

City of Philadelphia



(Bill No. 010503)

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, City streets and private property subject to permission of the property owner, or attached to or within facilities of other entities holding a grant pursuant to other City ordinances, subject to such owner's consent; 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, PA 19044, and its successors, assigns, and agents (collectively "Sunesys"), 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 or private property, subject to the property owner's permission, within existing conduit, and on the existing utility poles or catenary poles of any other entities holding a grant pursuant to other City ordinances, subject to such owner's consent; Sunesys is further granted permission 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 defined at 47 U.S.C. § 522(5).

(a) For its designate "Northern Route," Sunesys is authorized to install aerial facilities to authorized existing utility poles or trolley catenary poles in and along the following public rights-of-way subject to the utility pole or catenary pole owner's permission:

Ninth street:	From Noble street to Willow street
Willow street:	From Ninth street to Eighth street
Eighth street:	From Willow street to Fairmount avenue
Fairmount avenue:	From Eighth street to Franklin street
Franklin street:	From Fairmount avenue to Master street
Master street:	From Franklin street to Nineteenth street
Nineteenth street:	From Master street to Jefferson street
Jefferson street:	From Nineteenth street to Seventeenth street
Seventeenth street:	From Jefferson street to Huntingdon street
Huntingdon street:	From Seventeenth street to Glenwood avenue
Glenwood avenue:	From Seventeenth street to Margie street

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Margie street:	From Glenwood avenue to Sedgley avenue at Twentieth street
Twentieth street:	From Sedgley street to Indiana avenue
Indiana avenue:	From Twentieth street to Seventeenth street
Seventeenth street:	From Indiana avenue to Ontario street
Ontario street:	From Seventeenth street to Twenty-third street
Twenty-third street:	From Ontario street to Venango street
Venango street:	From Twenty-third street to Wissahickon avenue
Wissahickon avenue:	From Venango street to Manheim street
Manheim street:	From Wissahickon avenue to Greene street
Greene street:	From Manheim street to Coulter street
Coulter street:	From Greene street to Lena street
Lena street:	From Coulter street to Church lane
Church lane:	From Lena street to Baynton street
Baynton street:	From Church lane to Herman street
Herman street:	From Baynton street to Baynton street
Baynton street:	From Herman street to Washington lane
Washington lane:	From Baynton street to Chew avenue
Chew avenue:	From Washington lane to Mount Airy avenue
Mount Airy avenue:	From Chew avenue to Stenton avenue
Stenton avenue:	From Mount Airy avenue to Gravers lane
Gravers lane:	From Stenton avenue to Shawnee street
Shawnee street:	From Gravers lane to Highland avenue
Highland avenue:	From Shawnee street to Seminole avenue
Seminole avenue:	From Highland avenue to Chestnut Hill avenue
Chestnut Hill avenue:	From Seminole avenue to Germantown avenue
Germantown avenue:	From Chestnut Hill avenue to Hillcrest avenue
Hillcrest avenue:	From Germantown avenue to the Philadelphia City Limits at Stenton avenue and Montgomery County

(b) For its designated “Northern Route,” Sunesys is authorized to install telecommunications cables in authorized existing underground conduit in the following public rights-of-way subject to the conduit owner’s permission:

Callowhill street at the property 401	
North Broad street :	From Broad street to Tenth street
Tenth street:	From Callowhill street to Noble street
Noble street:	From Tenth street to Ninth street

(c) For its designated “Western Route,” Sunesys is authorized to install new conduit, manholes and/or appurtenances within the public rights-of-way at the following locations:

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Thirteenth street: From Callowhill street to Noble street
Girard avenue: From Poplar drive to Thirty-eighth street

(d) For its designate “Western Route,” Sunesys is authorized to install aerial facilities to authorized existing utility poles or trolley catenary poles in and along the following public rights-of-way subject to the utility pole or catenary pole owner’s permission and across private property subject to the property owner’s permission:

Thirteenth street: From Noble street to Wallace street
Wallace street: From Thirteenth street to Sixteenth street
Sixteenth street: From Wallace street to North street
North street: From Sixteenth street to Twentieth street
Twentieth street: From North street to Poplar street
Poplar street: From Twentieth street to Poplar Drive
Poplar Drive: From Poplar street to Girard avenue
Girard avenue: From Poplar drive to Thirty-eighth street
Thirty-eighth street: From Girard avenue to Pennsgrove street at AMTRAK railroad right-of-way and then over private property between Pennsgrove street and Parrish street

Thirty-eighth street: From Parrish street to Brown street
Brown street: From Thirty-eighth street to Forty-second street
Forty-second street: From Brown street to Pennsgrove street
Pennsgrove street: From Forty-second street to Belmont avenue
Belmont avenue: From Pennsgrove street to Parrish street
Parrish street: From Forty-fourth street to Dearborn street and then over private property from Dearborn street to Ramsey street

Parrish street: From Ramsey street to Fifty-fourth street
Fifty-fourth street: From Parrish street to Master street
Master street: From Fifty-fourth street to Haverford avenue
Haverford avenue: From Master street to Sixty eighth street
Sixty-eighth street: From Haverford avenue to Lansdowne avenue
Lansdowne avenue: From Sixty-eighth street to Cardington road
Cardington road: From Lansdowne avenue to Philadelphia City Limits and Delaware County

(e) For its designated “Western Route,” Sunesys is authorized to install telecommunications cables in authorized existing underground conduit in the following public right-of-way subject to the conduit owner’s permission:

Girard avenue: From Poplar drive to Thirty-eighth street

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(f) All telecommunication facilities that include 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. Obtaining approval from the Pennsylvania Public Utility Commission is the sole responsibility of Sunesys.

(g) Sunesys must submit proof of authorization from the governmental body responsible for maintaining any highway bridge crossing over a railroad right-of-way if the Telecommunications System listed in this Section is constructed on or attached to any such bridges.

(h) The said 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 and regulations of the Fairmount Park Commission governing the construction, maintenance, and operation of underground structures and the equipment, facilities and/or appurtenances placed therein and the construction, maintenance and operation of aerial facilities.

(i) 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 or attachment to existing utility poles in the public right-of-way.

(j) Before Sunesys attaches any aerial facilities to existing utility poles along a public right-of-way, Sunesys must identify the specific legislation authorizing the utility pole to be constructed along the public right-of-way, the specific identification number of the utility pole and the specific agreement between the City of Philadelphia and the owner of the utility pole which gives the utility pole owner the right to construct the utility pole within the public right-of-way.

(k) Before Sunesys attaches any aerial facilities to existing catenary poles along a public right-of-way, Sunesys must identify the specific legislation authorizing the electrified street railway system with catenary poles to be constructed in the public right-of-way.

(l) Before Sunesys places any facilities within the boundaries of Fairmount Park, Sunesys must submit authorization, in a form acceptable to the City of Philadelphia, that the Fairmount Park Commission has approved the installation of the

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Telecommunications System within Fairmount Park. The Fairmount Park Commission shall not be required solely by virtue of this Ordinance to approve the construction or installation of the Telecommunication System within Fairmount Park.

(m) Before Sunesys places any facilities on or over private property, Sunesys must submit documentation from the owner of the real property, in a form acceptable to the City of Philadelphia, that the owner has approved the installation of the Telecommunications System on or over the private property. No private property owner shall be required solely by virtue of this Ordinance to approve the construction or installation of the Telecommunication System over private property.

(n) Sunesys shall 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

(o) Sunesys shall mark each manhole constructed as part of the approved route in Section 1 with identification of the owner of the manhole in a manner designated by the City of Philadelphia.

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 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, footway or other real property 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, Fairmount Park or private property owners if affected by the relocation route. This Section shall govern all deviations from the route approved in Section 1, including those deviations which serve as replacement and alternative right-of-ways in relocating

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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, City streets, Fairmount Park and/or private property 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 the 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 the Sunesys Telecommunications System;

(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 the 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 portions of the Telecommunications System listed in Section 1 from the public right-of-way and/or Fairmount Park pursuant to applicable City

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of Philadelphia specifications within sixty (60) days when the Telecommunications System or a portion of the Telecommunications System is no longer used for the purpose authorized by the ordinance or existing law; and

(g) Submit to the City within ninety (90) days of the completion of construction of the telecommunication system listed in Section 1 a copy of the “as built” plans in a format designated by the City and at no cost or expense to the City.

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, City streets, Fairmount Park and private property 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 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 thirty (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 November 15, 2001. The Bill was Signed by the Mayor on November 28, 2001.



Marie B. Hauser
Chief Clerk of the City Council