



Interoffice Memorandum

April 26, 2019

TO: Mayor Jerry L. Demings
and Board of County Commissioners

FROM: Mark V. Massaro, P.E., Director, Public Works Department

CONTACT PERSON: Christine N. Lofye, P. E., Manager
Traffic Engineering Division

PHONE NUMBER: (407) 836-7891

SUBJ: **Approval of Central Florida Expressway Authority (CFX) Temporary Right of Entry Permit**

The Traffic Engineering Division is requesting approval of a Temporary Right of Entry Permit for the Central Florida Expressway Authority (CFX). The Temporary Right of Entry Permit is needed to access a fiber optic pull box located at the interchange of CR 535 and SR 429 for traffic signal communication.

Staff recommends approval and execution of the Temporary Right of Entry Permit.

Action Requested: Approval and execution of Central Florida Expressway Authority Application for a Temporary Right of Entry Permit. District 1.

MVM/CNL/FY

Attachments

BCC Mtg. Date: May 21, 2019

**CENTRAL FLORIDA EXPRESSWAY AUTHORITY
APPLICATION FOR A TEMPORARY RIGHT OF ENTRY PERMIT**

PERMIT NO.:		COUNTY: Orange	
ROAD: SR429		CROSS STREET: CR535	
APPLICANT (Contractor)			
APPLICANT: (Name and Title)	Joseph W. Muniz, President		
COMPANY:	Advanced Cabling Solutions, Inc		
ADDRESS:	201 Reece Way Suite 1431		
CITY/STATE/ZIP:	Casselberry, FL 32707		
PHONE NO.:	407-339-6636		
E-MAIL:	d.muniz@acstraffic.net		
PERMITTEE (for whom Contractor works)			
PERMITTEE:	Orange County		
ADDRESS:	4200 S John Young Pkwy		
CITY/STATE/ZIP:	Orlando, FL 32839		
PHONE NO.:	407-836-7890		
EMAIL:	Hazem.El-Assar@ocfl.net		
<p>PERMITTEE and APPLICANT request permission to enter upon real property which they represent is owned by the Central Florida Expressway Authority ("CFX"), which ownership CFX will not confirm, for the limited purpose of engaging in the activity or performing the work described in the attached plans ("Permittee's Activity") within the area delineated therein ("CFX Property") and as described below.</p> <p>Location: SR429 / CR535 at the southbound off-ramp plaza</p>			
<p>Limited Purpose: <small>Installation of approx. 10 LF of 2" conduit between the man hole 429-19.6 SB and the stubbed conduit that was previously installed to the signal at SR 535 / SR 429 SB off-ramp. Installation of 12 SM fiber optic cable between the man hole 429-19.6 SB and the traffic signal at SR535 / SR 429 SB off-ramp (approx. 1200 LF).</small></p>			
Requested Term	Start Date:	Stop Date:	Duration: One Day
Attachments from Applicant:	<input checked="" type="checkbox"/>	Attachment A. Description of Location and Plans	
	<input checked="" type="checkbox"/>	Attachment B. Certificate of Insurance	
	<input type="checkbox"/>	Attachment C. Additional Insured Endorsement	
	<input type="checkbox"/>	Attachment D. Waiver of Subrogation Endorsement	
	<input type="checkbox"/>	Attachment E. Other:	
Attachment from CFX:	<input type="checkbox"/>	Attachment F. Certificate from GEC	

TERMS AND CONDITIONS

Based upon the above, Permittee and Applicant request a temporary non-exclusive right of entry permit to enter upon CFX Property limited to the area delineated in Attachment A for the limited purpose of Permittee's Activity and, as a condition of approval, agree to the terms and conditions set forth herein.

1. Permittee and Applicant represent and warrant that the information above is true, correct, and complete.
2. Photographs. Upon initial entry onto CFX Property and prior to commencing any activity or work within CFX's Property, Permittee or Applicant shall provide CFX with a minimum of six (6) photographs documenting the work area.
3. It is expressly stipulated that this Permit is a license for permissive use only and that the placing of utilities, wires, cables, pipes, or other structures or alterations, upon public property pursuant to this Permit shall not operate to create or vest any property right in said holder. In the case of non-compliance with CFX's

requirements or any other applicable requirements, any alterations to CFX Property shall be brought into compliance or removed from CFX Property at no cost to CFX. In the event of failure to so comply within the specified time by CFX, CFX may restore CFX Property and Permittee and Applicant shall be responsible for all removal and restoration costs. It is understood and agreed that the rights and privileges herein set out are granted only to the extent of CFX's title and interest in the land to be entered upon and used by the Permittee or Applicant, and the Permittee will, or will cause Applicant, at all times, and to the extent permitted by law, assume all risk of and indemnify, defend, and save harmless CFX and its officers, employees, and agents from and against any and all loss, damage, cost or expense arising in any manner on account of the exercise or attempted exercises by said Permittee or Applicant of the aforesaid rights and privileges. §§ 337.401(2), 337.402, 337.404, Fla. Stat. This paragraph shall survive the termination of this Permit.

4. General Conditions. Permittee and Applicant further agree to the following conditions:

- a. Permittee shall or shall cause its agent to apply for and obtain all necessary permits, including permits issued by or through the Florida Department of Transportation, and comply with all applicable laws, rules, ordinances, regulations, and CFX criteria, policies, and procedures.
- b. Under no circumstances may Permittee or Applicant block any CFX roadway or operation or impede or restrict the normal current or future operation of CFX or its Expressway System, as defined in Section 348.752, without the prior written consent and approval from CFX.
- c. No structures shall be permanently placed within CFX right-of-way.
- d. All work, materials, and equipment shall be subject to inspection and approval by CFX at any time.
- e. Permittee and Applicant shall ensure that Permittee's Activity does not interfere with the property and rights of a prior applicant or an existing structure, facility, utility, or use.
- f. If CFX determines that Permittee's Activity, in whole or in part, unreasonably interferes in any way with the convenient, safe, or continuous use, or the maintenance, improvement, extension, or expansion of the Expressway System, the Permittee and Applicant shall, upon receipt of oral or written notice, immediately alleviate the interference at no cost to CFX. As a condition to the issuance of this Application, Permittee and Applicant understand and acknowledge that in the event of such interference, CFX may require, in CFX's sole discretion, and Permittee and Applicant hereby agree to perform or cause to be performed, any of the following: (i) the removal or relocation of all structures, wires, cables, pipes, utilities, or other improvements within, under or over CFX's Property at no cost to CFX; (ii) immediate cessation of Permittee's Activity; (iii) restoration of CFX's property; or (iv) such other work that alleviates interference. Such corrective action or cessation of activity must be completed within the time frame stated in the notice from CFX. This paragraph shall survive the termination of this Permit.
- g. In the event Permittee or Applicant encounter any abnormal condition which may indicate the presence of a hazardous substance, toxic waste, or pollutants, the Permittee and Applicant shall immediately cease Permittee's Activity and notify CFX. Abnormal conditions may include discolored earth or groundwater, visible fumes or smoke, abnormal odors, excessively hot soil or water, tanks or barrels, or other conditions which appear abnormal. CFX shall notify the Applicant of any suspension or revocation of the Permit to allow for contamination assessment and remediation. Said suspension or revocation shall remain in effect until otherwise notified by CFX.

5. Special Conditions for Underground Activity.

- a. As-Built Documentation. Permittee shall provide As-Built documentation of the completed installation of Permittee's Activity within ninety (90) days of completion of Permittee's Activity. As-Built documentation shall include plans signed and sealed by a professional engineer licensed in the State of Florida as well as GIS Inventory data outlined in section 612 *GIS Inventory* of the CFX ITS Specifications.
- b. Locator Services. In connection with retention of any locator services, Permittee shall register or shall cause Applicant to register with the applicable Florida One Call agency per Chapter 556, Florida Statutes. Permittee, at its expense, will be responsible for performing utility locates for its improvements within CFX's right-of-way on behalf of any party needing such locates, to protect the systems from accidental cuts and dig-ups. Prior to performing a utility locate, Permittee shall coordinate with CFX staff listed below, and arrange a mutually convenient time for the utility locate in the presence of CFX. Permittee

understands and agrees that accidental cuts and dig-ups may occur causing damage to its improvements, and that Permittee is solely responsible for repairing such damage. No liability shall be imposed upon CFX attributable to mislocation of any improvement by any locator service. No liability shall be imposed upon CFX for any damage to improvements in, on, under or over CFX Property. This paragraph shall survive the termination of this Permit.

6. Coordination. The Permitted Activities shall be coordinated with CFX prior to the initiation of the activity. Coordination with CFX shall be accomplished through contact and cooperation with:

<u>Name/Title</u>	<u>Email</u>	<u>Telephone No.</u>
Steve Geiss, CFX Sr. Roadway Inspector	Steve.Geiss@CFXWay.com	407-467-8258

and _____
and _____
and _____

at least 72 hours in advance to assist in locating the existing CFX roadway lighting lines, fiber optic network lines, and any other underground improvements and to confirm no on-going maintenance in the area.

7. Restoration of Site; Final Site Inspection. Permittee and Applicant shall be responsible for any and all costs related to the Permitted Activities, including, but not limited to, installation, operation and removal and restoration of equipment on CFX Property. At Permittee's sole cost and expense, Permittee shall (or shall cause Applicant to) remove from CFX Property all materials generated during its activities within CFX Property and Permittee shall be fully responsible for the proper disposal of such materials in accordance with applicable laws, rules, ordinances and regulations. Additionally, Permittee agrees to (or agrees to cause Applicant to) promptly repair any and all damage to CFX Property caused by the Permitted Activities with specific attention to surface sod, concrete, and asphalt. Restoration of CFX Property shall be equal or superior to its present condition as nearly as may reasonably be possible. Upon completion of the Permitted Activities, including restoration, Permittee shall (or shall cause Applicant to) contact CFX staff listed above, who shall inspect the CFX Property and, if satisfied, issue a notice of satisfaction, which notice may be transmitted by electronic mail. Failure to obtain said notice of satisfaction may result in pursuit by CFX against Permittee, its contactors or agents for damages and costs associated with proper restoration of CFX Property. In the event of failure to restore CFX Property within the specified time, CFX may restore CFX Property and Permittee and Applicant shall be responsible for all removal and restoration costs. This paragraph shall survive the termination of this Permit.
8. Indemnification. Unless specifically prohibited or limited by statute, Permittee shall, or shall cause Applicant, to indemnify, defend and hold CFX (which used herein includes CFX and its past, present and future employees, officers and Board members and any of their successors and assigns) harmless and shall cause its contractors and agents to indemnify, defend and hold CFX harmless from and against any and all lawsuits, actions, proceedings claims, demands, losses, costs, expenses, fines, fees (including attorneys' fees at the trial or appellate level), judgments, liabilities, damages, injuries (including death) which arise from or may be related to the Permitted Activities or this Permit, including but not limited to construction, maintenance, use, or occupancy of CFX's Property or ingress and egress to or from CFX's Property, either directly or indirectly, and are caused in whole or in part by the acts, omissions or negligence of the Permittee or the Applicant, or their employees, contractors, or agents, excepting only those claims arising from the sole negligence of CFX, its officials, or employees. Legal counsel provided to CFX must be acceptable to CFX. This paragraph shall survive the termination of this Permit.
9. Sovereign Immunity. Nothing contained in this Permit shall be construed as a waiver or attempt at a waiver by CFX of its sovereign immunity under the Constitution, the Florida Statutes, and laws of the State of Florida. This paragraph shall survive the termination of this Permit.
10. Insurance Requirements. The Permittee shall, or shall cause the Applicant to, provide, pay for and maintain in full force and effect insurance outlined below for coverage at not less than the prescribed minimum limits of liability, covering the activities of Permittee and Applicant and those of any and all subcontractors (including officers, employees or agents of each and their successors). All insurance shall be provided through companies authorized to do business in the State of Florida and considered acceptable by CFX. Compliance

with the insurance requirements below shall not relieve or limit the Permittee's or Applicant's liabilities and obligations under this Permit. Failure of CFX to demand such certificate or evidence of full compliance with these insurance requirements or failure of CFX to identify a deficiency from evidence provided will not be construed as a waiver of the obligation to maintain such insurance. The acceptance of delivery by CFX of any certificate of insurance evidencing the required coverage and limits does not constitute approval or agreement by CFX that the insurance requirements have been met or the insurance policies shown in the certificates of insurance are in compliance with the requirements.

- a. The Permittee shall require or shall cause the Applicant to require all insurance policies in any way related to the Permitted Activities to include clauses stating each underwriter shall waive all rights of recovery, under subrogation or otherwise, against CFX. The Permittee shall require or shall cause the Applicant to require of sub-contractors, by appropriate written Agreements, similar waivers each in favor of all parties enumerated in this section. When required by the insurer, or should a policy condition not permit an endorsement, the Permittee or Applicant agree to notify the insurer and request that the policy(ies) be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or an equivalent endorsement. At the Permittee's or Applicant's expense, all limits must be maintained. **All insurance coverage required of the Permittee or Applicant shall be primary over any insurance or self-insurance program carried by CFX.**
 - b. Commercial General Liability: Shall be on an occurrence form policy for all operations including, but not limited to, Contractual, Products and Completed Operations, and Personal Injury. The limits shall be not less than One Million Dollars (\$1,000,000) per occurrence, Combined Single Limits (CSL) or its equivalent. CFX shall be listed as an additional insured utilizing an endorsement Form. **INITIAL** _____
 - c. Business Automobile Liability: Shall be on an occurrence form policy for all owned, non-owned and hired vehicles issued on ISO form CA 00 01 or its equivalent. The limits shall be not less than One Million Dollars (\$1,000,000) per occurrence, Combined Single Limits (CSL) or its equivalent. In the event the Permittee or Applicant do not own automobiles, the Permittee shall (and shall cause Applicant to) maintain coverage for hired and non-owned auto liability, which may be satisfied by way of endorsement to the Commercial General Liability policy or separate Business Auto Liability policy.
 - d. Workers' Compensation Coverage: Workers' Compensation and Employer's Liability Insurance shall be provided as required by law or regulation (statutory requirements). Employer's Liability insurance shall be provided in amounts not less than \$100,000 per accident for bodily injury by accident, \$100,000 per employee for bodily injury by disease, and \$500,000 policy limit by disease. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of CFX for all work performed by Permittee and Applicant, and their employees, contractors, agents and sub-contractors. **INITIAL** _____
 - e. **CHECK ALL APPLICABLE ADDITIONAL INSURANCE REQUIREMENTS**
 - _____ Railroad Insurance, as set forth in the attached Addendum, is required if the Location encompasses any part of a railroad track or facility.
 - _____ Pollution Legal/Environmental Liability Insurance (CPL), as set forth in the Addendum, is required for any activities involving or related to hazardous waste.
 - x _____ Excess Coverage in the amount of \$ 5,000,000 is required if the cost of Permittee's Activity or the potential impact to CFX is greater than the CGL coverage.
 - f. Prior to the expiration of the Certificate of Insurance, the Applicant shall provide CFX with a renewed Certificate of Insurance.
11. Assumption of Risk; Release. Permittee and Applicant, on behalf of their employees, contractors, and agents, assume the risk associated with any activities arising out of this Permit or on or around CFX Property. Permittee and Applicant, on behalf of themselves, their employees, contractors, and agents, hereby release CFX, its officials, officers, employees, contractors and agents from any and all liability, loss, claims, damages, costs and expenses of any nature in connection with any injury or damage to any person or any real or personal property which Permittee or Applicant and their employees, contractors, or agents may suffer or incur in connection with the Permitted Activities or this Permit. This paragraph shall survive the termination of this Permit.

12. Reservation of Rights. CFX expressly reserves all rights to pursue any claims it may have against Permittee or Applicant, their employees, contractors or agents for damages, violations, contributions and indemnity, or for any other losses which may have been caused by Permittee or Applicant, their employees, contractors, or agents within CFX Property. In the event that Permittee or Applicant fail to comply with the terms of this Permit, CFX has the right to immediately terminate the Permit upon oral or written notice. This paragraph shall survive the termination of this Permit.
13. Governing Law. All parties agree that this Permit and the contents thereof are to be interpreted and enforced pursuant to the laws of the State of Florida. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Permit or any provision hereof shall be instituted and maintained only in the courts of the State of Florida. The parties consent to the *exclusive* jurisdiction of the courts located in Orange County, Florida. This paragraph shall survive the termination of this Permit.
14. Notice. Except as otherwise provided in paragraphs 4 (general conditions), 7 (restoration of site, final site inspection), and 12 (reservation of rights), all written notices required to be delivered to the Permittee or the Applicant or CFX shall be delivered via certified mail return receipt requested to the respective parties at the following addresses: (a) with respect to the Permittee or the Applicant, to the address provided on page 1; and (b) with respect to CFX, to CENTRAL FLORIDA EXPRESSWAY AUTHORITY, 4974 ORL Tower Road, Orlando, FL 32807-1684, Attention: Chief of Infrastructure, with a copy to the same address, but to the Attention of CFX's General Counsel. This paragraph shall survive the termination of this Permit.
15. Authorized Signatories. Permittee and Applicant represent and warrant that the person signing below is duly authorized to sign this Application for Permit to which the Permittee and the Applicant and their employees, contractors, and agents will be duly bound.
16. Termination. This Permit is terminable at will by CFX. Unless terminated sooner, this Permit expires upon the earlier of: (a) the termination date; (b) completion of Permittee's Activity, including restoration; (c) expiration of the required insurance; or (d) written or oral notice by CFX.
17. The Parties agree that neither this Permit nor any memorandum or notice of the same shall be recorded in the Official Records of Orange County, Florida or any other County in the State of Florida.
18. This Permit does not take effect until it is fully executed by CFX in writing. The representations of staff are not binding.

IN WITNESS WHEREOF, the Permittee and the Applicant execute this Application for a temporary non-exclusive right of entry to enter CFX Property, subject to the terms and conditions herein.

Witnesses:

#1 - Signature: [Signature]
 Print Name: RAOUL MUNIZ

#2 - Signature: [Signature]
 Print Name: Luis RIVERA

APPLICANT: Advanced Cabling Solutions, Inc.

By signing below, I represent that I have the authority to bind Applicant.

Signature: [Signature]
 Print Name: Joseph W. Muniz
 Title: President
 Date: 2/18/2019

STATE OF FLORIDA)
 COUNTY OF Seminole)

The foregoing instrument was acknowledged before me this 18th day of FEB 2019, by JOSEPH MUNIZ, who is personally known to me or who has produced as identification and who did (did not) take an oath.

(SEAL)



[Signature]
 Notary Public

SHARYN L. BRADLEY
 Print Name

Witnesses:

#1 - Signature: Katie Smith
Print Name: Katie Smith

#2 - Signature: Jennifer Lara-Klimetz
Print Name: Jennifer Lara-Klimetz

PERMITTEE: ORANGE COUNTY, FL

By signing below, I represent that I have the authority to bind Permittee.

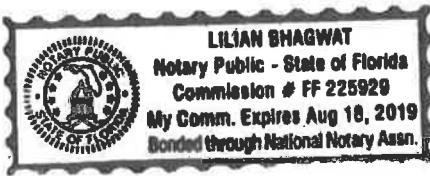
Signature: Byron W. Brooks
Print Name: Byron W. Brooks
Title: County Administrator
Date: 21 May 2019



STATE OF FLORIDA)
COUNTY OF Orange)

The foregoing instrument was acknowledged before me this 22 day of May 2019,
by Brook Byron FL, who is personally known to me or who has produced
as identification and who did (did not) take an oath.

(SEAL)



Lilian Bhagwat
Notary Public
Lilian Bhagwat
Print Name

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

Special Conditions: See attached.

In reliance upon the representations and commitments of Permittee and Applicant, including the terms and conditions above, CFX approves the Application for Temporary Right of Entry Permit and grants to Permittee and Applicant, and their employees and contractors, a temporary non-exclusive right to enter the CFX Property delineated in Attachment A for the sole and limited purpose of Permittee's Activity described in Attachment A, for the period

commencing on: 7/25/19 and expiring on: 8/19/19
Start Date and Time End Date and Time

By: [Signature] Date: 7/25/19
Chief of Infrastructure DIRECTOR OF ENGINEERING

APPROVED AS TO FORM: [Signature] Date: 7/25/19
General Counsel /Deputy General Counsel

ADDENDA

RAILROAD INSURANCE: When the Permitted Activities are on, over or under a railroad, railroad property or railroad right-of-way, the Permittee shall furnish, or shall cause Applicant to furnish, to CFX (for transmittal to the railroad company) an insurance certificate with the railroad named as the insured which (with respect to the operations the Permittee or Applicant or any of its subcontractors perform) will provide for Railroad Protective Liability insurance providing coverage for bodily injury, death and property damage of a combined single limit of Five Million Dollars (\$5,000,000.00) per occurrence, with an aggregate limit of Ten Million Dollars (\$10,000,000.00) for the term of the policy. The policy shall be written on the ISO/RIMA (CG 00 3S 11 85) with Pollution Exclusions Amendment (CG 28 31 11 85) endorsement deleting Common Policy Conditions (CG 99 01) if Common Policy Conditions are included in the policy and Broad Form Nuclear Exclusion (IC 00 21). CFX, its employees, members, officers, agents, consultants and successors shall be named as Additional Insured under this policy. A waiver of subrogation endorsement is required.

POLLUTION LEGAL/ENVIRONMENTAL LEGAL LIABILITY INSURANCE (CPL): The Permittee agrees to maintain, or to cause Applicant to maintain, Pollution Legal/Environmental Legal Liability Insurance on a per-project basis. Coverage shall be for pollution losses arising from all activities arising from or related to the Permit. Coverage shall apply to sudden and gradual pollution conditions including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any watercourse or body of water, which results in Bodily Injury or Property Damage. If policy is written on a Claims Made form, a retroactive date prior to or equal to the effective date of the Permit is required, and coverage must be maintained for 3 years after termination of the Permit or "tail coverage" must be purchased. In the event the policy is canceled, non-renewed, switched to occurrence form, or any other event which triggers the right to purchase a Supplemental Extended Reporting Period (SERP) during the life of this contract the Permittee agrees to purchase, or cause the Applicant to purchase, the SERP with a minimum reporting period of not less than three years. Purchase of the SERP shall not relieve the Permittee or the Applicant of the obligation to provide replacement coverage. Coverage should include and be for the at least the minimum limits listed below:

- 1) Bodily injury, sickness, disease, mental anguish or shock sustained by any person, including death; property damage including physical injury to or destruction of tangible property including the resulting loss of use thereof, clean-up costs, and the loss of use of tangible property that has not been physically injured or destroyed;
- 2) Defense including costs, charges and expenses incurred in the investigation, adjustment or defense of claims for such compensation damages.
- 3) Cost of Cleanup/Remediation.

Limits: Each Occurrence - \$ 2,000,000; General Aggregate - \$ 4,000,000

For acceptance of Pollution Legal/Environmental Legal Liability coverage included within another policy coverage required herein, a statement notifying the certificate holder must be included on the certificate of insurance and the total amount of said coverage per occurrence must be greater than or equal to the amount of Pollution Legal/Environmental Legal Liability and other coverage combined. If the CGL and CPL policy is issued by the same issuer, a total pollution exclusion shall be attached to the Permittee's or Applicant's CGL policy and an appropriate premium credit provided from the issuer to the Permittee or Applicant. CFX, its employees, members, officers, agents, consultants and successors shall be named as Additional Insured under this policy. A waiver of subrogation endorsement is required.

Special Conditions

1. The Permittee shall inspect the Work regularly and at all significant times during construction in advance of final inspection by CFX. If there are deficiencies in the Work, the Permittee shall correct, or cause to be corrected, the deficiencies so that the Work will pass CFX's inspection.
2. If anything more than a shoulder closure per Index 102-612 is needed to complete the work, prior approval from CFX will be required.
3. No lane closures are permitted.
4. Coordinate any activities that impact the signalized intersection that impact the City of Winter Garden as necessary.