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ACCOUNTING

DEPT. OF CORRECTIONS

December 20, 2004

Joseph J. Williams
Administrator
Centralized Services Division
Montana Department of Corrections
1539 11th Avenue
Helena, MT 59620

RE: Letter of Opinion/ Contract for Facility Development

Dear Mr. Williams:

At the request of Department of Corrections, we have been asked to provide an opinion as to the reasonableness and appropriateness of a purchase option provision contained in that certain contract between Montana Department of Administration (the "Department") and Corrections Corporation of America ("CCA, sometimes referred to as Contractor"), having an effective date of September 1, 1999, as amended by Contract Amendment dated April 28, 2003 ("the Contract").

Following is a brief outline of the background of the Contract, purchase option provision, comparison of Contract purchase option provision vs. typical lease, compensation, net purchase price, analysis of internal rate of return, and opinion.

BACKGROUND

The subject matter of the Contract is the design, development and operation of a privately owned 500-bed correctional facility located in Shelby, Montana (the "Facility"). Based on information provided by the Department, CCA completed the Facility in or about September of 1999 at a cost of approximately \$24,994,347, including land, building, and development costs. The Facility is owned and operated by CCA. In essence, the Contract is a quasi-lease transaction, whereby the Department pays Contractor a negotiated per diem rental rate per inmate space occupied at the Facility. The Compensation paid by the Department allows the Contractor to recover its capital costs and return on investment on the construction cost of the Facility.

PURCHASE OPTION PROVISION

Pursuant to Paragraph H of the Contract ("Right to Purchase by the Department"), the Department has an option to purchase the Facility upon termination of the Contract, or otherwise as provided under the Contract. Pursuant to Paragraph V ("Termination"), the Contract may be terminated for cause, or if funds for the Contract become unavailable. The Contract does not

grant to the Department the unilateral right to purchase the Facility except if the Contract is terminated, however, we are advised by the Department that the parties have an informal agreement that the Facility may be purchased by the Department without terminating the Contract.

Paragraph H of the Contract ("Right to Purchase by the Department") provides as follows:

"The Department has an option to purchase the Facility if this Contract is terminated as set forth herein for its fair market as determined in Paragraph 3 below, less the then present value of all payments made by the Department to Contractor under Paragraph F, Compensation (as of the purchase date). The net amount shall be the Purchase Price".

The Contract further provides that if the Department purchases the Facility, the Contractor would convey the Facility to the Department free and clear of all liens and encumbrances.

The Contract speaks of "present value," which is usually understood to be the equivalent to "discounted net present value of a future stream of payments," but does not by its terms expressly provide for a discount rate to be applied in determining the present value of the Compensation paid to Contractor in calculating the net purchase price of the Facility.

Moreover, the term "present value," as noted, is properly applied to a series of payments to be made in the future, with reference to the moment in time at which present value is calculated. However, and obviously, the sum of payments that will have been made by the Department at the time a purchase option is exercised, will at that time be past payments- payments that have already been made before the time of purchase. If an adjustment were to be made to recognize the time value of money, interest would have to be added to these past payments, rather than a discount subtracted from them. Therefore, it is not sensible to interpret the term "then present value" to mean "discounted net present value," in the usual usage of that term, since a present value discount simply is not applicable to past payments. In view of this, and in view of the fact that (i) no discount rate is stated in the Contract, and (ii) the word "discount" itself is not used, the most reasonable interpretation of "the then present value of all payment made" is "the sum of payment that have been made to that date." I was not involved in the negotiations between the parties, and it is possible that the parties did intend to apply a discount rate despite the fact that the logic of calculating time value of money does not allow discounts to past payments. Absent that knowledge, the most reasonable interpretation is that under Paragraph H of the Contract, no discount was intended. If, on the other hand, a discount were intended, application of a discount rate would have a material effect on net purchase price.

COMPARISON OF CONTRACT PURCHASE OPTION PROVISION VS. TYPICAL

First, with respect to lease agreements involving single-tenant, institutional-grade real estate, it is not uncommon that a tenant would have the right to purchase the property at some point during the term of the lease. Institutional landlords and tenants understand that a purchase option provision is an effective tool to enable the parties to achieve specific leverage, return on investment, and tax objectives. Purchase option terms vary, depending on the financial objectives of the parties; however, typically the following elements are incorporated:

1. Right to Purchase. Typically, the tenant has the exclusive and unilateral right to purchase the property as of a certain date or upon the occurrence of a certain event based on a price, terms and closing date provided in the contract.

2. Notification. Typically, the tenant would be required to provide the landlord advance written notice of election to purchase the property.
3. Purchase Price. Typically, the purchase price would be based on one of several different methods: (a) fixed purchase price; (b) fair market value to be determined by appraisal; (c) present value of the remaining lease payments and reversion (terminal value) based on an agreed upon discount rate; or (d) value based on an agreed upon capitalization rate applied to prevailing fair market net rent.
4. Closing. Typically, the closing date would be a fixed date or a certain number of days following notification. At closing the landlord/seller would provide title insurance and a deed and the tenant/purchaser would pay the purchase price.

Following are similarities and differences between the provisions of a typical purchase option and the provisions of the purchase option under the Contract between the Department and CCA:

Similarities:

- The purchase price under the Contract is based on fair market value as determined by appraisal.

Differences:

- The Department does not have the unilateral right to purchase the property during the term of the Contract. Rather, the Department has the right to purchase the property only upon termination for cause. As discussed previously, although CCA may have informally agreed to allow the purchase of the property if the Contract, CCA is not obligated under the Contract to sell the property unless the Contract is terminated.
- Notification is governed by the default provisions, not the purchase option provision itself.
- In typical commercial real estates lease transactions involving a purchase option, a tenant is not entitled to a credit on the purchaser price in the form of rent paid from the commencement date of the lease. With respect the subject Contract, 100% of the lease payments from the commencement of the Contract apply to the purchase price. However, regardless of how the language of the purchase option provision is interpreted (i.e., even if past payments are somehow subject to a "discount"), this provision is highly favorable to the Department- since the normal practice is to allow no credit for lease payments against the purchase price.
- Closing date is not fixed, nor are there specific provisions for title insurance or conveyance.

COMPENSATION PAID TO CONTRACTOR- (See Attachment A)

Based on information provided by the Department, for the period commencing September 1, 1999 through October 1, 2004, the Department paid the Contractor Compensation of approximately \$6,831,117.18 based on 747,387 inmate days multiplied by the contract rate of \$9.14 per diem, as follows:

Year 1:	\$ 1,042,892.28 (September 1999 thru August 2000)
Year 2:	\$ 1,494,490.54 (September 2000 thru August 2001)
Year 3:	\$ 1,567,784.20 (September 2001 thru August 2002)
Year 4:	\$ 1,118,077.92 (September 2002 thru August 2003)

Year 5: \$ 1,361,201.92 (September 2003 thru August 2004)
 Year 6: \$ 246,670.32 (September 2004 thru October 2004)

TOTAL \$ 6,831,117.18

The above figures do not include the additional Compensation paid by the Department to Contractor related to operations (currently \$43.60 per diem), as this component of Compensation does not directly relate to the real estate.

COMPENSATION /NET PURCHASE PRICE/ INTERNAL RATE OF RETRUN FROM CCA'S PERSPECTIVE- (See Attachment B)

As shown on Attachment B, the total Compensation paid by the Department over the 62-month period commencing September 1999 through October 2004 is approximately \$6,831,117.17. Accordingly, assuming the Department purchases the Facility at a market value of \$25,000,000 (the original cost), and assuming a 5% discount rate applied to Compensation paid, the net purchase price would be approximately \$19,009,972. By comparison, assuming a 6% discount rate, the net purchase price would be approximately \$19,161,407.

The following is an Internal Rate of Return (IRR) analysis of three scenarios that take into account the original cost of construction and development of the Facility (\$24,994,347) and the effect of Compensation paid by the Department in arriving at a net purchase price.

Scenario No. 1:

As of December 2004, if the Department purchased the Facility for the net purchase price of \$25,000,000 (without crediting the compensation paid against the purchase price), CCA would have realized an IRR of approximately 5.28%, as follows:

<u>n</u>	<u>\$</u>
0 /	(24,994,347.00)
1 /	1,042,892.28
2 /	1,494,490.54
3 /	1,567,784.20
4 /	1,118,077.92
5 /	1,361,201.92
6 /	<u>246,670.32</u> +25,000,000 = 25,246,670 (Reversion)

IRR: 5.28% (discounted monthly)

Scenario No. 2:

As of December 2004, if the Department purchased the Facility for the net purchase price of \$19,009,972 (\$25,000,000 assumed FMV less present value of compensation at 5% discount rate (\$5,990,028), CCA would have realized an IRR of approximately 0.740%, as follows:

<u>n</u>	<u>\$</u>
0 /	(24,994,347.00)
1 /	1,042,892.28
2 /	1,494,490.54
3 /	1,567,784.20
4 /	1,118,077.92
5 /	1,361,201.92

6 / 246,670.32 + 19,009,972 = 19,256,642 (Reversion)

IRR: 0.740% (discounted monthly)

Scenario No. 3:

As of December 2004, if the Department purchased the Facility for the net purchase price of 18,168,883 (\$25,000,000 assumed FMV less present value of compensation at 0% discount rate (\$6,831,117), CCA would have realized an IRR of approximately 0.005%, as follows:

n	\$
0	/ (24,994,347.00)
1	/ 1,042,892.28
2	/ 1,494,490.54
3	/ 1,567,784.20
4	/ 1,118,077.92
5	/ 1,361,201.92
6	/ <u>246,670.32</u> + 18,168,883 = 18,415,553 (Reversion)

IRR: 0.005% (discounted monthly)

OPINION

The question has been raised as to whether, from the perspective of the Department, the purchase option provision provided in the Contract is reasonable and appropriate compared to commercial real estate lease and finance transactions of a similar nature.

In arriving at an opinion on that question I considered the terms of the Contract, including the purchase option; the original cost of the Facility; the amount and timing of compensation (rent); and net purchase price and IRR. For comparison purposes, I also considered the resulting IRR assuming there was no provision in the Contract for application of Compensation to the purchase price.

This opinion is based substantially upon the economics of the transaction. In negotiating and executing the Contract, as an investor, CCA's financial objective was to secure a return on and of its \$25,000,000 capital cost in constructing the Facility. Importantly, if the Department purchased the property in December of 2004, as illustrated in Scenario No. 1 (without compensation applied to purchase price), the resulting IRR would be approximately 5.276%. If the Department purchased the property in December of 2004, as illustrated in Scenario Nos. 2 and 3 (with compensation applied to purchase price), based on 0% and 5% discount applied to compensation, the resulting IRR would be approximately .0740% and .005%, respectively. Thus, regardless of the discount rate applied, assuming Compensation is applied to the purchase price the resulting IRR is less than 1%. Based on information provided by the Department, in the RFP submitted by CCA, the estimated a return on investment was approximately 6.67%. Clearly, the rate of return on the Contract is substantially below expectation of 6.67%, or market rates of return on comparable institutional investments, which are typically in the range of 8-9%.

In summary, from an economic perspective, the Contract is very favorable to the Department due, in part, to the below market lease rate. The lease rate will not materially escalate over time for the reason that Compensation is limited by Facility capacity and the fixed per diem rate. From CCA's perspective, while there is little, if any, upside potential to increase its return on investment on this Contract, there is considerable downside risk in the case the Contract is

terminated for cause or non-appropriations. If, for whatever reason, the Contract is terminated, given the special purpose nature of the property and its relatively remote location, it is highly unlikely that CCA would recover its capital costs. Moreover, given the fact that Department's aggregate total of compensation paid to CCA will continue to rise each year during term of the Contract, thereby increasing the potential offset to the purchase price, and that the building will physically depreciate over time, thereby lowering its future value, the financial dynamics of this Contract are not particularly favorable to CCA.

On the other hand, depending on the purchase price, availability and terms of bond financing, and other factors, at some point in the future it may be mutually advantageous for the Department and CCA to negotiate a purchase and sale of the Facility. As an example, assuming a net purchase price of \$18,168,883 (Scenario No. 3), the current rate of tax exempt, revenue bond financing of 5 %, and 25-year amortization, the annual debt service would be approximately \$1,289,127. This compares to the average annual cost of Compensation paid by the Department over the prior 62-month period of approximately \$1,322,152 ($\$6,831,117$ divided by 62 Months = $\$110,179$ x 12 = $\$1,322,152$).

In consideration of these facts, and based my experience and knowledge in the capacity as both principal and agent involved in the acquisition, disposition, development, lease, finance and investment analysis of institutional real estate, it is my opinion that the purchase option provision is reasonable and appropriate.

Sincerely,

SBC REALTY PARTNERS, LLC



Glen E. Rickett, CCIM
Managing Member

Enclosures: Attachment A- Compensation paid by Department to Contractor
Attachment B- Net Purchase Price/Internal Rate of Return from perspective of CCA

ATTACHMENT A-COMPENSATION PAID BY DEPARTMENT TO CONTRACTOR
Payments made to Corrections Corporation of America
Shelby, Montana Correctional Facility

Note: The following figures related to bed days and compensation were provided by Montana Department of Corrections.

Date	Male Bed Days	Female Bed Days	Total Bed Days	Contract rate per diem:	Male Compensation	Female Compensation	Total Compensation
Sep-99	2,917	-	2,917	\$ 9.14	26,661.38	-	26,661.38
Oct-99	7,290	-	7,290		66,630.60	-	66,630.60
Nov-99	7,492	-	7,492		68,476.88	-	68,476.88
Dec-99	8,025	714	8,739		73,348.50	6,525.96	79,874.46
Jan-00	7,440	1,510	8,950		68,001.60	13,801.40	81,803.00
Feb-00	7,400	1,232	8,632		67,636.00	11,260.48	78,896.48
Mar-00	8,829	1,213	10,042		80,697.06	11,086.82	91,783.88
Apr-00	8,435	1,465	9,900		77,095.90	13,390.10	90,486.00
May-00	10,037	1,541	11,578		91,738.18	14,084.74	105,822.92
Jun-00	11,050	1,416	12,466		100,997.00	12,942.24	113,939.24
Jul-00	11,459	1,365	12,824		104,735.26	12,476.10	117,211.36
Aug-00	11,739	1,533	13,272		107,294.46	14,011.62	121,306.08
Sep-00	11,987	1,664	13,651		109,561.18	15,208.96	124,770.14
Oct-00	12,692	1,662	14,354		115,913.48	15,373.48	131,286.96
Nov-00	12,453	1,855	14,308		113,820.42	16,954.70	130,775.12
Dec-00	12,640	1,871	14,511		115,529.60	17,100.94	132,630.54
Jan-01	12,121	1,840	13,961		110,785.94	16,817.60	127,603.54
Feb-01	10,616	1,698	12,314		97,030.24	15,519.72	112,549.96
Mar-01	11,163	2,000	13,163		102,029.82	18,280.00	120,309.82
Apr-01	10,770	2,183	12,953		98,437.80	19,952.62	118,390.42
May-01	11,424	2,343	13,767		104,415.36	21,415.02	125,830.38
Jun-01	10,897	2,247	13,144		99,598.58	20,537.58	120,136.16
Jul-01	11,457	2,258	13,715		104,716.98	20,638.12	125,355.10
Aug-01	11,443	2,217	13,660		104,589.02	20,263.38	124,852.40
Sep-01	11,373	2,252	13,625		103,949.22	20,583.28	124,532.50
Oct-01	11,864	2,260	14,124		108,436.96	20,656.40	129,093.36
Nov-01	11,668	2,008	13,676		106,645.52	18,353.12	124,998.64
Dec-01	12,243	2,228	14,471		111,901.02	20,363.92	132,264.94
Jan-02	12,203	2,402	14,605		111,535.42	21,954.28	133,489.70

Feb-02	11,201	\$	102,377.14	2,191	\$	20,025.74	13,392	\$	122,402.88
Mar-02	12,754	\$	116,571.56	2,377	\$	21,725.78	15,131	\$	138,297.34
Apr-02	12,409	\$	113,418.26	2,285	\$	20,884.90	14,694	\$	134,303.16
May-02	12,791	\$	116,909.74	2,343	\$	21,415.02	15,134	\$	138,324.76
Jun-02	12,477	\$	114,039.78	2,194	\$	20,053.16	14,671	\$	134,092.94
Jul-02	12,718	\$	116,242.52	1,891	\$	17,283.74	14,609	\$	133,526.26
Aug-02	12,674	\$	115,840.36	724	\$	6,617.36	13,398	\$	122,457.72
Sep-02	12,545	\$	114,661.30	-	\$	-	12,545	\$	114,661.30
Oct-02	11,389	\$	104,095.46	-	\$	-	11,389	\$	104,095.46
Nov-02	10,882	\$	99,461.48	-	\$	-	10,882	\$	99,461.48
Dec-02	10,815	\$	98,849.10	-	\$	-	10,815	\$	98,849.10
Jan-03	10,470	\$	95,695.80	-	\$	-	10,470	\$	95,695.80
Feb-03	8,996	\$	82,223.44	-	\$	-	8,996	\$	82,223.44
Mar-03	9,568	\$	87,451.52	-	\$	-	9,568	\$	87,451.52
Apr-03	8,915	\$	81,483.10	-	\$	-	8,915	\$	81,483.10
May-03	9,029	\$	82,525.06	-	\$	-	9,029	\$	82,525.06
Jun-03	9,163	\$	83,749.82	-	\$	-	9,163	\$	83,749.82
Jul-03	10,094	\$	92,259.16	-	\$	-	10,094	\$	92,259.16
Aug-03	10,462	\$	95,622.68	-	\$	-	10,462	\$	95,622.68
Sep-03	10,332	\$	94,434.48	-	\$	-	10,332	\$	94,434.48
Oct-03	11,562	\$	105,676.68	-	\$	-	11,562	\$	105,676.68
Nov-03	12,153	\$	111,078.42	-	\$	-	12,153	\$	111,078.42
Dec-03	12,837	\$	117,330.18	-	\$	-	12,837	\$	117,330.18
Jan-04	12,855	\$	117,494.70	-	\$	-	12,855	\$	117,494.70
Feb-04	11,917	\$	108,921.38	-	\$	-	11,917	\$	108,921.38
Mar-04	12,896	\$	117,869.44	-	\$	-	12,896	\$	117,869.44
Apr-04	12,502	\$	114,268.28	-	\$	-	12,502	\$	114,268.28
May-04	13,018	\$	118,984.52	-	\$	-	13,018	\$	118,984.52
Jun-04	12,515	\$	114,387.10	-	\$	-	12,515	\$	114,387.10
Jul-04	13,049	\$	119,267.86	-	\$	-	13,049	\$	119,267.86
Aug-04	13,292	\$	121,488.88	-	\$	-	13,292	\$	121,488.88
Sep-04	12,936	\$	118,235.04	-	\$	-	12,936	\$	118,235.04
Oct-04	14,052	\$	128,435.28	-	\$	-	14,052	\$	128,435.28
TOTAL	686,385	\$	6,273,558.90	61,002	\$	557,558.28	747,387	\$	6,831,117.18

ATTACHMENT B- NET PURCHASE PRICE & INTERNAL RATE OF RETURN FROM PERSPECTIVE OF CCA

ASSUMPTIONS	Scenario No. 1	Scenario No. 2	Scenario No. 3
Discount Rate on Compensation	Assume no offset to Purchase Price	5.0%	0.0%
Present Value of Compensation	Assume no offset in Purchase Price	\$5,990,027.87	\$6,831,117.18
Initial Investment ("Cost of Facility")	\$ (24,994,347.00)	\$ (24,994,347.00)	\$ (24,994,347.00)
Discounted PV of Compensation	Assume no offset in Purchase Price	(5,990,028)	(6,831,117)
Assumed Fair Market Value	25,000,000	25,000,000	25,000,000
Less: PV of Compensation	Assume no offset to Purchase Price	(5,990,028)	(6,831,117)
Net Purchase Price	25,000,000	19,009,972	18,168,883

INTERNAL RATE OF RETURN (IRR)

IRR	Scenario No. 1		Scenario No. 2		Scenario No. 3	
	n	5.28%	n	0.740%	n	0.005%
	0	\$ (24,994,347)	0	\$ (24,994,347)	0	\$ (24,994,347)
	1	26,661.38	1	26,661.38	1	26,661.38
	2	66,630.60	2	66,630.60	2	66,630.60
	3	68,476.88	3	68,476.88	3	68,476.88
	4	79,874.46	4	79,874.46	4	79,874.46
	5	81,803.00	5	81,803.00	5	81,803.00
	6	78,896.48	6	78,896.48	6	78,896.48
	7	91,783.88	7	91,783.88	7	91,783.88
	8	90,486.00	8	90,486.00	8	90,486.00
	9	105,822.92	9	105,822.92	9	105,822.92
	10	113,939.24	10	113,939.24	10	113,939.24
	11	117,211.36	11	117,211.36	11	117,211.36
	12	121,306.08	12	121,306.08	12	121,306.08
	13	124,770.14	13	124,770.14	13	124,770.14
	14	131,286.96	14	131,286.96	14	131,286.96
	15	130,775.12	15	130,775.12	15	130,775.12
	16	132,630.54	16	132,630.54	16	132,630.54
	17	127,603.54	17	127,603.54	17	127,603.54
	18	112,549.96	18	112,549.96	18	112,549.96
	19	120,309.82	19	120,309.82	19	120,309.82
	20	118,390.42	20	118,390.42	20	118,390.42
	21	125,830.38	21	125,830.38	21	125,830.38
	22	120,136.16	22	120,136.16	22	120,136.16
	23	125,355.10	23	125,355.10	23	125,355.10
	24	124,852.40	24	124,852.40	24	124,852.40
	25	124,532.50	25	124,532.50	25	124,532.50
	26	129,093.36	26	129,093.36	26	129,093.36
	27	124,998.64	27	124,998.64	27	124,998.64
	28	132,264.94	28	132,264.94	28	132,264.94
	29	133,489.70	29	133,489.70	29	133,489.70
	30	122,402.88	30	122,402.88	30	122,402.88
	31	138,297.34	31	138,297.34	31	138,297.34
	32	134,303.16	32	134,303.16	32	134,303.16
	33	138,324.76	33	138,324.76	33	138,324.76
	34	134,092.94	34	134,092.94	34	134,092.94
	35	133,526.26	35	133,526.26	35	133,526.26
	36	122,457.72	36	122,457.72	36	122,457.72
	37	114,661.30	37	114,661.30	37	114,661.30
	38	104,095.46	38	104,095.46	38	104,095.46
	39	99,461.48	39	99,461.48	39	99,461.48
	40	98,849.10	40	98,849.10	40	98,849.10
	41	95,695.80	41	95,695.80	41	95,695.80

42	\$	82,223.44	42	\$	82,223.44	42	\$	82,223.44
43	\$	87,451.52	43	\$	87,451.52	43	\$	87,451.52
44	\$	81,483.10	44	\$	81,483.10	44	\$	81,483.10
45	\$	82,525.06	45	\$	82,525.06	45	\$	82,525.06
46	\$	83,749.82	46	\$	83,749.82	46	\$	83,749.82
47	\$	92,259.16	47	\$	92,259.16	47	\$	92,259.16
48	\$	95,622.68	48	\$	95,622.68	48	\$	95,622.68
49	\$	94,434.48	49	\$	94,434.48	49	\$	94,434.48
50	\$	105,676.68	50	\$	105,676.68	50	\$	105,676.68
51	\$	111,078.42	51	\$	111,078.42	51	\$	111,078.42
52	\$	117,330.18	52	\$	117,330.18	52	\$	117,330.18
53	\$	117,494.70	53	\$	117,494.70	53	\$	117,494.70
54	\$	108,921.38	54	\$	108,921.38	54	\$	108,921.38
55	\$	117,869.44	55	\$	117,869.44	55	\$	117,869.44
56	\$	114,268.28	56	\$	114,268.28	56	\$	114,268.28
57	\$	118,984.52	57	\$	118,984.52	57	\$	118,984.52
58	\$	114,387.10	58	\$	114,387.10	58	\$	114,387.10
59	\$	119,267.86	59	\$	119,267.86	59	\$	119,267.86
60	\$	121,488.88	60	\$	121,488.88	60	\$	121,488.88
61	\$	118,235.04	61	\$	118,235.04	61	\$	118,235.04
62	\$	25,128,435.28	62	\$	19,138,407.41	62	\$	18,297,318.10
IRR		5.276%	IRR		0.740%	IRR		0.005%

