

**RESOLUTION NO. 48-10-10**

**A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE A CONTRACT WITH HY-BYRD INC., FOR BUILDING INSPECTION, PERMITTING AND OTHER SERVICES; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Town of Lake Park, Florida (“Town”) is a municipal corporation of the State of Florida with such power and authority as has been conferred upon it by the Florida Constitution and Chapter 166, Florida Statutes; and

**WHEREAS**, the Town is empowered to enter into contractual arrangements with public agencies, private corporations or other persons, pursuant to Florida Statutes; and

**WHEREAS**, the Town Commission has previously entered into a contract with Hy-Byrd, Inc. for building inspection and permitting services; and

**WHEREAS**, the Town and Hy-Bryd Inc., wish to continue with their contractual arrangement, and the parties have agreed to enter into a new Contract for a three year term; and

**WHEREAS**, the Town has budgeted funds in its current fiscal year budget which are available for the funding of this Contract; and

**WHEREAS**, Town staff is recommending that the Town Commission approve this Contract.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF LAKE PARK:**

**Section 1.** The whereas clauses are hereby incorporated herein as true and correct.

**Section 2.** The Mayor is hereby authorized and directed to execute the Contract between the Town of Lake Park and Hy-Bryd Inc., a copy of which is attached hereto and incorporated herein as **Exhibit “A”**.

**Section 3.** This Resolution shall take effect immediately upon its adoption.

The foregoing Resolution was offered by Commissioner Rumsey who moved its adoption. The motion was seconded by Vice-Mayor Osterman and upon being put to a roll call vote, the vote was as follows:

	AYE	NAY
MAYOR DESCA DUBOIS	<u>/</u>	—
VICE-MAYOR PATRICIA OSTERMAN	<u>/</u>	—
COMMISSIONER STEVEN HOCKMAN	<u>/</u>	—
COMMISSIONER JEANINE LONGTIN	<u>/</u>	—
COMMISSIONER KENDALL RUMSEY	<u>/</u>	—

The Town Commission thereupon declared the foregoing Resolution NO. 48-10-10 duly passed and adopted this 20 day of October, 2010.

TOWN OF LAKE PARK, FLORIDA

BY: Desca Dubois  
DESCA DUBOIS  
MAYOR

ATTEST:

Vivian M. Lemley  
VIVIAN M. LEMLEY  
TOWN CLERK  
TOWN OF LAKE PARK  
(TOWN SEAL)  
FLORIDA

Approved as to form and legal  
sufficiency:

BY: Thomas J. Baird  
THOMAS J. BAIRD  
TOWN ATTORNEY

**TOWN OF LAKE PARK  
BUILDING OFFICIAL SERVICES AGREEMENT**

This Agreement entered into this 1 day of Nov. 2010, by and between HY-BYRD, INC., a Florida corporation with offices located at 511 South East Coast Street, Lake Worth, Florida 33460, and THE TOWN OF LAKE PARK, a municipal corporation, with offices located at 535 Park Avenue, Lake Park, Florida, 33403.

**WITNESSETH**

**WHEREAS**, the Town of Lake Park, Florida ("TOWN ") is a municipality and given those powers and responsibilities enumerated by Chapter 166 Florida Statutes and the Florida Constitution; and

**WHEREAS**, the TOWN is empowered to enter into contractual arrangements with public agencies, private corporations or other persons, pursuant to Florida Statutes; and

**WHEREAS**, the TOWN required the services of an outside consultant to serve as the TOWN's Building Official, and therefore in or about 2005, the TOWN solicited competitive proposals for the required services through a Request For Proposals issued by the Town, and HY-BYRD, INC., a Florida corporation; and

**WHEREAS**, HY-BYRD, INC., submitted the successful Proposal to the Town Commission, and was awarded the Contract by the Town Commission; and

**WHEREAS**, the TOWN and HY-BYRD, INC., ("BUILDING OFFICIAL"), wish to continue with their contractual arrangement, and the parties have agreed to enter into a new Contract for up to a three year term; and

**WHEREAS**, the TOWN has budgeted funds in its current fiscal year budget which are available for the funding of this Contract; and

**NOW THEREFORE**, the TOWN and the BUILDING OFFICIAL in consideration of the benefits flowing from each to the other do hereby agree as follows:

**1. STATEMENT OF WORK**

- 1.1 The BUILDING OFFICIAL, by and through its President, Joseph A. Crisafulle, and/or his employees or agents shall perform all Building Official duties for the TOWN. The BUILDING OFFICIAL shall be responsible for direct regulatory administration and supervision of plans review, enforcement, and inspection of all phases of building construction within the Town, any construction, erection, alteration, demolition, or substantial improvement of, or addition to, any structure for which permitting is required. In so doing, the BUILDING OFFICIAL shall indicate in writing, compliance or non-compliance with all applicable codes. The

BUILDING OFFICIAL shall, to the satisfaction of the TOWN, fully and timely provide all duties, services, functions, obligations, and all other functions, which are typically performed by an in-house local government building official, including but not limited to, building and construction plans review for compliance with the Florida Building Code and other applicable codes the provision of written notice of deficiencies to the applicant; attend meetings with applicants, developers, engineers, design and other professionals; pre-construction plan review; building and other types of permit review and issuance; construction site inspections; processing and issuance of certificates of occupancy and certificates of completion; issuance of stop work orders; condemnation of unsafe buildings; processing of alarm permit applications; issuance of interpretations of the Florida Building Code and all local technical and other amendments, preparation of forms used in connection with Building Department functions and maintenance of the records of the TOWN Building Department; make recommendations regarding fee and rate structures for building department and related fees; testify on behalf of the TOWN in code enforcement proceedings, administrative appeals, and other administrative and/or judicial proceedings at the request of the TOWN Manager and/or TOWN Attorney; work with Palm Beach County Fire Rescue as needed with respect to fire inspection and other matters; determine compliance with Florida Building Code with respect to modifications of approved products based upon documentary evidence, such as certifications; prosecute appeals to the Florida Building Commission if authorized by the Town Commission; and other duties as may be reasonably required by the TOWN as a regular and routine duty of the BUILDING OFFICIAL. BUILDING OFFICIAL shall be responsible for all plan review and written reports for all building permits issued. All reports shall be filed in the TOWN'S Community Development Department. The BUILDING OFFICIAL shall also perform such other tasks as may be requested by the TOWN as are reasonable and customary for a Building Official, including direct communications with the applicants and their representatives.

- 1.2 The BUILDING OFFICIAL shall maintain fully staffed business hours equal to, but not less, than the TOWN's business hours of 8 AM to 5 PM, Monday through Friday, with TOWN holidays excepted.
- 1.3 The BUILDING OFFICIAL shall have discretionary approval over utilization of employees and agents who may be called upon to assist in performing field inspections for the TOWN. Each employee or agent of the BUILDING OFFICIAL who performs field inspections is required to inform the TOWN of any conflicts of interest which may exist or could exist in the future as a result of work done elsewhere or for others which could hinder proper performance in accordance with the terms of this Agreement. BUILDING OFFICIAL shall only utilize personnel who are State Certified for the functions they are performing.

- 1.4 All rights in data, drawings, specifications, sketches, maps, as-built drawings, designs, models, photographs, computer CADD discs, surveys, reports and other data developed or provided in connection with this Contract, shall be the sole and exclusive property of the TOWN, and the TOWN shall have the full right to use such data for any official purpose permitted by law, including making it available to the public. Such use shall be without additional payment to or approval by the BUILDING OFFICIAL. The TOWN shall have unrestricted authority to publish, disclose, distribute, and other wise use, in whole or in part, any data developer or prepared pursuant to this Contract.
- 1.5 The TOWN agrees to provide the necessary administrative materials for BUILDING OFFICIAL, including desk space, filing cabinets, business cards, in-house clerical assistance, and building code related materials, i.e., code books, plan review materials.

**2. TERM**

- 2.1 The term of this Contract is for a period of three one-year terms, commencing on the date that the Contract is executed by the TOWN (Mayor) ("Commencement Date"). At the end of each contract year, either party may terminate this contract provided notice is given, in writing, not less than 90 days prior to the last date of the contract year. TIME IS OF THE ESSENCE OF THIS AGREEMENT.

**3. CONSIDERATION AND EXPENSES**

- 3.1 The annual compensation paid to the BUILDING OFFICIAL for fiscal year ~~2009-2010~~ 2010-2011 shall be ~~\$90,000~~ \$85,000 to include up to a maximum of 125 inspections per month, with an increase to ~~\$92,700~~ \$87,550 for fiscal year ~~2010-2011~~ 2011-2012 to include up to a maximum of 135 inspections per month, and an increase to ~~\$95,481~~ \$90,176, for fiscal year ~~2011-2012~~ 2012-2013 to include up to a maximum of 145 inspections per month. All plan reviews with a total valuation of \$300,000.00 to \$400,000.00 will require a minimum review fee of \$250.00.
- 3.2 An additional inspection fee of \$10 shall be paid by the TOWN to the BUILDING OFFICIAL for each inspection that exceeds the monthly maximum allocation according to the following schedule:

<u>Fiscal Year</u>	<u>Maximum Allotted inspections per month</u>
2010-2011	125
2011-2012	135
2012-2013	145

- 3.3 The plans review fee for the review of plans where the total estimated cost of construction costs or valuation is \$300,000.00 to \$400,000.00 shall be a

minimum review fee of \$250.00; The plans review fee for the review of plans where the total estimated cost of construction costs or valuation is \$400,001.00 or more, shall be \$1.25 per thousand dollars or a fraction thereof.

- 3.4 ~~The BUILDING OFFICIAL shall conduct building inspections to verify the use of properties in conjunction with requests for zoning confirmation and the TOWN's processing of applications for business tax receipts, and the BUILDING OFFICIAL shall charge the TOWN a fee of \$20.00 per each such inspection.~~ For all inspections conducted by the BUILDING OFFICIAL in connection with building permits, and zoning confirmations no fee shall be charged by the BUILDING OFFICIAL to the TOWN of any initial inspection or for the first re-inspection; however, the charge for any subsequent re-inspections shall be \$25.00 per each re-inspection. The costs for these inspections shall be billed by the BUILDING OFFICIAL to the TOWN on a monthly basis.
- 3.5 The BUILDING OFFICIAL represents and warrants to the TOWN that these rates are the actual direct wage rates paid to BUILDING OFFICIAL's employees and the rates shall remain in effect for a period of one year from the date of Contract execution. Under no circumstances shall the BUILDING OFFICIAL be paid for travel to and from the TOWN.
- 3.6 Pursuant to Section 287.055(5)(a), Florida Statutes, signature of this Contract by BUILDING OFFICIAL shall act as the execution of a truth-in-negotiation certificate stating that wage rates and other factual unit costs supporting the consideration are accurate, complete, and current at the time of contracting. The BUILDING OFFICIAL agrees that the TOWN may adjust the consideration for this Contract to exclude any significant sums by which the consideration was increased due to inaccurate, incomplete, or non-current wage rates and other actual unit costs. The TOWN shall make any such adjustment within one (1) year following the termination of this Contract.
- 3.7 Requests for Additional Services. The undertaking by BUILDING OFFICIAL to perform professional services defined within this Agreement extends only to those services specifically described herein. If upon the request of the TOWN, BUILDING OFFICIAL agrees to perform additional services hereunder, the TOWN shall pay BUILDING OFFICIAL for the performance of such additional services an amount (in addition to all other amounts payable under this Agreement) based on the hourly fees established herein, plus reimbursable expenses incurred by BUILDING OFFICIAL, unless a lump sum addendum to this Agreement is executed by the parties to this Agreement addressing the additional services.

**Position**

**Hourly Rate**

Building Official

\$65.00

4. **EQUAL OPPORTUNITY**

4.1 The BUILDING OFFICIAL hereby assures that no person shall be discriminated against on the grounds of race, color, creed, national origin, handicap, age, or sex, in any activity under this Contract. The BUILDING OFFICIAL shall take all measures necessary to effectuate these assurances.

5. **INVOICING AND PAYMENT**

5.1 The BUILDING OFFICIAL'S invoices shall be sent to the following address:

Town of Lake Park  
Town Manager  
535 Park Avenue  
Lake Park, FL 33403

5.2 The BUILDING OFFICIAL shall bill the TOWN on a monthly basis. The TOWN shall pay the full amount of the invoice within 30 days of receipt and acceptance of the work by the TOWN, and provided the BUILDING OFFICIAL has performed the work according to the terms and conditions of this Contract to the satisfaction of the TOWN.

6. **INDEMNIFICATION AND INSURANCE**

6.1 For \$100.00 consideration, the sufficiency of which is acknowledged, payable as part of and included in the first payment hereunder, the BUILDING OFFICIAL shall defend, indemnify, save, and hold the TOWN, including the Town Commission, and the Town's agents, elected and appointed officials, representatives, and employees, harmless from any and all claims or causes of action, including without limitation, all damages, losses, liabilities, expenses, costs, and attorney's fees related to such claims, resulting from any negligent or intentional act or omission, or the violation of any federal, state, or local law or regulation, by the BUILDING OFFICIAL, its subcontractors, agents, assigns, invitees, or employees in connection with this Contract. The BUILDING OFFICIAL further acknowledges that it is solely responsible for ensuring its compliance and the compliance of its subcontractors, agents, assigns, invitees and employees with the terms of this Contract.

6.2 The BUILDING OFFICIAL shall maintain, or cause to be maintained, the following specified insurance coverages in the amounts set forth hereafter during the full period of the Contract, which must include the following coverages and minimum limits of liability:



- a. WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE for all employees of the BUILDING OFFICIAL for Statutory Limits in compliance with the applicable state and federal laws. Notwithstanding the number of employees or any other statutory provisions to the contrary, coverage shall extend to all employees of the BUILDING OFFICIAL and all sub-contractors.
  - b. COMPREHENSIVE GENERAL LIABILITY with the minimum limits of \$1,000,000.00, Per Occurrence, Combined Single Limit for Bodily Injury Liability, Property Damage Liability, Premises and Operations, Independent contractors, Products and Completed Operations, Broad Form Property / Personal Injury, XCU coverage, and a contractual Liability Endorsement.
  - c. BUSINESS AUTO LIABILITY with minimum limits of \$1,000,000.00, Per Occurrence, Combined Single Limit for Bodily Injury and Property Damage Liability. This shall be an "any-auto" policy including Owned, Hired, Non-Owned, and Employee Non-Ownership Coverage.
  - d. PROFESSIONAL LIABILITY (malpractice and professional negligence) coverage with minimum limits of \$1,000,000.00 for all agents and employees of BUILDING OFFICIAL.
- 6.3 The TOWN shall be included as an Additional Named Insured under the General Liability and Automobile Liability policies. Current valid insurance policies meeting the requirements herein identified shall be maintained during the duration of the BUILDING OFFICIAL. There shall be a 30 day notification to the TOWN, in the event of cancellation or modification of any stipulated insurance policy. It shall be the responsibility of the BUILDING OFFICIAL to ensure that any sub-contractors' are adequately insured or covered under their policies.
- 6.4 All Certificates of Insurance shall be kept on file with the TOWN, and approved by the TOWN prior to the commencement of any work activities. The TOWN may at its discretion, require the BUILDING OFFICIAL to provide a complete certified copy of the insurance policy(s). If this Contract includes the installation of machinery and/or equipment into an existing structure, the Comprehensive General Liability policy must include an endorsement covering same, including installation and transit.
- 6.5 The required insurance coverage shall be issued by an insurance company duly authorized and licensed to do business in the State of Florida with the following minimum qualifications in accordance with the latest edition of A.M. Best's Insurance Guide: Financial Stability: B+ to A+.
- 6.6 All required insurance shall preclude any underwriter's rights of recovery or subrogation against the TOWN with the express intention of the parties

being that the required coverages protect both parties as the primary insurance for any and all losses covered by the above described insurance.

- 6.7 The clauses "Other Insurance Provisions" and "Insured Duties in the Event of an Occurrence, Claim or Suit" as they appear in any policy of insurance in which the TOWN is named as an additional named insured shall not apply to TOWN.
- 6.8 Violation of the terms of this Paragraph 6 and its sub-parts shall constitute a material breach of the Contract by the BUILDING OFFICIAL and the TOWN, at its sole discretion, may cancel the Contract and all rights, title and interest of the BUILDING OFFICIAL shall thereupon cease and terminate.

## **7. TERMINATION/REMEDIES**

- 7.1 If either party fails to fulfill its obligations under this Contract in a timely and proper manner, the other party shall have the right to terminate this Contract by giving written notice of any deficiency. The party in default shall then have seven calendar days from receipt of notice to correct the deficiency. If the defaulting party fails to correct the deficiency within this time, this Contract shall terminate at the expiration of the seven day time period.
- 7.2 Early termination. The Town Manager shall provide written notice to the BUILDING OFFICIAL if the Town is dissatisfied with the services performed by the BUILDING OFFICIAL. Such written notice shall specify what areas of performance sought by the Town to be improved. The BUILDING OFFICIAL shall be given 30 days in which to remedy the situation. If the situation is not remedied within that time, the Town, upon the recommendation of the Town Manager, by motion and vote, shall have the option of terminating the Contract with three days written notice after the expiration of the thirty-day period.
- 7.3 Termination for the convenience of the Town. Upon seven calendar days written notice, delivered by certified mail, return receipt requested to the, the TOWN may, without cause and without prejudice to any other right or remedy, terminate the Contract for the TOWN'S convenience whenever the TOWN determines that such termination is in the best interest of the TOWN. Where the Contract is terminated for the convenience of the TOWN, the notice of termination must state that the Contract is being terminated for the convenience of the TOWN under the termination clause and the extent of the termination. Upon receipt of the notice of termination, the BUILDING OFFICIAL shall promptly discontinue all work at the time.

## **8. STANDARDS OF COMPLIANCE**

- 8.1 The BUILDING OFFICIAL, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulation relating to the performance of this Contract. The TOWN undertakes no duty to ensure such compliance, but will attempt to advise the BUILDING OFFICIAL, upon request, as to any such laws of which it has present knowledge.
- 8.2 The BUILDING OFFICIAL, by its execution of this Contract, acknowledges and attests that, neither he nor any of his suppliers, sub-contractor or affiliates who shall perform work which is intended to benefit the TOWN, has been convicted of any public entity crime pursuant to Section 287.133, Florida Statutes, or, if any such person, entity or affiliate was convicted of a public entity crime, a period longer than thirty-six (36) months has passed since any such person, entity or affiliate was placed on a convicted vendor list. The BUILDING OFFICIAL further understands and acknowledges by its execution of this Contract, that this Contract shall be null and void, and/or that this Contract is subject to immediate termination by the TOWN, for any misstatement or lack of compliance with the mandates of said statute. The TOWN, in the event of such termination, shall not incur any liability to the BUILDING OFFICIAL for any work or materials furnished.
- 8.3 The BUILDING OFFICIAL shall not be exempted from paying Florida Sales and Use taxes to the appropriate governmental agencies or for payment by the BUILDING OFFICIAL to suppliers for taxes on materials used to fulfill its contractual obligations with the TOWN. The BUILDING OFFICIAL shall be responsible and liable for the payment of all of its FICA/Social Security and other taxes resulting from this Contract.
- 8.4 Pursuant to Section 287.055(6), Florida Statutes, the BUILDING OFFICIAL warrants that it has not employed or retained any person, other than a bona fide employee working solely for the BUILDING OFFICIAL, to solicit or secure this Contract. Further, the BUILDING OFFICIAL warrants that he has not paid or agreed to pay any person, other than a bona fide employee working solely for the BUILDING OFFICIAL, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Contract. For breach of this provision, the TOWN may terminate this Contract without liability and, at its discretion, deduct or otherwise recover the full amount of such fee, commission, percentage, gift, or other consideration.

## 9. RELATIONSHIP BETWEEN THE PARTIES

- 9.1 The BUILDING OFFICIAL is an independent BUILDING OFFICIAL and is not an employee or agent of the TOWN. The BUILDING OFFICIAL will perform required services on an independent BUILDING OFFICIAL basis and shall be solely responsible for all employees' payroll taxes to include,

but not limited to Federal Income Withholding Tax, Workers' Compensation, FICA, and Federal and State Unemployment taxes. Nothing in this Contract shall be interpreted to establish any relationship other than that of an independent contractor, between the TOWN and the BUILDING OFFICIAL, its employees, agents, sub-contractors, or assigns, during or after the performance of this Contract. The BUILDING OFFICIAL is free to provide similar services for others.

- 9.2 The BUILDING OFFICIAL shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Contract without the prior written consent of the TOWN. Any attempted assignment in violation of this provision shall be void.
- 9.3 The BUILDING OFFICIAL shall not pledge the TOWN'S credit or make the TOWN a guarantor of payment or surety for any contract, debt, obligation, judgment, lien, or any form of indebtedness.

**10. RECORDS RETENTION/OWNERSHIP/AUDIT**

- 10.1 The BUILDING OFFICIAL understands that all documents produced by BUILDING OFFICIAL pursuant to this Contract are public records and BUILDING OFFICIAL must permit the inspection and copying of all public records and must maintain all public records pursuant to Chapter 119, Florida Statutes. The BUILDING OFFICIAL shall indemnify and hold the TOWN harmless from any demands, claims, actions or lawsuits of any kind regarding the BUILDING OFFICIAL's failure to comply with Chapter 119, F.S. related to public records. The BUILDING OFFICIAL shall permit the TOWN or its designated agent to inspect all records maintained by BUILDING OFFICIAL that are associated with this Contract at the location where they are kept upon reasonable notice.
- 10.2 The TOWN has not performed a pre-audit of the BUILDING OFFICIAL'S financial and/or accounting records to verify actual or average direct labor payroll rates or verify the general overhead factor and profit margin. However, the BUILDING OFFICIAL shall permit the TOWN or its designated agent to inspect such records at the location where they are kept upon reasonable notice. Furthermore, the TOWN shall have the right to audit the BUILDING OFFICIAL's financial and accounting records, in accordance with generally accepted governmental auditing standards, within a period of one year after completion of this Contract. This audit may be performed by the TOWN or a designated agency.
- 10.3 All documents, including, but not limited to, technical reports, research notes, scientific data and computer programs in draft and final form including the source code and object code, which are developed by the BUILDING OFFICIAL in connection with this Contract, may be utilized by the TOWN in its normal course of business. TOWN use may include, but shall not be limited to, reproduction, distribution and preparation of

derivative works. The TOWN will not hold the BUILDING OFFICIAL responsible if documents are used for other purposes than intended.

**11. CONFLICTS**

11.1 The TOWN recognizes and acknowledges that the BUILDING OFFICIAL is engaged in a business that provides consulting services to multiple clients including other governmental entities. Further, the TOWN, recognizes and acknowledges that the BUILDING OFFICIAL may presently, or may in the future, represent clients who are or may be doing business in or with the TOWN. The TOWN agrees that the BUILDING OFFICIAL may perform services for clients who are or may have matters before the Town Commission, provided BUILDING OFFICIAL discloses any and all clients it represents who may have any matters which are now or may reasonably be expected to come before the Town Commission for its consideration and, provided further, that the Town Commission waives the actual or potential conflict of interest created by the BUILDING OFFICIAL'S representation.

**12. NON-EXCLUSIVITY**

12.1 The Award of this Contract shall not impose any obligation on the TOWN to utilize the BUILDING OFFICIAL for all work of this type, which may develop during the contract period. The TOWN specifically reserves the right to concurrently contract with other companies for similar work if it deems such action to be in the TOWN'S best interest.

**13. FUNDING**

13.1 In the event that sufficient budgeted funds are not available for a new fiscal period, the TOWN shall notify the BUILDING OFFICIAL of such occurrence and the Contract shall terminate on the last day of the current fiscal period without penalty or expense to the TOWN.

**14. RIGHT TO AUDIT**

14.1 The TOWN reserves the right to audit the BUILDING OFFICIAL's records as such records relate to the services and the Contract between the TOWN and the BUILDING OFFICIAL. All records shall kept in a way so as to permit inspection pursuant to Chapter 119, Florida Statutes. The records of the BUILDING OFFICIAL shall be retained for three years from the date of final payment.

**15. ATTORNEY'S FEES**

15.1 In the event that legal action is taken to enforce this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, including attorney's fees at all appellate levels, and other costs and

disbursements, in addition to any other relief to which the prevailing party is entitled.

**16. FORCE MAJEURE**

16.1 Should the performance of this Agreement by either party be prevented or delayed by act of God, war, terrorist act, civil insurrection, fire, flood, storms, strikes, lock-outs, or any order of federal, state, county or local authority. That party's performance shall be excused to the extent it is prevented or delayed. Each party shall promptly give notice of any event it claims to be an event of force majeure.

**17. MISCELLANEOUS PROVISIONS**

17.1 The validity, construction and effect of this Agreement shall be governed by the laws of the State of Florida. Any claim, objection or dispute arising out of this Agreement shall be litigated in the Fifteenth Judicial Circuit in and for Palm Beach County, Florida.

17.2 Should any part, term or provision of this Agreement be by the courts decided to be invalid, illegal or in conflict with any law of the State, the validity of the remaining portion or provision shall not be affected thereby. In the event any provisions of this Contract shall conflict, or appear to conflict, the Contract, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.

17.3 BUILDING OFFICIAL shall not assign or transfer the Contract or its rights, title or interests therein without TOWN'S prior written approval. The obligations undertaken by BUILDING OFFICIAL pursuant to the Contract shall not be delegated or assigned to any other person or firm unless TOWN shall first consent in writing to the assignment. Violation of the terms of this Paragraph shall constitute a breach of Contract by BUILDING OFFICIAL and the TOWN may, at its discretion, cancel the Contract and all rights, title and interest of BUILDING OFFICIAL shall thereupon cease and terminate.

17.4 Notwithstanding any provisions of this Contract to the contrary, the parties shall not be held liable for any failure or delay in the performance of this Contract that arises from fires, floods, strikes, embargoes, acts of the public enemy, unusually severe weather, outbreak of war, restraint of government, riots, civil commotion, force majeure, act of God, or for any other cause of the same character which is unavoidable through the exercise of due care and beyond the control of the parties. Failure to perform shall be excused during the continuance of such circumstances, but this Contract shall otherwise remain in effect.

- 17.5 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Contract by the parties, their successors and assigns shall not be deemed a waiver of any of its rights or remedies, nor shall it relieve the other party from performing any subsequent obligations strictly in accordance with the terms of this Contract. No waiver shall be effective unless in writing and signed by the party against whom enforcement is sought. Such waiver shall be limited to provisions of this Contract specifically referred to therein and shall be not deemed a waiver of any other provision. No waiver shall constitute a continuing waiver unless the writing states otherwise.
- 17.6 This Contract may be amended, extended, or renewed only with the written approval of the parties.
- 17.7 This Contract states the entire understanding and agreement between the parties and supersedes any and all written or oral representations, statements, negotiations, or agreements previously existing between the parties with respect to the subject matter of this Contract. The BUILDING OFFICIAL recognizes that any representations, statements or negotiations made by TOWN staff do not suffice to legally bind the TOWN in a contractual relationship unless they have been reduced to writing and signed by an authorized TOWN representative. This Contract shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest.
- 17.8 Upon acceptance of this Agreement the Town of Lake Park agrees not to solicit nor accept employment of any Hy-Byrd employee throughout the term of employment with Hy-Byrd and for one (1) year following separation from Hy-Byrd for any reason whatsoever.

IN WITNESS WHEREOF, the parties or their duly authorized representatives hereby execute this Contract in triplicate.

This Contract shall be effective on the 15<sup>th</sup> day of ~~NOVEMBER, 2009~~ 2010

TOWN OF LAKE PARK, FLORIDA

Desca Dubois  
Desca Dubois, Mayor

ATTEST:

Vivian Mendez Lemley  
Vivian Mendez Lemley, Town Clerk  
TOWN OF LAKE PARK  
FLORIDA  
SEAL

APPROVED AS TO FORM:

Thomas J. Baird  
Thomas J. Baird,  
Town Attorney

WITNESS:

Nadia Di Tommaso  
[Signature]

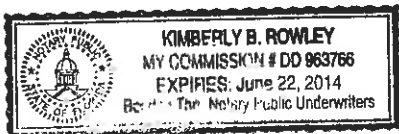
HY-BYRD, INC.

By: [Signature]

State of Florida  
County of Palm Beach

On this the 22<sup>nd</sup> day of October, ~~2009~~ 2010, before me, the undersigned Notary Public of the State of Florida, the foregoing instrument was acknowledged by (name of corporate officer), Michael Crissafulli (title), of \_\_\_\_\_ Hy-Byrd, Inc, a Florida corporation, on behalf of the corporation.

WITNESS my hand and official seal



Kimberly B Rowley  
Notary Public, State of Florida

Personally known to me, or  
 Produced identification:

\_\_\_\_\_  
(type of identification produced)