

RESOLUTION NO. 2024-06-113R

CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS

**A RESOLUTION AUTHORIZING THE MAYOR TO NEGOTIATE AND ENTER INTO A LAND DEVELOPMENT AGREEMENT AND GUARANTEE WITH GSPNWA, INC. FOR THE CONSTRUCTION OF THE BARRINGTON SUBDIVISION IN THE CITY OF TONTITOWN, ARKANSAS.**

**WHEREAS**, the City of Tontitown has received a proposal from GSPNWA, Inc. (the “Developer”) for plat approval to construct the Barrington Subdivision development located south of the Barrington Road and Highway 412 intersection in the City of Tontitown, subject to the consideration and approval of the Planning Commission and City Council; and

**WHEREAS**, the Developer has agreed to make certain improvements to Barrington Road and its surrounding areas, as required by the Tontitown Municipal Code, and has proposed a cost share commitment with the City of Tontitown for additional improvements to, and around, what will become the new Fletcher Road, as set forth and more particularly described in the attached Exhibit “1”; and

**WHEREAS**, the City of Tontitown acknowledges that the Developer will incur additional costs for the proposed improvements to the new Fletcher Road which will exceed the cost of the Barrington Road improvements that are required by the Tontitown Municipal Code; and

**WHEREAS**, the City Council has reviewed the proposal, and has determined that it is in the best interest and benefit of the community to authorize the Mayor to negotiate and execute the Land Development Agreement and Guarantee with GSPNWA, Inc., attached hereto as Exhibit “1”, for the Barrington Subdivision development, and the City acknowledges and agrees to be responsible for its cost share commitment in the amount of \$22,187.33, for additional improvements to the new Fletcher Road, as well as funding for half of the amount of any additional costs incurred by change orders for the Fletcher Road improvements.

**NOW, THEREFORE, BE IT RESOLVED**, by the City Council of the City of Tontitown, Arkansas:

**Section 1.** The City Council of Tontitown hereby authorizes the Mayor to negotiate and execute the Land Development Agreement and Guarantee with GSPNWA, Inc., attached hereto as Exhibit “1”, for the Barrington Subdivision development, and the City of Tontitown hereby agrees to be responsible for its cost share commitment with GSPNWA, Inc. in connection with the additional improvements to, and around the new Fletcher Road.


**Section 2.** The Mayor and her designee are hereby authorized to expend funds and to take all such action as necessary in connection therewith. Further, all previous acts and actions of the Mayor or her designee are hereby ratified and approved.

**PASSED AND APPROVED** this 18 day of June 2024.

**APPROVED:**

  
\_\_\_\_\_  
Angela Russell, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Rhonda Ardemagni, City Clerk-Treasurer  
(SEAL)

**LAND DEVELOPMENT AGREEMENT AND GUARANTEE**

This Land Development Agreement and Guarantee ("Guarantee") is made this 24<sup>th</sup> day of May, 2024 by and between the City of Tontitown, Arkansas (the "City") and GSPNWA Inc., an Arkansas corporation, the owner(s) of property located south of the Barrington Road and Highway 412 intersection, recorded as instrument number \_\_\_\_\_ at the Washington County Circuit Clerk and Recorder and represented by Justin Salter, Member (name and title where ownership is titled in a corporation or business name), collectively hereinafter, ("Developer")

**WHEREAS**, it is the responsibility of the City to protect the health, safety and welfare of the citizens of the City, and this responsibility extends to ensuring the orderly development of land in the City within the parameters established by the laws of the State of Arkansas and the City of Tontitown, Arkansas; and

**WHEREAS**, the Developer requests plat approval to construct a development known as "Barrington Subdivision", located south of the Barrington Road and Highway 412 intersection (the "Development"); subject to conditions ("Conditions") as incorporated hereinafter, and which will hereafter be submitted for approval from the Tontitown Planning Commission; and

**WHEREAS**, in accordance with the request for Approval, the Developer is seeking the approval of certain Conditions from the City; and

**WHEREAS**, the parties have agreed, subject to Planning Commission and City Council's ultimate consideration and approval, that: (i) certain items and requirements which Developer would otherwise be required to complete will not be required for this Development; and instead, (ii) Developer has agreed to complete certain other items and requirements which Developer would not otherwise be required to complete; and (iii) the City has agreed to cost share a part of the increase in cost of the foregoing; and

**WHEREAS**, the City Code requires certain guarantees related to requested Conditions, and the parties agree that such guarantees shall pertain to the improvements as based upon the code and regulations as well as plan approval Conditions for the Development; and

**WHEREAS**, the City code also requires that when an owner/developer requests plat approval, the owner/developer shall agree to guarantee the installation or ensure the completion of the improvements; and

**WHEREAS**, the Developer desires to develop the aforementioned Development in compliance with the plan and Conditions of approval, and all applicable Federal, State, and City laws, ordinances and regulations, except to the extent modified in this Agreement; and

**WHEREAS**, the City desires to ensure that the approved Conditions contain the timeline and means of construction and reference of amenities and performance bonding for private and public improvements, as based upon City code and regulations as well as plan approval and Conditions; and

**WHEREAS**, the Developer requests approval of the plat for the Development and freely enters into this Guarantee in reference to the aforesaid Development.

**NOW, THEREFORE**, in consideration of the foregoing premises, the conditions, and promises hereinafter set forth, the Developer agrees to be legally bound as follows:

1. As used herein, "Plans of Development" means that certain pages of plans authored by Half and dated as of April, 2024. In order to secure the City's approval of the Conditions, the Developer shall comply with the Plans of Development and the Conditions if the Planning Commission approves



them. The Conditions are attached to this Guarantee by Exhibit "A". The Developer acknowledges that the Conditions shall be completed before final approval, including the issuance certificates of final plat approval, unless another timeline is expressly provided for in the attached Conditions. If the Planning Commission approves the Plans of Development, the Developer agrees that the Conditions shall run with the land until such time as subsequent approvals are provided or the Conditions are changed through the City's development process. The Conditions and this Agreement shall be void if the Tontitown Planning Commission or the Tontitown City Council does not approve the Plans of Development.

2. It is the Developer' responsibility to make sure that all contractors, subcontractors, agents, successors and assigns of the Development are fully aware of the approved Plans of Development and the Conditions
3. The Developer shall, prior to the start of any site preparation activity, including clearing, grubbing, grading, etc., obtain from the City, all appropriate permits in accordance with the requirements of the Tontitown Code, the Conditions and this Guarantee. Violations shall subject the Developer to any fines and penalties pursuant thereto and shall, in addition, permit the City to suspend, cancel or revoke any permits issued concerning the Development and take any other remedial actions for under applicable law.
4. If the Plans of Development are approved by the Planning Commission and City Council (which approvals then constitute preliminary plat approval of the Plans of Development), Developer covenants, promises and agrees to build, construct and install all private improvements, in accordance with the plan and those associated construction drawings set forth in the Plans of Development, including but not limited to all access drives, parking, streets, sidewalks, walkways, gutters, stormwater management facilities, curbs, water lines, sewers, utilities, landscaping and any facilities to be owned, maintained or operated by a private entity such as an individual, partnership, corporation or homeowners' association and constructed in accordance with the construction standards as set forth in the Plans of Development and as approved by the City.
5. Developer shall provide a bond or financial surety as required by the City Code in the amount of value of purchase and construction or installation of the improvements as set forth in the Conditions.
6. If the improvements guaranteed through the bonds are not as required by the Code, the City may, at its sole discretion, execute the bonds and shall direct the completion of the required work as per the approved plan and associated construction drawings. The Developer agrees to take all measures necessary to assist with the City's execution of the bonds.
7. Developer shall indemnify completely, defend and save harmless the City of Tontitown, its elected and appointed officers, agents and employees from any and all costs and damages, losses, claims, suits and actions including cost of defense and attorney's fees which the City of Tontitown, its elected and appointed officers, agents and employees may sustain or suffer by reason of Developer failing to adequately and properly perform the terms and conditions of this Guarantee including the construction of public and private improvements.
8. The Developer shall obtain all other required City, County, State and Federal Permits and approvals and shall abide by the rules and regulations governing said permits and approvals in effect at the time of issuance.
9. During construction, the Developer, its contractors, sub-contractors and builders shall keep public roads, highways surrounding the property and other public property, which are used by vehicles entering and leaving the construction site, in good repair, clean and free of mud, dust, debris and trash, and shall maintain existing drainage patterns on all roadways. The City shall withhold final

approvals until any required repairs are made, or clean-up performed, at the satisfaction of the City to public streets and property caused by the aforementioned construction.

10. During construction, the Developer shall police the construction area daily, keeping the same safe and free and clear of all rubbish, refuse, brush, debris and discarded building materials so as not to create a public nuisance. The Developer may accumulate said material in an area approved by the City until such time as the accumulated matter is removed from the site by the Developer, provided that the City, at its sole discretion, may require the removal of said material. The Developer shall remove from the site and dispose of all rubbish, refuse, brush, debris and discarded building materials, leaving the Development free and clear of the same prior to the release of any remaining financial security or final acceptance of any public improvements. The burning of any construction rubbish, refuse, debris is not permitted.
11. Prior to commencement of any site preparation activity or construction, the Developer shall comply with all requirements and regulations in effect at the time of plan/plat approval with respect to hauling equipment and building materials on overweight restricted city roads.
12. Developer specifically agrees that any permits issued in accordance with appropriate City ordinances, shall automatically be revoked by it or its contractors or subcontractors or builders' failure to comply with any portion of this Guarantee, after notification to the Developer and his subsequent failure to correct such condition within forty-eight (48) hours of notification. The exception shall be made for dust and mud where the Developer shall be required to immediately correct such violation.
13. The Developer hereby gives specific permission for the City, its employees, agents or contractors to conduct inspections on its property. These inspections may take place at any time and with any frequency as the City deems appropriate in order to ensure construction in accordance with approved Conditions. Where the Developer proposes to offer proposed improvements to the City, the Developer shall notify the City twenty-four (24) hours prior to the following activities: excavating, embankment construction, detention ponds, storm sewers, utility lines, base course, binder course, wearing course and seeding.
14. The Developer agrees to comply with all regulations, approvals and specifications enacted or promulgated by the Federal Government, Arkansas Department of Environmental Protection, as part of the coordinated, comprehensive stormwater management plan. The Developer agrees that the City shall have the sole right to determine and to approve the location and number of fire hydrants it deems necessary for the protection of the development. All costs and expenses relating to the installation of the fire hydrants shall be borne by the Developer.
15. The developer shall maintain all storm water detention and best management practices as required by City ordinances or shall be subject to penalties thereof.
16. The Developer shall provide to the City one (1) electronic copy of the as-built plans in PDF and DWG formats with approved Engineer certification and two (2) paper copies of all site improvements prior to formal acceptance and/or final release of any financial security related thereto, including landscaping plans which shall be sealed by a registered landscape architect.
17. During construction of all phases, parking for vehicles related to the construction activities shall be arranged so as not to create a potential traffic hazard at the direction of the City.
18. Developer shall not erect, nor permit any agent, employee, contractor or subcontractor of the Developer, including but not limited to builders, real estate agents, contractors, etc., to erect any sign related to the development that is not permitted by the City code.



19. All erosion and sedimentation controls shall be installed and maintained in accordance with an approved by the Storm Water Pollution Prevention Plan (SWPPP) prior to any other construction activity occurring at the Development.
20. The Developer shall be responsible to immediately revegetate and/or stabilize all areas of disturbed soil within a development in accordance with the Plans of Development.
21. It is specifically understood that this Guarantee is binding upon the Developer, its successors, assigns, agents, representatives, and officers, but that any partial or whole transfer of construction rights, approvals or agreements, shall subject the transferee and all transferee's contractors and subcontractors to all provisions of this Guarantee and all other rules, regulations, statutes and ordinances of Tontitown; provided, that the foregoing does not apply if the Plans of Development are not approved by the Planning Commission and City Council. It is further specifically understood that the Developer may not assign or transfer its rights hereunder without prior, written and duly authorized consent of the City.
22. The Developer shall protect, indemnify and save harmless Tontitown and its officers, employees, attorneys, and agents against them from any and all liabilities, suits, actions, claims, demands, losses, expenses and costs of every kind and nature (including costs of defense and attorney's fees) incurred by, or asserted or imposed against, Tontitown and its officers, employees, attorneys and agents, or any of them, by reason of any accident, injury (including death) or damage to any person or property which occurs or is alleged to have occurred in connection with the development of the property described in this Guarantee.
23. Neither this Guarantee nor any item hereof may be changed, waived, discharged, or terminated orally, but only by an instrument in writing by all parties hereto.
24. It is expressly agreed that nothing contained in this Guarantee shall be construed to contain a covenant, either expressed or implied either to create any obligation of Tontitown, Arkansas that is not consistent with the City code.
25. This Guarantee does not create an obligation or relationship such as a partnership, joint venture, or other similar legal relationship under the laws of any state or the federal government.
26. Nothing in this Guarantee shall operate as, or be construed as, a waiver, limit, modification, nullification, or alteration, of the tort immunity and other rights and immunities afforded by law to the City of Tontitown, including but not limited to those immunities set forth in Ark. Code Ann. § 21-9-301.
37. This Guarantee shall be interpreted and construed in accordance with the laws of the State of Arkansas, and any dispute with respect to it and the rights and duties thereby created shall be litigated in Washington County, Arkansas.

IN WITNESS WHEREOF, the Developer and City, having read, understands and freely agrees.

**DEVELOPER:**  
GSPNVA Inc

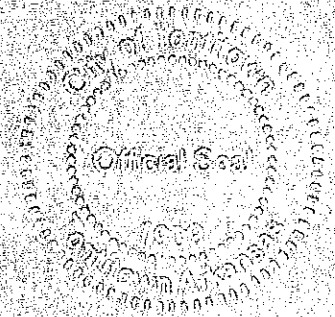
By: \_\_\_\_\_

Title: \_\_\_\_\_

**CITY**  
City of Tontitown,

By: \_\_\_\_\_

Title: \_\_\_\_\_



## EXHIBIT A

1. Barrington Road - In lieu of the improvements Developer would otherwise either be required or requested to make to and surrounding Barrington Road, the estimated costs of which are \$520,340.21, the only improvements Developer shall make to Barrington and its surrounding areas are as shown and otherwise detailed in the Plans of Development with the date referenced in the agreement to which this Exhibit is attached. Future improvements of Barrington Road shall be paid for by others and not Developer.

2. New proposed Fletcher Road - In consideration for the concession referenced in #1 above, Developer shall make additional improvements to and around what will become the new Fletcher Road as set forth in the Plans of Development with the date referenced in the agreement to which this Exhibit is attached, the estimated costs of which are \$542,527.54.

3. Cost share - The Developer and City acknowledge that Developer will incur additional costs from the additional improvements referenced in #2 above over what it would cost for Developer to make the Barrington Road improvements Developer will not otherwise have to make, as referenced in #1 above. The City hereby agrees to cost share these additional costs in the amount of: (i) \$22,187.33; and (ii) 1/2 of any additional costs due to change orders for the extra Fletcher improvements. The City will pay to Developer the referenced \$22,187.33 at the completion of the project and final acceptance by the City at the time of Final Plat. Regarding the City's obligation for change orders, the City shall have the option of either: (i) paying its 1/2 of those amounts at the same time as it pays the \$22,187.33; (ii) offsetting it against impact or other fees the Developer would otherwise owe as the Subdivision is built out.

4. Nothing set forth above shall abrogate the Developer's responsibility for the payment of all fees, as required by City Code, for the Development, including but not limited to standard development fees as well as Transportation, Public Safety, Water, and Sewer Impact Fees as well as all such fees for the commercial lot associated with the Development in addition to Transportation Impact Fees for said commercial lot.

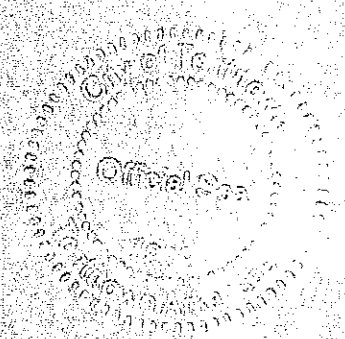


Opinion of Probable Construction Cost  
for  
Fletcher Road & South Barrington Road Improvements  
Fletcher Road Collector Improvements & Barrington Road Minor Arterial Improvements  
Tontitown, Washington County, Arkansas  
5/16/2024

Item No.	Description	Unit	Quantity	Unit Cost	Total Cost
<b>Fletcher Road Improvements (932 LF of Half Road Improvements)</b>					
1	Mobilization	LS	1	\$ 15,000.00	\$ 15,000.00
2	Site Preparation	LS	1	\$ 37,500.00	\$ 37,500.00
3	Trench and Excavation Safety Systems	LS	1	\$ 5,000.00	\$ 5,000.00
4	Erosion Control (Inclusive of all items in SWPPP)	LS	1	\$ 5,000.00	\$ 5,000.00
5	2" ACHM Surface Course (ARDOT Type 3)	SY	1,502	\$ 20.00	\$ 30,040.00
6	3" ACHM Surface Course (ARDOT Type 2)	SY	1,502	\$ 22.00	\$ 33,044.00
7	Base Course (ARDOT Class 7) (8" Thickness)	SY	1,813	\$ 16.00	\$ 29,008.00
8	Prime Coat (0.3 GAL/SY)	GAL	544	\$ 4.75	\$ 2,584.00
9	Concrete Curb and Gutter (ARDOT Type A)	LF	932	\$ 20.00	\$ 18,640.00
10	12" Concrete Trail (4" Thickness) (4" Class 7 Base)	SY	1,243	\$ 95.00	\$ 118,085.00
11	Accessible Ramps	EA	2	\$ 1,500.00	\$ 3,000.00
12	18" RCP (Class III)	LF	350	\$ 75.00	\$ 26,250.00
13	24" RCP (Class III)	LF	250	\$ 80.00	\$ 20,000.00
14	24" FES (RCP)	EA	1	\$ 750.00	\$ 750.00
15	Curb Inlet/Junction Box (48" Dia.)	EA	2	\$ 7,275.00	\$ 14,550.00
16	Extra Throat	LF	12	\$ 300.00	\$ 3,600.00
17	Street Trees	LS	1	\$ 5,000.00	\$ 5,000.00
18	Topsoil Placement (4")	SY	725	\$ 9.00	\$ 6,525.00
19	Seeding	SY	725	\$ 3.00	\$ 2,175.00
Fletcher Road Improvements Sub-Total =					\$ 375,751.00
Contingency (15%) =					\$ 56,362.65
<b>Total Opinion of Probable Construction Cost =</b>					<b>\$ 432,113.65</b>
<b>Barrington Road Improvements (841 LF of Half Road Improvements)</b>					
1	2" ACHM Surface Course (ARDOT Type 3)	SY	701	\$ 20.00	\$ 14,020.00
2	3" ACHM Surface Course (ARDOT Type 2)	SY	701	\$ 22.00	\$ 15,422.00
3	Base Course (ARDOT Class 7) (8" Thickness)	SY	815	\$ 16.00	\$ 13,040.00
4	Prime Coat (0.3 GAL/SY)	GAL	245	\$ 4.75	\$ 1,163.75
5	Concrete Curb and Gutter (ARDOT Type A)	LF	341	\$ 20.00	\$ 6,820.00
6	6" Concrete Sidewalk (4" Thickness) (4" Class 7 Base)	SY	227	\$ 75.00	\$ 17,025.00
7	Accessible Ramps	EA	1	\$ 1,500.00	\$ 1,500.00
8	Topsoil Placement (4")	SY	644	\$ 9.00	\$ 5,796.00
9	Seeding	SY	644	\$ 3.00	\$ 1,932.00
Barrington Road Improvements Sub-Total =					\$ 76,718.75
Contingency (15%) =					\$ 11,507.81
<b>Total Opinion of Probable Construction Cost =</b>					<b>\$ 88,226.56</b>

Developer's Half Road Improvements Responsibility = \$ 520,340.21

Note: Earthwork quantities are not included in this OPCC.



Opinion of Probable Construction Cost  
for  
Proposed Fletcher Road Improvements  
1,233 LF of Modified Collector Road Section  
Tontitown, Washington County, Arkansas  
5/16/2024

Item No.	Description	Unit	Quantity	Unit Cost	Total Cost
<b>Fletcher Road Improvements (Modified Section)</b>					
1	Mobilization	LS	1	\$ 15,000.00	\$ 15,000.00
2	Site Preparation	LS	1	\$ 50,000.00	\$ 50,000.00
3	Trench and Excavation Safety Systems	LS	1	\$ 5,000.00	\$ 5,000.00
4	Erosion Control (Inclusive of all Items in SWPPP)	LS	1	\$ 5,000.00	\$ 5,000.00
5	Remove & Dispose Concrete Curb and Gutter from Cul-de-sac	LF	141	\$ 25.00	\$ 3,526.51
6	Remove & Dispose Existing Asphalt and Base Course from Cul-de-sac	SY	347	\$ 30.00	\$ 10,396.32
7	Remove & Dispose Existing Asphalt, Base Course and Dock from Parking Lot	SY	1,041	\$ 30.00	\$ 31,230.00
8	2" ACHM Surface Course (ARDDT Type 3)	SY	3,810	\$ 20.00	\$ 76,200.00
9	3" ACHM Binder Course (ARDDT Type 2)	SY	3,810	\$ 22.00	\$ 83,820.00
10	Base Course (ARDDT Class 7) (8" Thickness)	SY	4,630	\$ 16.00	\$ 74,080.00
11	Prime Coat (0.3 GAL/SY)	GAL	1,389	\$ 4.75	\$ 6,597.75
12	2" Gravel Shoulders	LF	2,475	\$ 4.00	\$ 9,900.00
13	Concrete Curb and Gutter (ARDDT Type A)	LF	120	\$ 20.00	\$ 2,400.00
14	5' Concrete Sidewalk (4" Thickness) (4" Class 7 Base)	SY	652	\$ 95.00	\$ 61,940.00
15	18" RCP	LF	145	\$ 75.00	\$ 10,875.00
16	18" FES (RCP)	EA	2	\$ 650.00	\$ 1,300.00
17	Curb Inlet/Junction Box (48" Dia.)	EA	1	\$ 7,275.00	\$ 7,275.00
18	Stop Signs	EA	1	\$ 700.00	\$ 700.00
19	Road Signs	EA	2	\$ 300.00	\$ 600.00
20	4" Solid Double Yellow Pavement Marking (Thermo)	LF	950	\$ 3.15	\$ 2,992.50
21	24" White Stop Bar Pavement Marking (Thermo)	LF	13	\$ 30.00	\$ 390.00
22	Topsoil Placement (4")	SY	1,045	\$ 9.00	\$ 9,405.00
23	Seeding	SY	1,045	\$ 3.00	\$ 3,135.00
Fletcher Road Improvements Sub-Total					\$ 471,763.08
Contingency (15%)					\$ 70,764.46
<b>Total Opinion of Probable Construction Cost</b>					<b>\$ 542,527.54</b>

Note: Earthwork quantities are not included in this OPCC.

