THE TOWN OF
Vineyard
240 East Gammon Road
Vineyard, Utah 84058
1-801-226-1929

NOTICE OF A WORK SESSION AND A SPECIAL MEETING OF THE VINEYARD TOWN COUNCIL
November 17, 2015 at 6:00 pm

Public Notice is hereby given that the Vineyard Town Council will hold a Work Session with staff starting at 6:00 pm and a Special Council Session starting at 7:00 pm, on Tuesday, August 17, 2015, in the Vineyard Town Hall; 240 East Gammon Road, Vineyard, Utah. The agenda will consist of the following:

AGENDA

6:00 PM WORK SESSION

7:00 PM SPECIAL SESSION

1. CALL TO ORDER/PRAYER

2. CONSENT ITEMS:
a) Approval of October 14, 2015 Minutes
b) Approval of October 28, 2015 Minutes
c) Final Plat Approval for WatersEdge Phase 5B
d) Final Plat Approval for WatersEdge Phase 5C

3. PLANNING COMMISSION UPDATE AND RECOMMENDATIONS TO THE COUNCIL: Planning Commission Chair Wayne Holdaway

4. STAFF REPORT
- Public Works Director /Engineer– Don Overson
- Attorney – David Church
- Utah County Sheriff's Department – Deputy Collin Gordon
- Planner – Aric Jensen
- Finance Director – Jacob McHargue
- Town Clerk/Recorder – Pamela Spencer

5. COUNCILMEMBERS' REPORTS

Julie Fullmer – Mayor Pro-tem October - December
- Youth Council
- Branding Committee
- Town Special Events
- Orem Community Hospital Board

Sean Fernandez – Mayor Pro-tem January – March

- Timpanogos Special Service District - Board Member
- ULCT Legislative Policy Committee

Nate Riley – Mayor Pro-tem April – June

- Economic Advisory Committee
- Utah Lake Technical Committee

Dale Goodman – Mayor Pro-tem July – September

- Public works – Park/Trails/Roads/Buildings
- Planning and Zoning

6. MAYOR'S REPORT

- North Pointe Solid Waste Special Service District - Board Member
- Mountainland Association of Governments
- Council of Governments
- Utah Lake Commission
- Economic Development Corporation Utah
- Meetings with Orem

7. OPEN SESSION: *Citizens' Comments (Please see note below)* *(15 minutes)*

8. BUSINESS ITEMS:

8.1 DISCUSSION AND ACTION – Municipal General Election Canvass (5 minutes)
The Mayor and Town Council will sit as the Board of Canvassers to certify results of the 2015 General Election.

8.2 DISCUSSION AND ACTION – Town Council and Planning Commission 2016 Meeting Schedules *(5 minutes)*
The Mayor and Town Council will discuss the meeting schedules for Planning Commission and Town Council for the 2016 Calendar Year. The Mayor and Town Council will take appropriate action.

8.3 DISCUSSION AND ACTION – Water Storage MOA (Resolution 2105-) (5 minutes)
Public Works Director/Engineer Don Overson will present a Memorandum of Agreement (MOA) for approval to collaborate with Orem and CUWP to conduct a water storage site study. The Mayor and Town Council will take appropriate action.

8.4 DISCUSSION AND ACTION – First Digital Franchise Agreement - Ordinance 2015-) (5 minutes)
Town Attorney David Church will present a Franchise Agreement between the Town of Vineyard and First Digital. The Mayor and Town Council will act to approve (or deny) this agreement by Ordinance.

9. ITEMS REQUESTED FOR NEXT AGENDA

10. CLOSED SESSION
The Mayor and Town Council pursuant to Utah Code 52-4-205 may vote to go into a closed session for the purpose of:

(a) discussion of the character, professional competence, or physical or mental health of an individual
(b) strategy sessions to discuss collective bargaining
(c) strategy sessions to discuss pending or reasonably imminent litigation
(d) strategy sessions to discuss the purchase, exchange, or lease of real property
(e) strategy sessions to discuss the sale of real property

11. ADJOURNMENT

This meeting may be held electronically to allow a councilmember to participate by teleconference.

Next regularly scheduled meeting is December 09, 2015

The Public is invited to participate in all Town Council meetings. In compliance with the Americans with Disabilities Act, individuals needing special accommodations during this meeting should notify the Town Clerk at least 24 hours prior to the meeting by calling (801) 226-1929.

I the undersigned duly appointed Recorder for the Town of Vineyard, hereby certify that the foregoing notice and agenda was emailed to the Daily Herald, posted at the Vineyard Town Hall, the Vineyard Town website, the Utah Public Notice website, delivered electronically to Town staff and to each member of the Governing Body.

AGENDA NOTICING COMPLETED ON: November 16, 2015 at 5:00 PM

CERTIFIED (NOTICED) BY: /s/ Pamela Spencer
P. SPENCER, TOWN CLERK/RECORDER

T.C. 1st + 3rd
T.C 2nd + 4th

2016 Calendar

P.C 2nd + 4th
P.C. 1st + 3rd

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**MEMORANDUM OF AGREEMENT
BETWEEN
CENTRAL UTAH WATER CONSERVANCY DISTRICT,
THE CITY OF OREM, AND THE TOWN OF VINEYARD
FOR THE STUDY AND EVAULATION OF ADDITIONAL FINISHED WATER STORAGE**

This MEMORANDUM OF AGREEMENT (MOA), made as of this _____ day of __________, 2015, between the CENTRAL UTAH WATER CONSERVANCY DISTRICT, a political subdivision of the State of Utah, organized and existing under the laws of the State of Utah, with its principal office located at 355 West University Parkway, OREM, Utah, 84058, hereinafter referred to as ("DISTRICT"), the CITY OF OREM, a municipal corporation and political subdivision of the State of Utah, organized and existing under the laws of the State of Utah, with its principal office located at 56 North State Street, OREM, Utah, 84057, hereinafter referred to as the ("OREM"), and the TOWN OF VINEYARD, a municipal corporation and political subdivision of the State of Utah, organized and existing under the laws of the State of Utah, with his principal office located at 240 East Gammon Road, Vineyard, Utah, 84058, hereinafter referred to as ("VINEYARD"). All of the foregoing entities are collectively referred to as the "PARTIES".

RECITALS

WHEREAS, the DISTRICT owns and operates the Don A. Christianson Regional Water Treatment Plant, or ("DCRWTP"), which is located in northeast Orem; and

WHEREAS, the DISTRICT recently completed a process improvement project and expanded the treatment capacity of the DCRWTP from 80 million gallons per day (MGD) to 100 MGD; and

WHEREAS, the DISTRICT and OREM entered into a Memorandum of Agreement ("MOA") in December, 2005 wherein DISTRCT and OREM jointly planned and DISTRICT constructed a new 20 million gallon finished water storage reservoir; and

WHEREAS, the DISTRICT'S operational finished water storage capacity at DCRWTP is 27 million gallons (MG) that is comprised of the 2 MG clearwell, the 15 MG Terminal Storage Reservoir, and 10 MG of the 20 MG Storage Reservoir; and

WHEREAS, the DISTRICT requires the full amount of its operational storage to maintain its ability to effectively treat water and provide reliable service to its customers; and

WHEREAS, OREM purchased from the DISTRICT a water supply for 7,520 acre-feet annually of Central Utah Project (OREM CUP WATER) and the DISTRICT treats this OREM CUP WATER, as well as OREM's water other than CUP WATER in the DCRWTP, according to agreements dated February 11, 1976 and March 19, 1997 and other agreements, and delivers these waters to OREM's water system; and

WHEREAS, VINEYARD purchased a water supply from the DISTRCT for 35 acre-feet of Central Utah Project ("VINEYARD CUP WATER") water according to an agreement dated August 13, 1997 and the DISTRICT treats this VINEYARD CUP WATER in the DCRWTP and delivers it to OREM, who delivers this VINEYARD CUP WATER to VINEYARD; and

WHEREAS, VINEYARD purchased from OREM 0.5 MG capacity of storage in OREM's 10 MG of storage capacity in the DISTRICT's 20 MG Reservoir which storage VINEYARD uses as distribution storage; and

WHEREAS, the OREM's and VINEYARD's water storage capacities are insufficient to accommodate the peak daily water demands within OREM's water distribution system without affecting the DCRWTP operations and OREM desires to construct additional finished water storage capacity to address its peak daily demand issues, and

WHEREAS, the VINEYARD's water storage capacity is insufficient to accommodate future growth and VINEYARD desires to construct additional finished water storage capacity to address its future water demand issues, and

WHEREAS, the DISTRICT and Anderson Geneva, LLC entered into an agreement in November, 2008 wherein the DISTRICT agreed to provide up to 4 MG of storage capacity in the DISTRICT'S finished water storage system for the Geneva Property until April 2021, after which the DISTRICT will construct or provide 2 MG of storage for Anderson Geneva, LLC's or its assignee's water system for the Geneva Property; and, WHEREAS, Anderson Geneva, LLC subsequently assigned to VINEYARD the storage rights associated with this agreement; and

WHEREAS, VINEYARD has contracted with the DISTRICT to purchase Central Utah Water Conservancy District Water Development Project (CWP) water for use within the municipal boundaries of VINEYARD; and

WHEREAS, OREM, the Metropolitan Water District of Orem, VINEYARD, the DISTRICT, Anderson Geneva, LLC, Ice Castle Retirement Fund, LLC, and Anderson Geneva Development, Inc. executed a Memorandum of Understanding (MOU) in May, 2013 which requires VINEYARD to formulate a permanent water storage solution plan by July, 2015 to provide for adequate water storage to service existing and future development within VINEYARD and to obtain the approval of both OREM and the DISTRICT for this solution; and

WHEREAS, VINEYARD completed a storage study in conformance with the MOU requirements, which study recommended that additional storage evaluations be conducted and that VINEYARD construct additional storage facilities; and

WHEREAS, the PARTIES agree that a jointly-funded water storage evaluation and location study ("LOCATION STUDY") that would identify storage needs and possible locations would be in the best interest of all of the PARTIES; and

WHEREAS, the PARTIES now desire to enter into this MOA to fund the LOCATION STUDY to evaluate and analyze their mutual needs for finished water storage;

NOW THEREFORE, in consideration of the mutual and dependent stipulations and covenants herein contained, it is agreed by and between the parties hereto as follows:

COVENANTS

1. Performance of a Jointly-Funded Location Study. The DISTRICT shall develop, advertise and solicit Requests for Proposals (RFP) from qualified consultants to perform the LOCATION STUDY, which will address the objectives of the PARTIES. The RFP will include a scope of work, qualification and experience listings, a summary of personnel expected to serve on the study team, an outline

of work to be accomplished, a schedule of expected performance, and pricing to complete the study. The DISTRICT will develop and receive approval from both OREM and VINEYARD of the RFP. The DISTRICT will be the contracting party and all services shall be obtained in accordance with the DISTRICT'S procurement policy for professional engineering services. A selection committee comprised of 2 representatives from OREM, 1 representative from VINEYARD and 1 representative from the DISTRICT will receive and evaluate the RFP. The committee will review and evaluate the proposals from the consultants and select a consultant to perform the work in accordance with DISTRICT contracting policy. A majority vote of the committee will determine the selection of the consultant. The DISTRICT will negotiate a final agreement with the selected consultant and will enter into an agreement with the consultant to perform the LOCATION STUDY. Each PARTY agrees to provide comments and input into the work progress summaries, attend progress meetings, provide critical operational data to the selected consultant, and respond to issues relating to operations of each of the PARTIES' water systems. The PARTIES acknowledge that in performing the services related to this MOA they may have access to privileged and confidential material(s) of the other PARTIES. The PARTIES agree to respect the privilege and confidentiality of any such information and to not disclose information of this nature without the expressed prior written consent of the other PARTIES.

2. <u>Cost Share.</u> OREM shall pay to the DISTRICT 60% of the cost of the LOCATION STUDY. VINEYARD will pay 20% of the cost of the LOCATION STUDY and the DISTRICT will pay the remaining 20% of the cost. Any proposed amendments or change orders to the LOCATION STUDY shall be reviewed and approved by the PARTIES prior to issuance by the DISTRICT. The total LOCATION STUDY costs are presently estimated to be $150,000.00. OREM, VINEYARD and DISTRICT staff time shall not be included in the total project cost and shall be borne by each party separately.
3. <u>Payment to the DISTRICT.</u> The DISTRICT will pay all LOCATION STUDY invoices and OREM will reimburse the DISTRICT for 60% and VINEYARD will

reimburse the DISTRICT for 20% of each invoice. The DISTRICT will submit to OREM and VINEYARD certified copies of all such invoices attached to each request for cost share reimbursement. OREM and VINEYARD will provide such funds to the DISTRICT on a reimbursement basis as the approved work is completed and accepted. Payments shall be made to the DISTRICT by OREM and VINEYARD within 30 days after receipt of certified invoices covering the cost of work accomplished. The DISTRICT will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Said records will be available for examination by OREM and VINEYARD during DISTRICT's normal business hours for a period of 3 years after DISTRICT's final invoice, to the extent required to verify the cost incurred hereunder.

4. <u>Title of LOCATION STUDY and Obligations for Future Action.</u> The information and recommendations provided in the LOCATION SUDY will become the property of the PARTIES. Each PARTY will act in its own best interest as it pertains to the recommendations of the study. No PARTY will be obligated to perform any recommendation contained in the study.
5. <u>Lawful Agreement</u>. The PARTIES represent that each of them has lawfully entered into this MOA, having complied with all relevant statutes, ordinances, resolutions, bylaws, and other legal requirements applicable to their respective operations.
6. <u>Utah Law</u>. This MOA shall be interpreted pursuant to the laws of the State of Utah.
7. <u>Time of Essence</u>. Time shall be of the essence of this MOA.
8. <u>Attorney's Fees</u>. In the event that any PARTRY should default in the performance of its respective obligations under this MOA, the non-defaulting PARTIES shall be entitled to recover their costs and reasonable attorney's fees incurred in enforcing the MOA, whether that enforcement is pursued through litigation or alternative dispute resolution.
9. <u>Interpretation of MOA</u>. The invalidity of any portion of this MOA shall not prevent the remainder from being carried into effect. Whenever the context of

any provision shall require it, the singular number shall be held to include the plural number, and vice versa, and the use of any gender shall include the other gender. The paragraph and section headings in this MOA are for convenience only and do not constitute a part of the provisions hereof.

10. Amendments. No oral modifications or amendments to this MOA shall be effective, but this MOA may be modified or amended by written agreement.
11. No Presumption. Should any provision of this MOA require judicial interpretation, the Court interpreting or construing the same shall not apply a presumption that the terms hereof shall be more strictly construed against one party, by reason of the rule of construction that a document is to be constructed more strictly against the person who himself or through his agents prepared the same, it being acknowledged that both parties have participated in the preparation therein.
12. Binding MOA. This MOA shall be binding upon the heirs, successors, administrators, and assigns of each of the PARTIES hereto.

SIGNED AND ENTERED INTO this as of this ______ day of ___________, 2015.

CENTRAL UTAH WATER
CONSERVANCY DISTRICT, by

____

Name:
General Manager

CITY OF OREM, by

____

Name:
Mayor

TOWN OF VINEYARD by

____

Name:
Mayor

TOWN OF VINEYARD
ORDINANCE NO. ____

An ordinance of the Town of Vineyard granting to FirstDigital Telecom LLC. ("Franchisee") and its affiliates a non-exclusive franchise to install, operate and maintain a telecommunications system in, on, over, upon, along, and across the public rights of way of the Town of Vineyard, prescribing certain rights, duties, terms, and conditions with respect thereto and establishing an effective date.

WHEREAS, Franchisee , has requested that the Town grant it the right to install, operate, and maintain a telecommunications system within the public ways of the Town; and

WHEREAS, the Town Council has found it desirable for the welfare of the Town and its residents that such a non-exclusive franchise be granted to the Franchisee; and

WHEREAS, the Town Council has the authority under Article 1, Section 23 of the Constitution of the State of Utah and consistent with Article 11, Section 9 of the Constitution of the State of Utah, and the statutes of the United States and the State of Utah to grant franchises for the use of its streets and other public properties; and

WHEREAS, the Town is willing to grant the rights requested subject to certain terms and conditions, NOW, THEREFORE,

The Town Council of the Town of Vineyard, Utah do ordain as follows:

Section 1. **Definitions**. For the purposes of this franchise, the following terms, phrases, words, and abbreviations shall have the meanings ascribed to them below. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number.

A. "Affiliate" means the entity which owns or controls, is owned or controlled by, or is under common ownership with the Franchisee.

B. "Town" means the Town of Vineyard, Utah.

C. "Communication(s) Service" shall mean any telecommunications services, telecommunications capacity, or dark fiber, provided by the Franchisee using its Communication System or facilities, either directly or as a carrier for its subsidiaries, affiliates, or any other person engaged in Communication Service, including but not limited to, the transmission of voice, data, or other electronic information, facsimile reproduction, burglar alarm monitoring, meter reading, and home shopping, or other subsequently developed technology that carries an electronic signal over fiber optic cable or copper cable. Communication Service shall also include non-switched, dedicated, and private line, high capacity fiber optic transmission services to firms, businesses, or institutions within the Town.

D. “Communication System” or “Facilities” shall mean the Franchisee’s fiber optic and/or copper cable system constructed and operated within the Town’s public ways and shall include all cables, wires, fibers, conduits, ducts, pedestals, and any associated converter, equipment, or other facilities within the Town’s public ways designed and constructed for the purpose of providing Communication Service.

E. “FCC” means the Federal Communications Commission, or any successor governmental entity hereto.

F. “Franchise” shall mean the initial authorization, or renewal thereof granted by the Town, through this ordinance or subsequently adopted ordinance, which authorizes construction and operation of the Franchisee’s Communication System and associated Facilities for the purpose of offering Communications Service.

G. “Franchisee” means FirstDigital Telecom LLC, a Utah Limited Liability Company, or the lawful successor, transferee, assignee, or affiliate thereof.

H. “Person” means an individual, partnership association, joint stock company, trust, corporation, or governmental entity.

I. “Public Way” shall mean the surface of and any space above or below any public street, highway, freeway, bridge, path, alley, court, boulevard, sidewalk, parkway, lane, drive, circle, or any other public right of way including, but not limited to, public utility easements, utility strips, or rights of way dedicated for compatible uses and any temporary or permanent fixtures or improvements located thereon, now or hereafter held by the Town in the Service Area which shall entitle the Town and the Franchisee the use thereof for the purpose of installing, operating, repairing, and maintaining the Communications System. Public way shall also mean any easement now or hereafter held by the Town within the Service Area for the purpose of public travel, or for utility or public service use dedicated for compatible uses, and shall include other easements or rights of way which within their proper use and meaning, entitle the Town and the Franchisee the use thereof for the purposes of installing or transmitting the Franchisee’s Communications Service over wires, cables, conductors, amplifiers, appliances, attachments, and other property as may be ordinarily and necessarily pertinent to the Communications System.

J. “Service Area” means the present municipal boundaries of the Town and shall include any additions thereto by annexation or other legal means.

Section 2. **Authority Granted**. The Town hereby grants to the Franchisee its heirs, successors, legal representatives, affiliates and assigns, subject to the terms and conditions hereinafter set forth, the right, privilege and authority to utilize the public ways of the Town for construction and operation of the Franchisee's Communications System and to acquire, construct, operate, maintain, replace, use, install, remove, repair, reconstruct, inspect, sell, lease, transfer, or to otherwise utilize in any lawful manner, all necessary equipment and facilities thereto for the Franchisee's Communications System, and to provide Communications Service.

Section 3. **Construction Permits Required**.

A. Prior to site specific location and installation of any portion of its Communications System within a public way, the Franchisee shall apply for and obtain a construction permit pursuant to the ordinances of the Town presently existing or as amended from time to time.

B. Unless otherwise provided in said permit, the Franchisee shall give the Town at least 48 hours' notice of the Franchisee's intent to commence work in the public ways. The Franchisee shall file plans or maps with the Town showing the proposed location of its Communication Facilities and pay all duly established permit and inspection fees associated with the processing of the permit. In no case shall any work commence within any public way without said permit except as otherwise provided in this franchise.

Section 4. **Grant Limited to Occupation**. Nothing contained herein shall be construed to grant or convey any right, title, or interest in the public ways of the Town to the Franchisee nor shall anything contained herein constitute a warranty of title.

Section 5. **Term of Franchise**. The first term of this franchise shall be for a period of Ten (10) years from the date of acceptance as set forth herein, and will continue thereafter on a year to year basis unless either party provides written notice to the other party one hundred twenty (120) days notice of its intent to renegotiate the terms and conditions of this Franchise. At the end of that term, additional terms and extensions will be negotiated upon terms and conditions deemed reasonable to both the Town and the Franchisee.

Section 6. **Non-Exclusive Grant**. This Franchise shall not in any manner prevent the Town from entering into other similar agreements or granting other or further franchises in, under, on, across, over, through, along or below any of said public ways of the Town. However, the Town shall not permit any such future Franchisee to physically interfere with the Franchisee's Communication Facilities. In the event that such physical interference or disruption occurs, the Town Engineer may assist the Franchisee and such subsequent Franchisee in resolving the dispute. Further, this franchise shall in no way prevent or prohibit the Town from using any of its public ways or affect its jurisdiction over them or any part of them, and the Town shall retain power to make all necessary changes, relocations, repairs, maintenance, establishment, improvement, dedication of the same as the Town may deem fit, including the dedication, establishment, maintenance, and improvement of all new public ways all in compliance with this franchise.

Section 7 Equal Treatment. FirstDigital shall be treated equal to other telecommunication providers within the Town who have been granted a franchise to utilize the public ways of the Town for construction and operation of a Franchisee's Communications System; and that FirstDigital may periodically review such terms or conditions of the franchise ordinances of other telecommunication providers and adopt such terms and conditions into this Ordinance through written amendment.

Section 8. **Maps and Records**. After construction is complete, the Franchisee shall provide the Town with accurate copies of as-built plans and maps in a form and content prescribed by the Town Engineer. These plans and maps shall be provided at no cost to the Town and shall include hard copies and digital copies in a format specified by the Town Engineer.

Section 9. **Work in Public Ways**.

A. During any period of relocation, construction, or maintenance, all surface structures, if any, shall be erected and used in such places and positions within said public ways and other public properties so as to interfere as little as possible with the free passage of traffic and the free use of adjoining property. The Franchisee shall, at all times, post and maintain proper barricades and comply with all applicable safety regulations during such period of construction as required by the ordinances of the Town or the laws of the State of Utah.

B. The Franchisee shall cooperate with the Town and all other persons with authority from the Town to occupy and use the public ways of the Town in coordinating construction activities and joint trenching projects. By March 1st of each calendar year, the Franchisee shall provide the Town with a schedule of its proposed construction activities in, around, or that may affect the public ways of the Town. The Franchisee shall also meet with the Town and other grantees, franchisees, permittees, and other users of the public ways of the Town annually or as determined by the Town to schedule and coordinate construction activities. The Town Engineer shall coordinate all construction locations, activities and schedules to minimize public inconvenience, disruption, or damage to the public ways of the Town.

C. If either the Town or the Franchisee shall at any time after the installation of the facilities plan to make excavations in an area covered by this franchise and as described in this section, the party planning such excavation shall afford the other upon receipt of written request to do so an opportunity to share such an excavation provided that: (1) such joint use shall not unreasonably delay the work of the party causing the excavation to be made or unreasonably increase its costs; (2) such joint use shall be arranged and accomplished on terms and conditions satisfactory to both parties; and (3) either party may deny such request for safety reasons or if their respective uses of the trench are incompatible.

D. If the Town should at any time after the installation of the facilities need the facilities moved for purposes of the Town constructing, installing, maintaining, repairing or upgrading any public infrastructure of the Town the Franchisee shall bear all cost of the removal and replacement of the facilities. Except in cases of emergencies the Town shall give the Franchisee 14 days notice of the Town's need to have the facilities moved.

Section 10. Restoration after Construction. The Franchisee shall, after the installation, construction, relocation, maintenance, removal or repair of its Communication Facilities within the public ways restore the surface of said public ways and any other Town-owned property that may be disturbed by the work to at least the same condition the public way or Town-owned property was in immediately prior to any such installation, construction, relocation, maintenance or repair, reasonable wear and tear excepted. The Franchisee agrees to promptly complete all restoration work and to promptly repair any damage caused by such work to the public ways or other affected area at its sole cost and expense according to the time and terms specified in the construction permit issued by the Town in accordance with the applicable ordinances of the Town.

Section 11. Emergency Work Permit Waiver. In the event of any emergency in which any of the Franchisees' Communication Facilities located in, above, or under any public way break, are damaged, or if the Franchisee's construction area is otherwise in such a condition as to immediately endanger the property, life, health, or safety of any individual, the Franchisee shall immediately take proper emergency measures to repair its facilities, to cure or remedy the dangerous conditions for the protection of property, life, health, or safety of individuals without first applying for and obtaining a permit as required by this franchise. However, this shall not relieve the Franchisee from the requirement of notifying the Town of the emergency work and obtaining any permits necessary for this purpose after the emergency work. The Franchisee shall notify the Town by telephone immediately upon learning of the emergency and shall apply for all required permits not later than the second succeeding day during which the Town Hall is open for business.

Section 12. **Dangerous Conditions**. Whenever construction, installation or excavation of the Communication Facilities authorized by this franchise has caused or contributed to a condition that appears to substantially impair the lateral support of the adjoining public way, street, or public place, or endangers the public street, utilities or Town-owned property, the Town Engineer may reasonably request the Franchisee to take action to protect the public, adjacent public places, Town-owned property, streets, utilities and public ways. Such action may include compliance within a prescribed time. In the event that the Franchisee fails or refuses to promptly take the actions directed by the Town or fails to fully comply with such directions, or if emergency conditions exist which require immediate action, the Town may enter upon the property and take such actions as are necessary to protect the public, the adjacent streets, utilities, public ways to maintain the lateral support thereof or actions regarded as necessary safety precautions and the Franchisee shall be liable to the Town for the reasonable costs thereof.

Section 13. **Non-Liability of Town for Acts of Franchisee**. The City shall not at any time become liable or responsible to any person, firm, corporation, or individual for any damage, injury, including loss of life or loss by reason of the activities of Franchisee under this franchise, and Franchisee hereby indemnifies the Town and holds it harmless against all such liabilities, loss, cost, damage, or expense which may be incurred by the Town by reason of the exercise or arising out of the implementations of this franchise.

Section 14. **Insurance**. The Franchisee shall procure and maintain insurance against claims for injuries to persons or damages to the property which may arise from, or in connection with the exercise of the rights, privileges, and authority granted hereunder to the Franchisee, its agents, representatives, or employees. The Franchisee shall provide to the Town for its inspection an insurance certificate naming the Town as an additional insured as its respective interests may appear prior to the commencement of any work or installation of any facilities pursuant to this franchise. Such insurance certificate shall evidence:

A. Comprehensive general liability insurance written on an occurrence basis, including contractual liability coverage with limits inclusive of umbrella or excess liability coverage of not less than: (1) $2,000,000 for bodily injury or death to each person; and (2) $3,000,000 for property damages resulting from any one accident.

B. Automobile liability for owned, non-owned, and hired vehicles with a limit inclusive of umbrella or excess liability coverage of $300,000 for each person and $500,000 for each accident.

C. Workers' compensation within statutory limits.

The liability insurance policies required by this section shall be maintained by the Franchisee throughout the term of this franchise and such other period of time during which the Franchisee is operating without a franchise hereunder, or is engaged in the removal of its Communication System. Payment of deductibles and self-insured retentions shall be the sole responsibility of the Franchisee. The insurance certificate required by this section shall contain a clause stating that the coverage shall apply separately to each insured against whom a claim is made or suit is brought except with respect to the limits of the insurer's liability. The Franchisee's insurance shall be primary insurance with respect to the Town. Any insurance maintained by the Town, its officers, officials, employees, consultants, agents, and volunteers shall be in excess of the Franchisee's insurance and shall not contribute with it.

Section 15. **Abandonment and Removal of the Franchisee's Communication Facilities**. Upon the expiration or termination of the rights granted under this franchise, the Franchisee shall either, at Franchisee's sole option, remove all of its Communication Facilities from the public ways of the Town within ninety (90) days or abandon the Facilities in place. Upon permanent abandonment and Franchisee's agreements to transfer ownership of the Communication Facilities to the Town, the Franchisee shall submit to the Town a proposal and instruments for transferring ownership to the Town. Any such facilities which are not permitted to be abandoned in place which are not removed within one (1) year of receipt of said notice shall automatically become the property of the Town.

Section 16. **Modification**. The Town and the Franchisee hereby reserve the right to alter, amend, or modify the terms and conditions of this franchise upon the written agreement of both parties to such alteration, amendment or modification. Said modifications shall be approved by the Town by ordinance and accepted by the Franchisee consistent with this section herein.

Section 17. **Forfeiture and Revocation**.

A. This franchise may be terminated for failure by Franchisee to comply with the material provisions hereof and other provisions of the Town ordinances.

B. If the Town has reason to believe that the Franchisee is in violation of this franchise or other provisions of the Town ordinances, the following procedures shall be followed by the Town:

(1) The Town shall provide the Franchisee with a detailed, written notice by certified mail detailing the violation, the steps necessary to cure such violation, and the time period within which the violation must be cured. Within thirty (30) days thereafter, Franchisee shall respond demonstrating that no violation occurred, that any problem has been corrected, or with a proposal to correct the problem within a specified period of time.

(2) Franchisee may request an extension of time to cure an alleged violation if construction is suspended or delayed by the Town or where unusual weather, natural consequences, extraordinary acts of third parties, or other circumstances which are reasonably beyond the control of the Franchisee delay progress, provided that the Franchisee has not, through its own actions or inactions, contributed to the delay.

(3) If said response is not satisfactory to the Town, the Town may declare the Franchisee to be in default with written notice by certified mail to Franchisee. Within ten (10) business days after notice to Franchisee, Franchisee may deliver to the Town a request for a hearing before the Town Council. If no such request is received, the Town may declare the franchise terminated for cause.

(4) If Franchisee files a timely written request for hearing, such hearing shall be held within thirty (30) days after the Town's receipt of the request therefor. Such hearing shall be open to the public and Franchisee and other interested parties may offer written and/or oral evidence explaining or mitigating such alleged noncompliance. Within ten (10) days after the hearing, the Town Council on the basis of the record will make the determination as to whether there is cause for termination and whether the franchise will be terminated. The Town Council may, in its sole discretion, fix an additional time period to cure violations. If the deficiency has not been cured at the expiration of any additional time period, or if the Town Council does not grant any additional period, the Town Council may, by resolution, declare the franchise to be terminated.

(5) If Franchisee appeals revocation and termination, such revocation may be held in abeyance pending judicial review by a court of competent jurisdiction provided the Franchisee is otherwise in compliance with this franchise.

C. Franchisee shall not be deemed to be in default failure, violation or noncompliance with any provision of this franchise where performance was rendered impossible due to an act of God, fire, flood, storm, or other element or casualty, theft, war, disaster, strike, lockout, boycott, prevailing war, or war preparation, or bona fide legal proceedings, beyond the control of the Franchisee.

Section 18. **Town Ordinances and Regulations**. Nothing herein shall be deemed to direct or restrict the Town's ability to adopt and enforce all necessary and appropriate ordinances regulating the performance of the conditions of this franchise, including any valid ordinance made in the exercise of its police powers in the interest of public safety and for the welfare of the public and including adopting a municipal telecommunication license tax under Utah Code 10-1-401 et seq. The Town shall have the authority at all times to control by appropriate regulations the locations, elevation, manner or construction and maintenance of facilities by the Franchisee and the Franchisee shall promptly conform with all such regulations unless compliance would cause the Franchisee to violate other requirements of the law.

Section 19. **Franchise Fee**. Franchisee acknowledges that the Town currently has the authority to and has imposed an Utah Municipal Telecommunication License Tax in the maximum amount of 3.5% on the gross receipts of gross receipts for telecommunication services from a transaction for telecommunication services that is located in the Town as determined for purposes of sales and use taxes under Utah Code Title 59, Chapter 12, Sales and Use Act and non-telecommunication services, as set out in Title 10, Chapter 1, Part 4, of the Utah Code, Franchisee hereby agrees to pay a contractual franchise fee in the amount of 3.5% of the gross receipts for telecommunication services and non-telecommunication services from a transaction for services that is located in the Town as determined for purposes of sales and use taxes under Utah Code Title 59, Chapter 12, Sales and Use Act or its successor, beginning on or after the day on which Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act of Utah is (A) repealed, invalidated, or the maximum allowable rate provided in Section 10-1-403 that Act is reduced; and (B) is not superseded by a law imposing a substantially equivalent tax.

Section 20. **Survival**. All of the provisions, conditions and requirements of this franchise shall be in addition to any and all other obligations and liabilities the Franchisee may have to the Town at common law by statute or by contract. The provisions, conditions and requirements of Section 8 Work in Public Ways; 9 Restoration after Construction; 11 Dangerous Conditions; 12 Non-Liability of Town for Acts of Franchisee; 13 Insurance; 14 Abandonment and Removal of the Franchisee's Communication Facilities; shall survive the expiration or termination of this franchise and any renewals or extensions thereof and remain effective until such time as the Franchisee removes its Communication Facilities from the public ways, transfers ownership of said facilities to a third party, or abandons said system in place as provided herein. All of the provisions, conditions, regulations and requirements contained in this franchise shall further be binding upon the heirs, successors, executors, administrators, legal representatives, and assigns of the Franchisee and all privileges as well as all obligations and liabilities of the Franchisee shall inure to its heirs, successors and assigns equally as if they were specifically mentioned wherever the Franchisee is named herein.

Section 21. **Severability**. If any section, sentence, clause or phrase of this franchise shall be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this franchise.

Section 22. **Assignment**. This Agreement may not be assigned or transferred without prior written notice to the Town except that the Franchisee may freely assign this franchise without notice in whole or in part to a parent, subsidiary, or affiliated corporation or as part of any corporate financing, reorganization, or refinancing. In the case of transfer or assignment as security by mortgage or other security instrument in whole or in part to secure indebtedness, such notice shall not be required unless and until the secured party elects to realize upon the collateral.

Franchisee may, without the prior written notice to the Town: (1) lease the facilities or any portion thereof to another; (2) grant an indefeasible right of user interest in the facilities or any portion thereof to another; or (3) offer to provide capacity or band width in its facilities to another, provided that Franchisee at all times retains exclusive control over such facilities and remains responsible for locating, servicing, repairing, relocating, or removing its facilities pursuant to the terms and conditions of this franchise.

Section 23. **Notice**. Any notice or information required or permitted to be given to the parties under this franchise may be sent to the following addresses unless otherwise specified:

Town:
Vineyard Town
240 East Gammon Road
Vineyard Utah 84058
Atten: Mayor

Franchisee:

FirstDigital Telecom, LLC
Atten: Legal
90 South 400 West, Suite M-100
Salt Lake City, UT 84101

Notice shall be deemed given upon receipt in the case of personal delivery three (3) days after deposit in the U.S. mail in the case of regular mail, or next day in the case of overnight delivery.

Section 24. **Entire Franchise**. This franchise constitutes the entire understanding and agreement between the parties as to the subject matter herein and no other agreements or understandings, written or otherwise, shall be binding upon the parties upon approval and acceptance of this franchise. Provided further that the Town and the Franchisee reserve all rights they may have under the law to the maximum extent possible and neither the Town nor the Franchisee shall be deemed to have waived any rights they may have or may acquire in the future by entering into this franchise.

Section 25. **Attorney's Fees**. If any suit or other action is instituted in connection with any controversy arising under this franchise, the prevailing party shall be entitled to recover all of its costs and expenses including such sum as the court may judge reasonable for attorney's fees.

Section 26. **Governing Law/Venue**. This franchise shall be governed by and construed in accordance with the laws of the State of Utah. The venue and jurisdiction over any dispute related to this franchise shall be with the Utah State Court in the county in which the Town is located, or with respect to any federal question, with the United States District Court for the District of Utah in Salt Lake Town.

Section 27. **Acceptance**. Within sixty (60) days after the passage and approval of this ordinance, this franchise shall be accepted by the Franchisee by its filing with the Town Clerk an unconditional written acceptance thereof. Failure of the Franchisee to so accept this franchise within said period of time shall be deemed a rejection thereof and the rights and privileges herein granted shall after the expiration of the sixty (60) day period, absolutely cease unless the time period is extended by ordinance duly passed for that purpose.

Section 28. **Effective Date**. This ordinance, shall take effect after the passage and posting of an approved summary thereof consisting of the title.

PASSED AND APPROVED this ____ day of __________, 20__.

TOWN OF VINEYARD

By____________________________
Mayor

ATTEST:

____
Town Clerk
(SEAL)