



RESOLUTION NO. 20170228-09

**A RESOLUTION AUTHORIZING EXECUTION OF A FRANCHISE AGREEMENT AND BILL OF SALE
FROM TEXAMERICAS CENTER TO NETWORK USA, LLC**

RECITALS

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, TexAmericas Center currently has no provider for fiber optic cable service upon the East Campus of the TexAmericas Center Industrial Park or upon the TexAmericas Center owned property of the Central Campus of TexAmericas Center Industrial Park; and;

WHEREAS, After seeking fiber optic cable service from the local telecommunications service which requires TexAmericas Center to provide substantial upfront development costs, TexAmericas Center has determined that it is in the best interest of TexAmericas Center, its current tenants and future tenants and/or purchasers of the property from TexAmericas Center upon the East Campus and the Central Campus, that a fiber optic cable provider be sought to provide said service with requiring TexAmericas Center to provide expenditure of authority funds ; and

WHEREAS, TexAmericas Center and Network USA, LLC have negotiated agreements for the development of fiber optic cable service without upfront development costs to TexAmericas Center including a Franchise Agreement for use of the TexAmericas Center rights-of-way and a Bill of Sale for TexAmericas Center to convey the fiber optic cable located upon the East Campus of TexAmericas Center received by TexAmericas Center from the Army in the transfer pursuant to the Base Realignment and Closure Act;

NOW, THEREFORE, IT IS HEREBY RESOLVED that Scott Norton, Executive Director/CEO shall be and he is hereby authorized to execute a Franchise Agreement for Fiber Communications with Network USA, LLC, in substantially the form attached hereto as Exhibit "A"; and

BE IT FURTHER RESOLVED that Scott Norton, Executive Director/CEO shall be and he is hereby authorized to execute a Bill of Sale transferring ownership of the existing fiber optic cable located upon the TAC East Campus to Network USA, LLC, in substantially the form of the Bill of Sale attached hereto as Exhibit "B".

PASSED and APPROVED this 28th day of February, 2017.


Denis Washington, Chairman of the Board

ATTEST:


Melford Pierce, Secretary

**FRANCHISE AGREEMENT
(FIBER COMMUNICATIONS)**

This Franchise Agreement dated March 1, 2017 (this "*Agreement*"), is made by and between **TexAmericas Center**, a political subdivision of the State of Texas ("*TAC*") and **Network USA, LLC**, a Louisiana Limited Liability Company ("*Network*") which agree as follows:

RECITALS

WHEREAS, Network has requested TAC to grant a franchise to enable Network to install, maintain, and use facilities in, through, along or under TAC's road rights-of-way and other real property in order to provide fiber optic and communications services to residents and business owners throughout the TAC East Campus of the Industrial Park; and

WHEREAS, subject to the terms and conditions set forth herein, the Parties hereto are desirous of entering into a non-exclusive franchise agreement, with Network providing fiber optic and communication services within the Franchise Area; and

WHEREAS, in order for Network to develop, construct, own and operate a fiber optic and communications system, it is necessary that Network have use of the roads, streets, avenues, lanes, boulevards, alleys, highways, sidewalks, rights of ingress and egress, and bridges located within the boundaries of the East Campus of the Industrial Park; and

WHEREAS, the Parties desire to set forth herein the terms and conditions regarding the grant of the Franchise;

NOW, THEREFORE, IT IS AGREED by and between TAC and Network as follows:

1. Definitions: The following definitions shall apply to this Agreement, including the foregoing Recitals.

"Distribution System" means the fiber lines and all facilities, equipment and materials of Network used or provided in connection with the fiber optic and communication services.

"Franchise" means the authorization, or renewal thereof, by TAC, whether such authorization is designated as a franchise, permit, license, resolution, contract, certificate or otherwise, authorizing the installation, construction, maintenance or operation of the Distribution System for the purpose of offering communication services to customers.

"Franchise Area" means (1) the East campus of the TexAmericas Industrial Park located on U.S. Highway 82 in Bowie County, Texas, adjacent to the City of Hooks, Texas, and being that certain tract or parcel of land containing approximately 8,867 acres conveyed by the United States of America to Red River Redevelopment Authority by Deed Without Warranty dated September 1, 2010, recorded in Volume 5898, Page 1 of the Real Property Records of Bowie County, Texas, together with such other real property conveyed by the United States of

America to TAC which is or was a part of the former Lone Star Army Ammunition Plant, and (2) the Central campus of the TexAmericas Industrial Park located South of U.S. Highway 82, and being that certain tract or parcel of land containing approximately 765 acres conveyed by the United States of America to Red River Redevelopment Authority by Deed Without Warranty dated March 25, 1999, and recorded in Volume 3072, Page 161 of the Real Property Records of Bowie County, Texas.

“Franchise Revenue” means all revenue desired or received by Network, directly or indirectly, from the sale of fiber optic and other communication services within the Franchise Area.

“Communication Services” shall mean the furnishing, distribution and sale of fiber optic, wire, wireless and related services.

“Right-of-Way” shall mean the surface of, and space above and below, any public street, highway, freeway, bridge, land path, alley, court, boulevard, sidewalk, parkway, way, lane, drive, circle, or other public rights-of-way, including, but not limited to, public utility easements, dedicated utility strips or rights-of-way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon now or hereafter held in fee simple title or any other lesser or conditional estate, grant or leasehold interest by TAC and where authorized by the appropriate authority any adjoining unincorporated areas and certain designated incorporated areas where applicable within the service area, which shall entitle Network to the use thereof for the purpose of installing, operating, repairing, and maintaining the communication lines.

2. Grant of Franchise:

A. TAC hereby grants to Network, its Affiliates, successors and assigns, the right, authority, privilege and franchise to erect, construct, operate and maintain a system of fiber optic and communication lines and all other necessary and appropriate equipment and facilities for the transmission and distribution of fiber optic and communication service in, upon, across, along and under the highways, streets, avenues, roads, alleys, lanes, ways, utility easements, parkways and other public grounds in the present or future limits of the Franchise Area and its environs, and to provide fiber optic and communication services within the Franchise Area and its environs, for the supplying and selling to the inhabitants, institutions, and businesses thereof; and for such purposes to construct, operate, maintain, renew, replace, repair, and extend all necessary fiber optic and service other appliances, fixtures and facilities as may be necessary for said purposes, to-wit, the transmission, institutional uses, and such other purposes for which it is or may hereafter be used. The Franchise herein granted and accepted is only intended to convey a limited right and interest. It is not a warranty of title or interest in the Rights-of-Way or other public property.

B. Written approval for the specific location of fiber optic and other communication lines and other necessary and appropriate equipment and facilities must be received from TAC prior to installation.

C.1. TAC reserves the right to lay, and permit to be laid, sewer, cable television, water, natural gas, telephone and other pipelines, cables and conduits, and to perform and permit to be performed any underground or overhead work that may be necessary or proper in, across, along, over, or under any street, alley, highway, easement, or public place occupied by Network. TAC shall be liable to Network only for any damage to the facilities to Network, the producing cause of which is the negligence of the TAC or its employees. TAC shall use reasonable efforts to minimize any disturbance of the facilities or operations of Network.

C.2. If TAC requires Network to adapt or conform its Distribution System, or in any way alter, relocate or change its property to enable any person, firm, corporation or entity (whether public or private), other than TAC, to use the public ways, Network shall be entitled to reimbursement from the person, firm, corporation or entity (the "*Third Party*") desiring or occasioning such change for any and all loss, cost or expense occasioned thereby. TAC shall require that any such Third Party shall enter into a written Reimbursement Agreement, on terms and conditions reasonably satisfactory to Network, as a condition precedent to granting approvals to the Third Party for the subject activity.

D.1. If, during the period of this Franchise, TAC shall elect to alter or change the grade or alignment of any street, alley or other public Right-of Way, or any water pipe, wastewater pipe, or any overhead or underground structure within the Franchise Area, so as to conflict with the facilities of Network, Network shall remove or relocate, as necessary, all of its facilities at its own expense; provided that such removal or relocation shall be within the Right-of-Way specified in the ROW Agreement. Schedules for this work shall be developed by designated representatives of TAC and Network. If such representatives cannot agree on the schedule, the Executive Director of TAC, after consultation with Network, shall establish a reasonable schedule. This schedule shall provide for a minimum of thirty (30) days to exist between the time the schedule is furnished to Network and the time that any specific work to be done by Network covered in the schedule is to begin.

D.2. Whenever any such project is funded, in whole or in part, with federal or state highway monies or grants, if the federal or state government or the grant provides compensation for utility adjustments, TAC shall request that compensation be provided to Network by the funding authority. If TAC receives such requested utility adjustment compensation, it shall promptly deliver same to Network.

3. Term: The term of this Agreement shall be a term of forty (40) years commencing on the Effective Date, and thereafter as long as Network, its affiliates, successors and/or assigns sell fiber optic and/or communication services within the Franchise Area.

4. Compensation To TAC: As full and complete compensation for the Franchise herein granted, Network shall pay to TAC a Franchise Fee in the amount of five percent (5%) of the Franchise Revenue. Payment shall be made on the last day of each calendar quarter, commencing when Network first invoices Customers receiving Communication Services. Said Franchise Fee shall become due and payable so long as Network shall provide and sell fiber optic services to Customers within the Franchise Area, or so long as this Franchise is in effect. With each payment of compensation, Network shall furnish to TAC a statement providing a

breakdown of the Franchise Revenue supporting the amount of the payment made. The interest on late payments shall be equal to the rate of interest set by Texas Public Utility Commission for customer deposits.

5. Review of Records. TAC may, if it sees fit, upon thirty (30) days prior written notice to Network review such of its books and records as is necessary to ensure compliance with the terms of this Agreement. Notwithstanding anything to the contrary set forth herein, Network shall not be required to disclose information that contains trade secrets or is proprietary or confidential in nature, nor disclose books and records of any Affiliate not obligated under this Franchise. TAC shall conduct any such review during normal business hours; provided that, such examination shall be no more frequent than once every six (6) Months. TAC agrees to maintain the confidentiality of any non-public information obtained from Network to the extent allowed by law. Network shall clearly identify information that it believes to be of a proprietary nature or confidential at the time the information is provided to TAC. TAC shall not be liable to Network for the release of any information TAC is required to release by law, subpoena, or court order. TAC shall provide notice to Network of any request for release of any information previously designated by Network as proprietary or non-public information prior to releasing the information so as to allow Network adequate time to pursue available remedies for protection. If TAC receives a request under the Texas Public Information Act that includes information previously designated by Network as proprietary or confidential information, TAC will request an opinion from the Texas Attorney General as to the confidential or the proprietary nature of the documents. TAC will also provide Network with a copy of this notification, and thereafter Network is responsible for establishing that an exception under the Texas Public Information Act allows TAC to withhold the information. Nothing herein shall be construed so as to prevent TAC from sharing Network information with TAC's employees, contractors or auditors as necessary to exercise TAC's rights under this Agreement with appropriate agreements from such persons to comply with the terms of this Agreement; provided that, TAC shall be responsible for any breach of the terms of this Agreement by its employees.

6. Construction and Maintenance: Network shall not cut or make an opening in any road or street without the prior written consent of TAC. If such consent is given by TAC, and Network shall have occasion to make an opening in any street or Right-of-Way for the purpose of laying, or repairing any of its facilities, it shall conduct its work in a careful and workman like manner, cause as little disturbance of traffic as reasonably possible, and restore the surface of such street or other public place to the same condition as before excavation or to a minimum standard as reasonably determined by the engineer designated by TAC as promptly as possible under the circumstances. Network, during the opening of such surface, shall properly guard and protect all openings and trenches. In the event that permanent asphalt or comparable surfacing material cannot be placed immediately upon completion of filling such excavation, Network shall level and maintain the surface until such time as permanent asphalt or comparable surfacing material can be placed. Network shall monitor and maintain such surface for a period of one year after completion of the work at such location. If Network fails to restore such surface to its normal condition, or to maintain said surface for a period of one year after completion of the work, the same may be repaired under the direction of the engineer designated by TAC and the reasonable and documented expense of such repair shall be paid by Network upon written demand.

7. Indemnity:

A. Network shall indemnify and hold TAC and its officers and employees harmless against any and all Liabilities found by a court of competent jurisdiction to be caused by the negligent act, error, or omission of Network, any agent, officer, director, representative, employee, affiliate or subcontractor of Network, or their respective officers, agents, employees, directors, representatives, while installing, repairing or maintaining facilities in any of the Rights-of-Way. The indemnity provided by this section does not apply to any Liabilities resulting from the negligence of TAC, its officers, employees, contractors or subcontractors.

B. If TAC and Network are found jointly liable by a court of competent jurisdiction, Liability shall be apportioned comparatively in accordance with the laws of the State of Texas without, however, waiving any governmental immunity available to TAC and without waiving any defenses of the Parties. This section is solely for the benefit of TAC and Network and does not create or grant any rights, contractual, or otherwise, to any other person or entity.

8. Liability Insurance: Network shall, at its sole cost and expense, obtain, maintain and provide throughout the term of this Agreement, insurance having limits of not less than the following:

Commercial General Liability:	Each occurrence \$1,000,000.00 General Aggregate \$2,000,000.00
Business Auto Liability:	Each accident \$1,000,000.00

9. Non-Exclusive Franchise: This Agreement is not exclusive, and nothing herein contained shall be construed so as to prevent TAC from granting other like or similar rights, or privileges and franchises to any other person, firm or corporation.

10. Beneficiaries of This Agreement: The rights granted by this Agreement inure to the benefit of Network and any parent, subsidiary or Affiliate now or hereafter existing as well as to its successors and assigns that may subsequently own and/or operate the Distribution System. Upon assignment, or other transfer of the Distribution System, the assignee or transferee assumes all obligations of Network hereunder and is bound to the same extent as Network hereunder. Network shall give TAC written notice within sixty (60) days of assignment.

11. Default, Remedies and Termination:

A. Events of Default. The occurrence at any time during the term of this Agreement, of any one or more of the following events, shall constitute an event of default under this Agreement:

- (1) With respect to Network, the failure of Network to pay the Franchise Fee when due under this Agreement within fifteen (15) Business Days of a written demand therefor; or

(2) A Party's breach or violation of any of the terms, covenants, representations or warranties contained herein or such Party's failure to perform any material obligation contained herein and such matter is not in dispute, which failure is not cured to the reasonable and commercially acceptable satisfaction of the other Party within thirty (30) Days from the date that such Party receives written Notice that corrective action is needed.

B. Remedies: The Performing Party shall be entitled to exercise any and all of the following cumulative remedies:

- (1) The commencement of an action against the Defaulting Party at law for monetary damages.
- (2) The commencement of an action seeking injunctive relief or the specific performance of any of the provisions that as a matter of equity are specifically enforceable.
- (3) Termination of this Agreement upon thirty (30) Business Days prior written notice to the Defaulting Party.

12. Public Purpose: All of the provisions contained in this Agreement are hereby declared to be for a public purpose, and are in the interest of the health, safety and welfare of the general public.

13. Notice: Any notices required or desired to be given from one Party to the other Party to this Agreement shall be in writing and shall be given and shall be deemed to have been served and received if (1) delivered in person to the address set forth below; (2) deposited in an official depository under the regular care and custody of the United States Postal Service located within the confines of the United States of America and sent by Certified Mail, Return Receipt Requested, and addressed to such Party at the address hereinafter specified; or (3) delivered to such Party by courier receipted delivery. Each Party may designate another address within the confines of the Continental United States of America for notice, but until written notice of such change is actually received by the other Party, the last address of such Party designated for notice shall remain such Party's address for notice.

TexAmericas Center
Attn: Executive Director/CEO
107 Chapel Lane
New Boston, Texas 75570

Network USA, LLC
Attn: JAMES R. DAVIS
3501 NW EVANGELINE HWY
CARENCRO, LA 70520

14. Governing Law: This Agreement is entered into in the State of Texas and shall be governed, interpreted, and construed in accordance with the laws of the State of Texas without regard to the conflicts of laws provisions thereof. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY PROCEEDINGS RELATING TO THIS

AGREEMENT. Venue for any proceedings arising out of this transaction shall be in Bowie County, Texas.

15. Future Amendments. This Agreement may be amended only by the mutual written consent of TAC and Network.

16. Limitation on Liability. The Parties' liability for damages is limited to direct, actual damages only, and neither Party shall be liable for lost profits or other business interruption damages, or special, consequential, incidental, punitive, exemplary or indirect damages, in tort, contract or otherwise, of any kind, arising out of or in any way connected with the performance, the suspension of performance, the failure to perform or the termination of this Agreement. Each Party acknowledges the duty to mitigate damages hereunder.

17. Parties Bound. This Agreement inures to the benefit of, and binds the parties to this Agreement and their respective successors and permitted assigns.

18. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be for all purposes an original, and all such counterparts shall constitute one and the same instrument. Delivery of an executed signature page of this Agreement in Portable Document Format (pdf) or by facsimile transmission shall be effective as delivery of an executed original counterpart of this Agreement.

19. Army Imposed Restrictions. This Agreement is granted and made subject to and Network (Grantee) agrees to be bound by all exceptions, restrictions and reservations by the United States of America, acting by and through the Secretary of the Army ("Army" or "Grantor"), in that certain Deed Without Warranty dated September 1, 2010, and recorded in Volume 5898, Page 1 of the Real Property Records of Bowie County, Texas, including but not limited to the following:

CERCLA Post Transfer Discovery of Contamination:

1. If an actual or threatened release of a hazardous substance or petroleum product is discovered by the Grantee, its successors or assigns on the property after the date of this document, Grantee, its successors or assigns shall immediately secure the sight and notify the Grantor of the existence of the hazardous substance and Grantee will not further disturb such hazardous substance without the written permission of the Grantor.
2. Grantee acknowledges that due to the former use of the property as a part of an active military installation, undiscovered, unexploded ordinance ("UXO") may exist on the property. Grantee acknowledges that the Army has represented that it has made a complete and thorough search of its records since the inception of the installation and found no instance of ordinance or within the property, and the Army has further represented that the property was never used for detonations of ordinance. Should there be any UXO discovered after the date of this document, the Army has the obligation to locate and remove the UXO as expeditiously as is reasonable and practicable. The parties shall cooperate with the Army with regard to the location of an removal of UXO from the property, notify the Army as soon as reasonably possible after discovery of any

UXO on the property, and take no actions regarding UXO discovered on the property except as may be specifically directed by the Army.

[Signature Page to Follow]

EXECUTED this 10th day of March, 2017.

TEXAMERICAS CENTER

By: 
William Scott Norton,

Executive Director/CEO

NETWORK USA, LLC

By: 
Name: JAMES R. DAVIS

Title: PRESIDENT

PREPARED IN THE OFFICE OF:
JORDAN LAW FIRM, L.L.P.
#4 Woodmont Crossing
Texarkana, Texas 75503

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

BILL OF SALE

Date: March 1, 2017

Seller: TexAmericas Center, a political subdivision of the State of Texas acting herein by and through its duly authorized Executive Director/CEO

Seller's Mailing Address: 107 Chapel Lane
New Boston, Texas 75570

Buyer: Network USA, LLC

Buyer's Mailing Address: 3501 NW EVANGELINE HWY
CARENCRO, LA 70520

Consideration: \$1.00 and other good and valuable consideration

Personal Property:

Approximately 19,700 linear feet of 12 Count Fiber Optic cable currently installed and located along the South boundary line of Oak Street, TAC East Campus Industrial Park, Hooks, Bowie County, Texas, together with any and all relays, boosters, amplifiers, and related attachments.

For value received, Seller sells and delivers the personal property to Buyer and warrants and agrees to defend title to the personal property to Buyer and Buyer's successors against all lawful claims, by, through, or under Seller but not otherwise.

WITH THE EXCEPTION OF THE WARRANTIES OF TITLE, INCLUDING THE WARRANTY THAT NO LIENS EXIST ON THE PROPERTY, SELLER HAS MADE NO AFFIRMATION OF FACT OR PROMISE RELATING TO THE PROPERTY THAT HAS BECOME ANY BASIS OF THIS BARGAIN, AND FURTHER, SELLER HAS MADE NO AFFIRMATION OF FACT OR PROMISE RELATING TO THE PROPERTY THAT IT WOULD CONFIRM TO ANY SUCH AFFIRMATION OR PROMISE. SELLER DISCLAIMS ANY WARRANTY OF FITNESS FOR ANY PARTICULAR PURPOSE WHATEVER WITH RESPECT TO THE PROPERTY. THE PROPERTY IS SOLD ON AN "AS IS" BASIS.

When the context requires, singular nouns and pronouns include the plural.

CONTINGENCY: THIS TRANSFER IS MADE BY TEXAMERICAS CENTER TO NETWORK USA, LLC CONTINGENT UPON NETWORK USA, LLC, PLACING SAID FIBER OPTIC LINE IN OPERATING CONDITION AND COMMERCIAL USE FOR OWNERS, LESSEES, TENANTS AND TAC UPON THE PREMISES OF THE TEXAMERICAS CENTER EAST CAMPUS INDUSTRIAL PARK, HOOKS, BOWIE COUNTY, TEXAS, WITHIN TWELVE (12) MONTHS FROM THE DATE OF THIS DOCUMENT. IF NETWORK USA, LLC HAS NOT PLACED SAID LINE IN COMMERCIAL USE WITHIN TWELVE (12) MONTHS FROM THE DATE OF THIS DOCUMENT, TITLE TO SAID FIBER OPTIC LINE SHALL AUTOMATICALLY REVERT TO TEXAMERICAS CENTER.

EXECUTED this 10th day of March, 2017.

TEXAMERICAS CENTER

By: 
Scott Norton, Executive Director/CEO

STATE OF TEXAS

COUNTY OF BOWIE

This instrument was acknowledged before me on the 10th day of March, 2017, by Scott Norton, Executive Director/CEO of TexAmericas Center, a political subdivision of the State of Texas.


Notary Public, State of Texas

