

City of Philadelphia



(Bill No. 040938)

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 PECO Energy and Verizon utility poles of other entities holding a grant pursuant to other City ordinances, subject to such owner of the conduit or utility poles 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., a Pennsylvania corporation with an office at 202 Titus Avenue, Warrington, PA 18976, and its successors, assigns, and agents (collectively "Sunesys"), subject to the terms and conditions hereinafter set forth, to construct, maintain, operate, replace, and remove a telecommunications system and appurtenances along, in, over and under the public rights-of-way of the City of Philadelphia described below, and/or to place such telecommunications system within existing conduit, and on the existing facilities owned by PECO Energy Company ("PECO Energy") or Verizon Pennsylvania, Inc. ("Verizon") and/or on utility poles or catenary poles of any other entities authorized by 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") along the routes described below, to create a system used to transmit, receive and distribute telecommunications and in particular to serve the schools listed below. Sunesys is not authorized by this Ordinance to provide to subscribers within the City "cable service," as defined at 47 U.S.C. § 522(6) or "video programming," as defined at 47 U.S.C. § 522(20), as an open video system operator pursuant to 47 U.S.C. § 573(a) or otherwise.

(a) Benjamin Rush Middle School, 11081 Knights Road

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

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|-------------------|--|
| Frankford Avenue: | From Convent Road to Knights Road |
| Knights Road: | From Frankford Avenue to Fairdale Road |
| Fairdale Road: | From Knights road to Whiting Road |

(b) George Washington High School, 10175 Bustleton Avenue

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

| | |
|---------------|------------------------------------|
| Knights Road: | From Fairdale Road to Academy Road |
|---------------|------------------------------------|

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|-------------------|--|
| Academy Road: | From Knights Road to Byberry Road |
| Byberry Road: | From Academy Road to Southampton Road |
| Southampton Road: | From Byberry Road to Trevese Road |
| Trevese Road: | From Southampton Road to the Philadelphia City Limits at Trevese Road and County Line Road |
| Worthington Road: | From Southampton Road to Byberry Road |
| Byberry Road: | From Worthington Road to Bustleton Avenue |
| Bustleton Avenue: | From Byberry Road to Haldeman Avenue |

(c) Baldi Middle School, 8801 Verree Road

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

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|---------------|--------------------------------------|
| Rhawn Street: | From Algon Avenue to Verree Road |
| Verree Road: | From Rhawn Street to Alburger Avenue |

(d) Anne Frank Elementary School, 200 Bowler Street

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

| | |
|------------------|--------------------------------------|
| Alburger Avenue: | From Verree Road to Welsh Road |
| Welsh Road: | From Alburger Ave. to Grant Avenue |
| Grant Avenue: | From Welsh Road to Hilspach Street |
| Michener Street: | From Grant Avenue to Hilspach Street |
| Hilspach Street: | From Michener Street to Lott Avenue |
| Lott Avenue: | From Hilspach Street to Hoff Street |
| Hoff Street: | From Lott Avenue to Bowler Street |

(e) Swenson High School, 2750 Red Lion Road

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

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|-------------------|---|
| Lott Avenue: | From Hoff Street to Bustleton Avenue |
| Bustleton Avenue: | From Lott Avenue to Haldeman Avenue |
| Haldeman Avenue: | From Bustleton Avenue to Red Lion Road |
| Red Lion Road: | From Haldeman Avenue to Roosevelt Boulevard |

(f) Swenson High School, 2750 Red Lion Road

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

| | |
|----------------|--|
| Red Lion Road: | From Roosevelt Boulevard to 2750 Red Lion Road |
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(g) Except as provided in sub-sections 1(a) through 1(f) above, Sunesys is not authorized by this Ordinance to construct any underground conduit, ducts, access manholes, or other underground facilities or appurtenances in, under, or along any public rights-of-way of the City of Philadelphia; or to perform any excavation of the public rights-of-way for the purpose of constructing the Telecommunications System, except excavation that is incidental to the installation and attachment of facilities set forth in sub-sections 1(a) through 1(f) above, as determined by the Department of Streets; or to install any new poles in any public rights-of-way.

(h) 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.

(i) 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.

(j) 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 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.

(k) 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 in the specified areas of this Section and is not a guaranty that Sunesys facilities can be placed at any particular location in those areas. 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 occupancy of existing conduit or attachment to existing PECO Energy and Verizon utility poles 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 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 Telecommunications 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

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notice upon Sunesys, Sunesys shall relocate said portion of the Telecommunications System and restore the roadway, or 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 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 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, 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

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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 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 a portion of construction of the Telecommunications 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. The City Solicitor shall include in the Agreement, together with the terms and provisions required by Section 5 of this Ordinance and such other terms and provisions as shall be deemed necessary to protect the interest of the City, provisions setting forth, as a condition of the permissions granted by this Ordinance, Sunesys' representation, warranty, and agreement that it is subject to and will comply fully with (i) the terms and conditions of this Ordinance and all other applicable ordinances of the City of Philadelphia, and (ii) the terms and conditions of all ordinances of general application currently in existence or subsequently enacted that are related to the City of Philadelphia's management of the public rights-of-way, the right of occupancy of the public rights-of-way, and/or the use of property in, under, over, along and/or across the streets, sidewalks, alleyways, easements and rights-of-way within the City of Philadelphia.

SECTION 7. The permission granted to Sunesys to construct, maintain and operate, replace and remove a Telecommunications System along, in and under rights-of-way, public right-of-ways and City streets 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 for installation and or construction of the new facilities in the areas 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 has 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 granted under the Agreement from one entity to another so as to ensure 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 December 16, 2004. The Bill was Signed by the Mayor on January 25, 2005.



Patricia Rafferty
Chief Clerk of the City Council