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WHEN RECORDED MAIL TO:

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



ENT 150000:2021 PG 1 of 19  
ANDREA ALLEN  
UTAH COUNTY RECORDER  
2021 Aug 27 4:05 pm FEE 0.00 BY JR  
RECORDED FOR JORDAN VALLEY WATER CON

[PARCEL ID #38-591-0023]

ENCROACHMENT AGREEMENT

This Encroachment Agreement is made as of AUGUST 20<sup>th</sup>, 2021, between the 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 (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 them 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 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 a quarter inch (1.25") fiber optic innerducts (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: 8-24-2021

By: Barton A. Forsyth  
Barton A. Forsyth  
Its General Manager/CEO

“Company”:

FirstDigital Telecom, LLC

Dated: 8/20/2021

By: Maclain Drake  
Maclain Drake  
Its Permits Manager

STATE OF UTAH )  
 :ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 24<sup>th</sup> day of August, 2021, by Barton A. Forsyth as General Manager/CEO of the Jordan Valley Water Conservancy District.

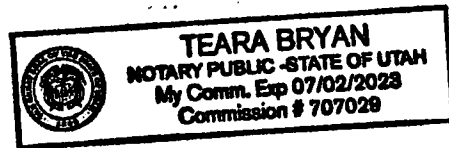
Beverly M Parry  
Notary Public



STATE OF UTAH )  
 :ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of AUGUST, 2021, by Maclain Drake as Permits Manager of FirstDigital Telecom, LLC.

Teara Bryan  
Notary Public



## EXHIBIT A

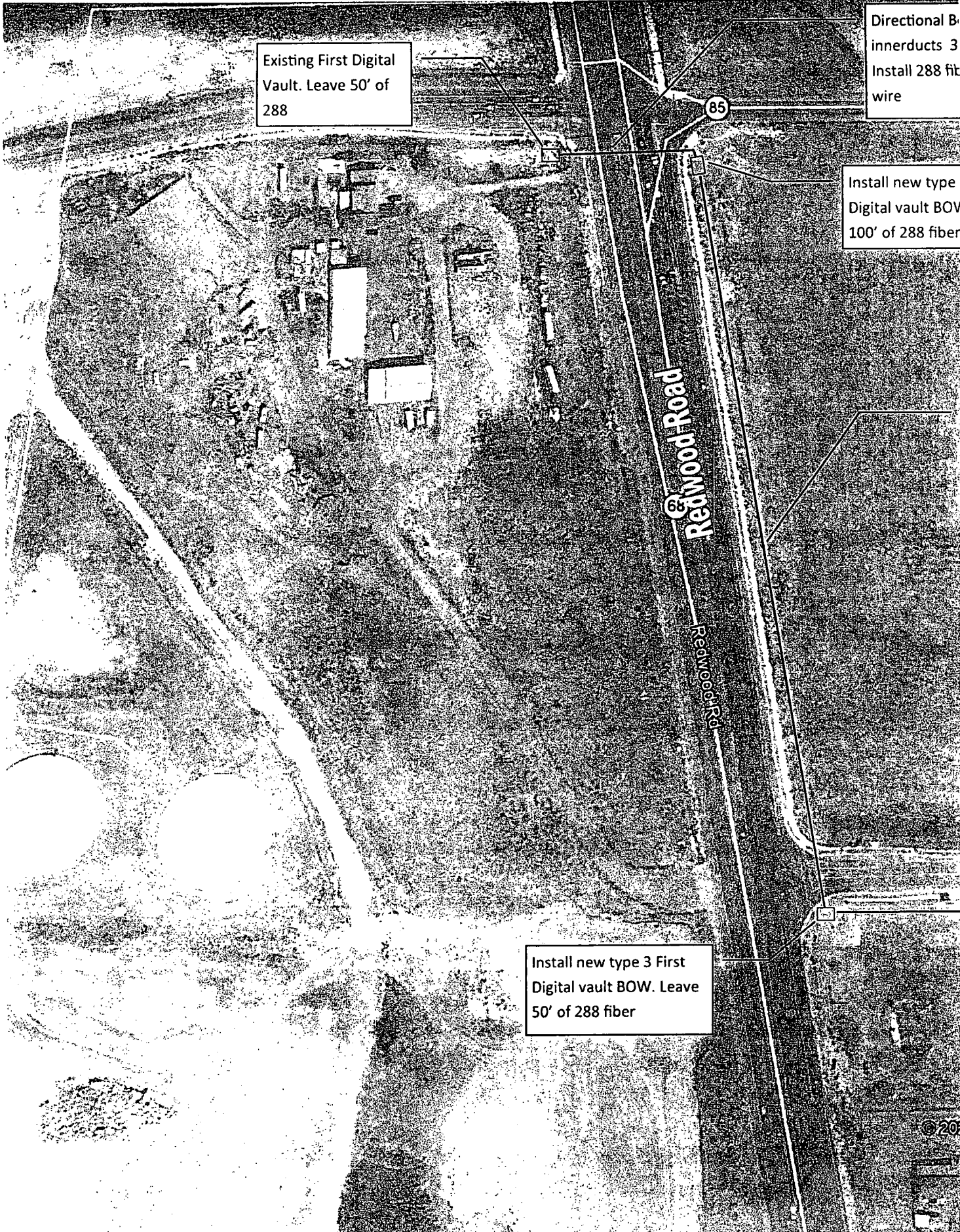
## DESCRIPTION OF DISTRICT'S EASEMENT/RIGHT-OF-WAY

A permanent easement being part of an entire tract being located in the Northeast Quarter of the Southwest 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 the Southwest Quarter of Section 2, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence North  $89^{\circ}32'18''$  East 1764.51 feet along the north line of said Southwest Quarter; thence South  $00^{\circ}16'32''$  East 228.44 feet to a point on the southerly right of way of 2100 North Street, Utah Department of Transportation Project MP-R399(41), and the north boundary of said tract, said point being the point of BEGINNING and running thence North  $84^{\circ}54'28''$  East 50.18 feet along said southerly right of way; thence South  $00^{\circ}16'32''$  East 112.53 feet to a point 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 four (4) courses: (1) South  $22^{\circ}45'02''$  West 377.88 feet to a point on a 410.00 feet radius curve to the left; (2) southerly 164.82 feet along the arc of said curve through a central angle of  $23^{\circ}02'00''$ , said arc having a chord bearing South  $11^{\circ}14'02''$  West 163.72 feet; (3) South  $00^{\circ}16'58''$  East 352.90 feet to a point on a 810.00 feet radius curve to the left; and (4) southerly 130.99 feet along the arc of said curve through a central angle of  $09^{\circ}15'56''$ , said arc having a chord bearing South  $04^{\circ}54'56''$  East 130.85 feet to a point on the north boundary of Lot 1, Country Mile Plat A subdivision, and the south boundary of said entire tract, said point being North  $00^{\circ}17'58''$  West 1328.81 feet along the east line of said Southwest Quarter and South  $89^{\circ}35'25''$  West 1011.27 feet along the north boundary of said Lot 1 from the south quarter corner of said Section 2; thence South  $89^{\circ}35'25''$  West 50.60 feet along said north boundary to a point on a nontangent 860.00 feet radius curve to the right, said point being 60.00 feet perpendicularly distant westerly from said canal centerline; thence parallel with said canal centerline the following four (4) courses: (1) northerly 131.04 feet along the arc of said curve through a central angle of  $08^{\circ}43'49''$ , said arc having a chord bearing North  $04^{\circ}38'53''$  West 130.91 feet; (2) North  $00^{\circ}16'58''$  West 352.90 feet to a point on a 460.00 feet radius curve to the right; (3) northerly 184.92 feet along the arc of said curve through a central angle of  $23^{\circ}02'00''$ , said arc having a chord bearing North  $11^{\circ}14'02''$  East 183.68 feet; and (4) North  $22^{\circ}45'02''$  East 367.70 feet; thence North  $00^{\circ}16'32''$  West 98.13 feet to the southerly right of way of said 2100 North Street and the point of BEGINNING, containing 56841 square feet or 1.305 acres.



**EXHIBIT B**  
**ENCROACHMENT IMPROVEMENTS**



Existing First Digital Vault. Leave 50' of 288

Directional B innerducts 3 Install 288 ft wire

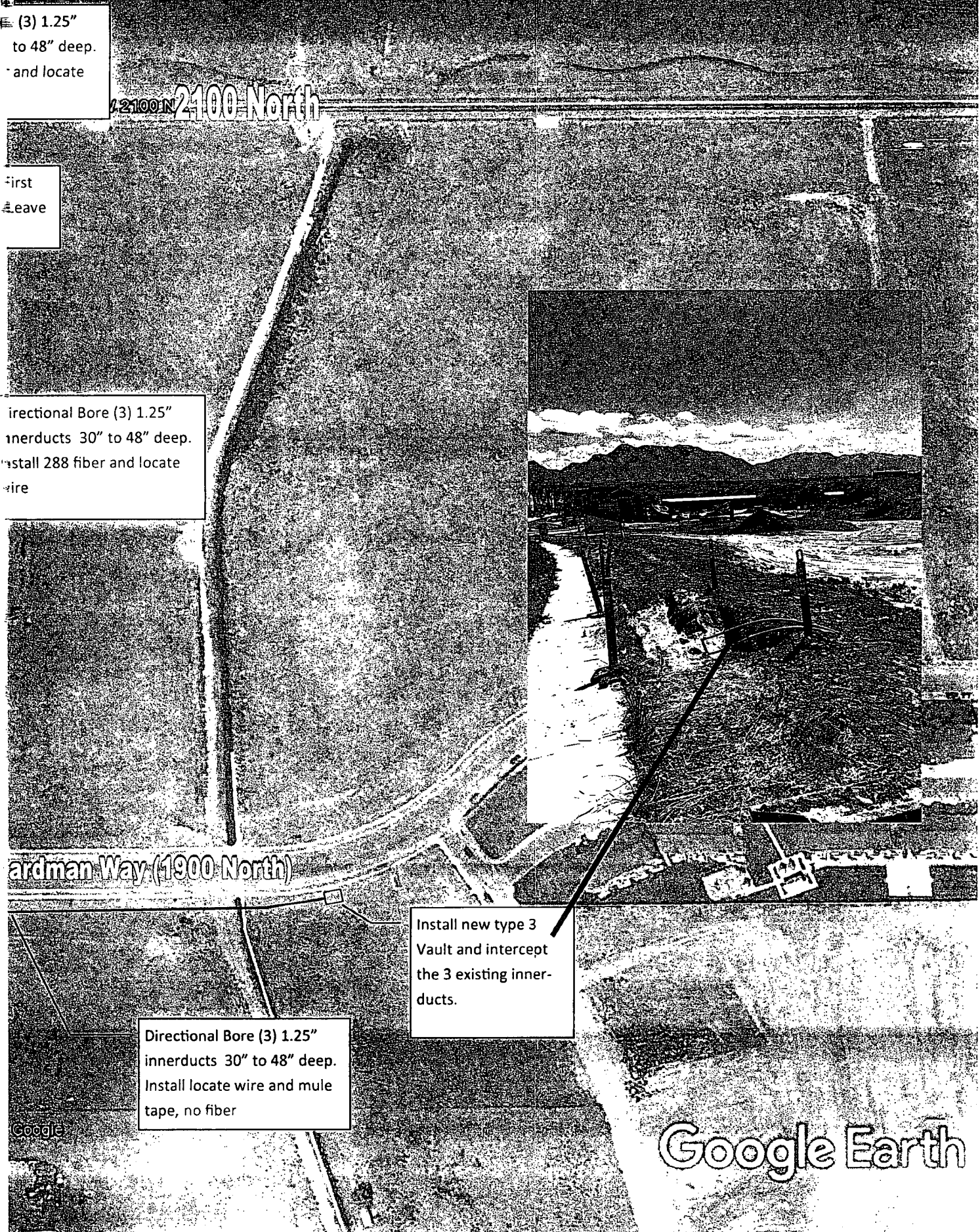
Install new type Digital vault BOV 100' of 288 fiber

Install new type 3 First Digital vault BOW. Leave 50' of 288 fiber

Redwood Road

Redwood Road

85



(3) 1.25" to 48" deep. and locate

2100 North

First leave

Directional Bore (3) 1.25" innerducts 30" to 48" deep. Install 288 fiber and locate wire



Hardman Way (1900 North)

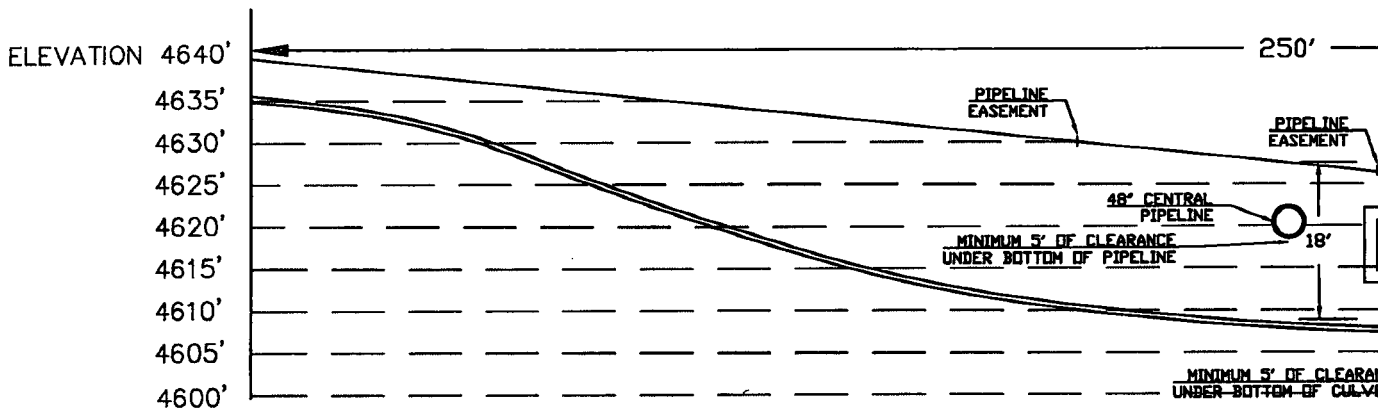
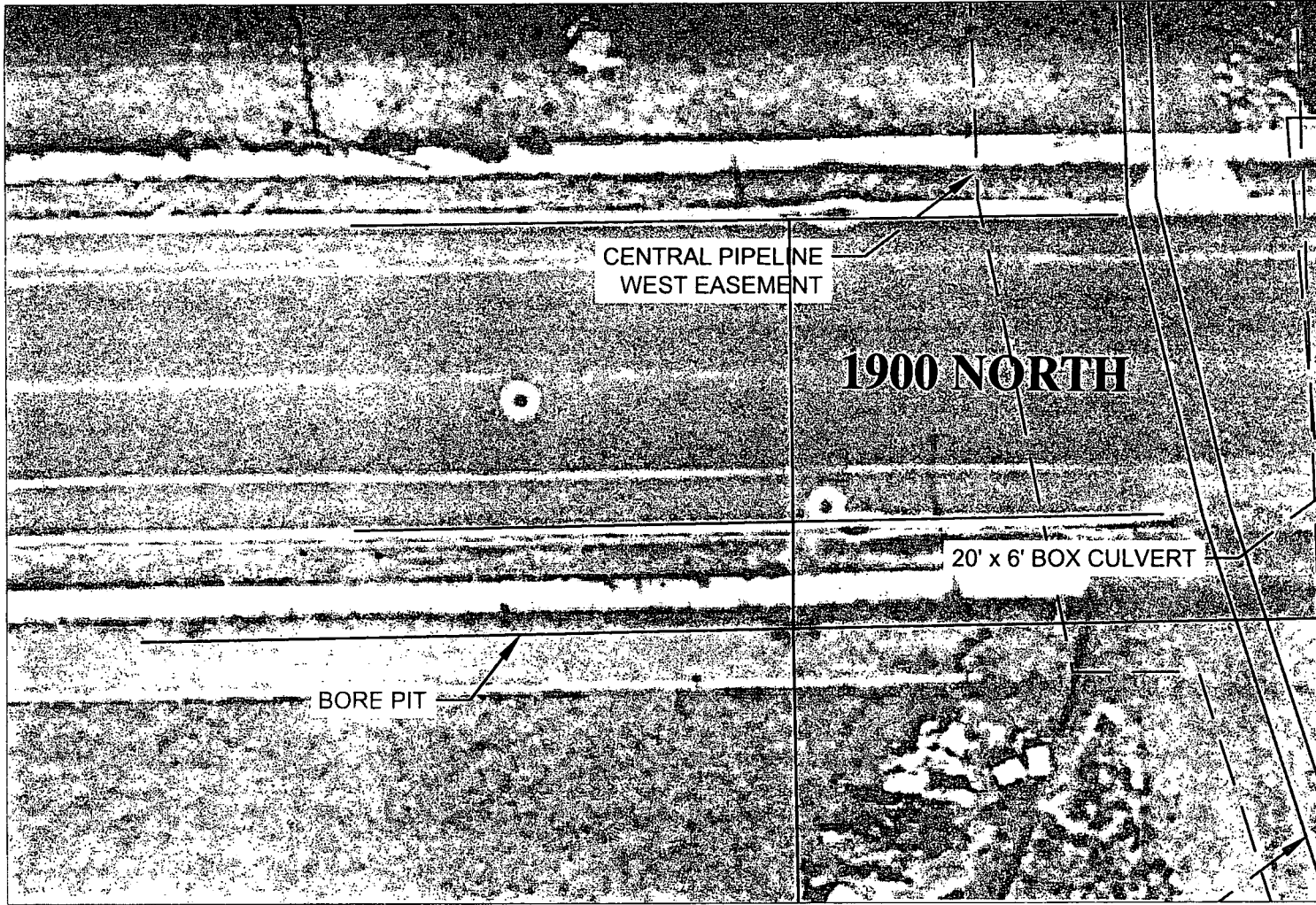
Install new type 3 Vault and intercept the 3 existing innerducts.

Directional Bore (3) 1.25" innerducts 30" to 48" deep. Install locate wire and mule tape, no fiber

Google

Google Earth

# FIRST DIGITAL - PIPELINE & CANA



## PIPELINE & BO

TELECOM LEGEND					
—●—	NEW TELECOM	—V—	WATER LINE	□	EX. TYPE I PULL BOX
—○—	UDOT 1D	—S—	STORM DRAIN	□	EX. TYPE II PULL BOX
—□—	UDOT 2D	—P—	SEWER LINE	□	EX. TYPE III PULL BOX
—■—	UDOT 3D	—G—	GAS LINE	□	NEW PULLBOX/VAULT
—X—	UDOT TALS	—F—	FIBER	□	EX. UDOT TYPE A BOX
—M—	UDOT TALS	—C—	DITCH/CANAL	□	TRAFFIC SIGNAL CABINET

- NOTES: 1) JWCD INSPECTOR TO BE ON-SITE DURING ALL CONSTRUCTION ACTIVITY. 48 HOURS' ADVANCED NOTIFICATION REQUIRED. CONTACT JT CRACKOPI
- 2) BORE MUST MAINTAIN A CONSTANT SLOPE THROUGH THE CENTRAL PIPELINE
- 3) BORE PITS ARE TO BE FILLED WITH A MIXTURE OF NATIVE MATERIAL AND
- 4) BORE PITS PIT COMPACTION SHALL BE 92% MODIFIED PROCTOR DENSITY

# BORE PROFILE 1900 N LEHI



OWNER:

PROJECT NAME:  
CANAL BORE PROFILE 1900 N

LOCATION: LEHI CITY, UTAH

SCALE: 1" = 22  
BASED ON 11X17 PRINT

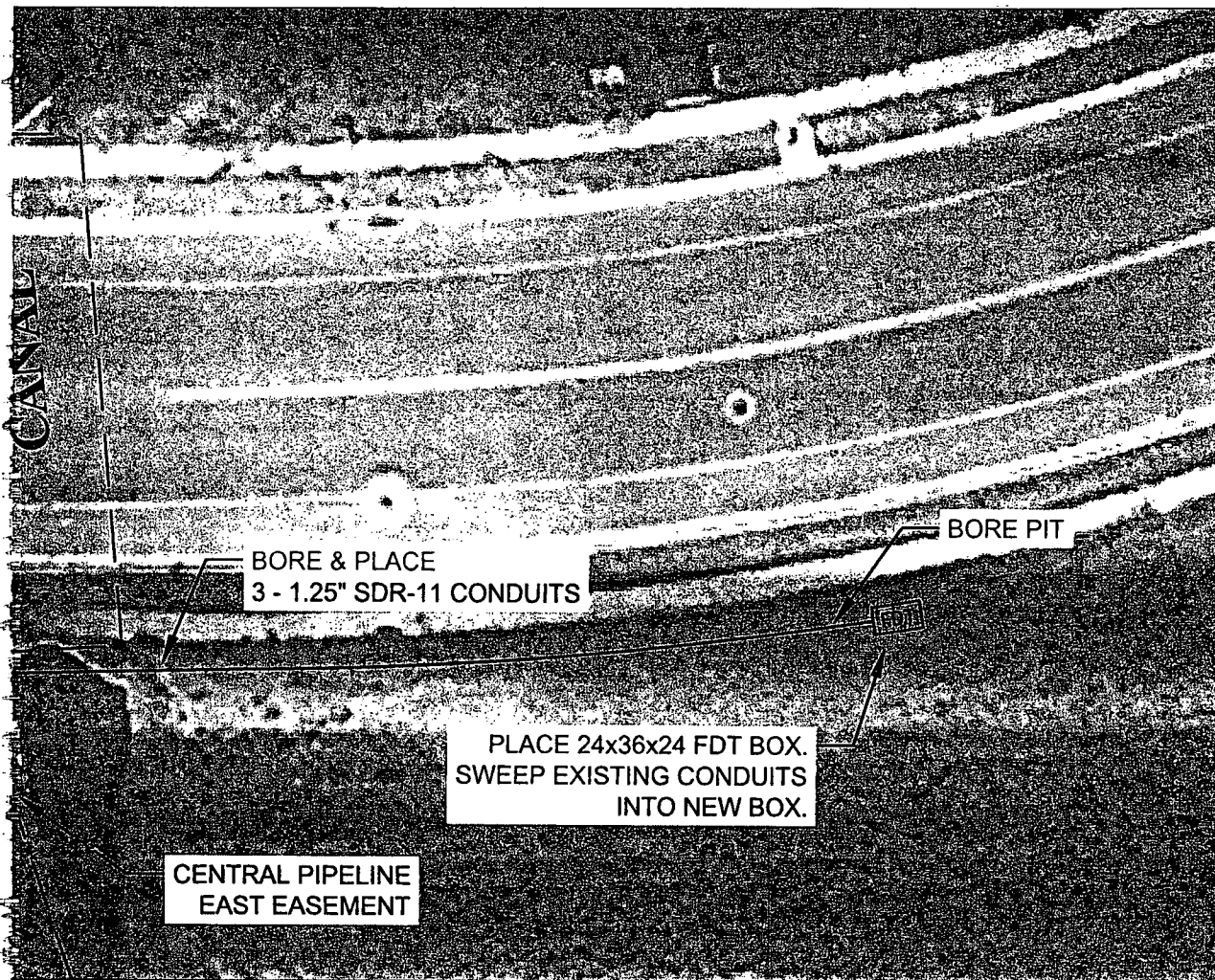
DATE: 7/20/2021

REVISION # 4

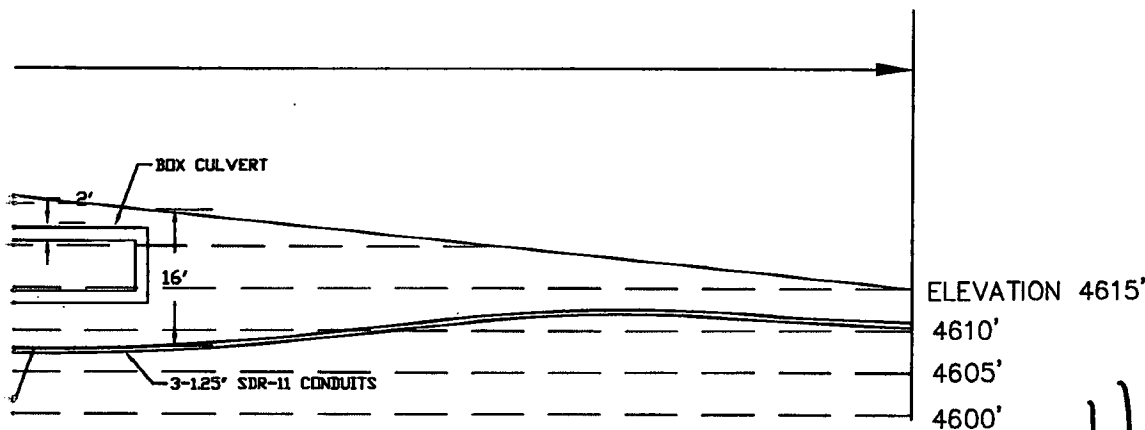
DATE: 8/4/2021

SHEET #

1 OF 2

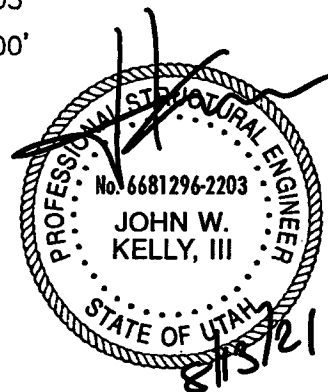


CENTRAL PIPELINE  
EAST EASEMENT

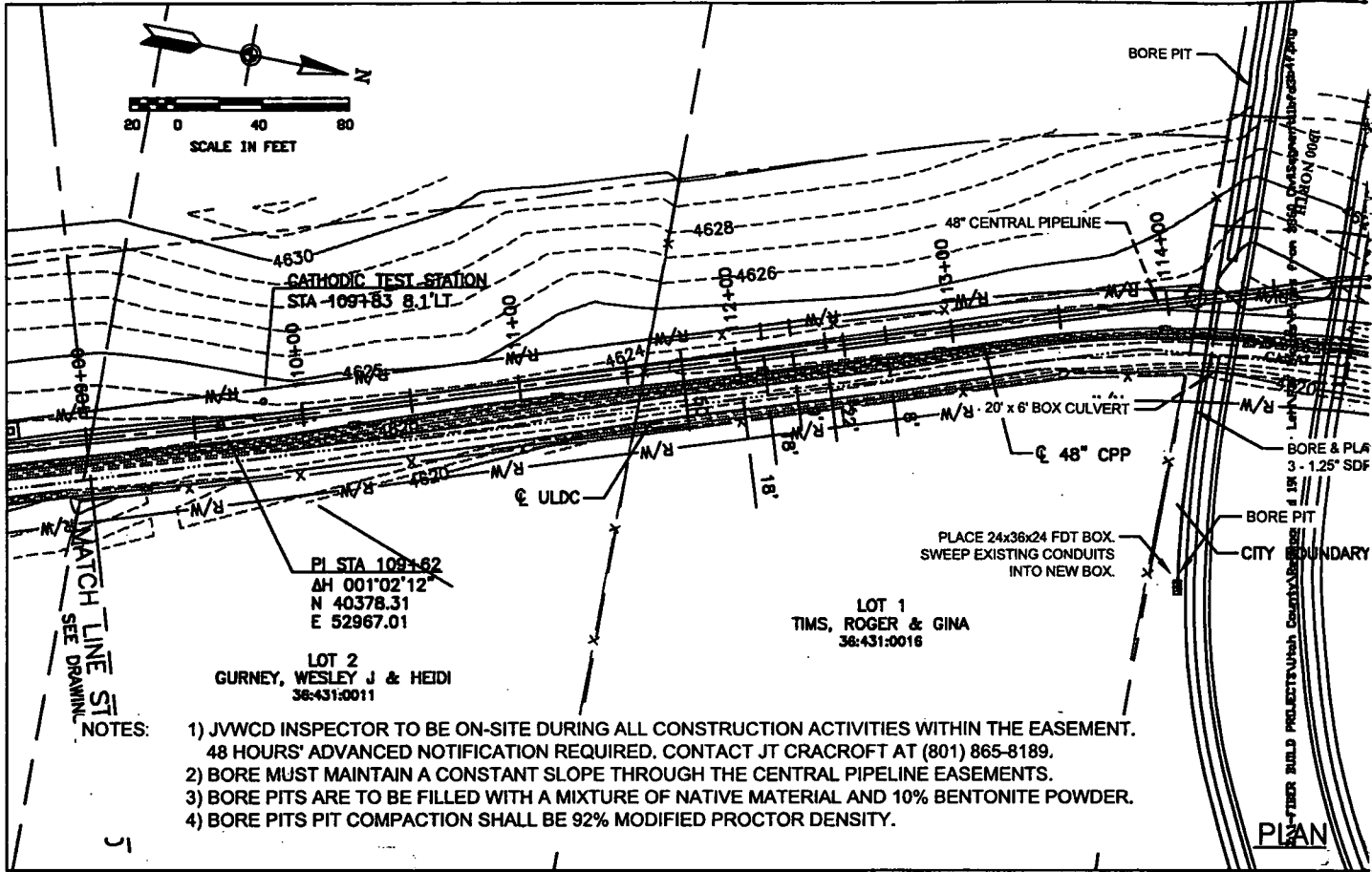


## CULVERT BORE PROFILE

S WITHIN THE EASEMENT.  
F (801) 865-8189.  
INE EASEMENTS.  
10% BENTONITE POWDER.

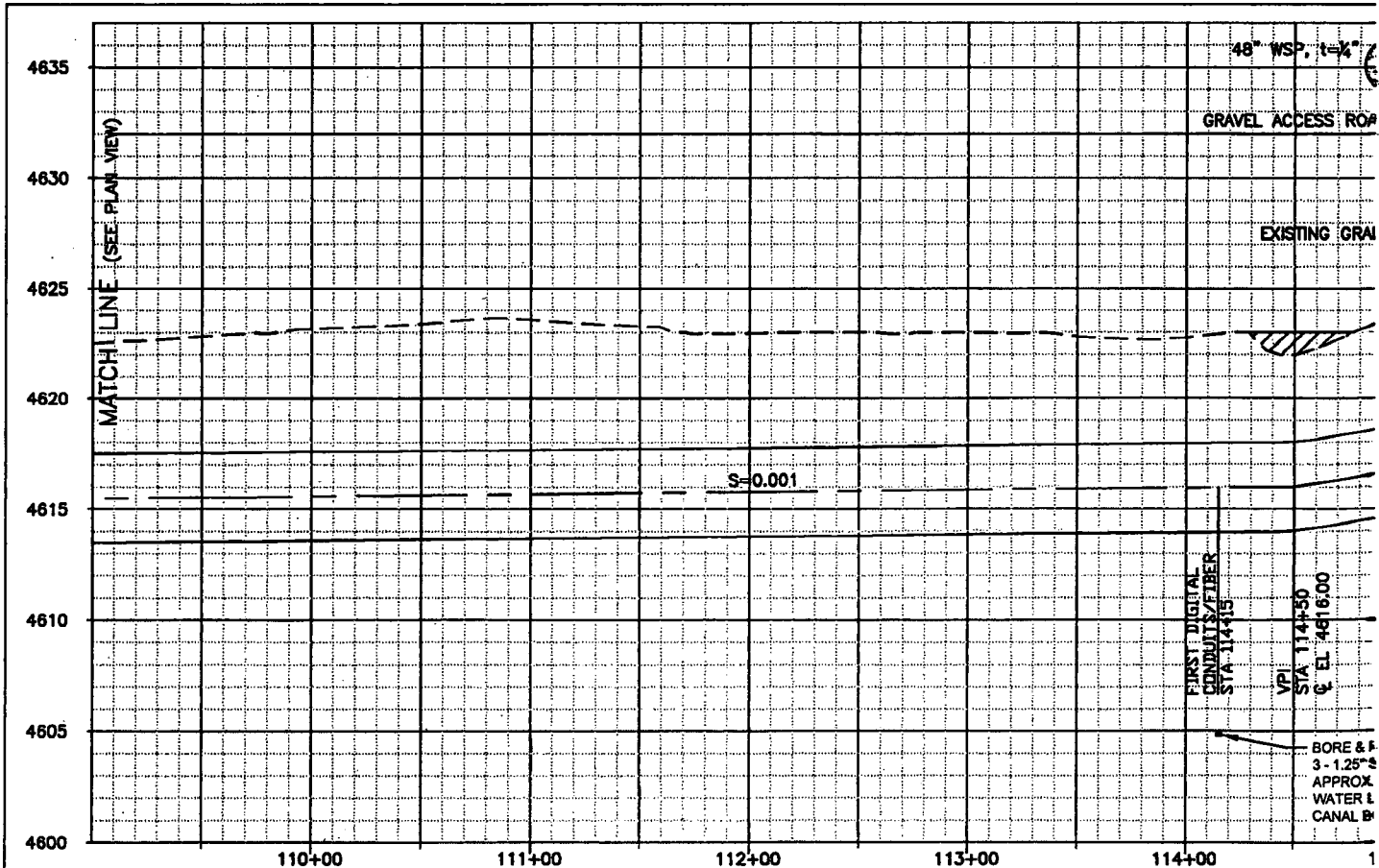


# FIRST DIGITAL - PIPELINE & CANAL

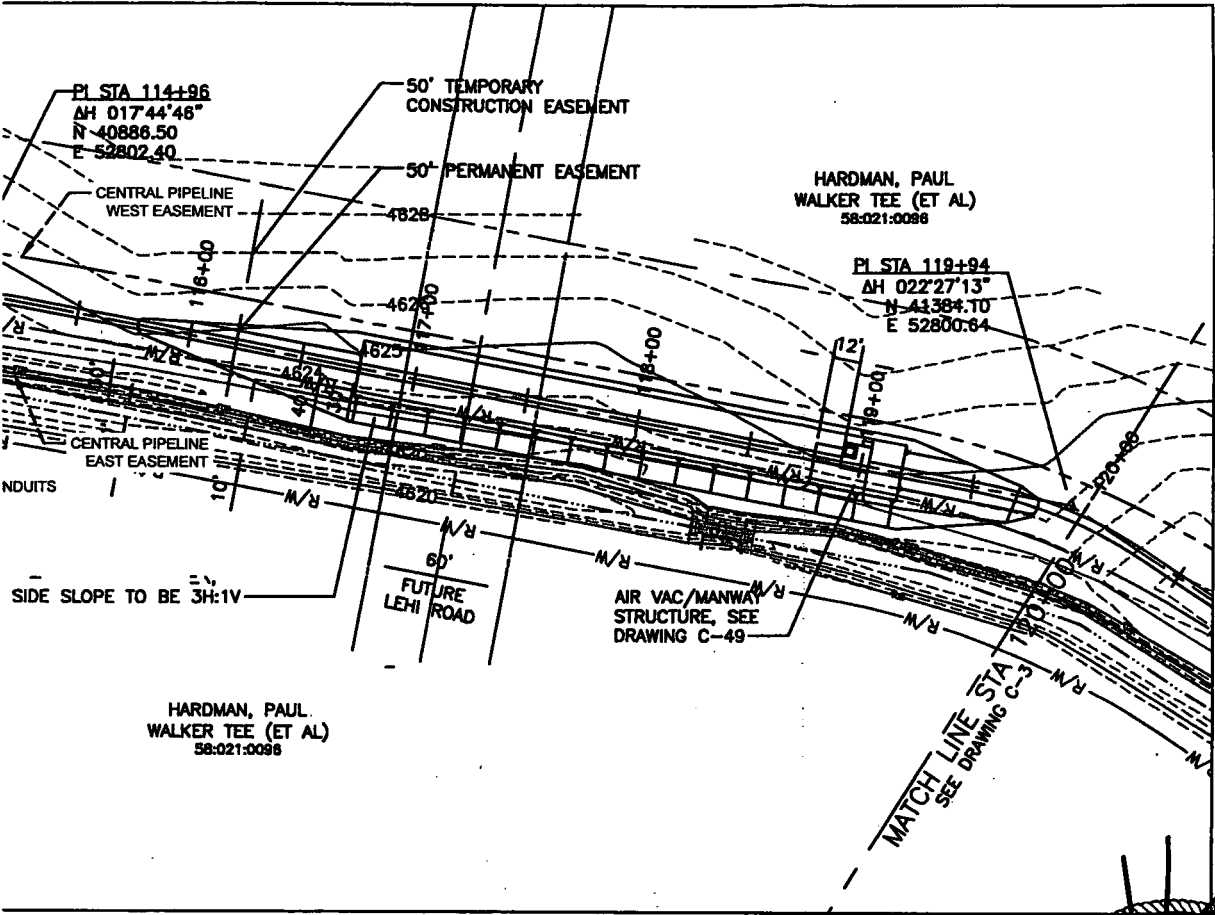


**NOTES:**

- 1) JWCD INSPECTOR TO BE ON-SITE DURING ALL CONSTRUCTION ACTIVITIES WITHIN THE EASEMENT. 48 HOURS' ADVANCED NOTIFICATION REQUIRED. CONTACT JT CRACROFT AT (801) 865-8189.
- 2) BORE MUST MAINTAIN A CONSTANT SLOPE THROUGH THE CENTRAL PIPELINE EASEMENTS.
- 3) BORE PITS ARE TO BE FILLED WITH A MIXTURE OF NATIVE MATERIAL AND 10% BENTONITE POWDER.
- 4) BORE PITS PIT COMPACTION SHALL BE 92% MODIFIED PROCTOR DENSITY.

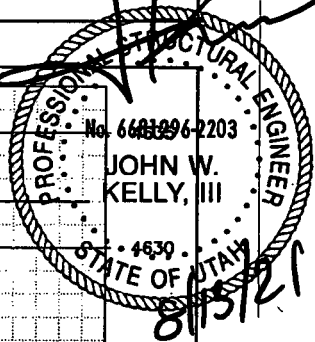
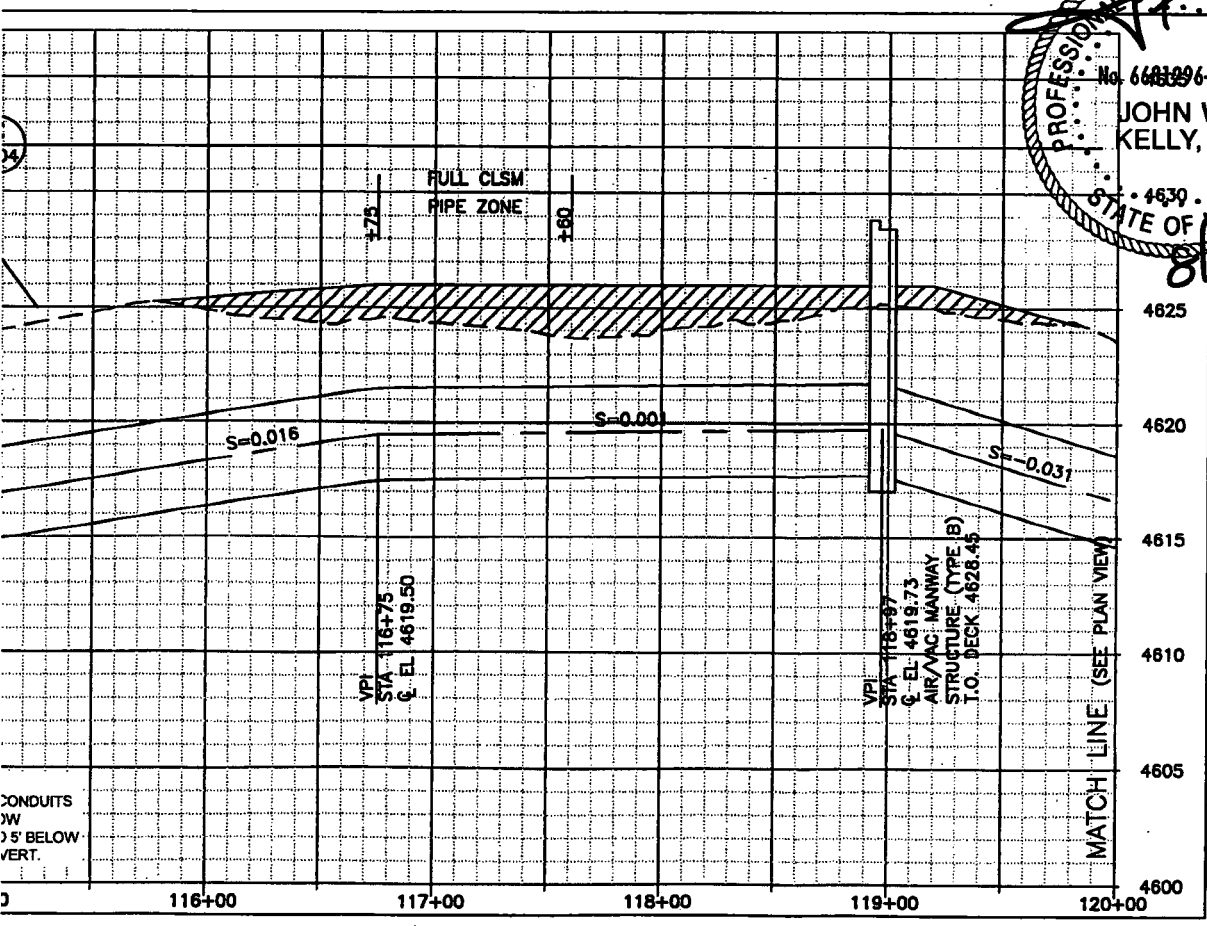


# BORE PROFILE 1900 N LEHI



HARDMAN, PAUL  
 WALKER TEE (ET AL)  
 58:021:0098

OWNER:



PROJECT NAME:  
 CANAL BORE PROFILE 1900 N

LOCATION: LEHI CITY, UTAH

SCALE: 1" = 83  
 BASED ON 11X17 PRINT

DATE: 7/20/2021

REVISION # 3

DATE: 8/4/2021

SHEET #

2 OF 2

## EXHIBIT C

## 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 seventy-two (72) 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.