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## *Via Hand Delivery*

Diane Rice, Chairperson  
House Judiciary Committee  
Montana State Legislature  
Montana State Capital  
Helena, Montana

RE: Support for Passage of HB 313

Dear Chairperson Rice:

Our office represents Missoula Correctional Services, Inc. (herein "MCS"). MCS is a non-profit corporation that operates the pre-release center located in Missoula, Montana. MCS constructed a pre-release facility in Missoula. The construction of the facility was financed by the issuance of bonds by the Montana Health Facility Authority (herein "MHFA") and the loan of the proceeds from the bond issuance to MCS. MCS entered into a Loan Agreement with MHFA regarding borrowing the funds necessary to construct the pre-release facility. MCS also entered into a Contract for Services with the Montana Department of Corrections to provide pre-release services to the Department of Corrections. The Contract for Services provided the source of repayment for the Loan Agreement. The term of repayment on the Loan Agreement is twenty (20) years. MCS Executive Director Sue Wilkins has requested me to write you a letter explaining the inter-relation between the Loan Agreement and the Contract for Services and the reasons that inter-relationship compels passage of House Bill 313.

The Loan Agreement between MHFA and MCS was entered into with the understanding by the parties that MCS would have a Contract for Services with the Department of Corrections in an amount necessary to pay the debt service on the loan and for the length of time necessary to pay the loan so long as MCS provided pre-release services to the Department of Corrections pursuant to the terms of the Contract for Services. Because the loan repayment under the Loan Agreement was amortized over twenty (20) years, it was necessary for the Montana Health Facility Authority to have contractual assurances that the Department of Corrections would

retain its Contract for Services with MCS for the twenty (20) years period so long as MCS adhered to the performance standards of the Contract for Services. As such, the Loan Agreement specifically refers to the Contract for Services and defines it as the "pledged contract". MCS warranted to MHFA that the contract was in existence in the Loan Agreement. MCS agreed to comply with and maintain the Contract for Services while the Loan Agreement was in place. Most importantly, the Loan Agreement indicates that a loss of the Contract for Services with the Department of Corrections by MCS is an event of default under the Loan Agreement. Please also note that the Official Statement that accompanied the issuance of the bonds that created the funds for the loan states that MCS has pledged to MHFA payments and Department of Corrections contracts sufficient to meet the debt service on the bonds.

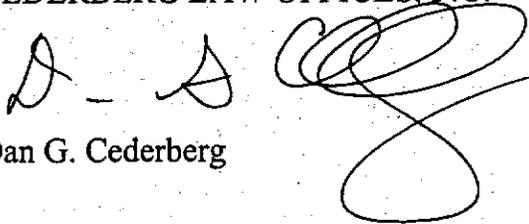
The above illustrates that the Loan Agreement regarding the construction of the pre-release facility and the representations made to the public at the time of the issuance of the bonds that created the funds for the loan clearly envisioned that, so long as MCS performed its obligations under the Contract for Services, MCS would have the Contract for Services with the Department of Corrections for the twenty (20) year term of the Loan Agreement. This agreement was entered into after taking into consideration the terms of 53-1-203 (2), the section that is proposed to be amended by House Bill 313. That section of the Montana Code indicates that the Department of Corrections may not enter into a contract with a private, non-profit Montana corporation to establish and maintain pre-release centers for a period that exceeds ten (10) years. With that subsection in mind, the Contract for Services entered into between MCS and the Department of Corrections indicated that every two (2) years the parties would re-negotiate the compensation provisions of the agreement and enter into a new contract for a ten (10) year term or a term that is no longer than the term of the bonds. That agreement was reviewed by attorneys for MCS, MHFA, the Department of Corrections and the Legislative Audit Committee. The review was conducted in 1998. All parties and their counsel agreed at that time that the contract provision allowing for the two (2) year review and re-negotiation of the compensation portion of the agreement did not violate the terms of 53-1-203 (2).

The possibility of a violation of 53-1-203 (2) MCA was raised when the Contract for Services was reviewed in the fall of 2003. State employee Gary Willems expressed the opinion that the language to re-negotiate the compensation portion of the contract every two (2) years and renew for ten (10) years violated Section 53-1-203 (2). His opinion has been reviewed by me and the chief counsel for the Department of Corrections. While we do not agree with his evaluation, all agree that it would be more appropriate to change the statutorily allowed contract time than to risk a default on the contract. As noted above, a default on the Contract for Services would result in a default under the Loan Agreement. It would also result in the Official Statement relating to the issuance of the bonds being inaccurate. The consequences of a default on the Loan Agreement and an inaccuracy in the Official Statement could result in

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severe negative consequences for MCS and DOC. Therefore, amending Section 53-1-203 (2) to allow for a twenty (20) year contract as is done by HB 313 is very desirable. I therefore request the committee to recommend HB 313 for passage.

Yours truly,  
CEDERBERG LAW OFFICES, P.C.

  
Dan G. Cederberg

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