

ATTACHMENT D
STATE OF COLORADO



Colorado Department of Human Services
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OFFICE OF ADULT, DISABILITY, AND REHABILITATION SERVICES
John P. Daurio, Director

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Governor

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Karen L. Beye
Executive Director

Nancy Smith
Director

May 21, 2008

Sally Symanski
State Auditor
Office of State Auditors
200 East 14th Avenue
Denver, Colorado 80203

Dear Ms. Symanski:

I am enclosing a status update for the recommendations from the Business Enterprise Program (BEP) Performance Audit (September 2007), as requested in your letter to Karen Beye dated April 22, 2008. The attachments include the Recommendation Implementation Status Report, as well as the Operator Agreement and Evaluation Form, to which the Status Report refers.

Should you need further information, please do not hesitate to contact me.

Sincerely,

A handwritten signature in cursive script that reads "Nancy Smith".

Nancy Smith
Director
Division of Vocational Rehabilitation

Cc: John P. Daurio
Kenneth Schmidt
Kristin McDermott
Marilyn Morgan

**Business Enterprise Program
Legislative Audit Committee
Recommendation Implementation Status Report
May 20, 2008**

Recommendation #1: The Department of Human Services should increase its oversight of Business Enterprise Program operators to ensure accurate financial reporting and compliance with applicable laws, rules and regulations, and the operator's agreement by:

1a) Ensuring only operators with fully-executed contracts or operator's agreements are managing business enterprise locations.

Implemented. The Business Enterprise Program (BEP) currently operates 37 locations across the state. Each of these locations is operating under a signed and fully-executed Operator Agreement. The Department will continue to ensure that an Operator Agreement is signed prior to a blind operator assuming a new or existing BEP location.

1b) Revising the Program's rules and regulations to define allowable and unallowable business expenses and, where necessary, cap the amount of certain business expenses that can be deducted from operator sales. The Program should conduct training for operators to update them on changes to the rules and regulations and operator's agreement.

Implemented. In May 2008, the BEP passed new rules, which will become effective July 1, 2008. Section 9.409.1 of 12 CCR 2513-1 requires that allowable business expenses be defined in the Operator Agreement. Pursuant to these new rules, the BEP revised its Operator Agreement to clearly define the business expenses that are allowable under the program. These expenses, as well as examples of expenses that are not allowable, are identified in Exhibit B of the Agreement (see attached). Exhibit B also states "It is within the (program's) authority to determine what constitutes a legitimate expense associated with business operations." Three training sessions were held during the months of November and December 2007 for blind operators, part of which covered changes to the rules and the Operator Agreement. All existing operators were required to sign this *revised* version of the Operator Agreement in order to continue in the program.

1c) Reviewing the operators' monthly financial reports to identify operators who appear to be reporting questionable or excessive expenses for follow-up by program staff.

Implemented. A new monitoring protocol has been established and is being used by the Department to evaluate and train blind operators in appropriate business expenses. The Division of Accounting monitors monthly financial statements and informs BEP's business consultants if certain expenses are questionable or appear to be excessive. Business consultants notify the blind operator in writing, and adjust the set-aside accordingly. In addition, the business consultants monitor operators extensively in this area as part of a formal evaluation that is conducted on each operator twice a year.

1d) Conducting annual on-site reviews at each business enterprise location to ensure that operators are maintaining documentation sufficient to support reported sales and expenses, reporting only allowable business expenses, reporting all revenue earned, paying applicable taxes, and complying with the terms and conditions of the operator's agreement. To ensure the on-site reviews are consistent and effective, the Program should develop an on-site evaluation tool and train the business consultants on its use.

Implemented. The evaluation tool used to monitor the performance of blind operators prior to the audit has been substantially revised to more effectively monitor the areas of concern raised during the audit, including those areas identified in this recommendation. The BEP business consultants, who were integral in its development, use the tool on a semi-annual basis to formally evaluate the performance of every blind operator. A copy of the evaluation tool is attached.

1e) Improving controls over vending machines to ensure that sales are reported completely and accurately. This should include surprise monitoring visits to count inventory and observe cash counts.

Implemented. Six Cantaloupe systems, which provide a means for wireless monitoring of inventory and cash tracking systems in vending machines, have been purchased to improve accuracy in reported vending machine sales. When the blind operator submits monthly sales reports, the Cantaloupe system compares the report to actual sales monitored at the BEP office.

The first location, Denver General Mail Facility (GMF; BEP's largest vending facility), serves as a pilot location. GMF is fully-installed and operational. The BEP began monitoring this pilot location remotely on May 19, 2008. A second BEP location, Tricare Management Association (TMA) will be fully operational and monitored by July 1, 2008.

In addition to regularly scheduled visits, which occur at least monthly at each BEP location, unannounced visits typically occur at least two times per year. However, if the operator has a history of prior performance concerns, or a new concern has been identified based on monthly reports or a scheduled visit, unannounced visits will occur more frequently; for example, the business consultant will conduct an unannounced visit between the regularly scheduled monthly visits until the concerns have been rectified.

1f) Taking enforcement action against operators with recurring deficiencies, including license suspension and termination as appropriate.

Implemented. The BEP Operator Agreement states that "If the terms or provisions of this agreement for operating a Business Enterprise Location are breached, the State Licensing Agency (SLA) may elect to immediately remove the Blind Operator from the assigned location/s. Alternatively, if the SLA deems that the specific breach of this agreement is not a flagrant violation; the SLA may place the Blind Operator on probation with the expected period and terms of corrective action identified in writing. Failure to comply with the required corrective action may lead to immediate termination of this agreement." The BEP will continue to monitor the performance of blind operators and take the appropriate enforcement action against those with recurring deficiencies.

Recommendation #2: The Department of Human Services should take steps to improve the performance of Business Enterprise Program operations and achieve Program goals by:

2a) Annually conducting a systematic analysis of the financial performance of all operators to identify changes in each operator's reported net earnings and reasons for changing profitability.

In progress. Utilizing the legislative auditor's format, business consultants will conduct annual financial reviews on all operators, with the first set of reviews completed during the summer of 2008. Within available time and resources, CDHS Auditors will assist with these reviews and

be available for consultation to the program. These annual reviews will be used as a follow-up to the 2007 audit to identify changes in each operator's reported net earnings and reasons for changing profitability. To ensure objectivity, business consultants will review the performance of operators with whom they do not work regularly.

2b) Taking steps, on the basis of the analysis in Part "a," to improve profitability such as consolidating, modifying, or closing low-performing locations. In addition, the Program should provide technical support to operators with low-performing sites, as needed, and conduct market studies to maximize the location's potential.

Implemented. Following the audit, BEP initiated a series of strategic location planning meetings, whereby business consultants, in consultation with blind operators, underwent a process to identify low-performing sites based on gross income, and restructure business locations to bring operators up to a level where profitability could be reached. Consolidations occurred based on market research, as well as operator goals and evaluations of the operators' prior performance and abilities. In certain situations, low-performing sites were determined to be necessary and appropriate, particularly for new operators coming into the program to build their skills before taking on a more advanced location. Business consultants provide technical assistance on an ongoing basis, customized to the individual needs and goals of each operator.

Business consultants will be using the annual financial reviews, in conjunction with the semi-yearly performance reviews to identify needs for technical assistance, and to make ongoing proposals for consolidation or modification of BEP locations to enhance future profitability. A subcommittee of blind operators was formed in February 2008 to review and research strategic proposals brought forth as a result of these efforts.

2c) Using the analysis to establish a statewide target for the minimum and average annual gross and net earnings of all operators and reporting the results to the General Assembly in the Department of Human Services' annual budget request.

Implemented. The Business Enterprise program has sought permission from the Office of State Planning and Budgeting to add the following measures to the annual budget request, consistent with the recommendations made in the audit report:

- *Performance Measure #1: Blind persons have opportunities for self-employment in order to achieve independence and self-sufficiency. Increase the average monthly gross and net income of blind business operators in the Business Enterprise Program.*
- *Performance Measure #2: Blind persons have opportunities for self-employment in order to achieve independence and self-sufficiency. Increase the minimum monthly gross and net income reported by blind business operators in the Business Enterprise Program.*

2d) Improving the accuracy and reliability of financial data reported by operators, as discussed in Recommendation No. 1 of this report.

Implemented. The BEP has already begun to notice improvement in the accuracy of the monthly data reported by blind operators. As the systems and protocols described in recommendation No. 1 become more routine, the BEP expects that the accuracy and reliability of financial data reported by operators will no longer be an issue.

Recommendation #3: The Department of Human Services should work with the Business Enterprise Program to actively pursue the collection of past due operator accounts. This should include:

3a) Developing a written policy for the handling and processing of delinquent operator accounts. At a minimum, the policy should assign responsibility to specific staff persons for conducting follow-up collection procedures and submitting delinquent accounts to Central Collection Services. The policy should also specify the required follow-up collection procedures (e.g., one demand letter and one phone call).

The department follows the Accounts Receivable Collections Administrative Rule issued by the Department of Personnel effective January 1, 1997. Accordingly, the following Program (BEP) and Program Accounting responsibilities have been established:

Program responsibilities: (BEP Manager)

The BEP Manager shall make contact with the debtor within the first 10 days after the due date. The BEP Manager will work with accounting to ensure the debtor is contacted and the communication is documented.

Program Accounting responsibilities:

The program accountant will make contact with the debtor on the 10th day after the due date, if communication with the debtor is not established by the BEP Manager. A letter will be sent to the debtor by Accounting giving them an opportunity to pay the account or set up a plan to repay the debt within 10 days of the letter. If the debtor does not respond, the program accountant will try to contact the debtor by phone. If this does not work the past due account is referred to State Collections on the 31st day the account is past due.

3b) Instituting follow-up collection procedures immediately upon an account becoming past due. The Program's follow-up collection actions should be documented and maintained in the operator's files.

Implemented. Since the audit report was released, no additional operator accounts have become past due. If accounts become past due in the future, the BEP Manager will follow the procedures described in response to recommendation 1a, which requires the BEP Manager to attempt contact with the debtor within the first 10 days after the due date. Communication efforts will be documented in the blind operator's file.

3c) Referring all debts to Central Collection Services when the debt is 30 days past due, as required by statute and State Fiscal Rules.

Implemented. The BEP is complying with State Fiscal Rules regarding the collections process, which states that past due accounts must be sent to Central Collection Services when the debt is 30 days past due. As noted above, if attempts by mail and phone to settle the account within the first thirty days are unsuccessful, the past due account is referred to Central Collection Services. All accounts that were past due at the time of the audit, for which payment plans have not been established, have been sent to the State of Colorado's Central Collection Service. No additional accounts have become past due since the audit.

3d) Taking enforcement action against any operator who refuses to make payment, including license suspension and termination as necessary

Implemented. All blind operators have now agreed to make payments in accordance with their signed operator agreement(s). In accordance with the BEP Rules and Operator Agreement, BEP took enforcement action with one blind operator who initially refused to set up a payment plan, which resulted in the operator paying his debt in full. BEP will take additional enforcement actions as necessary with subsequent past due accounts.

Recommendation #4: The Department of Human Services should ensure the Business Enterprise Program discontinues its practice of paying sales taxes and other expenses on behalf of operators and seeking reimbursement from operators. The Department should work with the Program to revise the operator's agreement to clarify that operators are responsible for obtaining sales tax licenses, liability insurance, and phone service and for the payment of all taxes and expenses relating to their business enterprise. The operator's agreement should also specify the grounds for terminating an operator's license, which should include failure to maintain the required licenses and insurance and failure to pay sales and other business taxes. The Program should also transfer the existing sales tax licenses from the State to the responsible operators, follow-up during on-site reviews to ensure operators are making appropriate and timely payments, and take enforcement action as needed.

Implemented. The program has discontinued its practice of paying sales taxes and other expenses on behalf of operators and seeking reimbursement from operators. All existing sales tax licenses were transferred from the state to the responsible operator. Each of the 37 BEP locations is currently operating under a signed and fully executed operator agreement that clearly identifies the operator's responsibility for obtaining their sales tax license, liability insurance, and phone service, and for the payment of all taxes and expenses relating to their business enterprise. Each of these areas is reviewed comprehensively during each operator's semi-annual performance review. To date, no enforcement action has been necessary. However, the Operator Agreement clearly stipulates that probation and/or removal of the operator are consequences for failing to comply with the terms of the agreement. All Colorado blind operators were offered multiple opportunities for active participation in revising the agreement, in accordance with the requirements of the Randolph Sheppard Act.

Recommendation #5: The Department of Human Services should work with the Business Enterprise Program to improve the timeliness of vendor payments, including working with appropriate vendors to submit consolidated weekly or monthly invoices.

Implemented. The BEP's two major repair vendors under contract, which account for the majority of invoices the program receives regularly, began submitting weekly consolidated invoices in October, which has allowed BEP to improve the timeliness of payments. The program currently does not have any past-due invoices.

Recommendation #6: The Department of Human Services should work with the Business Enterprise Program to fully implement the provisions of the Colorado Secure and Verifiable Identity Document Act and House Bill 06-1343. This should include:

6a) Obtaining legal advice to assist in reconciling the identity documentation requirements set forth in House Bill 06S-1023 and the Colorado Secure and Verifiable Identity Document Act and taking appropriate action.

In progress. The Department has identified this issue as one that potentially impacts a number of other departmental programs as well as the Business Enterprise Program, and has sought assistance from the Governor's Office in reconciling House Bill 06S-1023 and the Colorado Secure and Verifiable Identity Document Act. Appropriate action will be taken once a legal opinion has been issued on this matter.

6b) Revising the standard operator's agreement to include all provisions required by House Bill 06-1343.

Implemented. The BEP revised the Operator Agreement to include lawful presence language in Exhibit A. Page 10 of the Operator Agreement states: "**Immigration Laws:** Pursuant to the Colorado Secure and Verifiable Identity Document Act, HB 06S-1023, and HB 06-1343, any independent contractor (Blind Operator), and its agent(s), who are designated by the Executive Director or the Executive Director's designee to be a contractor under C.R.S. 27-1-110, who hires individuals, must:

- a) Comply with all identity document requirements;
- b) Certify that they do not hire or subcontract with a company that hires illegal aliens;
- c) Verify legal alien status using the Systematic Alien Verification for Entitlement Program (SAVE) Database; and
- d) Accommodate any on-site compliance reviews regarding immigration topics."

6c) Requiring all operators to sign the new operator agreement and certify that they do not hire or subcontract with a company that hires illegal aliens and that they have attempted to gain access to the United States Department of Homeland Security's basic pilot program to verify the status of their workers.

Implemented. As noted in the response to recommendation 1a, all blind operators have signed the revised operator agreement for each of their locations. In addition, all operators have signed a State of Colorado Certification Statement Regarding Illegal Aliens (SCCSRIA) certifying that they do not hire or subcontract with a company that hires illegal aliens, and the Affidavit of Legal Residence verifying that they are, themselves, legal residents. By signing the SCCSRIA, blind operators agree they have gained access to the USDHS basic pilot program to verify the status of their workers.

6d) Training operators on the requirements of HB 06-1343 and assisting operators attempting to enter the United States Department of Homeland Security's basic pilot program.

Implemented. As noted above, BEP hosted three training sessions for operators in Denver and Colorado Springs to cover new requirements and procedures implemented as a result of the audit. The requirements of HB 06-1343 and the United States Department of Homeland Security's basic pilot program were addressed initially during that session. New trainees receive this information during the last phase of their formalized program training.

6e) Verifying during on-site reviews that operators are complying with the requirements of HB 06-1343.

Implemented. Business consultants routinely verify that all blind operators are complying with the requirements of HB 06-1343 through use of the semi-annual evaluation tool. The first section of the tool, titled "Compliance Procedures", requires business consultants to confirm that the operator has gained access to the USDHS pilot program, and review the I-9 documentation on file. Evaluations to date have shown that compliance is not an issue.

OPERATOR AGREEMENT

For the Operation of a Business Enterprise Location Under the Randolph-Sheppard Vending Facility Act

This Agreement, made this _____ day of _____, 20____, by and between the State of Colorado, for the use and benefit of the Department of Human Services, Division of Vocational Rehabilitation, Business Enterprise Program (BEP), with offices located at 2211 West Evans Avenue, Building B, Denver, Colorado, 80223, hereinafter referred to as the State Licensing Agency (SLA), and _____, a Certified or Licensed Blind Business Manager of Colorado and/or trainee _____, hereinafter referred to as "Blind Operator" or "Trainee", agree to operate a Business Enterprise Location according to the applicable laws, the management policies of the SLA, State rules and regulations, and the Code of Federal Regulations set forth under the Randolph-Sheppard Act.

RECITALS

Whereas, the SLA is the Colorado program responsible for the administration of the Federal Randolph-Sheppard Vending Facility Program as the designated State Licensing Agency under the Randolph-Sheppard Act, as amended, 20 USC. 107 et seq, and 34 CFR Part 395 - Vending Facility Program for the Blind on Federal, State and Other Property, and Human Services Code, Part 1 of Article 8.5, Title 26, Sections 100.1 through 107 Colorado Revised Statutes, as amended; and

Whereas, the SLA enters into this agreement with the Blind Operator to operate location number _____ on the property known as _____, located at _____, and to provide services under the statutory authority, terms and conditions described herein, hereinafter referred to as the "assigned location"; and

Whereas, the SLA offered the Blind Operator the opportunity to manage the location under the terms and conditions hereinafter set forth below and in Exhibits A, B, and C.

Now, therefore, it is hereby agreed that:

1. The Blind Operator will manage the assigned location/s under the terms and conditions hereinafter set forth below and in Exhibits A, B, and C.
2. The SLA shall administer the Business Enterprise Program (hereinafter referred to as "Program") in accordance with the responsibilities and rights imposed and granted by applicable Federal and State laws, local laws, and the rules and regulations and guidelines governing the Program.
3. The SLA shall not have any personal or economic interest in the location. Without written permission of the Business Enterprise Program Manager, no employee of the SLA, its contractors and subcontractors shall have any personal or economic interest whatsoever in the location.
4. The SLA shall protect the confidentiality of all records and other materials containing personal identifying information that are maintained in accordance with this agreement. Except as provided by law, no information in possession of the SLA about the Blind Operator shall be disclosed in a form including identifying information without the prior written consent, using form, "Consent to Release Confidential Information", of the Blind Operator. In this regard, the SLA shall be governed by Rehabilitation Services, Service Delivery Policy: Vocational Rehabilitation Services, Chapter 2, Use and Release of Personal Information, 2.0 et seq.
5. The SLA shall act in accordance with the Randolph-Sheppard Act to protect the priority of the Blind Operator to operate

facilities on State and Federal properties. The SLA will exercise necessary and appropriate actions to assure a successful business operation on any State and Federal property where the business is operated.

6. The SLA shall determine the necessary systems, methods and/or format for required accounting, operations management and reporting for the assigned location/s, and tailor these to the Blind Operator if necessary, based on the resources and needs of the Blind Operator.
7. The SLA shall take steps to improve profitability, such as consolidating, modifying, or closing low-performing locations, based on SLA-conducted analysis. If the SLA determines a location is no longer a suitable site, the SLA has the right to take action and terminate this agreement with a thirty (30) day written notice.
8. The SLA will guarantee full and fair access to the formal appeals process to all Blind Operators in accordance with 12 CCR 2513-1 9.411 REVIEWS AND HEARINGS FOR LICENSED OPERATORS and 9.411.2 PROCEDURES FOR A FULL EVIDENTIARY HEARING.
9. This agreement shall expire annually on September 30th. The Committee of Licensed Blind Business Managers of Colorado and the SLA shall review the agreement and give consideration to suggestions for improvements through active participation. Any changes agreed to by the SLA will be included in a new agreement.
10. Failure to sign or comply with any and all terms of this agreement, and subsequent revisions to this agreement, may result in the immediate termination of this agreement and the removal of the Blind Operator from the assigned location/s.

11. This agreement may be terminated at any time by either party upon providing the other party with thirty (30) days written notice prior to the date of termination.
12. This agreement is subject to immediate termination by the SLA in the event that the SLA determines that the health, safety, or welfare of persons receiving or providing services may be in jeopardy.
13. If the terms or provisions of this agreement for operating a Business Enterprise Location are breached, the SLA may elect to immediately remove the Blind Operator from the assigned location/s. Alternatively, if the SLA deems that the specific breach of this agreement is not a flagrant violation; the SLA may place the Blind Operator on probation with the expected period and terms of corrective action identified in writing. Failure to comply with the required corrective action may lead to immediate termination of this agreement.
14. The waiver of a breach of a term or provision of this agreement shall not be construed as a waiver if a breach of any other term or provision of this agreement or as a waiver of a breach of the same term or provision upon subsequent breach.
15. This agreement is terminated when the Blind Operator has relinquished this location, been removed from this location by the SLA, abandoned this location, upon the termination of the Blind Operator's license issued by the SLA, or upon the Blind Operator's death. The termination of this agreement does not relieve the Blind Operator of any debts or liabilities incurred under this agreement.
16. Blind Operator is authorized to take possession of said location's equipment, inventory, cash and keys only after a fully-executed operator agreement is in place at the SLA.

17. Any exhibits or addendums that are attached hereto, and incorporated herein, shall be a part of this agreement.

IN WITNESS THEREOF, the parties hereto have executed this agreement on the day first above written.

By _____
_____, Licensed Blind Business Manager

Date

By _____
Marilyn Morgan, Program Manager
Business Enterprise Program

Date

By _____
Nancy Smith, Director
Division of Vocational Rehabilitation
For the Executive Director,
Karen L. Beye, Executive Director CDHS

Date

Exhibit A

Scope of Work

The Blind Operator agrees to comply with the following terms and conditions in managing the scope of work for the assigned location/s:

1. The Blind Operator will abide by all rules and regulations and program policies governing the operation of the location, and will conduct all business in a fair and truthful manner. The Blind Operator shall perform within any contract, permit, or agreement, as authorized or required by the location's property management, and shall not engage in any conduct that demonstrably jeopardizes the SLA's interest in the location, its statutory priority, or its equipment and inventory. The Licenses Manager will notify the SLA of any complaints of alleged violations or legal issues that would jeopardize the location permit or agreement with property management and/or jeopardize the SLA's priority under the Randolph-Sheppard Act. If the priority or permit is jeopardized, the SLA has the right to immediately remove the Blind Operator from the assigned location/s.
2. The Blind Operator must provide satisfactory service to the location's building management personnel and to the location's customers. Failure to provide a reasonable level of service may result in removal from the assigned location.
3. The Blind Operator will utilize the cash basis of accounting, as opposed to an accrual basis of accounting, for financial reporting of operations, except for such credit accounts as may be authorized by the SLA.
4. The Blind Operator is personally responsible and financially liable for all State assets entrusted to the Blind Operator, including but not limited to cash, inventory and equipment.

5. Blind Operator is required to carry liability insurance which satisfies the SLA's coverage requirements.
6. Blind Operator is responsible for maintaining the appropriate business licenses applicable to the assigned location/s.
7. Blind Operator is responsible for the payment of all liabilities and expenses related to the business enterprise, including sales tax, telephone expense and Internet Service Provider costs, unless other written arrangements are made with the SLA.
8. The Blind Operator will submit, in accordance with the prescribed schedule, a standard monthly financial report to the SLA (i.e. Operator Turn-In Report) detailing the daily sales, purchases for resale, operating expenses, wages and cash on hand. The information reported on the monthly financial report becomes the basis for calculating Operator assessments (i.e. set-aside amounts) and to report financial performance to the United States Rehabilitation Services Administration.
9. The Blind Operator is personally responsible and financially liable for the accurate and proper reporting of all sales transacted through the location/s or generated due to the privileges associated with this agreement.
 - a. Sales must be reported in accordance with Generally Accepted Accounting Principles (GAAP). This also includes, but is not limited to, monies received from vending machines, lottery sales, rebates, commissions or bonuses received by the Blind Operator that are considered to be income to the location.
 - b. Controls must be maintained to ensure that all sales are reported completely and accurately. The Blind Operator

must maintain, and provide when requested, documentation providing evidence supporting the collection and reporting of all revenues associated with the location/s.

- c. Blind Operator agrees to implement, upon SLA request, necessary systems, methods and controls for tracking and reporting of vending machine sales, which may include automated reporting systems. Blind Operator also agrees to accommodate unscheduled site visits for record readings, inventory counts and/or observe cash counts.
10. Upon SLA request, the Blind Operator agrees to implement, or assist in the implementation, the necessary systems, methods and controls for tracking and reporting of vending machine sales, which may include automated reporting systems. The Blind Operator also agrees to
- a. Accommodate scheduled and unscheduled site visits to record readings, count inventory and/or observe cash counts;
 - b. Fully cooperate with the SLA's implementation and routine operation of any sales, inventory and cash monitoring systems, including but not limited to remote, wireless machine monitoring and related hardware;
 - c. Not tamper with, disable or remove monitoring hardware;
 - d. Allow, and not impede in anyway, the SLA's mandated requirements associated with the capturing and reporting of all sales and cash information from all vending machines connected with the Blind Operator's location/s, including the 24 hours, 7 days a week electronic monitoring;
 - e. Pay for any costs associated with utilizing additional functionality of vending machine monitoring systems beyond what the SLA is required to implement, including the purchase of personal computers and Internet access fees; and

- f. Not hold the SLA responsible for third-party management of their servers, applications and network performance, including data backups and trouble-free Internet browsing.
11. The Blind Operator will maintain documentation sufficient to support reported and legitimate business expenses.
 - a. Blind Operator agrees to only deduct reasonable and legitimate business expenses in determining monthly income. See Exhibit B for legitimate business expenses.
 - b. The reporting of unauthorized or questionable business expenses will result in the repayment of such amounts plus penalties.
12. Upon request, the SLA shall be furnished with, and have access to, all documents and reports for business operations at the location/s named in this agreement, which are currently required by State or Federal governments, including but not limited to Federal Withholding Form 941, Federal Unemployment Form 940, State Withholding Form DR1094, State Unemployment Form UITR-1, and Worker's Compensation Insurance payment records.
13. The Blind Operator authorizes the State, the Federal government, or their designee, to perform audits and/or inspections of its records, at any reasonable time, to assure compliance with the State or Federal government's terms and/or to evaluate the Blind Operator's performance. Requested records must be produced within five business days. Supporting financial documentation must be maintained for a period of three full calendar years, in addition to the current year.
14. Discrimination: The Blind Operator during the performance of this agreement shall:

- a. Not discriminate against any person on the basis of race, color, national origin, age, sex, religion and disability, including Acquired Immune Deficiency Syndrome (AIDS) or AIDS related conditions and shall not exclude from participation in, or deny benefits to any qualified individual with a disability, by reason of such disability; and
 - b. Inform any person who thinks he/she has been discriminated against as related to the performance of this contract that they have the right to assert a claim, Colorado Civil Rights Division, C.R.S. 24-34-302, et seq.
15. Criminal Background Check: Pursuant to C.R.S. 27-1-110 and Department of Human Services Policy VI-2.4, any independent contractor (Blind Operator), and its agent(s), who are designated by the Executive Director or the Executive Director's designee to be a contractor under C.R.S. 27-1-110, who has direct contact with vulnerable persons in a state-operated facility, or who provides or manages a state-licensed facility, shall:
- a. Initially and periodically submit to a criminal background check; and
 - b. Report any arrests, charges, or summonses for any disqualifying offense as specified by C.R.S. 27-1-110 to the State.

Any Contractor or its agent(s), who do not comply with C.R.S. 27-1-110 and DHS Policy VI-2.4, may, at the sole discretion of the State, be suspended or terminated.

16. Immigration Laws: Pursuant to the Colorado Secure and Verifiable Identity Document Act, HB 06S-1023, and HB 06-1343, any independent contractor (Blind Operator), and its

agent(s), who are designated by the Executive Director or the Executive Director's designee to be a contractor under C.R.S. 27-1-110, who hires individuals, must:

- a. Comply with all identity document requirements, including the Affidavit of Legal Residency, the Employment Eligibility Verification Form I-9, and prove identities using documents that meet the requirements of the Colorado Secure and Verifiable Identity Document Act;
 - b. Certify that they do not hire or subcontract with a company that hires illegal aliens;
 - c. Verify legal alien status using the Systematic Alien Verification for Entitlement Program (SAVE) Database; and
 - d. Accommodate any on-site compliance reviews regarding immigration topics.
17. Only the Blind Operator may have an economic interest in the assigned location/s, unless written permission is provided by the Business Enterprise Program Manager.
18. At its discretion, the SLA has the right to bill the Blind Operator for monies paid due to the acts of negligence, including but not limited to repairs to buildings, equipment damages, and loss of inventory.
19. Appropriate training is expected to be provided by the Blind Operator to all of their staff.
20. The Blind Operator agrees to pay any and all debts on time. If a debt to the SLA is 30 days past due, the SLA will refer the past due amount to collections in accordance with Colorado Administrative Accounts Receivable Rule 1.37. Accounts referred to collections may result in the immediate removal of

the Blind Operator from the assigned location/s. Additionally, the SLA may offset mutual debts without prior approval of the Blind Operator.

21. The Blind Operator agrees to promptly file their monthly statement (i.e. Turn-In) for set-aside assessment and pay their set-aside fees timely.
 - a. The Blind Operators shall be assessed a one hundred dollar (\$100.00) late charge the first time that either the turn-in report or the set-aside payment is not received timely.
 - b. The Blind Operators shall be assessed a two hundred dollar (\$200.00) late charge the second time that either the turn-in report or the set-aside payment is not received timely.
 - c. The Blind Operators shall be assessed a three hundred dollar (\$300.00) late charge the third and subsequent times that either the turn-in report or the set-aside payment is not received timely.
 - d. If an operator is late a total of five times with the turn-in report or the set-aside payment, then the license may be terminated or suspended. The number of times that a Blind Operator is late in making their set-aside payment is associated with the term of this agreement or any calendar year (i.e. the count or the amount of the late fee is not reset to zero at any point, nor is it associated with a specific location).
 - e. For the turn-in report, timely shall mean the 9th calendar day following the artificial month-end of the 25th of each month.
 - f. For the set-aside payment timely shall mean the 25th of the month following the month for which they are calculated. If

- payments are not received in the office by the 25th, the account shall be considered past due by the SLA.
- g. The SLA may waive the late charge if extenuating circumstances warrant such a waiver in the opinion of the SLA.

22. The Blind Operator acknowledges the State's zero tolerance policy for violence in the workplace and agrees to conduct business in compliance with such. Blind Operator also agrees that harassment in the workplace will not be tolerated. Acts of violence or harassment may result in termination of this agreement.

23. If the Blind Operator vacates the location without thirty days notice or fails to continue operating the business enterprise on daily basis, the Blind Operator will be personally liable for all costs associated in transferring the location to the next Blind Operator or SLA. These costs shall include but are not limited to: inventories, cleaning, back wages, and repair or replacement of SLA equipment.

24. INDEPENDENT CONTRACTOR STATUS: THE BLIND OPERATOR SHALL PERFORM ITS DUTIES HEREUNDER AS AN INDEPENDENT CONTRACTOR AND NOT AS AN EMPLOYEE. NEITHER THE BLIND OPERATOR NOR ANY AGENT OR EMPLOYEE OF THE BLIND OPERATOR SHALL BE OR SHALL BE DEEMED TO BE AN AGENT OR EMPLOYEE OF THE STATE. BLIND OPERATOR SHALL PAY WHEN DUE ALL REQUIRED EMPLOYMENT TAXES AND INCOME TAX WITHHOLDING, INCLUDING ALL FEDERAL AND STATE INCOME TAX AND LOCAL HEAD TAX ON ANY MONIES PAID PURSUANT TO THIS AGREEMENT. BLIND OPERATOR ACKNOWLEDGES THAT THE BLIND OPERATOR AND ITS EMPLOYEES ARE NOT

ENTITLED TO UNEMPLOYMENT INSURANCE BENEFITS UNLESS THE BLIND OPERATOR OR A THIRD PARTY PROVIDES SUCH COVERAGE AND THAT THE STATE DOES NOT PAY FOR OR OTHERWISE PROVIDE SUCH COVERAGE. BLIND OPERATOR SHALL HAVE NO AUTHORIZATION, EXPRESS OR IMPLIED, TO BIND THE STATE TO ANY AGREEMENTS, LIABILITY, OR UNDERSTANDING EXCEPT AS EXPRESSLY SET FORTH HEREIN. BLIND OPERATOR SHALL PROVIDE AND KEEP IN FORCE WORKER'S COMPENSATION (AND SHOW PROOF OF SUCH INSURANCE) AND UNEMPLOYMENT COMPENSATION INSURANCE IN THE AMOUNTS REQUIRED BY LAW, AND SHALL BE SOLELY RESPONSIBLE FOR THE ACTS OF THE BLIND OPERATOR, ITS EMPLOYEES AND AGENTS.

25. It is expressly understood and agreed that the enforcement of the terms and conditions of this agreement and all rights of action relating to such enforcement, shall be strictly reserved to the SLA and the Blind Operator. Nothing contained in this agreement shall give or allow any claim or right of action whatsoever by any other third party. It is the express intention of the SLA and the Blind Operator that any such person or entity, other than the SLA or the Blind Operator, receiving services or benefits under this agreement shall be deemed an incidental beneficiary only.
26. The Blind Operator cannot assign, delegate, or subcontract the totality or the whole of his duties to subcontractors or any other third party.
27. The Blind Operator shall notify the SLA within twenty (20) calendar days in the event that he/she learns of any actual litigation in which he/she is a party defendant in a case that

involves services provided under this agreement. Failure to comply with this provision is grounds for immediate termination.

28. All equipment purchased by the SLA is the property of the State and will not be transferred to another location without prior written approval of the SLA. A work order and an equipment transfer sheet must be properly executed prior to any equipment move. Items purchased for a particular location remain the property of that location unless the appropriate equipment transfer is properly submitted and executed. The Blind Operator, and their staff members, are not authorized to modify the State's equipment. The Blind Operator agrees to:
- a. Be liable for the equipment losses and repair costs when the Blind Operator or their staff members fail to provide appropriate care;
 - b. Be liable for any costs of transitioning a location to a subsequent operator due to failure to properly maintain and clean the facility and equipment.
 - c. Fund the purchase of supplies, consumables, expendables, cleaning costs, and replacement of minor equipment components (such as light bulbs, filters, cash register supplies, etc.); and
 - d. Be responsible for, unless ordered and approved by the SLA, all maintenance and service costs due normal usage.
29. The Blind Operator must maintain a professional appearance and act in a professional manner while managing a SLA facility. All employees are expected to wear uniforms.
30. The Blind Operator must open and maintain a dedicated bank account in which they maintain sufficient funds to operate the SLA facility, and which will be available to the SLA for audits

and reviews to provide documentation for revenues and expenses.

31. The Blind Operator must be actively engaged in the management of the location/s to achieve satisfactory operation of the facility. With prior notice from the SLA, the Blind Operator shall be available for all necessary visits to the facilities for the purpose of advice, consultation, and inspections.
32. The Blind Operator must take appropriate actions to correct deficiencies, noted in writing on evaluations, audits or reviews, within 30 business days or this Agreement will be terminated.
33. The Blind Operator shall notify the SLA and their building management, in writing and in advance, if their facility will be closed during the facility's regularly scheduled business hours.
34. The Blind Operator must provide the SLA with the following information and must notify the SLA of any changes to any item no later than 10 business days after a change occurs:
 - a. The facility telephone number;
 - b. An address to which SLA correspondence is to be sent;
 - c. A current email address;
 - d. A phone number for use in emergencies; and
 - e. Preferred reading format and form of communications.

Exhibit B Legitimate Business Expenses

Legitimate Business Expenses, which may be deducted from gross profits to reduce the set-aside assessments, must be direct expenses of the business enterprise, and must be reasonable for the SLA operation. Any business expenses deducted on the monthly financial report (i.e. Turn-In) must be supported by actual invoices, delivery receipts, and/or proof of payment. It is within the SLA's authority to determine what constitutes a legitimate expense associated with business operations.

Legitimate Business Expenses, beyond product purchased for resale, wages and taxes, include the following categories of expenses:

- Insurances and Business License costs;
- Rent and Utility Expenses paid to the owner of the property on which the business is located;
- Food Handling and Product Storage costs;
- Office and Cleaning supplies;
- Maintenance and Repair costs;
- Uniform and Linen costs;
- Signage, Décor and Furnishing costs;
- Telephone Expense for local service charges for the business line located at the facility;
- Internet Access fees for the location's usage, if not provided by the SLA facility;

- Sanitation, Water Treatment and Pest Control Expense;
- Rental Expense for equipment used within the business enterprise.

While not an exhaustive list, transportation expense, cell phone charges, and non-mandatory cost for training are specifically not legitimate business expenses, unless other written agreements are made with the SLA for a specific location.

Additionally, allocations of depreciation expense for vehicles and home offices are not legitimate business expenses for SLA purposes, although they may be valid business expenses for IRS purposes.

Exhibit C Inventory Processes

1. Initial inventory of sellable merchandise and expendables (i.e. paper products, supplies, cleaning materials, components, etc.) for newly-licensed Blind Operators.
 - a. The SLA shall furnish, without charge, the initial inventory of merchandise and expendables for the initial assignment of a new licensee. The initial inventory of merchandise and expendables shall be sufficient, as projected by the SLA.
 - b. The Blind Operator will plan and conduct a physical inventory of sellable merchandise and expendables, at least monthly at the end of the financial reporting period, or as requested by the SLA. The extended value of the inventory is to be reported on the monthly Turn-In spreadsheet, with supporting detail available to the SLA upon request.

2. Subsequent inventory of merchandise and expendables.
 - a. The Blind Operator shall maintain an inventory of merchandise and expendables in the same quantity as the initial merchandise and expendables transferred to the Blind Operator upon assignment to the facility. If the SLA, in consultation with the Blind Operator, determines that changed circumstances require a different amount of merchandise and expendables, the SLA shall communicate in writing to the Blind Operator the new amount of merchandise and expendables. If a new amount of merchandise and expendables is necessary to provide for the satisfactory operation of the facility, that new amount of inventory must be maintained by the Blind Operator.
 - b. Blind Operators assigned to any facility other than their initial assignment in Colorado, shall acquire the

merchandise and expendables as determined by the SLA to be sufficient to satisfactorily operate the facility. To effectively expedite the changeover in facilities, when a facility is already stocked with merchandise and expendables, the existing stock shall become part of the required inventory stock level of the incoming Blind Operator. The location will be inventoried by the SLA and the value of the inventory will be calculated by the SLA. The value of the inventory received by the incoming Blind Operator shall be the amount agreed to be repaid to the SLA by the Blind Operator at the time the Operator Agreement is terminated.

- c. The SLA shall provide initial inventory to the Licensed Manager for merchandise and expendables. The Licensed Manager must satisfy any cash advance received from the SLA to purchase merchandise on subsequent assignments within a 12-month period and make monthly payments in the amount established by the SLA.
- d. The granting of an advance is discretionary and may be granted only under the following conditions:
 - i. The Licensed Manager shall satisfy the SLA as to the Licensed Manager's ability to repay the advance within 12 months; and
 - ii. Licensed Managers with outstanding balances on advances are not eligible for transfer to another assignment.
- e. When a Blind Operator is assigned to an existing SLA location, the responsibility for the fixtures, furnishings, and equipment of that facility, as well as its inventory of merchandise and expendable items, shall be transferred to the incoming Blind Operator. The Program Manager shall

develop and implement procedures for affecting such transfers to assure that both the incoming and outgoing Blind Operators have full knowledge of the nature and condition of the items being transferred.

SNACKSHOP EVALUATION FORM

YES	NO	N/A
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Total Yes	0
Total N/A	0
Total Possible Points	65
Final Score	0.0%
90% Above	Excellent
80% Above	Good
70% Above	Average
69% Below	Poor

	July	August	Sept.	Oct.	Nov.	Dec	Average
Gross Sales							
Gross Profit %							
Labor %							
Net Proceeds							
Net Profit %							
Vending Commission							
Net Income							

Comments