

Dated Nov 4, 2024

STATE OF MINNESOTA  
COUNTY OF RAMSEY

DISTRICT COURT  
SECOND JUDICIAL DISTRICT

---

In the Matter of Trusteeship created by San Luis Project Development Corporation Pursuant to the Trust Indenture Dated as of October 1, 2005, as Amended, Relating to the Issuance of San Luis Project Development Corporation Senior Lien Taxable Refunding Revenue Bonds (San Luis Regional Detention Center Project) Series 2014 and Series 2014-A

Case Type: Other  
File No. 62-TR-CV-24-31

---

**FINDINGS OF FACT, CONCLUSIONS OF LAW, DIRECTIONS AND ORDER FOR JUDGMENT**

---

The above matter was heard by the Court using remote technology on November 4, 2024, on the Petition (the "**Petition**")<sup>1</sup> of U.S. Bank Trust Company, National Association in its capacity as successor trustee (in such capacity, the "**Trustee**") for the above-captioned trust (the "**Trust**") created pursuant to the Trust Indenture dated as of October 1, 2005, between San Luis Project Development Corporation, as issuer (the "**Issuer**"), and the Trustee, as supplemented by that certain First Supplemental Indenture dated as of February 1, 2011, Second Supplemental Indenture dated as of March 27, 2014, Third Supplemental Indenture dated as of April 1, 2014, and Fourth Supplemental Indenture dated as of July 1, 2014 (as further amended or supplemented from time to time, the "**Indenture**").<sup>2</sup>

In the Petition, the Trustee sought an instruction pursuant to Minn. Stat. § 501C.0201(c) primarily to: (a) approve and authorize the Trustee's entrance into and performance under the

---

<sup>1</sup> Capitalized terms used herein but not defined shall have the meanings given to them in the Petition.

<sup>2</sup> A true and correct copy of the Indenture, including all supplemental indentures, was entered into evidence as **Exhibit 1**.

terms of the Forbearance Agreement; and (b) approve and authorize the Trustee's consent to and acknowledgement of the Revised Management Agreement.

Jason M. Reed of Maslon LLP appeared on behalf of the Trustee. Mr. Charles S. Hodges, Vice President, of U.S. Bank testified in support of the Petition.

This Court, being fully advised of the facts and issues involved herein, makes the following Findings of Fact, Conclusions of Law, Directions and Order for Judgment.

### FINDINGS OF FACT

#### **Issuance of the Bonds, Existing Management Agreement And Underperforming Project Operations**

1. Pursuant to the Indenture, specifically the Third Supplemental Trust Indenture dated as of April 1, 2014, the Issuer issued its Senior Lien Taxable Refunding Revenue Bonds (San Luis Regional Detention Center Project) Series 2014 in the original aggregate principal amount of \$26,090,000.00 (the "**Series 2014 Bonds**"). Subsequently, pursuant to the Fourth Supplemental Trust Indenture dated as of July 1, 2014, the Issuer issued its Senior Lien Taxable Refunding Revenue Bonds (San Luis Regional Detention Center Project) Series 2014-A in the original aggregate principal amount of \$20,835,000.00 (the "**Series 2014-A Bonds**") and together with the Series 2014 Bonds, the "**Bonds**"). The aggregate principal amount of the Bonds outstanding is \$24,655,000.00, of which \$16,870,000.00 is Series 2014 Bonds, and \$7,730,000.00 is Series 2014-A Bonds.

2. Proceeds of the Bonds were used primarily to refund all of the tax-exempt bonds that had been previously issued under the Indenture in connection with the Issuer's acquisition and construction of the Project (as defined in the Indenture). The indebtedness evidenced by the Bonds is non-recourse indebtedness that is repayable solely from and primarily secured by the

Issuer's pledge of Project Revenues generated through the operation of the Project and a deed of trust lien and security interest on all real and personal property comprising the Project.

3. The Project is located in a remote location near the small border town of San Luis, Arizona. It was designed and constructed solely as a secure detention facility and the Project would have little economic value relative to the size of the Bond indebtedness other than as an operating detention facility. Closure of the Project under prevailing industry conditions could significantly impair the prospects for Bondholder recovery due to the loss of Project Revenues and the absence of any clear way to replace such revenue or monetize the Project.

4. Since 2018, the Project has been operated by LaSalle Corrections West, L.L.C. ("**LaSalle**" or the "**Operator**") under an Operation and Management Agreement, executed by LaSalle and the Issuer (the "**Existing Management Agreement**"). Under the terms of Existing Management Agreement, the Operator is required to operate and manage the Project in accordance with specified industry standards until the agreed upon termination date, which is currently November 30, 2024, and in exchange, the Operator's direct costs would be reimbursed and the Operator would receive a base management fee of 6% of such operating costs (the "**Base Operator Fee**"), plus certain additional incentive fees tied to the generation of specific excess Project Revenues (the "**Variable Incentive Fees**"). The Existing Management Agreement provides that it automatically renews for a successive five-year term, unless either LaSalle or the Issuer notifies the other party of its election to cancel the forthcoming renewal term not less than 120 days prior to the existing term's expiration, i.e., in this case, August 2, 2024.

5. All Project Revenues generated from the operation of the Project are pledged to the Trustee under the Indenture and are delivered directly to the Trustee each month to fund debt service accruals on the Bonds and certain other charges, including payments or reimbursements to the Operator for operating costs and expenses, subject to the priorities set forth in the Indenture. In the Existing Management Agreement, the Operator agreed to advance the costs of operating and managing the Project and to be reimbursed and paid solely from the Project Revenues that the Trustee has remaining each month *after* first making deposits to cover accruals for scheduled principal and interest payments on the Bonds (and certain other prior transfers, such as replenishment of the Reserve Funds when required) under the Indenture. As a consequence, the Operator has been taking the risk under the Existing Management Agreement that inmate populations and Project Revenues might be insufficient to reimburse and pay it for its services and operating cost advances. The Operator has provided the Trustee a summary of cash flow at the Project demonstrating that for over the past 18 months, the Project has not generated sufficient Project Revenues (after funding the Bond debt service accruals) to pay the accrued fees and expenses of the Operator.

**Event of Default under the Indenture and Prior Project Accommodations.**

6. An Event of Default occurred under Section 7.01(d) of the Indenture in April 2016 due to the failure of the Issuer to provide, or to cause the then-current Operator<sup>3</sup> to provide (after notice and an opportunity to cure), certain Project financial and census information in accordance with the Indenture (the “**Existing Event of Default**”). Pursuant to Section 8.01 of

---

<sup>3</sup> In 2016, the Project was operated and managed by Emerald Correctional Management L.L.C., which operator was subsequently replaced by the Issuer with LaSalle in 2018.

the Indenture, the Trustee is required to exercise the rights and powers vested in it by the Indenture to the same extent and in the same manner as a prudent person would exercise under the circumstances with respect to its own affairs.

7. At the same time of the occurrence of the Existing Event of Default, the prior operator of the Project had informed the Issuer and Trustee that the Project was generating insufficient Project Revenues to pay its operating costs and fees and it threatened to stop operation of the Project upon expiration of its management agreement unless the risks of nonpayment of the operator were addressed. As a result the Trustee, the prior operator, and the Issuer previously entered into a temporary forbearance agreement in 2016 (the “**2016 Forbearance Agreement**”) that provide for the temporary subordination of certain monthly debt service deposits on the Bonds to the prior payment of the operator’s costs and fees subject to, among other things, the Trustee’s right to terminate the 2016 Forbearance Agreement if the Project performance materially improved so as to provide sufficient Project Revenues in an amount sufficient to pay both the required debt service accrual on the Bonds and the operator’s costs and fees. In connection with the 2016 Forbearance Agreement the Trustee sought approval from this Court of the transactions therein and provided notice to all Bondholders. No Bondholder objected to the prior relief sought by the Trustee.

8. In April 2017, Lasalle consensually agreed with the then-current operator to assume and take over operation and control of the Project. Within a little over a year thereafter, Lasalle was able to substantially improve the operational and financial performance of the Project to a level that allowed the Trustee to terminate the 2016 Forbearance Agreement, which occurred effective as of December 1, 2018, and thereafter restored the normal payment priorities for the application of Project Revenues first to debt service accruals on the Bonds and thereafter

to the payment of Operator costs and fees. However, such termination did not result in a waiver of the Existing Event of Default nor have the requisite Bondholders authorized the waiver thereof. As a result, the Existing Event of Default and the Trustee's prudent person standard of care remains continuing as of the date of the Petition.

**Operator's Request for Assistance, Interim Forbearance Agreement and Extended Management Agreement**

9. On August 1, 2024, the Operator sent the Issuer a notice of its intention not to renew the Existing Management Agreement when the term of such agreement expires on November 30, 2024.<sup>4</sup> As described in the Notice of Non-Renewal, due to low population rates at the Project, the Operator has been losing approximately \$400,000 per month and has incurred \$4,400,000 of unreimbursed costs to the Operator since 2023. The Operator further stated that under the current arrangements, it cannot continue to sustain such losses and maintain operations at the Project.

10. Section 5.06 of the Indenture provides that after setting aside funds for the required accruals and payment of interest and scheduled principal payments on the Bonds, and after replenishing any existing deficiencies in the Reserve Funds, the Trustee is to transfer the remaining Project Revenues on a monthly basis to the Operating Account to pay or reimburse the Operator for Operation and Maintenance Costs (as defined in the Indenture) and, thereafter, to the extent there are remaining Project Revenues available, such remaining funds get allocated between several other trust accounts pursuant to the priorities set forth in Section 5.06 of the Indenture. As indicated earlier, however, lower than expected inmate occupancy has generated insufficient Project Revenues, which has resulted in moneys not being available in

---

<sup>4</sup> A true and correct copy of the Notice of Non-Renewal was entered into evidence as Exhibit 2.

the Operating Account to fully pay or reimburse all operating fees, costs and expenses incurred or advanced by the Operator.

11. In order to substantiate its claims in the Notice of Non-Renewal the Operator has provided the Trustee with a cash flow summary dating back to January of 2023 demonstrating that significant portions of the Operator's direct operating costs for operating the Project and the Operator's Fee have not been reimbursed.

12. In an effort to avoid the loss of services of the Operator and a potential shutdown of the Project on November 30, 2024, and in order to give the Operator and the Issuer a period of time to seek improved long-term contractual arrangements for use of the Project (and thereby, improved Project Revenues), the Issuer, the Operator and the Trustee have negotiated a temporary forbearance arrangement with respect to the Project and the Project Revenues. After several weeks of discussions and negotiations, on September 25, 2024, the Trustee, the Issuer and the Operator entered into that certain Agreement Regarding Temporary Forbearance, Operation of Project and Project Revenues (the "**Forbearance Agreement**").<sup>5</sup>

13. The Forbearance Agreement generally provides that during the "**Forbearance Period**," which is defined in the Forbearance Agreement as the period starting as of September 1, 2024 and continuing until the termination of the Forbearance Agreement, any Project Revenues generated by the Operator's operation of the Project that are actually received by the Trustee after September 1, 2024 (the "**Subject Project Revenues**") are to be applied using a new priority which is designed to give greater protection to the Operator. Under the terms of the Forbearance Agreement, each calendar month during the Forbearance Period is referred to as a "**Revenue Deposit Month**." Rather than using the Project Revenues to first

---

<sup>5</sup> A true and correct copy of the Forbearance Agreement was entered into evidence as Exhibit 3.

set aside installments of Bond principal and interest amounts next coming due, as required by Section 5.06(b) of the Indenture, the Forbearance Agreement provides that Project Revenues attributable to each Revenue Deposit Month will continue to be paid to the Trustee and after payment of any outstanding Trustee's fees and expenses (as currently permitted by the Indenture), all such remaining revenues shall be held by the Trustee and made available as protective advances for the benefit of the Project (the "**Protective Advances**") to pay for the Operation and Maintenance Costs incurred by the Operator during each Revenue Deposit Month, including any Base Operator Fee (collectively, the "**Operator Payments**"). If in any Revenue Deposit Month there shall be excess Subject Project Revenues remaining after funding the then applicable Operator Payments, such amounts shall remain held by the Trustee and made available, if necessary, to make permitted Operator Payments in subsequent months (i) that became due but not paid in a prior Revenue Deposit Month due to a lack of sufficient Subject Project Revenues, and (ii) due in a subsequent Revenue Deposit Month occurring during the Forbearance Period.

14. The Issuer and Operator have also agreed that the Operator Payments to be made under the Forbearance Agreement are (1) to be made solely from the Subject Project Revenues deposited with the Trustee during the Forbearance Period, and (2) that the Trustee is not obligated to advance monies from any other funds or source for payment of the Operator Payments. In addition, all Protective Advances made by the Trustee pursuant to the Forbearance Agreement shall be repaid from all Project Revenues (including any excess Subject Project Revenues) remaining or becoming available after the end of the Forbearance Period.

15. In addition, any Subject Project Revenues held by the Trustee at the end of the Forbearance Period not used to pay either Operator Payments or amounts owing to the Trustee

shall be applied to catch up any amounts to be credited to the Bond Fund under the Indenture pursuant to Section 5.06(b)(i) and 5.06(b)(ii).

16. In consideration of the foregoing the Operator has rescinded its Notice of Non-Renewal and agreed to an extension of the Management Agreement through November 30, 2029 (as amended, the “**Revised Management Agreement**”).<sup>6</sup> Notwithstanding the foregoing, the Revised Management Agreement provides that either the Operator or the Issuer can terminate the agreement at any time with 75-days written notice rather than being forced to wait until the end of the term of the agreement as was previously the requirement. Additionally, the Operator has committed to using reasonable efforts during the Forbearance Period to negotiate and secure modified contracts with the principal users of the Project at either improved per diem rates and/or improved minimum populations at the Project to allow for increased Project Revenues. The Operator has agreed to provide the Trustee and Issuer with updates regarding the foregoing at least every other week.

17. The Forbearance Agreement will run through the earlier of (a) April 30, 2025; or (b) 75 days after the Trustee sends the Operator a notice that a “Termination Event” has occurred; or (c) the cessation or suspension of operations at the Project by the Operator or the termination date of the Revised Management Agreement.

#### **Bondholder Meeting and Trustee’s Notice**

18. After an Event of Default pursuant to Section 8.01 of the Indenture, the Trustee is to exercise the rights and powers vested in it with the same degree of care and skill as a prudent person would exercise under similar circumstances. Additionally, Bondholders holding at least

---

<sup>6</sup> A copy of the Revised Management Agreement was entered into evidence as Exhibit 4.

66 2/3% of the Outstanding Bonds (the “Supermajority Bondholders”) may direct the actions of the Trustee after an Event of Default.

19. The Bonds are believed to be held by numerous separate Bondholders through the Depository Trust Company’s indirect holding system. As a result, the Trustee expects to encounter significant obstacles and delays in soliciting, and ultimately obtaining, the affirmative consent of the holders of at least 66 2/3% of the outstanding principal amount of the Bonds with respect to the Forbearance Agreement. Exigencies of a potential closure of the Project, including the loss of Project Revenues and the short time period available to address the November 30, 2024 termination date support the request made by the Trustee in the Petition for authority to enter into and perform under the Forbearance Agreement.

20. Despite uncertainty about obtaining direction from a group of Supermajority Bondholders the Trustee has been in contact with as many Bondholders as possible during the process of negotiating the Forbearance Agreement and the filing of its Petition. By notice dated August 21, 2024 the Trustee notified Bondholders of the Operator’s Notice of Non-Renewal and invited all Bondholders to a call to discuss the status of the Project and whether the Bondholders desire to direct the Trustee’s actions with respect thereto. A Bondholder call was held on September 4, 2024, and the Bondholders who expressed their opinions on the call indicated a desire for the Trustee to pursue solutions that would avoid the closure of the Project. In addition, on September 23, 2024, the Trustee provided all Bondholders a pre-hearing notice regarding its entrance into the Forbearance Agreement.<sup>7</sup>

21. As further described in the Trustee’s September 23, 2024 notice the Trustee held another telephonic meeting with Bondholders on October 1, 2024. The Trustee listened to input

---

<sup>7</sup> The notices described in this paragraph were entered into evidence as Exhibits 5 and 6 respectively.

from Bondholders regarding the Forbearance Agreement and sought affirmative Bondholder consent to the agreement. The Trustee received affirmative consent of Bondholders holding approximately 42% of the Bonds. Additionally, the Trustee served the Petition on all Bondholders and has not received any opposition to the relief being sought.

22. The Trustee entered into the Forbearance Agreement in order to avoid the loss of the Operator and potential shutdown of the Project in November 2024 and in order to provide the Operator additional time to secure improved contracts for the long-term success of the Project. Though the Trustee has sought Bondholder direction with respect to the forbearance arrangement, it has been unable to solicit input from the requisite percentage of Bondholders on the compressed timeline it is facing.

#### **CONCLUSIONS OF LAW**

1. The Trustee is a national banking association and has its principal corporate trust office in St. Paul, Minnesota. There is jurisdiction over the Petition under Minn. Stat. § 501C.0202(1) and (24) in that the Trustee is seeking an instruction from the Court confirming the actions taken by the Trustee, authorizing the Trustee to enter into and perform under the Forbearance Agreement as well as authorizing the Trustee's acknowledgment of the Revised Management Agreement.

2. The assets of the trust that is the subject of the Petition are administered through the Trustee's corporate trust office in St. Paul, Minnesota.

3. The Petition is properly venued in this Court pursuant to Minn. Stat. § 501C.0207(a)(2)(i) and § 501C.0207(b) because the Trustee has a corporate trust office in St. Paul, Minnesota and this Court has previously heard matters regarding this Trust.

4. The Trustee complied with all of the notice and publication requirements set forth in Minn. Stat. § 501C.0203, subd.1 and this Court's Order for Hearing dated October 4, 2024. (See Exhibits 7 and 8 admitted into evidence.)

5. Pursuant to this Court's Order for Hearing, any party in interest wishing to object to the Petition was required to file a memorandum not later than five (5) calendar days before the November 4, 2024 hearing. No objections to the Petition were filed.

6. Pursuant to Minn. Stat. § 501C.0204, subd. 1, this Order is final as to all matters determined by it and binding *in rem* upon the Trustee, the Trust, all parties involved in the administration of the Trust, and all persons or entities claiming a beneficial ownership interest in the Trust including, without limitation, all past, present or future holders of the Bonds, and their respective successors or assigns, as well as any other parties-in-interest, if any.

7. All actions taken (or omissions) by the Trustee in accordance with the Order of this Court, including, without limitation, the Trustee's evaluation, acceptance, execution and implementation of the Forbearance Agreement, comply with all applicable duties under, and be fully authorized and protected by, the Indenture, and shall not subject U.S. Bank Trust Company, National Association, individually or as Trustee, to liability.

#### **DIRECTIONS AND ORDER FOR JUDGMENT**

The relief sought by the Trustee in the Petition is hereby **GRANTED**, and the Court further specifically orders and directs as follows:

A. The Trustee is authorized to enter into and perform, and such entrance into and performance under are hereby approved, the terms of the Forbearance Agreement including, without limitation, allocation of Project Revenues pursuant to the terms thereof;

B. The Trustee's consent to and acknowledgement of the Revised Management Agreement is authorized and approved;

C. The Trustee is authorized to take such further or additional actions as may be necessary or appropriate in connection with the Forbearance Agreement and the Revised Management Agreement;


D. The Trustee’s execution and acknowledgement of the Forbearance Agreement and Revised Management Agreement, and any and all actions taken by the Trustee thereunder or in connection therewith, are prudent and reasonable and satisfy any and all duties of the Trustee under the Indenture and any other Trust documents, and the Trustee shall not be liable to any holders of the Bonds or other party for complying with this Court’s Order;

E. The Trust and the Trustee shall not be subject to the continuing supervision of the Court for the purposes of Minn. Stat. § 501C.0205 or General Rule of Practice 417.02.

**LET JUDGMENT BE ENTERED ACCORDINGLY.**

Dated: \_\_\_\_\_

BY THE COURT



Ireland, Mark (Judge)  
Nov 4, 2024 3:23 PM

\_\_\_\_\_  
The Honorable Mark Ireland  
Judge of the District Court