

ORDINANCE NO. 31

BOROUGH OF MILL VILLAGE FRANCHISE AGREEMENT

This Franchise Agreement is entered into this 3rd day of January, 2006 (the “**Effective Date**”) between BOROUGH OF MILL VILLAGE, Erie County, Pennsylvania (the “**Borough**”), and ARMSTRONG UTILITIES, INC., a Pennsylvania corporation, duly authorized to conduct business in the Commonwealth of Pennsylvania, with principal offices located at One Armstrong Place, Butler, Pennsylvania 16001 (the “**Grantee**”).

PREAMBLE

The Borough has determined that it would be in the public interest for the Grantee to have, in accordance with the terms hereof, the right, license and privilege of constructing and operating a cable television and telecommunications system within the Borough. The Grantee has determined, so long as it is economical and technically feasible, that it is desirous of obtaining, in accordance with the terms hereof, the right, license and privilege of constructing and operating a cable television and telecommunications system within the Borough. The Grantee and the Borough have agreed to be bound by the terms and provisions herein set forth and have further agreed that such terms and provisions may be modified or amended only by written agreement of both parties. The entering into this Agreement by the Borough and the terms and conditions hereof were duly authorized, approved and ratified by the Borough Council pursuant to Ordinance No. 31, enacted on January 3, 2006.

NOW, THEREFORE, the parties hereto, intending to be legally bound, do hereby covenant and agree as follows.

AGREEMENT

SECTION 1.

Definitions

For the purpose of this Agreement, each of the following terms shall have the meaning ascribed below. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word “shall” is always mandatory and not merely directory.

- (A) “**Borough**” shall mean the Borough of Mill Village, Erie County, Pennsylvania.
- (B) “**Borough Council**” shall mean the present governing body of the Borough or any future board constituting the legislative body of the Borough.
- (C) “**Grantee**” shall mean Armstrong Utilities, Inc. or its assignees.
- (D) “**Cable Television System**” or “**System**” means a system of poles, wires, cables, fibers, lines, underground conduits, converters, equipment, appliances and/or facilities designed, constructed or used for the purpose of providing, receiving, amplifying, transmitting and distributing radio, television, telephone, data and two-way interactive impulses and energy and other information or matter to residential and commercial customers of the Grantee within the Borough.
- (E) “**Cable Service**” means the one-way or two-way transmission to or from subscribers of video programming or other programming services (including music), and subscriber interaction, if any, which is required for the selection of such video programming or other programming service, and the installation and rental of equipment necessary for the receipt to transmission thereof.

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- (F) “**Gross Annual Receipts**”, for the purpose of the calculation of the Franchise Fee, shall mean any and all revenues of any kind or nature including, without limitation, cash, credits, property and in-kind contributions received directly or indirectly by Grantee or its affiliated entities from any source whatsoever arising from, attributable to or in any way derived from the provision of Cable Service within the Borough. Gross Annual Receipts will include the following: Basic Service fee, fees charged to subscribers for any programming service other than Basic Service; fees charged to subscribers for any optional, per-channel or per-program service; installation, additional outlets, relocation, disconnection, reconnection and change-in-service fees; fees for control devices and antennas; fees for any and all music services. Gross Annual Receipts will not include revenues associated with internet or cable modem services, data transmission services, and/or interactive services bad debts or any taxes on services furnished by Grantee and imposed directly upon any subscriber or user by the Borough, state, federal or other governmental unit. If changes to federal or Pennsylvania law occur during the term of this Agreement, which would affect the definition of “Gross Annual Receipts”, then the Borough and Grantee shall meet and mutually agree to an amendment of this Agreement.
- (G) “**Subscriber**” means a user of the Cable System who lawfully receives Cable Service or other service therefrom with Grantee’s express permission.
- (H) “**Franchise**” means that initial authorization, or renewal thereof, issued by **Township**, whether such authorization is designated as a franchise, permit, license, resolution, ordinance, contract, agreement, certification or otherwise, which authorizes construction and operation of the Cable System for the purpose of offering Cable Service or other service to Subscribers.
- (I) “**Base Rate**” mean the rate established by Grantee and paid by Subscribers for Cable Service, not including any applicable Franchise Fees.
- (J) “**Franchise Fee**” means a fee, calculated as a percentage of Gross Annual Receipts, paid to Borough by Grantee in consideration for the right, license and privilege granted by this Agreement and to defray any costs and expenses of the Borough in connection with the execution, delivery, performance and administration of this Agreement.

SECTION 2.

Grant of Franchise

- (A) In consideration of the within undertakings by the Grantee, the Borough agrees that the Grantee shall have, and hereby confirms and grants unto the Grantee, the right, license and privilege to construct and reconstruct, to install, maintain, repair, replace and remove, and .solicit and sell customers, Subscribers, users and advertisements for, and otherwise to own, promote and operate, a cable television and telecommunication system throughout the Borough.
- (B) The right, license an privilege hereby granted shall not be exclusive, and the Borough reserves the right to grant a similar Franchise to any person at any time. The Borough will not enter into a Franchise Agreement, permit, license, authorization or any other agreement with another person or entity to construct a similar system or provide cable or telecommunication services in any part of the Franchise area which grants more favorable terms and conditions.
- (C) The right, license and privilege herein granted and confirmed shall be deemed to include a continuing right to enter upon and to use and occupy the surface, subsurface and space above or below any public streets, lanes, alleys, paths, ways, bridges and viaducts within the Borough, when and to the extent necessary to carry out the intent and purposes of this Agreement, subject, however, to limitations and qualifications herein contained.

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- (D) In exercising the right, license and privilege granted and confirmed hereby, the Grantee shall be and remain subject to and shall comply with all federal, state and local laws, rules and regulations applicable to it in the conduct of the activities contemplated hereby.

- (E) All of the rights and privileges and all of the obligations, duties and liabilities created by this Franchise shall pass to and be binding upon the successors of the Borough and the successors and assigns of Grantee; and the same shall not be assigned or transferred without the written approval of the Borough Council Members, which approval shall not be unreasonably withheld; provided, however, that this Section shall not prevent the assignment or hypothecation of the Franchise by Grantee as security for debt without such approval; and provided further that transfers or assignments of this Franchise between any parent and subsidiary corporation or between entities of which at least fifty percent (50%) of the beneficial ownership is held by the same person, persons or entities which are controlled or managed by the same person, persons or entities, shall be permitted without the prior approval of the Borough (“intracompany transfers”). Grantee shall notify Borough in writing within thirty (30) days of the closing of such intracompany transfer.

SECTION 3.

Construction and Maintenance Activities

- (A) In cases where existing poles or other structures, conduits or other facilities owned or leased by public utilities or third parties having the right to permit attachment thereto or location therein or thereon of the system by the Grantee are not available or are impractical for that purpose, then the proposed means of attachment, construction or conduit shall be submitted to the Borough Engineer or Chairman or Borough Council or designated person by drawings, plans and explanatory addenda at least thirty (30) days before such proposed attachment, installation or construction, and shall be subject to his approval in writing before commencement of such attachment, installation or construction, and such approval shall not be unreasonably withheld and the Borough Engineer or Chairman or Borough Council or designated person shall advise the Grantee of its determination within twenty (20) days after receipt of the Grantee’s proposed means of attachment, construction or conduit.

- (B) In the event that Grantee provides New Services, Grantee shall extend the Cable System into all areas of the Borough where there is a minimum of twenty (20) dwelling units per linear mile of aerial cable, and thirty (30) dwelling units per linear mile of underground cable, calculated from the nearest trunk line. To be counted for purposes of this Section 3(B), dwelling units must be located within two hundred (200) feet of the to-be-built Cable System extension.

- (C) Grantee shall obtain all legally required permits before commencing any work requiring a permit, including the opening or disturbance of any street, or public property or public easement within the community. Grantee shall strictly adhere to all building and zoning codes currently or hereafter applicable to construction, operation or maintenance of the Cable System in the community, provided such codes apply to all other similar situated entities.

SECTION 4.

Conditions on Use and Occupancy of Streets

- (A) Pole attachments and the construction, installation, repair and replacement of basic system hardware and the operation and removal of the system and all parts thereof by the Grantee within the Borough shall be conducted in such a manner as to cause minimum interference with the proper use of streets, lanes, alleys, bridges and viaducts and other public places, and to cause minimum interference with the

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right or reasonable convenience of the property owners, tenants or occupants who adjoin any of said streets, lanes, alleys, bridges, viaducts and other public places.

- (B) In the event of any disturbance caused by the Grantee's activities hereunder to the pavement, sidewalk, driveway or other surfacing as to which the Borough is responsible, the Grantee, at its own cost and expense, shall replace and restore all such paving, sidewalk, driveway or surface so disturbed in a good and workmanlike manner and to as functionally sound a condition as before said activities were commenced, and shall be completed within sixty (60) days of the disturbance or such longer period as may be approved by the Borough Council. All such replacement and restoration by the Grantee shall be subject to the approval of the Borough Engineer or designated person and such approval shall not be unreasonably withheld.
- (C) In the event that, at any time during the existence of the within right, license and privilege to the Grantee, the Borough elects to alter or change the grade, alignment or paved width of any street, lane, alley, bridge or viaduct or other public way, the Grantee, upon notice by the Borough, shall remove and relocate any affected part of the system within thirty (30) days of the date of notice or such reasonable extension thereof as may be granted by the Borough Representative considering the circumstances of the case. The Borough and Grantee shall work together in good faith to determine the proper allocation of expenses for any such removal or relocation as between the Grantee and the Borough.
- (D) The Grantee shall not place the system of any part thereof where the same will interfere with any gas, electric, telephone or telegraph line or fixture, water hydrant or main, nor in such manner as would interfere with the usual travel on the streets, lanes, alleys, bridges and viaducts and other public places of the Borough.
- (E) Upon the request of any person, firm or corporation holding a moving permit issued by the Borough or other governmental regulatory agency having jurisdiction of the matter, by which permit any building or buildings, large pieces of equipment or structural materials or the like are to be moved from place to place, the Grantee shall temporarily raise or lower its system as and to the extent necessary to permit the moving of such buildings, equipment, structural materials and the like, provided the expense of such temporary raising or lowering of the system or any part thereof shall have been paid or tendered by the person, firm or corporation requesting the same. The Grantee shall be given not less than fifteen (15) days advance notice to arrange for such temporary changes to its system.
- (F) Any opening or obstruction in the streets or other public ways made by the Grantee in the course of the installation, operation, maintenance or removal of equipment, structures, facilities, apparatus and appurtenances shall be guarded and protected at all times by the placement of adequate barriers, fences or boarding or as otherwise directed by the Borough Representative. Whenever it is deemed necessary by the Borough, the Grantee shall install steel plates to allow a public way to remain usable while openings or obstructions exist.
- (G) The Grantee shall have the authority to trim trees which are located on or which overhang streets, alleys, sidewalks and public places of the Borough to the extent that such trimming activities are minor in nature or required to be performed without delay due to the risk of danger to personal or property damage arising by reason of the location of such trees. The Grantee shall have the authority to perform all other tree trimming activities only with the prior approval of the Borough and such approval shall not be unreasonably withheld. All trimming shall be at the expense of the Grantee.
- (H) In such sections, if any, of the Borough in which all cables, wires and other like facilities of public utilities are required to be and are placed underground, the Grantee shall place its cables, wires and other facilities underground.

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- (I) The Grantee shall, at its expense, protect, support, temporarily disconnect, relocate in the same street or other streets or remove from the street any property of the Grantee when required by the Borough by reason of traffic conditions, public safety, street vacation, freeway and street construction, change or establishment of street grade, installation of sewers, drains, gas or water pipes, power lines, signal lines and tracks and other types of improvements by the Borough or public agencies.
- (J) The Borough shall have the right to inspect all pole attachments, installation, construction, repair and replacement of basic system hardware, and the removal of the system or any part thereof to insure compliance with Section 4(A) of this Agreement.

SECTION 5.

Fees and Reports

- (A) In consideration of the right, license and privilege granted hereby and in order to defray any costs and expenses of the Borough in connection with the execution, delivery, performance and administration of this Agreement, the Grantee shall pay to the Borough, with respect to each quarter, on or before the 15th day following the end of such quarter during the term of this Agreement, an amount equal to three percent (3%) of the Gross Annual Receipts.
- (B) The Borough shall have the right to inspect and audit the Grantee's records from which the payments hereunder are computed and to recomputed the amount of such payments to correct errors in the computation and reporting of the same. The Grantee's records shall be made available at the Grantee's Headquarters. Such requests to inspect the records shall be made in writing by the Borough and scheduled by the Grantee's Corporate Accounting Staff within thirty (30) days.

SECTION 6.

Safety Measures

- (A) Construction and maintenance of the system shall be in accordance with the provisions of the National Electric Safety Code of the National Board of Fire Underwriters, and such other applicable laws of the Commonwealth of Pennsylvania, Erie County, and regulations of the Borough which may be lawfully in effect from time tot time.
- (B) All structures, lines, equipment and connections in, over, under and upon the streets of the Borough, wherever situated or located, shall at all times be kept and maintained in a safe, suitable condition and in good order and repair.

SECTION 7.

Voluntary Subscriptions

All subscriptions for service under any Franchise shall be on a voluntary basis, and may be terminated at any time by the customer except in circumstances whereby a mutually agreed upon contract has been executed.

SECTION 8.

System Services

- (A) The Grantee, at all times, shall provide all Subscriber service as and to the extent required to be provided by applicable federal and state rules and regulations from time to time in effect.

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- (B) If Grantee operates a Citizens Awareness Channel, or similar programming option, it shall post, free of charge, any notices properly submitted by the Borough Council.
- (C) Additional services may, at the sole discretion of the Grantee, be provided by the Grantee, including services for which a per-program, per-service or per-channel charge is made consistent with applicable federal and state rules and regulations.
- (D) Service to Public Buildings. Grantee shall provide, without charge, one (1) outlet of Basic Cable to Borough of Mill Village Volunteer Fire Department Building(s) and one (1) outlet to each public school building(s) that are located within the Borough of Mill Village.

SECTION 9.

Operation and Maintenance of System

Grantee shall make reasonable efforts to assess Subscriber need and viewing preferences. If any existing service becomes unavailable, or the Grantee decides to discontinue a service, Grantee shall endeavor to provide substitute programming. Grantee may combine programming into composite channels to improve efficiency of channel utilization or to attract a larger viewing audience.

SECTION 10.

Service Standards

- (A) The Grantee will investigate and resolve all Subscriber complaints regarding the quality of service, equipment malfunctions and similar matters expeditiously and in accordance with the following procedure:
 - (i) The Grantee shall have qualified personnel available during normal working hours to investigate and resolve Subscriber complaints;
 - (ii) Upon notification of a service complaint, the Grantee shall dispatch a qualified employee to investigate the complaint and adjust, repair or replace Grantee equipment as necessary to resolve the complaint. The Grantee shall not be responsible for malfunctions of any television receivers or other equipment owned or operated by any Subscriber;
 - (iii) All complaints shall be investigated and resolved in accordance with the Cable Television Consumer Protection Act of 1992; and
 - (iv) The Grantee shall maintain a service log in which an entry shall be made off each complaint, the date of notification thereof, the nature of the complaint and the means by which it was resolved.
- (B) In construction, maintenance and operation of the system, the Grantee shall, at a minimum, at all times, fully comply with technical standards which have been or which hereafter may be adopted by the Federal Communications Commission, including (without limitations), if applicable, requirements relating to channel capacity, bandwidth and periodic testing. Further, should any federal, state or local governmental unit with jurisdiction establish technical standards that exceed those of the Federal Communications Commission, the Grantee will comply therewith when and to the extent required by such governmental unit, unless to require the Grantee to do so would be held invalid by the Federal Communications Commission or a court of administrative tribunal of competent jurisdiction. The technical quality of the service provided by the Grantee shall be sufficient to provide Subscribers with uniform quality television reception. The Grantee shall maintain the system in good repair and working order at all times.

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- (C) Grantee shall provide parental control devices, at a reasonable cost, to Subscribers who wish to be able to prevent certain Cable Services from entering the Subscriber's home.

SECTION 11.

Subscriber Rates and Charges

- (A) Installation charges, monthly service rates and any residential rates charged by Grantee related to the basic service tier, as defined by the Federal Communications Commission ("FCC"), may be regulated under this Franchise only to the extent permitted by the Communications Act of 1934, as amended in 1984, 1992 and 1996 and applicable FCC rules and regulations. Commercial installation charges and monthly rates are negotiable and not covered by Federal regulations.
- (B) The Grantee shall offer the services of the system within the Borough on terms and conditions, which are uniform and nondiscriminatory as required under applicable law. The provisions of this Section 11 (B) will not apply in any area of the Borough in which another multi-channel video distributor provides cable or telecommunication services, whereby the parties agree such action constitute effective competition.
- (C) The rates and charges for all system services (specifically including but not limited to basic Subscriber service, any additional service provided pursuant to Section 8, or any connection, maintenance or similar service) and equipment shall be subject to adjustment from time to time, at the sole discretion of the Grantee, provided Grantee shall give notice to Borough of any such modifications or additional charges thirty (30) days prior to the effective date thereof.

SECTION 12.

Discrimination Practices Prohibited

The Grantee shall not, as to rates, charges, service, service facilities, rules regulation, or in any other respect, make or grant unlawful undue preference or advantage to any person, nor subject any person to any unlawful prejudice or disadvantage, provided that nothing in this Franchise shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled. Connection and/or service charges may be waived or modified during promotional campaigns of the Grantee. The Borough acknowledges that the offering of different programming and service rates by Grantee in portions of the Borough also served by another multi-channel video distributor shall not constitute an act of discrimination prohibited by this Section 12.

SECTION 13.

Insurance

The Grantee shall, at all times during the term of this Agreement, maintain in full force and effect, at its own cost and expense, a general comprehensive liability insurance policy protecting its representatives, officials and employees, against liability for loss or damage for person injury, death and property damage, occasioned by the operations of the Grantee under this Agreement with minimum liability limits of: One Million Dollars (\$1,000,000.00) for personal injury or death of any one person, and One Million Dollars (\$1,000,000.00) for personal injury or death of two (2) or more persons in any one occurrence. Such policy of insurance, and any certificate evidencing same, shall name the Borough, its representatives, officials and employees as additional insured and shall also provide that thirty (30) days prior written notice of intention not to renew, cancel or material change, be given to the Borough.

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SECTION 14.

Effective Date and Terms of Franchise

- (A) The right and privilege herein granted shall take effect and be in force from and after the Effective Date and shall continue in force and effect for a period of fifteen (15) years from the Effective Date of this Agreement.
- (B) In the event the Term expires without a renewed agreement, the parties agree hereto that Grantee shall be permitted to continue to operate the cable and telecommunication system and collect the Franchise Fees until a formal agreement is reached.

SECTION 15.

Federal Regulations

In the event and to the extent that the terms and provisions hereof shall be superseded and preempted by or become inconsistent with state law or federal law (including rules and regulations promulgated by the FCC), then and in each such event, it shall be the right of Grantee to take such action within sixty (60) days after such event as shall be reasonably necessary and may be reasonably requested to so amend or modify in writing this Agreement and to preserve the written contract for rights and benefits of the Grantee and fulfill the intent and purposes of this Agreement.

SECTION 16.

Separability

Subject to the provisions of Section 12 hereof, if any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court or administrative tribunal of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

SECTION 17.

Interpretation

Notwithstanding any provisions of this Agreement to the contrary, the Borough agrees that in the event of any ambiguity with respect to the terms and conditions of this Franchise, or dispute as to meaning, the Borough shall, in conjunction with the Grantee, make a good faith effort to establish the meaning of such terms and conditions in a manner consistent with the parties' original intent of the language.

SECTION 18.

Defaults - Arbitration

- (A) In the event that the Borough determines that Grantee is in violation of the terms and conditions of this Agreement, the Borough shall provide the Grantee with written notice, which describes the violation for which such notice is being **issues**, of such determination. The Grantee shall have sixty (60) days from the date of the Borough's written notice to either cure the violation or, for violations which cannot reasonably be cured within such sixty (60) day period, demonstrate to the Borough that the Grantee **(is)** using its reasonable best effort to cure such violation. If the Borough provides the Grantee with written notice under this Section 18 and the Grantee fails to either cure or demonstration that it is using its reasonable best efforts, the Borough shall have the right to invoke the arbitration procedure set forth in Section 18(B) hereof.
- (B) IN the event of any dispute arising under this Agreement, as the same may be amended or supplemented, such dispute shall be submitted to arbitration upon

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request of any one or more of the disputants, who shall notify each of the other disputants in writing of such request. Each of the disputants shall confer with the other disputants for the purpose of selecting by unanimous agreement an independent arbitrator. Failing such agreement within thirty (30) days of the earliest such notice, upon request of any one or more of the disputants, such selection shall be made through the services and facilities of the Pittsburgh, Pennsylvania regional office of the American Arbitration Association and in accordance with the rules thereof. The decision and award of the arbitrator shall be final and binding upon the disputants. The costs of the arbitration proceeding, including the fee of the arbitrator, shall be borne **(by the)** non-prevailing party in such arbitration.

SECTION 19.

Grantee's Inability To Perform

In the event Grantee's performance of any of the terms, conditions, obligations or requirements of this Franchise Agreement is prevented or impaired due to any cause beyond its control or not foreseeable, such inability to perform shall be deemed to be excused and no penalties or sanctions shall be imposed as a result thereof, provided Grantee has notified the Borough in writing within thirty (30) days of its discovery of the occurrence of such an event. This section shall not be considered to relieve Grantee of the obligation for adjustments contained in Section 11. Such causes beyond Grantee's control or not foreseeable shall include, but shall not be limited to, act of God, civil emergencies, and possible labor unrest or strikes including by telephone or power company owners of said poles.

SECTION 20.

Binding Effect

This Agreement shall bind and inure to the benefit of the Borough and the Grantee, and their respective successors and assigns; provided, however, that without the written consent of the Borough, which consent shall not be unreasonably withheld or delayed, the Grantee shall not assign the right, license or privilege herein granted to any person, firm or corporation other than a person, firm or corporation affiliated with it. The terms and provisions of this Agreement may not be amended or modified, by ordinance or otherwise, except as agreed upon in writing by both parties hereto.

SECTION 21.

Indemnification

Grantee agrees to indemnify, save and hold harmless and defend Borough, its officers, boards and employees, from and against any liability for damaged and for the liability or claims to the extent that such liability results from property damage or bodily injury (including accidental death) which arises out of Grantee's negligent construction, operation or maintenance of its Cable System, including, but not limited to, reasonable attorney's fees and costs.

SECTION 22.

Notice

Unless expressly otherwise agreed between the parties, every notice or response to be served upon the Borough or Grantee shall be in writing, and shall be deemed to have been duly given to the required party five (5) business days after having been posted in a properly sealed and correctly addressed envelope by certified or registered mail, postage prepaid, at a Post Office or branch thereof regularly maintained by the U.S. Postal Service.

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The Notices or responses to **Township** shall be addressed as follows:

Mill Village Borough
14350 North Main Street
P.O. Box 10
Mill Village, PA 16427
Attention: Sally Peters, Borough Secretary

The notices or responses to Grantee shall be addressed as follows:

Armstrong Utilities, Inc.
One Armstrong Place
Butler, PA 16001
Attention: General Counsel

BOROUGH OF MILL VILLAGE

By: Cris E. Peters
Title: President

ARMSTRONG UTILITIES, INC.

By: Joseph ??????
Title: President

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