

**RIGHT-OF-WAY USE AGREEMENT**

This Agreement is entered into this \_\_\_\_\_ day of August, 2001 by and between CITY SIGNAL COMMUNICATIONS, INC. ("City Signal"), a \_\_\_\_\_ corporation, whose address is \_\_\_\_\_ and the City of Cleveland Heights ("the City"), an Ohio municipal corporation, whose address is 40 Severance Circle, Cleveland Heights, Ohio 44118.

WHEREAS, City Signal is constructing a fiber optic telecommunications network in the greater Cleveland area and desires to install optic fiber and equipment (the "Telecommunications Facilities") within certain public rights-of-way in the City of Cleveland Heights; and

WHEREAS, the City agrees to permit City Signal to install its Telecommunications Facilities in its Public rights-of-way for that purpose pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration for the specific contractual terms and conditions set forth below, the parties agree as follows:

1. Aerial Installation. City Signal may aerially install fiber, not to exceed three-quarters inch diameter in total, on existing poles in the City's Coventry Road and Cedar Road rights-of-way along the route indicated in the map attached to this Agreement as Exhibit A.

2. Use of Existing Conduit. City Signal may install fiber in the City's existing conduit in the Mayfield Road rights-of way (the "Mayfield Road Conduit") along the route indicated in Exhibit A.

3. Installation of Underground Conduit. City Signal may install fiber in conduit, to be constructed as described below, in the City's Lee Road rights-of-way along the route indicated in Exhibit A.

A. As a part of its Lee Road resurfacing project to be completed during the fall of 2001, the City shall construct two four inch conduits in its Lee Road rights-of-way for telecommunications facilities and associated manholes (the "Lee Road Conduit") as more fully described in the plans and specifications attached to this Agreement as Exhibit B.

B. The City shall make fifty percent (50%) of the capacity of one of the four inch conduits available to City Signal to install its fiber no later than \_\_\_\_\_, 2002.

4. Payment for Lee Road Conduit. After construction of the Lee Road Conduit is complete, City Signal shall reimburse the City for the cost of the telecommunications conduit construction in an amount not to exceed Three Hundred Sixty Thousand, Nine Hundred and Fifty Dollars (\$360,950.00). City Signal shall make payment to the City within thirty (30) days of the City presenting City Signal with an invoice for payment. At the time of executing this Agreement, City Signal shall provide the City with a bond or letter of credit, in a form acceptable to the City's Law Director, in the amount of \$\_\_\_\_\_ to secure City Signal's payment obligation.

5. Construction of Connecting Conduit. City Signal shall be responsible for constructing, at its cost, conduit connecting the Lee Road Conduit and the Mayfield Road Conduit.

City Signal shall be required to obtain a construction permit from the City for construction of the connecting conduit and shall comply with all City construction requirements.

6. Waiver of Right-of-Way Fees. For City Signal's use of the City's rights-of-way authorized pursuant to this Agreement, the City shall waive any administrative, management, use or similar fees that it may now, or in the future, charge for use of its public -rights-of-way.

7. City Signal Sublease of Fiber Capacity. City Signal may sublease its fiber capacity to other persons or companies for telecommunications purposes. City Signal may not, however, lease, to any other person or company, the conduit space it is authorized to use pursuant to this Agreement.

8. City Lease of Additional Lee Road Conduit/Reimbursement to City Signal. The City agrees that it shall only permit other persons or companies to use the City's additional Lee Road Conduit if those persons or companies enter into a lease agreement with the City, pursuant to which the lessee of the additional Lee Road Conduit is required to pay no less than Two Dollars (\$2.00) per lineal foot for one and one-half inch of conduit space. The City shall pay City Signal seventy-five percent (75%) of all tariffs received pursuant to any such lease agreement until City Signal has received a total sum of Two Hundred Seventy Thousand, Seven Hundred Thirteen Dollars (\$270,713.00), at which time no further payment to City Signal shall be required.

Approved as to legal form:

CITY OF CLEVELAND HEIGHTS, OHIO

\_\_\_\_\_  
John H. Gibbon  
Director of Law

By: \_\_\_\_\_  
Robert C. Downey, Jr.  
City Manager

Authorized by Resolution \_\_\_\_\_ of  
Cleveland Heights City Council

CITY SIGNAL COMMUNICATIONS  
By: \_\_\_\_\_  
Title: \_\_\_\_\_