



County of Santa Cruz

AUDITOR - CONTROLLER'S OFFICE
GARY A. KNUTSON, AUDITOR - CONTROLLER

June 20, 2001

AGENDA DATE: JUNE 26, 2001

Honorable Board of Supervisors
701 Ocean Street
Santa Cruz, California 95060

Dear Members of the Board:

Subject: Adopt the attached Resolution to Restate and Amend the Use Agreement between the Santa Cruz Consolidated Communications Center and the County to facilitate the Issuance of Revenue Refunding Bonds

The Santa Cruz County Emergency Communications Center Joint Powers Authority has determined that the present interest rates on tax-exempt bonds make it desirable to refinance the 1994 Lease Revenue Bond. Due to these favorable market conditions, their Board of Directors have authorized staff to have the necessary documents prepared and returned on July 26, 2001 for final approval. The savings to be realized as a result of the refunding will be used to acquire needed replacement fixed assets totaling about \$330,000 without impacting future member contributions.

In order to proceed, your Board must approve the attached Resolution approving the form and authorizing the execution of a restated and amended use agreement between the Santa Cruz Consolidated Communications Center and the County. The refunding analysis was prepared by Harrell and Associates as the financial advisor, and reviewed by the Auditor-Controller and County Administrative Office. Rutan and Tucker, Bond Counsel prepared the legal documents.

IT IS THEREFORE RECOMMENDED that your Board of Supervisors approve the attached Resolution authorizing the execution of the Restated and Amended Use Agreement attached hereto.

Sincerely,

Recommended By:


Gary A. Knutson
Auditor-Controller


Susan A. Mauriello
County Administrative Officer

cc: County Counsel
Rutan and Tucker
Harrell and Associates
Mike McDougall, SCCCC Manager

2160 158

RESOLUTION NO.

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ (THE "COUNTY") APPROVING THE FORM AND AUTHORIZING THE EXECUTION OF A RESTATED AND AMENDED USE AGREEMENT BETWEEN THE SANTA CRUZ CONSOLIDATED EMERGENCY COMMUNICATIONS CENTER (THE "CENTER") AND THE COUNTY

WHEREAS, the Santa Cruz Consolidated Emergency Communications Center (the "Center") wishes to institute proceedings to refinance certain public capital improvements and finance certain equipment and, in implementation thereof, proposes to lease and lease-back certain facilities (the "Project") as more particularly described in the form of Lease Agreement, dated as of June 1, 2001, by and between the Santa Cruz County Public Financing Authority (the "Authority"), and the Center (the "Lease Agreement"); and

WHEREAS, the Center proposes to let the Project pursuant to the Restated and Amended Use Agreement, dated as of June 1, 2001 (the "Use Agreement") in exchange for certain Use Payments thereunder in the aggregate amounts and at the times sufficient to provide for the retirement of lease revenue bonds to be issued by the Authority to finance the Project;

THE BOARD OF SUPERVISORS OF THE COUNTY OF SANTA CRUZ DOES RESOLVE AS FOLLOWS:

SECTION 1. Findings and Determinations. The Board of Supervisors of the County of Santa Cruz hereby finds and determines that it is for the common benefit of the County and its residents and is necessary and proper for public purposes that the County enter into the Use Agreement with the Center.

SECTION 2. Approval of Use Agreement. The Board of Supervisors hereby approves the Use Agreement in the form on file with the Clerk of the Board of Supervisors, and authorizes and directs the County Administrative Officer or Assistant County Administrative Officer or their designee to execute and the Clerk of the Board of Supervisors to attest and affix the seal of the County to the Use Agreement in such final form as may be necessary or convenient as determined by bond counsel to conform the Use Agreement to the proceedings for the issuance of such lease revenue bonds.

SECTION 3. Official Actions. The Chairperson, the Vice-Chairperson, the County Administrative Officer, the Assistant County Administrative Officer, the County Counsel, and any and all other officers of the County are each authorized and directed in the name and on behalf of the City to make any and all assignments, certificates, requisitions, agreements, notices, consents, instruments of conveyance, warrants and other documents, which they or any of them might deem necessary or appropriate in order to consummate the lawful execution and delivery of the Use Agreement by the County and the authorization, sale and delivery of such lease revenue bonds.

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PASSED AND ADOPTED this 26th day of June, 2001.

Chairperson

ATTEST:

Clerk of the Board of Supervisors

STATE OF CALIFORNIA)
) ss
COUNTY OF SANTA CRUZ)

I, _____ Clerk of the Board of Supervisors of the County of Santa Cruz hereby certify that the above and foregoing Resolution No. was approved and adopted at a regular meeting of the City Council held on the 26th day of June, 2001, by the following roll call vote:

AYES:

NOES:

ABSENT:

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of the County of _____ this ____ day of _____, 2001.

Clerk of the Board of Supervisors

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RESTATED AND AMENDED USE AGREEMENT

Dated as of June 1, 2001

by and between the

**THE COUNTY OF SANTA CRUZ, THE CITY OF CAPITOLA, THE CITY OF SANTA
CRUZ, AND THE CITY OF WATSONVILLE**

and the

SANTA CRUZ CONSOLIDATED EMERGENCY COMMUNICATIONS CENTER

**Santa Cruz County Public Financing Authority
2001 Lease Revenue Refunding Bonds, Series A
(Consolidated Emergency Communications Center Project)**

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RESTATED AND AMENDED USE AGREEMENT

THIS RESTATED AND AMENDED USE AGREEMENT (the "Use Agreement"), dated as of June 1, 2001, by and among the SANTA CRUZ CONSOLIDATED EMERGENCY COMMUNICATIONS CENTER, a joint exercise of powers agency organized and existing under the laws of the State of California, as lessor (the "Center"), the COUNTY OF SANTA CRUZ, a general law county organized and existing under the laws of the State of California (the "County"), THE CITY OF CAPITOLA ("Capitola"), THE CITY OF SANTA CRUZ ("Santa Cruz") and THE CITY OF WATSONVILLE ("Watsonville"), all municipal corporations and general law cities organized and under the laws of the State of California (the County, Capitola, Santa Cruz, and Watsonville shall collectively be referred to as the "Agencies").

WITNESSETH:

WHEREAS, the Center wishes to provide use of the Consolidated Emergency Communications Center (the "Project") to the Agencies and the Agencies are authorized pursuant to the laws of the State of California to enter into use agreements for such purposes; and

WHEREAS, in order to provide funds to advance refund the lease of the Project from the Center to the Santa Cruz County Public Financing Authority (the "Authority"), and from the Authority to the Center, and to finance certain equipment, the Authority has authorized the issuance of its Santa Cruz County Public Financing Authority 2001 Lease Revenue Refunding Bonds, Series A (Consolidated Emergency Communications Center Project), in the aggregate principal amount of \$_____ (the "Bonds"), pursuant to an Indenture of Trust, dated as of June 1, 2001 (the "Indenture"), by and between the Authority and BNY Western Trust Company as trustee (the "Trustee"); and

WHEREAS, the Center proposes to provide use of the Project to the Agencies as provided in this Use Agreement, for the purpose (among others) of providing amounts sufficient to provide for the Lease Payments and the payment of the principal of and interest on the Bonds; and

WHEREAS, the Center will use the proceeds of this Use Agreement to pay Lease Payments used to finance certain public improvements which are also public capital improvements, as that term is defined in the Act; and

WHEREAS, the Center and the Agencies have duly authorized the execution and delivery of this Use Agreement; and

WHEREAS, this Use Agreement amends and restates in its entirety that Use Agreement, dated as of April 1, 1994, by and among the Center and the Agencies (the "Prior Use Agreement");

NOW, THEREFORE, for and in consideration of the premises and the material covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows:

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**ARTICLE 1
DEFINITIONS AND EXHIBITS**

Section 1.01 Definitions.

Unless the context clearly otherwise requires or unless otherwise defined herein, the capitalized terms in this Use Agreement shall, for all purposes of this Use Agreement, have the meanings ascribed to them in the Indenture or the Lease Agreement.

Section 1.02 Exhibits.

The following exhibits are attached to, and by this reference made a part of, this Use Agreement:

- Exhibit A: Description of Project Site
Exhibit B: Schedule of Use Payments for Project for each Agency

**ARTICLE 2
REPRESENTATIONS, COVENANTS AND WARRANTIES**

Section 2.01 Representations, Covenants and Warranties of the Agencies.

The Agencies, and each of them, represent, covenant and warrant to the Center as follows:

(a) Authorization. The laws of the State authorize the Agencies to enter into this Use Agreement and to enter into the transactions contemplated hereby and to carry out its obligations hereunder, and the Agencies have duly authorized and executed this Use Agreement and this Use Agreement constitutes the legal, valid and binding agreement of the Agencies, enforceable against the Agencies in accordance with its terms.

(b) No Violations. Neither the execution and delivery of this Use Agreement, nor the fulfillment of or compliance with the terms and conditions hereof and thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Agencies are now a party or by which the Agencies are bound, or constitutes a default under any of the foregoing, or results in the creation or imposition of any lien, charge or encumbrances whatsoever upon any of the property or assets of the Agencies, or upon the Project, except Permitted Encumbrances.

(c) Execution and Delivery. The Agencies have duly authorized and executed this Use Agreement in accordance with the laws of the State.

Section 2.02 Represent Covenants and Warranties of Center.

The Center represents, covenants and warrants to the Agencies as follows:

(a) Due Organization and Existence. The Center is a joint exercise of powers agency duly organized and existing under and by virtue of the laws of the State; has power to enter into this Use Agreement and the Lease Agreement; is possessed of full power to own and hold, improve and equip real and personal property, and to lease and lease back the same; and has duly authorized the execution and delivery of each of the aforesaid agreements and such agreements constitute the legal, valid and binding agreements of the Center, enforceable against the Center in accordance with their respective terms.

(b) No Encumbrances. The Center will not pledge the Use Payments or other amounts derived from the Project and from its other rights under this Use Agreement and will not mortgage or encumber the Project, except as provided under the terms of this Use Agreement, the Lease Agreement and the Indenture.

(c) No Violations. Neither the execution and delivery of this Use Agreement or the Lease Agreement, nor the fulfillment of or compliance with the terms and conditions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, conflicts with or results in a breach of the terms, conditions or provisions of any restriction or any agreement or instrument to which the Center is now a party or by which the Center is bound, or constitutes a default under any of the foregoing, or results in the creation or imposition' of any lien, charge or encumbrance whatsoever upon any of the property or assets of the Center, or upon the Project, except Permitted Encumbrances.

(d) No Assignment. Except as provided herein and the Lease Agreement, the Center will not assign this Use Agreement, its right to receive Use Payments from the Agencies, or its duties and obligations hereunder to any other person, firm or corporation so as to impair or violate the representations, covenants and warranties contained in this Section 2.02.

(e) Title to Site. The Center warrants that it has or will acquire and is or will be the owner of a leasehold interest to the Site, subject, however, to Permitted Encumbrances.

(f) Execution and Delivery. The Center has duly authorized and executed this Use Agreement in accordance with the laws of the State.

ARTICLE 3 AGREEMENT TO USE; TERM OF THIS USE AGREEMENT; USE PAYMENTS

Section 3.01 Authorization of Use.

In consideration of the payment of Use Payments and in consideration of the execution of this Use Agreement by the Agencies, and other good and valuable consideration, the Center hereby lets to the Agencies, and the Agencies hereby let from the Center, the Project, for the Term this Use Agreement, plus one week following the end of the Term of this Agreement. This Use Agreement grants no rights of any kind to any of the Agencies to manage, control, or operate the Center and the right of each of the Agencies is limited hereunder to one of use.

Section 3.02 Term of Use Agreement.

The Term of this Use Agreement shall commence as of _____ and shall end on June 15, 2024, unless such term is extended as hereinafter provided. If on June 15, 2024, the Indenture on the Lease Agreement shall not be discharged bas terms, or if the Lease Payments payable under the Lease Agreement shall have been abated at any time and for any reason, then the Term of this Use Agreement shall be extended until June 15, 2034 or until the Indenture shall be discharged by its terms. If prior to June 15, 2024, the Indenture and the Lease Agreement shall be discharged by its terms, the Tern of this Use Agreement shall thereupon end.

Notwithstanding the foregoing, it is intended that the Project will terminate upon payment of the portions of the Use Payments set forth in Exhibit B as prescribed in Section 4.07 hereof.

Section 3.03 Use Payments.

(a) Obligation to Pay. In consideration of the use of the Project from the Center hereunder, the Agencies, and each of them, agree to pay to the Center, its successors and assigns, as rental for the use and occupancy of the Project during each Rental Period, the Use Payments for the Project in the amounts for the County, Capitola, Santa Cruz and Watsonville, specified in Exhibit B hereto, to be due and payable on the respective Use Payment Dates specified in Exhibit B hereto, which are based upon an aggregate borrowing of \$ _____. The Agencies shall receive a credit against each Use Payment due equal to the amount of any credit received by the Center against its Lease Payment for amounts on deposit in the Bond Fund, including any amount in excess of the Reserve Requirement, as well as the amount on deposit in the Lease Payment Fund. The amount of each Agency's credit shall be in the same percentage as their individual portion of the Use Payment bears to the total Use Payment then due. The Use Payments for the Project payable in any Rental Period shall be for the use of the Project for such Rental Period.

(b) Rate on Overdue Payments. In the event the Agencies, or any of them, should fail to make any of the payments required in this Section 3.03, the payment in default shall continue as an obligation of the respective entity until the amount in default shall have been fully paid, and the Agencies, and each of them, agree to pay the same with interest thereon, to the extent permitted by law, from the date of default to the date of payment at the interest rate payable by the Authority on the Bonds, or the maximum legal rate, whichever is less. Such interest, if received, shall be deposited by the Center in the Lease Payment Fund.

(c) Source of Payments: Budget and Appropriation. The Use Payments shall be payable from any source of available funds of the Agencies,

The Agencies, and each of them, covenant to take such action as may be necessary to include all Use Payments due hereunder in each of its budgets during the Term of the Use Agreement and to make the necessary annual appropriations for all such Use Payments. The covenants on the part of the Agencies, and each of them, herein contained shall be deemed to be and shall be construed to be ministerial duties imposed by law and it shall be the duty of each and every public official of the Agencies to take such action and do such things as are required

by law in the performance of the official duty of such officials to enable the Agencies and the Center to carry out and perform the covenants and agreements in this Use Agreement agreed to be carried out and performed by the Agencies and the Center.

(d) In addition to the Use Payments, the Agencies, and each of them in the same percentage as their individual portion of Use Payments bears to total Use Payments, shall pay when due the Additional Payments payable by the Center under the Lease Agreement, or indicating their individual proportionate shares thereof.

Section 3.04 Optional Prepayment.

The Agencies, and each of them, shall have the right at any time to prepay all, or any part, of the Use Payments, and the Center and the Authority agree that the Trustee shall accept such prepayments when the same are tendered by the Agencies.

The Agencies, or any of them, may prepay their proportionate share of Use Payments by depositing with the Center for transfer to the Trustee for deposit in the Redemption Fund, the "Prepayment Amount", which is calculated as follows:

(a) Divide the Participant's total remaining Use Payments by the total of all remaining Use Payments and multiply the result by the principal amount of any Outstanding Bonds. Round the result up to the nearest \$5,000.

(b) Multiply this amount by the redemption premium, if any, on the Bonds and add to such amount the amount determined by the Controller of the Center to be the difference between the amount needed to pay Debt Service on the Bonds to be redeemed and the amount to be derived from the reinvestment of the prepaid Use Payments pending the redemption of such Bonds (subject to any limitations imposed by the Tax Code on such earnings). Add this amount to the amount determined in (a) above.

(c) The administrative fees of the Center as are determined by the Controller of the Center, which include the costs of the computation of the Prepayment Amount, the costs of redeeming the Bonds, the costs of any fiduciary, and the costs of recording or publishing any notices of redemption. Add these costs to the total of the amounts determined in (a) and (b) above.

(d) The Reserve Account credit, if any, is computed by deducting the Reserve Requirement for the Bonds to remain Outstanding following such redemption from the current Reserve Requirement. Deduct the result from the total of the amounts determined in (a), (b) and (c) above. This represents the Prepayment Amount.

(e) The Prepayment Amount will be deposited in the Redemption Fund and used to redeem Bonds in accordance with a Certificate of the Center and the Authority; provided that the administrative fees of the Center determined in (c) above will be retained by the Center.

All such prepayments shall be deposited upon receipt in the Redemption Fund, and applied to redeem or purchase Bonds pursuant to the Indenture. Each Agency also shall have the right to surrender Bonds acquired by it in any manner whatsoever to the Trustee for cancellation and

such Bonds, upon such surrender and cancellation, shall be deemed to be paid and surrendered, and shall be allocated to Use Payments as specified in a Certificate of the Center. Notwithstanding any such prepayment or surrender of Bonds, as long as any Bonds remain outstanding or any Additional Payments remain unpaid, the Agencies shall not be relieved of their obligations hereunder.

In the event the Agencies, or any of them, deposit with the Trustee the full amount of any prepayment of the Use Payments pursuant to this Section 3.04, the Center shall at the request of the Agencies, or any of them, forthwith take all steps that may be necessary under Section 4.01(b) of the Indenture to cause the redemption of all or a portion of Bonds under and in accordance with Section 4.01 (b) of the Indenture.

If the Agencies are not in default in the payment of any Additional Payments, the Center, at the request of the Agencies, at any time that there is on deposit with the Trustee moneys or securities in the amount necessary to pay or redeem all Bonds then Outstanding (as provided in Article X of the Indenture), shall forthwith take all steps that may be necessary to discharge the entire indebtedness on Bonds Outstanding.

Use Payments due after any such partial prepayment shall be in the amounts set forth in a revised Use Payment schedule which shall be provided by, or caused to be provided by the Center to the Trustee and the Agencies and which shall represent an adjustment to the schedule set forth in Exhibit B attached hereto taking into account said partial prepayment.

Section 3.05 Amendment of the Use Agreement.

Neither the Center nor the Agencies will alter, modify or cancel, or agree to consent to alter, modify or cancel the Use Agreement except for the following purposes:

- (a) issuing Additional Bonds pursuant to the Indenture;
- (b) substituting the Project pursuant to the Lease Agreement; or
- (c) with the prior written consent of Standard & Poor's, Moody's and the Bond Insurer, modifying Exhibit B hereto for the purpose of (i) modifying the percentage that each Agency's individual portion of the Use Payments bears to the total Use Payments, or (ii) to add or remove Agencies, or any of them.

ARTICLE 4 USE DEFAULT EVENTS ALL REMEDIES

Section 4.01 Use Default Events Defined.

The following shall be "Use Default Events" under this Use Agreement:

- (a) Failure by the Agencies, or any member thereof, to pay any Use Payment, or any portion thereof, required to be paid hereunder at the time specified herein.

(b) Failure by the Agencies, or any member thereof, to make any Additional Payment, or any portion thereof, required hereunder and the continuation of such failure for a period of thirty (30) days.

(c) Failure by the Agencies, or any member thereof, to observe and perform any covenant, condition or agreement on its part to be observed or performed under this Use Agreement, for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied has been given to the Agencies by the Center, the Authority or the Trustee; provided, however, if the failure stated in the notice can be corrected, but not within the applicable period, the Authority, the Center and the Trustee shall not unreasonably withhold their consent to an extension of such time if corrective action is instituted by the Agencies within the applicable period and diligently pursued until the default is corrected.

(d) The filing by the Agencies, or any member thereof, of a voluntary petition in bankruptcy, or failure by the Agencies, or any member thereof, promptly to lift any execution, garnishment or attachment, or adjudication of the Agencies, or any member thereof, as a bankrupt, or assignment by the Agencies, or any member thereof, for the benefit of creditors, or the entry by the Agencies, or any member thereof, into an agreement of composition with creditors, or the approval by a court of competent jurisdiction of a petition applicable to the Agencies, or any member thereof in any proceedings instituted under the provisions of the Federal Bankruptcy Act, as amended, or under any similar acts which may hereafter be enacted.

Section 4.02 Remedies on Default.

Whenever any Use Default Event referred to in Section 4.01 hereof shall have happened and be continuing, it shall be lawful for the Center to exercise any and all remedies available pursuant to law or granted pursuant to this Use Agreement. Each and every covenant hereof to be kept and performed by the Agencies is expressly made a condition and upon the breach thereof the Authority or the Center may exercise any and all rights of entry and reentry upon the Project. In the event of such default and notwithstanding any re-entry by the Authority or the Center, the Agencies shall, as herein expressly provided, continue to remain liable for the payment of the Use Payments and/or damages for breach of this Use Agreement and the performance of all conditions herein contained and, in any event, such rent and/or damages shall be payable to the Center at the time and in the manner as herein provided, to wit:

(a) The Agencies agree to and shall remain liable for the payment of all Use Payments and the performance of all conditions herein contained and shall reimburse the Center and the Authority for any deficiency arising out of the reletting of the Project, or, in the event the Authority is unable to relet the Project, then for the full amount of all Use Payments to the end of the Term of the Use Agreement, but said Use Payments and/or deficiency shall be payable only at the same time and in the same manner as hereinabove provided for the payment of Lease Payments hereunder, notwithstanding such entry or re-entry by the Authority and the Center or any suit in unlawful detainer, or otherwise, brought by the Authority for the purpose of effecting such re-entry or obtaining possession of the Project or the exercise of any other remedy by the Authority or the Center.

(b) The Agencies hereby irrevocably appoint the Authority as the agent and attorney-in-fact of the Center to enter upon and relet the Project in the event of default by the Agencies in the performance of any covenants herein contained to be performed by the Agencies and to remove all personal property whatsoever situated upon the Project to place such property in storage or other suitable place in the County of Santa Cruz, for the account of and at the expense of the Agencies, and the Agencies hereby exempt and agree to save harmless the Authority and the Center from any costs, loss or damage whatsoever arising or occasioned by any such entry upon and reletting of the Project and the removal and storage of such property by the Authority or the Center or its duly authorized agents in accordance with the provisions herein contained.

(c) The Agencies hereby waive any and all claims for damages caused or which may be caused by the Authority or the Center in reletting and taking possession of the Project as herein provided and all claims for damages that may result from the destruction of or injury to the Project and all claims for damages to or loss of any property belonging to the Agencies that may be in or upon the Project.

(d) The Agencies agree that the terms of this Use Agreement constitute full and sufficient notice of the right of the Authority or the Center to use the Project in the event of such re-entry without effecting a surrender of this Use Agreement, and further agree that no acts of the Authority or the Center in effecting such use shall constitute a surrender or termination of this Use Agreement irrespective of the term for which such use is made or the terms and conditions of such use, or otherwise.

(e) The Agencies further waive the right to any rental obtained by the Authority or the Center in excess of the Use Payments and hereby convey and release such excess to the Authority as compensation to the Authority for its services in reletting the Project.

If, and to the extent, that any Agency fails to make timely payment of any Use Payment, or any portion thereof, in addition to any remedy available to the Center, the Authority and/or the Trustee, as provided herein, any Agency may bring an action for collection, or exercise any other remedy available to it under applicable law, pursuant to the terms of this Use Agreement against the defaulting Agency as the parties hereto declare that the obligations to make Use Payments is one for the benefit of the Bondowners, the Authority, the Center, and each Agency in that all will be adversely affected by any individual payment default. The obligation to make Use Payments is one which is owed by the Agencies and each of them, to the Center and each other. Any Agency collecting Use Payments from any other Agency, by whatever means, shall promptly pay such amounts to the Center for deposit in the Lease Payment Fund as the Use Payment for the defaulting Agency.

Section 4.03 No Remedy Exclusive.

No remedy herein conferred upon or reserved to the Center is intended to be exclusive and every such remedy shall be cumulative and shall, except as herein expressly provided to the contrary, be in addition to every other remedy given under this Use Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a

waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Center to exercise any remedy reserved to it in this Article IV it shall not be necessary to give any notice, other than such notice as may be required in this Article IV or by law.

Section 4.04 Agreement to Pay Attorneys' Fees and Expenses.

In the event any party to this Use Agreement should default under any of the provisions hereof and the nondefaulting parties should employ attorneys or incur other expenses for the collection of moneys or the enforcement or performance or observance of any obligation or agreement on the part of the defaulting parties herein contained, the defaulting party agrees that it will on demand therefor pay to the nondefaulting parties the reasonable fees of such attorneys and such other expenses so incurred by the nondefaulting party.

Section 4.05 No Additional Waiver Implied by One Waiver.

In the event any agreement contained in this Use Agreement should be breached by any party and thereafter waived by any other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**ARTICLE 5
MISCELLANEOUS**

Section 5.01 Notices.

All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed to have been received 48 hours after deposit in the United States mail in first class form with postage fully prepaid:

If to the Center:	Santa Cruz Consolidated Emergency Communications Center 495 Upper Park Road Santa Cruz, CA 95065 Attn: General Manager
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If to the City of Capitola:	City of Capitola 420 Capitola Avenue Capitola, CA 95010 Attn: City Manager
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If to the City of Santa Cruz:	City of Santa Cruz 809 Center Street Santa Cruz, CA 95060 Attn: City Manager
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If to the County of Watsonville: City of Watsonville
 250 Main Street
 Watsonville, CA 95076
 Attn: City Manager

If to the County of Santa Cruz: County of Santa Cruz Government Center
 701 Ocean Street
 Santa Cruz, CA 95060
 Attn: County Administrative Officer

The Center and the Agencies, by notice given hereunder, may designate different addresses to which subsequent notices, certificates or other communications will be sent.

Section 5.02 Binding Effect.

This Use Agreement shall inure to the benefit of and shall be binding upon the Center and the Agencies and their respective successors and assigns.

Section 5.03 Severability.

In the event any provision of this Use Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 5.04 Net-net-net.

This Use Agreement shall be deemed and construed to be “net-net-net” and the Agencies hereby agree that the Use Payments shall be an absolute net return to the Center, free and clear of any expenses, charges or set-offs whatsoever.

Section 5.05 Further Assurances and Corrective Instruments.

The Center and the Agencies agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for correcting any inadequate or incorrect description of the Project hereby leased or intended so to be or for carrying out the expressed intention of this Use Agreement.

Section 5.06 Execution in Counterparts.

This Use Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 5.07 Applicable Law.

This Use Agreement shall be governed by and construed in accordance with the laws of the State.

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Section 5.08 Authorized Representatives.

Whenever under the provisions of this Use Agreement the approval of the Center or the Agencies are required, or the Center or the Agencies is required to take some action at the request of the other, such approval or such request shall be given for the Center by an Authorized Representative of the Center and for the Agencies by an Authorized Representative of the Agencies, and any party hereto shall be authorized to rely upon any such approval or request.

Section 5.09 Captions.

The captions or headings in this Use Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Use Agreement.

IN WITNESS WHEREOF, the Center has caused this Use Agreement to be executed in its corporate name by its duly authorized officers and the County of Santa Cruz, the City of Capitola, the City of Santa Cruz, and the City of Watsonville has caused this Use Agreement to be executed in its name by its duly authorized officers as of the date first above written.

SANTA CRUZ CONSOLIDATED EMERGENCY
COMMUNICATIONS CENTER

By: _____
Its: General Manager

CITY OF CAPITOLA

By: _____
Its: City Manager

CITY OF SANTA CRUZ

By: _____
Its: City Manager

CITY OF WATSONVILLE

By: _____
Its: City Manager

COUNTY OF SANTA CRUZ

By: _____
Its: Assistant County Administrative Officer