

ORDINANCE NO. 2022-0-018

**AN ORDINANCE CONSISTENT WITH ORDINANCE NO. 2021-0-013 ESTABLISHING
UNIFORM RATES FOR DIGITAL, OPTIC FIBER, ANALOG CABLES/CONDUITS TO ZAYO
TO ENTER ALONG, UPON AND OVER AND USE OF THE LAND,
LEVEES AND EASEMENTS OF THE METRO EAST SANITARY DISTRICT IN
MADISON AND ST. CLAIR COUNTIES, ILLINOIS**

WHEREAS, the Board of Commissioners of the Metro East Sanitary District, owner of rights and in control of certain lands, levees and easements in Madison and St. Clair Counties, Illinois, does from, time to time, grant licenses to various entities for specific limited purposes subject to management and control by the Metro East Sanitary District; and

WHEREAS, permission to use by the Licensee is a privilege which can be enjoyed by the Licensee according to an agreement affecting such use between the Metro East Sanitary District and the licensing entity and monetary consideration is required for such permission to be granted by the Metro East Sanitary District; and

WHEREAS, the Metro East Sanitary District desires to establish a schedule of fees for various licensing upon, along and across the lands, levees and easements of the Metro East Sanitary District; and

WHEREAS, the Metro East Sanitary District must review, monitor and inspect any use by outside entities over, above and upon the lands, levees and easements of the Metro East Sanitary District, and the Metro East Sanitary District realizes any license or permit granted subjects Metro East Sanitary District to various risks, liabilities and individual concerns considering the integrity of the levees, lands and easements of the Metro East Sanitary District;

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF COMMISSIONERS OF THE METRO EAST SANITARY DISTRICT, A MUNICIPAL CORPORATION OF MADISON AND ST. CLAIR COUNTIES, STATE OF ILLINOIS, AS FOLLOWS:

**ARTICLE I
SCHEDULE OF FEES FOR ANY TYPE OF DIGITAL,
OPTIC FIBER, ANALOG CABLES/CONDUITS
CROSSING METRO EAST SANITARY DISTRICT LANDS, LEVEES
AND EASEMENTS**

SECTION 1: The fee for digital, optic fiber, analog cables/conduits entities:

- A. For a single cable fiber and/or conduit with widths up to four inches (4"), for lengths up to 2,000 feet TWO THOUSAND DOLLARS (\$2,000) per year, plus an accumulative annual increase of THREE PERCENT (3%) per year, for lengths over 2,000 feet, there is a charge of \$2,000.00 for every additional 2,000 feet or parts thereof, plus an accumulative annual increase of THREE PERCENT (3%) per year.

- B. For multiple cables fibers and/or conduits widths four inches (4") up to twelve inches (12") for lengths up to 2,000 feet, TEN THOUSAND DOLLARS (\$10,000) per year, plus an accumulative annual increase of THREE PERCENT (3%) per year, for lengths over 2,000 feet, there is a charge of \$10,000.00 for every additional 2,000 feet or parts thereof, plus an accumulative annual increase of THREE PERCENT (3%) per year.
- C. The owner of the digital, optic fiber, analog cables/conduit shall furnish Metro East Sanitary District information on the name of each company that will perform the work installing or performing maintenance repair or other work on fibers, digital or analog cables, the number of digital, optic fiber, analog cables/conduit and disclose the number of fibers installed and the size thereof and shall furnish Metro East Sanitary District with information on the status of fibers being served by the digital, optic fiber or analog cable annually from the date of installation. Prior to any Company performing any work on MESD property, that owner and Company shall fully execute and comply with the terms and conditions of the MESD Right of Entry Application and Agreement.
- D. The owner shall annually at or near the anniversary of the effective date of this Ordinance, furnish to Metro East Sanitary District information on the status of the lines or cables installed, maintained, repaired or abandoned, etc. Failure to report to Metro East Sanitary District may result in termination of this license or a fee of \$2,500.00.

ZAYO shall pay \$10,000 annually as the fee for this license for FOUR 1 ½" conduits. Subject to the remaining terms and within Project 11 and Project 14. Please reference exhibits A 140 feet, B 565.85 feet, C 574 feet, D 200 feet. There is an accumulative annual increase of THREE PERCENT (3%) per year, per Section 1 B.

SECTION 2: That any work performed as stated or construction planned shall be done subject to the approval of the designated Engineer of the Metro East Sanitary District and, when required, the United States Army Corps of Engineers, who shall be represented on the work site, from time to time by an inspector authorized by the Executive Director of the Metro East Sanitary District. The expense of such shall be negotiated by the applicant. All work shall not interfere with the MESD use of property and work performed shall not damage MESD property and if so licensee, when required, shall be responsible for damages.

Zayo must install the conduits at a minimum of 5 feet below the surface for each crossing

SECTION 3: That any owner or operator seeking access as fully stated above upon thirty (30) days written notice from the Executive Director of the District, shall relocate, without cost to the District any part of the digital, optic fiber or analog cable or conduit wherever same may interfere with the construction, maintenance, or repair of the lands, levees and easements and such subsidiary work as may be hereafter required, to enable the District to perform such work without hindrance or delay. Removal and restoration is the only form of abandonment acceptable to the Metro East Sanitary District without prior negotiation; however, lands, levees and easements and the areas in the immediate vicinity of the lands, levees and easements are subject to the regulations of the requirements of the United States Army Corps of Engineers, which may choose the method of abandonment as the cost of the owner.

That at any time in the future the digital, optic fiber, analog, cable conduit shall become abandoned or shall no longer be used for the purpose constructed, the owner shall give thirty (30) days written notice to the District of said abandonment. Then, upon thirty (30) days written notice from the District, the owner shall be required to remove all items which have been placed upon the land, levees or easements of the District in conjunction with the construction, operation and maintenance of the digital, optic fiber, analog, cable conduit herein provided for, without cost to the District. All abandonment procedures must be approved by the District and meet with all requirements of the USACE.

SECTION 4: That any work done by the licensee and their contractor(s) shall be done in a workmanlike manner, in compliance with any and all applicable building and construction codes, and fully maintained during the term stated in the license of the licensee at the expense of the licensee, its successors and assigns.

SECTION 5: That anyone seeking to construct, replace, perform maintenance or repair a digital, fiber, or analog cable/conduit on the lands, levees and easements of the Metro East Sanitary District, shall give the Metro East Sanitary District at least five (5) days written notice prior to any non-emergency work done at such site and again must fully execute and comply with the terms and conditions of the MESD Right of Entry Application and Agreement.

SECTION 6: That any owner, operator or any contractor performing work on their behalf seeking access to the lands levees and easements of the Metro East Sanitary District for digital, optic fiber, analog cables/conduits shall, in addition to fully executing and complying with the terms and

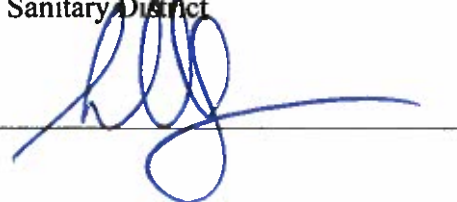
conditions of the Metro East Sanitary District Right of Entry Application and agreement, indemnify and save harmless the Metro East Sanitary District from any and all liability of whatsoever kind or character or claims therefor, on behalf of any person, firm or corporation, for any injuries or alleged injuries to person or property that may arise or be alleged to arise on account of installing, laying, maintaining or repairing and operating said digital, optic fiber, analog cables/conduits and all rights granted are subject to the lawful use by the Metro East Sanitary District and any owner or operator using the lands of the Metro East Sanitary District for digital, fiber, or analog cable/conduit purposes shall reimburse the Metro East Sanitary District for any sum or sums that it may be compelled to expend in defending itself associated with the digital, optic fiber, analog cables/conduits.

SECTION 7: This Ordinance shall be in full force and effect from and after its passage and approval and written acceptance thereof being filed with the Clerk of the Metro East Sanitary District.

Approved: May 24, 2022.

Metro East Sanitary District

President



Attest:

Clerk

Gillian Lederman, VP (instaling Rights) (under protest)

Zayo Representative

May 25, 2022

Date