

PROPERTY IMPACT COMPENSATION AND RELEASE AGREEMENT

On this ____ day of ____, 2026, this Property Impact Compensation and Release Agreement (“Agreement”) is entered into by and between Joseph and Audra Austin (collectively referred to as “the Owners”) and the City of Tontitown, Arkansas, an Arkansas municipal corporation (“the City”).

WHEREAS, Joseph Austin and Audra Austin (collectively, “Owners”) own the real property located at 572 S. Klenc Road, Tontitown, Arkansas, identified as Parcel No. 830-37675-001 and more particularly described in Exhibit A attached hereto (“Property”); and

WHEREAS, the City of Tontitown proposes the Fletcher Avenue Extension West street project, Project No. T 24-110 (Project), which requires removal or alteration of the Property’s existing access drive and will affect portions of its fencing, landscaping, and related improvements; and

WHEREAS, the City of Tontitown, Arkansas, and Owners desire to enter into this Agreement to provide compensation for specified impacts to the Property arising from the Fletcher Avenue Extension West project; and

WHEREAS, Owners have requested direct monetary compensation in lieu of having the City’s contractor perform the specified private-property restoration; and

WHEREAS, the parties have agreed to address the Project’s impacts to the Property through negotiated compensation and an allocation of restoration responsibilities on the terms stated herein;

NOW, THEREFORE, in consideration of the mutual agreements, covenants, and obligations contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the City of Tontitown, Arkansas, and the Owners agree as follows:

1. **Purpose and Scope**: This Agreement provides compensation for the Project impacts expressly identified in completed Exhibit C and located on the approved plan attached as Exhibit B (Covered Impacts), in lieu of City-performed private restoration for those impacts. The Covered Impacts may include the identified driveway demolition and replacement, clearing, fencing, topsoil, sod, and private drainage work, but only to the extent specifically included in Exhibit C. The parties’ obligations and the release are limited to the agreed scope.

Owners enter this Agreement as property owners. The City does not hire Owners or Midland Construction as its construction contractor. This Agreement does not convey title, grant an easement, or acquire additional property rights. Any right-of-way or

easement documents are separate and remain governed by their own terms, except for a specific restoration obligation expressly modified in Exhibit C with the signatures of all necessary parties.

2. **Agreed Compensation.** The City shall pay Owners \$217,314.00 (Two Hundred Seventeen Thousand Three Hundred Fourteen and No/100 Dollars) as a single lump-sum payment for the Covered Impacts and release provided herein. Payment shall be made within thirty (30) days after Council approval and execution by all parties. Owners shall provide the information reasonably required for issuance of payment through the City's normal payment procedures. Payment shall be made to Joseph and Audra Austin.

The agreed compensation is based on the itemized pricing submitted by Owners' contractor, Midland Construction, with the additions shown in Exhibit C. This figure is not a guarantee of actual costs or a unit-price construction contract. Exhibit C shall identify any prior payment or credit applicable to the Covered Impacts and any separately compensated matters to avoid duplication.

3. **Owners Responsibility:** Upon receipt of payment, Owners assume responsibility for arranging, paying for, and maintaining the private restoration assigned to them in Exhibit C. The Owners bear any costs exceeding the agreed compensation. The parties agree that the City has no obligation to perform that restoration or make further payment for it, except as expressly stated in this Agreement.

Owners may select their own contractors, materials, and methods, subject to applicable law and the essential access, drainage, connection, and coordination requirements in Exhibit C. Except for those requirements, Owners need not reproduce every quantity or improvement in Exhibit C or the engineer's estimate. Owners shall obtain required permits and inspections and pay their contractors and suppliers. The City is not responsible for the private work's contractor debts, warranties, or liens.

Owners are responsible for injury or damage caused by their private restoration to the extent imposed by law. City review or inspection of a connection or interface does not make the City responsible for the design, means, methods, or workmanship of Owners' private restoration.

4. **Work Retained by City:** The City remains responsible for the public improvements and other work expressly assigned to it in Exhibit C ("Retained City Work"), through its separately procured Project contract. Exhibit C shall specifically assign responsibility for the 31 feet of elliptical storm pipe, two end sections, driveway connection, and related grading, including subsequent ownership and maintenance. Public infrastructure work shall remain in the City's construction scope unless its proposed treatment is separately reviewed and lawfully authorized before execution.

The City shall revise its plans and bid or contract documents, as applicable, to reflect the agreed division of responsibilities. This Agreement does not itself amend the City's construction contract or authorize additional contractor work. The City shall preserve any access rights needed for Retained City Work under the applicable separate instruments.

5. **Access and Coordination.** Before execution, Exhibit C shall identify the temporary or replacement access arrangement, responsibility for providing it, the trigger for removal of existing access, drainage and connection requirements, and essential completion milestones. Removal of existing access shall be coordinated with provision of the agreed usable temporary or replacement access. The parties shall comply with the agreed sequence and shall not interfere with each other's allocated work.

Owners shall construct the new private access drive described in Exhibit C, and the compensation paid under this Agreement includes that work.

Owners shall give the City Engineer at least 10 business days' notice before work affecting the Project interface. Owners shall not obstruct public drainage, utilities, sidewalks, or the City's construction. Work in public right-of-way or an easement requires applicable authorization and compliance with approved connection details. Owners' flexibility over purely private restoration does not excuse the essential requirements in Exhibit C.

City entry onto the Property must be authorized by an existing right, separate written permission, or other lawful authority. This Agreement does not create a general right of entry. Any additional temporary access required for construction shall be addressed separately before that access occurs.

6. **Release & Satisfaction.**

a. Released Claims. Upon receipt of the full payment required by Section 2, Owners, individually and collectively, fully and finally release and discharge the City and its current and former officials, employees, agents, Project engineers, and Project contractors and subcontractors, acting in their respective Project capacities (collectively, "Released Parties"), from all claims, demands, causes of action, liabilities, damages, costs, and expenses belonging to Owners and arising from the Covered Impacts expressly identified in Exhibits B and C ("Released Claims"). Released Claims include claims for just compensation, inverse condemnation, diminution in property value, loss or alteration of access, removal or disturbance of the identified improvements, and the cost of restoring or replacing those improvements, but only to the extent attributable to the Covered Impacts.

b. Known and Unknown Consequences. The release includes Released Claims whether presently known or unknown, anticipated or unanticipated, accrued or arising after payment, provided they arise from implementation of the Covered Impacts within the scope and limits established by this Agreement. Owners expressly assume the risk that the consequences of those Covered Impacts, the actual restoration costs, or the resulting effect on the Property's value or use may differ from their present expectations, the pricing in Exhibit C, or the engineer's estimate. Such differences shall not entitle Owners to additional compensation or reopen the Released Claims.

c. Discharge of Restoration Obligations. The payment constitutes full and final compensation for the Covered Impacts and fully satisfies and discharges the City's obligations to perform or pay for the private restoration expressly assigned to Owners in Exhibit C. Owners' failure or decision not to complete that restoration, use of the payment for another purpose, or incurrence of costs exceeding the payment shall not revive any Released Claim or require the City to perform the restoration or make an additional payment. Owners remain responsible for the requirements expressly imposed on them by this Agreement.

d. Covenant Not to Sue. Owners shall not assert, prosecute, or maintain any Released Claim against a Released Party, whether through a lawsuit, demand for additional compensation, or other proceeding. This covenant does not prohibit enforcement of obligations expressly retained under this Agreement.

e. Reserved Matters. The release does not extend to claims arising from the City's breach of an express obligation under this Agreement, failure to perform Retained City Work, entry without lawful authority, damage outside the agreed scope or limits, or additional impacts caused by a material departure from Exhibits B and C. These reservations do not permit recovery of additional compensation merely because the consequences or costs of the agreed Covered Impacts differ from Owners' expectations.

f. Ownership and Authority. Each Owner represents that the Owner has authority to release the Released Claims and has not assigned, transferred, pledged, or otherwise disposed of any such claim. Owners shall identify before execution any other person or entity holding an ownership interest or independently enforceable claim concerning the Covered Impacts. This Agreement releases only claims held by its signatories or lawfully derived through them and does not purport to extinguish an independent claim belonging to a nonparty.

g. Voluntary Agreement. Owners acknowledge that they have reviewed this Agreement and its completed exhibits, understand the payment and release, and have had a reasonable opportunity to obtain independent legal and engineering advice. Owners enter this Agreement voluntarily and rely on its written terms rather than any outside promise concerning additional compensation, restoration, or actual restoration costs.

h. Continuing Effect. Following full payment, the release and covenant not to sue survive completion of the Project, transfer of the Property, and performance or nonperformance of Owners' restoration obligations. Nothing in this Agreement admits liability or waives any immunity, defense, or limitation of liability available to a Released Party.

7. **Notices.**

Legal Notices to City:

Mayor and Clerk-Treasurer
City of Tontitown, Arkansas
235 E. Henri de Tonti Boulevard, Tontitown, AR 72762

With a copy to: ATTN: City Attorney at TRFarrarLaw@gmail.com

To Owners:

Joseph and Audra Austin
572 S. Klenc Road
Tontitown, Arkansas

Notices shall be delivered personally, by certified mail, or by email with affirmative acknowledgment of receipt.

Routine project coordination: City Engineer

ATTN: Zak Johnston, P.E.
Karstetter Johnston, PLLC
155 E. Fantinel Dr., Suite D
Tontitown, AR 72762

These contacts have no authority to amend this Agreement unless separately authorized.

8. **General Provisions.**

- a. **Arkansas Law.** This Agreement is entered in the State of Arkansas, and it shall be construed and applied in all respects in accordance with the laws of the State of Arkansas. The parties agree to consent to the exclusive jurisdiction of the Circuit Court of Washington County, Arkansas, or the United States District Court for the Western District of Arkansas for any and all matters arising out of the construction, application, or breach of this Agreement.

- b. **Amendment.** Any change to compensation, Covered Impacts, the release, or the allocation of responsibilities requires a written amendment signed by the parties with any necessary Council approval. The City Engineer may coordinate implementation within the agreed terms but may not change compensation or expand the release through field direction.
 - c. **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision, and the Agreement shall survive and be construed as if such invalid or unenforceable provision were not present.
 - d. **Entire Agreement.** This Agreement constitutes the entire Agreement between the parties relating to the matters addressed herein and supersedes any and all prior verbal or written agreements or understandings pertaining to those matters, except that separate right-of-way and easement documents remain governed by their own terms as provided in Section 1.
 - e. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same executed instrument.
 - f. **Binding Effect.** The provisions of this Agreement shall be binding upon and inure to the benefit of each of the parties and their representative successors and assigns, except that Owners shall not assign their rights under this Agreement to any third party without the City's prior written consent.
9. **Council Approval Contingency:** This Agreement is subject to approval by the City Council through Resolution No. _____, and execution by the authorized City officials and all Owners.
10. **Effective Date.** The Effective Date is the last signature date after that approval. Before execution, the City shall confirm sufficient appropriated funds and any required funding-agency approvals. This Agreement creates no payment obligation before the Effective Date. The release and transfer of private-restoration responsibility become effective only upon Owners' receipt of payment.
11. **Exhibits.** The following completed exhibits shall be attached and incorporated before execution:
- Exhibit A:** Identification and legal description of the Property.

Exhibit B: Project impact plan, Sheet EX-01 (North West Remediation), dated September 30, 2026, identifying the responsibility line between Owners’ work and City work.

Exhibit C: Covered Impacts, compensation, restoration allocation, and essential access, drainage, and coordination requirements.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth above.

CITY OF TONTITOWN, ARKANSAS

BY: _____
Angela Russell

Title: Mayor, City of Tontitown, Arkansas

Date: _____

OWNERS

BY: _____
Audra Austin

BY: _____
Joseph Austin

Date: _____

Exhibit A

Owners: Joseph Austin and Audra Austin

Property address: 572 S. Klenc Road, Tontitown, Arkansas

Parcel No. 830-37675-001

Source: Beneficiary Deed recorded February 10, 2026, Washington County, Arkansas, File No. 2026-3712

Legal description:

Part of the South one-half (1/2) of the SW 1/4 of the SW 1/4 of Section 1, Township 17 North, Range 31 West, Washington County, Arkansas, and being more particularly described as follows, to-wit: Beginning at the Southwest Corner of said Section 1 and running thence North 89°20'43" East, 423.50 feet to and along an existing fence; thence leaving said fence line, North 309.28 feet to a set iron pin; thence South 89°16'38" West, 423.63 feet to the West line of said Section 1; thence South 308.73 feet along the centerline of Klenc Road to the Point of Beginning, containing 3.00 acres, more or less. Subject to that portion in County Road right of way on the West side of herein described tract and subject to easements and rights of way of record.

The Property is also subject to the Fletcher Avenue right-of-way along its southern boundary described in Document 2023-00005178, containing 0.30 acres.

Exhibit B

Exhibit C

Covered Impacts and Restoration Responsibilities

WORKING SCHEDULE: Owners shall complete the new private drive north of the Fletcher Avenue right-of-way line, connecting to Klenc Road, before construction of Fletcher Avenue Extension West begins.

Agreed lump-sum payment: \$217,314.00.

Prior payment credit for Covered Impacts: None.

Net payment: \$217,314.00.

Separately compensated matters excluded from this payment and release: None.

Supporting compensation basis: itemized pricing submitted by Midland Construction (Owners' contractor), plus lump-sum amounts of \$5,000 for driveway demolition and \$2,500 for fence removal added by the City Engineer.

The release applies only to the impacts expressly identified below and within the agreed Exhibit B limits.

Restoration item	Quantity and agreed price	Party, limits and release scope
Clearing and grubbing	0.82 AC; \$8,500 (lump sum)	Owners; all disturbance north of the Fletcher Avenue right-of-way line.
Existing driveway demolition	106 SY; \$5,000 (lump sum)	Owners; remove existing drive as necessary to construct the new drive. City will demolish the remainder.
Welded pipe fence removal	261 LF; \$2,500 (lump sum)	Owners; all fence north of the Fletcher Avenue right-of-way line.
Welded pipe fence replacement	280 LF @ \$35.00; \$9,800	Owners; all fence north of the Fletcher Avenue right-of-way line.
Topsoil placement	395 CY @ \$90.00; \$35,550	Owners; all disturbance north of the Fletcher Avenue right-of-way line.
Bermuda sod	3,600 SY @ \$7.00; \$25,200	Owners; all disturbance north of the Fletcher Avenue right-of-way line.
Elliptical storm pipe	31 LF @ \$465.35; \$14,426	Owners; culvert (31 LF) under the new private drive at its Klenc Road entrance, as shown on Exhibit B. Owners shall construct the culvert to City standards, subject to City Engineer inspection and acceptance; upon acceptance, the City will own and maintain it within the Klenc Road right-of-way.
Elliptical pipe end sections	2 EA @ \$2,784.00; \$5,568	Owners; two end sections for the culvert under the new private drive at its Klenc Road entrance. Owners shall construct the end sections to City standards, subject to City

		Engineer inspection and acceptance; upon acceptance, the City will own and maintain them within the Klenc Road right-of-way.
Concrete driveway	560 SY @ \$192.00; \$107,520	Owners; complete new private drive north of the Fletcher Avenue right-of-way line to Klenc Road. City will construct the second drive to Fletcher Avenue within the Fletcher Avenue right-of-way and tie it into the Austin drive.
Class 7 base	65 CY @ \$50.00; \$3,250	Owners; new private drive north of the Fletcher Avenue right-of-way line to Klenc Road.
Total	\$217,314	Equals agreed lump-sum payment

Total: \$217,314, equal to the agreed lump-sum payment in Section 2.

Quantities are approximate, and the payment is not adjusted for actual quantities or costs.

Essential requirements: Owners shall complete construction of the new private drive to Klenc Road, including stripping existing grass, placing Class 7 base, installing the culvert and end sections, and placing concrete, before construction of Fletcher Avenue Extension West begins.

Retained City Work: The City will perform all work within the Fletcher Avenue right-of-way, including construction of the second drive access to Fletcher Avenue as Fletcher Avenue Extension West is constructed and its tie-in to the new Austin drive.

Separate instruments: The City will initiate vacation of the unused Fletcher Avenue right-of-way (Document 2023-00005178, 0.30 acres) after completion of the Fletcher Avenue Extension West project.