



**AGREEMENT**

**Between**

**BROWARD COUNTY**

**and**

**THE MERCER GROUP, INCORPORATED**

**for**

**EXECUTIVE SEARCH PROFESSIONAL SERVICES**

**RLI # R0709109R1**

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**Between**

**BROWARD COUNTY**

**and**

**THE MERCER GROUP, INCORPORATED**

**for**

**EXECUTIVE SEARCH PROFESSIONAL SERVICES**

**RLI# R0709109R1**

This is an Agreement, made and entered into by and between: BROWARD COUNTY, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY,"

**AND**

THE MERCER GROUP, INCORPORATED, a Georgia corporation, its successors and assigns, licensed to conduct business in the State of Florida, hereinafter referred to as "CONSULTANT."

WHEREAS, COUNTY desires to retain CONSULTANT to provide executive search professional services to COUNTY; and

WHEREAS, COUNTY has reviewed the qualifications of CONSULTANT to perform such executive search services and has found them to be satisfactory; and

WHEREAS, the Broward County Board of County Commissioners finds that it is in the public interest that COUNTY obtain such services which will serve a public purpose.

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, and payments hereinafter set forth, COUNTY and CONSULTANT agree as follows:

## ARTICLE 1

### DEFINITIONS AND IDENTIFICATIONS

For purposes of this Agreement, reference to one gender shall include the other, use of the plural shall include the singular, and use of the singular shall include the plural. The following definitions apply unless the context in which the word or phrase is used requires a different definition:

- 1.1 **Agreement** - means this document, Articles 1 through 9, inclusive. Other terms and conditions are included in the exhibits and documents that are expressly incorporated by reference.
- 1.2 **Board** - The Broward County Board of County Commissioners.
- 1.3 **Contract Administrator** - The Director of the Human Resources Division, or the designee of such Director. The primary responsibilities of the Contract Administrator are to coordinate and communicate with CONSULTANT and to manage and supervise execution and completion of the Scope of Services and the terms and conditions of this Agreement as set forth herein. In the administration of this Agreement, as contrasted with matters of policy, all parties may rely on the instructions or determinations made by the Contract Administrator; provided, however, that such instructions and determinations do not change the Scope of Services unless specifically authorized herein, and provided further that changes by the Contract Administrator which are expressly authorized by the Procurement Code (Chapter 21 of the Broward County Administrative Code) may be relied upon by the parties.
- 1.4 **County Administrator** - The administrative head of COUNTY pursuant to Sections 3.02 and 3.03 of the Broward County Charter.
- 1.5 **County Attorney** - The chief legal counsel for COUNTY who directs and supervises the Office of the County Attorney pursuant to Section 2.10 of the Broward County Charter.
- 1.6 **Project** - The Project consists of the services described in Article 2, Scope of Services.
- 1.7 **Purchase Order** – means a purchasing document issued by the Contract Administrator to CONSULTANT conveying acceptance of the CONSULTANT's proposal for an individual project.
- 1.8 **Purchasing Director** – Broward County's Director of its Purchasing Division.

- 1.9 **Services** – all services described in this Agreement, any related Statement of Work, and/or any related Purchase Order.
- 1.10 **Statement of Work** - a written document of COUNTY setting forth the services and/or deliverables required of CONSULTANT for a particular executive search project.

## ARTICLE 2

### SCOPE OF SERVICES

- 2.1 CONSULTANT shall perform all work identified in this Agreement; attached and incorporated in Exhibit A, "Scope of Services;" and any related Purchase Order and/or Statement of Work. The parties agree that the Scope of Services is a description of CONSULTANT's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites, and all labor, materials, equipment, and tasks which are such an inseparable part of the work described that exclusion would render performance by CONSULTANT impractical, illogical, or unconscionable.
- 2.2 CONSULTANT acknowledges and agrees that the Contract Administrator has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services to be provided under this Agreement, except as expressly authorized herein or expressly authorized by the Broward County Procurement Code (Chapter 21 of the Broward County Administrative Code). Any changes requested by either party, including the initiation of additional services, must be contained in a written amendment in accordance with section 9.19, below, and executed by the parties hereto prior to any deviation from the terms and conditions of this Agreement, except as otherwise provided herein, or as expressly authorized by the Broward County Procurement Code (Chapter 21 of the Broward County Administrative Code).
- 2.3 CONSULTANT acknowledges and agrees that services under this Agreement will be requested by COUNTY on an as-needed basis only, and no representation or guarantee is made by COUNTY to CONSULTANT that COUNTY will utilize CONSULTANT's services at all.
- 2.4 Nothing in this Agreement shall preclude COUNTY from using firms and individuals other than CONSULTANT to provide executive search professional services.
- 2.5 COUNTY reserves the right, in its sole discretion, to advertise periodically for additional consultants to perform services set forth in this Agreement for the purpose of increasing the existing CONSULTANT library/list if it is determined to be in COUNTY's best interest. COUNTY reserves the right, in its sole discretion, to add or remove any and all consultants, including CONSULTANT, according to the Procurement Code procedure for cancellation of contracts and/or according to the terms of this Agreement.

2.6 EXECUTIVE SEARCH RESOURCE LIBRARY

CONSULTANT acknowledges and agrees that CONSULTANT may be one of multiple consultants placed in an Executive Search Resource Library (ESRL) to provide executive search professional services to COUNTY.

Proposals for a particular executive search will be solicited from consultants in the ESRL through a Statement of Work, and acceptance of any such proposal will be made through the issuance of a Purchase Order by the Contract Administrator. Any determination concerning solicitations for proposals or acceptance of such proposals will be made at the sole discretion of the Contract Administrator.

ARTICLE 3

COMPENSATION

- 3.1 For the services performed under this Agreement, COUNTY shall pay CONSULTANT in accordance with and as further detailed in specific Purchase Order(s). There shall be no reimbursable expenses payable under this Agreement or any Purchase Order(s).

The Contract Administrator may make awards under this Agreement, through Purchase Order(s), up to Thirty Thousand Dollars (\$30,000.00) per executive search. Any single executive search in excess of thirty thousand dollars (\$30,000.00) must be approved by the Purchasing Director up to the limits authorized by the Board. Such award limit is not an obligation on the part of the COUNTY to pay CONSULTANT any compensation during the term of this Agreement and/or any renewal period(s), except as stated in any applicable Purchase Order(s) issued by the Contract Administrator or the Purchasing Director pursuant to this Agreement.

Any award to CONSULTANT in excess of the dollar amount limit established by this Agreement as the award authority of the Contract Administrator and the Purchasing Director for executive searches shall be subject to the prior approval of the Board.

3.2 METHOD OF BILLING AND PAYMENT:

3.2.1 Pursuant to the Compensation Schedule in Exhibit A, CONSULTANT may submit invoices for compensation no more often than on a monthly basis, but only after the services for which the invoices are submitted have been completed. An original invoice plus one copy are due within fifteen (15) days of the end of the month, except the final invoice which must be received no later than sixty (60) days after this Agreement expires. Invoices shall designate the nature of the services performed and the date(s) such services were completed.

3.2.2 COUNTY shall pay CONSULTANT within thirty (30) calendar days of receipt of CONSULTANT's proper statement, as required by the "Broward County Prompt Payment Ordinance" (Broward County Ordinance No. 89-49, as may be amended from time to time). To be deemed proper, all invoices must comply with the requirements set forth in this Agreement and must be submitted on the form and pursuant to instructions prescribed by the Contract Administrator. Payment may be withheld for failure of CONSULTANT to comply with a term, condition, or requirement of this Agreement.

3.3 Notwithstanding any provision of this Agreement to the contrary, COUNTY may withhold, in whole or in part, payment to the extent necessary to protect itself from loss on account of inadequate or defective work which has not been remedied or resolved in a manner satisfactory to Contract Administrator. The amount withheld shall not be subject to payment of interest by COUNTY.

3.4 Force Maieure

CONSULTANT shall not be required to perform as requested if its services are engaged pursuant to this Agreement or any of its Exhibits, as a result of fire, embargo, strike, war, accident, act of God, act of terrorism, voluntary or involuntary compliance with any valid law or regulation of any governmental agency of authority, or anything beyond CONSULTANT's reasonable control, as mutually agreed upon by both parties.

3.5 Payment shall be made to CONSULTANT payable in the name of and forwarded to CONSULTANT as set forth below:

CONSULTANT: The Mercer Group Inc.  
Attn: Name/Title: Connie Hoffmann, Senior Vice President  
Address: 7664 Courtyard Run  
W Boca Raton, FL 33433

#### ARTICLE 4

##### CHANGES IN SCOPE OF SERVICES

- 4.1 CHANGES: Except as otherwise specifically provided herein, any change to the Scope of Services must be accomplished by a written amendment, executed by the parties in accordance with Section 9.19 below.
- 4.2 DISPUTE RESOLUTION: In the event a dispute between the Contract Administrator and CONSULTANT arises over whether requested services constitute additional work or services or is outside the level of effort originally anticipated by this Agreement and such dispute cannot be resolved by the Contract Administrator and CONSULTANT, such dispute shall be promptly presented to COUNTY's County Administrator for resolution. The County Administrator's decision shall be final and binding on the parties. Any resolution in favor of CONSULTANT shall be set forth in a written document. During the pendency of any dispute, CONSULTANT, if requested in writing by the Contract Administrator, shall promptly perform the disputed services.

#### ARTICLE 5

##### TERM AND TIME OF PERFORMANCE

- 5.1 The term of this Agreement shall begin on the date it is fully executed by both parties and shall end two (2) years thereafter, subject to earlier termination as stated in this Agreement. This Agreement may be renewed for three (3) consecutive terms with each term consisting of a one (1) year period, at the sole option of the COUNTY's Purchasing Director, upon at least thirty (30) days prior written notice by the Purchasing Director. If the term of this Agreement extends beyond a single fiscal year of COUNTY, the continuation of this Agreement beyond the end of any fiscal year shall be subject to the availability of funds from COUNTY in accordance with Chapter 129, Florida Statutes, as may be amended from time to time.
- 5.2 All duties, obligations, and responsibilities of CONSULTANT required by this Agreement shall be completed no later than the time agreed upon by CONSULTANT and COUNTY's Contract Administrator or Purchasing Director as set forth in any Purchase Order(s), Statement(s) of Work and/or this Agreement. Time shall be deemed to be of the essence in performing the duties, obligations and responsibilities required by this Agreement, any Purchase Order(s), and/or Statement(s) of Work.

## ARTICLE 6

### TERMINATION

- 6.1 This Agreement and/or any Purchase Order may be terminated for cause by action of COUNTY's Purchasing Director or by CONSULTANT if the party in breach has not corrected the breach within ten (10) days after written notice from the aggrieved party identifying the breach. This Agreement and/or any Purchase Order may also be terminated for convenience by action of COUNTY's Purchasing Director upon not less than five (5) days' prior written notice by such Purchasing Director.

This Agreement and/or any Purchase Order may also be terminated by COUNTY's Purchasing Director upon such notice as such Purchasing Director deems appropriate under the circumstances in the event that such Purchasing Director determines that termination is necessary to protect the public health, safety, or welfare. This Agreement and/or any Purchase Order may also be terminated by the COUNTY's Purchasing Director upon not less than five (5) days' prior written notice in the event that CONSULTANT becomes debarred by COUNTY; loses essential qualifications; becomes insolvent; or is removed as a CONSULTANT for executive search professional services in accordance with the Procurement Code procedure for cancellation of contracts and/or according to the terms of this Agreement. An erroneous termination for cause shall be considered a termination for convenience.

- 6.2 Cause for COUNTY's termination of this Agreement and/or any Purchase Order shall include, but not be limited to, negligent, intentional, or repeated submission for payment of false or incorrect bills or invoices, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of the COUNTY as set forth in this Agreement and/or any Purchase Order, or multiple breach by CONSULTANT of this Agreement and/or any Purchase Order which has a material adverse effect on the efficient administration of the services notwithstanding whether any such breach was previously waived or cured.
- 6.3 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement except that notice of termination by the Purchasing Director which the Purchasing Director deems necessary to protect the public health, safety, or welfare may be verbal notice which shall be promptly confirmed in writing in accordance with the "NOTICES" section of this Agreement.

- 6.4 In the event this Agreement and/or any Purchase Order is terminated for convenience by the COUNTY's Purchasing Director, CONSULTANT shall be paid for any services performed to the effective date the Agreement and/or Purchase Order is terminated; however, upon being notified of COUNTY's election to terminate, CONSULTANT shall refrain from performing further services or incurring additional expenses under the terms of this Agreement and/or any Purchase Order, unless otherwise specifically authorized in such written termination notice. CONSULTANT acknowledges and agrees that Ten Dollars (\$10.00) of the compensation to be paid by COUNTY, the receipt and adequacy of which is hereby acknowledged by CONSULTANT, is given as specific consideration to CONSULTANT for COUNTY's right to terminate this Agreement for convenience.
- 6.5 In the event this Agreement or any Purchase Order is terminated for any reason, any compensation payable by COUNTY shall be withheld until all documents are provided by CONSULTANT to COUNTY pursuant to Section 9.1, of Article 9, below.

## ARTICLE 7

### INDEMNIFICATION

- 7.1 CONSULTANT shall at all times hereafter indemnify, hold harmless and, at County Attorney's option, defend or pay for an attorney selected by County Attorney to defend COUNTY, its officers, agents, servants, and employees from an and against any and all causes of action, demands, claims, losses, liabilities, and expenditures of any kind, including attorney fees, court costs, and expenses, caused or alleged to be caused by intentional or negligent act of, or omission of CONSULTANT, its employees, agents, servants, or officers, or accruing, resulting from, or related to the subject matter of this Agreement including, without limitation, any and all claims, losses, liabilities, expenditures, demands, or causes of action of any nature whatsoever resulting from injuries or damages sustained by any person or property. In the event any lawsuit or other proceeding is brought against COUNTY by reason of any such claim, cause of action or demand, CONSULTANT shall, upon written notice from COUNTY, resist and defend such lawsuit or proceeding by counsel satisfactory to COUNTY or, at COUNTY's option, pay for an attorney selected by County Attorney to defend COUNTY. The provisions of this section shall survive the expiration or earlier termination of this Agreement. To the extent considered necessary by Contract Administrator and County Attorney, any sums due CONSULTANT under this Agreement may be retained by COUNTY until all of COUNTY's claims for indemnification pursuant to this Agreement have been settled or otherwise resolved, and any amount withheld shall not be subject to payment of interest by COUNTY.

ARTICLE 8

INSURANCE

- 8.1 To ensure the indemnification obligation contained above, CONSULTANT shall, as a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverages set forth in Sections 8.3, 8.4, 8.5, and 8.6, in accordance with the terms and conditions required by this Article.
- 8.2 Except as otherwise permitted in Section 8.6, such policy or policies shall be without any deductible amount and shall be issued by approved companies authorized to do business in the state of Florida and having agents upon whom service of process may be made in Broward County, Florida. CONSULTANT shall pay all deductible amounts, if any. CONSULTANT shall specifically protect COUNTY and the Broward County Board of County Commissioners by naming COUNTY and the Broward County Board of County Commissioners as additional insureds under the Comprehensive General Liability Policy as well as any Excess Liability Policy coverage. The official title of the certificate holder is Broward County Board of County Commissioners. This official title shall be used in all insurance documentation.
- 8.3 Comprehensive General Liability Insurance. Unless the provisions of Section 8.9 apply, a Comprehensive General Liability Insurance Policy shall be provided, which shall contain minimum limits of Five Hundred Thousand Dollars (\$500,000) per occurrence, combined single limit for bodily injury liability, and property damage liability and Five Hundred Thousand Dollars (\$500,000) per aggregate. Coverage must be afforded on a form no more restrictive than the latest edition of the Comprehensive General Liability Policy, without restrictive endorsements, as filed by the Insurance Service Office and must include Contractual Insurance coverage.
- 8.4 Business Automobile Liability. Unless the provisions of Section 8.9 apply, a Business Automobile Liability policy shall be provided, which shall contain minimum limits of Three Hundred Thousand Dollars (\$300,000) per occurrence, combined single limit for Bodily Injury Liability and Property Damage Liability. Coverage must be afforded on a form no more restrictive than the latest edition of the Business Automobile Liability policy, without restrictive endorsements, as filed by the Insurance Services Office, and must include:

Owned Vehicles.  
Hired and Non-Owned Vehicles.  
Employers' Non-Ownership, if applicable.

- 8.5 Workers' Compensation Insurance. Unless the provisions of Section 8.9 apply, Workers' Compensation Insurance is to apply for all employees in compliance with Chapter 440, Florida Statutes, as may be amended from time to time, the "Workers' Compensation Law" of the state of Florida and all applicable federal laws. In additions, the policy(ies) must include:  
Employer's Liability with a limit of One Hundred Thousand Dollars (\$100,000) per each accident.
- 8.6 Professional Liability Insurance. Unless the provisions of Section 8.9 apply, CONSULTANT shall maintain, for the term of this Agreement, Professional Liability Insurance, including coverage for errors and omissions, in the minimum amount of One Million Dollars (\$1,000,000) per claim. If written with a deductible, such deductible shall not exceed Fifty Thousand Dollars (\$50,000). CONSULTANT shall notify COUNTY in writing within thirty (30) days of any claims filed or made against the Professional Liability Insurance policy.
- 8.7 CONSULTANT shall furnish to the Contract Administrator Certificates of Insurance or endorsements evidencing the insurance coverages specified by this Article within fifteen (15) calendar days after notification of award of the Agreement and attached hereto as Exhibit "B." The required Certificates of Insurance shall name the types of policies provided, refer specifically to this Agreement, and state that such insurance is as required by this Agreement. The Certificate of Insurance shall be in form similar to and contain the information set forth in Form 00708, to be provided by the COUNTY's Risk Management Division. CONSULTANT's failure to provide to COUNTY the Certificates of Insurance or endorsements evidencing the insurance coverage within fifteen (15) calendar days shall provide the basis for the termination of the Agreement.
- 8.8 Coverage is not to cease and is to remain in force (subject to cancellation notice) until all performance required of CONSULTANT is completed. All policies must be endorsed to provide COUNTY with at least thirty (30) days' notice of cancellation or change in coverage. If any of the insurance coverages expire prior to the completion of the work, copies of renewal policies shall be furnished at least thirty (30) days prior to the date of their expiration.
- 8.9 In the event CONSULTANT chooses to self-insure any of the insurance coverages required under Sections 8.3, 8.4, 8.5, and 8.6, such self-insurance must be certified by an authorized CONSULTANT financial officer or other more appropriate corporate officer. The certification must be accompanied by a copy of CONSULTANT's past three years of audited financial statements. In such certification, CONSULTANT shall advise the COUNTY of the total number of professional liability claims pending against CONSULTANT during the past twelve (12) months. CONSULTANT shall further advise the COUNTY of any professional liability claim filed against CONSULTANT during the term of this Agreement, if such claim would potentially impact CONSULTANT' financial

condition or its ability to provide the services required pursuant to this Agreement. COUNTY reserves the right to request additional information from CONSULTANT when self-insurance is submitted to the Broward County Risk Management Division for approval, or during the term of this Agreement, as determined necessary by the COUNTY.

- 8.10 In the event CONSULTANT at any time during this agreement ceases to be self-insured, CONSULTANT shall, at a minimum, provide, pay for, and maintain in force at all times during the term of this Agreement (unless otherwise provided), the insurance coverage in accordance with the terms and conditions required by this Article.

## ARTICLE 9

### MISCELLANEOUS

#### 9.1 OWNERSHIP OF DOCUMENTS

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of COUNTY. In the event of termination of this Agreement for any reason, any reports, photographs, surveys, and other data and documents prepared by CONSULTANT, whether finished or unfinished, shall be delivered by CONSULTANT to the Contract Administrator or Purchasing Director within seven (7) days after expiration or termination of this Agreement by either party. Any compensation due to CONSULTANT shall be withheld until all documents are received as provided herein.

#### 9.2 AUDIT RIGHT AND RETENTION OF RECORDS

COUNTY shall have the right to audit the books, records, and accounts of CONSULTANT that are related to this Agreement, any Purchase Order(s) and Statement of Work. CONSULTANT shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to the Agreement, any Purchase Order(s) and Statement(s) of Work. All books, records, and accounts of CONSULTANT shall be kept in written form, or in a form capable of conversion into written form within a reasonable time, and upon request to do so, CONSULTANT shall make same available at no cost to COUNTY in written form.

CONSULTANT shall preserve and make available, at reasonable times for examination and audit by COUNTY, all financial records, supporting documents, statistical records, and any other documents pertinent to and related to this Agreement, any Purchase Order(s) and Statement of Work for the required retention period of the Florida Public Records Act, Chapter 119, Florida Statutes, as may be amended from time to time, if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement. If any audit has been initiated, the books, records, and accounts shall be retained and made available until final resolution of the audit findings. If the Florida Public Records Act is determined by COUNTY to be applicable to CONSULTANT's records, CONSULTANT shall comply with all requirements thereof; however, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by CONSULTANT. Any incomplete or incorrect entry in such books, records, and accounts shall be a basis for COUNTY's disallowance and recovery of any payment upon such entry.

**9.3 NONDISCRIMINATION, EQUAL EMPLOYMENT OPPORTUNITY AND AMERICANS WITH DISABILITIES ACT**

9.3.1 CONSULTANT shall not unlawfully discriminate on the basis of race, color, national origin, sex, religion, age, marital status, political affiliation, disability, sexual orientation, gender identity and expression, or pregnancy (including but not limited to Broward County Code, Chapter 16½) in the performance of the Agreement, the solicitation for or purchase of goods or services relating to this Agreement, or in subcontracting work (if authorized) in the performance of this Agreement. Contractor shall include the foregoing or similar language in its agreements with any subcontractors, except that any project assisted by the U.S. Department of Transportation funds shall comply with the non-discrimination requirements in 49 CFR Parts 23 and 26, as amended. Failure to comply with the foregoing requirements is a material breach of the Agreement, which may result in termination of this Agreement or such other remedy as COUNTY deems appropriate.

9.3.2 CONSULTANT shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement. Contractor shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) and the Americans with Disabilities Amendments Act (ADAAA) in the course of providing any services funded by COUNTY, including Titles I and II of the ADA and ADAAA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, Contractor shall take affirmative steps to ensure nondiscrimination in employment against disabled persons.

**9.4 ASSIGNMENTS AND PERFORMANCE**

9.4.1 Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, CONSULTANT shall not subcontract any portion of the work set forth in this Agreement except as authorized by COUNTY in writing.

9.4.2 CONSULTANT represents that all persons who have been selected by CONSULTANT to deliver the services set forth by this Agreement had the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in Article 2 herein and any associated Work Orders; and that such persons shall provide and perform the requisite services to COUNTY's satisfaction for the agreed compensation.

#### 9.5 PUBLIC ENTITY CRIME ACT

CONSULTANT represents that the execution of this Agreement will not violate the Public Entity Crime Act, Section 287.133, Florida Statutes, as may be amended from time to time, which essentially provides that a person or affiliate who is a Contractor, Consultant or other provider and who has been placed on the convicted vendor list following a conviction for a Public Entity Crime may not submit a bid on a contract to provide any goods or services to COUNTY, may not submit a bid on a contract with COUNTY for the construction or repair of a public building or public work, may not submit bids on leases of real property to COUNTY, may not be awarded or perform work as a contractor, supplier, subcontractor, or Consultant under a contract with COUNTY, and may not transact any business with COUNTY in excess of the threshold amount provided in Section 287.017, Florida Statutes, as may be amended from time to time, for category two purchases for a period of thirty-six (36) months from the date of being placed on the convicted vendor list. Violation of this section shall result in termination of this Agreement and recovery of all monies paid by COUNTY pursuant to this Agreement, and may result in debarment from COUNTY's competitive procurement activities.

In addition to the foregoing, CONSULTANT further represents that there has been no determination, based on an audit, that it committed an act defined by Section 287.133, Florida Statutes, as a "public entity crime" and that it has not been formally charged with committing an act defined as a "public entity crime" regardless of the amount of money involved or whether CONSULTANT has been placed on the convicted vendor list.

#### 9.6 INDEPENDENT CONTRACTOR

CONSULTANT is an independent contractor under this Agreement. Services provided by CONSULTANT pursuant to this Agreement shall be subject to the supervision of COUNTY. In providing such services, neither CONSULTANT nor its agents shall act as officers, employees, or agents of the COUNTY. No partnership, joint venture, or other joint relationship is created hereby. COUNTY does not extend to CONSULTANT or CONSULTANT's agents any authority of any kind to bind COUNTY in any respect whatsoever.

CONSULTANT is an independent contractor under this Agreement and shall be solely responsible for any and all costs and expenses, including, but not limited to, payment of any applicable compensation, fringe benefits, or workers' compensation related to its employees, personnel, and agents performing services under this Agreement, any Statement of Work and/or any Purchase Order(s) issued by the COUNTY's Contract Administrator or Purchasing Director.

9.7 THIRD PARTY BENEFICIARIES

Neither CONSULTANT nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against either of them based upon this Agreement.

9.8 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or by hand-delivery with a request for a written receipt of acknowledgment of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the parties designate the following:

FOR COUNTY:

James R. Acton, Jr.  
Director of Human Resources  
115 S. Andrews Avenue Room 508  
Fort Lauderdale, Florida 33301

FOR CONSULTANT:

James Mercer, President & CEO  
(Name & Title of person)

The Mercer Group Inc.  
(Consultant's name)

551 W. Cordova Rd.  
(Address)  
#726  
Santa Fe, NM 87505

Name of Contract Representative: Connie Hoffmann  
Contact Telephone #: 954-303-6890  
Contact Fax #: 561-338-5086  
E-mail Address: choffmann@mercergroupinc.com

**9.9 ASSIGNMENT AND PERFORMANCE**

Neither this Agreement nor any interest herein shall be assigned, transferred, or encumbered by either party. In addition, CONSULTANT shall not subcontract any portion of the work required by this Agreement, except as specifically authorized by this Agreement, any Statement of Work and/or any Purchase Order(s) issued by the Purchasing Director pursuant to this Agreement.

CONSULTANT represents that all persons delivering the services required by this Agreement have the knowledge and skills, either by training, experience, education, or a combination thereof, to adequately and competently perform the duties, obligations, and services set forth in the Scope of Services and to provide and perform such services to COUNTY's satisfaction for the agreed compensation.

CONSULTANT shall perform its duties, obligations, and services under this Agreement in a skillful and respectable manner. The quality of CONSULTANT's performance and all interim and final product(s) provided to, or on behalf of, COUNTY shall be comparable to the best local and national standards.

**9.10 CONFLICT OF INTEREST**

Neither CONSULTANT nor its employees shall have or hold any continuing or frequently recurring employment or contractual relationship that is substantially antagonistic or incompatible with CONSULTANT loyal and conscientious exercise of judgment related to its performance under this Agreement.

CONSULTANT agrees that none of its officers or employees shall, during the term of this Agreement, serve as an expert witness against COUNTY in any legal or administrative proceeding in which he, she or CONSULTANT is not a party, unless compelled by court process. Further, CONSULTANT agrees that such persons shall not give sworn testimony or issue a report or writing, as an expression of his or her expert opinion, which is adverse or prejudicial to the interests of COUNTY in connection with any such pending or threatened legal or administrative proceeding unless compelled by court process. The limitations of this section shall not preclude CONSULTANT or any other persons in any way from representing themselves including giving expert testimony in support thereof in any action or in any administrative or legal proceeding.

In the event CONSULTANT is permitted to utilize subcontractors to perform any services required by this Agreement, CONSULTANT agrees to require such subcontractors, by written contract, to comply with the provisions of this section to the same extent as CONSULTANT.

9.11 CONTRACT EXECUTION AUTHORITY

Each individual executing this Agreement on behalf of a party hereto does hereby represent and warrant that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and to bind such party to this Agreement.

9.12 MATERIALITY AND WAIVER OF BREACH

COUNTY and CONSULTANT agree that each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof.

COUNTY's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

9.13 COMPLIANCE WITH LAWS

CONSULTANT shall comply with all federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

9.14 SEVERABILITY

In the event a portion of this Agreement is found by a court of competent jurisdiction to be invalid, the remaining provisions shall continue to be effective unless COUNTY or CONSULTANT elects to terminate this Agreement. An election to terminate this Agreement based upon this provision shall be made within seven (7) days after the finding by the court becomes final.

9.15 JOINT PREPARATION

Each party and its counsel have participated fully in the review and revision of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

**9.16 PRIORITY OF PROVISIONS**

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any exhibit attached hereto, any document or events referred to herein, or any document incorporated into this Agreement by reference and a term, statement, requirement, or provision of this Agreement, the term, statement, requirement, or provision contained in Articles 1 through 9 of this Agreement shall prevail and be given effect.

**9.17 GOVERNING LAW, JURISDICTION, VENUE, AND WAIVER OF JURY TRIAL**

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida and, when applicable, federal law. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the United States District Court for the Southern District of Florida, if appropriate. BY ENTERING INTO THIS AGREEMENT, CONSULTANT AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT.

**9.18 NO INTEREST**

Any monies which are the subject of a dispute regarding this Agreement and which are not paid by COUNTY when claimed to be due shall not be subject to interest. All requirements inconsistent with this provision are hereby waived by CONSULTANT.

**9.19 AMENDMENTS**

No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by the COUNTY and CONSULTANT.

**9.20 PRIOR AGREEMENTS**

This document represents the final and complete understanding of the parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representation

or agreement, whether oral or written.

**9.21 STAFF**

CONSULTANT shall provide the staff identified in its proposal for each Project as long as said staff are in CONSULTANT's employment.

CONSULTANT shall obtain prior written approval of Contract Administrator to change key staff. CONSULTANT shall provide Contract Administrator with such information as necessary to determine the suitability of proposed new key staff. Contract Administrator shall be reasonable in evaluating key staff qualifications.

**9.22 INCORPORATION BY REFERENCE**

The truth and accuracy of each "Whereas" clause set forth above is acknowledged by the parties, and attached Exhibit A is incorporated into and made a part of this Agreement.

**9.23 DRUG-FREE WORKPLACE**

It is a requirement of COUNTY that it enter into contracts only with firms that certify the establishment of a drug-free workplace in accordance with Chapter 21.31(a)(2) of the Broward County Procurement Code. Execution of this Agreement by CONSULTANT shall serve as CONSULTANT's required certification that it either has or that it will establish a drug-free workplace in accordance with Section 287.087, Florida Statutes, as may be amended from time to time, and Chapter 21.31(a)(2) of the Broward County Procurement Code, as may be amended from time to time.

**9.24 LEGISLATIVE, REGULATORY, OR ADMINISTRATIVE CHANGE**

In the event there shall be a change in the relevant federal or state statutes or regulations, the adoption of new federal or state legislation, or a change in any reimbursement system, any of which are reasonably likely to materially and adversely affect the manner in which either party may perform under this Agreement or which shall make this Agreement unlawful, the parties shall immediately enter into good faith negotiations regarding a new service agreement that complies with the law, regulation or policy and that approximates as closely as possible the position of the parties prior to the change.

**9.25 INTERPRETATION**

The language of this Agreement has been agreed to by both parties to express their mutual intent and no rule of strict construction shall be applied against either party hereto. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter" refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

**9.26 MULTIPLE ORIGINALS**

This Agreement may be fully executed in multiple copies by all parties, each of which, bearing original signatures, shall have the force and effect of an original document.

**THIS SECTION INTENTIONALLY LEFT BLANK**

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for Executive Search Professional Services: BROWARD COUNTY through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice Mayor authorized to execute same, by Board action on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and CONSULTANT, \_\_\_\_\_, signing by and through its \_\_\_\_\_, duly authorized to execute same.

COUNTY

ATTEST:

BROWARD COUNTY, by and through its Board of County Commissioners

\_\_\_\_\_  
Broward County Administrator, as  
Ex-Officio Clerk of the Broward County  
Board of County Commissioners

By \_\_\_\_\_  
Mayor

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.


Insurance requirements  
approved by Broward County  
Risk Management Division

By \_\_\_\_\_  
Signature above (Date)  
Dawn Mphler  
Print name and/or title above

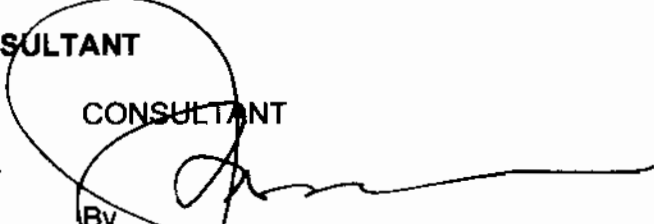
Approved as to form by  
JEFFREY J. NEWTON, County Attorney  
for Broward County, Florida  
Governmental Center, Suite 423  
115 South Andrews Avenue  
Fort Lauderdale, Florida 33301  
Telephone: (954) 357-7600  
Telecopier: (954) 357-7641

By \_\_\_\_\_  
Adam Katzman  
Assistant County Attorney  
7 day of October, 2009.

AGREEMENT BETWEEN BROWARD COUNTY AND CONSULTANT FOR  
EXECUTIVE SEARCH PROFESSIONAL SERVICES

ATTEST  
  
Secretary

CONSULTANT

CONSULTANT  
  
By

11 day of September, 2009

(CORPORATE SEAL)

STATE OF ~~FLORIDA~~ <sup>NEW MEXICO</sup> )  
 )SS  
COUNTY OF ~~SANTA FE~~ )

The foregoing instrument was acknowledged before me this  
11 day of SEPT, 2009, by JAMES L MERGER, as  
PRESIDENT/CEO, of the  
THE MERGER GROUP, INC, who is personally known  
to me or who has produced \_\_\_\_\_ as identification.

KAROLYN PRINCE-MERCER  
Print Name: Karolyn Prince-Mercer  
Notary Public, State of NM at Large  
Commission No. N/A

My Commission Expires:

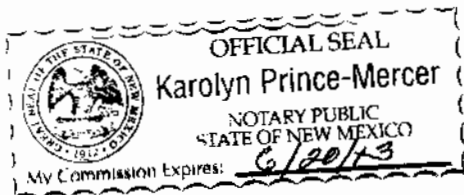


Exhibit "A"

to the Agreement

Between

Broward County

and

The Mercer Group, Incorporated

for

Executive Search Professional Services  
RLI No. R0709109R1

SCOPE OF SERVICES

Upon CONSULTANT's receipt of a Purchase Order from the Contract Administrator, CONSULTANT shall perform the services identified below for each recruitment consistent with the number of week(s) indicated below, unless otherwise modified as described herein:

<u>Week(s)</u>	<u>Task</u>
1	Meet with appropriate County staff to gather background information.
2-3	Develop and obtain approval from the Contract Administrator for the Recruitment Profile; develop a list of potential candidates to review; and prepare and place advertisements, if desired.
4-6	Actively recruit potential candidates by soliciting, receiving, and acknowledging resumes.
7	Evaluate resumes and gather supplemental information.
8	Submit to the Contract Administrator the Report on Leading Candidates and the List of Leading Candidates and speak with the Contract Administrator to review leading candidates.
9-10	Verify candidates' degrees and certifications; conduct reference checks; and interview best qualified candidates.
11	Submit Final Report and initiate the interview process with the Contract Administrator.
Post-11	Following interviews, conduct supplemental reference checks; conduct credit, criminal, civil litigation, and motor vehicle records checks; and assist the Contract Administrator with negotiations.

NOTE: Depending on the circumstances surrounding a particular executive search, the foregoing list of executive search services and the associated time frames may be modified by the mutual agreement of the CONSULTANT and the Contract Administrator.

1. ORGANIZATION AND POSITION ANALYSIS

CONSULTANT shall interview appropriate COUNTY staff to determine their views about the position and their concerns regarding desirable training, experience, and other pertinent qualifications of prospective candidates. CONSULTANT shall also gather and review relevant information about Broward County, such as applicable budgets and organization charts. CONSULTANT'S findings shall be summarized and a Recruitment Profile with the desired qualifications shall be presented to the Contract Administrator for approval. The Recruitment Profile shall be sent to potential candidates and shall include information about Broward County government, the position, and any other criteria established by COUNTY.

2. RECRUITMENT

After the Contract Administrator approves the Recruitment Profile, CONSULTANT shall actively seek individuals with superior qualifications consistent with the County's requirements and invite and encourage such individuals' interest and participation. CONSULTANT shall place announcements in professional journals and shall rely on its own experience, contacts, and file data for the identification of potential candidates. Consistent with COUNTY's Equal Employment Opportunity policies, CONSULTANT shall seek out the assistance of organizations representing the County's diverse population. CONSULTANT shall not discriminate against any applicant for employment on the basis of race, religion, creed, age, color, marital status, sex, sexual orientation, gender identity and expression, pregnancy, political affiliation, disability, medical condition, veteran status, or national origin.

3. PRELIMINARY SCREENING

CONSULTANT shall review, acknowledge, and evaluate all resumes received. Preliminary screening shall be based upon criteria contained in the Recruitment Profile, information contained in the resumes submitted to CONSULTANT, and CONSULTANT'S knowledge of the people and organizations with which the candidates work or are employed. CONSULTANT shall conduct telephone interviews with the candidates whose qualifications appear to most closely match the County's criteria to gain a better understanding of the candidates' backgrounds.

4. CANDIDATE EVALUATION

Thereafter, CONSULTANT shall interview those candidates whose qualifications most closely match the criteria established by the COUNTY. CONSULTANT shall examine the candidates' qualifications and achievements in relation to the selection criteria. CONSULTANT shall also verify degrees and certifications, and gather newspaper articles and any other information, if applicable and available, about the candidates (e.g., via the Internet). As part of CONSULTANT's process in evaluating candidates, CONSULTANT shall speak directly with individuals who are, or have been, in a position to evaluate the candidate's performance on the job. Based on the reference checks and evaluations, CONSULTANT shall provide the COUNTY with a frank, objective appraisal of each candidate (Report on Leading Candidates and the List of Leading Candidates).

5. FINAL REPORTING

CONSULTANT shall prepare a detailed report and evaluation on each candidate most nearly meeting the COUNTY's specifications. The candidates shall not be ranked.

6. SPECIAL ASSISTANCE

Upon request by the Contract Administrator, CONSULTANT shall provide the following support services:

- A. Prior to interviews, suggest interviewing and selection tips, and interview questions, and rating forms;
- B. Conduct a "briefing session" immediately preceding the interviews, and assist in a "debriefing" immediately following the interviews;
- C. Arrange the schedule of interviews and associated logistics for final candidates;
- D. Advise the Contract Administrator on starting salary, fringe benefits, relocation trends, and employment packages;
- E. Act as liaison between the Contract Administrator and the candidate in a discussion of offers and counter-offers;
- F. Conduct a final round of reference checks with current employers (if not previously done for reasons of confidentiality);
- G. Notify unsuccessful candidates who were not recommended for interview of the COUNTY's decision; and
- H. Conduct credit, criminal, civil litigation, and motor vehicle record checks through an outside service on all finalists before an interview is scheduled.

7. COMPENSATION SCHEDULE

Upon COUNTY's acceptance of the following services after completion by CONSULTANT, CONSULTANT shall be paid in the following manner:

- |    |                                                             |                       |
|----|-------------------------------------------------------------|-----------------------|
| A. | Recruitment Profile                                         | 1/3 of the agreed fee |
| B. | List of Leading Candidates and Report on Leading Candidates | 1/3 of the agreed fee |
| C. | Final Report (Item 5) and Special Assistance (Item 6)       | 1/3 of the agreed fee |

EXHIBIT B

# ACORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
10/01/2009

PRODUCER <b>MAGUIRE INSURANCE AGENCY, INC.</b> 1954 GREENSPRING SUITE 360 TIMONIUM, MD 21093	Serial # 100875	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.
	INSURERS AFFORDING COVERAGE	
INSURED <b>THE MERCER GROUP, INC.</b> P.O. BOX 9328 WINTER HAVEN, FL 33883	INSURER A: PHILADELPHIA INSURANCE CO.	
	INSURER B: HARTFORD INSURANCE COMPANY	
	INSURER C:	
	INSURER D:	
	INSURER E:	

**COVERAGES**

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES, AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS

INSR LTR	ADDL INSR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A		<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO. JECT <input type="checkbox"/> LOC	PHSD388582	02/06/2009	02/06/2010	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 50,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 3,000,000 PRODUCTS - COMP/OP AGG EXCLUDED
A		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	PHSD388582	02/06/2009	02/06/2010	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY EA ACC AGG \$
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				OTHER THAN AUTO ONLY EA ACC AGG \$
		<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B		<b>WORKER'S COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	30WECAA8987	07/14/2009	07/14/2010	WC STATUTORY LIMITS OTHER EL EACH ACCIDENT \$ 100,000 EL DISEASE - EA EMPLOYEE \$ 100,000 EL DISEASE - POLICY LIMIT \$ 500,000
A		<b>OTHER</b> <b>PROFESSIONAL ERRORS &amp; OMISSIONS</b>	PHSD388582	02/06/2009	02/06/2010	LIMIT: \$2,000,000 AGGREGATE: \$2,000,000 DED: \$5,000

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
 CERTIFICATE HOLDER IS AN ADDITIONAL INSURED WITH RESPECT TO THE ABOVE GENERAL LIABILITY AND AUTO LIABILITY.

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
<b>BROWARD COUNTY BOARD OF COUNTY COMMISSIONERS</b> RISK MANAGEMENT DIVISION, ROOM 210 115 SOUTH ANDREWS AVENUE FORT LAUDERDALE, FL 33301	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO CANCELLATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES AUTHORIZED REPRESENTATIVE