AGREEMENT FOR CONSTRUCTION SERVICES

THIS AGREEMENT is made as of the 9th day of September in the year 2013, between **THE CITY OF LEESBURG**, a Florida Municipal Corporation, whose address is 501 West Meadow Street, Post Office Box 490630, Leesburg, Florida 34749-0630 (hereinafter referred to as the "CITY"), and **KAM SERVICES, INC.** whose address is P.O. Box 121728, Clermont, Florida 34712 (hereinafter referred to as the "CONTRACTOR").

NOW, THEREFORE, in consideration of the mutual benefits accruing to the parties to this Agreement, and for other good and valuable considerations, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Services. The CONTRACTOR shall perform the following services: **SEE ATTACHMENT "A,"** which is attached and incorporated by reference herein. Nothing herein shall limit the CITY'S right to obtain proposals or services from other contractors for similar projects.

2. Compensation. The services shall be performed for a total price of **$57,150.00**. The cost of the services shall not exceed this amount unless the CITY has executed a written change order approving any increase in price.

3. Payment. CITY shall compensate CONTRACTOR for their services in the following manner; **SEE ATTACHMENT "B"**. No other costs or services shall be billed to the CITY.

4. Labor and Materials. All work will be done in a competent and workmanlike manner, using quality, new materials. CONTRACTOR shall guarantee all materials and workmanship furnished under this agreement for a period of one (1) year from completion.

5. Authorized Expenses. The CITY will not be liable for any expenses incurred by the CONTRACTOR prior to the issuance of a Notice to Proceed except as authorized by the CITY in writing.

6. Insurance. The CONTRACTOR will maintain throughout this Agreement the following insurance: SEE EXHIBIT "A."

A. The original of each such policy of insurance, or a complete duplicate, shall be delivered to CITY by CONTRACTOR prior to starting work, together with evidence that the premiums have been paid.

B. All required insurance shall be provided by insurers acceptable to the CITY with an A.M. Best rating of at least "A."

C. The CONTRACTOR shall require, and shall be responsible for assuring that any and all of its subcontractors secure and maintain such insurance that are required by law to be provided on behalf of their employees and others until the completion of that subcontractors work.

D. The required insurance shall be secured and maintained for not less than the limits required by the CITY, or as required by law, whichever is greater.

E. The required insurance shall not limit the liability of the CONTRACTOR. The CITY does not represent these coverages or amounts to be adequate or sufficient to protect the CONTRACTOR'S interests or liabilities, but are merely required minimums.

F. All liability insurance, except professional liability, shall be written on an occurrence basis.

G. The CONTRACTOR waives its right of recovery against the CITY to the extent permitted by its insurance polices.

H. Insurance required of the CONTRACTOR, or any other insurance of the CONTRACTOR shall be considered primary, and insurance of the CITY, if any, shall be considered excess as applicable to any claims, which arise out of the agreement, contract or lease.

I. Except for workers' compensation and professional liability, the CONTRACTOR'S insurance policies shall be endorsed to name the CITY OF LEESBURG as additional insured to the extent of the agreement, contract or lease.

J. The Certificate(s) of Insurance shall designate the CITY as certificate holder as follows:

City of Leesburg
Attention: Mike Thornton, Purchasing Manager
P.O. Box 490630
Leesburg, Florida 34749-0630

K. The Certificate(s) of Insurance shall include a reference to the project and/or purchase order number.

L. The CONTRACTOR shall notify the CITY at least thirty (30) days in advance of any known or planned cancellation of required insurance policy or coverage.

M. The Certificate(s) of Insurance shall include all deductibles and/or self-insurance retentions for each line of insurance coverage.

N. The CONTRACTOR, at the discretion of the Risk Manager for the CITY, shall provide information regarding the amount of claims payments or reserves chargeable to the aggregate amount of the CONTRACTOR' S liability coverage(s).

7. Indemnification. The CONTRACTOR shall indemnify the CITY and hold it, its officers, and its employees harmless from liabilities, losses, and costs, including, but not limited to, reasonable attorney's fees to the extent caused by the negligence, recklessness, or intentional wrongful conduct of the CONTRACTOR and persons employed or utilized by the CONTRACTOR in the performance of this Agreement. The liability of the CONTRACTOR shall, however, be limited to one million and 00/100 dollars ($1,000,000.00) per occurrence, and the obligation of the CONTRACTOR to indemnify the CITY shall be limited to acts, omissions, or defaults of the CONTRACTOR; any contractors, subcontractors, sub-subcontractors, materialmen, or agents or employees of any of them, providing labor, services or materials in connection with the project; and the CITY, its officers, agents and employees, provided however that the CONTRACTOR shall not be obligated to indemnify the CITY against losses arising from the gross negligence, or willful, wanton, or intentional misconduct of the CITY, its officers, agents and employees, or against statutory violations or punitive damages except to the extent caused by or resulting from the acts or omissions of the CONTRACTOR, or any contractors, subcontractors, sub-subcontractors, materialmen, or agents or employees of any of them, providing labor, services, or materials in connection with this Agreement.

8. Waiver of Lien. The CONTRACTOR agrees to make payment of all proper charges for labor, materials and equipment supplied and CONTRACTOR shall hold harmless the CITY against any claim arising out of any unpaid bills for labor, services, materials or equipment furnished to this project.

9. Codes, Laws, and Regulations. CONTRACTOR will comply with all applicable codes, laws, regulations, standards, and ordinances in force during the term of this Agreement.

10. Permits, Licenses, and Fees. CONTRACTOR will obtain and pay for all permits and licenses required by law that are associated with the CONTRACTOR'S performance of the Scope of Services.

11. Risk of Loss. The CONTRACTOR assumes the risk of loss of damage to the CITY's property during possession of such property by the CONTRACTOR, and until delivery to, and acceptance of, that property to the CITY. The CONTRACTOR shall immediately repair, replace or make good on the loss or damage without cost to the CITY, whether the loss or damage results from acts or omissions (negligent or not) of the CONTRACTOR or a third party.

The CONTRACTOR shall indemnify and hold the CITY harmless from any and all claims, liability, losses and causes of action which may arise out of the fulfillment of this Agreement. The CONTRACTOR shall pay all claims and losses of any nature whatsoever in connection therewith, and shall defend all suits, in the name of the CITY when applicable, and shall pay all costs and judgments which may issue thereon.

12. Access to Records. CONTRACTOR will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination by the CITY and/or Agencies with the State of Florida having provided grant funding on this project. Records will be available for examination during CONTRACTOR'S normal business hours. Said records will be maintained for a period of five (5) years after the date of the invoice.

13. Contingent Fees Prohibited. The CONTRACTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the CONTRACTOR, to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the CONTRACTOR any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or making of this Agreement. In the event of a breach of this provision, the CITY shall have the right to terminate this Agreement without further liability and at its discretion, deduct from the contract price, or otherwise recover, the full amount of any such fee, commission, percentage, gift or consideration paid in breach of this Agreement.

14. Ownership of Documents. All data, specifications, calculations, estimates, plans, drawings, construction documents, photographs, summaries, reports, memoranda, and other documents, instruments, information and material prepared or accumulated by the CONTRACTOR (or by such sub-consultants and specialty consultants) in rendering services hereunder shall be the sole property of the CITY who may have access to the reproducible copies at no additional cost other than printing. Provided, that the CONTRACTOR shall in no way be liable or legally responsible to anyone for the CITY's use of any such materials for another PROJECT, or following termination. All original documents shall be permanently kept on file at the office of the CONTRACTOR.

15. Independent Contractor. The CONTRACTOR agrees that it is an independent contractor and not an agent, joint venture, or employee of the CITY, and nothing in this Agreement shall be construed to be inconsistent with this relationship or status. None of the benefits provided by the CITY to its employees, including but not limited to, workers' compensation insurance, unemployment insurance, or retirement benefits, are available from the CITY to the CONTRACTOR. CONTRACTOR will be responsible for paying its own Federal income tax and self-employment tax, or any other taxes applicable to the compensation paid under this Agreement. The CONTRACTOR shall be solely and entirely responsible for his or her acts during the performance of this Agreement.

16. Assignment. Neither party shall have the power to assign any of the duties or rights or any claim arising out of or related to the Agreement, whether arising in tort, contract, or otherwise, without the written consent of the other party. These conditions and the entire Agreement are binding on the heirs, successors, and assigns of the parties hereto.

17. No Third Party Beneficiaries. This Agreement gives no rights or benefits to anyone other than the CONTRACTOR and the CITY.

18. Jurisdiction. The laws of the State of Florida shall govern the validity of this Agreement, its interpretation and performance, and any other claims related to it. In the event of any litigation arising under or construing this Agreement, venue shall lie only in Lake County, Florida.

19. Term. The term of this Agreement shall be for a period of 180 calendar days or until the terms and conditions of this Agreement, including, but not limited to, its Scope of Services, have been completed, whichever occurs first, as determined by the CITY. Work shall begin within 5 calendar days from the date the CITY issues a Notice to proceed. All services to be rendered by the CONTRACTOR, as specified in the Contract Documents, shall be completed within 30 calendar days from the date the CITY issues a Notice to Proceed.

20. Termination. All or part of this Agreement may be terminated under the following conditions;

a. **For Convenience.** All or part of this Agreement may be terminated by the CITY for its convenience on fifteen (15) days written notice to the CONTRACTOR. In such event, the CONTRACTOR will be entitled to compensation for services competently performed up to the date of termination.
b. **For Cause.** CITY may terminate the Agreement for cause if CONTRACTOR;
    i. becomes Insolvent/Bankrupt, or
    ii. commits a material breach of the Agreement which does not otherwise have a specified contractual remedy, provided that:
        1. CITY shall first provide CONTRACTOR with detailed written notice of the breach and of CITY's intention to terminate the Agreement, and
        2. CONTRACTOR shall have failed, within the number of days indicated in the written notice, to commence and diligently pursue cure of the breach.

None of these remedies restricts the CITY's right to pursue a cure by filing a claim against the CONTRACTOR's Public Construction Bond.

21. Contact Person. The primary contact person under this Agreement for the CONTRACTOR shall be MICHAEL HEINE, Project Manager. The primary contact person under this Agreement for the CITY shall be DAVID LOTT, Project Representative.

22. Approval of Personnel. The CITY reserves the right to approve the contact person and the persons actually performing the professional services on behalf of CONTRACTOR pursuant to this Agreement. If CITY, in its sole discretion, is dissatisfied with the contact person or the person or persons actually performing the services on behalf of CONTRACTOR pursuant to this Agreement, CITY may require CONTRACTOR assign a different person or persons be designated to be the contact person or to perform the CONTRACTOR services hereunder.

23. Notice to Owner. All Notice to Owners (NTO) issued by sub-contractors and material suppliers must be mailed or delivered to:

CITY OF LEESBURG
ATTN: PURCHASING MANAGER
RE: ITB - 130411

501 W. MEADOW ST
LEESBURG, FL 34748

24. Disclosure of Conflict. The CONTRACTOR has an obligation to disclose to the CITY any situation that, while acting pursuant to this Agreement, would create a potential conflict of interest between the CONTRACTOR and his duties under this Agreement.

25. Illegal Alien Labor - CONTRACTOR shall comply with all provisions of the Federal Immigration and Control Act of 1986 (8 U.S. Code § 1324 a) and any successor federal laws, as well as all provisions of Section 448.09, Florida Statutes, prohibiting the hiring and continued employment of aliens not authorized to work in the United States. CONTRACTOR shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into an Agreement with a subcontractor that fails to certify to the CONTRACTOR that the subcontractor is in compliance with the terms stated within. The CONTRACTOR nor any subcontractor employed by him shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. CONTRACTOR agrees that it shall confirm the employment eligibility of all employees through participation in E-Verify or an employment eligibility program approved by the Social Security Administration and will require same requirement to confirm employment eligibility of all subcontractors.

All cost incurred to initiate and sustain the aforementioned programs shall be the responsibility of the CONTRACTOR. Failure to meet this requirement may result in termination of the Agreement by the CITY.

26. Authority to Obligate. Each person signing this agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and bind and obligate such party with respect to all provisions contained in this agreement.

25. Counterparts. Original signatures transmitted and received via facsimile or other electronic transmission of a scanned document, (e.g., PDF or similar format) are true and valid signatures for all purposes hereunder and shall bind the parties to the same extent as that of an original signature. Any such facsimile or electronic mail transmission shall constitute the final agreement of the parties and conclusive proof of such agreement. Any such electronic counterpart shall be of sufficient quality to be legible either electronically or when printed as hardcopy. The CITY shall determine legibility and acceptability for public record purposes. This Agreement may be executed in one or more counterparts, each of which shall for all purposes be deemed to be an original and all of which shall constitute the same instrument.

[Signature page follows.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date indicated in the preamble to the Agreement.

THE CITY OF LEESBURG, FLORIDA

By: _____
Mayor

ATTEST:

_____
City Clerk

Approved as to form and content:

_____
City Attorney

"KAM SERVICES, INC. "

By: Kerri A Myer

Printed: Kerri A Myer

Its: President
Title

ATTACHMENT "A"

I. **Scope of Services.** The contractor shall provide all labor, tools, equipment, materials, and supplies for the Relocation and Installation of a Pre-Fabricated Building as specified by ITB 130411 and Addendums 1 through 4.

II. **Technical Specifications.** Technical specifications for this project are comprised of: Scope of Work/Specifications in Section 2 and the Drawings of ITB 130411.

III. **Addenda.** Addendum 1 through 4 to ITB 130411 is incorporated by reference and made a part hereof.

IV. **Vendor Bid Response**. The bid response to Invitation to 130411 submitted by KAM Services, Inc. dated August 13, 2013, is incorporated by reference and made a part hereof.

V. **Insurance Requirements.** The Insurance and Indemnity Requirements from Invitation to Bid 130411 are incorporated by reference and made a part hereof.

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ATTACHMENT "B" - SCHEDULE OF BID ITEMS

Bid Item	Item Description	Unit	Total Bid Price
1	Install (Construct) concrete foundation including stem wall as specified.	Lump Sum	$13,800.00
2	Relocate & Install Concrete Communications Shelter	Lump Sum	$21,500.00
3	Electrical (wiring, connection, engineering)	Lump Sum	$21,850.00
	Grand Total		$57,150.00