

FIBER OPTIC NETWORK CONNECTION POLICY

Department: Operations/Technology

Supersedes: n/a

Date of Board Approval: 9/8/2016

**A RESOLUTION OF THE
CENTRAL FLORIDA EXPRESSWAY AUTHORITY
ADOPTING AND APPROVING
A FIBER OPTIC NETWORK CONNECTION POLICY**

WHEREAS, the Central Florida Expressway Authority (“CFX”) has an extensive fiber optic network (“FON”) for its Expressway System; and

WHEREAS, CFX periodically receives requests from other governmental entities to connect into CFX’s FON by installing an access line, a portion of which may be on CFX’s property, to a splice location; and

WHEREAS, CFX is willing to accommodate such connection in the form of a revocable, non-exclusive license, subject to certain safeguards and limitations appropriate to a publicly owned and operated FON.

NOW, THEREFORE, BE IT RESOLVED BY THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY as follows:

Section 1. CONNECTION TO CFX’S FIBER OPTIC NETWORK. CFX may allow a governmental entity to utilize a portion of CFX’s FON, but only for transportation-related purposes, if the governmental entity completes the Application for Revocable, Non-Exclusive License for Access Line to Splice into CFX’s Fiber Optic Network attached hereto as Exhibit “A” and the terms set forth therein. Such usage shall be authorized by the Executive Director or the Chief of Technology/Operations, or his or her designee, and any revisions made to the Application must be approved by CFX’s General Counsel.

Section 2. CODIFICATION. This Policy shall be codified in CFX’s Index of Policy and Procedures.


Section 3. EFFECTIVE DATE. This Policy shall become effective upon adoption by the CFX governing Board.

ADOPTED this 8th day of Sept., 2016.



Welton G. Cadwell, Chairman

ATTEST:



Darleen Mazzillo
Executive Assistant

Approved as to form and legality



Joseph L. Passiatore
General Counsel

**APPLICATION FOR REVOCABLE, NON-EXCLUSIVE LICENSE FOR
ACCESS LINE TO SPLICE INTO CFX'S FIBER OPTIC NETWORK ("FON")**

Applicant: _____

Address: _____

Telephone Number(s): _____

Email Address(es): _____

Contact Person: _____

Telephone Numbers(s): _____ Email: _____

Required Attachments:

- ___ A. Approval by FDOT
- ___ B. Signed and Sealed Design Plans for Access Line
- ___ C. Footprint of Access Line
- ___ D. CFX's Application for Right of Entry

CFX'S EXCESS FOC STRANDS ALLOCATED TO FDOT

The Florida Department of Transportation ("FDOT") and CFX have entered into a Memorandum of Understanding ("MOU") dated November 14, 2003 regarding the use of unused conduit and fiber. According to the MOU, FDOT may share a portion of the fiber optic strands allocated by CFX to FDOT (in the white buffer) to third parties, but only for transportation related purposes including traffic, regional traveler, and multi-modal information and data, so long as: (i) the third parties indemnify CFX and FDOT for losses attributable to interruption or for providing alternate communication facilities during the interruption of any CFX or FDOT fiber; (ii) CFX approves the plans and details through its application process; and (iii) the parties coordinate.

**APPROVAL BY FDOT FOR USE OF CFX'S EXCESS STRANDS
ALLOCATED TO FDOT**

Applicant has contacted FDOT and requested permission to use a portion of the excess strands allocated to FDOT. Specifically, Applicant has requested permission to use the following:

<u>Road Section</u>	<u>Strands</u>
_____	_____
_____	_____
_____	_____
_____	_____

A copy of FDOT's response authorizing Applicant to use of the above-described portion of the excess strands in lieu of FDOT ("Excess Strands") is attached hereto as **Attachment "A."**

DESCRIPTION OF ACCESS LINE LOCATION AND AREA OF CONSTRUCTION

A. Description of Construction Activities and Access Line. Applicant seeks to engage in those construction activities addressed in and subject to CFX's Application for Right of Entry, referred to as the "Project," to install an access line ("Access Line") at the precise location described in the design plans signed and sealed by a professional engineer licensed in the State of Florida, attached as **Attachment "B"**, with a precise footprint ("Access Line Footprint") depicted in **Attachment "C."** The location of the Access Line is generally described as follows:

B. Requested Splice Location. Applicant requests permission to connect the Access Line to the Excess Strands at the following location ("Splice Location"):

A separate application should be completed for each Splice Location unless the Splice Locations are sufficiently related and CFX agrees to the use of only one application for multiple Splice Locations.

TERMS AND CONDITIONS

Based upon the above, Applicant hereby requests a revocable, non-exclusive license for the Access Line within the precise location described in the Access Line Footprint to connect to the Excess Strands described above at the Splice Location listed above, and in consideration for the license, agrees to the terms and conditions set forth herein.

1. Access Line. The description and location of the Access Line are true, correct, and complete.

1.1. Specifications for Access Line. The Access Line shall be placed and maintained in accordance with the requirements and specifications of current editions of the CFX Intelligent Transportation Systems ("ITS") Design Standards and Specifications available online at www.CFXway.com/DoingBusinessWithUs.aspx, Utility Accommodation Manual ("UAM"), National Electrical Code ("NEC"), the National Electrical Safety Code ("NESC"), the applicable rules and regulations of the Occupational Safety and Health Act ("OSHA"), and any governing authority having jurisdiction over the subject matter. Where a difference in specifications exists, the more stringent shall apply. Applicant's facilities shall not physically, electronically or inductively interfere with CFX's FON, CFX's right of way, or other facilities.

1.2. Conditions. Applicant agrees to the following:

1.2.1. Neither the Access Line nor the Project shall interfere with the property and rights of a prior Applicant or an existing structure, facility, utility, or use.

- 1.2.2. Under no circumstances may Applicant block any CFX roadway or operation or impede CFX in its normal functions without the prior written consent and approval from CFX.
- 1.2.3. No pullboxes or other surface structures shall be placed within CFX right-of-way without express written approval from CFX.
- 1.2.4. At its sole cost and expense, Applicant shall 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, and regulations.
- 1.2.5. All work, materials, and equipment shall be subject to inspection and approval by CFX at any time. Making periodic inspections or the failure to do so shall not operate to impose upon CFX any liability of any kind whatsoever nor relieve Applicant of any responsibility, obligations or liability assumed under this Application.
- 1.2.6. CFX has no responsibility for the Project, the Access Line, Applicant's improvements or conduits within the Access Line, or the Excess Strands.

1.3. Approval by CFX. To assure compatibility with CFX's FON, the general type of cable and construction standards must be approved by CFX. CFX will in its discretion furnish to Applicant written material, which will specify and explain the required construction or materials.

1.4. Placement and Installation of Access Line. The Access Line shall be located only within the Access Line Footprint. The exact fibers within the Excess Strands where Applicant's Access Line may enter and exit CFX's FON are specified above and in **Attachment "A."** Applicant shall not use or splice into any other fibers, strands, cables or conduits on CFX's FON. Applicant acknowledges and understands that any damage or interference with other conduits on CFX's FON is unacceptable. CFX makes no representation regarding the effectiveness of Applicant's method of splicing into CFX's FON or operability of the Excess Strands. Clearing obstructions, repairs, dig-ups and any other work required to install Applicant's Access Line shall be done at Applicant's expense by Applicant, and shall not be CFX's responsibility.

1.5. As-Built Documentation. Applicant shall provide As-Built documentation of the completed installation of the Access Line within ninety (90) days of completion. 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.

1.6. Revocable, Non-Exclusive License. It is expressly agreed that the approval of this Application for a revocable, non-exclusive license for an Access Line described in **Attachment "C"** to splice into the Excess Strands on CFX's FON described above and in **Attachment "A,"** whichever is more restrictive, is a license for permissive use only and that the placing of utilities or FOC upon CFX's property shall not operate to create or vest any property right in said holder. Applicant may not use the Excess Strands for anything other than non-commercial, transportation-related purposes, including traffic, regional traveler, and multi-modal information and data. Applicant acknowledges it does not have an exclusive license and that CFX reserves the right to revoke the license at any time. In the case of non-compliance with CFX's requirements or any other applicable requirements, the license to use the Access Line, including the Excess Strands, is void and any alterations to CFX property will have to be brought into compliance or removed from CFX property at no cost to CFX. 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 Applicant, and Applicant will, 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 Applicant of the aforesaid rights and privileges.

1.7. No Property Interest. Nothing contained in this Application shall be construed to convey to Applicant any other right, title or other ownership or leasehold interest in CFX's FON, the Access Line, or Excess Strands. Applicant agrees that neither construction nor maintenance of fiber optic systems in the CFX right-of-way shall operate to create or vest any real property interest in the right-of-way.

1.8. Sublicenses Prohibited. Applicant shall not execute a sub-license (or other any other type of transfer, assignment or conveyance) with third parties. Sub-licenses are strictly prohibited.

1.9. Relocation or Alteration. CFX reserves the right to relocate or alter CFX's FON to accommodate modifications to CFX's Conduit System, CFX's FON, CFX's expressway system, or for any other reason. CFX shall provide 30-days written notice by email to Applicant of projects which impact the Access Line, the Excess Strands, or Applicant's fiber optic system. Applicant shall be responsible for all costs associated with disconnection of the Access Line.

1.10. Notice of Removal. Applicant shall provide CFX notice in writing as to the date on which it abandons use of the Excess Strands. Within ten (10) days of abandonment, Applicant shall coordinate a date and time with CFX so that CFX may monitor the disconnection of the Access Line at the Splice Location and Applicant shall disconnect the Access Line at the Splice Location in CFX's presence.

2. Construction: Right of Entry Application. In conjunction with this Application, Applicant has submitted a CFX Right of Entry Application for the construction activities associated with the Project attached as **Attachment "D."** CFX, in its sole discretion, has the right to approve or deny the Application in whole or in part.

3. Maintenance.

3.1. Applicant shall construct and maintain its Access Line in a safe condition, and in a manner reasonably acceptable to CFX so as not to physically conflict or electrically interfere with the facilities attached thereon or placed therein by CFX or other authorized users.

3.2. Coordination. Activities to be performed in connection with the Project or the Access Line shall be coordinated with CFX prior to the initiation of the activity. Coordination with CFX shall be accomplished through contact and cooperation with both Pat Collins at 407-690-5056 and Steve Geiss at 407-690-5335, at least 7-days in advance.

3.3. Access to CFX's Manholes/Handholes. CFX's Manholes/Handholes shall be opened only as permitted by CFX's authorized employees or agents. Applicant shall be responsible for obtaining any necessary authorization from appropriate authorities to open Manholes/Handholes and conduct work operations therein. Applicant's employees, agents or contractors will be permitted to enter or work in CFX's Manholes/Handholes only when an authorized employee or agent of the CFX is present or if prior authorization waiving this requirement is granted by CFX. CFX's employee or agent shall have the authority to suspend Applicant's work operations in and around CFX's Manholes if (in the sole discretion of said employee or agent) any hazardous conditions arise or any unsafe practices are being followed by Applicant's employees, agents or contractors or for reasonable cause. The presence of CFX's

authorized employee or agent shall not relieve Applicant of its responsibility to conduct all of its work operations in and around CFX's FON or CFX's right of way in a safe and workmanlike manner and in compliance with all laws, codes, rules, and regulations. Applicant shall comply with security directives and procedures promulgated by CFX.

3.4. Location of Access Line. In connection with retention of any locator services, Applicant shall register with the applicable Florida One Call agency. Applicant, at its expense, will be responsible for performing utility locates for its Access Line 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, Applicant shall **coordinate** with CFX per Section 3.2 and arrange a mutually convenient time for the utility locate in the presence of CFX. Applicant understands and agrees that accidental cuts and dig-ups may occur causing damage to the Access Line, and improvements therein, and that Applicant is solely responsible for repairing such damage within its Access Line that it owns and maintains. No liability shall be imposed upon CFX attributable to mislocation of the Access Line System by any locator service.

4. Annual License Fee. To offset the cost to CFX associated with this License, Applicant shall pay to CFX the greater of: (i) an annual charge of Two Thousand Dollars (\$2000.00) per connection to CFX's FON (the "Base Rate"), adjusted annually in accordance with the CPI Escalation provisions below provided. Within thirty (30) days of the Effective Date (with respect to the first year of the Initial Term) and on the anniversary date thereafter, Applicant shall pay CFX annually, in advance, the payment.

4.1. Invoices. Beginning with the second year of the Term, invoices for annual fees shall be sent to:

Name: _____

Address: _____

Email: _____

Telephone number: _____

4.2. Late Payment; Default. Failure by Applicant to pay all fees and charges within thirty (30) days of the due date shall constitute a default of this Application. All fees and charges not paid within such thirty (30) day period shall result in a late payment charge of one and one-half percent (1-1/2 %) of the unpaid balance for each month payment is outstanding.

4.3. CPI Escalation. Annually, on the anniversary of the Effective Date, the license fee shall be adjusted to an amount which is equal to the Base Rate multiplied by a fraction, the denominator of which is the CPI Index Number applicable to the Effective Date and the numerator is the CPI Index Number applicable to the relevant anniversary date of the Effective Date. The CPI Index Number shall mean the All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average, 1982-84 = 100 published by the U.S. Department of Labor, Base year applicable as of the Effective Date.

5. Term. This License is terminable at will by the CFX. Unless terminated sooner, this License will expire upon the earlier of: (a) 180-days notice of termination by CFX; (b) notice of abandonment by Applicant; (c) notice by FDOT that the Excess Strands are no longer available; (d) immediate termination for good cause; or (e) notice by CFX of a breach in CFX's

security policies or procedures or default by Applicant. Default shall consist of, but not be limited to, the following:

- 5.1. If Applicant knowingly uses its Excess Strands or maintains them in violation of any law or in aid of any unlawful act or undertaking or anything other than transportation related purposes as described herein; or
 - 5.2. If Applicant violates any applicable laws, statutes, ordinances, codes or other legal requirements with respect to this Application; or
 - 5.3. If any authorization required by any governmental or private authority for the construction, operation and maintenance of the Excess Strands is permanently denied or revoked; or
 - 5.4. If Applicant occupies or uses any portion of CFX's FON or CFX's expressway system without having first been issued a license or permit from CFX or obtaining written approval from CFX; or
 - 5.5. Non-payment of amounts described in this Application; or
 - 5.6. If, in CFX's discretion, Applicant, its employees, agents, contractors, operations, or facilities in any way threaten, disrupt, interfere with, pose a hazard to or otherwise affect, CFX's FON, CFX's telecommunications service or ability to provide that service, or CFX's expressway system; or
 - 5.7. If Applicant's acts or omissions, or Applicant's use of the Access Line, Excess Strands, Splice Location, or any maintenance or other work thereon interferes in a material and adverse way with CFX's operation and maintenance of its expressway system; or
 - 5.8. If Applicant's Access Line, Excess Strands, Splice Location, or any maintenance or other work thereon pose, or in CFX's discretion may pose, a significant threat to the life, health or safety of any person; or
 - 5.9. If Applicant violates the terms and conditions of this License.
6. Disputes. If construction or installation of the Access Line or use of the Excess Strands interfere with CFX duties or responsibilities, Applicant agrees that CFX's Chief of Technology Operations or the Manager of Traffic Operations have the right and authority to resolve all disputes involving traffic safety, construction, maintenance of traffic, maintenance within the CFX right-of-way, CFX's FON, the Access Line, the Excess Strands, the Splice Location, or security breaches that may occur by reason of this License. CFX maintains the right to delay or postpone any construction or maintenance activities due to disputes and shall notify the Applicant regarding such delays.
7. Indemnification; Cost to Repair. Applicant shall indemnify, defend and hold CFX and the Florida Department of Transportation ("FDOT"), including their officers, directors, employees, and agents, collectively referred to as "CFX" and "FDOT," harmless and shall cause Applicant's contractors and agents to indemnify, defend and hold CFX and FDOT harmless from and against any and all costs, expenses, fines, fees, penalties, claims, suits or proceedings (including attorneys' fees at the trial or appellate level), demands, liabilities, damages, injuries (including death) arising from their respective use of or work performed on or about CFX property, the Access Line, the Excess Strands, or the Splice Location, excepting only those claims arising from the sole negligence of CFX or FDOT. Applicant shall be responsible for the cost of repairing any damage to CFX's expressway system (including improvements thereon), CFX's FON, the Access Line, the Splice Location, or toll revenue

arising from their respective use of or work performed on or about CFX property, the Access Line, the Excess Strands, or the Splice Location, excepting only those claims arising from the sole negligence of CFX or FDOT.

8. Sovereign Immunity. Applicant hereto agrees that it shall be solely responsible for the wrongful acts of its employees, contractors and agents. Nothing contained in this Application for License 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.
9. Assumption of Risk; Release. Applicant assumes the risk associated with any activities arising out of this License, the Access Line or the improvements therein, the Excess Strands, or the Splice Location. Applicant, on behalf of itself, its employees, contractors, and agents, hereby releases 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 Applicant and its employees, contractors, or agents may suffer or incur in connection with this License, the Access Line or the improvements therein, the Excess Strands, or the Splice Location. Applicant expressly agrees that CFX is under no obligation to ensure the functionality of CFX's FON, in whole or in part.
10. **CFX PROVIDES NO WARRANTY OF OPERABILITY OR FITNESS OF PURPOSE OF CFX'S FON.**
11. **LIMITATION OF LIABILITY. IT IS UNDERSTOOD AND AGREED THAT CFX'S LIABILITY WHETHER IN CONTRACT, IN TORT, IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED THE LICENSE FEE PAID BY APPLICANT FOR ONE YEAR AND UNDER NO CIRCUMSTANCES SHALL CFX BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES. THE PRICE STATED FOR THE LICENSE IS A CONSIDERATION IN LIMITING CFX'S LIABILITY.**
12. Reservation of Rights. CFX reserves the right, in its sole and absolute discretion, to regulate and control access to CFX's rights-of-way, all portions of CFX's FON, and CFX's expressway system. Further, this Application does not provide Applicant any exclusive rights regarding the Access Line, access to CFX rights-of-way, nor preclude CFX from granting right-of-way access to others. CFX expressly reserves all rights to pursue any claims it may have against the Applicant, its employees, contractors or agents for damages, violations, contributions and indemnity, or for any other losses which may have been caused by the Applicant, its employees, contractors, or agents to CFX's expressway system (including improvements thereon), CFX's FON, the Access Line, the Splice Location, or toll revenue.
13. Governing Law. All parties agree that this Application for License 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 Application for License 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.

14. Notice. Except as otherwise provided in the paragraphs with the headings of: (a) Relocation or Alteration and (b) Maintenance, all notices required to be delivered to Applicant or CFX shall be delivered via certified mail return receipt requested to the respective parties at the addresses provided below:

14.1. With respect to Applicant: To the address provided on page 1.

14.2. With respect to CFX:

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
4974 ORL Tower Road
Orlando, FL 32807-1684
Telephone: (407) 690-5000
Attention: Chief of Technology

and

CENTRAL FLORIDA EXPRESSWAY AUTHORITY
4974 ORL Tower Road
Orlando, FL 32807-1684
Telephone: (407) 690-5000
Attention: General Counsel

15. Authorized Signatories. Applicant represents and warrants that the person signing below is duly authorized to sign this Application for License to which the Applicant and its employees, contractors, and agents will be duly bound.

16. The Parties agree that neither this Application for License 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.

17. Assignment. The rights granted herein shall not be assignable without the express, prior written consent of CFX.

18. Waiver. Failure of CFX to enforce or insist upon compliance with any of the terms or conditions of this Application or to give notice or declare this Application, or any provision granted hereunder, terminated shall not constitute a general waiver or relinquishment of any term or condition of this Application, but the same shall be and remain at all times in full force and effect. Any waiver must be in writing and signed by both parties.

19. This Application for License supersedes and cancels any other agreement, representation, or communication, whether oral or written, between or among the Parties relating to the Access Line, Excess Strands, or Splice Location contemplated herein, or the subject matter hereof.

20. Survival. The paragraphs on Indemnification and Notice of Removal survive the termination of this Application.
21. Applicant understands and agrees that this Application for License does not take effect until it is fully executed by CFX in writing and that Applicant cannot rely upon the representations of staff.

IN WITNESS WHEREOF, the Applicant executes this Application for License for a revocable, non-exclusive license for the Access Line within the precise location described in the Access Line Footprint to connect to the Excess Strands described above at the Splice Location listed above, subject to the terms and conditions above.

Witnesses:

APPLICANT:

First Witness

Name: _____

By: _____

By: _____

Print Name: _____

Print Name: _____

Second Witness

Title: _____

By: _____

Date: _____

Print Name: _____

STAFF REVIEW

Traffic Operations: _____	Date: _____
Engineering: _____	Date: _____

CENTRAL FLORIDA EXPRESSWAY AUTHORITY

In reliance upon the Applicant's representations and commitments, CFX approves the Application and grants a revocable, non-exclusive license for the Access Line within the precise location described in the Access Line Footprint to connect to the Excess Strands described above at the Splice Location listed above, subject to the terms and conditions above, effective on the last date of execution below.

By: _____ Date: _____
 Corey Quinn, P.E., Chief of Technology Operations

APPROVED AS TO FORM
 FOR RELIANCE BY CFX ONLY: _____ Date: _____
 General Counsel /Deputy General Counsel

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