

BOROUGH OF RED BANK

COUNTY OF MONMOUTH

RESOLUTION NO. 08-147

**RESOLUTION AUTHORIZING THE MAYOR AND THE BOROUGH CLERK TO
EXECUTE AN AGREEMENT WITH SUNESYS, L.L.C. PERTAINING TO THE USE OF
THE PUBLIC RIGHT OF WAY FOR THE INSTALLATION AND
OPERATION OF FIBER OPTIC CABLES**

Mr. Murphy offered the following resolution and moved its adoption:

WHEREAS, Sunesys is seeking the Borough's consent to use certain portions of the municipally owned Right of Way along certain streets within the Borough for the purpose of installing and operating fiber optic cables, as more specifically described herein; and

WHEREAS, Sunesys has received approval from the Board of Public Utilities of the State of New Jersey to provide local exchange and interexchange telecommunications services in New Jersey pursuant to BPU Docket No. TE00040261, dated May 8, 2001; and

WHEREAS, N.J.S.A. §49:3-19 requires Sunesys to obtain the Borough's consent prior to installing such cables along, or within, the Borough's right of way; and

WHEREAS, the Borough has an interest in ensuring that the fiber optic cables and associated equipment that Sunesys is seeking to place within the Borough's right of way is installed, operated and maintained in a reasonably safe manner and do not constitute a general nuisance to the citizens of the Borough of Red Bank; and

WHEREAS, N.J.S.A. §54:30A-124 permits a municipality to charge telecommunications companies reasonable fees for actual services rendered by any municipal agency; and

WHEREAS, it is the intent of this agreement to ensure that the fiber optic cables are installed, operated and maintained in a reasonably safe manner and do not become a nuisance and to further ensure that the Borough is reasonably compensated for its legal and engineering costs associated with the review of Sunesys' request to use the Borough's right of way; and

WHEREAS, among other things, Sunesys has submitted the following plans:

- a. Wide Area Network Drawings, dated December 5, 2007, prepared by Sunesys and consisting of seven sheets; and
- b. An undated letter from Harry J. Pohl, Right of Way Manager, Sunesys, describing cable dimensions;

WHEREAS, the form of agreement and the plans submitted have been approved by the Borough Attorney and the Borough Engineer, as applicable; and

WHEREAS, Sunesys has agreed to pay the following to the Borough:

- a. \$1,500.00 for submission of initial occupancy application for review by the Borough Engineer and Attorney.

- b. \$200.00 per mile for occupancy fee due at time of filing for initial, or modified, or expanded occupancy application.
- c. \$200.00 per mile for annual occupancy fee due on the anniversary of the agreement.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Red Bank that the Mayor and the Borough Clerk are authorized to sign an Agreement Pertaining to the Use of the Public Right of Way with Sunesys, L.L.C. subject to the approval of the Borough Attorney and the Borough Engineer; and

BE IT FURTHER RESOLVED that this Resolution, and the Mayor's authority to sign the aforementioned agreement is contingent upon Sunesys' provision of reasonable notice as to the nature and impact of the project to all residential property owners adjoining the route along with the fiber optic cables will be installed; and

BE IT FURTHER RESOLVED that the Clerk forward certified true copies of this resolution and the executed Agreement to Sunesys, L.L.C., Attn: Harry Pohl, 202 Titus Avenue, Warrington, Pennsylvania 18976.

Seconded by Ms. Lee and adopted on roll call by the following vote:

	Yes	No	Abstain	Absent
Mr. Curley	(x)	()	()	()
Mr. Murphy	(x)	()	()	()
Ms. Lee	(x)	()	()	()
Mr. DuPont	()	()	()	(x)
Ms. Cangemi	(x)	()	()	()
Ms. Horgan	(x)	()	()	()

Dated: July 14, 2008