



Monterey County Board of Supervisors

Board Order

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1st Floor
Salinas, CA 93901
831.755.5066
www.co.monterey.ca.us

A motion was made by Supervisor Chris Lopez, seconded by Supervisor John M. Phillips to:

Agreement No.: A-15773; Amendment No.: 2

Authorize the Chief Executive Officer for Natividad Medical Center (NMC) or his designee to execute amendment No. 2 to the agreement (A-15773) with Kirby Bates Associates for interim leadership services, extending the agreement an additional one (1) year period (January 1, 2023 through December 31, 2023) for a revised full agreement term of January 1, 2022 through December 31, 2023, and adding \$1,000,000 for a revised total agreement amount not to exceed \$1,300,000.

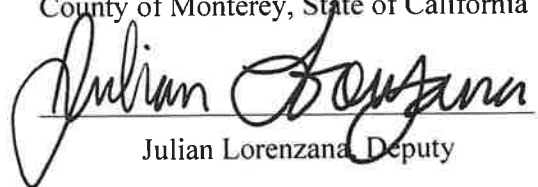
PASSED AND ADOPTED on this 13th day of September 2022, by roll call vote:

AYES: Supervisors Alejo, Phillips, Lopez, Askew, and Adams
NOES: None
ABSENT: None
(Government Code 54953)

I, Valerie Ralph, 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 82 for the meeting September 13, 2022.

Dated: September 15, 2022
File ID: A 22-453
Agenda Item No.: 24

Valerie Ralph, Clerk of the Board of Supervisors
County of Monterey, State of California


Julian Lorenzana, Deputy

**AMENDMENT NO. 2
TO SERVICES AGREEMENT
BETWEEN KIRBY BATES ASSOCIATES AND
COUNTY OF MONTEREY ("COUNTY"), FOR THE PROVISION OF SERVICES AT
NATIVIDAD MEDICAL CENTER, A COUNTY-OWNED AND OPERATED ACUTE CARE
FACILITY
FOR
INTERIM LEADERSHIP SERVICES**

This Amendment No. 2 to the Services Agreement ("Agreement") which was effective on January 1, 2022 is entered into by and between the County of Monterey ("County"), for the provision of services at Natividad Medical Center, a County-owned and operated acute care facility , and Kirby Bates Associates ("CONTRACTOR"); **From this point forward, the party referenced previously as "NMC" shall be referenced as "COUNTY" and collectively, COUNTY and CONTRACTOR are referred to as the "Parties" to this Agreement, with respect to the following:**

RECITALS

WHEREAS, the Agreement was executed with Kirby Bates Associates for Interim Leadership Services with a term January 1, 2022 through December 31, 2022 and a total Agreement amount not to exceed \$100,000; and

WHEREAS, the Parties amended the Agreement via Amendment No. 1 with revisions to the indemnification clause attached hereto as "Addendum No. 1 as per Amendment No. 1" with a \$200,000 increase for a total Agreement amount of \$300,000, with no changes to the term Agreement January 1, 2022 through December 31, 2022.

WHEREAS, COUNTY and CONTRACTOR currently wish to amend the Agreement via Amendment No. 2 to allow for existing services to continue with revisions to the scope of work attached hereto as "Exhibit A-2 as per Amendment No. 2" and to extend the term for an additional one (1) year period through December 31, 2023 for a revised term Agreement (January 1, 2022 through December 31, 2023), with a \$1,000,000 increase for a total Agreement amount of \$1,300,000.

AGREEMENT

NOW, THEREFORE, the Parties agree to amend the Agreement as follows:

The Agreement is hereby renewed on the terms and conditions as set forth in the Original Agreement and in Amendment No. 1 incorporated herein by this reference, except as specifically set forth below.

1. Paragraph titled, "PAYMENTS BY COUNTY" shall be amended to the following:
"COUNTY shall pay the CONTRACTOR in accordance with the payment provisions set forth in EXHIBIT A. The total amount payable by COUNTY to CONTRACTOR under this Agreement shall not exceed the sum of \$1,300,000."
2. Paragraph titled, "SCOPE OF SERVICES AND ADDITIONAL PROVISIONS/EXHIBITS" shall be amended to the following:
***"The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:
Exhibit A: Scope of Services/Payment Provisions
Addendum No. 1 as per Amendment No. 1
Exhibit A-2: revised Scope of Services/Payment Provisions as per Amendment No. 2"***

Agreement A-15773

3. Except as provided herein, all remaining terms, conditions and provisions of the Agreement are unchanged and unaffected by this Amendment No. 2 and shall continue in full force and effect as set forth in the Agreement and Amendment No. 1.
4. A copy of this Amendment No. 2 shall be attached to the Agreement.
5. This Amendment No. 2 shall be effective when signed by the parties.

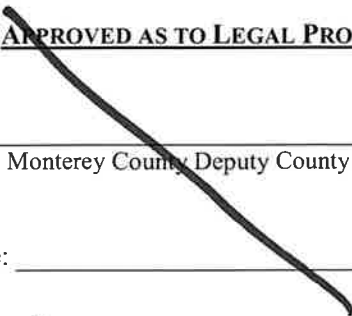
IN WITNESS WHEREOF, the Parties hereto are in agreement with this Amendment No. 2 on the basis set forth in this document and have executed this Amendment No. 2 on the day and year set forth herein.

**COUNTY OF MONTEREY ("COUNTY"),
FOR THE PROVISION OF SERVICES AT
NATIVIDAD MEDICAL CENTER, A
COUNTY-OWNED AND OPERATED
ACUTE CARE FACILITY**

By: 
Charles R. Harris, CEO

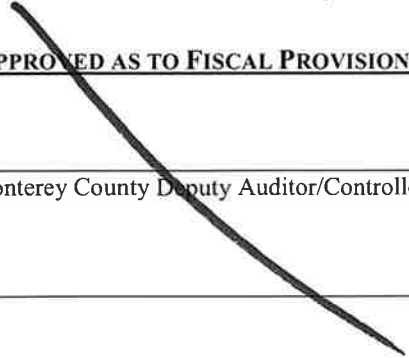
Date: 9/15/22

APPROVED AS TO LEGAL PROVISIONS

By: 
Monterey County Deputy County Counsel

Date: _____

APPROVED AS TO FISCAL PROVISIONS

By: 
Monterey County Deputy Auditor/Controller

Date: _____

CONTRACTOR

Kirby Bates Associates
CONTRACTOR's Business Name
See instructions below

By: Colleen Chapp
(Signature of: Chair, President, or Vice-President)

Colleen Chapp, Executive Vice President

Name and Title

Date: 08/02/2022

By: 
(Signature of: Secretary, Asst. Secretary, CFO,
Treasurer, or Asst. Treasurer)

Nikhol Perez, Director of Finance

Name and Title

Date: 08/08/2022

*****Instructions*****

If **CONTRACTOR** is a corporation; including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required).

If **CONTRACTOR** is a partnership; the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required).

If **CONTRACTOR** is contracting in an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required).

IN WITNESS WHEREOF, the Parties hereto are in agreement with this Amendment No. 2 on the basis set forth in this document and have executed this Amendment No. 2 on the day and year set forth herein.

**COUNTY OF MONTEREY ("COUNTY"),
FOR THE PROVISION OF SERVICES AT
NATIVIDAD MEDICAL CENTER, A
COUNTY-OWNED AND OPERATED
ACUTE CARE FACILITY**

By: 
Charles R. Harris, CEO

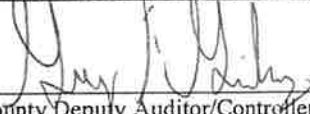
Date: 9/15/22

APPROVED AS TO LEGAL PROVISIONS

By: 
Monterey County Deputy County Counsel

Date: 8/4/2022

APPROVED AS TO FISCAL PROVISIONS

By: 
Monterey County Deputy Auditor/Controller

Date: 8-4-2022

CONTRACTOR

Kirby Bates Associates

CONTRACTOR's Business Name

See instructions below

By: _____
(Signature of: Chair, President, or Vice-President)

Name and Title

Date: _____

By: _____
(Signature of: Secretary, Asst. Secretary, CFO,
Treasurer, or Asst. Treasurer)

Name and Title

Date: _____

*****Instructions*****

If **CONTRACTOR** is a corporation; including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers (two signatures required).

If **CONTRACTOR** is a partnership; the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership (two signatures required).

If **CONTRACTOR** is contracting in an individual capacity, the individual shall set forth the name of the business, if any and shall personally sign the Agreement (one signature required).

EXHIBIT A-2 as per Amendment No. 2:

SCOPE OF SERVICES/PAYMENT PROVISIONS

1. INTERIM LEADERSHIP SERVICES AND LEADERSHIP ADVISORY SERVICES

1.1 Interim Leader Screening. For engagements with a minimum duration of 13 weeks, **CONTRACTOR** will confirm that **INTERIMS** have achieved the requisite leadership experience and shall provide the **NMC** the following information prior to the first day of an engagement:

- | | |
|------------------------------------|-------------------------------|
| a. Résumé | e. Required Medical Clearance |
| b. Valid Professional License | f. Required Certifications |
| c. Two (2) Professional References | g. Negative Drug Screen |
| d. Criminal Background Check | |

1.2 Selection of Interims. **CONTRACTOR** will source, screen, and interview potential **INTERIMS** in accordance with qualifications and experience requirements set forth by the **NMC**. **CONTRACTOR** will provide the **NMC** the opportunity to interview final **INTERIM** candidates for **INTERIM** engagements by telephone, videoconference, or in person. The **NMC** shall provide any **INTERIM** candidates who are invited to interview on-site with necessary travel, meal, and overnight accommodations by either direct payment of expenses or reimbursement to the **INTERIM** candidate. Final selection of **INTERIM** candidates is determined by the **NMC**.

1.3 Non-discrimination. **CONTRACTOR** is an equal opportunity employer in compliance with all applicable laws and shall refer all qualified **INTERIMS**, regardless of race, sex, religious creed, ancestry, veteran or marital status, disability, or age or any other protected characteristic now or in the future protected by law. **NMC** agrees it will not reject any **INTERIM** or take any other action with respect to any **INTERIM**, in violation of any applicable federal or state law, including but not limited to those relating to equal employment opportunity (including, without limitation, Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000e-17), the Age Discrimination in Employment Act of 1967, as amended (29 U.S. Sections 621-634), the Equal Pay Act of 1963 (29 U.S.C. Section 206(d)), and any rules, regulations, and administrative orders relating thereto).

2. CONTROL OF WORK

2.1 Acceptance of Personnel. Once the **CONTRACTOR INTERIM** begins the **INTERIM** leadership engagement for **NMC**, the **INTERIM** works under the direct supervision and control of the **NMC**.

2.2 Maximum Interim Term. It is generally agreed the **NMC** will not offer an **INTERIM** engagement that exceeds 12 consecutive months. In the event that an engagement needs to exceed 12 months a mutually agreed to plan between the **NMC**, **CONTRACTOR**, and **INTERIM**, will be developed and executed to address any and all tax or other related issues associated with an extended engagement.

2.3 INTERIM to permanent employee. In the event that the **NMC** offers any type of full- or part-time employment to the **INTERIM** placed by **CONTRACTOR** within one year of the end of the engagement, the **NMC** agrees to pay **CONTRACTOR** a placement fee equal to twenty-five percent (25%) of the annual gross remuneration agreed to by the **NMC** for the individual employed, including the individual's base salary and any signing bonus. Such placement fee shall be paid within forty-five (45) days of permanent employment.

2.4 Regulatory Compliance. As requested, **CONTRACTOR** will use reasonable efforts to aid **NMC** in complying with regulatory requirements, including requests relating to Joint Commission, HIPAA and OSHA, and will make available to authorized governmental bodies certain records indicating the nature and cost of **CONTRACTOR**'s services. Except to the extent an **INTERIM** requires Protected Health Information (as defined within HIPAA) in connection with an assignment, **NMC** shall not disclose such information to **CONTRACTOR**. **NMC** will provide **INTERIM** with a suitable workplace that fully complies with applicable federal, state and local safety and other regulations. **NMC** will provide **INTERIM** with site- and job-specific training that meets applicable regulatory standards, including, but not limited to, use of **NMC**'s protective equipment, emergency and fire prevention procedures, IIPP, Hazcom, chemical hygiene, and blood-borne pathogen training. Any orientation, training or other similar time will be treated as part of the **INTERIM**'s normal work period.

2.5 Duration and Termination. The respective obligations of **CONTRACTOR** and **NMC** shall be for a minimum engagement of 13 weeks following the first day of the engagement and shall automatically renew until the **NMC** or the **INTERIM** provides a thirty (30) days' written termination notice. Exception to thirty (30) days' notice is applicable only if termination of the **INTERIM** by the **NMC** is for cause. **NMC** will involve **CONTRACTOR** immediately if there are performance issues experienced with the **INTERIM**. **NMC** agrees to reimburse **CONTRACTOR** for all contractual expenses incurred for an engagement up to its conclusion.

2.6 Interim Leader Wages and Benefits. **CONTRACTOR** will be responsible for **INTERIM**'s wages, payroll taxes, benefits, unemployment and workers compensation insurance, and other fringe benefits to which **INTERIM** may be entitled.

2.7 Deliverables. In collaboration with **NMC**, **CONTRACTOR** develops a set of deliverables that serves as the agenda and general direction for the **INTERIM**. Once **NMC** has approved the deliverables, they are reflected in the "Statement of Work" document.

3. COMPENSATION FOR SERVICES

3.1 Bill Rates. **NMC** will pay an all-inclusive daily bill rate set forth in the "Statement of Work" document. The bill rate includes the **INTERIM**'s wages, payroll taxes, and any applicable employment expenses, including **INTERIM** state licenses or permits. The daily bill rate also includes the reasonable direct cost of air or ground transportation to and from the engagement at the engagement's beginning, conclusion, and twice-a-month weekend home travel, housing accommodations, background checks, drug screens, and rental car or mileage compensation. Travel arrangements will

be agreed to by the Interim Leader and Direct Report Leader. **Refer to Section 6.0 herein for bill rates and billing terms.**

3.2 Overtime. **CONTRACTOR INTERIM** leaders are exempt employees for the purposes of federal and state wage and hour laws and are not eligible for overtime pay.

3.3 Holidays. **INTERIM** leaders observe holiday schedules which the County of Monterey observes.

3.4 Timesheets. **NMC** accepts **CONTRACTOR**'s timesheets as the basis for all days billed by **CONTRACTOR**. **INTERIM** will submit automated time sheet to **CONTRACTOR** by the last day of the pay period.

3.5 Guaranteed Days per Week. **NMC** will provide work schedules for **CONTRACTOR INTERIM** and guarantees full-time work of 5 workdays per week. Exception to 5 workday week is by mutual agreement of **NMC** and **INTERIM** with notification to **CONTRACTOR**.

3.6 Billing Period. The billing period for all **INTERIMS** engaged by **NMC** is Sunday through Saturday on a bi-weekly schedule.

3.7 Interim Services Fees. **NMC** will pay **CONTRACTOR** for its services in accordance with the terms of the compensation structure set forth in this agreement and in the "Statement of Work" document. **CONTRACTOR** will provide **NMC** with biweekly invoices for Interim Services Fees, which **NMC** will pay within 30 days from the date of receipt by Auditor-Controller of an invoice certified by Natividad pursuant to section 2.3 of the original Agreement. **NMC** shall pay or reimburse **CONTRACTOR** for any state sales or receipt taxes imposed on **NMC**'s payments to **CONTRACTOR**.

3.8 Governing Law. This Agreement shall be governed by California law. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration in Monterey County, CA.

3.9 EEOC Compliance Statement. We are committed to providing an environment in which all individuals are treated with respect and professionalism, including employees, contractors, volunteers, interns and others. Consistent with this commitment, we comply with those rules and regulations prohibiting discrimination on the basis of race, color, age, ancestry, gender, sex, marital status, sexual orientation, gender identity and/or expression, religion, national origin, disability (including HIV and AIDS), medical condition, military service, genetic information or any legally protected status. We comply with all related and applicable federal, state and local laws, regulations, orders and ordinances, including, but not limited to, (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990, as amended; (iv) the Age Discrimination in Employment Act of 1967, as amended; (v) the Age Discrimination Act of 1975, as amended; (vi) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (vii) Federal Executive Order No. 11246, as amended; (viii) the Equal Pay Act of 1963, as amended; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; and (x) all regulations and administrative rules established pursuant to the foregoing laws. The creation

or promotion of a hostile, disrespectful or unprofessional environment in violation of any of the foregoing is strictly prohibited.

4.0 OTHER TERMS

4.1 Additional Payment Provisions: CONTRACTOR shall provide an invoice for services rendered showing services were performed, the County Purchase Order Number, the position and a copy of the time card for each employee of the CONTRACTOR. If not otherwise specified, the CONTRACTOR may submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. 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 shall certify the invoice, either in the requested amount or in such other amount as NMC approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.

4.2 Other Terms and Conditions Associated with Temporary Employees:

- a. CONTRACTOR shall identify in writing to NMC any individual with prior PERS affiliation who is sent to report for NMC service under the AGREEMENT, at least seven days prior to the individual being assigned by CONTRACTOR for service to NMC.
- b. CONTRACTOR shall identify in writing to NMC any PERS annuitant who is sent to report for NMC service under the AGREEMENT, at least seven days prior to the individual being assigned by CONTRACTOR for service to NMC.
- c. The term "identify" is defined for purposes of this section to include both (1) the CONTRACTOR's employee name and (2) the last four digits of the employee's Social Security Number.
- d. The term "PERS affiliation" is defined for purposes of this section to mean the CONTRACTOR's employee had previously worked for a governmental entity that participates or participated in CalPERS Retirement System.
- e. Should CONTRACTOR fail to properly identify a PERS annuitant or a CONTRACTOR employee with prior PERS affiliation, CONTRACTOR shall be held responsible for any costs assessed, or eligible to be assessed, by CalPERS relating to the assignment to the County of such individual.
- f. The term "PERS annuitant" is defined for purposes of this section as a person who has retired from a CalPERS agency and who is receiving a retirement allowance from CalPERS Retirement system.
- g. **TEMPORARY EMPLOYMENT ASSIGNMENT:** CONTRACTOR shall be responsible for tracking cumulative hours per employee for all assignments at NMC. CONTRACTOR shall notify the NMC Human Resources when an individual employee's hours working for the NMC are approaching 650 hours in a fiscal year (7/1-6/30).
- h. **An employee of the CONTRACTOR shall not be assigned to work at the NMC for more than 720 hours in a fiscal year (7/1 - 6/30), unless approved by mutual agreement between CONTRACTOR and NMC in writing under the following conditions:**
 - a. Contractor's employee agrees to participate in the PERS retirement system in accordance with the County's agreement with PERS.

- b. **Contractor agrees to provide NMC the assigned employee's information: Full Name, full social security number, copy of social security card, the employee's base rate of pay (without any travel, per diem or other expenses)**
- c. **Contractor agrees to report hours worked weekly to NMC to determine payment amount for PERS**
- d. **Both parties agree that the contractor's assigned employee and the County will pay their applicable portion of the PERS contribution**
- e. **Contractor's assigned employee will pay their applicable portion of PERS to the county bi-weekly via check**
- f. **The County will submit appropriate payments to PERS in accordance with the County's PERS agreement for employees paying on a post-tax basis**

5.0 JOINT COMMISSION POLICY STATEMENT

5.1 CONTRACTOR is committed to providing a higher standard of service and to the delivery of safe, quality patient care by its healthcare professionals. **CONTRACTOR** complies with The Joint Commission's Standards for Healthcare Staffing Services. As a customer, the **NMC** can have confidence that the processes within **CONTRACTOR** support that supplemental **INTERIM** leadership staff working in its organization have met the requirements established by The Joint Commission. To assure compliance with The Joint Commission Standards for Healthcare Staffing Services, **CONTRACTOR** has established the following practices:

- a. **CONTRACTOR** will not engage subcontractors to provide **INTERIM** leadership services unless agreed to in advance by the customer.
- b. As a provider of **INTERIM** leadership services, **CONTRACTOR** will be the employer of assigned **INTERIM** leader employees and shall not by reason of their assignment to the **NMC** through **CONTRACTOR** become employees of the **NMC**.
- c. **CONTRACTOR** will notify the **NMC** whether assigned **INTERIM** leadership employees are employees of **CONTRACTOR** or independent contractors working through **CONTRACTOR**.
- d. Assigned **INTERIM** leadership employees may only be placed in engagements that match the job description for the engagement. If an assigned **INTERIM** leadership employee is asked to provide services to another department with the **NMC**, the department must have comparable leadership needs and the **INTERIM** leadership employee must have demonstrated previous competency and have the appropriate certifications and credentials to perform effectively and safely. Assigned **INTERIM** leadership employees should only be re-assigned to other areas with comparable leadership expectations and needs. **CONTRACTOR** must be notified if an **INTERIM** leadership employee is re-assigned.
- e. **CONTRACTOR** shall verify the assigned **INTERIM** leader employee's licensure, certification, education and work experience to assure they are competent and possess the skills and experience appropriate for the engagement.
- f. It shall be the responsibility of **NMC** to orient assigned **INTERIM** leader employees to the facility and its rules and regulations and to acquaint them with the facility policies and procedures,

- including dress code, physical layout and equipment and to validate competency and ability of assigned **INTERIM** leader employee to properly use equipment.
- g. It shall be the responsibility of the **NMC** to cooperate in an evaluation of each assigned **INTERIM** leader employee relative to such employee's ability to perform specific job functions upon completion of employee's engagement.
 - h. It shall be the responsibility of the **NMC** to notify **CONTRACTOR** within 24 hours of any events, competency issues, incidents, and/or complaints related to the assigned **INTERIM** leader employee and/or **CONTRACTOR**. **NMC** agrees to initiate communication with **CONTRACTOR** whenever an incident/injury report related to the assigned **INTERIM** leader is completed. Upon notification, **CONTRACTOR** shall document and track all unexpected incidents, including errors, sentinel events and other events, injuries and safety hazards related to the care and services provided.
 - i. It shall be the responsibility of the **NMC** to notify **CONTRACTOR** within 24 hours of any occupational safety hazards or events that involve an assigned **INTERIM** leader.
 - j. Conflict of Interest occurs when an individual's private interest interferes, or appears to interfere, in any way with a company's interest, or when the private interest creates the appearance of impropriety. **CONTRACTOR** expects that both the **NMC** and **CONTRACTOR** make or participate in business decisions and actions based on the interest of the company as a whole, and not based on personal relationships or benefits.

6.0 Full-Service Model Bill Rate provisions:

- a. Interim is compensated as a Nurse Professional (on behalf of **CONTRACTOR**) employee.
- b. **NMC** is invoiced bi-weekly with one all-inclusive fee payable to **CONTRACTOR**.
- c. Expenses such as travel, housing, rental car and any expenses directly related to the engagement, are factored into all-inclusive daily fee. Individual expenses reimbursement shall not be permitted under this Agreement.
- d. Actual final daily rate is determined after final candidate selection and specific travel and housing requirements. The following is a general guide reflecting ranges by position level:
- e. Leadership Positions approximate Range of Daily Fee*
- f. CEO positions: \$2,000 - \$2,300/Day
- g. CNO positions: \$1,900 - \$2,100/Day
- h. Vice Presidents: \$1,900 - \$2,000/Day
- i. Service Line Directors \$1,800 - \$1,900/Day
- j. Nurse/Unit Managers \$1,700 - \$1,800/Day
- Included in the Full-Service Model Fee is ongoing Advisory Services from **CONTRACTOR**'s executive team in support of the interim leader for achievement of the engagement deliverables. At **NMC**'s request, gap analyses; 30-, 60-, 90-day plans for key strategic initiatives; or other management tools are provided.
- k. Rates are based upon **CONTRACTOR** providing high-performing interim executives, executive advisors, directors and managers drawing from a national network of experienced executives and healthcare leaders.

**Fees subject to change only by a written amendment executed by the Parties.*