

**PURCHASING AGREEMENT**

This Agreement, made and entered into this 1st day of July, in the year 2009, by and between LEE COUNTY, a political subdivision and chartered county of the STATE OF FLORIDA, acting by and through its BOARD OF COUNTY COMMISSIONERS, the governing body thereof, hereinafter referred to as "County", and Calusa Blueway Outfitters hereinafter referred to as "Vendor".

WITNESSTH: That the parties hereto, for the consideration herein set forth mutually agree as follows:

Article 1. SCOPE OF WORK: The Vendor shall provide all labor, services, materials, and equipment and perform all the necessary work in the manner and form provided by the Contract Documents for the performance of:

**INFORMAL QUOTE NO. IW090221 – KAYAK/CANOE OUTFITTER & GIFT SHOP/FOOD CONCESSION FOR MANATEE PARK**

Article 2. CONTRACT SUM: The Vendor shall pay to the County, for the faithful performance of the terms as specified in the Purchasing Agreement, in lawful money of the United States of America, and subject to the additions and deductions as provided in the Contract Documents, total sum as follows:

Based on the agreed upon price shown in the Proposal previously submitted to the County, a copy of said Proposal being a part of this Agreement

The sum of \$678,000 PER MONTH X 12 MONTHS = TOTAL ANNUAL RENT OF \$8,136.00

Article 3. This Purchasing Agreement shall be in effect for five (5) years, or until new quotes are taken and awarded. It may be renewed for one (1) additional five (5) year period, upon mutual agreement of both parties under the same terms and conditions. Specifically, from the period commencing the 1st day of July, 2009 up to and including the 30<sup>th</sup> day of June, 2014.

Article 4. PURCHASING AGREEMENT DOCUMENTS: The documents hereinafter listed shall form the Purchasing Agreement and they are as fully part of the Purchasing Agreement as if attached hereto:

1. Advertisement for quotes (If Advertising actually performed)
2. Proposal Quote Form
3. Quote Bond (if required)
4. Specifications
5. Insurance Certificate (if required)
6. Vendors Bond (if required)
7. Plans (if applicable)

Article 5. APPLICABLE LAW: This Purchasing Agreement shall be governed by the laws, rules, and regulations of the State of Florida, or the laws, rules and regulations of the United States which may be applicable to the product or services provided. The PROVIDER has attested to compliance with the applicable immigration laws of the United States. Violations of the immigration laws of the United States shall/may be grounds for unilateral termination of this agreement.

Article 6. ASSIGNMENT AND TRANSFER: The Vendor shall not assign or transfer any of its rights, benefits or obligations hereunder, except for transfer that result from transfer or consolidation with a third party, without the prior written approval of the county. The Vendor shall have the right to employ other persons and/or firms to serve as subcontractors in connection with the requirements of the Agreement.

Article 7. TERMINATION: This Agreement may be terminated by either party by giving thirty (30) calendar days advance written notice. The County reserves the right to accept or not accept a termination notice submitted by the Vendor, and no such termination notice submitted by the Vendor shall become effective unless and until the Vendor is notified in writing by the County of its acceptance.

However, if the Vendor is adjudged bankrupt or insolvent, if it makes a general assignment for the benefit of its creditors, if a trustee or receiver is appointed for the Vendor or for any of the property, if it files a petition to take advantage of any debtors act or to reorganize under the bankruptcy or similar laws, if it disregards the authority of the County's designated representatives, if it otherwise violates any provisions of this Agreement, or for any other just cause, the County may, without prejudice to any other right or remedy and after giving the Vendor seven (7) calendar days written notice, terminate this Agreement.

Where the Vendor's services have been terminated by the County, said termination shall not affect any rights of the County against the Vendor then existing or which may thereafter accrue. In the event of termination of this Agreement, not the fault of the Vendor, the County shall compensate the Vendor for: (1) all services completed prior to the effective date of termination; (2) reimbursable expenses then due; and (3) reasonable expenses incurred by the Vendor in effecting the termination of services and work, and incurred by the submittal to the County of project drawings, plans, data, and other project documents which are the subject of this Agreement.

Article 8. SEVERABILITY: The provisions and scope of work included in this Agreement are severable. The excuse of nonperformance of a portion of this Agreement shall not excuse the Vendor from further performance or completion of the Agreement.

Article 9. CONFLICTING PROVISION: Should any provision of this Agreement conflict with any other specifications or provisions included or incorporated by reference, the provisions of this Agreement shall control.

Article 10. WAIVER: Any waiver by the County or the breach of any provision of this Agreement shall not be construed or deemed to be a modification of the terms of this Agreement.

Article 11. MODIFICATION: Modification to covenants, terms and provisions of the Agreement shall only be valid when issued in writing as an amendment or change order agreed to by both parties.

Article 12. ILLEGAL OR UNCONSTITUTIONAL PROVISIONS: Should a Court of Law determine any provision of this Agreement to be contrary to the law, such a ruling shall not relieve the Vendor from fulfilling other responsibilities under the Agreement.

Article 13. DAMAGE TO PRIVATE PROPERTY: Should any private property not belonging to the Vendor be damaged through the fault of the Vendor, while carrying out this Agreement, such damage shall be repaired by the Vendor prior to the completion of the project. The County shall withhold final payment until such repairs have been made.

Article 14. INSURANCE: The Vendor will provide a certificate of insurance, meeting the requirements outlined in the specifications (if required).

Article 15. HOLD HARMLESS AND INDEMNITY: The Vendor agrees through the signing of this document by an authorized party or agent that he shall hold harmless and defend the County of Lee and its agents and employees from all suits and actions, including attorneys' fees and all costs of litigation and judgements of every name and description arising out of or incidental to the performance of this Agreement or work performed thereunder, whether or not due to or caused by negligence of the County excluding only the sole negligence of the County.

Article 16. EMPLOYEES: Persons employed by the Vendor in the performance of services pursuant to this Purchasing Agreement shall not be considered employees of the County, shall be independent thereof and shall have no claim against the County as to pension, worker compensation, unemployment compensation, insurance, salary, wages or other employee rights or privileges granted by operation of law or by the County to its officers and employees.

Article 17. LIABILITY FOR ACTS AND OMISSIONS: The County shall not be deemed to assume any liability for the acts, omissions or negligence of the Vendor, its agents or employees, and the Vendor shall indemnify, release and hold the county harmless from and shall defend the County and its officers and employees against any and all claims, demands, liabilities and suits arising from any act or omission of the Vendor, his agents or employees performing services and functions pursuant to this Agreement. This Agreement to indemnify shall not apply to any liability for personal injury, property damage, or breach of Agreement caused solely by the negligence of the County.

Article 18. This Agreement embodies the entire understanding of the parties and there are no other agreements or understandings, written or oral, in effect between parties, relating to the subject matter hereof. This instrument may be amended or modified only by an instrument of equal formality signed by the respective parties.

Article 19. ANTI-DISCRIMINATION CLAUSE: The Vendor hereby agrees to comply with all applicable provisions of Federal, State and local anti-discrimination laws. A list of all pertinent provisions are attached as an addendum, if applicable. The Vendor agrees to hold harmless, defend, and indemnify the County for any losses incurred as a result of its failure to abide by the applicable anti-discrimination laws.

Article 20. SALES AND USE TAX: The Contractor is responsible for complying with the Florida Sales and Use Tax Law as it may apply to any and all of the Services and Work to be provided and performed pursuant to this Contract. The amount(s) of Compensation set forth in the Contract or in any Change Orders or Work Orders authorized pursuant to this Contract shall be understood and agreed to include any and all Florida Sales and Use Tax payment obligations required by Florida Law of the Contractor and of any an all of the Sub-Contractors or material suppliers engaged by the Contractors pursuant thereto.

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LEE COUNTY, FLORIDA  
BOARD OF COUNTY COMMISSIONERS

By: D.W. II  
~~Barbara Manzo, Acting Director - Parks~~  
David W. Harner II, Acting Deputy Director - Parks & Recreation

APPROVED AS TO FORM  
By: [Signature]  
Office of the County Attorney

By: —  
Secretary

Captiva Blowing Outfitters LLC  
(Correct Name of Corporation)

By: [Signature]  
President

(Corporate Seal)

Revised: December 10, 2008