

**Lee County Board of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20030860

1. REQUESTED MOTION:

ACTION REQUESTED: Request permission to advertise and conduct a public hearing on September 9, 2003, at 5:00 p.m., to consider and approve a Cable Franchise Agreement between Lee County and Strategic Technologies, Inc..

WHY ACTION IS NECESSARY: Lee County Ordinance No. 89-05, as amended by Lee County Ordinance No. 01-05, and the Federal Communications Act sets forth the procedure for approving Cable Franchise Agreements.

WHAT ACTION ACCOMPLISHES: Formalizes the process for the County to approve a Cable Franchise Agreement.

2. DEPARTMENTAL CATEGORY:

COMMISSION DISTRICT # CW **C6D**

3. MEETING DATE:

08-12-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED:

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE
 - ORDINANCE 89-05, 01-05
 - ADMIN. CODE
 - OTHER

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER
- B. DEPARTMENT **Public Resources**
- C. DIVISION
- BY: Paul Arthur
Technical Support Supervisor

7. BACKGROUND:

Strategic Technologies, Inc. has applied for a cable franchise with Lee County. Lee County Ordinance No. 01-05 and the Federal Communications Act require the approval by the Board of County Commissioners of a Cable Franchise Agreement between the two Parties.

8. MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL:

A Department Director	B Purchasing or Contracts	C Human Resources	D Other	E County Attorney	F Budget Services				G County Manager
	N/A	N/A	N/A		OA 7/29/03	OM 7/29/03	RISK 7/29/03	GC 7/29/03	

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

RECEIVED BY
COUNTY ADMIN: **CA**
7/28 3:00
COUNTY ADMIN
FORWARDED TO: **PN**
7/31 3:00

CS. ATTY. 7/28/03
FORWARDED
TO CO. ADMIN.
2:30 PM

**LEE COUNTY, FLORIDA
FRANCHISE AGREEMENT**

**CABLE TELEVISION FRANCHISE AGREEMENT BETWEEN
LEE COUNTY, FLORIDA AND STRATEGIC TECHNOLOGIES, INC.**

**A FRANCHISE AGREEMENT ENTERED INTO BETWEEN
LEE COUNTY, FLORIDA, AND STRATEGIC
TECHNOLOGIES, INC., PURSUANT TO THE LEE COUNTY,
FLORIDA CABLE TELEVISION ORDINANCE NO. 01-05
AND GRANTING A FRANCHISE TO OWN, OPERATE AND
MAINTAIN A CABLE TELEVISION SYSTEM IN LEE
COUNTY, FLORIDA, AND SETTING FORTH CONDITIONS
ACCOMPANYING THE GRANT OF SUCH FRANCHISE AND
PROVIDING FOR REGULATION AND USE OF SUCH
SYSTEM.**

THIS AGREEMENT, effective this _____ day of _____, 2003, is by and between LEE COUNTY, FLORIDA (the “County”) and STRATEGIC TECHNOLOGIES, INC., a wholly owned subsidiary of Lennar Corporation, a _____ corporation (hereinafter each individually, and collectively “STI” or “Franchisee”).

WHEREAS, pursuant to the Communications Act of 1934, *as amended*, 47 U.S.C. § 521 *et seq.*, the County may grant or renew a Franchise to construct, operate and maintain a Cable Television System; and

WHEREAS, on March 27, 2001, the Board of County Commissioners of Lee County, Florida (“Board”), adopted Ordinance No. 01-05, providing for the issuance and regulation of cable television franchises for, and the installation, construction and operation of Cable Television Systems within the unincorporated area of the County; and

WHEREAS, STI submitted an application on or about February 28, 2003, to obtain a cable franchise for a portion of the unincorporated area of the County; and

WHEREAS, the construction, installation, maintenance, and operation of such a System involves the use and occupation of the Streets of the County, over which the County exercises governmental control; and

WHEREAS, the Board has evaluated Franchisee’s request in light of the requirements of Federal and State law and the Ordinance, and has conducted a public hearing concerning Franchisee’s request; and

WHEREAS, the Board has relied on Franchisee’s representations both orally made on the record at a public hearing and written and has considered all information presented to it by

Franchisee, the County Staff, the County's consultants, and the public; and

WHEREAS, based on said representations and information, the Board has determined that a grant of a nonexclusive Franchise to Franchisee to construct, install, maintain and operate a Cable Television System in the County, subject to the terms and conditions set forth herein and in the Ordinance unless otherwise set forth in this Franchise Agreement, is consistent with the public interest; and

WHEREAS, the County and Franchisee have reached agreement on the terms and conditions of this Franchise Agreement.

NOW, THEREFORE, in consideration of the County's grant of a Cable Television Franchise to Franchisee to own, construct, install, maintain and operate a Cable System within the County, and to use and occupy the Streets of the County for that purpose, and in consideration of Franchisee's promise to provide Cable Service to residents of the County pursuant to the terms and conditions set forth herein, and in consideration of the promises and undertakings herein, and other good and valuable consideration, the receipt and the adequacy of which is hereby acknowledged, the Franchise is hereby granted and

THE SIGNATORIES DO HEREBY AGREE AS FOLLOWS:

Section 1 Definitions

Except as otherwise provided herein, the definitions in Section II of the County's Ordinance No. 01-05, as such existed as of the Effective Date of this Franchise Agreement, shall govern this Franchise Agreement. In addition, the following definitions shall apply:

- A. Ordinance shall mean Ordinance 01-05, as may be amended from time to time.

- B. Franchisee shall have the meaning set forth in the preamble, above.
- C. Franchise Area shall mean that area of the County as described [description and reference to map].
- D. Notice to the Franchisee shall be deemed effective upon receipt. Notice to the County shall be effective upon receipt by the County Manager.
- E. Non-Public School shall mean any school serving grades K-12 (as defined in Chapter 205.022(6)(b), Florida Statutes) in the Franchise Area that is not a public school and receives funding pursuant to Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6301, *et seq.*), as may be amended. For purposes of this Franchise Agreement, “non-Public School(s) expressly excludes any ‘home school’.”

Section 2 **Grant of Franchise**

- A. Franchisee accepts all terms and conditions of the Ordinance except as otherwise expressly provided herein.
- B. Subject to the terms of this Franchise Agreement, the County hereby grants Franchisee a Franchise for the right and privilege to own, construct, install, maintain and operate a Cable Television System within the Franchise Area.
- C. Where any provision of this Franchise expressly conflicts with the Ordinance, the express provision of this Franchise Agreement shall control.
- D. The Cable System herein franchised shall be used and operated only for the purposes of providing Cable Services unless and until Franchisee obtains written authorization from the County Manager to provide other services, including but not limited to,

telephony and non-cable video services (such as open video systems), unless the County is otherwise prohibited by applicable law from the exercise of such authority. Nothing in this Franchise Agreement shall be construed to prohibit Franchisee from offering any service over its Cable Television System that is not prohibited by Federal, State or local law, nor shall anything in this Franchise Agreement be construed as a limitation on the County's right to exercise its lawful authority with respect to cable and telecommunications providers.

Section 3 **Term of Franchise**

This Franchise shall be for a period of twelve (12) years unless otherwise sooner terminated or otherwise extended in accordance with the terms of this Franchise Agreement. The Franchise shall commence upon the date of the Board resolution approving the grant of the Franchise, provided the County is in receipt of the written acceptance.

Section 4 **Non-Exclusive Franchise**

The Franchisee's right to use and occupy the Streets shall be non-exclusive, and the County, in accordance with applicable law, reserves the right to grant a similar Franchise or other use of said Streets, or any portions thereof, to any Person, including the County, at any time during the term of this Franchise Agreement.

Section 5 **Subject to Federal Law, State Law and Local Law**

This Franchise Agreement is subject to and shall be governed by all terms, conditions and provisions of the Communications Act, any amendments thereto, and any other applicable provision of federal, state or local law.

Section 6 **Franchisee Subject to Other Laws, Police Power**

- A. The Franchisee is subject to and agrees to comply with all applicable local, county, state and federal laws, ordinances, rules, regulations, and orders.

- B. The Franchisee shall at all times be subject to the lawful exercise of the police power of the County. Nothing in this Franchise Agreement shall be construed as a limitation of the County’s authority to exercise such power in any lawful manner.

Section 7 **Reservation of Rights**

The County reserves the right to acquire, purchase, own and/or operate a Cable System to the extent permitted by federal, state and local law.

Section 8 **Insurance**

- A. Franchisee shall obtain and maintain insurance for the types and minimum amounts required in Section X of the Ordinance in such a manner as to comply with each and every requirement of said Section except that any insurance policy(ies) that are required of Franchisee herein shall be written by a company or companies authorized and qualified to do business in the State of Florida and have a minimum rating of “A-”, in Best’s Rating Guide.

- B. The Franchisee shall provide proof to the County Manager of compliance with this Section 8 no later than forty-five (45) days from the date of the Board resolution approving the grant of the Franchise. Failure to provide the Count Manager with proof of insurance within the prescribed forty-five (45) day time period will render this Franchise Agreement and the grant of the Franchise null and void upon receipt

of Notice from the County by the Franchisee.

Section 9 **Indemnification of the County**

Pursuant to Section IX B. of the Ordinance, Franchisee and its parent, Lennar Corporation, agrees to indemnify, defend and hold harmless the County, its officers, boards, commissioners, agents and employees from any and all actions, claims, suits, penalties and judgments for damages at law or equity of any nature whatsoever arising out of or through, Franchisee's enjoyment or exercise of the Franchise granted hereunder, regardless of whether the act or omission complained of is authorized, allowed or prohibited by the Ordinance or the Franchise Agreement; provided, however, that Franchisee's obligation hereunder shall not extend to any claims caused by the misconduct or negligence of the County, its officials, boards, Board, agents, Commissioners or employees or any claim caused by or arising out of the operation or programming of any Access Channel(s), including copyright, which is outside of Franchisee's control. This provision includes, but is not limited to, any claim arising out of copyright infringements or a failure by the Franchisee to secure consents from the owners, authorized distributors, or providers of programs to be delivered by the cable system, claims arising out of Section 638 of the Communications Act, 47 U.S.C. § 558, and claims against the Franchisee for invasion of the right of privacy, defamation of any person, firm or corporation, or the violation or infringement of any copyright, trademark, trade name, service mark or patent, or of any other right of any person, firm or corporation or any suit, claim or demand for violation of any law that arises from Franchisee's operation of the System in Lee County including, but not limited to, the provision or failure to provide channels, facilities and services to handicapped persons Franchisee shall obtain the approval of the County Attorney or any counsel

to be retained to represent the County's interest pursuant to this Section, which approval shall not be unreasonably withheld. County agrees to notify Franchisee, in writing, within ten (10) days of County receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the County from participating in the defense of any litigation by its own counsel and at its own cost.

Nothing in the provision shall be construed to affect in any way the County's rights, privileges, and immunities as set forth in Section 768.28, Florida Statutes.

Section 10 Construction Bond

Prior to any Cable System construction, upgrade, rebuild or other work in the streets excluding work connected with normal operation and maintenance of the System, Franchisee shall furnish a construction bond in favor of the County, in an amount equal to the lesser of the projected cost of construction or One Hundred Thousand (\$100,000.00) Dollars. If such construction bond is not furnished to the County ten (10) days prior to the start of any such construction, construction shall be delayed until such time as the construction bond is provided in a form reasonably acceptable to the County Manager. The construction bond must be in a form approved by the County Manager or his/her designee, which approval shall not be unreasonably withheld. The construction bond shall be maintained until said construction work is completed and activated and for a period of twelve (12) months thereafter. Franchisee shall notify the County Manager in writing when it believes the construction has been completed and the date on which it believes the bond may be eliminated pursuant to this Section 10.

Notwithstanding Section XI A. of the Ordinance, should Franchisee fail to perform the

construction obligations herein, there shall be recoverable from the bond the cost of completing such construction.

Section 11 **Use of Streets**

- A. Franchisee agrees at all times to comply with and abide by all applicable provisions of the County laws, rules, regulations, ordinances, and orders.
- B. Franchisee's Cable System distribution facilities shall be installed and maintained underground where all other telecommunications, cable, communications, power, electric company and any utility facilities are also located underground.
- C. Franchisee shall utilize, with the owner's permission, existing conduits, poles, or other facilities whenever feasible. The Franchisee has the duty and the responsibility to obtain or establish the existence of an easement, license, or dedication for an applicable use.
- D. All of Franchisee's transmission lines, equipment, structures and other facilities shall be installed, located and maintained so as to cause minimum interference with the rights and convenience of property owners.
- E. All safety practices required by applicable federal, state or local law or accepted industry practices and standards shall be used during construction, maintenance and repair of the Cable System.
- F. As required by the County, and upon receipt of written notice from the County, Franchisee shall remove, relocate, replace or modify, at its own expense (except as otherwise required by law) its facilities within any public street as set forth in the

Ordinance; provided, however, should the County require such removal, relocation, replacement, or modification in order to construct and install its own competitive Cable System, then the County shall pay said expense.

- G. Before commencing any construction on or otherwise disturbing any private property or public streets as a result of its construction or operations, Franchisee shall obtain any required permits and pay any required fees in accordance with applicable law. Franchisee shall, at its own expense, restore such property pursuant to the requirement of the Ordinance. If such restoration is not performed in a reasonable and satisfactory manner within forty-five (45) business days, the County may, after prior written notice to Franchisee, cause the repairs to be made at Franchisee's expense.
- H. In the event of an emergency situation within the rights-of-way or on public roads where Franchisee's facilities are located and County needs to move or remove Franchisee's facilities, the County shall make a good faith effort to provide notice to Franchisee of the need to perform such emergency work in the event Franchisee may be able to undertake such work. However, if the County is required to perform emergency Street work requiring relocation of Franchisee's facilities in the Streets, then Franchisee shall reimburse the County for its reasonable costs associated with such relocation.
- I. Franchisee shall not place facilities, equipment or fixtures where they will unreasonably interfere with any other companies lawfully using the public rights-of-way serving the residents of the County. All such facilities, equipment or fixtures

placed in any public street or public right-of-way shall, to the best of the Franchisee's ability, be placed in a manner so as not to interfere with use of the public street.

- J. The Construction Bond required pursuant to the Ordinance and this Franchise Agreement shall not reduce Franchisee's obligation to pay any and all applicable permit fees generally required by the County of other entities accessing or using the public rights of way unless otherwise provided by applicable law.

Section 12 Minimum System Facilities and Services

Notwithstanding any of the foregoing or Section XIV of the Ordinance, or any other written agreement previously existing between the Parties, the following are the terms and conditions that the Parties agree to abide by for "Minimum System Facilities and Services" during the Term of this Agreement.

- A.
 - 1. Franchisee's initial Cable System shall be able to pass frequencies of at least 750 MHZ; have a minimum channel capacity of seventy-eight (78) video channels or the equivalent thereto; and have video channel capability to the headend from the locations specified herein, and in the amount necessary to satisfy the downstream access channel requirements set forth in Section 16 hereof.
 - 2. Franchisee's system shall be completely constructed and activated with service available to all existing residents within the Franchise Area as the residents request service; and to new subscribers as they move into the newly constructed home as the residential community is constructed and the

homeowner requests service.

B. County Government Facilities.

1. Franchisee agrees to provide one (1) cable drop per location (including installation and Basic Cable Service) without charge, to each government building in the Franchise Area, provided that (i) any such building is within two hundred (200) feet of Franchisee's coaxial distribution plant, and (ii) any new government building that does not have Cable Service as of the Effective Date of this Franchise Agreement, and meets the density requirements set forth in Section XIV B. of the Ordinance.

C. School Commitments.

1. Where Franchisee's plant: (a) is the closest franchised cable operator to any K-12 public or Non-Public School, Franchisee hereby agrees to provide, one free cable drop and installation, and free Basic Cable Service at no charge to such schools. Any K-12 public and/or Non-Public Schools constructed after the Effective Date hereof shall, upon written request, be provided with installation at no more than Franchisee's direct cost. However, where Franchisee receives reasonable prior written notice of the construction of a new school, Franchisee shall cooperate with the builder to install all cable-related facilities during construction so as to allow for activation of Cable Services simultaneous with occupancy of the school, provided that any such school is within two hundred (200) feet of Franchisee's coaxial distribution

plant. If any internal wiring installation is requested to serve additional outlets in any school, it will be provided at no more than Franchisee's actual cost. Internal wiring will be provided without charge if Franchisee is provided sufficient notice to coordinate with other comparable electrical wiring installation in cases of new construction or substantial rehabilitation of existing schools in the County.

2. Franchisee shall provide to each cable-connected school, materials for teachers that explain the educational applications of Franchisee's cable services and programming, if such materials are available.

D. Franchisee agrees not to seek to recover the cost for the connections provided pursuant to subsections B. and C. above as external or other costs nor shall such costs be considered fees or taxes.

E. All video signals received for transmission that contain closed circuit captioning information for the hearing impaired shall in turn contain such information in the form received when transmitted by Franchisee to its subscribers of the System.

F. Franchisee shall comply fully with all applicable laws concerning handicapped or disabled persons.

Section 13 Technological Improvements to System

Notwithstanding the definition of "State-of-the-Art", as found in Section II A.30., the requirements of Section XIV A. of the Ordinance, or any other written agreement previously existing between the Parties, the following are the terms and conditions that the Parties agree to abide by for

“Technological Improvements to System” during the Term of this Agreement.

- A. Franchisee agrees that it will meet with County officials on the sixth (6th) anniversary of the issuance of this Franchise Agreement, upon the County’s written request, in order to review and discuss developments in Cable System services and technology. The Cable System and its services shall be reviewed in light of those developments in order to maintain the alignment of the community’s cable-related needs and interests with Franchisee’s services. It is hereby expressly agreed that in the event Franchisee fails to provide services generally available to subscribers of other cable franchises in Lee County, Franchisee shall be presumed to be not satisfying the community’s needs and interests.
- B. Notwithstanding Section III H. of the Ordinance, should the Franchisee upgrade its Cable System consistent with the County’s request, the Parties expressly agree that the Term of this renewal Franchise Agreement shall be extended for an additional five (5) years by the County. Should Franchisee not upgrade or rebuild, as requested by the County, the County may consider said inaction during renewal proceedings.

Section 14 **Technical Standards**

Franchisee shall maintain and operate its Cable System, at a minimum, in full compliance with the standards and regulations of the FCC or other applicable federal or state standards.

Franchisee shall further comply with each of the following requirements:

- A. All antennae, supporting structures, and outside plants used in operating and maintaining Franchisee’s Cable System within the Franchise Area shall comply with

all generally accepted industry standards and all applicable federal, state, and local laws, ordinance, rules, regulations and any applicable lease agreements executed by and between Franchisee and the County relating to tower structures and outside plants.

- B. All construction, installation and maintenance of Franchisee's Cable System shall comply with the National Electrical Safety Code, the National Electrical Code, all applicable state and local laws, regulations, and accepted industry practices.

Section 15 Proof of Performance Tests

Franchisee shall perform, at its own expense, the proof of performance tests as required by FCC rules and Section XV C. of the Ordinance to demonstrate compliance with the requirements of that Section of the Ordinance, this Franchise Agreement and FCC standards. Notwithstanding anything to the contrary, upon written request by the County Administrator, Franchisee will provide proof of performance test results within thirty (30) days of such request to the County Manager.

Section 16 Access Channels and Facilities, INET and Government Capital Support

Notwithstanding any of the foregoing or Section XVI of the Ordinance, the following are the terms and conditions that the Parties agree to abide by for "Access Channels and Facilities, INET and Government Capital Support" during the Term of this Franchise Agreement.

- A. Access Channel Capacity.
 - 1. Immediately effective with activation of Franchisee's system, Franchisee shall provide to the County the exclusive use of two (2) Access Channels [one for Educational Access and one for Government Access use] and will

continue to provide same through the Term of this Franchise Agreement. Notwithstanding anything to the contrary, in no event shall the County be denied the exclusive use of the two Access Channels for non-commercial Educational and Government purposes.

2. If, at any time during the Term of the Franchise, the Government Access Channel is programmed more than eight (8) hours per day Monday through Friday between the hours of 7:00 a.m. and 12:00 midnight with non-character generated, non-duplicative, locally produced (County government and other County, non-commercial programming) for eight (8) consecutive weeks, the Franchisee shall provide the exclusive use of a second Government Access Channel (third Access Channel) within six (6) months of receipt of a written request from the County that will include detailed documentation evidencing the fact the usage of the first Government Access Channel has met the criteria set forth above.
3. Six (6) months after the second Government Access Channel is provided to the County, if the first Government Access Channel is not programmed as required under Section 16.A.2. above, then the second Government Access Channel (the third Access Channel) will, after notice to the County of not less than ninety (90) days, automatically revert back and be returned to the exclusive use of Franchisee.
4. Franchisee will, as a condition precedent to the grant of this Franchise, obtain interconnection agreements and hereby agrees, at its expense, to interconnect

with any and all operators so as to provide all government and education programming including, but not limited to live cablecasting of all meetings of the Board of County Commissioners and all programming from the County Government complex located in the City of Fort Myers.

5. During the Term of the Franchise, if Franchisee decides to convert all channels on the Cable System to digital channels and, thus, no longer provides analog channels, Franchisee shall give the County at least one hundred twenty (120) days notice before implementing such change. On and after the date of such change, the County shall have the right, upon its written request, to use digital channel capacity on the “basic tier” equivalent to the “spectrum capacity” then currently occupied by the analog Government Access Channel(s) at the time such change is made; provided the County meets the usage triggers set forth above in Section 16.A.3. for each digital channel of Access programming. For purposes of this Section 16.A.6., “Spectrum capacity”, shall mean 6 MHZ for each analog channel. In addition, Franchisee shall provide to the County the equipment necessary for analog to digital conversion, at no cost to the County.
6. Franchisee agrees that all Access Channels provided to the County in accordance with this Section 16, will be provided to Franchisee’s Subscribers in the County as part of the lowest tier of basic service and that, if programming information is supplied to Franchisee in writing by the County, Franchisee will use its best efforts to publicize such programming on the

Access Channel as a part of any ordinary printed or on-air program listings it provides.

7. All Government and Educational Access programming will be on the same channel(s) on Franchisee's System throughout the County.
8. Unless technically not feasible, Franchisee shall assign all government and education programming to the same channel numbers as does the Franchisee serving the largest number of subscribers in the unincorporated area of the County.
9. The County may cablecast character generated information on the County's designated Access Channel from the designated location in the County complex at any time of its choosing.

B. Institutional Network.

Franchisee agrees that upon written request from the County, it shall construct an Institutional Network ("INET") within the County or interconnect with any existing INET.

1. Construction Process.
 - a. Within thirty (30) business days of the written request from the County, Franchisee shall begin to confer with the appropriate County representatives in order to determine the scope and capabilities of the INET.
 - b. Within ninety (90) days from the completion of the conference between the Franchisee and County representatives, Franchisee shall

present to the County a proposed design plan and budget for the County's review in order to determine whether the design plan will not only accomplish the County's objectives, but that the cost is within the County's budget.

- c. After presentation of the proposed design plan and budget for the INET, should County desire re-engineering of the design plans, the County shall be responsible for all costs of re-engineering. Moreover, upon completion of the County's review of the design plans and budget, should County decide not to go forward with the construction of the INET, Franchisee will be relieved of all responsibility of the construction of the INET as required under this Section 16.B. of this Franchise Agreement.

2. Cost of Construction and Payment by the County.

- a. The County will be responsible for the cost of construction (labor and materials) of the INET, as set forth below.
- b. Franchisee agrees that it will not include any additional mark-up for or profit in the cost of constructing the INET. However, the Parties agree that the direct cost of management oversight and other overhead may be included in calculating the construction costs of the INET.
- c. Payment to Franchisee by the County for construction of the INET shall be made as follows:
 - i. Twenty-five percent (25%) within thirty (30) days after

agreement of the design plans;

- ii. Fifty percent (50%) within thirty (30) days of notification by Franchisee in writing to the County that construction of the INET is fifty percent (50%) complete; and
- iii. Twenty-five percent (25%) within thirty (30) days of notification by Franchisee in writing to the County that construction of the INET is complete and ready to be activated.

3. Ownership of the INET.

- a. Franchisee shall retain ownership of the INET to the point of demarcation. The County shall own any end-user equipment installed and purchased by the County.
- b. The County shall have exclusive use of the INET during the Term of the Franchise Agreement.
- c. The County may not, however, use the INET, for non-governmental, commercial or non-commercial purposes, nor lease any capacity on the INET to another entity.

4. Maintenance of the INET.

- a. Normal Maintenance. Franchisee shall be responsible for maintaining the INET, except for the maintenance of any end-user equipment purchased, installed, and owned by the County.
- b. Franchisee agrees that the maintenance and repair of the County's

INET will be a high priority item for the Franchisee, and that Franchisee will use its best efforts to maintain the INET for “core government services” as defined by the County Manager or designee which shall be considered on emergency level for the Franchisee.

- c. Extraordinary Maintenance of the INET shall be considered to be any repairs to the INET.
- d. Costs of Extraordinary Maintenance shall be covered in the following manner:
 - i. Franchisee shall first demand reimbursement from the person(s) or entity(s) that caused the damage.
 - ii. Should Franchisee be unable to recover reimbursement of the extraordinary maintenance from the person(s) or entity(s) that caused the damage after such demand, and the damage occurred in the County rights-of-way or other County owned property, the County agrees to assist Franchisee in recovering reimbursement by seeking to draw down on the construction bond filed with the County by the person(s) or entity(s) that caused the damage. The Franchisee agrees to provide all documentary evidence showing that it sought reimbursement without success and that the particular person(s) or entity(s) caused the damage.
 - iii. After exhausting the methods set forth above, the County

shall reimburse Franchisee for its costs associated with the extraordinary maintenance. However, before doing so, Franchisee shall provide all relevant information about the costs of the extraordinary maintenance to the County.

C. Governmental Capital Support.

For the sole noncommercial support of Governmental Access equipment, Franchisee shall collect as a Subscriber pass-through an amount equal to five cents (\$.05) per month per Subscriber throughout the Term of this Franchise Agreement. Remittance of such Subscriber pass-through shall be made to the County on a quarterly basis throughout the Term.

1. Franchisee may list this amount as a specific line amount on its monthly bills to its Subscribers.
2. The County may increase this amount no sooner than the third (3rd) anniversary of this Franchise Agreement and no more often than every 3 years thereafter; provided that (i) any such increase will not be more than five cents (\$.05) at any given three (3) year period, and (ii) the total per Subscriber, per month pass-through shall never exceed fifteen cents (\$0.15) during the Term of this Franchise Agreement, and (iii) the County may only increase the monthly subscriber pass-through amount after first holding a public hearing on the matter where both the public and Franchisee may be heard on the issue after providing Franchisee with forty-five (45) days notice of the Board of County Commissioners' approval of such increase.

3. Franchisee agrees to provide a semiannual report of its Subscribers to verify the quarterly “Governmental support” payment or collection to the County.

Section 17 Commercial Leased Access

Franchisee shall provide commercial leased access channels as required by Federal Law.

Section 18 Emergency Use of Facilities

- A. Franchisee shall, at minimum, comply with all FCC rules and regulations and such other procedures as may be agreed upon with the County, with respect to emergency use of facilities.
- B. Franchisee shall install and operate all necessary EAS equipment to receive, decode and encode digital emergency information, and to transmit the required information across all cable channels, as required by federal law. In case of any emergency or disaster, as determined by the County, Franchisee shall, upon request of the County, make the override capacity available to the County without charge for use during emergency or disaster periods. When this requirement is requested, based upon Lee County’s police powers, this requirement cannot be included by Franchisee as an external costs to be passed on to the consumer.
- C. Franchisee shall provide standby power generating capacity at the Cable System headend and be capable of providing at least two (2) hours of emergency power supply.

Section 19 **Lock-out Devices**

Franchisee shall make available at a reasonable charge, to any of its residential Subscribers in the Franchise Area, upon the request of such Subscriber, a “parental guidance” or “lock-out” device which shall permit the Subscriber, at his/her option, to eliminate the audio and visual transmissions from any channel reception to the extent technically feasible.

Section 20 **Line Extension Policy**

In accordance with Section XIV B. of the Ordinance, upon request and payment of all applicable charges, and provided that the requesting person gives Franchisee access to his/her premises in order to furnish, maintain and continue to offer Cable Service to that person, Franchisee shall, throughout the Term of this Agreement, promptly furnish, maintain, and continue to provide all Cable Services distributed over the System to any person at his/her place of residence within the County where Franchisee’s plant is the closest of any franchised cable operator.

Section 21 **Cable Home Wiring Commitments**

At minimum, Franchisee shall comply with FCC rules regarding cable home wiring, and any amendments thereto or hereafter adopted, from time to time.

Section 22 **Franchisee Fee**

The Parties recognize that on the Effective Date of this Franchise Agreement, the Florida Simplified Communications Services Tax Act preempts Section III L. of the Ordinance. If, however, the Florida Communications Services Tax Law is amended or repealed so that a local franchising authority is allowed to impose and collect franchise fees, then forty-five (45) days after the effective date of any such statutory amendment or repealment, Section III L. of the Ordinance will become

effective with respect to this Franchise Agreement or at such time as stated in said amendment or repealment of the Florida Communications Services Tax Law. At such time and in consideration of the privilege granted herein to use and occupy the Streets to own, construct, install, maintain and operate its Cable System, Franchisee shall pay to the County a franchise fee in the amount of five percent (5%) of its Gross Revenues [which shall be defined consistent with the Ordinance and applicable law]. However, should a change in applicable law increase the maximum allowable franchise fee percentage to an amount greater than five percent (5%), Franchisee hereby agrees to pay to the County that higher amount, provided; however, that such increase is affirmatively imposed by the County after a public hearing where both the public and Franchisee are allowed to comment on the impact of the higher fee. Franchisee will pay to the County such higher amount effective with the next available billing cycle in which the higher charge may be placed on Subscribers' bills.

Section 23 **Reports and Records**

Upon reasonable prior written request of the County Manager or his/her designee, Franchisee shall furnish the County with the information under Section XXII of the Ordinance except Sections XXII A.1. and XXII A.2. (unless and until the Florida Simplified Communications Tax Act is properly repealed).

Section 24 **Right to Inspect Records and Facilities**

- A. Franchisee shall maintain a complete set of books and records, including plans, engineering, accounting, financial, statistical, and customer service records as may be required by state or federal law within the County.
- B. The County shall have the right to inspect, at Franchisee's local office, books and

records as may be required by the County to perform its regulatory responsibilities under this Franchise Agreement, the Ordinance or applicable federal, state or local law (unless applicable law prohibits or limits the County's right to inspect certain of Franchisee's books and records). The County agrees to carry out any such inspection during Franchisee's normal business hours and upon reasonable prior written notice so long as their presence at such inspection includes a representative of Franchisee. Access by the County to Franchisee's books and records in order to perform its regulatory responsibilities shall not be denied on grounds that such books and records contain proprietary or confidential information.

- C. The County shall provide all books and records that it inspects under this Section 24 the degree of confidentiality such books and records are entitled to under federal and state law. Franchisee's books and records shall not constitute public records, except to the extent required by federal and state law.
- D. Pursuant to the Ordinance, the County shall have the right to inspect Franchisee's facilities so long as any such inspection is conducted (i) during Franchisee's normal business hours and in such a manner so as not to interfere with Franchisee's business operations (ii) upon prior written notice, and (iii) in the presence of a representative of Franchisee.

Section 25 **Customer Service Requirements**

- A. The County and Franchisee agree that the "Customer Service Requirements", set forth in Section XVII of the Ordinance shall be followed.

- B. Fines for Customer Service Violations. Franchisee shall be subject to the schedule of liquidated damages and/or fines set forth within Section XVII of the Ordinance.

Section 26 **County Purchase of Cable System**

The County may, upon the recommendation of the County Manager and the approval of the Board, acquire ownership of and operate Franchisee’s Cable System in accordance with Section XXVI E.2. of the Ordinance and applicable federal law.

Section 27 **Modification of Franchise**

Franchise shall file a request for any modification of this Franchise Agreement with the County Manager in accordance with the federal Cable Act and the Ordinance.

Section 28 **Transfer of Franchise**

- A. Franchisee shall not directly or indirectly assign, sell or transfer its franchise, or any right, title, or interest in same, this Franchise Agreement, or its cable system, nor shall any ownership interest or any other form of control of Franchisee or any lawful successor be transferred, assigned, directly or indirectly, without prior written notice to and approval of the County. In determining whether to approve a transfer, the County will consider the factors set forth in the Ordinance. However, prior consent of the County will not be required where Franchisee provides reasonable notice to the County of a “pro forma” transfer, as defined in Section II A.35. of the Ordinance.
- B. Franchisee shall file an application to transfer its franchise or to transfer control of Franchisee in full compliance with Section XXV of the Ordinance unless such application has been filed at least ninety (90) days prior to the effective date hereof.

Section 29 Procedures for Requesting Approval of Transfer

One hundred twenty (120) calendar days prior to the contemplated effective date of a transfer, Franchisee shall submit to the County Manager an application for approval of the transfer. Notwithstanding the requirements of Section III D. of the Ordinance, such application shall include the following:

1. A statement of the reason for the contemplated transfer.
2. The name, address and telephone number of the proposed transferee.
3. A detailed statement of the corporate or other business entity organization of the proposed transferee, including but not limited to the following:
 - (a) The names, business addresses, state of residence and country of citizenship of all general partners and/or corporate officers and directors of the proposed transferee.
 - (b) The names, business addresses, state of residence and country of citizenship of all persons and entities having, controlling, or being entitled to have or control five percent (5%) or more of the ownership of the proposed transferee and the respective ownership share of each such person or entity.
 - (c) The names and addresses of any of the proposed transferee and of any other business entity owning or controlling in whole or in part or owned or controlled in whole or in part by the proposed transferee.
 - (d) Detailed and complete financial statements including audited

reports of the proposed transferee, prepared by a certified public accountant and/or certified by a duly authorized financial officer of the proposed transferee, for the three (3) fiscal years immediately preceding the date of the request for transfer approval, and a letter or other acceptable evidence in writing from a duly authorized officer of the proposed transferee setting forth a clear and accurate description of the amount and sources of funding for the proposed transferee to construct, install, rebuild, maintain and operate the proposed system in the County. If the corporate or business entity organization of the proposed transferee has not been in existence for a full three (3) years, the proposed transferee shall submit a certified financial statement for the period of its existence.

- (e) A description of all previous experience of the proposed transferee in operating cable television systems and providing cable television services or related or similar services, including a list of statements identifying, by place and date, any other cable television franchise(s) awarded to the proposed transferee, its parent, subsidiaries, or affiliates; the status of said franchise(s) with respect to completion thereof, the total estimated cost of completion of such system(s); and a summary of the amount of the proposed transferee's and its parent's or subsidiary's resources

committed to the completion thereof.

- (f) Upon written request from the County Manager, a detailed pro forma financial plan describing for each remaining year of the franchise, the projected number of subscribers, rates, all revenues, operating expenses, capital expenditures, depreciation schedules, income statements, and statement of sources and uses of funds.

Where the transfer is part of a larger transaction and such information is not prepared for the single system in the County, the proposed transferee may provide such information on a consolidated basis including the system in the County, but shall provide information on the size of the County system, in terms of number of subscribers, relative to the transaction, so that pro rata estimates may be made.

- (g) A detailed description of the proposed plan of operation of the proposed transferee, which shall include, but not be limited to the following:

- (i) a detailed map indicating all areas proposed to be served, a proposed time schedule for the installation of all equipment necessary to become operational throughout the new areas to be served, and the projected total cost for new construction of the System.

- (ii) a statement or schedule setting forth proposed products and services to be made available and classifications of rates and charges to be made against Subscribers including installation charges, service charges, and equipment charges.
- 4. However, should the transaction only involve a change of parental control of the Franchisee and the present Franchisee is not changing and will remain as the Franchisee, then the information sought in subsections (f) and (g) directly above may not be required.
- 5. Upon request, the proposed purchased price of the Cable System, and the terms and conditions of the proposed transfer.

Section 30 **Renewal of Franchise**

Any renewal of this Franchise Agreement shall be in accordance with the Federal Cable Act.

Section 31 **Rates**

- A. Nothing in the Ordinance or this Franchise Agreement shall prohibit the County from regulating rates, service, installation, disconnection, and equipment rental to the full extent permitted by and consistent with state and federal law.
- B. Franchisee further agrees that it shall not increase rates or charges for Basic Cable Service, installation, disconnection, or equipment rental or change the services or channels offered without at least thirty (30) days prior notice to Subscribers and the County.

Section 32 **Bulk Contracts**

The County expressly reserves all of its authority as it now exists or may exist in the future under local, state and federal law to enforce the applicable provisions of the Ordinance and this Franchise Agreement and any and all applicable local, state and federal laws with respect to cable Subscribers receiving Cable Service at a bulk rate under any agreement applicable to a multiple dwelling unit. The Franchisee expressly agrees that it will not enforce any bulk rate contracts beyond the termination of the Franchisee's rights to operate a Cable Television System in the unincorporated area of the County.

Section 33 **Performance Bond**

- A. Pursuant to Section XI B. of the Ordinance, Franchisee and its parent, Lennar Corporation, shall provide the County with a performance bond in a form approved by the County Administrator or his designee in the amount of Two Hundred Thousand Dollars (\$200,000.00) as security for the faithful performance of all provisions of the Franchise Agreement, the Ordinance, and all applicable state and federal law. If such bond is not furnished to the County within forty-five (45) business days of the date of the Board resolution approving the grant of the Franchise, then Franchisee shall pay to the County a fine in the amount of One Hundred Dollars (\$100.00) per day, beginning on the 46th day; beginning on the 51st day, Franchisee shall pay to the County a fine in the amount of Two Hundred Dollars (\$200.00) per day. In the event said bond is not received on or by the 60th day after the Board resolution approving the grant of the Franchise, this Franchise Agreement

and the grant of the Franchise may be revoked.

- B. If thirty (30) calendar days after written notice Franchisee fails to pay to the County any fees or taxes due and unpaid, or any liquidated damages, damages, costs or expenses that the County has incurred by reason of any act, omission or default of Franchisee in connection with this Franchise Agreement the County may immediately withdraw that amount, with interest and any costs, from the performance bond. Upon such withdrawal or claim, the County shall notify Franchisee in writing of the amount and date of the withdrawal at least three (3) business days prior to a withdrawal.
- C. Franchisee shall pay the County the amounts of all claims against said bond within thirty (30) calendar days after notice of such claim, maintaining the bond at its original amount. If Franchisee fails to pay the County the amount of any claim within thirty (30) days after notice to the Franchisee of the claim paid or fails to restore the bond to its original amount, such failure may be considered a material breach of this Franchise Agreement and a violation of the Ordinance, and shall constitute grounds for revocation.
- D. Franchisee is entitled to return of the balance of the performance bond that remains following any other form of expiration of the Franchise, including denial of renewal, provided that there is no outstanding default and less any unpaid amounts owed to the County by Franchisee and any amount that is the subject of a pending dispute between the County and Franchisee.

- E. If the Franchise terminates for reasons other than revocation, any performance bond will be maintained by the Franchisee for six (6) months from the date of termination and the bond will be returned to Franchisee six (6) months from the termination date of this Franchise, provided there is no outstanding default or unpaid amounts owed to the County by Franchisee.
- F. The rights reserved to the County under this Section are in addition to all other rights of the County, whether reserved in this Franchise Agreement or in the Ordinance, or authorized by other law, and no action, proceeding or exercise of a right with respect to the performance bond will affect any other right the County may have.

Section 34 Enforcement Remedies

- A. Because the County may suffer damages from any violation by Franchisee of this Agreement or of the Ordinance, which damages may be difficult to quantify, the County and Franchisee agree to the following schedule of liquidated damages:
 - 1. For failure to complete the system construction and activation as expressly required by this Franchise Agreement unless the County specifically approves a delay caused by the occurrence of conditions beyond Franchisee's control, including, but not necessarily limited to, construction by a home builder, Franchisee shall pay to the County One Thousand Dollars (\$1,000.00) per day for each day the violation continues.
 - 2. For material failure to provide data, documents, reports or information in a timely manner as required by this Franchise Agreement and not by the

Ordinance or as requested by the County consistent with FCC rules and regulations and all other applicable law, Franchisee shall pay Fifty Dollars (\$50.00) per day for each day the violation continues. A violation will be deemed to have occurred when Franchisee fails to provide information by the date requested by the County in a certified written letter in accordance with this Agreement.

- B. Before assessing liquidated damages against Franchisee, the County shall give Franchisee written notice of the alleged violation and its intention to assess such damages, which notice shall contain a sufficient description of the alleged violation. Following receipt of such notice, Franchisee shall cure or commence to cure to the satisfaction of the County Manager the violation within thirty (30) business days or provide a written statement as to why it is of the reasonable belief that no violation has occurred or that such violation cannot be cured within thirty (30) business days and provide a time frame for such cure of said violation. If the violation is not cured or commenced to be cured to the reasonable satisfaction of the County Manager in that thirty (30) business day period, the County may, effective on the 31st business day, collect liquidated damages owed, through a draw-down of the performance bond as provided in Section 33 of this Franchise Agreement, or through any other means allowed by law. In the event Franchisee desires to challenge the decision of the County Manager, Franchisee may appeal to the County Board, however such appeal must be filed within thirty (30) business days of the date of the County Manager's

decision and any such good faith appeal shall stay the draw-down and the accrual of liquidated damages until the County Board makes its determination.

- C. Franchisee's Franchise is subject to revocation pursuant to the Ordinance for any of the reasons set forth therein. In the event the County exercises its right to revoke the franchise, the procedures set forth in the Ordinance shall apply. After exhaustion of all such proceedings, Franchisee shall have the right to appeal the decision of the Board to a court of competent jurisdiction in Lee County, Florida.

Section 35 **Area Wide Interconnection**

- A. Franchisee hereby agrees to provide to the County copies of executed interconnection agreements with any or all other operator(s) of a Franchised Cable System located within the County and servicing Subscribers within the County for the sole purpose of sharing government and education programming.
- B. Franchisee shall make all reasonable efforts to cooperate with any designated access organization, interconnection corporation, regional interconnection authority or County, state or federal regulatory agency that may be hereafter established for the purpose of regulation, financing, or otherwise providing for the interconnection of Cable Systems beyond the boundaries of the Franchise Area.
- C. Notwithstanding anything to the contrary in the Ordinance Franchisee shall make available to all of Franchisee's Subscribers in the County on the Access Channels, all government and education programming provided by the County.

Section 36 **Written Notice of Acceptance**

Upon adoption and as of the date the Board resolution approving grant of this franchise, Franchisee shall provide the County Manager with written acceptance of all the terms and conditions of this Franchise Agreement. In addition, such acceptance shall incorporate Franchisee's agreement to be bound by all obligations, Franchisee's failure to comply with this Section shall render this Franchise Agreement and the franchise null and void with no further action by the County, unless the County Manager agrees in writing or the Board takes action to extend such period.

Section 37 **No Opposition**

- A. By execution of this Franchise Agreement, unless otherwise expressly waived herein, the Franchisee accepts the validity of the terms and conditions of this Franchise Agreement and the processes and procedures pursuant to which this Franchise Agreement was entered into and the Franchise was granted.
- B. In the event that after the Effective Date of this Franchise Agreement, or Ordinance No. 01-05, and any amendments thereto or hereafter adopted, pursuant to which the Franchise is granted, an official act of any court, agency, commission, legislative body, or other authority of competent jurisdiction (1) renders the Ordinance or the Franchise invalid in whole or in part, or (2) requires the Franchisee or the County either to (a) perform any act which is inconsistent with any provision of the Ordinance or this Franchise Agreement, or (b) cease performing any act required by any provision of the Ordinance or this Franchise Agreement, the Franchisee shall promptly notify the County of such fact.

- C. Nothing herein shall limit the ability of Franchisee to lobby or otherwise exercise its First Amendment right in pursuit of a change in generally applicable federal, state or local law.

Section 38 **Force Majeure**

If by reason of strike, acts of God, acts of public enemies, orders of any kind of a government of the United States of America or of the State or any of their departments, agencies, political subdivisions; riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, tornadoes, volcanic activity, storms, floods, washouts, droughts, civil disturbances, explosions, partial or entire failure of utilities or any other cause or event not reasonably within the control of the disabled party, any party is unable in whole or in part to carry out its obligations hereunder, that party shall not be deemed to be in violation or default during the continuance of such inability.

Section 39 **Execution in Counterpart**

This Franchise Agreement may be executed in counterpart.

IN WITNESS OF THE FOREGOING, the Parties have set their hands and seals the day and year first written above.

STRATEGIC TECHNOLOGIES, INC.

ATTEST:

Witness

By: _____

Date: _____

Witness

(SEAL)

LENNAR CORPORATION

ATTEST:

Witness

By: _____

Date: _____

Witness

(SEAL)

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of the County Attorney

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