

ILLINOIS DEPARTMENT OF HUMAN SERVICES
DIVISION OF REHABILITATION SERVICES
BUSINESS ENTERPRISE PROGRAM FOR THE BLIND

MEMORANDUM OF UNDERSTANDING
2012-MOU-004-DRS

The Department of Human Services (DHS)/Division of Rehabilitation Services (DRS)/Business Enterprise Program for the Blind (BEPB) (hereinafter referred to as DHS/DRS/BEPB), and the Department of Corrections (Lincoln Correctional Center, DOC), hereby enter into this Memorandum of Understanding (MOU) pursuant to the statutory mandates set forth in the Blind Vendors Act, 20 ILCS 2421/1 *et seq.* DHS and DOC are collectively referred to herein as "Parties" or individually as a "Party".

RECITALS

WHEREAS, Lincoln Correctional Center, DOC is desirous of having the BEPB Vending Facilities for the use of its employees, individuals served and the general public properly on its Premises (unless otherwise limited herein) at Lincoln Correctional Center, DOC facility;

WHEREAS, DHS/DRS/BEPB is willing to operate, under this MOU with Lincoln Correctional Center, DOC, such Vending Facilities in said buildings, and provide all equipment and inventories necessary for its operation therein and operate said facilities as hereinafter provided; and

WHEREAS, Lincoln Correctional Center, DOC is agreeable to such operation on the terms hereinafter set forth.

NOW, THEREFORE, it is agreed by the Parties hereto as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. Capitalized words and phrases used in this Agreement have the following meanings:

"BEPB" means the Business Enterprise Program for the Blind.

"Blind Vendor" means a blind person licensed by DHS/DRS/BEPB to operate a Vending Facility.

"Blind Vendors Act" means the Illinois statute set forth at 20 ILCS 2421/1 *et seq.*

"DHS" means the Illinois Department of Human Services.

"DHS/DRS/BEPB" means the State Licensing Agency in Illinois designated by the U.S. Department of Education under the Randolph-Sheppard Act, 20 U.S.C. 107 *et seq.*, and rules issued pursuant thereto at 34 CFR Part 395. DHS/DRS/BEPB shall operate the location pursuant

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to said federal laws and regulations, and the Blind Persons Operating Vending Facilities Act, 20 ILCS 2421, and the rules promulgated there under 89 Ill. Adm. Code Part 650.

"DOC" means the Illinois Department of Corrections.

"DRS" means the Division of Rehabilitation Services.

"Location" means a correctional facility operated and/or controlled by DOC.

"MOU" means this Memorandum of Understanding.

"Premises" means a Location operated and/or controlled by DOC.

"Randolph Sheppard Act" means the Federal statute set forth at 20 U.S.C. §107 *et seq.*

"Vending Facility" means automatic vending machines and such other appropriate auxiliary equipment that may be operated by Blind Vendors and that is necessary for the sale of confections, foods and beverages dispensed automatically and prepared off the Premises in accordance with all applicable health laws. Vending Facility does not include DOC's non-vending machine commissaries.

"Vending Machine" means a debit card-operated machine that dispenses articles.

"Vendor" means a Blind Vendor licensed by DHS/DRS/BEPB to operate a facility upon DOC Premises.

**ARTICLE II
EFFECTIVE DATE**

2.1. Effective Date. This Memorandum of Understanding shall become effective when fully executed by all Parties, and shall continue in effect until terminated for default or non-compliance.

**ARTICLE III
EQUIPMENT AND SUPPLIES**

3.1. Unless otherwise specified herein, DHS/DRS/BEPB agrees to provide, at its own cost, all equipment deemed necessary for the proper operation of the Vending Facilities, and to provide whatever other initial inventory is necessary or proper for such operation. All such equipment shall, however, be subject to the approval of Lincoln Correctional Center, DOC, and shall be located and installed at the expense of DHS/DRS/BEPB, pursuant to plans approved by individual DOC facilities. No alterations of the Premises may be made without the permission of each individual DOC facility.

**ARTICLE IV
PERSONNEL**

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4.1. If the Vendor finds it necessary to hire personnel, all such personnel shall at all times be under the direction of the Vendor and not of DOC and shall be subject to such health examination as may be required by local, State or Federal authorities.

4.2. The Vendor shall not unlawfully discriminate against any employee or applicant for employment.

4.3. The Vendor and all personnel of the Vendor shall be required to pass a background investigation conducted by DOC as a requisite for initial and/or continued entry into Lincoln Correctional Center, DOC facility. All personnel of the Vendor may be required to provide a urine sample as part of a background investigation. In addition, all Vendor personnel who perform on-site services may be required to undergo a urinalysis or blood test if there is reasonable suspicion to believe that they are performing any function under this MOU under the influence of or using controlled substances or marijuana and may be subject to random drug testing. DOC has a zero tolerance policy on drugs and failure to pass a drug test will result in the individual being permanently locked out of facilities of the DOC.

**ARTICLE V
ITEMS SOLD**

5.1. Items and products sold shall be agreed to by Lincoln Correctional Center, DOC facility and Vendor. No other types of items or products shall be sold or otherwise dispensed on said Premises without the written consent of the specific DOC facility nor shall there be sold, anything illegal or pornographic. See Attachment 1.

5.2. Lincoln Correctional Center, agrees to not sell items that would be considered to be, by a reasonable prudent person, like products of that of the Vendor. Thus Lincoln Correctional Center, agrees to not compete with the Vendor. Notwithstanding this provision, this MOU does not in any way preclude DOC facilities from selling products at the DOC facility's commissary, including food and soft drink products.

**ARTICLE VI
INSURANCE**

6.1. DHS/DRS/BEPB, through the Vendor, will provide insurance protection for each of the facilities and for the benefit of the Correctional Center and Vendor in the following amounts:

Public Liability	\$1,000,000/\$2,000,000
Property Damage	\$50,000/\$1,000,000
Food Products Liability	\$1,000,000/\$2,000,000
Fire & Extended Coverage on Equipment	
Worker's Compensation Coverage	to meet minimum Standards set forth in law.

6.2. Lincoln Correctional Center, DOC may annually request from Vendor a Certificate of Insurance evidencing such coverage and naming the specific DOC facility as an additional insured.

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**ARTICLE VII
MISCELLANEOUS**

7.1. Conformance with Law. DHS/DRS/BEPB, DOC and the Vendor agree to conform to all Federal, State, county, and city laws, rules and regulations covering the sale of food and drink, and the operation of the facility as applicable. All necessary licenses shall be secured and all governmental taxes and fees levied with respect to the Vending Facility shall be paid by the Vendor.

7.2. Applicable Law and Severability. This MOU shall be governed in all respects by the laws of the State of Illinois. If any provision of this MOU shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, ordinance, rule of law or public policy, or for any reason, such circumstance shall not have the effect of rendering any other provision or provisions contained herein invalid, inoperative or unenforceable to any extent whatsoever. The invalidity of any one or more phrases, sentences, clauses, or sections contained in this MOU shall not affect the remaining portions of this MOU or any part thereof. In the event that this MOU is determined to be invalid by a court of competent jurisdiction, it shall be terminated immediately.

7.3. Utilities. Lincoln Correctional Center, DOC will, at its own expense, provide all heat, air conditioning, electricity, gas, water, and any other utilities reasonably needed to operate the Vending Facility(ies) on its Premises.

7.4. Repairs and Damages. Any and all claims, losses, liabilities or other expenses, including repair expenses sustained by the Lincoln Correctional Center, DOC arising from or relating to the operation of the Vending Facilities by the Vendor or his/her employees, servants, or agents, shall be paid by DHS/DRS/BEPB or the Vendor. DHS/DRS/BEPB and Vendor's obligation under this paragraph shall survive the expiration or termination of this MOU.

7.5. Service Interruptions. Lincoln Correctional Center, DOC may interrupt service of the heating, air conditioning, plumbing, water, and electric systems only when necessary by reason of accident or emergency and until emergency repairs have been made, provided such emergency repairs are made with due diligence. Lincoln Correctional Center, DOC shall, if practicable, notify BEPB and the Vendor of the interruption, the reason for it, and the estimated time it will take to make emergency repairs. Other repairs, maintenance, alterations, replacements, and improvements shall be made at reasonable times so as to minimize the interference with the Vendor's operation.

7.6. Service. Vendor shall provide service for machines twenty-four (24) hours per day, seven (7) days per week, or as needed.

7.7. Non-interference. DHS/DRS/BEPB and the Vendor hereby agree that they will not restrict or otherwise impair the use of the licensed Premises by the public or Lincoln Correctional Center employees or its agents, or any other person lawfully on the licensed Premises. Vendor and Vendor's personnel shall adhere to all security policies of Lincoln Correctional Center, DOC.

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7.8. Notices. All notices required or desired to be sent by either Party shall be sent to the persons listed below:

To DHS/DRS/BEPB:

Raven Pulliam, Administrator
Business Enterprise Program for the Blind
809 Commercial Avenue
Springfield, Illinois 62703
217.558.2321 (phone)
217.558.2328 (fax)

To DOC

Ron McCormick, Acting Business Administrator
Lincoln Correctional Center 1098 1350th
Lincoln, Illinois 62656
217-735-5411 ext 215

7.9. Entire Agreement and Modification. This MOU, including any and all exhibits and referenced documents, if any, constitutes the entire agreement of the Parties with respect to the matters contained herein. No modification of, amendment or addendum to this Agreement shall be effective unless such modification, amendment or addendum is in writing and signed by all of the Parties.

7.10. Termination. This MOU may be terminated by either Party upon ninety (90) days' written notice based upon legislative changes or repeals to relevant portions of the Blind Vendors Act.

7.11. Limitation of Damages. Except for DHS' gross negligence or willful misconduct, in no event shall DHS or its affiliates or their respective officers, directors, agents or employees be liable to Lincoln Correctional Center, DOC for penalties, anticipated profits, or for punitive, special, indirect, incidental, or consequential damages whether an action is brought in contract, tort, indemnity or strict liability. For purposes of this provision, the Vendor is not an affiliate, agent, or employee of DHS.

7.12. Assignment; Binding Effect. This MOU, or any portion thereof, shall not be assigned or subcontracted by any of the Parties without the prior written consent of the other Parties. This Agreement shall inure to the benefit of and shall be binding upon DHS and Lincoln Correctional Center, DOC and their respective successors and permitted assigns.

7.13. No Personal Liability. No member, official, director, employee or agent of DHS or Lincoln Correctional Center, DOC shall be individually or personally liable in connection with this MOU. For purposes of this provision, the Vendor and the Vendor's employees are not employees or agents of DHS or Lincoln Correctional Center, DOC

7.14. Counterparts. This MOU may be executed in one or more counterparts, each of which shall be considered to be one and the same agreement, binding on all Parties hereto, notwithstanding that all Parties are not signatories to the same counterpart.

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7.15. Incorporation by Reference. Attachments, laws and regulations referred to in this MOU are hereby incorporated by reference.

7.16. Additional Attachments. Attached to this MOU and made a part hereof is the following: Attachment 1.

IN WITNESS WHEREOF, the Parties hereto have caused this MOU to be executed by their authorized representatives.

DEPARTMENT OF HUMAN SERVICES/
DIVISION OF REHABILITATION SERVICES/
BUSINESS ENTERPRISE PROGRAM
FOR THE BLIND

By: 

Title: Acting Director

Date: 6/21/12

DEPARTMENT OF CORRECTIONS

By: 

Title: Director

Date: 6/8/12

DEPARTMENT OF CORRECTIONS
LINCOLN CORRECTIONAL CENTER
WARDEN

By: 

Title: SPSA - Warden

Date: 6/1/12

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ATTACHMENT 1

1. SERVICES PROVIDED

- (a) DHS/DRS/BEPB shall be given first priority to provide Vendors to maintain the vending machines at Lincoln Correctional Center, DOC facilities when prior contractual agreements with other vendors expire.
- (b) Placement and type(s) of vending equipment shall be mutually agreed upon by the Warden at Lincoln Correctional Center where services are to be provided and DHS/DRS/BEPB before installation.
- (c) DHS/DRS/BEPB shall provide and place vending equipment at no cost to Lincoln Correctional Center as mutually agreed upon per this MOU.
- (d) DHS/DRS/BEPB shall be given first priority in providing vending machine services to other buildings at Lincoln Correctional Center when such sites are approved by the Warden of the Correctional Center where the services are provided.
- (e) DHS/DRS/BEPB shall maintain the vending equipment to meet ADA requirements.

2. VENDOR

- (a) The Vendor shall be responsible for the stocking and maintenance of the vending machines at Lincoln Correctional Center.
- (b) All products to be sold are to be accepted products used in the food service and vending industries and approved by the Warden at the Lincoln Correctional Center where the services are provided.
- (c) The Vendor shall adhere to the business practices in the 89 Ill. Adm. Code §650.100.
- (d) The VENDOR shall pay to Lincoln Correctional Center where the services are provided a commission of 25% for visitors and 10% for employees on all net sales, less taxes and cost of goods, from the vending machines each month. The commission rates are statutory mandates set forth in Section 30(e) of the Blind Vendors Act, 20 ILCS 2421/30(e). The commission is due to Lincoln Correctional Center by the 20th day of the month.
- (e) The Vendor is to mail or deliver the commission and reconciled funds to the Business Administrator at Lincoln Correctional Center where the services are provided.

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- (f) The Vendor must observe all Lincoln Correctional Center traffic regulations while on the Correctional Center's grounds, including a provision that unattended vehicles must be locked and the motor turned off.
- (g) The Vendor will be responsible for the transportation of the inventory, maintenance, sanitation, and filling of the vending machines.
- (h) The Vendor and his/her employees shall carry identification while on Lincoln Correctional Center's grounds that identify same as an employee of the Vendor.
- (i) The Vendor shall provide proof of auto insurance to meet the mandatory amount required by the State of Illinois law.
- | | |
|------------------|---|
| Bodily Injury: | \$250,000 per person/\$500,000 per occurrence |
| Property Damage: | \$100,000 per occurrence |
- (j) The Vendor's personnel shall be physically able, with or without a reasonable accommodation and competent to do their assigned work and shall meet all health standards.
- (k) The Vendor and Vendor's personnel shall obey all security rules of Lincoln Correctional Center while on the grounds of the facility and are subject to being locked out of the facility for any violation of those rules.
- (l) Sales Revenue Reconciliation: The Vendor shall reconcile sales revenue with the commissary at Lincoln, Correctional Center when the commissary collects money for vending machine sales through the use of a cash-to-card system. The sales revenue reconciliation shall be done at regular periodic time frames as agreed upon between Lincoln Correctional Center Business Administrator and the Vendor at each location on dates and times convenient for the Lincoln Correctional Center's business operations. Sales revenue reconciliation shall be on all register sales for cash-to-cards, minus over-rings.
- (m) Float Reconciliation: The Vendor at the Lincoln facility shall biannually reconcile the difference between the actual vending machine sales with the actual cash-to-card revenue received in the period since the execution of the contract or, if reconciliation has been performed subsequent to the beginning of the contract, the computation shall be for the period of time since the last reconciliation. The difference between the actual vending machine sales and the actual cash-to-card revenue collected shall hereinafter be referred to as the "float". The biannual reconciliation of the float shall be done on or around April 15th and October 15th of each year. The biannual reconciliation must be completed no later than April 30th and October 30th. The Vendor shall return 80% of all available float to Lincoln Correctional Center after adjustments for debits or credits from the previous reconciliation of the float, with payment no later than May 31st and November 30th respectively, following the reconciliation. The Vendor may retain 20% of

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the available float until the next reconciliation of the float to ensure sustainability of the account. The 20 % float retained by the Vendor shall not be considered income for the Vendor. All float revenue shall be returned to Lincoln Correctional Center when the Vendor ceases doing vending machine business with the Correctional Center.

3. CORRECTIONAL CENTER

- (a) Lincoln Correctional Center shall provide all utilities at no cost to DHS/DRS/BEPB or Vendor.
- (b) Lincoln Correctional Center shall provide pest control services at no cost to the Vendor or DHS/DRS/BEPB.
- (c) Lincoln Correctional Center shall provide regular building maintenance, purchase and installation of permanent fixtures necessary for the operation of vending locations, and storage areas.

4. HOURS OF OPERATION

Vendor shall provide vending machine service to Lincoln Correctional Center, as needed to provide quality service.

5. OPERATION PROCEDURES

- (a) Vendor shall be responsible for the operation of all equipment in the areas under his/her control. Said equipment shall remain property of DHS/DRS/BEPB. The Vendor shall instruct his/her staff in appropriate use of equipment.
- (b) Vendor may adjust price (s) to reflect operating costs, said adjustment to be in writing to Lincoln Correctional Center five (5) working days before the change becomes effective.
- (c) Vendor shall reimburse employees, or other users of the vending machines for money lost in vending machines due to malfunction of the machines. Vendor assumes full and complete responsibility for the proceeds obtained from the operation of said vending machines, shall have sole possession and control of said proceeds and relieves Lincoln Correctional Center of all responsibility for all loss thereto, arising from any cause whatsoever.
- (d) Vendor shall not sell or deliver alcoholic liquors, other intoxicating beverages, illegal drugs or weapons to Lincoln Correctional Facility.

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6. LIST OF MACHINES

Administration Building:

2 wall mounted cash to card machines

Employees only:

4 beverage machines

1 condiment stand

2 microwaves

Visitors' area:

1 Frozen food

1 coffee

2 microwaves

2 condiment stands

2 cold foods

2 snacks

4 beverage machines

Dietary:

2 beverage machines

Employee commissary:

1 sharp 700 cash register

Cash to card reader for the cash register above

Current employee count smart cards for all employees free of charge