

MINUTES
FINANCE COMMITTEE MEETING
6:30 P.M., OCTOBER 3, 2022
AV ROOM #308, CITY HALL

Joseph Jenkins, Chairperson, called the meeting of the Charleston City Council Committee on Finance to order at 6:30 p.m., October 3, 2022.

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
Ben Adams
Brent Burton
Becky Ceperley
Mary Beth Hoover
Chad Robinson

Absent:

Other Councilmembers present:

Bruce King
Emmett Pepper
Keeley Steele

I. DISCUSSION:

a. Approval of Previous Minutes - Councilmember Reishman asked for unanimous consent to dispense with the reading of the minutes for the September 19, 2022 meeting and that they be approved as distributed. There were no objections, and the minutes were approved.

II. RESOLUTIONS:

- a. Resolution No. 725-22 – Authorizing the Mayor or City Manager to enter into a contract with National Auto Fleet Group in the amount of \$122,018.88 to purchase three 2023 Ford F-150 pickup trucks for the Refuse Department, where the purchase price was determined through a competitively sourced purchasing consortium contract.

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

That the Mayor or City Manager is authorized to enter into a contract with National Auto Fleet Group in the amount of \$122,018.88 to purchase three 2023 Ford F-150 pickup trucks for the Refuse Department, where the purchase price was determined through a competitively sourced purchasing consortium contract.

City Manager, Jonathan Storage, added that this is part of the normal replacement cycle for the Refuse Department. There was an unexpected price increase of 23.3% despite the discounted pricing.

Councilmember Reishman moved to approve the Resolution. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Resolution No. 725-22 approved.

- b. Bill No. 7973 – A Bill granting a non-exclusive franchise to Zayo Group, 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 Zayo Group, 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 Zayo Group, LLC as evidenced by its signature below:

FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter “Agreement”) is made and entered into this ____ day of _____, 2022 by and between the City of Charleston (the “City”) and Zayo Group, LLC (“Zayo”).

RECITALS

WHEREAS, Zayo is a limited liability company duly organized and existing under the laws of the State of Delaware , and has been authorized by the West Virginia Public Service Commission to provide all forms of telecommunication services in the State of West Virginia; and

WHEREAS, Zayo 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 Zayo 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 Zayo agree as follows:

ARTICLE I
GENERAL AND DEFINITIONS

A. General. Zayo 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. Zayo further promises to notify the City immediately of the change of any of the following current information:

Responsible official and telephone and mailing address:

Zayo Group, LLC
Attn: Director, Underlying Rights – East Region
1821 30th Street, Unit A
Boulder, CO 80301
(303) 381-4683

Local agent, address and telephone for service of process:

Roger Radcliff
OSP PM VA / MD
Zayo Group
21635 Red Rum Blvd., Suite 165 Ashburn, VA 20147
roger.radcliff@zayo.com Cell- 571-220-9646

Business name and type of business entity: Zayo Group, LLC, a Delaware 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 Zayo 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 Zayo 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 Zayo 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. Zayo 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, Zayo 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 Zayo 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 Zayo 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 Zayo's ability to contract with other entities for access to Facilities and Equipment in the PROW.

1. This grant of authority is exclusive to Zayo and its agents. Zayo is not authorized to rent space or allow use of the Facilities to other providers who do not have a franchise or license agreement with the City and approval by the City to access. To clarify, the Facilities can be used for any Telecommunications Services, including, but not limited to, the lease, license or granting of indefeasible or other rights of use in optical fiber strands.

2. Zayo acknowledges and understands that the City desires to minimize installation and maintenance work within the PROW. Therefore, Zayo 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, Zayo 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:

References to the “council” or the “division” shall be interpreted as being to the City Engineer;

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. Zayo 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 Zayo’s operations under this Agreement, both Zayo and the City agree to enter into good faith negotiations to enable Zayo to conform its activities under this Agreement within a reasonable period of time. Zayo expressly acknowledges that any changes to City Code made by City Council regarding issues impacting Zayo’s operations under this Agreement will be controlling and the possibility and outcome of such changes is expressly understood and contemplated by Zayo in this Agreement.

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

The installation of the Facilities will not adversely affect the safety, design, construction, operation, maintenance or stability of the City’s street system;

Operation under the Agreement will not interfere with or impair the present use or anticipated future expansion of the affected street;

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;

The installation will not involve tree removal or tree trimming that conflicts with City policy;

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, Zayo shall not interfere 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 Zayo interfere with the installation, construction, operation, maintenance, repair or removal of such public works or public improvements, Zayo 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 Zayo through good faith negotiation), shall protect, alter, remove or relocate Facilities, as directed by the City. If Zayo 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 Zayo 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 Zayo's Facilities or Equipment. The City shall invoice Zayo for the costs and expenses incurred for such break through, removal, alteration, or relocation of Facilities and Equipment, which invoice will be payable within sixty (60) days of the date of the invoice. If Zayo fails to make payment during the required time period, the City may file a lien against the Facilities and Equipment. The City may enforce this lien and 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.

D. Relocation of Facilities for Government. Except as provided below, Zayo 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 Zayo'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. Zayo 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 because Zayo's Facilities or equipment were improperly installed, and if installed properly the removal, relocation or relaying would be unnecessary, Zayo will, after sixty (60) 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, the reasonable cost of removal, relaying, or relocation will be borne by Zayo.

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. Zayo 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, Zayo 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. Zayo 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. Zayo shall comply with all existing PROW ordinances and permitting requirements and with any future or revised ordinances and requirements.

B. Facilities Map. Zayo 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, Zayo will notify the City of this opinion, and the City will strive to keep it confidential, as permitted by law. Zayo will submit an existing Facilities Map as a condition of this Agreement. As for new installations, after the effective date of this Agreement, Zayo 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 Zayo 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 Zayo 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 Zayo 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 Zayo, City will cooperate in good faith with Zayo 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 Zayo require the City to acquire new locations for Zayo.

D. City's Trees. In installing or maintaining its Facilities or structures along the PROW, Zayo 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. Zayo 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 Zayo'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, Zayo 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. Zayo shall notify the

City Traffic Engineering Department and City Engineer of traffic and parking disruptions prior to beginning work. Zayo 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. Zayo 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, Zayo 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. Zayo shall be responsible for damage to City of Charleston street pavements, existing utilities, curbs, gutters and sidewalks related to Zayo'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 Zayo 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 Zayo 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 Zayo. 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. Zayo 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
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|-------|---|-----------------------------|
| (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) Zayo agrees that with respect to the above-required insurance, the contracts will contain the following required provisions:

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; and
Policies shall provide primary coverage and shall reflect that Zayo is responsible for any and all deductibles.

H. Construction Bond or letter of credit. Upon commencement of installation of the Facilities, Zayo 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). Zayo'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 Zayo due to damage caused to the PROW and not remedied to City's reasonable satisfaction after notice to Zayo of the loss or damage and a reasonable opportunity for Zayo 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, Zayo 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 Zayo undertakes repairs on an emergency basis at a time when permitting offices are closed, Zayo 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, Zayo 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 Zayo, its officers, employees, and agents; or, any breach by Zayo of its obligations described in this Agreement; provided, Zayo 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.

IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT

J. Timing of Cable/Line Installation Work

The City shall be consulted, through the permit review process, 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 AND INTEREST

A. Franchise Fee. Upon completion of installation of its Facilities or any part thereof in the PROW, Zayo 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. Zayo 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 Zayo 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 Zayo.

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, Zayo 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 changed by the City for late payment of business and occupation taxes.

D. Nonpayment of Franchise Fee. Failure of Zayo to pay its undisputed 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.

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 Zayo: Zayo Group, LLC
Attn: Director, Underlying Rights – East Region
1821 30th Street, Unit A
Boulder, CO 80301
legal@zayo.com

If notice is to Licensee:
Zayo Group, LLC
Attn: General Counsel, Legal
1821 30th Street, Unit A
Boulder, Colorado 80301

Billing:
Zayo Group, LLC
Attn: Accounts Payable
1821 30th Street, Unit A
Boulder, Colorado 80301
ap@zayo.com

Emergencies (24/7):
Network Operations Center & Repair
Phone: (888) 404 9296
E-mail: zayoncc@zayo.com

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, Zayo 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 Zayo's affiliates or any party providing financing to Zayo; 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. Zayo shall notify the City at least thirty (30) days in advance of Zayo'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 Zayo, Zayo 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 Zayo 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 Zayo 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 Zayo who shall pay said costs within thirty (30) days of the demand to do so. The City may collect its verifiable costs incurred from Zayo 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 Zayo 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. Zayo 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, Zayo 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 Zayo, if Zayo commits a material breach of the terms of this Agreement, and such breach remains uncured in a ninety (90) day period. Among other things, the failure of Zayo to remove or relocate Facilities as provided in Article II of this Agreement, the failure of Zayo to pay the City back its invoiced costs and expenses, necessitating the filing of a lien, as provided in Article II of this Agreement, or the failure of Zayo 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.

[Remainder of page intentionally blank – signature pages follow]

IN WITNESS WHEREOF, the parties have duly executed this Agreement.

Zayo Group, LLC

By: _____

Dated: _____

STATE OF _____,
COUNTY OF _____, TO-WIT;

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by _____, in the capacity as _____ of Zayo Group, LLC.

My commission expires: _____.

Notary Public

CITY OF CHARLESTON

By: _____

Dated: _____

STATE OF WEST VIRGINIA,
COUNTY OF KANAWHA, TO-WIT;

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, in the capacity as _____ of the City of Charleston, West Virginia.

My commission expires: _____.

Notary Public

City Attorney, Kevin Baker, added that the telecommunications agreement is similar to one recently done for Shentel. It gives Zayo the non-exclusive ability to lay fiber in the public right-of-way. The term is for 15 years, with an option to renew for 5 additional years. Baker added that there is a provision on page 10 that states "IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT" to protect the City and Zayo from those types of damages.

Councilmember Adams asked if Zayo knew how many linear feet they were going to put down. A representation from Zayo replied that the goal would open it up to anyone who needs fiber, serving all kinds of clients.

City Treasurer, Vic Grigoraci, asked would payments be due in the normal cycle. Baker replied that it would be quarterly.

Councilmember Reishman moved to approve the Bill. With members present recorded thereon as voting unanimously in the affirmative, Chairperson Jenkins declared Bill No. 7973 approved.

Councilmember Reishman motioned to adjourn the meeting.
Meeting adjourned.