



RESOLUTION No. 20140225-04

RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR/CEO TO EXECUTE AN EASEMENT AGREEMENT (TELECOMMUNICATIONS) ON TEXAMERICAS CENTER-CENTRAL TO WINDSTREAM COMMUNICATIONS.

WHEREAS, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

WHEREAS, Windstream Communications contacted TexAmericas Center to seek an easement for land upon TexAmericas Center-Central to serve existing customers; and

WHEREAS, it has now been determined that it is in the best interest of TexAmericas Center to provide said access easement as described on the attached easement.

~~**NOW, THEREFORE, BE IT RESOLVED**~~ by the Board of Directors that the Board of TexAmericas Center approves the adoption of the attached Right of Way and Easement; and

BE IT FURTHER RESOLVED, by the Board of Directors of TexAmericas Center that the Executive Director/CEO shall be and he is hereby authorized to execute an Easement Agreement (Telecommunications) in substantially the same terms as attached hereto.

PASSED and APPROVED this 25th day of February, 2014



Denis Washington, Chairman of the Board

ATTEST:



Mike Carter, Secretary-Treasurer

Attached: Easement Agreement



NOTICE OF CONFIDENTIALITY RIGHTS:
IF YOU ARE A NATURAL PERSON, YOU
MAY REMOVE OR STRIKE ANY OF THE
FOLLOWING INFORMATION FROM THIS
INSTRUMENT BEFORE IT IS FILED FOR
RECORD IN THE PUBLIC RECORDS:
YOUR SOCIAL SECURITY NUMBER OR
YOUR DRIVER'S LICENSE NUMBER.

**EASEMENT AGREEMENT
(TELECOMMUNICATIONS)**

- A. **GRANTOR:** **TexAmericas Center**, a political subdivision of the State of Texas, having its office at 107 Chapel Lane, New Boston, Bowie County, Texas.
- B. **GRANTEE:** **Windstream**, a _____ Corporation/LLC having its corporate headquarters at 4001 Rodney Parham Road, Little Rock, AR 72212-2442.

FOR AND IN CONSIDERATION of the mutual covenants and conditions contained in this Easement Agreement, and the further consideration of the sum of \$10.00 (Ten Dollars), and other good and valuable consideration paid by GRANTEE, the receipt and sufficiency of which are hereby acknowledged, GRANTOR, its successors and assigns (collectively, the "GRANTOR") hereby grants and conveys unto the GRANTEE, its successors and assigns:

A non-exclusive right, privilege, and easement (the "Easement") to construct, install, reconstruct, repair, rebuild, revise, supplement, inspect, replace, operate, patrol, maintain and remove its communications line or system (the "Communications Facilities") in, along, across, above, under, and on the Easement Area across GRANTOR's real property ("Grantor's Property") which is located in the County of Bowie, State of Texas.

GRANTOR's Property is more particularly described in the Deed recorded in Volume 3072, Page 161 of the Real Property Records of Bowie County, Texas, and the Easement Area is more particularly described in EXHIBIT A which is attached hereto and made part hereof.

GRANTOR and **GRANTEE** further expressly **AGREE** as follows:

1) **GRANTEE's** Communications Facilities may include the following items and their upgrades:
X poles, X wires, X cables, N/A drains, N/A buildings, X fixtures, X conduits,
X guys and anchors, X manholes, X marker poles, N/A cabinets, N/A fences, N/A gates, and
N/A other (list here) N/A _____ that
GRANTEE may require.

- 2) **GRANTOR** acknowledges and agrees that the Communications Facilities and related equipment shall remain the property of **GRANTEE**, and shall be removable by **GRANTEE**.
- 3) **GRANTEE** has the right of ingress and egress to (enter, exit and re-enter by vehicle or otherwise) the Easement Area at all times and in such places as may be necessary or convenient to accomplish the activities permitted in this Easement Agreement (the "Agreement"), and to use such additional portions of **GRANTOR's** adjacent lands as may be reasonably required to access the Easement Area and to perform the activities permitted in this Agreement.
- 4) **GRANTEE** has the right to make alterations within the Easement Area, and to relocate the Communications Facilities on the Easement Area, subject to the limitations in Paragraph 1 above.
- 5) **GRANTEE** has the right to cut and trim any trees and shrubbery growing upon or overhanging the Easement Area and to remove from the Easement Area any timber, brush, roots, undergrowth, or debris that, in **GRANTEE's** judgment, should be cut, trimmed or removed to prevent interference with its Communications Facilities; at its option, **GRANTEE** shall also have the right to mow the Easement Area.
- 6) **GRANTEE** does not have the right to license, lease, permit or otherwise agree to the use or occupancy of the Easement Area by other telecommunications companies, government bodies, power companies or third parties.
- 7) **GRANTEE** will use reasonable efforts to avoid damage to **GRANTOR's** property, and shall compensate **GRANTOR** for (or, at **GRANTEE's** election, shall have repaired) damages caused to fences, gates, roads, driveways, rail lines, or other property of **GRANTOR** and other parties having personal property located in the Easement Area including other utility providers, as a result of activities undertaken by **GRANTEE** or on **GRANTEE's** behalf pursuant to this Agreement. **GRANTEE** shall bore under any existing roads, driveways, parking areas, rail lines, and shall not cut, drill through or remove any asphalt or concrete improvements within the Easement Area.
- 8) **GRANTEE** shall compensate **GRANTOR** by payment of the then current market value for any growing crops that are actually damaged by the **GRANTEE** occasioned by entry upon the Easement Area or upon **GRANTOR's** adjacent lands.
- 9) **GRANTEE** shall restore lawn areas removed or damaged in the Easement Area during activity by or on behalf of **GRANTEE** by seeding or replacement with like sod, at **GRANTEE's** option.
- 10) **GRANTEE** shall, after activity upon the Easement Area and **GRANTOR's** adjacent property: (a) cause all debris and materials incident to such activity to be removed; (b) fill any excavations; and (c) to the extent reasonably possible, substantially restore the property to its pre-existing state, reasonable wear and tear and damage by casualty or condemnation excepted.

11) **GRANTOR** has the right to use the surface of the Easement Area for any purpose that does not in any way interfere with **GRANTEE's** use of the Easement, and **GRANTOR** covenants not to use, construct on, or conduct any activity on the Easement Area that may interfere with the rights conveyed to **GRANTEE** or with **GRANTEE's** use of the Easement Area, or which would impair or adversely affect the proper operation of the Communications Facilities.

12) **GRANTOR** covenants not to place any building or other structure, upon the Easement Area, and covenants not to excavate or change the elevation or grade of the land surface in the Easement Area without prior written notice to and written approval received from **GRANTEE**.

13) **GRANTOR** does not warranty in any way, type or fashion title to the property or the rights granted to **GRANTEE** herein. **GRANTEE** takes title to the Easement rights at its own risk. In the event of failure of title, no refund shall be made by **GRANTOR** to **GRANTEE** of any consideration paid by **GRANTEE** to **GRANTOR** nor shall **GRANTEE** be released from its obligations under this agreement. **GRANTEE** takes its rights under this agreement subject to any and all existing easements, both visible upon the Easement Tract and those of record in Bowie County, Texas, and further subject to all presently recorded and validly existing restrictions, reservations, covenants, conditions, oil, gas or other mineral leases or interests, liens and encumbrances, and other instruments, that affect the Easement Tract and are recorded in the Deed, Mortgage, Deed of Trust, Real Property, and/or other official records of Bowie County, Texas.

14) **GRANTEE's** failure to exercise any rights granted herein shall be not construed as a waiver or abandonment of any such rights.

15) It is understood and agreed by **GRANTOR** and **GRANTEE** that the easement right of way, and other rights granted to **GRANTEE** herein are not and shall not be perpetual and/or irrevocable. This easement, right of way, and rights granted to **GRANTEE**, its successors and assigns shall terminate if at any time the Easement Tract ceases to be used by **GRANTEE**, its successors or assigns for more than six (6) consecutive months. If this easement and right of way terminates or is terminated for any reason, **GRANTEE** its successors or assigns shall remove all the Facilities and any other property of **GRANTEE**, its successors and assigns from the Easement Area, restore the Easement Area to its original condition, and compensate **GRANTOR**, its successors or assigns for any and all damage to personal or real property arising out of such removal and restoration.

16) The rights and obligations set forth herein are performable in Bowie County, Texas, and any litigation arising out of or relating to this agreement or the rights and obligations set forth herein shall be filed and maintained in the District Court of Bowie County, Texas.

17) Except as limited by paragraph 6) above, **GRANTEE** may transfer or assign this Easement for its intended purpose without approval by **GRANTOR**. **GRANTEE** will record this Easement Agreement at its sole cost and expense, including recording fees, transfer fees, and/or stamp fees that are required by state statute.

18) **GRANTOR** shall have no right to grant additional licenses, rights or other easements to the Easement Area that would **INTERFERE WITH GRANTEE's USE**: and **GRANTOR** shall have no right to use the Easement Area for any purpose that will **INTEREFERE WITH GRANTEE's USE** of

the Easement Area for its Communications Facilities; provided, however, **GRANTOR** reserves the right to place roads and/or driveways over and across the Easement Area as long as the construction of same does not damage the Grantee's Communication Facilities.

19) **GRANTEE AND ITS SUCCESSORS AND ASSIGNS DO HEREBY UNCONDITIONALLY RELEASE AND FOREVER DISCHARGE AND AGREE TO INDEMNIFY AND HOLD HARMLESS GRANTOR AND GRANTOR'S SUCCESSORS, AND ASSIGNS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, CAUSES OF ACTION, DAMAGES, COSTS AND EXPENSES OF EVERY KIND, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES FOR DEFENSE AGAINST ANY SUCH MATTERS, ARISING OUT OF GRANTEE'S AND/OR ITS SUCCESSORS' AND/OR ASSIGNS/ USE OF THE EASEMENT AREA AND THE COMMUNICATION FACILITIES OR BREACH OF ANY OF THE TERMS OF THIS AGREEMENT.**

20) Time is of the essence of this Agreement.

21) This Agreement shall not be effective and binding upon the parties hereto unless and until (1) **GRANTOR** and **GRANTEE** acting by and through their authorized representatives have executed the same, (2) the original document has been recorded in the Real Property Records of Bowie County, Texas, and (3) **GRANTEE** has provided to **GRANTOR** and **GRANTOR's** counsel, if any, a full and complete copy of the recorded document bearing the file mark and volume and page of the recording information.

IN WITNESS WHEREOF, the parties have executed this **EASEMENT AGREEMENT** to be effective as of the 25th day of February, 2014.

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SIGNATURES AND ACKNOWLEDGMENTS ARE ON THE FOLLOWING PAGES.

GRANTOR:

TEXAMERICAS CENTER

By: William V. Cork
William V. Cork,
Executive Director/CEO

STATE OF TEXAS

COUNTY OF BOWIE

This instrument was acknowledged before me on this the 25th day of February, 2014, by William V. Cork, who is the Executive Director/CEO of TexAmericas Center, a political subdivision of State of Texas, on behalf of said political subdivision.



Cyd V. Collins
Notary Public, State of Texas

GRANTEE:

WINDSTREAM

By: _____
Name: _____
Title: _____

STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on this the _____ day of _____, 2014, by _____, who is the _____ of Windstream, a a/n Corporation/LLC, on behalf of said Corporation/LLC.

Notary Public, State of _____

EXHIBIT "A"
The Easement Area – Legal Description and/or Survey

TRACT ONE:

All that certain lot, tract or parcel of land lying and situated in the Jonathan Collom Headright Survey, Abstract 109, Bowie County, Texas, being a part of that certain tract of land described as 765.5 acres in the deed from the United States of America to Red River Redevelopment Authority, now known as TexAmericas Center, dated March 30, 1999, recorded in Volume 3072, Page 161 of the Real Property Records of Bowie County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a point for a corner, lying in the South right-of-way line of the Texas and Pacific Railroad and the North line of the said 765.5 acre tract, said corner bears North 84 degrees 02 minutes 15 seconds East a distance of 7176.95 feet to a 1/2 inch steel rod found for a corner (control monument), the Northeast corner of the said 765.5 acre tract;

THENCE South 05 degrees 54 minutes 32 seconds East a distance of 106.35 feet to a point for a corner;

THENCE North 84 degrees 09 minutes 37 seconds East a distance of 490.78 feet to a point for a corner;

THENCE South 11 degrees 50 minutes 55 seconds East a distance of 583.75 feet to a point for a corner;

THENCE North 84 degrees 08 minutes 13 seconds East a distance of 1435.46 feet to a point for a corner, lying in the West line of that certain tract of land described as 0.853 acres in the deed from TexAmericas Center, formerly Red River Redevelopment Authority, to Red River Employees Federal Credit Union, dated July 31, 2012, recorded in Volume 6277, Page 1 of the Real Property Records of Bowie County, Texas, said corner bears North 05 degrees 34 minutes 27 seconds West a distance of 36.16 feet to a 1/2 inch steel rod found for a corner, capped MTG 101011-00, the Northwest corner of the said 0.853 acre tract;

THENCE South 05 degrees 34 minutes 27 seconds East a distance of 20.00 feet along the West line of the said 0.853 acre tract to a point for a corner, said corner bears South 05 degrees 34 minutes 27 seconds East a distance of 208.83 feet to a 1/2 inch steel rod found for a corner, capped MTG 101011-00, the Southwest corner of the said 0.853 acre tract;

THENCE South 84 degrees 08 minutes 13 seconds West a distance of 1463.32 feet to a point for a corner;

THENCE North 11 degrees 50 minutes 55 seconds West a distance of 20.11 feet to a point for a corner;

THENCE North 84 degrees 08 minutes 13 seconds East a distance of 20.00 feet to a point for a corner;

THENCE North 11 degrees 50 minutes 55 seconds West a distance of 573.70 feet to a point for a corner;

THENCE South 84 degrees 09 minutes 37 seconds West a distance of 491.76 feet to a point for a corner;

THENCE North 05 degrees 54 minutes 32 seconds West a distance of 116.33 feet to a point for a corner, lying in the South right-of-way line of the said Railroad and the North line of the said 765.5 acre tract, said corner bears South 84 degrees 02 minutes 15 seconds West (basis of bearings) a distance of 5205.43 feet to a 5/8 inch steel rod found for a corner (control monument), capped Huitt-Zollars, the Northwest corner of the said 765.5 acre tract;

THENCE North 84 degrees 02 minutes 15 seconds East a distance of 10.00 feet along the South right-of-way line of the said Railroad and the North line of the said 765.5 acre tract to the point of beginning and containing 0.944 acres of land, at the time of this survey.

TRACT TWO:

All that certain lot, tract or parcel of land lying and situated in the Jonathan Collom Headright Survey, Abstract 109, Bowie County, Texas, being a part of that certain tract of land described as 765.5 acres in the deed from the United States of America to Red River Redevelopment Authority, now known as TexAmericas Center, dated March 30, 1999, recorded in Volume 3072, Page 161 of the Real Property Records of Bowie County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a point for a corner, lying in the East line of that certain tract of land described as 0.853 acres in the deed from TexAmericas Center, formerly Red River Redevelopment Authority, to Red River Employees Federal Credit Union, dated July 31, 2012, recorded in Volume 6277, Page 1 of the Real Property Records of Bowie County, Texas, said corner bears North 05 degrees 24 minutes 53 seconds West a distance of 25.85 feet to a 1/2 inch steel rod found for a corner, capped MTG 101011-00, the Northeast corner of the said 0.853 acre tract;

THENCE North 84 degrees 08 minutes 13 seconds East a distance of 930.06 feet to a point for a corner, said corner bears North 90 degrees 00 minutes 00 seconds East a distance of 4023.43 feet, North 00 degrees 00 minutes 1116.42 feet to a 1/2 inch steel rod found for a corner (control monument), the Northeast corner of the said 765.5 acre tract, and South 84 degrees 02 minutes 15 seconds West (basis of bearings) a distance of 12392.38 feet to a 5/8 inch steel rod found for a corner (control monument), capped Huitt-Zollars, the Northwest corner of the said 765.5 acre tract;

THENCE South 05 degrees 10 minutes 22 seconds East a distance of 406.47 feet to a point for a corner, at an angle point;

THENCE South 02 degrees 58 minutes 17 seconds East a distance of 578.85 feet to a point for a corner;

THENCE South 82 degrees 39 minutes 02 seconds West a distance of 20.06 feet to a point for a corner;

THENCE North 02 degrees 58 minutes 17 seconds West a distance of 580.00 feet to a point for a corner, at an angle point;

THENCE North 05 degrees 10 minutes 22 seconds West a distance of 385.84 feet to a point for a corner;

THENCE South 84 degrees 08 minutes 13 seconds West a distance of 909.97 feet to a point for a corner, lying in the East line of the said 0.853 acre tract, said corner bears South 05 degrees 24 minutes 53 East a distance of 208.85 feet from a 1/2 inch steel rod found for a corner, capped MTG 101011-00, the Southeast corner of the said 0.853 acre tract;

THENCE North 05 degrees 24 minutes 53 seconds West a distance of 20.00 feet along the East line of the said 0.853 acre tract to the point of beginning and containing 0.870 acres of land, at the time of this survey.