



ENT 119146:2021 PG 1 of 6
ANDREA ALLEN
UTAH COUNTY RECORDER
2021 Jul 06 1:27 pm FEE 0.00 BY AS
RECORDED FOR SPANISH FORK CITY CORPORATI

When Recorded, Mail To:

City of Spanish Fork
Attn: City Recorder
40 S Main
Spanish Fork, UT 84660

(Space Above for Recorder's Use Only)

MUNICIPAL UTILITY EASEMENT AND AGREEMENT

This MUNICIPAL UTILITY EASEMENT AND AGREEMENT (this "Agreement") is made and entered into effective as of the 15 day of June, 2021 (the "Effective Date"), by and between DAC-SWENSON, L.C. of 7045 South 2400 West, Spanish Fork, Utah 84660, County of Utah, State of Utah ("Grantor"), and the CITY OF SPANISH FORK, a Utah municipal corporation ("Grantee").

RECITALS

A. Grantor is the owner of that certain real property located in the City of Spanish Fork, Utah County, Utah (the "Grantor Property").

B. Grantee desires to obtain and Grantor is willing to convey a municipal utility easement over the Grantor Property subject to the terms and conditions of this Agreement.

C. "Utilities" or "utility" are defined herein to include all municipal utility facilities, pipes, channels, ponds, ditches, boxes, facilities, and all related appurtenances owned and operated by Grantee for the provision of services such as drinking water, secondary water, irrigation water, electric power, telecommunications, storm drainage, storm sewer, sanitary sewer, sewer, roads, and transportation.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

1. **Grant of Easement.** Grantor does hereby convey, without warranty, unto Grantee for the benefit of Grantee an exclusive easement (the "**Municipal Utility Easement**") under and

across that portion of the Grantor Property more particularly described and depicted on Exhibit A, attached hereto and incorporated herein by this reference (the “**Municipal Utility Easement Area**”). Grantor shall not grant any other easements or licenses to any other person or entity on, over, or under the Municipal Utility Easement Area and that no above or below ground improvements, buildings, or facilities of any kind shall be constructed or maintained on the Municipal Utility Easement Area.

2. **Access.** Grantee and its agents, servants, employees, consultants, contractors and subcontractors (collectively, “**Grantee’s Agents**”) shall have the right to enter upon the Municipal Utility Easement Area solely for the purposes permitted by this Agreement. Grantee shall enter upon the Municipal Utility Easement Area at its sole risk and hazard, and Grantee and its successors and assigns, hereby release, indemnify, defend and hold harmless Grantor, its successors and assigns, agents, servants, employees, consultants, contractors and subcontractors (collectively, the “**Grantor Parties**”) from any and all claims relating to the condition of the Municipal Utility Easement Area and the entry upon the Municipal Utility Easement Area by Grantee and Grantee’s Agents.

3. **Cost of easement.** The Grantor agrees to convey the Municipal Utility Easement as described in Exhibit “A” to grantee, for the mutual benefit of sharing in 50% the costs associated with the installation of power utilities within said exhibit. There is no cash to be exchange for this conveyance.

4. **Condition of Easement Area.** Grantee accepts the Municipal Utility Easement Area and all aspects thereof in their “AS IS,” “WHERE IS” condition, without warranties, either express or implied, “WITH ALL FAULTS,” including but not limited to both latent and patent defects, the existence of hazardous materials, if any, and any other easements, rights, or other encumbrances affecting the Utility Easement Area.

5. **Purposes of the Utility Easement.** The purpose of this Municipal Utility Easement is to allow the construction of the Utilities by Grantee and its successors, assigns, and agents in order to meet Grantee’s development standards for the subdivision and development of all or a portion of the Property and to allow Grantee the ability to maintain the Utilities after acceptance in writing. Grantee or its successors, assigns, and agents shall be responsible for the proper and timely construction and installation of the Utilities per Grantee’s standards. Upon the proper and timely construction of the Utilities and acceptance in writing by Grantor and Grantee, per Grantee’s development standards, Grantee, at its sole cost and expense, shall maintain the Utilities in good order and condition, except for repair of the Utilities during the 1-year warranty period per Grantee’s development standards. Grantee shall also have the right to repair, replace, restore, and relocate the Utilities within the Municipal Utility Easement Area. In doing so, Grantee shall restore the Grantor Property to the same condition prior to Grantee’s entry.

6. **Replacement of Utility Easement with Subdivision Plat Recordation.** Upon the recordation of a subdivision plat with the Utah County Recorder’s Office per Grantee’s development standards, which shall provide for the equivalent replacement of the easements in this Agreement in the favor of Grantee, the Municipal Utility Easement shall automatically be deemed superseded and replaced, but only with respect to such portion of the Property over which a subdivision plat is

recorded. Upon such subdivision plat recordation, the rights and obligations in this Agreement shall be of no force or effect so long as the equivalent rights of Grantee are granted in such recorded subdivision plat. For the remainder of Grantor's Property that is not subdivided pursuant to a recorded subdivision plat, this Agreement shall continue in full force and effect.

7. **Notices.** All notices, demands, statements, and requests (collectively, the "Notice") required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the Party to whom the notice is addressed or if such Party is not available the date such notice is left at the address of the Party to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt requested, and (iii) on the date the notice is delivered by a courier service (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the Party to whom it is directed, provided it is sent prepaid, return receipt requested. The addresses of the signatories to this Agreement are set forth below:

If to Grantor: DAC-SWENSON, L.C.
7045 South 2400 West,
Spanish Fork, Utah 84660,

If to Grantee: Spanish Fork City
40 S Main
Spanish Fork, UT 84660
Attn: Engineering

8. **Miscellaneous.**

8.1. **Binding Effect.** Except as expressly stated herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto, as well as the successors and assigns of such Persons.

8.2. **Partial Invalidity.** If any term, covenant or condition of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

8.3. **Captions.** The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

8.4. **Gender.** In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

8.5. Relationship of the Parties. Nothing contained herein shall be construed to make the parties hereto partners or joint venturers, or render any of such parties liable for the debts or obligations of the other party hereto.

8.6. Amendment. This Agreement may be canceled, changed, modified or amended in whole or in part only by the written and recorded agreement of the Parties or their successor and assigns (as determined by the provisions herein).

8.7. Counterparts. This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Agreement.

8.8. Attorney Fees. In the event any legal action or proceeding for the enforcement of any right or obligations herein contained is commenced, the prevailing party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

8.9. Assignment. Grantee may not at any time during this Agreement assign its rights and obligations under this Agreement without the prior written consent of Grantor, which consent may be granted or withheld in Grantors sole and absolute discretion and for any reason or no reason at all.

[Signatures and acknowledgements to follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

GRANTOR: DAC-SWENSON, L.C.

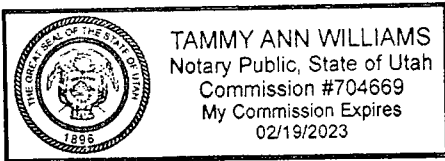
PRINT: David M. Cloward

David M. Cloward
Manager

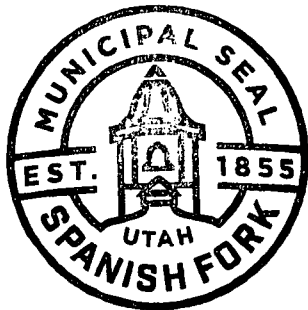
STATE OF UTAH)
:SS

COUNTY OF UTAH)

On the 14 day of May, 2021 personally appeared before me, David Cloward, personally known to me or proved to me, to be the MANAGER of DAC-SWENSON, L.C of 7045 South 2400 West, Spanish Fork, Utah 84660, County of Utah, State of Utah, who duly acknowledged to me that he signed the foregoing instrument as the MANAGER of said limited liability company on behalf of said limited liability company executed the same.



Tammy Williams
NOTARY PUBLIC



GRANTEE:

Spanish Fork City, a Utah municipal corporation

Steve Leifson
STEVE LEIFSON, Mayor

ATTEST:

Tara Allen
City Recorder

EXHIBIT A

DAC-SWENSON, L.C. EASEMENT DESCRIPTION

A PORTION OF SOUTHWEST ¼ OF SECTION 26, TOWNSHIP 8 SOUTH, RANGE 2 EAST, SALT LAKE BASE & MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT A POINT WHICH LIES S89° 31' 29"W ALONG THE SECTION LINE 32.80 FEET AND NORTH 0.19 FEET FROM THE SOUTH ¼ CORNER OF SECTION 26, TOWNSHIP 8 SOUTH, RANGE 2 EAST, SALT LAKE BASE & MERIDIAN; RUNNING THENCE S89° 31' 53"W 9.70 FEET; THENCE N00° 17' 30"W 681.94 FEET; THENCE N89° 50' 20"E 10.26 FEET; THENCE S00° 11' 38"E 331.15 FEET; THENCE S00°17'30"E 350.76 FEET, RETURNING TO THE POINT OF BEGINNING.

AREA +/- .15 AC