

16-R-11

A RESOLUTION

**Authorizing the City Manager to Execute an Easement Agreement
with Sunesys, LLC for the Installation of Dark Fiber Optic Cable**

WHEREAS, the City and Sunesys, LLC, a Delaware limited liability company ("Sunesys") desire to enter into an easement agreement, the City granting an easement for the installation of dark fiber optic cable (the "Easement Agreement") on public property at Lyons Street, West to Asbury Avenue, North of Asbury Avenue to Simpson Street, West on Simpson Street to Green Bay Road, Southeast on Green Bay Road to Asbury Avenue, South on Asbury Avenue to Davis Street, all within the City of Evanston (the "Easement Area"); and

WHEREAS, Sunesys desires a temporary construction easement and a twenty (20) year exclusive easement for continued use of a three feet (3') wide strip of land within the Easement Area, more fully detailed in the Easement Agreement attached as Exhibit "1".

WHEREAS, the easement will be for Sunesys to construct, reconstruct, operate, maintain, and repair a dark fiber optic system ("the Dark Fiber System") and to serve the central quadrant of the City of Evanston, Illinois businesses, on the real estate legally described on Exhibit "A", attached to Exhibit "1".

WHEREAS, installation of the dark fiber optic system requires boring for underground conduits with no above-ground lines except for fiber entry points into the buildings; and

WHEREAS, the City is willing to grant to the Company the easement aforesaid upon the conditions and representations set forth in the Easement Agreement.

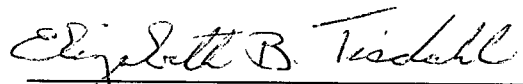
**NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF EVANSTON, COOK COUNTY, ILLINOIS:**

SECTION 1: That the City Manager is hereby authorized and directed to sign, and the City Clerk is hereby authorized and directed to attest, on behalf of the City of Evanston, an Easement Agreement for the term of twenty (20) years between the City of Evanston and Sunesys, LLC, attached hereto as Exhibit 1 and incorporated herein by reference, providing for the installation dark fiber optic cable in the City.

SECTION 2: That the City Manager or his designee is hereby authorized and directed to negotiate any additional terms and conditions of the Easement Agreement as may be determined to be in the best interests of the City.

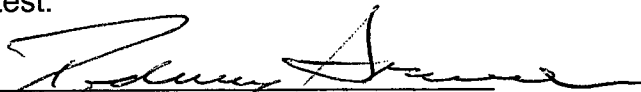
SECTION 3: That Sunesys shall, at its cost, record a certified copy of this resolution, including all Exhibits attached hereto, with the Cook County Recorder of Deeds, before the City may issue any permits related to the construction or installation of the utility cabinets on the Subject Property.

SECTION 4: That this resolution shall be in full force and effect from and after the date of its passage and approval in the manner provided by law.



Elizabeth B. Tisdahl, Mayor

Attest:


Rodney Greene, City Clerk

Adopted: March 28, 2011

EXHIBIT 1
EASEMENT AGREEMENT



110-610016

Doc#: 1109610016 Fee: \$172.00
Eugene "Gene" Moore RHSP Fee: \$10.00
Cook County Recorder of Deeds
Date: 04/06/2011 11:37 AM Pg: 1 of 0

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[FOR RECORDING PURPOSES ONLY]

Please return recorded Easement Agreement to:

City of Evanston
Attn: Law Department
2100 Ridge Avenue, Room 4400
Evanston, IL 60201

EASEMENT AGREEMENT FOR DARK FIBER OPTIC CABLE

THIS EASEMENT AGREEMENT, made and entered into this 31st day of March, 2011, by and between the CITY OF EVANSTON, a municipal corporation organized and existing under the laws of the State of Illinois (the "City"); and SUNESYS, LLC a Delaware limited liability company (the "Company"). Hereinafter the City and the Company shall be referred to herein as the "Parties".

WHEREAS, the Company desires a twenty (20) year exclusive easement for continued use of a three feet (3') wide strip of land, with a minimum eighteen (18) inches from the surface of the roadway at Lyons Street, West to Asbury Avenue, North of Asbury Avenue to Simpson Street, West on Simpson Street to Green Bay Road, Southeast on Green Bay Road to Asbury Avenue, South on Asbury Avenue to Davis Street, all within the City of Evanston, and at the manhole areas marked on Exhibit "A", the easement area will be three feet (3') all within the City of Evanston. The easement will be for Company to construct, reconstruct, operate, maintain, and repair a dark fiber optic system ("the Dark Fiber System") and to serve the central quadrant of the City of Evanston, Illinois businesses, on the real estate legally described and depicted in Exhibit "A", which is attached hereto and incorporated herein by reference (the "Easement Premises"); and

WHEREAS, installation of a fiber optic system generally requires boring for underground conduits with no above-ground lines except for fiber entry points into the buildings; and

WHEREAS, the City is willing to grant to the Company the easement aforesaid upon the conditions hereinafter set forth;

WHEREAS, the City and Company have authorized the execution of this Agreement as an exercise of the City's home rule authority and the Company's corporate authority;

WHEREAS, the City Council enacted Resolution 16-R-11 on March 28, 2011 to authorize the City Manager to sign this Agreement;

WHEREAS, the purposes, powers, rights, objectives, and responsibilities of the City and Company under this Agreement are fully set forth herein.

NOW, THEREFORE, for and in consideration of the representations, covenants, conditions, undertakings, and agreements herein made, the parties hereto agree as follows:

ARTICLE ONE: TERM OF EASEMENT

1.01 The City hereby grants unto the Company a permanent three foot (3') exclusive easement, right, privilege, and authority for a term of twenty (20) years commencing on March 31, 2011, and terminating on March 31, 2031, for the sole and exclusive purpose to construct, reconstruct, operate, maintain, repair a dark fiber optic system in and under the City's public ways, to serve the central quadrant of the City of Evanston, Illinois (the "Easement"), hereinafter the improvements to the Easement Premises shall be referred to as the "Improvements and Facilities," and as aforementioned, legally described on Exhibit "A".

1.02 The City hereby grants and conveys to Company, and Company's contractors, subcontractors, agents, employees, and representatives, a non-exclusive temporary construction easement ("Temporary Construction Easement") to enter in, upon, under and across that portion of the Easement Premises. All costs related to the construction of the Facilities and Improvements shall be sole

responsibilities of Company. The Temporary Construction Easement shall terminate on the date that Company completes construction of the Facilities and Improvements.

1.03 The Parties agree to cooperate fully to accomplish the Total Fiber Plan as depicted on Exhibit "C" attached hereto and incorporated herein by reference. The Company agrees to cause the general contractor to apply for, and the City agrees to issue when application is complete, right of way permits for construction of the Total Fiber Plan.

1.04 The Company shall complete the work contemplated for the Dark Fiber System and the Total Fiber Plan pursuant to permits issued per Title 7, Chapter 17 of the City Code. The Company represents that it will follow all State of Illinois JULIE guidelines and the City is not responsible for ensuring that the Company follows said guidelines.

1.05 The Company covenants and agrees in consideration of the grant of said easement to pay the City an initial easement fee in the amount of \$69,000.00 (Sixty-Nine Thousand and no/100 Dollars), which is payable contemporaneously with Company's execution and delivery hereof. At the end of said easement term, the Parties shall revisit the easement fee and negotiate any additional necessary conditions in order to renew the easement agreement.

ARTICLE TWO: CONSTRUCTION OF FACILITIES AND IMPROVEMENTS

2.01 The construction and installation of the Improvements and Facilities of the Company on the Easement Premises shall be in accordance with plans and specifications therefore prepared at Company's expense and supplied to the City by the Company. No work shall commence until said plans and specifications have been approved in writing by the Chief Engineer of the City.

2.02 The construction and installation of the Improvements and Facilities by the Company on the Easement Premises shall be done to the satisfaction of the City Engineer. Grantee shall complete construction of the Facilities and Improvements and shall restore the surface of Easement Premises to the condition which existed prior to such construction (collectively the "Total Fiber Work") within six (6) months of the date contemplated herein, June 2011, then the City will send a written notice (the "First Notice"), subject to Force Majeure (as defined below). In the event Company has not completed the Total Fiber Work by the end of such six (6) month period, City shall be permitted to send a written notice (the "Second Notice") to Company stating that Company must complete such Total Fiber Work within forty-five (45) days of receipt of the Second Notice. If Grantee has not completed the Total Fiber Work within such forty-five (45) day period, Grantor, upon written demand to Grantee, shall be permitted to collect a per diem fee from Grantee in the amount \$150.00 for each day beyond such forty-five (45) period that Grantee has not completed the Total Fiber Work. As used herein, the term "Force Majeure" shall mean labor disputes, acts of God, moratoriums, war, riots, insurrections, civil commotion, a general inability to obtain labor or materials or reasonable substitutes for either, fire, unusual delay in transportation, severe and adverse weather conditions preventing performance of the Total Fiber Work, unavoidable casualties, unforeseeable acts or failures to act by any governmental entity, quasi-governmental entity and/or utility company or their respective agents or employees (including but not limited to the failure to install utility improvements), unforeseeable governmental, quasi-governmental or utility company restrictions, regulations or controls including the inability to obtain the necessary approvals necessary to complete, among other things, the Total Fiber Work and delays caused by the breach of this Easement Agreement or default under this Easement Agreement by City.

2.03 Company shall construct, install, operate, maintain, and remove the Improvements and Facilities in a good and workmanlike manner at its sole cost, risk, and expense. The Company shall be solely responsible for providing maintenance support for the Facilities and Improvements, located in the

Easement Premises. The Company shall be solely responsible for any cost and expenditure associated with any and all costs associated in anyway with the Facilities and Improvements during the duration of this Easement Agreement.

2.04 The Company shall relocate or remove the Improvements and Facilities existing or constructed upon the Easement Premises at no cost to the City: In the event that said relocation or removal is required for the corporate purposes of the City.

ARTICLE THREE: INDEMINIFICATION AND INSURANCE OBLIGATIONS

3.01 The City expressly retains its interest in and rights to the use and occupation of the Easement Premises subject to the easement rights herein granted, and the City may grant further easements, assign, sell, or lease the same to other parties subject to the Company's right of use and a reasonable means of access to said Improvements and Facilities for construction, reconstruction, operation, maintenance, repair or removal thereof.

3.02 The Company shall be solely responsible for and shall defend, indemnify, keep and save harmless the City, its Commissioners, officers, agents, attorneys, employees, against all injuries, deaths, losses, damages, claims, patent claims, liens, suits, liabilities, judgments, costs and expenses which may in anywise accrue, directly or indirectly, against the City, its Commissioners, officers, attorneys, agents, and employees, in consequence of the granting of this Easement, or which may in anywise result therefrom or from any work done hereunder, whether or not it shall be alleged or determined that the act was caused through negligence or omission of the Company or Company's contractors, subcontractors or their agents and the Company shall, at Company's sole expense, appear, defend and pay all charges or attorneys and all costs and other expenses arising therefrom or incurred in connection therewith, and, if any judgment shall be rendered against the City, its Commissioners, officers, attorneys, agents, or employees, in any such action, the Company shall, at Company's sole expense, satisfy and discharge the same provided that Company shall first have been given prior notice of the suit in which judgment has been or shall be rendered, Company shall have been given an opportunity to defend the same and the City shall have given Company its full cooperation. Company expressly understands and agrees that any performance bond or insurance protection required by this Easement, or otherwise provided by Company, shall in no way limit the responsibility to indemnify, keep and save harmless and defend the City as herein provided. Company expressly understands and agrees that any insurance protection or bond required by this Easement, or otherwise provided by Company, shall in no way limit the responsibility to defend, indemnify, keep and save harmless the City, as hereinabove provided.

3.03 The Company, prior to entering upon said premises and using the same for the purposes for which this Easement is granted, shall procure, maintain and keep in force, at Company's expense, the following public liability and property damage insurance in which the City, its Commissioners, officers, agents, and employees, are a named insured as well as fire and extended coverage, and all-risk property insurance ("CLAIMS MADE" policies are unacceptable) in which the City is named as an additional insured from a company to be approved by the City, each afore-referenced policy shall have limits of not less than the following:

A. COMPREHENSIVE GENERAL LIABILITY:

1. Combined Single Limit Bodily Injury Liability, and
2. Property Damage Liability (including Liability for Environmental Contamination of Adjacent Properties) in the amount of not less than Four Million and 00/100 Dollars (\$4,000,000.00) per Occurrence; and

B. ALL RISK PROPERTY INSURANCE: including Coverage for Environmental Contamination of Easement Premises, in the amount of not less than Four Million and 00/100 Dollars (\$4,000,000.00) per Occurrence.

i. Commercial General Liability insurance including coverage for bodily injury (including death), operations of Grantee, and limits of liability coverage in the following amounts: (a) \$1,000,000 general aggregate (other than products-completed operations); (b) \$1,000,000 products-completed operations aggregate limit; (c) \$1,000,000 personal and advertising injury limit per claim; and (d) \$1,000,000 primary liability per claim limit. Grantor shall be listed as an additional insured under said policies.

ii. Commercial auto liability insurance covering Grantee's owned, hired, borrowed and non-owned vehicles, with limits of liability coverage in the amount of \$1,000,000 primary combined bodily injury and property damage liability per claim and aggregate limit.

iii. Workers compensation insurance with respect to all of Grantee's employees and officers, regardless of whether such coverage or insurance is mandatory or merely elective under applicable law, with limits of liability and coverage as required by applicable law.

iv. Employer's liability insurance with limits of liability coverage of \$1,000,000 each accident, \$1,000,000 each employee-disease, and \$1,000,000 policy limit-disease.

v. Excess or umbrella liability insurance in an amount of \$2,000,000 per claim and aggregate.

3.04 Prior to entering upon said Easement Premises, and thereafter on the anniversary date of such policies, the Company shall furnish to the City certificates of such insurance or other suitable evidence that such insurance coverage has been procured and is maintained in full force and effect. Upon City's written request, Company shall provide City with copies of the actual insurance policies within ten (10) days of City's request for same. Such certificates and insurance policies shall clearly identify the premises and shall provide that no change, modification in or cancellation of any insurance shall become effective until the expiration of thirty (30) days after written notice thereof shall have been given by the insurance company to the City. The provisions of this paragraph shall in no wise limit the liability of the Company as set forth in the provisions of paragraph 4.02 below, or

ARTICLE FOUR: COVENANTS AND REPRESENTATIONS

4.01 The Company, prior to entering upon said premises and using the same for the purposes for which this Easement is granted, shall, at Company's sole cost and expense, obtain all permits, consents, and licenses which maybe required under any and all statutes, laws, ordinances, and regulations of the City, the United States of America, the State of Illinois, the county, or the city, village, town, or municipality in which the subject property is located, and furnish to the City suitable evidence thereof.

4.02 The Company represents and warrants that it will record this Easement Agreement and all associated exhibits with the Cook County Recorder of Deeds within 30 days of execution.

4.032 The Company covenants and agrees that it shall strictly comply with any and all statutes, laws, ordinances, and regulations of the City, the United States of America, the State of Illinois, the county, and the city, village, town, or municipality in which the subject property is located, which in any manner affects this Easement, any work done hereunder or control or limit in any way the actions of Company, its agents, servants, and employees, or of any contractor or subcontractor of Company, or their employees. The Parties acknowledge that if any conflict occurs between this Easement Agreement and any applicable statutes, laws, ordinances, and regulations, that the more restrictive laws are applicable.

4.04 The Company agrees to protect all existing City facilities within the Easement Premises, including, but not limited to, water system and appurtenances, sewer system and appurtenances, street light and traffic signal systems and appurtenances and fiber optic system and appurtenances.

4.05 In the event of any default on the part of the Company to faithfully keep and perform all the covenants, agreements, and undertakings herein agreed by it to be kept and performed, or if said Improvements and Facilities are abandoned, the City shall give the Company notice in writing of such default or abandonment; and if such default or abandonment shall not have been rectified within thirty (30) days after receipt of such notice by the Company, all rights and privileges granted herein by the City to the Company may be terminated by the City; and upon such termination, the Company shall immediately vacate the Easement Premises and remove its Improvements and Facilities from said real estate and restore the land to its condition prior to Company's entry thereon, all at the sole cost of the Company.

4.06 The Company shall have the right to give the City written notice to cease and terminate all rights and privileges under this Agreement. In the event of such termination, the Company shall have a period of one hundred twenty (120) days from and after such termination date to remove the Improvements and Facilities and to restore the land to its original condition at no cost to the City. The expiration of said removal and restoration date shall in no event extend beyond the expiration date of this Easement, including any renewals thereof.

4.07 The Company understands and agrees that upon the expiration of this Easement, including any renewals thereof, Company shall have removed or caused to be removed its Improvements and Facilities and any other things which Company has erected or placed upon said Easement Premises. Company further agrees to yield up said Easement Premises in as good condition as when the same was entered upon by the Company. Upon Company's failure to do so, the City may do so at the sole expense and cost of Company.

4.08 The Company also agrees that if the City incurs any additional expense for additional work which the City would not have had to incur if this Easement had not been executed, then, in that event, the Company agrees to pay to the City such additional expense as determined by the Chief Engineer of the City, promptly upon rendition of bills therefore to the Company.

4.09 The Company covenants and agrees that it will reimburse the City, make all necessary repairs at its sole cost and expense and otherwise keep and save harmless the City from any loss, cost, or expense arising out of the granting of this Easement suffered to property of the City by way of damage to or destruction thereof, caused by any act or omission of the Company, Company's agents, employees, contractors, subcontractors, or anyone else acting through or on behalf of Company, its agents, employees, contractors, or subcontractors.

4.10 During the term of this Easement, the City shall not be liable to the Company for any loss, cost, or expense which the Company shall sustain by reason of any damage to its property or business caused by or growing out of the construction, repair, reconstruction, maintenance, existence, operation, or failure of any of the sewers, structures, channels, or other works or equipment of the City now located or to be constructed on said Easement Premises, or on the land of the City adjacent to said Easement Premises, provided, however, that the foregoing shall not release any contractor or subcontractor working for the City from claims by the Company for any loss, cost or expense resulting from the negligence or willful misconduct of such contractor or subcontractor.

ARTICLE FIVE: NOTICE

5.01 Detailed plans of subsequent construction or material alteration of the Company's Improvements and Facilities shall first be submitted to the Chief Engineer of the City for approval. Construction work shall not begin until such approval is given to Company in writing.

5.02 Any notice herein provided to be given shall be deemed properly served if delivered in writing personally or mailed by registered or certified US Postal Service Mail, postage prepaid, return receipt requested to the City in care of the:

If to the City: City of Evanston
 Attn: Director of Utilities
 2100 Ridge Avenue
 Evanston, IL 60201

With a Copy to: City of Evanston
 Attn: Corporation Counsel
 2100 Ridge Avenue, Suite 4400
 Evanston, IL 60201
 Fax: (847) 448-8093

If to the Company: Sunesys LLC
 Attn: Paul Bradshaw
 185 Titus Avenue
 Warrington, PA 18976
 Fax: (267) 927-2099

or to such other persons or addresses as either party may from time to time designate.

ARTICLE SIX: ASSIGNMENT and LEASING

6.01 The Parties agree that the Easement granted hereunder shall inure to the benefit of Company, its successors, and agents. The Company shall not voluntarily, or by operation of law, assign, lease, sublease, or otherwise transfer or encumber all or any part of Company's interest in this Easement or in the Premises to any other governmental agency, individual, partnership, joint venture, corporation, land trust, or other entity without prior written consent of the City, provided, however, that the Company may assign or transfer the Company's interest in this easement to a person controlling, controlled by or under common control with the Company (an "Affiliate") upon notice to, but without the City's prior consent; further, provided, that the Affiliate shall assume and agree to be bound by the terms and conditions of the Easement and further that such assignment or transfer to an Affiliate shall not release the Company from its obligations hereunder without a separate written release by the City.

6.02 Company shall notify the City in writing not less than sixty (60) days prior to any proposed assignment or transfer of interest in this Easement. Company shall identify the name and address of the proposed assignee/ transferee and deliver to the City original or certified copies of the proposed assignment, a recital of assignee's personal and financial ability to comply with all the terms and conditions of the Easement Agreement and any other information or documentation requested by the City. The City shall not unreasonably withhold the consent to assignment or transfer.

6.03 Any attempted assignment or transfer of any type not in compliance with these sections shall be void and without force and effect.

ARTICLE SEVEN: ENVIRONMENTAL PROVISIONS

7.01 DEFINITIONS:

- A. “Environmental Laws” shall mean all present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, and similar items of all government agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, State of Illinois, and political subdivisions thereof and all applicable judicial, administrative, and regulatory decrees, judgments, orders, notices or demands relating to industrial hygiene, and the protection of human health or safety from exposure to Hazardous Materials, or the protection of the environment in any respect, including without limitation:
- (1) all requirements, including, without limitation, those pertaining to notification, warning, reporting, licensing, permitting, investigation, and remediation of the presence, creation, manufacture, processing, use, management, distribution, transportation, treatment, storage, disposal, handling, or release of Hazardous Materials;
 - (2) all requirements pertaining to the protection of employees or the public from exposure to Hazardous Materials or injuries or harm associated therewith; and
 - (3) the Comprehensive Environmental Response, Compensation and Liability Act (Superfund or CERCLA) (42 U.S.C. Sec. 9601 *et seq.*), the Resource Conservation and Recovery Act (Solid Waste Disposal Act or RCRA) (42 U.S.C. Sec. 6901 *et seq.*), Clean Air Act (42 U.S.C. Sec. 7401 *et seq.*), the Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. Sec. 1251 *et seq.*), the Emergency Planning and Community Right-to-Know Act (42 U.S.C. Sec. 11001 *et seq.*), the Toxic Substances Control Act (15 U.S.C. Sec. 2601 *et seq.*), the National Environmental Policy Act (42 U.S.C. Sec. 4321 *et seq.*), the Rivers and Harbors Act of 1988 (33 U.S.C. Sec. 401 *et seq.*), the Endangered Species Act of 1973 (16 U.S.C. Sec. 1531 *et seq.*), the Safe Drinking Water Act (42 U.S.C. Sec. 300(f) *et seq.*), the Illinois Environmental Protection Act (415 ILCS 5/1 *et seq.*), and all rules, regulations and guidance documents promulgated or published thereunder, the Occupational Safety and Health Act (29 U.S.C. Sec. 651 *et seq.*), and all similar state, local, and municipal laws relating to public health, safety, or the environment.
- B. “Hazardous Materials” shall mean:
- (1) any and all asbestos, natural gas, synthetic gas, liquefied natural gas, gasoline, diesel fuel, petroleum, petroleum products, petroleum hydrocarbons, petroleum by-products, petroleum derivatives, crude oil and any fraction of it, polychlorinated biphenyls (PCBs), trichloroethylene, urea formaldehyde, and radon gas;
 - (2) any substance (whether solid, liquid, or gaseous in nature), the presence of which (without regard to the action levels, concentrations, or quantity thresholds specified herein) requires investigation or remediation under any federal, state, or local statute, regulation, ordinance, order, action, policy, or common law;

- (3) any substance (whether solid, liquid, or gaseous in nature), which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, or otherwise hazardous or dangerous;
- (4) any substance (whether solid, liquid, or gaseous in nature), the presence of which could cause or threaten to cause a nuisance upon the area subject to easement or to adjacent properties or pose or threaten to pose a hazardous threat to the health or safety of persons on or about such properties;
- (5) any substance (whether solid, liquid, or gaseous in nature), the presence of which on adjacent properties could constitute trespass by or against Company or City;
- (6) any materials, waste, chemicals, and substances (whether solid, liquid, or gaseous in nature) now or hereafter defined, listed, characterized, or referred to in any Environmental Laws as "hazardous substances," "hazardous waste," "infectious waste," "medical waste," "extremely hazardous waste," "hazardous materials," "toxic chemicals," "toxic substances," "toxic waste," "toxic materials," "contaminants," "pollutants," "carcinogens," "reproductive toxicants," or any variant or similar designations;
- (7) any other substance (whether solid, liquid, or gaseous in nature) which is now or hereafter regulated or controlled under any Environmental Laws (without regard to the action levels, concentrations, or quantity thresholds specified herein); or
- (8) any result of the mixing or addition of any of the substances described in this Subsection B with or to other materials.

C. "Phase I Environmental Assessment" shall mean:

- (1) an assessment of the Easement Premises and a reasonable area of the adjacent premises owned by the City performed by an independent and duly qualified, licensed engineer with experience and expertise in conducting environmental assessments of real estate, bedrock, and groundwater of the type found on the Easement Premises and said assessment shall include, but not necessarily be limited to, a historical review of the use (abuse) of the Easement Premises, a review of the utilization and maintenance of Hazardous Materials on the Easement Premises, review of the Easement Premises' permit and enforcement history (by review of regulatory agency records), a site reconnaissance and physical survey, inspection of the Easement Premises, site interviews and site history evaluations, basic engineering analyses of the risks to human health and the environment of any areas of identified concerns, and preparation of a written report which discusses history, site land use, apparent regulatory compliance or lack thereof, and which includes historical summary, proximity to and location of USTs, LUSTs, TSDFs, CERCLA site flood plain, maps, photograph log references, conclusions, and recommendations.

7.02 Company, for itself, its heirs, executors, administrators, and successors covenants that to the extent that any Hazardous Materials are manufactured, brought upon, placed, stored, transferred, conveyed, or distributed upon or within the Easement Premises, by Company or its subtenant or assigns, or any of its agents, servants, employees, contractors, or subcontractors, same shall be done in strict compliance with all Environmental Laws. Construction or installation of new or reconstruction of any

underground interconnecting conveyance facilities for any material or substance is not permitted without the advance written consent of the Chief Engineer of the City.

7.03 Company shall use the Easement Premises only for purposes expressly authorized by Article 1.01 of this Easement Agreement. Company will not do or permit any act that may impair the value of the Easement Premises or any part thereof or that could materially increase the dangers, or pose an unreasonable risk of harm, to the health or safety of persons or third parties (on or off the Easement Premises) arising from activities thereon, or that could cause or threaten to cause a public or private nuisance on the Easement Premises, or use the Easement Premises in any manner (i) which could cause the Easement Premises to become a hazardous waste treatment, storage, or disposal facility within the meaning of, or otherwise bring the Easement Premises within the ambit of the Resource Conservation and Recovery Act of 1976, Section 6901 *et seq.* of Title 42 of the United States Code, or any similar state law or local ordinance, (ii) so as to cause a release or threat of release of Hazardous Materials from the Easement Premises within the meaning of, or otherwise bring the Easement Premises within the ambit of, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 9601 *et seq.* of Title 42 of the United States Code, or any similar state law or local ordinance or any other Environmental Law, or (iii) so as to cause a discharge of pollutants or effluents into any water source or system, or the discharge into the air of any emissions which would require a permit under the Federal Water Pollution Control Act, Section 1251 of Title 33 of the United States Code, or the Clean Air Act, Section 741 of Title 42 of the United States Code, or any similar state law or local ordinance.

7.04 In the event of a release, emission, discharge, or disposal of Hazardous Materials in, on, under, or about the Easement Premises or the improvements thereon, Company will take all appropriate response action, including any removal and remedial action after the execution date of this Easement Agreement.

7.05 Company agrees to and covenants as follows:

- A. Company covenants and agrees that, throughout the term of the Easement Agreement, all Hazardous Materials which may be used upon the Easement Premises shall be used or stored thereon only in a safe, approved manner in accordance with all generally accepted industrial standards and all Environmental Laws.
- B. Company has been issued and is in compliance with all permits, certificates, approvals, licenses, and other authorizations relating to environmental matters and necessary for its business, if any.
- C. Company, to the best of its knowledge, is not a potentially responsible party with respect to any other facility receiving waste of the Company (whether or not from the Easement Premises) under CERCLA or under any statute providing for financial responsibility of private parties for cleanup or other actions with respect to the release or threatened release of any Hazardous Materials.
- D. Company will take all reasonable steps to prevent a violation of any Environmental Laws. There will be no spill, discharge, leaks, emission, injection, escape, dumping, or release of any toxic or Hazardous Materials by any persons on the area to be used and under the Easement Agreement.
- E. Company will not allow the installation of asbestos on the area described in Exhibit A or any item, article, container, or electrical equipment including but not limited to transformers, capacitors, circuit breakers, reclosers, voltage regulators, switches, electro-magnets and cable, containing PCBs.

- F. Company shall be responsible to install "plugs" of compacted impermeable soil material at intervals of no greater than one hundred feet (100') between such plugs along utility trenches which have been backfilled with compacted granular materials in order to minimize cross-site and off-site environmental contaminant migration. The spacing of these plugs should be based on the characteristics of the site, the configuration of the trench or trenches, the characteristics (nature and extent) of the site environmental contamination, and/or the potential for site contamination should a surface or subsurface chemical release occur. Special emphasis should be placed on locating these plugs at all utility trenches where they cross: other utility trenches, containment berms or walls, property boundaries, and lease boundaries.
- G. The aforesaid representations and warranties shall survive the expiration or termination of the Easement Agreement.

ARTICLE EIGHT: MISCELLANEOUS PROVISIONS

8.01 The making, execution and delivery of this Easement by the City have not been induced by any representations, statements, warranties, or agreements other than those herein expressed.

8.02 This Agreement embodies the entire understanding of the Parties and there are no further or other agreements or understandings, written or oral, in effect between the parties, their officers, agents, representatives and employees, relating to the subject matter hereof.

8.03 The Parties agree the this Agreement shall be governed by and interpreted in accordance with the laws of the State of Illinois and that venue for any disputes shall be Cook County, Illinois.

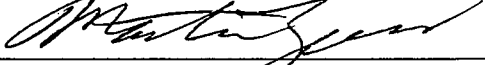
8.04 This lease may be modified or amended only in writing signed by Lessor and Lessee. It may not be amended or modified by oral agreements between the parties unless they are in writing duly executed by Lessor and Lessee.

8.05 Time is of the essence.

[SIGNATURES ON FOLLOWING PAGES]

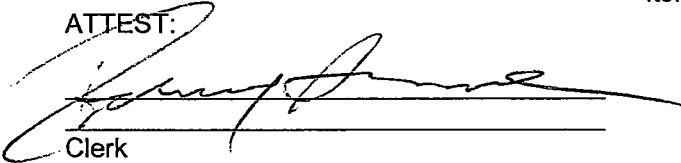
IN WITNESS WHEREOF, on the day and year first above written, the parties hereto have causes these presents, including Riders and Exhibits, if any, to be duly executed, duly attested and their corporate seals to be hereunto affixed.

CITY OF EVANSTON
an Illinois municipal corporation,

By: 

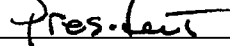
Its: Asst City Manager / Treasurer

ATTEST:


Clerk

SUNESYS, LLC
a Delaware limited liability company

By: 

Title: Pres. 

ATTEST:


Paul T. Bradshaw
Title: Asst Secretary

Approved as to form:


W. Grant Farrar
Corporation Counsel

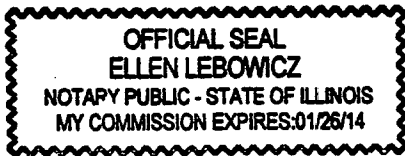
STATE OF ILLINOIS)
) SS
 COUNTY OF COOK)

The undersigned, a Notary Public in and for said County, in the State aforesaid, DOES HEREBY CERTIFY that Martin Lyons personally known to me to be the Assistant City Manager of the City of Evanston, a municipal corporation, personally known to me to be the same person whose name is subscribed to in the foregoing instrument, appeared before me this day in person and severally acknowledged that as such the Assistant City Manager of the City of Evanston, and duly executed said instrument on behalf of said municipal corporation and caused its corporate seal to be affixed thereto pursuant to authority given by the corporate authority of said municipal corporation, as its free and voluntary act and as the free and voluntary act and deed of said municipal corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 31 day of March, A.D. 2011.

Ellen Lebowicz
 Notary Public

My Commission Expires: 1/26/14, 2011



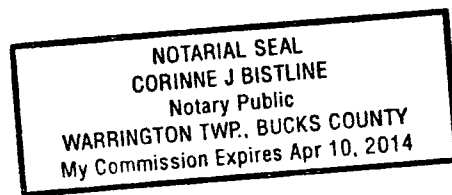
COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF BUCKS)

I, Corinne J Bistline Notary Public in and for said County, in the State aforesaid,
DO HEREBY CERTIFY that Lawrence Coleman (name), personally known to me to be the
President (title) of Sunesys, LLC a Delaware limited liability company, and personally known to
me to be the same person whose name is subscribed to the foregoing instrument, appeared before me
this day in person and acknowledged they signed and delivered the said instrument as such and caused
the corporate seal of said municipal corporation, to be affixed thereto, pursuant to authority given by the
corporation, as their free and voluntary act and as the free and voluntary act and deed of said municipal
corporation, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal this 28th day of March, A.D. 2011.

Corinne J Bistline
Notary Public

My Commission Expires:
April 10, 2011



APPROVED AS TO FORM:

Approved as to form:

W. Grant Farrar, Corporation Counsel

W. Grant Farrar
W. Grant Farrar
Corporation Counsel

APPROVED:

Paul Schneider
Paul Schneider, City Engineer

David Stonebeck
David Stonebeck, Director of Utilities

RECEIVED:

Fee _____

Insurance _____

Bond _____

EXHIBIT "A"

LEGAL DESCRIPTION

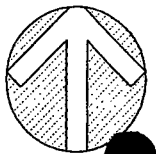
That part of Leon Place, Asbury Avenue, Simpson Street and Green Bay Road Rights of Way described as follows: A strip of land being 3 feet wide and lying 1.5 feet on each side of the following centerline: Beginning at a point on the South line of Leon Place at a point 187.32 West of the Westerly line of Ridge Avenue; thence North 00 degrees, 00 minutes, 00 seconds West, for the purpose of this description and at right angles to the south line of said Leon Place, 7.5 feet; thence North 90 degrees, 00 minutes, 00 seconds West, along a line 7.5 feet North of and parallel with the South line of Leon Place, 313.41 feet to a point of curve, said point of curve being 64.08 feet East and 7.5 feet North of the intersection of the South line of Leon Place and the West line of Asbury Avenue; thence Northwesterly along a curve having a radius of 89.56 feet and a chord bearing of North 56 degrees, 37 minutes, 39 seconds West an arc distance of 99.41 feet to a point of tangency being 61.52 feet Northwest and 12.88 feet Northeasterly of said intersection of the South line of Leon Place and the West line of Asbury Avenue; thence North 23 degrees, 25 minutes, 58 seconds West, a distance of 136.56 feet to a point 11.25 feet North and 14.21 feet East of the bend point in the West line of Asbury Avenue; thence North 00 degrees, 22 minutes, 40 seconds West, 120.47 feet to a point 13.79 feet East and 13.69 feet South of the Southwest corner of Asbury Avenue and Simpson Street; thence North 22 degrees, 00 minutes, 47 seconds West, 3.21 feet to a point 12.59 feet East and 10.71 feet South of said Southwest corner; thence North 01 degrees, 08 minutes, 18 seconds West, 71.32 feet to a point 11.31 feet East and 5.90 feet South of the Northwest corner of Asbury Avenue and Simpson Street; thence South 87 degrees, 59 minutes, 38 seconds West, 29.81 feet to a point 18.59 feet West and 5.66 feet South of said Northwest corner; thence South 84 degrees, 33 minutes, 46 seconds West, 76.33 feet to a point 9.61 feet South of the North line of Simpson Street; thence South 88 degrees, 11 minutes, 21 seconds West, 209.21 feet to a point 7.91 feet West and 7.20 feet South of the Northeast corner of Wesley Avenue and Simpson Street; thence South 01 degrees, 48 minutes, 39 seconds East, 48.45 feet to a point 170.01 feet East and 10.36 feet North of the Southeast corner of Simpson Street and Green Bay Road; thence South 83 degrees, 54 minutes, 15 seconds West, 57.51 feet to a point 112.61 feet East and 6.73 feet North of said Southeast corner; thence South 88 degrees, 39 minutes, 16 seconds West, 118.65 feet to a point 9.00 feet North and 0.72 feet Southwesterly of said Southeast corner; thence South 74 degrees, 41 minutes, 00 seconds West, 59.30 feet to a point 3.00 feet Northeast and 6.35 feet Southeast of the Southwest corner of Simpson Street and Green Bay Road; thence South 32 degrees, 15 minutes, 20 seconds East, along a line 3.00 feet Northeast of and parallel with the Westerly line of Green Bay Road, 171.29 feet; thence South 26 degrees, 49 minutes, 32 seconds East, 468.17 feet to a point 5.00 feet Northeast and 7.12 feet Northwest of the Northwest corner of Green Bay Road and Foster Street; thence South 31 degrees, 21 minutes, 42 seconds East, 319.83 feet to a point 4.00 feet Northeast of the Northwest corner of Green Bay Road and Asbury Avenue; thence South 29 degrees, 56 minutes, 44 seconds East, 116.51 feet to a point 1.50 feet Southwest of the Westerly line of Green Bay Road and 3.45 feet West of the East line of Asbury Avenue; thence South 00 degrees, 34 minutes, 59 seconds West, 351.87 feet to a point 3.00 feet West and 10.21 feet North of the Northeast corner of Asbury Avenue and Emerson Street; thence South 08 degrees, 05 minutes, 02 seconds East, 88.90 feet to a point 15.00 feet West and 13.31 feet South

of the Southeast corner of Asbury Avenue and Emerson Street; thence South 00 degrees, 00 minutes 00 seconds West, 133.50 feet; thence South 07 degrees, 11 minutes, 32 seconds West, 16.65 feet; thence South 00 degrees, 00 minutes, 00 seconds West, 326.78 feet; thence South 02 degrees, 00 minutes, 04 seconds West, 63.53 feet; thence South 00 degrees, 00 minutes, 00 seconds West, 144.58 feet to a point 14.72 feet West and 0.82 feet North of the Southeast corner of Asbury Avenue and Lyons Street; thence South 34 degrees, 59 minutes, 53 seconds East, 4.35 feet; thence South 36 degrees, 19 minutes, 11 seconds West, 4.55 feet to a point 14.87 feet West and 6.41 feet South of the Southeast corner of Asbury Avenue and Lyons Street; thence South 00 degrees, 17 minutes, 20 seconds West, 480.82 feet to a point 108.45 feet North and 14.24 feet West of the Northeast corner of Asbury Avenue and Church Street; thence South 09 degrees, 55 minutes, 34 seconds East, 51.75 feet to a point 57.53 feet North and 5.00 feet West of the Northeast corner of Asbury Avenue and Church Street; thence South 01 degrees, 16 minutes, 36 seconds East, 64.74 feet to a point 3.15 feet West and 7.19 feet South of Northeast corner of Asbury Avenue and Church Street; thence South 10 degrees, 01 minutes, 39 seconds East, 33.88 feet to a point 25.53 feet North and 11.04 feet West of Southeast corner of Asbury Avenue and Church Street; thence South 00 degrees, 16 minutes, 42 seconds West, 24.2 feet to a point 7.77 feet North and 11.00 feet West of Southeast corner of Asbury Avenue and Church Street, said point to be referred to as point "A"; thence South 00 degrees, 23 minutes, 37 seconds West, 309.07 feet; thence South 89 degrees, 36 minutes, 23 seconds East, 11.16 feet to the east line of Asbury Avenue and the point of terminus of the aforesaid centerline. ALSO that part of the Right of Way of Church Street described as follows: A strip of land being 3 feet wide and lying 1.5 feet on each side of the following centerline: Beginning at the aforesaid point "A", being a point 7.77 feet North and 11.00 feet West of Southeast corner of Asbury Avenue and Church Street; thence North 59 degrees 13 minutes 33 seconds East 12.32 feet; thence South 89 degrees 08 minutes 35 seconds East 20.66 feet; thence North 59 degrees 13 minutes 33 seconds East 9.25 feet; thence North 89 degrees 08 minutes 35 seconds East 52.42 feet; thence North 59 degrees 13 minutes 33 seconds East 18.16 feet to the point of terminus of the aforesaid centerline, all in Sections 13 and 18, Township 41 North, Range 13, East of the Third Principal Meridian, in the City of Evanston, Cook County, Illinois.

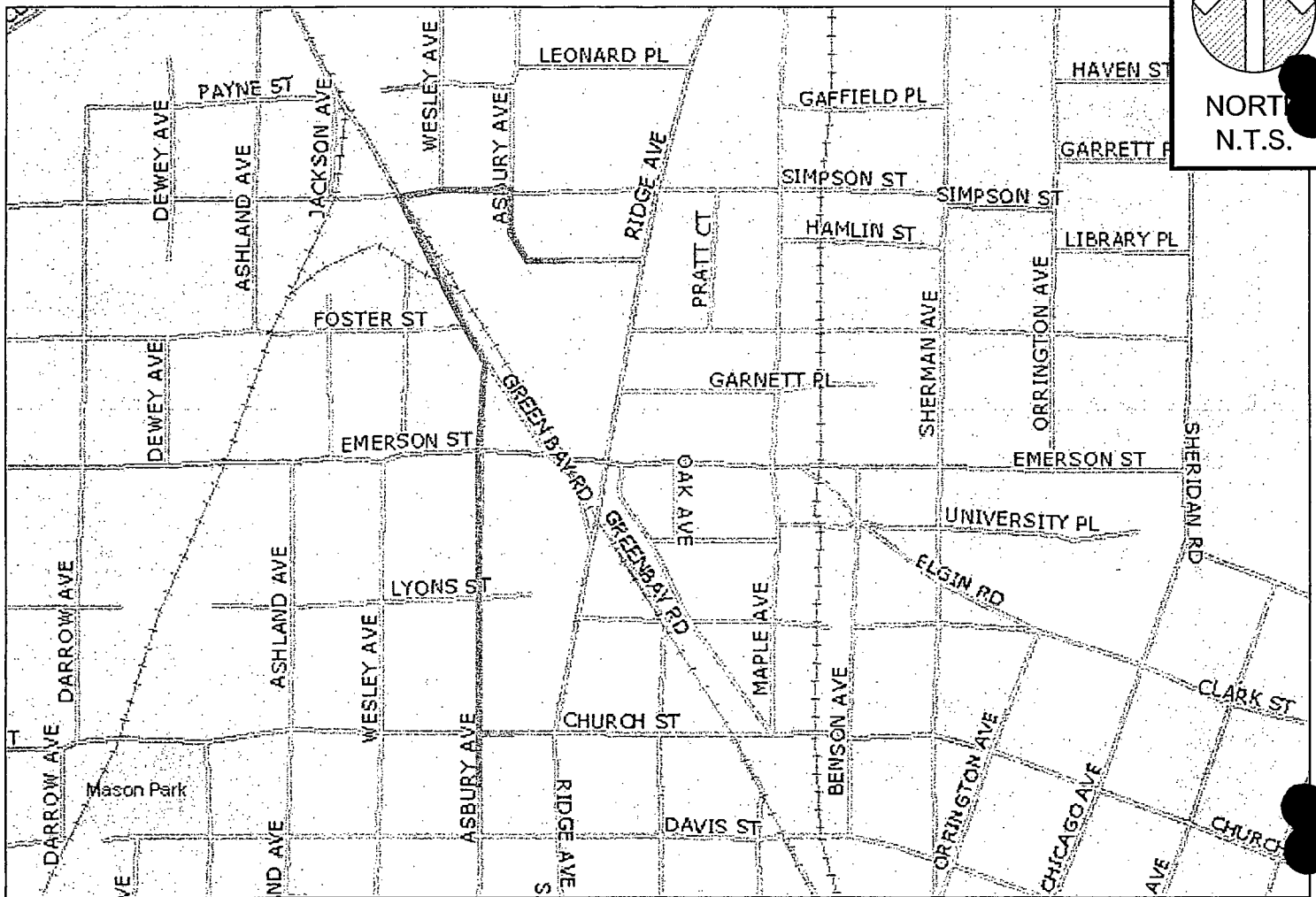
EXHIBIT "B"
PLAT OF EASEMENT

EXHIBIT "C"
MAP OF TOTAL FIBER PLAN

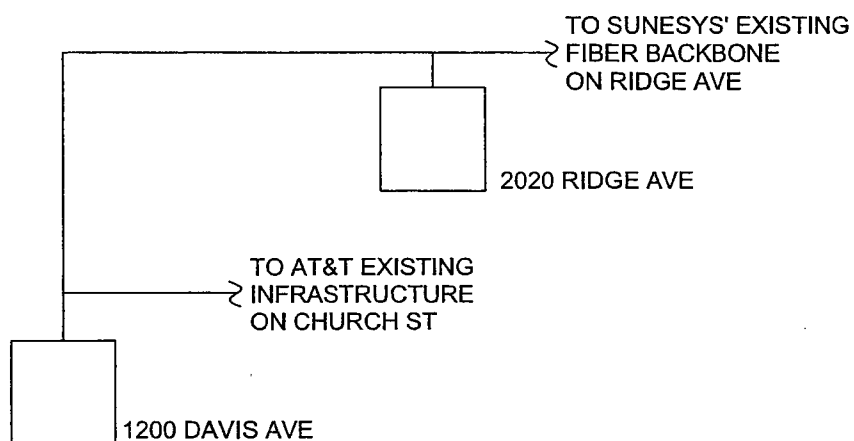
FIBER MAP OVERVEIW



NORTH
N.T.S.



SINGLEINE FIBER OVERVEIW



SUNESYS

185 TITUS AVENUE
WARRINGTON, PA 18976
PHONE: (267) 927-2000
FAX: (267) 927-2090

EXHIBIT "D"

CITY MANAGER AUTHORIZATION RESOLUTION FOR EASEMENT AGREEMENT
FOR DARK FIBER SYSTEM