

METRICOM

ROW AGREEMENT SUMMARY FORM



TAB to each item and enter information. When completed, do a "SAVE AS" and name it a regular Microsoft Excel Workbook (.xls) file name, (i.e. name of your jurisdiction) and email to your AA. When emailed, clear file from screen and reopen 04 - ROW AGREEMENT SUMMARY FORM TEMPLATE.xlt file (.xlt is the extension for 'template') to begin entering the next jurisdiction. Thanks.

Document Submitted By: Richard Bartoccini Date: 8/30/99

Market
Riverside/San Bernardino

Jurisdiction/Company
Redlands

Business Terms Summary		
Agreement Type: ☒ Metricom's ☐ Other Party's	Pole Rental Rate: \$ <u>60.00</u> per Pole per year	
Agreement grants right to locate on jurisdiction-owned poles?	☒ Yes	☐ No
Agreement grants right to locate on third-party-owned poles?	☒ Yes	☐ No
Franchise Fee <u>5</u> % ☒ Metricom Standard	☐ Non-Standard	
Pole Rent Comments: SCE owned poles only		
ROW/Franchise Fee: Five Percent, 5%		
Other Fees: Business License, Encroachment permit		
Administrative Reimbursement? ☒ Yes ☐ No		
Description: Actual costs		
Initial Term(Yrs.): <u>5</u>	Number of Renewal Terms: <u>2</u>	Renewal Duration(s): <u>5</u>

Other Noteworthy Items (refer to Description below for explanation of non-standard items):				
Termination:	☒	Metricom Standard	☐	Non-Standard
Assignment:	☒	Metricom Standard	☐	Non-Standard
Most Favored Nation:	☒	Metricom Standard	☐	Non-Standard ☐ N/A
Insurance:	☒	Metricom Standard	☐	Insurance Company Approved
Indemnity	☒	Metricom Standard	☐	Non-Standard
Security Required:	☒	Yes	☐	No Amount: \$ <u>7500.00</u>
Description:	<u>Bond</u>			

None

SCE owned poles only. SCE power

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Attachment Permit Agreement

THIS ATTACHMENT PERMIT AGREEMENT (the "Permit") is dated as of September 21, 1999, and entered into by and between the **CITY OF REDLANDS**, a California municipal corporation (the "City"), and **METRICOM, INC.**, a Delaware corporation ("Metricom").

Recitals

- A. Under California law the City has the right and power to regulate the time, location, and manner of attachment, installation, operation, and maintenance of wireless digital communications radios in the Public Way within the limits of the City.
- B. Metricom wishes to attach, install, operate, and maintain a wireless digital communications radio network on facilities located in the Public Way for purposes of operating its Ricochet® wireless digital communications radio network (the "Network").

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 agreement:

1.1 Agency. "Agency" means any governmental or quasi-governmental agency other than the City, including the FCC and the PUC (as such terms are defined in §§ 1.4 and 1.9 below).

1.2 City. "City" means the City of Redlands.

1.3 Effective Date. "Effective Date" means the latest to occur of (a) the date on which this Permit, as finally approved by the City Council of Redlands, is executed by the City and delivered to Metricom; (b) the date on which all permits required hereunder for deployment of the Radios is issued by the City; or (c) the date on which Metricom hangs its first Radio as provided below.

1.4 FCC. "FCC" means the Federal Communications Commission.

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

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1.6 Gross Revenues. "Gross Revenues" means the gross dollar amount accrued on Metricom's books for Services provided to its customers with billing addresses in the City, excluding (i) the Franchise Fee, if any, payable pursuant to § 4 *et seq.* below; (ii) local, state, or federal taxes collected by Metricom that have been billed to the subscribers and separately stated on subscribers' bills; and (iii) revenue uncollectible from subscribers (*i.e.*, bad debts) with billing addresses in the City that was previously included in Gross Revenues.

1.7 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 Permit, in effect either at the time of execution of this Permit or at any time during the presence of Radios in the Public Way.

1.8 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.

1.9 PUC. "PUC" means the California Public Utilities Commission.

1.10 Permit. "Permit" means this nonexclusive Attachment Permit Agreement and may also refer to the associated right to encroach upon the Public Way conferred hereunder.

1.11 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 entity or association.

1.12 Provision. "Provision" means any agreement, clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this Permit that defines or otherwise controls, establishes, or limits the performance required or permitted by any party to this Permit. All Provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

1.13 Public Way. "Public Way" means in, upon, above, along, across, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, 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 City. This term shall not include any property owned by any Person or Agency other than the City, except as provided by applicable Laws or pursuant to an agreement between the City and any such Person or Agency.

1.14 Radio Month. "Radio Month" means a calendar month during which a Radio occupies space on a City-owned pole or other City-owned property, even if such occupancy is less than the entire month.

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

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described in **Exhibit A** attached hereto.

1.16 Ricochet®. "Ricochet®" or "Ricochet® MCDN" means Ricochet® MicroCellular Digital Network, a wireless, microcellular digital radio communications network owned and operated by Metricom.

1.17 Services. "Services" means the wireless digital communications services provided through Ricochet by Metricom to subscribers with billing addresses within the City.

1. **TERM.** The term of this Permit shall commence on the Effective Date and shall expire on the date which completes five (5) years after the Effective Date, unless it is earlier terminated by either party in accordance with the provisions herein. The term of this Permit shall be renewed automatically for two (2) successive terms of five (5) years each on the same terms and conditions as set forth herein, except that the Annual Fee shall be subject to adjustment as provided in § 4.3.1 below, upon application to the City by Metricom and approval by the City Council of City.
2. **SCOPE OF PERMIT.** Any and all rights expressly granted to Metricom under this Permit, 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 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 which may affect the Public Way. Nothing in this Permit shall be deemed to grant, convey, create, or vest in Metricom a perpetual real property interest in land, including any fee, leasehold interest, or easement.

2.1 Attachment to City-Owned Property. The City hereby authorizes Metricom to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace Radios in or on City street light poles, lighting fixtures, electroliers, or other City-owned property located within the Public Way for the purposes of providing Services to Persons located within or without the limits of the City.

2.2 Attachment to Third-Party Property. Subject to obtaining the permission of the owner(s) of the affected property, the City hereby authorizes and permits Metricom 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, including SCE, or other property owners located within the Public Way as may be permitted by the public utility company or property owner, as the case may be. Metricom shall furnish to the City documentation of such permission from the individual utility or property owner responsible.

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2.3 No Interference. Except as permitted by applicable Laws or this Permit Metricom in the performance and exercise of its rights and obligations under this Permit 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.

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

2.4.1 Construction Permits. Any and all construction work performed pursuant to the rights granted under this Permit, including the installation, operation, maintenance, location, and attachment of the Radios in the Public Way, shall, if required under applicable City ordinances, be subject to the prior review and approval of City by means of submission of a permit application, payment of any applicable permitting fees, and the City's ordinary administrative review. Metricom agrees to apply for and obtain all appropriate permits required by applicable Law prior to the commencement of any work of construction in the Public Way. The locations of Metricom's planned initial installation of Radios shall be incorporated in **Exhibit B** attached to this Permit. After the initial deployment of the Radios, new attachments, removals, and relocations of Radios shall also be subject to the City's permitting process. If the location of any Radio is different from that applied for in the applicable permit, the location of such Radio installed by Metricom or its designee shall be disclosed in writing to the City by Metricom within ten (10) days after its installation, removal, or relocation.

2.4.2 As-Built Drawings. Upon the completion of construction work, Metricom promptly shall furnish to the City, in hard copy and in Metricom's electronic format, suitable documentation showing the exact location of the Radios in the Public Way.

2.4.3 Modification of Service Voltage. The City reserves the right to modify the service voltage delivered to or at any street light pole or utility pole on which a Radio may be located. Metricom shall replace or modify any Radio that will be affected by such voltage modifications within thirty (30) days of receiving notice of voltage modifications. In the event that Metricom fails to replace or modify any Radio within the thirty-day notice period before the voltage modification, the City may disconnect any such Radio until Metricom performs and completes the necessary work and advises City accordingly.

2.5 Annual Business License. Metricom agrees to obtain an annual City business license prior to the Effective Date and maintain the same throughout the term of this Permit.

3. FEES AND TAXES. Metricom shall be solely responsible for the payment of all lawful Fees and utility charges in connection with the exercise of Metricom's rights under this Permit, including those set forth below.

3.1 Franchise Fee. Metricom shall pay to the City, on an annual basis, an amount (the

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"Franchise Fee") equal to five percent (5%) of Metricom's Gross Revenues collected during each preceding calendar year, which amount shall be collected from subscribers of the Services and remitted to City as provided herein. The Franchise Fee shall be due on or before the forty-fifth (45th) day after the end of each calendar year or fraction thereof. Within forty-five (45) days after the termination of this Permit, the Franchise Fee shall be paid for the period which has elapsed since the end of the last calendar year for which the Franchise Fee has been paid. Metricom shall furnish to the City with each payment of the Franchise Fee a statement, executed by an authorized officer of Metricom or his or her designee, showing the amount of Gross Revenues for the period covered by the payment. If Metricom discovers that it has failed to pay the entire or correct amount of the Franchise Fee, Metricom shall pay the difference to the City or make such other adjustment within fifteen (15) 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 Permit 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 collecting any balance due to the City.

3.1.1 Accounting and Audit. Metricom shall keep accurate books of account at its principal office in Los Gatos or such other location of its choosing for the purpose of determining the amounts due to the City under § 4.2. The City may inspect Metricom's books of account at any time during regular business hours on five (5) 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 under § 4.2. The City shall bear the cost of any such audit, unless such audit reveals an underpayment to the City of more than five percent (5%) of the Franchise Fee which was due to the City for such calendar year. Once each calendar year the City may require an annual report from Metricom relating to its operations and revenues within the City. City agrees to hold in confidence any nonpublic information it learns from Metricom in accordance with applicable law.

3.2 Annual Fee. Metricom shall pay to the City an annual fee (the "Annual Fee") in the amount of Sixty Dollars (\$60.00) for the use of each City-owned pole or other structure or piece of City-owned property upon which a Radio has been installed pursuant to this Permit. The initial Annual Fee shall be due and payable not later than the date of installation of the first Radio on City-owned poles or other City-owned property under this Permit (the "Installation Date") and shall be computed based upon the number of Radios Metricom estimates as of the Installation Date that it will install on City-owned poles or other City-owned property during the succeeding twelve (12) months. The Annual Fee for subsequent years shall be due and payable not later than thirty (30) days following each anniversary of the Installation Date and shall equal the total number of Radios then installed on City-owned poles or other City-owned property pursuant to this Permit multiplied by the Annual Fee, adjusted for the Prior Year Adjustment, as described immediately below. The Prior Year Adjustment shall either increase or decrease a subsequent year's aggregate Annual Fee to account for the installation or removal of Radios during the prior year, and shall equal the difference between (i) the total number of Radios used to calculate the prior year's aggregate Annual

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Fee multiplied by twelve (12) and (ii) the actual number of Radio Months which occurred during such year, multiplied by one-twelfth of the Annual Fee.

3.2.1 CPI Adjustment. At the commencement of each renewal term, the Annual Fee with respect to such term shall be adjusted effective January 1st of the first year of such renewal term by a percentage amount equal to the percentage change in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index of all items, Base 1982-1984, which occurred during the previous term or renewal term, as the case may be, for the Los Angeles-Anaheim-Riverside Consolidated Metropolitan Statistical Area.

3.3 City Access Program Subscription Rate. In consideration of City's execution and delivery of this Permit, City shall have the right throughout the term of this Permit to purchase a number of subscriptions based upon the City's population, up to the maximum number set forth below, to Ricochet™ Basic Service Subscriptions when such service is commercially available in the City at the rate of fifty percent (50%) of the regular Basic Service Subscription rate as current from time to time. The number of subscriptions which the City may purchase at the City Access Program rate shall be determined in accordance with the City's official population, as shown on the latest available census data, as follows: (a) for cities with a population of less than 100,000, up to a maximum of twenty (20) discount subscriptions; (b) for cities with a population of 100,000 to 249,000, up to a maximum of thirty (30) discount subscriptions; (c) for cities with a population of 250,000 to 500,000, up to a maximum of forty (40) discount subscriptions; and (d) for cities with a population of over 500,000, up to a maximum of fifty (50) discount subscriptions. City understands and agrees that Metricom's modems and equipment required to utilize the discounted subscriptions and any additional service subscriptions or service options the City may desire are expressly excluded from this special City Access Program rate and may be obtained from either Metricom or an authorized retailer at market rates current from time to time or under other promotional programs which may be available from time to time in addition to the City Access Program rate. City shall use all subscriptions provided pursuant to this § 4.3 solely for its own use and shall not be entitled to resell, distribute, or otherwise permit the use of the same by any other party.

3.4 Reimbursement of City's Expenses. Metricom shall reimburse the City at City's standard rates for all reasonable expenses relating to the preparation, issuance, and implementation of this Permit, promptly upon receipt of bills, paid invoices, and such other documentation as Metricom shall reasonably require. The reimbursement provided for in this § 4.4 shall not replace or excuse Metricom from the payment of any applicable City permit fee for work undertaken in connection with this Permit.

3.5 Potential Utility Users' Tax. Metricom acknowledges and agrees that the City may require users of revenue-producing services such as the Services to pay a utility users' tax ("Utility Tax") to the City pursuant to City's Municipal Code. If the City determines that the Services are subject to the Utility Tax, Metricom agrees to collect the tax from Service users and remit such tax to the City, without cost to the City, in accordance with City's Municipal Code.

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3.6 Most-Favored Nation Clause. Should Metricom after the parties' execution and delivery of this Permit enter into an attachment permit agreement with another municipality of the same size or smaller than the City in the Los Angeles Metropolitan Statistical Area which agreement contains financial benefits for such municipality which, taken as a whole and balanced with the other terms of such agreement, are in the City's opinion substantially superior to those in this Permit, City shall have the right to require that Metricom modify this Permit to incorporate the same or substantially similar superior benefits and such other terms.

4 REMOVAL AND RELOCATION OF RADIOS. Metricom understands and acknowledges that City may require Metricom to relocate one or more of its Radios, and Metricom shall at City's direction relocate such Radios at Metricom's sole cost and expense, whenever City reasonably determines that the relocation is needed for any of the following purposes: (a) to facilitate or accommodate the construction, completion, repair, relocation, or maintenance of a City project; (b) because the Radio is interfering with or adversely affecting proper operation of City light poles, traffic signals, or other City facilities; or (c) to protect or preserve the public health, safety, or welfare. If Metricom shall fail to relocate any Radios as requested by the City in accordance with the foregoing provision, City shall be entitled to relocate the Radios at Metricom's sole cost and expense, without further notice to Metricom.

4.1 Metricom Desires Relocation. In the event Metricom desires to relocate any Radios from one City-owned pole or other property to another City-owned pole or other property, Metricom shall so advise City. City will use its best efforts to accommodate Metricom by making another existing functionally equivalent City-owned pole or other property available for use in accordance with and subject to the terms and conditions of this Permit.

4.2 Discontinuation of Service. In the event that any Radio subject to this Permit is abandoned and no longer placed in service for a period of six (6) months or more, Metricom promptly shall notify the City, and the City, at its option, may require Metricom promptly to remove the abandoned Radio(s) at Metricom's sole cost and expense or dedicate the same to the City. The City shall not issue notice to Metricom that the City intends to exercise the option to require removal or dedication 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 cost and expense. Metricom shall execute such documents of title as will convey all right, title, and interest in the abandoned Radios, but in no other Metricom property, intellectual or otherwise, to the City.

4.3 Damage to Public Way. Whenever the removal or relocation of Radios is required under this Permit, and such removal or relocation shall cause the Public Way to be damaged, Metricom, at its sole cost and expense, shall promptly repair and return the Public Way in which the Radios are located to a safe and satisfactory condition to the satisfaction of the City's Director of Public Works. If Metricom does not repair the site as just described, then the City 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

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costs to be incurred or the actual costs incurred by the City at City's standard rates. Upon the receipt of a demand for payment by the City, Metricom shall reimburse the City for such costs.

5 INDEMNIFICATION, WAIVER, AND BOND. Metricom agrees to indemnify, defend (with counsel reasonably acceptable to the City and to Metricom's insurance carrier), protect, and hold harmless the City, its council members, officers, and employees from and against any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgements, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in connection therewith, including reasonable attorney's fees and costs of defense (collectively, the "Losses") arising, directly or indirectly, in whole or in part, out of the activities or facilities described in this Permit, except to the extent arising from or caused by the negligence or willful misconduct of the City, its council members, officers, employees, agents, or contractors.

5.1 Waiver of Breach. The waiver by the City of any breach or violation of any Provision of this Permit by Metricom shall not be deemed to be a waiver or a continuing waiver by the City of any subsequent breach or violation of the same or any other Provision of this Permit by Metricom.

5.2 Waiver of Claims. Metricom waives any and all claims, demands, causes of action, and rights it may assert against the City on account of any loss, damage, or injury to any Radio or any loss or degradation of the Services as a result of a sudden or gradual loss or change of electrical power caused by, among others events, an Act of God, an event or occurrence which is beyond the reasonable control of the City, a power outage, a lightning strike, or occasioned by the installation, maintenance, replacement or relocation of any City-owned facility to which such Radio is attached.

5.3 Limitation of City's Liability. The City shall be liable only for the cost of repair to damaged Radios arising from the negligence or willful misconduct of City or its employees or agents, and the City shall not be responsible for any damages, losses, or liability of any kind occurring by reason of anything done or omitted to be done by the City or by any third party, including damages, losses, or liability arising from the issuance or approval by the City of a permit to any third party or any interruption in Services.

5.4 Bond or Other Security. Prior to the commencement of any work under this Permit, Metricom shall furnish or cause to be furnished to City a good and sufficient bond, substantially in the form attached hereto as **Exhibit C** entitled Surety Bond, in the amount of Seventy Five Hundred (\$7,500) Dollars, or such other comparable security instrument as may be approved by the City's attorney or risk manager, securing the faithful performance by Metricom of all of the work, construction, installation, and removals required to be performed by Metricom under this Permit within the time periods set forth hereunder.

6 INSURANCE. Metricom shall obtain and maintain at all times during the term of this Permit (including the period between the expiration hereof and Metricom's removal of its Radios or other equipment from the Public Way) commercial general liability insurance and commercial automobile

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liability insurance protecting Metricom in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than One Million Dollars (\$1,000,000) annual aggregate for each personal injury liability and products-completed operations. Such insurance policies shall name the City, its councilmembers, officers, and employees as additional insureds as respects any covered liability arising out of Metricom's performance of work under this Permit. 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 or materially altered to reduce coverage until the City has received at least thirty (30) days' advance written notice of such cancellation or change. Metricom shall be responsible for notifying the City of such change or cancellation.

6.1 Filing of Certificates and Endorsements. Prior to the commencement of any work pursuant to this Permit, Metricom shall file with the City the required original certificate(s) of insurance with endorsements, subject to the City's prior approval, which shall clearly state all of the following:

- (a) the policy number; name of insurance company; name and address 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 is required to 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.

The certificate(s) of insurance with endorsements and notices shall be mailed to the City as the address specified in § 8 below:

6.2 Workers' Compensation Insurance. Metricom shall obtain and maintain at all times during the term of this Permit statutory workers' compensation and employer's liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000) and shall furnish the City with a certificate showing proof of such coverage.

6.3 Insurer Criteria. Any insurance provider of Metricom shall be admitted and authorized to do business in California and shall be rated at least A:X in *A.M. Best & Company's Insurance Guide*. Insurance policies and certificates issued by non-admitted insurance companies are not acceptable.

6.4 Severability of Interest. Prior to the execution of this Permit, any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the City. "Cross liability," "severability of interest," or "separation of insureds" clauses shall be made a part of the commercial general liability and commercial automobile liability policies.

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6.5 Contractors' and Subcontractors' Insurance. Metricom shall require that all contractors and subcontractors obtain insurance meeting the criteria set forth herein and shall furnish to the City copies of all certificates evidencing such policies of insurance.

6.6 Insurance and Indemnification Obligation. Metricom's compliance with the insurance requirements herein shall not excuse, replace, or otherwise affect Metricom's duty to indemnify and defend the City pursuant to § 6 of this Permit.

7 NOTICES. All notices which shall or may be given pursuant to this Permit 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 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 City:

CITY OF REDLANDS

Attn: City Clerk

P.O. Box 3005

35 Cajon Street

Redlands, CA 92373

if to Metricom:

METRICOM, INC.

Attn: Property Manager

980 University Avenue

Los Gatos, CA 95032

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 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.

8 TERMINATION. This Permit 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 such 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. As used in this § 9, the term *default* shall include, with respect to Metricom's obligations hereunder, Metricom's failure (i) to comply with the restrictions established in § 3, (ii) timely to pay any sums owing to the City under § 4, and (iii) to maintain, deploy, relocate, or

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remove its Radios as provided in § 5 hereof.

9 ASSIGNMENT. This Permit shall not be assigned by Metricom without the express written consent of the City, which consent shall not be unreasonably withheld, conditioned, or delayed. Any attempted assignment in violation of this § 10 shall be void. Notwithstanding the foregoing, the transfer of the rights and obligations of Metricom hereunder to a parent, subsidiary, or financially viable 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 Permit, provided 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 (iii) Metricom shall not be released from the obligations of this Permit by virtue of such transfer. If such criteria are satisfied, it shall not be deemed reasonable for the City to withhold its consent to the proposed transfer, unless the proposed transferee has a record of performance under similar agreements which is unacceptable to the City under a reasonable standard of evaluation. Lack of prior specific experience in administering a system providing the Services described in this Permit shall not, by itself, be deemed a reasonable basis for refusing or conditioning the City's consent. Metricom shall give to the City thirty (30) days' prior written notice of any proposed transfer for which notice is required hereunder, and the City's consent shall be deemed approved unless the City objects in writing within such thirty-day period. In the case of any proposed transfer for which the City's consent is required hereunder, Metricom agrees to reimburse the City for its reasonable expenses incurred in reviewing such transfer proposal.

10 MISCELLANEOUS PROVISIONS. The provisions which follow shall apply generally to the obligations of the parties under this Permit.

10.1 Nonexclusive Use. Metricom understands that this Permit does not provide Metricom with exclusive use of any City-owned poles or property and that City shall have the right to permit other providers of telecommunications services to install equipment or devices in the Public Way; however, City shall endeavor promptly to notify Metricom of the receipt of a proposal for the installation of communications equipment or devices in the Public Way, regardless of whether a license is required by the FCC for the operation thereof.

10.2 Amendment of Permit. This Permit may not be amended except pursuant to a written instrument signed by both parties.

10.3 Severability of Provisions. If any one or more of the Provisions of this Permit 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 Permit and shall in no way affect the validity of the remaining portions of this Permit.

10.4 All-Hours Contact. Metricom shall be available to the staff employees of any City 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,

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Robert L. DELSMAN

(510) 845-7135

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maintenance, or removal of the Radios. The City may contact by telephone the network control center operator at telephone number (800) 556-6123 regarding such problems or complaints.

10.5 Governing Law; Jurisdiction. This Permit shall be governed and construed by and in accordance with the laws of the State of California. In the event that suit is brought by a party to this Permit, the parties agree that trial of such action shall be vested exclusively in the state courts of California, County of San Bernardino, or in the United States District Court, Central District of California in the County of San Bernardino.

10.6 Attorneys' Fees. Should any dispute arising out of this Permit lead to litigation, the prevailing party shall be entitled to recover its costs of suit, including reasonable attorneys' fees.

10.7 Exhibits. All exhibits referred to in this Permit and any addenda, attachments, and schedules which may from time to time be referred to in any duly executed amendment to this Permit are by such reference incorporated in this Permit and shall be deemed a part of this Permit.

10.8 Successors and Assigns. This Permit is binding upon the successors and assigns of the parties hereto.

10.9 Rules, Regulations, and Specifications. Metricom acknowledges that the City may develop rules, regulations, and specifications, including a general ordinance or other regulation governing wireless telecommunications in the City (the "Regulations"), for the attachment, installation, and removal of Radios and any similar purpose devices on the City-owned facilities, including poles, and that such Regulations, when finalized, shall govern Metricom's activities hereunder as if they had been in effect at the time this Permit was executed by the City; provided, however, that in no event shall such Regulations materially interfere with or affect Metricom's right to install Radios or Metricom's ability to transmit or receive radio signals from Radios installed pursuant to and in accordance with this Permit or materially increase Metricom's obligations hereunder.

10.10 Advice of Displacement. To the extent the City has actual knowledge thereof, the City will attempt to inform Metricom of the displacement of any pole on which any Radio is located.

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

10.12 Entire Agreement. This Permit 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 Permit which are not fully expressed herein.

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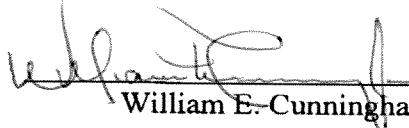
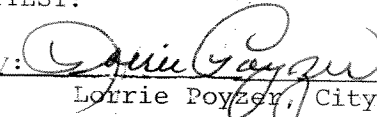
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In witness whereof, the parties have executed this Permit as of the date first above written.

City: **CITY OF REDLANDS**, a California municipal corporation

By:  William E. Cunningham
ATTEST: By:  Lorrie Poyzer, City Clerk

Its: Mayor

Date: September 21, 1999

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

By:  Lee M. Gopadze
Its: Senior Vice President,
Field Operations Group
Date: AUG 31 1999, 1999

Approved As To Form
ROY Legal Department

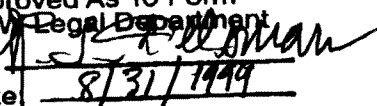
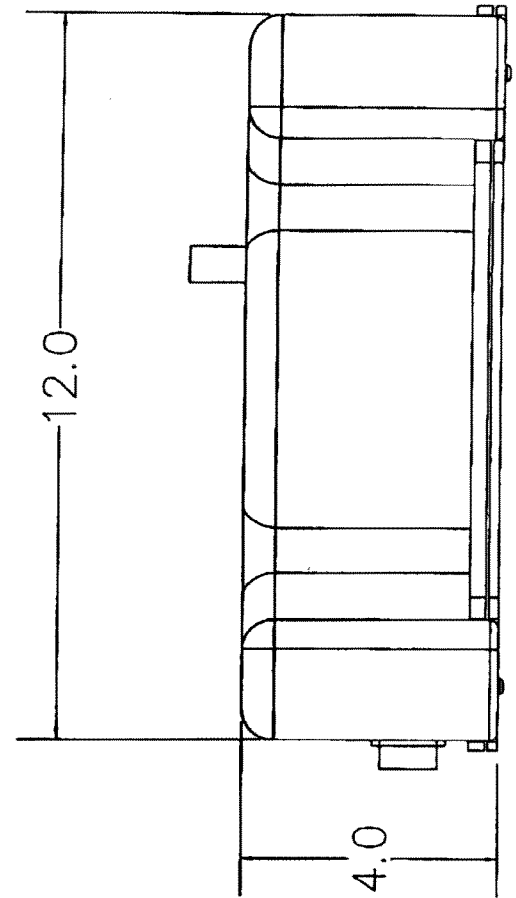
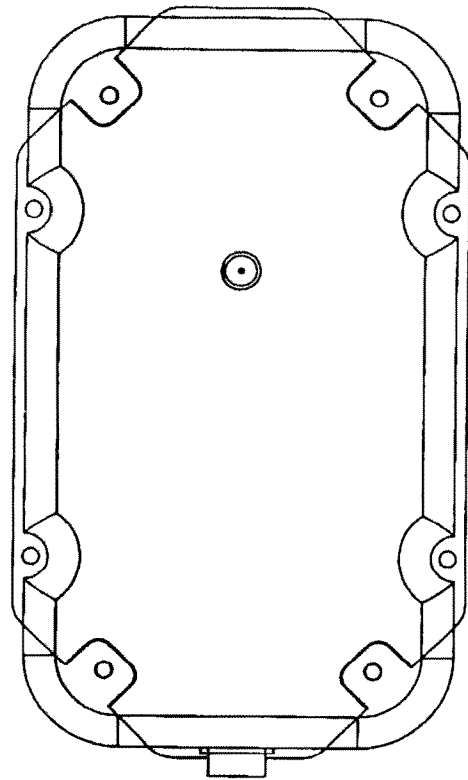
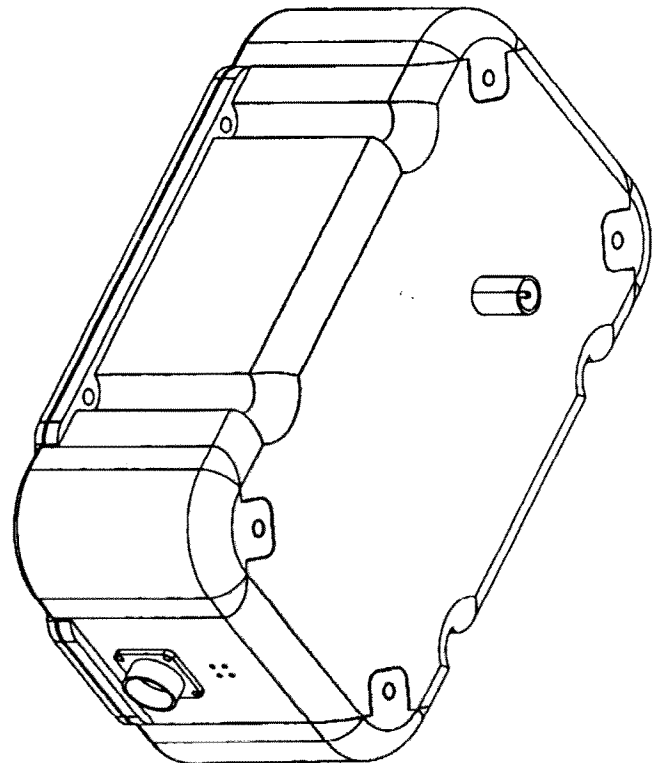
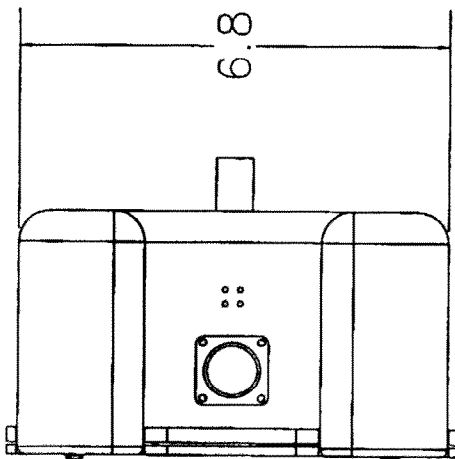
By: 
Date: 8/31/1999

Exhibit A

Exhibit A



Ricochet Poletop Radio, 7/29/98



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(510) 845-7135

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[EXHIBIT B]

[PROPOSED RADIO LOCATIONS]

**PROPOSED LOCATIONS TO BE PROVIDED
AFTER REVIEW OF STREET LIGHT MAPS
AND PRIOR TO DEPLOYMENT**

Aug 31 99 12:12p

Robert L. DELSMAN

(510) 845-7135

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[EXHIBIT C]**[FORM OF SURETY BOND]**

Bond Number: _____

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

That METRICOM, INC. as Principal, and _____, incorporated under the laws of the State of _____, and authorized to execute bonds and undertakings as sole surety, are held and firmly bound unto _____, as Oblige, in the sum of _____ (\$ _____); for the payment thereof, well truly to be made, said Principal and Surety bind themselves, their administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that:

WHEREAS, the above bounden Principal is about to enter into a certain agreement with the Oblige for the following: _____, the award of which said agreement was made to the Principal by the Oblige, on _____.

NOW THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and provisions of said agreement during the original term thereof, and any extensions thereof which may be granted by the Oblige, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such agreement, and shall fully indemnify and save harmless the Oblige from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Oblige all outlay and expenses which the Oblige may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

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(510) 845-7135

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PROVIDED, HOWEVER, this bond is issued subject to the following express conditions:

1. This bond shall be deemed continuous in form and shall remain in full force and effect until canceled under Section _____, after which all liability ceases except as to any liability incurred or accrued prior to the date of such cancellation.
2. The aggregate liability of the Surety hereunder on all claims whatsoever shall not exceed the penal sum of this bond in any event.
3. The surety reserves the right to withdraw as surety from this bond, except as to any liability incurred or accrued, and may do so upon giving the Obligee sixty (60) days written notice.

SIGNED AND SEALED this _____ day of _____, 19____.

PRINCIPAL

SURETY

(Type Company Name)

By: _____

By: _____

Title: _____

Title: _____

By: _____

Address: _____

Telephone: _____

(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety signatures)

Exhibit C

Bond No. 229541
Premium: \$150.00

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS: that METRICOM, INC., as Principal, and THE INSURANCE COMPANY OF THE STATE OF PENNSYLVANIA, Incorporated under the laws of the State of Pennsylvania, and authorized to execute bonds and undertakings as sole surety, are held and firmly bound unto the City of Redlands, Ca. as Oblige, in the penal sum of Seven Thousand Five Hundred and no/100 Dollars (\$7,500.00) for the payment thereof, well and truly to be made, said Principal and Surety bind themselves, their administrators, successors and assigns, jointly and severally, firmly by these presents.

The condition of the foregoing obligation is such that: WHEREAS, the above bounden Principal is about to enter into a certain agreement with the Oblige for the following:

To attach, install, operate and maintain a wireless digital communications radio network on facilities located in the public right-of-way for purposes of operating its Ricochet™ wireless digital communications radio network

the award of which said agreement was made to the Principal by the Oblige on September 21, 1999.

NOW, THEREFORE, if the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions and provisions of said agreement during the original term thereof, and any extensions thereof which may be granted by the Oblige, with or without notice to the Surety, and if he shall satisfy all claims and demands incurred under such agreement, and shall fully indemnify and save harmless the Oblige from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the Oblige all outlay and expenses which the Oblige may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, FURTHER, that the said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the agreement or to the work to be performed thereunder or the specifications accompanying the same shall not in any way affect its obligation on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the agreement or to the work or to the specifications.

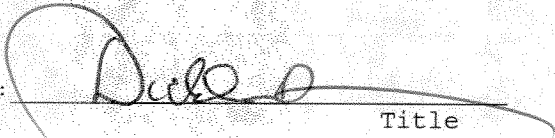
PROVIDED, HOWEVER, this bond is issued subject to the following express conditions:

1. This bond shall be deemed continuous in form and shall remain in full force and effect as required in accordance with Section 5.4 of the agreement, after which all liability ceases except as to any liability incurred or accrued prior to the date of cancellation.
2. The aggregate liability of the Surety hereunder on all claims whatsoever shall not exceed the penal sum of this bond in any event.
3. The Surety reserves the right to withdraw as surety from this bond, except as to any liability incurred or accrued, and may do so upon giving the Obligee forty-five (45) days written notice.

Signed and sealed this 30th day of December, 1999.

PRINCIPAL

METRICOM, INC.

By: 

Title

DICK L AU
VP FIELD OPS

SURETY

THE INSURANCE COMPANY OF THE STATE
OF PENNSYLVANIA

By: 

Rosemarie Guanill,
Attorney-in-Fact

Address: 121 Spear St. -5th floor
San Francisco, Ca. 94105

Phone: 415-836-2700

(Affix Corporate Seals)

(Attach Acknowledgments of both Principal and Surety Signatures)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

No. 5907

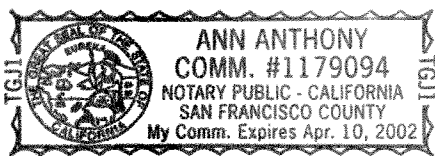
State of California

County of San Francisco

On December 30, 1999 before me, Ann Anthony, Notary Public,
DATE NAME, TITLE OF OFFICER - E.G., "JANE DOE, NOTARY PUBLIC"

personally appeared Rosemarie Guanill,
NAME(S) OF SIGNER(S)

☒ personally known to me - **OR** - ☐ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

[Signature]
 SIGNATURE OF NOTARY

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☒ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)

The Insurance Company of
the State of Pennsylvania

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

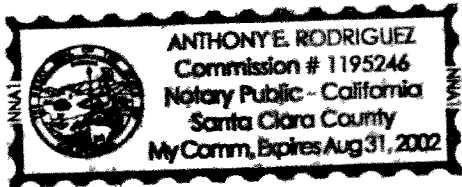
DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California }
County of Santa Clara }

On January 7, 1999, before me, Anthony E. Rodriguez, Notary Public, personally appeared Dick Au, personally known to me to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



WITNESS my hand and official seal

Anthony E. Rodriguez
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment to another document

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity (ies) Claimed by Signer

Signer's Name: Dick Au

- ☐ Individual
☐ Corporate Officer
☐ Partner - ☐ Limited ☐ General
☐ Attorney in Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer is Representing: Metricom, Inc.

RIGHT THUMBPRINT OF
SIGNER

Top of Thumb Here

KNOW ALL MEN BY THESE PRESENTS:

That The Insurance Company of the State of Pennsylvania, a Pennsylvania corporation, does hereby appoint

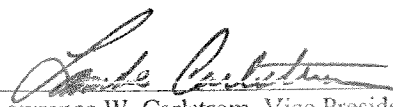
---Stanley D. Loar, Charles R. Shoemaker, Roger C. Dickinson, Nancy L. Hamilton,
Rosemarie Guanill: of San Francisco, California---

its true and lawful Attorney(s)-in-Fact, with full authority to execute on its behalf bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, issued in the course of its business, and to bind the company thereby.

IN WITNESS WHEREOF, The Insurance Company of the State of Pennsylvania has executed these presents



this 24th day of February, 1999.


Lawrence W. Carlstrom, Vice President

STATE OF NEW YORK }
COUNTY OF NEW YORK}ss.

On this 24th day of February, 1999 before me came the above named officer of The Insurance Company of the State of Pennsylvania, to me personally known to be the individual and officer described herein, and acknowledged that he executed the foregoing instrument and affixed the seal of said corporation thereto by authority of his office.


Notary Public, State of New York
No. 01-NO4652754
Qualified in Westchester County
Term Expires Jan. 31, 2002

CERTIFICATE

Excerpts of Resolution adopted by the Board of Directors of The Insurance Company of the State of Pennsylvania, on May 18, 1976:

"RESOLVED, that the Chairman of the Board, the President, or any Vice President be, and hereby is, authorized to appoint Attorneys-in-Fact to represent and act for and on behalf of the Company to execute bonds, undertakings, recognizances and other contracts of indemnity and writings obligatory in the nature thereof, and to attach thereto the corporate seal of the Company, in the transaction of its surety business;

"RESOLVED, that the signatures and attestations of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed with respect to any bond, undertaking, recognizance or other contract of indemnity or writing obligatory in the nature thereof;

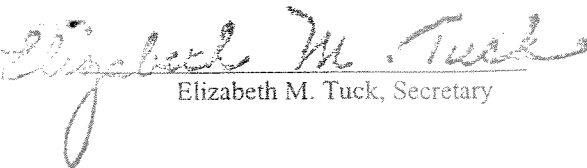
"RESOLVED, that any such Attorney-in-Fact delivering a secretarial certification that the foregoing resolutions still be in effect may insert in such certification the date thereof, said date to be not later than the date of delivery thereof by such Attorney-in-Fact."

I, Elizabeth M. Tuck, Secretary of The Insurance Company of the State of Pennsylvania, do hereby certify that the foregoing excerpts of Resolution adopted by the Board of Directors of this corporation, and the Power of Attorney issued pursuant thereto, are true and correct, and that both the Resolution and the Power of Attorney are in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of the corporation

this 30th day of December, 1999




Elizabeth M. Tuck, Secretary