

**AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND R. WILLIAM FUNK & ASSOCIATES.**

This Services Agreement ("Agreement") is entered into and effective November 1, 2020 (the "Effective Date"), by and between The Texas A&M University System (hereafter referred to as "A&M System"), an agency of the state of Texas, and R. William Funk & Associates (hereafter referred to as "PROVIDER"). A&M System and PROVIDER are sometimes hereafter referred to as "Party" individually or "Parties" collectively.

A&M System and PROVIDER hereby agree as follows:

1. SCOPE OF WORK

PROVIDER will provide executive search services to the A&M System ("Scope of Work"). The Scope of Work is further described in Exhibit A, attached hereto.

2. TERM OF THE AGREEMENT

The term of this Agreement shall begin November 1, 2020, and will extend until the completion of the Scope of Work.

3. PAYMENT TERMS

- A. For the services rendered under this Agreement, A&M System shall pay PROVIDER as outlined in Exhibit B to this Agreement. The Parties agree that Base Compensation will be in an amount not to exceed \$150,000. This amount can be later amended if agreed to in writing by both parties. All reimbursement for Direct Expenses must be approved by the A&M System.
- B. PROVIDER will invoice A&M System monthly for the compensation described in Exhibit B. For reimbursement of reasonable Direct Expenses, as further described in Exhibit B, PROVIDER'S invoice(s) must include supporting documents. Payment will be made to PROVIDER only upon approval of such invoice(s) by A&M System. It is the policy of the state of Texas to make payment on a properly prepared and submitted invoice within thirty (30) days of the latter of any final acceptance of performance or the receipt of a properly submitted invoice, in conformance with the Texas Prompt Payment law. Generally, payment will be made on the 30th day unless a discount has been arranged for more immediate payment.
- C. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to A&M System a Vendor Direct Deposit Authorization form prior to the first payment request. The form can be accessed at;
<https://www.tamus.edu/business/budgets-and-accounting/accounting/general/>.
- D. All invoices must reference the A&M System purchase order number (which will be provided to PROVIDER within 15 days of the execution of this Agreement) and

description of services provided to include but not limited to time, deliverables, and activities.

4. DEFAULT AND TERMINATION

- A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, A&M System may terminate this Agreement upon fifteen (15) days written notice of termination setting forth the nature of the failure (the termination shall not be effective if the failure is fully cured prior to the end of the fifteen-day period), provided that said failure is through no fault of A&M System.
- B. A&M System may terminate this Agreement at any time upon thirty (30) days prior notice to PROVIDER.

5. CONFIDENTIAL INFORMATION

PROVIDER agrees that any information supplied to PROVIDER or collected by PROVIDER for use in completing the Scope of Work under this Agreement will be kept in confidence and not disclosed to third parties or released for publication without the prior written consent of the A&M System. The foregoing obligation of confidentiality shall not apply to any information disclosed by the A&M System or other parties to PROVIDER that (a) was already in the possession of PROVIDER as evidenced by existing documentation, prior to the receipt of the information from A&M System or others; (b) which is now or during the pendency of this Agreement becomes generally available to the public on a non-confidential basis through no fault or failure to act on the part of PROVIDER; (c) is disclosed to PROVIDER by third parties having a bona fide right to make such disclosure; or (d) is ordered produced or disclosed by a court or administrative body of competent jurisdiction, the Attorney General of Texas, or otherwise required by law.

6. PUBLIC INFORMATION

- A. PROVIDER acknowledges that A&M System is obligated to strictly comply with the Public Information Act, Chapter 552, Texas Government Code, in responding to any request for public information pertaining to this Agreement, as well as any other disclosure of information required by applicable Texas law.
- B. Upon A&M System's written request, PROVIDER will promptly provide specified contracting information exchanged or created under this Agreement for or on behalf of A&M System.
- C. PROVIDER acknowledges that A&M System may be required to post a copy of the fully executed Agreement on its Internet website in compliance with Section 2261.253(a)(1), Texas Government Code.
- D. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this agreement and the PROVIDER agrees that the agreement can be terminated if the PROVIDER knowingly or intentionally fails to comply with a requirement of that subchapter.

7. DISPUTE RESOLUTION

The dispute resolution process provided in Chapter 2260, *Texas Government Code*, and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by A&M System and PROVIDER to attempt to resolve any claim for breach of contract made by PROVIDER that cannot be resolved in the ordinary course of business. PROVIDER shall submit written notice of a claim of breach of contract under this Chapter to Billy Hamilton, Deputy Chancellor and Chief Financial Officer for A&M System, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

8. INSURANCE

Insurance requirements are stated in Exhibit C, attached hereto.

9. MISCELLANEOUS

- A. **Indemnification.** PROVIDER agrees to indemnify and hold harmless A&M System from any claim, damage, liability, expense or loss to the extent arising out of PROVIDER's negligent or willful errors or omissions under this Agreement.
- B. **Independent Contractor.** PROVIDER is an independent contractor, and neither PROVIDER nor any employee of PROVIDER shall be deemed to be an agent or employee of A&M System. A&M System will have no responsibility to provide transportation, insurance or other fringe benefits normally associated with employee status. PROVIDER shall observe and abide by all applicable laws and regulations, policies and procedures, including but not limited to those of A&M System relative to conduct on its premises.
- C. **Delinquent Child Support Obligations.** A child support obligor who is more than 30 days delinquent in paying child support and a business entity in which the obligor is a sole proprietor, partner, shareholder, or owner with an ownership interest of at least 25 percent is not eligible to receive payments from state funds under an agreement to provide property, materials, or services until all arrearages have been paid or the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency. The *Texas Family Code* requires the following statement: "Under Section 231.006, *Texas Family Code*, the vendor or applicant certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate."
- D. **Payment of Debt or Delinquency to the State.** Pursuant to Section 2252.903, *Texas Government Code*, PROVIDER agrees that any payments owing to PROVIDER under this Agreement may be applied directly toward certain debts or delinquencies that PROVIDER owes the State of Texas or any agency of the State of Texas regardless of when they arise, until such debts or delinquencies are paid in full.
- E. **Previous Employment.** PROVIDER acknowledges and understands that Section 2252.901, *Texas Government Code*, prohibits A&M System from using state appropriated funds to enter into any employment contract, consulting contract, or professional services contract with any individual who has been previously employed, as an employee, by the agency within the past twelve (12) months. If PROVIDER is an individual, by signing this

Agreement, PROVIDER certifies that Section 2252.901, *Texas Government Code*, does not prohibit the use of state appropriated funds for satisfying the payment obligations herein.

- F. **Franchise Tax Certification.** If PROVIDER is a taxable entity subject to the Texas Franchise Tax (Chapter 171, *Texas Tax Code*), then PROVIDER certifies that it is not currently delinquent in the payment of any franchise (margin) taxes or that PROVIDER is exempt from the payment of franchise (margin) taxes.
- G. **State Auditor's Office.** PROVIDER understands that acceptance of funds under this Agreement constitutes acceptance of the authority of the Texas State Auditor's Office, or any successor agency (collectively, "Auditor"), to conduct an audit or investigation in connection with those funds pursuant to Section 51.9335(c), *Texas Education Code*. PROVIDER agrees to cooperate with the Auditor in the conduct of the audit or investigation, including without limitation, providing all records requested. PROVIDER will include this provision in all contracts with permitted subcontractors.
- H. **Entire Agreement.** This Agreement constitutes the sole agreement of the parties and supersedes any other oral or written understanding or agreement pertaining to the subject matter of this Agreement. This Agreement may not be amended or otherwise altered except upon the written agreement of both parties.
- I. **Severability.** If any provisions of this Agreement are rendered or declared illegal for any reason, or shall be invalid or unenforceable, such provision shall be modified or deleted in such manner so as to afford the Party for whose benefit it was intended the fullest benefit commensurate with making this Agreement, as modified, enforceable, and the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby, but shall be enforced to the greatest extent permitted by applicable law.
- J. **Headings.** Headings appear solely for convenience of reference. Such headings are not part of this Agreement and shall not be used to construe it.
- K. **Non-Assignment.** PROVIDER shall neither assign its rights nor delegate its duties under this Agreement without the prior written consent of A&M System.
- L. **HUB Subcontracting Plan.** If a subcontractor will be used to provide any commodity or service as part of the scope on a specific assignment, the PROVIDER will be required to make a good faith effort and complete the state of Texas HSP found at <https://www.tamus.edu/business/hub-procurement/hub-programs-3/system-offices-hub-program/>. If there are pre-existing agreements in place with companies who will be hired as subcontractors, the PROVIDER will show those companies as subcontractors on the HSP and provide an explanation as to why solicitations were not done, e.g. contractual requirements. If no pre-existing agreements with companies who will be hired as subcontractors exist, then the PROVIDER will be expected to make a good faith effort according to the HSP instructions.

In the event that you determine you will be using a subcontractor, please contact Mr. Jeff Zimmermann from the A&M System's HUB Program at (979) 458-6410 or jzimmermann@tamus.edu for assistance in determining available HUB subcontractors and proper completion of the HSP.

- M. **Force Majeure.** Neither Party will be in breach of its obligations under this Agreement (other than payment obligations) or incur any liability to the other Party for any losses or

damages of any nature whatsoever incurred or suffered by that other Party if and to the extent that it is prevented from carrying out those obligations by, or such losses or damages are caused by, a Force Majeure, except to the extent that the relevant breach of its obligations would have occurred, or the relevant losses or damages would have arisen, even if the Force Majeure had not occurred. Force Majeure is defined as: 1) acts of God; 2) war; 3) act(s) of terrorism; 4) fires; 5) explosions; 6) natural disasters, to include without limitation, hurricanes, floods, and tornadoes; 7) failure of transportation; 8) strike(s); 9) loss or shortage of transportation facilities; 10) lockout, or commandeering of materials, products, plants or facilities by the government or other order (both federal and state); 11) interruptions by government or court orders (both federal and state); 12) present and future orders of any regulatory body having proper jurisdiction; 13) civil disturbances, to include without limitation, riots, rebellions, and insurrections; 14) epidemic(s), pandemic(s), or other national, state, or regional emergency(ies); and 15) any other cause not enumerated in this provision, but which is beyond the reasonable control of the Party whose performance is affected and which by the exercise of all reasonable due diligence, such Party is unable to overcome. Such excuse from performance will be effective only to the extent and duration of the Force Majeure event(s) causing the failure or delay in performance and provided that the affected Party has not caused such Force Majeure event(s) to occur and continues to use diligent, good faith efforts to avoid the effects of such Force Majeure event(s) and to perform the obligation(s). Written notice of a Party's failure or delay in performance due to Force Majeure must be given within a reasonable time after its occurrence and which notice must describe the Force Majeure event(s) and the actions taken to minimize the impact of such Force Majeure event(s). Notwithstanding the foregoing, a Party's financial inability to perform its obligations shall in no event constitute a Force Majeure.

- N. **Loss of Funding.** Performance by A&M System under this Agreement may be dependent upon the appropriation and allotment of funds by the Texas State Legislature (the "Legislature"). If the Legislature fails to appropriate or allot the necessary funds, A&M System will issue written notice to PROVIDER and A&M System may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of A&M System.
- O. **Governing Law.** The validity of this Agreement and all matters pertaining to this Agreement, including but not limited to, matters of performance, non-performance, breach, remedies, procedures, rights, duties, and interpretation or construction, shall be governed and determined by the Constitution and the laws of the State of Texas.
- P. **Venue.** Pursuant to Section 85.18, *Texas Education Code*, venue for any suit filed against A&M System shall be in the county in which the primary office of the chief executive officer of A&M System is located, which is Brazos County, Texas.
- Q. **Non-Waiver.** PROVIDER expressly acknowledges that A&M System is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by A&M System of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- R. **Conflict of Interest.** By executing this Agreement, PROVIDER and each person signing on behalf of PROVIDER certifies, and in the case of a sole proprietorship, partnership or corporation, each party thereto certifies as to its own organization, that to the best of their knowledge and belief, no member of The A&M System or The A&M System Board of

Not Eligible for Rehire as defined in System policy 32.02, Section 4. Non-conformance to this requirement may be grounds for termination of this Agreement.

IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

The Texas A&M University System

By


Billy Hamilton
Deputy Chancellor & Chief Financial Officer

Date

11-6-20

R. William Funk & Associates.

By


R. William "Bill" Funk - President

Date

11-1-20

EXHIBIT A – SCOPE OF WORK

Provider shall perform the following as part of its engagement for executive search services for the next President of Texas A&M University:

- Assist specific University search committees in developing a position description that will optimize a strong and productive pool of candidates.
- Place appropriate advertising of the position that will maximize the exposure of the position to the highest quality pool of candidates.
- Act as contact for communication with persons nominating candidates or applying for the position
- Identify potential candidates in a confidential manner; use contacts and previous experience to identify potential candidates who would not apply themselves.
- Work with University search committees to gather letters of nomination and/or recommendation, including letters of nomination from University faculty and staff.
- Provide information on finalists' positions.
- Conduct routine and necessary background investigations of the top candidates, ensuring validity of stated credentials; determine interest and seriousness of candidate and anticipate obstacles or problems (salary, spousal placement, etc).
- Obtain additional confidential references on short-listed candidates.
- Assist the University search committees with scheduling interviews and making travel arrangements, whether on campus or off-campus, with selected candidates.
- Maintain contact with short list candidates, keeping them interested and keeping the University search committees informed of their other opportunities.
- Provide advice on making the offer.

Provider will provide all names and other relevant information about potential candidates to the University search committees. The firm or individual will be expected to maintain a high degree of confidentiality throughout the process. Media or other requests for information should be referred to the chair of the specific search committee.



TEXAS A&M UNIVERSITY.

PRESIDENT SEARCH SEARCH PLAN AND ACTIVITIES TIMELINE

- SEARCH FIRM CALLS WITH BOARD MEMBERS AND SEARCH COMMITTEE MEMBERS (Ongoing)
 - ◆ Introduce search firm...discuss challenges and opportunities new President will inherit... discuss best candidates' desired attributes and previous experience....
- SEARCH INFRASTRUCTURE AND CANDIDATE DEVELOPMENT – (Ongoing)
 - ◆ Advertisement/announcement is developed and placed in appropriate higher education publications and appropriate list serves. (A&M and RWFA)
 - ◆ Open forums with key constituent groups on campus. (A&M)
 - ◆ 'Leadership Statement' (Position Description) is developed which can be used by the Consultant when discussing the role with prospective candidates and placed on the University website. (A&M and RWFA) *
 - ◆ Search Committee members proactively seek nominations. (A&M)
 - ◆ Online website developed to keep university constituents apprised of the progress of the search and where suggestions and nominations can be received. (A&M)
 - ◆ Consultant researches and targets candidates that appear appropriate for the role and begins extensive networking and recruiting. (RWFA)
 - ◆ Consultant sends letters to proprietary mailing list of leaders in higher education (600+) soliciting nominations. (RWFA)
 - ◆ Consultant contacts leadership of the leading higher education associations soliciting nominations and suggestions. (RWFA)
 - ◆ Consultant establishes a password-protected website ('Client Center') for Committee to review updated logs and the resumes of active candidates once a critical number of candidates are surfaced. (RWFA)

[*RWFAssociates can provide samples to the Committee]
- 'CLIENT CENTER' UNVEILED/UPDATE OF THE PROCESS AND POOL / DISCUSS "TOP 8" PREPARATION FOR NEXT MEETING – (November 17)
 - ◆ Candidate pool is reviewed preliminarily.
 - ◆ 'Client Center' unveiled.
 - ◆ Consultant updates the Committee relative to results and feedback to date.
 - ◆ Last minute strategies are developed to contact reluctant or non-responding attractive nominees.
 - ◆ Discuss evaluation techniques regarding active candidate files.
 - ◆ Committee members are asked to review the resumes of all active candidates prior to next meeting and submit their "Top 8" unranked.
 - ◆ Consultant 'opens' Client Center to Search Committee.

- DISTILLATION OF THE POOL TO A 'SHORT LIST' AND DISCUSSION OF DUE DILIGENCE EFFORTS– (December 14)
 - ◆ Consultant will tabulate the results of the “Top 8” exercise and share with the Committee. The results will frame our discussion with an objective of reaching consensus on the best ~8 candidates for the Committee to interview virtually.
 - ◆ Action plan for RWFA to do initial background checks, verify education credentials, and Lexis-Nexis-Google-Social Media reports on “short list” prior to interviews.
 - ◆ Review Interview Questions and Protocol.
- FIRST ROUND/VIRTUAL INTERVIEWS – (January 19, 20...back-up date 22nd)
 - ◆ One and one-half hours each...confidential
 - ◆ Two consecutive days ideally...
 - ◆ Search Committee narrows pool to 3 or 5 tentative “finalists” to recommend to the Chancellor after the last interview is completed.
 - ◆ Finalists are informed of their status and are asked if the Chancellor/Consultant can quietly make several strategic “non-directed” reference calls. Calls are made. Finalists are also asked to sign release forms to allow for credit/litigation/criminal/sexual abuse background checks to be made. These checks are conducted and the “Finalists” list is confirmed and officially forwarded to the Chancellor. Once successfully concluded, finalists are invited to interview in-person with the Chancellor.
- CHANCELLOR INTERVIEWS – (Weeks of January 25 and February 1)
 - ◆ Visits of recommended final candidates to meet with the Chancellor in College Station/Dallas/Houston.
 - ◆ Follow up with candidates and spouses as needed.
- SELECTION, NEGOTIATION AND ANNOUNCEMENT – (begin immediately after Chancellor Interviews)
 - ◆ Chancellor selects first choice...begins negotiations with the lead candidate after finalist interviews...(perhaps a second meeting with the lead candidate if deemed necessary).
 - ◆ Candidate formally accepts position.
 - ◆ Chancellor issues a press release announcing new President.
 - ◆ Press Conference to present new President.



EXHIBIT C – INSURANCE

PROVIDER shall obtain and maintain, for the duration of this Agreement or longer, the minimum insurance coverage set forth below. With the exception of Professional Liability (E&O), all coverage shall be written on an occurrence basis. All coverage shall be underwritten by companies authorized to do business in the State of Texas or eligible surplus lines insurers operating in accordance with the Texas Insurance Code and have a financial strength rating of A- or better and a financial strength rating of VII or better as measured by A.M. Best Company or otherwise acceptable to A&M System. By requiring such minimum insurance, the Owner shall not be deemed or construed to have assessed the risk that may be applicable to PROVIDER under this Agreement. PROVIDER shall assess its own risks and if it deems appropriate and/or prudent, maintain higher limits and/or broader coverage. PROVIDER is not relieved of any liability or other obligations assumed pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation.

Insurance:

<u>Coverage</u>	<u>Limit</u>
A. <u>Worker's Compensation</u>	
Statutory Benefits (Coverage A)	Statutory
Employers Liability (Coverage B)	\$1,000,000 Each Accident
	\$1,000,000 Disease/Employee
	\$1,000,000 Disease/Policy Limit

Workers' Compensation policy must include under Item 3.A. on the information page of the workers' compensation policy the state in which work is to be performed for A&M System. Workers' compensation insurance is required, and no "alternative" forms of insurance will be permitted

B. Automobile Liability

Business Auto Liability Insurance covering all owned, non-owned or hired automobiles, with limits of not less than \$1,000,000 Single Limit of liability per accident for Bodily Injury and Property Damage;

If a separate Business Auto Liability policy is not available, coverage for hired and non-owned auto liability may be endorsed on the Commercial General Liability policy.

Additional Endorsements

The Auto and Commercial General Liability Policies shall name the Texas A&M University System Board of Regents for and on behalf of The Texas A&M University System as additional insured's.

C. Commercial General Liability

Each Occurrence Limit	\$1,000,000
General Aggregate Limit	\$2,000,000
Products / Completed Operations	\$1,000,000
Personal / Advertising Injury	\$1,000,000
Damage to rented Premises	\$300,000
Medical Payments	\$5,000

The required commercial general liability policy will be issued on a form that insures PROVIDER's or its subcontractors' liability for bodily injury (including death), property damage, personal and advertising injury assumed under the terms of this Agreement.

- D. **Professional Liability (Errors & Omissions)** Insurance with limits of not less than \$1,000,000 each occurrence, \$2,000,000 aggregate. Such insurance will cover all professional services rendered by or on behalf of PROVIDER and its subcontractors under this Agreement. Renewal policies written on a claims-made basis will maintain the same retroactive date as in effect at the inception of this Agreement. If coverage is written on a claims-made basis, PROVIDER agrees to purchase an Extended Reporting Period Endorsement, effective for two (2) full years after the expiration or cancellation of the policy. No professional liability policy written on an occurrence form will include a sunset or similar clause that limits coverage unless such clause provides coverage for at least three (2) years after the expiration or cancellation of this Agreement.

- E. PROVIDER will deliver to A&M System:

Evidence of insurance on a Texas Department of Insurance approved certificate form verifying the existence and actual limits of all insurance after the execution and delivery of this Agreement and prior to the performance of any services by PROVIDER under this Agreement. Additional evidence of insurance will be provided on a Texas Department of Insurance approved certificate form verifying the continued existence of all required insurance no later than thirty (30) days after each annual insurance policy renewal.

All insurance policies, with the exception of worker's compensation, employer's liability and professional liability will be endorsed and name The Board of Regents for and on behalf of The Texas A&M University System and The Texas A&M University System as Additional Insureds up to the actual liability limits of the policies maintained by PROVIDER. Commercial General Liability and Business Auto Liability will be endorsed to provide primary and non-contributory coverage. The Commercial General Liability Additional Insured endorsement will include on-going and completed operations and will be submitted with the Certificates of Insurance.

All insurance policies will be endorsed to provide a waiver of subrogation in favor of The Board of Regents of The Texas A&M University System and The Texas A&M University System. No policy will be canceled without unconditional written notice to A&M System at least ten days before the effective date of the cancellation. **All insurance policies** will be endorsed to require the insurance carrier providing coverage to send notice to A&M System ten (10) days prior to the effective date of cancellation, material change, or non-renewal relating to any insurance policy required in this Section 11.

Any deductible or self-insured retention must be declared to and approved by A&M System prior to the performance of any services by PROVIDER under this Agreement. PROVIDER is responsible to pay any deductible or self-insured retention for any loss. All deductibles and self-insured retentions will be shown on the Certificates of Insurance.

Certificates of Insurance and Additional Insured Endorsements as required by this Agreement will be emailed to the following A&M System contact in SOProcurement@tamus.edu.

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by A&M System in writing, except as may be noted.