

WHEN RECORDED MAIL TO:

Jordan Valley Water  
Conservancy District  
Attn: Property Manager  
8215 South 1300 West  
West Jordan, Utah 84088



ENT 30197:2023 PG 1 of 16  
**ANDREA ALLEN**  
**UTAH COUNTY RECORDER**  
2023 May 11 2:07 pm FEE 0.00 BY TM  
RECORDED FOR JORDAN VALLEY WATER

[PARCEL ID #58:021:0309]

### ENCROACHMENT AGREEMENT

This Encroachment Agreement is made as of April 27, 2023, between Jordan Valley Water Conservancy District, a Utah local district ("District"), and FirstDigital Telecom, LLC, a Utah limited liability company ("Company").

#### RECITALS:

A. The District holds an easement and right-of-way at or near 4600 West 2700 North in Lehi, Utah (collectively referred to as the "Easement/Right-of-Way," and described on attached Exhibit A) under authority of a written agreement, and it utilizes, or will utilize the Easement/Right-of-Way for constructing, installing, operating, maintaining, inspecting, repairing and/or replacing a water pipeline and related facilities;

B. The Company has requested permission to encroach upon the Easement/Right-of-Way of the District in a manner more particularly specified in this Agreement; and,

C. The property upon which the encroachment is located is further described on attached Exhibit B; and,

D. The District is willing to agree to the encroachment, upon the terms and conditions set forth in this Agreement.

**TERMS:**

The parties agree:

1. (a) The District hereby agrees to encroachment upon the Easement/Right-of-Way by the Company, but only to this extent and for this purpose: The Company may install, operate, and maintain three (3) one and one quarter inch (1.25") conduits to contain fiber optic cables (referred to as the "Encroachment Improvements"), as shown on attached Exhibit B.
- (b) By entering into this Agreement, the District is giving its consent for the Company to encroach upon the Easement/Right-of-Way held by the District. However, the District does not hold fee title to the real property within the Easement/Right-of-Way. Accordingly, the District does not warrant title to the underlying property, nor does the District represent or warrant that the Company's encroachment on or across the District's Easement/Right-of-Way: (i) is suitable for the Company's purposes; (ii) is allowed by the terms or conditions of the District's Easement/Right-of-Way agreement with those who hold fee title to the underlying real property; and, (iii) does not require the consent of others to

encroach upon the District's Easement/Right-of-Way, which consent may be withheld for any or no reason.

(c) This consent for encroachment is granted by the District only to the extent of, and with no actual or implied diminishment of, the District's rights and interests in the Easement/Right-of-Way and without any express or implied warranty of any kind.

2. The Company shall comply with the District's Guidelines for Encroachment upon the Easement/Right-of-Way as set forth in attached Exhibit C.

3. The Company and its contractor(s) and agent(s) shall perform all work within the Easement/Right-of-Way in accordance with the plans, drawings, guidelines, and/or maps set forth in Exhibit B, and in a manner satisfactory to the District.

4. If the installation, construction, operation, maintenance, repair, replacement or inspection of any structures, equipment, facilities or pipeline(s) of the District located, or to be located, in the Easement/Right-of-Way should be made more expensive by reason of the Encroachment Improvements or the activities of the Company, the Company shall pay to the District the full amount of such additional expense upon receipt of an itemized statement. The District has the right to remove any/all of the Encroachment Improvements without any liability to the Company for removal, damages, or any cost or expense, and the Company, at its sole expense and labor, may replace and/or re-install them within the Easement/Right-of-Way consistent with the terms of this Agreement.

5. The Company shall construct, install, use, maintain, repair and replace its Encroachment Improvements in such a manner as not to (i) damage or obstruct the District's structures, equipment, facilities and/or pipelines; or, (ii) interfere with the

installation, construction, operation, maintenance, inspection, repair or replacement of the District's structures, equipment, facilities and pipelines.

6. In consideration of the District agreeing to encroachment upon the Easement/Right-of-Way, the Company shall:

(a) Indemnify, defend and hold harmless the District, its agents, employees, officers, trustees, assigns and successors from and against all claims, demands, causes of action, liability or judgment of any kind, including attorney's fees and costs, which directly or indirectly arise from the negligence of the Company [or its agent(s) or contractor(s)], or from the existence, construction, installation, operation, maintenance, repair, replacement, condition, use or presence of the Encroachment Improvements within the Easement/Right-of-Way;

(b) Release the District and its agents, employees, officers, trustees, assigns and successors, from liability for all loss or damage of every description or kind whatsoever which may result to the Company from the construction, installation, operation, maintenance, inspection, repair and replacement of District structures, equipment, pipelines and facilities within the Easement/Right-of-Way, provided the loss or damage was not due solely to the negligence of the District; and,

(c) Hereby acknowledge that it accesses and uses the Easement/Right-of-Way at the Company's risk and hazard and, without limiting the generality of the foregoing, the Company agrees that the District shall not be responsible for any harm, damage or injury that may be suffered or incurred by the Company, its agents, employees, contractors, licensees, guests or invitees associated with the use or

condition of the Easement/Right-of-Way, except to the extent the harm, damage or injury was caused by the reckless or intentional misconduct of the District.

7. The Company and its contractor(s) and agent(s) shall comply with all applicable laws, ordinances, rules, and regulations enacted or promulgated by any federal, state, or local governmental body having jurisdiction over the Encroachment Improvements and/or the Easement/Right-of-Way.

8. The provisions of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties; provided, however, that no such successor or assign of the Company shall have the right to use, alter, or modify the Encroachment Improvements in a manner which will increase the expense or burden to the District of the Company's encroachment on the Easement/Right-of-Way.

9. (a) This Agreement, and the encroachment granted to the Company by this Agreement, shall terminate without further notice or condition if (i) the Company does not continuously use the Encroachment Improvements as intended by this Agreement for any twelve (12) month period; or, (ii) the Company breaches this Agreement.

(b) In the event of termination, the Company, at its expense, shall immediately remove the Encroachment Improvements from the Easement/Right-of-Way and restore the surface of the Easement/Right-of-Way to its pre-encroachment condition.

10. (a) The Company may assign this Agreement with the prior written consent of the District, which consent shall not be unreasonably withheld.

(b) The District may assign this Agreement.

11. This Agreement may be amended only by written instrument executed by all parties.

12. All of the grants, covenants, terms, provisions and conditions in this Agreement shall run with the land and shall be binding upon and inure to the benefit of the successors, assigns, heirs, executors and administrators of the parties.

13. This Agreement, including exhibits, constitutes the entire agreement of the parties and supersedes all prior understandings, representations or agreements of the parties regarding its subject matter.

14. Each individual executing this Agreement does hereby represent and warrant that he or she has been duly authorized to sign this Agreement in the capacity and for the entities identified.

15. The parties shall perform those acts and/or sign all documents required by this Agreement and which may be reasonably necessary to effectuate the terms of this Agreement.

16. Any party may record this Agreement.

"District":

Jordan Valley Water Conservancy District

Dated: 4-27-2023

By:

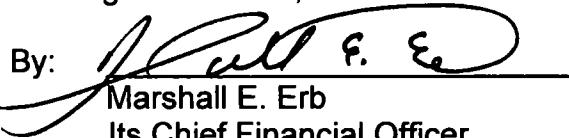
  
Alan E. Packard  
Its General Manager/CEO

"Company":

FirstDigital Telecom, LLC

Dated: 04/03/2023

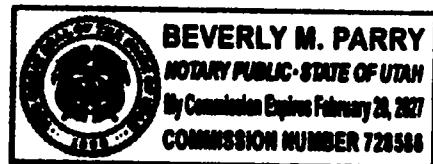
By:

  
Marshall E. Erb  
Its Chief Financial Officer

STATE OF UTAH )  
ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of April, 2023, by Alan E. Packard as General Manager/CEO of the Jordan Valley Water Conservancy District.

Beverly M. Parry  
Notary Public



STATE OF UTAH )  
ss.  
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of APRIL, 2023, by Marshall E. Erb as Chief Financial Officer of FirstDigital Telecom, LLC.

Marshall E. Erb  
Notary Public



## EXHIBIT A

## DESCRIPTION OF DISTRICT'S EASEMENT/RIGHT-OF-WAY

The District's easement and right-of-way includes the following:

## Central Pipeline Easement

A 50-foot wide permanent easement being part of an entire tract being located in the Southeast, Northeast and Northwest Quarters of the Northwest Quarter of Section 2, Township 5 South, Range 1 West, Salt Lake Base and Meridian, Utah County, Utah, described as follows:

COMMENCING at the northwest corner of Section 2, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North 89°32'52" East 1421.23 feet along the north line of said Northwest Quarter and South 01°59'10" East 16.51 feet to the point of BEGINNING and running; thence North 89°32'52" East 50.02 feet along the southerly right of way of 2600 North Street and the north line of said entire tract; thence South 01°59'10" East 206.21 feet to a point on a 190.00 feet radius curve to the right; thence southerly 84.97 feet along the arc of said curve through a central angle of 25°37'25", said arc having a chord bearing South 10°49'33" West 84.26 feet; thence South 23°38'15" West 150.20 feet to a point on a 110.00 feet radius curve to the left; thence southerly 117.79 feet along the arc of said curve through a central angle of 61°21'13", said arc having a chord bearing South 07°02'22" East 112.24 feet to a point being 10.00 feet perpendicularly distant westerly from the centerline of the Utah Lake Distributing Canal as described in a Notice of Right of Way recorded as Entry Number 30678:1984; thence parallel with said canal centerline the following six (6) courses: (1) South 37°42'58" East 49.40 feet to a point on a 190.00 feet radius curve to the right; (2) southerly 151.55 feet along the arc of said curve through a central angle of 45°42'00", said arc having a chord bearing South 14°51'58" East 147.56 feet; (3) South 07°59'02" West 175.20 feet to a point on a 410.00 feet radius curve to the left; (4) southerly 224.22 feet along the arc of said curve through a central angle of 31°20'00", said arc having a chord bearing South 07°40'58" East 221.43 feet; (5) South 23°20'58" East 584.93 feet; and (6) South 17°58'58" East 240.41 feet to the south boundary of said entire tract; thence South 89°50'41" West 52.52 feet along said south boundary to a point being 60.00 feet perpendicularly distant westerly from the centerline of said canal; thence parallel with said canal centerline the following six (6) courses: (1) North 17°58'58" West 221.99 feet; (2) North 23°20'58" West 582.59 feet to a point on a 460.00 feet radius curve to the right; (3) northerly 251.56 feet along the arc of said curve through a central angle of 31°20'00", said arc having a chord bearing North 07°40'58" West 248.44 feet; (4) North 07°59'02" East 175.20 feet to a point on a 140.00 feet radius curve to the left; (5) northerly 111.67 feet along the arc of said curve through a central angle of 45°42'00", said arc having a chord bearing North 14°51'58" West 108.73 feet; and (6) North

37°42'58" West 49.40 feet to a point on a 160.00 feet radius curve to the right; thence northerly 171.33 feet along the arc of said curve through a central angle of 61°21'13", said arc having a chord bearing North 07°02'22" West 163.26 feet; thence North 23°38'15" East 150.20 feet to a point on a 140.00 feet radius curve to the left; thence northerly 62.61 feet along the arc of said curve through a central angle of 25°37'25", said arc having a chord bearing North 10°49'33" East 62.09 feet; thence North 01°59'10" West 207.54 feet to the southerly right of way of said 2600 North Street and the point of BEGINNING, containing 99223 square feet or 2.278 acres.

## EXHIBIT B

## DESCRIPTION OF PROPERTY

The property upon which the Encroachment Improvements take place is described as follows:

Parcel No. 58:021:0309

COM N 0 DEG 8' 15" W 1573.74 FT & W 3785.45 FT FR E 1/4 COR. SEC. 2, T5S, R1W, SLB&M.; S 77 DEG 58' 22" W 43.86 FT; S 14 DEG 53' 37" W 105.24 FT; S 67 DEG 40' 42" W 93.01 FT; N 59 DEG 4' 11" W 154.75 FT; S 77 DEG 58' 22" W 646.42 FT; N 15 DEG 54' 2" W 96.22 FT; N 77 DEG 58' 22" E 646.94 FT; N 37 DEG 47' 38" E 160.83 FT; ALONG A CURVE TO R (CHORD BEARS: N 5 DEG 46' 40" E 35.51 FT, RADIUS = 567 FT); ALONG A CURVE TO L (CHORD BEARS: N 7 DEG 53' 58" W 222.48 FT, RADIUS = 417 FT); ALONG A CURVE TO R (CHORD BEARS: N 1 DEG 2' 21" E 399.22 FT, RADIUS = 483 FT); ALONG A CURVE TO L (CHORD BEARS: N 11 DEG 52' 14" E 195.81 FT, RADIUS = 417 FT); N 1 DEG 42' 30" W .48 FT; ALONG A CURVE TO L (CHORD BEARS: N 45 DEG 56' 29" W 20.93 FT, RADIUS = 15 FT); S 89 DEG 49' 32" W 981.73 FT; N 15 DEG 24' 22" W 52.34 FT; N 89 DEG 49' 32" E 1239.06 FT; S 0 DEG 10' 28" E 50.5 FT; S 89 DEG 49' 32" W 120.55 FT; ALONG A CURVE TO L (CHORD BEARS: S 44 DEG 12' 44" W 21.44 FT, RADIUS = 15 FT); ALONG A CURVE TO R (CHORD BEARS: S 12 DEG 1' 27" W 236.82 FT, RADIUS = 510 FT); ALONG A CURVE TO L (CHORD BEARS: S 1 DEG 2' 21" W 322.35 FT, RADIUS = 390 FT); ALONG A CURVE TO R (CHORD BEARS: S 7 DEG 53' 58" E 272.1 FT, RADIUS = 510 FT); ALONG A CURVE TO L (CHORD BEARS: S 6 DEG 32' 49" W 16.96 FT, RADIUS = 474 FT); S 40 DEG 58' 50" E 110.96 FT; ALONG A CURVE TO L (CHORD BEARS: S 5 DEG 28' 16" E 13.29 FT, RADIUS = 430 FT); N 77 DEG 58' 22" E 33.75 FT; S 7 DEG 56' 16" E 42.47 FT; S 18 DEG 46' 54" E 28.84 FT TO BEG. AREA 6.164 AC.

**EXHIBIT C**

**ENCROACHMENT IMPROVEMENTS**

## FirstDigital Telecom - JWVCD Bore Profile

JWVCD Note:

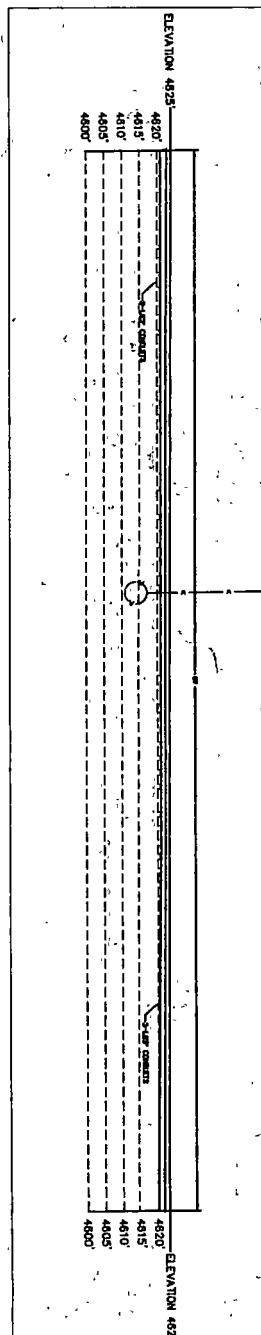
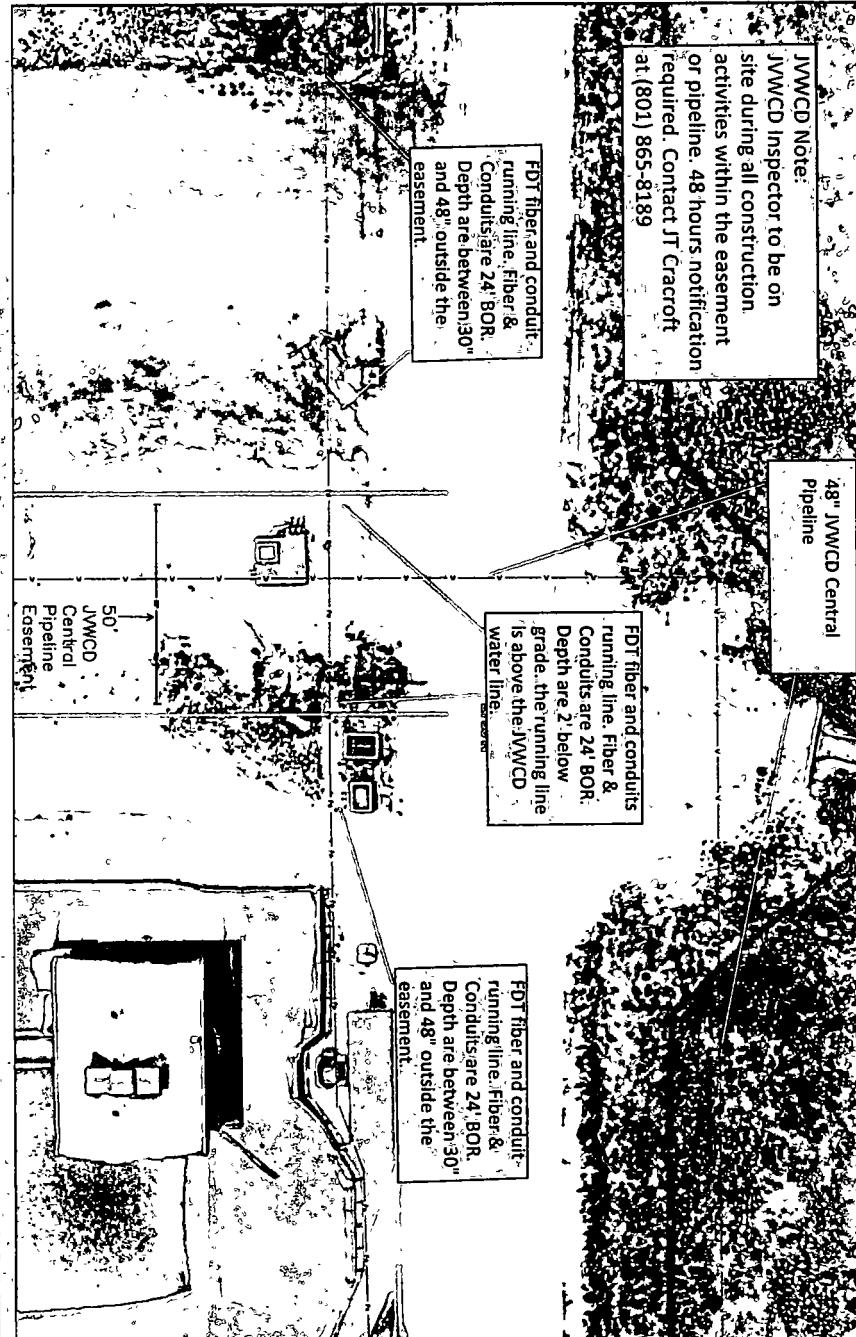
JWVCD Inspector to be on site during all construction activities within the easement or pipeline. 48 hours notification required. Contact JT Cracraft at (801) 865-8189

48" JWVCD Central Pipeline

FDT fiber and conduit running line. Fiber & Conduits are 24" BOR. Depth are between 30" and 48" outside the easement.

FDT fiber and conduits running line. Fiber & Conduits are 24" BOR. Depth are 2' below grade, the running line is above the JWVCD water line.

FDT fiber and conduit running line. Fiber & Conduits are 24" BOR. Depth are between 30" and 48" outside the easement.



SHEET #	1	PROJECT NAME: JWVCD Bore Profile 2700 N Redwood	OWNER: FIRST DIGITAL TELECOM	CALL BEFORE YOU DIG
SCALE: 1" = 25'	BASED ON 1/100 PAPER	LOCATION: Lehi, Utah	DATE: 1/25/2023	

## EXHIBIT D

## GUIDELINES FOR ENCROACHMENT

A. Surface structures that may be constructed within the District's Easement/Right-of-Way, but only upon the prior written consent of the District, include asphalt roadway, with no utilities within roadway; non-reinforced concrete parking lots, walkways and driveways, curb, gutter, sidewalk; and non-masonry fence with gated opening. However, where the District's facilities or pipeline(s) have specific maximum and minimum cover designations, the special requirements for structures crossing over the pipeline(s) shall be obtained from the District for the maximum allowable external loading or minimum cover. It is understood that all surface structures shall be analyzed and considered by the District on an individual basis.

B. Structures that may not be constructed in, on, over, across or along the District's Easement/Right-of-Way include, but are not limited to, permanent structures such as footings, foundations, masonry block walls, buildings, garages, decks, swimming pools and in-ground trampolines, as designated and characterized by the District.

C. No trees or vines are allowed within the Easement/Right-of-Way. Shrubs or hedges that reach more than six feet (6') in height at maturity and/or have extensive root systems are not permitted within the Easement/Right-of-Way.

D. All changes in ground surfaces or elevations within the Easement/Right-of-Way are considered encroaching structures. Earthfills and cuts on adjacent property shall not encroach onto the Easement/Right-of-Way without the prior written consent of the District.

E. Existing gravity drainage of the Easement/Right-of-Way shall be maintained.

No new concentration of surface or subsurface drainage may be directed onto, under or across the Easement/Right-of-Way without adequate provision for removal of drainage water or adequate protection of the Easement/Right-of-Way.

F. Prior to any construction within the Easement/Right-of-Way, an excavation must be made to determine the location of existing District facilities and pipeline(s). The excavation shall be made by or in the presence of the District, at the Company's expense.

G. All construction activities within the Easement/Right-of-Way shall be limited to construction of the Encroachment Improvements previously approved by the District, and the Encroachment Improvements shall be constructed strictly in accordance with the plans and specifications previously approved by the District.

H. The ground surfaces or elevations within the Easement/Right-of-Way shall be restored to the condition, elevation and contour which existed prior to construction or as shown on the plans, drawings, guidelines and/or maps set forth in Exhibit B.

I. The Company shall notify the District upon completion of construction and shall, at its expense, provide the District with one (1) copy of as-built drawings showing the actual location of the Encroachment Improvements within the Easement/Right-of-Way.

J. Following completion of construction of the Encroachment Improvements, and except in case of emergency repairs, the Company shall give the District at least ten (10) days written notice before entering upon the Easement/Right-of-Way for the purpose of accessing, maintaining, inspecting, repairing, or removing the Encroachment Improvements.

K. If unusual conditions are proposed for the Encroachment Improvements or unusual field conditions within the Easement/Right-of-Way are encountered, as designated and characterized by the District, the District may, at its discretion, impose conditions or requirements which are different from or more stringent than those prescribed in these Guidelines.

L. All backfill material within the Easement/Right-of-Way shall be compacted to ninety percent (90%) of maximum density, unless otherwise allowed or required by the District. Mechanical compaction shall not be allowed within six inches (6") of any of the District's facilities and pipeline(s). Mechanical compaction using heavy equipment, as designated and characterized by the District, shall not be allowed over District facilities and pipeline(s) or within eighteen inches (18") horizontally.

M. Backfilling of any excavation or around any facilities or pipeline(s) within the Easement/Right-of-Way shall be compacted in layers not exceeding six inches (6") thick to the following requirements: (1) cohesive soils to 90 percent (90%) maximum density specified by ASTM Part 19, D-698, method A; (2) noncohesive soils to 70 percent (70%) relative density specified by ANSI/ASTM Part 19, d-2049, par. 7.1.2, wet method.

N. To enable the District to locate non-metallic Encroachment Improvements below ground level, the Company shall install a "locator wire" as required by District specifications.

O. The Company shall notify the District at least forty-eight (48) hours in advance of commencing initial construction of the Encroachment Improvements in order to permit inspection by the District.

P. No encroachment shall involve the use or storage of hazardous material(s), as designated and characterized by the District.