



Legislation Text

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ORDINANCE GRANTING PERMISSION TO SUNESYS, LLC TO INSTALL AND MAINTAIN 1,783 FEET OF FIBER OPTIC TELECOMMUNICATIONS NETWORK WITHIN THE PUBLIC RIGHT-OF-WAY FOR SERVICE TO THE STATE OPERATED NEWARK PUBLIC SCHOOL DISTRICT.

WHEREAS, Sunesys, LLC, a Delaware Corporation, 185 Titus Avenue, Warrington, Pennsylvania 18976, desires to build a telecommunication network for the service of the State Operated Newark Public School District, with conduit as set forth on Exhibit A-1, attached hereto and made part hereof; and

WHEREAS, the Municipal Council of the City of Newark previously adopted Ordinance 6S&FH, on August 3, 2005, granting non-exclusive permission to Sunesys, Inc., to accomplish the foregoing for different locations; however, the Agreement approved by said Ordinance may not have been fully executed or recorded in the records of the Essex County Register's Office; and

WHEREAS, the Municipal Council of the City of Newark is desirous of granting the requested permissions, on a non-exclusive basis to Sunesys, LLC, for use of the public right-of-way for the purpose of providing certain telecommunications services to the State Operated Newark Public School District, in exchange for the payment of the applicable administrative and certain annual charges for the term of the permissions granted.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:

Section 1. Permission is hereby granted to Sunesys, LLC, its successors and assigns to install, operate, repair, and maintain 1,783 linear feet of fiber optic telecommunications network for the service of the State Operated Newark Public School District, as set forth on the attached maps dated February 15, 2012, Numbered 228-461, 225-456, 229-459, 229-455, 227-458, and 226-456. Permission is specifically granted for those areas specifically identified on the maps attached hereto and made a part hereof. The Mayor and/or his designee, the Director of the Department of Engineering, are hereby authorized to execute an Agreement with Sunesys, LLC, a Delaware Corporation, 185 Titus Avenue, Warrington, Pennsylvania 18976, for permission to use the City of Newark right-of-way, on a non-exclusive basis, for the occupation or use in connection with the provision of Telecommunications Services to the State Operated Newark Public School District, including any renewals or amendments thereof, in accordance with the terms and conditions of this Ordinance.

Section 2. No part of the proposed fiber optic telecommunications network shall be laid over existing utilities. Sunesys, LLC shall contact utility companies and NJ One Call for utility mark-outs prior to the commencement of any work.

Section 3. Sunesys, LLC, its successors and assigns, shall adhere to all applicable requirements of Federal, State and Local laws.

Section 4. Such permission is hereby given upon the condition and provision that Sunesys, LLC, its successors, assigns, agents, contractors, and subcontractors, not only indemnify and save harmless the City of Newark, its elected officials, directors, officers, employees, agents, and servants, from any claims whatsoever arising from or in any way connected with the granting or use of the public right-of-way, but shall agree to assume on behalf of the City of Newark, defense of any action at law or equity which may be brought against the City of Newark upon such claims or from claims arising from the installation, operation, repair and maintenance of the fiber optic telecommunications network and any associated or connected telecommunications equipment.

Section 5. In addition to the aforesaid indemnity agreement, Sunesys, LLC, its successors, assigns, agents, contractors, and subcontractors shall at its own cost and expense, procure and keep at all times in full force and effect paid up policies for Comprehensive General Liability Insurance in favor of the City of Newark, in an amount of at least \$5,000,000 covering bodily injury and property damage arising out of any one accident, said policies to be approved by the Risk Manager and the Corporation Counsel of the City of Newark. Proof of said coverage, naming the City of Newark as an additional insured and including the indemnification clause in Section 4 of the Agreement and/or the alternative, appropriate Additional Insured Endorsement shall be filed with the City Clerk prior to the installation of any telecommunications fiber optic cable or equipment. The City shall have the right to require or increase the amount of Comprehensive General Liability Insurance and to alter the terms of insurance called for under this section upon prior notice to Sunesys, LLC. Said insurance shall not be subject to cancellation or change until thirty (30) days after the City Clerk has received written notice thereof as evidenced by return receipt or certified or registered letter. Failure of Sunesys, LLC to submit insurance certificate approved by the Risk Manager and the Corporation Counsel of the City of Newark prior to the installation of the telecommunications fiber optic cable or equipment shall render this Ordinance and the rights granted hereunder invalid. Sunesys, LLC, shall forward a copy of the Certificate of Insurance and any necessary policy endorsement to the Secretary of the City of Newark's Insurance Fund Commission and to the Department of Engineering, for filing with the City Clerk, together with any Agreement authorized by this Ordinance.

Section 6. Such permission is hereby given upon the further condition that in the use of the public right-of-way, Sunesys, LLC its successors, assigns, agents, contractors, and subcontractors shall become subject to any applicable Ordinance or Resolution now or hereafter adopted by the City of Newark that may apply to the permissions granted herein, as well as any easement and/or license agreement granted and any fiber optic telecommunications network and telecommunications equipment placed in the right-of-way, and Sunesys, LLC, its successors, assigns, agents, contractors, and subcontractors shall become liable for the payment of any fee hereafter imposed by the City of Newark by such Ordinance or Resolution.

Section 7. As-built plans shall be filed with the Director of the Department of Engineering within 30 days of the completion of work authorized under this Ordinance. The plans shall be in a form approved by the Director of Engineering. In addition, a survey by a licensed surveyor in the State of New Jersey must be submitted with GPS location of all points.

Section 8. Such permission is hereby given upon the condition that Sunesys, LLC shall file with the City of Newark its written acceptance of the provisions of this Ordinance within 30 days from the date of adoption and shall pay on demand of the City of Newark the amount and cost and expense to the City for all official publications of this Ordinance.

Section 9. Such permission is hereby given upon the condition that Sunesys, LLC shall obtain all applicable permits which may be required by the City of Newark and shall be responsible for the repair of any damage to including but not limited to paving, existing utility lines, or any surface or subsurface installations arising from the installation, repair, or maintenance of the fiber optic telecommunications network. Sunesys, LLC shall also become a member utility of NJ One Call.

Section 10. In the event the fiber optic telecommunications network and/or telecommunications equipment covered in the aforesaid easement and/or license agreement is no longer used, or used for a purpose other than for the original intent by either Sunesys, LLC or its successors or assigns in title, the City of Newark shall be so notified, and it shall have the right to terminate this easement and/or license agreement and upon such termination all rights shall revert to the City.

Section 11. Sunesys, LLC, subject to the approval of the City of Newark Corporation Counsel, shall record this Ordinance and any Agreement authorized herein or any other necessary instrument in the Essex County Registers Office, giving notice of the existence of the easement, if so created by this Ordinance. That instrument shall be executed on behalf of the City of Newark by the Director of Engineering and attested to by the City Clerk who shall affix the City Seal thereto. The cost of recordation of any instruments shall be at the sole cost of Sunesys, LLC .

Section 12. Sunesys, LLC shall be responsible for milling, repaving and restriping, curb to curb, those streets on the proposed conduit route where any new conduit is proposed or where the streets may be disturbed by any work authorized by this Ordinance. Sunesys, LLC., and its successors, assigns, contractors and subcontractors, shall be responsible for the restoration (which may include replacement) and repairs to any and all portions of the City of Newark's right-of-way, where installation of the fiber optic telecommunications network and/or equipment has been proposed, approved and installed. All work must be coordinated with and approved by the Director of Engineering, who shall be the final arbiter of whether repair or replacement is necessary.

Section 13. The permissions authorized herein shall be a period of ten (10) years. After ten (10) years from the date of adoption of this Ordinance, the City of Newark shall have the right to terminate permission and/or renegotiate the terms, subject to approval by Ordinance.

Section 14. For the rights and privileges herein granted, Sunesys, LLC shall pay the City of Newark on January 15th of each succeeding year a fee of \$2.50 per linear foot of network or conduit installed for a total of Four Thousand Four Hundred and Fifty-Eight dollars (\$4,458.00), plus an additional annual payment of Five Thousand dollars (\$5,000.00), as provided in the Revised Ordinances of the City of Newark, in particular, 6S & FF, May 19, 1999.

Section 15. This Ordinance shall take effect upon promulgation and passage in accordance with law.

STATEMENT

This Ordinance grants permission to Sunesys, LLC, to locate, place, attach, install, operate, control, and maintain Telecommunications Equipment in the Public Way (as defined in the attached License Agreement) for service to the State Operated Newark Public School District.