

COUNTY COUNCIL  
OF  
HARFORD COUNTY, MARYLAND

BILL NO. 19-017

Introduced by Council President Vincenti and Council Member Shrodes

Legislative Day No. 19-013 Date May 7, 2019

An EMERGENCY ACT to renew the nonexclusive cable television franchise for Armstrong Utilities, Inc. to operate in the County; to incorporate the terms of the Franchise Agreement into this Act; and generally relating to the renewal of the cable television franchise to Armstrong Utilities, Inc.; and that this Act is declared to be an emergency act affecting the health, safety and welfare of the citizens of Harford County, Maryland.

By the Council, May 7, 2019

Introduced, read first time, ordered posted and public hearing scheduled

on: June 4, 2019

at: 6:30 PM

By Order: *Mylia A. Dixon* Council Administrator

**PUBLIC HEARING**

Having been posted and notice of time and place of hearing and title of Bill having been published according to the Charter, a public hearing was held on \_\_\_\_\_, and concluded on \_\_\_\_\_.

\_\_\_\_\_, Council Administrator

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW. [Brackets] indicate matter deleted from existing law. Underlining indicates language added to Bill by amendment. Language lined through indicates matter stricken out of Bill by amendment.

1           **WHEREAS**, the County Council, pursuant to Chapter 235 of the Harford County Code  
2 and Local Government Article Section 1-702, of the Annotated Code of Maryland, as amended, is  
3 authorized to grant one or more nonexclusive franchises to operate a cable television system within  
4 the County; and

5           **WHEREAS**, by County Council Bill 03-24, the County Council of Harford County,  
6 Maryland renewed an existing cable franchise and awarded a nonexclusive cable franchise to  
7 Clearview Partners. and by Resolution No. 25-08, the County Council consented to the assignment  
8 of the cable franchise from Clearview Partners to Armstrong Utilities, Inc.; and

9           **WHEREAS**, Armstrong Utilities, Inc. has contacted the Harford County Council  
10 and filed an application requesting a renewal of the cable franchise agreement for a period of 15  
11 years; and

12           **WHEREAS**, the County Council held a public hearing on June ,2019 for the purpose of  
13 providing an opportunity for all interested parties to participate; and

14           **WHEREAS**, The County Council finds that Armstrong Utilities, Inc. has substantially  
15 complied with the material terms of its current franchise and with both county and federal law; and

16           **WHEREAS**, the Council has determined that it is in the best interests of the citizens of the  
17 county to renew the cable television franchise to Armstrong Utilities, Inc. on the terms and  
18 conditions set forth in the attached Cable Franchise Agreement;

19 **NOW, THEREFORE:**

20 Section 1. Be It Enacted By The County Council of Harford County, Maryland, that:

21           A. Armstrong Utilities, Inc. is granted a renewal of its current nonexclusive franchise  
22 to construct, operate and maintain a cable television system within the County for a period of 15  
23 years from the effective date of this Act.

24           B. The County Executive and the County Council expressly reserve the right at all  
25 times to exercise, in the interest of the public, full superintendence, regulation, and control in  
26 respect to all matters connected to the grant consistent with the provisions of the attached Cable

1 Franchise Agreement and to the full extent permitted by federal law.

2 C. The renewal Cable Franchise Agreement attached hereto is incorporated and made  
3 a part of this Act.

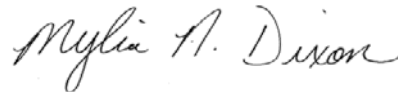
4 Section 2. And Be It Further Enacted, That Council bill 03-24 and Council Resolution No. 25-  
5 08 are hereby repealed.

6 Section 3. And Be It Further Enacted, that this Act is hereby determined by the County  
7 Council of Harford County Maryland to be emergency in nature in that the current Armstrong  
8 Utilities, Inc. Cable Franchise Agreement has expired and that it is not in the public welfare to  
9 allow this situation to continue without prompt renewal.

10 Section 4. BE IT FURTHER ENACTED BY THE COUNTY COUNCIL OF HARFORD  
11 COUNTY, MARYLAND that this Emergency Bill shall take effect on the date it becomes law,  
12 contingent upon the signing of the attached Cable Franchise Agreement by the authorized  
13 representatives of Armstrong Utilities, Inc. and if the Cable Franchise Agreement is not so  
14 signed, this Act shall be null and void without the necessity of further action by the County  
15 Council.

EFFECTIVE DATE:

The Council Administrator does hereby certify that seven (7) copies of this Bill are immediately available for distribution to the public and the press.



\_\_\_\_\_  
Council Administrator

CABLE FRANCHISE AGREEMENT

BY AND BETWEEN

HARFORD COUNTY, MARYLAND

AND

ARMSTRONG UTILITIES, INC.

**TABLE OF CONTENTS**

1.	TITLE .....	3
2.	DEFINITIONS .....	3
3.	FRANCHISE GRANT; LIMITS AND RESERVATIONS.....	6
4.	EFFECTIVE DATE.....	7
5.	ANNEXATION.....	7
6.	COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.....	7
7.	INDEMNIFICATION .....	7
8.	INSURANCE.....	8
9.	OFFICE.....	9
10.	FRANCHISE FEES .....	9
11.	CUSTOMER SERVICE .....	10
12.	BOOKS AND RECORDS .....	10
13.	PRIVACY .....	13
14.	TRANSFER .....	13
15.	SERVICE OBLIGATIONS .....	14
16.	PEG .....	15
17.	SYSTEM FACILITIES .....	17
18.	TERM OF FRANCHISE.....	19
19.	RENEWAL.....	19
20.	PERFORMANCE BOND.....	19
21.	ENFORCEMENT AND REVOCATION.....	20
22.	MISCELLANEOUS .....	22
23.	SIGNATURES.....	25
	EXHIBIT A- CUSTOMER SERVICE STANDARDS.....	26

## HARFORD COUNTY - ARMSTRONG CABLE TELEVISION RENEWAL FRANCHISE AGREEMENT

THIS AGREEMENT, executed this \_\_\_\_\_ day of \_\_\_\_\_, 2019, between Harford County, Maryland (hereinafter called "County") and Armstrong Utilities, Inc., a Pennsylvania corporation authorized to conduct business in the State of Maryland, and having its principal office at One Armstrong Place, Butler, Pennsylvania 16001 (hereinafter called "Company").

Harford County, Maryland, having determined that the financial, legal, and technical ability of the Company is reasonably sufficient to provide the services, facilities, and equipment necessary to meet the future cable-related needs of the community, desires to enter into this Franchise Agreement with the Company for the construction, operation, and maintenance of a Cable System on the terms and conditions set forth herein.

**Section 1.** (TITLE) This Agreement shall be known and may be cited as the "HARFORD COUNTY - ARMSTRONG CABLE TELEVISION RENEWAL FRANCHISE AGREEMENT".

### **Section 2.** (DEFINITIONS)

For this Franchise Agreement, capitalized terms, phrases, words, and abbreviations shall have the meanings ascribed to them in the Cable Communications Policy Act of 1984, as amended from time to time, 47 U.S.C. §§ 521et seq. (the "Cable Act") and, if not in conflict, the Cable Law, and the words "shall" and "will" are mandatory. In addition, the following definitions shall apply:

2.1 "Cable Act" shall mean the Cable Communications Policy Act of 1984, as amended by the Cable Consumer Protection and Competition Act of 1992 and the Telecommunications Act of 1996, as may be amended from time to time.

2.2 "Affiliate" shall mean any person who, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with, the Company.

2.3 "Advertising Revenues" shall mean revenues derived from sales of advertising that are made available to Company's Cable System subscribers within the County and shall be allocated on a pro rata basis using total Cable Service subscribers reached by the advertising. Additionally, Company agrees that Gross Revenues subject to franchise fees shall include without any offset or other adjustment, all commissions, rep fees, associated with sales of advertising on the Cable System within the County allocated according to this paragraph using total Cable Service subscribers reached by the advertising.

2.4 "Bundled Services" shall mean the combination of Cable Services and non-Cable Service offered to Subscribers in a bundled Package.

2.5 "Cable Law" shall mean Chapter 235, of Part II, General Legislation of the Harford County Code, as amended, to the extent authorized under and consistent with federal and state law.

2.6 "Cable Service" or "Service" shall mean the one-way transmission to Subscribers of Video Programming or other Programming service and Subscriber interaction, if any, which is required for the selection or use of such Video Programming or other Programming service, as defined under Section 602 of the Communications Act, 47 U.S.C §522(6), as may be amended from time to time.

2.7 "Cable System" shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. §522(4).

2.8 "Channel" shall be defined herein as it is defined under Section 602 of the Communications Act, 47 U.S.C. §522(4).

2.9 "Code" shall mean the Harford County Code, as may be amended from time to time

2.10 "Company" is Armstrong Utilities, Inc., and is a grantee of rights under this non-exclusive renewal franchise agreement.

2.11 "Customer" or "Subscriber" shall mean any person or entity who or which contracts with Company and lawfully receives for any purpose Cable Service from the Cable System of the Company.

2.12 "Council" shall be the County Council of Harford County, Maryland.

2.13 "County" shall be Harford County, Maryland, a body corporate and politic of the State of Maryland.

2.14 PEG Access Channels" shall be any Licensee-owned channel(s) made available for the presentation of PEG Access Programming.

2.15 "Educational Access Channel" shall be a specific channel(s) on the Cable System owned and made available by the Company for use by, among others, the County, educational institutions and/or educators wishing to present non-commercial educational programming and/or information to the public.

2.16 "Effective Date" The effective date of this franchise shall be the date it is approved by resolution of the County Council.

2.17 "Federal Communications Commission" or "FCC" is the present federal agency of that name as constituted by the Communications Act of 1934, or any successor agency created by the United States Congress.

2.18 "Force Majeure" shall mean an event or events reasonably beyond the ability of Franchisee to control. This includes, but is not limited to, severe or unusual weather condition, strike, labor disturbance, lockout, war or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, fire, flood, or other act of God, and sabotage.

2.19 "Franchise Agreement" or "Agreement" shall mean this Agreement and any amendments or modifications hereto.

2.20 "Franchise Area" shall mean the present legal boundaries of Harford County, Maryland, as of the Effective Date, and shall include any additions thereto, by annexation or other legal means.

2.21 "Government Access Channel" shall be a specific channel(s) on the Cable System owned and made available by the Company to the County and/or his or her designee(s) for the presentation of non-commercial governmental programming and/or information to the public.

2.22 "Gross Subscriber Revenue" shall mean and be construed broadly to include all revenues, including cash, credits, property or other consideration of any kind or nature arising from, attributable to, or in any way derived directly or indirectly by Company, an Affiliated Entity, or by any other entity that is an of the Cable System, from the operation of Company's Cable System to provide Cable Services within the County. Gross revenues include, by way of illustration and not limitation:

- a) Monthly fees for Cable Services, regardless of whether such Cable Services are provided to residential or commercial customers, including revenues derived from the provision of all Cable Services (including but not limited to pay or premium Cable Services, digital Cable Services, pay-per-view, pay-per-event and video-on-demand Cable Services);
- b) Installation, disconnection, reconnection, downgrade, upgrade or similar charges associated with changes in subscriber Cable Service levels;
- c) Fees related to Cable Service related service calls or repair calls;
- d) Fees paid to Company for channels designated for commercial leased access use and shall be allocated on a pro rata basis using total Cable Service subscribers within the County;

- e) Converter, remote control, and other Cable Service equipment rentals, leases, or sales;
- f) Advertising Revenues as defined herein;
- g) Late fees, convenience fees and administrative fees which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the County;
- h) Revenues from program guides;
- i) FCC Regulatory Fees;
- j) Commissions from home shopping channels and other Cable Service revenue sharing arrangements which shall be allocated on a pro rata basis using total Cable Service subscribers within the County.

Gross revenues shall include revenues received by an entity other than Company, an Affiliate, or another entity that operates the Cable System where necessary to prevent evasion or avoidance of the obligation under this agreement to pay the franchise fee.

Gross Revenue shall not include:

- a) actual bad debt write-offs, except any portion which is subsequently collected which shall be allocated on a pro rata basis using Cable Services revenue as a percentage of total subscriber revenues within the County;
- b) any taxes or fees on services furnished by Company imposed by any municipality, state or other governmental unit, provided that franchise fees and the FCC regulatory fee shall not be regarded as such a tax or fee;
- c) other fees imposed by any municipality, state or other governmental unit on Company including PEG Fees;
- d) launch fees and marketing co-op fees; and
- e) unaffiliated third- party advertising sales agency fees or commissions which are reflected as a deduction from revenues.

To the extent revenues are received by Company for the provision of a discounted bundle of services which includes Cable Services and non-Cable Services, Company shall calculate revenues to be included in Gross Revenues using a methodology that allocates revenue on a pro rata basis when comparing the bundled service price and its components to the sum of the published rate card, except as required by specific federal, state or local law it is expressly understood that equipment shall be subject to inclusion in the bundled price at full rate card value. This calculation shall be applied to every bundled service package containing Cable Service from which Company derives revenues in the County. The County reserves its right to review and to challenge Company's calculations.

Company reserves the right to change the allocation methodologies set forth in this definition to meet the standards required by governing accounting principles as promulgated and defined by the Financial Accounting Standards Board ("FASB"), Emerging Issues Task Force ("EITF") and/or the U.S. Securities and Exchange Commission ("SEC").

2.23 "PEG" shall mean public, educational and governmental.

2.24 "Public Access Channel" shall be a specific channel(s) on the Cable System owned and made available by the Company to the County for use by, among others, County residents and/or organizations wishing to present non-commercial PEG Access Programming and/or information to the public.

2.25 "Public Rights-of-Way" shall be the surface and the area across, in, over, along, upon and below the surface of the public streets, roads, bridges, sidewalks, lanes, courts, ways, alleys, and boulevards, including public lands and waterways used as Public Rights-of-Way, as the same now or may hereafter exist, which, consistent with the purposes for which it was dedicated, may be used for the purpose of installing and maintaining a Cable System.



2.26 "Reserved PEG Channel" shall be PEG any channel which may be activated in accordance with Section 16 of this agreement.

**Section 3.** (FRANCHISE) The County hereby grants a non-exclusive franchise renewal to the Company for the installation, operation, maintenance, and extension of the Cable System within the Franchise Area as the same may hereafter be extended, for providing Cable Service to Subscribers within the County, upon the terms and conditions and subject to the limitations herein set forth.

3.1 By its acceptance of the terms of this Franchise Agreement, except as may be otherwise provided in this Agreement, Company specifically agrees to abide in all material respects with the generally applicable and lawful requirements of the Harford County Code, the regulations of the FCC; the Cable Act; and all County, State and federal statutes and ordinances of general application as all may be amended.

3.2 Grant Not Exclusive. The Franchise and the right it grants to use and occupy the Public Rights-of-Way to provide Cable Services shall not be exclusive, and the County reserves the right to grant other franchises for similar uses or for other uses of the Public Right of-Way, or any portions thereof, to any Person, or to make any such use themselves, at any time during the term of the Franchise. Any such rights which are granted shall not adversely impact the authority granted the Company and shall not interfere with existing facilities of the Cable System.

3.3 Agreement Does Not Address Authority Other Than for Cable Service. Notwithstanding any other provision of this Agreement, nothing in this Agreement shall be construed to (i) grant Company any right to use the County's Public Rights-of-Way or other property for any purpose other than Cable Service, (ii) waive any rights the County may have with respect to any use of the County's Public Rights-of-Way or other property for any purpose other than Cable Service, or (iii) imply that Company has or does not have authority to use the Public Rights-of-Way for other purposes. Accordingly, the Franchise and this Agreement grant no authority for Company to use the County's Public Rights-of-Way for any other purpose other than as expressly provided herein. However, nothing in this Agreement shall be construed to prohibit Company from offering any service over the Cable System that is not prohibited by federal or state law provided any requirements for County authorization or registration not inconsistent with federal and state law are satisfied. The County makes no representation or guarantee that their interest in or right to control any Public Rights-of-Way is sufficient to permit Company's use, and Company shall gain only those rights to use that are within the County's power to convey. No privilege or power of eminent domain is bestowed by this grant; nor is such a privilege or power bestowed by the Agreement.

3.4 No rights shall pass to the Company by implication. Without limiting the foregoing, by way of example and not limitation, this Agreement shall not include or be a substitute for:

- a) Any other permit or authorization generally required under the County Code for the privilege of transacting and carrying on a business within the County that may be required by the County; or
- b) Any permits or agreements for occupying any other property of the County or private entities to which access is not specifically granted by this Agreement including, without limitation, permits and agreements, whether owned by the County or a private entity.

However, Company shall not be required to obtain permits for Cable Service drops for individual Subscriber or for servicing pedestals or routine maintenance that does not disturb surface grade or impact vehicular traffic. Company shall pay any and all required permit fees.

3.5 The parties acknowledge that this franchise does not encompass or reflect the full extent of the County's authority over the Company and notwithstanding any provision hereof, the Parties reserve all of their rights under state and federal law regarding the scope of such authority. The Company also acknowledges that, subject to state and federal law, the County has the authority to regulate the placement, construction, repair, and maintenance of physical facilities located in the Public Rights-of-Way, including the Cable System. Finally, nothing in this Franchise shall be deemed a waiver of any right or authority the County may have now or in the future to regulate information services or telecommunications services, or the use of the Cable System to provide such services.

3.6 Upon completion of the term of the Franchise granted under this Agreement or if Franchise is revoked or if Franchise is revoked as provided herein, if a new, extended, or renewed Franchise is not granted to the

Company by the County, the Company's right, granted by this Agreement to own, construct, operate and maintain the Cable System in the Public Rights-of-Way within the Franchise Area for the sole purpose of providing Cable Service shall terminate as applicable, subject to applicable federal law.

3.7 **Competitive Equity:** Company acknowledges and agrees that this franchise is non-exclusive and the County reserves the right to grant additional franchises to construct, operate, and maintain a Cable System within the County. If the County grants to a new entrant a subsequent franchise that, upon consideration of all its material obligations, is more favorable or less burdensome to the subsequent franchisee than this Agreement is to the Company, then Armstrong may request an amendment to this Agreement to include any material terms or conditions that it imposes upon the new entrant, or provide relief from existing material terms or conditions, so as to insure that the regulatory and financial burdens on each entity are materially equivalent. The parties agree that this provision shall not require a word for word identical franchise or authorization for a competitive entity so long as the regulatory and financial burdens on each entity are materially equivalent.

**Section 4. (EFFECTIVE DATE AND TERM OF FRANCHISE)** This franchise shall become effective on the date it is approved by resolution of the County Council ("Effective Date"). The term of this Franchise shall be for 15 years from the Effective Date unless the Franchise is earlier revoked as provided herein, or unless the Franchise is renewed or extended by mutual agreement.

**Section 5. (ANNEXATION)** Upon 90 days written notice from the County, the annexation of any territory to the County contiguous to the Franchise Area as defined in Section 2.20, above, the portion of any Cable System of the Company that may be located or operated within said territory shall thereafter be subject to all the terms of this Agreement as though it were an extension made hereunder.

**Section 6. (COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES)** The Company shall, at all times during the life of this franchise renewal, be subject (i) to the terms of this Agreement, (ii) to all lawful exercise of the police power by the County, (iii) to such reasonable and generally applicable regulations as the County shall hereafter by resolution or ordinance provide, which are not expressly prohibited by or inconsistent with the provisions of the Cable Act or this Agreement, and (iv) to all applicable provisions of state and federal law, including but not limited to, the Cable Act.

6.1 Company acknowledges that the County may modify its regulatory policies by lawful exercise of the County's police powers throughout the term of this Agreement. Company agrees to comply with such lawful and generally applicable modifications which are not expressly prohibited by or inconsistent with the provisions of the Cable Act or this Agreement. Company reserves all rights it may have to challenge such County Code modifications whether arising in contract or at law. The County reserves all of its rights and defenses to such challenges whether arising in contract or at law.

6.2 In addition to the inherent powers of the County to regulate and control a franchise, and those powers expressly reserved by the County or agreed to and provided for herein, the right and power is hereby reserved by the County to promulgate such additional and generally applicable regulations as it shall find necessary in the exercise of its lawful police powers and in furtherance of the terms and conditions of this Agreement.

6.3 Notwithstanding any other provisions of this Agreement to the contrary, the Company shall at all times comply with all applicable laws and regulations of the state and federal government or any administrative agencies thereof, provided however, if any such state or federal law or regulation shall require the Company to perform any service, or shall permit the Company to perform any service, or shall prohibit the Company from performing any services, in conflict with the terms of this Agreement or of any law or regulation of the County, then as soon as possible following knowledge thereof, the Company shall notify the County of the point of conflict believed to exist between such regulation or law and the laws or regulations of the County or this Agreement.

6.4 Should the County or Company determine that a material provision of this Agreement is affected by any subsequent action of the state or federal government, the Company and County will thereupon, by mutual agreement, modify any of the provisions herein to reflect such government action.

**Section 7. (INDEMNIFICATION)** Company agrees to indemnify, save and hold harmless, and defend the County, its elected and appointed officials, officers, boards and employees, from and against any liability for damages or claims resulting from the following to the extent caused by Company: (i) the acts or omissions of Company and its employees, officers, agents, contractors or subcontractors, arising out of the construction, installation, maintenance, operation, or removal of the Cable System; including without limitation damage to

persons, real property, or personal property caused by the construction, installation, operation, or removal of any structure, equipment, wire, or cable; (ii) the acts or omissions of Company, and its employees, officers, or agents, including any failure or refusal by Company, and its employees, officers, agents, contractors or subcontractors to comply with any obligation or duty imposed on Company by this Agreement or the Cable Law subject to this Agreement; (iii) the violation or infringement of any copyright, trademark, trade name, service mark, or patent, or of any other intellectual property right of any Person, firm, or corporation; (iv) any claim against Company for invasion of privacy or defamation of any person, firm or corporation and (v) any failure by Company to secure consents from the owners, authorized distributors, or licensees of programs to be delivered by the Cable System, whether or not any act or omission complained of is authorized, allowed, or prohibited by the Cable Law or this Agreement, and provided that the County shall give Company prompt written notice of its obligation to indemnify the County as soon as practicable after receipt of a claim or action pursuant to this Subsection and sufficiently in advance of the time for Company's response to a third party claim in order that Company will be able to timely respond and the defense against such claim will not be prejudiced. The County shall take action necessary to avoid entry of a default judgment if such action is needed before the County provides Company notice; provided, however, that no such action shall in any way prejudice or harm Company. Notwithstanding the foregoing, Company shall not indemnify the County for any damages, liability or claims resulting from the willful misconduct or negligence of the County, its officers, agents, employees, attorneys, consultants, independent contractors or third parties or for any activity or function conducted by any Person other than Company in connection with PEG Access, use of EAS, or the distribution of any Cable Service over the Cable System.

7.1 With respect to Company's indemnity obligations set forth in this Section 7, Company shall provide the defense of any claims, suits, causes of action, or proceedings brought against the County by selecting counsel of Company's choice to defend the claim. Company shall keep the County and its counsel advised of the progress and the substance of the defense in a timely manner in order that, if desired, the County can intervene to protect its rights and benefits. Nothing herein shall be deemed to prevent the County from cooperating with Company and participating in the defense of any litigation by its own counsel at its own cost and expense, provided however, (i) if a final judgment is obtained against the County or one or more of its officers, employees or agents in a suit or action for which the County and its officers, employees and agents are entitled to be indemnified and held harmless, Company shall pay such judgment, including all costs and attorneys' fees, entered against the County and any of its officers, employees and agents; and (ii) Company shall be entitled to settle a claim brought in a suit or action for which the County and its officers, employees and agents are entitled to be indemnified and held harmless hereunder, provided that, absent the release of the County and any other indemnified parties, Company shall obtain the prior written approval of the County for any settlement of such claims against the County, which approval shall not be unreasonably withheld or unreasonably delayed. In the event that the terms of any such settlement do not include the release of the County and the County does not consent to the terms of any such settlement or compromise, Company shall not settle the claim or action but its obligation to indemnify the County shall in no event exceed the amount of such settlement. In the event that Company fails, after notice pursuant to Section 7 to undertake the County's defense of any claims encompassed within this Section, Company's indemnification shall include, but is not limited to, the County's reasonable attorney's fees, including fees for outside counsel hired to defend the County, incurred in defending against any such claim, suit, cause of action, or proceeding any interest charges arising from any claim, suit, cause of action, or proceeding arising under this Agreement.

7.2 The County shall at no time be liable for any injury or damage occurring to any Person or property from any acts or omissions of Company in the construction, maintenance, use, operation or condition of the Cable System. It is a condition of this Agreement that the County shall not and does not by reason of this Agreement assume any liability whatsoever of Company for injury to Persons or damage to property; provided, however, the County shall be responsible for its own acts of willful misconduct or negligence, or breach of obligation committed by the County for which the County is legally responsible, subject to any and all defenses and limitations of liability provided by law.

7.3 Nothing in this Agreement shall be construed to waive the County's governmental immunity.

**Section 8. (INSURANCE)** Company shall maintain in full force and effect, at its own cost and expense, during the Franchise term, the following insurance coverage:

8.1 Commercial General Liability Insurance in the amount of three million dollars (\$3,000,000) combined single limit for property damage and bodily injury. Such insurance shall cover the construction, operation and maintenance of the Cable System, and the conduct of Company's Cable Service business in the County.

8.2 Automobile Liability Insurance in the amount of three million dollars (\$3,000,000) combined single limit for bodily injury and property damage coverage for owned automobiles and trucks, non-owned automobiles and trucks and/or rented automobiles and trucks.

8.3 Workers' Compensation Insurance meeting all legal requirements of the State of Maryland.

8.4 Broadcaster's Liability Coverage, covering errors and omissions and negligent acts and other operations of the Company, committed during the term of the Franchise period with the County, with a limit of liability of at least two million dollars (\$2,000,000) per claim and aggregate. Company agrees to provide a one-year discovery period under this policy.

8.5 Employers' liability Insurance in the following amounts;(i) Bodily Injury by Accident: \$100,000; and (ii) Bodily Injury by Disease: \$100,000 employee limit; \$500,000 policy limit.

8.6 Copyright infringement insurance insuring the County and the Company in the minimum amount of \$2,000,000 for copyright infringement occasioned by the operation of the Cable System.

8.7 The County shall be included as an additional insured under each of the insurance policies required in this Section 8 except Workers' Compensation and Employer's Liability Insurance.

8.8 Company shall not cancel any required insurance policy without obtaining alternative insurance in conformance with this Agreement and providing new Certificates of Insurance under Subsection 8.5.

8.9 Each of the required insurance policies shall be with insurers qualified to do business in the State of Maryland, with an A- or better rating for financial condition and financial performance by Best's Key Rating Guide, Property/Casualty Edition.

8.10 The Company's failure to obtain, procure or maintain the required insurance shall constitute a breach of the Franchise and may lead to County action under Section 21 below.

8.11 Within 30 calendar days of the Effective Date, Company shall deliver to County Certificates of Insurance showing evidence of the required coverage.

8.12 All insurance policies and certificates maintained pursuant to this Agreement shall provide the following unless the County approves other language:

"It is hereby understood and agreed that this insurance coverage may not be materially changed or canceled by the insurance company nor the intention not to renew be stated by the insurance company until at least 60 days after receipt by the County of a written notice of such intention to cancel or not to renew."

**Section 9.** (Office) So long as it continues to operate the system, or any portion thereof in Harford County, the Company shall maintain a principal office in Harford County.

9.1 The Company may, upon Subscriber request, arrange for pickup and/or replacement of converters or other Company equipment at the subscriber's address or by a satisfactory equivalent (such as the provision of a postage-prepaid mailer).

9.2 The Company shall provide all Subscribers with the option of paying for Cable Service by check, by phone, by credit card, or through an automatic payment option where the amount of the bill is automatically deducted from a checking account. Based on credit and/or payment history, at the option of the Company, the payment alternative may be limited.

**Section 10.** (FRANCHISE FEES) Company shall pay to the County a Franchise Fee of three percent (3%) of annual Gross Revenue. Such payments shall be made no later than 45 calendar days following the end of each calendar quarter, (i.e. May 15, August 15, November 15) and 60 days after the close of the calendar year (last day of February). Company shall be allowed to submit or correct any payments that were incorrectly omitted and shall be refunded any payments that were incorrectly submitted, in connection with the quarterly Franchise fee remittances within 120 calendar days following the close of the calendar year for which such payments were applicable. The County shall be entitled, to the extent permitted by law, upon 120 calendar days written notice to the Company, to require the Company to pay such higher amount up to a maximum of 5% and the Company agrees to pay such

higher amount on a going forward basis, so long as other Cable Service providers in the Franchise Area are required to pay the same Franchise fee percentage that is imposed upon the Company.

10.1 If any Franchise fee payment is not made on or before the due date, Company shall pay as additional compensation an interest charge, computed from the due date, at an interest charges from the due date at the annual interest then charged for unpaid federal income taxes. In addition, the franchisee will pay a late charge of 5% of the amount of the payment.

10.2 Company shall be allowed to submit or correct any payments that were incorrectly omitted and shall receive a credit from the granting authority for any payments that were incorrectly submitted, in connection with the annual franchise fee remittances within 90 days following the close of the payments in question.

10.3 (AUDIT AND SUPPORTING RECORDS) To satisfy Sections 235-13F, 235-13J and 235-16A of the Cable Code each Franchise fee payment made pursuant to Section 10 shall be accompanied by a brief report prepared by a representative of Company showing the basis for the computation. Subject to the confidentiality requirements of Section 12 of this Agreement, Company shall be responsible for making available to the County for inspection and audit upon written request, all records necessary to confirm the accurate payment of Franchise fees, including, but not limited to, all books, records, maps, plans, financial statements and customer subscription information, whether the records are held by Company or an affiliate that collects or receives funds related to Company's operation in the County subject to the payment of Franchise fees under this Agreement. Company shall maintain such records for five years provided that, if the County commences an audit within that five-year period, Company shall continue to maintain such records for the duration of any audit in progress at the end of that five-year period. The County shall conduct all audits expeditiously, and neither the County nor Company shall unreasonably delay the completion of an audit. The County's audit expenses shall be borne by the County unless the audit determines the payment to the County should be increased by 5% or more in the audited period, in which case the reasonable and documented costs of the audit, together with any additional amounts due the County as a result of such audit, shall be paid by Company to the County with its next quarterly Franchise fee payment pursuant to Section 10 due after written notice to Company by the County of the underpayment, which notice shall include a copy of the audit report, provided, however, that Company's obligation to pay or reimburse the County's audit expenses shall not exceed an aggregate of \$40,000 per audit. If re-computation results in additional Franchise fees to be paid to the County, such amount shall be subject to interest charges computed from the due date, at the annual rate specified in Section 10.1. If the audit determines that there has been an overpayment by Company, Company may credit any overpayment against its next quarterly payment under Section 10. No auditor employed by the County shall be compensated on a success-based formula, i.e., payment based on a percentage of an underpayment, if any. The County shall not conduct an audit more frequently than once every 3 years provided, however, that in the event of an underpayment of 5% or more in an audited period or audited year this limitation shall not apply to the subsequent audit period.

10.4 Limitation on Franchise Fee Actions: The period of limitation for recovery of any Franchise fee payable hereunder shall be five years from the end of the fiscal year during which the Franchise fee payment was made.

**Section 11. (CUSTOMER SERVICE)** Customer service standards are set forth in Exhibit A, which shall be binding unless amended by written consent of the parties.

**Section 12. (BOOKS AND RECORDS)** Upon 30 days written notice to the Company, the County shall have the right to inspect and copy Company's books and records pertaining to Company's provision of Cable Service or relate to the Cable System in the Franchise Area at any time during Normal Business Hours and on a non-disruptive basis, as are reasonably necessary to ensure compliance with the terms of this Agreement and the Cable Law. Such notice shall specifically specify the purpose of the review, so that the Company may organize the necessary books and records for appropriate access by the County. Records to be available to review include, but are not necessarily limited to, all books, records, maps, plans, financial statements, service complaint logs, performance test results, records required to be kept by Company and any parent company as such relate to the Cable System or the provision of Cable Services pursuant to the rules and regulations of the FCC and other regulatory agencies, and other like materials of Company and any parent company which relate to the enforcement of the Franchise. Such ability shall satisfy the requirements of Section 235-17C of the Cable Law. Company's responsibility to provide financial information under Section 235-16A of the Cable Law will be limited to Gross Revenue for Franchise fee purposes. All books and records relating to Company's activities under the Franchise shall be, or upon request be made, available in Harford County. Any information requested by the County pursuant

to Section 235-16F of the Cable Code shall be limited to the provisions of Cable Services in the Franchise Area. Company shall not be required to maintain any books and records for Franchise compliance purposes longer than 5 years.

12.1 (PROPRIETARY INFORMATION) Notwithstanding anything to the contrary set forth in this Section, Company shall not be required to deliver copies of information which it reasonably deems to be proprietary or confidential in nature, nor disclose any of its or an Affiliate's books and records not relating to the provision of cable Service in the Service Area. If the Company believes that any requested information is confidential and proprietary, the Company must provide the following documentation to the County: (i) specific identification of the information; (ii) statement attesting to the reason(s) Company believes the information is confidential; and (iii) statement that the documents are available at the Company's office in the county for inspection by the County. The County agrees to take reasonable steps to protect the proprietary and confidential nature of any books, records, Franchise area maps, plans, or other County-requested documents that are provided pursuant to this Agreement to the extent they are designated as such by the Company.

Company shall not be required to provide Customer information in violation of Section 631 of the Cable Act or any other applicable federal or state privacy law. For purposes of this Section, the terms "proprietary or confidential" include, but are not limited to, information relating to the Cable System design, customer lists, marketing plans, financial information unrelated to the calculation of Franchise fees or rates pursuant to FCC rules, or other information that is reasonably determined by Company to be competitively sensitive. Company may make proprietary or confidential information available for inspection, but not copying or removal of information by the County's representative.

12.2 (PUBLIC INFORMATION ACT REQUESTS) If the County receives a demand from any person for disclosure pursuant to the Maryland Public Information Act of any information designated by the Company as confidential, the County shall, within 5 business days of receiving this request, provide the Company with notice of the request, including providing a copy of the Public Information Act Records Request received by the County. Company shall thereafter have 5 business days within which to provide a written response to the County before the County may disclose any requested confidential information. Should the County determine that it will be necessary to disclose the information pursuant to the Public Information Act, the County shall promptly notify Company and, if possible, provide to the Company a minimum of 5 business days prior to the information being released to the requestor. The County shall retain final discretion to determine whether to release the requested information in response to the Public Information Act Records Request as recognized under Maryland Law, subject to the Company's right to initiate court action to protect its interests including, but not limited to, requesting an injunction or other order restraining and prohibiting the release of the information by the County pending a ruling by the Court.

12.3 (RECORDS REQUIRED) Company shall at all times maintain and, upon request, provide to the County:

- a) Subject to applicable State and federal privacy restrictions, records of all written complaints and those otherwise captured by Company's complaint process for a period of 3 years after receipt by Company. The term "complaint" as used herein refers to complaints about any aspect of the Cable System as it relates to the Company's Cable Service operations, including, without limitation, complaints about employee courtesy. Complaints recorded will not be limited to complaints requiring an employee service call.
- b) A summary of complaints, identifying both the number and nature of the complaints received and an explanation of their dispositions.
- c) Record of outages for a period of 3 years after occurrence, indicating date, duration, area, and the number of Subscribers affected, type of outage, and cause of outage.
- d) A quarterly report showing the number of outages for that quarter, and identifying separately each planned Subscriber outage for more than one hour at a time (excluding a maintenance window from 12:00 a.m. to 6:00a.m.), the time it occurred, its cause, its duration, and the impacted streets and a range of affected addresses in the Franchise Area (or a map area using the most recent edition of the ADC map or its equivalent) and, when available to the Company, number of homes affected; and, when the Company can reasonably determine that at least 500 homes were affected, each unplanned outage affecting more than 500 homes for more than one

hour, the time it occurred, the reason for the disruption and its causes, its estimated duration and, when available to the Company, the number of homes affected.

- e) A report showing the Company's performance with respect to all applicable customer service standards in this Agreement, signed and certified by an officer or agent. Should Company be unable to certify full compliance for any calendar quarter, it must indicate each standard with which it is in compliance and in noncompliance, the reason for the noncompliance and a remedial plan. The Company shall keep such records as are reasonably required to enable the County to determine whether the Company is substantially complying with all such customer service standards. Company shall maintain adequate procedures to demonstrate substantial compliance.
- f) Records of service calls for repair and maintenance for a period of 3 years after resolution by Company, indicating the date and time service was required, the date of acknowledgement and date and time service was scheduled (if it was scheduled) and the date and time service was provided, and (if different) the date and time the problem was resolved.
- g) Records of installation/reconnection and requests for Service extension for a period of 3 years after the request was fulfilled by Company, indicating the date of request, date of acknowledgement, and the date and time service was extended; and
- h) A map showing the area of coverage for the provisioning of Cable Services.
- i) The Company shall take all reasonable steps required to ensure that it is able to provide the County with all information that must be provided or may be requested under this Agreement or applicable law, including the issuance of appropriate subscriber privacy notices. The Company shall be responsible for redacting any data that applicable law prevents it from providing to the County. Nothing in this Section shall be read to require the Company to violate federal or state law protecting subscriber privacy.
- j) Copying of Books and Records: The County shall have the right to copy any such books and records of the Company under and in connection with this Agreement, except to the extent that such books and records are proprietary and/or confidential pursuant to the Maryland Uniform Trade Secrets Act or other applicable law.
- k) Complete and Accurate Records: The Company shall keep complete and accurate books of account and records of its business and operations under and in connection with the Agreement.
- l) Record Retention: Unless otherwise provided in this Section, all materials and information specified in this Section shall be maintained for a period of 5 years.
- m) Communication with Regulatory Agencies: Upon request, the Company shall file with the County a copy of any document filed by the Company with a regulatory agency or received by the Company from a regulatory agency that pertains to and references the County with respect to the provision of Cable Service or any document filed by the Company with the Federal Communications Commission in a formal cable proceeding.

#### 12.4 (REPORTS REQUIRED)

- a) In addition to the reports reprinted in paragraph 12.3 and in accordance with Section 235.16 of the Code, for the purpose of ensuring compliance with the terms and conditions of this Agreement, the Company shall, concurrent with the payment of the fee specified in Section 10 hereof, file a verified statement of the gross subscriber revenues received from the subscribers in the County for the preceding quarter and it will also provide the aggregate number of subscribers receiving Cable Services.
- b) The company shall submit upon request by the County, an expansion schedule for the next 12 months, showing its plans for extending service in its franchise area.
- c) After the Company and its affiliates and subsidiaries have filed a report, petition or communication with any governmental body pertaining directly and materially to any aspect of the

Company's provision of Cable Service in the County, it shall file a copy of such document with the County upon 10 days written request.

d) The Company shall notify the County of all products and Cable Services offered over the Cable System as promptly as practicable after each such product or Cable Service is instituted.

e) Upon request by the County, the Company shall provide a summary of the previous calendar year's activities in development of the Cable System, including but not limited to descriptions of services begun or dropped.

#### 12.5 (Service Area Maps)

Upon written request, Company shall provide to the County for the County's exclusive use and shall maintain at the Company's local office a complete set of their service area maps of the County on which shall be shown those areas in which its facilities exist. The maps shall be provided to the County in hardcopy and also, if requested, in an electronic GIS format which is compatible with the County's GIS format. The Company shall provide the County with updated maps within 30 days after a written request by the County, but shall not be required to provide such maps more than twice in any calendar year.

### **Section 13. (PRIVACY)**

13.1 Company shall respect the rights of privacy of every Customer and shall not violate such rights through the use of any device or signal associated with the Cable System. Company shall at all times comply with the privacy provisions of Section 631 of the Cable Act and all other applicable federal and state privacy laws and regulations.

13.2 Company shall be responsible for complying with all applicable privacy laws and regulations and shall at all times maintain adequate physical, technical and administrative security safeguards to ensure that personal Customer information is handled and protected strictly in accordance with all applicable laws and regulations.

13.3 Except as permitted by applicable law, neither Company nor its designee nor its employees shall make available to any third party, including the County, information concerning the viewing habits or subscription package decisions of any individual Customer. If a court authorizes or orders such disclosure, Company shall notify the Customer prior to disclosure, unless such notification is otherwise prohibited by applicable law or the court.

13.4 Upon a written request by a Customer, Company shall make available for inspection at a reasonable time and place all personal Customer information that Company maintains regarding said Customer. Company shall ensure that all information related to billing and service requests is accurate and up to date and shall promptly correct any errors upon discovery.

13.5 Except as permitted by applicable law, Company shall not make its Customer list or lists, or any portion thereof, available to any other person or entity, with or without remuneration.

### **Section 14 (TRANSFER OF FRANCHISE)**

14.1 The Company's right, title and interest in the Cable System shall not be sold, transferred or otherwise encumbered, other than to an entity controlling, controlled by, or under common control with Company, without prior consent of the Council, provided such consent shall not be unreasonably withheld, delayed or conditioned. In the event that the Company seeks the Council's consent for an assignment, the Council shall act by resolution upon said request within 120 days of request or the assignment shall be considered to be approved automatically. No consent shall be required, however, for: (i) a transfer in trust, by mortgage, hypothecation, or by assignment of any rights, title, or interest of the Grantee in the Franchise or in the Cable System in order to secure indebtedness, (ii) a transfer to an entity directly or indirectly owned or controlled by Armstrong Utilities, Inc., or (iii) the sale, conveyance, transfer, exchange or release of 50% or less of its equitable ownership. Within 30 days of receiving a notice of transfer, the County may, in accordance with FCC rules and regulations, notify the Grantee in writing of the additional information, if any, it requires regarding the legal, financial, and technical qualifications of the transferee or new controlling party.

14.2 No application for a Transfer of the Franchise shall be approved unless the transferee agrees in writing that it will abide by and accept all terms of this Agreement and the Cable Law, and that it will assume the



obligations, liabilities, and responsibility for all acts and omissions, known and unknown, of the previous Franchisee under this Agreement and the Cable Law for all purposes, including renewal, unless the County, in its sole discretion, expressly waives this requirement in whole or in part.

**Section 15. (SERVICE OBLIGATIONS)**

15.1 (GENERAL SERVICE OBLIGATION) The Company shall make Cable Services available to residential dwelling units, and may make Cable Service available to businesses, in all areas of the Franchise Area where density is equal to or greater than 15 occupied residential dwelling units per mile or a proportionate fraction thereof as measured from the nearest point of the Cable System distribution network. In no event will density be considered met for areas not meeting 15 homes per mile from the nearest point of the cable system distribution network or by including occupied dwelling units beyond one mile. For purposes of this section, a home shall be counted as a "dwelling unit" if, and only if, such home is within 300 feet of the public right of way. Should, through new construction, an area within the Franchise Area meet the density requirements after the Effective Date of the Franchise, Company shall use commercially reasonable efforts to provide Cable Service to such area within 6 months of the date that the Company is notified of a request from a potential subscriber of an occupied residential dwelling unit or receiving written notice from the County that the density requirements have been met and the Company verifies that the density requirement is satisfied. However, the Company is not required to provide Cable Service to any area that is being serviced by any other cable television company that holds a franchise from the County. Subject to the density requirements, Company shall offer Cable Service to all new residential dwelling units or previously unserved residential dwelling units located within 300 feet of the Company's distribution network at the standard installation rate.

15.2 (ISOLATED AREAS) Potential subscribers in an area satisfying the density requirement in Section 15.1 but beyond 300 feet of an existing distribution or trunk cable line shall be provided Service upon request. The Company shall be allowed to recover, from a Subscriber that requests such connection, actual costs incurred for connections that exceed 300 feet. The starting point shall be a point at the nearest technically feasible point on the cable plant using the public right-of-way. The actual length of cable needed from the starting point to the subscriber's home shall be the total number of feet.

- a) Company shall provide service at its normal, published installation charge for the initial 300 feet of extension.
- b) The subscriber shall pay all costs for the extension for the distance greater than 300 feet.

15.3 (LOW DENSITY AREAS) Where potential Subscribers reside in residential dwelling units in a portion of the Franchise Area with a density that does not meet the Subscriber density requirements set out in Section 15.1, upon request of those potential Subscribers Company shall extend Service to the potential Subscribers in the low density area if the potential Subscribers agree to pay a Subscriber contribution to aid in construction of the Cable system in this area. The costs of providing Cable Service to the area shall be calculated by taking 1) the capital cost to construct the entire extension from the existing trunk and distribution system that is required to serve the person or persons requesting service including electronics, pole make-ready charges, labor and reasonable associated overhead, but not the cost of the house drop, divided by the number of residential dwelling units requesting Cable Service in the area minus the average cost extending Cable Service to the residential dwelling units in an area that meets the density requirement specified in Section 15.1 above. The resulting costs shall equal the per Subscriber contribution relating to line extension of Cable Service in that particular area of the County, or

$$C/LE - CA/P = SC$$

- C equals the cost of construction of new plant from the nearest technically feasible point on the Cable System trunk or feeder line.
- LE equals the number of dwelling units requesting Cable Service in the line extension area, who subsequently pay a contribution in aid of construction;
- CA equals the average cost of construction per mile in the primary service area;
- LE equals the number of dwelling units requesting service in the line extension area;
- P equals the 15 residential dwelling units per mile of plant as measured from the nearest technically feasible point on the Cable System trunk or feeder line; and

- SC equals the per residential dwelling unit contribution in aid of construction in the line extension area.

15.4 (NON-DISCRIMINATION) Neither the Company nor any of its employees, agents, representatives, contractors, subcontractors, or consultants, shall discriminate or permit discrimination between or among any individuals in the availability of Cable Services provided in connection with the Cable System in the Franchise Area ;provided, however, Company reserves the right to deny service for good cause, including but not limited to non-payment or theft of service, vandalism of equipment, or documented or founded harassment or abuse of Company's employees or agents. It shall be the right of all individuals to receive all available services provided on the Cable System so long as such individual's financial or other obligations to the Company are satisfied. Nothing contained herein shall prohibit the Company from offering bulk discounts, promotional discounts, package discounts, or other such pricing strategies as part of its business practice.

#### **Section 16. (PEG SERVICES)**

16.1 Company shall make available for use on the Basic Service Tier or as part of its lowest cost package offered to subscribers the dedicated Public/Educational/Government Access Channel (the "PEG Channel"), and, 3 additional reserved access channels. which may be activated in accordance with Section 16.5 below ("Reserved PEG Channels"), (jointly the "PEG" Access Channels") so long as all other Cable Service providers in the Franchise Area are required to provide the Reserved PEG Channel. A total of two PEG Channels will be high definition (HD) channels which shall be activated in accordance with Section 16.9 below.

16.2 All PEG Channels shall be available on the tier of service which all subscribers must subscribe (currently the Basic Service tier), or if there is no such tier, the channels will be provided to every Subscriber without charge beyond the charge the Subscriber pays for the cable services and equipment the Subscriber receives. County acknowledges that HD programming may require the viewer to have special viewer equipment (such as an HDTV and an HD-capable digital device/receiver), but any subscriber who can view an HD signal delivered via the cable system at a receiver shall also be able to view the HD PEG channel(s) at that receiver, without additional charges or equipment. County acknowledges that not every customer may be able to view HD PEG programming (for example, because they do not have a HDTV in their home or have chosen not to take an HD-capable receiving device from the Company or other equipment provider) or on every television in the home.

16.3 The programming to be carried on the PEG Access Channels set aside by Company will be governmental, educational and public access in nature. County hereby authorizes Company to transmit such programming within and outside of County jurisdictional boundaries. Company specifically reserves its right to make or change channel assignments in its sole discretion. PEG Channel assignments should not be changed unless there is good cause. In the event of such a reassignment, Company shall provide notice of such change in at least two monthly Subscriber bill inserts or bill messages prior to such change (if commercially practicable) but in no event less than one monthly Subscriber bill insert or bill message; provided, however, that such bill inserts or bill messages shall not be necessary in the Event Company provides notice of such changes to all Subscribers in a letter separate from their bill or by a substantially equivalent means.

16.4 The County has designated Harford Community College, 399 Thomas Run Road, Bel Air, Maryland 21015, as the single point of interconnection for PEG Access Channel facilities with the Cable System (the "PEG Access Interconnection Site").

16.5 Company shall, without charge to the County, provide upstream Access Channel transmission connections between its video channel aggregation point and the Harford County Network ("HCN") PEG Access Interconnection Site in order to permit the signals to be correctly routed from the HCN PEG Access Interconnection Site for distribution to Subscribers. The County shall deliver the HCN content from any remote program origination points to the HCN PEG Access Interconnection Site and generate a PEG signal suitable for interconnection.

16.6 The County may activate a Reserved PEG Channel during the term of this Agreement by providing Company with written notice 120 calendar days prior to the date it intends to activate any one of the Reserved PEG Channels which will originate from the PEG Access interconnection Site or another existing Interconnection Site pursuant to Section 16.12 below.

16.7 The County shall provide to Company at the PEG Access Interconnection Site a suitable video signal and a suitable audio signal in a mutually agreed upon format suitable for the PEG Access Channels. The video and audio signals provided to Company shall be obtained directly from the County's facilities at the PEG Access Interconnection Site. Company, upon receipt of the suitable audio and video signals, shall provide, install and

maintain in good working order only the equipment necessary for transmitting the PEG Access Channels signal to Company's channel aggregation site for further processing for distribution to Subscribers. Company's obligations with respect to such upstream transmission equipment and facilities shall be subject to the availability, without charge to Company, of any third party consent that may be necessary to transmit such signals (including the incumbent cable provider), and of suitable required space, environmental conditions, electrical power supply, access, pathways, and facilities and such cooperation of the County or any third party as is reasonably necessary for Company to fulfill such obligations.

16.8 The PEG channels shall be carried in compliance with all applicable FCC rules. All PEG channels shall be maintained at FCC standards commensurate with those which apply to the Cable System's commercial channels, provided that the Company shall not be responsible for the production quality of PEG access programming. Company shall encode and transmit the PEG Channels from the PEG Origination Point where Company acquires the signal to Subscribers in a manner that ensures that the signals originally provided to Company at the PEG Origination Point experience no greater degradation during such encoding and transmission than do other signals on the Cable System cablecast by the Company to Subscribers, regardless of where they originate or are inserted into the Cable System. If Company makes changes to the Cable System that require improvements to PEG Access facilities to continue to be used as they were intended under the terms of this Agreement, then Company shall, without charge to the County, make such changes in either the equipment and facilities referred to in Section 16.7 or in the Company's video channel aggregation point and distribution equipment and facilities in order to permit the continuation of such intended use.

16.9 Subject to the aggregate four PEG Channel limit, the Company shall activate and make available up to two HD PEG Channels at the request of the County. Activation of either HD PEG Channel shall occur within 120 days of a written request from the County for such HD PEG Channel. An HD PEG Channel provided under this section may be a simulcast of a SD PEG channel; or may be original programming or a compilation of programming; in any case, the channel will count as one channel against the total number of PEG Channels Company is obligated to provide.

16.10 Within 24 hours of a call from County to the Company identifying a technical problem and requesting assistance, Company will provide technical assistance or diagnostic services to determine whether or not a problem with a PEG signal is the result of matters for which Company is responsible and if so, Company will take prompt corrective action. If the problem persists and there is a dispute about the cause, then the parties shall meet with engineering representation from Company and the County in order to determine the course of action to remedy the problem.

16.11 In the event Company relocates its headend, Company will be responsible for replacing or restoring the existing dedicated connection at Company's cost so that all the functions and capacity remain available, operate reliably and satisfy all applicable technical standards without additional costs to the County.

16.12 In the event that the County activates a Reserved PEG Channel from an origination site other than the PEG Access Interconnection Site, Company shall provide the technical capability to transmit video signals for the Reserved PEG Channel for an additional PEG interconnection site (the "Interconnection Site") to the Company's headend for distribution on the Cable System, so long as such connection is to a mutually agreeable public building located within the Franchise Area or another area within Harford County and 300 feet solely to provide connectivity to a Reserved PEG Channel, the County for which Company has an effective cable franchise agreement and is within 300 feet of the Company's trunk or feeder lines. If it is necessary to extend Company's trunk or feeder lines more than 300 feet, the County shall have the option either of paying Company's direct costs for such extension in excess of 300 feet, or of releasing Company from the obligation to provide connectivity to such building. Company's obligation under this Section 16.12 including its obligation to provide upstream equipment and facilities necessary to transmit signals, is limited to one additional Interconnection Site per Reserved PEG Channel and shall be subject to the requirements that are applicable to the PEG Access Interconnection Site in Sections 16.5, 16.7, and 16.8 above and to the provision by the County, without charge to Company, of access to PEG facilities and any other cooperation and access to facilities as are reasonably necessary for the Company to fulfill the obligations stated herein. Company shall, within 180 calendar days of the delivery of suitable video and audio signals, provide, install, and maintain in good working order the equipment necessary for transmitting such signals to Cable Subscribers from the Interconnection Site.

16.13 If the Company makes changes to the Cable System that require modifications to access facilities and equipment, Company shall make any necessary changes to the Company's headend and distribution facilities or equipment within 30 days so that PEG facilities and equipment may be used as intended in this Agreement.

16.14 The Company shall design, build, and maintain all PEG upstream feeds, interconnection, and distribution facilities so that such feeds function as reliably as Company's Cable System as a whole within the County, and are no more likely to fail than is Company's Cable System as a whole within the County.

16.15 County shall require all local producers and users of any of the PEG facilities or Channels to agree in writing to authorize Company to transmit programming consistent with this Agreement and to defend and hold harmless Company and the County, from and against any and all liability or other injury, including the reasonable cost of defending claims or litigation, arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations or other requirements of local, state or federal authorities; for claims of libel, slander, invasion of privacy, or the infringement of common law or statutory copyright; for unauthorized use of any trademark, trade names or service mark. for breach of contractual or other obligations owing to third parties by the producer or user; and for any other injury or damage in law or equity, which result from the use of a PEG facility or Channel.

16.16 Company shall not exercise editorial control over any public, educational, or governmental use of a channel position, except as otherwise required or permitted by law, including refusal to transmit any public access program or portion of a public access program that contains obscenity, indecency, or nudity.

16.17 With at least 120 day written notice to Company, a PEG Provider may provide Channel Signals exclusively in a mutually agreed upon HD format to the demarcation point at the designated point of origination for the PEG Channel, and as such the PEG County shall be responsible for the cost of any necessary equipment from the PEG Channel origination point in order to deliver PEG channels in HD format to the Company's channel aggregation site. The Company shall provide all necessary equipment at its headend and throughout its distribution system, in order to deliver the PEG Channels in accordance with the requirements of this Franchise Agreement. The County shall provide, without charge to the Company, access to any PEG facility providing signals in HD only format and any other cooperation and use of facilities as are reasonable necessary for the Company to fulfill the obligations state herein. This Section 16.17 references the delivery of the HD signal from the PEG access point of origination to the Company's channel aggregation site only, and does not address the Company's carriage of GD PEG channels on the System.

16.18 HD PEG Channels will be assigned channel numbers near other local HD channels, and if that is not possible, channel numbers in the lowest available HD channel sequence or as otherwise agreed by the Parties. If a HD PEG Channel is a simulcast of the programming on an SD PEG Channel, the programming may be delivered to Company in an HD format, and Franchisee will down-convert the signal to SD for purposes of the simulcast.

16.19 Company shall deliver each HD PEG signal to Subscribers so that it is viewable without material degradation of the signal provided that Company is not required to deliver a PEG Channel in HD at a resolution higher than the highest resolution used in connection with the delivery of the twenty most popular non-premium commercial channels to Subscribers. Company may implement HD carriage of the PEG Channel in any manner (including selection of compression, utilization of IP, and other processing characteristics) that produces a signal as accessible, functional, usable and of a quality equivalent from the perspective of the viewer to other HD channels of the same resolution carried on the cable system.

16.20 Company reserves its rights to pass through costs associated with the provision of PEG Access in accordance with applicable law.

**Section 17: (SYSTEM FACILITIES)** To satisfy Section 235-13.1 of the Cable Law, Company's Cable System shall meet or exceed the following requirements:

17.1 The System shall be designed to be an active two-way plant for subscriber interaction, if any, required for the selection or use of Cable Service.

17.2 Modern design when built, utilizing an architecture that will permit additional improvements necessary for high quality and reliable service throughout the Franchise term. The Cable System shall meet or exceed the applicable technical standards set forth in 47 C.F.R. §76.601, and any other applicable FCC rules and regulations, industry standards, and manufacturers performance specifications.

17.3 Protection against outages due to power failures, so that back-up power generators designed for 24 hours backup power are available at each headend. Conforming to industry standards, but in no event rated for less than four hours, back-up power generators at each power supply site. Company will conduct ongoing monitoring of power supplies.

17.4 Facilities and equipment of good and durable quality, generally used in high-quality, reliable, systems of similar design.

17.5 Facilities and equipment sufficient to cure violations of any applicable FCC technical standards and to ensure that the Cable System remains in compliance with the standards specified in Section 17.13.

17.6 Facilities and equipment as necessary to maintain, operate, and evaluate the Cable System to comply with any applicable FCC technical standards, as such standards may be amended from time to time.

17.7 All facilities and equipment shall be designed to be capable of continuous 24-hour daily operation in accordance with applicable FCC standards except as caused by a Force Majeure event.

17.8 All facilities and equipment shall be designed, built and operated in such a manner as to comply with all applicable FCC requirements regarding (i) consumer electronic equipment and (ii) interference with the reception of over-the-air signals by a subscriber.

17.9 All facilities and equipment shall be designed, built and operated in such a manner as to protect the safety of the Cable System workers and the public.

17.10 All facilities and equipment shall be able to properly test the Cable System and conduct an ongoing and active program of preventive maintenance and quality control and to be able to quickly respond to customer complaints and resolve system problems.

17.11 Company shall provide adequate security provisions in its Subscriber site equipment to permit parental control over the use of Cable Services on the System. Such equipment will at a minimum offer as an option that a Subscriber ordering programming must provide a personal identification number or other means provided by Company only to a Subscriber. Provided, however, that Company shall bear no responsibility for the exercise of parental controls and shall incur no liability for any Subscriber's or viewer's exercise or failure to exercise such controls.

17.12 The Cable System must conform to or exceed all applicable FCC technical performance standards, as amended from time to time, and any other future applicable technical performance standards, which the County is permitted by a change in law to enforce, and shall substantially conform in all material respects to applicable sections of the following standards and regulations to the extent such standard; and regulations remain in effect and are consistent with accepted industry procedures.

- a) Occupational Safety and Health Administration (OSHA) Safety and Health Standards;
- b) National Electrical Code;
- c) National Electrical Safety Code (NESC);
- d) Obstruction Marking and Lighting, AC 10/7460 i.e., Federal Aviation Administration; e) Constructing, Marking and Lighting of Antenna Structures, Federal Communications Commission Rules, Part 17; and
- f) The Harford County Building and Electrical Codes

17.13 Facilities and equipment at the headend shall allow the Company to transmit or cablecast signals in substantially the form received, without substantial alteration or deterioration. For example, the headend should include equipment that will transmit color video signals received at the headend in color, stereo audio signals received at the headend in stereo, and a signal received with a secondary audio track with both audio tracks. Similarly, all closed-captioned programming retransmitted over the Cable System shall include the closed-captioned signal in a manner that renders that signal available to Subscriber equipment used to decode the captioning.

17.14 (INTERCONNECTION) Company shall design its Cable System so that it may be interconnected with other cable systems in the Franchise Area at suitable locations as determined by Company. Interconnection of systems may be made by direct fiber connection or other methods of equivalent quality.

17.15 (EMERGENCY ALERT SYSTEM) Company shall comply with the Emergency Alert System (EAS) requirements of the FCC in order that emergency may be distributed over the System. This EAS shall at all times be operated in compliance with FCC requirements in order that emergency messages may be distributed over the System. In the event of a state or local civil emergency, the EAS shall be activated by equipment or other acceptable means as set forth in the Maryland State EAS Plan. Company will override the audio and video on all channels, so long as it is consistent with Company's contractual commitments, to transmit EAS alerts received from the designated Local Primary Sources assigned by the Maryland State EAS Plan to serve the Harford County Operational Area.

17.16 (RESTORATION OF COUNTY PROPERTY) When installing, repairing or disconnecting Cable Service any County property damaged or destroyed by the Company's employees or agents shall be repaired or replaced by the Company and restored to a condition comparable to the condition immediately prior to the disturbance.

17.17 (RESTORATION OF PRIVATE PREMISES) Company shall ensure that privately-owned premises are restored to a condition comparable to the condition immediately prior to the disturbance if damaged by the Company's employees or agents in connection with the installation, repair, or disconnection of Cable Service.

**Section 18. (TERM OF FRANCHISE)** The franchise renewal and rights herein granted shall take effect upon the Effective Date of the franchise renewal by the Company with the Council Administrator and shall continue in full force for a term to end or otherwise expire 15 years from the effective date.

**Section 19. (RENEWAL)** Any renewal of this Agreement shall be governed by and comply with the provisions of Section 626 of the Cable Act (47 U.S.C. §546), as amended.

**Section 20. (PERFORMANCE BOND)** Prior to the Service Date, in satisfaction of Section 235-19 of the Cable Law, the Company shall provide to the County a security for the performance of its obligations under this Agreement in the amount of \$75,000 in cash or in the form of a letter of credit reasonably satisfactory to the County or in form of a performance bond (the "Security Fund"). Subject to Section 21, the following procedures shall apply to the Security Fund: (i) the County may not draw on the Security Fund until 30 calendar days have passed after the County has provided the Company with written notice of its intent to make such withdrawal and the amount and the reasons therefor; (ii) in the event that the Security Fund is in the form of cash, amounts withdrawn from the Security Fund pursuant to this Section shall be replenished by Franchisee by delivering to the County or its designee for deposit in the Security Fund a cash amount equal to the amount so withdrawn within 30 calendar days of its receipt of notice from the County of the date and amount of such withdrawal; (iii) in the event the Security Fund is in the form of a letter of credit, Franchisee shall replenish the Security Fund by establishing a new letter of credit within 30 calendar days of its receipt of notice from the County of the date and amount of such withdrawal; and (iv) within 30 calendar days of receipt of the new letter of credit, the County shall return the previously issued letter of credit to the Company. If the Company posts a performance bond ("Performance Bond"), in the event that a Performance Bond provided pursuant to this Agreement is not renewed or is cancelled, the Company shall provide new security pursuant to the Agreement within 30 calendar days of such cancellation or failure to renew. Neither cancellation, nor termination, nor refusal by surety to extend the Performance Bond, nor inability of the Company to file a replacement bond or replacement security for its obligations, shall constitute a loss to the County recoverable under the bond. Within 5 calendar days after a draw, the County shall notify the Company of the date and amount of the draw from the Performance Bond. The total amount of the Performance Bond required by this Agreement shall be forfeited in favor of the County if:

- 1) The Company abandons the Cable System at any time during the Franchise Term or any extension thereto; or
- 2) The Company carries out a Transfer requiring County approval as stated in Section 14 of this Agreement without obtaining County approval.

## **Section 21. (ENFORCEMENT AND REVOCATION)**

21.1 (NOTICE OF VIOLATIONS AND CURE) In order to apply the provisions of Section 235-27B(i) of the Cable Code, in the event that the County believes that Company has not complied with the terms of this Agreement or applicable provision of the Cable Law, the County shall informally discuss any alleged noncompliance, violation or failure with Company. As provided in Section 235-27B(i) of the Cable Code, if these discussions do not lead to resolution of the problem in a reasonable time and if the County wishes to pursue the matter further, the County shall notify Company in writing of the exact nature of the alleged noncompliance (for purposes hereof, the "Noncompliance Notice"). Except as provided in 21.3 below when the County exercises liquidated damages as a remedy, Company shall have 30 days from receipt of the Noncompliance Notice to: (i) respond to the County, if Company contests (in whole or in part) the assertion of noncompliance, (ii) cure such noncompliance; or (iii) in the event that, by the nature of the noncompliance, it cannot be cured within the 30 day period, initiate reasonable steps to remedy such noncompliance and notify the County of the steps being taken and the projected date that they will be completed, provided, however, that if such alleged noncompliance creates a safety hazard placing members of the public in imminent danger, Company shall commence cure promptly after notice. In the event that Company fails to respond to the Noncompliance Notice, or in the event that the alleged default is not remedied within 30 days or the date projected pursuant to clause (iii) above, the County may pursue any remedies available under this Agreement.

21.2 (ENFORCEMENT) Subject to applicable federal and state law, in the event the County determines after the procedures above that Company is in default of any provision of this Agreement, the County may:

- a) Seek specific performance of any provision, which reasonably lends itself to such remedy, as an alternative to damages; or
- b) At its election, County may require an issue to be decided by arbitration as provided in Section 235-28 of the Cable Law.
- c) Commence an action at law for monetary damages or seek other equitable relief; or
- d) Exercise its rights under the Performance Bond as described in Section 20; or
- e) Assess liquidated damages as provided in Section 21.3; or
- f) In the case of a substantial material default of a provision of this Agreement or the Cable Law to the extent applicable, revoke the Franchise in accordance with Section 21.3 of this Agreement.

### **21.3 (LIQUIDATED DAMAGES)**

- a) Because the Company's failure to comply with provisions of this Agreement will result in injury to the County and because it will be difficult to estimate the extent of such injury, the County and the Company agree to the liquidated damages provided for in this Section, with such liquidated damages representing both Parties' best estimate of the damages resulting from the specified violations. Such damages shall not be a substitute for actual performance by the Company of a financial payment, but shall be in addition to any such actual performance. The failure of a Franchisee to hire sufficient staff or to properly train its staff shall not preclude the application of the provisions in this Section.
- b) The County, or its designee, shall have the authority to waive or reduce the liquidated damage amounts herein for good cause.
- c) Cure periods listed below shall begin to run at the time the Company is notified in writing of a violation by the County, unless otherwise specified below. Should the County elect to receive liquidated damages for any of the violations enumerated herein, such liquidated damages shall be the County's sole remedy for the violations occurring during the period of time to which the liquidated damages apply.
- d) On an annual basis from the Effective Date, the Company shall be liable for liquidated damages up to \$75,000 (the "Liquidated Damages Cap"); provided, however, the Company may pay any amount in excess of the Liquidated Damages Cap. The liquidated damages may be assessed only by the County and any assessments shall be made in the following manner:

- i) For failure to substantially comply with requirements for PEG use of the Cable System \$400 per day for each day compliance is delayed beyond a fourteen (14) day cure period, if the Company has not undertaken substantial corrective action to cure the violation within that 14- day cure period;
- ii) For failure to provide complete and accurate information, reports, or filings lawfully required under this Agreement: \$150 per day for each day that each such filing is delayed beyond a 30-day cure period;
- iii) For each day during which the County determines that the Company has violated customer service standards pursuant to Exhibit A, \$150, per violation, treating each failure to comply as a separate violation, following a 7 -day cure period, except that such cure period does not apply to customer service standards that themselves provide a time to act or a specific cure period;
  - a) A separate violation under sub-section 21.2(D)(iii) shall be deemed to occur whenever the County reasonably determines that a separate customer service standard violation has occurred on one day. Thus, for example, if the Company fails to keep an appointment pursuant to Exhibit A with one Subscriber on one day and on that same day, independent of the missed appointment, the Company fails to disclose price terms to that same Subscriber, then there would be two violations. However, the Company shall not be charged with multiple violations for a single act or event affecting a single Subscriber or for a single act or event affecting multiple Subscribers on the same day. For example, the failure of the Company to send out its annual notice to multiple Subscribers would constitute a single violation.
- iv) For failure to issue an undisputed refund or credit pursuant to Exhibit C after being directed by the County to do so: \$150 per violation, treating each failure to comply as a separate violation, following a 7-day cure period;
  - v) For failure to meet customer service standards .with regard to telephone answering time, time to transfer a call to a customer service representative, or excessive busy signals: if such standards are not met according to the terms in which such standards are established in Exhibit C: \$300 for each quarter in which such standards were not met if the failure was by less than 5%; \$ 600 for each quarter in which such standards were not met if the failure was by 5% or more but less than 15%;and \$1,200 for each quarter in which such standards were not met if the failure was by 15% or more;
- vi) For failure to render payment for Audit Fees pursuant to Section 10.3, \$100, for each day each such payment is delayed, following a 7- day cure period;
- vii) For violation of applicable technical standards established by the FCC or other lawful authority: \$100 per day for each day the violation continues after a 30-day cure period;
- viii) For failure, unless such failure is beyond the Company's control, of the Emergency Alert System to perform in the event of a public emergency or vital information situation: \$200 per occurrence;
- ix) For a Transfer without approval: \$1,000 per day for each day the violation continues;
- x) For failure to restore damaged property: \$50 per day in addition to the cost of restoration as required elsewhere herein;
- xi) For any other material violations of this Agreement or the Cable Law (if applicable): \$50 per day for each violation for each day the violation is not remedied beyond a 30-day cure period;



21.4 (REVOCATION) Should the County seek to revoke the Franchise after following the procedures set forth above in this Section 21, the County shall give written notice to Company of such intent. The notice shall set forth the specific nature of the noncompliance. Company shall have 90 calendar days from receipt of such notice to object in writing and to state its reasons for such objection. In the event the County has not received a satisfactory response from Company, it may then seek termination of the Franchise at a public hearing. The County shall cause to be served upon the Company, at least 30 calendar days prior to such public hearing, a written notice specifying the time and place of such hearing and stating its intent to revoke the Franchise. At the designated hearing, Company shall be provided a fair opportunity for full participation, including the right to be represented by legal counsel, to submit information for inclusion in the record. Company shall be permitted to record or make a transcript of such hearing.

If the County determines that the Franchise shall be revoked, the County shall promptly provide Company with written evidence setting forth its reasoning. To the extent permitted by applicable law, Company may challenge such determination of the County to an appropriate court. Company shall be entitled to such relief as the court finds appropriate. The County may, at its sole discretion, take any lawful action which it deems appropriate to enforce the County's rights under the Franchise in lieu of revocation of the Franchise, and, except as otherwise provided in this Agreement or the Cable Law, any action, proceeding or exercise of a right by the County under Section 21.1 through 21.3 shall not constitute an election of remedies or a waiver of any other rights the County may have, including the right to seek specific performance of any provision which reasonably lends itself to such remedy as an alternative to damages, provided such remedies are not duplicative. In the event of a final revocation or non-renewal of the Franchise, Company will continue to make Cable Service available for a reasonable period of time, not less than 6 months, if necessary to allow customers to transition to an alternate Cable Service provider. In accordance with applicable law, Company may continue to operate the Cable System to the extent such Cable System is used for the provision of other services.

21.5 In determining which of the remedies available under this Franchise is appropriate, the County may consider, among other things:

- a) The nature or extent of the violation;
- b) Whether the Company has had a history of similar violations;
- c) The damage suffered by the public and cost of remedying these violations; and
- d) Such other factors that the County may deem appropriate.

## **Section 22. (MISCELLANEOUS PROVISIONS)**

22.1 (ACTIONS OF PARTIES) In any action by the County or Company that is mandated or permitted under the terms hereof, such party shall act in a reasonable, expeditious, and timely manner. Furthermore, in any instance where approval or consent is required under the terms hereof, such approval or consent shall not be unreasonably withheld, delayed or conditioned.

22.2 (BINDING ACCEPTANCE) This Agreement shall bind and benefit the parties hereto and their respective heirs, beneficiaries, administrators, executors, receivers, trustees, successors and assigns, and the promises and obligations herein shall survive the expiration date hereof.

22.3 (PREEMPTION) In the event that federal or state law, rules or regulations preempt a provision or limit the enforceability of a provision of this Agreement, the provision shall be read to be preempted to the extent, and for the time, but only to the extent and for the time, required by law. In the event such federal or state law, rule or regulation is subsequently repealed, rescinded, amended or otherwise changed so that the provision hereof that had been preempted is no longer preempted, such provision shall thereupon return to full force and effect, and shall thereafter be binding on the parties hereto, without the requirement of further action on the part of the County.

22.4 (NOTICES) Unless otherwise expressly stated herein or agreed between the parties, notices required under this Agreement and Sections 235-17A and 235-32 of the Cable Code shall be mailed first class, postage prepaid, or via overnight courier to the addresses listed below. Each party may change its designee or address by providing written notice to the other party.

a) Notices to Company shall be mailed to:

Armstrong Utilities, Inc.  
One Armstrong Place  
Butler, Pennsylvania 16001  
Attention: President

Additional Notice:

Armstrong Utilities, Inc.  
One Armstrong Place  
Butler, Pennsylvania 16001  
Attention: Legal Department

b) Notices to the County shall be mailed to:

Council Administrator  
Harford County Council  
212 South Bond Street  
Bel Air, MD 21014

With a copy to:

Council Attorney  
Harford County Council  
212 South Bond Street  
Bel Air, MD 21014

22.5 (ENTIRE AGREEMENT) This Agreement and the Exhibits hereto constitute the entire agreement between Company and the County, and it supersedes all prior or contemporaneous agreements, representations, proposals or understandings of the parties regarding the subject matter hereof except as specifically incorporated herein. Amendments modifications to this Agreement shall be mutually agreed to in writing by the parties.

22.6 (CAPTIONS) The captions and headings of articles and sections throughout this Agreement are intended solely to facilitate reading and reference to the sections and provisions of this Agreement. Such captions shall not affect the meaning or interpretation of this Agreement.

22.7 (CONFLICTS WITH THE ACT AND THE CODE) The County and the Company recognize that this Renewal Franchise Agreement imposes certain burdens and obligations on the Company that are greater than those imposed by the Act or the Code, and the Company agrees to be bound by these greater burdens and obligations. The provisions of this agreement shall be liberally construed to effectuate their objectives. Company is subject to the Cable Law in effect as of the Effective Date of this Agreement and to all reasonable and lawful exercises of police power by the County, provided that each of these authorities is applied in a manner consistent with Company's rights under this Agreement. In the event of a conflict between the Cable Law and this Agreement, this Agreement shall prevail. The County shall not modify the terms and conditions of the Agreement by changes to the Cable Law enacted after the Effective Date. Any amendments to the Cable Law shall be consistent with state and federal law and shall not abrogate any contractual rights Company contained herein or impose any new obligations or duties on Company that would be inconsistent with this Agreement.

22.8 (SEVERABILITY) If any sentence, clause, section or part of this Agreement is for any reason found to be unconstitutional, illegal or invalid, such unconstitutionality, illegality or invalidity shall not affect or impair any of the remaining provisions, sentences, clauses, sections or part of this Agreement. It is hereby declared as the intent of the Council that this Agreement would have been enacted had such unconstitutional, illegal or invalid sentence, clause, section or part thereof not been included therein.

22.9 (FORCE MAJEURE) The Grantee shall not be held in default under, or in non-compliance with, the provisions of the Franchise, nor suffer any enforcement or penalty relating to noncompliance or default {including termination, cancellation or revocation of the Franchise), where such non-compliance or alleged defaults occurred or were caused by lightning strike, earthquake, flood, tidal wave, unusually severe rain, ice or snow storm, hurricane, tornado, or other catastrophic act of nature; riot, war, labor disputes, environmental restrictions, failure of utility service necessary to operate the Cable System, governmental, administrative or judicial order or regulation or other event that is reasonably beyond the Grantee's ability to anticipate or control. This provision also covers work delays caused by waiting for utility providers to service or monitor their own utility poles on which the Grantee's cable or equipment is attached, as well as unavailability of materials or qualified labor to perform the work necessary.

22.10 (CABLE SYSTEM TRANSFER PROHIBITION) Under no circumstances including, without limitation, upon expiration, revocation, termination, denial of renewal of the Agreement or any other action to forbid or disallow Company from providing Cable Services, shall the Company or its assignees be required to relinquish or sell any right, title, Interest, use or control of any portion of the Company's Cable System and any capacity used for Cable service or otherwise, to the LFA or any third party. Company shall not be required to remove the Cable System or to relocate the Cable System or any portion thereof as a result of revocation, expiration, termination, denial of renewal or any other action to forbid or disallow Company from providing Cable Services. Notwithstanding the foregoing, this provision is not intended to contravene leased access requirements under federal law or PEG requirements set out in this Agreement.

22.11 (MODIFICATION) This Agreement shall not be modified except by written instrument executed by both parties.

22.12 (BILLS) The County hereby requests that Company include the County's name and address on Subscriber bills as permitted by 47 CFR 76.952.

22.13 (RATE REGULATION) The rates and charges for Company's Cable Service shall comply with any applicable provisions of 47 U.S.C.§543. The parties acknowledge and agree that the rates and charges imposed by Company for Cable Services will not be subject to the approval of or regulation by the County since Company will be subject to effective competition as provided in 47 U.S.C.§543. Therefore, the County will not regulate Company's rates at this time, but it reserves any right to regulate Company's rates it may have in the future in accordance with applicable law.

22.14 (GOVERNING LAW) This Agreement shall be governed by and construed under the laws of the State of Maryland and applicable federal law.

22.15 (JURISDICTION AND VENUE) Company and the County agree that any court action to enforce or interpret the terms of this Agreement shall be brought and maintained exclusively in the Circuit Court for Harford County, Maryland, or the U.S. District Court for the District of Maryland.

22.16 (NO WAIVER) Company shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the County to enforce prompt compliance, nor does the County waive or limit any of its rights under this Franchise by reasons of such failure or neglect. The County Council shall be vested with the power and authority to reasonably regulate the exercise of the privileges permitted by this franchise in the public interest. County shall not be relieved of its obligations to comply with any of the provisions of this Franchise by reason of any failure of the Company to enforce prompt compliance, nor does the Company waive or limit any of its rights under this Franchise by reasons of such failure or neglect.

22.17 (AFFILIATE ACTIONS) During the term of the Franchise, the Company shall be liable to the acts or omissions of its affiliates while such affiliates are involved directly or indirectly in the construction, upgrade, installation, maintenance or operation of the cable system as if the acts or omissions of such affiliates are the acts or omissions of the Company.

22.18 (GUARANTEE OF PERFORMANCE) Company agrees that it enters into this Franchise voluntarily in order to secure and in consideration of the grant from the County of a Franchise. The Company has the requisite power and authority under applicable law and its by-laws and articles of incorporation and/or other organizational documents, is authorized by resolutions of its Board of Directors or other governing body, and has secured all consents which are required to be obtained as of the Effective Date of this Franchise Agreement, to enter into and legally bind the Franchisee to this Franchise and to take all actions necessary to perform all of its obligations pursuant to this Franchise Agreement.

22.19 (CONTRACTORS) Any contractor or subcontractor used for work or construction, installation, operation, maintenance, or repair of System equipment or for the pruning or removal must be properly licensed under laws of the State and all applicable local ordinances, where applicable, and each contractor or subcontractor shall have the same obligations with respect to its work as the Company would have if the work were performed by the Company. The Company must ensure that contractors, subcontractors and all employees who will perform work for it are trained. The Company shall be responsible for ensuring that the work of contractors and subcontractors is performed consistent with the franchise and applicable law, persons contracting or subcontracting or representing the Company in the course of providing Cable Service to any Subscriber.

22.20 (NO THIRD-PARTY BENEFICIARIES) Nothing in this Franchise is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of this Franchise.

WITNESS the hands and seals of the parties the day and year first above written.

Harford County, Maryland

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Armstrong Utilities, Inc.

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### Customer Service Standards

These standards shall apply to the Company in the Franchise Area. In addition, the customer service requirements in the Cable Law to the extent they are consistent with this Exhibit shall also apply to the Company. The Federal Communication Commission's customer service obligations at 47 CFR 76.309, 76.1602, 76.1603 and 76.1603 as such standards may be amended to the extent they are not in conflict with this Exhibit shall also apply to the Company.

#### **SECTION 1: DEFINITIONS**

1.1 Respond: Company's investigation of a Service Interruption by receiving a Subscriber call and opening a trouble ticket, if required.

1.2 Significant Outage: A significant outage of the Cable Service shall mean any Service Interruption or System Malfunction lasting at least 4 continuous hours that affects at least 10% of the Subscribers in the Service Area.

1.3 Service Call: The action taken by the Company to correct a Service Interruption, the effect of which is limited to an individual Subscriber.

1.4 Standard Installation: Installations where the Subscriber is within 300 feet of trunk or feeder lines.

#### **SECTION 2: TELEPHONE AVAILABILITY**

2.1 The Company shall maintain a toll-free number to receive all calls and inquiries from Subscribers in the Franchise Area and/or residents regarding Cable Service. Company representatives trained and qualified to answer questions related to Cable Service in the Service Area must be available to receive reports of Service Interruptions 24 hours a day, 7 days a week, and other inquiries at least 45 hours per week. Company representatives shall identify themselves by name when answering this number.

2.2 The Company's telephone numbers shall be listed on Subscriber bills, included in materials provided to customers upon installation, included with materials provided to customers under Section 10F herein, and be accessible on the internet and by internet search engines.

2.3 Company may use an Automated Response Unit ("ARU") or a Voice Response Unit ("VRU") to distribute calls. If a foreign language routing option is provided, and the Subscriber does not enter an option, the menu will default to the first-tier menu of English options.

After the first-tier menu (not including a foreign language rollout) has run through three times, if customers do not select any option, the ARU or VRU will forward the call to a queue for a live representative. The Company may reasonably substitute this requirement with another method of handling calls from customers who do not have touch-tone telephones.

2.4 Under Normal Operating Conditions, telephones answered by a customer service representative, including wait time, shall not exceed 30 seconds when the connection is made. Should the call be transferred, the transfer time shall not exceed 30 seconds. The Company shall meet this standard for 90% of the calls it receives under normal operating conditions, as measured on a quarterly calendar basis.

2.5 Under Normal Operating Conditions, callers to the Company shall receive a busy signal no more than 3% of the time during any calendar quarter.

2.6 Upon written request, the Company shall provide the County with a report once every quarter 30 calendar days following the end of each quarter, which contains the following for all call centers receiving calls from Subscribers:

- a) Percentage of calls answered within thirty (30) seconds as set forth in Subsection D.
- b) Percentage of transferred calls which are transferred within thirty (30) seconds.
- c) Percentage of time customers received busy signal when calling the Company.

Subject to consumer privacy requirements, underlying activity will be made available to the County for review upon reasonable request.

### **SECTION 3: INSTALLATIONS AND SERVICE APPOINTMENTS**

3.1 All installations shall be in accordance with FCC rules, including but not limited to, appropriate grounding, connection of equipment to ensure reception of Cable Service, and the provision of required consumer information and literature to adequately inform the Subscriber in the utilization of the Company-supplied equipment and cable Service.

3.2 The Standard Installation shall be performed within 7 business days after an order is placed where a drop connection already is in place. If the drop is not present, the Standard Installation shall be performed within 14 business days after an order is placed. For other than a Standard Installation, Company shall provide the customer in advance with a total installation cost estimate and an estimated date of completion.

Commencing with the first calendar quarter from the effective date of this Franchise Agreement, Company shall meet this standard for 95% of the Standard Installations it performs, as measured on a calendar quarter basis, excluding customer requests for connection later than 7 business days after an order is placed.

3.3 Upon written request, the Company shall provide the County with a report once every quarter, 30 calendar days following the end of each quarter, noting the percentage of Standard Installation; completed within the 7-business day period, excluding those requested outside of the 7-business day period by the Subscriber. Subject to consumer privacy requirements, underlying activity will be made available to the County for review upon reasonable request.

3.4 The Company will offer Subscribers "appointment window" alternatives for arrival to perform installations, Service Calls and other activities of a maximum 4 hours scheduled time block during appropriate daylight available hours, usually beginning at 8:00 a.m. unless it is deemed appropriate to begin earlier by location exception. At the Company's discretion, the Company may offer Subscribers appointment arrival times other than these 4-hour time blocks, if agreeable to the Subscriber.

3.5 Company may not cancel an appointment with a Customer after the close of business on the business day prior to the scheduled appointment.

3.6 If Company's representative is running late for an appointment with a Customer and will not be able to keep the appointment as scheduled, the Customer shall be contacted. The appointment will be rescheduled, as necessary, for a time which is convenient for the Customer.

### **SECTION 4: SERVICE INTERRUPTIONS AND OUTAGES**

4.1 The Company shall notify the County of any Significant Outage of the Cable Services.

4.2 The Company shall exercise commercially reasonable efforts to limit any Significant Outage for the purpose of maintaining, repairing, or constructing the Cable System. Except in an emergency or other situation necessitating a more expedited or alternative notification procedure, the Company may schedule a Significant Outage for a period of more than 4 hours during any twenty-four (24) hour period only after the County and each affected Subscriber in the Service Area have been given 15 calendar days prior notice of the proposed Significant Outage. Notwithstanding the forgoing, Company may perform modifications, repairs and upgrades to the System between 12:01 a.m. and 6:00a.m. which may interrupt service, and this Section's notice obligations respecting such possible interruptions will be satisfied by notice provided to Subscribers upon installation and in the annual subscriber notice.

4.3 Company representatives who are capable of responding to Service Interruptions must be available to Respond 24 hours a day, 7 calendar days a week.

4.4 Under Normal Operating Conditions, the Company must respond to a call from a Subscriber regarding a Service Interruption or other service problems within the following time frames:

- a) Within 24 hours, including weekends, of receiving subscriber calls respecting Service Interruptions in the Service Area.

b) The Company must begin actions to correct all other Cable Service problems the next business day after notification by the Subscriber or the County of a Cable Service problem.

4.5 The Company shall meet the standard in Subsection D of this Section for 95% of the Service Interruptions and other service problems it Responds to, as measured on a quarterly basis.

4.6 Under Normal Operating Conditions, the Company shall make reasonable efforts to complete Service Calls within 72 hours of the time Company commences to Respond to the Service Interruption, not including situations where the Subscriber is not reasonably available for a Service Call to correct the Service Interruption within the 72-hour period.

4.7 Upon written request, Company shall provide the County with a report once every quarter within 30 calendar days following the end of each calendar quarter, noting the percentage of Service Calls completed within the 72-hour period not including Service Calls where the Subscriber was reasonably unavailable for a Service Call within the 72-hour period as set forth in this Section. Subject to consumer privacy requirements, underlying activity will be made available to the County for review upon reasonable request.

4.8 Under Normal Operating Conditions, the Company shall provide a credit upon Subscriber request when all Channels received by that Subscriber are out of service for a period of 4 consecutive hours or more. The credit shall equal, at a minimum, a proportionate amount of the affected Subscriber(s) current monthly bill. In order to qualify for the credit, the Subscriber must promptly report the problem and allow the Company to verify the problem if requested by the Company. If Subscriber availability is required for repair, a credit will not be provided for such time, if any, that the Subscriber is not reasonably available.

4.9 Under Normal Operating Conditions, if a Significant Outage affects all Cable Services for more than 24 consecutive hours, the Company shall issue a credit to the affected Subscribers upon request in the amount equal to their monthly recurring charges for the proportionate time the Cable Service was out. Such credit shall be reflected on Subscriber billing statements in accordance with Section 8 of this Exhibit. Subscribers shall be given notice of the availability of credits upon subscribing to Cable Services.

## **SECTION 5: CUSTOMER COMPLAINTS**

Under Normal Operating Conditions, the Company shall investigate Subscriber complaints referred by the County within 5 business days. The Company shall notify the County of those matters that necessitate an excess of 5 business days to resolve, but those matters must be resolved within 20 calendar days of the initial complaint. The County may require reasonable documentation to be provided by the Company to substantiate the request for additional time to resolve the problem. For purposes of this Section, "resolve" means that the Company shall perform those actions, which, in the normal course of business, are necessary to investigate the Customer's complaint and advise the Customer of the results of that investigation.

## **SECTION 6: BILLING**

6.1 Subscriber bills must be itemized to describe Cable Services purchased by Subscribers and related equipment charges. Bills shall clearly delineate activity during the billing period, including optional charges, rebates, credits, and aggregate late charges. Company shall, without limitation as to additional line items, be allowed to itemize as separate line items, franchise fees, franchise related costs in accordance with applicable law, taxes and/or other governmentally imposed fees. The Company shall maintain records of the date and place of mailing of bills.

6.2 Every Subscriber with a current account balance sending payment directly to Company shall be given at least 20 calendar days from the date the statements are mailed to the Subscriber until the payment due date.

6.3 Should any customer's rates be changed (whether increased or decreased) an explanation shall be provided to customers in accordance with Section 10.5 herein.

6.4 A specific due date shall be listed on the bill of every Subscriber whose account is current. Delinquent accounts may receive a bill which lists the due date as upon receipt; however, the current portion of that bill shall not be considered past due except in accordance with Subsection 6.2 above.

6.5 Any Subscriber who, in good faith, disputes all or part of any bill shall have the option of withholding the disputed amount without disconnect or late fee being assessed until the dispute is resolved provided that:

- a) The Subscriber pays all undisputed charges;
- b) The Subscriber provides notification of the dispute to Company within five (5) calendar days prior to the due date; and
- c) The Subscriber cooperates in determining the accuracy and/or appropriateness of the charges in dispute.

6.6 Under Normal Operating Conditions, the Company shall initiate investigation and resolution of all billing complaints received from Subscriber within five business days of receipt of the complaint. Final resolution shall not be unreasonably delayed.

6.7 The Company shall provide a telephone number and address on the bill for Subscribers to contact the Company.

6.8 The Company shall forward a copy of any Cable Service related billing inserts or other mailing sent to Subscribers to the County upon written request.

#### **SECTION 7: DEPOSITS, REFUNDS AND CREDITS**

7.1 The Company may require refundable deposits from Subscribers 1) with a poor credit or poor payment history, 2) who refuses to provide credit history information to the Company, or 3) who rent Subscriber equipment from the Company, so long as such deposits are applied on a non-discriminatory basis. The deposit the Company may charge Subscribers with poor credit or poor payment history or who refuse to provide credit information may not exceed an amount equal to an average Subscriber's monthly charge multiplied by three (3).

7.2 The Company shall refund or credit the Subscriber for the amount of the deposit collected for equipment, which is unrelated to poor credit or poor payment history, after one year and provided the Subscriber has demonstrated good payment history during this period. The Company shall pay interest on other deposits if required by law.

7.3 Under Normal Operating Conditions, refund checks will be issued within the next available billing or within 45 days cycle following the resolution of the event giving rise to the refund, (I.E. equipment return and final bill payment).

7.4 Credits for Cable Service will be issued no later than the Subscriber's next available billing cycle or within 45 days, following the determination that a credit is warranted, and the credit is approved and processed. Such approval and processing shall not be unreasonably delayed.

7.5 Bills shall be considered paid when the Company receives appropriate payment. Appropriate time considerations shall be included in the Company's collection procedure to assure that payments due have been received before late notices or termination notices are sent.

#### **SECTION 8: RATES, FEES AND CHARGES**

8.1 The Company shall not, except to the extent permitted by law, impose any fee or charge for Service Calls to a Subscriber's premises to perform any repair or maintenance work related to Company equipment necessary to receive Cable Service, except where such problem is caused by a negligent or wrongful act of the Subscriber (including, but not limited to, a situation in which the Subscriber reconnects Company equipment incorrectly) or by the failure of the Subscriber to take reasonable precautions to protect the Company's equipment (for example, a dog chew).

8.2 The Company shall provide reasonable notice to Subscribers of the possible assessment of a late fee on bills or by separate notice.

#### **SECTION 9: DISCONNECTION/DENIAL OF SERVICE**



9.1 Company may terminate a Subscriber's service if the Subscriber fails to pay his bill within 36 days after Company mails the applicable bill to the Subscriber if Company has provided appropriate notice to the Subscriber pursuant to 10.2 below.

9.2 Company shall not terminate Cable Service for nonpayment of a delinquent account unless the Company mails a notice of the delinquency and impending termination prior to the proposed final termination. The notice shall be mailed to the Subscriber to whom the Cable Service is billed. The notice of delinquency and impending termination may be part of a billing statement. In all cases, Company shall provide the customer with a least 10 business days written notice prior to disconnection.

9.3 Cable Service terminated in error must be restored without charge within twenty-four (24) hours of notice. If a Subscriber was billed for the period during which Cable Service was terminated in error, a credit shall be issued to the Subscriber.

9.4 Nothing in these standards shall limit the right of the Company to deny Cable Service for non-payment of previously provided Cable Services, refusal to pay any required deposit, theft of Cable Service, damage to the Company's equipment, abusive and/or threatening behavior toward the Company's employees or representatives, or refusal to provide credit history information or refusal to allow the Company to validate the identity, credit history and credit worthiness via an external credit agency.

## **SECTION 10: COMMUNICATION WITH SUBSCRIBERS**

10.1 All Company personnel, contractors and subcontractors contacting Subscribers or potential Subscriber; outside the office of the Company shall wear a clearly visible identification card bearing their name and photograph. The Company shall make reasonable effort to account for all identification cards at all times. In addition, all Company representatives shall wear appropriate clothing while working at a Subscriber's premises. Every service vehicle of the Company and its contractors or subcontractors shall be clearly identified as such to the public. Specifically, Company vehicles shall have the Company's logo plainly visible. The vehicle of those contractors and subcontractors working for the Company shall have the contractor's/subcontractor's name plus markings (such as a magnetic door sign) indicating they are under contract to the Company. Compliance with this section will satisfy all requirements under Chapter 197 of the County Code.

10.2 All contact with a Subscriber or potential Subscriber by a Person representing the Company shall be conducted in a courteous manner.

10.3 The Company shall send annual notices to all Subscribers informing them that any complaints or inquiries not satisfactorily handled by the Company may be referred to the County.

10.4 All notices identified in this Section shall be by either:

- a) Direct mail or a separate document included with a billing statement or included on the portion of the monthly bill that is to be retained by the Subscriber;
- b) A separate electronic notification; or
- c) Other appropriate means.

10.5 The Company shall provide reasonable notice to Subscribers of any pricing changes or additional changes (excluding sales discounts, new products or offers) and, subject to the forgoing, any changes in Cable Services, including channel line-ups. Such notice must be given to Subscribers a minimum of 30 calendar days in advance of such changes if within the control of the Company, and the Company shall provide a copy of the notice to the County including how and where the notice was given to Subscribers.

10.6 The Company shall provide information to all Subscribers about each of the following items at the time of installation of Cable Services, annually to all Subscribers, at any time upon request, and, subject to Subsection 10.5, at least 30 calendar days prior to making significant changes in the information required by this Section if within the control of the Company:

- a) Products and Cable Service offered;

- b) Prices and options for Cable Services and condition of subscription to Cable Services. Prices shall include those for Cable Service options, equipment rentals, program guides, installation, downgrades, late fees and other fees charged by the Company related to Cable Service;
- c) Installation and maintenance policies including, when applicable, information regarding the Subscriber's in-home wiring rights during the period Cable Service is being provided.
- d) Channel positions of Cable Services offered on the Cable System;
- e) Complaint procedures, including the name, address and telephone number of the County, but with a notice advising the Subscriber to initially contact the Company about all complaints and questions;
- f) Procedures for requesting Cable Service credit;
- g) The availability of a parental control device;
- h) Company practices and procedures for protecting against invasion of privacy; and
- i) The address and telephone number of the Company's office to which complaints may be reported.

A copy of notices required in this Subsection 10.6 will be given to the County earlier or contemporaneous with distribution to subscribers if the reason for notice is due to a change that is within the control of Company and as soon as possible if not within the control of Company.

10.7 Notices of changes in rates shall indicate the Cable Service new rates and old rates; if applicable.

10.8 Notices of changes of Cable Services and/or Channel locations shall include a description of the new Cable Service, and the specific channel location. In addition, should the channel location, hours of operation, or existence of other Cable Services be affected by the introduction of a new Cable Service, such information must be included in the notice.

10.9 Every notice of termination of Cable Service shall include the following information:

- a) The name and address of the Subscriber whose account is delinquent;
- b) The amount: of the delinquency for all services billed;
- c) The date by which payment is required in order to avoid termination of Cable Service; and
- d) The telephone number for the Company where the Subscriber can receive additional information about their account and discuss the pending termination.