

CALLERY BOROUGH  
FRANCHISE AGREEMENT

This Franchise Agreement is entered into this 4 day of August 2008, between CALLERY BOROUGH, Butler 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 Grantee and Borough desire to enter into this Franchise Agreement ("Agreement") in connection with the Grantee's provision of cable, internet and related services for the residents of the Borough. The Grantee currently holds a franchise from the Borough by virtue of an agreement executed on August 10, 1978, which expired on August 9, 2003 (the "Existing Agreement"). The Grantee and Borough will continue to operate pursuant to the terms and conditions of the Existing Agreement until the execution of this Agreement (the "Effective Date"). The Grantee has duly satisfied its requirements pursuant to the renewal provisions of the Cable Communications Act of 1984, Section 626 and the Borough has determined that the Grantee has complied with the terms and conditions of the Existing Agreement and it would be in the public interest for the Grantee to continue to have, in accordance with the terms hereof, the right, license and privilege of constructing and operating a cable television, internet and telecommunication system within the Borough. 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. A98 enacted on August 4, 2008.

Therefore, the parties hereto, intending to be legally bound, do hereby 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 Callery Borough, Butler 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 producing, 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.

(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 Revenues will include the following: Basic Service fees; fees charged to subscribers for any programming service other than Basic Service; fees charged to subscribers for any optional, per-channel or per-program services; 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 Revenues will not include 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.

## 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 and 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.

(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.

### **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 other 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 Person 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 Person 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) 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.

### **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 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 rights 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 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, at its own expense, 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.

(D) The Grantee shall not place the system or 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 like facilities underground.

(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 in 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 calendar year, on or before the 60<sup>th</sup> day following the end of such calendar year during the term of this Agreement, an amount equal to five percent (5%) of the Gross Annual Receipts.

(B) Not later than sixty (60) days after the close of each fiscal year of the Grantee during the term of this Agreement, the Grantee shall file with the Borough Representative a written report, certified by the Grantee's chief accounting officer, setting forth the amount of basic subscriber service receipts as defined in Section 1, Paragraph (E), paid to the Grantee during such fiscal year.

(C) The Borough shall have the right to inspect and audit the Grantee's records from which the payments hereunder are computed and to recompute the amount of such payments to correct errors in the computation and reporting of 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.

## **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, Butler County, and regulations of the Borough which may be lawfully in effect from time to 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 services 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.

(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.

## **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 of each complaint, the date of notification thereof, the nature of the complaint and the means by which it was resolved.

(B) In the 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.

## **SECTION 11.**

### **Subscriber Rates and Charges**

(A) Installation charges, monthly service rates and any other 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 service 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 to the fullest extent practicable. 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 constitutes 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.

## **SECTION 12.**

### **Discrimination Practices Prohibited**

The Grantee shall not, as to rates, charges, service, service facilities, rules, regulations, 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 personal 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 insureds 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.

### **SECTION 14.**

#### **Effective Date and Term of Franchise**

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. Upon the expiration of said period and provided that the Grantee has complied with the terms and conditions hereof, the grant and provisions hereof shall be renewed under the provisions of the Cable Communications Act of 1984, Section 626. 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 Regulation**

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 provision 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 issued, 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 using its reasonable best efforts 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 demonstrate 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 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 Philadelphia, 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 fees of the arbitrator, shall be borne 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 construed 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, acts 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.**

**Community Service**

Grantee will, at no charge to the Borough, provide basic cable services to the borough buildings, public school buildings, public library, police stations and fire stations located in the Borough and which are also located within 150 feet of Grantee's existing Cable System. The buildings into which Grantee shall provide basic cable service under this Section 21 are identified in Exhibit A attached hereto and made part hereof.

CALLERY BOROUGH

By:   
Its: Resident Callery Borough

ARMSTRONG UTILITIES, INC.

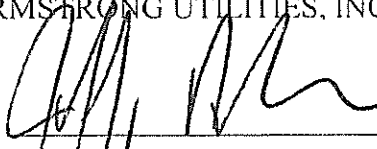
By:   
Its: President

EXHIBIT A

Buildings to Receive

Free Basic Cable Service

Baro Building 1 T.V.  
Fire Department Building 1 T.V.