THE CITY OF ASHEVILLE

Staff Report

Council Meeting Date: June 14, 2022 & June 28, 2022

Subject: Education and Research Consortium Franchise Agreement

Staff Resource(s): Jonathan Feldman, Chief Information Officer, IT Services Department Director

Action Requested: Adoption of an ordinance by City Council to authorize the assignment of the City of Asheville's franchise agreement with the Education and Research Consortium of the Western Carolinas, LLC ("ERC") to ERC Broadband, LLC.

Background:

- The Asheville City Council previously authorized the granting of franchises to install telecommunications facilities within the City of Asheville's right-of-ways.
- As a result, the City and the Education and Research Consortium of the Western Carolinas, LLC ("ERC") entered into a telecommunications franchise in 2004 (Ordinance No. 3127), and amended in 2012 (Ordinance No. 4124).
- This agreement provides fiber optic capability to the City of Asheville in lieu of franchise fees for the use of City right of way.
- ERC wishes to transfer this responsibility to a separate entity and requires consent of the City for the assignment.
- Assigning this agreement will allow the City to continue utilizing the fiber optic capability, and allow ERC to fully transfer ownership to a new entity, ERC Broadband, LLC.
- Because this is an assignment to a franchise agreement, two readings are required.
- The ordinance was adopted on its first reading on June 14, 2022.

Vendor Outreach Efforts:

- N/A

Council Goal(s):

- Core Services

Committee(s):

- N/A

Pro(s):

- Allows the City to continue receiving broadband services without interruption or changes to the existing terms of its franchise agreement.

Con(s):

- None noted.

Fiscal Impact:

- None. However, consenting to the assignment will allow the City to avoid the cost of installing its own fiber infrastructure, estimated at a cost of more than $4.9 million in 2012.

Suggested Motion:

- Motion to approve consent for the assignment of the City's franchise agreement with the Education and Research Consortium of the Western Carolinas, LLC to ERC Broadband, LLC and to authorize an amendment to the franchise agreement to reflect the assignment.

Attachment(s)

- Ordinance

ORDINANCE NO. 4951

ORDINANCE AUTHORIZING ASSIGNMENT OF THE FRANCHISE AGREEMENT BETWEEN THE CITY OF ASHEVILLE AND THE EDUCATION AND RESEARCH CONSORTIUM OF THE WESTERN CAROLINAS, LLC TO ERC BROADBAND, LLC

WHEREAS, pursuant to N.C.G.S. § 160A-319, the City is authorized to grant franchises for the operation of telecommunications systems within the City; and

WHEREAS, the City of Asheville and the Education and Research Consortium of the Western Carolinas, LLC (ERC) entered into a franchise agreement on June 15, 2004 per Ordinance Number 3127, and an amendment approved by Ordinance Number 4124; and

WHEREAS, both the City and ERC have benefited from this franchise agreement; and

WHEREAS, ERC has now requested the City's consent to assign the franchise agreement to a separate entity known as ERC Broadband, LLC; and

WHEREAS, the City's consent is required by the terms of the original franchise agreement before the agreement can be transferred to an unaffiliated entity; and

WHEREAS, this assignment will allow for the continued provision of broadband capacity and redundancy for public safety stations as well as other city facilities;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ASHEVILLE THAT:

1. The City Council approves its consent for the assignment of the franchise agreement between the City of Asheville and the Education and Research Consortium of the Western Carolina, LLC to ERC Broadband, LLC and hereby authorizes the amendment of the franchise agreement to reflect the assignment.

2. All ordinances and clauses of ordinances in conflict herewith be and the same are hereby repealed to the extent of such conflict.

3. That if any section, subsection, sentence, clause, or phrase of this ordinance is, for any reason, held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each section, subsection, sentence, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared invalid.

4. That this ordinance shall be in full force and effect on the date of adoption.

Read, approved and adopted on first reading on the 14th day of June, 2022, and the second and final reading on the 28th day of June, 2022.

City Clerk

Mayor

Approved as to form:

City Attorney