

Regular Meeting of Mayor and Council June 1, 2006

PRESENT: Mayor DeIorio; Councilmembers Harms, Matarante, Zeglarski, Rubilla and Dinardo; Borough Attorney Bill Lane and Borough Engineer Ed Dec

ABSENT: Councilman Badillo

Mayor DeIorio called the meeting to order at 7:35 p.m. and said it is being held in accordance with the Open Public Meetings Act and adequate notice of this meeting has been provided as required by law.

All contracts awarded by Mayor and Council must comply with the affirmative action requirements of P.L. 1975, C172. (NJAC 17:27).

As required by the Fire Prevention Code, he indicated and the fire exits and procedure to be followed in case of fire.

Borough Clerk Doreen Cali read a short prayer followed by the Pledge of Allegiance.

COMMUNICATIONS & PETITIONS

Councilman Harms moved the following communication; seconded by Councilman Matarante, all members present voting Aye, said motion was adopted.

- Request from Mr. & Mrs. Richard Bodtmann for permission to conduct a block party on Tuesday, July 4, 2006 on Amsterdam Avenue, between Lincoln and W. Webster Avenue and Ashwood Avenue, between Lincoln and Amsterdam Avenue from 10:00 a.m. to 10:00 p.m.

Councilman Harms moved the following communication; seconded by Councilman Rubilla, all members present voting Aye, said motion was adopted.

- Request from John Longo, to advertise for replacement of part-time employee.

MINUTES TO BE APPROVED, PENDING ANY CORRECTIONS

Councilman Rubilla moved to approve the following minutes pending any corrections; seconded by Councilman Harms, all members present voting Aye, said motion was adopted.

- Regular Meeting: May 4, 2006

MOTION TO APPROVE SUBMITTED REPORTS

- Treasurer's Report: April 30, 2006

REPORT OF DEPARTMENTS

Borough Engineer – Ed Dec:

- Reported that construction started on Markthaler Place and Walnut Street. He said construction will begin on Hemlock next week.

Borough Attorney – Bill Lane:

- Sent correspondence regarding the on going positions of the parties in the matter of The Borough of Roselle Park vs. Blackstone.
- The Borough has resolved to enter into a contract with Sunesys. He noted there has been slight adjustments to the contract and in both cases are in benefit to the Borough. He said Sunesys has increased there allotment to the Borough from \$500 to \$2,500.
- Stated he had a closed session matter to discuss regarding Public Defender fees.

Borough Clerk – Doreen Cali:

- Researched the garbage service contract and reimbursement cost. She said bids were turned in today and with the new 3 year contract the Borough is looking at a savings of about \$230,000.00.
- New computers were installed in the Clerk's Office and the old files were transposed.
- She stated that the next step after Council adopts the budget will be to introduce the capital ordinance and upgrade the licensing program.

Police Department – Chief Warren Wielgus:

- Participated in the contract negotiations with our Labor Attorney and PBA.
- Attended the Annual Fire Department Memorial for the 10th year and stated that the necessary evening was a success as it honored all fire personnel who have passed.
- Participated in the annual Memorial Day Parade with the Mayor, Councilman Badillo, Rubilla and Dinardo. Said it was a nice day and the weather was excellent.
- Met with Mayor DeIorio and Mayor Smith from Roselle. Mayor DeIorio suggested that the two towns become involved in a joint effort to combat crime on our boarders. Chief Wielgus will work out the particulars with Chief Sacala from Roselle.
- He said his term as the State presidents of the Chief's Association will end in two weeks and thanked Council members for their support.
- Two new DARE Officers graduated from the DARE training academy. Officers Michel Smith and James Kompany will start their programs in September 2006.

DPW – Frank Wirzbicki:

- Cardboard for Business is picked up every other Tuesday and grass is being cut throughout the Borough.
- Street Sweeper is out five days a week and early Friday mornings and Borough trash cans emptied twice a week.
- SLAP worked with the Public Works Department the whole month of May.
- In preparation for Memorial Day flowers were planted and crosses placed at the Library.
- New American flags were installed and flowers planted in boxes along Chestnut Street.
- One crew has been picking up debris throughout the Borough. White goods are picked up daily Monday-Friday by appointment only. Sanitary lines are checked plus tops of basins are being cleaned on heavy rain days.
- 11 men have attended the “Blood borne Pathogen” retraining, which is mandatory once a year.
- SLAP Workers have removed old records in the storage area, cleaned overgrowth of high weeds behind Webster gardens, removed dead bushes in front of Borough Hall, behind Police Headquarters and weeded along the bike path.
- Playgrounds are being cleaned at least three times a week.
- Catch basins are still be cleaned out and they are waiting for the mulch to come in for Aldene and Acker Parks He reported that the damaged swing has been removed from Acker Park.
- Bridges are being washed once a week and the split pear tree was removed from 490 Madison Avenue.
- Reported that the gas tank in the DPW Yard does not have to be replaced.
- Tree roots are being grounded down at 620 Laurel Avenue so a resident can replace their sidewalk and a split tree was removed by Astone Tree Service at the corner of Woodland and Lehigh Avenue.
- A small section of sanitary line was replaced on the 700 block of Woodland Avenue due to the top of pipe being cracked.

Administrative Assistant – Karen Intile:

- Reported that Triad Security Systems will be installing the alarm for our Fire Suppression System.
- Received estimates from three different companies with regards to replacing the ceiling and the floor of the Center. Ed Dec will review the estimates to see whether the work is comparable from each company.
- Guarriello and Dec Associates has again committed to donating \$500.00 to the Borough car shows and \$100.00 has been received for sponsorship from Climax Brewing Co., Colline Brothers, Enterprise Rent a Car, JDS Cycle Parts, Inc., LaCatena Restaurant, STS Tire and Auto Centers and the Sun Tavern. DJ Papa Joe will DJ both shows.

- Contacted several firework companies for quotes for a twenty minute and thirty minute display to take place on Tuesday, July 4th.
- Air conditioning is not working on the Seniors in Motion Van.
- Karen said she has finished revising the Service Information Pamphlet and is currently working on a July 4th Summer Events flyer to go out with the tax bill.
- The Elizabeth Post Office held a food drive on Saturday, May 13th and donated a portion of the food to the Casano Center food pantry.
- The Robert Gordon 5th Grade Picnic is scheduled to be held at the Casano Community Center on next Thursday, June 8th, from 10:00 a.m. to 3:00 p.m.
- Reported the rider ship count to Ken Blum, the Chief Financial Officer of Roselle with the exception of future aid. Sent letter to David Brown, Roselle Borough Administrator, requesting consideration of financial aid for the shuttle program and said he would bring up the request at the June 5th Council Meeting.

PASSAGE OF ORDINANCES

Second Reading and Public Hearing

An Ordinance (#2176) entitled, “AN ORDINANCE CREATING THE POSITION OF CHIEF ADMINISTRATIVE OFFICER”, was brought up and read by title only on its second reading and public hearing.

Councilman Rubilla moved to open the public hearing on Ordinance #2176; seconded by Councilman Harms and adopted.

Jacob Magiera, 612 Sheridan Avenue, nominated Ms. Cali for the position.

There being no one else wishing to speak, Councilman Rubilla moved to close the public hearing; seconded by Harms and adopted.

Councilman Rubilla moved that Ordinance #2176 be adopted on second reading and advertised as prescribed by law; seconded by Councilman Harms, all members present voting Aye, said ordinance was adopted.

An Ordinance (#2177) entitled, “AN ORDINANCE AMENDING CHAPTER 43 (OFFICERS AND EMPLOYEES) OF THE CODE OF THE BOROUGH OF ROSELLE PARK TO REPEAL SECTION 43-9 (HOLDING OTHER OFFICES)”, was brought up and read by title only on its second reading and public hearing.

Councilman Rubilla moved to open the public hearing on Ordinance #2177; seconded by Councilman Harms and adopted.

There being no one wishing to speak, Councilman Rubilla moved to close the public hearing; seconded by Councilman Harms and adopted.

Councilman Harms moved that Ordinance #2177 be adopted on second reading and advertised as prescribed law; seconded by Councilman Rubilla, all members present voting Aye, said ordinance was adopted.

RESOLUTIONS

The following routine resolutions, listed on a consent agenda, were offered by Councilman Rubilla and seconded by Councilman Harms, all members voting Aye, said resolutions were adopted.

RESOLUTION NO. 93-06

WHEREAS, Sunesys intends to install its facilities on or in existing telephone, electric or cable conduit and poles in the public Rights-of-Way through agreement with other utility companies; and

WHEREAS, the new facilities of Sunesys may require certain modifications, reallocations, adjustments and additions due to future work by the Borough of Roselle Park; now therefore

BE IT RESOLVED, that the Mayor and Council hereby authorize the attached Rights-of-Way Use Agreement between the Borough of Roselle Park and Sunesys, Inc.

Borough of Roselle Park, New Jersey

Rights-of-Way Use Agreement

This Rights-of-Way Use Agreement (this "Use Agreement") is dated as of _____, 2006, and entered into by and between the **Borough of Roselle Park**, Union County, New Jersey, a New Jersey Municipal Corporation (the "Municipality"), party of the first part, and **Sunesys, Inc.**, a Pennsylvania corporation ("Sunesys"), party of the second part,

Recitals

Whereas, Sunesys intends to install its facilities on or in existing telephone, electric or cable conduit and poles in the public Rights-of-Way through agreement with other utility companies; and

Whereas, the new facilities of Sunesys may require certain modifications, reallocations, adjustments and additions due to future work by the Municipality; and

Whereas, the Municipality is empowered to enter into this agreement pursuant to N.J.S.A. 48:17-10 through 48:17-12.

Agreement

Now, therefore, in consideration of mutual benefits and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows as to the terms of use, occupancy and manner in which such Sunesys' Facilities will be accommodated within the Municipal Rights-of-Way.

1. Definitions

The following definitions shall apply generally to the provisions of this Use Agreement: 1.1.

Agency

"Agency" means any governmental or quasi-governmental agency other than the Municipality, including the Federal Communications Commission, the New Jersey Board of Regulatory Commissioners, and or the New Jersey Board of Public Utilities.

1.2. Installation Date

"Installation Date" shall mean the date Sunesys begins installation pursuant to this Use Agreement.

1.3. Laws

"Laws" means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the Municipality or other governmental agency having joint or several jurisdiction over the parties to this Use Agreement, in effect either as of the Effective Date or at any time during the presence of Sunesys in the Municipal Rights-of-Way.

1.4. Municipal Facilities

"Municipal Facilities" means Municipally-owned street light poles, lighting fixtures, electroliers, or other Municipality-owned structures located within the Municipal Rights-of-Way and may refer to such facilities in the singular or individually, as appropriate to the context in which used.

1.5. Municipal Rights-of-Way.

"Municipal Rights-of-Way" means the space in, upon, above, along, across, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, including all public utility easements and public service easements as the same now or hereafter may exist, that are under the jurisdiction of the Municipality. This term shall not include county, state, or federal rights-of-way or any property owned by any person or agency other than the Municipality, except as provided by applicable Laws or pursuant to an agreement between the Municipality and any such person or agency.

1.6. Person

"Person" means an individual, a corporation, a limited liability company, a general or limited partnership, a joint venture, a business trust, or any other form of business entity or association.

1.7. Provision

"Provision" means any agreement, clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this Use Agreement that defines or otherwise controls, establishes, or limits the performance required or permitted by any party to this Use Agreement. All Provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.

1.8. Municipality

"Municipality" shall have the meaning set forth in the first paragraph of this Use Agreement.

1.9. Sunesys

"Sunesys" shall have the meaning set forth in the first paragraph of this Use Agreement.

1.10. Use Agreement

"Use Agreement" means this non-exclusive Rights-of-Way Use Agreement and may also refer to the associated right to encroach upon the Municipal Rights-of-Way conferred hereunder.

1.11. Effective Date

"Effective Date" means the date the Use Agreement is signed by a duly authorized agent of the Municipality.

1.12. Sunesys' Facilities

"Sunesys' Facilities" means Sunesys manholes, handholds, cables, ducts, PVC pipe, conduits, fiber optic warning tape, markers, locate wires and equipment placed in the Municipality's Rights-of-Way.

2. Term

2.1. This Use Agreement shall be effective as of the Effective Date and shall extend for an initial term of twenty (20) years commencing on the Effective Date, unless it is earlier terminated by either party in accordance with the provisions herein. Upon the expiration of the initial term or a prior extension term, this Use Agreement shall automatically be extended for up to three (3) additional terms of ten (10) years each upon the terms and conditions set forth herein, unless either party hereto shall give written notice to the other party of its intent not to renew this Use Agreement at least twelve (12) months prior to the expiration of the initial term or then effective extension term.

3. Scope of Use Agreement

3.1 Any and all rights expressly granted to Sunesys under this Use Agreement, which shall be exercised at Sunesys' sole cost and expense, shall be subject to the prior and continuing right of the Municipality under the applicable Laws to use any and all parts of the Municipal Rights-of-Way exclusively or concurrently with any other Person or Persons and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect the Municipal Rights-of-Way. Nothing in this Use Agreement shall be deemed to grant, convey, create, or vest in Sunesys a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Use Agreement must be subject to prior review and approval by the Municipality in accordance with all applicable existing laws.

3.2 Attachment to Third Party Property

Subject to obtaining the permission of the owner(s) of the affected property, on notice to the Municipality, the Municipality hereby authorizes and permits Sunesys to enter upon the Municipal Rights-of-Way and to attach, install, operate, remove, relocate, repair, and/or maintain the facilities of Sunesys according to the plan appended to this agreement, as long as the facilities do not unreasonably impair any future improvements or interfere with the intended use of the Municipal Rights-of-Way.

3.3 No Interference

Sunesys, in the performance and exercise of its rights and obligations under this Use Agreement shall not interfere in any manner with the existence and operation of any and all public and private Rights-of-Way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Law of this Use Agreement. The Municipality agrees to require the inclusion of the same prohibition on interference as that stated above in all agreements and franchises for use of the Municipal Right-of-way the Municipality may enter into after the Effective Date with other Persons.

3.4 Compliance with Laws

Sunesys agrees to comply with all applicable laws and regulations in the exercise and performance of its rights and obligations under this Use Agreement.

3.5 Obtaining Required Permits

If the attachment, installation, operation, maintenance, or location of Sunesys' Facilities in the Municipal Rights-of-Way shall require any permits, Sunesys shall, if required under applicable Municipal ordinances, apply the appropriate permits and pay any permit fees. The Municipality shall promptly respond to Sunesys' request for permits and otherwise cooperate with Sunesys in obtaining permits in a reasonable and timely manner in accordance with existing laws.

3.6 Notice of Location

"As-Built Drawings" shall be furnished by Sunesys upon completion of installation, showing exact locations of Sunesys' Facilities in the Municipal Rights-of-Way.

3.7 Amendments to this agreement.

If Sunesys proposes to expand, reduce, relocate or modify any portion of its system within the public right-of-way, Sunesys shall file an application for an amendment of this agreement with Borough Engineer. An application for an amendment shall include relevant new information of the type required for the initial application and shall be reviewed by the Borough Engineer in the same manner as the original application. If the amendment requires only one or more connections to the main system and if the new connections will run entirely through existing underground utility conduit or ducts so as not to require any excavation in the public right-of-way, or by means of overhead wires or cables between existing utility poles, Sunesys licensee shall not be required to pay an additional administrative fee for the amendment.

4. Payment for Services

In payment for the estimated time, review analysis, and other cost and services rendered by the Municipality in connection with its management of the public rights-of-way, as authorized by N.J.S.A.54:30A-124, Sunesys agrees to pay the following:

- 4.1. \$2500.00 for submission of initial occupancy application as required by the Municipality's Engineer.
- 4.2. \$2500.00 for submission of modified or expanded occupancy application as required by the Municipality's Engineer.
- 4.3. \$200.00 per mile for annual occupancy fee due on the anniversary of the agreement or a minimum annual fee of \$2500.00.
- 4.4. In the event that additional occupancy is sought, the payments shall be made as of the beginning of that occupancy (pro-rated as appropriate) and then the rate shall be paid with the annual occupancy fee.
- 4.5. Nothing herein shall limit the Municipality's right to collect from Sunesys reasonable fees for actual service made by the Municipality as per N.J.S.A. 54:30A-124 or any other relevant statute.

5. Relocation

Sunesys, by execution of this Use Agreement, certifies its willingness to cooperate with the Municipality and its agents for the proper coordination of all work in connection with any planned or future Municipal improvements. Sunesys' Facilities shall be relocated, adjusted, or supported as required for any future improvements constructed on behalf of the Municipality in the Municipal Rights-of-Way by Sunesys as no cost to the Municipality. If Sunesys fails to relocate its facilities requested by the Municipality in a reasonable time under the circumstances, the Municipality shall be entitled to relocate Sunesys' Facilities at Sunesys' sole cost and expense, without further notice to Sunesys. The Municipality will use its best effort to accommodate Sunesys' request for relocation of Sunesys' Facilities. Sunesys' twenty-four (24) hour emergency telephone number is 1-800-286-6664.

6. Damage to Municipal Rights-of-Way

Whenever the installation, removal, repair, or relocation of Sunesys' Facilities is required or permitted under this Use Agreement, and such installation, removal, repair, or relocation shall cause the Municipal Rights-of-Way to be damaged, Sunesys, at its sole cost and expense, shall promptly repair and return the Municipal Rights-of-Way to a condition as good or better than prior to the work. If Sunesys does not repair the site as described, the Municipality shall have the option, upon five (5) days written notice to Sunesys, to perform or cause to be performed such reasonable and necessary work on behalf of Sunesys and to charge Sunesys for the actual costs incurred by the Municipality. Upon the receipt of the demand for payment, after the aforementioned procedure, Sunesys shall promptly reimburse the Municipality for such cost within ten (10) days of receipt of an invoice.

7. Indemnification and Waiver

- 7.1 Each party shall indemnify and hold harmless the other party, its officers, directors, employees and agents, and its successors and assigns from and against any claims, liabilities, losses, damages, fines, penalties, and costs (including reasonable attorneys fees). whether foreseen or unforeseen, which the indemnified parties suffer or incur because of: (i) any Hazardous Discharge resulting from acts or omissions of the

indemnifying party or its predecessor in interest; (ii) acts or omissions of the indemnifying party, its agents or representatives in connection with any cleanup required by law or (iii) failure of indemnifying party to comply with environmental, safety and health laws.

7.2 Waiver of Claims

Except for death or bodily harm to any person and tangible property damage as provided above, in no event shall either party be liable to the other party for any special, consequential or indirect damages (including by way of illustration, lost revenues and lost profits) arising out of this Use Agreement or any obligation arising there under, whether in action for or arising out of breach of contract, tort or otherwise.

7.3 Limitation of Municipality's Liability

The Municipality shall be liable only for the cost of repairs of damages to Sunesys' Facilities arising from the gross negligence or willful misconduct of the Municipality, its agents, or employees.

8. Compliance with Laws

Notwithstanding anything to the contrary in this Use Agreement, each party shall ensure that any and all activities it performs pursuant to this Use Agreement shall comply with all applicable federal, state, and local laws and regulations. Without limiting the generality of the foregoing, each party shall comply with all applicable provisions of i) workmen's compensation laws, ii) unemployment compensation laws, iii) the Federal Social Security Law, iv) the Fair Labor Standards Act, and v) all laws, regulations, rules, guidelines, policies, orders, permits, and approvals of any governmental authority relating to environmental matters and/or occupational safety.

9. Insurance

9.1 Insurance Coverage

Sunesys shall obtain and maintain insurance issued by one or more reputable insurance carriers licensed to insure property in New Jersey and shall be rated at least A+ in A.M. Best and Company's Insurance Guide, which protects the Parties and each of them from and against all claims, demands, causes of action, judgments, costs, including attorneys' fees, expenses and liabilities of insurable kind and nature which may arise or result directly or indirectly from or by reason of such loss, injury or damage that in any way arises from or is related to this Use Agreement or activities undertaken pursuant to this Use Agreement.

Sunesys shall obtain and maintain at all times during the term of this Use Agreement Commercial General Liability insurance and Commercial Automobile Liability insurance protecting Sunesys in an amount not less than One Million Dollars (\$1,000,000) per occurrence (combined single limit), including bodily injury and property damage, and in an amount not less than One Million Dollars (\$1,000,000) annual aggregate for each personal injury liability and products-completed operations. The Commercial General Liability insurance policy shall name the Borough, its council members, officers, and employees as additional insured as respects any covered liability arising out of Sunesys' performance of work under this Use Agreement. Coverage shall be in an occurrence form and in accordance with the limits and provisions specified herein. Claims-made policies are not acceptable. Sunesys shall provide umbrella coverage in the amount of Two Million Five Hundred Thousand Dollars (\$2,500,000.00). Such insurance shall not be canceled, nor shall the occurrence or aggregate limits set forth above be reduced, until the Borough has received at least thirty (30) days' advance written notice of such cancellation or change. Sunesys shall be responsible for notifying the Borough of such change or cancellation.

9.2 Filing of Certificates and Endorsements

Prior to commencement of any work pursuant to this Use Agreement, Sunesys shall file with the Municipality the required original certificates of insurance with endorsements, not less than ten (10) days before any

work is commenced and renewals not less than ten (10) days before expiration date of the certificate. The insurance certificate shall clearly state all of the following:

- 9.2.1 The policy number; name of insurance company; name and address of agent or authorized representative; name, address, and telephone number of insured; project name and address; policy expiration date; and specific coverage amounts.
- 9.2.2 The Municipality shall receive thirty (30) days notice prior to cancellation.
- 9.2.3 That Sunesys insurance is primary as respects any other valid or collectible insurance that the Municipality may possess, including any self-insured retentions the Municipality may have; and any other insurance the Municipality does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

9.3 Worker's Compensation Insurance

Sunesys shall obtain and maintain at all times during the term of this Use Agreement statutory workers' compensation and employer's liability insurance in an amount not less than Five Hundred Thousand Dollars (\$500,000.00) and shall furnish the Municipality with a certificate showing proof of such coverage.

9.4 Severability of Interest

Any deductibles or self-insured retentions must be stated on the certificate(s) of insurance, which shall be sent to and approved by the Municipality. "Cross Liability", "severability of interest", or "separation of insured" clauses shall be made a part of the commercial general liability and commercial automobile liability policies. Sunesys shall name the Municipality as an additional insured, as its interest may appear, on Sunesys' policies of insurance carried under the terms of this Agreement.

10. Force Majeure

Except for payment of the license fee and other amounts, neither party shall have any liability for its delays or its failure of performance due to: fire, explosion, pest damage, power failures, strikes or labor disputes, acts of God, the elements, war, civil disturbances, acts of civil or military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, or other causes beyond its control, whether or not similar to the foregoing.

11. Notices

11.1 All notices which shall be given pursuant to this Use Agreement shall be in writing and delivered personally or transmitted either through the United States Postal Service, by registered or certified mail, postage pre-paid or by means of pre-paid overnight delivery service; or by facsimile or e-mail transmission, if a hard copy of the same is followed by delivery of same by means specified above. All notices shall be sent to the Municipal Clerk and one (1) copy to the Municipality Engineer, and Municipality Solicitor at time of execution of documents and to Sunesys at the following addresses:

If to the Municipality:

Borough of Roselle Park
110 East Westfield Avenue
Roselle Park, New Jersey 07204

If to Sunesys:

Sunesys, Inc.
202 Titus Avenue

Warrington, PA 18976
Attn.: Senior Counsel
Facsimile: 267.927.2090
E-mail: pbradshaw@sunesys.com

11.2 Date of Notices; Changing Notice Address

Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next day in the case of overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the same manner set forth above.

12. Termination

Either party may terminate this Use Agreement upon forty-five (45) days prior written notice to the other party upon a default of any material covenant or term hereof by the other party, which default is not cured within the forty-five (45) day of receipt of written notice of default (or, if such default is not curable within forty-five (45) days, if the defaulting party fails to commence such cure within forty-five (45) days thereafter diligently to prosecute such cure to completion), provided that the grace period for any monetary default shall be ten (10) days from receipt of notice. Except as expressly provided herein, the rights granted under this Use Agreement are irrevocable during the term of this Use Agreement.

13. Assignment

This Use Agreement shall not be assigned by Sunesys without the express written consent of the Municipality, which consent shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the forgoing, the transfer of the rights and obligations of Sunesys hereunder to a parent, subsidiary, successor, or financially viable affiliate shall not be deemed as an assignment for the purposes of this Use Agreement.

14. Nonexclusive Use

Sunesys understands that this Use Agreement does not provide Sunesys the exclusive use of the Municipal Rights-of-Way and that the Municipality has the right to permit other telecommunication service providers to install equipment or devices in Municipal Rights-of-Way.

15. Headings

All headings contained in this Use Agreement are inserted for convenience only and are not intended to affect the meaning or interpretation of this Use Agreement or any clause.

16. Amendment of Use Agreement

This Use Agreement may not be amended except pursuant to a written instrument signed by both parties.

17. Severability of Provisions

If any one or more of these Provisions of this Use Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such Provision(s) shall be deemed severable from the remaining Provisions of this Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Use Agreement. Each party hereby declares that it would have entered into this Use Agreement and each Provision hereof irrespective of the fact that any one or more provision(s) be declared illegal, invalid, or unconstitutional.

18. Governing Law; Jurisdiction

This Use Agreement shall be governed and construed by and in accordance with the laws of the State of New Jersey, without reference to its conflict of law principles. If suit is brought by a party to this Use Agreement, the parties agree that trial of such shall be vested exclusively in the state courts of New Jersey in the county in which the Municipality is located, or the United States District Court for the District of New Jersey.

19. Attorneys' Fees

Should any dispute arising out of this Use Agreement lead to litigation, the prevailing party shall be entitled to recover its cost of suit, including reasonable attorneys' fees.

20. Exhibits

All exhibits referred to in this Use Agreement and any addenda, attachments, and schedules which may from time to time be referred to in any duly executed amendment to this Use Agreement are by such reference incorporated in this Use Agreement and shall be deemed a part of this Use Agreement.

21. Successors and Assigns

This Use Agreement is binding upon the successors and assigns of the parties hereto.

22. Advise of Displacement

To the extent that the Municipality has actual knowledge thereof, the Municipality will attempt to inform Sunesys of any displacement of Sunesys' Facilities.

23. Consent Criteria

In any case where the approval or consent of one party hereto is required, requested or otherwise to be given under this Use Agreement, such party shall not unreasonably delay, condition, or withhold its approval or consent.

24. Waiver of Breach

The waiver by either party of any breach or violation of any provision of this Use Agreement shall not be deemed to be a waiver or continuing waiver of any subsequent breach or violation of the same or any other Provision of this Use Agreement.

25. Representations and Warranties

Each of the parties to this Use Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith, except as provided in Section 3.1 above. In addition, the Municipality specifically represents and covenants that the Municipality has jurisdiction over all the Rights-of-Way for the use of which the Municipality is collecting from Sunesys the Fees pursuant to Section 4 above.

26. Entire Agreement

This Use Agreement contains the entire understanding between the parties with respect to the subject matter herein. There are no representations, agreements, or understandings, whether oral or written, between or among the parties relating to the subject matter of this use Agreement which are not fully expressed herein.

27. Expiration or Termination

Upon the expiration or termination of this Agreement, Sunesys shall be responsible, at its own costs, for the removal of all Sunesys Facilities (as herein defined) from the Municipality's Right of Way. Any and all damage caused by the removal of Sunesys Facilities shall be the responsibility of Sunesys to repair to the satisfaction of the Municipality within thirty days of said removal or to pay for said repair.

28. Improvements to Municipal Right of Way

Any and all improvements, other than Sunesys Facilities, made to the Municipality's Right of Way by Sunesys, shall become the property of the Municipality.

[signatures appear on the following page]

In witness whereof, and in order to bind themselves legally to the terms and conditions of this Use Agreement, the duly authorized representatives of the parties have executed this Use Agreement as of the effective date.

Borough of Roselle Park

By: _____

(Typed Name) Title:

Sunesys, Inc.

By: _____

Alan N. Katz

Title: Vice President

RESOLUTION NO. 94-06

WHEREAS, Karl Krynicki, Equipment Operator for the Department of Public Works, of the Borough of Roselle Park has requested an unpaid leave of absence under the Family Medical Leave Act from June 3, 2006 to August 2, 2006; and

WHEREAS, the Mayor and Council of the Borough of Roselle Park desire to make clear the terms of Karl Krynicki's leave for the purpose of record keeping;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Roselle Park that Karl Krynicki be and is hereby granted an unpaid leave of absence under the Family Medical Leave Act effective June 3, 2006 to August 2, 2006.

RESOLUTION NO. 95-06

BE IT RESOLVED by the Mayor and Council of the Borough of Roselle Park that Genevieve X. Kelly, 117 Columbus Place, Roselle Park be appointed to the position of Probationary Civilian Dispatcher in the Roselle Park Police Department, at a salary of \$26,416.87, effective June 4, 2006 for a 12 month probationary period ending June 3, 2007, and pending pre-employment process.

RESOLUTION NO. 97-06

BE IT RESOLVED by the Mayor and Council of the Borough of Roselle Park, that Doreen Cali, be and is hereby appointed to the position of Chief Administrative Officer for a trial period effective June 1, 2006 thru December 31, 2006.

BE IT FURTHER RESOLVED that the Chief Administrative Officer may be removed either by a two-thirds (2/3) vote of the Borough Council or mutual agreement between

the Mayor and Council and the Chief Administrative Officer. The Resolution of removal shall become effective immediately.

RESOLUTION NO. 98-06

BE IT RESOLVED, by the Mayor and Council of Borough of Roselle Park, Union County, New Jersey that:

1. Mark Cassidy of 736 Willow Street, Cranford, NJ, 07016 be and hereby is appointed first alternate municipal prosecutor to serve only in the absence or disqualification of the Chief Municipal Prosecutor for a term ending on December 31, 2006.
2. As to those matters in which she is called to serve, Mr. Cassidy shall have all the powers and authority provided for municipal prosecutors by statute, Borough ordinances, and court rules and rulings and shall be subject to the same and to the rules and regulations of the Administrative Office of the Courts.
3. Michael J. Mitzner, Esquire, heretofore appointed Municipal Court Prosecutor is hereby designated Chief Municipal Prosecutor.

Councilman Matarante moved the following resolution; seconded by Councilman Harms, all members present voting Aye; said resolution was adopted.

Councilman Matarante said Officer Vella is a fine Officer and Council was reluctantly accepting his resignation.

RESOLUTION NO. 96-06

BE IT RESOLVED by the Mayor and Council of the Borough of Roselle Park, in the County of Union, that the resignation of Brian Vella from the position of Officer in the Roselle Park Police Department, effective June 4, 2006 be and is hereby accepted.

MOTIONS

Councilman Rubilla moved to approve the following motions; seconded by Councilman Harms, all members present voting Aye, said motions were adopted.

- Motion that a Raffle License be granted to the Roselle Park Community Center Association for a non-draw raffle to be held on July 4, 2006.
- Motion approving Sidewalk Café Permit application of Mona Lisa Restaurant.
- Motion authorizing Borough Clerk to advertise for a part-time Crisis Center Hotline Operator for CAASA.

PUBLIC COMMENT

Christina Delarosa, 341 E. Lincoln Avenue, addressed:

- Submitted a petition from residents of E. Lincoln Avenue and Sheridan Avenue requesting stop signs on the eastbound and westbound sides of E. Lincoln Avenue on the corners of Sheridan Avenue and on the corners of Hemlock Street on E. Lincoln Avenue.

Mayor DeIorio asked her permission to share the petition with the Freeholder Board and Ms. Delarosa agreed. Councilman Matarante said he spoke with the Traffic Safety Officer who did contact the County. He said the County has asked to see the petition and to confirm there is a speeding problem. He said several new 25 mile an hour signs have been installed and patrols will be increased. Radar will be used to help determine the number of vehicles on the road and the average speed. He said the County is reluctant to do anything right now but if the Borough can show there is a problem they will address it.

Jacob Magiera, 612 Sheridan Avenue, addressed:

- Submitted an article regarding the deaths of 2 pedestrians crossing St. George Avenue in Roselle.
- He said the Division of Motor Vehicles offers the driving test in 11 different languages and questioned if drivers were able to read signs.
- Suggested that the DPW shares services with the Township of Cranford.
- Tree branches on Sheridan Avenue need to be trimmed because even the school children had to bend down.
- He asked how much it cost to clean up the sludge from the gasoline tank at the DPW Yard.
- Stated that several years ago the County and Local Police did car stops to check for insurance, driver's license and registrations.
- Asked why construction stopped at Tavern in the Park. He asked if there was an update with the nail salon and the Hawthorne Avenue building. Borough Clerk Doreen Cali said she spoke to the owners and they anticipate opening in September.
- Asked if any money had been taken from the Sale of Assets or Surplus to pay for any golden parachute retirements. Mayor DeIorio said he would have to research that.
- Asked if there was an update for an awareness program for children riding bicycles and skateboards without helmets.
- Said he received his sewer bill January 1, 2006 to December 31, 2006 showing the amount of cubic feet and dollars. He said the bill is due July 1, 2006 and wanted to know why he has to pay 6 months ahead of time. Mayor DeIorio said he would speak to the Tax Collector and provide an answer at the next meeting.
- Reported on the Union County Air Traffic and Noise Advisory Board. He said the Port Authority of New York and New Jersey opposed the new flight routes

over the metropolitan area and said the public comment period was been extended to July 1st.

Michael Peterson, 45 E. Colfax Avenue, addressed:

- Asked if Councilman Matarante had an update in regards to speeding on Chestnut Street. Councilman Matarante said he was still in the process of purchasing pedestrian amber lights for the crosswalks near the train trestle.
- Asked why his sewer bill nearly doubled. Mayor DeIorio said the rate went up due to the increases in the Rahway Valley Sewerage Authority payment. He said the rate did not double but there may have been an increase in a homeowner's consumption. He said if anyone had any questions or concerns they should contact the Tax Collector's Office.
- Said there were inconsistencies in what the Mayor said and what Mrs. Decker said regarding the budget surplus.

There being no one else wishing to speak, Councilman Rubilla moved to close the public comment portion of the meeting; seconded by Councilman Harms and adopted.

REPORT & RECOMMENDATIONS OF MAYOR

- Mayor DeIorio thanked the public for attending the discussion on under aged drinking in the Borough. He said anyone wishing to view that meeting can see a taping of it on TV34 next week. He thanked John Longo who took the role of facilitating that discussion.
- On June 22nd, at 7:00 p.m., the Planning Board will be hosting a meeting to discuss the redevelopment of the Borough. He said the meeting will be conducted by the Planners Heyer, Gruel & Associates.

MATTERS FOR REFERRAL

Councilman Dinardo:

- The reflective poles installed on Grant Avenue are working out well by keeping people in their lane and slowing them down.
- Said he walked in the Memorial Day parade and was glad to see the number of residents who came out.
- Attended the under age drinking awareness meeting held at Borough Hall and thanked CAASA Director, John Longo, for all his efforts to combat substance abuse.
- Received a request from a resident to do a town wide garage sale. Borough Clerk Doreen Cali said the residents would come to Borough Hall and for \$10.00 they are put on a list and on the day of the event maps can be picked up so they know every house that is registered. Councilman Harms suggested discussing the matter in committee and Mayor DeIorio agreed.

Councilman Rubilla:

- Reported that Conrail has agreed to paint the bridges although they have not provided a date Roselle Park is on a rotating list. He also received a commitment that it would be done before it gets cold. Councilman Zeglarski asked if the town would have any input as to how it gets painted and Councilman Rubilla said he would ask.

Councilman Matarante:

- Reported there was a Joint Sewer Board lawsuit which included an agreement for the Joint Sewer to be reimbursed 4 million dollars. He said it has been agreed to in principal but is still in litigation because all the parties have not signed the documents.
- The Public Safety Committee has agreed to the speed humps on Prospect Street and Maple from the Township of Union. He reported that Traffic Safety Officer Mike Antonucci was going out to get bids. He requested that the Borough Clerk notify the residents of those two streets. He said they are also looking into speed humps on the 700 block of Walnut Street and the 100 block of E. Colfax Avenue. Councilman Matarante said they are considering asking the County to place reflective cones on Lincoln Avenue, two spots on E. Clay and on E. Grant by Bender.
- Thanked the Borough Clerk for all her hard work on the 4th of July event. He stated the Borough was up to \$7,000.00 in donations for fireworks. He said Pop Warner was sponsoring a dunk tank and have requested that Mayor and Council take turns on getting dunked.

Councilman Harms:

- Requested that Borough Clerk contact the Administrative Assistant to find out when letters were going out to the First Aid Squad and Fire Department regarding the Fourth of July so they have time to schedule people for the day.
- Suggested using crossing guards during the bike races.
- Reminder that the Relay for Life starts Saturday night at 6:00 p.m. and runs until 7:00 a.m.

Mayor DeIorio said the Borough has received a revision for a request regarding the street fair. Borough Clerk Doreen Cali said originally the request was for W. Webster Avenue and is now for E. Clay Avenue to Grant and from Grant Avenue to Charles. Councilman Harms said the request would need the approval from the Police Department. He said he received an e-mail today and he has several questions. He requested discussing the matter at the Public Safety meeting on Tuesday because he had several questions which he wanted to discuss with Chief Wielgus. Borough Clerk Doreen Cali stated that the request has changed seven times in the last week. Councilman Rubilla suggested inviting the applicant to the meeting and Mayor DeIorio agreed. Mayor DeIorio said he had no updates on the Hawthorne Property except that it was for

sale. He said there is some potential interest in the development of the nail salon property with a wellness center.

Mayor DeIorio read the Closed Session resolution and said Council would be discussing the following matters:

- Potential Litigation – Public Defender Fees

INTERRUPT THE REGULAR ORDER OF BUSINESS

Councilman Dinardo moved to interrupt the regular order of business for a closed session meeting; seconded by Councilman Harms and adopted.

RESUME THE REGULAR ORDER OF BUSINESS

Councilman Harms moved to resume the regular order of business; seconded by Councilman Rubilla and adopted.

Mayor DeIorio said during closed session Council discussed matters pertaining to:

- Potential Litigation – Public Defender Fees

There being no further business to come before the meeting; Councilman Matarante moved to adjourn; seconded by Councilman Rubilla and adopted.

Attest:

Borough Clerk