

THIS RIGHT-OF-WAY USE AGREEMENT ("Use Agreement") is dated as of _____, 2000 (the "Effective Date"), and entered into by and between the CITY OF _____, a Missouri municipal corporation (the "City"), and METRICOM, INC., a Delaware corporation ("Metricom").

Recitals

A. Metricom owns, maintains, and operates, in accordance with regulations promulgated by the Federal Communications Commission, a mobile digital data communications radio network known as Ricochet(r), utilizing Radios (as described in § 1.11 below) and related equipment certified by the Federal Communications Commission.

B. For purposes of operating Ricochet(r), Metricom wishes to locate, place, attach, install, operate, and maintain Radios in the Public Right-of-Way (as defined in § 1.10 below) on facilities owned by the City, as well as on facilities owned by third parties therein.

C. The City is currently evaluating the new and increasing use of its right-of-way, including by telecommunications and other companies, to establish appropriate regulations to facilitate fair and appropriate compensation and use, and this Agreement will allow Metricom immediate use of the right-of-way while expressly making this Agreement subject to such future right-of-way regulations, including, but not limited to, compensation provisions.

Agreement

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the following covenants, terms, and conditions:

1. Definitions. The following definitions shall apply generally to the provisions of this Use Agreement.

1.1 Adjusted Gross Revenues. "Adjusted Gross Revenues" means all revenue received by Metricom, directly and indirectly, from any subsidiary or any other person, from or in connection with the distribution or sale of any Services to customers with billing addresses in the City. The sale of Services by Metricom at wholesale rates for the purpose of resale at retail shall not serve to allow Metricom to evade the compensation requirements of Section 4 of this Agreement. "Adjusted Gross Revenue" shall not include (i) local, state, or federal taxes collected by Metricom that have been billed to the subscribers and separately stated on subscribers' bills and (ii) revenue uncollectible from subscribers (i.e., bad debts) with billing addresses in the City that was previously included in Adjusted Gross Revenues. Adjusted Gross Revenues shall include Fees paid hereunder.

1.2 City. "City" means the city, town, or village, as applicable, of [Name of Municipality].

1.3 City Engineer. "City Engineer" means the City Engineer, Director of Public Works or such other City official as may be designated by the City as having authority over the subject matter of this Use Agreement.

1.4 Effective Date. "Effective Date" means the date of this Use Agreement stated above.

1.5 Installation Date. "Installation Date" shall mean the date that the first Radio is installed by Metricom pursuant to this Use Agreement.

1.6 Laws. "Laws" means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the City or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement, and all subsequent amendments thereto, as may be in effect either as of the Effective Date or at any time during the presence of Radios in the Public Right-of-Way.

1.7 Metricom. "Metricom" means Metricom, Inc., a corporation duly organized and existing under the laws of the State of Delaware, and its lawful successors, assigns, and transferees.

1.8 Municipal Facilities. "Municipal Facilities" means any street light poles, lighting fixtures, or electroliers or other structures located within the Public Right-of-Way and owned by the City.

1.9 Person. "Person" means an individual, a corporation, a limited liability company, a general or limited partnership, a sole proprietorship, a joint venture, a business trust, or any other form of business association.

1.10 Public Right-of-Way. "Public Right-of-Way" means any municipal street, alley, road, highway, lane or City right-of-way dedicated or commonly used now or hereafter for utility purposes, including but not limited to overhead lighting facilities, and including utility easements wherein the City now or hereafter acquires the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. This term shall not include any Municipal Facilities, nor shall it include county, state, or federal rights-of-way or any property owned by any Person or agency other than the City, except as provided by applicable Laws or pursuant to a maintenance, jurisdictional or other agreement between the City and any such Person or agency. "Public Right-of-Way" shall not include property owned or leased by the City other than right-of-way such as City parks, City Hall property or public works facilities.

1.11 Radio. "Radio" means the radio equipment, whether referred to singly or collectively to be installed and operated by Metricom hereunder, and described in the attached Exhibit A to this Use Agreement. No other equipment or facilities shall be deemed included in the term "Radio."

1.12 Ricochet(r). "Ricochet(r)" means Ricochet(r) MicroCellular Data Network, a wireless digital communications microcellular network owned and operated by Metricom.

1.13 Services. "Services" means the mobile digital communications access and support provided through Ricochet(r) by Metricom for the purpose of providing subscribers access to wireless Internet, private intranet, email, and local area networks. Metricom represents that in offering its Services, Metricom is not itself a direct retailer, distributor or provider of any cable or open video services, or telecommunications subject to the 1996 Federal Telecommunications Act. Metricom agrees that no cable, open video, or local exchange telephone services shall be authorized to be provided by any party through use of the Radios without such party first obtaining a separate franchise or Rights-of-Way Use agreement specifically authorizing use of the Rights-of-Way for such purposes.

2. Term. This Use Agreement shall be effective as of the Effective Date and shall extend for a term of two (2) years commencing on the Installation Date, unless it is earlier terminated by either party in accordance with the provisions herein. Provided Metricom gives City at least 120 days' written notice prior to expiration of the initial term. Metricom shall be entitled to extend this Use Agreement for an additional three (3) year option term commencing upon expiration of the initial term, provided that

Metricom is not in uncured default of any provision of this Use Agreement. Unless sooner terminated prior to the end of such three (3) year option, Metricom and the City shall enter into good faith negotiations to extend the term of the Use Agreement upon terms and conditions mutually acceptable to the parties. During such negotiations this Use Agreement shall continue in full force and effect upon the same terms and conditions until such time as: (1) Metricom and the City complete the negotiations and the parties enter into a new Use Agreement; or (2) either party gives written notice to the other party that the negotiations shall cease and that this Use Agreement shall expire (a) sixty (60) days from the date of said notice or (b) at the end of term of this Use Agreement, whichever shall last occur. Parties shall allow a minimum period of ninety (90) days to conduct said negotiations.

3. Scope of Use Agreement. Any and all rights expressly granted to Metricom under this Use Agreement, which shall be exercised at Metricom's sole cost and expense, shall be subject to the prior and continuing right of the City under applicable Laws to use any and all parts of the Public Right-of-Way exclusively or concurrently with any other Person or Persons and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Public Right-of-Way. Any work performed pursuant to the rights granted under this Use Agreement may occur only after the reasonable prior review and written approval of the City.

3.1 Authorization for Use of Public Right-of-Way. Subject to Metricom obtaining approval pursuant to Section 3.3 and obtaining any required permits, the City hereby authorizes and agrees to permit Metricom to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Radios on any street lights, utility poles and/or other facilities owned by utility companies or owned by other entities or Persons located within the Public Right-of-Way for the purpose of providing Services to Persons located within or without the limits of the City, subject to obtaining permission from said utility companies or other entities or Persons. Notwithstanding any provision herein to the contrary, this Use Agreement does not authorize Metricom to install Radios or facilities on decorative light fixtures or poles or on any Municipal Facilities, unless separate written agreement is obtained with the City or owner of the fixture. Metricom shall permit the City to inspect copies of documents containing specifications and installation, inspection and safety information (as determined by the City) concerning the Radios and Services as might be reasonably requested by City. Metricom shall provide certification by a duly authorized representative of Ameren/UE or other owner ("Owner") of the facility upon which any Radio is secured that Metricom has permission from the Owner to install the Radios. Metricom acknowledges it shall have no right to maintain its Radios on any facility of a third party who is in default of any franchise agreement with the City or other authority to use the Rights-of-Way. This Use Agreement does not grant permission to Metricom to install Wired Access Points (WAPs) (including telecommunication towers) within the Public Right-of-Way or upon any property owned by the City. This Use Agreement does not grant permission to Metricom or any other party to install within the Public Right-of-Way street lights, utility poles or other facilities to which Radios may be attached, without express written approval of the City governing body.

3.2 No Property Rights Granted. Any and all rights expressly granted by the City to Metricom under this Use Agreement shall be personal to Metricom; shall be exercised at Metricom's sole cost and expense; shall be subject to the prior and continuing right of the City under applicable Laws to use any and all parts of the Public Right-of-Way only, exclusively or concurrently, with any other Person or Persons; and further shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances and claims of title which apply to or which may affect the Public Right-of-Way. Nothing

in this Use Agreement shall be deemed to grant, convey, create or vest a temporary or perpetual real property interest in land in Metricom, including any fee or leasehold interest, easement, or any franchise rights.

3.3 City Review and Approval of Radio Installation and Work. The location and installation of each Radio and all work performed pursuant to the rights granted under this Use Agreement shall be subject to the City's prior review and written approval. Before beginning any installation of any Radios, Metricom shall provide to the City for review, technical information on: (a) the chemical composition of any battery contained within the Radios; (b) any hazardous material contained within the Radios; (c) the potential for interference with other wireless communications devices; and (d) the potential for exposure to electromagnetic fields. Such information shall be contained in Exhibit A to this Use Agreement. No Radio may be installed or relocated without the prior written approval of the City Engineer, or other designated official, which approval shall not be unreasonably withheld, conditioned or delayed.

3.4 Notice of Location of Radios. During the term of this Use Agreement, the current location of each Radio installed by or on behalf of Metricom shall be disclosed to the City by Metricom, in writing, on a quarterly basis each year during the Agreement term. . The proposed location of each Radio shall be contained in Exhibit B to this Use Agreement.

3.5 No Interference. In the performance and exercise of its rights and obligations under this Use Agreement, Metricom shall not interfere in any manner with the existence, operation or use of any and all public and private rights-of-way, roads, streets, sanitary sewers, water mains, storm sewers and drains, gas mains, poles, aerial and underground electric and telephone wires, electroliers, cable television, and other telecommunications, utility, and municipal property without the express prior written approval of the owner or owners of the affected property or properties. All electric power for the Radios and facilities shall be obtained by Metricom and paid for by Metricom at its sole expense.

3.6 Use Agreement Extends Only to Installation of Radios. The rights granted Metricom under this Use Agreement extend only to the installation of the Radios described herein on Public Right-of-Way, and does not create any right to install different or additional facilities or facilities other than Radios in the Public Right-of-Way or on Municipal Facilities or on other property. Under no circumstances is the closing, excavation or opening of any Public Right-of-Way authorized or permitted under this Use Agreement.

3.7 Exclusion of Certain Locations/Facilities. Prior to its installation of Radios on the Public Right-of-Way and after it provides the City with its proposed locations for installation of the Radios on the Public Right-of-Way, the City may in its discretion designate certain facilities in the Public Right-of-Way to be excluded from those on which Radios may be installed by Metricom, including but not limited to ornamental or similar specially-designed streets lights, or other facilities which, in the reasonable judgment of the City's Engineer do not have electrical service adequate or appropriate for Metricom's Radios or cannot safely bear the weight or wind loading caused by the presence of Metricom's radios, or any other facility that in the reasonable judgment of the City's Engineer is incompatible with the Radio or would be rendered unsafe or unstable by the installation of a Radio. The City Engineer may further exclude certain other facilities that have been designated or planned for other use or are not otherwise available for use by Metricom due to engineering, technological, proprietary, legal, or other limitations or restrictions as may be reasonably determined by the City.

3.8 Emergencies, Natural Disasters. If an emergency or natural disaster occurs, the City, any agency, their employees, agents and contractors have first priority for access to the Public Right-of-Way. Public service utilities which have valid franchises granted by the City shall have secondary priority for access to the Public Right-of-Way. Metricom's right to access to the Public Right-of-Way shall be subordinate to the City, such agencies and franchisees and may be limited by the City during an emergency or natural disaster without liability to the City.

3.9 Changes in Service or Radios. Metricom hereby represents that the Radios subject to this Use Agreement will be utilized exclusively for the rendering of Services. If, in the reasonable opinion of the City after consultations with representatives of Metricom, the nature or character of Services or the nature, character or size of the Radios change in any material manner in the future, to include the offering of services not expressly permitted by or described under this Use Agreement, or if such change constitutes a material variation of the size of any Radio subject to this Use Agreement, or if such change results in a revision in the technical information provided in accordance with Section 3.3 of the Use Agreement, then Metricom shall notify the City, in writing, as soon as practicable. Such notice shall be delivered to the City at least three (3) months prior to the effective date of any of the above-described changes. To the extent permitted by applicable Laws, the City may extend its regulatory jurisdiction over any such change in the nature or character of Services or any Radio subject to this Use Agreement. In such case, the City, in its sole discretion, may either (i) renegotiate with Metricom the terms of this Use Agreement affected by such change, or (ii) require that the Services/Radios not be changed, but continue as contemplated by the terms of this Use Agreement.

4. Compensation. Metricom shall be solely responsible for the payment of all lawful Fees in connection with Metricom's performance under this Use Agreement, including those set forth below.

4.1 Reimbursement of Expenses. Metricom shall pay the City the sum of One Thousand Dollars (\$1,000.00) as partial compensation for the City's expenses associated with the preparation, issuance, implementation and administration of this Use Agreement. Such payment shall be submitted to the City at the time of execution of this Use Agreement by Metricom.

4.2 Fee for Usage of Public Right-of-Way. Metricom shall pay to the City, on a quarterly basis, an amount equal to the greater of the following: (a) ____ (___%) percent of Metricom's Adjusted Gross Revenues ("Fee") or (b) \$_____/month for each separate subscriber accounts within the City. "Subscriber accounts" shall mean each and every separate service line or account for each subscriber with a billing address within the City. The Fee required by this section shall be due on or before the 45th day after the end of each calendar quarter. The payment obligation shall survive the termination or expiration of this Use Agreement. Metricom shall furnish to the City, with each payment required by this section, a statement, executed by an authorized officer of Metricom or his or her designee, showing the amount of Adjusted Gross Revenues for the period covered by the payment. The statement shall also include the detailed methodology, components, and any assumptions of the calculation of the Fee owed, and such other format or information as the City may reasonably request. The Fee for the period covered by the statement shall be computed on the basis of the Adjusted Gross Revenues so reported. If Metricom discovers that it has failed to pay the entire or correct amount of the Fee due, the City shall be paid by Metricom within 30 days of discovery of the error or determination of the correct amount. Any overpayment to the City through error or otherwise shall be offset against the next payment due from Metricom. Acceptance by the City of any payment due under this section shall not be deemed to

be a waiver by the City of any breach of this Use Agreement occurring prior thereto, nor shall the acceptance by the City of any such payments preclude the City from later establishing that a larger amount was actually due, or from collecting any balance due to the City. Except as expressly provided herein, the Fee shall be paid in addition to, not instead of, any other amounts of money which Metricom is required to pay to the City under this Use Agreement, by any other contract with the City, or under the City's taxing authority.

4.2.1 Reduction of Fee by Amount of Telecommunications Tax. If the Services are or become subject to a telecommunications tax or other gross receipts tax on the Adjusted Gross Revenues or a portion thereof during the term of this Use Agreement, Metricom shall receive an offset and reduction in the Fee owed in the amount of the tax actually paid by Metricom to the City for the applicable Fee payment period. In no event shall the offset or reduction exceed the amount of the Fee owed. In consideration for an entitlement to receive this credit, Metricom hereby agrees that its Services are subject to the business license taxing authority establishing certain gross receipt taxes ("License Tax") currently enacted and as may be hereinafter enacted pursuant to R.S.Mo §§94.110, 94.270 or 94.360 or such other business license fees or taxes as may be currently authorized for telephone, telephone exchange, or telecommunications services. Metricom hereby releases all claims challenging or disputing that Metricom Services are subject to a License Tax enacted by any municipality in St. Louis County, Missouri up to the extent the percentage amount of such tax does not exceed the amount set forth in Section 4.2 herein. For the purposes of determining any applicable tax rate or offset, Metricom agrees that its Services shall be presumed to be commercial in nature unless or until demonstrated otherwise by Metricom for any particular user.

4.3 Books of Account. Metricom shall keep accurate books of account at its principal office in Los Gatos, California or such other location of its choosing for the purpose of determining the amounts due to the City. The City, including its accountants or agents, may inspect Metricom's books of account at any time during regular business hours on fifteen (15) days' prior written notice and may audit the books from time to time, but in each case only to the extent necessary to confirm the accuracy of payments due the City. On reasonable request by the City, but no more often than annually, Metricom at its cost shall promptly make available to the City at City Hall or at a location within the St. Louis metropolitan area, financial records and other information to enable the City to determine the accuracy of the Fee paid or required to be paid. The City may require quarterly or annual reports from Metricom relating to its operations and revenues within the City.

4.4 Billing. Metricom agrees that the compensation paid to City is for an integral cost of providing the service and is compensation for use of right-of-way and is in no regard a tax. Metricom acknowledges that the City will likely require Metricom to agree, in future Right-of-Way Use Agreements, or legislation as referred to herein, that no portion of the fee shall be stated on any billing to any customer or subscriber as a separate line item, fee, charge or tax to the extent Metricom has the right or ability to control the billing.

4.5 Municipal Access Program. In further consideration of City's execution and delivery of this Use Agreement, City shall have the right throughout the term of this Use Agreement to, at no cost, when such Service is commercially available in the City, up to _____ Ricochet(r) basic service subscriptions. City understands and agrees that modems and equipment may be purchased by the City from authorized retailers. City shall use all subscriptions and equipment provided pursuant to this section

solely for its own use and shall not be entitled to resell, distribute, or otherwise permit the use of the same by any other Person, excepting that this shall not limit the local public entity employees or officials from using this Access Program for public purposes of such entity or allowing use by other governmental entities. The level of benefits and services provided to City by Metricom as "basic service" shall not be diminished or reduced during the term of this Use Agreement or renewal thereof, or prior to its cancellation or termination, as the case may be. Metricom and the City agree that all benefits and services offered under this Section, whether for the use of City or another unit of local government, shall be acquired under and pursuant to City's lawful purchasing and procurement process and procedures. The City agrees that it shall only request the Service and equipment provided for in this subsection to the extent it has a legitimate governmental use for the Service and required equipment.

5. Removal and Relocation of Radios

5.1 Relocation; Removal. Metricom understands and acknowledges that the City may require Metricom to relocate or remove, and Metricom shall, at the City's direction, relocate or remove, upon fifteen (15) business days' prior written notice in situations described in subsection (a) below, and immediately in situations described in subsections (b) and (c) below, at Metricom's sole expense, any Radio whenever the City reasonably determines that the relocation is needed: (a) to facilitate or accommodate the construction, completion, repair, relocation or maintenance of any City or other government agency construction project within the City or any project performed by a private developer to meet a development condition or other City requirement, including any project which replaces the cobra head type street lighting with pedestrian scale decorative street lighting; (b) because the Radio is interfering with or adversely affecting proper operation of street lights, traffic signals or any other public, City-owned, or privately owned facilities, whether or not located within the Public Right-of-Way; or (c) to protect or preserve the public health, safety, or welfare. If Metricom fails to relocate or remove any Radios as required by the City, then the City shall be entitled to remove the Radios at Metricom's sole expense. Upon expiration or termination of this Use Agreement, Metricom shall promptly, but in no event longer than ninety (90) days, remove the Radios from the Public Right-of-Way at Metricom's sole expense.

5.2 Damage to Public Right-of-Way or Facilities. Whenever the removal or relocation of a Radio(s) is required or undertaken under this Use Agreement, and such removal or relocation shall cause the Public Right-of-Way or Municipal Facilities or other facilities located therein to be damaged, then Metricom, at its sole expense, shall promptly repair and return damaged Public Right-of-Way or Municipal Facilities or other facilities to a safe and satisfactory condition in accordance with applicable Laws subject to normal wear and tear excepted. If Metricom does not make repairs as just described within a reasonable period of time, then the City shall have the option to perform or cause to be performed such reasonable and necessary work on behalf of Metricom and charge Metricom for actual expenses incurred by the City, and the City may require advance payment of the proposed expenses to be incurred, as reasonably estimated by the City. Upon the receipt of a demand for payment by the City, Metricom shall reimburse the City for such expenses within thirty (30) days.

5.3 Abandonment. If any Radio subject to this Use Agreement is abandoned or is no longer placed in service for a continuous period of six (6) months or longer, then Metricom promptly shall notify the City, and the City, at its option, may promptly remove the abandoned Radio(s) at Metricom's sole expense. The City shall not issue a notice to Metricom that the City intends to exercise the option to require

removal of Radios, unless and until the City first gives fifteen (15) days' prior written notice to Metricom to remove the Radios. If Metricom shall fail to remove the Radios as required by the City, the City shall be entitled to remove the radios at Metricom's sole expense.

5.4 Condemnation or Vacation of Land. If any real estate containing the Radios is taken, condemned, or vacated in whole or in part, by the City or any government agency, Metricom, notwithstanding anything in this Use Agreement to the contrary, shall remove the Radios from such real estate at its sole expense within the time period required by the condemner, vacating entity, or the court. Metricom shall not be entitled to any condemnation award or portion thereof.

6. CONSTRUCTION WORK.

6.1 Permits. If the attachment, installation, operation, removal, reattachment, reinstallation, relocation, replacement, or maintenance of Radios shall require any construction work and/or maintenance of traffic during such work in the Public Right-of-Way, Metricom, prior to beginning such work, shall apply for and obtain all street opening, excavation, and other permits required by law.

6.2 Installation Standards. Metricom shall install and maintain its Radios: (a) so as to minimize inconveniencing the general public, (b) by using the highest degree of care and shall use commonly accepted methods and devices for preventing failures and accidents which may cause damage, injuries, or nuisances to the public, (c) in such a manner that will not interfere with any other installation or service as provided in Section 3.5 hereof, and (d) in a good and workmanlike manner and according to the National Electrical Safety Code of the American Standards Institute, the National Electrical Code of the National Fire Protection Association, and all other applicable ordinances, statutes, regulations, rules and laws as may be presently in effect or changed in the future.

6.3 Documentation. Upon the completion of the initial installation or construction work after execution of this Use Agreement, Metricom promptly shall furnish to the City, in hard copy and Metricom's electronic format, documentation reasonably acceptable to the City showing the exact location of the Radios in the Public Right-of-Way.

6.4 Tree Protection. In the attachment, installation, operation, maintenance, removal, reattachment, reinstallation, relocation or replacement of Radios, Metricom shall neither remove, cut, nor damage any trees in and along the streets, alleys and public places of the City. Tree trimming and pruning may be permitted to occur only after prior written notice to the City of the extent of trimming and pruning to be performed and the prior written approval thereof by the City. The type and extent of trimming and pruning shall be in accordance with the requirements of the City.

6.5 Bond or security. Unless otherwise required by City ordinance or regulation, the City Engineer may require a bond or security of up to \$_____ in a form approved by the City Attorney to guarantee compliance with this Agreement, including but not limited to, securing against damage to the Public Right-of-Way or Municipal Facilities or other property in Metricom's exercise of its rights under this Agreement.

6.6 Schedule. Before beginning installation of any radios, Metricom shall provide to the City a schedule for installation of Radios.

7. INDEMNIFICATION AND WAIVER.

7.1 Indemnification. Metricom, at its sole cost and expense, hereby agrees to indemnify, protect, defend (with counsel acceptable to the City) and hold harmless the City, its elected officials, officers, employees, and agents, from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, and all costs and expenses of any kind, including, without limitation, reasonable attorney's fees and costs of defense arising, directly or indirectly, in whole or in part, out of the fact that the City granted this Use Agreement to Metricom, the rights granted to Metricom, or the activities performed, or failed to be performed, by Metricom under this Use Agreement, or otherwise, except to the extent arising from or caused by the sole or gross negligence or willful misconduct of the City, its elected officials, officers, employees, agents or contractors. This indemnification shall survive the expiration or termination of this Use Agreement for a period of five (5) years after the effective date of expiration or termination.

7.2 Waiver. Metricom hereby waives any and all claims, demands, causes of action, and rights it may assert against the City, its elected officials, officers, employees and agents on account of any loss, damage, or injury to any Radio or any loss or degradation of the Services as a result of the attachment, installation, operation, removal, reattachment, reinstallation, maintenance, replacement or relocation of any Radio or facility to which any such Radio is attached. Metricom waives and releases any and all claims contesting the legality of this Use Agreement or the authority of the parties to enter into this Use Agreement.

7.3 Breach or Violation Not a Waiver. The waiver of any breach or violation of any provision of this Use Agreement shall not be deemed to be a waiver or a continuing waiver of any subsequent breach or violation of the same or any other provision of this Use Agreement.

7.4 Limitation of City's Liability. The City shall be liable only for the cost of repair to damaged Radios arising from the negligence, so far as City may be liable under applicable sovereign immunity statutes, or willful misconduct of City, its corporate authorities, officers employees, or agents.

8. INSURANCE.

8.1 Insurance Requirements. Metricom shall obtain and maintain at all times during the term of this Use Agreement, and for at least three (3) months after termination or expiration thereof, comprehensive general liability insurance and comprehensive automotive liability insurance protecting Metricom in an amount of not less than Two Million Dollars (\$2,000,000) per occurrence (combined single limit), including bodily injury and property damage, and not less than Two Million Dollars (\$2,000,000) aggregate, for each personal injury liability, products-completed operations, and each accident. Such insurance shall name the City, its elected officials, officers, employees, agents, and contractors as additional insureds as respects any liability arising out of Metricom's performance of any work under this Use Agreement, or suitable additional insured endorsement acceptable to the City. Coverage shall be provided in accordance with the limits specified and the provisions indicated herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, materially changed or reduced in coverage unless the City has received at least thirty (30) days advance written notice of such cancellation, change or reduction in coverage. Metricom shall be responsible for notifying the City of such cancellation, change or reduction in coverage. Metricom shall further be responsible for paying all deductibles under such policies.

8.2 Certificate of Insurance. Before commencing any work in the Rights-of-Way to install any Radio, Metricom shall file a certificate(s) of insurance with endorsements with the City clearly stating: (a) policy number; telephone number of insurance company; name, address and telephone number of the agent or authorized representative; name, address and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts; (b) that thirty (30) days prior notice of cancellation, material change or reduction in coverage is unqualified as to the acceptance of liability for failure to notify the City; and (c) that Metricom's insurance is primary as respects any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have, and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance. "Cross liability," "severability of interest" or "separation of insureds" clauses shall be made a part of the comprehensive general liability and comprehensive automobile liability policies.

All certificate(s) of insurance, endorsements and insurance notices, shall be mailed to:

with copies thereof to the City Clerk under Section 9 of this Use Agreement.

8.3 Workers' Compensation and Employer's Liability. Metricom shall obtain and maintain at all times during the term of this Use Agreement, statutory workers' compensation and employer's liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000), or such other amounts as required by Missouri law. Before commencing work to install Radios under this Use Agreement, Metricom shall furnish the City with a certificate of insurance showing proof of such coverage.

8.4 Insurance Provider Standard. All insurance providers of Metricom, providing insurance coverage required by this Use Agreement, shall be admitted and authorized to do business in Missouri and shall be rated at least A:X in the latest edition of A.M. Best and Company's Insurance Guide. Insurance certificates issued by non-admitted insurance companies are not acceptable.

8.5 Deductibles/Self-Insurance. Before the execution of this Use Agreement, all deductibles and self-insured retentions shall be stated on the certificate(s) of insurance, which shall be sent to, and subject to approval by, the City.

9. NOTICES. Unless otherwise stated herein, all notices which shall or may be required or given pursuant to this Use Agreement shall be in writing and delivered personally or transmitted: (i) through the United States mail, by registered or certified mail, postage prepaid; (ii) by means of prepaid overnight delivery

service; or (iii) by facsimile transmission, if a hard copy of the same is followed by delivery through the U.S. mail or by overnight delivery service as just described, as follows:

to the City: City of []

 ATTN: [City Clerk]

 [Address]

to Metricom: Metricom, Inc.

 980 University Avenue

 Los Gatos, CA 95032

 Attn: Property Manager

Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next day in the case of overnight delivery. Either party to this Use Agreement may, from time to time, designate any other person or address for this purpose by written notice to the other party in the manner set forth above.

10. TERMINATION.

10.1 By Either Party for Default. This Use Agreement may be terminated by either party upon thirty (30) days' prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within thirty (30) days of receipt of written notice of default (or, if such default is not curable within thirty (30) days, if the defaulting party fails to commence such cure within thirty (30) days or fails thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) days from receipt of notice. For purposes of this Section, Metricom's abandonment of its Radios shall also be deemed a default if not cured within the time limit provided for in this Section. Notwithstanding the provisions regarding the opportunity to cure defaults, the City may also terminate this Use Agreement at any time if (a) Metricom becomes insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt; or (b) Metricom attempts to or does practice any fraud or deceit in its conduct or relations with the City under this Use Agreement; or (c) the City enacts a franchise or rights-of-way management ordinance(s) having different requirements from this Use Agreement and that is/are generally applicable to the users of the Rights-of-Way that include or may include providers of Services, telecommunications or other similar services and no agreement is reached as pursuant to Section 10.2. Nothing herein shall preclude the City from acting immediately without thirty days' notice in case of emergency, to protect public safety, or as otherwise may be provided in this Use Agreement. Except as expressly provided herein, the rights granted under this Use Agreement are irrevocable during the term.

10.2 Effect of Adoption of Telecommunications or Rights-of-Way Ordinance. Upon the adoption by the City of an ordinance(s) governing the use of the Public Right-of-Way as provided in Section 10.1(c), the City shall notify Metricom of any provision of this Use Agreement which is inconsistent with such ordinance. Metricom shall have ninety (90) days, or such extension of time as to which the parties may mutually agree in writing, from such notification to resolve such inconsistencies, otherwise, this Use Agreement shall terminate upon notice by the City. Subject to Metricom's compliance with all other

requirements and conditions of such ordinance(s), and executing a new or amended agreement so complying, Metricom shall be entitled to a term for use of the Right-of-Way equal to the remainder of the total of the original two year term and three year option period. The City shall endeavor, if requested, to provide Metricom with notice of any hearings that may be held relating to such ordinance adoption.

11. MISCELLANEOUS PROVISIONS.

11.1 Paragraph Headings. The headings on the paragraphs in this Use Agreement are for the convenience of reference and shall not alter or affect the terms of such paragraphs.

11.2 Assignment/Transfer. This Use Agreement is personal to Metricom and may not be conveyed, assigned, pledged or hypothecated without prior written consent of the City, which consent shall not be unreasonably withheld or unduly delayed. Any proposed assignee or transferee shall provide to the City in writing notice that they agree to abide by all the terms and conditions of this Use Agreement. Metricom shall give the City sixty (60) days prior written notice of any proposed transfer, assignment, or change of name. Notwithstanding anything herein to the contrary, Metricom may assign or transfer this Use Agreement to a wholly-owned subsidiary or parent company, or change its name, or transfer less than 50 percent of the stock in Metricom, without prior written consent of the City, provided notice is delivered to the City as provided herein prior to such assignment, transfer or change of name.

11.3 Non-Exclusivity. This Use Agreement does not provide Metricom with exclusive use of any poles, property or structures located in the Public Right-of-Way. The City shall have the right to permit other Persons or entities, including, but not limited to, providers of telecommunications services, to install equipment or devices on structures located in the Public Right-of-Way. The City, upon written inquiry by Metricom, agrees, to the extent provided by law, to provide at Metricom's cost information regarding any proposals for the installation of telecommunications equipment or devices in the Public Right-of-Way.

11.4 Metricom Staff Availability. Metricom shall have sufficient staff to provide safe, adequate and prompt installation, maintenance and removal of its Radios as allowed or required by this Use Agreement. In addition, Metricom staff shall be available to the staff employees of any City department 24 hours a day, 7 days a week, regarding problems or complaints resulting from the existence of the Radios in the Public Right-of-Way. The City may contact by telephone Metricom's network control center operator at telephone number (800) 556-6123 regarding such problems or complaints. Metricom shall notify the City in writing within ten (10) days of any change in this telephone number. All Metricom employees or contractors working within the Public Right-of-Way shall carry at all times appropriate documentation identifying such persons as Metricom employees or contractors. Metricom agrees to provide the City the names of all Metricom authorized contractors working within the Public Right-of-Way.

11.5 Exhibits and Schedules Part of Use Agreement.

All such exhibits and schedules referred to in this Use Agreement, or in any duly executed amendment to this Use Agreement, are by such reference incorporated in this Use Agreement and shall be deemed a part of this Use Agreement. Metricom agrees to fully comply with all of the obligations and terms of the exhibits and schedules.

11.6 Successors. This Use Agreement is binding upon the successors of the parties hereto.

11.7 Attorneys' Fees; interest. Should any dispute arising from this Use Agreement lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorneys' fees. To the extent permitted by law, interest at eighteen (18%) percent per annum shall accrue from the due date to date of actual payment and be paid by Metricom on all amounts owed to the City pursuant to this Use Agreement.

11.8 Taxes. Except as otherwise may be provided in Section 4.2.1 herein, no provision of this Use Agreement shall be construed to relieve or credit Metricom, its employees, contractors, and agents from the payment of all applicable federal, state and City taxes.

11.9 Advertising, Signs or Extraneous Markings. Metricom shall not place or cause to be placed any sort of signs, advertisements or other extraneous markings, whether relating to Metricom or any other person or entity, on any Municipal Facility, or on any Radio or other equipment located on the Public Right-of-Way or on other property, excepting such labels, numbers or other marks on the Radio(s) as shown on Exhibit A or as may be required by law or as approved by the City as are reasonably necessary to identify the Radio or Metricom for service, repair, maintenance or emergency purposes, or as may be otherwise required to be affixed by applicable law or regulation.

11.10 Relationship of the Parties. Metricom and City shall be and act as independent contractors, and under no circumstances shall this Use Agreement be construed as one of agency, partnership, joint venture, or employment between the parties.

11.11 Severability. If any one or more of the provision or provisions of this Use Agreement is determined by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Use Agreement and shall not affect the validity of the remaining portions of this Use Agreement.

11.12 Amendments. This Use Agreement may not be amended except by written agreement signed by duly authorized representatives of the City and Metricom.

11.13 Applicable Law. This Use Agreement shall be governed and construed by, and in accordance with, the Laws of the State of Missouri, and the ordinances, regulations and written policies of the City. If any lawsuit is brought by any Person or by a party to this Use Agreement, the parties to this Use Agreement agree that such lawsuit shall be tried in the applicable federal or state court in Missouri in which the city is located.

11.14 Compliance With Laws. In performing services or activities and exercising its rights and obligations under this Use Agreement, Metricom shall comply with all applicable federal, state and local Laws, ordinances, regulations and policies, including, but not limited to, all Laws, ordinances, regulations and policies concerning zoning.

11.15 Entire Agreement. This Use Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements or understandings (whether oral or written) between the parties relating to the subject matter of this Use Agreement which are not fully expressed herein.

11.16 Option to Use Other Agreements. In the event and each time that Metricom enters into an agreement, after the Effective Date and during the Term of this Use Agreement or renewal thereof, with another municipality located, in whole or in part, within the boundaries of St. Louis County, St. Charles County, Jefferson County, or Franklin Counties in the State of Missouri, and that permits Metricom or its successors or assigns to use that municipality's Public Right-of-Way, however defined, in a manner similar to this Use Agreement, then, if such subsequent agreement contains terms or conditions different in amount or kind from those contained in this Use Agreement, Metricom shall make such agreements available to the City at the City's request. If the City determines in the reasonable exercise of its discretion that such different provisions, if incorporated into this Use Agreement, will provide City with rights that are more beneficial to the City than the rights and benefits provided for under this Use Agreement and the City notifies Metricom that it desires to adopt such other agreement in its entirety, Metricom agrees that it will amend this Use Agreement as directed by the City so that it contains terms that are the same as in such subsequent agreement.

11.17 Reservation of Rights

11.17.1 In addition to any rights specifically reserved to the City by this Use Agreement, the City reserves to itself every right and power available to it under the constitutions of the United States and the State of Missouri, and any other right or power, including, but not limited to all police powers and authority to regulate and legislate to protect and promote the public health, safety, welfare, and morals. Further, the City hereby reserves to itself the right to intervene in any suit, action or proceeding, involving the provisions herein.

11.17.2 Notwithstanding anything to the contrary set forth herein, the provisions of this Use Agreement shall not infringe upon the rights of any Person under any applicable state or federal statutes, including, but not limited to the right to occupy the Public Right-of-Way and easements.

IN WITNESS WHEREOF, this Use Agreement is executed on the day first written by persons duly authorized to bind the City and Metricom.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK]

City: City of _____

By:

Its:

Attest:

Its: City Clerk

Metricom: METRICOM, INC., a Delaware corporation

By:

Its:

Attest:

Its: