

## Legislation Text

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Granting permission to Sunesys, Inc., its successors and assigns to construct, maintain and operate, replace, and remove a ductbank for certain telecommunications uses under and in the public rights-of-way, City streets and the Frankford Creek Channel; 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 ductbank of eight (8) five inch (5") diameter conduit with four (4) one and one half inch (1½") diameter inner ducts in each in and under the public rights-of-way of the City of Philadelphia (the "City") and a portion of the Frankford Creek Channel, for the purpose of providing access for telecommunications service providers to a telecommunications system that extend under the Delaware River to New Jersey. The ductbank provides space for facilities that provide telecommunication switching, Internet access and electronic commerce, and related telecommunications services and activities.

(a) Sunesys is authorized to construct, maintain and operate, replace and remove a ductbank consisting of eight (8) five inch (5") diameter conduit with four (4) one and one half inch (1½") diameter inner ducts in each and manholes in and under the public rights-of-way, streets and a portion of the Frankford Creek Channel in the following locations:

Beginning in the Delaware River where the Frankford Creek Channel meets the Delaware River, then along the east bank of the Frankford Creek Channel at a distance of approximately seven feet (7') west of the east right-of-way line of the Frankford Creek Channel as defined on City Plan No. 305 to a point approximately seven hundred feet (700') north of the north right-of-way line of former Casper; then diagonally across and under the Frankford Creek Channel to a point approximately seven hundred feet (700') south of the south curb line of Richmond street and approximately seven feet (7') east of the west right-of-way line of the Frankford Creek Channel; then along the west bank of the Frankford Creek Channel parallel to the west right-of-way line, approximately seven feet (7') east of the west right-of-way line and continuing north within the Frankford Creek Channel boundary to a point where the Frankford Creek Channel meets the south right-of-way line of Richmond street. The duct bank continues underground in a westerly direction within the Richmond street right-of-way to Lewis street where the duct bank ends.

(b) Sunesys must submit proof of authorization from the governmental body having jurisdiction over the Delaware River and the Frankford Creek Channel or private property or where the ductbank is authorized by the ordinance.

(c) The ductbank 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 and regulations of the City 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.

(d) Sunesys shall reserve two (2) of the twenty (20) inner ducts described in Section 1(a) for the use of the City for whatever purpose the City, in its sole discretion, may determine, without conditions and at no cost or expense to the City for the construction, maintenance and/or use of the reserved ducts.

(e) The permission granted by this Ordinance is conditioned upon the approval of the Department of Streets as to the construction and installation of the ductbank at any location along the route and is not a guaranty that the ductbank can be placed at any particular location along the route. In the event that it is impossible or infeasible to construct and install any portion of the ductbank along the route listed in this Ordinance, Sunesys may propose and the Department of Streets may approve an alternative route for the location of such portion of the ductbank; such alternative route as may be approved by the Department of Streets is hereby authorized. 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 of conduit or a ductbank, or occupancy of existing conduit or ductbank(s), in the public right-of-way.

(f) All facilities constructed pursuant to this Ordinance that include an alteration to a rail/highway crossing, which includes such crossings as they 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. Sunesys has the sole responsibility to obtain any required Pennsylvania Public Utility Commission approval(s).

(g) Prior to the installation or operation of the ductbank authorized by this Ordinance, or of any telecommunications or other facilities or appurtenances thereto, including but not limited to fiber optic and other cables and facilities for the provision of telecommunications service as defined at 47 U.S.C. § 153(46), the owner of the facilities and/or appurtenances must have obtained, by Ordinance of City Council, the City's permission to occupy a right-of-way in the City, and must submit to the City information on the proposed installation and/or operation, in form and content acceptable to the City, for the City's review and approval. No City department, agency, board, or commission shall be required solely by virtue of this Ordinance to issue any permit, license, or approval for occupancy of the ductbank to any entity seeking to install telecommunications or other facilities or appurtenances in the ductbank.

SECTION 2. In the event that any portion of said ductbank 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 ductbank. Within one hundred eighty (180) days of service of said notice upon Sunesys, Sunesys shall relocate said portion of the ductbank and restore any portions of the roadway, footway or the Frankford Creek Channel disturbed by the relocation to the condition it was in prior to the relocation, without cost or expense to the City. In the event that Sunesys is required to remove any portion of the ductbank 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 ductbank which may be utilized without unreasonable inconvenience; such alternative location as may be approved by the Streets Department is hereby authorized.

SECTION 3. The Philadelphia Code Section 11-204(5) does not apply to the ductbank authorized by this Ordinance.

SECTION 4. The permission granted to Sunesys by this Ordinance shall be and is subject to the terms and conditions of this Ordinance and other applicable ordinances of the City, including, but not limited to, all ordinances of general application currently in existence or subsequently enacted that are related to the right of occupancy and use of property in, under, over, along and across the streets, sidewalks, alleyways, easements and rights-of-way, the Frankford Creek Channel and the Delaware River within the City.

SECTION 5. Nothing in this Ordinance authorizes Sunesys to:

(a) 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.

(b) Furnish “telecommunications service” as defined at 47 U.S.C. § 153(46).

(c) Install or operate, or permit any other entities to install or operate, any fiber optic or other cables or facilities or appurtenances thereto in the ductbank authorized by this Ordinance for the purpose of Sunesys itself providing such telecommunications service.

(d) Permit occupancy of the ductbank by any entity that has not obtained permission to occupy a right-of-way in the City by ordinance of City Council and all permits required by the City for such occupancy.

SECTION 6. 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 ductbank.

(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 the Sunesys ductbank.

(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 may now or in the future impose for a licensee’s occupation of City property, streets, rights-of-way the Frankford Creek Channel and the Delaware River.

(f) Remove any or all portions of the ductbank listed in Section 1 from the public rights-of-way, Frankford Creek Channel and Delaware River pursuant to applicable City specifications within sixty (60) days when the ductbank or a portion of the ductbank is no longer used for the purpose authorized by this Ordinance

or existing law.

(g) Make necessary adjustments, or reimburse the City for making adjustments, to any manhole constructed as part of the ductbank approved in Section 1 when instructed to do so by the Streets Department in preparation of a street paving project.

(h) Mark each manhole constructed as part of the ductbank approved in Section 1 with identification of the owner of the manhole in a manner designated by the City.

(i) Provide that Sunesys shall not sell or transfer any individual duct within the ductbank of eight (8) five inch (5") diameter conduit with four (4) one and one half inch (1½") diameter inner ducts or a portion of the capacity of an individual duct within the ductbank to another entity without the express authorization of the City.

The permission granted by this Ordinance and the rights and privileges provided herein, are strictly conditional on Sunesys entering into such Agreement.

SECTION 7. 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 8. The permission granted to Sunesys to construct, maintain and operate, replace and remove a ductbank for telecommunications use under and in the public rights-of-way and City streets listed in Section 1 of this Ordinance shall expire without any further action by the City if Sunesys has not entered into the Agreement as required by Section 6 within one (1) year after this Ordinance becomes law.

SECTION 9. The permission granted to Sunesys for installation and or construction of the ductbank along the route identified in this Ordinance shall expire without any further action by the City unless Sunesys has substantially completed the construction of the ductbank authorized herein within two (2) years after the date this Ordinance becomes law. A change in ownership of the assets of Sunesys does not, without express written permission of the City, extend the time for substantially completing the construction of the ductbank authorized herein.

SECTION 10. The City reserves the right to charge a transfer fee for any agreement transferring the rights-of-way license from one entity to another so as to insure that all costs incurred by the City related to the transfer are reimbursed. The transferee must pay all costs incurred by the City 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 11. 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.