

RESOLUTION

No. 2018-02

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE SAN LUIS FACILITY DEVELOPMENT CORPORATION BOARD ADOPTING AND APPROVING THE FACILITY OPERATION AND MANAGEMENT AGREEMENT EFFECTIVE DECEMBER 1, 2018 THROUGH NOVEMBER 30, 2019 WITH LaSALLE CORRECTIONS, L.L.C. FOR THE OPERATION AND MANAGEMENT OF THE SAN LUIS REGIONAL DETENTION AND SUPPORT CENTER

BE IT RESOLVED by the San Luis Facility Development Corporation Board of Directors, as follows:

Section 1. it is deemed in the best interest of the continued stability of the operations of the San Luis Regional Detention and Support Center that the San Luis Facility Development Corporation enter into a Facility Operation and Management Agreement to be effective December 1, 2018; and

Section 2. that a true copy of said Agreement is incorporated herein as though fully set forth again in full;

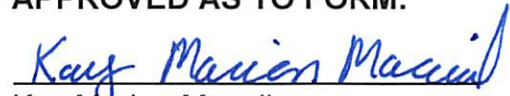
PASSED, ADOPTED and APPROVED by the Board of Directors of the San Luis Facility Development Corporation this 27 day of November 2018



Jenny Torres, President

ATTEST:


Olivia Jenkins, Secretary-Treasurer

APPROVED AS TO FORM:


Kay Marion Macuil
Corporation Attorney

FACILITY OPERATION AND MANAGEMENT AGREEMENT

**December 1, 2018, through November 30, 2019
LaSalle Corrections, L.L.C.**

This Facility and Operation and Management Agreement ("Operating Agreement") is entered into by and between the SAN LUIS FACILITY DEVELOPMENT CORPORATION, a nonprofit corporation organized under the laws of the State of Arizona ("MPC") and LaSALLE CORRECTIONS, L.L.C., a Limited Liability Company organized under the law of the State of Louisiana ("Operator"). The MPC and the Operator may be referred to singularly as the "Party" and collectively as the "Parties." This Operating Agreement is effective December 1, 2018 ("Effective Date") for the operation and management of the San Luis Regional Detention and Support Center at 406 North Avenue D, San Luis, Arizona 85349 ("Facility").

RECITAL

WHEREAS, Background: This Operating Agreement replaces the Revised Amended and Restated Facility Operation and Management Agreement effective December 5, 2016 ("2016 Agreement"). The Second Judicial District Court of Ramsey County, Minnesota approved the 2016 Agreement with an Interim Agreement Regarding Forbearance, Operation of Project and Project Revenue effective December 5, 2016 ("Forbearance Agreement"). U.S. Bank National Association as trustee ("Trustee"), the MPC and the former operator, Emerald Corrections, L.L.C. ("Emerald") entered into the Forbearance Agreement. Emerald assigned and the Operator, LaSalle Corrections, L.L.C., assumed the obligations and the rights of the 2016 Agreement on April 7, 2017, by an agreement which the MPC consented to by Resolution No. 2017-01-A. The 2016 Agreement terminates on December 1, 2018, by operation of the Forbearance Agreement, the 2016 Agreement and a 90-day notice to terminate the Forbearance Agreement the Trustee issued on August 28, 2018. The interim forbearance period is from December 5, 2016 through November 30, 2018 ("Interim Forbearance Period"). This Operating Agreement follows the organization of the 2016 Agreement.

WHEREAS, the MPC is the owner of the Facility, with a capacity of eight hundred seventy (870) inmate beds for secure detention; and

WHEREAS, the MPC (also sometimes referred to in this Operating Agreement as the "Issuer") has issued bonds to finance building the Facility and other improvements to support the operation of the Facility; and

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

WHEREAS, the MPC and Operator find this Operating Agreement to be in the best interests of the Parties and the efficient and safe operation of the Facility.

WHEREAS, the Parties find this Operating Agreement to be in the best interests of the public because it serves the public purposes of providing space for incarcerating law violators and economic benefits to the local economy; and

WHEREAS, the workforce for the Facility as represented by the International Guards Union of America Local 158 has expressed concerns about the Trustee's August 28, 2018, 90-day notice which terminates the 2016 Agreement. The workforce is content with the Operator (LaSalle), and it wants no abrupt change of operators as it has experienced; and

WHEREAS, continuing with the Operator without solicitation of bids is justified given (1) the short 90-day window before termination of the 2016 Agreement, (2) there being only four (4) known operators in the market (including Operator, LaSalle), and (3) the interests of a stable work-force without disruption because the main consideration for entering into the Project was to provide jobs to the residents of San Luis, Arizona; and

WHEREAS, the MPC has entered into a Trust Indenture ("Indenture"), dated October 1, 2005, and supplemented on February 1, 2011, March 27, 2014, and April 2014, with the Trustee. Capitalized terms not otherwise defined 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 covenant, agree and bind themselves as follows:

I. PURPOSES

1.01 Operator agrees to operate, manage and supervise the Facility for the MPC, and to receive, detain and care for all properly classified inmates for which the Facility is approved that may be assigned to the Facility from:

- (a) the City of San Luis, Arizona ("City") through its Chief of Police, or through its Acting Chief of Police, or through such other person or persons as may be designated by its City Manager, or its Chief or Acting Chief of Police (collectively the "Police Chief");
- (b) the United States Government or any of its agency, under an agreement between the MPC and the United States or any of its agencies;
- (c) any Indian Tribe as defined under 25 USC §101 subject to the jurisdiction of the United States and recognized as possessing powers of self-government;
- (d) the Arizona Department of Corrections ("ADOC"), under an agreement between ADOC and the MPC; and
- (e) any other federal, state, county, city or local jurisdictions.

The above entities may be referred to as "Users" or "User Agencies."

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 the MPC to house inmates at the Facility ("Sending Jurisdictions").

- 1.03 The Operator is an independent operator engaged for the public purpose of operating a Detention Center on behalf of the MPC. No property interest or right in the Facility or grounds is granted to the Operator by this Operating Agreement.
- 1.04 The Operator shall operate the Facility in compliance with the Indenture and this signed Operating Agreement. The Operator shall provide or cause to be provided all insurance, maintenance, certifications and other matters required of or made the obligation of the MPC under the Indenture and this Operating Agreement. This obligation includes, without limitation, preparation of all reports or disclosures required under the Indenture and this Operating Agreement.
- 1.05 Each statement contained in the introduction section of this Operating Agreement are contractual provisions and stipulations binding upon the Parties and are not mere recitals.

II. TERM

- 2.01 The MPC retains Operator exclusively, and Operator accepts this engagement for the operation, management, and maintenance of the Facility of this Operating Agreement. The term of this Operating Agreement shall begin on the Effective Date, December 1, 2018, and shall end on November 30, 2019.
- 2.02 The MPC may terminate this Operating Agreement if Operator's continued default occurs under the terms of this Operating Agreement existing more than ninety (90) days after Operator's receipt of the MPC's notice that Operator has failed to perform any of its obligations under this Operating Agreement. If Operator does not, within ninety (90) days of receiving from the MPC written notice that Operator has failed to perform any of its obligations in this Operating 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 when reasonably possible), then the MPC, may upon written notice to Operator, terminate the Operating Agreement.

III. OPERATOR'S COMPENSATION

3.01 Operator Fee.

(a) Operator Fee.

Indenture and Forbearance Agreement. During the term of this Operating Agreement and solely from Project Revenue, MPC agrees to pay Operator compensation as set forth herein for the goods and services provided hereunder to the extent that Project Revenue are made available for that purpose under the Indenture. Section 1 of the Forbearance Agreement provides that Project Revenue accrued during the period before the end of the Interim Forbearance Period shall be paid as set forth in the Forbearance Agreement even after the end of the Interim Forbearance Period.

Accordingly, the Parties agree that the Operator Fee shall include fees accrued but unpaid under the Forbearance Agreement.

Definition of Operator Fee. As used in this Operating Agreement, the term "Operator Fee" shall mean collectively the fees earned under this Operating Agreement and those accrued and unpaid fees under the Forbearance Agreement. For the avoidance of doubt, Project Revenue generated from the Operator's operation of the Facility during any of the operation's months, including the Interim Forbearance Period, even if such Project Revenue are not actually received by the Trustee until after the termination of the 2016 Agreement, the Forbearance Agreement and this Operating Agreement, will be applied in accordance with the priorities set forth in this Operating Agreement.

Source of Funds. The MPC is only obligated to pay the Operator's share of the Operator Fees to Operator to the extent that funds are available in the Operating Account, Operator Fee Account and the Surplus Account (maintained by the Trustee pursuant to the Indenture and the Forbearance Agreement) for such purposes. No funds of the MPC that are generated by other projects or any other funds of the MPC, and no funds of the City, including but not limited to those that are held in the general fund of the City, and no tax, fee, enterprise or any other revenue of the City, shall be obligated to pay the Operator Fee or any fees under this Operating Agreement. MPC shall instruct the Trustee to pay the Operator's share of the Operator Fees to Operator when funds are available to the Trustee to pay such fees. The Operator shall instruct the Trustee to pay the City's fees under this Operating Agreement, when funds are available to the Trustee to pay such fees.

- (b) **Operator Fee Payments and Order of Priority.** Once the Trustee has transferred Project Revenue to the Bond Fund and Reserve Fund under Indenture Sections 5.06(a) and (b), and made all required principal and interest payments on the Bonds according to the Indenture including deposits needed to cover any shortfalls of interest and principal due and owing from prior months during the Interim Forbearance Period, MPC shall then direct the Trustee to calculate and pay any available Project Revenue as an Operator Fee payable on a monthly basis in this order:
- (i) **"Operation and Maintenance Costs."** From Project Revenue available to the Trustee in the Operating Account for such purposes, MPC shall direct the Trustee to pay to Operator all of the unreimbursed "Operation and Maintenance Costs" as defined by the Indenture incurred by the Operator, including any unreimbursed "Operator Direct Expenses" as defined in the 2016 Agreement from prior months during the Interim Forbearance Period. If there is not sufficient net revenue to pay these expenses, any unpaid amounts will be carried forward to the next month; and
 - (ii) **"General and Administrative Expenses" and City's fees.** After paying the above Operation and Maintenance Costs and carryforwards, if there is sufficient net Project Revenue in the Operator Fee Account, the MPC shall direct the Trustee to pay the Operator for its General and Administrative Expenses based on 6% of actual Operation and Maintenance Costs and the Trustee shall pay the City a fixed monthly City Business License Fee of \$35,000.00 ("City Business License Fee"), and will also include any unreimbursed "Detention Facility City Business License

Fees” (as defined under the 2016 Agreement) and the Operator’s General and Administrative Expenses from prior months earned and unpaid during the Interim Forbearance Period. The amounts will be paid in a pro-rata share between the Operator and the City if there is not sufficient net Project Revenue to pay both the General Administrative Expenses and the City’s fees (the City Business License Fee and the Detention Facility Business License Fee)the City and the Operator shall be paid to the extent of available net Project Revenue, and any unpaid amounts will be carried forward to the next month; and

- (iii) “Variable Incentive Fee” and “Variable Business License Fee.” After paying the above costs and fees in subsection (i) and (ii), if there is sufficient net Project Revenue in the Operator Fee Account, the MPC shall direct the Trustee to pay from the Operator Fee Account a Variable Fee when the average Inmate Days for December 2018 or any subsequent months is 638 or above. The Operator shall be paid an amount equal to \$20 per inmate per day in that month, and the City shall be paid a Variable Business License Fee equal to \$5 per inmate per day in that month. The amounts will be paid in a pro-rata share between the Operator and the City; provided, however, if there is not sufficient net Project Revenue to pay both variable fees, the Operator and the City shall only be paid to the extent of available net Project Revenue, and any unpaid amounts will be carried forward to the next month. See section 3.10 below for the calculation of those Inmate Days; and
 - (iv) “Operating Reserve/Repair/Contingency Account.” To the extent that there are sufficient available Project Revenue after satisfaction of the above priorities deposits shall be made to the Operating Reserve/Repair/Contingency Account up to \$10,000 per month, in accordance with Section 5.06(e) of the indenture, plus any accrued unpaid deposits from the Interim Forbearance Period; and
 - (v) “Accrued and Unpaid Incentive Interim Forbearance Period Amounts.” Any funds remaining after paying the Variable Incentive Fee and the Variable Business License Fee including any carryover shall follow the requirements for the excess of the Operator Fee Account under the Indenture and Forbearance Agreement as it relates to Operating Reserve/Repair/Contingency and Surplus Account as defined in section 1 (e) and (f) of the Forbearance Agreement. Section 1(f) of the Forbearance Agreement defines the Operator’s “Incentive Fee” as 80% of the surplus 25% of the 80% goes to the City. In each case, nothing in this Section 3.01 of this Operating Agreement shall be construed in a manner inconsistent with the Indenture.
- (c) Final Interim Forbearance Period Accounting. Before December 31, 2018, the Operator will submit to the Trustee and MPC what shall be called an “Open Accounts Receivable Detail” showing what payments from Project Revenue accrued before December 1, 2018, and are still outstanding under the 2016 Agreement. The Trustee and MPC reserve the right to verify the accuracy of the Open Accounts Receivable Detail. The MPC shall direct the Trustee to pay any outstanding amounts to the Operator from Project Revenue accrued for the period prior to December 1, 2018 under the priorities set forth in Section 3.01(b) above. The Operator shall direct the Trustee to pay any outstanding amounts to the City from Project Revenue accrued for the period prior to December 1, 2018 under the priorities set forth in Section 3.01(b) above.
- (d) Termination of Operator Fee. No Operator Fee due and owing to the Operator under this Operating Agreement shall remain due and owing after 120 calendar days have elapsed following the termination of this Operating Agreement by its own terms or otherwise.

The Operator shall only be paid its share of the Operator Fee due under this Operating Agreement from Project Revenue generated by the services provided by the Operator in the operation, management and maintenance of the Facility. Project Revenue generated by any other operator of the Facility shall not be utilized to pay the Operator Fee of the Operator due and owing under this Operating Agreement.

- (e) Operator Acknowledgement of Risk. The Operator acknowledges that Project Revenue during the term of the Operating Agreement may not be adequate to reimburse the Operator for all Operation and Maintenance Costs advanced by the Operation.

3.02 Source of Funds. Regardless of anything to the contrary in this Operating Agreement, all amounts due and payable by the MPC to Operator shall be a current obligation payable solely from the amounts held within accounts established under the Indenture (the Operating Account, the Operator Fee Account and the Surplus Account). Never shall the City or the MPC be liable for payment of these sums except from the Operating Account, Operator Fee Account, and the Surplus Account established under the Indenture. The Surplus Account shall be used for the limited purpose of paying the Incentive Fee and City percentage accrued under the 2016 Agreement and the Forbearance Agreement. Otherwise, the Surplus Account shall be used as provided for in the Indenture.

3.03 Payment of Business License Fee and Variable Business License Fee. The obligation to pay the Business License Fee and Variable Business License Fee to the City shall be the responsibility of the Operator. The Operator shall direct the Trustee to make the Business License Fee and Variable Business License Fee payments directly to the City. The MPC and Operator agree to cooperate with each other to establish with the Trustee such procedures as needed or necessary for the City to be paid the Business License Fee and Variable Business License Fee directly by the Trustee from Project Revenue in the Operator Fee Account. The Business License Fee and the Variable Business License Fee (upon a monthly basis) to be paid to the City shall be as described in Section 3.01.

3.04 Documentation for Payment by the Trustee. The Operator shall, each month, promptly forward to the Trustee, such documentation as may be reasonably required to facilitate the payment of the Operator Fee and the Variable Business License Fee anticipated by Section 3.01 and 3.03 of this Operating Agreement. 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 the Trustee to document the payment of Operator Fees under this Operating Agreement including but not limited to the certified actual monthly Operation and Maintenance Costs which are to be reported to the MPC in addition to the Trustee. The Operator shall prepare and submit to the City a monthly statement setting forth any amounts due and owing by Operator to the City as the City Business License Fee and the Variable Business License Fee.

3.05 Adjustment to Operator Fees. The amount described as the Operator 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 has materially changed, so Operator is over-compensated or under-compensated for the goods and services provided.

3.07 Project Revenue. The term "Project Revenue" shall have the meaning set forth in the

Indenture.

- 3.08 Extraordinary Costs. 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 the MPC, but only that of the User Agencies or Sending Jurisdictions, and shall be in addition to the Operator's compensation payable under this Operating Agreement.
- 3.09 City as Sending Jurisdiction. If a shortage of space in the City's jail occurs, the City, at the request of the Police Chief may house at the Facility, up to five (5) inmates at no cost to the City, for not more than seventy-two (72) consecutive hours. Should the need to exceed five (5) inmates arise for more than seventy-two (72) consecutive hours, both Parties agree to negotiate, in good faith, a rate per inmate per day acceptable to both Parties applicable to each such occurrence. Said rate shall only apply to those instances where more than five (5) inmates are housed at Facility for more than seventy-two (72) consecutive hours for any inmate. The City may not contract with other jurisdictions for the beds identified in this section. The Operator's Warden for the Facility or his designee shall contact the Police Chief and the MPC's Attorney to negotiate compensation under this Section 3.09.
- 3.10 Inmate Day. For this Operating Agreement, 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, shall 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 this Operating Agreement shall be determinative of the number of inmates present at the Facility for the day just ended. If an inmate is processed into and out of the Facility in less than twenty-four (24) 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. Neither the Variable Incentive Fee nor the Variable Business License Fee shall be due and owing in any month where the average monthly occupancy of the Facility is 637 or fewer.

IV. DUTIES OF OPERATOR

- 4.01 Effective December 1, 2018, Operator shall manage, operate and provide at its sole cost and expense:
- (a) 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 housing inmates;
 - (b) intake facilities and inmate 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 inmate-locator practices;

- (c) the Operator shall have a staffing plan that shall include 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 inmates confined within the Facility;
- (d) food and beverage services;
- (e) clothing and uniforms;
- (f) engineering and maintenance;
- (g) procurement and purchasing;
- (h) recreational, vocational, counseling, education and exercise programs, and other program requirements required by law or inmate housing contracts;
- (i) bookkeeping and financial accounting;
- (j) basic medical care, over-the-counter medications, and miscellaneous medical supplies as required by Sending Jurisdictions;
- (k) training of jailers to be employed at the Facility;
- (l) repair, upkeep, and maintenance for the Facility. This shall include (without limitation) establishment of a periodic maintenance program with applicable equipment maintenance records and extraordinary repairs;
- (m) necessary utilities and refuse services; and
- (n) 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 including but not limited to payment of costs in Section 5.06(e) of the Indenture.

Regarding 4.01(l) above, the MPC agrees to assign to Operator, when necessary and appropriate, any warranties or guarantees it might have or be entitled to regarding the Facility, Furniture, Fixtures, and Equipment ("FF&E") 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 guarantees, to seek reimbursement for monies expended by the Operator to meet its repair, upkeep and maintenance obligations under this Operating Agreement to the extent that those expenditures relate specifically to work covered by the warranty or guarantee. Regarding any warranties, the 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 Account or the Operating Reserve Repair Contingency Fund established under the Indenture where funds are available in any of those accounts. Therefore, unless extraordinary repair is due to the negligence or intentional acts of Operator's employees, or by an inmate or 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 Operator Account, the Operator Fee Account or Operating Reserve Repair Contingency

Fund to pay for the same, is limited to the proceeds of applicable insurance or the funds available in the Operating Account the Operating Reserve Repair Contingency Fund (Sections 5.06(c) and (e) of the Indenture), unless the need for such repairs was created by the negligence or intentional act of its employees, or by an inmate or inmates, in which case the Operator shall pay for such repairs from its independent funds.

- 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 regarding the operation of the Facility or the inmates detained 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 inmates 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 inmates, and shall maintain such certification(s) at all times. Not limited to but included among the Operator's duties is to require that all jailers are certified by the appropriate State of Arizona Standards or the Sending Jurisdiction's requirements prior to undertaking permanent jailer duties. After such certifications have been obtained, if required by the laws of the State of Arizona, the Operator shall provide copies to the MPC.
- 4.04 Operator shall properly incarcerate all inmates assigned to the Facility for whom space is available at the Facility within the statutory and regulatory limits of the Sending Jurisdiction and under all federal, state, and local laws, ordinances, regulations, and other legal requirements.
- 4.05 Regardless of anything to the contrary in this Operating Agreement, the MPC and/or the City and/or the Trustee shall have no liability for any employees of Operator. Operator agrees to indemnify, defend and hold the MPC and/or the City and/or the Trustee harmless from all costs, claims, expenses, and liabilities (including attorneys' fees) whatsoever which may be incurred by the MPC and/or the City 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 Operating Agreement. All representations and warranties of Operator, Operator's indemnity, hold harmless and defense obligations shall survive the expiration or earlier termination of this Operating 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 the Operator. The Operator shall use its best efforts to hire and train residents of San Luis, Arizona, and shall report on the status of hiring San Luis, Arizona residents upon request of the MPC.
- 4.07 Operator shall use its best efforts to purchase goods and services locally when economically feasible.
- 4.08 Operator shall provide all balance sheets, income statements, inmate rolls, accounting records or reports, audits and other such matters required of the MPC and/or the Trustee under the Indenture and this signed Operating Agreement for the Facility, and all Project operation information necessary to carry out the MPC's and/or the Trustee's continuing disclosure obligations under the Indenture and this Operating Agreement.
- 4.09 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 regarding the operation of the project for such fiscal quarter, and average inmate census information for each calendar month in each such fiscal quarter.

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V. MEDICAL CARE OF INMATES

- 5.01 The Operator shall provide inmates access to medical, optical, and emergency health care under those standards of the Sending Jurisdictions. The Operator shall provide on-site nurses and medical technicians to handle sick calls and medical assessments and care that does not require a physician or specialist. The Operator shall also contract with a medical doctor to serve as a medical consultant for the Facility.
- 5.02 Health care needs in excess of basic triage shall be performed off-site of the Facility. The agency having jurisdiction over the inmates bears the costs associated with care in excess of basic triage. The MPC and the City shall have no obligation for the medical care of inmates.

VI. COMPLIANCE WITH STANDARDS

- 6.01 Operator shall prepare and adopt a Procedures Manual for operating the Facility to assure that the Facility is operated fully under applicable correctional practices and under the requirements of the User Agencies.
- 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 inmate housing contracts entered into with each Sending Jurisdiction by the MPC and provide all services to be provided by the MPC under such contracts and under such contracts.
- 6.04 The Operator shall conform to all regulations and requirements, and seek any necessary accreditations set forth in specific housing agreements for the Facility.

VII. DUTIES OF THE CITY

[Intentionally blank, these terms are in a separate agreement between the Operator and the City]

VIII. DUTIES OF THE MPC

- 8.01 The MPC and the Operator agree it shall be to their mutual benefit and interest that the Facility be fully utilized by maintaining the maximum inmate population within statutory or regulatory limits. To this end, and throughout the term of this Operating Agreement, the MPC and the Operator agree to cooperate in efforts to obtain maximum inmate population from the sources set forth in Section 1.01 of this Operating Agreement (such as the Operator actively seeking potential additional inmate sources and the MPC entering into additional inmate housing contracts, etc.). It shall be the responsibility of Operator to assist the MPC in seeking sources of inmates for incarceration at the Facility and to assist in negotiation and presentation for acceptance by the MPC contracts for

the incarceration of inmates from sources listed in Section 1.01 of this Operating Agreement.

IX. LIABILITY AND INDEMNITY

9.01 Operator agrees to defend, hold harmless and indemnify the MPC and/or the City representatives including but not limited to the MPC's Board of Directors and the City's Mayor and Council, from and against any and all claims, damages, demands, losses, costs and expenses, including attorney's fees, incurred or suffered by the MPC and/or the Trustee, their officials, 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 under this Operating Agreement. All representations and warranties of Operator, Operator's indemnity, hold harmless and defense obligations shall survive the expiration or earlier termination of this Operating Agreement.

X. INSURANCE

- 10.01 Operator shall obtain and maintain in force, at its sole cost, risk and expense during the term of this Operating 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 (\$5,000,000.00) aggregate. Such insurance shall insure against all claims inclusive of defense, including but not limited to claims based on violations of civil rights arising from services performed by Operator under this Operating Agreement.
- 10.02 Said policy or policies of insurance shall name the MPC, the City 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 inmate fee with each Sending Jurisdiction and has taken this operational expense into account.
- 10.04 Operator shall provide to the MPC insurance certificates as proof of the insurance policies obtained under this Article X. All policies shall provide that coverage shall not be canceled without thirty (30) days prior written notice to the certificate holder and all additional named insureds and loss payees. The 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 for 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 Regardless of anything to the contrary in this Operating Agreement, Operator shall provide all insurance required of the MPC under the Indenture or this Operating Agreement in the form and naming the insureds and loss payees as required in the Indenture. Operator agrees that the negotiated per diem, per inmate fee with each

Sending Jurisdiction has taken this operational expense into account. This includes business interruption insurance under Section 6.16 of the Indenture. Section 6.16 of the Indenture provides:

"Property Insurance. As the 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 Revenue 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 monies (other than monies 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 the Issuer and the Trustee as their respective interests may appear and shall name the 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 THE CITY POLICE CHIEF

[Intentionally blank, these terms are in a separate agreement between the Operator and the City]

XII. MAINTENANCE, UPKEEP AND REPAIR

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

XIII TAXES AND GOVERNMENTAL CHARGES

13.01 The Operator shall be responsible for any taxes or governmental charges of any kind assessed or incurred after the Effective Date of this Operating Agreement which are levied or imposed on the Facility and related property. If 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, the Operator shall pay them and seek reimbursement to the extent funds are available from the Operating Account or any reserve accounts available for payment thereof as amounts due or payable under the Indenture of this Operating Agreement. Such amounts are not a responsibility or debt of the MPC or the City. This Facility is, and under current law, should be exempt from property taxation based on current interpretations and decisions.

XIV ADDITIONAL PROVISIONS

14.01 Regardless of anything to the contrary in this Operating Agreement, if 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, this Operating 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 Operating Agreement, said Party shall have ninety (90) days, from notification of the breach, to correct or rectify said matter. If the breaching Party makes a good faith effort to correct said breach and more time is required due to unforeseen or uncontrollable circumstances, then both Parties shall negotiate in good faith on an appropriate time frame to correct the breach. If the material breach is not corrected with this section, then this Operating Agreement shall terminate in thirty (30) days.
- 14.03 If a dispute arises out of or relates to this Operating 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. If 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 another form of dispute resolution proceeding must be commenced within the time for bringing claims against public entities as permitted by A.R.S. § 12-821 and the Operator shall file a notice of claim against the MPC within 180 days after the claim accrues. Failing to commence such mediation, arbitration or another form of dispute resolution proceeding shall not bar the accrual of any such claim. However, if mediation, arbitration or another form of dispute resolution proceeding is commenced before the expiration of the 180 day period provided for in A.R.S. § 12-821.01, then such 180 day period shall abate during the pendency of such mediation, arbitration or another form of dispute resolution proceeding.
- 14.04 The Operator shall use sound and acceptable business and accounting practices to procure commissary and inmate phone services. The Operator controls commissary and inmate phone services proceeds. The Operator shall use said proceeds only for inmate welfare or costs associated with operating the commissary and inmate phone services at the Facility if the law or a contract or contracts require it.
- 14.05 The City is a third party beneficiary of the Operator's obligations under Section 3.01 Section 3.02, Section 3.03, Section 3.09, Section 4.05, Section 5.02, Section 9.01 and Section 10.02 of this Operating Agreement.

XV. APPLICABLE LAW AND VENUE; LEGAL CONSTRUCTION; MISCELLANEOUS

- 15.01 Applicable Law and Venue. This Operating Agreement shall be construed under and under the laws of the State of Arizona, and all obligations of the Parties created in this Operating Agreement are performable in San Luis, Arizona. Any legal action relating to this Operating 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 shall 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 Operating Agreement is subject to termination under A.R.S. § 38 - 511.
- 15.02 Severability. Every provision of this Operating Agreement is and shall be construed to be a separate and independent covenant. If any provision of this Operating Agreement

or the application of the same is, to any extent, found to be invalid or unenforceable, then the remainder of this Operating 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 Operating Agreement will be valid and shall be enforced to the extent permitted by the law, and the Parties shall negotiate in good faith for such amendments of this Operating Agreement which may be necessary to achieve its intent, notwithstanding such invalidity or unenforceability.

- 15.03 Assignment. This Operating Agreement is not assignable unless both Parties mutually consent to assignment in writing. The Operator shall not assign the benefits of this Operating Agreement nor delegate the obligations arising under this Operating Agreement to any person or entity without the consent of the MPC. The requirements of this Operating Agreement are binding upon the heirs, executors, administrators, successors and assigns of all Parties.
- 15.04 Void/Voidable. If this Operating Agreement shall be held void or voidable, or otherwise be held unlawful, this Operating Agreement shall immediately terminate, and the Operator shall have no claim or right of action against the 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. The Operator warrants and shall require its subcontractors to warrant, that all comply 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 Operating Agreement and is subject to penalties up to and including termination of this Operating Agreement. The City and the MPC retain the legal right to inspect the papers of the Operator or any subcontractor employee who works to service the obligations of the Operator to ensure that the Operator or its subcontractors are complying with this warranty.
- 15.06 Boycott. The Operator certifies by executing this Operating Agreement that it does not participate in and agrees not to participate in during the term of this Operating Agreement a boycott under A.R.S. § 35-93.01.
- 15.07 Counterparts. This Operating 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 Operating Agreement are inserted for convenience only and shall not control or affect the meaning or construction of the provisions.
- 15.09 Further Acts. Each of the Parties 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 Operating Agreement.
- 15.10 Time is of the essence of this Operating Agreement. Time is of the essence of this Operating Agreement.

- 15.11 No Partnership and Third Parties. It is not intended by this Operating Agreement to, and nothing in this Operating Agreement shall create any partnership, joint venture or other similar arrangement between the City, the MPC or the Operator. No term or provision of this Operating Agreement is intended to, or shall, be for the benefit of any person, firm, organization or corporation, not a Party to this Operating Agreement and no such other person, firm, organization or corporation shall have any right or cause of action under this Agreement. Except as stipulated in Section 14.05 of this Operating Agreement, the City is a third party beneficiary of the Operator's obligations under Section 3.01, Section 3.02, Section 3.03, Section 3.09, Section 4.05, Section 5.02, Section 9.01 and Section 10.02 of this Operating Agreement.
- 15.12 No Personal Liability. No member, official or employee of the City including but not limited to the Mayor and City Council or the MPC including but not limited to the MPC's Board of Directors shall be personally liable to Operator, or any successor or assignee, (a) if any default occurs 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 the MPC or the City under the terms of this Operating Agreement.
- 15.13 Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof, and no waiver by the Parties of the breach of any provision of this Operating Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Operating Agreement.
- 15.14 Attorneys' Fees and Costs. If any Party finds it necessary to bring any action at law or other proceeding, including arbitration, against the other Party to enforce any of the terms, covenants or conditions under this Operating Agreement, or for any breach or default, the Party prevailing in any such action or other proceeding shall be paid all reasonable costs and reasonable attorney's fees by the other Party, and if the prevailing Party secures any judgment, all such costs and attorney's fees shall be included and set by the court and not by jury.
- 15.15 Survival. All representations and warranties of Operator, Operator's indemnity, hold harmless and defense obligations shall survive the expiration or earlier termination of this Operating Agreement.
- 15.16 Force Majeure. If the Operator or the MPC are prevented or materially restricted from performing any of their obligations under this Operating Agreement by an event of force majeure, then the obligations of each Party shall be suspended or reduced to the extent made necessary by the event. As used in this section, "Force Majeure" means any act or cause not reasonably within the control of the Party whose ability to perform is impaired and which that Party could not have prevented by exercising reasonable diligence. This includes, but is not limited to, acts of God, fire, flood, earthquakes, explosions, strikes or labor disputes over which the affected Party has no control, riots over which the affected Party has no control, sabotage, civil commotion, acts of civil or military authority, wars or material changes in applicable business laws or regulations.

XVI. NOTICES

- 16.01 Notices required to be given by any Party to the other shall be in writing and shall be valid if actually received or refused 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 or refused by the Party to whom notice is being given.

Notices to the MPC shall be delivered or sent to:

San Luis Facility Development Corporation
1090 E. Union Street (Delivery)
P.O. Box 1170 (By U.S. Postal Service)
San Luis, Arizona 85349
Attention: Board President Jenny Torres

Copy to: Board Attorney Kay Marion Macuil
Copy to: Board Finance Adviser Monica Castro

Notices to the Operator shall be delivered or sent to:

LaSalle Corrections, L.L.C.
192 Bastille Lane, Suite 200
Ruston, Louisiana 71270
Attention: William K. "Billy" McConnell (Managing Director)

Copy to: Tim Kurpiewski, Director of Finance
LaSalle Corrections
26228 Ranch Road 12
Dripping Springs, TX 78620

Notice to the Trustee Shall be delivered or sent to:

U. S. BANK NATIONAL ASSOCIATION
633 West Fifth Street, 24th Floor
Los Angeles, California 90071
Attention: Keith R. Marshall, Vice President

XVII. EXECUTION AUTHORITY

17.01 By his or her signature below, each signatory individual certifies that he or she is the duly authorized agent or officer of the applicable Party and has the authority to execute this Operating Agreement on behalf of such Party, and each Party 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 Operating Agreement may be amended only by a written instrument specifically purporting to amend this Operating Agreement and executed by all Parties.

XIX. ENTIRE AGREEMENT

19.01 This Operating Agreement supersedes any prior understandings or written or oral agreements between the Parties, provided that to the extent that either the MPC and/or the Operator already have any existing rights and/or obligations pursuant the 2016 Operating Agreement, then such Parties shall respectively maintain those rights and be responsible for those obligations. This Operating Agreement is not intended to revoke, sever or terminate the rights existing under the 2016 Agreement, but is intended to initiate new rights and obligations of the Parties as of the Effective Date.

XX. ADDITIONAL TERMINATION PROVISIONS

[Intentionally left blank.]

XXI. DEFINITIONS

21.01 All capitalized terms not otherwise defined, shall have the meanings given to those capitalized terms in the Indenture

"2016 Agreement" has the meaning ascribed to it in the first (1st) whereas clause titled "Background."

"Accrued and Unpaid Incentive Interim Forbearance Period Amounts" has the meaning ascribed to it in Section 3.01(b)(v)

"ADOC" has the meaning ascribed to it in Section 1.01(d).

"Bond Fund" has the meaning ascribed to it in the *Indenture*.

"City" has the meaning ascribed to it in Section 1.01(a).

"City Business License Fee" has the meaning ascribed to it in Section 3.01(b)(ii).

"Detention Facility Business License Fee" has the meaning ascribed to it in Section 3.01 of the *2016 Agreement* and is first referred to in Section 3.01(b)(ii) of this Operating Agreement.

"Effective Date" has the meaning ascribed to it in the opening paragraph.

"Emerald" has the meaning ascribed to it in the first (1st) whereas clause titled "Background."

"Facility" has the meaning ascribed to it in the opening paragraph.

"FF&E" has the usual meaning Furniture Fixtures and Equipment as noted in the last paragraph of Section 4.01.

"Forbearance Agreement" has the meaning ascribed to it in the first (1st) whereas clause titled "Background."

"Force Majeure" has the meaning ascribed to it in Section 15.16.

"General and Administrative Expenses" has the meaning ascribed to it in Section 3.01(b)(ii).

"Incentive Fee" has the meaning ascribed to it the **Forbearance Agreement** under Section 1(f) and the **2016 Agreement**.

"Indenture" has the meaning ascribed to it in the ninth (9th) and last whereas clause.

"inmate or inmates" have their common meaning which includes detainee(s), jailee(s), and prisoner(s). The words prisoner or prisoners are the terms sometimes used in the **Indenture** to mean the same as inmate or inmates as used in this Operating Agreement.

"Inmate Day" has the meaning ascribed to it in Section 3.10.

"Interim Forbearance Period" has the meaning ascribed to it in the first (1st) whereas clause titled "Background."

"Issuer" and **"MPC"** are the same. **"Issuer"** has the meaning ascribed to it in the third (3rd) "whereas" clause.

"Midnight Count Report" has the meaning ascribed to it in Section 3.10.

"MPC" has the meaning ascribed to it in the opening paragraph.

"Open Accounts Receivable Detail" has the meaning ascribed to it in Section 3.01(c).

"Operating Agreement" has the meaning ascribed to it in the opening paragraph.

"Operating Account" has the meaning ascribed to it in the **Indenture**.

"Operating Reserve/Repair/Contingency Account" has the meaning ascribed to it in the **Indenture**.

"Operation and Maintenance Costs" has the meaning ascribed to it in Section 3.01(b)(i) and the **Indenture**.

"Operator" has the meaning ascribed to it in the opening paragraph.

"Operator Direct Expenses" has the meaning ascribed to it in Section 3.01(b)(i) and Section 3.01 of the **2016 Agreement**.

"Operator Fee" has the meaning ascribed to it in Section 3.01(a) and is the collective term for the fees paid to the **Operator** consisting of the **Operation and Maintenance Costs**, the **General Administrative Expenses** the **Variable Incentive Fee** and the **Operator's** fees accrued and unpaid under the **2016 Agreement** and the **Forbearance Agreement**.

"Operator Fee Account" has the meaning ascribed to it in the **Indenture**.

"Parties" has the meaning ascribed to it in the opening paragraph.

“Party” has the meaning ascribed to it in the opening paragraph.

“Police Chief” has the meaning ascribed to it in Section 1.01(a).

“Project Revenue” has the meaning ascribed to it in the *Indenture*.

“Reserve Fund” has the meaning ascribed to it in the *Indenture*.

“Sending Jurisdiction” has the meaning ascribed to it in Section 1.02.

“Surplus Account” has the meaning ascribed to it in the *Indenture*.

“Trustee” has the meaning ascribed to it in the first (1st) whereas clause titled “Background.”

“Users” has the meaning ascribed to it in Section 1.01, the last sentence.

“User Agencies” has the meaning ascribed to it in Section 1.01, the last sentence.

“Variable Business License Fee” has the meaning ascribed to it in Section 3.01(b)(iii).

“Variable Incentive Fee” has the meaning ascribed to it in Section 3.01(b)(iii).

[Intentionally left blank, signature page follows]

This Operating Agreement shall inure to the benefit of and bind the legal representatives, assignees, and successors of the respective Parties.

SIGNED by each of the Parties and acknowledged by the Trustee on the dates set forth below:

San Luis Facility Development Corporation

By: [Signature]
Signature

Name: Jenny Torres

Its: President

Date: November 27, 2018

ATTEST:

[Signature]
Olivia Jenkins, Secretary

APPROVED AS TO FORM:

[Signature]
Kay Marion Macuil, Attorney for Corporation

LaSalle Corrections, L.L.C

By: _____
Signature

Name: _____

Its: _____

Date: _____

Acknowledged by:

U.S. BANK NATIONAL ASSOCIATION,
Not individually but solely in its capacity as Trustee

By: _____
Signature

Name: _____

Its: _____

Date: _____

This Operating Agreement shall inure to the benefit of and bind the legal representatives, assignees, and successors of the respective Parties.


SIGNED by each of the Parties and acknowledged by the Trustee on the dates set forth below:

San Luis Facility Development Corporation

By: 
Signature

Name: Jenny Torres
Its: President
Date: November 27, 2018

ATTEST: 
Olivia Jenkins, Secretary

APPROVED AS TO FORM:

Kay Marion Macuil, Attorney for Corporation

LaSalle Corrections, L.L.C

By: 
Signature

Name: Tim Kurpiewski
Its: CFO
Date: 11-28-18

Acknowledged by:

U.S. BANK NATIONAL ASSOCIATION,
Not individually but solely in its capacity as Trustee

By: _____
Signature

Name: _____
Its: _____
Date: _____

This Operating Agreement shall inure to the benefit of and bind the legal representatives, assignees, and successors of the respective Parties.

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San Luis Facility Development Corporation

By: 
Signature

Name: Jenny Torres
Its: President
Date: November 27, 2018

ATTEST:


Olivia Jenkins, Secretary

APPROVED AS TO FORM:


Kay Marion Macuil, Attorney for Corporation

LaSalle Corrections, L.L.C

By: 
Signature

Name: Tim Kurpiewski
Its: CFO
Date: 11-28-18

Acknowledged by:

U.S. BANK NATIONAL ASSOCIATION,
Not individually but solely in its capacity as Trustee

By: 
Signature

Name: KEITH R. MARSHALL
Its: VICE PRESIDENT
Date: 11-29-18