

TRAIL SYSTEM PAYMENT IN LIEU AGREEMENT

THIS TRAIL SYSTEM PAYMENT IN LIEU AGREEMENT (“Agreement”) is made effective as of _____, 2025 (“Effective Date”) by and between Toquerville City, a Utah municipal corporation (the “City”), and SAPP BROS., INC. a Nebraska corporation (the “Sapp Bros”). Throughout this Agreement, the City and the Sapp Bros may be referred to herein individually as a “Party” or collectively as the “Parties”.

RECITALS

WHEREAS, the Sapp Bros are the owners of certain real property located within the City, including without limitation, property identified as Washington County Parcel Nos. T-3-0-27-3410 and T-3-027-315 (collectively, the “Properties”);

WHEREAS, as a condition for development approval for the Properties, Sapp Bros agreed to design and construct a recreational trail for public use on the Properties (the “Trail System”);

WHEREAS, the proposed Trail System would be located on portions of the Properties adjacent to Toquerville Parkway (the “Parkway”) and in close proximity to Interstate 15;

WHEREAS, Sapp Bros has addressed concerns about the usability, safety, and desirability of constructing the Trail System in the proposed location, due to its proximity to the Parkway and Interstate 15;

WHEREAS, in lieu of constructing the Trail System, Sapp Bros have proposed to make a payment in lieu of improvements in an amount equal to the estimated cost of designing and installing the Trail System;

WHEREAS, the City has determined that it is in the best interest of the City to waive Sapp Bros’s obligation to construct the Trail System and to accept a payment in lieu of improvements, which funds may be allocated by the City toward other park or trail capital improvements within the City; and

WHEREAS, the Parties desire to enter into this Agreement to formally memorialize the terms and conditions of the City’s waiver of the Trail System installation requirement and the acceptance of a payment in lieu thereof.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and obligations set forth below, and for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Waiver of Trail System Installation Requirement. The City hereby waives the Sapp Bros’s obligation to install the Trail System, on the express condition that Sapp Bros makes a

payment in lieu of improvements to the City in an amount equal to the proposed cost of the Trail System. Sapp Bros shall obtain a written cost estimate for the installation of the Trail System (the "Cost Estimate") prepared by a licensed professional engineer and shall provide a copy of the Cost Estimate to the City. The City shall verify that the Cost Estimate reasonably reflects the anticipated costs of design, materials, labor, and all other necessary expenditures associated with construction of the Trail System, consistent with industry standards and comparable projects. Upon the City's written approval of the Cost Estimate, Sapp Bros shall remit to the City a payment in lieu of improvements in an amount equal to the approved Cost Estimate (the "Funds") within thirty (30) days of such approval. Should Sapp Bros fail to pay the Funds within said timeframe, this Agreement shall be null and void.

2. Use of Funds. The City shall retain sole discretion over the use of the Funds and shall not be obligated to use such funds for the design, construction, or installation of the Trail System or any specific improvement. The Funds may be used by the City for any capital improvements related to parks or trails.
3. City's Right to Construct Trail System. Nothing in this Agreement shall be construed to obligate the City to construct the Trail System. However, the City expressly retains the right, but not the obligation, to construct the Trail System, in whole or in part, in accordance with the plans and specifications contemplated by the Cost Estimate or any modified design as determined appropriate by the City, as such time and in such manner as the City may choose. Should the City choose to construct the Trail System, Sapp Bros agrees that it shall not interfere with, restrict, or otherwise impede the City's access to or use of the property necessary to construct, maintain, or operate the Trail System, and shall grant the City such temporary or permanent access, licenses, or easements as may be reasonably necessary to facilitate the installation and public use of the Trail System.
4. Waiver of Future Claims Related to Trail System. Sapp Bros hereby waives any claims for payment, including without limitation, seeking a reimbursement, credit, or impact fee offset related to the Trail System.
5. Severability. If any provision or term of this Agreement is declared invalid or unenforceable by statute or judicial decision, such action shall not invalidate the entire Agreement. It is the express intention of the Parties that all other provisions not declared invalid or void shall remain in full force and effect.
6. Further Assurances. Each Party will, whenever it shall be reasonably requested to do so by the other Party, promptly execute, acknowledge, and deliver, or cause to be executed, acknowledged, or delivered, any and all such further conveyances, confirmation, instruments, or further assurances and consents as may be necessary or proper, in order to effectuate the covenants and agreements herein provided. Each of the Parties shall cooperate in good faith with the other and shall do any and all other acts and execute, acknowledge and deliver any and all documents so requested in order to satisfy the conditions set forth herein and carry out the intent and purposes of this Agreement.
7. Interpretations. Any uncertainty or ambiguity existing herein shall not be interpreted against

either Party because such Party prepared any portion of this Agreement but shall be interpreted according to the application of rules of interpretation of contracts generally.

8. Entire Agreement. This Agreement contains the entire agreement of the Parties relating to a transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, warranties, and statements, oral or written, are merged herein. This Agreement cannot be modified or altered unless reduced to writing and consented to by all Parties.
9. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be an original and all of which shall constitute one and the same instrument.
10. Governing Law. This Agreement shall be governed by the laws of the State of Utah. The Parties irrevocably submit to the exclusive jurisdiction of the Fifth District Court in Washington County, Utah.
11. Attorneys' Fees. In any legal action or other adversarial proceeding arising out of this Agreement, the prevailing Party will be entitled to receive attorney fees, expenses and court costs.
12. Modification. No supplement, modification, waiver or termination of this Agreement or any provision hereof shall be binding unless executed in writing by all Parties.
13. No Partnership or Joint Venture. Nothing in this Agreement shall create a partnership or joint venture between the Parties, any relationship of principal and agent, or authorize any Party to make or enter into any commitments for or on behalf of the other Party.
14. Arm's Length Transaction. This Agreement was negotiated at arm's length and it is the intent of the Parties that no part of this Agreement be construed against any Party because of the identity of the drafter.

IN WITNESS HEREOF, the undersigned have executed this Agreement as of the Effective Date.

[Signature Page Follows]

CITY:

TOQUERVILLE CITY,
a Utah municipal corporation

Justin Sip, Mayor Date

ATTEST:

Emily Teaters, Recorder Date

SAPP BROS:

SAPP BROS., INC.,
a Nebraska corporation

By: _____
Its: _____