

CITY OF NAPLES, FLORIDA

AGREEMENT (PROFESSIONAL SERVICES)

Bid/Proposal No. 032-11

Contract No. _____

Project Name Naples Pier Concession

THIS AGREEMENT (the "Agreement") is made and entered into this 1st day of June, 2011, by and between the City of Naples, a Florida municipal corporation, (the "CITY") and **Russells Clambakes & Cookouts, Inc.**, a Florida corporation (or other entity), **2390 Linwood Way, Naples, FL 34112**, (the "CONTRACTOR").

WITNESSES:

WHEREAS, the CITY desires to obtain the services of the CONTRACTOR concerning **certain services specified in this Agreement** (referred to as the "Project"); and

WHEREAS, the CONTRACTOR has submitted a proposal for provision of those services; and

WHEREAS, the CONTRACTOR represents that it has expertise in the type of professional services that will be required for the Project.

NOW, THEREFORE, in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

ARTICLE ONE CONTRACTOR'S RESPONSIBILITY

1.1. The Services to be performed by CONTRACTOR are generally described as concession services at Naples Pier Concession, and may be more fully described in the Scope of Services, attached as Exhibit A and made a part of this Agreement.

1.2. The CONTRACTOR agrees to obtain and maintain throughout the period of this Agreement all such licenses as are required to do business in the State of Florida, the City of Naples, and in Collier County, Florida, including, but not limited to, all licenses required by the respective state boards and other governmental agencies responsible for regulating and licensing the professional services to be provided and performed by the CONTRACTOR pursuant to this Agreement.

1.3. The CONTRACTOR agrees that, when the services to be provided hereunder relate to a professional service which, under Florida Statutes, requires a license, certificate of authorization or other form of legal entitlement to practice such services, it shall employ or retain only qualified personnel to provide such services.

1.4. CONTRACTOR agrees to employ and designate, in writing, within 5 calendar days after receiving its Notice to Proceed, or other directive from the CITY, a qualified licensed professional to serve as the CONTRACTOR's project manager (the "Project Manager"). The Project Manager shall be authorized and responsible to act on behalf of the CONTRACTOR with respect to directing, coordinating and administering all aspects of the services to be provided and performed under this Agreement.

1.5. The CONTRACTOR has represented to the CITY that it has expertise in the type of professional services that will be required for the Project. The CONTRACTOR agrees that all services to be provided by CONTRACTOR pursuant to this Agreement shall be subject to the CITY's review and approval and shall be in accordance with the generally accepted standards of professional practice in the State of Florida, **as may be applied to the type of services to be rendered**, as well as in accordance with all published laws, statutes, ordinances, codes, rules, regulations and requirements of any governmental agencies which regulate or have jurisdiction over the Project or the services to be provided and performed by CONTRACTOR. In the event of any conflicts in these requirements, the CONTRACTOR shall notify the CITY of such conflict and utilize its best professional judgment to advise CITY regarding resolution of the conflict.

1.6. The CONTRACTOR agrees not to divulge, furnish or make available to any third person, firm or organization, without CITY's prior written consent, or unless incident to the proper performance of the CONTRACTOR's obligations hereunder, or in the course of judicial or legislative proceedings where such information has been properly subpoenaed, any non-public information concerning the services to be rendered by CONTRACTOR hereunder, and CONTRACTOR shall require all of its employees, agents, subconsultants and subcontractors to comply with the provisions of this paragraph. **However, the CONTRACTOR shall comply with the Florida Public Records laws.**

1.7. The CONTRACTOR agrees not to employ or offer to employ any Elected Officer or City Managerial Employee of the CITY who in any way deals with, coordinates on, or assists with, the professional services provided in this Agreement, for a period of 2 years after termination of all provisions of this Agreement. For purposes of this paragraph, the term "Elected Officer" shall mean any member of the City Council. For purposes of this paragraph, the term "City Managerial Employee" shall mean the City Manager, the Assistant City Manager, the City Clerk, and any City department head or director. If the CONTRACTOR violates the provisions of this paragraph, the CONTRACTOR shall be required to pay damages to the CITY in an amount equal to any and all compensation which is received by the former Elected Officer or City Managerial Employee of the CITY from or on behalf of the contracting person or entity, or an amount equal to the former Elected Officer's or City Managerial Employee's last 2 years of gross compensation from the CITY, whichever is greater.

1.8. The CONTRACTOR agrees not to provide services for compensation to any other party other than the CITY on the same subject matter, same project, or scope of services as set forth in this Agreement without approval from the City Council of the CITY.

1.9. Except as otherwise provided in this Agreement, the CONTRACTOR agrees not to disclose or use any information not available to members of the general public and gained by reason of the CONTRACTOR's contractual relationship with the CITY for the special gain or benefit of the CONTRACTOR or for the special gain or benefit of any other person or entity.

ARTICLE TWO CITY'S RESPONSIBILITIES

2.1. The CITY shall designate in writing a project coordinator to act as the CITY's representative with respect to the services to be rendered under this Agreement (the "Project Coordinator"). The Project Coordinator shall have authority to transmit instructions, receive information, interpret and define the CITY's policies and decisions with respect to the CONTRACTOR's services for the Project. However, the Project Coordinator is not authorized to issue any verbal or written orders or instructions to the CONTRACTOR that would have the effect, or be interpreted to have the effect, of modifying or changing in any way whatever:

- (a) The scope of services to be provided and performed by the CONTRACTOR;
- (b) The time the CONTRACTOR is obligated to commence and complete all such services; or
- (c) The amount of compensation the CITY is obligated or committed to pay the CONTRACTOR.

Any such modifications or changes ((a) (b) or (c)) shall only be made by or upon the authorization of the CITY's city manager as authorized by city council in the enabling legislation or in the CITY's procurement policies.

2.2. The Project Coordinator shall:

(a) Review and make appropriate recommendations on all requests submitted by the CONTRACTOR for payment for services and work provided and performed in accordance with this Agreement;

(b) Arrange for access to and make all provisions for the CONTRACTOR to enter the Project site to perform the services to be provided by the CONTRACTOR under this Agreement; and

(c) Provide notice to the CONTRACTOR of any deficiencies or defects discovered by the CITY with respect to the services to be rendered by the CONTRACTOR hereunder.

2.3. The CONTRACTOR acknowledges that access to the Project Site, to be arranged by the CITY for the CONTRACTOR, may be provided during times that are not the normal business hours of the CONTRACTOR.

ARTICLE THREE TIME

3.1. Services to be rendered by the CONTRACTOR shall be commenced subsequent to the execution of this Agreement upon written Notice to Proceed from the CITY for all or any designated portion of the Project and shall be **for a period of three (3) years from June 1, 2011 through May 31, 2014 with the option of two (2) one-year renewal periods.** Time is of the essence with respect to the performance of this Agreement.

3.2. Should the CONTRACTOR be obstructed or delayed in the prosecution or completion of its services as a result of unforeseeable causes beyond the control of the CONTRACTOR, and not due to its own fault or neglect, including but not restricted to acts of God or of public enemy, acts of government or of the CITY, fires, floods, epidemics, quarantine regulations, strikes or lock-outs, then the CONTRACTOR shall notify the CITY in writing within 5 working days after commencement of such delay, stating the cause or causes thereof, or be deemed to have waived any right which the CONTRACTOR may have had to request a time extension.

3.3. No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the CONTRACTOR's services from any cause whatsoever, including those for which the CITY may be responsible in whole or in part, shall relieve the CONTRACTOR of its duty to perform or give rise to any right to damages or additional compensation from the CITY. The CONTRACTOR's sole remedy against the CITY will be the right to seek an extension of time to its schedule. This paragraph shall expressly apply to claims for early completion, as well as claims based on late completion.

3.4. Should the CONTRACTOR fail to commence, provide, perform or complete any of the services to be provided hereunder in a timely and reasonable manner, in addition to any other rights or remedies available to the CITY hereunder, the CITY at its sole discretion and option may withhold any and all payments due and owing to the CONTRACTOR until such time as the CONTRACTOR resumes performance of its obligations hereunder in such a manner so as to reasonably establish to the CITY's satisfaction that the CONTRACTOR's performance is or will shortly be back on schedule.

ARTICLE FOUR COMPENSATION

4.1. The total compensation is to be paid by the CONTRACTOR to the CITY for gross sales at 20% less sales

tax for all operations covered by this concession, and shall be paid in the manner set forth in the "Basis of Compensation", which is attached as **Exhibit B** and made a part of this Agreement.

ARTICLE FIVE MAINTENANCE OF RECORDS

5.1. The CONTRACTOR will keep adequate records and supporting documentation which concern or reflect its services hereunder. The records and documentation will be retained by the CONTRACTOR for a minimum of five 5 years from the date of termination of this Agreement or the date the Project is completed, whichever is later. the CITY, or any duly authorized agents or representatives of the CITY, shall have the right to audit, inspect and copy all such records and documentation as often as they deem necessary during the period of this Agreement and during the 5 year period noted above; provided, however, such activity shall be conducted only during normal business hours. **If the CONTRACTOR desires to destroy records prior to the minimum period, it shall first obtain permission from the CITY in accordance with the Florida Public Records laws.**

ARTICLE SIX INDEMNIFICATION

6.1. The CONTRACTOR agrees to indemnify and hold harmless the City from liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the CONTRACTOR and persons employer or utilized by the CONTRACTOR in the performance of the Contract.

ARTICLE SEVEN INSURANCE

7.1. CONTRACTOR shall obtain and carry, at all times during its performance under **this Agreement**, insurance of the types and in the amounts set forth in the document titled General Insurance Requirements, which is attached as **Exhibit C and made a part of** this Agreement.

ARTICLE EIGHT SERVICES BY CONTRACTOR'S OWN STAFF

8.1. The services to be performed hereunder shall be performed by the CONTRACTOR's own staff, unless otherwise authorized in writing by the CITY. The employment of, contract with, or use of the services of any other person or firm by the CONTRACTOR, as independent contractor or otherwise, shall be subject to the prior written approval of the CITY. No provision of this Agreement shall, however, be construed as constituting an agreement between the CITY and any such other person or firm. Nor shall anything contained in this Agreement be deemed to give any such party or any third party any claim or right of action against the CITY beyond such as may otherwise exist without regard to this Agreement.

ARTICLE NINE WAIVER OF CLAIMS

9.1. The CONTRACTOR's acceptance of final payment shall constitute a full waiver of any and all claims, except for insurance company subrogation claims, by it against the CITY arising out of this Agreement or otherwise related to the Project, except those previously made in writing and identified by the CONTRACTOR as unsettled at the time of the final payment. Neither the acceptance of the CONTRACTOR's services nor payment by the CITY shall be deemed to be a waiver of any of the CITY's rights against the CONTRACTOR.

**ARTICLE TEN
TERMINATION OR SUSPENSION**

10.1. The CONTRACTOR shall be considered in material default of this Agreement and such default will be considered cause for the CITY to terminate this Agreement, in whole or in part, as further set forth in this section, for any of the following reasons: (a) failure to begin work under the Agreement within the times specified under the Notice(s) to Proceed, or (b) failure to properly and timely perform the services to be provided hereunder or as directed by the CITY, or (c) the bankruptcy or insolvency or a general assignment for the benefit of creditors by the CONTRACTOR or by any of the CONTRACTOR's principals, officers or directors, or (d) failure to obey laws, ordinances, regulations or other codes of conduct, or (e) failure to perform or abide by the terms or spirit of this Agreement, or (f) for any other just cause. The CITY may so terminate this Agreement, in whole or in part, by giving the CONTRACTOR at least 3 calendar days' written notice.

10.2. If, after notice of termination of this Agreement as provided for in paragraph 10.1 above, it is determined for any reason that the CONTRACTOR was not in default, or that its default was excusable, or that the CITY otherwise was not entitled to the remedy against the CONTRACTOR provided for in paragraph 10.1, then the notice of termination given pursuant to paragraph 10.1 shall be deemed to be the notice of termination provided for in paragraph 10.3 below and the CONTRACTOR's remedies against the CITY shall be the same as and limited to those afforded the CONTRACTOR under paragraph 10.3 below.

10.3. The CITY shall have the right to terminate this Agreement, in whole or in part, without cause upon 7 calendar day's written notice to the CONTRACTOR. In the event of such termination for convenience, the CONTRACTOR's recovery against the CITY shall be limited to that portion of the fee earned through the date of termination, together with any retainage withheld and any costs reasonably incurred by the CONTRACTOR that are directly attributable to the termination, but the CONTRACTOR shall not be entitled to any other or further recovery against the CITY, including, but not limited to, anticipated fees or profits on work not required to be performed.

**ARTICLE ELEVEN
CONFLICT OF INTEREST**

11.1. The CONTRACTOR represents that it presently has no interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder. The CONTRACTOR further represents that no persons having any such interest shall be employed to perform those services.

**ARTICLE TWELVE
MODIFICATION**

12.1. No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

**ARTICLE THIRTEEN
NOTICES AND ADDRESS OF RECORD**

13.1. All notices required or made pursuant to this Agreement to be given by the CONTRACTOR to the CITY shall be in writing and shall be delivered by hand or by United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CITY's address of record:

City of Naples
735 Eighth Street South
Naples, Florida 34102-3796
Attention: **A. William Moss**, City Manager

13.2. All notices required or made pursuant to this Agreement to be given by the CITY to the CONTRACTOR shall be made in writing and shall be delivered by hand or by the United States Postal Service Department, first class mail service, postage prepaid, return receipt requested, addressed to the following CONTRACTOR's address of record:

Russells Clambakes & Cookouts, Inc.
2390 Linwood Way
Naples, FL 34112
Attn: Russell Bowles, President

13.3. Either party may change its address of record by written notice to the other party given in accordance with requirements of this Article.

ARTICLE FOURTEEN MISCELLANEOUS

14.1. The CONTRACTOR, in representing the CITY, shall promote the best interest of the CITY and assume towards the CITY a duty of the highest trust, confidence, and fair dealing.

14.2. No modification, waiver, suspension or termination of the Agreement or of any terms thereof shall impair the rights or liabilities of either party.

14.3. This Agreement is not assignable, in whole or in part, by the CONTRACTOR without the prior written consent of the CITY.

14.4. Waiver by either party of a breach of any provision of this Agreement shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Agreement.

14.5. The headings of the Articles, Exhibits, Parts and Attachments as contained in this Agreement are for the purpose of convenience only and shall not be deemed to expand, limit or change the provisions in such Articles, Exhibits, Parts and Attachments.

14.6. This Agreement constitutes the entire agreement between the parties hereto and shall supersede, replace and nullify any and all prior agreements or understandings, written or oral, relating to the matter set forth herein, and any such prior agreements or understanding shall have no force or effect whatever on this Agreement.

Sec. 14. 7. The CONTRACTOR shall comply fully with all provisions of state and federal law, including without limitation all provisions of the Immigration Reform and Control Act of 1986 ("IRCA") as amended, as well as all related immigration laws, rules, and regulations pertaining to proper employee work authorization in the United States. The CONTRACTOR shall execute the Certification of Compliance with Immigration Laws, attached hereto as **Exhibit "D"**.

ARTICLE FIFTEEN APPLICABLE LAW

15.1. Unless otherwise specified, this Agreement shall be governed by the laws, rules, and regulations of the State of Florida, and by the laws, rules and regulations of the United States when providing services funded by the United States government. Any suit or action brought by either party to this Agreement against the other party relating to or arising out of this Agreement must be brought in the appropriate Florida state court in Collier County, Florida.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for the day and year first written above.

ATTEST:

CITY:

CITY OF NAPLES, FLORIDA,
A Municipal Corporation

By: _____
Tara A. Norman, City Clerk

By: _____
A. William Moss, City Manager

Approved as to form
and legal sufficiency:

By: _____
Robert D. Pritt, City Attorney

CONTRACTOR:
Russells Clambakes & Cookouts, Inc.
A Florida Corporation

By: _____
Its _____

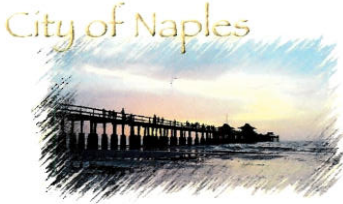
Witness

(CORPORATE SEAL)

EXHIBIT A

SCOPE OF SERVICES

The Services to be provided under this Agreement are those set out below [or in Exhibit A-1 through A-], attached and made part of this Exhibit A.



REQUEST FOR PROPOSAL
CITY OF NAPLES
PURCHASING DIVISION
CITY HALL 735 8TH STREET SOUTH
NAPLES, FL 34102
PH: 239-213-7100 FX: 239-213-7105

NOTIFICATION DATE: 4/13/11	TITLE: NAPLES PIER CONCESSIONS	NUMBER: 032-11	OPENING DATE & TIME: 5/6/11 2:00 PM
PRE-PROPOSAL CONFERENCE: DATE, TIME AND LOCATION: Non-mandatory conference will be held April, 22 2011, 9:00AM in the Purchasing Conference Room, 735 8 th Street S. Naples, FL 34102			

NAME OF PARTNERSHIP, CORPORATION OR INDIVIDUAL: Russells Clambakes Inc	
MAILING ADDRESS: 2390 LINWOOD WAY Naples FL 34112	
CITY-STATE-ZIP:	
PH: 239-417-0777	EMAIL: CLambakes1@msw.com
FX: 239-417-0778	WEB ADDRESS: www.RussellsClambake.com

I certify that this proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a proposal for the same materials, supplies, or equipment or services and is in all respects fair and without collusion or fraud. I agree to abide by all conditions of this proposal and certify that I am authorized to sign this proposal for the proposer. In submitting a proposal to the City of Naples the proposer offers and agrees that if the proposal is accepted, the proposer will convey, sell, assign or transfer to the City of Naples all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the Anti-trust laws of the United States and the State of FL for price fixing relating to the particular commodities or services purchased or acquired by the City of Naples. At the City's discretion, such assignment shall be made and become effective at the time the City tenders final payment to the proposer.

AUTHORIZED SIGNATURE Russell Bowles	DATE 5/3/11	PRINTED NAME/TITLE Russell Bowles OWNER
Please initial by all that apply I acknowledge receipt of the following addendum		
<input checked="" type="checkbox"/> Addendum #1	<input type="checkbox"/> Addendum #2	<input type="checkbox"/> Addendum #3
<input type="checkbox"/> Addendum #4		

PLEASE NOTE THE FOLLOWING:

- > **This page must be completed and returned with your proposal.**
- > **Proposals must be submitted in a sealed envelope, with the proposal number & closing date.**
- > **Proposals received after the above closing date and time will not be accepted.**
- > **Proposal tabulations will be available on the City of Naples web site www.naplesgov.com, Departments, Finance, Purchasing.**

A. PURPOSE

The purpose of this procurement action is to solicit Proposals from qualified individuals/firms to operate the concession facility at the Naples Fishing Pier located at the western terminus of 12th Avenue South, Naples, Florida 34102.

B. SCOPE

The successful contractor will operate the concession facility at the Naples Fishing Pier for a term of thirty-six months, effective on/about July 1, 2011. Upon the written mutual consent of both parties, this Agreement may be extended for up to two (2) 12-month periods.

The Naples Fishing Pier is a very important element of Old Naples, and perhaps, the most visited site in Collier County. It is the intent of the Mayor and the Naples City Council that this concession facility reflects the quiet, relaxed and distinct atmosphere of the Pier and the Naples community. Proposers, by means of this RFP, will clearly demonstrate their intent, ability and commitment to successfully operate the facility in this manner.

C. PROPOSAL GUIDELINES

In preparing your proposal, please be aware of the following restrictions:

1. At a minimum, the hours of operation shall be:
9:00AM to SUNSET, January thru April
9:00AM to 5:00PM, May thru December
2. At the Contractor's discretion, the concession stand may be closed on Thanksgiving and Christmas.
3. The Contractor must have previously operated a related or similar type of business in Collier County for a minimum period of 5 years.
4. The contractor will not be permitted to sell or rent beach equipment to the public.
5. The contractor will not be permitted to have amplified music piped onto the public portion of the Pier.
6. The concession stand will not have commercial lighting of any type, including signage.
7. If the contractor chooses to install a security alarm system, it will be of the non-audible type, and approved by the Community

Services Director.

8. Contractor will endeavor to insure that any deliveries of food, supplies, etc., will occur in the early part of the business day.

9. The Contractor will not be permitted to install, or maintain cooking equipment, other than the type detailed on page 13. Food warming and/or cooling equipment will be permitted.

10. The Contractor will be permitted to sell items such as t-shirts, hats, etc. However, such items shall be tastefully displayed on inside of concession building, or in the already existing display case permanently mounted on North side of concession building. (See list of approved items on page 14.)

11. All appliances and fixtures purchased by the vendor will remain the property of the vendor.

12. All permanently attached improvements to the facility would stay and become the property of the City of Naples.

13. Concession may be closed by the City of Naples for special events such as fireworks set up, clean up and presentation and during emergency related situations.

D. PRE-PROPOSAL CONFERENCE

Specific questions concerning the RFP should be submitted in writing prior to the pre-proposal conference so that City representatives may prepare responses in advance of the conference. Additional questions will be entertained at the conference; however, responses may be deferred and provided at a later date. Copies of all written questions and the City responses will be mailed to all vendors attending the conference or otherwise requesting a copy. Only the written responses will be considered official. The response to any question which is given orally at the conference is to be considered tentative. After the conference, the questions will be researched and the official response published in writing. This will assure accurate, consistent responses to all vendors.

E. PROPOSER'S INQUIRES

The Proposer shall examine this Request for Proposal to determine if the City requirements are clearly stated. If there are any requirements which restrict competition, the Proposer may

request, in writing, to the City that the requirements be changed. The Proposer who requests changes to the City requirements, must provide detailed justification for a change, and must provide recommended changes to the requirements. Request for changes to the Request for Proposal must be forwarded in writing to the Purchasing Manager.

Proposer's failure to request changes shall be considered to constitute Proposer's acceptance of City requirements. The City shall determine what changes to the Request for Proposal are acceptable to the City. If required, the City shall issue an addendum reflecting the acceptable changes to this Request For Proposal which shall be sent to all Proposers, in order that they shall be given the opportunity of submitting proposals to the same requirements. Said requirements shall be considered as the City's minimum mandatory requirements. Also, only communications from Proposers which are signed and in writing will be recognized by the City as duly authorized expressions on behalf of the Proposer.

The City, either through the final award of contract or through the selection process, reserves the right to waive or alter any of the requirements set forth herein.

Any inquiries from Proposers concerning this Request for Proposal shall be submitted in writing to the City of Naples, Purchasing Division, 270 Riverside Circle, Naples, Florida 34102.

F. INSURANCE

1. The Contractor agrees to provide insurance coverage as shown elsewhere in this RFP. Such policies of insurance shall name both the Contractor and the City of as additional insured, and shall be delivered to the City with the signed contracts and before the commencement of any operation by the Contractor. The policy shall carry the "governmental immunity endorsement (ISO #CG2412 11/85), which reads as follows:

"It is agreed that in the event of any claim or suite against the insured for damages covered by this policy, the company will not deny liability by the use of a defense based upon governmental immunity defense."

All policies shall be subject to the approval of the City for adequacy and form of protection. All policies shall provide limits as specified by the City of Naples.

2. The Contractor agrees to provide Worker's Compensation Insurance to cover all employees of the concession in accordance with the Florida Worker's Compensation Law.

Copies of all insurance policies shall be provided to the City on or before the date the concession agreement is signed.

G. PROPOSAL FORMAT & SUBMISSION

The procedure outlined in the Request for Proposal must be followed. Submit the original and three copies of the aforementioned documents to the City of Naples Purchasing Manager. The original document must be signed in blue or black ink and submitted in a sealed package along with all copies, on which shall be shown the name of the proposer, proposal opening date, RFP number and title on the outside of the proposal package. Whether forwarded by mail or personally delivered, the above-mentioned envelope must be received by the City of Naples, Purchasing Division prior to the date and time stated on the Request for Proposals. Proposals received after the time stated shall be returned unopened to the proposer.

The proposal must contain:

1. Tab 1, Proposer Identification Sheet - Proposers shall complete and return the Proposer Identification Sheet with their proposal. Your signature on this sheet will acknowledge that you agree to paying the City of Naples a fee of 20% of gross proceeds (gross, minus sales tax).
2. Tab 2, Business Plan - Including a brief synopsis of the proposal. The synopsis should be prepared in such a manner that it will be understandable to individuals on a management level. Synopsis shall include, but not be limited to:
 - a. List of anticipated merchandise
(See list of approved items)
 - b. List of anticipated services
(See list of approved items)
 - c. Food types
(See list of approved items)
 - d. Number of employees

- e. Description of major equipment to be installed
(See list of approved equipment)
 - f. General layout of equipment and counters
 - g. Business management techniques and controls over money, personal and financial records
 - h. Schedule of operation including dates and times
(See PROPOSAL GUIDELINES, #1 and #2)
 - i. Any other information which would allow a reviewer to evaluate and understand the total method of operation.
3. Tab 3, References - The Proposer shall furnish references with the proposal including the company name, responsible person, and telephone numbers, where similar services have been provided. Information will be provided on the Proposer Qualification Form.
4. Tab 4, Resume' of Related Business Experience - Resume' must include a chronological list, to include beginning and ending dates, of Proposer's experience with a description of the services provided by each operation, with a minimum requirement of 5 years related or similar type business in Collier County. If Proposer is a corporation with a lengthy history of concession operations, the list should begin with the earliest concession experience and list several operations which accurately portray the variety and complexity of Proposer's experience up through the most recent.
5. Tab 5, Financial Information - If the Proposer is an individual, he/she shall submit, at a minimum, a statement of net worth as of December 31, 2010 and photocopies of his/her Federal tax returns (Form 1040 and supporting schedules) for the two most recent years. If the proposer is a partnership or corporation, he/she shall submit financial statements which include a balance sheet as of December 31, 2010 and the related statements of income, retained earnings and changes in financial positions for the year then ended. In cases where the Proposer's fiscal year end is not December and financial statements have been prepared, the proposer may submit financial statements for the two most recent fiscal years, accompanied by interim statements as of December, 2005. Proposers may submit

financial information which has been reviewed or audited by a Public Accountant. Since reviewed statements are generally accepted as being more reliable than unaudited statements and generally accepted as being more reliable than reviewed statements, preferences will be given in the evaluation process to audited and reviewed statements. For a newly formed corporation, organized for the purpose of submitting a response to this proposal, bidder may substantiate financial stability by submitting information on individual financial assets.

H. CONCESSION FOOD and BEVERAGE ITEMS

NOTE: NO DRINK COVERS OR STRAWS ARE ALLOWED. CONTRACTOR IS REQUIRED TO USE PAPER PRODUCTS VS STYROFOAM.

1. Any food and beverage items are permitted if provided from a health department approved and licensed commissary and all on-site food cooking is limited on listed equipment.
2. Alcoholic Beverages of any sort is not permitted.

I. CONCESSION EQUIPMENT

1. The following items are permitted
 - a. Microwave
 - b. Toaster Oven
 - c. Warmer
 - d. Cooler
 - e. Roller-type hot dog cooker/warmer
 - f. Hot dog steamer
 - g. Crock Pot
 - h. Ice cream machine
 - i. Meat slicer
 - j. Coffee maker
 - k. Sandwich press/making unit
 - l. GRIDDLE - Flat electric counter top griddle.
A GRIDDLE is a flat top cooker where the heat comes from the top of the griddle like a stove.
 - m. Refrigerator/Freezer
2. The following items are not permitted
 - a. Grills - *A GRILL is like a BBQ grill where heat comes from below.*
 - b. Fryers
 - c. Propane Gas Tanks

- d. Any equipment that would require installation of a fire suppression hood system.

J. EQUIPMENT PROVIDED BY THE City of Naples, Florida

1. The City will provide ONLY what is attached such as sink(s), work table, counters, roll down shutters. All other equipment must be supplied by the contractor.

K. SOUVENIRS

1. T-Shirts/Polo Shirts
2. Hats/Visors
3. Cups
4. Other related items

L. FISHING ITEMS

1. The following items are permitted
 - a. Hooks
 - b. Weights
 - c. Line
 - d. Frozen Bait
 - e. Sales/Rental of Fishing Equipment

M. MISCELLANEOUS

1. The following items are permitted, but not required
 - a. Bags of Ice
 - b. Disposable Cameras
 - c. Film (standard)
 - d. Sunscreen
 - e. Nose Plugs
 - f. Ear Plugs
 - g. Goggles
 - h. Snorkel equipment
2. The following items are not permitted
 - a. Rental of beach chairs, umbrellas, flotation rafts, toys, and water sports equipment.

N. ADVERTISING & DISPLAYS

1. Advertising and Displays are permitted as long as they meet

all City of Naples Code of Ordinances as related to signage, displays, advertising, etc.

O. UTILITY AND PHONE CHARGES

The City will provide electricity, water and a City phone and pay associated bills. Any other phone lines, fax lines, etc. will be at the Contractor's expense.

END OF EXHIBIT A

EXHIBIT B

BASIS OF COMPENSATION

As consideration for providing the Services as set forth in the Agreement, the CITY agrees to pay, and the CONTRACTOR agrees to accept payment on a time and reimbursement cost basis [or other basis] as follows [or in Exhibit B-1, which is attached and made part of this Agreement]:

A. PROPOSAL SHEET

I, the Contractor, agree to pay the City of Naples as compensation for this Concession Agreement, a monthly concession 20% of gross sales (less sales tax) for all operations covered by this concession.

I, the Contractor, shall post with the City of Naples, upon the execution of an agreement, the following security in the amount of \$1500.00 (Performance Bond, Letter of Credit, or Certified Check).

All notices and orders given to me, the Contractor may be served by mail at the following address:

Russells CLambakes
2390 Linwood way
Naples FL 34112

My business is organized as a (choose one):

Corporation Proprietorship Partnership

Signature: Russell Bowles
Name/Title Russell Bowles owner
Representing Russells CLambakes
Date 5/3/11

BID NUMBER:
OPENING DATE:

EXHIBIT C

GENERAL INSURANCE REQUIREMENTS

The Contractor shall not commence work until he has obtained all the insurance required under this heading, and until such insurance has been approved by the CITY, nor shall the Contractor allow any subcontractor to commence work until all similar insurance required of the subcontractor has also been obtained and approved by the CITY.

Certificates of insurance must be issued by an authorized representative of the insurance company at the request and direction of the policyholder and must include sufficient information so as to identify the coverage and the contract for CITY's improvements for which they are issued. Certificates of insurance must be issued by a nationally recognized insurance company with a Best's Rating of no less than B+VII, satisfactory to the CITY, and duly licensed to do business in the state of said Contract.

The Contractor shall procure and maintain, during the life of this Contract, Workmen's Compensation Insurance for all of his employees to be engaged in work under this Contract, and he shall require any subcontractor similarly to provide Workmen's Compensation Insurance for all of the latter's employees to be engaged in such work, unless such employees are covered by the protection afforded by the Contractor's insurance. In case any employees are to be engaged in hazardous work under this Contract, and are not protected under this Workmen's Compensation statute, the Contractor shall provide, and shall cause each subcontractor to provide, adequate coverage for the protection of such employees. It is acceptable to use a State-approved Workmen's Compensation Self-Insurance fund.

The Contractor shall take out and maintain during the life of this Contract, Public Liability and Property Damage and shall include Contractual Liability, Personal Injury, Libel, Slander, False Arrest, Malicious Prosecution, Wrongful Entry or Eviction, Broad Form Property Damage, Products, Completed Operations and XCU Coverage to be included on an occurrence basis, and to the full extent of the Contract to protect him, the CITY, and any subcontractor performing work covered by this Contract from damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from operations under this contract, whether such operations be by himself or by a subcontractor, or by anyone directly or indirectly employed by either of them. The Contractor shall also maintain automobile liability insurance including "non-owned and hired" coverage. The entire cost of this insurance shall be borne by the Contractor.

The amount of such insurance shall be no less than \$1,000,000 annual aggregate for bodily injury and property damage combined per occurrence.

The City of Naples and their Engineer must be named as **Additional Insured** on the insurance certificate **and the following must also be stated on the certificate.** "These coverages are primary to all other coverages the City possesses for this contract only." The City of Naples shall be named as the Certificate Holder. **The Certificate Holder shall read as follows:**

**The City of Naples
735 Eighth Street South
Naples, Florida 34102**

No City Division, Department, or individual name should appear on the Certificate.
No other format will be acceptable.

Thirty (30) days cancellation notice required.

The Certificate must state the bid number and title.

When using the "Accord" form of insurance certificate, please note that under the cancellation clause, the following must be deleted: "endeavor to" and "but failure to mail such notice shall impose no obligation or liability of any kind upon the company"

[If other insurance or insurance requirements or any waivers, attach as Exhibit C-1 through C-__]

EXHIBIT D

CERTIFICATION OF COMPLIANCE WITH IMMIGRATION LAWS

The undersigned, is the _____ of **Russells Clambakes & Cookouts, Inc.** (“the CONTRACTOR”), and hereby certifies to the following:

1. The CONTRACTOR is in full compliance with all provisions of the Immigration Reform and Control Act of 1986 (“IRCA”), as well as all related immigration laws, rules, regulations pertaining to proper employee work authorization in the United States.

2. The undersigned has verified that the CONTRACTOR has obtained and maintains on file, and will continue to obtain and maintain on file, all documentation required by law, including but not limited to, Form I-9, Employment Eligibility Verification, for all persons employed by or working for the CONTRACTOR in any capacity on any project for the City of Naples (CITY). All such persons have provided evidence of identity and eligibility to work to the CONTRACTOR in accordance with the IRCA and related law. The undersigned hereby affirms that no person has been or will be employed by the CONTRACTOR to work on projects for the CITY who is not authorized to work under law. The undersigned further affirms that the CONTRACTOR’s files will be updated by written notice any time that additional employees work on projects for the CITY.

3. The CONTRACTOR will have its contractors, subcontractors, suppliers and vendors who are involved in projects for the CITY to sign a written acknowledgment that they too are in compliance with immigration law. It is understood that failure to do so could result in the CONTRACTOR being liable for any violation of the law by such third parties.

4. The CONTRACTOR will fully cooperate with and have its contractors, subcontractors, suppliers and vendors to fully cooperate with, all inquiries and investigations conducted by any governmental agency in connection with proper compliance with the laws pertaining to appropriate work authorization in the United States.

5. The undersigned, on behalf of the CONTRACTOR, acknowledges that this Certification may be relied upon by the CITY, its officers, directors, employees, and affiliates or related persons and entities.

6. If it is found that the CONTRACTOR has not complied with the laws pertaining to proper employment authorization, and any legal and administrative action ensues against the CITY, the CONTRACTOR will indemnify, defend and hold the CITY harmless along with their officers, directors, employees, and affiliated or related persons and entities.

7. The CONTRACTOR acknowledges that the CITY by their authorized representatives shall have the right, at any time, upon 24 hours notice, to examine the CONTRACTOR’s books and records to confirm that the CONTRACTOR is in compliance with the terms of this certification.

Executed this _____ day of _____, 2011.

By: _____

ACKNOWLEDGMENT

STATE OF _____

COUNTY OF _____

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 2011.

The Affiant, _____, is [] personally known to me or [] has produced _____ as identification, which is current or has been issued within the past five years and bears a serial number of other identifying number.

Print Name:

NOTARY PUBLIC - STATE
OF _____

Commission Number: _____

My Commission Expires: _____

(Notary Seal)