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# CITIZENS SUMMARY

## Findings in the audit of the City of Arnold and Arnold Transportation Development Districts

### Conflicts of Interest Resulted in TDD Taxes Funding City Developments

Conflicts of interest have resulted in the City of Arnold inappropriately using the taxing authority of the Arnold Retail Corridor Transportation Development District (ARC TDD) to fund city developments. The City Attorney was significantly involved in the creation of the Triangle TDD, as well as the ARC TDD; and has also maintained significant involvement with the ARC TDD, despite not having a formal role in the district's governance structure or formally representing the district as the district's attorney. In addition, the Triangle TDD and ARC TDD were created and structured to ensure city officials maintained control of district decisions, rather than having property owner or citizen representation on the board. The TDD has continued to collect sales taxes despite not having any outstanding debt and without having a viable project to justify the TDD's continued existence. TDD taxes are currently being used to pay off the city's tax increment financing (TIF) debt, and have been used to purchase property outside of the TDD boundaries for the purposes of furthering the city's development goals, which are unrelated to the TDD and are an improper use of TDD resources. From June 30, 2009, through June 30, 2025, the ARC TDD unnecessarily paid \$3.3 million of the City's TIF debt without any benefit to the district. Further, city officials, acting in their capacity as ARC TDD Board members, entered into an agreement to prevent the ARC TDD from abolishing until this city debt is paid in full. TDD funds are being used to purchase properties that may or may not be necessary for the construction of the connector road, but are part of a larger plan to redevelop the residential area adjacent to the district. Using TDD funds to purchase property for non-transportation purposes is not an allowable use of TDD funds.

### Lack of Transparency to the Public

City officials, acting in their capacity as the petitioner for the ARC TDD and as ARC TDD Board members, have intentionally designed multiple aspects of the ARC TDD to limit transparency to the public. The boundary of the ARC TDD was intentionally drawn to exclude the residential area between the current district boundary and Highway 141. As a result, the residential property owners in this area did not have a vote in the creation of the district and are not allowed to be part of the governance structure or be involved in the decisions of the district. The Arnold City Council took several "show" votes to end the Arnold Parkway Project even though the City Council has no authority to make any decisions related to the ARC TDD. Holding such public votes which intentionally mislead the public causes confusion, and significantly reduces public trust and transparency. The ARC TDD contracted with the Arnold Acquisition Company (AAC) to purchase property on the open market because the city and the ARC TDD did not want the residents who were selling their homes to know the purchase was for the ARC TDD due to concerns that residents might become aware the purchase was for a commercial project and demand a premium for their homes. The city violated Missouri law by inappropriately discussing TDD activity in closed session and the State Auditor's Office had to issue a subpoena to the city in an attempt

to obtain unredacted copies of the meeting minutes. The ARC TDD did not ensure businesses within the boundaries of the ARC TDD disclosed the existence of the ARC TDD sales tax to customers, in violation of state law. A review of retailers determined none of the 10 retailers tested displayed the rate of the sales tax at the entry of the business or at the register, or otherwise acknowledged the existence of the ARC TDD.

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Lack of Oversight by ARC TDD Board and City, and Noncompliance with TIF reporting

Improved oversight by the ARC TDD Board and the City Council is needed related to TDD funding and governance. The ARC TDD Board is made up entirely of city officials who are responsible for appointing and removing designated TDD directors as they see fit. The ARC TDD delegated the city to receive and process sales tax payments from the state on its behalf, with no district oversight. Without oversight of district revenue, the Board has reduced assurance district revenues are being allocated and distributed appropriately. The Board contracted with the Arnold Acquisition Company (AAC) for the design and construction of the connector road project, and for property acquisition services, but the district's contract with AAC was not reviewed by district legal counsel, but rather, was prepared by the City Attorney. The contract does not define the terms of payment for these services, which puts the district at risk of being overcharged. Despite frequent discussions about the ARC TDD projects during closed session, the City Council was unaware of its specific duties related to oversight of the ARC TDD and the active redevelopment projects within the city. Revenues from the city's 2 TIF districts are not segregated or accounted for separately as required by state law, resulting in TIF funds being comingled and revenues for one district potentially being used for the projects of the other. In addition, the city is not in compliance with statutory TIF reporting requirements, which results in a lack of transparency to the public regarding the status of TIF debts and revenues.

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State Law is Ambiguous and Allows for Abuse

State law clearly defines a TDD as a political subdivision of the state, which makes it a legally separate entity from other political subdivisions like a city or county. However, the state TDD law does not require TDD board members and officials to act in a fiduciary manner, with the best interest of the TDD in mind, when conflicts arise. City officials, in their capacity as ARC TDD Board members, have consistently made decisions that prioritize their development goals for the City of Arnold, rather than the best fiduciary interest of the district and the taxpayers who pay TDD taxes. The city used a section of the TDD law intended for districts that span multiple jurisdictions to ensure city officials and city designees obtained and maintained control of the ARC TDD board, and conversely, ensuring property owners in the ARC TDD boundaries did not have representation on the board. The ARC TDD creation documents use vague, undefined project wording as justification to pursue projects and purchase property outside of the district's boundaries because the Board believes these projects fit into the definition of "benefitting the district."

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City Attorney Provided an intentionally Misleading Statement to Auditors

The City Attorney intentionally provided a misstatement to the State Auditor's Office in an attempt to interfere with the audit, and in doing so, violated Missouri statute and Missouri Supreme Court Rules of Professional Conduct. During an interview with auditors, the City Attorney indicated he served as legal counsel for the ARC TDD and then responded on behalf of

the district on multiple subjects. At a later meeting, the City Attorney indicated he was never procured as the official legal counsel for the TDD, and clarified that his involvement with the district has always been on behalf of, and to the betterment of, his client, the city.

In the areas audited, the overall performance of this entity was **Poor**.\*

\*The rating(s) cover only audited areas and do not reflect an opinion on the overall operation of the entity. Within that context, the rating scale indicates the following:

- Excellent:** The audit results indicate this entity is very well managed. The report contains no findings. In addition, if applicable, prior recommendations have been implemented.
- Good:** The audit results indicate this entity is well managed. The report contains few findings, and the entity has indicated most or all recommendations have already been, or will be, implemented. In addition, if applicable, many of the prior recommendations have been implemented.
- Fair:** The audit results indicate this entity needs to improve operations in several areas. The report contains several findings, or one or more findings that require management's immediate attention, and/or the entity has indicated several recommendations will not be implemented. In addition, if applicable, several prior recommendations have not been implemented.
- Poor:** The audit results indicate this entity needs to significantly improve operations. The report contains numerous findings that require management's immediate attention, and/or the entity has indicated most recommendations will not be implemented. In addition, if applicable, most prior recommendations have not been implemented.



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**Recommendations in the audit of the City of Arnold and Arnold Transportation Development Districts**

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| <p>Conflicts of Interest Resulted in TDD Taxes Funding City Developments</p>             | <p>The Arnold Retail Corridor Transportation Development District (ARC TDD) Board begin taking the necessary steps to abolish the district, and rescind the district's sales tax. The Board should also evaluate any payments made from TDD funds to ensure they are in the best interest of the district, including halting any unnecessary payments to the city's tax increment financing (TIF) fund.</p> <p>The City Council consider using methods already prescribed by state law for funding city development projects and discontinue using TDDs in this manner. Additionally, the City Council should stop paying the City Attorney for legal services incurred on behalf of the TDD.</p> |
| <p>Lack of Transparency to the Public</p>  | <p>The ARC TDD Board communicate the district's intentions to the public, hold open public discussions regarding plans for the district, and document these discussions in public board meeting minutes.</p>  |
| <p>Lack of Oversight by ARC TDD Board and City, and Noncompliance with TIF reporting</p> | <p>3.1 The ARC TDD Board create procedures to allow for an independent third party review of sales tax revenue calculations, and use its own legal counsel for all contracts to ensure the validity of those contracts.</p> <p>3.2 The City Council regularly evaluate the performance and eligibility of its designees to the ARC TDD Board as well as monitor the status of all TIF districts within the city.</p> <p>3.3 The city maintain separate TIF funds as required by law, and ensure the timely preparation and submission of TIF status reports.</p>  |
| <p>State Law is Ambiguous and Allows for Abuse</p>                                       | <p>The General Assembly consider clarifying the purpose of a transportation development districts' boundaries, and prevent the acquisition of property and the pursuit of projects outside the district. Additionally, the General Assembly consider clarification of the "regional" TDD portion of the law to ensure it is being used in the manner it was intended and prevent a local transportation authority (LTA) from partnering with a TDD it participated in creating to form another TDD.</p>   |