



BOARD OF REGENTS AGENDA ITEM SUMMARY

President Search

October 5, 2023

AGENDA ITEM: Selection of Academic Search as the executive search partner for the Presidential Search

Review **Review + Action** **Action** **Discussion**

This is a report required by Regents' policy.

PRESENTERS: Executive Committee
Tim Clare, Chair
Rob Schafer, Vice Chair
Paul Kenney, Past Chair
Elizabeth O'Connor

PURPOSE & KEY POINTS

Academic Search, Inc. was founded in 1976, and was the first organization in the nation committed to meeting the unique recruiting needs of higher education. The firm is a wholly owned subsidiary of the American Academic Leadership Institute, which provides leadership programs, networking opportunities, and mentorship experiences to prepare administrators to advance to higher positions of responsibility in higher education. Of note, 92% of presidents or chancellors placed by Academic Search serve for five or more years.

The search team includes:

- Jay Lemons, Ph.D., President and Senior Consultant
- George Ross, Ph.D., Senior Consultant
- Jennifer Kookan, Consultant

Services and deliverables include:

- Facilitation of stakeholder listening sessions to ensure input into the needs of the University and understanding of desired leadership attributes for the President.
- Developing a leadership profile and advertisement to reach potential candidates and nominators.
- Cultivation and recruitment of a robust candidate pool.
- Facilitation of reference checks and extensive background checks for due diligence.

Contract Cost: \$225,000 plus reimbursable expenses

BACKGROUND INFORMATION

Section 2.1 of the *Bylaws* provides that “the appointment of the President shall be made by the Board.”

Neb. Rev. Stat. § 85-106.06 provides that “the chief executive officer of the University of Nebraska shall be appointed by the Board of Regents using the enhanced public scrutiny process..., hold office at the pleasure of the board, and receive such compensation as the board may prescribe.”

RECOMMENDATION

The Executive Committee recommends selection of Academic Search as the executive search partner for the Presidential Search.

If approved, the Senior Vice President and CFO is directed to finalize and execute the attached consulting services agreement with Academic Search.

University of Nebraska Consulting Services Agreement

This University of Nebraska Consulting Services Agreement (“Agreement”) is made and entered as of the date of the last signature set forth below (“Effective Date”) between the Board of Regents of the University of Nebraska a public body corporate and governing body of the University of Nebraska (“University”) and Academic Search, Inc. (“Academic Search”). University and Academic Search are collectively referred to as “parties.”

RECITALS

1. University has formed a committee to advise University in the search for its next president (“Search Committee”).
2. Academic Search submitted a proposal to the Search Committee, and the Search Committee recommended University contract with Academic Search to perform executive search services and collaborate with University in the search for its next president.
3. University of Nebraska Board of Regents policy RP-6.2.1.10.f.2) exempts this purchase from competitive bidding.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants set forth in this Agreement and the above recitals, which are incorporated herein by this reference, the parties agree as follows:

1. **Description of Services.** Academic Search agrees to provide the services (“Services”) identified in the statement of work (“Statement of Work”) and proposal (“Proposal”) attached to the Agreement. The Statement of Work and Proposal are incorporated into the Agreement by this reference. In the event of a conflict between the terms of (1) this Agreement, (2) the Statement of Work, and (3) the Proposal, a document identified with a lower numerical value in this section shall supersede a document identified with a higher numerical value in this section to the extent necessary to resolve any such conflict or inconsistency. Provided, however, that in the event an issue is addressed in one of the foregoing documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur. Academic Search agrees to perform the Services to the satisfaction of University during the Term of this Agreement and with the standard of professional care and skill customarily provided in the performance of such services.
2. **Payment.** In full consideration for the Services provided by Academic Search under this Agreement, University shall pay or cause to be paid to Academic Search a fee, pursuant to the Statement of Work within forty-five (45) days after University’s receipt of an accurate invoice and all requested supporting documentation. Along with its invoice, Academic Search shall submit adequate receipts and documentation as requested by University to support reimbursement of all previously agreed upon reimbursable expenses. Academic Search is expected to comply with applicable policies and procedures, including those stated within the University of Nebraska Travel Policy (located at <https://nebraska.edu/-/media/unca/docs/offices-and-policies/policies/policies/university-of-nebraska-travel-policy.pdf>). University, in its discretion, may decline to reimburse expenses that are not pre-approved or fail to comply with applicable policies and procedures. Academic Search agrees that it is solely responsible for payment of income, social security, and other employment taxes due to the proper taxing authorities, and that University will not deduct such taxes from any payments to Academic Search hereunder, unless required by law.
3. **Expenses, Equipment, Tools, Materials, and Supplies.** University shall not be liable to Academic Search for any expenses paid or incurred by Academic Search unless otherwise agreed to in writing by University. Academic Search shall supply, at its sole expense, all equipment, tools, materials, or supplies to provide the Services.

4. **Taxes.** University is generally exempt from payment of state sales and use taxes and local occupation taxes within the State of Nebraska. University will furnish exemption certificates upon written request by Academic Search. If Academic Search is required to pay any taxes from which University is exempt as a result of doing business with University, it shall be solely responsible for the payment of those taxes.

5. **Purchase Order Requirement.** A purchase order shall be issued by University to Academic Search for payment in accordance with the terms of this Agreement. All invoices submitted by Academic Search shall make reference to the appropriate purchase order number to be eligible for payment.

6. **Term.** The term of this Agreement shall commence on the Effective Date and expire on June 30, 2024 ("Term").

7. **Termination.** In the event that either party commits a material breach of this Agreement and fails to remedy or cure such breach within thirty (30) days after receipt of written notice thereof from the non-breaching party, the non-breaching party may, at its option and in addition to any other remedies which it may have at law or in equity, terminate this Agreement by sending written notice of termination to the other party. Such termination shall be effective as of the date of receipt of the notice of termination. Additionally, University may terminate this Agreement for its convenience immediately upon written notice to Academic Search. Upon termination, University shall promptly pay Academic Search for all fees incurred up to and including the effective date of termination or Academic Search will refund to University a prorated share of any prepaid fees.

8. **Remedies.** In addition to any remedies available to University under law or equity, University may, at its sole discretion, take or require one (1) or more of the following remedial actions if Academic Search's performance is deficient and does not comply with the requirements of the Agreement: (a) require Academic Search to take corrective action to ensure that performance conforms to the requirements of the Agreement; (b) reduce payment to reflect the reduced value of the performance received; (c) require Academic Search to subcontract all or part of the Services at no additional cost to University; (d) withhold payment or require payment of actual damages caused by the deficiency of the Services; (e) replace the deficient Services and deduct the costs of the replacement Services from payments to Academic Search under the Agreement; and (g) terminate the Agreement pursuant to any termination provisions within the Agreement. These remedies are cumulative to the extent the remedies are not inconsistent, and University may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

9. **Representations and Warranties.** Academic Search warrants and represents that each of its employees and agents to perform any of the Services shall have the skills, training, and background reasonably commensurate with their level of performance or responsibility, to be able to perform in a competent and professional manner that is consistent with industry standards. Academic Search further warrants the Services provided will conform to the requirements of this Agreement and that in performing the Services Academic Search will not be in breach of any agreement with a third party. The foregoing warranties are conditions to this Agreement and are in addition to all other warranties, expressed or implied, and shall survive any inspection, acceptance, or payment by University. All warranties shall run to University. If any warranties specified herein or otherwise applicable are breached by Academic Search, University may, at its election, require re-performance of the Services or terminate this Agreement and receive a full refund. Academic Search agrees to hold University harmless from any loss, damage, or expense, including court costs and reasonable attorneys' fees, that University may suffer as a result of a breach or alleged breach of the foregoing warranties. The foregoing remedies are in addition to all other remedies University may have at law or in equity.

10. **Relationship of Parties.** No agency, partnership, or joint venture is created by this Agreement. The parties affirmatively disclaim any intent to form such relationship. Academic Search is solely responsible for maintenance and payment of insurance and the like that may be required by federal, state,

or local law with respect to any sums paid hereunder. Academic Search is not University's agent or representative and has no authority to bind or commit University to any agreements or other obligations.

11. **Indemnity.** To the fullest extent allowed by law, Academic Search shall defend, indemnify, and hold harmless University, its regents, officers, employees, agents, and students for any loss, claim, damage, expense, or liability of any kind, including reasonable attorneys' fees and costs, arising out of or in connection with the performance or nonperformance of Academic Search and its officers, employees, agents, and subcontractors under this Agreement.

12. **Insurance.** Academic Search shall at its own expense obtain and maintain throughout the Term of this Agreement general commercial liability insurance against claims for bodily injury, death, and property damage with limits of not less than one million dollars (\$1,000,000.00) per occurrence, and three million dollars (\$3,000,000.00) general aggregate to cover such liability caused by, or arising out of, activities of Academic Search and its agents and/or employees while engaged in or preparing for the provision of the Services. Upon request by University, Academic Search shall furnish to University certificates of insurance evidencing that such insurance is effective prior to provision of the Services. By requiring such minimum insurance, University shall not be deemed or construed to have assessed the risk or limited the liability that may be applicable to Academic Search under this Agreement. Academic Search shall assess its own risks and, if it deems appropriate, maintain higher limits or broader coverages. Academic Search further agrees, upon request, to include University as an additional insured on its general liability insurance policy on a primary and non-contributory basis. Academic Search is not relieved of any liability or other obligations assumed or pursuant to this Agreement by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.

13. **Workers' Compensation Insurance.** Academic Search shall maintain worker's compensation insurance as required by law and shall provide certificate of same if requested by University. Failure to provide a certificate of worker's compensation insurance may, at University's option, result in termination of the Agreement.

14. **Assignment.** This Agreement is non-assignable and non-transferrable unless agreed to in writing by the parties. Any attempt by either party to assign its rights or obligations hereunder without the written agreement of the other party shall be void.

15. **Entire Agreement and Amendment.** This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings between the parties with respect to the subject matter hereof. This Agreement may not be amended except by an agreement signed by Academic Search and an authorized representative of University.

16. **Governing Law and Forum.** The Agreement shall be governed by the laws of the State of Nebraska without giving effect to its conflicts of law provisions. Any legal actions brought by either party hereunder shall be in the state courts located in Lancaster County, Nebraska. It is understood and agreed that any legal action by Academic Search in relation to the Agreement may only be instituted in accordance with the provisions of the Nebraska State Contract Claims Act (Neb. Rev. Stat. §§ 81-8,302 to 81-8,306).

17. **Authority to Conduct Business in Nebraska and Service of Process.** Academic Search must independently determine whether Academic Search is required to register with the Nebraska Secretary of State, and, if so, must register and remain in good standing for the Term. If Academic Search is not registered with the Nebraska Secretary of State, Academic Search hereby consents to service of process upon it by registered or certified mail, return receipt requested, at its address for notices under this Agreement. Service shall be completed upon Academic Search's actual receipt of process, or upon University's receipt of the return thereof by the United States Postal Service, or a reasonable delivery service if Academic Search's address is outside the United States, as refused or undeliverable.

18. **Conflict of Interest.** Academic Search certifies, to the best of its knowledge and belief, that there are no potential organizational conflicts of interest related to this Agreement. If Academic Search cannot so certify, it shall provide to University a disclosure statement that describes all relevant information concerning any potential conflict of interest under this Agreement. In the event the potential conflict of interest cannot be resolved, University may declare this Agreement void and of no further force or effect and University shall have no further obligations under this Agreement.

19. **Work Status Verification.** Academic Search and its subcontractors shall use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska pursuant to Neb. Rev. Stat. §§ 4-108 to 4-114.

20. **Debarment List.** Academic Search certifies and warrants that it has not been debarred, suspended, or declared ineligible as defined in the Federal Acquisition Regulation 48 CFR Ch.1 Subpart 9.4. Academic Search also certifies that Academic Search, its partners, directors, officers, employees, licensees, subcontractors, or agents have not been excluded or debarred or otherwise become ineligible to participate in Federal health care programs pursuant to 42 USC § 1320a-7. This shall be an ongoing certification and warranty during the Term of the Agreement and Academic Search shall immediately notify University of any change in the status of the certification and warranty set forth in this section. If Academic Search becomes excluded from Federal health care program participation or placed on the Consolidated List of Debarred, Suspended, and Ineligible Contractors, the Agreement may be terminated immediately, for cause, by University. If any partners, directors, officers, employees, licensees, subcontractors, personnel, or agents of Academic Search become excluded from Federal health care program participation, such individual shall be removed from participating in this Agreement immediately. Failure by Academic Search to remove such excluded individual immediately shall provide University the right to terminate the Agreement immediately for cause.

21. **Taxpayer Transparency Act.** Under Neb. Rev. Stat. §§ 84-602.01 to 84-602.04, University is required to provide the Nebraska Department of Administrative Services with a copy of each contract that is a basis for an expenditure of state funds, including any amendments and documents incorporated by reference in the contract. Copies of all such contracts and documents will be published by the Nebraska Department of Administrative Services at <https://statecontracts.nebraska.gov/>. It shall be the sole responsibility of Academic Search (a) to notify University of any requested redactions to such contracts and documents and (b) to indicate the legal basis for such requested redactions at the time of execution. In addition, Academic Search agrees to defend any challenge to such redactions at its own expense. Academic Search's failure to request redactions to any contracts and documents released by University shall constitute a complete waiver of any and all claims for damages caused by any such release.

22. **Public Records.** Under Neb. Rev. Stat. §§ 84-712 to 84-712.09, information or records of or belonging to the University regarding, related to, or part of the Agreement will be open to public inspection and copying unless exempted from disclosure in accordance with the University's interpretation and application of applicable law. It shall be the sole responsibility of Academic Search (a) to notify University of requested redactions to any such information or records that may otherwise be required to be open to public inspection and copying and (b) to indicate the legal basis for such requested redactions. In addition, Academic Search agrees to defend any challenge to such requested redactions at its own expense. Academic Search's failure to request redactions to any information or records released by University shall constitute a complete waiver of any and all claims for damages caused by any such release.

23. **Nondiscrimination.** Academic Search agrees that neither it nor any of its subcontractors shall discriminate against any employee, or applicant for employment to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privilege of employment because of the race, color, religion, sex, disability, or national origin of the employee or applicant in accordance with the Nebraska Fair Employment Practice Act (Neb. Rev. Stat. §§ 48-1101 to 48-1125).

24. **Discrimination including Sexual Harassment.** State and federal law, as well as University of Nebraska Bylaws, policies, and guidelines prohibit discrimination (as defined therein) including harassment and retaliation, against students, employees, and other members of University community. Prohibited types of discrimination include discrimination on the basis of race, color, ethnicity, national origin, sex (including sexual harassment), pregnancy, sexual orientation, gender identity, religion, disability, age, genetic information, veteran status, marital status, political affiliation, and any other protected status. Academic Search shall exercise control over itself, its employees, agents, contractors, and affiliated parties to prohibit acts of discrimination, including sexual harassment, against University students, employees, and other members of the University community. Academic Search shall cooperate with University following any report of discrimination. In the event University determines that Academic Search or an employee, agent, contractor, or other person affiliated with Academic Search has engaged in discrimination, including harassment, or other inappropriate conduct, Academic Search will take prompt and effective action, in accordance with University's direction, to prevent recurrence of the conduct and to correct its effects, which may include removal of Academic Search or the employee, agent, contractor, or other person affiliated with Academic Search from providing the Services. Academic Search's failure to comply with University's directive or any other part of this provision may be cause for immediate termination of this Agreement. Academic Search acknowledges that University may have obligations to report any allegations or incidents of discrimination, including sexual harassment. Academic Search and employees, agents, contractors, and other persons affiliated with Academic Search who are directly providing the Services or present on University premises shall participate in any training as may be required by University from time to time, including training regarding sexual harassment and diversity and inclusion.

25. **Criminal Background Investigations.** If applicable, Academic Search represents and warrants that Academic Search has obtained, at its own expense and in a manner compliant with all applicable laws, a background screening for all of its employees who will be present on University premises. Such background screenings shall be completed consistent with current industry standards and shall, at a minimum, include the same degree of thoroughness as the background checks University conducts for its newly hired staff. Academic Search agrees to update any background screening upon reasonable request by University, it being agreed that any request based upon the occurrence of any illegal activity involving Academic Search or its personnel, or the reasonable suspicion of illegal activity would be deemed reasonable. Academic Search shall provide University with evidence of the completion of the required background screenings upon University's request. Alternatively, in the event Academic Search is an individual, University may require Academic Search complete a background check consistent with current industry standards at University's request. Academic Search shall not hire, retain, or engage any individual directly involved in the performance of services under the Agreement who has been convicted (felony or misdemeanor) of or entered into a court-supervised diversion program for any sexual offense, felony assault (including domestic violence related incidents), child abuse, molestation or other crime involving endangerment of a minor, murder, or kidnapping. Academic Search and Academic Search's employees or agents directly performing services under the Agreement cannot be listed on any sex offender registry. Other convictions, such as misdemeanor assault, drug distribution activity, felony drug possession, and any other felony or crime involving moral turpitude may also render Academic Search and Academic Search's employees or agents ineligible to directly perform services under the Agreement, taking into consideration (a) the nature and gravity of the offense(s), (b) the time that has passed since the offense or conduct and/or completion of the sentence, and (c) the nature of the services being performed. Academic Search and Academic Search's employees or agents cannot be listed on any sex offender registry. Academic Search agrees to ensure any third party with whom Academic Search engages to provide any part of services provided under the Agreement agrees to the same restrictions, conditions, and requirements of this section in the same capacity as Academic Search.

26. **Equal Opportunity (intentionally bolded).** If this Agreement is for \$10,000 or more and involves federal funds, then Academic Search shall comply with 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a), incorporated by reference with the following statement: **"This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60- 741.5(a). These regulations prohibit**

discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, national origin or for inquiring about, discussing, or disclosing compensation. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability or veteran status.”

27. **Logos or University Marks.** Academic Search shall not use or display any University name, logo, trademark, service mark (individually a “Mark” and collectively the “Marks”) and/or other indicia designated by University as a source identifier, unless expressly authorized in writing by University. Any unauthorized use of Marks is expressly prohibited. Academic Search agrees it will not use University’s name in any manner that acts as an endorsement or is an appearance of any endorsement in any promotion, advertisement, solicitation, or other communication, especially as it relates to Academic Search’s business.

28. **Right to Audit Privilege.** University reserves the right to audit or inspect work performed by Academic Search under the Agreement. University may participate directly or through an appointed representative in order to verify that services related to the Agreement have been performed in accordance with the procedures indicated. Academic Search shall maintain documentation for all expenses under this Agreement. The books, records and documents of Academic Search, insofar as they relate to services performed or money received under this Agreement, shall be maintained for a period of three (3) full years from the date of the final payment, and shall be subject to audit, at any reasonable time and upon reasonable notice, by University or its appointed representative. These records shall be maintained in accordance with generally accepted accounting principles.

29. **No Personal Liability.** Academic Search specifically understands and agrees that in no event shall any regent, official, officer, employee, agent, or student of University be personally liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, this Agreement, express or implied.

30. **Compliance.** Academic Search and its employees and agents will comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority, as well as applicable University policies.

31. **Severability.** The terms of the Agreement are severable. If any term or provision is declared by a court of competent jurisdiction to be illegal, void, or unenforceable the remainder of the provisions shall continue to be valid and enforceable.

32. **Survival.** Provisions surviving termination or expiration of this Agreement are those which on their face affect rights and obligations after termination or expiration and also include provisions concerning indemnification, confidentiality, representations and warranties, and governing law and venue.

33. **Waiver.** A waiver of any term or provision of this Agreement by University shall not be deemed to be a waiver of such provision on any subsequent breach of the same or any other provision contained in this Agreement. Any such waiver must be in writing to be effective, and no such waiver or waivers shall serve to establish a course of performance between the parties contradictory to the terms hereof.

34. **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing, sent via certified mail or hand delivery, effective when received, and delivered to the addresses provided on the signature page of this Agreement.

35. **Electronic Signatures.** Each party agrees that this Agreement and any other documents to be delivered in connection herewith may be electronically signed, and that any electronic signatures appearing

on this Agreement or such other documents are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

36. **Subcontractors.** Academic Search shall not subcontract all or substantially all of any facet of the services without the prior written approval of University. Academic Search shall be fully responsible for the acts and omissions of its subcontractors and of the persons directly or indirectly employed by them. Every subcontractor shall be bound by the terms of this Agreement; provided, however, that no contractual relationship shall exist between any subcontractor and University, unless evidenced in a separate contract independent of this Agreement with Academic Search.

37. **Unavailability of Funding.** Due to possible future reductions in State and/or Federal funds, University cannot guarantee the continued availability of funding of this Agreement notwithstanding the consideration contained within this Agreement. In the event funds to finance this Agreement become unavailable, either in full or in part, due to such reductions, University may terminate the Agreement or reduce the consideration upon notice in writing to Academic Search. Said notice shall be delivered by certified mail (return receipt requested) or in person (with proof of delivery). University shall be the final authority as to the availability of funds. The effective date of such Agreement, termination, or reduction in consideration shall be the actual effective date of the elimination or reduction of funding. In the event of a reduction in consideration, Academic Search may cancel this Agreement as of the effective date of the proposed reduction upon the provision of advance written notice to University. Academic Search shall be entitled to receive just and equitable compensation for any satisfactory work performed up to the date of the notice of termination. In the event of unavailability of funding, University shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential, or other damages resulting therefrom.

[Signature page to follow]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date set forth below.

Board of Regents of the University of Nebraska

Academic Search, Inc.

Signature: _____

Signature: _____

Printed Name: _____

Printed Name: _____

Date: _____

Date: _____

Title: _____

Title: _____

Notices to the University shall be sent to:

Notices to Academic Search shall be sent to:

Mr. Phil Bakken
Chief of Staff to the President
University of Nebraska
3835 Holdrege Street
Lincoln, NE 68583-0745

Dr. Shawn M. Hartman
Academic Search
1015 18th Street NW, Suite 510
Washington, DC 20036
Shawn.hartman@academicsearch.org

With copy to:

With copy to (optional):

Legal Notices
C/O P2P Procurement Contracts
1700 Y Street, BSC 125
Lincoln, NE 68588-0645