

RESOLUTION NO. 54-2018

Approving an Agreement and Permit for and between XO Communications Services, LLC, a Delaware Limited Liability Company, to Operate and Maintain a Telecommunications System Within the City of Worthington Pursuant to and Subject to the Provisions of Chapter 949 of the Codified Ordinances of the City of Worthington.

WHEREAS, XO Communications Services, LLC, a Delaware Limited Liability Company, has requested authority to provide telecommunications services in the City of Worthington; and,

WHEREAS, the City of Worthington has enacted a comprehensive Right-of-Way Ordinance, Chapter 949 of the Codified Ordinances of the City of Worthington; and,

WHEREAS, City Council found the technical ability, and plan for services of XO Communications Services, LLC acceptable; and,

WHEREAS, XO Communications Services, LLC, has facilities within the community under a permit initially approved in 1996; and,

WHEREAS, the authority is nonexclusive; and,

WHEREAS, XO Communications Services, LLC has certified that the company meets the criteria of Section 949.05 of the Codified Ordinances of the City of Worthington for the issuance of a permit;

NOW, THEREFORE, BE IT RESOLVED by the Council of the Municipality of Worthington, County of Franklin, State of Ohio:

SECTION 1. That pursuant to Chapter 949 of the Codified Ordinances of the City of Worthington, an agreement between the City of Worthington and XO Communications Services, LLC, a Delaware Limited Liability Company as attached hereto and made a part hereof is hereby authorized and approved and the City Manager is hereby authorized and directed to execute said agreement on behalf of the City, upon approval thereof by the Director of Law.

SECTION 2. That the Clerk of Council be and hereby is instructed to record this Resolution in the appropriate record book.

Adopted October 1, 2018

/s/ Bonnie D. Michael  
President of Council

Attest:

/s/ D. Kay Thress  
Clerk of Council

**TELECOMMUNICATIONS AND UTILITY PERMIT FOR THE USE OF PUBLIC  
RIGHTS-OF-WAY WITHIN THE CITY OF WORTHINGTON, OHIO**

This Agreement is executed on this 2nd day of October, 2018, by and between XO Communications Services, LLC, a Delaware limited liability company, ("Company") and the City of Worthington, Ohio, an Ohio municipal corporation (the "City") pursuant to Resolution No. 54-2018 adopted by the Worthington City Council on October 1, 2018.

Now, therefore, in consideration of the foregoing and of the covenants, promises and conditions hereinafter set forth it is hereby agreed as follows:

- I. That the Company, a limited liability company, organized under the laws of the State of Delaware, its successors and assigns, is hereby granted the non-exclusive right, privilege and authority in accordance with the provisions of Chapter 949 of the Codified Ordinances of the City to acquire, construct, maintain and operate a telecommunications system and/or utility in the City in and under, above, across and along the streets, alleys, thoroughfares, public rights-of-way, public property and easements as the same now exist or may hereafter be laid out in the City, with minimum interference with the proper use of same, for the provision of all competitive telecommunications services as authorized by the Public Utilities Commission of Ohio.
- II. The Company shall construct and operate the telecommunications and/or utility system in accordance with all laws, ordinances, construction standards, governmental requirements, FCC technical standards and any other standards incorporated by reference. Nothing in this Agreement permits the Company to provide any other utility services or cable television services.
- III. The Company shall comply with the applicable requirements of Chapter 949 of the City Codified Ordinances.
- IV. The Company shall pay the annual permit fee as determined by City Codified Ordinances Section 949.07.
- V. The Company agrees that all contractors and subcontractors proposed for work on construction, installation, operation, maintenance and repair of the system shall be properly licensed under the laws of the state of Ohio and all City ordinances.
- VI. Subject to the final requirements of this Section VI, in those areas where telephone and electric services are provided by underground facilities, the Company shall place all new facilities underground. In all other areas, the Company agrees to use its Best Efforts (as defined in Chapter 949 of the City Codified Ordinances) to place all facilities in the City right-of-way underground except for equipment which is customarily placed on or above the ground in conjunction with underground transmission facilities. In addition, where the City Manager or his designee determine that such transmission facilities should not be located underground, the City Manager shall have the authority to relieve the Company of the requirement to do so. In making such a determination, the City Manager may take into account unusual circumstances or physical characteristics including but not limited to the existence of underground facilities which might interfere with the operations of the Company, topographical features or use requirements which may interfere with existing facility locations. The City Manager may also relieve the Company of the requirement to

locate transmission facilities underground when to do so in a particular circumstance would not be in the best interest of the City. The installation of above-ground locator wire markers is prohibited.

- VII. The rights, privileges and authority hereby granted shall not be effective prior to acceptance of this Agreement by the Company and the City and shall terminate three years from the date of acceptance.
- VIII. The Company shall, at its sole cost and expense, fully indemnify, defend and hold harmless the City, its officers, public officials, boards and commissions, agents and employees from and against any and all lawsuits, claims, causes of action, actions, liability, and judgments for injury or damages in connection with this permit, the Company system, and construction, installation, maintenance, and repair thereof.
- IX. Whenever in this Agreement the City or Company is referred to, such reference shall be deemed to include the respective successor or assign of either, and all rights, privileges, and obligations herein contained shall bind and inure to the benefit of such respective successor or assign, in which the predecessor of such successor or assign is divested of all such rights, privileges, or obligations, whether so expressed or not.
- X. The terms and provisions of this Agreement are joint and several, and the invalidity of any part shall not affect the validity of the Agreement.
- XI. If this permit involves the installation of small cell facilities or wireless support structures in the right of way, then the Company shall also comply with the applicable requirements of Chapter 955 of the City Codified Ordinances. In the case of any conflict between the requirements of Chapter 955 and Chapter 949 of the City Codified Ordinances, the provisions of Chapter 955 shall control.

*Sabrina J. [Signature]*  
Witness

*Paula Gabriel*  
Witness

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Witness

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Witness

Approved as to Form:

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Law Director, City of Worthington

XO COMMUNICATIONS SERVICES, LLC

By: *Robert J. Hayes*

Name: Robert J. Hayes

Title: Senior Manager Municipal Franchises

CITY OF WORTHINGTON

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

Name: \_\_\_\_\_

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