

AMENDED AND RESTATED
FACILITY OPERATION AND MANAGEMENT AGREEMENT

This Amended and Restated Facility Operation and Management Agreement (hereinafter "Agreement") is entered into by and between the SAN LUIS FACILITY DEVELOPMENT CORPORATION, an Arizona nonprofit corporation (hereinafter "MPC") and EMERALD CORRECTIONAL MANAGEMENT, L.L.C., a limited liability company organized under the laws of the state of Louisiana (hereinafter called "Operator") to become effective on the date signed by the last party to sign ("Effective Date"). This Agreement amends and restates that certain Facility Operation and Management Agreement entered into by MPC and Operator with an effective date of August 7, 2009 (the "Initial Agreement"), but the term of which began, and all obligations of both parties hereto first began, on the first day that prisoners were housed at the facility operated and managed hereunder ("Commencement Date", namely August 15, 2009) and shall continue during and after the first date that prisoners are housed in the new expansion portion of the Facility ("New Expansion Date") in accordance with the terms and conditions of this Agreement. Notwithstanding the foregoing, to the extent that either MPC and/or Operator already have any existing rights and/or obligations pursuant to the Initial Agreement, then such parties shall respectively maintain those rights and be responsible for those obligations. For the sake of clarity, this Agreement is not intended to revoke, sever or terminate the rights existing under the Initial Agreement, but is intended to initiate new rights and obligations of the parties hereto as of the Effective Date.

WHEREAS, MPC is the owner or equitable owner of that certain detention facility (hereinafter "Facility"); and

WHEREAS, the Facility, when completed, will include at least eight hundred sixteen (816) inmate beds for secure detention; and

WHEREAS, the parties hereto desire to enter into an agreement for the operation and management of the Facility; and

WHEREAS, the entering into this Agreement is found to be in the best interests of the parties, the efficient and safe operation of the Facility, and the public as it will serve the public purpose of providing space for incarceration of law violators and will provide economic development and economic benefits to the local economy; and

WHEREAS, MPC has entered into a Trust Indenture ("Indenture"), dated as of October 1, 2005, with U.S. Bank National Association ("Trustee") in order (among other things) to finance the Facility. Capitalized terms not otherwise defined herein shall have the meaning ascribed to such terms in the Indenture.

NOW, THEREFORE, in consideration of the mutual rights, benefits and obligations herein exchanged, the parties do covenant, agree and bind themselves as follows:

I. PURPOSES

- 1.01 Operator agrees to operate, manage and supervise the Facility for MPC, and to receive, detain and care for all properly classified prisoners for which the Facility is approved that may be assigned to the Facility from:
- (a) The Chief of Police of the City of San Luis (the "City"), such person who is in charge of the management of the Police Department, or such other person or persons as may be designated by the City Manager of the City (collectively the "Police Chief");
 - (b) The United States Government or any agency thereof, pursuant to an agreement between MPC and the United States or any agency thereof, subject to any limitations of the Trust Indenture;
 - (c) The Arizona Department of Corrections, pursuant to an agreement between ADOC and MPC; or
 - (d) Any other state, local, county, or federal jurisdiction.

All of whom may be referred to hereinafter as "Users" or "User Agencies".

Provided, however, that the Operator shall not house prisoners from sources, and under circumstances, that would cause income from the Trust Indenture to Bondholders to become includable in the gross income of the recipient under the Internal Revenue Code. This includes, but is not limited to, complying with the restrictions imposed on the housing of federal prisoners so that the income to the Bondholders is not deemed "federally guaranteed" within the meaning of Section 149(d) of the Internal Revenue Code. Operator agrees not to house prisoners of the United States government, or any department or agency thereof, unless the following conditions are met:

- (a) The housing of prisoners for the Federal Government is on a space-available, first-come, first-served basis; and
 - (b) The Federal Government will be charged approximately the same amount for each prisoner as other persons that enter into similar transfer agreements, and the term of use under the Federal Government Agreement is not longer than 100 days and the Federal Government has no right to renew.
- 1.02 Operation and management of the Facility must be in accordance with the applicable standards of the American Correctional Association and the requirements set forth in agreements with entities contracting with MPC to house prisoners at the Facility ("Sending Jurisdictions").

- 1.03 Operator is an independent operator engaged for the public purpose of operating a detention center on behalf of MPC. No property interest or right in the Facility or grounds is granted to the Operator by this Agreement.
- 1.04 The Operator shall operate the Facility in compliance with the terms of the Trust Indenture and this signed Agreement. The Operator shall provide or cause to be provided all insurance, maintenance, certifications and other matters required of or made the obligation of MPC under the Trust Indentures and this Agreement. This includes, without limitation, preparation of all reports or disclosures required under the Trust Indentures and this Agreement.

II. TERM

- 2.01 MPC hereby retains Operator exclusively and Operator hereby accepts this engagement for the operation, management, and maintenance of the Facility pursuant to the terms hereof. The Initial Term of this Agreement shall begin on the Effective Date and shall end on the fifth year anniversary of the completion date of the expansion of the Facility and the first date that prisoners are housed in the expansion portion of the Facility (namely "New Expansion Date"). The day of the New Expansion Date shall be agreed to in writing by the parties and such agreement shall not be unreasonably withheld by either side. The parties agree that this Agreement is terminable five years following the New Expansion Date, upon not less than sixty (60) days' prior notice to Operator (the "60 Days' Notice Right"), with no costs or penalties assessed to either party, on mutually acceptable terms. The 60 Days' Notice Right shall continue into, and be part of any extension of the term of this Agreement.
- 2.02 This Agreement shall automatically renew for two (2) independent and successive, five (5) year terms (hereinafter "Renewal Terms"), unless either Party notifies, pursuant to the terms of Section XVI of this Agreement, the other Party of its election to cancel the forthcoming Renewal Term, not less than Sixty (60) days prior to the then existing term's natural expiration.
- 2.03 MPC may terminate this Agreement or cancel the renewal terms only in the event of Operator's continued default under the terms of this Agreement existing more than ninety (90) days after Operator's receipt of MPC's notice that Operator has failed to perform any of its obligations under this Agreement. In other words, if Operator does not, within ninety (90) business days of receipt from MPC of written notice that Operator has failed to perform any of its obligations in this Agreement, cure such failure (or if such failure cannot be cured within such ninety (90) day period, Operator does not commence such cure within the ninety (90) day period and thereafter diligently proceed with all actions necessary to cure such failure as soon as reasonably possible), then MPC, may upon written notice to Operator, terminate the Agreement or cancel the renewal term.

III. OPERATOR'S COMPENSATION

- 3.01 Management Fees. The MPC agrees to pay Operator compensation for the services provided hereunder at a Fixed Periodic Fee and a Variable Fee determined by the Variable Fee Per Diem Rate as set forth on the Attached Exhibit A (collectively referred to herein as "Management Fees"). MPC is only obligated to pay the Management Fee to Operator to the extent that funds are available in the Operator Fee Account for such purposes. No funds of the MPC that are generated by other projects and no funds of the City, that are held in the general fund of the City, and no tax revenue of the City shall be obligated to pay the Management Fee.

The Fixed Periodic Fee shall be that portion of the Management Fees that is due and owing to Operator each month without regard to the occupancy level of the Facility. The Variable Fee shall be determined monthly and shall be due and owing to Operator only for those months where the average monthly occupancy of the Facility is greater than ninety five percent (95%). To calculate the Variable Fee, the applicable Variable Fee Per Diem Rate shown on the attached Exhibit A, shall be applied to each Inmate Day that exceeds ninety five percent (95%) capacity of the Facility in any month. For the purposes of this section, the term "Inmate Day" shall mean each calendar day or part thereof, during which an inmate is assigned to the Facility, which, for each calendar day, will be determined by the Midnight Count Report. The term "Midnight Count Report" shall mean the official numerical count of the number of inmates present at the Facility at the end of each day, which for purposes of this Agreement shall be determinative of the number of inmates present at the Facility for the day just ended. In the event an inmate is processed into and out of the Facility in less than twenty-four hours and is not in the Facility at midnight, such inmate's presence shall be made part of the official numerical count for the day such inmate arrived at the Facility. No Variable Fee shall be due and owing in any month where the average monthly occupancy of the Facility is ninety four percent (94%) or less. The Variable Fee shall be capped at, and shall never exceed an amount equal to five percent (5%) of the total of the Fixed Periodic Fee and Variable Fee paid to Operator for the applicable time period during which the Variable Fee is calculated. In the event that the Commencement Date does not occur on the first day of a month, then the Management Fees pertaining to the first month's operations shall be prorated as necessary.

The Operator's compensation under this Article III shall be payable from moneys available therefore in the Operator Fee Account established under that certain Trust Indenture by and between MPC and U. S. Bank National Association. The MPC hereby irrevocably instructs the Trustee to pay the Operator within three (3) business days after the date upon which there is sufficient money accumulated in the Operator Fee Account. If the Operator is not paid its full compensation as set forth in this Section for any calendar month, the deficiency in such payment shall be carried over to the following months and added to the Operator's compensation due in following months during the term of this Agreement.

Any portion of the Management Fees due and owing to the Operator that is not timely paid, shall remain due and owing until it is paid in full.

No Management Fees due and owing to Operator pursuant to this Agreement shall remain due and owing after 120 calendar days has have elapsed following the termination of this Agreement by its own terms or otherwise. Operator shall only be paid its Management Fees due hereunder from Project Revenues generated by the services provided by Operator pursuant to this Agreement. Project Revenues generated by any other operator of the Facility shall not be utilized to pay the Management Fees of Operator due and owing hereunder.

The Management Fees set forth in Exhibit A shall be paid to Operator during the Initial Term of this Agreement. The Management Fees for the Renewal Terms shall be negotiated by the parties after the full scope of services to be rendered by Operator has been determined for those years. If the parties are unable to agree upon the amount of such monthly fixed periodic fees for the Renewal Terms prior to sixty (60) days prior to the then existing term's normal expiration, and if either party does not terminate the Agreement pursuant to Section 2.02, then the Management Fee for such terms shall be the monthly periodic fees described in Exhibit A, adjusted by the change in the Consumer Price Index, West Urban Region, between the Commencement Date and the then existing date.

- 3.02 Source of Funds. Notwithstanding anything herein to the contrary, all amounts due and payable by the MPC to Operator shall be a current obligation payable solely from the amounts held within Operator Fee Account established under that certain Trust Indenture by and between MPC and U. S. Bank National Association. At no time shall the City or MPC be liable for payment of these sums save and except from the source of funds identified hereinabove.
- 3.03 Detention Facility Business License Fee. The obligation to pay the Detention Facility Business License Fee to the City, shall be the responsibility of Operator; however, Operator shall direct the Trustee to make the Detention Facility Business License Fee payment directly to the City and as a priority payment from the Operator Fee Account prior to any payments to Emerald. The City, MPC and Operator hereby agree to cooperate with each other to establish with Trustee such procedures as may be needed or necessary for the City to be paid the Detention Facility Business License Fee directly by Trustee from revenues in the Operator Fee Account. Operator shall provide the City with the documentation to calculate the amount of the Detention Facility Business License Fee, for each given month, so that the City can verify the Operator's calculations. The amount of Detention Facility Business License Fee (upon a monthly basis) to be paid to the City shall be determined by the daily rate paid by the applicable User Agency (other than the City) for the housing of an inmate at the Facility as follows:
- (a) If the daily rate paid by the User Agency is between \$59.50 and \$70.00 - the Detention Facility Business License Fee shall be \$3.00 per Inmate Day, and

(b) If the daily rate paid by the User Agency is between \$70.01 and \$75.00 - the Detention Facility Business License Fee shall be \$4.00 per Inmate Day, and

(c)

(c) If the daily rate paid by the User Agency is more than \$75.00 - the Detention Facility Business License Fee shall be \$4.50 per Inmate Day provided.

In calculating the Detention Facility Business License Fee due and owing to the City each month, the number of Inmate Days provided in the Facility in a given month to a User Agency, shall be determined by reference to the occupancy of the Facility as determined by the Midnight Count Report. The number of Inmate Days so calculated for a User Agency in a given month, will then be multiplied by the applicable daily amount of the Detention Facility Business License Fee as determined above. The resulting sum shall be the Detention Facility Business License Fee for a given month. The Detention Facility Business License Fee is not due for any Inmate Day until the applicable User Agency has paid for said Inmate Day. The City shall only be entitled to the Detention Facility Business License Fee for those inmates housed at the facility for whom a User Agency (other than the City) has paid the applicable per diem fee. No Detention Facility Business License Fee will be owed to, earned by, billed by or collected by the City, for any City inmate that is housed in the Facility, even when the City pays for the housing of such inmate. The monthly bill for the Detention Facility Business License Fee will be subject to the reasonable approval of the City and the Operator pursuant to this section. The Detention Facility Business License Fee shall be due and payable to the City for each calendar month. In those months when Operator Fee Account contains insufficient funds to pay the Detention Facility Business License Fee, such fee(s) shall aggregate and shall be paid by the Trustee as sufficient funds become available in the Operator Fee Account to pay the Detention Facility Business License Fee.

3.04 Documentation for Distributions by Trustee. Operator shall, each month, promptly forward to the Trustee, such documentation as may be reasonably required to facilitate the payment of Management Fees and the Detention Facility Business License Fee anticipated by Sections 3.01 and 3.03 above. Such documentation shall include, but is not limited to, the monthly invoice prepared by Operator and forwarded to each User Agency assigning Inmates to the Facility, the monthly calculation of the amount due and owing to Operator, and such other matters as may be reasonably and prudently required by Trustee to document the payment of Management Fees hereunder. Operator shall prepare and submit to the City a monthly statement setting forth the calculation of any and all amounts due and owing by Operator to the City as the Detention Facility Business License Fee, pursuant to Section 3.03 above, and such other amounts as may be due and owing between the City and Operator pursuant to the terms of this Agreement.

3.05 Adjustment to Management Fees. The amount described as the Management Fee to be paid to Operator, set forth in Section 3.01 above, is subject to renegotiation and adjustment at the option of the parties when the scope of services required to be provided

by Operator hereunder has materially changed, such that Operator is not fairly compensated for the goods and services provided.

- (a) MPC and Operator agree and irrevocably stipulate that an increase in the maximum capacity of the Facility (for purposes of this section defined as the housing of eight hundred sixteen (816) inmates at the Facility) of three percent (3%) or more constitutes a material change in the scope of services required to be provided by Operator hereunder.
- (b) MPC and Operator agree and irrevocably stipulate that housing more than eight hundred sixteen (816) inmates at the Facility for more than five (5) consecutive days, constitutes a material change in the scope of the services required to be provided by Operator hereunder.
- (c) If MPC and Operator do renegotiate such compensation or any other terms of this Agreement, such renegotiated compensation or terms shall comply with Federal and State law so as to not affect the tax exempt status of the Bonds issued to finance the Facility.

3.06 Excess Inmates. If more than seven hundred seventy-five (775) inmates are housed in the Facility on any calendar day ("Extra Inmates") as determined by the Midnight Count Report for such day, then in the absence of an amendment to this Agreement adjusting the Management Fees to be paid to Operator for the housing of such Extra Inmates, Operator shall be paid eighty percent (80%) of the fees paid for the housing of such Extra Inmates and collectively such amounts paid to Operator shall be the "Variable Management Fees." At any point in time, the Variable Management Fees paid to Operator pursuant to this Agreement shall never exceed 5.03% of the sum of all of the fixed monthly Management Fees paid to Operator pursuant to Article III of this Agreement for the then preceding twelve (12) months. If it is found that the Variable Management Fees paid to Operator have violated the limitation on amount set forth herein, Operator shall promptly pay to the Trustee an amount equal to that portion of the Variable Management Fees that exceed the limitation of 5.03% of the sum of all of the fixed monthly Management Fees paid to Operator pursuant to Article III of this Agreement for the then preceding twelve (12) months.

3.07 Project Revenue. The term "Project Revenue," except as limited herein, shall mean all revenues generated by the operation, management and maintenance of the Facility, which, pursuant to the terms of that certain Trust Indenture by and between MPC and U. S. Bank National Association shall be deposited into the Operator Fee Account. However, the following described types of revenue are not Project Revenue and shall not be deposited in the Operator Fee Account (or otherwise forwarded or delivered to the Trustee) and are deemed to be the sole and exclusive property of Operator in which MPC shall have no interest or claim to or in the revenues received by Operator relating to reimbursement to Operator by a third-party for transportation expense incurred; reimbursement to Operator by a third-party for health care and related medical expenses incurred; reimbursement to Operator by a third-party for the cost of renovations,

improvements or repairs to the Facility completed as a condition precedent to the receipt or housing of inmates; reimbursement to Operator by a third-party for inmate education, treatment, or training programs; any revenue or proceeds generated from the operation of the inmate commissary, the operation of the inmate telephone system, the operation of vending machines for the staff and the public; and/or the sale of hobby, crafts, and related products created by the inmates.

- 3.08 The Operator shall be entitled to seek reimbursement for extraordinary costs associated with the housing agreements with Sending Jurisdictions. Said extraordinary expenses may include, but are not limited to, outside hospital coverage, transportation, extraordinary medical expenses, pharmaceuticals, and facility enhancements. Said reimbursement for such costs shall not be the burden of MPC, but only that of the User Agencies or Sending Jurisdictions, and shall be in addition to the Operator's compensation payable under this agreement.
- 3.09 In the event of a shortage of space in the City's jail, the City, at the request of the respective Police Chief, may house at the Facility, up to five (5) prisoners at no cost to the City, for a time period of not more than seventy-two (72) hours. Should the need to exceed five (5) prisoners arise for more than seventy-two (72) hours at any given time, both parties agree to negotiate, in good faith, a rate per prisoner per day acceptable to both parties applicable to each such occurrence. Said rate shall only be applicable to those instances where more than five (5) prisoners are housed at Facility for more than seventy-two (72) hours for any given inmate is required. The City may not contract with other jurisdictions for the beds identified in this section.
- 3.10 For the purposes of this Agreement, a "day" shall mean a twenty-four (24) hour time period beginning with twelve (12) o'clock midnight and ending twenty-four (24) hours later and a "month" shall mean a calendar month. The Operator shall provide to MPC a daily midnight census count of all inmates confined at the Facility during the calendar month. This census will be provided not later than ten (10) calendar days after the end of the month and will be the basis for all compensation actions.

IV. DUTIES OF OPERATOR

- 4.01 Operator shall manage, operate and provide at its sole cost and expense:

Replacement of all necessary furniture, fixtures and equipment required at the Facility, including, but not limited to, computers, fax and copy equipment, radios, televisions, uniforms and linens and basic office furniture and administrative phone systems, which are necessary or prudent for operation and management of the Facility and the housing of prisoners.

Intake facilities and prisoner accounting which shall encompass booking, record keeping, billing, system of controls, identification systems and records, computerized communication interface with law enforcement agencies, and such statistical records as

may be required by law, Sending Jurisdictions, or as generally accepted prisoner-locator practices;

Attendants to control ingress and egress at the Facility, in addition to attendants necessary for the requisite level of security internally within the Facility and those required to monitor the activities of prisoners confined within the Facility. The Operator shall provide to MPC a complete staffing plan. This plan will include a suitable relief factor which takes into account training, vacation and other matters required to staff a correctional facility of this size and mission. The Operator will make every effort to maintain staffing at a level equal to ninety percent (90%) of the staffing plan;

- (a) Food and beverage services;
- (b) Clothing and uniforms;
- (c) Engineering and maintenance;
- (d) Procurement and purchasing;
- (e) Recreational, vocational, counseling, education and exercise programs, and other program requirements required by law or prisoner housing contracts;
- (f) Bookkeeping and financial accounting;
- (g) Basic medical care, over-the-counter medications, and miscellaneous medical supplies as required by Sending Jurisdictions;
- (h) Training of jailers to be employed at the Facility and all start up costs of operations;
- (i) Repair, upkeep and maintenance for the Facility. This will include (without limitation) establishment of a periodic maintenance program with applicable equipment maintenance records;
- (j) Necessary utilities and refuse services; and
- (k) All other services necessary or proper for the efficient and safe operation of the Facility, and secure custody, care and housing of inmates, in compliance with all applicable federal, state and local laws and regulations and in compliance with all signed housing agreements.

In regard to 4.01(i) above, the MPC agrees to assign to Operator, when necessary and appropriate, any warranties or guarantees it might have or be entitled to with regard to the Facility, Furniture, Fixtures, and Equipment (FF&E) in order to effect repairs on the Facility, and FF&E, or to give Operator the right to pursue the manufacturer, builder, or other supplier who gave such warranties or guaranties, to seek reimbursement for monies

expended by Operator to meet its repair, upkeep and maintenance obligations under this Agreement to the extent that those expenditures relate specifically to work covered by the subject warranty or guaranty. With respect to any warranties, MPC agrees to cooperate and use its best efforts to assist Operator to recover under such warranties. Extraordinary repairs shall generally be paid or reimbursed out of the Operating Reserve Repair Contingency Fund established under the Trust Indenture where funds are available in that account therefor, unless such is due to the negligence or intentional acts of Operator's employees, or by inmates or is covered by insurance or warranty. Operator's responsibility for extraordinary repairs, where funds are not available in a sufficient amount in the Operating Reserve Repair Contingency Fund to pay for the same, is limited to the proceeds of applicable insurance, unless the need for such repairs was created by the negligence or intentional act of its employees, or by inmates.

- 4.02 Operator shall prepare and furnish such reports as may be required by law to be submitted to the City and the Police Chief with respect to the operation of the Facility or the prisoners detained therein and, in addition, such other reports as may be required by an Arizona state agency or any agency of the United States Government, or by any state or political subdivision thereof from which prisoners have been assigned to the Facility.
- 4.03 Operator shall obtain, and thereafter maintain, the proper certification(s) necessary for the Facility to incarcerate federal, state and local prisoners, and shall maintain such certification(s) at all times. After such certifications have been obtained, if required by the laws of the State of Arizona, the Operator shall provide copies to MPC.
- 4.04 Operator will properly incarcerate all prisoners assigned to the Facility for whom there is space available at the Facility within the statutory and regulatory limits of the Sending Jurisdiction and in accordance with all federal, state, and local laws, ordinances, regulations, and other legal requirements.
- 4.05 Notwithstanding anything contained herein to the contrary, MPC and/or the Trustee shall have no liability whatsoever for any employees of Operator. Operator hereby agrees to indemnify, defend and hold MPC and/or the Trustee harmless from all costs, claims, expenses, and liabilities (including attorneys' fees) whatsoever which may be incurred by MPC and/or the Trustee arising from any and all acts done or omitted to be done by Operator, or the employees, agents and assigns of Operator, in connection with services performed or to be performed under this Agreement.
- 4.06 The interviewing, hiring, training, assignment, control, management, compensation, promotion and termination of all members of the Facility's administration and staff shall be the responsibility and obligation of Operator. Operator will use its best efforts to hire and train local personnel and will report on the status of local hiring on a quarterly basis.
- 4.07 Operator shall use its best efforts to purchase goods and services locally when economically feasible. Prior to the initial purchase of any goods (including, without limitation, FF&E), Operator will conduct a local vendor fair. The intent of this fair is to

provide local vendors with a listing of facility purchase needs. Special emphasis shall be given to food, office supplies and maintenance products.

- 4.08 Operator shall make available to its employees health care benefits that are comparable to those provided by the City to its employees.
- 4.09 Operator shall provide all balance sheets, income statements, inmate rolls, accounting records or reports, audits and other such matters required of MPC and/or the Trustee under the Trust Indenture and this signed Agreement for the Facility, and all Project operation information necessary to carry out MPC and/or the Trustee's continuing disclosure obligations under the Trust Indenture and this Agreement.
- 4.10 The Operator will provide to the Trustee, the Underwriters, and each holder of at least \$1,000,000 in principal amount of Bonds Outstanding who has given notice to the Issuer and the Trustee of its interest in receiving the same, within 60 days after the end of each fiscal quarter of each Fiscal Year of the Issuer, an unaudited statement of income and expenditures with respect to the operation of the Project for such fiscal quarter, and average prisoner census information for each calendar month in each such fiscal quarter.

V. MEDICAL CARE

- 5.01 The Operator shall provide access to medical, optical, and emergency health care in accordance with those standards of Sending Jurisdictions. Operator shall provide on-site nurses and medical technicians to handle sick call and medical assessment and care that does not require a physician or specialist. The Operator shall also contract with a medical doctor to serve as medical consultant for the Facility.
- 5.02 It is the understanding of MPC that all healthcare needs in excess of basic triage are to be performed off-site of the Facility. In addition, it is the understanding of MPC that all costs associated with care in excess of basic triage will be borne by the agency having jurisdiction over the inmates. MPC shall have no obligation for such costs.

VI. COMPLIANCE WITH STANDARDS

- 6.01 Operator shall prepare and adopt a Procedures Manual for the operation of the Facility so as to assure that the Facility is operated fully in accordance with applicable correctional practices and in accordance with the requirements of the contracting jurisdictions.
- 6.02 Operator shall assure that all employees at the Facility are adequately trained to perform at standards required by law.
- 6.03 Operator shall comply with all standards and requirements of the prisoner housing contracts entered into with each Sending Jurisdiction by MPC and provide all services to be provided by MPC under such contracts and pursuant to the terms of such contracts.

- 6.04 The Operator shall conform to all regulations and requirements, as well as seek any necessary accreditations set forth in specific housing agreements for the Facility.
- 6.05 The Operator shall satisfy the requirements of the American Correctional Association.

VII. DUTIES OF THE CITY

- 7.01 The City and the Police Chief will cooperate with Operator in all matters of law enforcement, security and communications. To that end, Operator will immediately inform the City as to the possibility of any escape or missing inmate. In addition, the City will be informed as to any unusual/extraordinary event/occurrence within the Facility, which might create a public concern or be of potential embarrassment to the City.
- 7.02 The City and the Police Chief may assist Operator in the training, at Operator's expense, of Operator employees to operate the Facility.
- 7.03 The City and the Police Chief shall assist and cooperate with Operator in providing information needed by Operator in the screening of candidates for employment.
- 7.04 All jailers must be certified by appropriate State of Arizona Standards or the Sending Jurisdiction's requirements prior to undertaking permanent jailer duties.

VIII. DUTIES OF MPC

- 8.01 MPC and the Operator agree it shall be to their mutual benefit and interest that the Facility be fully utilized by maintaining the maximum prisoner population within statutory or regulatory limits. To this end, and throughout the term of this Agreement, MPC and the Operator agree to cooperate in efforts to obtain maximum prisoner population from the sources set forth in Section 1.01 of this Agreement (e.g., MPC will enter into reasonable and advisable prisoner housing contracts or related agreements; Operator will actively seek to identify potential prisoner sources, etc.). It shall be the responsibility of Operator to assist MPC in seeking out sources of prisoners for incarceration at the Facility, and to assist in negotiation and presentation for acceptance by MPC contracts for the incarceration of prisoners from sources listed in Section 1.01 of this Agreement.

IX. LIABILITY AND INDEMNITY

- 9.01 Operator hereby agrees to defend, hold harmless and indemnify MPC and/or the Trustee, their officers, directors, employees, agents, and representatives, from and against any and all claims, damages, demands, losses, costs and expenses, including attorney's fees, incurred or suffered by MPC and/or the Trustee, their officers, directors, employees, agents, or representatives, arising out of or resulting from any acts done or omitted to be done by Operator or the employees, agents or assigns of Operator pursuant to the provisions of this Agreement.

X. INSURANCE

- 10.01 Operator shall obtain and maintain in force, at its sole cost, risk and expense during the term of this Agreement, a policy or policies of liability insurance in an amount of no less than Five Million Dollars (\$5,000,000.00) in coverage per occurrence, and Five Million Dollars (\$5,000,000) aggregate. Such insurance shall insure against all claims, including claims based on violations of civil rights up to a maximum of One Million Dollars (\$1,000,000.00), arising from services performed by Operator pursuant to this Agreement.
- 10.02 Said policy or policies of insurance shall name the MPC and the Trustee as "additional named insureds".
- 10.03 Operator shall provide and continue in force property insurance coverage in the name of the MPC, and the Trustee as loss payees in amounts equal to the cost of replacement of all of the Facility, and shall maintain and continue fire, boiler and machinery coverage on the Facility. Operator agrees that its negotiated per diem, per prisoner fee with each Sending Jurisdiction has taken this operational expense into account.
- 10.04 Operator shall provide to MPC insurance certificates as proof of the insurance policies obtained in accordance with this Article X. All policies shall provide that coverage shall not be cancelled without thirty (30) days prior written notice to the certificate holder and all additional named insureds and loss payees. Operator shall obtain, as soon as possible (and before cancellation) and at its sole cost, replacement insurance policies.
- 10.05 Operator shall provide workers compensation insurance for its employees at the Facility, which provides the statutorily required coverage, except that employer's liability coverage shall not be in an amount of less than \$1,000,000.
- 10.06 Operator shall carry auto liability insurance coverage in the amount of at least \$1,000,000 per single limit for bodily injury and property damage, with umbrella coverage in an amount not less than \$3,000,000, covering any vehicles used in its operations.
- 10.07 Notwithstanding anything to the contrary in the foregoing sections, Operator shall provide all insurance required of the MPC under the Trust Indenture or this Agreement in the form and naming the insureds and loss payees as required in the Trust Indenture. Operator agrees that the negotiated per diem, per prisoner fee with each Sending Jurisdiction has taken this operational expense into account. This includes business interruption insurance in accordance with Section 6.16 of the Trust Indenture. Section 6.16 of the Trust Indenture provides as follows:

Property Insurance. As Operation and Maintenance Costs, from and after the Completion Date, the Issuer shall procure and maintain continuously in effect with respect to the Project, to the extent of the amount of Bonds Outstanding, all-risk insurance, including coverage for riots, subject only to the standard exclusions contained

in the policy. Issuer also shall obtain business interruption insurance protecting Issuer against the loss of Project Revenues sufficient to pay the average Operation and Maintenance Costs and annual debt service payments due hereunder for a period of one year. The proceeds of such business interruption insurance shall be paid to the Project Fund and applied as provided herein if and to the extent that other moneys (other than moneys held in the Reserve Fund) are not available to pay Operation and Maintenance Costs and make the annual debt service payment. All policies (or endorsements or riders) evidencing insurance required by this Section 6.16 shall be carried in the names of Issuer and Trustee as their respective interests may appear and shall name Trustee as mortgagee and loss payee. The Net Proceeds of insurance required by this Section 6.16 shall be applied as in Section 6.24 hereof.

XI. APPROVAL AND MONITORING BY CITY POLICE CHIEF

- 11.01 The Police Chief shall periodically monitor the operation of the Facility, and, to this end, the Police Chief or his designated representative shall conduct a thorough on-site inspection of the Facility no less than once each month throughout the term of this Agreement. Such monitoring shall not create any liability to the City or the Police Chief, and shall not be a basis for release or defense to liability of the Operator.

XII. MAINTENANCE, UPKEEP AND REPAIR

- 12.01 All ordinary maintenance, upkeep and repair costs for the Facility shall be paid by Operator pursuant to subsection 4.01(i) of this Agreement except as otherwise provided therein. Operator agrees that the negotiated per diem, per prisoner fee with each Sending Jurisdiction has taken this operational expense into account.

XIII. TAXES AND GOVERNMENTAL CHARGES

- 13.01 Operator shall be responsible for any taxes or governmental charges of any kind assessed or incurred after the effective date of this Agreement which are levied or imposed on the Facility and related property. To the extent that such taxes are chargeable against the Facility and found by a final non-appealable judgment of a court of competent jurisdiction to be due and owing, they shall be paid out of the Operating Account or any reserve accounts available for payment thereof as amounts due or payable under the Trust Indenture or this Agreement. Such amounts are not a responsibility or debt of MPC. This Facility is intended to be, and under current law, should be exempt from property taxation. MPC is the owner of taxable title to the Facility based on current interpretations and decisions.

XIV. ADDITIONAL PROVISIONS

- 14.01 Notwithstanding anything to the contrary contained herein, in the event any bankruptcy, reorganization debt arrangement, moratorium, proceeding under any bankruptcy or insolvency law or dissolution or liquidation proceeding is instituted by Operator, or if instituted against Operator, is consented to or acquiesced in by Operator and is not

dismissed within sixty (60) days, the Agreement shall be immediately terminated and canceled, and the MPC shall immediately assume responsibility for the operation, management and supervision of the Facility.

- 14.02 If either party is found in material breach of this Agreement, said party shall have ninety (90) days, from notification of said breach, to correct or rectify said matter. In the event breaching party makes a good faith effort to correct or rectify said matter, however, more time is required due to unforeseen or uncontrollable circumstances, both parties shall negotiate in good faith as to an appropriate time frame to correct or rectify said matter. If material breach is not corrected for rectified in accordance with above, said contract shall terminate in thirty (30) days.
- 14.03 If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try to settle the dispute through mediation before resorting to arbitration, litigation or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Yuma County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool, an Arizona nonprofit corporation. Mediation, arbitration or other form of dispute resolution proceeding must be commenced within the time for bringing claims against the City as permitted by A.R.S. § 12-821 and Operator shall file a notice of claim against the City within 180 days after the claim accrues. The failure to commence such mediation, arbitration or other form of dispute resolution proceeding shall not bar the accrual of any such claim. However, if mediation, arbitration or other form of dispute resolution proceeding is commenced prior to the expiration of the 180 day period provided for in A.R.S. § 821.01, then such 180 day period shall abate during the pendency of such mediation, arbitration or other form of dispute resolution proceeding.
- 14.04 Commissary services procurement shall be made utilizing sound and acceptable business and accounting practices. Commissary proceeds will be controlled by the Operator, and to be used only for inmate welfare purposes or costs associated with the operation of the Commissary at the Facility.
- 14.05 This City is a third party beneficiary of the Operator's obligations under Section 3.01 and Section 3.02 of this Agreement.

XV. APPLICABLE LAW AND VENUE; LEGAL CONSTRUCTION; MISCELLANEOUS

- 15.01 Applicable Law and Venue. This Agreement shall be construed under and in accordance with the laws of the State of Arizona, and all obligations of the parties created hereunder are performable in San Luis, Arizona. Any legal action relating to this Agreement shall be brought in either the Yuma County Superior Court or in the United States District Court for the District of Arizona at the election of the plaintiff in such legal action, provided, however, that nothing in this Section 15.01 will be deemed to have authorized

the bringing of any legal action in a court which does not otherwise have jurisdiction to adjudicate the legal action. This Agreement is subject to termination pursuant to A.R.S. § 38 - 511.

- 15.02 **Severability.** Every provision of this Agreement is, and will be construed to be, a separate and independent covenant. If any provision of this Agreement or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this Agreement or the application of that provision to circumstances other than those to which it is invalid or unenforceable, will not be affected by that invalidity or unenforceability, and each provision of this Agreement will be valid and will be enforced to the extent permitted by the law, and the parties will negotiate in good faith for such amendments of this Agreement which may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.
- 15.03 **Assignment.** This Agreement is not assignable unless both parties mutually consent otherwise in writing. The requirements of this Agreement are binding upon the heirs, executors, administrators, successors and assigns of all parties.
- 15.04 **Void/Voidable.** If for any reason this Agreement shall be held void or voidable, or otherwise be held unlawful, this Agreement shall immediately terminate, and Operator shall have no claim or right of action against MPC, its officials, its employees, its agents or its attorneys for any such termination or alleged act or omission related to the same.
- 15.05 **Employment Eligibility.** Operator hereby warrants, and shall require its subcontractors to warrant, that it is in compliance with all federal immigration laws and regulations that relate to its employees and with A.R.S. §23-214 relating to verification of employment. A breach of this warranty shall be deemed a material breach of this Agreement and is subject to penalties up to and including termination of this Agreement. The City and MPC retain the legal right to inspect the papers of Operator or any subcontractor employee who works to service the obligations of Operator to ensure that Operator or its subcontractors are complying with this warranty.
- 15.06 **Sudan/Iran Investments and Business Operations.** By entering into this Agreement, Operator certifies that it does not have scrutinized business operations in Iran or Sudan as those terms are defined in A.R.S. §35-391 et seq.
- 15.07 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.
- 15.08 **Headings.** The descriptive headings of the Sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

15.09 Further Acts. Each of the parties hereto shall execute and deliver all such documents and perform all such acts as reasonably necessary, from time to time, to carry out the matters contemplated by this Agreement.

15.10 Time is of the essence of this Agreement. Time is of the essence of this Agreement.

15.11 No Partnership and Third Parties. It is not intended by this Agreement to, and nothing contained in this Agreement shall, create any partnership, joint venture or other similar arrangement between the City, MPC or Operator. No term or provision of this Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation not a party hereto, and no such other person, firm, organization or corporation shall have any right or cause of action hereunder.

15.12 No Personal Liability. No member, official or employee of the City or MPC shall be personally liable to Operator, or any successor or assignee, (a) in the event of any default or breach by MPC or the City, (b) for any amount which may become due to the Operator or its successor or assign, or (c) pursuant any obligation of MPC or the City under the terms of this Agreement

XVI. NOTICES

16.01 Notices required to be given hereunder by any party to the other shall be in writing and shall be valid if actually received by the party to whom such notice is given or if deposited in the United States Mail, postage prepaid and addressed to the party as herein below specified. The effective date for noticing shall be the date actually received by the party to whom notice is being given. Notices to the MPC shall be delivered or sent as follows:

MPC Address and Contact: SAN LUIS FACILITY DEVELOPMENT
CORPORATION
1090 E. Union Street
P.O. Box 1170
San Luis, Arizona 85349
Attn: City Manager

Notices to Operator shall be EMERALD CORRECTIONAL MANAGEMENT, L.L.C.
delivered or sent as follows: 400 Travis Street, Suite 402
Shreveport, LA 71101
Attention: Clay M. Lee

With a copy to: Ayres, Warren, Shelton & Williams, L.L.C.
Attention: Mr. J. Benjamin Warren, Jr.
333 Texas Street, 14th Floor
Shreveport, LA 71101

Notices to the Trustee shall be U. S. BANK NATIONAL ASSOCIATION

delivered or sent as follows: 950 17th Street, Suite 300
 Denver, CO 80202
 Attention: Corporate Trust Services

XVII. EXECUTION AUTHORITY

17.01 By his or her signature below, each signatory individual certifies that he or she is the properly authorized agent or officer of the applicable party hereto, and has the necessary authority to execute this Agreement on behalf of such party, and each party hereby certifies to the other that any resolutions necessary to create such authority have been duly passed and are now in full force and effect.

XVIII. AMENDMENT

18.01 This Agreement may be amended only by a written instrument specifically purporting to amend this Agreement and executed by all parties hereto.

XIX. ENTIRE AGREEMENT

19.01 This Agreement supersedes any prior understandings or written or oral agreements between the parties respecting the within subject matter, provided that to the extent that either MPC and/or Operator already have any existing rights and/or obligations pursuant to the Initial Agreement, then such parties shall respectively maintain those rights and be responsible for those obligations. For the sake of clarity, this Agreement is not intended to revoke, sever or terminate the rights existing under the Initial Agreement, but is intended to initiate new rights and obligations of the parties hereto as of the Effective Date.

[Signatures on Next Page]

SIGNED this ____ day of _____, 2010.

EMERALD CORRECTIONAL MANAGEMENT, L.L.C.
Operator

By: Clay Lee

Print Name: Clay Lee

Title: Manager

ATTEST: Paul W. Jr.

MPC

By: _____

Print Name: _____

Title: _____

ATTEST:

Corporate Secretary

SIGNED this ____ day of _____, 2010.

EMERALD CORRECTIONAL MANAGEMENT, L.L.C.
Operator

By: _____

Print Name: _____

Title: _____

ATTEST:

MPC

By:  _____

Print Name: MICHAEL TREND

Title: PRESIDENT

ATTEST:

 _____

Corporate Secretary

**EXHIBIT A
TO
AMENDED AND RESTATED FACILITY OPERATIONS AND
MANAGEMENT AGREEMENT**

*Management Fee to be Paid to Emerald

The following Schedule 1 of Exhibit A shall apply from the Commencement Date to the New Expansion Date:

A) Schedule 1

<u>Effective Start Date of Commencement Date</u>	<u>Fixed Periodic Fee</u>	<u>Variable Fee Per Diem Rate</u>
<u>Through March 30, 2010</u>		
For each 28-day month the Monthly Management Fee shall be:	\$495,550.00	\$35.00
For each 29-day month the Monthly Management Fee shall be:	\$520,838.00	\$35.00
For each 30-day month the Monthly Management Fee shall be:	\$546,125.00	\$35.00
For each 31-day month the Monthly Management Fee shall be:	\$571,412.00	\$35.00
 <u>April 1, 2010 through March 30, 2011</u>		
For each 28-day month the Monthly Management Fee shall be:	\$537,200.00	\$37.00
For each 29-day month the Monthly Management Fee shall be:	\$563,975.00	\$37.00
For each 30-day month the Monthly Management Fee shall be:	\$590,750.00	\$37.00
For each 31-day month the Monthly Management Fee shall be:	\$617,525.00	\$37.00
 <u>April 1, 2011 through March 30, 2012</u>		
For each 28-day month the Monthly Management Fee shall be:	\$572,900.00	\$39.00
For each 29-day month the Monthly Management Fee shall be:	\$600,950.00	\$39.00
For each 30-day month the Monthly Management Fee shall be:	\$629,000.00	\$39.00
For each 31-day month the Monthly Management Fee shall be:	\$657,050.00	\$39.00

**EXHIBIT A
TO
FACILITY OPERATIONS AND
MANAGEMENT AGREEMENT**

***Management Fee to be Paid to Emerald**

The following Schedule 2 of Exhibit A shall apply from the
New Expansion Date forward:

B) Schedule 2

Effective Start Date of Management Contract upon <u>Completion Phase II (Until new per diem)</u>	<u>Fixed Periodic Fee</u>	<u>Variable Fee Per Diem Rate</u>
For each 28-day month the Monthly Management Fee shall be:	\$1,164,616.00	\$50.00
For each 29-day month the Monthly Management Fee shall be:	\$1,220,416.00	\$50.00
For each 30-day month the Monthly Management Fee shall be:	\$1,276,216.00	\$50.00
For each 31-day month the Monthly Management Fee shall be:	\$1,332,016.00	\$50.00