

A RESOLUTION AUTHORIZING THE MAYOR AND THE FINANCE DIRECTOR TO ENTER INTO A RIGHT-OF-WAY USE AGREEMENT WITH METRICOM, INC.

BE IT RESOLVED by the Council of the Village of Richfield, Summit County, State of Ohio:

SECTION 1. That the Mayor and the Finance Director be, and they hereby are, authorized and directed to enter into a Right-of-Way Use Agreement with Metricom, Inc., a copy of which Agreement is attached hereto as Exhibit "A" and incorporated herein fully as if by reference.

SECTION 2. This Resolution shall take effect and be in force from and after the earliest period allowed by law.

PASSED: February 20, 2001

Michael Lyons
President of Council

Ronald W. Larsen
Mayor

Dated: 2/21/2001

ATTEST:
Carole Gibson
Clerk of Council

Right-of-Way Use Agreement

THIS RIGHT-OF-WAY USE AGREEMENT (this "Use Agreement") is dated as of _____, 2001 (the "Effective Date"), and entered into by and between the **VILLAGE OF RICHFIELD, OHIO**, an Ohio municipal corporation (the "Village"), 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®, utilizing Radios (as defined in § 1.9 below) and related equipment certified by the Federal Communications Commission.

B. For purpose of operating Ricochet®, Metricom wishes to locate, place, attach, install, operate, and maintain Radios in the Municipal Right of Way (as defined in § 1.8 below) on facilities owned by the Village, as well as on facilities owned by third parties therein.

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" shall mean all revenue derived directly or indirectly by Metricom, its subsidiaries, and parent for its Services provided to subscribers with billing addresses within the Village provided, however, that this shall not include the Right of Way fee payable pursuant to Section 4.1 nor any franchise fees or similar charges or taxes on services furnished by Metricom herein imposed directly upon any subscriber or user by the state of Ohio, local or other governmental unit and collected by Metricom on behalf of said governmental unit.

1.2 Village. "Village" means the Village of Richfield, Ohio.

1.3 Fee. "Fee" means any assessment, license, charge, fee, imposition, tax, or levy of general application to entities doing business in the Village lawfully imposed by any governmental body (but excluding any utility users' tax, franchise fees, communications tax, or similar tax or fee).

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

1.5 Laws. "Laws" means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the Village or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement.

1.6 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.

1.7 Municipal Facilities. "Municipal Facilities" means Village-owned street light poles, lighting fixtures, electroliers, or other Village-owned structures located within the Municipal Right of Way and may refer to such facilities in the singular or plural, as appropriate to the context in which used.

1.8 Municipal Right of Way. "Municipal Right of Way" means the space in, upon, above, along, across, and over the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks, bicycle lanes, and places, including all public utility easements and public service easements as the same now or may hereafter exist, that are under the jurisdiction of the Village. This term shall not include county, state, or federal rights of way or any property owned by any person or entity other than the Village, except as provided by applicable Laws or pursuant to an agreement between the Village and any such person or entity.

1.9 Radio. "Radio" means the radio equipment, whether referred to singly or collectively, to be installed and operated by Metricom hereunder.

1.10 Services. "Services" means the mobile digital communications services provided through Ricochet® by Metricom.

2 TERM. This Use Agreement shall be effective as of the Effective Date and shall extend for a term of nine (9) years commencing on the Installation Date, unless it is earlier terminated by either party in accordance with the provisions herein.

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 Village under applicable Laws to use

any and all parts of the Municipal Right of Way exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Municipal Right of Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in Metricom a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Use Agreement shall be subject to the reasonable prior review and approval of the Village.

3.1 Attachment to Municipal Facilities. The Village hereby authorizes and permits Metricom to enter upon the Municipal Right of Way and to locate, place, attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Radios in or on Municipal Facilities for the purposes of operating Ricochet® and providing Services. In addition, subject to the provisions of § 4.3 below, Metricom shall have the right to draw electricity for the operation of the Radios from the power source associated with each such attachment to Municipal Facilities.

3.2 Attachment to Third-Party Property. Subject to obtaining the permission of the owner(s) of the affected property, the Village hereby authorizes and permits Metricom to enter upon the Municipal Right of Way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace such number of Radios in or on poles or other structures owned by public utility companies or other property owners located within the Municipal Right of Way as may be permitted by the public utility company or property owner, as the case may be. Upon request, Metricom shall furnish to the Village documentation of such permission from the individual utility or property owner responsible.

3.3 No Interference. Metricom in the performance and exercise of its rights and obligations under this Use Agreement shall not interfere in any manner with the existence and operation of any and all public and private rights of way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Use Agreement.

3.4 Interference Resolution. Any actual or anticipated radio interference caused by either the presence of the Radios or the presence of any such other communications equipment or devices in the Municipal Right of Way shall be resolved by Metricom and any such other providers without cost to Village on the basis of the applicable rules, regulations, practices, and procedures of the FCC.

3.5 Compliance with Laws. Metricom shall comply with all applicable Laws in the exercise and performance of its rights and obligations under this Use Agreement.

3.6 Obtaining Required Permits. If the attachment, installation, operation, maintenance, or location of the Radios in the Municipal Right of Way shall require any permits, Metricom shall, if required under applicable Village ordinances, apply for the appropriate permits and pay any standard and customary permit fees.

3.7 Location of Radios. The proposed locations of Metricom's planned initial installation of Radios, as well as relocation of Radios pursuant to Sections 5 and 5.1, shall be provided to the Village promptly after Metricom's review of available street light maps if such maps are available to the Village. Within 14 days after receiving Metricom's proposed Radio locations, or such longer period as the parties may agree, the Village will notify Metricom if it objects to any such proposed locations for any reasons including aesthetic reasons. In the event the Village notifies Metricom that it objects to any proposed locations, Metricom agrees that it will not locate radios in any such location and will attempt to find suitable alternate locations, subject to the Village's approval which approval will not unreasonably be withheld, conditioned or delayed. Upon the completion of installation, Metricom promptly shall furnish to the Village a pole list showing the exact location of the Radios in the Municipal Right of Way.

4 COMPENSATION; UTILITY CHARGES. 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 Right-of-Way Fees. In order to compensate Village for Metricom's entry upon and deployment within the Municipal Right of Way, Metricom shall pay to the Village, on an annual basis, an amount equal to two and two one-hundredths percent (2.02%) of Adjusted Gross Revenues (the "Right-of-Way Fee"), which amount may be collected from subscribers of the Services with billing addresses in the Village and remitted to Village as provided herein. The Right-of-Way Fee shall be payable for the period commencing upon the date that Services are offered to commercially paying subscribers within the Village using Radios installed pursuant to this Use Agreement and ending on the date of termination of this Use Agreement, and shall be due on or before the 45th day after the end of each calendar year or fraction thereof. Within forty-five (45) days after the termination of this Use Agreement, compensation shall be paid for the period elapsing since the end of the last calendar year for which compensation has been paid. Metricom shall furnish to the Village with each payment of compensation 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. If Metricom discovers any error in the correct amount of compensation due, the Village shall be paid within thirty (30) days of discovery of the error or determination of the correct amount. Any overpayment to the Village through error or otherwise shall be refunded or offset against the next payment due. Acceptance by the Village of any payment due under this section shall not be deemed to be a waiver by the Village of any breach of this Use Agreement occurring prior thereto, nor shall the acceptance by the Village of any such payments preclude the Village from later establishing that a larger amount was actually due or from collecting any balance due to the Village.

4.1.1 Reduction of Right-of-Way Fee by Amount of Utility Users or Communications Tax. Notwithstanding anything to the contrary in this Use Agreement, if the Services are subject to a utility users tax, communications tax, or other similar tax or fee which accrues to the Village by operation of the Village's ordinances, local rules or regulations or other applicable law, then the amount of the Right-of-Way Fee shall be reduced by the amount of the applicable utility users tax, communications tax, or such other similar tax or fee. The utility users tax, communications tax or other similar tax or fee to which this section refers does not include any franchise fee or similar charge or tax on services furnished by Metricom that is excluded from the definition of Adjusted Gross Revenue in Section 1.1 of this Agreement.

4.1.2 Accounting Matters. Metricom shall keep accurate books of account at its principal office in San Jose or such other location of its choosing for the purpose of determining the amounts due to the Village under § 4.1 above. The Village may inspect Metricom's books of account relative to the Village at any time during regular business hours on thirty (30) days' prior written notice and may audit the books from time to time at the Village's sole expense, but in each case only to the extent necessary to confirm the accuracy of payments due under § 4.1 above. The Village agrees to hold in confidence any non-public information it learns from Metricom to the fullest extent permitted by Law.

4.2 Annual Fee. As compensation for the use of Municipal Facilities, Metricom shall pay to the Village an annual fee (the "Annual Fee") in the amount of Sixty Dollars (\$60.00) for the use of each Municipal Facility, if any, upon which a Radio has been installed pursuant to this Use Agreement. The aggregate Annual Fee with respect to each year of the term shall be an amount equal to the number of Radios installed on Municipal Facilities during the preceding twelve (12) months multiplied by the Annual Fee, prorated as appropriate, and shall be

due and payable not later than forty-five (45) days after each anniversary of the Installation Date. Village represents and covenants that Village owns all Municipal Facilities for the use of which it is collecting from Metricom the Annual Fee pursuant to this § 4.2.

4.2.1 CPI Adjustment. Effective commencing on the fifth (5th) anniversary of the Installation Date and continuing on each fifth (5th) anniversary thereafter during the term, the Annual Fee with respect to the ensuing five-year period shall be increased by a percentage amount equal to the percentage increase, if any, in the U.S. Department of Labor, Bureau of Labor Statistics Consumer Price Index (All Items, All Consumers, 1982-1984=100) which occurred during the previous five-year period for the Midwest Urban Region Consolidated Metropolitan Statistical Area.

4.3 Electricity Charges. Metricom shall be solely responsible for the payment of all electrical utility charges to the applicable utility company based upon the Radios' usage of electricity and applicable tariffs.

4.4 Reimbursement of Village's Projected Review Expenses. Metricom shall reimburse the Village at the Village's standard rates for reasonable attorney's fees and other projected review expenses relating to the preparation and review of this Use Agreement, promptly upon receipt of itemized bills, paid invoices, and other such documentation as Metricom shall reasonably require, and in a total amount not to exceed Two Thousand Five Hundred Dollars (\$2,500.00). The reimbursement provided for in this §4.4 shall not replace or excuse Metricom from the initial payment of any applicable permit fee for work undertaken pursuant to the initial installation of the Radios.

4.5 Most Favored Municipality. Should Metricom after the parties' execution and delivery of this Use Agreement enter into a right-of-way permit and facility use agreement with another Ohio Village, township, or municipality of the same size or smaller than the Village in the Counties of Cuyahoga, Geauga, Lake, Lorain, Medina, Portage, Stark or Summit, which agreement contains either (a) a higher Right-of Way Management Reimbursement as described in § 4.1 above or (b) a higher Annual Fee as described in § 4.2 above, Metricom shall modify this Use Agreement to incorporate the same or substantially similar superior benefits and such other terms.

5 RELOCATION AND DISPLACEMENT OF RADIOS. Metricom understands and acknowledges that Village may require Metricom to relocate one or more of its Radios, and Metricom shall at Village's direction relocate such Radios at Metricom's sole cost and expense, whenever Village reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair,

relocation, or maintenance of a Village project; (b) because the Radio is interfering with or adversely affecting proper operation of Village-owned light poles, traffic signals, or other Municipal Facilities; (c) to protect or preserve the public health or safety; or (d) for aesthetic purposes provided that a suitable alternate location is available to Metricom at the time of such relocation. Any relocation of Metricom radios under this Section shall be in accordance with Section 3.7 of this Use Agreement.

5.1 Relocations at Metricom's Request. In the event Metricom desires to relocate any Radios from one Municipal Facility to another, Metricom shall so advise Village. Any such relocation shall be in accordance with Section 3.7 of this Use Agreement.

5.2 Damage to Municipal Right of Way. Whenever the removal or relocation of Radios is required or permitted under this Use Agreement, and such removal or relocation shall cause the Municipal Right of Way to be damaged, Metricom, at its sole cost and expense, shall promptly repair and return the Municipal Right of Way in which the Radios are located to a safe and satisfactory condition in accordance with applicable Laws, normal wear and tear excepted. If Metricom does not repair the site as just described, then the Village shall have the option, upon fifteen (15) days' prior written notice to Metricom, to perform or cause to be performed such reasonable and necessary work on behalf of Metricom and to charge Metricom for the proposed costs to be incurred or the actual costs incurred by the Village at Village's standard rates. Upon the receipt of a demand for payment by the Village, Metricom shall promptly reimburse the Village for such costs.

5.3 Revised Pole List. Upon the completion of installation of any relocated Radios, Metricom promptly shall furnish to the Village a revised pole list showing the exact location of the Radios in the Municipal Right of Way.

6 INDEMNIFICATION AND WAIVER. Metricom agrees to indemnify, defend, protect, and hold harmless the Village, its council members, officers, employees, and agents from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgements, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") directly or proximately resulting from Metricom's activities undertaken pursuant to this Use Agreement, except to the extent arising from or caused by the negligence or willful misconduct of the Village, its council members, officers, employees, agents, or contractors.

6.1 Waiver of Claims. Metricom waives any and all claims, demands, causes of action, and rights it may assert against the Village on account of any loss, damage, or injury to any Radio or any loss or degradation of the Services as a

result of any event or occurrence which is beyond the reasonable control of the Village.

7 INSURANCE. Metricom shall obtain and maintain at all times during the term of this Use Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting Metricom in an amount not less than Two Million Dollars (\$2,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than Two Million Dollars (\$2,000,000) annual aggregate for each personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the Village, its council members, officers, and employees as additional insureds as respects any covered liability arising out of Metricom's performance of work under this Use Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the Village has received at least thirty (30) days' advance written notice of such cancellation or change. Metricom shall be responsible for notifying the Village of such change or cancellation. The amounts shown above shall be subject to annual review and the Village may require an increase in coverage amounts to account for inflation or other changes in conditions or circumstances that may reasonably require increases in the coverage amounts.

7.1 Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Use Agreement, Metricom shall file with the Village the required original certificate(s) of insurance with endorsements, which shall name the Village as an additional insured party and shall state the following:

- (a) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; project name; policy expiration date; and specific coverage amounts;
- (b) that the Village shall receive thirty (30) days' prior notice of cancellation;
- (c) that Metricom's Commercial General Liability insurance policy is primary as respects any other valid or collectible insurance that the Village may possess, including any self-insured retentions the Village may have; and any other insurance the Village does possess shall be considered excess insurance only and shall not be required to contribute with this insurance; and

- (d) that Metricom's Commercial General Liability insurance policy waives any right of recovery the insurance company may have against the Village.

The certificate(s) of insurance with endorsements and notices shall be mailed to the Village at the address specified in § 8 below.

7.2 Workers' Compensation Insurance. Metricom shall obtain and maintain at all times during the term of this Use Agreement statutory workers' compensation and employer's liability insurance in accordance with Ohio law and shall furnish the Village with a certificate showing proof of such coverage.

7.3 Insurer Criteria. Any insurance provider of Metricom shall be admitted and authorized to do business in the State of Ohio and shall carry a minimum rating assigned by *A.M. Best & Company's Key Rating Guide* of "A" Overall and a Financial Size Category of "X" (*i.e.*, a size of \$500,000,000 to \$750,000,000 based on capital, surplus, and conditional reserves). Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

7.4 Severability of Interest. Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the Village. "Severability of interest" or "separation of insureds" clauses shall be made a part of the Commercial General Liability and Commercial Automobile Liability policies.

7.5 Bond or Other Security. Prior to the commencement of any work under this Use Agreement, Metricom shall furnish or cause to be furnished to Village a good and sufficient bond, substantially in the form attached hereto as **Exhibit B** entitled Surety Bond, in the amount of Two Thousand Five Hundred Dollars (\$2,500), or such other comparable security instrument as may be approved by the Village's attorney or risk manager, securing the faithful performance by Metricom of all of its obligations under this Use Agreement within the time periods set forth hereunder. In the event that the number of Radios initially deployed in the Village exceeds 100, then the bond amount shall be Five Thousand Dollars (\$5,000). If at any time after the initial deployment the number of Radios deployed by Metricom in the Village exceeds 100, then the Village may require Metricom to increase the amount of the Surety Bond to Five Thousand Dollars (\$5,000).

8 NOTICES. All notices which shall or may be given pursuant to this Use Agreement shall be in writing and delivered personally or transmitted (a) through the United States mail, by registered or certified mail, postage prepaid; (b) by means of prepaid overnight delivery service; or (c) by facsimile or email 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, addressed as follows:

if to the Village:

VILLAGE OF RICHFIELD
Attn: [NAME OF CONTACT]

RICHFIELD, OH _____

if to Metricom:

METRICOM, INC.
Attn: Network Real Estate
333 West Julian Street
San Jose, California 95110

8.1 Date of Notices; Changing Notice Address. Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next business day in the case of facsimile, email, or overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the manner set forth above.

9 TERMINATION. This Use Agreement may be terminated by either party upon forty five (45) 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 forty-five (45) days of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) 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. Except as expressly provided herein, the rights granted under this Use Agreement are irrevocable during the term.

10 ASSIGNMENT. This Use Agreement shall not be assigned by Metricom without the express written consent of the Village, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, the transfer of the rights and obligations of Metricom hereunder to a parent, subsidiary, or affiliate of Metricom or to any successor-in-interest or entity acquiring all or substantially all of Metricom's outstanding voting stock or assets shall not be deemed an assignment or transfer for the purposes of this Use Agreement, provided that at or about the time of such transfer, Transferee or Metricom provide written notice to the Village certifying that (i) any such transferee will have a financial strength after the proposed transfer at least equal to that of Metricom prior to the transfer, (ii) any such transferee assumes all

the obligations of Metricom hereunder and is authorized to transact business in the State of Ohio, and (iii) Metricom shall not be released from the obligations of this Use Agreement by virtue of such transfer. Metricom shall give to the Village thirty (30) days' prior written notice of any proposed transfer for which notice is required hereunder, and the Village's consent shall be deemed approved unless it objects in writing within such thirty-day period.

11 MISCELLANEOUS PROVISIONS. The provisions which follow shall apply generally to the obligations of the parties under this Use Agreement.

11.1 Nonexclusive Use. Metricom understands that this Use Agreement does not provide Metricom with exclusive use of the Municipal Right of Way or any Municipal Facility and that Village shall have the right to permit other providers of communications services to install equipment or devices in the Municipal Right of Way and on Municipal Facilities.

11.2 Waiver of Breach. The waiver by either party 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.

11.3 Severability of Provisions. If any one or more of the provisions of this Use Agreement shall be held by 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 legality, validity, or constitutionality of the remaining portions of this Use Agreement. Each party hereby declares that it would have entered into this Use Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

11.4 Contacting Metricom. Metricom shall be available to the staff employees of any Village department having jurisdiction over Metricom's activities twenty-four (24) hours a day, seven (7) days a week, regarding problems or complaints resulting from the attachment, installation, operation, maintenance, or removal of the Radios. The Village may contact by telephone the network control center operator at telephone number (800) 873-3468 regarding such problems or complaints.

11.5 Governing Law; Jurisdiction. This Use Agreement shall be governed and construed by and in accordance with the laws of the State of Ohio, without reference to its conflicts of law principles. If suit is brought by a party to this Use Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of Ohio, County of Summit, or in the United States District Court for the Northern District of Ohio.

11.6 Consent Criteria. In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Use Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

11.7 Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in § 3.2 above.

11.8 Amendment of Use Agreement. This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

11.9 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 or among the parties relating to the subject matter of this Use Agreement which are not fully expressed herein.

11.10 Municipal Access Program. In consideration of Village's execution and delivery of this Use Agreement, Village shall have the right throughout the term of this Use Agreement to receive up to the maximum number specified below (based upon the Village's population) of free Ricochet® Internet Access subscriptions. These subscriptions allow for Internet access, e-mail and news. LAN access, dial-in Internet access, and other services will not be provided by Metricom but may be obtained through an authorized Ricochet® service provider, at the Village's expense. The number of free subscriptions which the Village may receive shall be determined in accordance with the Village's official population at the time this agreement is signed, as shown on the latest available census data. The number of subscriptions allowed per population is as follows:

<i>Population Size</i>	<i>Maximum Subscriptions</i>
< 9,999	2
10,000 - 24,999	3
25,000 - 49,999	4
50,000 - 74,999	5
75,000 - 99,999	6

Village shall designate one person who shall be responsible for ordering and receiving any subscriptions. To take advantage of this program, the designated individual should contact Metricom's local Office (typically the Local Market Manager). Village's right to use the subscriptions shall commence at the time that Ricochet® service is commercially available in the Village and shall extend until the expiration of the term of this Use Agreement or through the length of time that Radios are deployed in the Municipal Right of Way, whichever is shorter. Village's use of the subscriptions shall be subject to the standard Ricochet® terms and conditions of use or to those of the chosen retailer of the Ricochet® services through whom the Village obtains service. Village understands and agrees that modems and equipment required to utilize the subscriptions and any additional service subscriptions or service options the Village may desire will need to be obtained from an authorized retailer at market rates current from time to time. Village shall use all subscriptions provided pursuant to this section solely for its own use and shall not be entitled to resell, distribute, or otherwise permit the use of same by any other person, excepting a local public entity that provides public service within the corporate boundaries of the Village (e.g., municipal schools, public safety, or fire departments, etc.).

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In witness whereof, and in order to bind themselves legally to the terms and conditions of this Use Agreement, the duly authorized representatives of the parties have executed this Use Agreement as of the Effective Date.

Village: **VILLAGE OF RICHFIELD**, an Ohio municipal corporation

By: _____

[name typed]

Its: _____

Date: _____, [Year of Agreement Date]

Metricom: **METRICOM, INC.**, a Delaware corporation

By: _____

[name typed]

Its: _____

Date: _____, [Year of Agreement Date]