

City of Philadelphia



(Bill No. 010385)

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, or on 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 and on the existing utility poles of any other entities holding a grant pursuant to other City ordinances, subject to such owner's consent, or on new Sunesys poles; 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) Sunesys is authorized to install aerial facilities attached to existing utility poles subject to the utility pole owner's permission and to install new Sunesys poles in and along the following public rights-of-way and within the Frankford Creek Channel:

Beginning in the Frankford Creek Channel at its intersection with the Delaware River, then along the east bank of the Frankford Creek Channel, approximately two feet (2') west of the east right-of-way line of the Frankford Creek Channel as defined on City Plan No. 305 to a point approximately twenty feet (20') north of the north right-of-way line of Bath street; then perpendicular across the Frankford Creek Channel to a point approximately twenty feet (20') north of the north house line of Bath street and approximately fifty feet (50') east of the west right-of-way line of the Frankford Creek Channel, then north to a point approximately two feet (2') east of the west right-of-way line of the Frankford Creek Channel and continues parallel to the Frankford Creek Channel west right-of-way line to a point where the channel meets the south right-of-way line of Richmond street; and then into the Richmond street right-of-way in a westerly direction to the intersection of Richmond street and Caster avenue.

City of Philadelphia

BILL NO. 010385 continued

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(b) Sunesys is authorized to install new conduit, manholes and/or appurtenances within the public rights-of-way at the following locations:

Somerset street:	From Salmon street to Richmond street
Richmond street:	From Somerset street to Lehigh avenue

(c) Sunesys is authorized to attach aerial facilities to authorized existing Verizon-Pa Inc., Exelon Company or new Sunesys utility poles in and along the following public rights-of-way subject to the utility pole owner's permission:

Richmond street:	From Caster street to Westmoreland street
Westmoreland street:	From Richmond street to Salmon street
Salmon street:	From Westmoreland street to Somerset street
Somerset street:	From Salmon street to Richmond street
Richmond street:	From Somerset street to Lehigh avenue
Richmond street:	From Lehigh avenue to Beach street
Beach street:	From Richmond street to Columbia avenue
Columbia avenue:	From Beach street to Allen street
Allen street:	From Columbia avenue to Crease street
Crease street:	From Allen street to Frankford avenue
Frankford avenue:	From Crease street to Palmer street
Palmer street:	From Frankford street to Hope street
Hope street:	From Palmer street to Montgomery avenue
Montgomery avenue:	From Hope street to Second street
Second street:	From Montgomery avenue to Fairmount avenue
Fairmount avenue:	From Second street to Thirteenth street
Thirteenth street:	From Fairmount avenue to Noble street
Noble street:	From Thirteenth street to the building 401 North Broad street

(d) 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.

(e) 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.

(f) 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

City of Philadelphia

BILL NO. 010385 continued

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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 and the construction, maintenance and operation of aerial facilities.

(g) 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.

(h) 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 be constructed within the public right-of-way.

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 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 which serve as replacement and alternative right-of-ways in relocating Sunesys pursuant to Section 2 of this Ordinance. All deviations which extend

City of Philadelphia

BILL NO. 010385 continued

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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 and City streets 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 pursuant to applicable City of Philadelphia specifications within sixty (60) days when the Telecommunications System or a portion

City of Philadelphia

BILL NO. 010385 continued

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of the Telecommunications System is no longer used for the purpose authorized by the ordinance or existing law.

(g) Mark in a manner designated by the City the identification of any pole or poles constructed by Sunesys to support the aerial facilities along a public right-of-way that are not along the public right-of-way pursuant to an existing grant of authority to another public utility.

(h) 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 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 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.

City of Philadelphia

BILL NO. 010385 continued

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 14, 2001. The Bill was Signed by the Mayor on August 31, 2001.



Marie B. Hauser
Chief Clerk of the City Council