

MINUTES
FINANCE COMMITTEE MEETING
6:15 P.M., AUGUST 19, 2019
A/V CONFERENCE ROOM

Joseph Jenkins, Chairperson, called the meeting of the Charleston City Council Committee on Finance to order at 6:15p.m., August 19, 2019, in the Audio/Visual Room in City Hall.

A silent roll was taken by the Clerk and a quorum was established. The following committee members were present:

Joseph Jenkins, Chair
Bobby Reishman, Vice Chair
Brent Burton
Mary Beth Hoover
Will Laird
Shannon Snodgrass
Keeley Steele

I. DISCUSSION:

a. Councilmember Reishman asked for unanimous consent to dispense with the reading of the minutes for the August 5, 2019 meeting and that they be approved as distributed. There was no objection and the minutes were approved.

II. RESOLUTIONS:

a. Resolution No. 228-19 - Authorizing the Mayor or City Manager to submit a grant application to the Department of Justice - Edward Byrne Memorial Justice Assistance Grant program in the amount of \$140,665.00 and administer any funds awarded. The Charleston Police Department will use \$104,059.00 to provide training and equipment for the Hybrid Unit, radios, one pole camera and overtime. The Kanawha County Sheriff's Department will utilize \$36,606.00 to purchase crime scene investigation supplies.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized to submit a grant application to the Department of Justice - Edward Byrne Memorial Justice Assistance Grant program in the amount of \$140,665.00 and administer any funds awarded.

City Manager, Jonathan Storage, added that this will supply equipment to the Hybrid Unit as well as overtime costs.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution 228-19 approved.

b. Resolution No. 229-19 - Authorizing the Mayor or City Manager to enter into a Memorandum of Understanding with the Kanawha County Commission designating the City as the applicant and fiscal agent for the Edward Byrne Memorial Justice Assistance Grant application.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized to enter into a Memorandum of Understanding with the Kanawha County Commission designating the City as the applicant and fiscal agent for the Edward Byrne Memorial Justice Assistance Grant application.

Storage added since the Kanawha County Sheriff's Office will be considered a sub-grantee, the grant program requires a separate MOU making sure that the program requirements are followed.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution 229-19 approved.

c. Resolution No. 230-19 - Authorizing settlement of pending disputed claims against the City by juveniles, known as X.W. and F.W., as recommended by the City Solicitor.

Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia:

That the City Council hereby authorizes and approves the settlement of pending disputed claims against the City by X.W. in the amount of \$105,000 and F.W. in the amount of \$25,000, as recommended by the City Solicitor. The City Council acknowledges that due to the involvement of juveniles, the settlement will not be finalized until it is approved by the Circuit Court of Kanawha County. The City Council authorizes the City Solicitor and City Manager to take all necessary steps to finalize resolution of the claims.

City Attorney, Kevin Baker, added that with Council's approval, the parties will petition the Court for approval of the settlement. The Court will appoint a guardian ad litem to recommend settlement term details. The City will work to recommend that the funds are placed in a trust with a neutral trustee who can ensure the money is spend on education and healthcare.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution 230-19 approved.

d. Resolution No. 231-19 - Authorizing the Mayor or City Manager to enter into a 25-year agreement with the United States Geological Survey for the installation and maintenance of a stream gauging station on the South Side Bridge for the purpose of streamflow measurement and/or water quality sampling of the Kanawha River.

Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia:

The Mayor or City Manager is authorized to enter into a 25-year agreement with the United States Geological Survey for the installation and maintenance of a stream gauging station on the South Side Bridge for the purpose of streamflow measurement and/or water quality sampling of the Kanawha River.

Storage added that the US Geological Survey approached the City to request that an apparatus be attached to the Southside Bridge to help with measuring water flow and the height of the water. This is a huge benefit to the City as it will provide free water alert notifications.

Councilmember Jenkins asked if there was currently a gauge on the Southside Bridge. It was answered yes, and that they would be moving the gauge to the other side of the bridge.

Councilmember Snodgrass asked what the main purpose of the gauge was. Storage answered that it was to allow agencies to determine flood stages and water flow, helping to predict in almost real time when flooding would occur.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution 231-19 approved.

U.S. DEPARTMENT OF THE INTERIOR
U.S. Geological Survey

Agreement Number

AGREEMENT FOR INSTALLATION AND MAINTENANCE OF GAGING STATION *

The landowner agrees that the U.S. Geological Survey (USGS), VA-WV Water Science Center may install and maintain a gaging station on the landowner's property at a mutually agreed-upon site at the location listed below. The landowner also agrees that the USGS will have access to the site, as it reasonably deems necessary for streamflow measuring and/or water-quality sampling during the life of this agreement.

Description of the gaging station, located at Lat. 38.347284 Long. -81.636512
and/or

South Side Bridge, Charleston, WV, located on railing on downstream side of bridge near right bank.

(Provide other location description and/or attach map, plat, drawings, photographs, or other descriptive information)

Excavation and/or installation of the gaging station, at the USGS's own expense, may begin any time after this agreement is fully executed. The gaging station shall be excavated, installed, and properly maintained by the USGS. This Agreement shall be regarded as granting a license or easement, whichever may most appropriately characterize it under applicable state law, in favor of USGS to enter landowner's property for the purposes noted herein.

At the expiration of this agreement, the gaging station may be disposed of in one of the following ways:

1- Removal by the USGS, at its own cost and expense, within a reasonable time after the expiration of this agreement. Upon removal of the station, the USGS shall restore the landowner's property, also at its own expense, as nearly as possible to the condition when installed, or

2- Transfer to a state, local, or tribal government agency or Federal Energy Regulatory Commission licensee under a separate written agreement, if approved by the landowner and the USGS Regional Executive.

During the life of this agreement, the Federal Government will be liable for any loss related to the installation, operation, maintenance, and other activities associated with the gaging station described above in accordance with, and to the extent permitted under, the Federal Tort Claims Act (28 U.S.C. §§1346(b) and 2671 et seq).

This agreement shall become effective when fully executed and shall remain in full force for 25 year(s) 0 month(s) unless terminated earlier by USGS upon 60 days written notice.

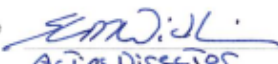
After 25 year(s) 0 month(s), the agreement will continue in force until terminated by either the USGS or the landowner upon 60 days written notice to the other party.

* For the purpose of this agreement, "gaging station" includes all stilling wells and structure, including cableways and equipment, used in the operation and maintenance of the monitoring site.

Landowner City of Charleston
Address 501 Virginia Street East, Charleston, WV 25301
Telephone Number 304-348-8014

USGS Water Science Director Bennett, Mark R.
Address 1730 E Parham Road, Richmond, VA 23228
Telephone Number 804-261-2600

USGS Project Chief White, Jeremy S.
Telephone Number 304-347-5130 x246

U.S. Geological Survey Signature/Date  8/13/19
Landowner Signature/Date 

As consideration for the rights and privileges granted herein, the USGS will pay the landowner the sum of \$0 upon presentation of a bill, subject to the availability of appropriations by the Congress.

Landowner City of Charleston
Address 501 Virginia Street E, Charleston, WV 25301
Telephone Number 304-348-8014

USGS Water Science Director Bennett, Mark R.
Address 1730 E Parham Rd, Richmond, VA 23228
Telephone Number 804-261-2600

USGS Project Chief White, Jeremy S.
Telephone Number 304-347-5130 x246

U.S. Geological Survey Signature/Date  8/13/19
Landowner Signature/Date 

Notary Seal:

e. Resolution No. 232-19 - Authoring the Mayor or City Manager to submit an application to the Kanawha County Commission Public Safety Grant Committee in the amount of \$15,000 and administer any funds awarded. These funds will be utilized by the Charleston Fire Department to purchase active shooter response kits for mass casualty trauma response. There is no match required on these funds.

Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized to submit an application to the Kanawha County Commission Public Safety Grant Committee in the amount of \$15,000 and administer any funds awarded.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution 232-19 approved.

f. Resolution No. 233-19 - Authorizing the Mayor or City Manager to renew a policy of insurance for cyber-attack coverage from Beazley Insurance Company with a \$5,000,000 policy limit and an annual premium of \$34,766.01, where the policy of insurance will cover both the City of Charleston and the Charleston Sanitary Board with premium costs to be shared between the two entities.

Now, therefore, be it Resolved by the Council of the City of Charleston, West Virginia:

The Mayor or City Manager is authorized to renew a policy of insurance for cyber-attack coverage from Beazley Insurance Company with a \$5,000,000 policy limit and an annual premium of \$34,766.01, where the policy of insurance will cover both the City of Charleston and the Charleston Sanitary Board with premium costs to be shared between the two entities.

Storage added that this insurance policy was recently obtained in 2017, which allows the City to have coverage in the event of a cyber-attack. The Administration anticipates cancelling the policy mid-year in March. This will ensure that all of the City's insurance policies renew at the same time.

Councilmember Burton abstained from voting as the agency he works for helps place this coverage.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative, with one abstention from Burton, Chairperson Jenkins declared Resolution 233-19 approved.

g. Resolution No. 234-19 - Authorizing the Mayor or City Manager to enter into a Memorandum of Understanding with Kanawha Valley Collective, Inc., for the Family Reunification and Enhancement Opportunity Project.

Be it Resolved by the Council of the City of Charleston, West Virginia:

That the Mayor or City Manager is hereby authorized to enter into a Memorandum of Understanding with the with Kanawha Valley Collective, Inc., for the Family Reunification and Enhancement Opportunity Project.

Storage added that the MOU will allow the City to continue to provide its critical reunification services.

Councilmember Laird was what is being done differently in this resolution. Storage answered that it streamlines the billing process.

Councilmember Hoover asked how many people have been relocated through this program. It was answered 322 people since 2017.

Councilmember Reishman moved to approve the Resolution. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Resolution 234-19 approved.

**MEMORANDUM OF UNDERSTANDING FOR
THE FAMILY REUNIFICATION AND ENHANCED OPPORTUNITY PROJECT**

This Memorandum of Understanding (MOU) is entered into this ___ day of August, 2019, by and between The City of Charleston ("City"), a West Virginia Municipal Corporation, and Kanawha Valley Collective, Inc., including its participating members and agents ("KVC"), a West Virginia Non-Profit Corporation. The City and KVC are collectively referred to herein as "the Parties."

WHEREAS, the City of Charleston is a West Virginia Municipal Corporation organized and existing under the laws of the State of West Virginia and located in Kanawha County, West Virginia; and

WHEREAS, KVC is a West Virginia Non-Profit corporation with its principal offices located at 1 United Way Square, Charleston WV 25301, and is a collaborative network dedicated to preventing and ending homelessness; and

WHEREAS, the Family Reunification and Enhanced Opportunity Project (the "Project") is an outreach project designed to assist homeless and other at-risk individuals found in the City of Charleston to be reunited with family members who are located outside of the City of Charleston and its surrounding areas, or to assist such individuals with employment and/or service and/or programming opportunities that are located outside of the City of Charleston and its surrounding areas, by providing transport to the locale where the family members or opportunities are located;

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

A. *Identification and Outreach.* The City and KVC agree that they will work together to identify persons who may benefit from participation in the Project and to facilitate outreach and transportation as part of the Project.

B. *Destination Contacts.* KVC agrees to use reasonable efforts to verify that the participants in the Project have family members living at the destination to which the participants are seeking relocation, or have employment and/or service and/or programming opportunities at such destination. KVC further agrees to document those efforts and provide them upon request to the City.

C. *Transportation.* The City and KVC agree work together to provide transport of participants in the Project to public transportation or common carrier service in an effort

to reunite them with identified family members, or to relocate participants for the purpose of taking advantage of employment and/or service and/or programing opportunities. KVC shall provide the City with an estimated cost of the relocation and information regarding the destination contacts prior to the City's approval of the relocation. Upon approval by City of the participant's relocation, KVC agrees to purchase one-way tickets on public transportation or common carrier, the cost of which shall be reimbursed by City as set forth below. In the event that participants are leaving incarceration, the City, through the Charleston Police Department, shall provide transport to the appropriate public transportation or common carrier service.

D. *Reimbursement.* In order to reimburse KVC for the cost of one-way transportation for participants in the Project, KVC agrees to provide a monthly invoice setting forth the name of the participant, the destination, the name of the transport service provider, the cost of the ticket, and the family member, employment, service, or programming opportunity that the participant will be meeting with or receiving at the destination. The City will process invoices in a reasonable time upon receipt and provide reimbursement for the cost of the tickets for approved participants' relocations.

E. *Liability.* KVC shall indemnify, defend, and hold harmless the City from and against any and all liabilities, demands, losses, claims and damages of any kind whatsoever, whether on account of injury to or death of any person or persons, damage to or loss of property, violation of any law or regulation, breach of any of the provisions of this MOU, or otherwise arising out of or attributable directly or indirectly to the negligent or intentional acts or omissions of KVC, its employees, officers, and agents. The duty to indemnify and defend shall specifically extend to include any and all costs and expenses, including reasonable attorney's fees and expenses that may be incurred by the City in connection therewith.

F. *Amendments.* Any amendment to this MOU shall be made in writing and shall be executed by all Parties.

G. *Term.* This MOU shall take effect immediately upon execution by the parties, and continue until terminated by agreement of the Parties, or as detailed in this MOU.

H. *Termination.* This MOU may be terminated at any time and for any reason by either party by providing ninety (90) days' written notice to the other. If either party terminates this MOU, KVC shall be entitled to payment for all months of work performed to the satisfaction of the City prior to the date of termination.

I. *Assignment.* Notwithstanding any provision of this MOU, no Party may assign or transfer any of the rights and privileges granted hereunder without the approval of the Parties hereto, which approval shall not be unreasonably withheld.

J. *Choice of Law, Dispute Resolution, and Venue.* This MOU shall be deemed to be executed in the City of Charleston, State of West Virginia, and shall be governed by

the laws of the State of West Virginia. If any breach, default, or other dispute arises out of this MOU, the Parties agree that they will exercise good faith and commercially reasonable efforts to resolve said breach, default or other dispute through negotiation. If the parties cannot resolve the matter through negotiation, the Parties acknowledge and agree that either the Circuit Court of Kanawha County, West Virginia or the Federal District Court for the Southern District of West Virginia shall have exclusive jurisdiction to resolve the breach, default or other dispute giving rise to the litigation.

K. *Severability.* In the event that any of the provisions of this MOU are determined to be illegal or unenforceable, all other terms shall remain in full force and effect.

L. *Conflicts of law.* If there is a conflict between the provisions of this MOU and any laws, whether federal, state, or city, including all future laws and ordinances, the contract provision will be superseded by any such law.

M. *Notices.* Notice pursuant to this MOU shall be in writing and addressed as follows:

For Kanawha Valley Collective:
Traci Strickland
Executive Director
1 United Way Square
Charleston, WV 25302

For City of Charleston:
Jonathan Storage
City Manager
501 Virginia Street E
Charleston, WV 25301

IN WITNESS WHEREOF, the undersigned have caused this MOU to be properly executed by an officer thereunto duly authorized.

City of Charleston,
A West Virginia Municipal Corporation

Kanawha Valley Collective,
A West Virginia Non-Profit Corporation

By: _____

By: _____

Its: _____

Its: _____

Date: _____

Date: _____

III. BILLS:

a. Bill No. 7828 - A Bill granting a non-exclusive franchise to Shentel Communications, LLC for the use of the streets and other public rights-of-way of the City of Charleston, West Virginia, for the purposes of constructing, installing and maintaining network facilities for telecommunication services within the City of Charleston.

Therefore, be it Ordained by the Council of the City of Charleston, West Virginia:

That Shentel Communications, LLC is hereby granted a non-exclusive franchise and is authorized to have access to the public rights-of-way in the City of Charleston for the purposes of constructing, installing and maintaining network facilities for telecommunication services within the City of Charleston upon the following terms and conditions which are agreed to by Shentel Communications, LLC as evidenced by its signature below:

FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter "Agreement") is made and entered into this ____ day of _____, 2019 by and between the City of Charleston (the "City") and Shentel Communications, LLC ("Shentel").

RECITALS

WHEREAS, Shentel is a limited liability company duly organized and existing under the laws of the Commonwealth of Virginia, and has been authorized by the West Virginia Public Service Commission to provide all forms of telephone service in the State of West Virginia; and

WHEREAS, Shentel is a telecommunications provider that seeks to construct, install and maintain network facilities for telecommunications services within the City of Charleston using the Public Rights-of-Way ("PROW"), which are limited resources; and

WHEREAS, in accordance with the provisions of W. Va. Code § 8-31-1, the City of Charleston has the authority to grant access to its PROW; and

WHEREAS, Section 37 of the Charter of the City of Charleston authorizes the City to enter into franchise agreements with public utilities by ordinance duly passed by the council; and

WHEREAS, Section 102-212 of the Code of the City of Charleston requires a franchise agreement before any person may occupy the PROW; and

WHEREAS, The City is mindful that access to the PROW for the installation of new facilities by multiple firms may have an adverse impact upon the community unless facilities are installed and maintained pursuant to an overall plan that manages the use of the PROW; and

WHEREAS, the City has determined that service to be provided by Shentel through its facilities to be located and maintained within the City is beneficial to the public and businesses within the City and further desires to promote the entry and operation of fiber optic service providers and facilities in a competitively neutral manner; and

WHEREAS, this ordinance is designed to protect the health, welfare and general economic wellbeing of the City of Charleston; and

NOW, THEREFORE, in consideration of the recitals and the mutual promises contained herein, the City and Shentel agree as follows:

ARTICLE I

GENERAL AND DEFINITIONS

A. General. Shentel promises to remain in good standing with West Virginia and the City by being licensed to do business and remaining current on all taxes and fees. Shentel further promises to notify the City immediately of the change of any of the following current information:

1. Responsible official and telephone and mailing address:
Edward H. McKay, Senior Vice President Engineering and Operations, 500 Shentel Way, Edinburg, VA 22824; 540-984-5303.
2. Local agent, address and telephone for service of process:
Corporate Creations Network Inc., 126 East Burke Street, Martinsburg, WV 25401.
3. Business name and type of business entity: Shentel Communications, LLC, a Virginia limited liability company.

B. Defined Terms:

1. Fiber Optic or Other Cable and Related Facilities (sometimes hereinafter referred to as "Facilities" and/or "Equipment") means fiber optic cables or other cable facilities, conduits, lines, converters, splice boxes, handholds, manholes, vaults, equipment, drains, surface location markers, appurtenances and related Facilities located or to be located by Shentel within the PROW of the City of Charleston and used or useful for the transmission of Telecommunications Services.
2. Law means any local, state or federal legislative, judicial or administrative order, certificate, decision, statute, constitution, ordinance, resolution, regulation, rule, tariff, guideline or other requirement as amended, now in effect or subsequently enacted or issued during the term of this Agreement.
3. Public Rights-of-Way ("PROW") means the surface and area across, in, over,

along, upon and below the surface of the public streets, rights of way, roads, sidewalks, lanes, courts, ways, alleys, boulevards, and places including, without limitation, all public utility easements and public service easements as the same now or may thereafter exist that are under jurisdiction of the City of Charleston.

4. Telecommunications Services means all telecommunications services that Shentel may provide under Law.

ARTICLE II

GRANT OF AUTHORITY AND PERMISSION TO PLACE FACILITIES IN PUBLIC RIGHTS-OF-WAY

A. Access. Subject to the terms of this Agreement, the City hereby grants to Shentel the non-exclusive right to construct, install, maintain, locate, move, operate, place, protect, reconstruct, reinstall, relocate, remove and replace Fiber Optic or Other Cable and Related Facilities in any PROW of the City. Shentel shall be solely responsible for obtaining any required consents from State or County agencies, or private parties, to the extent that its operations affect State, County, or private property. For purposes of this Agreement, Shentel is only authorized to install underground Facilities but may access and use the PROW above ground for the installation, maintenance, repair, of its Facilities and Equipment, and for other related legitimate purposes authorized herein. It is expressly agreed that this Agreement does not give Shentel the right to occupy any PROW with permanent above ground cabinets, pads and other similar above-ground structures or facilities that require the installation of new poles or construction. If Shentel desires to occupy any PROW with such a structure or facility, a separate permit and city approval will be required. This paragraph does not limit Shentel's ability to contract with other entities for access to Facilities and Equipment in the PROW.

1. This grant of authority is exclusive to Shentel and its agents. Shentel is not authorized to rent space or allow use to providers who do not have a franchise or license agreement with the City and approval by the City to access.

2. Shentel acknowledges and understands that the City desires to minimize installation and maintenance work within the PROW. Therefore, Shentel shall follow a process consistent with the West Virginia Division of Highways Dig Once Policy to make fair and reasonable accommodation to share installation costs if competitors elect to place Facilities along the same PROW as described in the permit sought. To comply with the West Virginia Division of Highways Dig Once Policy, Shentel shall follow the process set forth in West Virginia Code § 17-2E-5, as of the effective date of this Agreement, with the following changes:

A. References to the "council" or the "division" shall be interpreted as being to the City Engineer;

B. The rules promulgated by the commissioner of the division pursuant to West Virginia Code § 17-2E-5(f) shall similarly apply as if promulgated by the City Engineer. Any issues in applying the rules shall be brought to the attention of the City Engineer directly.

3. All installation and maintenance of fiber-optic Facilities to be installed within the PROW require the written approval of City in accordance with the City's standard permitting process.

4. Shentel recognizes and accepts the risk that the City retains the right to amend existing, and pass new, PROW ordinances governing its PROW within the term of this Agreement, subject to applicable law. In the event the City passes any such ordinance which might affect Shentel's operations under this Agreement, both Shentel and the City agree to enter into good faith negotiations to enable Shentel to conform its activities under this Agreement within a reasonable period of time. Shentel expressly acknowledges that any changes to City Code made by City Council regarding issues impacting Shentel's operations under this Agreement will be controlling and the possibility and outcome of such changes is expressly understood and contemplated by Shentel in this Agreement.

5. With respect to the PROW, Shentel shall provide the City with detailed Plans of the Project so the City can have appropriate verification that:

- A. The installation of the Facilities will not adversely affect the safety, design, construction, operation, maintenance or stability of the City's street system;
- B. Operation under the Agreement will not interfere with or impair the present use or anticipated future expansion of the affected street;
- C. The direct and indirect environmental and economic effects that would result from disapproval of the use of the PROW for the accommodation of the Facilities would be contrary to the public interest;
- D. The installation will not involve tree removal or tree trimming that conflicts with City policy;
- E. The installation shall be located in an area that is as far along the outer limit of the PROW as is practicable; and

B. No Property Interest. This Agreement is not a grant by the City of any fee simple or superior property interest and is made subject and subordinate to the prior and continuing right of the City to control and use the PROW as a street and/or sidewalk and for the purpose of laying, installing, maintaining, repairing, protecting, replacing and removing sanitary sewers, water mains, storm drains, gas mains, poles and for other municipal uses and with the right of ingress and egress, along, over, across and in said PROW.

C. No Interference. In the performance and exercise of its rights and obligations under this Agreement, Shentel shall not interfere in any manner with the existence and operation of any and all PROW, and private rights-of-way, sanitary sewers, water mains, storm drains, gas mains, poles, overhead and underground electric and telephone wires, television cables, public works, telecommunication or utility Facilities, or City of Charleston property without the prior approval of the owner(s) of the affected property or properties, including the City.

Nothing in this Agreement abrogates the right of the City to perform any public works or public improvements. If Facilities of Shentel interfere with the installation, construction, operation, maintenance, repair or removal of such public works or public improvements, Shentel at its own expense, within sixty (60) days after notice by the City (or such longer period of time as may be reasonably necessary and as may be agreed upon by the City and Shentel through good faith negotiation), shall protect, alter, remove or relocate Facilities, as directed by the City. If Shentel refuses or neglects to so protect, alter, remove or relocate Facilities or Equipment within the sixty (60) days after notice or the agreed negotiated time, the City may break through, remove, alter or relocate Facilities or Equipment without any liability to City, and Shentel shall pay to the City the costs incurred in connection with such breaking through, removal, alteration or relocation provided that reasonable efforts shall be used to minimize any damage to Shentel's Facilities or Equipment. The City may collect these costs and expenses, including reasonable attorney fees, as debts owed to the City, by bringing action in any court of competent jurisdiction and by the City exercising the City's rights to draw on bonds or letters of credit. The City shall also have a lien on the property of Shentel in an amount equal to all such costs, expenses, and legal fees associated with collection efforts.

D. Relocation of Facilities for Government. Except as provided below, Shentel will protect, support, temporarily disconnect, relocate, or remove any of its property at the time and in the manner required by the City or any other governmental entity for any legitimate and reasonably necessary or convenient governmental purpose at Shentel's expense. Except in an emergency, the City will provide written notice describing where the work is to be performed at least sixty (60) days before the deadline for performing the work. Shentel may seek an extension of the time to perform the work where it cannot be performed within sixty (60) days even with the exercise of due diligence, and such request for an extension will not be unreasonably refused.

E. Relocation of Facilities for a Third Party. If any removal, relaying, or relocation is required to accommodate the installation, construction, operation, or repair of the facilities or equipment of another party ("Third Party") authorized to use the PROW, Shentel will, after thirty (30) days' advance written notice, take action to effect the necessary changes requested by such Third Party. Unless the matter is governed by a valid contract or applicable law, or unless Shentel's Facilities or equipment were improperly installed, and if installed properly the removal, relocation or relaying would be unnecessary, the reasonable cost of removal, relaying, or relocation will be borne by such Third Party requesting the removal, relaying, or relocation.

F. Term. The period of this Agreement shall be for an initial term of fifteen (15) years commencing at the date of the signing of this Agreement, with the right to renew for consecutive additional five (5) year terms, unless either party notifies the other in writing at least sixty (60) days prior to the expiration of the term of its intent to seek a modification or termination of the Agreement.

G. Regulatory Approvals. Shentel shall obtain all necessary approvals from the appropriate

federal and state authorities to offer Telecommunications Services through its Facilities and Equipment, and shall, upon the City's request, submit evidence of such approvals to the City.

H. Street Closings. Nothing in this Agreement waives or releases the rights of the City in and to the streets. If all or part of the streets are eliminated, discontinued, closed or demapped in accordance with applicable law, the Agreement shall cease with respect to such streets upon the later to occur of (a) the effective date that such streets become eliminated, discontinued, closed or demapped and conditions specified by the City are met; or (b) in the case of any transfer of title to such streets to a private Person, the closing date of such transfer.

ARTICLE III INSTALLATION OF FACILITIES

A. Permits. As required by Law, Shentel shall apply for a permit for all work and each job within the PROW, and shall comply with all terms and conditions of any such permit. Shentel shall furnish City detailed plans of the work and other such information as required by Law, and shall pay all standard permitting and related processing, field marking, engineering and inspection fees prior to issuance of a permit in accordance with the rates in effect at the time of payment. Improvements shall be constructed and installed in accordance with the Law. Shentel shall comply with all existing PROW ordinances and permitting requirements and with any future or revised ordinances and requirements.

B. Facilities Map. Shentel shall maintain an accurate map showing the location of its existing Facilities, including conduit lines, equipment, and any other details of the Facilities as may be requested by the City. If any of the requested information is considered proprietary, Shentel will notify the City of this opinion, and the City will strive to keep it confidential, as permitted by law. Shentel will submit an existing Facilities Map as a condition of this Agreement. As for new installations, after the effective date of this Agreement, Shentel shall submit the proposed mapping of its plans for new installation to the City prior to any installation. As-built drawings of any new installation of Facilities shall be furnished to the city within sixty (60) days of completion of such installation. All mapping shall be provided in a format compatible to the City's GIS System, including, but not limited to, AutoCAD, Civil 3D or such other format agreed to by the Parties.

C. Exclusion of Certain Locations/Facilities. Prior to its installation of any Facilities in the PROW, and after Shentel provides the City with its proposed plans for the Facilities, the City may in its discretion designate certain locations for Facilities in the PROW to be excluded from use by Shentel for its Facilities, which, in the reasonable judgment of the City Engineer, are incompatible with the proposed Facilities or would be rendered unsafe or unstable by the installation. The City Engineer may further exclude certain other locations that have been designated or planned for other use or are not otherwise available for use by Shentel due to engineering, technological, proprietary, legal or other limitations or restrictions as may be reasonably determined by the City. In the event such exclusions conflict with reasonable requirements of Shentel, City will cooperate in good faith with Shentel and exercise

commercially reasonable efforts to attempt to find suitable alternatives, if available, provided that the City shall not be required to incur financial costs nor may Shentel require the City to acquire new locations for Shentel.

D. City's Trees. In installing or maintaining its Facilities or structures along the PROW, Shentel shall not injure or in any manner cut or trim the trees or branches of trees in such PROW without the permission of the City. All such trimmings shall be performed in a safe and orderly manner and in accordance with applicable Law. Shentel shall be responsible for removing all trimmings from the PROW upon completion.

E. Installation, operation, maintenance, repair, relocation and removal of Facilities. The installation, operation, maintenance, repair and removal of Shentel's Fiber Optic or Other Cable and Related Facilities shall be accomplished without cost or expense to the City and in such a manner so as not to endanger persons or property, or unreasonably obstruct travel on any road, walk or other access thereon within the PROW. During the performance of installation, along with any subsequent maintenance, repair, relocation or removal, Shentel shall be solely responsible for putting in place adequate safety measures and warnings for both pedestrians and vehicular traffic, including, but not limited to, barricades, flashing lights, flaggers, and all other measures required by law or necessary under the circumstances. Shentel shall notify the City Traffic Engineering Department and City Engineer of traffic and parking disruptions prior to beginning work. Shentel will maintain its Facilities in good order and operating condition and in compliance with all applicable PROW construction and other applicable federal, state and local regulatory codes throughout the term of this Agreement. Shentel shall justly compensate owners of property for any damages caused by installing, operating, maintaining, repairing, relocating or removing its Facilities.

F. Restoration of Public Rights-of-Way. After the installation, along with any subsequent maintenance, repair, relocation or removal, of the Fiber Optic or Related Facilities, Shentel shall, at its own cost, repair and return the PROW at a minimum to the same or similar condition existing before such installation, maintenance, repair, relocation or removal, in a manner as may be reasonably specified by the City and to the reasonable satisfaction of the City. Shentel shall be responsible for damage to City of Charleston street pavements, existing utilities, curbs, gutters and sidewalks related to Shentel's installation, construction, operation, maintenance, repair, relocation or removal of its Fiber Optic or Other Cable and Related Facilities in PROW, and shall repair, replace and restore in kind, any such damaged property at its sole expense. Upon failure of Shentel to repair, replace and restore any such damaged property in a manner as may be reasonably specified by the City and to the reasonable satisfaction of the City Engineer, after thirty (30) days notice in writing shall have been given by the City (or such longer period of time as may be reasonably necessary and as may be agreed upon by the City and Shentel through good faith negotiation), the City may cause such necessary repair, replacement or restoration to be made and may collect the costs and expenses incurred for such repair, replacement or restoration from Shentel. The City may collect these costs and expenses, including reasonable attorney fees, as debts owed to the City, by bringing action in any court of competent jurisdiction.

G. Insurance. Shentel shall provide proof to City of and shall maintain throughout the term of this Agreement liability insurance with regard to all damages in the minimum types and amounts of:

(1) General Liability - including premises, products and complete operations.

- | | | |
|-------|---|--|
| (i) | Bodily injury liability | \$1,000,000 each person
\$1,000,000 each occurrence |
| (ii) | Property damage liability, or | \$1,000,000 each occurrence |
| (iii) | Bodily injury and property
damage combined | \$1,000,000 single limit |

(2) Comprehensive - Automobile Liability Insurance, including owned, non-owned and hired vehicles.

- | | | |
|-------|---|--|
| (i) | Bodily injury liability | \$1,000,000 each person
\$1,000,000 each occurrence |
| (ii) | Property damage liability | \$1,000,000 each occurrence |
| (iii) | In lieu of (1) and (2)
Bodily injury and property
damage combined | \$1,000,000 single limit |

(3) Shentel agrees that with respect to the above-required insurance, the contracts will contain the following required provisions:

- (i) The City of Charleston and its officers, agents, employees, and elected officials shall be named as additional insureds (as the interests of each may appear) as to the general liability coverage;
- (ii) Policies shall provide primary coverage and shall reflect that Shentel is responsible for any and all deductibles; and
- (iii) Thirty (30) days notice shall be provided to the City of Charleston prior to cancellation, revocation, non-renewal or material change.

H. Construction Bond or letter of credit. Upon commencement of installation of the Facilities, Shentel shall deposit with the City of Charleston a surety bond or irrevocable letter of credit naming the City of Charleston as an obligee in the amount of Fifty Thousand Dollars (\$50,000.00). Shentel's obligation to maintain the surety bond shall terminate upon the satisfactory completion of the installation and the approval of the City Engineer. The City of Charleston may draw against the surety bond, up to its full face amount, for any loss or damage to the PROW utilized by Shentel due to damage caused to the PROW and not remedied to City's reasonable satisfaction after notice to Shentel of the loss or damage and a reasonable opportunity for Shentel to remedy said loss or damage. This bonding requirement is in addition to bonding requirements for obtaining construction permits, if any. Following the release of

the Bond or letter of credit upon completion of installation, Shentel may undertake maintenance and repairs of its installed Fiber Optic or Other Cable and Related Facilities upon obtaining the necessary permits and the payment of associated fees; provided that in the event Shentel undertakes repairs on an emergency basis at a time when permitting offices are closed, Shentel will notify the City Engineer of said emergency repair on the next business day following initiation of the emergency repair.

I. Indemnification. To the fullest extent permitted by law, Shentel agrees to indemnify, defend and hold harmless the City of Charleston its officers, employees, agents, and officials from and against any and all claims, demands, losses, damages, liabilities, fines, and penalties, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorney's fees and costs of defense (collectively, the losses), arising out of or related to: the installation, operation, maintenance, repair, relocation or removal of the Fiber Optic and Related Facilities; the negligent or wrongful acts or omissions of Shentel, its officers, employees, and agents; or, any breach by Shentel of its obligations described in this Agreement; provided, Shentel shall not be responsible for any liability arising from the sole negligence or willful misconduct of the City of Charleston, its officers, employees, and agents.

J. Timing of Cable/Line Installation Work

The City shall be consulted before the installation of Fiber Optic or Other Cable and Related Facilities so it has the ability to approve final locations and timing of construction/installation and to coordinate such work with other City or public projects including, but not limited to, street paving.

ARTICLE IV

FRANCHISE FEE, INTEREST, AND CITY USE OF FACILITIES

A. Franchise Fee. Upon completion of installation of its Facilities or any part thereof in the PROW, Shentel shall provide to the City, for its share of the City's costs of managing the PROW as contemplated by this Agreement, \$0.25 per linear foot per year for Facilities placed in the PROW.

B. No credits or deductions towards Other Fees. Shentel shall pay all standard, permit, right of way and user fees to the City of Charleston in accordance with Law. The compensation and other payments made pursuant to this agreement shall be in addition to any and all taxes or other fees or charges that Shentel shall be required to pay to the City, pursuant to current and future ordinances, or to any state or federal agency, all of which shall be separate and distinct obligations of Shentel.

C. Interest on Late Payments. If any payment required by this Agreement is not actually received by the City on or before the applicable dates fixed in this Agreement or applicable law, Shentel shall pay interest thereon, to the extent permitted by law, from the due date to the date paid at a rate equal to the rate of interest then charged by the City for late payment of

business and occupation taxes.

D. Nonpayment of Franchise Fee. Failure of Shentel to pay its Franchise Fee within sixty (60) days of its due date shall constitute a breach of this Agreement and subject to the Termination provisions set forth in Article V.

E. City Use of Shentel Facilities. Upon prior written notice to Shentel of the City's desire to do so, Shentel shall reserve space for the City to place fire, police, or other signal wires, including but not limited to, data and voice wires, for the City's use in conduit and on any poles owned by Shentel and to place traffic signs on any poles and above-ground fixtures owned by Shentel; provided, that any such use by the City shall be made in a manner that shall not interfere with Shentel's use of said conduit, poles, or fixtures, or cause damage to said conduit, poles, or fixtures, or to Shentel's Facilities. Such permission shall not extend to conduit, poles, or fixtures used by Shentel, but owned by others. The City shall be solely responsible for the installation, operation, maintenance and repair of signal wires or traffic signs placed pursuant to this permission, including all costs thereof, in accordance with the National Electric Safety Code and other applicable laws. Shentel shall make said space in its conduit and on its poles and fixtures available at no charge or cost to the City.

ARTICLE V GENERAL PROVISIONS

A. Notices. Notices pursuant to this Agreement shall be in writing and addressed as follows:

To the City of Charleston, care of the City Manager, P. O. Box 2749, Charleston, WV 25301, with a copy to the City Attorney at the same address.

To Shentel: Shentel Communications, LLC, 500 Shentel Way, Edinburg, VA 22824, Attention: Senior Vice President – Engineering and Operations, with a copy to the General Counsel at the same address.

Either party may change the address at which it will receive notices by providing written notice of the change to the other party.

B. Assignment. Notwithstanding any provision of this agreement, Shentel may not assign, transfer, lease, or sell any of the rights and privileges granted hereunder without approval of City, which approval shall not be unreasonably withheld, conditioned or delayed; provided, that, unless otherwise provided by applicable law, no consent need be obtained to assign, transfer, lease or sell any rights and privileges granted hereunder to any of Shentel's affiliates or any party providing financing to Shentel; provided, however, that no assignment, transfer, lease or sale shall be effective until the assignee, transferee, lessee, or the purchaser, including an affiliate, has filed with the City a duly executed instrument reciting the fact of such assignment, transfer, lease or sale and accepting the terms of the Agreement and agreeing to

perform all of the conditions thereof.

C. Abandonment or Termination. Shentel shall notify the City at least thirty (30) days in advance of Shentel's intent to abandon the Facilities, or any portion thereof, or to terminate this Agreement. Upon receipt of such notice of abandonment or termination, the City may, at the City's sole discretion, permit some or all of the Facilities to remain in place and ownership of such Facilities shall, if requested by City, be transferred to the City. If the City elects not to accept ownership of the Facilities within thirty (30) days after the receipt of notice of abandonment or termination by Shentel, Shentel shall, upon reasonable request by City, remove its Facilities at its own expense within thirty (30) days of the City's election not to accept ownership. In the event Shentel fails to remove or is not reasonably capable of removing its Facilities within thirty (30) days after abandonment or termination (or such longer period of time as may be reasonably necessary and as may be agreed upon by the City and Shentel through good faith negotiation), the City may, at City's reasonable discretion, permit the Facilities to remain abandoned in place, or City may undertake removal of the Facilities itself, without further notice, and charge the cost for removal to Shentel who shall pay said costs within thirty (30) days of the demand to do so. The City may collect its verifiable costs incurred from Shentel by exercising the City's rights to draw on bonds, letters of credit, or Guaranteed Fees, if any, and, to the extent such bonds, letters of credit, or Guaranteed Fees are not sufficient to cover such costs, the City may collect the remaining costs and expenses, including reasonable attorney fees, as debts owed to the City, by bringing action in any court of competent jurisdiction. The City shall also have a lien on the property of Shentel in an amount equal to all such costs, expenses, and legal fees associated with collection efforts.

D. Dispute Resolution, Choice of Law and Venue. If any breach, default, or other dispute arises out of this Agreement, the Parties agree that they will exercise good faith and commercially reasonable efforts to resolve said breach, default or other dispute through negotiation. Consistent with that agreement, each party agrees to disclose all material facts relevant to any dispute to the other party during any such negotiation. If the parties cannot resolve the matter without litigation, the Parties acknowledge and agree that either the Circuit Court of Kanawha County, West Virginia or the Federal District Court for the Southern District of West Virginia shall have exclusive jurisdiction to resolve the breach, default or other dispute giving rise to the litigation. The law of West Virginia shall govern any dispute that arises out of this Agreement.

E. Severability. In the event any of the provisions of this agreement are determined to be illegal or unenforceable, all other terms shall remain in full force and effect.

F. Bankruptcy. Shentel agrees to notify the City of any bankruptcy filings and any significant proceeding or motion that might affect the City's interests. The parties agree that this Agreement is personal and cannot be assigned without the consent of the City. If property is abandoned due to bankruptcy, Shentel will adhere to requirements of the subsection C titled "Abandonment or Termination" above.

G. Conflicts of law. If there is a conflict between the provisions of this Agreement and any laws, whether federal, state, or city, including all future laws and ordinances, the contract provision will be superseded by any such law and have no effect notwithstanding the contract clause of the United States Constitution.

I. Termination. The City of Charleston has the right to terminate this Agreement upon thirty (30) days written notice to Shentel, if Shentel commits a material breach of the terms of this Agreement, and such breach remains uncured during such 30-day period. Among other things, the failure of Shentel to remove or relocate Facilities as provided in Article II of this Agreement or the failure of Shentel to pay its Franchise Fee as provided in Article IV of this Agreement will be considered a material breach of this Agreement.

J. Survival. The insurance and indemnity obligations contained in Article III, Sections G and I herein shall remain in full force and effect and shall survive the completion or earlier termination of this Agreement.

Baker added that this is to be able to use the public right of way before the company can dig up the street to lay conduit. One difference to past agreements is that it incorporates the WV Divisions of Highway's Dig Once Policy.

Councilmember Reishman moved to approve the Bill. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared Bill No. 7828 approved.

IV. BIDS/PURCHASES:

a. A bid submitted by Hanson Ready Mix, for purchase of Portland Cement Concrete to be used by the Public Works Department on an as needed basis at the prices listed on the attached tabulation sheet

To be charged to Account No. 001-750-00-000-3-341, Street—Materials & Supplies

Storage added that while the majority of the quotes were cheaper from Rumble Ready Mix, he was advised that the bulk of the material that the City would need is Class A Concrete. Therefore, Hanson Ready mix is the apparent low bidder.

Councilmember Reishman moved to approve the Committee Report. With a majority of members present recorded thereon as voting in the affirmative Chairperson Jenkins declared the Committee Report approved.

Portland Cement - Public Works
Bid Opening: July 31, 2019 @ 11:00am

		Rumble Ready Mix 7 Scary Creek, Industrial Park Winfield, WV 25213 P: (304) 755-2595 PB@rumblereadymix.com	Hanson Ready Mix 1011 Bullit Street Charleston, WV 25301 P: (304) 346-6704 david.hescht@lehighhanson.com
Full Load* per cubic yard delivered to job site *unload in 30 minutes or less	Class A: 3500# Concrete	\$135.00	\$130.00
	Class B: 3000# Concrete	\$127.00	\$132.00
	Class C: 2500# Concrete	\$125.00	\$128.00
	Class D: 2000# Concrete	\$120.00	\$123.00
	Controllable Low Strength Material	\$105.00	\$106.00
Partial Load Charge (if applicable)		\$100.00	\$100.00
Unloading Charge past 30 minutes		1.00 per minute	\$85.00
Cost of adding Fiber to Concrete		\$7.50/yard	\$6.50/cubic yard
Fuel Surcharge		\$25.00	\$15.00

**** Received a late bid on 8/6/2019
from Claxton Smith & Sons Concrete -
Bid Rejected received after the official
bid opening date of July 31, 2019.

Councilmember Reishman motioned to adjourn the meeting.

Meeting adjourned.