

CITY OF TONTITOWN, ARKANSAS

RESOLUTION NO. 2026-_____

A RESOLUTION ACKNOWLEDGING AND DOCUMENTING THE DISPOSITION AND BENEFICIAL USE OF EXCAVATED MATERIAL GENERATED BY THE CITY'S SOUTH BARRINGTON ROAD DRAINAGE PROJECT; FINDING A MUNICIPAL PURPOSE AND BENEFIT; PROVIDING FOR TRANSPARENCY AND RECUSAL; DIRECTING DEVELOPMENT OF A UNIFORM PROCEDURE FOR FUTURE DISPOSITION OF EXCESS MATERIAL GENERATED BY CITY PROJECTS; AND FOR OTHER PURPOSES

WHEREAS, the City of Tontitown has undertaken drainage and right-of-way improvements along South Barrington Road to address documented drainage deficiencies and recurring stormwater concerns; and

WHEREAS, the South Barrington drainage work is a municipal project performed by or under the direction of the City through its Public Works Department using City personnel, equipment, and resources; and

WHEREAS, the underlying South Barrington drainage improvements were designed or reviewed by the City Engineer, although the City Engineer did not direct that excavated material from the project be placed upon the private property described herein; and

WHEREAS, performance of the drainage work necessarily generated soil, clay, rock, and similar excavation material requiring removal from the City's work area; and

WHEREAS, the City Engineer inspected the material placed at the receiving location and reported that it consists of a mixture of soil, clay, rock, roots, stumps, asphalt, and other debris; that it is unsuitable for use as select fill and would require screening, separation, and processing before any usable portion could be sold as topsoil; and that, in the City Engineer's opinion, the material has little to no resale value; and

WHEREAS, property owned by Alderman Mick Wagner contains an existing ravine or low area located in close proximity to the South Barrington project, and the property owner made that location available to the City without charge if City officials independently determined that use of the site was lawful, appropriate, and advantageous to the City; and

WHEREAS, Alderman Wagner did not contract with the City to perform a private construction project upon his property and did not serve as the contractor, developer, engineer, or project manager for the South Barrington drainage work; and

WHEREAS, Alderman Wagner not direct Public Works to select his property as the receiving location and has requested that all decisions concerning the location, transportation, placement, and legal suitability of the material be made independently by appropriate City officials; and

WHEREAS, Arkansas solid-waste regulations recognize the lawful beneficial use of appropriate uncontaminated soil, dirt, and similar material for purposes that may include filling low areas, improving drainage, and stabilizing slopes or embankments, subject to applicable environmental and other legal requirements; and

WHEREAS, information presented to the City includes FEMA Flood Insurance Rate Map information indicating that the ravine or receiving location where the material was placed is outside the mapped Special Flood Hazard Area, subject to confirmation by the appropriate City official or City Engineer; and

WHEREAS, the proximity of the receiving location allowed City trucks to transport excavation material from the South Barrington project through nearby private property and private roads without requiring the substantially longer alternative route over public streets and highways; and

WHEREAS, use of the nearby location therefore provided identifiable benefits to the City, including reduced truck mileage, fuel consumption, employee time, equipment operating hours, maintenance, depreciation, and other hauling or disposal-related costs; and

WHEREAS, transportation of loose excavation material over public streets and highways may also implicate requirements of Arkansas law governing the secure transportation of loads, including Ark. Code Ann. § 27-35-110, making avoidance of unnecessary public-road hauling an additional legitimate operational consideration; and

WHEREAS, the City Council finds that making nearby receiving capacity available to the City without charge constituted measurable consideration to the City and that the transaction should not be characterized merely as a gratuitous transfer of City property to a private individual; and

WHEREAS, the City Council recognizes that the fact the receiving property is owned by a sitting alderman requires heightened transparency and avoidance of any actual or perceived conflict of interest; and

WHEREAS, Alderman Wagner has stated his intention to abstain from deliberation, influence, or voting concerning any discretionary City decision involving authorization or approval of the use of his property for this purpose; and

WHEREAS, to the City's knowledge, Tontitown has historically not maintained a comprehensive written policy, ordinance, standardized form, or project procedure governing the disposition of excess soil, rock, clay, asphalt, concrete, or similar materials generated from municipal street, drainage, water, sewer, or other construction and maintenance activities; and

WHEREAS, the City Council finds that adoption of a uniform prospective procedure would promote consistency, accountability, transparency, environmental compliance, sound financial management, and protection of City employees and officials;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF TONTITOWN, ARKANSAS:

SECTION 1. FINDINGS AND PUBLIC RECORD.

The City Council hereby acknowledges the facts and circumstances surrounding the South Barrington Road drainage project and the transportation and placement of appropriate excavation material upon nearby private property as described in this Resolution.

The Council further finds that the drainage work constituted a City public-works project and was not a private construction project undertaken by the receiving landowner.

SECTION 2. MUNICIPAL PURPOSE AND CONSIDERATION.

The City Council finds that use of a nearby receiving location for appropriate excavation material served a legitimate municipal and operational purpose by reducing or avoiding transportation, fuel, labor, equipment, maintenance, and potential disposal expenses. In making this finding, the City Council has considered the City Engineer's assessment that the mixed excavated material has little to no resale value in its present condition, while use of the nearby receiving location avoided hauling or disposal costs for the City.

The Council further finds that the availability of the receiving location without charge to the City constituted identifiable and measurable consideration to the City.

Nothing in this Resolution shall authorize the placement of contaminated material, municipal solid waste, household refuse, hazardous material, or any material otherwise prohibited by law.

SECTION 3. LEGAL AND TECHNICAL COMPLIANCE.

The acknowledgment and findings contained in this Resolution are expressly subject to compliance with applicable federal law, Arkansas law, City ordinances, environmental requirements, floodplain requirements, drainage requirements, and any other legally applicable permit or approval.

The City Engineer, Public Works Director, City Attorney, or other appropriate City official may document any additional determination reasonably necessary concerning:

1. the character and suitability of the material;
2. drainage effects associated with placement;
3. floodplain status of the receiving location;
4. environmental or permitting requirements; and
5. any corrective action, if required by law.

Nothing in this Resolution shall be construed as waiving any applicable legal requirement.

SECTION 4. ACKNOWLEDGMENT AND RATIFICATION.

Subject to Section 3 of this Resolution, the City Council acknowledges and ratifies the City's operational use of the receiving location for appropriate material generated by the South Barrington drainage project and finds that such use served a municipal purpose and provided consideration to the City.

If the City Attorney or City Engineer identifies any additional documentation, condition, permit, or corrective action legally required for the project, the appropriate City department shall take reasonable steps to address that requirement.

SECTION 5. ALDERMAN RECUSAL.

Because the receiving property is owned by Alderman Mick Wagner, Alderman Wagner shall not participate in the Council's consideration, deliberation, or vote upon this Resolution except to provide factual information requested by the Council or City Attorney.

The minutes shall reflect his recusal and abstention.

SECTION 6. DEVELOPMENT OF CITYWIDE MATERIAL-DISPOSITION PROCEDURE.

The City Council requests that the City Attorney, in consultation with the Mayor, Public Works Director, Water and Sewer Department, City Engineer, and other appropriate staff, review whether the City should adopt an ordinance, resolution, administrative policy, standardized form, or combination thereof governing excess material generated by future City projects.

The recommended procedure should consider documentation of:

1. the City project generating the material;
2. the type and approximate quantity of material;
3. whether the material will be reused, stockpiled, sold, beneficially used, or disposed of;
4. the proposed receiving location;
5. whether the receiving property is publicly or privately owned;
6. the identity and written consent of any private receiving landowner;
7. whether the proposed placement requires engineering, drainage, floodplain, environmental, or other review;
8. whether any permit or governmental approval is required;
9. whether transportation over public highways implicates load-security or other transportation requirements;
10. the anticipated financial or operational benefit to the City;
11. whether City Council approval is required; and

12. documentation sufficient to provide a permanent and transparent project record.

SECTION 7. NO FINDING REGARDING PRIOR PRACTICES.

The City Council recognizes that the City has historically disposed of or placed excess excavation and construction material at various locations without the benefit of a uniform written procedure.

Nothing in this Resolution shall be construed as making a finding that any prior disposition was lawful or unlawful. The purpose of Section 6 is to establish greater consistency and documentation prospectively.

SECTION 8. SEVERABILITY.

If any provision of this Resolution is determined to be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

SECTION 9. EFFECTIVE DATE.

This Resolution shall be effective immediately upon its adoption.

PASSED AND APPROVED this ____ day of _____, 2026.

CITY OF TONTITOWN, ARKANSAS

By: _____

Angela Russell, Mayor

ATTEST:

Recorder/Treasurer

SPONSOR

Sponsored by:

Alderman _____

Date: _____

ROLL-CALL VOTE

Council Member	Yes	No	Abstain	Absent
Alderman _____	☐	☐	☐	☐
Alderman _____	☐	☐	☐	☐
Alderman _____	☐	☐	☐	☐
Alderman _____	☐	☐	☐	☐
Alderman _____	☐	☐	☐	☐
Alderman Mick Wagner	☐	☐	☒	☐