

**MOUNTAIN BROOK CITY COUNCIL
PRE-MEETING AGENDA**

**PRE-COUNCIL ROOM (A106) CITY HALL
56 CHURCH STREET
MOUNTAIN BROOK, AL 35213**

JULY 8, 2013, 6:15 P.M.

1. Bright House franchise request – Whit Colvin. (See attached information.)
2. Cost of carpet runner for main stairs in City Hall – Sam Gaston. (See attached information. This item may be added to the formal agenda.)
3. Change Orders for fountain and servers air conditioner unit – Steve Boone. (See attached information. These items may be added to the formal agenda.)

Sam Gaston

From: Smith, Robert L.
Sent: Friday, June 28, 2013 4:27 PM
To: 'gastons@mtnbrook.org'; 'wcolvin@bishopcolvin.com'
Cc: Horne, Scott; Wilson, Thomas M.; Johnson, Marva B.
Subject: RE: Bright House Networks franchise proposal

Stan & Whit,

I hope that all is well with you and that you have had a chance to review our proposal. Based on the City Council's schedule, there should be a Council meeting on July 9th. I would like to receive any questions, concerns, or comments that you may have related to the proposal by close of business Monday, July 1st if possible. Next week is a short week with the 4th of July Holiday there.

We are not sure of your planned schedule to advance this to your City Council, but we would like to respond to any concerns that you might have. I feel that receiving your concerns on Monday would give us a chance to provide responses if necessary.

Again we thank you for the opportunity to work with the City of Mountain Brook.

All the Best,

Robert L. Smith

Director of Public Affairs
Bright House Networks
151 London Parkway
Birmingham, AL 35211
Phone: 205-238-3080
Fax: 205-941-1398
robert.smith4@mybriighthouse.com

From: Smith, Robert L.
Sent: Tuesday, June 25, 2013 4:59 PM
To: gastons@mtnbrook.org; wcolvin@bishopcolvin.com
Cc: Horne, Scott; Wilson, Thomas M.; Johnson, Marva B.
Subject: Bright House Networks franchise proposal

Gentlemen,

Again I want to thank you for your time this morning. Scott and I are excited about the opportunities in Mountain Brook. Attached is the digital version of the proposal as promised. Should you have any questions feel free to contact me.

All the Best

Robert L. Smith

Director of Public Affairs
Bright House Networks
151 London Parkway
Birmingham, AL 35211
Phone: 205-238-3080

7/5/2013

CABLE SERVICE AGREEMENT

THIS CABLE SERVICE AGREEMENT (this "Agreement") dated the ____ day of _____, 2013 ("Effective Date") is made by and between Bright House Networks, LLC, a limited liability company ("Operator"), and the City of Mountain Brook, a municipal corporation of the State of Alabama (the "City"). Operator and the City shall sometimes be referred to separately as a "Party," and collectively as the "Parties."

RECITALS

WHEREAS, Operator has requested the right to serve customers within the City of Mountain Brook; and

WHEREAS, the City is of the opinion that Operator has sufficient legal and technical ability to provide cable television services (as defined by the Act), facilities and equipment necessary to meet the future cable-related needs of the residents of the City (the "Cable Service" or "Service"); and

WHEREAS, the City agrees to grant to Operator a non-exclusive right to provide cable TV services within the City of Mountain Brook and to use the rights of way (ROW) of the City to provide cable TV services to the residents of the City; and

WHEREAS, the City believes that the system and services that Operator will use in the City to provide Cable Service are subject to the Cable Communications Policy Act of 1984, 47 U.S.C. § 521, *et seq.*, as it may be amended or superseded (the "Act"); and

WHEREAS, the Parties desire to enter into this Agreement, which the Parties, in good faith, intend to be binding as a matter of contract between them and believe is in accord with such obligations as might be imposed by the Act, Alabama law and the ordinances of the City, if and to the extent such are applicable; and

WHEREAS, Operator intends to provide Cable Service on a non-discriminatory basis, and without regard to the income or minority status of any resident or group of residents residing in Operator's service area located within the English Village and Mountain Brook Village areas of the City (the "Service Area"); and

NOW, THEREFORE, in consideration of and reliance upon the Recitals set out above, the respective representations, promises, concessions, terms and conditions contained herein, the City and Operator agree as follows.

1. Requirements.

1.1 Operator agrees that it must locate its cable service equipment in the ROW so as not to cause unreasonable interference with the proper use of streets, alleys and other public ways and places, and not to cause unreasonable interference with the rights, if any, and reasonable convenience of property owners who adjoin any of the said streets, alleys or other public ways. In addition, Operator may enter private property only as permitted by applicable

law, or as allowed by the owner of such private property for the purpose of constructing, operating, maintaining, repairing, and upgrading equipment or facilities.

1.2 Operator agrees that no cable service facilities or equipment shall be placed in any public ways so as to unreasonably interfere with usual travel on, or maintenance of, such public rights of ways, nor shall such facilities or equipment unreasonably limit the visibility of vehicular and/or pedestrian traffic.

1.3 Operator shall comply with the lawful application of all applicable provisions of local, state and federal law with respect to the location of Operator's cable service equipment and facilities in the ROW. If the location selected by Operator for a specific cable service facilities or equipment raises a reasonable public health, safety, and welfare concern, the City and Operator agree to work together to identify alternative locations, if available, to satisfy any technical specifications or limitations of the facilities or equipment to be placed in the ROW and that are acceptable to the City.

1.4 In accordance with local rules and regulations, the City agrees to process any and all applicable permits for the installation and construction of cable service facilities in a timely and prompt manner consistent with reasonable municipal practices. City agrees not to unreasonably block, restrict, or limit the construction and installation of the cable service during the term of this Agreement.

1.5 With respect to the facilities of Operator located in the ROW and utilized to provide Cable Service:

a. All construction practices for cable service facilities shall be in accordance with all applicable state laws and local codes.

b. All installation of electronic cable service equipment shall be installed in accordance with the provisions of the National Electrical Safety Code of the National Bureau of Standards and National Electrical Code of the National Board of Fire Underwriters.

c. All of Operator's cable service equipment and facilities shall be installed, located, erected, constructed, reconstructed, replaced, removed, repaired, maintained and operated in accordance with good engineering practices. All such work must be performed by qualified maintenance and construction personnel so as not to endanger or unreasonably interfere with applicable improvements the City may deem appropriate to make, interfere in any unlawful manner with the rights of any property owner or unreasonably hinder or obstruct pedestrian or vehicular traffic. Nothing in this Section shall be construed to limit Operator's rights to access and make use of its own or general utility easements in accordance with the terms of such easements so long as such use is consistent with applicable law.

d. Operator shall at all times employ ordinary care and shall install, maintain and use commonly accepted methods and devices preventing accidents which are likely to cause damage or injury to the public.

e. Operator shall to the extent applicable, comply with the provisions of local rules and regulations regarding tree trimming on public rights of ways.

2. Term. The term of this Agreement shall begin on the Effective Date and end five (5) years after the Effective Date. This Agreement shall be renewed in accordance with the Act.

3. Compensation to the City.

3.1 During the term of this Agreement, Operator shall pay to the City a fee of five percent (5%) of the Gross Revenues, which fee shall be paid quarterly. Such fees shall be paid to the City within forty-five (45) days after the end of the preceding quarter for which payment is made. Operator may designate a portion of the subscriber's bill attributable to fees imposed pursuant to this Agreement and recover such amount from the subscriber as a separate line item of the bill.

Gross revenues shall mean all consideration of any kind or nature, including without limitation, cash, credits, property, and in-kind contributions (services or goods) received by Operator from the provision of Cable Service within the City.

1. Included Items: Subject to paragraph (2), the term Gross Revenues shall include the following:

a. All charges and subscription fees paid by subscribers in the Service Area for the provision of Cable Service;

b. All revenue derived from advertising sales and home shopping (including Home Shopping Network and any comparable shopping from home network) sales derived from the operation of the Service within the City. Advertising commissions paid to third parties shall be deducted from advertising revenue included in Gross Revenues. The allocation of advertising and home shopping revenue shall be based on the number of subscribers in the City divided by the total number of subscribers in relation to the relevant region or national compensation arrangement; and

c. All revenue arising from or attributable to the provision of Cable Service related to fees charged Subscribers for any basic, optional, premium, per-channel or per-program service; cable service provider fee; installation and re-connection fees; converter rentals and/or sales; wire maintenance revenues; upgrade, downgrade or other change-in-service fees;

2. For the purposes of this Chapter, the term Gross Revenues shall not include the following:

a. Any revenue not actually received, even if billed, such as bad debt net of any recoveries of bad debt;

b. Late fees and collection fees;

- c. Refunds, rebates, credits or discounts to subscribers or City
- d. Any amounts attributable to the provision of Cable Service to customers at no charge, including the provision of such Service to the public institutions without charge;
- e. Any tax, fee, or assessment of general applicability imposed on the customer or the transaction by a Federal, State, or local government or any other governmental entity, collected by Operator, and required to be remitted to the taxing entity, including sales and use taxes and utility user taxes;
- f. Any forgone revenue from the provision of Service at no charge to any Person, except that any forgone revenue exchanged for trades, barter services, or other items of value shall be included in Gross Revenue;
- g. Sale of capital assets or surplus equipment;
- h. Reimbursement by programmers of marketing costs actually incurred by Operator for the introduction of new programming; and
- i. The sale of Services for resale to the extent the purchaser certifies in writing that it will resell the Service and pay a fee to the City with respect hereto.

4. Educational and Governmental Programming.

4.1 Operator shall make available one (1) digital channel for use by the City to enable City to provide educational and governmental ("EG") programming. Operator's obligation herein will begin when its cable service subscribers in the Service Area reach one thousand (1000) subscribers or eighteen (18) months after the Effective Date, whichever comes first. City shall be responsible for programming the channel and all other costs associated therein.

4.2 Operator shall pay the City an EG Fee of TWENTY FIVE CENTS (\$0.25) per subscriber per month. Payment shall be due within 45 days of the end of each quarter.

4.3 If technically and economically feasible, Operator will, at its discretion, use reasonable efforts to interconnect with the other cable or video provider to provide EG programming.

4.4 Operator will provide complimentary basic cable TV service to each public school, municipal government administrative buildings, fire buildings, police buildings, and library buildings that is passed by Operator's system and capable of being served with a 200 foot drop.

5. Customer Service. Operator shall comply with 47 C.F.R. § 76.309(c), as amended from time to time.

6. Non-Discrimination. Operator will not deny access to its cable service within the City because of the income or minority status of the residents within the City.

7. Emergency Alerts. Operator shall comply with all FCC rules and regulations regarding the transmission of EAS alerts.

8. Indemnification.

Operator agrees to indemnify, defend and hold harmless the City, its officers, agents and employees in

9. Insurance.

10. Compliance with Laws. Operator shall comply with all applicable federal, state and local laws during the term of this Agreement.

11. Books and Records. Operator shall maintain books of account and records adequate to enable Operator to demonstrate that it is in compliance with the obligation to pay the franchise fees and EG fees described in this Agreement with respect to cable service.

12. Termination and Revocation of this Agreement. A verified and continuing pattern of noncompliance with any material provision of this Agreement shall constitute a material breach of this Agreement. This Agreement may be revoked, after a full due process hearing, by a majority vote of the City Council upon the recommendation of the City, for a material breach of this Agreement after giving Operator sixty (60) days notice in writing of intention to revoke such Agreement, unless such violation is corrected during the period of notice, or unless Operator has made a reasonable attempt to correct the violation during that time and is unable to correct such violation despite such reasonable attempts.

13. Breach of Agreement. Should either Party claim that a breach of any part of this Agreement has occurred, that Party will provide prompt written notice to the other, specifying the nature of the breach; and upon receipt the other Party shall cure such breach within sixty (60) days.

14. Dispute Resolution. Except as otherwise provided in this Agreement, the Parties shall make diligent good faith efforts to resolve all issues and disputes that arise in the administration of this Agreement through discussions between designated representatives of the Parties, and use of non-binding mediation, if time permits. Each Party shall bear its own costs of mediation including attorney fees.

15. Inspection Rights.

15.1 The City shall have the right to inspect, upon reasonable prior written notice, and at its expense, all construction and installation work performed by Operator of cable service-specific facilities on the public rights-of-way as it shall find necessary to ensure compliance with a specified permit. Any such inspection shall be solely for the benefit of the City.

15.2 The City Council shall have authority to enforce the terms and conditions of this Agreement.

16. Amendment of this Agreement. This Agreement may be amended or modified only by a written instrument executed by both Parties.

16.1 Except as provided below, the Parties agree to consult in the event that any court, agency, commission, legislative body, or other authority of competent jurisdiction issues a finding that limits the validity or enforceability of this Agreement, in whole or in part. Should the finding be final, non-appealable and binding upon either the City or Operator, this Agreement shall be deemed modified or limited to the extent necessary to address the subject of the finding unless either Party, within thirty (30) days of receipt of the ruling, provides written notice to the other Party of election to terminate, in which case this Agreement shall terminate within six (6) months or such earlier period as the Parties mutually may agree. Where the effect of a finding is a modification, the Parties shall enter into good faith negotiations to modify this Agreement in the manner which best effectuates its overall purposes and the intentions of the Parties. Failure to reach a mutually satisfactory modification within ninety (90) days of the commencement of such efforts shall entitle either Party to terminate this Agreement on the provision of thirty (30) days' written notice.

16.2 In addition to the rights set forth in above, Operator shall have the right to terminate this Agreement and all obligations hereunder upon ninety (90) days' notice to the City, if Operator concludes in its reasonable business judgment that cable service in the City is no longer technically, economically or financially consistent with Operator's business objectives.

17. Abandonment. Upon abandonment, Operator will, at the City's request, and within a reasonable amount of time, remove from the City rights-of-way any visible equipment that Operator used exclusively for cable service and restore the surrounding property at the sole expense of Operator.

18. Entire Agreement. This Agreement constitutes the entire agreement between the City and Operator with respect to the subject matter contained herein and supersedes all prior or contemporaneous discussions, agreements, and/or representations of or between the City and Operator regarding the subject matter hereof.

19. Waiver. Failure on the part of either Party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision.

20. Notices. Any notice to be given under this Agreement shall be in writing and may be delivered to either personally, by facsimile or by certified or registered mail with postage prepaid and return receipt requested, addressed as follows:

If to the City:

City Manager
City of Mountain Brook
P.O. Box 130009

Mountain Brook, Alabama 35213-0009

If to Bright House Networks:

Bright House Networks, LLC
Attn: VP/GM
151 London Pkwy
Birmingham, AL 35211

21. Miscellaneous.

21.1 Operator and the City each hereby warrants that it has the requisite power and authority to enter into this Agreement and to perform according to the terms hereof.

21.2 The headings used in this Agreement are inserted for convenience or reference only and are not intended to define, limit or affect the interpretation of any term or provision hereof. The singular shall include the plural; the masculine gender shall include the feminine and neutral gender.

21.3 Operator and the City shall cooperate fully with one another in the execution of any and all other documents and in the completion of any additional actions including, without limitation, the processing of permits that may be necessary or appropriate to give full force and effect to the terms and intent of this Agreement.

21.4 Nothing contained in this Agreement is intended or shall be construed as creating or conferring any rights, benefits or remedies upon, or creating any obligations of the Parties hereto toward any person or entity not a Party to this Agreement, unless otherwise expressly set forth herein.

21.5 To the extent the provisions of this Agreement conflict with any of the provisions of local laws, the provisions of this Agreement shall control.

21.6 As used in this Agreement, the term "Affiliate" shall mean any person that directly or indirectly owns or controls Operator, any person that Operator directly or indirectly owns or controls, or any person under common ownership or control with Operator.

22. Waiver. Operator and the City agree not to challenge the legality of any provision in this Agreement, or any future amendments as agreed by the parties, irrespective of any changes in the law applicable to cable service providers.

23. Binding Effect. This Agreement shall be binding upon and for the benefit of each of the Parties and their respective past and present principals, managers, City Council members, offices, directors, shareholders, agents, employees, attorneys, successors and assigns and any parents, subsidiaries or affiliated corporations or entities, as applicable. However, should any change to federal or state law occurring during the term of this franchise have the lawful effect of

materially altering the regime of cable franchising, then Operator shall have the option of terminating this franchise in order to opt-in to such new regime.

24. Counterpart Execution. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same agreement. Signature pages may be transmitted by facsimile and any signature transmitted by facsimile will be given the same force and effect as an original signature.

25. Compliance with this Agreement. Operator shall not be excused from complying with any of the terms, conditions, and provisions of this Agreement by any failure of the City upon one or more occasions to insist upon or to seek compliance with any such terms, conditions or provisions.

26. Choice of Laws. This Agreement shall be construed and interpreted according to the laws of the State of Alabama.

IN WITNESS WHEREOF, the Parties hereto, by their duly authorized representatives, have executed this Agreement and made the same effective as of the Effective Date.

BRIGHT HOUSE NETWORKS, LLC

By: _____

Name: Scott Horne

Title: VP/GM Birmingham

CITY OF MOUNTAIN BROOK, ALABAMA

By: _____

Name: _____

Title: _____

Sam Gaston

From: Steven Smith
Sent: Wednesday, July 03, 2013 1:56 PM
To: 'Sam Gaston'
Cc: Emily Coe; Steve Boone
Subject: FW: Mountain Brook City Hall - stair runner pricing request
Please see message below regarding the stair tread installation and budget estimate.

Steven W. Smith Vice President, RID, AIDC, IIDA
Williams-Blackstock Architects
2204 1st Avenue South, Suite 200
Birmingham, Alabama 35233
205-252-9811 office
205-222-7684 cell
www.wba-architects.com

From: Hiltz-Lauber Flooring [mailto:hiltzlauberflooring@gmail.com]
Sent: Wednesday, July 03, 2013 1:46 PM
To: Steven Smith
Subject: RE: Mountain Brook City Hall - stair runner pricing request

Steven,

Below please find the estimate for the additional carpet that you need quoted:

The carpet will be stretched in over the wood treads over a fiber padding. It is tacked into the wood, but it is the only recommended installation method on steps. It is my understanding that both of the carpets that you have selected are suitable for commercial, however no carpets whether wool or nylon are warranted on stairs, this is standard throughout the industry.

1055RR, synthetic woven carpet, material cost: \$5,490.00

Labor to install: Approximately \$1,370.00

The estimate for the iron stair rods with ball finial (hand forged) area \$64.00 per rod plus \$12.00 per rod installation.

$$\underline{\underline{X 24 rods = \$1,824.00}}$$

While we can have the carpet installed by your deadline, I have not gotten a commitment that we can get the rods by that date. I should know something early next week. Please keep in mind that this estimate is approximate and the job will need to be site measured to get an exact quote. Please let me know if you have any further questions.

Many thanks,

Joe

7/5/2013

From: Steven Smith [<mailto:steven@wba-architects.com>]
Sent: Tuesday, July 02, 2013 3:03 PM
To: 'Hiltz-Lauber Flooring'
Cc: 'Sam Gaston'
Subject: Mountain Brook City Hall - stair runner pricing request

Per my previous email, it is possible to have pricing on the two stair runner options prior to end of business Friday? There is a council meeting Monday evening, and they would like to present the samples and the cost at that meeting. Please copy Sam Gaston on pricing correspondence as I will be out of the office on Thursday and Friday of this week.

I apologize for the rush – I know it's a short week, but if you can get this we would appreciate it. Please let me know if I can assist further.

Thanks,

Steven W. Smith Vice President, RID, AIDC, IIDA
Williams-Blackstock Architects
2204 1st Avenue South, Suite 200
Birmingham, Alabama 35233
205-252-9811 office
205-222-7684 cell

Sam Gaston

From: Steve Boone
Sent: Friday, July 05, 2013 8:37 AM
To: Sam Gaston
Subject: Fwd: Fountain & AC Work for Server Room

A discussion about whether to execute change orders with B&G for the fountain construction and back-up air conditioning system for the server room should be added to the pre-meeting agenda. Below are Robert McElroy's comments regarding the proposed change order.

----- Forwarded message -----

From: McElroy, Robert <RMcElroy@brasfieldgorrie.com>
Date: Mon, Jul 1, 2013 at 5:12 PM
Subject: Fountain & AC Work for Server Room
To: "boones@mtnbrook.org" <boones@mtnbrook.org>, "virginia smith (Wood967@aol.com)" <Wood967@aol.com>
Cc: "Tew, Brad" <BTew@brasfieldgorrie.com>

Virginia and Steve,

We will be happy to help you all with the Fountain Installation and the redundant AC unit for the server room. I have also heard that Nimrod wants to add plantings.

For the fountain work to be performed by Brown Mechanical through our contract, I think you all offered to write us a letter exempting B&G from any warranty responsibilities for Brown's work and the fountain. Leighann at Brown tells me it is a 6 week duration for installation. We would have a full time superintendent on site. We would also have 20 hours of my time prior to construction and 6 hours of my time per week during construction. We would have to include insurance & bond cost at 1.85%, Fee at 5%, to the final number from Brown Mechanical. The 5% fee is to cover corporate overhead, material transmittals and is reduced from the 10% per your request. Our intent is to cover our costs and assist you all with the installation of the fountain. If Brown's cost is \$240,000 (still unconfirmed as of today) and needs to be firmed up to finalize the costs. If it can be completed quicker than Brown is projecting, then we would adjust the costs to match the duration.

Brown Mechanical	\$240,000
Superintendent (6weeks)	\$ 16,458
Project Manager (56 hours)	\$ <u>9,240</u>
Subtotal	\$265,698

7/5/2013

Insurance, Bond, Overhead \$ 18,200

Estimated Cost of Fountain **\$283,898**

For the AC Unit by Carrier at the Server Room we would assist with the standard markups but would require a full time superintendent while the work is being performed.

I will give you a call in the morning to talk through this and see what the next steps will be. Thanks

Robert McElroy

[205-714-1638](tel:205-714-1638) direct

[205-966-6920](tel:205-966-6920) cell

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Steven Boone
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Mountain Brook, AL 35213-0009
Direct: (205) 802-3825
Facsimile: (205) 874-0611
Southernlinc PTT: 1*182*366

www.mtnbrook.org
<http://mtnbrookcity.blogspot.com/>
Twitter®: @mountain_brook

7/5/2013