

RESOLUTION NO. 38-10-13

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF LAKE PARK, FLORIDA AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT FOR A ONE YEAR TERM WITH HY-BYRD INC., TO CONTINUE TO PROVIDE THE TOWN BUILDING INSPECTION, PERMITTING AND OTHER BUILDING OFFICIAL 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; and

WHEREAS, the Town Commission has previously entered into an Agreement with Hy-Byrd, Inc. for building inspection and permitting services, the term of which expires October 31, 2013; and

WHEREAS, the Town and Hy-Byrd Inc., wish to continue their contractual arrangements, and have agreed to enter into a new Agreement for a one year term; and

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

WHEREAS, the new contracted yearly amount of \$77,400 was approved as part of the 2013-2014 fiscal year budget; and

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

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

Section 1. The whereas clauses are hereby incorporated herein.

Section 2. The Mayor is hereby authorized and directed to execute the Agreement between the Town and Hy-Byrd, 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 Flaherty who moved its adoption. The motion was seconded by Commissioner Rapoza and upon being put to a roll call vote, the vote was as follows:


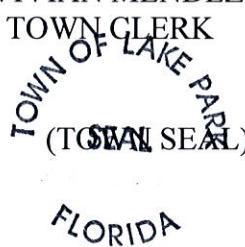
	AYE	NAY
MAYOR JAMES DUBOIS	<u> / </u>	<u> </u>
VICE-MAYOR KIMBERLY GLAS-CASTRO	<u> / </u>	<u> </u>
COMMISSIONER ERIN FLAHERTY	<u> / </u>	<u> </u>
COMMISSIONER MICHAEL O'ROURKE	<u> / </u>	<u> </u>
COMMISSIONER KATHLEEN RAPOZA	<u> / </u>	<u> </u>

The Town Commission thereupon declared the foregoing Resolution NO. 38-10-13 duly passed and adopted this 16 day of October, 2013.


TOWN OF LAKE PARK, FLORIDA

BY: 
JAMES DUBOIS
MAYOR

ATTEST:


VIVIAN MENDEZ
TOWN CLERK

TOWN OF LAKE PARK
(TOWN SEAL)
FLORIDA

Approved as to form and legal sufficiency:

BY: 
THOMAS J. BAIRD
TOWN ATTORNEY

BUILDING OFFICIAL SERVICES AGREEMENT

This Building Official Services Agreement (Agreement) is entered into this **1st day of November, 2013**, by and between HY-BYRD, INC., a Florida corporation (HY-BYRD) with offices located at 511 South East Coast Street, Lake Worth, Florida 33460, and THE TOWN OF LAKE PARK, a municipal corporation of the state of Florida, 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; and

WHEREAS, the TOWN does not have an employee who is qualified to act as a Building Official, and therefore requires the services of a consultant to serve as the TOWN's Building Official; and

WHEREAS, in 2005, the TOWN solicited competitive proposals from individuals or companies qualified to provide Building Official services for the Town ; and

WHEREAS, in response to the Town's Request For Proposals, HY-BYRD, was selected by the Town Commission as the most responsive and qualified Proposer; and

WHEREAS, the TOWN entered into an Agreement with HY-BYRD whereby HY-BYRD. provided services as the TOWN'S Building Official; and

WHEREAS, the TOWN and HY-BYRD wish to amend and extend the Agreement for a one year term ending October 31, 2014; and

WHEREAS, the TOWN has budgeted funds in the fiscal year 2013/2014 budget which are available through September 30, 2014.

NOW THEREFORE, the TOWN and HY-BYRD in consideration of the benefits flowing from each to the other do hereby agree to amend the existing Agreement as follows:

1. STATEMENT OF WORK

- 1.1 HY-BYRD by and through its President, Joseph A. Crisafulle, and/or his employees or agents shall perform all services and duties, and shall have

the authority to act as the Building Official of the TOWN pursuant to Florida law. HY-BYRD 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, HY-BYRD shall indicate in writing, compliance or non-compliance with all applicable codes. HY-BYRD 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 the TOWN'S 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. HY-BYRD 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. HY-BYRD 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 HY-BYRD 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 HY-BYRD 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 HY-BYRD 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. HY-BYRD 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 Agreement, 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 HY-BYRD. 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 Agreement.
- 1.5 The TOWN agrees to provide the necessary administrative materials for HY-BYRD, 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/TERMINATION

- 2.1 The term of this Agreement is for a period of one-year, commencing on the date that the Agreement is executed by the TOWN. Either party may terminate this Agreement by giving 90 days advance written notice of its intention to do so.

3. CONSIDERATION AND EXPENSES

- 3.1 The annual compensation paid to HY-BYRD for the Term of this Agreement shall be \$77,400 to include up to a maximum of 125 inspections per month. An additional inspection fee of \$10 shall be paid by the TOWN to HY-BYRD for each inspection that exceeds the 125 monthly maximum allocation.
- 3.2 The plan review fee for HY-BYRD'S review of plans where the total estimated cost of construction costs or valuation is \$300,000.00 to \$400,000.00 shall be \$250.00; The plan 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. These additional fees are borne by the Applicant of the building permit.

- 3.3 HY-BYRD shall not charge TOWN a fee for those inspections it conducts associated with the initial inspections or for the first re-inspection of building permits or zoning confirmations ; however, HY-BYRD shall be entitled to charge \$25.00 for each subsequent re-inspection. The costs for these inspections shall be billed by the HY-BYRD to the TOWN on a monthly basis.
- 3.5 HY-BYRD represents and warrants to the TOWN that these rates are the actual direct wage rates paid to it's employees and the rates shall remain in effect throughout the term of the Agreement. HY-BYRD shall not be paid for it's employees or agents' travel to and from the TOWN.
- 3.6 Pursuant to Section 287.055(5)(a), Florida Statutes, signature of this Agreement by HY-BYRD'S authorized representative 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. HY-BYRD agrees that the TOWN may adjust the consideration for this Agreement 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 six months following the termination of this Agreement.
- 3.7 Requests for Additional Services. The undertaking by HY-BYRD to perform professional services defined within this Agreement extends only to those services specifically described herein. If upon the request of the TOWN, HY-BYRD agrees to perform additional services hereunder, the TOWN shall pay it 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 it incurs.

<u>Position</u>	<u>Hourly Rate</u>
Building Official	\$65.00

4. **EQUAL OPPORTUNITY**

- 4.1 HY-BYRD 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 Agreement. HY-BYRD shall take all measures necessary to effectuate these assurances.

5. INVOICING AND PAYMENT

5.1 HY-BYRD'S invoices shall be sent to the following address:

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

5.2 HY-BYRD 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 HY-BYRD has performed the work according to the terms and conditions of this Agreement 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 HY-BYRD 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 HY-BYRD, its subcontractors, agents, assigns, invitees, or employees in connection with this Agreement. The HY-BYRD 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 Agreement.

6.2 HY-BYRD shall maintain, or cause to be maintained, the following specified insurance coverages in the amounts set forth hereafter during the full period of the Agreement, 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 HY-BYRD 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 HY-BYRD. 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 HY-BYRD 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 HY-BYRD to provide a complete certified copy of the insurance policy(s). If this Agreement 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 Agreement by HY-BYRD and the TOWN, at its sole discretion, may cancel the Agreement and all rights, title and interest of HY-BYRD shall thereupon cease and terminate.

7. TERMINATION/REMEDIES

- 7.1 If either party fails to fulfill its obligations under this Agreement in a timely and proper manner, the other party shall have the right to terminate this Agreement 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 Agreement shall terminate at the expiration of the seven day time period.
- 7.2 Early termination. The Town Manager shall provide written notice to HY-BYRD if the Town is dissatisfied with the services performed by HY-BYRD. Such written notice shall specify what areas of performance sought by the Town to be improved. HY-BYRD 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 Agreement 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 Agreement for the TOWN'S convenience whenever the TOWN determines that such termination is in the best interest of the TOWN. Where the Agreement is terminated for the convenience of the TOWN, the notice of termination must state that the Agreement 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, HY-BYRD shall promptly discontinue all work at the time.

8. STANDARDS OF COMPLIANCE

- 8.1 HY-BYRD, its employees, subcontractors or assigns, shall comply with all applicable federal, state, and local laws and regulation relating to the performance of this Agreement. The TOWN undertakes no duty to ensure such compliance, but will attempt to advise HY-BYRD, upon request, as to any such laws of which it has present knowledge.
- 8.2 HY-BYRD, by its execution of this Agreement, 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. HY-BYRD further understands and acknowledges by its execution of this Agreement, that this Agreement shall be null and void, and/or that this Agreement 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 HY-BYRD for any work or materials furnished.
- 8.3 HY-BYRD shall not be exempted from paying Florida Sales and Use taxes to the appropriate governmental agencies or for payment by HY-BYRD to suppliers for taxes on materials used to fulfill its contractual obligations with the TOWN. HY-BYRD shall be responsible and liable for the payment of all of its FICA/Social Security and other taxes resulting from this Agreement.
- 8.4 Pursuant to Section 287.055(6), Florida Statutes, HY-BYRD warrants that it has not employed or retained any person, other than a bona fide employee working solely for HY-BYRD, to solicit or secure this Agreement. Further, HY-BYRD warrants that he has not paid or agreed to pay any person, other than a bona fide employee working solely for HY-BYRD, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the awarding or making of this Agreement. For breach of this provision, the TOWN may terminate this Agreement 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 HY-BYRD is an independent BUILDING OFFICIAL and is not an employee or agent of the TOWN. HY-BYRD 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 Agreement shall be interpreted to establish any relationship other than that of an independent contractor, between the TOWN and HY-BYRD, its employees, agents, sub-contractors, or assigns, during or after the performance of this Agreement. HY-BYRD is free to provide similar services for others.
- 9.2 HY-BYRD shall not assign, delegate, or otherwise transfer its rights and obligations as set forth in this Agreement without the prior written consent of the TOWN. Any attempted assignment in violation of this provision shall be void.
- 9.3 HY-BYRD 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 HY-BYRD understands that all documents produced by BUILDING OFFICIAL pursuant to this Agreement 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. HY-BYRD shall indemnify and hold the TOWN harmless from any demands, claims, actions or lawsuits of any kind regarding HY-BYRD'S failure to comply with Chapter 119, F.S. related to public records. HY-BYRD shall permit the TOWN or its designated agent to inspect all records maintained by BUILDING OFFICIAL that are associated with this Agreement at the location where they are kept upon reasonable notice.
- 10.2 The TOWN has not performed a pre-audit of HY-BYRD'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, HY-BYRD 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 HY-BYRD'S financial and accounting records, in accordance with generally accepted governmental auditing standards, within a period of one year after completion of this

Agreement. 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 HY-BYRD in connection with this Agreement, 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 HY-BYRD responsible if documents are used for other purposes than intended.

11. CONFLICTS

- 11.1 The TOWN recognizes and acknowledges that HY-BYRD is engaged in a business that provides consulting services to multiple clients including other governmental entities. Further, the TOWN, recognizes and acknowledges that HY-BYRD 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 HY-BYRD may perform services for clients who are or may have matters before the Town Commission, provided HY-BYRD 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 HY-BYRD'S representation.

12. NON-EXCLUSIVITY

The Award of this Agreement shall not impose any obligation on the TOWN to utilize HY-BYRD for all work of this type, which may develop during the Agreement 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

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

14. RIGHT TO AUDIT

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

15. ATTORNEY'S FEES

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

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 Agreement shall conflict, or appear to conflict, the Agreement, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.

17.3 HY-BYRD shall not assign or transfer the Agreement or its rights, title or interests therein without TOWN'S prior written approval. The obligations undertaken by HY-BYRD pursuant to the Agreement 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 Agreement by

HY-BYRDL and the TOWN may, at its discretion, cancel the Agreement and all rights, title and interest of HY-BYRD shall thereupon cease and terminate.

- 17.4 Notwithstanding any provisions of this Agreement to the contrary, the parties shall not be held liable for any failure or delay in the performance of this Agreement 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 Agreement shall otherwise remain in effect.
- 17.5 Failures or waivers to insist on strict performance of any covenant, condition, or provision of this Agreement 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 Agreement. 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 Agreement 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 Agreement may be amended, extended, or renewed only with the written approval of the parties.
- 17.7 This Agreement 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 Agreement. HY-BYRD 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 Agreement 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.