



FOR YOUTH DEVELOPMENT®  
FOR HEALTHY LIVING  
FOR SOCIAL RESPONSIBILITY

September 4, 2018

Subject: YMCA of Honolulu 2018-19 Afterschool Meal Program

Dear Food Vendor Provider:

The YMCA of Honolulu is an approved sponsoring organization for the USDA's Child and Adult Feeding Program. We are requesting proposals from qualified food service vendors for afterschool meals to be provided at Kalihi YMCA Teen Center during school year 2018-19.

The Request for Proposal application packet is enclosed and includes the following documents:

- Exhibit A. Proposal Application Instructions
- Exhibit B. Administrative Overview
- Exhibit C. Proposal Evaluation
- Exhibit D. Food Service Program Agreement

Proposals will be accepted via US postal service or hand delivered to the address below by 4:00 PM on September 21, 2018. Proposals submitted by US postal service must be postmarked by September 21, 2018. Proposals will be received or should be delivered to:

**YMCA of Honolulu**  
Metropolitan Offices  
1441 Pali Highway  
Honolulu, Hawaii 96813  
ATTN: D. Tabangay

Questions may be directed to Diane Tabangay at: 531-3558 or [dtabangay@ymcahonolulu.org](mailto:dtabangay@ymcahonolulu.org).

Thank you for your interest in working with the YMCA's Afterschool Meal Program.

Sincerely,

Diane Tabangay  
Director of Child Care

## **Exhibit A. Proposal Application Instructions**

- I. Service Overview – Applicant shall provide a brief overview to orient evaluators to the services being offered.
  
- II. Compliance to Requirements – Applicants shall provide statements to the effect that they meet the minimum requirements found in Exhibit B. Administrative Overview, section I. General Conditions.
  
- III. Experience and Capability
  - A. Necessary Skills – Applicant shall demonstrate that it has the necessary skills, abilities, experience and knowledge relating to the delivery of the proposed services.
  - B. Experience – Applicant shall provide a description of other contracts pertinent to the proposed services. Include names, addresses, and telephone numbers of references.
  - C. Quality Assurance – Applicant shall describe its own plan for quality assurance and evaluation for the proposed services.
  - D. Facilities – Applicant shall describe kitchen, packaging, and delivery facilities for the proposed services.
  - E. Unique Qualifications – Applicant may provide information that describes any unique qualifications that they possess.
  
- IV. Organization and Staffing
  - A. Applicant shall describe the staffing and oversight structure of its food service operations.
  - B. Applicant shall describe qualifications of key staffing that will be directly responsible for the proposed services.
  
- V. Service Delivery

Applicant shall include a detailed description of its approach to meeting the standards and expectations of the proposed services and all related USDA and CACFP regulations/requirements.
  
- VI. Cost of Services

Applicant shall submit a cost proposal for proposed services that is inclusive of all applicable state and federal taxes, and packaging and delivery expenses.
  
- VII. Litigation

Applicant shall disclose any pending litigation to which they are a party, including the disclosure of any outstanding judgment. If applicable, please explain.

## Exhibit B. Administrative Overview

### I. General Conditions:

General Conditions – The general conditions that will be imposed include, but are not limited to, the following in accordance with Federal and State Law:

- (1) Representation of the Vendor. As a necessary condition to the formation of this Agreement, Vendor can make the representations contained in this paragraph, and the YMCA relies upon such representations as a material inducement to entering into an Agreement.
  - (a) Compliance with Laws. As of the date of this Agreement, the Vendor complies with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the Vendor's performance of this Agreement.
  - (b) Licensing and Accreditation. As of the date of this Agreement, the Vendor holds all licenses and accreditations required under applicable federal, state, and county laws, ordinances, codes, and rules to provide the Required Services under this Agreement.
- (2) Compliance with Laws. The Vendor shall comply with all federal, state, and county laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect the Vendor's performance of this Agreement, including but not limited to the laws specifically enumerated in this paragraph:
  - (a) Smoking Policy. The Vendor shall implement and maintain a written smoking policy as required by Chapter 328K, Hawaii Revised Statutes, or its successor provision.
  - (b) Drug Free Work Place. The Vendor shall implement and maintain a drug free work place as required by the Drug Free Workplace Act of 1988, or its successor.
  - (c) Persons with Disabilities. The Vendor shall implement and maintain all practices, policies, and procedures required by federal, state, or county law, including but not limited to the Americans with Disabilities Act (42 U.S.C. §12101. et seq.), and the Rehabilitation Act (20 U.S.C. §701. et seq.)
  - (d) Nondiscrimination. No person performing work under this Agreement, including any subcontractor, employee, or agent of the Vendor, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law, specifically with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR part 60).
  - (e) Contract Work Hours and Safety Standards. Compliance with the provisions of section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330) as supplemented by Department of Labor regulations (29 CFR part 5, section 103).
  - (f) Patent Rights. Full compliance with USDA requirements and regulations pertaining to reporting and patent rights (section 3015.175), with rights to inspection of records and books pertinent to this contract by the YMCA, FNS,

Comptroller General of the United States or any of their duly authorized representatives.

- (g) Clean Air Act. Compliance with the provisions or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1837h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), which prohibit the sue under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Provisions shall include reporting of violations to the FNS and to the U.S. EPA Assistant Administrator for Enforcement (EN-329);
- (h) Energy Efficiency. Compliance to the mandatory standards and policies relating to energy efficiency which are contained in the State energy efficiency conservation plan issued in compliance with Energy Policy and Conversation Act (Pub. L. 94-163).
- (i) OMB A-133 Audit. The Vendor shall subject its activities under this Agreement to audit as specified under provisions of OMB A-133.
- (j) OMB Circular A-110. The Vendor shall comply with all provisions.
- (3) Insurance. The Vendor shall obtain, maintain, and keep in force throughout the period of this Agreement liability insurance (the "Liability Insurance") issued by an insurance company in a combined amount of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00), or such lesser amount requested in writing by the Vendor and, for good cause shown, which approval, if any is incorporated herein by reference, for bodily injury and property damage liability arising out of each occurrence. Prior to or upon execution of this Agreement, the Vendor shall obtain a certificate of insurance verifying the existence of the necessary liability insurance coverage, including the naming of the YMCA, and its officers, employees, and agents as an additional insured. If the scheduled expiration date of the liability insurance policy is earlier than the expiration date of the time for performance under this Agreement, the Vendor, upon renewal of the policy, shall promptly provide to the YMCA an updated certificate of insurance. The certificates of insurance shall expressly provide that the insurance policy shall not be cancelled unless the insurance company has first given to the YMCA thirty (30) calendar days' written notice of the intended cancellation.

## II. **Further Requirements and Process to Submit Proposal:**

- (1) Submission of Written Questions to the YMCA of Honolulu via mail or in person.
- (2) Submission of Proposals to YMCA of Honolulu via mail or in person.
- (3) Service / Food Specific Requirements are included in the Food Service Program Agreement (See Exhibit D).
- (4) Multiple or alternate proposals shall not be accepted.
- (5) Tax Clearance. Vendors shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation ("DOTAX") and the Internal Revenue Service ("IRS"). Certificate shall be an original certified copy and shall be valid for six (6) months from the most recent approval date on the certificate.

- (6) Wages and Labor Law Compliance. If applicable, by submitting a proposal, the applicant certifies that the applicant is in compliance with HRS Section 103.55, Wages, hours and working conditions of employees of contractors performing services. Refer to HRS Section 103-55, at the Hawaii State Legislature.
- (7) Compliance with all Applicable State Business and Employment Laws. All vendors shall comply with all laws governing entities doing business in the State. Prior to contracting, owners of all forms of business doing business in the State except sole proprietorships, charitable organizations unincorporated associations and foreign insurance companies be registered and in good standing with the Department of Commerce and Consumer Affairs (“DCCA”), Business Registration Division.
- (8) Hawaii Compliance Express (“HCE”). Vendors may register with HCE for online proof of DOTAX and IRS tax clearance Department of Labor and Industrial Relations (“DLIR”) labor law compliance, and DCCA good standing compliance. There is a nominal annual fee for the service. The “Certificate of Vendor Compliance” issued online through HCE provides the registered vendor’s current compliance status as the issuance date, and is accepted for both contracting and final payment purposes.
- (9) Confidential Information. If an applicant believes any portion of a proposal contains information that should be withheld as confidential, the applicant shall request in writing nondisclosure of designated proprietary data to be confidential and provide justification to support confidentiality. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal to facilitate eventual public inspection of the non-confidential sections of the proposal. NOTE: Price is not considered confidential and will not be withheld.
- (10) Proposal Submittal. All proposals shall be received by the YMCA of Honolulu no later than the submittal deadline indicated in Section I above. All mail-ins shall be postmarked by the United States Postal System (“USPS”) and shall be deemed received by the YMCA of Honolulu on the postmarked date, provided that the proposal is actually received by the YMCA no later than 3 business days from the date of postmark. Proposals shall be rejected when:
  - Postmarked after the designated date; or
  - Postmarked by the designated date but not received within three (3) business days from the submittal deadline; or
  - If hand delivered, received after the designated date and time.
- (11) Additional Materials and Documentation. Upon request from the YMCA, each applicant shall submit any additional materials and documentation reasonably required by the Child and Adult Care Feeding Program (“CACFP”) office or the YMCA as purchasing agent in its evaluation of proposals.
- (12) RFP Amendments. The YMCA reserves the right to amend this RFP at any time prior to the closing date for the final revised proposals.

- (13) Final Revised Proposals. If requested, final revised proposals shall be submitted in the manner, and by the date and time specified by the YMCA. If a final revised proposal is not submitted, the previous submittal shall be construed as the applicant's best and final offer/proposal. The applicant shall submit only the sections of the proposal that are amended. After final revised proposals are received, final evaluations will be conducted for an award.
- (14) Cancellation of Request for Proposal. The YMCA may cancel this RFP and any or all proposals may be rejected in whole or in part, when it is determined to be in the best interests of the YMCA's mission and purpose and/or its Program.
- (15) Costs for Proposal Preparation. Any costs incurred by the Vendor in the preparation and submission of a proposal is deemed to be the cost of the Vendor and shall not be reimbursed by the YMCA.

III. **Procurement Timetable:**

Note that the procurement table represents the YMCA of Honolulu's best estimated timetable. Contract start dates may be subject to the issuance of approval to proceed by the USDA Child and Adult Program Feeding Program, Department of Education, Child Nutrition Office.

<b><u>Activity</u></b>	<b><u>Scheduled Date</u></b>
Distribution of RFP	September 4, 2018
Closing date for written questions	September 7, 2018
Response to applicants' written questions	September 10, 2018
Proposal submittal deadline	September 21, 2018
Vendor selection	September 24, 2018
Acceptance of vendor selection by State	September 25, 2018
Notice of contract award	September 26, 2018
Contract start date	October 1, 2018 *

\* Pending approval by the State of Hawaii, Child and Nutrition Program.

IV. **Discussions with Applicants:**

- (1) Prior to Submittal Deadline. No discussions may be conducted with potential applicants, except for clarification purposes of the YMCA's requirements or, if prior to the written submission date, in writing.
- (2) After Proposal Submittal Deadline. Discussions may be conducted with applicants whose proposals require further clarification. Proposals may be accepted without discussions.

V. **Opening of Proposals:**

Proposals will be dated upon receipt by the YMCA, remained sealed and stored in a secured location until the submittal deadline. Procurement files shall be made available for public inspection after a contract has been awarded and executed by all parties.

VI. **Rejection of Proposals:**

The YMCA reserves the right to consider as acceptable only those proposals submitted in accordance with all requirements set forth in this RFP and which demonstrate an understanding of the specified service requirements and the USDA Child and Adult Feeding Program requirements.

A proposal may be automatically rejected for any one or more of the following reasons:

- (1) Failure to cooperate or deal in good faith.
- (2) Inadequate accounting system.
- (3) Late proposals.
- (4) Inadequate response to request for proposals.
- (5) Proposal not responsive to all requirements.
- (6) Applicant not responsible as required in the RFP.

VII. **Notice of Award:**

A statement of findings and decision shall be provided to all applicants by mail upon completion of the evaluation of competitive purchase of service proposals.

Agreements arising out of this solicitation are subject to the approval of the State CACAP Agency.

No work is to be undertaken by the awardee prior to the contract commencement date. The YMCA is not liable for any costs incurred prior to the official starting date.

VIII. **Protests:**

A Vendor may file a protest against the awarding of the contract. Appeal requests shall be submitted in writing to the YMCA of Honolulu and shall include appeal justifications. Appeal Requests shall be posted marked by USPS or hand delivered to the YMCA of Honolulu within five (5) business days of the postmark of the Notice of Findings and Decision sent by the YMCA. Delivery methods other than USPS shall be considered hand deliveries and considered submitted on the actual date of receipt by the YMCA of Honolulu.

IX. **Availability of Funds:**

The award of a contract and any allowed renewal or extension thereof, is subject to availability of funds by the YMCA and CACFP.

X. **Approvals:**

Any agreements arising out of this offer is subject to approval of the State CACFP Agency.

XI. **For Further Information:**

Contact the: **YMCA of Honolulu**  
Attention: Diane Tabangay, Director of Childcare  
1441 Pali Highway  
Honolulu, Hawaii 96813  
Telephone: (808) 531-3558  
Facsimile: (808) 533-1286



## Exhibit C. Proposal Evaluation

I. **Introduction:** The evaluation of proposals received in response to the RFP will be conducted by a Committee comprised of YMCA Staff. Final selection for the contract award will require review and approval by local administrators of the Child and Adult Care Food Program (Office of the Hawaii Child Nutrition Programs).

II. **Evaluation Categories and Thresholds:**

<u>Evaluation Categories</u>	<u>Possible Points</u>
Service Overview	10
Compliance to Requirements	20
Experience and Capability	10
Organization and Staffing	10
Service Delivery and Cost of Services	45
Litigation and/or Complaints	<u>5</u>
<b>TOTAL POSSIBLE POINTS</b>	<b><u>100</u> Points</b>

III. **Evaluation of Proposal Application:**

*Category: Service Overview (10 points)*

- The applicant demonstrates an understanding of the scope of services required.

*Category: Compliance to Requirements (20 points)*

- Refer to Exhibit A. II. Compliance to Requirements.
- The applicant demonstrates experience, capacity and knowledge relating to the USDA's Child and Adult Feeding Program and related requirements in the areas of:
  - (a) Food Safety and Sanitation;
  - (b) Meal Patterns, Portions and Food Service; and
  - (c) Recordkeeping and Reporting, including but not necessarily limited to:
    - Menus for meal service;
    - Receipts of daily delivery time and meal counts; and
    - Production records.

*Category: Experience and Capability (10 points)*

- Refer to Exhibit A. III. Experience and Capability.

*Category: Organization and Staffing (10 points)*

- Refer to Exhibit A. IV. Organization and Staffing.

*Category: Service Delivery and Cost of Service (45 points)*

- Refer to Exhibit A. V. Service Delivery; and A. VI. Cost of Service.

*Category: Litigation and/or Complaints (5 points)*

- Refer to Exhibit A. VII. Litigation.

## Exhibit D

### FOOD SERVICE PROGRAM AGREEMENT

This Food Service Program Agreement dated \_\_\_\_\_, 2018, and effective October 1, 2018 (the "Agreement"), is by and between the Young Men's Christian Association of Honolulu ("YMCA"), the business address of which is 1441 Pali Highway, Honolulu, Hawaii 96813, hereafter referred to as "Client", and \_\_\_\_\_, the business address of which is \_\_\_\_\_, Hawaii \_\_\_\_\_, hereafter referred to as "Contractor" (collectively, the "Parties").

#### RECITALS

A. The at-risk after-school meals component of the Child and Adult Care Food Program ("CACFP") provides Federal funding to after-school programs that serve a meal or snack to children in low-income areas. Reimbursement for after-school snacks is available through CACFP.

B. The U.S. Department of Agriculture's Food and Nutrition Service administers CACFP at the national level. In Hawaii, CACFP is administered by the State Department of Health ("DOH").

C. Client conducts an After-School Program ("YMCA Program") at Kalihi YMCA, 1335 Kalihi St, Honolulu, HI 96819

D. Contractor has experience in providing high quality food and beverage service.

E. Client desires to engage Contractor to provide, and Contractor desires to be engaged to provide, after-school meals as a part of its YMCA Program and in accordance with CACFP Regulations ("Meals") as set forth in the USDA At-Risk Afterschool Meals, A Child and Adult Care Food Program Handbook, that is attached hereto as Attachment A and made a part hereof (the "Regulations"), such that the YMCA Program will qualify for reimbursement under CACFP.

#### AGREEMENT

**NOW, THEREFORE**, in consideration of the following promises, the Parties agree as follows:

I. SCOPE OF SERVICES. Client hereby engages Contractor to perform, and Contractor hereby agrees to perform, the following services for Client (the "Services"):

a. Prepare, provide and deliver the requested number of Meals to the Client at the Program Site in accordance with the Regulations and in a satisfactory, timely and appropriate manner as may be described by Client from time to time. The Contractor shall deliver the Meals to the Program Site no later than 2:15 P.M on each day the YMCA Program is in session ("Service Day").

b. Deliver the Meals in individual containers to each of the Program Site in a manner that prevents spoilage and contamination (in coolers, thermo-containers, etc.). The Client will ensure that the containers belonging to the Contractor are stored in a safe location until they are picked up by the Contractor prior to the end of the Service Day.

c. Provide a written monthly menu to the Client at least five (5) business days prior to the end of each month, which monthly menu shall be subject to the Client's review and approval. If Client does not approve of any particular menu item, the Parties shall subsequently agree in writing on a suitable replacement item at least one (1) business day prior to the delivery of such item. The Client will inform the Contractor in advance of any food allergies so that menus can be planned accordingly. Client's approval shall not relieve the Contractor of its obligation under this Agreement to ensure that its Services comply with all Regulations and applicable laws.

d. Maintain all records, invoices, receipts, or other documentation relating to the Services and/or this Agreement or required to be maintained by the Client or the Contractor in connection with CACFP requirements and the Regulations.

Contractor shall perform all of the Services in a professional manner, consistent with industry standards, and pursuant to a schedule mutually acceptable to Client and Contractor. All Services must be performed to the reasonable satisfaction of the Client.

## II. RESPONSIBILITIES OF CLIENT. The Client shall:

a. Five (5) business days prior to the start of any YMCA Program session during the Term of this Agreement, provide the Contractor with a calendar setting forth the Service Days on which Meals shall be provided.

b. Inform the Contractor of the day's required Meal count via telephone or electronic mail by 10:00 A.M. on each Service Day.

III. TERM; TERMINATION. The term of this Agreement ("Term") shall be from October 1, 2018, through and including May 31, 2019; provided that the effective date of this Agreement shall be subject to and contingent upon approval by the local CACFP administrators (Office of Hawaii Child Nutrition Programs) and may be modified accordingly. This Agreement may be terminated by either Party by providing thirty (30) business days prior written notice to the other Party. A copy of any termination shall also be submitted to the State administering office, the Office of Hawaii Child Nutrition Program, ATTN: CACFP, 650 Iwilei Road, Suite 270, Honolulu, Hawaii 96817.

## IV. COMPENSATION.

a. The Client shall pay the Contractor \$\_\_\_\_\_ per Meal delivered in accordance with this Agreement, inclusive of all applicable federal, state and local taxes. Payments from Client to Contractor shall be contingent upon and shall be made following receipt of payment from DOH to Client for the same Services. To the extent that the reimbursement rates set forth in the Regulations are decreased and payments made by the DOH to the Client are decreased accordingly, the corresponding payments from Client to Contractor will be decreased accordingly.

b. Contractor will provide Client with a completed IRS Form W-9, and Contractor's State of Hawaii General Excise Tax License number, prior to any payments being made by Client to Contractor.

c. The Contractor will present to Client a daily record upon delivery at each Program Site that lists the number of Meals delivered. The Client will inspect the Meals to ensure that the agreed upon

menu for the day has been followed. In the event that the Meals delivered do not meet the required CACFP food pattern, are not consistent with the Regulations, or are not provided in accordance with this Agreement (“Non-Conforming Meals”), the Client may either (1) accept the Non-Conforming Meals, or (2) reject the Non-Conforming Meals. The Contractor neither invoice nor be compensated by the Client for Non-Conforming Meals regardless of whether they are accepted or rejected by Client.

d. The Contractor shall provide the Client with a School Food Service Program Certificate (“SFSPC” or “Certificate”) at the end of each month that lists the total number of Meals (other than Non-Conforming Meals) provided in that month. Upon reconciling the SFSPC with the Client’s daily records of delivered Meals (other than Non-Conforming Meals), the Contractor will submit an invoice statement to the Client, no later than seven (7) business days after the last day of that month. The invoice statement shall include the delivery dates and the number of Meals (other than Non-Conforming Meals) delivered on each Service Day at each Program Site for each designated site, as well as other information as reasonably requested by the Client. Invoices shall be submitted to the Client at YMCA of Honolulu, Metropolitan Office, 1441 Pali Highway, Honolulu, Hawaii, 96813, Attention: D. Tabangay.

e. The Client shall remit payment for each invoice submitted within twenty (20) business days of receipt and acceptance of such invoice.

V. EXPERTISE. Contractor represents that Contractor and its employees have the expertise necessary to perform the Services set forth in Section I above. If at any time Client is unsatisfied with the quality of Contractor’s Services, Client may request that Contractor replace any unsatisfactory workers assisting with the provision of Services with other workers to provide the Services. Contractor shall complete the replacement of Workers in an expeditious manner.

VI. INDEPENDENT CONTRACTOR. For all purposes under this Agreement, Contractor shall be considered an independent contractor. Except as otherwise required by law, Contractor agrees that all state and federal withholding taxes, unemployment insurance contributions and assessments, workers’ compensation insurance, general excise tax, self-employment taxes, and any and all other taxes, fees, assessments or contributions, owed by Contractor as an independent contractor, shall be the sole responsibility of, and shall be paid by Contractor.

VII. NO PARTNERSHIP OR JOINT VENTURE. Under no circumstances shall Client and Contractor be deemed, for any purposes, to be partners, nor shall Client or Contractor, in any manner, represent or suggest to any third party that either is a partner or joint-venturer of the other. Neither the Contractor nor the Client has any authority to assume or create any obligation or liability, either expressed or implied, on behalf of the other.

VIII. NON-EXCLUSIVITY. Contractor acknowledges and agrees that nothing in this Agreement shall restrict Client’s ability to enter into other agreements with other entities and individuals to render similar services, provided that Contractor’s rights and obligations under this Agreement are not altered or impaired. Likewise, Client acknowledges and agrees that nothing in this Agreement shall restrict Contractor’s ability to enter into other agreements with other entities and individuals to render similar services, provided that Client’s rights and obligations under this Agreement are not altered or impaired.

IX. EXPENSES. Contractor shall be responsible to pay for all costs and expenses incurred in the conduct of Contractor's Services unless otherwise provided in this Agreement or agreed to in writing by the Parties.

X. CONFIDENTIALITY. During this Agreement and after its termination, Contractor shall not publish, disclose or communicate to any third party any information concerning matters affecting or relating to the business of the Client or the students in the YMCA Program (the "Confidential Information"), except as permitted by the Client or required pursuant to court order or other legal process. Contractor agrees to disclose such Confidential Information only to its employees and/or workers who are required to have such information in connection with the performance of Contractor's obligations under this Agreement. If the Contractor believes any portion of a proposal contains information that should be withheld as confidential, the Contractor shall request in writing nondisclosure of designated proprietary data to be confidential and provide justification to support confidentiality. Such data shall accompany the proposal, be clearly marked, and shall be readily separable from the proposal to facilitate eventual public inspection of the non-confidential sections of the proposal. Price shall not be considered confidential and will not be withheld. Confidential information does not include information which (a) was or becomes generally available to the public, (b) was or becomes available on a non-confidential basis, provided that the source of such information was not bound by a confidentiality agreement in respect thereof, (c) was within the disclosing party's possession prior to being furnished by or on behalf of the non-disclosing party, provided that the source of such information was not bound by a confidentiality agreement in respect thereof, or (d) was a duplication of materials that the disclosing party already possessed.

XI. CONTRACTOR COMPLIANCE WITH LAWS; COVENANTS. As of the effective date of this Agreement, the Contractor complies with all federal, state, county and local laws, ordinances, codes, rules, and regulations, as the same may be amended from time to time, that in any way affect or are related to the Contractor's performance of this Agreement or Services provided ("Applicable Laws"). As of the effective date of this Agreement, the Contractor holds all licenses and accreditations required under Applicable Laws. At all times, Contractor agrees to observe all federal, state, and local laws, regulations and ordinances applicable to the performance of the Services ("Applicable Laws"), including but not limited to the following:

(a) Smoking Policy. The Contractor shall implement and maintain a written smoking policy as required by Chapter 328K, Hawaii Revised Statutes, or its successor provision.

(b) Drug Free Work Place. The Contractor shall implement and maintain a drug free work place as required by the Drug Free Workplace Act of 1988, or its successor.

(c) Persons with Disabilities. The Contractor shall implement and maintain all practices, policies, and procedures required by federal, state, or county law, including but not limited to the Americans with Disabilities Act (42 U.S.C. §12101. et seq.), and the Rehabilitation Act (20 U.S.C. §701. et seq.)

(d) Nondiscrimination. No person performing Services under this Agreement, including any subcontractor, employee, or agent of the Contractor, shall engage in any discrimination that is prohibited by any applicable federal, state, or county law, specifically with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR part 60).

(e) Contract Work Hours and Safety Standards. Compliance with the provisions of section 103 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 through 330) as supplemented by Department of Labor regulations (29 CFR part 5, section 103).

(f) Patent Rights. Full compliance with USDA requirements and regulations pertaining to reporting and patent rights (section 3015.175), with rights to inspection of records and books pertinent to this contract by the YMCA, FNS, Comptroller General of the United States or any of their duly authorized representatives.

(g) Clean Air Act. Compliance with the provisions or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1837h), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15), which prohibit the sue under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Provisions shall include reporting of violations to the FNS and to the U.S. EPA Assistant Administrator for Enforcement (EN-329);

(h) Energy Efficiency. Compliance to the mandatory standards and policies relating to energy efficiency which are contained in the State energy efficiency conservation plan issued in compliance with Energy Policy and Conversation Act (Pub. L. 94-163).

(i) OMB A-133 Audit. The Contractor shall subject its activities under this Agreement to audit as specified under provisions of OMB A-133.

(j) OMB Circular A-110. The Contractor shall comply with all provisions.

(k) HAR Title 11, Chapter 12. Food Service Standards and Permits in accordance with the Hawaii Administrative Rules, Title 11, Department of Health, Chapter 12 (Food Establishment Sanitation).

(l) HRS Section 103-55. Wages and Labor Law Compliance. The Contractor shall comply with HRS Section 103.55, wages, hours and working conditions of employees of contractors performing services. Refer to HRS Section 103-55, at the Hawaii State Legislature.

(m) State Business and Employment Laws. Contractor shall comply with all laws governing entities doing business in the state of Hawaii. Prior to contracting, owners of all forms of business doing business in the State except sole proprietorships, charitable organizations unincorporated associations and foreign insurance companies be registered and in good standing with the Department of Commerce and Consumer Affairs (“DCCA”), Business Registration Division.

Additionally, Contractor hereby agrees to comply with all requirements and obligations set forth in the following and/or assist Client with compliance with the following:

(a) Regulations. All requirements as set forth in the Regulations.

(b) DOH Agreement. All requirements as set forth in the master agreement between the Client and the DOH relating to the YMCA Program offered at the Program Site.

As a necessary condition to the formation of this Agreement, Contractor makes the representations contained in this paragraph, upon which the Client is relying as a material inducement to entering into this Agreement.

XII. INSURANCE. The Contractor shall obtain, maintain, and keep in force throughout the Term of this Agreement the following minimum insurance coverage:

(a) Commercial General Liability Insurance (“Liability Insurance”): written on an occurrence basis and issued by an insurance company in good standing in a combined amount of at least ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) in the aggregate and FIVE HUNDRED THOUSAND AND NO/100 DOLLARS (\$500,000.00) per occurrence, for bodily and personal injury and property damage liability.

(b) Workers’ Compensation Insurance: as required by Hawaii law. To the fullest extent allowable by Hawaii law, the policy must include a waiver of subrogation in favor of the YMCA of Honolulu and its officers, directors, employees, agents, affiliates, subsidiaries and representatives (“Client Parties”).

(c) Commercial Automobile Liability Insurance: in an amount at least equal to ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) combined single limit. Autos shall include any and all vehicles, whether hired, leased, owned or rented, that will be used in connection with the YMCA Program and/or Services. The limit shall be not less than \$1,000,000 per accident for bodily injury and property damage.

(d) Prior to or upon execution of this Agreement, the Contractor shall furnish to Client certificates of insurance which evidence the insurance required hereunder. Such certificates of insurance shall name the Client Parties as an additional insured. Upon renewal of the Liability Policy, Contractor shall promptly provide to the Client an updated certificate of insurance. The certificates of insurance shall expressly provide that the insurance policy shall not be cancelled unless the insurance company has first given to the Client thirty (30) calendar days’ written notice of the intended cancellation.

XIII. INDEMNIFICATION. The Contractor shall indemnify and hold harmless the Client Parties from and against any and all claims, demands, damages, losses, costs and expenses, including attorneys’ fees and costs, whatsoever that arise out of or in connection with the performance of Services under this Agreement.

XIV. RECORDS; AUDIT. All records pertaining to the Services shall be available for inspection and/or audit by representatives of the (i) State CACFP agency (Office of Hawaii Child Nutrition Programs); (ii) USDA, Food and Nutrition Service; (iii) U.S. General Accounting Office; (iv) USDA Office of the Inspector General upon request. Contractor shall follow all recordkeeping, reporting and retention requirements set forth in the Regulations notwithstanding any conflicting provision contained herein.

XV. TAX CLEARANCE. Contractor shall submit to Client a tax clearance certificate issued by the Hawaii State Department of Taxation (“DOTAX”) and the Internal Revenue Service (“IRS”). The certificate shall be an original certified copy and shall be valid for six (6) months from the most recent approval date on the certificate. The Contractor may register with Hawaii Compliance Express (“HCE”) for online proof of DOTAX and IRS tax clearance, Department of Labor and Industrial Relations (“DLIR”) labor law compliance, and DCCA good standing compliance. There is a nominal annual fee for the service. The “Certificate of Vendor Compliance” issued online through HCE provides the registered vendor’s current compliance status as the issuance date, and is accepted for both contracting and final payment purposes.

#### XVI. MISCELLANEOUS.

a. Entire Agreement. This Agreement represents the entire agreement between the Parties with regard to the subject matter of this Agreement. Any and all prior oral or written representations,

correspondence, and agreements regarding the subject matter contained in this Agreement are merged into and superseded by this Agreement and shall be of no force or effect.

b. Amendment. The provisions of this Agreement may be amended only by each Party executing a subsequent written instrument, which states each amended provision.

c. Interpretation of Agreement. The Parties acknowledge that both Parties have had the opportunity to have this Agreement reviewed and approved by legal counsel of their own choice. No negotiations concerning or modifications made to prior drafts of this Agreement shall be construed in any manner to limit, reduce, or impair the rights, remedies, duties, and obligations of the parties under this Agreement, or to restrict or expand the meaning of any of the provisions of this Agreement, or to construe any of the provisions of this Agreement in either Client's or Contractor's favor.

d. No Drafter. No Party shall be deemed to have drafted this instrument. No provision stated in this instrument shall be construed against any party as its drafter.

e. Survival. Any representation and warranty stated in this Agreement made by a Party shall survive the termination of the Agreement, unless otherwise specifically stated.

f. Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be thereby affected.

g. No Waiver. The failure of any Party to enforce at any time any provision of this Agreement shall not constitute a waiver of the right to thereafter enforce the same or any other provision thereof.

h. Dispute Resolution. If a dispute arises out of or in relation to this Agreement, the Parties agree to first work together in good faith to settle the dispute. Thereafter, if the parties are unable to settle any dispute involving this Agreement, such disputes shall be settled by arbitration under the auspices of Dispute Prevention & Resolution, Inc. ("DPR"), in Honolulu, Hawaii. Such arbitration shall be conducted by a single arbitrator mutually agreed to by the Parties, and in the absence of such mutual agreement on a single arbitrator; such arbitration shall be conducted by a panel of three (3) impartial arbitrators selected pursuant to the DPR's selection procedures. The decision of the arbitrator(s) shall be final, conclusive and binding on the parties, and judgment upon the award rendered by the arbitrator(s) may be entered in any court pursuant to Chapter 658 of the Hawaii Revised Statutes, as amended. Each Party shall bear its own witness fees and one-half of the fees of the arbitrator(s); however, the arbitrator(s) in his or their discretion may allocate such costs and expenses of the arbitration in such other manner as the arbitrator(s) may deem equitable or appropriate. Additionally, the prevailing Party shall be entitled to reimbursement for its reasonable expenses and attorney's fees incurred in connection with the arbitration proceeding, as determined and awarded by the arbitrator(s), together with the costs, including attorney's fees incurred in the enforcement of any arbitration award. This agreement to arbitrate shall be enforceable under Hawaii law. Any arbitration arising out of, or relating to, this Agreement, or the breach thereof, may, at the option of either Client or Contractor, include by consolidation or joinder any party against whom a claim might be made by the Client or the Contractor which is related, in any way, to the disputes submitted to arbitration.

i. Choice of Law. This Agreement shall be interpreted pursuant to the laws of the State of Hawai'i.



j. Notice. All notices, requests, demands, and other communications required or permitted hereunder shall be effective upon receipt (or upon refusal of proper delivery); shall be in writing; and shall be delivered personally, by facsimile, or by mail, via United States certified mail return receipt requested with postage prepaid to the address set forth on the first page of this Agreement.

k. Representations and Warranties of Authority; Authority to Sign. Each Party hereto represents and warrants that such party has the full power and authority to execute and perform this Agreement, subject to the terms and conditions hereof. The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in their individual or representative capacity as indicated. This Section and its provisions shall survive the expiration or earlier termination of this Agreement.

l. Counterparts; Facsimile Signatures. This Agreement may be executed in counterparts, each of which shall be an original and together shall constitute one and the same instrument binding on the parties. Execution by facsimile is acceptable and such signatures shall be treated as originals.

m. No Subcontracting. The Contractor may not subcontract any of its obligations under this Agreement without the prior written consent of Client, which consent may be not be unreasonable withheld.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date written above.

**Client: The YMCA of Honolulu**

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Name: Michael F. Broderick Title: President & CEO

**Contractor:** \_\_\_\_\_

Signed: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_