

**AN AGREEMENT
BY AND BETWEEN
THE TEXAS A&M UNIVERSITY SYSTEM OFFICES
AND AGB SEARCH, LLC**

This Services Agreement (“Agreement”) is entered into and effective March 11, 2016 (the “Effective Date”), by and between The Texas A&M University System Offices (hereafter referred to as “TAMUS”), an agency of the State of Texas, and AGB Search, LLC (hereafter referred to as “PROVIDER”). TAMUS and PROVIDER are sometimes hereafter referred to as “Party” individually or “Parties” collectively.

TAMUS and PROVIDER hereby agree as follows:

1. SCOPE OF WORK

- A.** PROVIDER will provide search services for the President of West Texas A&M University as further described in the Scope of Work attached hereto as Exhibit A.
- B.** TAMUS shall periodically meet with PROVIDER to provide feedback and assist in the performance of the Scope of Work.

2. TERM OF THE AGREEMENT

The Initial Term of this Agreement shall begin March 11, 2016, and shall terminate on the earlier to occur of completion of the Scope of Work or April 3, 2017. This Agreement may be extended for an additional term of twelve (12) months upon written agreement of both Parties.

3. PAYMENT TERMS

- A.** TAMUS shall compensate the PROVIDER for the services as described in Exhibit A - Scope of Work. Payment for services will not exceed \$100,000 (the Fee) for the Initial Term of the Agreement and this amount shall be exclusive of travel and out of pocket expenses.
- B.** PROVIDER shall be entitled to reimbursement of expenses without markup subject to prior approval by a representative of the TAMUS Office of the Chancellor. All requests for reimbursement of expenses shall be presented to the Vice Chancellor for Academic Affairs by PROVIDER for preliminary approval prior to incurring the expense. PROVIDER’s failure to obtain approval from TAMUS for a reimbursable expense shall preclude PROVIDER from receiving reimbursement. PROVIDER is required to submit all receipts when requesting reimbursement.
- C.** Consistent with TAMUS’s commitment to conserving public funds, business-

related travel, lodging and/or meal expenses will be reimbursed by TAMUS according to the State of Texas rates, rules, and regulations (<http://www.window.state.tx.us//procurement/prog/stmp/>). If PROVIDER is unable to obtain travel or lodging at a rate comparable to the State of Texas reimbursement rates, PROVIDER must provide appropriate documentation to TAMUS supporting the higher travel or lodging rate. PROVIDER is required to submit all travel receipts when requesting reimbursement. Under no circumstance will the PROVIDER be reimbursed for alcohol purchases. State travel rates are subject to change without notice and will be adjusted accordingly. Mileage rates will be calculated from point-to-point (PROVIDER's place of business to job site) using the State of Texas mileage. Should the contract be renewed for an additional term, travel reimbursement amounts will be renegotiated at that time.

- D. PROVIDER shall invoice TAMUS monthly for all reimbursable expenses incurred in the previous month and shall invoice TAMUS for the Fee as outlined in Exhibit A. PROVIDER'S invoices must include supporting documents, including receipts for out-of-pocket expenses (including approvals) and travel expenses. Payment will be made to PROVIDER upon approval of such invoice by a representative of the Office of the Chancellor. 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. A single invoicing format may be submitted.
- E. All payments shall be made by electronic direct deposit. PROVIDER is required to complete and submit to TAMUS a Direct Deposit Authorization form prior to the first payment request. The form can be accessed at <http://www.window.state.tx.us/taxinfo/taxforms/74-176.pdf>.
- F. All invoices must reference the TAMUS purchase order number (which will be provided to PROVIDER within fifteen (15) days of the execution of this Agreement) and description of services provided to include but not limited to time, deliverables, and activities.
- G. Invoices are to be sent to the TAMUS Procurement Department at the address listed in Section 8(Q). The invoices must include a summary of services performed. The invoices will be paid upon approval by a representative within the Office of the Chancellor.

4. DEFAULT AND TERMINATION

- A. In the event of substantial failure by PROVIDER to perform in accordance with the terms hereof, TAMUS 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 TAMUS.

- B. TAMUS may terminate this Agreement at any time upon fifteen (15) days prior notice to PROVIDER. Upon termination pursuant to this paragraph, PROVIDER shall be entitled to payment of such amount as shall compensate PROVIDER for the services satisfactorily performed and approved expenses incurred from the time of the last payment date to the termination date in accordance with this Agreement. TAMUS shall not be required to reimburse PROVIDER for any services performed or expenses incurred after the date of termination notice.

5. CONFIDENTIALITY

Both PROVIDER and TAMUS represent to each other that, except as required by law, each of them will keep strictly confidential within the Search Committee and PROVIDER staff engaged in this Presidential Search all information pertaining to this Presidential Search available to either of them. No information will be released by either the Search Committee or any member thereof or PROVIDER or a staff person engaged in the Presidential Search without the prior knowledge and consent of Dr. Lawless and the Search Committee Chair. Under the Act, there are exceptions to requests for disclosure, which include but are not limited to, information confidential by law and certain commercial information and trade secrets. The Texas Attorney General's office makes the final determination whether or not requested information is to be disclosed on a case by case basis after reviewing the materials and assertions against disclosure. If proprietary information is requested, the Act requires University to provide written notice to the party whose proprietary information may be subject to the request, and that party may also submit information to the Texas Attorney General to establish that disclosure of the information would cause substantial competitive harm.

Notwithstanding the foregoing, PROVIDER acknowledges its understanding that TAMUS is subject to the Texas Open Records Act (Texas Government Code, Chapter 552). PROVIDER further acknowledges that upon TAMUS's written request, PROVIDER will provide specified public information exchanged or created under this Agreement that is not otherwise excepted from disclosure under chapter 552, Texas Government Code, to TAMUS in a non-proprietary format acceptable to TAMUS. As used in this provision, "public information" has the meaning assigned Section 552.002, *Texas Government Code*, but only includes information to which TAMUS has a right of access. Finally, PROVIDER acknowledges that TAMUS 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*.

6. 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 TAMUS 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 Executive Vice Chancellor and Chief Financial Officer for TAMUS, who shall examine PROVIDER's claim and any counterclaim and negotiate with PROVIDER in an effort to resolve the claim.

7. 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 TAMUS. 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 TAMUS at least ten days before the effective date of the cancellation.

Insurance:

Coverage

Limit

A. Worker's Compensation

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 TAMUS. 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;

C.	<u>Commercial General Liability</u>	
	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. PROVIDER will deliver to TAMUS:

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 TAMUS 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, The Texas A&M University System and TAMUS 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, The Texas A&M University System and TAMUS. No policy will be canceled without unconditional written notice to TAMUS 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 TAMUS 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 TAMUS 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 mailed, faxed, or emailed to the TAMUS contact listed in Section 8 (Q) of this Agreement.

The insurance coverage required by this Agreement will be kept in force until all services have been fully performed and accepted by TAMUS in writing.

8. MISCELLANEOUS

- A. Indemnification.** PROVIDER shall defend, indemnify and hold harmless TAMUS, all of its officers, agents and employees from and against all claims, actions, suits, demands, proceedings, costs damages, and liabilities, arising out of, connected with or resulting from any acts or omissions of PROVIDER or any agent, employee or representative of PROVIDER in the execution or performance of 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 TAMUS. PROVIDER 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 TAMUS 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 TAMUS 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 TAMUS.

- L. Force Majeure.** Neither party is required to perform any term, condition, or covenant of this Agreement, if performance is prevented or delayed by a natural occurrence, a fire, an act of God, an act of terrorism, or other similar occurrence, the cause of which is not reasonably within the control of such party and which by due diligence it is unable to prevent or overcome.
- M. Loss of Funding.** Performance by TAMUS 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, TAMUS will issue written notice to PROVIDER and TAMUS may terminate this Agreement without further duty or obligation hereunder. PROVIDER acknowledges that appropriation of funds is beyond the control of TAMUS.
- N. 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.
- O. Venue.** Pursuant to Section 85.18, *Texas Education Code*, and venue for any suit filed against TAMUS shall be in the county in which the primary office of the chief executive officer of TAMUS is located, which is Brazos County, Texas.
- P. Non-Waiver.** PROVIDER expressly acknowledges that TAMUS is an agency of the State of Texas and nothing in this Agreement will be construed as a waiver or relinquishment by TAMUS of its right to claim such exemptions, privileges, and immunities as may be provided by law.
- Q. Notices.** Any notice required or permitted under this Agreement must be in writing, and shall be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address set out below. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, email or other commercially reasonable means and will be effective when actually received. TAMUS and PROVIDER can change their respective notice address by sending to the other party a notice of the new address. Notices should be addressed as follows:

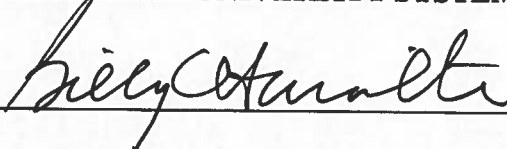
TAMUS: The Texas A&M University System
301 Tarrow St.
College Station, Texas 77840
Attention: Dr. James Hallmark
Vice Chancellor for Academic Affairs

PROVIDER: Dr. James Ferrare
Managing Principal
AGB Search, LLC
1133 20th Street, N.W., Suite 300
Washington, D.C. 20036

- R. Public Statements.** The Parties shall coordinate with one another on all public statements, whether written or oral and no matter how disseminated, regarding their contractual relationship as set forth in this agreement or the performance by either of them of their respective obligations under this agreement. PROVIDER may not use any of TAMUS's marks in connection with any sales promotion or publicity event without the prior written approval of TAMUS.
- S. Multiple Counterparts.** This Agreement may be executed by each of the parties in separate counterparts; each counterpart when so executed shall be deemed an original. When executed by all parties, such counterparts shall, together, constitute and be one and the same Agreement.

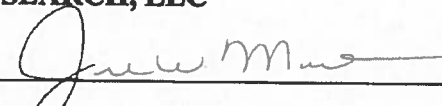
IN WITNESS WHEREOF, intending to be bound, the Parties have entered into this Agreement as of the Effective Date.

THE TEXAS A&M UNIVERSITY SYSTEM OFFICES

By: 
Title: _____

3-23-16
Date

AGB SEARCH, LLC

By: 
Title: Executive Dir. for Finance & Admin

3/22/2016
Date

EXHIBIT A – SCOPE OF SERVICES

I. SEARCH SERVICES

AGB Search (PROVIDER) shall provide Search Services to The Texas A&M University System Offices (TAMUS) for a Presidential Search for West Texas A&M University (University). PROVIDER agrees to provide the search consultant services of Dr. Robert Lawless, who with other PROVIDER staff, as appropriate, will provide the following services:

1. Assist the System and Search Committee in reaching agreement on search goals and presidential priorities and attributes;
2. Work with the Search Committee Chair in organizing and facilitating Search Committee meetings;
3. Assist in coordinating the entire search process;
4. Assume major responsibility in recruiting and cultivating candidates;
5. Assist in developing and engaging effective candidate screening procedures;
6. Provide due diligence on candidates identified on a short list and those identified as semi-finalists and finalists, including interviews of personal and professional references and review of published speeches and writings;
7. Counsel the Chancellor and the Search Committee regarding off-site and final candidate interview schedules and procedures;
8. Provide drafts of correspondence and communication to the Search Committee and candidates;
9. Guide in the preparation and implementation of a transition plan for the new President, administration, and campus community;
10. Handle all search-related administrative services, all of which will be provided at the offices of PROVIDER or on a secure web site hosted by PROVIDER, to which only members of the Search Committee and PROVIDER staff will have access. PROVIDER will receive and process all applications for the position and will handle all correspondence and contact with the candidates other than as agreed to with the Search Committee Chair;
11. Prepare a draft prospectus for the University, for use by PROVIDER to inform candidates and potential candidates about the System and University, their history, opportunities and challenges; this draft will be subject to editing and modification by the Search Committee, and the System shall solely be responsible for the final version which it endorses for use by PROVIDER in connection with the Presidential Search; and
12. PROVIDER may not replace Dr. Lawless as the principal consultant nor designate any other principal consultant without the express written consent of the System.

II. SEARCH FEES

The System shall pay PROVIDER \$100,000 plus reimbursement of all reasonable travel and travel-related expenses, to the extent permitted by Texas law, as well as out-of-pocket expenses such as advertising costs, fees charged by an investigative firm for candidate background checks, and expenses incurred by candidates who are interviewed for the position by PROVIDER and/or the Search Committee. Out-of-pocket expenses will only be paid after TAMUS receives expenditure documentation deemed adequate by the System. This fee includes

all administrative charges incurred directly by PROVIDER as part of its overhead in the administration of this agreement.

A search fee shall be paid within 30 (thirty) days following each of the following billing dates:

April 30, 2016	\$35,000
May 31, 2016	\$35,000
Upon completion (billed at the end of the month following appointment)	\$30,000

III. LIMITED WARRANTIES

If the person selected as President of West Texas A & M University leaves office during the first year from the date he or she first occupies the office (i.e., is on the payroll of the University) for cause in accord with the definition of "cause" as set forth in an employment agreement between the University and the new hire, which definition is reasonably acceptable to PROVIDER, PROVIDER will assist in a follow-up search for no additional charge other than out-of-pocket expenses incurred in connection with the subsequent search.

Unless TAMUS grants prior permission in writing, PROVIDER will not recruit the University's new President for any position with an organization outside the A&M System for a period of 5 years from the date the President first occupies the office.

PROVIDER does not warrant the accuracy or completeness of the background checks that are conducted by third-party service providers. PROVIDER routinely engages such service providers to check candidates' credit, criminal, and driving records, and degree verification; this level of investigation is done at a cost of approximately \$250 per candidate. If TAMUS desires a more in-depth due diligence report with respect to any candidate, a more thorough investigation can be conducted at a higher cost, which will be incurred only if approved by the Office of the Chancellor prior to such investigation being ordered and such costs being incurred. The limited warranty immediately above does not relieve PROVIDER of the obligation to personally conduct a thorough background check of candidates, including interviews of personal and professional references of candidates and a review of published speeches and writings of candidates.

III. EMPLOYMENT AGREEMENT NEGOTIATION NOT INCLUDED

PROVIDER does not participate in the negotiation of an employment agreement between the successful candidate and University unless there is an express agreement to that effect; however, PROVIDER, for additional consideration and subject to agreement by both parties of an addendum to this agreement, will provide consulting services to University with respect to the negotiation of an employment agreement with the successful candidate. AGB does not provide legal services, so University should arrange for its counsel to be involved in the negotiation process to the extent University and such counsel deem appropriate.