

ORDINANCE NO. 1243

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, GRANTING TO XO COMMUNICATIONS SERVICES, LLC, ITS SUCCESSORS AND ASSIGNS, THE RIGHT, PRIVILEGE, AUTHORITY, AND NONEXCLUSIVE MASTER PERMIT, FOR FIVE YEARS, TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, AND REPAIR A TELECOMMUNICATION SYSTEM, IN, ACROSS, OVER, ALONG, UNDER, THROUGH, AND BELOW THE PUBLIC RIGHTS-OF-WAY OF THE CITY

WHEREAS, XO Communications Services, LLC, a limited liability company (the "Company") owns and operates a telecommunications system; and

WHEREAS, the City Council of Lake Forest Park (the "City") has previously approved Master Use Permits for the Company by adoption of Ordinance no. 1017 and Ordinance no. 1131. The later will expire October 1, 2022; and

WHEREAS, the Company desires to obtain from the City a new Master Use Permit to continue to allow the Company to install, operate, and maintain a telecommunications system in the public rights-of-way of the City; and

WHEREAS, the City Council has the authority to grant Master Use Permits for the use of its streets and other public properties pursuant to RCW 35A.47.040, RCW Ch. 35.99, and Chapter 5.26 of the Lake Forest Park Municipal Code.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LAKE FOREST PARK, WASHINGTON, DO ORDAIN AS FOLLOWS:

Section 1. GRANT MUP. The City Council hereby grants a Master Use Permit to Company for a telecommunications system, with terms and conditions substantially as set forth in Exhibit A hereto. The initial term of the Master Permit shall be 5 (five) years commencing on the effective date of this Ordinance, after which time the Master Use Permit may be renewed or reinstated by ordinance of the City Council for a term determined by the City Council. This Master Permit is issued pursuant to Chapter 5.26 LFFMC, which is incorporated herein by reference. Further, the City Attorney is authorized to make non-substantive, administrative edits to the Master Use Permit.

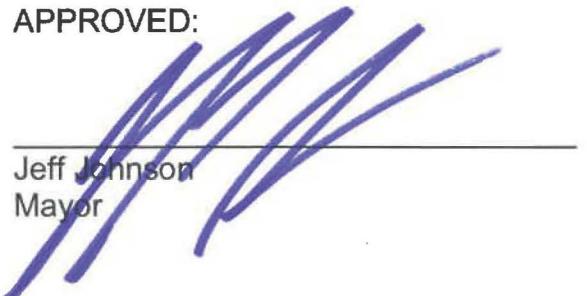
Section 2. SEVERABILITY. If any section, sentence, clause, or phrase of this Ordinance should be held to be invalid or unconstitutional by a court, the validity or constitutionality of any other section, sentence, clause, or phrase of this Ordinance shall not be affected, unless the rights, privileges, duties, or obligations hereunder are materially altered, whereupon either party may request renegotiation of those remaining terms.

Section 3. EFFECTIVE DATE. This ordinance, being an exercise of a power specifically delegated to the City legislative body, is not subject to referendum, and shall take effect five (5) days after passage and publication of an approved summary thereof consisting of the title.

APPROVED BY A MAJORITY of the Lake Forest Park City Council this 28th day of July, 2022.

APPROVED:

Jeff Johnson
Mayor



ATTEST/AUTHENTICATED:



Matt McLean, CMC
City Clerk

APPROVED AS TO FORM:



Kim Adams Pratt
City Attorney

Introduced: June 23, 2022
Adopted: July 28, 2022
Posted: August 2, 2022
Published: August 2, 2022
Effective: August 7, 2022

EXHIBIT A to Ordinance 1243

XO COMMUNICATIONS SERVICES, LLC MASTER USE PERMIT FOR OPERATION OF TELECOMMUNICATIONS FACILITIES WITHIN THE CITY OF LAKE FOREST PARK

WHEREAS, XO Communications Services, LLC, a limited liability company (the "Company"), owns and operates a telecommunications system; and

WHEREAS, the Company desires to install, operate, and/or maintain a telecommunications system in the public rights-of-way of the City of Lake Forest Park (the "City"); and

WHEREAS, the City Council has the authority to grant Master Permits for the use of its streets and other public properties for telecommunications facilities pursuant to RCW 35A.47.040, RCW 35.99.020, and Chapter 5.26 of the Lake Forest Park Municipal Code (the "LFPMC").

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

Section 1. Master Permit Granted. This Master Permit is issued pursuant to Chapter 5.26 LFPMC, which is incorporated herein by reference. Subject to the terms and conditions hereinafter set forth, and to approval by the City Council via Ordinance, the City grants to the Company a Master Permit for a telecommunications system for the purposes of providing fiber optic network for telecommunication services. The term of the Master Permit shall be as set forth in the Ordinance approving this Master Permit. This Franchise does not grant Grantee the right to install and/or operate Wireless Communication Facilities. As used herein, "Wireless Communication Facilities" means any unstaffed facility for the transmission and/or reception of radio frequency signals through electromagnetic energy usually consisting of an equipment shelter or cabinet, a support tower or other structures used to achieve the necessary elevation, and the transmission and reception devices or antenna. Any entity that seeks to install and/or operate such Wireless Communication Facilities must have an independent franchise to use the Public Ways outside of this Franchise. Further, this Franchise does not grant the right to offer cable services as defined in 47 U.S.C. Section 522(6).

This Master Permit grants to the Company the right, privilege, and authority to construct, operate, maintain, remove, replace, and repair all necessary facilities for the above-described telecommunications system, in, under, on, across, over, through, along, or below the public rights-of-way located in the City and shown on the map attached as Exhibit 1 hereto and incorporated herein by reference, as approved under City permits issued pursuant to applicable City codes and regulations. Any reference herein to a public right-of-way shall not be deemed to be a representation or guarantee by the City that its interest or other right to control the use of such property is sufficient to permit its use for such purposes, and this Master Permit shall be deemed to grant no more than those rights which the City may have the undisputed right and power to give.

This Master Permit does not convey any equitable or legal title to the public rights-of-way. The right granted is only the right to occupy public rights-of-way. This Master Permit does not grant a vested right for any facility to be located or to remain at any specific location in the public right-of-way and this Master Permit or consent to occupy any location in the public right-of-way is revocable and terminable at the lawful discretion of the City; and, if so revoked, the facility shall be removed at the cost of the Company in order to allow free and unencumbered use of the public right-of-way for public work or other public purpose as may be in the best public or municipal interest as determined by the City.

Section 2. Definitions.

“Administrator.” The City Administrator of the City of Lake Forest Park, or a designee of the Administrator.

“Engineer.” The Public Works Director or designee authorized to administer this Master Permit.

“Public Works Director.” The appointed Public Works Director of the City of Lake Forest Park, or the designee of the Public Works Director.

Other terms. Unless otherwise defined, terms used in this Ordinance shall have the meaning set forth in Chapter 5.26 LFPMC.

Section 3. Non-Exclusive Master Permit. This Master Permit is non-exclusive, and the City reserves the right to grant other or further Master Permits or franchises in, along, over, through, under, below, or across any of its public rights-of-way. This Master Permit shall in no way prevent or prohibit the City from using any of its public rights-of-way or other public properties or affect its jurisdiction over them or any part of them, and the City shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, and dedication of same, including the dedication, establishment, maintenance, and improvement of all new rights-of-way, thoroughfares, and other public properties of every type and description.

Section 4. Compensation.

A. Per RCW 35.21.860, the Company shall compensate the City for its costs related to receiving and approving its Master Permit, including the costs associated with the City’s legal costs incurred in drafting and processing this Master Permit. Company shall pay all costs of publication of this Master Permit and any and all notices prior to any public meeting or hearing in connection with this Master Permit. Company shall pay the reimbursements per this section 4.A upon acceptance of this Master Permit. No permits shall be issued for the installation of Facilities until such time as the City has received payment.

B. The Company shall pay the costs to process any subsequent right-of-way permits issued pursuant to this Master Permit, other permits required under the LFPMC, the costs

of inspecting plans and construction pursuant thereto, or the cost of the preparation of a detailed statement pursuant to Chapter 43.21C RCW.

1. Costs shall be billed to the Company in the manner and at the rates provided in a resolution adopted by the City Council.

2. Fees must be paid within 30 days of receipt of the City's billing.

3. On request of the Company, the City will submit proof of any charges or expenses incurred. For any project or time frame, the Company can request a written estimate from the Administrator, in advance of costs planned to be expended by the City, and the Company may object to any costs by filing written protest with the Administrator. The Administrator shall decide the protest within five business days, and the decision shall be the final decision of the City.

B. The Company shall compensate the City for its actual incremental costs necessarily incurred on City public works projects because of the presence of Company's telecommunications system in the right-of-way.

1. Fees must be paid within 30 days of receipt of the City's billing; thereafter, amounts due shall bear interest at 6% per annum.

2. On request of the Company, the City will submit proof of such incremental costs.

3. Before commencing work, the City shall notify the Company of its proposed project, and the incremental costs the City estimates will be incurred. The Company may object to any cost estimates by filing written protest of the cost estimate with the Administrator. The Administrator shall decide the protest within five business days, and the decision shall be the final decision of the City. In the event unforeseen costs are actually incurred by the City, the City shall bill such costs to the Company and such costs shall be paid within 30 days of receipt of the City's billing. The Company may object to any unforeseen costs by filing a written protest with the Administrator. The Administrator shall decide the protest of any unforeseen costs within five business days, and the decision shall be the final decision of the City.

C. Company hereby warrants that its operations as authorized under this Master Permit are those of a telephone business as defined in RCW 82.16.010, or service provider as defined in RCW 35.21.860. As a result, the City will not impose a franchise fee under the terms of this Master Permit. The City hereby reserves its right to impose a franchise fee on Company if Company's operations as authorized by this Master Permit change such that the statutory prohibitions of RCW 35.21.860 no longer apply, or if statutory prohibitions on the imposition of such fees are removed. In either instance, the City also reserves its right to require that Company obtain a separate Master Permit for its change in use. Nothing contained herein shall preclude Company from challenging any such new fee or separate agreement under applicable

federal, state, or local laws.

Section 5. Conditions governing use of public rights-of-way.

A. Before any work is performed in the public right-of-way, the Company shall obtain a right-of-way permit in accordance with Chapter 12.04 LFPMC. An application for a right-of-way permit by the Company shall be approved or disapproved within thirty days of the date of the filing of a complete application. A right-of-way permit shall incorporate the requirements of this Master Permit and Chapter 5.26 LFPMC in addition to the requirements of Chapter 12.04 LFPMC.

B. Except as expressly provided otherwise, any act that the Company, its contractors or subcontractors are required to perform under this section shall be performed at their cost. If the Company fails to perform work that it is required to perform within the time provided for performance specified within the right-of-way permit, the City may perform the work and bill the Company therefore. The Company shall pay the amounts billed within 30 days.

C. Construction Procedures and Placement of Facilities – Obligation to Minimize Interference with Use of Public Rights-of-Way.

1. The construction, operation, and repair of communications facilities are subject to the supervision of all of the authorities of the City with jurisdiction over such matters and shall be performed in compliance with all laws, ordinances, departmental rules and regulations affecting such system.

2. The construction, operation, and repair shall be performed in a manner consistent with high industry standards. Persons engaged in the construction, operation, or repair of communications facilities shall exercise reasonable care in the performance of all their activities and shall use commonly accepted methods and devices for preventing failures and accidents that are likely to cause damage, injury, or nuisance to the public or to property or interfere with traffic or the use of adjoining property. All work performed by the Company or its contractors shall be accomplished in a safe and competent manner. The Company shall comply with all applicable safety regulations during construction as required by the ordinances of the City or the laws of the State of Washington.

3. Construction, operation, or repair of a communications system shall not commence until all required permits have been properly filed for and obtained from the proper City officials and all required permits and associated fees paid and bonds or other performance security provided. In any permit so issued, the City may impose as a condition of the granting of the permit such conditions and regulations as may be necessary to the management of the rights-of-way, including, by way of example and not limitation, for the purpose of protecting any structures in the public rights-of-way, for the proper restoration of such public rights-of-way and structures, and for the protection of the City and the public and the continuity of pedestrian and vehicular traffic.

4. Whenever a Company facility located in a right-of-way endangers property, health, or safety, or whenever necessary to temporarily restore communications system services that have been disrupted by storms, earthquakes, riots or other unexpected accidents the Company shall immediately take proper emergency measures, without first obtaining a permit as required by this Master Permit. However, the Company shall notify the City of the work no later than the next succeeding business day and apply for a right-of-way permit by the next business day; provided that the Company shall be required to conform any work performed before a right-of-way permit was issued and to perform any other work in accordance with the requirements of the permit.

If work related to facilities authorized by this Master Permit endangers property or the public's health and safety, the Public Works Director may direct the Company, at the Company's own expense, to take appropriate protective action, including compliance within a prescribed time. Unless otherwise notified in writing by the Company, the City shall notify the Company as follows: name: MCI One Call; emergency number 1-800-624-9675; local contact person Randal Schreur and cell/pager 206-472-0247. The Company must notify the City if the person(s) or contact information changes.

If the Company does not comply with such directions, or if immediate action is required to protect property or the public's health and safety, the City may take reasonable emergency measures, and the Company shall be liable to the City for the costs thereof.

5. The Company shall follow City-established requirements for placement of facilities in public rights-of-way, including the specific location of facilities in the public rights-of-way, and shall install facilities in a manner that minimizes interference with the use of the public rights-of-way by others. The City may require the installation of facilities at a particular time, at a specific place, or in a particular manner as a condition of access to a particular right-of-way; it may require a person using the rights-of-way to cooperate with others to minimize adverse impacts on the rights-of-way through joint trenching, joint use of facilities and other arrangements; it may deny access if the Company is not willing to comply with the City's lawful requirements that allows operator to provide its services; it may remove, or require removal of, any facility that is not installed in compliance with the requirements established by the City, or that is installed without prior City approval of the time, place, or manner of installation; and it shall charge the Company for all the costs associated with removal.

6. Upon order of the Administrator, all work that does not comply with this Master Permit, the approved plans or specifications for the work, or the requirements of Chapter 5.26 LFPMC or other applicable law shall be removed.

7. Unless otherwise agreed or provided in this Master Permit or a right-of-way permit, the Company shall be required to reimburse and hold harmless the City for any cost or expense reasonably incurred by the City in the planning, construction, installing, altering, or implementing any public work as a result of the construction or the presence in the public right-of-way of the facility of the Company.

8. The specific location within the right-of-way and the method of installing facilities underground or overhead will be subject to approval by the Engineer. Cutting of pavement in the public right-of-way shall be prohibited where the Engineer approves locating underground facilities in the unimproved portions of the right-of-way or in the sidewalk areas or requires alternative methods for undergrounding not requiring trenching or the cutting of pavement. Above ground facilities may be camouflaged using cover boxes that imitate trees or rocks.

9. Except to allow for compliance with state or federal law, cutting of pavement may be prohibited in a newly constructed or reconstructed street for a period of five years from the paving of such street or in a street where a trench was previously available for a period of three years from the date the trench was available. The City may require as a condition to the occupancy of the rights-of-way that communications facilities be located in existing underground ducts or conduits wherever the capacity exists; provided, however, the Engineer may in his or her discretion permit pot-holing (subject to conditions to alleviate the harmful effects) where conduit is to be placed underground by means of directional boring and the person seeking permission has provided evidence satisfactory to the Engineer that:

- a. Such pot-holing is necessary to avoid interference with existing utilities;
- b. Such pot-holing is the only reasonable alternative available to locate existing utilities; and
- c. Such pot-holing will result in little or no visual or other detrimental impact to the street.

10. Any and all public rights-of-way, public property, or private property that is disturbed or damaged during the construction, operation, repair or removal of a communications facility shall be promptly repaired by the Company. Public property and public right-of-way must be restored to the satisfaction of the City and to a condition as good as or better than before the disturbance or damage occurred and to the standards established on the approved plans, or permit conditions, whichever is greater. The Public Works Director shall have final approval of the condition of such streets and public places after restoration, such approval not being unreasonably withheld. All concrete encased monuments which have been disturbed or displaced by such work shall be restored pursuant to all federal, state, and local standards and specifications. The Company shall complete all restoration work promptly and promptly repair any damage caused by such work.

11. The Company shall continue to maintain the restored street area, which may consist of curb, gutter, sidewalk, pavement, or other restored appurtenances, in a condition as good as or better than the condition of the adjacent undisturbed area of the street for the life of the street when such maintenance or restoration is required as:

- a. A result of the restored street area being defective or otherwise inferior to the

adjacent undisturbed area of the street, or

b. A result of the presence of the facilities of the communications system operator until the restored area is repaved or reconstructed by a different party.

12. Tree trimming shall not be performed without the permission of the City and other affected authorities, and tree trimming must be performed in strict accordance with the City code.

13. Within 48 hours after notice from the City in accordance with Section 5.C.4, the Company shall remove any graffiti on any part of its communications system in the public rights-of-way. If the operator fails to do so, the City may remove the graffiti and bill the Company for the cost thereof.

D. Relocation and Abandonment of Facilities.

1. The Company shall, by a time specified by the City, protect, support, temporarily disconnect, relocate, or remove any of its property when required by the City by reason of traffic conditions; public safety; public right-of-way construction; public right-of-way repair (including resurfacing or widening); change of public right-of-way grade; construction, installation or repair of sewers, drains, water pipes, power lines, signal lines, tracks, or any other type of government-owned communications system, public work, public facility or improvement, or any government-owned utility; public right-of-way vacation; or for any other purpose where the work involved would be aided by the removal or relocation of the communications facility. Collectively, such matters are referred to below as the "public work."

a. Except in the case of emergencies, the City shall provide written notice describing where the public work is to be performed as soon as practical but at least 30 days prior to the deadline by which the Company must protect, support, temporarily disconnect, relocate or remove its facilities. The Company may seek an extension of the time to perform such tasks where they cannot be performed in 30 days or by the completion time specified even with the exercise of its best efforts, and such request for an extension shall not be unreasonably refused.

b. If the Company does not comply with the requirements of Chapter 5.26 LFPMC, and to the extent that this Master Permit or any applicable right-of-way permit does not provide otherwise, and if not prohibited by applicable law, the City shall have the right to revoke any right of the Company to have its facilities remain at a specific location in the public right-of-way whenever the City determines that the facilities of the Company must be removed from their present location in order to facilitate a public work in the public right-of-way; and upon revocation of the Master Permit, license or right-of-way permit of the Company, the Company shall remove the same and restore the public right of way at its cost.

2. If any person that is authorized to place facilities in the rights-of-way requests the Company to protect, support, temporarily disconnect, remove, or relocate its facilities

to accommodate the construction, operation, or repair of the facilities of such other person, the Company shall, after 30 days' advance written notice, take action to effect the necessary changes requested. Unless the matter is governed by a valid contract or a state or federal law or regulation, the reasonable cost of the same shall be borne by the person requesting the protection, support, temporary disconnection, removal, or relocation and at no charge to the City, even if the City makes the request for such action on behalf of such party.

3. The Company shall, on the request of any person holding a valid permit issued by a governmental authority, temporarily raise or lower its wires to permit the moving of buildings or other objects. The expense of such temporary removal or raising or lowering of wires shall be paid by the person requesting the same. The Company shall be given not less than seven days' advance notice to arrange for such temporary wire changes.

4. The Company may abandon and surrender its Master Permit to the City on six months' written notice to the Administrator, with copies served on the mayor and City attorney. Abandonment shall be subject to acceptance by the City, by a resolution of acceptance adopted by the City Council. Upon abandonment, non-renewal, revocation or expiration of this Master Permit, and if no extension is granted, the Company may, at the discretion of the Administrator, be required, in part or entirely, to remove all its fiber, wire, poles, fixtures, and other facilities or equipment installed or used in the enjoyment of the Master Permit. Alternatively, the Administrator may direct, limit or condition the Company's removal, sale or continued use or abandonment of grantee's facilities and equipment, either by agreement or through means of any other lawful municipal power or right. The City may continue to invoke any provision of this Master Permit against the Company or any successor entity enjoying de facto Master Permit privileges after revocation or expiration. The City may take all other actions deemed necessary and proper by the City to accommodate the transition to any successor as may be in the best interests of the City and its residents.

E. Every communications facility shall be subject to the right of periodic inspection by the City to determine compliance with the provisions of this Chapter 5.26 LFPMC, this Master Permit and any right-of-way permit, and other applicable law. The City shall have the right, upon request, to be notified and be present when the communications system is inspected by the Company to determine compliance with the provisions of Chapter 5.26 LFPMC, this Master Permit, any right-of-way permit, or applicable law where the City has enforcement authority. The Company shall respond to requests for information regarding its system and plans for the system as the City may from time to time issue, including requests for information regarding its plans for construction, operation and repair and the purposes for which the plan is being constructed, operated, or repaired to the extent such plant is or will be in the public right-of-way or has been or will be provided under this Master Permit or any right-of-way permit granted by or requested from the City.

F. The Company, if it places facilities underground, shall be a member of the regional notification center for subsurface installations and shall field mark the locations of

its underground communications facilities upon request. The Company shall locate its facilities for the City at no charge. The Company shall reasonably cooperate with City initiatives to coordinate underground fixture locations and installations. The Company shall be familiar with Chapter 19.122 RCW, Washington State's "Underground Utilities" statute. The Company shall certify that it understands local procedures, custom and practice relating to facilities locating, and shall ensure that its contractors or others working in the right-of-way on grantee's behalf are similarly well informed.

G. The Company shall recognize the City's right to preserve and control of the public right-of-way, particularly with respect to policies regarding the undergrounding of overhead lines for aesthetic reasons. Consistent with any general municipal undergrounding policy or program now or hereafter developed, the City reserves the right to require the Company's participation in municipally imposed undergrounding or related requirements as may now or hereafter arise, as a condition of the operator's new installation or major maintenance or restoration construction activities of overhead facilities under this franchise. The Company shall coordinate its underground installation and planning activities with the City's underground plan and policies; provided, in no event shall any third-party beneficiary rights be implied or created. Nothing in this section shall be permitted in conflict with RCW 35.99.060, and the provisions of this section shall be applied in conformity thereto.

H. The Company may request reimbursement from the City as provided in RCW 35.99.060(3)(a)-(c) and if so requested the City shall make reimbursement as provided therein.

I. Plans for and Publicizing Work.

1. Work shall be publicized as the City may direct from time to time to notify the public and operators of other communications systems, of the impending work, to minimize inconvenience and disruption to the public and to allow for cooperative construction and for joint use of trenches and facilities.

2. The Company shall provide the City a plan for any initial system construction, or for any substantial rebuild, upgrade or extension of its facility, which shall show its timetable for construction of each phase of the project, and the areas of the City that will be affected.

3. The Company shall supply and maintain updated, at no cost, any information requested by the Administrator to coordinate municipal functions with the operator's activities and fulfill any municipal obligations under state law. The Administrator may request information concerning an installation inventory, location of existing or planned facilities, maps, plans, and as-built drawings of the operator's installations in the City. The information may be requested either in hard copy and/or electronic format compatible with the City's data base system. The Company shall keep the Administrator informed of its long-range plans for coordination with the City's long-range plans.

4. The Company shall maintain accurate maps and improvements plans which

show the location, size, and a general description of all facilities installed in the public rights-of-way and any power supply sources (including voltages and connections). Maps shall be based upon post-construction inspection to verify location. The Company shall provide a 24-inch by 36-inch map to the City showing the location of its facilities, in such detail and scale as may be directed by the Engineer. New system maps shall be promptly submitted to the City when the facility expands or is relocated. Copies of maps shall be provided on disk, in a commercially available electronic format specified by the Engineer or in such alternate form as approved by the Engineer.

5. The Administrator may when the City receives application for a permit to use a particular route, or on the Administrator's own initiative, designate by published order a route or proposed route for installation of communications facilities and may:

a. Require all persons who wish to place underground facilities along that route or any part thereof to install them during a specified period; and

b. To the extent allowed by law, otherwise prohibit placement of such facilities along the route or any part thereof for 36 months or for such other, longer period as is necessary to protect the public.

Section 6. Indemnification. The Company shall release, indemnify, and defend the City, its officers, employees, agents, and representatives from any and all claims, costs, judgments, awards, or liability to any person for injury or death of any person or damage to property caused by or arising out of the negligent acts or omissions of the Company, its agents, servants, officers, or employees, performed under authority of this Master Permit; provided, that for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Company and the City, its officers, employees, and agents, the Company's obligation shall be only to the extent of the Company's negligence. This indemnification includes claims by the Company's own employees for which the Company might otherwise be immune under Title 51 RCW, and the Company waives its immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

Inspection or acceptance by the City of any work performed by the Company at the time of completion of construction shall not relieve the Company of any of its obligations under this Section.

If a court or other tribunal agreed upon by the parties determines that the Company wrongfully refused the tender of defense in any suit or any claim made pursuant to this indemnification provision, the Company shall pay all of the City's costs for defense of the action, including all expert witness fees, costs, and attorney's fees, including costs and fees incurred in recovering under this indemnification provision.

Section 7. Insurance. The Company shall procure and maintain for the duration of the Master Permit, insurance against claims for injuries to persons or damages to

property which may arise from or in connection with the exercise of the rights, privileges, and authority granted hereunder to the Company. The Company shall provide a blanket additional insured endorsement, including the City as an additional insured as its interest may appear under this Agreement, upon execution of this Master Permit Ordinance, and such endorsement shall evidence a policy of insurance that includes:

A. Commercial General Liability Insurance to Cover Liability Bodily Injury and Property Damage. The above referenced endorsement shall be as broad as (or better than) ISO endorsement CG 20 26 12 19. Exposures to be covered are: premises, operations, products/completed operations, and contractual liability. Coverage must be written on an occurrence basis, with the following limits of liability:

1. Bodily Injury.

Each occurrence: \$5,000,000.
Annual aggregate: \$10,000,000.

2. Property Damage.

Each occurrence: \$5,000,000.
Annual aggregate: \$10,000,000.

3. Personal and Advertising Injury.

Annual aggregate: \$3,000,000.

4. Contractors Pollution Liability

Each occurrence: \$2,000,000.
Annual aggregate: \$2,000,000.

4. Completed operations and products liability shall be maintained for two years after the termination of the master permit or license (in the case of the communications system owner or operator) or completion of the work for the communications system owner or operator (in the case of a contractor or subcontractor).

5. Property damage liability insurance shall include coverage for the following hazards: X- Explosion, C- Collapse, U- Underground.

B. Workers' compensation coverage as required by the Industrial Insurance laws of the State of Washington.

C. The Company shall maintain commercial automobile liability in the amount of \$5,000,000 combined single limit each accident for bodily injury and property damage covering all owned, non-owned, and hired vehicles use in connection with this Agreement

D. Upon receipt of notice from its insurer(s) the Company shall provide the City

with thirty (30) days' prior written notice of cancellation of any required coverage. Both the Commercial General Liability Insurance and the Commercial Auto Liability Insurance shall be endorsed to include the City as an additional insured as its interest may appear under this Agreement. Policies shall be issued by companies authorized to do business under the laws of the state of Washington. Financial ratings must be no less than "A-" in the latest edition of "Bests Key Rating Guide," published by A.M. Best Guide.

E. The City reserves the right, upon prior written notice to require any other insurance coverage it deems necessary depending upon the exposures. Further, in the event the Company is self-insured, the Company shall furnish proof of self-insurance and shall warrant to the City that its self-insurance meets the criteria defined in this Agreement. Further, the Company shall assume all liability for deficiencies in their self-insurance to the extent it fails to meet the terms outlined in this Agreement.

F. The Company shall require any contractors and subcontractors to obtain and maintain equivalent or greater coverage as required of the Company, and the Company shall have sole responsibility for determining the limits of coverage required to be obtained by contractors and subcontractors. The Company shall ensure that the City is an additional insured on each and every contractor and subcontractor's Commercial General liability insurance policy using an endorsement as least as broad as ISO CG 20 26.

Section 8. Modification. The terms and conditions of this Master Permit may be modified upon written agreement of the parties.

Section 9. Forfeiture and Revocation. If the Company willfully fails to comply with any provision of this Master Permit, or through willful misconduct or gross negligence fails to comply with any notice given the Company by the City under the provisions of this Master Permit, or if any of the provisions of LFPMC 5.26.090(D) apply, then this Master Permit may be revoked pursuant to LFPMC 5.26.090.

Section 10. Remedies to Enforce Compliance. In addition to any other remedy, the City may obtain a superior court order compelling the Company to comply with the provisions of this Ordinance and seek to recover damages and costs incurred by the City by reason of the Company's failure to comply. The pursuit of any right or remedy by the City shall not prevent the City from acting under Section 9.

Section 11. City Ordinances and Regulations. This Master Permit shall not prevent the City from adopting and enforcing all necessary and appropriate ordinances regulating the performance of the conditions of this Master Permit, including any valid ordinance made in the exercise of its police powers. The City retains its authority to control by reasonable regulations the location, elevation, manner of construction, and maintenance of Company's telecommunications system in the public rights-of-way, and the Company shall conform with all such regulations, unless compliance would cause the Company to violate other requirements of law. In the event of a conflict between the provisions of this Master Permit and any other ordinance(s) enacted under the City's police power, such other ordinance(s) shall take precedence.

Section 12. Cost of Publication. The cost of the publication of this Ordinance shall be borne by the Company.

Section 13. Acceptance. Unless extended by Ordinance, the Company shall have sixty (60) days after the passage and approval of this Ordinance to file with the City Clerk its unconditional written acceptance of this Master Permit; otherwise, the Company shall be deemed to have rejected this Master Permit.

Section 14. Survival. Sections 5, Conditions governing use of public rights-of-way, and 6, Indemnification, shall be in addition to any and all other obligations and liabilities the Company may have to the City at common law, by statute, or by contract, and shall survive the City's Master Permit to the Company for the use of the City rights-of-way. This Ordinance is binding upon the successors and assigns of the Company and all privileges, as well as all obligations and liabilities of the Company shall inure to its successors and assigns.

Section 15. Assignment.

A. This Master Permit shall not be sold, leased, assigned, or otherwise alienated without the express consent of the City, and no rule of estoppel shall be invoked against the City in case the City shall assert the invalidity of any attempted transfer in violation of this section. The City agrees not to withhold consent where the Company demonstrates that the requested assignment is in the nature of a change of name or a change in the nature of a reorganization or merger of or with an entity controlled by, controlling, or under the common control of the Company, there being no other change in the resulting entity's ability to meet its master permit obligations hereunder. Such consent may be granted by the City Administrator and this Master Permit may be administratively amended to reflect any such changes without the need for further City Council action or amendments to the adopting Ordinance.

B. The City reserves the right to invoke any or all provisions of this master permit upon the Company's successors or assigns, judgment creditors, or distributors of facilities or property used in enjoyment of privileges conferred herein, whether or not stated elsewhere, all without waiver of the right to withhold consent not expressly given of any such transfer and/or require a new master permit or license. This includes, but may not be limited to, requirements for filing or establishing with the City the insurance certificates, security fund and performance bond as required pursuant to this master permit and paying all direct costs to the City related to the transfer or assignment.

C. The Company shall not permit installations by others in the permitted areas, without written approval from the administrator. Such approval shall not be in lieu of a master permit or license or other requirements of the City. Whether or not permitted, the Company shall remain responsible for all third-party users permitted or allowed by the Company for compliance with this master permit. The intent of this provision is to require third parties, who might otherwise desire to use the Company's facilities, to also comply

with applicable City requirements regarding master permits or right-of-way permits.

Section 16. Notice. Any notice, except a notice under Section 5.C.4, required or permitted by this Master Permit must be sent to the addresses specified below. This Master Permit may be administratively amended to update this contact information as needed without the need for City Council action or amendments to the adopting Ordinance.

CITY OF LAKE FOREST PARK
City Administrator
17425 Ballinger Way N.E.
Lake Forest Park, WA 98155

XO COMMUNICATIONS SERVICES, LLC
Attn: Franchise Manager
600 Hidden Ridge, E02E102
Irving, TX 75038

Copy to:

Verizon Legal Department
Attn: Network Legal Team
1300 I Street, NW
5th Floor
Washington, DC 20005

Section 17. Venue and Jurisdiction. This Master Permit shall be construed in accordance with the laws of the State of Washington. Venue for any disputes arising out of this Master Permit shall be filed and adjudicated in either the United States District Court for the Western District of Washington or King County Superior Court.

Section 18. Work of Contractors and Subcontractors. The Company's contractors and subcontractors shall be licensed and bonded in accordance with state law and the City's ordinances, regulations, and requirements. Work by contractors and subcontractors is subject to the same restrictions, limitations, and conditions as if the work were performed by the Company. The Company shall be responsible for all work performed by its contractors and subcontractors and others performing work on its behalf as if the work were performed by the Company and shall ensure that all such work is performed in compliance with this Master Permit and applicable law.

Section 19. Term. The term of this Master Permit shall be as set forth in the Ordinance approving, renewing, or restating this Master Permit.

EXECUTED this _____ day of _____, 2022.

City of Lake Forest Park

**XO Communications Services,
LLC**

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____

Approved as to Form:

Kim Adams Pratt, City Attorney