in this Agreement to the PHI and limit further uses and disclosures to only those purposes that make the return or destruction of the information infeasible.

## **5. MISCELLANEOUS**

5.1. **Regulatory References:** A reference to HIPAA or the HITECH Act, or a section thereof, and its regulations and requirements means the provisions and section(s) in effect, as may be modified or amended, including by the issuance of regulations and guidance by HHS.

5.2. **Amendment:** No modification of this Agreement will be effective unless made in writing and executed by each party hereto; provided, however, both parties agree that the provisions of HIPAA and the HITECH Act, including any implementing regulations to be published by HHS, which apply to business associates, that are not otherwise addressed herein, and that are required to be incorporated into a HIPAA business associate agreement, are hereby incorporated into this Agreement as if set forth in this Agreement in their entirety and are effective as of the applicable compliance date. Notwithstanding the foregoing, the parties agree to take such action as may be Required by Law to amend this Agreement pursuant to final regulations or any amendment of HIPAA and the HITECH Act.

5.3. **Notices:** Any notices to be delivered hereunder shall be delivered to the addresses set forth in and consistent with the requirements for delivery contained in, the Services Agreement; provided, that a copy of any notice to Business Associate hereunder shall also be delivered to: DaVita HealthCare Partners Inc., 2000 16<sup>th</sup> St. 12<sup>th</sup> Floor, Denver, CO 80202, Attention: Privacy Office. Notice shall be in writing and shall be deemed effective when personally delivered or, if mailed, three (3) calendar days after the date deposited in the United States mail, first class, postage prepaid, to the addressee at its current business address.

5.4. **Counterparts:** This Agreement may be executed in counterparts, each of which shall be deemed an original and when taken together shall constitute one agreement.

5.5. **Choice of Law:** All issues and questions concerning the validity, enforcement and interpretation of this Agreement shall be governed by, and construed in accordance with, the laws of the state identified in the Services Agreement.

5.6. **Voluntary Execution:** Each party has read and understands this Agreement, and represents that this Agreement is executed voluntarily and should not be construed against any party hereto solely because it drafted all or a portion hereof.

5.7. **Severability:** If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect

any other provision and this Agreement will be reformed, construed, and enforced as if such invalid, illegal or unenforceable provision had never been contained herein.

5.8. **Entire Agreement:** This Agreement supersedes any and all prior agreements and understandings between the parties related to the subject matter hereof.

5.9. **Independent Contractor:** None of the provisions of this Agreement are intended to create any relationship between the parties other than that of independent entities contracting with each other for the purpose of effecting the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Business Associate Agreement to be executed and delivered.

**COVERED ENTITY:**

**NATIVIDAD MEDICAL CENTER**

BY: Andrea Rosenberg

ITS: \_\_\_\_\_

DATE: 1/3/14

**BUSINESS ASSOCIATE:**

**TOTAL RENAL CARE, INC.**

BY: John Zimm

ITS: \_\_\_\_\_

DATE: 12/20/13

SMC  
MULTI ANALYST/CONSULTANTS  
J-98-14

Reviewed as to fiscal provisions  
[Signature]  
Deputy Controller  
County of Monterey  
1-9-14

[Signature]  
A. Breerton  
Office of County Counsel  
Jan 9, 2014