

REPLACEMENT # 1  
DATE 8/29 TIME 3:30

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**Central Coast Regional  
Secure Community Reentry Facility Siting Agreement**

This Central Coast Regional Secure Community Reentry Facility Siting Agreement (“**Siting Agreement**” or “**Agreement**”) entered into by and between the California Department of Corrections and Rehabilitation (“**CDCR**” or the “**Department**”) and the Counties of San Benito, Santa Barbara, and San Luis Obispo (“**Counties**”) is effective this 9<sup>th</sup> day of September, 2008. The Department and the Counties are each referred to as a “**Party**” and are collectively referred to as the “**Parties.**”

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**Recitals**

WHEREAS, the Legislature has found and declared that: (a) the continuity of services provided both before and after an inmate’s release on parole will improve the parolee’s opportunity for successful reintegration into society (Penal Code § 6270(a)); and (b) placing an inmate in a secure correctional facility within the community prior to parole into that community provides the opportunity for both parole officers and local law enforcement personnel to better coordinate supervision of that parolee (Penal Code § 6270(b));

WHEREAS, Penal Code section 6271 authorizes CDCR to construct, establish and operate Reentry Facilities in a city, county, or city and county that requests a reentry facility, and provides that the proposed location of the reentry facility shall be identified by the city, county, or city and county;

WHEREAS, Penal Code section 6273 provides that in the locations where a Reentry Facility is established, CDCR shall develop a collaborative partnership with local government, local law enforcement, and community service providers;

WHEREAS, Government Code section 15820.901 authorizes CDCR, the Counties and the State Public Works Board (SPWB) to acquire, design, and construct local jail facilities approved by the Corrections Standards Authority (CSA) pursuant to Government Code section 15820.906;

WHEREAS, Government Code section 15820.907(b) provides that CDCR and CSA shall give a maximum of 300 jail funding preference points (Reentry Preference) to counties that assist the state in siting a Reentry Facility as described in Penal Code sections 6270, 6271.1(a), 15 C.C.R. section 1706, and CDCR’s Secure Community Reentry Facilities Planning Guide;

WHEREAS, as set forth on page 13 of the CSA’s December 20, 2007 Request for Proposals (RFP), a county will receive preference points for assisting with siting a Reentry Facility on city-owned property located within an applicant county, and each county participating in a regional state Reentry Facility will be qualified for the preference points;

WHEREAS, Government Code section 15820.907(b) also provides that the CSA shall, to the extent possible, ensure that funds for the construction of new jail beds be coordinated with CDCR’s efforts to site new reentry facilities;

WHEREAS, San Benito County signed an *Agreement to Cooperate with the California Department of Corrections and Rehabilitation* (Agreement to Cooperate) dated December 4, 2007, Santa Barbara County signed an Agreement to Cooperate dated June 19, 2007, and San Luis Obispo County signed an Agreement to Cooperate dated December 4, 2007;

WHEREAS, on May 8, 2008, the CSA Board adopted a motion stating, in relevant part that: (1) the CSA Board only approve final funding for proposals that include a secure Reentry Facility; and (2) if a Siting Agreement locates the Reentry Facility within a city's limits, the County must include resolutions approving that site from both the County Board of Supervisors and the city's council before the site is approved for final funding during phase one.

WHEREAS, 15 C.C.R. section 1747.5(b) states that the Siting Agreement shall include: (a) a description of the Proposed Reentry Location including the proximity of water, sewer and power supply (see paragraph 1.a below); (b) language that states that the Proposed Reentry Location is agreeable to CDCR (see paragraph 1.b below); (c) the roles, responsibilities and performance expectations of the Parties to establish a Reentry Facility (see paragraphs 2 - 4 below); (d) a description of the needs of the individual county with respect to the parolee population, as well as the services and programs that will be available and/or necessary for a successful Reentry Facility (see paragraph 1.a below); and (e) a description of the location and design of the Reentry Facility, staffing and operations (where applicable) (see paragraph 1.a below) and additional terms as the Parties deem necessary;

WHEREAS, San Benito County's Board of Supervisors is scheduled to adopt a Resolution on September 9, 2008, Santa Barbara County's Board of Supervisors is scheduled to adopt a Resolution on September 2, 2008 and San Luis Obispo County's Board of Supervisors is scheduled to adopt a Resolution on September 9, 2008, (collectively the "**Resolutions**") where the Resolutions were adopted pursuant to page 20 of the **RFP** for construction or expansion of county jails pursuant to the Public Safety and Offender Rehabilitation Act of 2007, as amended (the "**Act**"), as well as 15 C.C.R. sections 1706 and 1712(a)(4), which Resolutions support the state's use of certain property in the vicinity of the El Paso De Robles Youth Correctional Facility as the Counties' Proposed Reentry Location for purposes of this Agreement, stipulates that a Reentry Planning Team exists, agrees that a Reentry Facility located at the Proposed Reentry Location may house inmates from each of the Counties under this agreement whether or not any of the Counties subsequently terminate this Agreement, and provides copies of local meeting/planning documents related to the Proposed Reentry Location;

WHEREAS, the Counties anticipate the City of El Paso De Robles will adopt a Resolution on September 16, 2008, supporting use of the Proposed Reentry Location as a Reentry Facility; and a commitment by the City to support, facilitate, assist and fully cooperate with CDCR and the County in connection with the proposed Reentry Facility;

WHEREAS, the Parties acknowledge that the state currently holds sufficient title to construct a Reentry Facility at the Proposed Reentry Location;

WHEREAS, nothing in this Agreement is intended to modify rights and obligations established pursuant to the Property Acquisition Law (Govt. Code §§ 15850 et seq.). Exhibit A to this Agreement provides a graphic describing the process set forth in this Agreement and the

process by which an eligible county will receive funding to construct local jail facilities. Exhibit A (“CSA – CDCR Reentry Siting Agreement Process/SPWB – CDCR Jail Lease Revenue Bond Program Agreements”).

Agreements

NOW, therefore, the parties agree as follows:

1. *Identification of the Proposed Reentry Location*

- a. Exhibit B to this Agreement includes
  - (1) A description of the Proposed Reentry Location’ including the proximity of water, sewer and power supply.
  - (2) A description of the needs of the Counties with respect to their parolee population, as well as the services and programs that will be available and/or necessary for a successful Reentry Facility; and
  - (3) A description of the location and design of the Reentry Facility, staffing and operations (where applicable).
- b. The Proposed Reentry Location is agreeable to CDCR and entry into this Agreement satisfies the provisions of section 15820.907(b) and has the same meaning as “assist the state in siting” as set forth in Government Code section 15820.907.

2. *Construction and Operation of the Reentry Facility*

- a. Counties agree to cooperate with CDCR to construct and operate a Reentry Facility. Such cooperation shall include but not be limited to the following:
  - (1) CDCR may need to apply for discretionary approvals or authorizations in order to construct or operate a Reentry Facility. The Counties shall provide a commitment that, to the extent permitted by law, the County will support, facilitate, assist and fully cooperate with planning, constructing, and operating a Reentry Facility at the Proposed Reentry Location, and shall take such other actions as may be reasonably necessary to accomplish the purpose of constructing a reentry facility on a the Proposed Reentry Location.
  - (2) Environmental issues or community opposition may exist that may materially interfere with construction and operating a Reentry at the Proposed Reentry Location. To that end, the Counties agree to assist CDCR in addressing such environmental issues or community opposition to the reasonable extent requested by CDCR.
- b. Each of the Counties’ respective members of the Reentry Planning Team shall work collaboratively with CDCR towards a successful Reentry Facility.

- c. CDCR shall have primary responsibility for the construction and operation of the Reentry Facility, which construction and operation shall only occur after the completion of any legally required compliance with the California Environmental Quality Act (CEQA). However, CDCR and the Counties recognize that the urgent need for the Reentry Facility requires close coordination between the Counties and CDCR, and that it may be necessary to coordinate CDCR's CEQA compliance for the Reentry Facility with the CEQA review for other projects for which one of the Counties may be the CEQA lead agency. To that end:
- (1) CDCR will endeavor to make available to the Counties any significance thresholds or standard avoidance and mitigation measures that CDCR has used or foresees utilizing in any CEQA review required for a Reentry Facility at the Proposed Reentry Location
  - (2) The Counties shall identify any closely related past, present, and reasonably foreseeable probably future projects that may increase or compound the environmental impacts resulting from developing a Reentry Facility at the Proposed Reentry Location;
  - (3) The Counties shall identify any activity that would constitute part of the same "project" as development of a reentry facility at the Proposed Reentry Location, pursuant to CEQA's definition of "project."
  - (4) The Counties shall provide CDCR a reasonable opportunity to review and comment upon an administrative draft of the CEQA compliance document(s) that the Counties propose to rely upon prior to approving or carrying out the jail facilities that are the subject of the Conditional Award, and the Counties shall give due consideration to incorporating any comments submitted by CDCR. The Counties' obligations to provide CDCR a reasonable opportunity to review and comment does not apply where a County relies upon a CEQA document that was adopted or certified by that County prior to entry into this Siting Agreement.
- d. The Parties agree that they anticipate that the Counties may enter into a joint operations/governance agreement to better implement the terms of this Agreement. The Counties may assign all of their rights and obligations under this Agreement to a joint powers authority. CDCR shall not unreasonably withhold consent from or untimely delay such an assignment.

3. *Term of Agreement*

- a. This Agreement shall commence on the effective date written above and shall continue in force until the date upon which the limitations period closes for any legal challenges arising out of the construction and operation of a Reentry Facility at the Proposed Reentry Location.
- b. The Parties may also terminate this Agreement as follows:

- (1) CDCR may terminate this Agreement at any time, with or without cause, upon one year's written notice to Counties. Should CDCR terminate this Agreement, CDCR may elect whether to terminate it with all, or any subset, of the Counties.
- (2) An individual county may only terminate this Agreement if that county did not receive a conditional award of state bond funds for construction of a jail facility ("Conditional Award") and has exhausted, or has waived, all administrative appeal procedures set forth at 15 C.C.R. section 1776, *et seq.* CDCR reserves the right to terminate this Agreement if one or more counties exercise the right of termination.
- (3) San Luis Obispo County specifically agrees that, regardless of any action by any of the other Counties to terminate this Agreement, San Luis Obispo County will continue to support CDCR in utilizing the Reentry Facility for inmates that will be returning to any of the three Counties.

4. *General Provision*

- a. *Disputes.* The Parties recognize that there may be disputes regarding the obligations of the Parties or the interpretation of this Agreement. The Parties agree that they may attempt to resolve disputes as follows:
  - (1) *Statement Describing Alleged Violation of Agreement.* A Party or Parties alleging a violation of this Agreement (the "**Initiating Party(ies)**") shall provide a written statement describing all facts that it believes constitute a violation of this Agreement to the Party(ies) alleged to have violated the terms of this Agreement (the "**Responding Party(ies)**").
  - (2) *Response to Statement of Alleged Violation.* The Responding Party(ies) shall have sixty days from the date of the written statement to prepare a written response to the allegation of a violation of this Agreement and serve that response on the Initiating Party(ies) or to cure the alleged violation to the reasonable satisfaction of the Initiating Party(ies). The Initiating Party(ies) and the Responding Party(ies) shall then meet within thirty days of the date of the response to attempt to resolve the dispute amicably.
  - (3) *Mediation of Dispute.* If the Initiating Party(ies) and the Responding Party(ies) cannot resolve the dispute within ninety days of the date of the written response, they shall engage a mediator to attempt to resolve the dispute. CDCR shall ensure that it is represented at the mediation by an individual with at least the rank of Deputy Director. The Counties shall ensure that they are represented at the mediation by their County Administrative Officers or by a member of their Board of Supervisors, or authorized representatives. These representatives of the Initiating Party(ies) and the Responding Party(ies) may consult with staff, counsel

and/or technical consultants during the mediation and such staff and/or technical consultants may be present during the mediation. The costs of the mediator shall be divided evenly between the Initiating Party(ies) and the Responding Party(ies).

- (4) *Reservation of Rights.* Nothing in this paragraph a.(4) shall require a Party to comply with the dispute resolution process contained herein and each Party retains and may exercise at any time all legal and equitable rights and remedies it may have to enforce the terms of this Agreement; provided, that prior to commencing litigation, a Party shall provide at least five calendar days' written notice of its intent to sue to all Parties.
- b. *Indemnification.* Each Party (the "Indemnitor") agrees to indemnify, defend and hold harmless the other Parties and their agents, board members, elected and appointed officials and officers, employees, volunteers, and authorized representatives (each an "Indemnitee") from any and all losses, liabilities, charges, damages, claims, liens, causes of action, awards, judgments, costs, and expenses (including, but not limited to, reasonable attorney's fees) of whatever kind or nature (collectively "Claims"), that arise out of or are in any way connected with any willful misconduct, negligent error, act or omission of the Indemnitor or the Indemnitor's officers, agents, employees, independent contractors, subcontractors, or authorized representatives, unless resulting from the sole negligence, active negligence, or willful misconduct of an indemnified party.
- c. *Insurance.* The Counties shall cause any contractor(s) as well as any subcontractors upon which the Counties rely to implement this Agreement to carry adequate insurance in a form agreed to by CDCR.
- d. *Authority.* Each signatory of this Agreement represents that s/he is authorized to execute this Agreement on behalf of the Party for which s/he signs. Each Party represents that it has legal authority to enter into this Agreement and to perform all obligations under this Agreement.
- e. *Amendment.* This Agreement may be amended or modified only by a written instrument executed by each of the Parties to this Agreement.
- f. *Jurisdiction and Venue.* This Agreement shall be governed by and construed in accordance with the laws of the State of California, except for its conflicts of law rules. Any suit, action, or proceeding brought under the scope of this Agreement shall be brought and maintained to the extent allowed by law in the County of Sacramento, California.
- g. *Headings.* The paragraph headings used in this Agreement are intended for convenience only and shall not be used in interpreting this Agreement or in determining any of the rights or obligations of the Parties to this Agreement.

- h. *Construction and Interpretation.* This Agreement has been arrived at through negotiations and each Party has had a full and fair opportunity to revise the terms of this Agreement. As a result, the normal rule of construction that any ambiguities are to be resolved against the drafting Party shall not apply in the construction or interpretation of this Agreement.
- i. *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes any prior oral or written agreement, understanding, or representation relating to the subject matter of this Agreement.
- j. *Partial Invalidity.* If, after the date of execution of this Agreement, any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provision shall be fully severable. However, in lieu thereof, there shall be added a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable.
- k. *Successors and Assigns.* This Agreement shall be binding on and inure to the benefit of the successors and assigns of the respective Parties to this Agreement. No Party may assign its interests in or obligations under this Agreement without the written consent of the other Parties, which consent shall not be unreasonably withheld or delayed.
- l. *Waivers.* Waiver of any breach or default hereunder shall not constitute a continuing waiver or a waiver of any subsequent breach either of the same or of another provision of this Agreement and forbearance to enforce one or more of the remedies provided in this Agreement shall not be deemed to be a waiver of that remedy.
- m. *Attorneys' Fees and Costs.* The prevailing Party in any litigation or other action to enforce or interpret this Agreement shall be entitled to reasonable attorneys' fees, expert witnesses' fees, costs of suit, and other and necessary disbursements in addition to any other relief deemed appropriate by a court of competent jurisdiction.
- n. *Necessary Actions.* Each Party agrees to execute and deliver additional documents and instruments and to take any additional actions as may be reasonably required to carry out the purposes of this Agreement.
- o. *Representations and Warranties.* Each representation and warranty contained herein or made pursuant hereto shall be deemed to be material and to have been relied upon and shall survive the execution, delivery and termination of this Agreement.
- p. *Compliance with Law.* In performing their respective obligations under this Agreement, the Parties shall comply with and conform to all applicable laws, rules, regulations and ordinances.

- q. *Third Party Beneficiaries.* This Agreement shall not create any right or interest in any non-Party or in any member of the public as a third party beneficiary. In particular, nothing in this Agreement is to be construed to create any rights, liberty interests or entitlements in favor of any offender. For purposes of this Agreement, the term "offender" includes any adult male or female person incarcerated, or in violation of parole, under applicable California laws. This Agreement is intended and shall be construed only to set forth the rights and obligations of the Parties; offenders shall have only those entitlements created by the federal and State Constitutions, statutes, regulations or caselaw.
- r. *Counterparts.* This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute but one and the same instrument.
- s. *Notices.* All notices, requests, demands or other communications required or permitted under this Agreement shall be in writing unless provided otherwise in this Agreement and shall be deemed to have been duly given and received on: (i) the date of service if served personally or served by facsimile transmission on the Party to whom notice is to be given at the address(es) provided below, (ii) on the first day after mailing, if mailed by Federal Express, U.S. Express Mail, or other similar overnight courier service, postage prepaid, and addressed as provided below, or (iii) on the third day after mailing if mailed to the Party to whom notice is to be given by first class mail, registered or certified, postage prepaid, addressed as follows:



IN WITNESS THEREOF, the parties hereto have executed this Agreement as specified below.

COUNTY OF SAN LUIS OBISPO

COUNTY OF SANTA BARBARA

By:

By:

Name: James R. Patterson, Chair

Name: Salud Carbajal, Chair

Title: San Luis Obispo County Board of Supervisors

Title: Santa Barbara County Board of Supervisors

Date:

Date:

COUNTY SAN BENITO

CALIFORNIA DEPARTMENT OF CORRECTIONS AND REHABILITATION

By:

By:

Name: Jaime De La Cruz, Chair

Name:

Title: San Benito County Board of Supervisors

Title:

Date:

Date:

ATTEST:

JULIE L. ROADWALD  
Clerk of the San Luis Obispo County Board of Supervisors

BY: \_\_\_\_\_, Deputy Clerk

APPROVED AS TO FORM AND LEGAL EFFECT

By: \_\_\_\_\_  
Deputy County Counsel

Date:

