

City of Philadelphia



(Bill No. 000405)

AN ORDINANCE

Granting permission to Sunesys, Inc., its successors and assigns to construct, maintain and operate, replace, and remove a telecommunications system along, over, in and under the public rights-of-way and City streets and/or to place such telecommunications system within the existing facilities owned by Bell Atlantic-PA, PECO Energy Company, Southeastern Pennsylvania Transportation Authority, CSX Corporation, Norfolk Southern Corporation, Consolidated Rail Corporation Shared Assets, or other entity holding a grant pursuant to other City ordinances; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Permission is hereby granted to Sunesys Inc., P.O. Box 1776, Horsham, Pennsylvania 19044 (hereinafter "Sunesys") and its successors, assigns and agents to construct, maintain, operate, replace and remove a telecommunications system and appurtenances along, in and under the public rights of way of the City of Philadelphia and within the existing facilities owned by Bell Atlantic-PA, PECO Energy Company, Southeastern Pennsylvania Transportation Authority, CSX Corporation, Norfolk Southern Corporation, Consolidated Rail Corporation Shared Assets or other entity holding a grant pursuant to other City ordinances, subject to such owner's consent; and to construct, lay, operate, maintain, replace and remove new telecommunications cables, conduits, access manholes and associated appurtenances (collectively, the "Telecommunications System") to create a system used to transmit, receive and distribute telecommunications. Sunesys is not authorized by this Ordinance to provide to subscribers within the City "cable service" as that term is defined at 47 U.S.C. § 522(5).

(a) Sunesys is authorized to install new conduit within any portion of the route that is part of the public right of way or private property that is not part of the public right of way subject to permission from the private property owner at the locations listed below:

Delaware River to private property on the east side of Christopher Columbus Boulevard, either between Pier 24 and Pier 19, or between Pier 25 and Pier 24 (all piers are private property and within the 400 block of North Christopher Columbus Boulevard); across the entire width of the public right of way of Christopher Columbus Boulevard to private property on the west side the 400 block of North Christopher Columbus Boulevard, and then from private property into the public right of way at Front Street near the intersection of Front Street

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and Noble Street. After entering the public right of way of Front Street, the public right-of-way the route continues as follows:

Front Street:	From Noble Street to Callowhill Street
Water Street:	From Front Street to Callowhill Street
Callowhill Street:	From Christopher Columbus Boulevard to Broad Street and into the property 401 North Broad Street
10 th Street:	From Callowhill Street to Noble Street (connecting to the PECO pole #73604 at the northeast corner of 13 th Street and Noble Street).

(b) The Telecommunications System shall be constructed in accordance with the requirements and under the supervision of the Department of Streets, without interference with any existing surface or subsurface structures, and shall be used by Sunesys and/or its successors and assigns exclusively for the purposes set forth in this Section and in accordance with all ordinances of the City of Philadelphia and regulations of the Committee of Highway Supervisors governing the construction, maintenance, and operation of underground structures and the equipment, facilities and or appurtenances placed therein.

(c) The permission granted by this Ordinance is conditioned upon the approval of the Department of Streets as to the construction and installation of Sunesys' facilities at any location along the specified route and is not a guaranty that Sunesys' facilities can be placed at any particular location along that route. No City department, agency, board, or commission shall be required solely by virtue of this Ordinance to issue any permit, license, or approval that Sunesys must by law obtain prior to construction, occupancy of existing conduit in the public right-of-way or attaching to an existing utility pole.

(d) All telecommunication facilities that includes an alteration to a rail/highway crossing, as such alterations are defined under state law, must have, in addition to the approvals set forth in this Ordinance, the appropriate approval of the Pennsylvania Public Utility Commission.

SECTION 2. In the event that any portion of said Telecommunications System must be relocated to accommodate a public improvement or public facility, whether such improvement or facility is constructed by the City or by another governmental entity, or by contract with the City or with any governmental entity, the Department of Streets shall

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provide Sunesys with written notice at least one hundred eighty (180) days prior to the date any action would be required by Sunesys to relocate said portion of the Telecommunications System. Within one hundred eighty (180) days of service of said notice upon Sunesys, Sunesys shall relocate said portion of the Telecommunications System and restore the roadway and footway disturbed by the relocation to the condition it was in prior to the relocation, without expense to the City. In the event that Sunesys is required to remove any portion of the Telecommunications System at the request of the City, the Department of Streets shall cooperate with Sunesys in order to identify a replacement and alternative right-of-way for the relocation of said portion of the Telecommunications System which may be utilized without unreasonable inconvenience.

SECTION 3. Pursuant to subsection 11-204(5) of The Philadelphia Code, the permission granted by this Ordinance shall include permission to extend from the route described in Section 1 by no more than three (3) City blocks, said blocks to be demarcated by major City streets and not by intervening pathways or alleyways. Before any such extensions are made, Sunesys shall first obtain the approval of the Department of Streets. This Section shall govern all deviations from the route approved in Section 1, including those deviations that serve as replacement and alternative right-of-ways in relocating Sunesys pursuant to Section 2 of this Ordinance. All deviations which extend more than three (3) City blocks from the approved route shall require additional authorization from City Council.

SECTION 4. The permission granted to Sunesys to occupy the public right-of-way with its Telecommunications System shall be and is subject to the terms and conditions of this Ordinance, and other applicable ordinances of the City of Philadelphia, including, but not limited to, all ordinances of general application currently in existence or subsequently enacted related to the right of occupancy and to use of property in, under, over, along and across the streets, sidewalks, alleyways, easements and right-of-ways within the City of Philadelphia. Such permission is also subject to the terms and conditions of all applicable agreements, to the extent that such agreements are consistent with the terms and conditions of this Ordinance.

SECTION 5. Before exercising any rights and privileges under this Ordinance, Sunesys shall enter into an agreement (“Agreement”) with the appropriate City department or departments, in form satisfactory to the City Solicitor, to provide that Sunesys shall, *inter alia*:

(a) Furnish the City with a bond with corporate surety in an amount required by the Department of Streets and in form satisfactory to the City Solicitor to ensure compliance with all the terms and conditions of this Ordinance and the Agreement and to protect and to indemnify the City from and against all damages or claims for damages which may arise directly as a result of the construction, maintenance, operation or removal of Sunesys Telecommunications System;

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(b) Secure all necessary permits, licenses and approvals from all appropriate departments, agencies, boards, or commissions of the City or other governmental entity as may be required by law;

(c) Assume the costs of all changes and adjustments to, and relocation and abandonment of, all utilities and structures wherever located as may be necessary by reason of the installation of Sunesys' Telecommunications System;

(d) Carry insurance protecting against liability for injury to persons or property of others, naming the City as an additional insured party in such amounts as shall be reasonably satisfactory to the City Solicitor;

(e) Pay all charges, rents, franchise fees or other fees that the City of Philadelphia may now or in the future impose for a licensee's occupation of City property, streets and rights-of-way;

(f) Remove any or all of the facilities authorized by Section 1 of the ordinance from the public right-of-way within sixty (60) days after lawful notice by the City of Philadelphia;

(g) Make necessary adjustments or reimburse the City of Philadelphia for making adjustments to any manholes constructed in the public right of way along the route authorized in Section 1 of this Ordinance when instructed to do so by the Streets Department in preparation of a street paving project; and

(h) Remove the facilities listed in Section 1 from the public right-of-way pursuant to the applicable City of Philadelphia specifications within sixty (60) days when any of the facilities are no longer used for the purpose authorized by this Ordinance.

SECTION 6. The City Solicitor shall include in the Agreement such other terms and provisions as shall be deemed necessary to protect the interest of the City.

SECTION 7. The permission granted to Sunesys to construct, maintain and operate, replace and remove a telecommunication system along, in and under rights of way, public rights of way and City Streets listed in Section 1 of this Ordinance shall expire without any further action by the City of Philadelphia if Sunesys has not entered into the Agreement as required by Section 5 within one (1) year after this Ordinance becomes law.

SECTION 8. The permission granted to Sunesys and its successors, assigns, and agents for installation and or construction of the new facilities along the route identified in this Ordinance shall expire without any further action by the City of Philadelphia as to such portions not constructed two (2) years after the date this Ordinance becomes law unless Sunesys, its successors, assigns, and agents have substantially completed the construction

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of the new facilities authorized herein. A change in ownership of the assets of Sunesys does not, without express written permission of the City of Philadelphia, extend the time for substantially completing the construction of the new facilities authorized herein.

SECTION 9. The City of Philadelphia reserves the right to charge a transfer fee for any agreement transferring the right of way license from one entity to another so as to insure that all costs incurred by the City of Philadelphia related to the transfer are reimbursed. The transferee must pay all costs incurred by the City of Philadelphia associated with such transfer within 30 days of the date the City submits such costs to the transferee or the transferee's authorized agent.

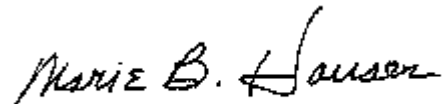
SECTION 10. This Ordinance shall not become effective unless the sum of two hundred dollars (\$200.00), toward costs thereof, is paid into the City Treasury within sixty (60) days after this Ordinance becomes law.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 22, 2000. The Bill was Signed by the Mayor on September 12, 2000.

A handwritten signature in black ink that reads "Marie B. Hauser". The signature is written in a cursive style with a large, looped initial "M".

Marie B. Hauser
Chief Clerk of the City Council