

amendment of section 76.31 ("Franchise Standards") of the rules and regulations of the FCC or federal legislature, may be incorporated into this ordinance as of the date such modifications become effective under FCC regulations or federal law or thereafter.

Section 9. [Severability.]

If any section, subsection, sentence, clause or phrase of this ordinance is for any reason held illegal, invalid or unconstitutional by the decision of any court or regulatory body of competent jurisdiction, such decision shall not affect the validity of the remaining portions hereof. The invalidity of any portion of this ordinance shall not abate, reduce or otherwise affect any consideration or other obligation required of the grantee.

Section 10. [Conflicts with other ordinances.]

For any section, subsection, sentence, clause, phrase or word contained in the city's Code of Ordinances, which is in conflict with or inconsistent with any part of this ordinance, or inconsistent with the purpose of this ordinance, this ordinance shall control.

Section 11. Technical requirements—Channel capacity.

The grantee shall install, maintain, and operate the cable system and all facilities and equipment and all additions to the system at all times in full compliance with the technical and channel capacity standards of the Federal Communications Commission. The results of annual performance tests conducted in accordance with section 76.601(c), FCC Rules (or such other section of the rules as shall incorporate its substance) shall be retained for at least five years and available for inspection by the City of Winter Garden.

Section 12. Changes in ownership and/or control.

I. *Applicability of section.* The restrictions, requirements and procedures contained in this section apply equally whether the transaction proposed is an assignment of the franchise and license to a separate legal entity or a transfer of

control or operation of the grantee resulting from changes in voting interests or the leasing of the cable system. The terms "assignor" and "assignee" and "lessor" and "lessee," respectively, should be used in lieu of "transferor" and "transferee" as used herein if the transaction proposed is an assignment or lease of license or franchise.

II. *Prior consent required.* Any franchise approval and license granted under this ordinance shall be a privilege to be held by the grantee for the benefit of the public subject to city, state and federal regulation. The franchise and license cannot under any circumstances be assigned, nor the control thereof transferred as set forth herein, by any means whatsoever, including but not limited to voluntary or involuntary sale, merger, consolidation, foreclosure, receivership or other means without the prior written consent of the city commission; and then only under such conditions and to the extent as the city commission may establish.

III. Control.

(a) The word "control" as used in this section shall not be limited to majority stock ownership, or controlling partners, but includes and is not limited to actual working control in whatever manner exercised. A rebuttable presumption that a transfer of control has occurred or will occur shall arise upon the acquisition by any person or group of persons of ten percent of the issued voting shares of the grantee unless a single and the same person or group of persons holds more than 50 percent of the voting interests both before and after the transfer. A rebuttable presumption that transfer of control has occurred or will occur shall arise when a change in a general partner has occurred or will occur. Any leasing of the cable system, or portion thereof, shall be a presumptive transfer of control. The term "control" as used in this section shall not include:

1. Leases of channels pursuant to sections 611 and 612 of the Cable Communications Policy Act of 1984;

- 2. A pledge, hypothecation or mortgage, or similar instrument transferring conditional ownership of all or part of the grantee's assets within the franchise area to a lender or creditor in the ordinary course of business so long as the lender does not thereby acquire any right to control or materially affect the grantee's operation, and no such transfer of conditional title can be made absolute without prior approval of the city; or
 - 3. The disposition of facilities or equipment no longer required in the conduct of the business.
- (b) For purposes of this subsection, "group of persons" shall include persons who by agreement, whether oral or written, act in concert for purposes of exercising control over the grantee. It shall not include proxy agreements in publicly held corporations. It shall include all immediate members of a family.
- (c) For purposes of this subsection, the establishment of a management agreement whereby the responsibility for the operation of the system is transferred in its entirety to an entity unaffiliated with the grantee shall be considered a transfer of control under this subsection.

IV. Bankruptcy/foreclosure pleadings, intervention. Upon the filing of an action for bankruptcy, foreclosure or the appointment of a receiver, by or against the grantee, the grantee shall forthwith send a copy of the initial and all subsequent pleadings to the city clerk. The city commission shall have the right to intervene in any such action, and any mortgage or pledge of the grantee which could have the effect of transferring control shall set forth this right to intervene. Whether the city commission intervenes or not, any involuntary transfer shall require the consent of the city commission.

Section 13. Conditions on street occupancy and system construction.

I. Use. All transmissions and distribution structures, lines, and equipment constructed by the grantee within the city shall be so located as to

cause minimum interferences with the proper use of streets, alleys and other public ways and places and to cause minimum interference with the right or reasonable convenience of property owners who adjoin any of said streets, alleys or public ways and places.

II. Restoration. In case of any disturbance of pavement, sidewalks, driveways, or other surfacing, the grantee shall at its own expense and in a manner approved by the city manager, replace or restore such places so disturbed in as good condition as before said work was commenced, and shall maintain the restoration in a condition approved by the city for the full period of one year, and if the grantee fails to do so, the city may undertake such restoration at the expense of the grantee.

III. Relocation. In the event that at any time during the period of this ordinance the city shall lawfully elect to alter or change the grade or alignment of any street, alley or other public way and place, or otherwise perform any construction, the grantee, upon reasonable notice by the city, shall remove, re-lay and relocate its equipment at its own expense.

IV. Placement of fixtures. The grantee shall not place any fixtures or equipment where the same will interfere with any existing gas, electric, telephone or sewer and water lines, fixtures and equipment, and the locations by the grantee or its liens and equipment shall be in such manner as to not interfere with the usual travel on said streets, alleys and public ways and the use of the same by gas, electric, telephone and water and sewer lines and equipment.

V. Temporary removal of wires for building moving. The grantee shall on the request of any person holding a building moving permit issued by the city, temporarily raise or lower its wires to permit the moving of buildings. The expense of such temporary moving or raising of wires shall be paid by the person requesting the same, and the grantee shall have the authority to require such payment in advance. The grantee may require not less than 48 hours notice to arrange for such temporary wire changes.

VI. No property right. Nothing in this ordinance shall grant to the grantee any right of property in city-owned or public property nor shall the city be compelled to maintain any of its property any longer than, or in any fashion other than in the city's judgment, its own business or needs may require in the sole discretion of the city.

VII. Interference with public works. Upon reasonable notice, the grantee, at its expense, shall protect, support, temporarily disconnect, relocate or remove any property of the grantee when, in the opinion of the city, the same is required by reason of:

- (a) Traffic conditions, public safety, street repair or relocation, or freeway or street grade installation;
- (b) Repair or removal of sewers, drains, water pipes, utility and communication lines, transportation facilities, tracks, or any general program under which the city shall undertake to cause any such properties to be located beneath the surface of the ground and any other improvements by governmental agencies whether acting in a governmental or a proprietary capacity; or
- (c) Any other construction or public improvement, including but not limited to movement of buildings and redevelopment. Action taken pursuant to this section shall not be deemed a taking of the property of the grantee, and the grantee shall not be entitled to a surcharge by reason of anything under this subsection.

VIII. Failure to perform required work. Upon failure of the grantee to commence, pursue or complete any work required by law or by the provisions of this ordinance to be done in any public way within the time prescribed and to the satisfaction of the city, the city may, at its option, cause such work to be done; and the grantee shall pay to the city the itemized direct cost within 45 days after receipt of an itemized demand by the city. Such costs include but are not limited to

actual costs incurred by the city and the costs associated with city personnel for the time expended related to grantee's failure.

IX. Nonliability of city. The city shall not be liable for any damage occurring to the property of the grantee caused by employees of the city in the performance of their duties, nor shall the city be held liable for the interruption of service by actions of city employees in the performance of their duties, nor shall the city be held liable for the failure of the grantee to be able to perform normal services due to the acts of God.

X. Permits, easements and agreements. The city shall not be required to assume any responsibility for the securing of any rights-of-way or easements, nor shall the city be responsible for securing any permits or agreements with other persons or utilities.

Section 14. Rights-of-way.

I. All installations in rights-of-way shall be performed in accordance with the state department of transportation's Manual of Uniform Minimum Standards for Design, Construction and Maintenance for Streets and Highways.

II. Where the facilities and equipment to be installed will function with, or as a part of, the cable system over which the city has jurisdiction as franchising authority, the grantee shall give prior notice to the city clerk of the proposed installation.

III. The following applies to a city right-of-way within the designated service area:

- (a) **Applicability.** The installation of any facilities or equipment in any right-of-way under city jurisdiction by which the grantee will serve subscribers in the city shall be approved by the city engineer. Prior to performing any work in city rights-of-way, a right-of-way utilization permit shall be obtained by the grantee. Grantee shall not be required to pay for any such permits so long as grantee is paying the franchise fee.
- (b) **Cable coordinator/city engineer.** The city engineer shall review the plans and spec-

ifications to determine whether the proposed installation meets city standards. Where a right-of-way not under the sole control and jurisdiction of the city is involved, the grantee shall forward the application (additional plans) to the appropriate governmental entity for approval.

- (c) *Obligation.* The grantee shall be responsible for obtaining all necessary governmental and private approvals. City personnel shall not be responsible for submitting information to the grantee to ensure that all such approvals are obtained.
- (d) *Cable depth.* Cable shall be a minimum of 30 inches deep in rights-of-way.
- (e) *No establishment of rights.* The issuance of a permit hereunder is nothing more than a city approval as to the authority under this ordinance, the installation, and the method of installation. Nothing in this ordinance shall be construed as conferring a right upon the grantee nor shall it be deemed a warranty of the grantee's right to effect the installation or utilize the easement. Nothing herein shall be construed as impairing the rights of third parties as against the grantee.

Section 15. Indemnification.

The grantee shall indemnify, save harmless and defend the city, its elected officials, officers, employees, and agents, against any and all claims of whatever nature resulting from the installation of facilities and equipment, or the use of any easement or right-of-way. The indemnification shall include any and all costs, expenses and reasonable attorney's fees. In the event it becomes necessary for the city to seek administrative or judicial enforcement of this ordinance against the grantee, the city shall, upon prevailing, be entitled to its reasonable attorneys' fees and costs, including any appellate actions.

Section 16. [Marketing and promotional information.]

The grantee shall, within 30 days after submitting marketing or promotional information to

subscribers or potential subscribers, submit to the city, through the office of the city clerk, marketing and promotional information communicated to subscribers or potential customers.

Section 17. [Definitions.]

When used in this chapter [ordinance], the following terms shall mean as indicated below. Terms used in this chapter [ordinance] but not defined below which are defined in the Cable Communications Policy Act of 1984, 47 USC 521, shall have the meanings set forth in section 602 of the act, 47 USC 522, as amended.

Act shall mean the Cable Television Consumer Protection and Competition Act of 1992 as amended.

Compatible easement shall mean an easement open for the use of a cable operator pursuant to section 621(a)(2) of the act.

Drops shall mean the facilities and equipment used to provide cable services to an individual dwelling unit.

Easement holder or beneficiary shall mean the person to whom an easement was or is dedicated, deeded or granted, and the persons entitled to the lawful and permitted use of the easement.

Exclusive easement shall mean an easement which by its terms and which by law is for the exclusive use of the easement holder.

Facilities and equipment shall mean headends, hubs, antennas, wires, cables, conductors, ducts, conduits, vaults, manholes, trenches, amplifiers, converters, appliances, attachments, poles and other property and equipment which are designed, constructed or wired for the purpose of producing, receiving, amplifying and distributing by coaxial cable, fiber optics, microwave, laser or other means, audio and video television, radio and electronic signals to and from subscribers and any other equipment or facilities used by grantee in connection with a cable system located within the city. In the context of public, educational, or governmental (PEG) access, it shall include all of the above and studios, cameras, antennae, dishes, buildings, chairs, desks, vehicles and all other capital equipment associated with the provision of PEG programming and access.

Fiscal period shall mean a calendar year beginning January 1 of each year.

Franchise shall mean an initial authorization, or renewal thereof (including a renewal of an authorization which has been granted subject to section 626 of the act), issued by the city, whether such authorization is referred to as a franchise, permit, license, resolution, contract, certificate, agreement or otherwise, which authorizes the construction or operation of a cable system in the city. All franchises shall be nonexclusive.

Franchise acceptance agreement shall mean the document executed by the grantee as set forth in section 18 of this ordinance.

Installation shall mean the connection of the system from feeder cable to subscribers' terminals.

License shall mean that document issued by the city clerk evidencing approval of a franchise application by the city commission.

National Electrical Code shall mean the edition of the National Electrical Code most recently adopted and amended by the city commission.

Other services shall mean those services provided by the grantee using the cable system, or a part thereof, excluding cable services. "Other services" shall not include services of grantee not related, directly or indirectly, to the cable system.

Outage shall mean the complete or partial loss of signal, whether audio or visual, or the provision of signal substantially below the technical standards required in this ordinance.

Pay television shall mean the delivery over the cable system of video signals in intelligible form to residential subscribers for a fee or charge (over and above the charge for basic service) on a per program, per channel or other subscription basis.

Property of grantee and other reference to property in grantee's control shall mean all property owned, installed or used by a grantee in the conduct of a cable business in the city under the authority of a franchise granted pursuant to this ordinance.

Representations made in the application process shall mean all material representations of

the applicant, its officers, employees, agents and representatives in the form of documents submitted as part of, incidental to, or pursuant to the application process involved in a request for an initial franchise, a renewal, or a transfer; and all material representations made by the applicant, its officers, employees, agents and representatives made at cable staff meetings, hearings or meetings of the city commission relating to request for an initial franchise, a renewal, or transfer.

Requirements of this ordinance or provisions of this ordinance shall mean the specific provisions of this ordinance, including the representations made in the application process for the approval of a franchise, transfer or renewal.

Right-of-way shall mean a way or place of whatever nature, publicly held and presently opened or established (by plat or otherwise) to be opened to the use of the public for purposes of vehicular travel. "Public right-of-way" shall include streets, roads, highways and alleys.

Satellite master antenna system (SMATV) shall mean a facility which includes a set of closed transmission paths and associated signal generation, reception and control equipment which is not franchised and serves only subscribers in one or more multiple-unit dwelling or residential areas under common ownership, control or management, not using public rights-of-way.

Satellite master antenna system operator shall mean a person providing cable services or cable-related services over a SMATV system.

Service shall mean the provision of cable services and other services to the ultimate consumer.

Strand mile shall mean a linear mile measured on the surface of the ground above or below the cable strand as such would be or is installed.

Street shall mean the surface of and the space above and below any public street, road, highway, freeway, lane, path, alley, court, sidewalk, parkway, right-of-way, or drive, now or hereafter existing as such within the city.

Subscriber shall mean a person lawfully using or receiving cable services or other services from grantee.

Technician shall mean an employee, contractor or agent of the grantee with the skills to perform, and who is available to perform, construction, repair and maintenance of the cable system, including the facilities and equipment installed by or for the grantee necessary to provide services or signal to the subscriber or user of the system.

U.N.C.L.E. shall mean the utility notification center liaison excavators.

Violation shall mean a violation of the terms of this ordinance; or a breach of the contractual, implied contractual, or contractual-in-fact relationship established pursuant to this ordinance or the representations made in the application process.

West Orange County shall mean the areas served by grantee in Orange County west of the city limits of Orlando.

Section 18. License.

(a) *License required.* Any rights which may be conferred upon grantee hereunder shall not be effective until a license has been issued by the city clerk. The license shall not be issued until all conditions precedent to its issuance established by this ordinance, the awarding resolution, or otherwise, by the city commission have been met. The city clerk shall execute a franchise acceptance agreement in a form to be promulgated by the city clerk.

(b) *Conditions precedent.* Failure to affirmatively and conclusively demonstrate to the city clerk that all such conditions precedent have been met within 90 days of the approval by the city commission shall render such approval void and of no further force and effect, unless otherwise directed by the city commission.

(c) *Other agreements.* The city commission may require such other agreements of the grantee or others as it deems appropriate to carry out the provisions of this ordinance, or to ensure compliance or performance by the grantee or others.

Section 19. [Effective date.]

This ordinance shall take effect upon the final adoption and acceptance by grantee hereof as

evidenced by execution of the franchise acceptance agreement. In the event the grantee does not accept this ordinance in its entirety in writing on or before 90 days after its adoption, the city shall have the right in its sole discretion to determine by motion that this ordinance is null and void. However all revenues to the city as calculated under this ordinance shall be paid during said 90-day period.

ARTICLE V. CABLE TELEVISION— STRATEGIC TECHNOLOGIES, INC.*

Franchise for Strategic Technologies, Inc.

ORDINANCE NO. 02-54

AN ORDINANCE OF THE CITY OF WINTER GARDEN, FLORIDA, GRANTING A NONEXCLUSIVE FRANCHISE FOR THE PROVISION OF CABLE TELEVISION SERVICES BY STRATEGIC TECHNOLOGIES, INC.; PROVIDING AUTHORIZATION FOR THE EXECUTION OF A FRANCHISE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE.

Be It Enacted by the City of Winter Garden, Florida:

Section 1. Definitions.

Except as otherwise provided herein, the definitions and word usage rules set forth in Chapter 71 of the Code of Ordinances of the City of Winter Garden, Article I, Section 2, shall govern this Franchise Agreement. References to "applicable laws" shall be interpreted broadly to cover government actions, however nominated, and include

*Editor's note—Printed herein is the cable communications franchise, as adopted by Ordinance Number 02-54 on October 24, 2002. Amendments to the franchise are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance. Obvious misspellings and punctuation errors have been corrected without notation. For stylistic purposes, a uniform system of headings, catchlines, capitalization, citation to state statutes, and expression of numbers in text has been used to conform to the Code of Ordinances. Additions made for clarity are indicated by brackets.

laws, ordinances and regulations as now in force or hereinafter enacted or amended. In addition, the following definitions shall apply:

(a) *Chapter 71 of the City Code or "Ordinance"* shall mean Chapter 71 of the Code of Ordinances of the City of Winter Garden, Florida, as it may be amended from time to time.

(b) *STI* shall mean Strategic Technologies, Inc., and its lawful and permitted successors, assigns and transferees pursuant to Chapter 71, Article II, Section 11 of the City Code.

(c) *Franchise area* shall mean the following area within the legal boundaries of the City: South of Florida State Road 50, West to the Lake County border, East to the Orange County border and South to the Orange County border, and such other areas as may be hereinafter annexed or incorporated by the City within the above-stated Franchise Area during the term of the franchise.

(d) *Cable system or system* except where the context clearly indicates otherwise, shall mean STI's Cable System, and all devices, structures, conduits, poles and equipment appurtenant thereto.

Section 2. Grant of franchise; nature of grant.

(a) Subject to the terms of this Franchise Agreement and Chapter 71 of the City Code, the City hereby grants STI a franchise for the right and privilege to own, construct, install, maintain and operate a cable system within the franchise area to provide cable services. This franchise grants the right, subject to conditions, to construct, operate and repair a Cable System in, over, along and under public rights-of-way within the franchise area for the purpose of providing cable service. The franchise term shall commence on the effective date of the Franchise and continue through and including October 23, 2012, unless terminated prior to that date in accordance with this franchise agreement or applicable law. It does not authorize STI to occupy or use other public or private property without the permission of the property owner, or other entity who may lawfully grant permission to use the property.

(b) Without limiting the foregoing, the City, among other things, does not waive the requirements of, or STI's duty to obtain, all applicable permits, and to comply with the conditions thereof, unless precluded by the application of the ordinance; to comply with zoning laws; or to comply with codes, ordinances and regulations governing the construction of the cable system; or to pay any fees associated with the same.

Section 3. Non-exclusive franchise.

STI's Franchise and its right to use and occupy the public rights-of-way to provide cable service shall be non-exclusive, and, without limitation the city expressly reserves the right to authorize itself or any person to engage in the same activities, and to grant any person the right to use and occupy the public rights-of-way, or to authorize itself to use and occupy the public rights-of-way for the same, similar or different purposes at any time during the term of this franchise agreement.

Section 4. Franchise subject to ordinance.

This franchise agreement is subject to and shall be governed by all terms, conditions and provisions of Chapter 71 of the City Code, in addition to the terms, conditions and provisions set forth in this franchise agreement. In the event of a conflict between this franchise agreement and Chapter 71 of the City Code, Chapter 71 of the City Code shall control except where a provision of this agreement expressly states that the agreement is meant to control, notwithstanding Chapter 71 of the City Code.

Section 5. Minimum facilities and services.

(a) (1) STI agrees to provide Cable Service without charge to buildings owned or space occupied by the City for municipal purposes in the Franchise Area, and to all buildings owned or space occupied by the City for municipal purposes that may be constructed or opened within the City during the term of this Franchise Agreement in the Franchise Area. City shall provide STI a list from time to time of the locations to which Cable Service must be provided. Cable Service provided shall consist of basic service and a program-

ming tier or set of programming tiers equivalent in quality and size to the expanded basic tier shown in Exhibit A.

- (2) Upon request, STI agrees to provide cable modem service, if offered to residential subscribers, to buildings owned or space occupied by the City for municipal purposes in the Franchise Area, and to all buildings owned or space occupied by the City for municipal purposes that may be constructed or opened within the City during the term of this Franchise in the Franchise Area. City shall provide STI a list from time to time of the locations to which cable modem service must be provided. If multiple classes of cable modem service are provided in the City, each location will be permitted to elect which class of cable modem service it wishes to receive. The cable modem service will be provided at no charge; except that, if the cable modem service is provided by a third party under contract to STI, and payment would be required under that contract to provide the cable modem service to the buildings, the City may be required to pay up to the amount STI remits to the service provider for standard residential cable modem service unless the location elects to receive a higher class of cable modem service, in which case the location may be required to pay up to the amount STI remits to the service provider for the class of cable modem service selected. STI will ensure that the quality of the cable modem service received is equivalent to the best quality that it offers to other subscribers receiving the same class of cable modem service.
- (3) STI will provide the services and facilities required under section 5(a)(1)-(2) to four (4) outlets at each location that is entitled to such service. STI will provide all devices necessary to receive Cable Service required under (a)(1). Should a location desire to attach more cable modems, it may obtain additional modems from STI at STI's cost, or obtain and attach the modem itself (if compatible modems are

available). Should a location desire to have service extended to additional outlets, the location may extend the service to the additional outlets. STI will not charge for the delivery of the service to the additional locations, but it may charge its actual cost for (i) the additional cost, if any, of equipment required to deliver an adequate signal to the additional outlets (e.g. if a more expensive amplifier must be installed at the location to boost the signal); and (ii) additional cost of terminal equipment, such as cable modems, required by a subscriber to receive or use the service at the outlets; and (iii) additional cost required to assign service to multiple fixed IP addresses.

- (b) (1) The franchisee shall, at a minimum, provide four cable service connections, without charge, to all public schools located within the franchise area that is within 125 feet of its existing cable system and is capable of standard installation, and to all such locations that may be constructed or opened after the effective date of this agreement.
- (2) The franchisee shall provide four cable service connections, including any requested internal wiring for additional outlets, to any private secondary school (as defined by, and which receives funding pursuant to, Title I of the Elementary and Secondary Education Act of 1965, 20 U.S.C. §421, et seq., as amended) requesting such connections that are located within its franchise area and that is within 125 feet of its existing cable system and is capable of standard installation. Such connections shall be provided at costs and as promptly as possible.
- (3) Any connected public or private school may elect to install its own internal wiring (provided such wiring meets required technical specifications) and to bear the cost thereof. Free basic tier service and expanded basic service shall be provided to four outlets in all connected public and private schools.