

# City of Philadelphia



(Bill No. 010506)

## 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 Fairmount Park, within existing conduit, or to attach facilities to existing utility poles of other entities holding a grant pursuant to other City ordinances, subject to such owner of the conduit or utility pole'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 and operate, replace, and remove a telecommunications system and appurtenances for serving Philadelphia School District Administration Building and certain Philadelphia public high schools along, over, in and under the public rights-of-way of the City of Philadelphia and Fairmount Park, within existing conduit or attached to existing utility poles of other entities holding a grant pursuant to other City ordinances, subject to such owner's consent. 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) Administration Building, Twenty-first street and the Benjamin Franklin Parkway

Sunesys is authorized to install facilities within existing underground conduit subject to the owner's permission at the following locations:

Twenty-third street:	From Wallace street to Spring Garden street
Fairmount Park:	From Spring Garden street to Benjamin Franklin Parkway near the two (2) intersections with Twenty-third street
Benjamin Franklin Parkway:	From Entrance to Ramp B, I-676, to Twenty-second street
Twenty-second street:	From Benjamin Franklin Parkway to Arch street
Arch street:	From Twenty-second street to Twenty-third street
Twenty-third street:	From Arch street to Grays Ferry avenue
Grays Ferry avenue:	From Twenty-third street to Bainbridge street
Bainbridge street:	From Grays Ferry avenue to Schuylkill avenue

# City of Philadelphia

BILL NO. 010506 continued

Certified Copy

(b) William Penn High School, Broad street and Master street

Sunesys is authorized to attach aerial facilities to authorized existing utility poles in and along the following public rights-of-way subject to the utility pole owner's permission:

Jefferson street:	From Sixteenth street to Thirteenth street
Thirteenth street:	From Jefferson street to Master street
Master street:	From Thirteenth street to Broad street

(c) Kensington High School, Amber street and Cumberland street

Sunesys is authorized to attach aerial facilities to authorized existing utility poles in and along the following public rights-of-way subject to the utility pole owner's permission:

Frankford avenue:	From Palmer street to Cumberland street
Cumberland street:	From Frankford avenue to Jasper street
Jasper street:	From Cumberland street to Dauphin street
Dauphin street:	From Jasper street to Howard street
Howard street:	From Dauphin street to Montgomery avenue

(d) Northeast High School, Cottman avenue and Algon avenue

Sunesys is authorized to attach aerial facilities to authorized existing utility poles in and along the following public rights-of-way subject to the utility pole owner's permission:

Cottman avenue:	From Dungan road to Algon avenue
Algon avenue:	From Cottman avenue to Faunce street
Faunce street:	From Algon avenue to Dungan road

(e) South Philadelphia High School, Broad street and Snyder avenue and Furness High School, Third street and Mifflin street

Sunesys is authorized to attach aerial facilities to authorized existing utility poles in and along the following public rights-of-way subject to the utility pole owner's permission:

Jackson street:	From Fifteenth street to Second street
Second street:	From Jackson street to McKean street
McKean street:	From Second street to Tenth street

(f) Audenried High School, Thirty-third street and Tasker street

# City of Philadelphia

BILL NO. 010506 continued

Certified Copy

Sunesys is authorized to attach aerial facilities to authorized existing utility poles in and along the following public rights-of-way subject to the utility pole owner's permission:

Tasker street: From Thirty-third street to Twenty-first street

(g) Germantown High School, Germantown avenue and High street and Martin Luther King High School, Stenton avenue and Haines street

Sunesys is authorized to attach aerial facilities to authorized existing utility poles in and along the following public rights-of-way subject to the utility pole owner's permission:

Stenton avenue: From Mount Airy avenue to Gorgas Lane  
Gorgas Lane: From Stenton avenue to Crittenden street  
Crittenden street: From Gorgas Lane to Tulpehocken street  
Tulpehocken street: From Crittenden street to Stenton avenue  
Stenton avenue: From Tulpehocken street to Haines street  
Haines street: From Stenton avenue to Germantown avenue

(h) Lincoln High School, Rowland street and Ryan street

Sunesys is authorized to attach aerial facilities to authorized existing utility poles in and along the following public rights-of-way subject to the utility pole owner's permission:

Crispin street: From Rhawn street to Tudor street  
Tudor street: From Crispin street to Rowland street  
Rowland street: From Tudor street to Ryan street  
Ryan street: From Rowland street to Frankford avenue

(i) Gratz High School, Eighteenth street and Hunting Park avenue

Sunesys is authorized to attach aerial facilities to authorized existing utility poles in and along the following public rights-of-way subject to the utility pole owner's permission:

McFerran street: From Thirteenth street to Pike street  
Pike street: From McFerran street to Eighteenth street  
Eighteenth street: From Pike street to Luzerne street

(j) Strawberry Mansion High School, Ridge avenue and Susquehanna avenue

# City of Philadelphia

BILL NO. 010506 continued

Certified Copy

Sunesys is authorized to attach aerial facilities to authorized existing utility poles in and along the following public rights-of-way subject to the utility pole owner's permission:

Twenty-sixth street:	From Indiana avenue to York street
York street:	From Twenty-sixth street to Thirty-first street
Thirty-first street:	From York street to Susquehanna avenue
Susquehanna avenue:	From Ridge avenue to Thirty-first street

(k) 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.

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

(m) 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, 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.

(n) 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.

(o) 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

# City of Philadelphia

BILL NO. 010506 continued

Certified Copy

owner of the utility pole which gives the utility pole owner the right to construct the utility pole within the public right-of-way.

(p) 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 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.

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 Fairmount Park 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 and Fairmount Park if the extended route is within Fairmount Park. 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 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 and Fairmount Park 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

# City of Philadelphia

BILL NO. 010506 continued

Certified Copy

and right-of-ways within the City of Philadelphia and Fairmount Park. 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 or Fairmount Park pursuant to applicable City 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;

(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.

# City of Philadelphia

BILL NO. 010506 continued

Certified Copy

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 and Fairmount Park 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.

# City of Philadelphia

BILL NO. 010506 continued

Certified Copy

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