



**City Council Meeting
Council Chamber**

**April 6, 2023
7:00 P.M.**

Zoom Link – Internet Audio/Video:

<https://us02web.zoom.us/j/81106202184?pwd=ZmxOSWRVdnF0RitveEJUWGMrcjRoUT09>

Dial-in Number: 312 626 6799

Meeting ID: 811 0620 2184

Passcode: 765654

AGENDA

1. Pledge of Allegiance and Opening Prayer
2. Roll Call
3. Business from the Floor
4. Consent Agenda
 - A. Regular Council Meeting Minutes from **March 2, 2023**
 - B. Payroll Warrant **#T00417 In the Amount of \$326,148.47**
 - C. General Warrant **#5830 In the Amount of \$235,065.00**
 - D. General Warrant **#5831 In the Amount of \$611,383.70**
5. Ordinances:
6. Resolutions:
 - A. **Resolution #23-08** A Resolution Authorizing the Repair Work to the Salt Conveyor.
 - B. **Resolution #23-09** A Resolution Authorizing the Mayor to Enter into A One-Year Agreement with Shelton Landscape & Maintenance to Provide On-Call Code Enforcement Abatement Services for the city of Arnold.
 - C. **Resolution #23-10** A Resolution Authorizing the City Administrator to Enter into a Contract with Shannon and Wilson for Professional Services Relative to Retaining Wall Project o Church Road.

7. Motions:

- A. A Motion to Approve Liquor License Applications
- B. A Motion to Approve PC-2023-08 S&J Sno-Ball (Conditional Use Permit)
- C. A Motion to Approve PC-2023-09 Chick-fil-A (Amended Site Plan and Conditional Use Permit)
- D. A Motion to approve PC-2023-10 Inspirational Living Counseling Clinic (Conditional Use Permit)
- E. A Motion to Hold a Closed Session Immediately Following the City Council Meeting for the Purpose of Discussing Real Estate Pursuant to RSMo 610.021 (2)

8. Reports from Mayor and Council

9. Administrative Reports

10. Adjournment

Upon request, reasonable accommodations will be provided. Contact Tammi Casey, City Clerk, Arnold City Hall, 2101 Jeffco Boulevard, Arnold, Missouri 63010. Phone: 636-296-2100

Mayor Ron Counts called the meeting to order at 7:00 p.m.

The council meeting was also presented live via Zoom Video Conferencing.

The pledge of allegiance was recited. Councilman Tim Seidenstricker offered the prayer.

ROLL CALL

Those present per roll call taken by City Clerk Tammi Casey: Mayor Counts, Cooley, Fulbright, Seidenstricker, Hood, Mullins, Plunk, McArthur, Fleischmann, Richison, Bookless, Lehmann, Sweeney, Crutchley, Wagner, Kroupa and Chief Carroll.

BUSINESS FROM THE FLOOR

Phil Amato, 1119 Catskill Lane – Provided council with a synopsis of the business currently being conducted in the state legislature. As a freshman State Representative, he has filed four bills that are currently being discussed. Mr. Amato has been appointed to the Economic Development, Transportation and Health and Mental Health Committees.

CONSENT AGENDA

- A. REGULAR COUNCIL MEETING MINUTES FROM JANUARY 19, 2023**
- B. PAYROLL WARRANT #T00384 IN THE AMOUNT OF \$380,452.11**
- C. PAYROLL WARRANT #T00391 IN THE AMOUNT OF \$367,196.17**
- D. PAYROLL WARRANT #T00393 IN THE AMOUNT OF \$325,658.69**
- E. GENERAL WARRANT #5827 IN THE AMOUNT OF \$496,587.27**
- F. GENERAL WARRANT #5828 IN THE AMOUNT OF \$426,462.65**
- G. GENERAL WARRANT #5829 IN THE AMOUNT OF \$212,718.84**

Butch Cooley made a motion and so moved to approve the consent agenda. Seconded by Rodney Mullins. Roll call vote: Cooley, yes; Fulbright, yes; Seidenstricker, yes; Hood, yes; Mullins, yes; Plunk, yes; McArthur, yes; Fleischmann, yes; 8 Yeas: **Motion carried.**

ORDINANCES

NONE

RESOLUTIONS

RESOLUTION NO 23-03 – A RESOLUTION APPOINTING LARRY OTIS TO THE VETERANS COMMISSION TO SERVE THE REMAINDER OF A THREE-YEAR TERM

Rodney Mullins made a motion and so moved to approve Resolution No 23-03. Seconded by Gary Plunk. Roll call vote: Cooley, yes; Fulbright, yes; Seidenstricker, yes; Hood, yes; Mullins, yes; Plunk, yes; McArthur, yes; Fleischmann, yes; 8 Yeas: **Resolution passed.**

RESOLUTION NO 23-04 – A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH SPENCER CONTRACTING COMPANY TO PROVIDE CONSTRUCTION SERVICES FOR THE 2023 CONCRETE STREET RELACEMENT PROJECT FOR THE CITY OF ARNOLD

Gary Plunk made a motion and so moved to approve Resolution No 23-04. Seconded by EJ Fleischmann. Roll call vote: Cooley, yes; Fulbright, yes; Seidenstricker, yes; Hood, yes; Mullins, yes; Plunk, yes; McArthur, yes; Fleischmann, yes; 8 Yeas: **Resolution passed.**

RESOLUTION NO 23-05 – A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO AN AGREEMENT WITH SPLASHTACULAR

Tim Seidenstricker made a motion and so moved to approve Resolution No 23-05. Seconded by Jason Fulbright. Roll call vote: Cooley, yes; Fulbright, yes; Seidenstricker, yes; Hood, yes; Mullins, yes; Plunk, yes; McArthur, yes; Fleischmann, yes; 8 Yeas: **Resolution passed.**

RESOLUTION NO 23-06 – A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH PLATTIN CREEK EXCAVATING, LLC TO PROVIDE CONSTRUCTION SERVICES FOR THE ELLEN ROAD STORMWATER PROJECT FOR THE CITY OF ARNOLD

Gary Plunk made a motion and so moved to approve Resolution No 23-06. Seconded by EJ Fleischmann. Roll call vote: Cooley, yes; Fulbright, yes; Seidenstricker, yes; Hood, yes; Mullins, yes; Plunk, yes; McArthur, yes; Fleischmann, yes; 8 Yeas: **Resolution passed.**

RESOLUTION NO 23-07 – A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A CONTRACT WITH KEELEY CONSTRUCTION SERVICES FOR THE CHURCH ROAD RETAINING WALL PROJECT FOR THE CITY OF ARNOLD

Mark Hood made a motion and so moved to approve Resolution No 23-07. Seconded by Brian McArthur. Roll call vote: Cooley, yes; Fulbright, yes; Seidenstricker, yes; Hood, yes; Mullins, yes; Plunk, yes; McArthur, yes; Fleischmann, yes; 8 Yeas: **Resolution passed.**

MOTIONS

A. A MOTION TO APPROVE LIQUOR LICENSE APPLICATIONS

Tammi Casey informed council that the Liquor Committee met earlier this evening. Captain 1 Liquor & More, located at 2496 Starling Airport Road, has applied for an Original Package/Sunday Package Sales Liquor License. The committee is forwarding a recommendation of approval by unanimous vote.

Butch Cooley made a motion and so moved to approve the liquor license application for Captain 1 Liquor & More. Seconded by Tim Seidenstricker. Roll call vote: Cooley, yes; Fulbright, yes; Seidenstricker, yes; Hood, yes; Mullins, yes; Plunk, yes; McArthur, yes; Fleischmann, yes; 8 Yeas: **Motion carried.**

Immaculate Conception Church is holding their annual parish picnic on May 19th and 20th. They have applied for a picnic liquor license and the committee is forwarding a recommendation of approval by unanimous vote.

Rodney Mullins made a motion and so moved to approve the picnic liquor license application for Immaculate Conception Church. Seconded by EJ Fleischmann. Roll call vote: Cooley, yes; Fulbright, yes; Seidenstricker, yes; Hood, yes; Mullins, yes; Plunk, yes; McArthur, yes; Fleischmann, yes; 8 Yeas: **Motion carried.**

REPORTS FROM MAYOR AND COUNCIL

Rodney Mullins, Ward 3 – Informed council that the Veterans Commission continues to meet to discuss the veterans memorial wall project. The renderings are near completion and will be presented to council at a Work Session in the near future.

Dan Kroupa – Inquired as to whether or not staff has final figures on the cost to demo the old AT&T building and build the retaining wall. Also asked Judy Wagner for an update on the blockage of the box culvert at Old Lemay Ferry and Fawn Drive.

Jason Fulbright, Ward 1 – Informed council that he recently attended the MML Legislative Conference and it was very informative.

Brian McArthur, Ward 2 – Commended police officers on their handling of a recent apprehension of a minor, which was captured on a resident's Ring door bell camera.

ADMINISTRATIVE REPORTS

Tammi Casey – Informed council that municipalities can no longer “opt in or out” of the annual Show-Me Green Sales Tax Holiday. State legislation has changed and now all municipalities must participate in both the Show-Me Green and Back To School Sales Tax Holidays.

Chief Carroll – Stated the Flock Cameras are up and running and the Explorer Program will begin next month.

Judy Wagner – Informed council that a Clean Stream event will take place this Saturday.


Dave Crutchley – Informed council that the Rec Center flooring project will be completed by tomorrow.

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Regular Meeting
March 2, 2023

A motion to adjourn the meeting was made by Jason Fulbright. Seconded by Butch Cooley.

Voice vote: All Yeas.

Meeting adjourned at 7:35 p.m.



City Clerk Tammi Casey, CMC/MRCC-S

CITY OF ARNOLD, MISSOURI

ROLL CALL

MEETING: COUNCIL MEETING

DATE: 3/2/2023

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BILL NO - RESOLUTION - MOTION

		ROLL CALL	CONSENT AGENDA	RESOLUTION NO 23-03	RESOLUTION NO 23-04	RESOLUTION NO 23-05	RESOLUTION NO 23-06
COUNCIL MEMBERS:							
MAYOR	<u>RON COUNTS</u>	PRESENT					
COUNCIL:	<u>BUTCH COOLEY</u>	PRESENT	YES	YES	YES	YES	YES
COUNCIL:	<u>JASON FULBRIGHT</u>	PRESENT	YES	YES	YES	YES	YES
COUNCIL:	<u>TIM SEIDENSTRICKER</u>	PRESENT	YES	YES	YES	YES	YES
COUNCIL:	<u>MARK HOOD</u>	PRESENT	YES	YES	YES	YES	YES
COUNCIL:	<u>RODNEY MULLINS</u>	PRESENT	YES	YES	YES	YES	YES
COUNCIL:	<u>GARY PLUNK</u>	PRESENT	YES	YES	YES	YES	YES
COUNCIL:	<u>BRIAN MCARTHUR</u>	PRESENT	YES	YES	YES	YES	YES
COUNCIL:	<u>EJ FLEISCHMANN</u>	PRESENT	YES	YES	YES	YES	YES
CITY ADMINISTRATOR	<u>BRYAN RICHISON</u>	PRESENT	PARKS DIR:	<u>DAVE CRUTCHLEY</u>			PRESENT
CITY CLERK	<u>TAMMI CASEY</u>	PRESENT	PUBLIC WORKS:	<u>JUDY WAGNER</u>			PRESENT
COM DEV	<u>DAVID BOOKLESS</u>	PRESENT	TREASURER:	<u>DAN KROUPA</u>			PRESENT
FINANCE DIRECTOR	<u>BILL LEHMANN</u>	PRESENT	POLICE DEPT.	<u>CHIEF CARROLL</u>			PRESENT
CITY ATTORNEY	<u>BOB SWEENEY</u>	PRESENT					

CITY OF ARNOLD, MISSOURI

ROLL CALL

MEETING: COUNCIL MEETING

DATE: 3/2/2023

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BILL NO - RESOLUTION - MOTION

COUNCIL MEMBERS:

MAYOR RON COUNTS

COUNCIL: BUTCH COOLEY

COUNCIL: JASON FULBRIGHT

COUNCIL: TIM SEIDENSTRICKER

COUNCIL: MARK HOOD

COUNCIL: RODNEY MULLINS

COUNCIL: GARY PLUNK

COUNCIL: BRIAN MCARTHUR

COUNCIL: EJ FLEISCHMANN

CITY ADMINISTRATOR BRYAN RICHISON

CITY CLERK TAMMI CASEY

COM DEV DAVID BOOKLESS

FINANCE DIRECTOR BILL LEHMANN

CITY ATTORNEY BOB SWEENEY

RESOLUTION NO 23-07	MOTION TO APPROVE LIQUOR LICENSE FOR CAPTAIN 1 LIQUOR & MORE	MOTION TO APPROVE LIQUOR LICENSE FOR IMMACULATE CONCEPTION CHURCH			
YES	YES	YES			
YES	YES	YES			
YES	YES	YES			
YES	YES	YES			
YES	YES	YES			
YES	YES	YES			
YES	YES	YES			
			PARKS DIR:	DAVE CRUTCHLEY	
			PUBLIC WORKS:	JUDY WAGNER	
			TREASURER:	DAN KROUPA	
			POLICE DEPT.	CHIEF CARROLL	

RESOLUTION NO. 23-08

A RESOLUTION AUTHORIZING THE REPAIR WORK TO THE SALT
CONVEYOR.

WHEREAS, the City of Arnold has obtained a quote of \$11,570.45 from Kimco, the maker of the conveyor.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Arnold, Missouri, that the attached proposal for the repair of the salt conveyor is hereby approved. The Mayor and/or City Administrator are authorized to execute any necessary documents to complete this transaction.

Mayor Ron Counts

ATTEST:

City Clerk Tammi Casey

Date: _____



QUOTE

118 East Trefz Drive
 Marshall, IL 62441
 Phone: 217-826-8067
 Fax: 217-826-8848

DATE	QUOTE #
3/6/2023	Q6211

Name / Address
CITY OF ARNOLD 2101 JEFFCO BLVD ARNOLD, MO 63010

Ship To
CITY OF ARNOLD PUBLIC WORKS DEPARTMENT 2912 ARNOLD TENBROOK ROAD ARNOLD, MO 63010

Date	Rep
4/5/2023	KAE

Item Number	Description	Qty	Each	Total
K151198NS	14" X 26" DRIVE ROLLER W/ 1-15/16" XT BUSHING, W/ 3/8" HERRINGBONE LAGGING AND CR MILD STEEL SHAFT WITH NO SPLINE FOR DIESEL POWERED CONVEYORS MANUFACTURED IN 2021 OR AFTER	1	1,476.32	1,476.32
K160830	1-15/16" PILLOW BLOCK BEARING (DRIVE ROLLER BEARING)	2	58.75	117.50
K151310	8" DIA X 26" WING ROLLER WITH (2) XTH HUBS & (1) 33" X 1-7/16" SHAFT (HEAD/TAIL)	2	669.33	1,338.66
K161330	1-7/16" 4-BOLT FLANGE BEARING WITH LOCK COLLAR (HEAD/TAIL ROLLER BEARINGS)	4	46.75	187.00
K151310A	8" DIA X 26" DRUM ROLLER WITH (2) XT HUBS & (1) 35" X 1-7/16" SHAFT (TAKE-UP)	1	591.50	591.50
K163820	1-7/16" WIDE SLOT TAKE-UP BEARING	2	46.75	93.50
K151400	6" DIA X 26" DRUM ROLLER WITH XT HUBS AND 1 7/16" X 33" SHAFT (TRACKING)	1	456.06	456.06
K161330	1-7/16" 4-BOLT FLANGE BEARING WITH LOCK COLLAR (HEAD/TAIL ROLLER BEARINGS)	2	46.75	93.50
K155100	24" 200# PVC CRESCENT TOP BELTING (PER FOOT)	148	16.40	2,427.20
K155150	24" LABOR & SUPPLIES (4 PIECES #4SPLICE & 24" SPLICE WIRE) TO CUT AND SPLICE BELT	1	169.21	169.21
MOBILIZATION1	MOBILIZATION	1	250.00	250.00
ON LOCATION ...	LABOR AT A CUSTOMERS LOCATION	32	110.00	3,520.00
SERVICE CALL	SERVICE CALL TO CUSTOMER LOCATION AT 170 MILES EACH WAY	340	2.50	850.00
Total				\$11,570.45

RESOLUTION NO: 23-09

**A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A
ONE-YEAR AGREEMENT WITH SHELTON LANDSCAPE &
MAINTENANCE TO PROVIDE ON-CALL CODE ENFORCEMENT
ABATEMENT SERVICES FOR THE CITY OF ARNOLD.**

BE IT RESOLVED. By the Council of the City of Arnold, Missouri that the Community Development Department, is hereby authorized to accept the grass cutting bid from Shelton Landscaping & Maintenance for on-call code enforcement abatement services and to enter into a one-year renewable contract.

A copy of said bid and contract is attached hereto and by this reference made a part hereof.

Presiding Officer of the City Council

Mayor Ron Counts

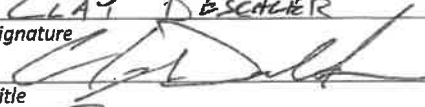
ATTEST:

City Clerk Tammi Casey

Date: _____

**REQUEST FOR PROPOSAL
ON-CALL CODE ENFORCEMENT ABATEMENT SERVICES**

ON-CALL CODE ENFORCEMENT ABATEMENT SERVICES BID FORM

Company Name <i>SHELTON LANDSCAPE & MAINTENANCE</i>	Authorized Person (Print) <i>CLAY ESCALIER</i>
Address <i>1575 LOWEDEL INDUSTRIAL CT.</i>	Signature 
City/State/Zip <i>ARNOLD, MO 63010</i>	Title <i>PRESIDENT</i>
Telephone # <i>(636) 296-4660</i>	Date <i>3/8/2023</i>
Fax # <i>—</i>	Tax ID #
Email Address <i>CLAY@SHELTON-LANDSCAPE.COM</i>	State of Missouri Charter Number or Exemption Number

NOTE: All businesses doing business in the State of MO should be registered with the Missouri Secretary of State. Upon MO registration, a charter number is issued and should be identified above. If your business is exempt, the exemption number should be referenced above, in lieu of a charter number.

ON-CALL CODE ENFORCEMENT ABATEMENT SERVICES BILLING RATE INFORMATION

The signatories have thoroughly examined the entire Request for Proposal (RFP), including all addenda thereto, hereby offers to furnish all services in accordance with the requirements of the Request for Proposal, as described in the Proposal attached hereto and incorporated herein, as follows:

YEAR 2023

Grass Cutting & Trimming	Cost per hour	\$ 90. ⁰⁰
Tree Removal/Trimming	Cost per hour	\$ 90. ⁰⁰
Debris Removal/Trash Pick-Up	Cost per hour	\$ 75. ⁰⁰
Miscellaneous Services	Cost per hour/person	To be negotiated
Equipment/Equipment Rental*	Cost per hour or day	To be negotiated
Material	Cost plus mark-up	20 %
Contractor License	Each	\$100.00 (Annually)

*Costs for non-typical equipment only

CITY-CONTRACTOR AGREEMENT

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2023; and between the City of Arnold, Missouri ("City"), 2101 Jeffco Blvd., Arnold, Missouri, and _____ ("Contractor"), with offices at _____.

WITNESSETH THAT:

WHEREAS, the City issued a Request for Bids dated February 17, 2023, entitled "On-Call Code Enforcement Abatement Services" ("RFP"); and

WHEREAS, Contractor submitted the lowest responsible bid meeting the specifications in response to the City's RFP, opened on March 9, 2023 ("Bid"); and

WHEREAS, the City has selected the Contractor to provide services in accordance with the terms of the RFP and the Bid.

NOW, THEREFORE, in consideration of the promises and of the mutual promises, covenants and agreements herein contained, the parties do hereby agree as follows:

- 1) **Contractor Selection:** City does hereby employ Contractor for the purpose of performing the services and work set out herein and performing the services set forth in the RFP and Bid, and Contractor agrees to perform such services and work and to provide all material (hereafter the "Work")
- 2) **Work and Project:** The Work to be performed includes the furnishing of all necessary professional, technical and other services and equipment as described in Exhibit 1 attached hereto ("Project"). Contractor shall perform all of the Work described in this Agreement and in the RFP and in the Bid attached hereto and made a part hereof in Exhibit 1, in accordance with the terms and conditions hereof (the "Contract Documents"). In connection with the Work and the Project, the City requires Contractor to use American products whenever the quality and price are comparable with other products.
- 3) **Term:** One year beginning on date of award. The City may, at its option, extend the contract for up to four (4) additional one-year terms.
- 4) **Escalation/De-Escalation:** Bid prices shall remain firm for a period of one year from the date of award. The contract prices may be changed after the first year for the following reasons:

An increase or decrease in the supplier's cost of materials may be justification for price change; however, this shall not be construed in any way to increase vendor's margin of profit.

All written request for price increase must include backup documentation as to the nature of the increase and shall be submitted to the City at least 60 days prior to the scheduled price increase/decrease or renewal of contract. Approval of each request shall be by written confirmation from the City. If the City should consider said increase unwarranted or unreasonable, the City reserves the right to terminate the contract with the vendor. Any price decline at the manufacturer's level shall be reflected in an immediate reduction of the contract prices and the vendor shall notify the City Clerk of said decline.

- 5) **Unexpected Costs:** If, by the City's determination, concealed or unknown physical conditions are encountered at the site that differ materially from those indicated in the Contract Documents or from those conditions ordinarily found to exist, the Contract Sum and Contract Time may be subject to equitable adjustment at the City's discretion.
- 6) **Contractor's Personnel:** Personnel are expected to conduct themselves in a courteous, safe, and responsible manner. This includes refraining from any behavior or actions while on City property that may be deemed offensive or unsafe by the City and complying with all related policies and procedures.
- 7) **Service Requirements:** Bids will only be considered from authorized Contractors who are normally engaged in the services as specified herein. The bidder must have adequate organization, facilities, equipment, and personnel to ensure prompt and efficient service to the City.
- 8) **Personnel:** The Contractor represents that Contractor will secure at Contractor's own expense, all personnel required to perform the services called for under this contract by Contractor. Such personnel shall not be employees of or have any contractual relationship with the City except as employees of the Contractor. All of the services required hereunder will be performed by the Contractor or under Contractor's direct supervision and all personnel engaged in the work shall be fully qualified and shall be authorized under state and local law to perform such services. All of the work or services covered by this contract shall be subcontracted with the written approval of the City.
- 9) **Termination:** If, through any cause, the Contractor fails to fulfill in timely and proper manner Contractor's obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the City shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective day of such termination. The City may, without cause, terminate this contract upon 30 day's prior written notice. In either such event, all finished or unfinished documents, data, studies, reports, or other materials prepared by the Contractor shall, at the option of the City become its property. The Contractor shall be entitled to receive fair and equitable compensation for any satisfactory work completed. Notwithstanding the above, the Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any such breach of the contract by the Contractor.
- 10) **Assignment-Subcontracting.** The Contractor shall not assign any interest in this contract, and shall not transfer any interest in the same (whether by assignment or novation), without prior written consent of the City thereto. Provided, however, that claims for money due or to become due to the Contractor from the City under this contract may be assigned to a bank, trust company, or other financial institution without such approval. Notice of such assignment or transfer shall be furnished in writing promptly to the City. Any such assignment is expressly subject to all rights and remedies of the City under this agreement, including the right to change or delete activities from the contract or to terminate the same as provided herein, and no such assignment shall require the City to give any notice to any such assignee of any actions which the City may take under this agreement, though City will attempt to so notify any such assignee. The consent of City shall in no way relieve the Contractor of its responsibility for the quality and performance of the Work. Contractor shall include in any such consented to subcontract all of the terms and conditions of this Agreement and make any subcontractor(s) subject thereto.
- 11) **Modification of Contract:** The Scope of Work to be done under the Contract shall be subject to modification and supplementation upon the written Agreement of the duly authorized representatives of the Contracting parties. No provision in the Contract shall be changed or modified without the execution of an amendment

to the Contract, mutually agreed to by the City and the Contractor and processed through the Finance Department. Upon request by the City, the Contractor shall provide an estimate of cost of any additional work or services to be incorporated by a modification to the Scope of Work and the Contract.

12) Notice: Any notice required or permitted to be delivered hereunder shall be in writing and shall be deemed to have been delivered on the earliest to occur of (a) actual receipt; or (b) three (3) business days after having been deposited in the U.S. Mail, postage prepaid, certified mail, return receipt requested; or (c) one business day after having been deposited with a reputable overnight express mail service that provides tracking and proof of receipt of items mailed to the parties as follows (or to such other addressee or address as shall be set forth in a notice given in the same manner):

City: City Clerk
City of Arnold
2101 Jeffco Blvd.
Arnold, MO 63010

Contractor:

13) Contract Documents: The agreement between the City of Arnold and the Contractor shall consist of (1) This City-Contractor Agreement, (2) the Request for Proposal, and all addenda thereto and, (3) the bid proposal, as accepted, submitted in response to the Request for Proposal. In the event of a conflict in language between the documents referenced above, the provisions and requirements set forth in the Request for Proposal and addenda thereto shall govern over the Contractor's Proposal and addenda thereto. However, the City reserves the right to clarify any Contract relationship in writing with the concurrence of the Contractor, and such written clarification shall prevail in case of conflict with the applicable requirements stated in the Request for Proposal or the Contractor's Proposal. In all other matters not affected by the written clarification, if any, the Request for Proposal shall govern. The Contractor is cautioned that the proposal shall be subject to acceptance without further clarification.

14) Compensation and Payment: City shall pay Contractor per Work Order. Contractor shall submit an invoice for all work performed. The City shall make payment in full to the Contractor within thirty (30) days of receipt of said invoice pursuant to the provisions of Exhibit 2. City shall have the right, upon reasonable prior notice, to examine all of the pertinent records of Contractor.

15) Appropriation of Funds: In the event that funds are not appropriated by the Council of the City of Arnold for any term of the contract or extension thereto or portion of any term of the contract which falls in a fiscal period other than a fiscal period for which funds have been appropriated, the contract shall terminate without notice at the end of the fiscal period for which funds are appropriated.

16) Substitution of Personnel: The Contractor agrees and understands that the City of Arnold's Agreement to the Contract may be predicated, in part and among other considerations, on the utilization of the specific individual(s) and/or personnel qualification(s) as identified and/or described in the Contractor's proposal. Therefore, the Contractor agrees that no substitution of such specific individuals and/or personnel qualifications shall be made without the prior written approval of the City. The Contractor further agrees that any substitution made pursuant to this paragraph must be equal or better than originally proposed and that the City's approval of a substitution shall not be construed as an acceptance of the substitution's

performance potential. The City of Arnold agrees that an approval of a substitution will not be unreasonably withheld.

17) General Independent Contractor Clause: This agreement does not create an employee/employer relationship between the parties. It is the party's intention that the Contractor will be an Independent Contractor and not the City's employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contributions Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue code, Missouri revenue and taxation laws, Missouri Workers' Compensation and unemployment insurance laws. The Contractor will retain sole and absolute discretion in the judgment of the manner and means of carrying out the Contractor's activities and responsibilities hereunder. The Contractor agrees that it is a separate and independent enterprise from the public employer, that it has a full opportunity to find other business, that it has made its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This agreement shall not be construed as creating any joint employment relationship between the Contractor and the City, and the City will not be liable for any obligation incurred by the Contractor, including but not limited to unpaid minimum wages and/or overtime premiums.

18) Workers Compensation Clause: The Contractor shall not be entitled to any of the benefits established for the employees of the City nor be covered by the Workers Compensation Program of the City.

19) Certification of Non-Resident/Foreign Contractor: If the Contractor is a foreign corporation or non-resident Contractor, it is required that the Contractor shall procure and maintain during the life of this contract:

- a. A certificate of authority to transact business in the State of Missouri from the Secretary of State, unless exempt pursuant to the provisions of Section 351.57 RSMo.
- b. A certificate from the Missouri Director of Revenue evidencing compliance with transient employer financial assurance law, unless exempt pursuant to the provisions of Section 285.230 RSMo.
- c. A Contractor's License as required by the City of Arnold Code Ordinances.

20) Nondiscrimination: The Contractor agrees in the performance of this contract not to discriminate on the ground or because of race, creed, color, national origin or ancestry, sex, religion, handicap, age, status as a protected veteran or status as a qualified individual with a disability, or political opinion or affiliation, against any employee of Contractor or applicant for employment and shall include a similar provision in all subcontracts let or awarded hereunder. The parties hereby incorporate the requirements of 41 C.F.R. §§ 60-1.4(a)(7), 29 C.F.R. Part 471, Appendix A to Subpart A, 41 C.F.R. § 60-300.5(a) and 41 C.F.R. § 60-741.5(a), if applicable.

- a. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-300.5(a). This regulation prohibits discriminations against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.
- b. This contractor and subcontractor shall abide by the requirements of 41 C.F.R. § 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

21) No Interest: Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this contract. The Contractor further covenants that in the performance of this contract no person having such interest shall be employed.

22) Contractor's Responsibility for Subcontractors: It is further agreed that Contractor shall be as fully responsible to the City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons it directly employs. Contractor shall cause appropriate provisions to be inserted in all subcontracts relating to this work, to bind all subcontractors to Contractor by all the terms herein set forth, insofar as applicable to the work of subcontractors and to give Contractor the same power regarding termination of any subcontract as the City may exercise over Contractor under any provisions of this contract. Nothing contained in this contract shall create any contractual relation between any subcontractor and the City or between any subcontractors.

23) Certificates of Insurance: The certificates of insurance, including evidence of the required endorsements of the policies shall be filed with the City of Arnold within ten (10) days of the date of receipt of the Award of the contract to the Contractor and prior to the start of work. All insurance policies shall provide thirty (30) days written notice to be given by the insurance company in question, prior to modification or cancellation of insurance. Such notices shall be emailed to veronics@arnoldmo.org or sent via USPS to:

Veronica Jones, Accountable Specialist
City of Arnold
2101 Jeffco Blvd.
Arnold, MO 63010

24) Liability and Indemnity:

- a. In no event, shall the City be liable to Contractor for special, indirect, or consequential damages, except those caused by the City's gross negligence or willful or wanton misconduct arising out of or in any way connected with a breach of this contract. The maximum liability of the City shall be limited to the amount of money to be paid or received by the City under this contract.
- b. The Contractor shall defend, indemnify and save harmless the City, its elected or appointed officials, agents and employees from and against any and all liability, suits, damages, costs (including attorney fees), losses, outlays and expenses from claims in any manner caused by, or allegedly caused by, or arising out of, or connected with, this contract, or the work or any subcontract thereunder (the Contractor hereby assuming full responsibility for relations with subcontractors), including, but not limited to, claims for personal injuries, death, property damage, or for damages from the award of this contract to Contractor.
- c. The Contractor shall indemnify and hold the City harmless from all wages or overtime compensation due any employees in rendering services pursuant to this agreement or any subcontract, including payment of reasonable attorneys' fees and costs in the defense of any claim made under the Fair Labor Standards Act, the Missouri Prevailing Wage Law (Annual Wage Order No. 25, Section 050, Jefferson County) or any other federal or state law.
- d. The indemnification obligations of Contractor hereunder shall not be limited by any limitations as to the amount or type of damages, compensation or benefits payable by or for the Contractor, under

any federal or state law, to any person asserting the claim against City, its elected or appointed officials, agents and employees, for which indemnification is sought.

- e. The indemnification obligations herein shall not negate, abridge or reduce in any way any additional indemnification rights of the City, its elected or appointed officials, agents and employees, which are otherwise available under statute, or in law or equity.
- f. Contractor affirms that it has had the opportunity to recover the costs of the liability insurance required in this agreement in its contract price. Contractor's obligation under this agreement to defend, indemnify and hold harmless any person from that person's own negligence or wrongdoing is limited to the coverage and limits of the applicable insurance.

25) Conflict of Interest: No salaried officer or employee of the City and no member of the City council shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void. Any federal regulations and applicable provisions in RSMo. Chapter 105 shall not be violated.

26) Entire Agreement: This agreement, including the terms and conditions contained or referenced herein, including but not limited to this RFP and all submitted bid documents constitutes the entire agreement between the parties. No modification, amendment, or waiver of any of the provisions of this agreement shall be effective unless in writing specifically referring hereto.

27) Waiver: No provision of the contract documents shall be construed, expressly or by implication, as a waiver by the City of any existing or future right or remedy available by law in the event of any claim of default or breach of contract.

28) Jurisdiction: This Agreement shall be governed, construed and interpreted under Missouri law, and shall be deemed to be executed and performed in the County of Jefferson, Missouri. Any legal action arising out of, or relating to this Agreement shall be governed by the laws of the State of Missouri, and the parties agree to the exclusive exercise of jurisdiction and venue over them by a court of competent jurisdiction located in the County of Jefferson, Missouri, or federal court located in the City of St. Louis, Missouri.

29) Headings: All paragraph headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement.

30) Non-Exclusive Agreement: This Request for Proposal will result in a non-exclusive contract and the City of Arnold reserves the right to purchase same or like services from other sources as deemed necessary and appropriate. If at any time the Offeror does not fulfill their contractual obligations the City of Arnold may procure services from another source.

31) Conflicts of Interest:

- a. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services to be performed under this contract. The Contractor further covenants that in the performance of this contract no person having such interest shall be employed.
- b. No salaried officer or employee of the City and no member of the City Council shall have a financial interest, direct or indirect, in this contract. A violation of this provision renders the contract void.

Any federal regulations and applicable provisions in Section 105.450 et seq. RSMo. shall not be violated.

32) Safety Precautions: The contractor shall maintain and enforce all necessary and adequate safety precautions for the protection of life and property on all work performed under the provisions of these Contract Documents. The contractor shall also comply with all regulatory agencies' requirements for safety.

33) Delay by The City: City and Contractor agree that the schedule of services to be provided by Contractor under this agreement may depend upon timely fulfillment of City responsibilities. If the City is unable to provide services and/or facilities as specified in the contract documents, and/or causes delays to the project beyond Contractor's control, the Contractor shall be entitled to an extension of the time for contract completion but such contract time of completion shall be extended no more than one day for each day of delay caused by the City. Any such agreement to modify or extend the time of contract completion shall be made in writing by formal addendum to the contract. The time of application of liquidated damages shall not begin until after the amended date for contract/phase completion. The contract time of completion shall not be extended because of delay caused by the City unless and until the Contractor has notified the City, in writing, that the City has caused a delay. Such notice shall be made not later than seven (7) days after the beginning of the delay caused by the City.

34) City's Right to Proceed: In the event this contract is terminated, the City may take over the work and prosecute the same to completion, by contract or otherwise, and Contractor and its sureties shall be liable to the City for any costs over and above the amount of this contract thereby occasioned by the City. In any such case the City may take possession of, and utilize in completion of the work, such materials, appliances and structures as may be on the work site and are necessary for completion of the work. The foregoing provisions are in addition to, and not in limitation of, the rights of the City under any other provisions of the contract, City ordinances, and state and federal law.

35) Cooperation: All information, data, and reports, past, existing, available, and necessary for the carrying out of the work, shall be furnished to the Contractor without charge, and the parties shall cooperate with each other in every way possible in carrying out of the performance of services. It is understood that City has no responsibility for the accuracy of any such information provided.

36) Coordination: The Contractor shall fully coordinate its activities in the performance of the contract with the activities of the City.

37) Contractor License: The Contractor shall obtain and maintain a contractor's license with the City of Arnold, Missouri. The cost for this license shall be borne by the Contractor. No contract will be executed by the City until this license has been obtained.

38) Authorization: The services of the Contractor shall commence only as authorized in writing by City Purchase Order or other written notice to proceed and shall be undertaken and completed as promised by the Contractor in its bid.

39) Insurance Requirements: Without limiting any of the other obligations or liabilities of the Contractor, the Contractor shall secure and maintain at its own cost and expense, throughout the duration of this Contract and until the work is completed and accepted by the City, insurance of such types and in such amounts as may be necessary to protect it and the interests of the City against all hazards or risks of loss as hereunder specified or which may arise out of the performance of the Contract Documents. The form and limits of such insurance, together with the underwriter thereof in each case, are subject to approval by the City. Regardless

of such approval, it shall be the responsibility of the contractor to maintain adequate insurance coverage at all times during the term of the Contract. Failure of the Contractor to maintain coverage shall not relieve it of any contractual responsibility or obligation or liability under the Contract Documents.

The certificates of insurance, including evidence of the required endorsements hereunder or the policies, shall be filed with the City within ten (10) days after the date of the receipt of Notice of Award of the Contract to the Contractor and prior to the start of work. All insurance policies shall provide thirty (30) days written notice to be given by the insurance company in question prior to modification or cancellation of such insurance and shall list the City as an additional insured and shall be accompanied by the policy's endorsements adding the City as an additional insured. Such notices shall be sent via email to vjones@arnoldmo.org or mailed to:

Veronica Jones, Accounts Payable Specialist
City of Arnold
2101 Jeffco Blvd.
Arnold, MO 63010

The minimum coverage for the insurance referred to herein shall be in accordance with the requirements established below: Such policies shall name the City as an additional named insured with limits of liability not less than the sovereign immunity limits for Missouri public entities calculated by the Missouri Department of Insurance as of January 1, each year, and published annually in the Missouri Register pursuant to Section 37.610, R.S.Mo. (See, <http://www.sos.mo.gov/industry/sovimunity.php>) as follows:

As of January 1, 2020, the minimum coverage for the insurance referred to herein shall be as set out below:

- a. **Workers' Compensation:** Statutory coverage per RSM 287.010 et seq Employer's Liability: \$1,000,000.00
- b. **Commercial General Liability Insurance:** Including coverage for Premises, Operations Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors, Explosion, Collapse, and Underground Property Damage and endorsed for blasting if blasting required. Such coverage shall apply to Bodily Injury and Property Damage on an "Occurrence Form Basis" with limits of Four Million Dollars (\$4,000,000.00) aggregate for all claims arising out of a single accident or occurrence and Two Million Dollars (\$2,000,000.00) for any one person in a single accident or occurrence.
- c. **Automobile Liability Insurance:** Covering Bodily Injury and Property Damage for owned, non-owned and hired vehicles with limits of Four Million Dollars (\$4,000,000.00) aggregate for all claims arising out of a single accident or occurrence and Two Million Dollars (\$2,000,000.00) for any one person in a single accident or occurrence.
- d. **Subcontracts:** In case any or all of this work is sublet, the Contractor shall require the subcontractor to procure and maintain all insurance required by the City of Arnold as listed above. Contractor shall require any and all subcontractors with whom it enters into a contract to perform work on this project to protect the City through insurance against applicable hazards or risks.
- e. **Notice:** The Contractor shall furnish the City prior to beginning the work, satisfactory proof of carriage of all the insurance required by this contract, with the provision that policies shall not be canceled, modified or non-renewed without thirty (30) days written notice to the City of Arnold.

- 40) Immunity Retention:** By execution and performance of this Agreement, the City does not intend to, nor shall it be deemed to have waived or relinquished any immunity or defense on behalf of the City, and the City's board members, officers, directors, servants, employees, agents, successors or assigns.
- 41) Severability:** If any provision of this Agreement is held to be invalid or unenforceable, such provision shall be deemed severable. In such event, this Agreement shall be enforced as if such invalid or unenforceable provision had never formed a part of this Agreement and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the invalid or unenforceable provision.
- 42) City Decisions:** The City will determine whether the documents to be furnished hereunder are in compliance with the requirements of this Agreement and will decide all questions which may arise concerning the proper performance of this Agreement. The City's decisions in these respects shall be final and conclusive.
- 43) Legal Compliance:** Contractor and its employees, agents and representatives shall comply with the City's policies and procedures and all applicable federal, state, county, municipal and other governmental statutes, laws, rules, orders, regulations, codes and ordinances required of Contractor in performing the services pursuant to this Agreement.
- 44) Contractor Warranties:** Contractor warrants and represents that it has the experience, skill, expertise, personnel and equipment necessary in order to perform and to complete the Work and the Project and that it will perform all such Work in accordance with the terms hereof and in accordance with the highest standards of competence of a professional and workmanlike manner.
- 45) E-Verify:** In accordance with section 85-30, RSMo., Contractor shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. Contractor shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services.

(Signatures on following page.)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CITY OF ARNOLD, MISSOURI

Bryan Richison, City Administrator

ATTEST:

City Clerk

CONTRACTOR'S NAME:

REPRESENTATIVE'S SIGNATURE:

ATTEST:

DATE:

SAMPLE
CONTRACT

EXHIBIT1

SCOPE OF SERVICES

ON-CALL CODE ENFORCEMENT ABATEMENT SERVICES

- 1) The City's Request for Bids for the On-Call Code Enforcement Abatement Services; and also,
- 2) The Contractor's Bid including all supplemental information submitted therewith.

SAMPLE
CONTRACT

EXHIBIT2

PAYMENT

Upon completion of the Work and the Project, Contractor shall submit to the City an application or request for payment along with adequate supporting documentation, for all labor performed and material provided and installed, all of which shall be acceptable to the City. Upon receipt and approval of the application or request for payment and the related supporting documentation, the City shall make payment in full to the Contractor within thirty (30) days.

**SAMPLE
CONTRACT**

RESOLUTION NO: 23-10

A RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO
ENTER INTO A CONTRACT WITH SHANNON AND WILSON FOR
PROFESSIONAL SERVICES RELATIVE TO RETAINING WALL
PROJECT ON CHURCH RD.

BE IT RESOLVED by the Council of the City of Arnold, Missouri, that the City Administrator be, and is hereby authorized to enter into a contract with Shannon and Wilson to provide professional services relative to the construction of the Church Rd retaining wall project.

A copy of said contract is attached hereto and made a part hereof reference.

City Administrator

Bryan Richison

ATTEST:

City Clerk Tammi Casey

Date: _____



March 21, 2023

Ms. Judy Wagner
City of Arnold
2900 Arnold Tenbrook Road
Arnold, MO 63010
jwagner@arnoldmo.com

RE: PROPOSAL FOR FORENSIC STUDY SERVICES
CHURCH STREET WALL
ARNOLD MISSOURI

Dear Ms. Wagner:

Shannon & Wilson is pleased to submit this construction monitoring services proposal for the retaining wall located between Ozark Drive and Stardust Lane and along Church Road in Arnold, Missouri. The purpose of our services will be to provide forensic review of the existing retaining wall during its demolition and to provide our opinion regarding the cause(s) of the failure of that wall. We understand that we may also be called upon to serve as an expert for the City of Arnold should litigation be pursued by the city related to the wall failure, but these services are not part of this proposal.

The services we propose to provide include the observation and documentation as requested by you via email on March 7, 2023. Our understanding of the project, scope of services, and associated fees are discussed in greater detail below.

PROJECT AND SITE DESCRIPTION

We understand that the City of Arnold has awarded the contract to remove and replace the existing small block retaining wall at 2200 Church Road in Arnold, Missouri. Shannon & Wilson provided a geotechnical design report for the project dated May 27, 2022. We understand that as-built records of the existing retaining wall construction are not complete. Shannon & Wilson is under contract to Heneghan & Associates in support of the project to provide construction materials testing, foundation inspection, rock bolt anchor observation and testing, as well as other design support needs which may arise during construction of the replacement wall. We understand that this proposal is separate from the construction and inspection scope of services for the project.

SCOPE OF WORK

A professional engineer from Shannon & Wilson will be present during the demolition of the existing retaining wall to document the as-built conditions behind the wall face. It should be noted that due to wall instability, limited access, and unknowns about how the contractor performing the demolition will perform the work, there is uncertainty about how much of the details can be collected. Some of the details we intend to document include:

- Type, location, and condition of the wall backfill,
- The location and condition of reinforcement grid,
- Details of how that grid was anchored to the bedrock face,
- Location and functionality of drainage features,
- Presence or absence of groundwater, and
- Other details we may discover throughout the course of our work.

For this proposal, we have estimated that 3 full time days will be required to observe and document the demolition of the retaining wall. Photographs and video documentation will be supported with unmanned aerial vehicle (drone) flights by a licensed UAS pilot (14 CFR part 107). This field effort will be completed under Task 1.

The City will be notified if, in our opinion, the work should stop based on the observations and findings obtained during Task 1. If authorized and when it is safe to proceed, detailed mapping and documentation of features which may not be preserved during demolition, will be performed. Other requested testing, such as anchor pull tests, geo-grid performance testing, or evaluation of the wall backfill material may be performed under Task 2, if requested.

We will provide a letter upon completion of the work that documents our observations and provides our opinion of the cause(s) of the wall failure, under Task 3. Engineering analysis is not included, but may be recommended based on our findings.

ESTIMATED PROBABLE FEE

Based on our understanding of the project and schedule, experience with similar-sized projects, and the scope discussed above, we anticipate the estimated probable fee for the proposed services as summarized in Table 1 below.

Table 1: Estimated Probable Fee^{1,2}

Task	Estimated Quantities	Estimate
Task 1 – Full time construction observation	30 hours	\$4,800
Task 1 – Drone Flights	4 hours	\$940
Task 2 – Detailed Inspections / Testing / Mapping	10 hours	\$1,650
Task 2 – Laboratory Support	Estimated	\$2,500
Task 3 – Findings & Opinion Letter	1 Letter	\$3,670
Site Visit Trip Charge	5	\$1,075
Project Meetings	4 hours	\$1,360
Estimated Probable Fee:		\$15,995

NOTES:

- 1 Our fee will depend on the amount of time and effort required for the project, which will depend on factors beyond our control such as contractor approach, contractor performance, and subsurface conditions.
- 2 Our services will be invoiced based on the actual services provided and in accordance with the attached Standard Rate Schedule.

ASSUMPTIONS

We have prepared this scope of work, schedule, and cost estimate based on the assumptions listed below in Table 2. If any of these assumptions are in error or change, then changes to our scope, schedule and/or fee may be required.

Table 2: Assumptions

Assumption
Our services are expected to be provided on a full-time basis for the wall demolition.
We request a 5-day notice prior to beginning our services for the project and a minimum 24-hour notice for on-call services to schedule our field representatives.

CONTRACT AGREEMENT

Our services are expected to be provided on an on-call basis and will be invoiced based on the actual services provided and in accordance with the attached Standard Rate Schedule. Our fee will depend on the amount of time and effort required for the project, which will depend on factors beyond our control such as weather, contractor approach and performance, and subsurface conditions.

Our approach, scope of work, schedule, and price contained in this proposal are subject to the Shannon & Wilson Standard Terms and Conditions, which are attached to and incorporated into

this proposal. We will provide the services as described above on a unit price basis in accordance with the attached Standard Rate Schedule.

OUR SERVICE PROMISE TO YOU

Shannon & Wilson is dedicated to helping your project succeed and to making your experience with us a positive one. Our hope is that, if you enjoy working with us on this project, you will use our services on your next project! To that end, we want you to be completely satisfied with our performance, our personnel, and our project documentation.

We encourage you to discuss any discrepancies between our service and your expectations with me. If you feel that we are not delivering on our promise of quality service, we encourage you to take your concerns straight to our Saint Louis Office Manager, Tom Abkemeier. Tom's direct number is (314) 564-8109. Your project is important to us and we want to deliver our services to your full satisfaction.

CLOSURE

If you have questions regarding this proposal or desire to modify the scope of work, please contact me at 314-564-8136 or bronson.bowling@shanwil.com. If this proposal meets with your approval, please sign in the space provided below and return one signed copy of this letter, which will serve as your authorization to proceed with the stated work.

We appreciate your consideration of Shannon & Wilson for your project and your confidence in our firm.

Sincerely,

SHANNON & WILSON



Bronson L. Bowling, P.E.
Senior Geotechnical Engineer



Patrick M. Kinsella, P.E.
Associate

BLB:PMK/tad

Enc. Standard Rate Schedule
Standard General Terms and Conditions (All Purpose)

I accept the above proposal and authorize the stated work to proceed.

Signature

Date

Name (Printed or Typed)

Organization

Title

E-mail Address

Direct Correspondence to

Please Direct Billings to

Attention

Attention

Organization

Organization

Address

Address

City, State, & Zip

City, State, & Zip

E-mail Address

Billing Reference
(Project Name, PO, or other identification)

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2023 FEE SCHEDULE – ST. LOUIS OFFICE
Fees for Professional Services

Officers/Associates

Senior Vice President	\$275.00/hr.
Vice President.....	\$245.00/hr.
Senior Associate	\$225.00/hr.
Associate	\$185.00/hr.

Engineering/Geology/Hydrology/Environmental

Senior Professional III	\$160.00/hr.
Senior Professional II.....	\$145.00/hr.
Senior Professional I.....	\$135.00/hr.
Professional IV	\$120.00/hr.
Professional III	\$110.00/hr.
Professional II.....	\$100.00/hr.
Professional I	\$85.00/hr.

Field and Lab Technician/Drafter/Technical Assistant

	<i>Regular</i>	<i>Overtime</i>
Senior Technician.....	\$110.00/hr.	\$135.00/hr.
Technical Services IV.....	\$90.00/hr.	\$115.00/hr.
Technical Services I.....	\$75.00/hr.	\$95.00/hr.
Construction Materials Testing.....	\$75.00/hr.	\$95.00/hr.

Fill control (includes Density Gage) and concrete testing. CMT services charged portal-to-portal

Administrative

	<i>Regular</i>	<i>Overtime</i>
Office Services (Senior)	\$125.00/hr.	\$145.00/hr.
Office Services	\$90.00/hr.	\$115.00/hr.

Special Services

Senior Consultant	as quoted
Consultant.....	as quoted
Instrumentation Specialist.....	\$155.00/hr.

Overtime Rates

Overtime rates will apply when an employee has charged more than 40 hours per week to a single project or for time charged on weekends or holidays.

Expert Testimony

Hourly rates will be doubled for time spent actually providing expert testimony in court or depositions.

Subconsultants, Subcontractors, and Reimbursable Expenses

Expenses other than salary costs that are directly attributable to our professional services will be invoiced at our cost plus 15%. Examples include, but are not limited to, expenses for subconsultants and subcontractors, out-of-town travel and living, information processing equipment, instrumentation and field equipment rental, special fees and permits, premiums for additional or special insurance where required, telecommunication charges, local mileage and parking, use of rental vehicles, taxi, reproduction, local and out-of-town delivery service, express mail, photographs, laboratory equipment fees, shipping charges, and supplies.

These rates are for services provided for the current fiscal year (FY). At the end of each FY (December 31), rates will be adjusted for the next FY and invoiced accordingly.

Field Equipment

Vehicle	\$0.75/mile
Hand Auger/Boring Kit	\$50.00/day
Resistivity Meter	\$75.00/day
Generator	\$50.00/day
Water Level Indicator	\$25.00/day; \$50.00/week; \$150.00/month
Vibrating Wire Piezometer (VWP) Readout	\$25.00/day; \$50.00/week; \$150.00/month
Submersible Water Level Datalogger	\$60.00/day; \$160.00/week; \$490.00/month
Downhole Barometric Pressure Datalogger	Included with Water Level Datalogger Rental
Single-channel VWP Datalogger	\$60.00/day; \$160.00/week; \$490.00/month
Inclinometer Probe and Readout	\$100.00/day; \$400.00/week; \$1200.00/month
Sondex Extensometer Readout	\$50.00/day; \$200.00/week; \$600.00/month
DJI UAV	\$50/day
EOS Arrow 100 GPS Unit	\$50/day

Laboratory Testing

Selected Standard Laboratory Tests (Per Each)

Soil

Visual Identification of Tube (ASTM D2488).....	\$ 60.00
Preparation and Curing of Remolded Specimen.....	110.00
Natural Moisture Content (ASTM D2216)	10.00
Unit Weight	
Extruded Sample (ASTM D2937).....	35.00
Irregular Sample (ASTM D1188)	75.00
Atterberg Liquid & Plastic Limits (ASTM D4318)	100.00
Shrinkage Factor (ASTM D4943)	140.00
Particle Size Analysis	
Wash Sieve Analysis (ASTM D422).....	95.00
Combined Analysis (ASTM D422)	200.00
Percent Passing No. 200 Sieve (ASTM D1140).....	55.00
Hydrometer (ASTM D422)	135.00
Shear Strength	
Unconfined Compression (ASTM D2166).....	100.00
Q Triaxial, single pt. (ASTM D2850)	125.00
R Triaxial, single pt. (ASTM D4767).....	400.00
S Triaxial, single pt. (ASTM D7181)	525.00
Direct Shear, per pt. (ASTM D3080).....	275.00
Consolidation	
Normal Loading (ASTM D2435).....	450.00
Swell Pressure/Free Swell (ASTM D4546).....	350.00
Compaction	
Standard, Method A or B (ASTM D698).....	350.00
Standard, Method C (ASTM D698)	350.00
Modified, Method A or B (ASTM D1557).....	350.00
Modified, Method C (ASTM D1557)	350.00
California Bearing Ratio	
Single Point	275.00
Three Points (ASTM D1883).....	550.00

Permeability (Up to 7 Days)	
Flex. Wall w/Back Press. Sat. (ASTM D5084).....	350.00
pH (ASTM D4972)	40.00
Resistivity (ASTM G187).....	175.00
Organic Content (ASTM D2974).....	90.00
Specific Gravity of Soil (ASTM D854).....	90.00

Aggregate

Particle Size Analysis	
Dry Sieve, Fine Aggregate (ASTM C136)	80.00
Dry Sieve, Coarse Aggregate (ASTM 136).....	100.00
Specific Gravity	
Fine Aggregate (ASTM C128)	135.00
Coarse Aggregate (ASTM 127).....	140.00
Clay Lumps & Shales (ASTM C142)	90.00
Coal & Lignite (ASTM C123).....	90.00
Sulfate Soundness up to 5 cycles (ASTM C88)	350.00

Concrete and Asphalt

Concrete and asphalt testing are subcontracted to a local laboratory at competitive prices.
Please call for rates for specific projects, nonstandard testing procedures, or for testing not listed above.

Please call for rates for specific projects, nonstandard testing procedures, or for testing not listed above.

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Attachment to and
part of Proposal: 111196-P
Date: March 21, 2023
To: Ms. Judy Wagner
City of Arnold
Re: Proposal

Standard General Terms and Conditions with Client

ARTICLE 1 – SERVICES OF SHANNON & WILSON

Shannon & Wilson’s scope of work (Work) shall be limited to those services expressly set forth in its Proposal and is subject to the terms and conditions set forth herein.

Shannon & Wilson shall procure and maintain all business and professional licenses and registrations necessary to provide its services. Upon Client’s request (and for additional compensation, if not already included in Shannon & Wilson’s Proposal), Shannon & Wilson shall assist Client in attempting to obtain, or on behalf of Client and in Client’s name attempt to obtain, those permits and approvals required for the project for which Shannon & Wilson’s services are being rendered.

Client acknowledges, depending on field conditions encountered and subsurface conditions discovered, the number and location of borings, the number and type of field and laboratory tests, and other similar items, as deemed necessary by Shannon & Wilson in the exercise of due care, may need to be increased or decreased; if such modifications are approved by Client, Shannon & Wilson’s compensation and schedule shall be equitably adjusted.

If conditions actually encountered at the project site differ materially from those represented by Client and/or shown or indicated in the contract documents, or are of an unusual nature, which materially differ from those ordinarily encountered and generally recognized as inherent for the locality and character of the services provided for in Shannon & Wilson’s Work, Shannon & Wilson’s compensation and schedule shall be equitably adjusted.

Without increasing the Work, price, or schedule contained in Shannon & Wilson’s Proposal, Shannon & Wilson may employ such subcontractors as Shannon & Wilson deems necessary to assist in furnishing its services.

If Shannon & Wilson’s Work is increased or decreased by Client, Shannon & Wilson’s compensation and schedule shall be equitably adjusted.

ARTICLE 2 – TIMES FOR RENDERING SERVICES

Shannon & Wilson shall perform its services in accordance with the schedule set forth in its Proposal.

If Shannon & Wilson’s Proposal sets forth specific periods of time for rendering services, or specific dates by which services are to be completed, and such periods of time or dates are extended or delayed through no fault of Shannon & Wilson, Shannon & Wilson’s compensation and schedule shall be equitably adjusted.

If Shannon & Wilson’s schedule is increased or decreased by Client, Shannon & Wilson’s compensation shall be equitably adjusted.

ARTICLE 3 – PAYMENTS TO SHANNON & WILSON

Invoices shall be prepared in accordance with Shannon & Wilson’s standard invoicing practices and shall be submitted to Client by Shannon & Wilson monthly. The amount billed in each invoice shall be calculated as set forth in Shannon & Wilson’s Proposal.

Unless Shannon & Wilson’s Proposal contains a fixed lump-sum price, Shannon & Wilson’s actual fees may exceed the estimate contained in its Proposal. Shannon & Wilson shall not exceed the estimate contained in its Proposal by more than ten percent (10%) without the prior written consent of Client; provided however, unless the Client authorizes additional funds in excess of the estimate contained in Shannon & Wilson’s Proposal, Shannon & Wilson shall have no obligation to continue work on the project.

Invoices are due and payable within thirty (30) days of receipt. If Client fails to pay Shannon & Wilson’s invoice within thirty (30) days after receipt, the amounts due Shannon & Wilson shall accrue interest at the rate of one and one-half percent (1.5%) per month (or the maximum rate of interest permitted by law, if less) after the 30th day. In addition, Shannon & Wilson may, after giving seven (7) days written notice to Client, suspend services under this Agreement until Shannon & Wilson has been paid in full.

If Client disputes Shannon & Wilson’s invoice, only the disputed portion(s) may be withheld from payment, and the undisputed portion(s) shall be paid.

Records of Shannon & Wilson’s direct and indirect costs and expenses pertinent to its compensation under this Agreement shall be kept in accordance with generally accepted accounting practices and applicable federal, state, or local laws and regulations. Upon request, such records shall be made available to Client for inspection on Shannon & Wilson’s premises and copies provided to Client at cost.

ARTICLE 4 – CLIENT’S RESPONSIBILITIES

Client shall grant or obtain free access to the project site for all equipment and personnel necessary for Shannon & Wilson to perform its services.

ARTICLE 5 – STANDARD OF CARE/ABSENCE OF WARRANTIES/NO RESPONSIBILITY FOR SITE SAFETY OR CONTRACTOR’S PERFORMANCE

Standard of Care

The standard of care for all professional services performed or furnished by Shannon & Wilson under this Agreement shall be the skill and care ordinarily exercised by other members of Shannon & Wilson’s profession, providing the same or similar services, under the same or similar circumstances, at the same time and locality as the services were provided by Shannon & Wilson. The construction, alteration, or repair of any object or structure by Shannon & Wilson shall be performed in a good and workmanlike manner in accordance with general industry standards, and conform to this Agreement. Shannon & Wilson warrants for one (1) year from substantial completion of the Work, all goods delivered hereunder shall be new and free from defects in material

or workmanship, and shall conform to the specifications, drawings, or sample(s) specified or furnished, if any, and shall be merchantable and fit for their intended purpose(s). Shannon & Wilson warrants that Shannon & Wilson has good and marketable title to all goods delivered hereunder, and that all goods delivered hereunder shall be free and clear of all claims of superior title, liens, and encumbrances of any kind.

Subsurface explorations and testing identify actual subsurface conditions only at those points where samples are taken, at the time they are taken. Actual conditions at other locations of the project site, including those inferred to exist between the sample points, may differ significantly from conditions that exist at the sampling locations. The passage of time or intervening causes may cause the actual conditions at the sampling locations to change as well.

Interpretations and recommendations made by Shannon & Wilson shall be based solely upon information available to Shannon & Wilson at the time the interpretations and recommendations are made.

Shannon & Wilson shall be responsible for the technical accuracy of its services, data, interpretations, and recommendations resulting therefrom, and Client shall not be responsible for discovering deficiencies therein. Shannon & Wilson shall correct any substandard work without additional compensation, except to the extent that such inaccuracies are directly attributable to deficiencies in Client-furnished information.

No Warranties

Except as expressly stated herein, Shannon & Wilson makes no guarantees or warranties, express or implied, under this Agreement or otherwise, about the Work.

Client-Furnished Documents

Shannon & Wilson may use requirements, programs, instructions, reports, data, and information furnished by Client to Shannon & Wilson in performing its services under this Agreement. Shannon & Wilson may rely on the accuracy and completeness of requirements, programs, instructions, reports, data, and other information furnished by Client to Shannon & Wilson. Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from Shannon & Wilson's reliance on Client-furnished information, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

Site Damage

Shannon & Wilson shall take reasonable precautions to minimize damage to the project site, but it is understood by Client that, in the normal course of Shannon & Wilson's services, some project site damage may occur, and the correction of such damage is not part of this Agreement unless so stated in Shannon & Wilson's Proposal. Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from any project site damage caused by Shannon & Wilson, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

Buried Structures

If there are any buried structures and/or utilities on the project site where subsurface explorations are to take place, Client shall provide Shannon & Wilson with a plan showing their existing locations. Shannon & Wilson shall contact a utility locator service to request that they identify any public utilities. Shannon & Wilson shall use reasonable care and diligence to avoid contact with buried structures and/or utilities as shown. Shannon & Wilson shall not be liable for any loss or damage to buried structures and/or utilities resulting from inaccuracy of the plans, or lack of plans, or errors by the locator service relating to the location of buried structures and/or utilities. Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify, and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from damage to buried structures and/or utilities caused by Shannon & Wilson's sampling, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

Aquifer Cross-Contamination

Despite the use of due care, unavoidable contamination of soil or groundwater may occur during subsurface exploration when drilling or sampling tools are advanced through a contaminated area, linking it to an aquifer, underground stream, or other hydrous body not previously contaminated and capable of spreading contaminants off the project site. Because Shannon & Wilson is powerless to totally eliminate this risk despite use of due care, and because sampling is an essential element of Shannon & Wilson's services, Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from cross-contamination caused by Shannon & Wilson's sampling, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

Opinions of Probable Construction Costs

If opinions of probable construction costs are included in Shannon & Wilson's Proposal, Shannon & Wilson's opinions of probable construction costs shall be made on the basis of its experience and qualifications and represent its judgment as a professional generally familiar with the industry. Opinions of probable construction costs are based, in part, on approximate quantity evaluations that are not accurate enough to permit contractors to prepare bids. Further, since Shannon & Wilson has no control over: the cost of labor, materials, equipment, or services furnished by others; the contractor's actual or proposed construction methods or methods of determining prices; competitive bidding; or market conditions, Shannon & Wilson cannot and does not guarantee that proposals, bids, or actual construction cost will not vary from opinions of the components of probable construction cost prepared by Shannon & Wilson. If Client or any contractor wishes greater assurance as to probable construction cost, Client or contractor shall employ an independent cost estimator.

Review of Contractor's Shop Drawings and Submittals

If review of a contractor's shop drawings and submittals are included in Shannon & Wilson's Proposal, Shannon & Wilson shall review and take appropriate action on the contractor's submittals, such as shop drawings, product data, samples, and other data, which the contractor is required to submit, but solely for the limited purpose of checking for general overall conformance with Shannon & Wilson's design concept. This review shall not include a review of the accuracy or completeness of details, such as quantities; dimensions; weights or gauges; fabrication processes; construction means, methods, sequences or procedures; coordination of the work with other trades; or construction safety precautions, all of which are the sole responsibility of the contractor. Shannon & Wilson's review shall be conducted with reasonable promptness while allowing sufficient time, in Shannon & Wilson's judgment,

to permit adequate review. Review of a specific item shall not be construed to mean that Shannon & Wilson has reviewed the entire assembly of which the item is a component. Shannon & Wilson shall not be responsible for any deviations by the contractor in the shop drawings and submittals from the construction documents, which are not brought to the attention of Shannon & Wilson by the contractor in writing.

Construction Observation

If construction observation is included in Shannon & Wilson's Proposal, Shannon & Wilson shall visit the project site at intervals Shannon & Wilson deems appropriate, or as otherwise agreed to in writing by Client and Shannon & Wilson, in order to observe and keep Client generally informed of the progress and quality of the work. Such visits and observations are not intended to be an exhaustive check or a detailed inspection of any contractor's work, but rather are to allow Shannon & Wilson, as a professional, to become generally familiar with the work in progress in order to determine, in general, whether the work is progressing in a manner indicating that the work, when fully completed, will be in accordance with Shannon & Wilson's general overall design concept. Shannon & Wilson's authority shall be limited to observing, making technical comments regarding general overall compliance with Shannon & Wilson's design concept, and rejecting any work which it becomes aware of that does not comply with Shannon & Wilson's general overall design concept. Shannon & Wilson's acceptance of any non-conforming work containing latent defects or failure to reject any non-conforming work not inspected by Shannon & Wilson shall not impose any liability on Shannon & Wilson or relieve any contractor from complying with their contract documents. All construction contractors shall be solely responsible for construction site safety, the quality of their work, and adherence to their contract documents. Shannon & Wilson shall have no authority to direct any contractor's actions or stop any contractor's work.

If Shannon & Wilson is not retained to provide construction observation of the implementation of its design recommendations, Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson, and indemnify and hold Shannon & Wilson harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from the implementation of Shannon & Wilson's design recommendations, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract.

No Responsibility for Site Safety

Except for its own subcontractors and employees, Shannon & Wilson shall not: supervise, direct, have control over, or authority to stop any contractor's work; have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by any contractor; be responsible for safety precautions and programs incident to any contractor's work; or be responsible for any failure of any contractor to comply with laws and regulations applicable to the contractor, all of which are the sole responsibility of the construction contractors. This requirement shall apply continuously, regardless of time or place, and shall in no way be altered because a representative of Shannon & Wilson is present at the project site performing his/her duties. Notwithstanding anything to the contrary, Shannon & Wilson shall never be deemed to have assumed responsibility for the project's site safety by either contract or conduct. No act or direction by Shannon & Wilson shall be deemed the exercise of supervision or control of any contractor's employees or the direction of any contractor's performance. Any direction provided by Shannon & Wilson shall be deemed solely to ensure the contractor's general overall compliance with Shannon & Wilson's design concept.

No Responsibility for Contractor's Performance

Except for its own subcontractors and employees, Shannon & Wilson shall not be responsible for safety precautions, the quality of any contractor's work, or any contractor's failure to furnish or perform their work in accordance with their contract documents.

Except Shannon & Wilson's own employees and its subcontractors, Shannon & Wilson shall not: be responsible for the acts or omissions of any contractor, subcontractor or supplier, or other persons at the project site, or otherwise furnishing or performing any work; or for any decision based on interpretations or clarifications of Shannon & Wilson's design concept given without the consultation and concurrence of Shannon & Wilson.

Approval of Contractor's Applications for Payment

If approval of a contractor's applications for payment are included in Shannon & Wilson's Proposal, Shannon & Wilson shall review the amounts due the contractor and issue a recommendation about payment to Client. Shannon & Wilson's review and approval shall be limited to an evaluation of the general progress of the work and the information contained in the contractor's application for payment and a representation by Shannon & Wilson that to the best of the Shannon & Wilson's knowledge, the contractor has performed work for which payment has been requested, subject to further testing and inspection upon substantial completion. The issuance of a recommendation for payment shall not be construed as a representation that: Shannon & Wilson has made an exhaustive check or a detailed or continuous inspection check of the quality or quantity of the contractor's work; approved the contractors means, methods, sequences, procedures, or safety precautions; or that contractor's subcontractors, laborers, and suppliers have been paid.

ARTICLE 6 – CONFIDENTIALITY AND USE OF DOCUMENTS

Confidentiality

Shannon & Wilson agrees to keep confidential and to not disclose to any person or entity (other than Shannon & Wilson's employees and subcontractors), without the prior consent of Client, all information furnished to Shannon & Wilson by Client or learned by Shannon & Wilson as a result of its work on the project; provided however, that these provisions shall not apply to information that: is in the public domain through no fault of Shannon & Wilson; was previously known to Shannon & Wilson; or was independently acquired by Shannon & Wilson from third-parties who were under no obligation to Client to keep said information confidential. This paragraph shall not be construed to in any way restrict Shannon & Wilson from making any disclosures required by law. Client agrees that Shannon & Wilson may use and publish Client's name and a general description of Shannon & Wilson's services with respect to the project in describing Shannon & Wilson's experience and qualifications to others.

Copyrights and Patents – Shannon & Wilson shall indemnify, hold harmless, and defend Client from any and all actions, damages, demands, expenses (including reasonable attorneys' fees and costs), losses, and liabilities arising out of any claims that any goods or services furnished by Subcontractor infringe any patent, trademark, trade name, or copyright.

Use of Documents

All documents prepared by Shannon & Wilson are instruments of service with respect to the project, and Shannon & Wilson shall retain a copyrighted ownership and property interest therein (including the right of reuse) whether or not the project is completed.

Shannon & Wilson grants to Client a non-exclusive, irrevocable, unlimited, royalty-free license to use any documents prepared by Shannon & Wilson for Client. Client may make and retain copies of such documents for their information and use. Such documents are not intended or represented to be

suitable for reuse by Client, or others, after the passage of time, on extensions of the project, or on any other project. Any such reuse without written verification or adaptation by Shannon & Wilson, as appropriate for the specific purpose intended, shall be at Client's sole risk, and Client shall, only to the fullest extent permitted by law, waive any claims against Shannon & Wilson and its subcontractors, and indemnify and hold Shannon & Wilson and its subcontractors harmless from any claims, liability, or expenses (including reasonable attorneys' fees and costs) arising from such reuse, except to the extent of Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract. Any verification or adaptation of the documents for extensions of the project or for any other project by Shannon & Wilson shall entitle Shannon & Wilson to additional compensation to be agreed upon by Client and Shannon & Wilson.

Copies of documents that may be relied upon by Client are limited to the printed copies (also known as hard copies) that are signed or sealed by Shannon & Wilson. Text, data, or graphics files in electronic media format are furnished solely for the convenience of Client. Any conclusion or information obtained or derived from such electronic files shall be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.

Because data stored in electronic media can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving an electronic file agrees that it shall perform acceptance tests or procedures within 60 days after its receipt, after which, unless notice of any errors are given in writing to the delivering party, the receiving party shall be deemed to have accepted the data thus transferred. Any errors reported within the 60-day acceptance period shall be corrected by the party delivering the electronic files at their sole expense. Shannon & Wilson shall not be responsible for maintaining documents stored in electronic media format after acceptance by Client.

When transferring documents in electronic media format, neither Client nor Shannon & Wilson makes any representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used for the document's creation.

ARTICLE 7 - INSURANCE

Shannon & Wilson shall purchase and maintain during the term of this contract, the following insurance coverage at its sole expense:

Commercial General Liability

\$1,000,000 each occurrence/\$2,000,000 annual aggregate Bodily Injury/Property Damage Combined Single Limit including Blanket Contractual Liability, Broad Form Products and Completed Operations, Explosion/Collapse/Underground (XCU) Exposures, and Washington Stop Gap coverage.

Auto Liability

\$1,000,000 Bodily Injury/Property Damage Combined Single Limit including Owned, Hired, and Non-Owned Liability coverage.

Umbrella Liability

\$4,000,000 Bodily Injury/Property Damage combined Single Limit in excess of Commercial General Liability, Auto Liability, and Employers' Liability.

Workers' Compensation

Statutory in monopolistic states and \$500,000 per accident/\$500,000 per disease/\$500,000 disease policy aggregate Employers' Liability in non-monopolistic including if applicable, U.S. Longshore & Harbor Workers coverage.

Professional Liability

\$5,000,000 per claims/\$5,000,000 annual aggregate for professional errors and omissions including Pollution Liability coverage.

If requested in writing by Client, Shannon & Wilson shall name Client as an additional insured on its Commercial General Liability policy.

If requested in writing by Client, Shannon & Wilson shall deliver to Client certificates of insurance evidencing such coverage. Such certificates shall be furnished before commencement of Shannon & Wilson's services.

Client shall cause Shannon & Wilson and its subcontractors to be listed as additional insureds on any Commercial General Liability insurance carried by Client that is applicable to the project.

Client shall require the project owner to require the general contractor on the project to purchase and maintain Commercial General Liability, Automobile Liability, Workers Compensation, and Employers Liability insurance, with limits no less than set forth above, and to cause Shannon & Wilson and its subcontractors to be listed as additional insureds on that Commercial General Liability insurance. Client shall require the project owner include the substance of this paragraph in the prime construction contract.

All insurance policies shall contain a waiver of subrogation.

ARTICLE 8 - HAZARDOUS ENVIRONMENTAL CONDITIONS

Disclosure of the Existence of Hazardous Environmental Conditions

Client has disclosed to Shannon & Wilson all data known to Client concerning known or suspected hazardous environmental conditions, including but not limited to, the existence of all asbestos, polychlorinated biphenyls, petroleum, hazardous waste, or radioactive material, if any, located at or near the project site, including its type, quantity, and location, or has represented to Shannon & Wilson that, to the best of Client's knowledge, no hazardous environmental conditions exist at or near the project site.

If any hazardous environmental condition is encountered or believed to exist, Shannon & Wilson shall notify Client and, to the extent required by applicable laws and regulations, the project site owner, and appropriate governmental officials.

Disposal of Non-Hazardous Samples and Hazardous or Toxic Substances

All substances on, in, or under the project site, or obtained from the project site as samples or as byproducts (e.g., drill cuttings and fluids) of the sampling process are the project site owner's property. Shannon & Wilson shall preserve such samples for forty-five (45) calendar days after Shannon & Wilson's issuance to Client of the final instrument of service that relates to the data obtained from them. Shannon & Wilson shall dispose of all non-hazardous samples and sampling process byproducts in accordance with applicable law; provided however, any samples or sampling process byproducts that are, or are believed to be, affected by regulated contaminants shall be packaged by Shannon & Wilson in accordance with applicable law, and turned over to

Client or left on the project site. Shannon & Wilson shall not transport, store, treat, dispose of, or arrange for the transportation, storage, treatment, or disposal of, any substances known, believed, or suspected to be affected by regulated contaminants, nor shall Shannon & Wilson subcontract for such activities.

Shannon & Wilson shall, at Client's request (and for additional compensation, if not already included in Shannon & Wilson's Proposal), help Client or the project site owner identify appropriate alternatives for transportation, storage, treatment, or disposal of such substances, but Shannon & Wilson shall not make any independent determination about the selection of a transportation, storage, treatment, or disposal facility.

Client or the project site owner shall sign all manifests for the transportation, storage, treatment, or disposal of substances affected by regulated contaminants; provided however, notwithstanding any other provisions of this Agreement to the contrary if Client directs Shannon & Wilson, Shannon & Wilson's employees, or Shannon & Wilson's agents to sign such manifests and/or to hire for Client or the project site owner a contractor to transport, store, treat, or dispose of the contaminated substances, Shannon & Wilson shall do so only as Client's disclosed agent.

Contaminated Equipment and Consumables

Client shall reimburse Shannon & Wilson for the cost of decontaminating field or laboratory equipment that is contaminated by regulated materials encountered at the project site and for the cost of disposal and replacement of contaminated consumables. In some instances, the cost of decontamination may exceed the fair market value of the equipment, were it not contaminated, together with the cost of properly transporting and disposing of the equipment. In such instances, Shannon & Wilson will notify Client and give Client the option of paying for decontamination or purchasing the equipment at its fair market value immediately prior to contamination. If Client elects to purchase equipment, Client and Shannon & Wilson will enter into a specific agreement for that purpose. Any equipment that cannot be decontaminated shall be considered a consumable.

Client's Liability for Hazardous or Toxic Materials

Except to the extent caused by Shannon & Wilson's and its subcontractor's negligent or wrongful acts, errors, omissions, or breach of contract, and only to the maximum extent permitted by law, Client shall: indemnify and hold harmless Shannon & Wilson, its subcontractors and their partners, officers, directors, employees, and agents; from and against any and all actions (whether sounding in tort, contract (express or implied), warranty (express or implied), statutory liability, strict liability, or otherwise), claims (including, but not limited to, claims for bodily injury, death, property damage (including bodily injury, death, or property damage to Shannon & Wilson's own employees), or arising under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), the Model Toxics Control Act (MTCA), or similar federal, state, or local environmental laws), costs, damages (including without limitation, economic, non-economic, general, special, incidental, consequential), demands, expenses (including, but not limited to, reasonable attorneys' fees and costs of defense), fines, judgments, liens, liabilities, and penalties of any kind whatsoever; arising from the arrangement for and/or ownership, operation, generation, labeling, transportation, storage, disposal, treatment, release, or threatened release of any hazardous or toxic materials, as defined by CERCLA, MTCA, or similar federal, state, or local environmental laws, on and/or from the project site.

ARTICLE 9 - ALLOCATION OF RISK

Indemnification of Client

To the maximum extent permitted by law, Shannon & Wilson shall: indemnify and hold harmless Client, its appointed and elected officials, partners, officers, directors, employees, and agents; from and against any and all actions (whether sounding in tort, contract (express or implied), warranty (express or implied), statutory liability, strict liability, or otherwise), claims (including, but not limited to, claims for bodily injury, death, property damage (including bodily injury, death, or property damage to Shannon & Wilson's own employees) or arising under CERCLA, MTCA, or similar federal, state, or local environmental laws), costs, damages (including without limitation, economic, non-economic, general, special, incidental, consequential), demands, expenses (including, but not limited to, reasonable attorneys' fees and costs of defense), fines, judgments, liens, liabilities, and penalties of any kind whatsoever; arising from the negligent or wrongful acts, errors, or omissions, or breach of contract or warranty express or implied, by Shannon & Wilson or any of its subcontractors; but only to the extent of Shannon & Wilson's and its subcontractor's relative degree of fault. In furtherance of these obligations, and only with respect to Client, its appointed and elected officials, partners, officers, directors, employees and agents, Shannon & Wilson waives any immunity it may have or limitation on the amount or type of damages imposed under any industrial insurance, worker's compensation, disability, employee benefit, or similar laws. Shannon & Wilson acknowledges that this waiver of immunity was mutually negotiated.

Limitation of Shannon & Wilson's Liability

A. Total Liability Limited to Insurance Proceeds

Notwithstanding any other provisions of this Agreement, and only to the maximum extent permitted by law, the total liability, in the aggregate, of Shannon & Wilson, its subcontractors, and their partners, officers, directors, employees, agents and, or any of them, to Client and/or anyone claiming by, through, or under Client, for any and all actions (whether sounding in tort, contract [express or implied], warranty [express or implied], statutory liability, strict liability, or otherwise), claims (including, but not limited to, claims for bodily injury, death, property damage [including bodily injury, death, or property damage to Shannon & Wilson's own employees] or arising under CERCLA, MTCA, or similar federal, state, or local environmental laws), costs, damages (including without limitation, economic, non-economic, general, special, incidental, consequential), demands, expenses (including, but not limited to, reasonable attorneys' fees and costs of defense), fines, judgments, liens, liabilities, and penalties of any kind whatsoever, arising out of, resulting from, or in any way related to the project or this Agreement, shall be limited to the insurance proceeds payable on behalf of or to Shannon & Wilson by any insurance policies applicable thereto. If you are unwilling or unable to limit our liability in this manner, we will negotiate this limitation and its associated impact on our approach, scope of work, schedule, and price, with you. You must notify us in writing before we commence our work of your intention to negotiate this limitation and its associated impact on our approach, scope of work, schedule, and price. Absent your prior written notification to the contrary, we will proceed on the basis that our total liability is limited as set forth above.

B. Professional Liability Limited to \$50,000 or 10% of Fee

With respect to professional errors or omissions only, notwithstanding any other provisions of this Agreement, and only to the maximum extent permitted by law, the total liability, in the aggregate, of Shannon & Wilson, its subcontractors, and their partners, officers, directors, employees, agents, or any of them, to Client and/or anyone claiming by, through, or under Client, for any and all actions (whether sounding in tort, contract [express or implied], warranty [express or implied], statutory liability, strict liability, or otherwise), claims (including, but not limited to, claims for bodily injury, death, property damage [including bodily injury, death, or property damage to Shannon & Wilson's own employees] or arising under CERCLA, MTCA, or similar federal,

state, or local environmental laws), costs, damages (including without limitation, economic, non-economic, general, special, incidental, consequential), demands, expenses (including, but not limited to, reasonable attorneys' fees and costs of defense), fines, judgments, liens, liabilities, and penalties of any kind whatsoever, arising out of, resulting from, or in any way related to the professional errors or omissions of Shannon & Wilson, its subcontractors, or their partners, officers, directors, employees, agents or, or any of them, shall not exceed the aggregate total amount of \$50,000.00, or ten percent (10%) of the total compensation actually paid to Shannon & Wilson under this Agreement, whichever is greater. If you are unwilling or unable to limit our professional liability to these sums, we will negotiate the amount of this limitation and its associated impact on our approach, scope of work, schedule, and price, with you. You must notify us in writing before we commence our work of your intention to negotiate the amount of this limitation and its associated impact on our approach, scope of work, schedule, and price. Absent your prior written notification to the contrary, we will proceed on the basis that our total professional liability is limited to \$50,000.00 or ten percent (10%) of the total compensation actually paid to Shannon & Wilson under this Agreement, whichever is greater.

ARTICLE 10 – MISCELLANEOUS

Termination

This Agreement may be terminated without further obligation or liability by either party, with or without cause (for convenience), upon thirty (30) days prior written notice to the other. Shannon & Wilson shall be entitled to compensation for all services performed prior to the termination of this Agreement. This Agreement may be terminated by the non-breaching party upon any breach of this Agreement that remains uncured after ten (10) days' notice to the breaching party by the non-breaching party. Upon payment of all amounts due Shannon & Wilson, Client shall be entitled to copies of Shannon & Wilson's files and records pertaining to services performed prior to the termination of this Agreement.

Successors, Assigns, and Beneficiaries

This Agreement shall be binding upon each party's assigns, successors, executors, administrators, and legal representatives.

Neither Client nor Shannon & Wilson may assign or transfer any rights under or interest in this Agreement without the written consent of the other. No assignment shall release or discharge the assignor from any duty or responsibility under this Agreement.

Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or Shannon & Wilson to any third-party. All duties and responsibilities undertaken under this Agreement shall be for the sole and exclusive benefit of Client and Shannon & Wilson. There are no intended third-party beneficiaries. Notwithstanding the foregoing, should a court find a third-party to be a beneficiary of this Agreement, it is the intent of the parties that the judicially created third-party beneficiary be bound by and subject to all of the terms and conditions of this Agreement.

Jurisdiction, Venue, and Choice of Law

Any applicable Statute of Limitation shall be deemed to commence running on the date which the claimant knew, or should have known, of the facts giving rise to their claims, but in no event later than the date of substantial completion of Shannon & Wilson's services under this Agreement. To the maximum extent permitted by law, as a condition precedent to commencing a judicial proceeding, a party shall give written notice of their claims, including all amounts claimed, and the factual basis for their claims, to the other party within one (1) year of when the claimant knew, or should have known, of the facts giving rise to their claims, but in no event later than one (1) year from the date of substantial completion of Shannon & Wilson's services under this Agreement. As a condition precedent to commencing a judicial proceeding, a party shall first submit their claims to non-binding mediation through and in accordance with the rules of the American Arbitration Association.

This Agreement shall be construed in accordance with and governed by the laws (except choice and conflict of law provisions) of the state in which the project is located.

Any judicial action shall be brought in the state in which the project is located.

Attorneys' Fees

Should any dispute or claims arise out of this Agreement, whether sounding in tort, contract (express or implied), warranty (express or implied), statutory liability, strict liability, or otherwise, the prevailing party shall be entitled to an award of their reasonable attorneys' fees and costs, including upon appeal and in the enforcement of any judgment. Should neither party prevail on all of their claims or receive all of the relief they sought, then the substantially prevailing party shall be awarded their reasonable attorneys' fees and costs, including upon appeal and in the enforcement of any judgment.

Waiver

A waiver of any of the terms and conditions or breaches of this Agreement shall not operate as a subsequent waiver.

Headings

The headings used in this agreement are for general ease of reference only. They have no meaning and are not part of this Agreement.

Integration

This Agreement, together with all attachments hereto, are incorporated by reference into each other, and supersede all prior written and oral discussions, representations, negotiations, and agreements on the subject matter of this Agreement and represent the parties' complete, entire, and final understanding of the subject matter of this Agreement.

Survival

Notwithstanding completion or termination of this Agreement for any reason, all representations, warranties, limitations of liability, and indemnification obligations contained in this Agreement shall survive such completion or termination and remain in full force and effect until fulfilled.

Severability

If any of the terms or conditions of this Agreement are found to be void or unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect, and the court shall attempt to judicially reform the void or unenforceable provisions to the maximum extent possible, consistent with the original intent expressed in the provisions, to render it valid and enforceable. If the court is unable to reform the provisions to render it valid and enforceable, the court shall strike only that portion which is invalid or unenforceable, and this Agreement shall then be construed without reference to the void or unenforceable provisions.



CITY COUNCIL AGENDA ITEM STAFF REPORT

MEETING DATE:	April 6, 2023
TITLE:	PC-2023-08 S&J Sno-Ball (Conditional Use Permit)
DEPARTMENT:	Community Development
PROJECT MANAGER:	Sarah Turner, Senior Planner
REQUESTED ACTION:	No Action, Conditional Use Permit stands approved
ATTACHMENTS:	(1) C.U.P. 2023-08 (2) March 14, 2023 Planning Commission Minutes

EXECUTIVE SUMMARY:

Joseph Sorg, operator of S&J Sno-Ball, requested approval of a Conditional Use Permit (CUP) for a “Seasonal Frozen Treat Stand” to allow for a returning seasonal snow-cone vendor in the parking lot of Walgreens at the corner of Jeffco Blvd. and Tenbrook Rd., located at 754 Jeffco Blvd. within a “C-2” Commercial District.

REVIEW & ANALYSIS:

At its March 14, 2023 meeting, the Planning Commission held a public hearing for the CUP application. Staff found the request consistent with the CUP review criteria contained in the Zoning Ordinance subject to conditions of approval. This applicant has been approved for CUPs for the S&J Sno-Ball snow-cone trailer in 2021, 2019, and 2017. Staff recommended similar conditions of approval to the previous CUPs, except the proposed CUP would expire in 4 summer seasons instead of 2 summer seasons.

The Commission had asked clarifying questions about the expiration date but had no comments of note. There were no public comments on the request.

RECOMMENDATION:

On March 14, 2023, the Planning Commission, by a vote of 9 to 0, voted to recommend approval of the Conditional Use Permit subject to nine (9) conditions of approval. Staff added an additional condition (#1 on the attached CUP document) to ensure that the approved site plan is satisfied for the duration of the CUP, for a total of ten (10) conditions of approval.

CONDITIONAL USE PERMIT 2023-08

WHEREAS, Joseph Sorg has requested a Conditional Use Permit for a "Seasonal Frozen Treat Stand" to allow for a seasonal snow-cone vendor at 754 Jeffco Blvd. within a "C-2" Commercial District as provided in the Arnold Zoning Ordinance; and

WHEREAS, on March 14, 2023, the Planning Commission has held a Public Hearing, reviewed the application for CUP and associated site plan pursuant to the laws of the City of Arnold, and;

WHEREAS, on April 6, 2023, the City Council found the proposed land use not detrimental to the surrounding land uses.

NOW THEREFORE, the City Council hereby issues a Conditional Use Permit to operate a seasonal frozen treat stand. This Conditional Use Permit shall be identified as C.U.P. 2023-08 and shall be developed in general conformance with City of Arnold Ordinances and with Commission findings with the following ten (10) conditions:

1. The seasonal frozen treat stand shall be established and operated according to the attached site plan (Exhibit A).
2. All structures, tables, trash containers, etc. shall be located at least fifty (50) feet from the front property line.
3. The tables, trash containers, etc. shall not create an obstruction for vehicle traffic.
4. The area shall be kept clean of trash and debris that may result from the snow cone stand.
5. A current written agreement shall be provided to the City regarding the use of restrooms for the employees and customers of the snow cone stand for each year of the Conditional Use
6. Permit.
7. The snow cone stand may open March 1 of each year of the Conditional Use Permit. The hours of operation are from 1:00PM to 10:00PM.
8. The trailer shall be removed on or before October 1 of each year of the Conditional Use Permit.
9. Approval for Conditional Use Permit does not supersede other local, state or federal requirements for building permits or other permits required for food or beverage service.
10. The Conditional Use Permit shall expire on October 31, 2026.

Andrew Sutton
Planning Commission Chairman

Date

Before me personally appeared, Andrew Sutton known to be the Chairman of the Planning Commission for the City of Arnold, who executed the same on the City of Arnold's behalf.

Notary

Date



LOCATION OF TRAILER

I HAVE ENCLOSED SITE PLANS. OUR TRAILER WILL BE POSITIONED IN THE CENTER FRONT OF PLAZA. 50 FT AWAY FROM JEFFCO BLVD. THE TRAILER IS 7 FT WIDE AND WE WILL REQUIRE AN ADDITIONAL 7 FT FOR CUSTOMERS. WE WILL BE SITTING PLANT POTS ON EACH FRONT SIDE OF THE TRAILER TO PROTECT CUSTOMERS FROM TRAFFIC WHEN THEY ORDER. THE PLANT POTS WERE REQUIRED FROM THE ARNOLD PLANNING COMMISSION. THEY ARE APPROX. 3 FT WIDE AND ARE TO BE HEAVY FOR ONE PERSON TO BUDGE.

< 3 FT >



AFTER USING 50 FT FROM JEFFCO AND 14 FT FROM TRAILER, WE ARE 36FT AWAY FROM PARKING LINES, WHICH WILL ALLOW A PLENTY OF ROOM FOR TRAFFIC THROUGH PLAZA. NORTH SIDE OF BUILDING WE WILL HAVE 2 PICNIC TABLES FOR CUSTOMERS.



**PLANNING COMMISSION MEETING
COUNCIL CHAMBERS, CITY HALL, 2101 JEFFCO BLVD.
MARCH 14, 2023**

MINUTES

REGULAR SESSION

1. **CALL TO ORDER:** The regular meeting of the Arnold Planning Commission was called to order by Chair Andrew Sutton at 7:00 p.m.
2. **ROLL CALL OF COMMISSIONERS:** Andrew Sutton, Alan Bess, Brian McArthur, Del Williams, Frank Kutilek, Steve Buss, Justin Lurk (Zoom), Phil Hogan, Bill Moritz. **STAFF PRESENT:** David Bookless (Community Development Director), Robert Sweeney (City Attorney) (Zoom), Christie Hull-Bettale (Engineer/Planner), Sarah Turner (Senior Planner).
3. **PLEDGE OF ALLEGIANCE:** The Commission and Staff stood and spoke the Pledge of Allegiance.
4. **APPROVAL OF MINUTES:** Motion by Hogan to approve the minutes from the February 14th, 2023 meeting. Second by Moritz. *Voice vote:* Approved 9-0.
5. **PUBLIC COMMENT:** There was no comment from members of the public present or on Zoom.
6. **PUBLIC HEARINGS:** Mr. Sutton requested a motion to open the public hearings. Motion by Moritz. Second by Buss. *Voice vote:* Approved 9-0.
 - a. **PC-2023-08 S&J Sno-Ball Seasonal Frozen Treat Stand (Conditional Use Permit):** Mr. Sutton introduced the project. Ms. Turner presented the Staff Report, recommending favorable consideration of the CUP request with eight (8) conditions of approval. The applicant, Joseph Sorg, introduced himself and was satisfied with Staff's presentation. McArthur complimented the applicant's quality of business and expressed support for the request. Moritz asked about the expiration date. Ms. Turner explained that Staff is recommending an extended period of 4 summer seasons for this particular returning applicant. There were no comments from the public. The Commission had no further questions for the applicant or Staff.
 - b. **PC-2023-09 Chick-fil-A MVOE (Conditional Use Permit):** Mr. Sutton introduced the project. Mrs. Hull-Bettale presented the Staff Report, recommending favorable consideration of the CUP request with six (6) conditions of approval. A representative of the applicant, Erin Gogolin of Bohler Engineering (1 Allegheny Square, Ste. 402, Pittsburg PA), introduced herself and explained the purpose of the amended site plan. Moritz asked about changes to the north elevation near the current location of the delivery window. Ms. Gogolin confirmed that it was relocated equipment. McArthur asked why a curb was being put in to block direct access to the drive-thru lane from the Jeffco entrance. Ms. Gogolin explained that redirecting traffic to go around the building to queue is ideal for traffic flow. Moritz asked if the pass-by lane is wide enough near a bump out on the north side of the site. Mrs. Hull-Bettale explained that Staff will follow-up with the applicant to ensure minimum dimensions are met. One member of the public had a comment on this request. Tara Tesreau-Boggs (119 Berrywood Dr, Arnold MO) represented the Berry Park Subdivision Property Owners Association and shared concerns regarding loose trash and debris entering their subdivision from Chick-fil-A. The Commission asked if there is a fence. Staff stated that there is an existing fence on top of the retaining wall but cannot confirm the style. Mr. Sweeney sympathized with the nuisance but stated that the concern was not relevant to the applicant's request for a CUP and amended site plan approval. Mr. Bookless said that code compliance would follow up on this issue. There were no more questions or comments from the public or the Commission.
 - c. **PC-2023-10 Inspirational Living Counseling Clinic (Conditional Use Permit):** Mr. Sutton introduced the project. Ms. Turner presented the Staff Report, recommending favorable consideration of the CUP request with six (6) conditions of approval. The applicant, Kimberly Sweesy, was satisfied with Staff's presentation. There were no comments from the public. The Commission had no questions for the applicant or Staff.
7. **OTHER BUSINESS:**

- a. **Comprehensive Plan Update:** Mr. Sutton stated that this standing agenda item was not to be discussed.
8. **ADJOURNMENT OF REGULAR SESSION:** Motion by Moritz to close the public hearings and regular session and move into executive session. Second by Kutilek. *Voice vote:* Approved 9-0. Session adjourned at 7:31 p.m.

EXCECUTIVE SESSION

9. **OLD BUSINESS:** *None*

10. **NEW BUSINESS:**

- a. **PC-2023-08 S&J Sno-Ball Seasonal Frozen Treat Stand (Conditional Use Permit):** Motion by Hogan to recommend approval of the requested CUP to the City Council. Second by Williams. The Commission had no further discussion. Ms. Turner asked if the motion included the conditions of approval recommended by Staff. Hogan amended his motion to include Staff's recommended conditions. Williams seconded the amended motion. *Roll call vote.* Andrew Sutton, yes; Alan Bess, yes; Brian McArthur, yes; Del Williams, yes; Frank Kutilek, yes; Steve Buss, yes; Justin Lurk, yes; Phil Hogan, yes; Bill Moritz, yes. Approved 9-0.
 - b. **PC-2023-09 Chick-fil-A MVOE (Conditional Use Permit):** Motion by Moritz to recommend approval of the requested CUP to the City Council with the conditions of approval recommended by Staff. Second by Buss. Lurk lost connection to the Zoom meeting and was reconnecting. Mr. Bookless announced that Lurk had recused himself from the vote due to conflict of interest so it was OK to proceed. The Commission had no further discussion. *Roll call vote.* Andrew Sutton, yes; Alan Bess, yes; Brian McArthur, yes; Del Williams, yes; Frank Kutilek, yes; Steve Buss, yes; Justin Lurk, N/A (recused); Phil Hogan, yes; Bill Moritz, yes. Approved 8-0.
 - c. **PC-2023-10 Inspirational Living Counseling Clinic (Conditional Use Permit):** Motion by Buss to recommend approval of the requested CUP to the City Council with the conditions of approval recommended by Staff. Second by Moritz. The Commission had no further discussion. *Roll call vote.* Andrew Sutton, yes; Alan Bess, yes; Brian McArthur, yes; Del Williams, yes; Frank Kutilek, yes; Steve Buss, yes; Justin Lurk, yes; Phil Hogan, yes; Bill Moritz, yes. Approved 9-0.
11. **DIRECTOR'S REPORT:** The next meeting of the Commission scheduled for March 28th does not yet have an agenda item and will be cancelled. The April 11th meeting will have at least one agenda item.
12. **COUNCIL LIAISON'S REPORT:** Councilman McArthur had no report.
13. **ANNOUNCEMENTS:** Mr. Sutton announced that he will be absent for the April 11th meeting. He also asked for an update on the City's use of Zoom during public meetings. Mr. Sweeney stated that his recommendation to the City Council has been to continue offering meetings on Zoom for all boards and commission to have additional participation and transparency. Mr. Sutton asked about signage at Total Liquor on Vogel. Mr. Bookless stated that Staff would take a look at the situation.
14. **ADJOURNMENT:** Motion by Moritz to adjourn. Second by Kutilek. *Voice vote:* Approved 9-0. Meeting adjourned at 7:37 p.m.

Respectfully Submitted,

Steve Buss
Planning Commission Secretary

VOTE RECORD

	Roll Call	Minutes	Open Public Hearings	Close Hearings Close Reg. Open Exec.	Vote PC-2023-08	Vote PC-2023-09	Vote PC-2023-10	Adjourn
Andrew Sutton	P	Y	Y	Y	Y	Y	Y	Y
Alan Bess	P	Y	Y	Y	Y	Y	Y	Y
Brian McArthur	P	Y	Y	Y	Y	Y	Y	Y
Del Williams	P	Y	Y	Y	2 nd - Y	Y	Y	Y
Frank Kutilek	P	Y	Y	2 nd - Y	Y	Y	Y	2 nd - Y
Steve Buss	P	Y	2 nd - Y	Y	Y	2 nd - Y	1 st - Y	Y
Justin Lurk	P (Z)	Y	Y	Y	Y	Recused	Y	Y
Phil Hogan	P	1 st - Y	Y	Y	1 st - Y	Y	Y	Y
Bill Moritz	P	2 nd - Y	1 st - Y	1 st - Y	Y	1 st - Y	2 nd - Y	1 st - Y

<i>David Bookless</i>	P
<i>Robert Sweeney</i>	P (Z)
<i>Christie Hull-Bettale</i>	P
<i>Sarah Turner</i>	P

CALL TO ORDER:	7:00 pm
ADJOURN REGULAR:	7:31 pm
ADJOURN EXECUTIVE:	7:37 pm



CITY COUNCIL AGENDA ITEM STAFF REPORT

MEETING DATE:	March 14, 2023
TITLE:	PC-2023-09 Chick-fil-A (MVOE, Conditional Use Permit)
DEPARTMENT:	Community Development
PROJECT MANAGER:	Christie Hull Bettale, Staff Engineer
REQUESTED ACTION:	No Action, Conditional Use Permit stands approved
ATTACHMENTS:	(1) C.U.P. 2023-09 (2) March 14 Planning Commission Meeting Minutes <i>(See S&J Snowball packet for minutes)</i>

EXECUTIVE SUMMARY:

Erin Gogolin of Bohler Engineering, on behalf of Chick- Fil- A, requested approval of a Conditional Use Permit for a “Motor Vehicle-Oriented Establishment” (“MVOE”) with an Amended Site Plan for a reconfigured drive-thru facility at 1 Arnold Park Mall.

REVIEW & ANALYSIS:

At its March 14, 2023 meeting, the Planning Commission held a public hearing for the CUP application. Staff found the request substantially consistent with the CUP review criteria contained in the Zoning Ordinance subject to conditions of approval. A representative of the Berry Park Property Owner Association expressed concern about ongoing litter accumulations from the Arnold Park Mall, including Chick- Fil- A. Attorney Bob Sweeney, responded this was an enforcement for Staff and should not be part of this deliberation (Note: Staff, the applicant, and the residents discussed how to resolve the issue after the meeting.). At the Commission’s request, Ms. Gogolin replied to general questions about site configuration and design.

RECOMMENDATION:

On March 14, the Planning Commission, by a vote of 7 to 0 (1 recusal), voted to recommend approval of the Conditional Use Permit subject to six (6) conditions.

CONDITIONAL USE PERMIT 2023-09

WHEREAS, Chick-Fil-A has requested a Conditional Use Permit for a “Motor Vehicle-Oriented Establishment” (“MVOE”) and an Amended Site Plan for a reconfigured drive-thru facility within the “C-3” Commercial District, as provided in the Arnold Zoning Ordinance; and

WHEREAS, on March 14, 2023, the Planning Commission has held a Public Hearing, reviewed the application for the C.U.P. with associated site plan pursuant to the laws of the City of Arnold, and;

WHEREAS, on April 6, 2023, the City Council found the proposed use not detrimental to the surrounding land uses.

NOW THEREFORE, the City Council hereby issues a Conditional Use Permit to allow the “Motor Vehicle-Oriented Establishment” (“MVOE”). This Conditional Use Permit shall be identified as C.U.P. 2023-09 and shall be developed in general conformance with City of Arnold Ordinances and with Commission findings with the following six (6) conditions:

1. This conditional use permit is for a restaurant with a Motor Vehicle Oriented Establishment drive-thru facility consistent with the approved Site Plan and architectural elevations.
2. Hours of operation shall be limited to 6:30 AM – 9:30 PM.
3. Sign Design Package shall be reviewed for compliance by staff during permit review.
4. This Conditional Use Permit may be revoked by the City Council if the terms of the permit have been found to have been violated. The procedure for revocation shall require a hearing before the City Council.
5. Revocation of this Conditional Use Permit shall constitute grounds for the revocation of all other City licenses and/or permits associated with this business establishment.
6. Approval for Conditional Use Permit does not supersede other local, state, or federal requirements.

Andrew Sutton
Planning Commission Chairman

Date

Before me personally appeared, Andrew Sutton known to be the Chairman of the Planning Commission for the City of Arnold, who executed the same on the City of Arnold’s behalf.

Notary

Date



Chick-fil-A
 Chick-fil-A
 5200 Buffington Road
 Atlanta, Georgia
 30348-2998



CHIPMAN DESIGN ARCHITECTURE INC
 1350 E TOWNY AVE
 SUITE 100
 DES PLAINES, IL 60018
 TEL: 847.288.4900

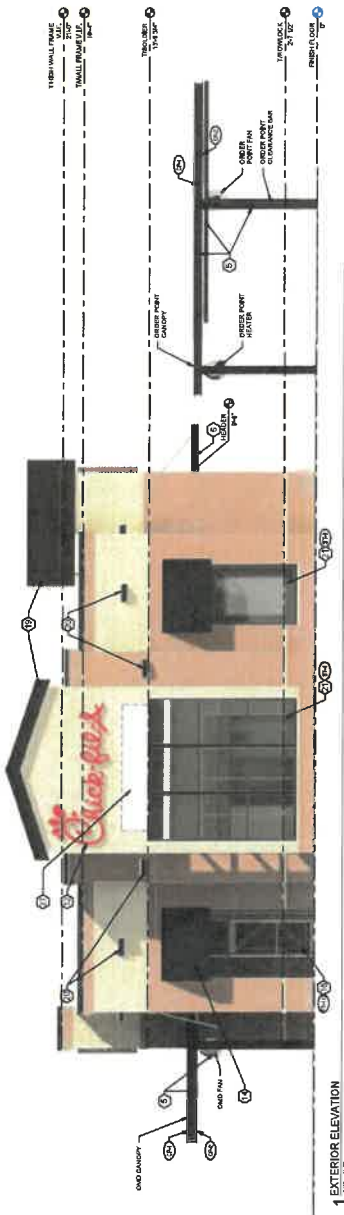
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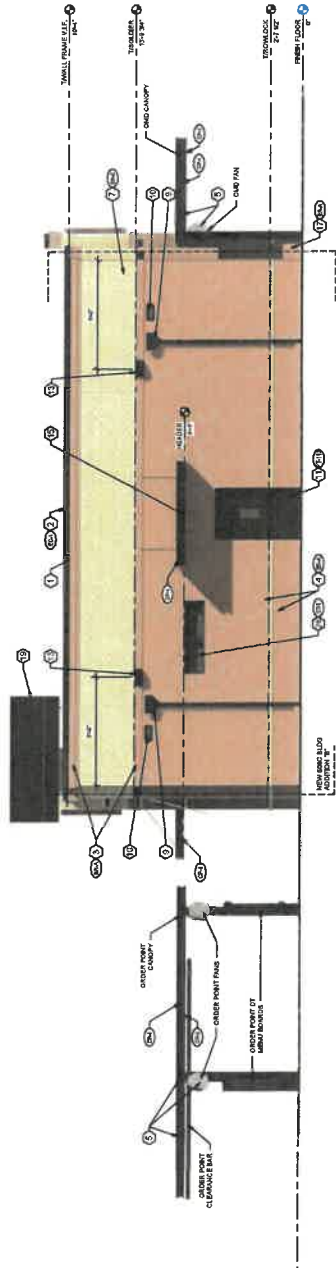
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 PROJECT NO. 2021010
 DATE 01/08/22
 DRAWN BY J. DALL
 CHECKED BY J. DALL

ISSUE FOR PERMIT

A-311



1 EXTERIOR ELEVATION



2 EXTERIOR ELEVATION

EXTERIOR MEMORIES

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FINISH SCHEDULE - EXTERIOR

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Chick-fil-A
 Chick-fil-A
 5200 Buffington Road
 Atlanta, Georgia
 30345-2998

CDM
 CHIPMAN DESIGN
 ARCHITECTURE INC
 3310 S TOWNY AVE
 DECATUR, GA 30030
 TEL: 404.778.8511

INTERPRETATION OF THESE DRAWINGS
 SHALL BE THE SOLE RESPONSIBILITY OF
 THE ARCHITECT. THE CONTRACTOR SHALL
 VERIFY ALL DIMENSIONS AND CONDITIONS
 BEFORE COMMENCING WORK.

CHICK-FIL-A
 ARNOLD FSU
 1 ARNOLD MALL
 ARNOLD, MO 63010

FSR#02629
 DATE: 08/11/10
 DRAWN BY: J. D. WOOD
 CHECKED BY: J. D. WOOD
 PROJECT NO: 10-0001

PERMITTED ELEVATIONS
 THIS DRAWING IS THE PROPERTY OF THE ARCHITECT AND SHALL BE KEPT IN CONFIDENCE.
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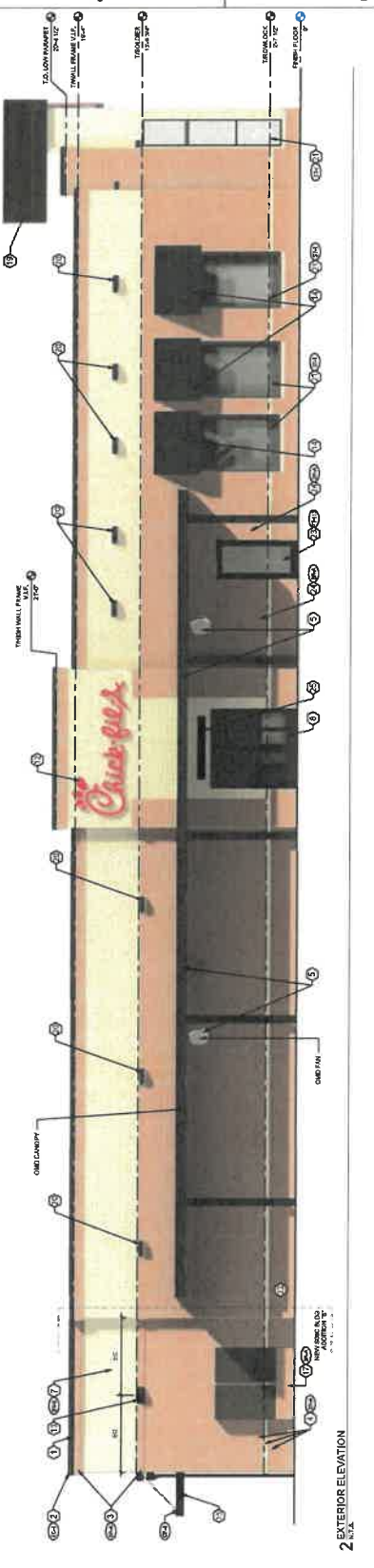
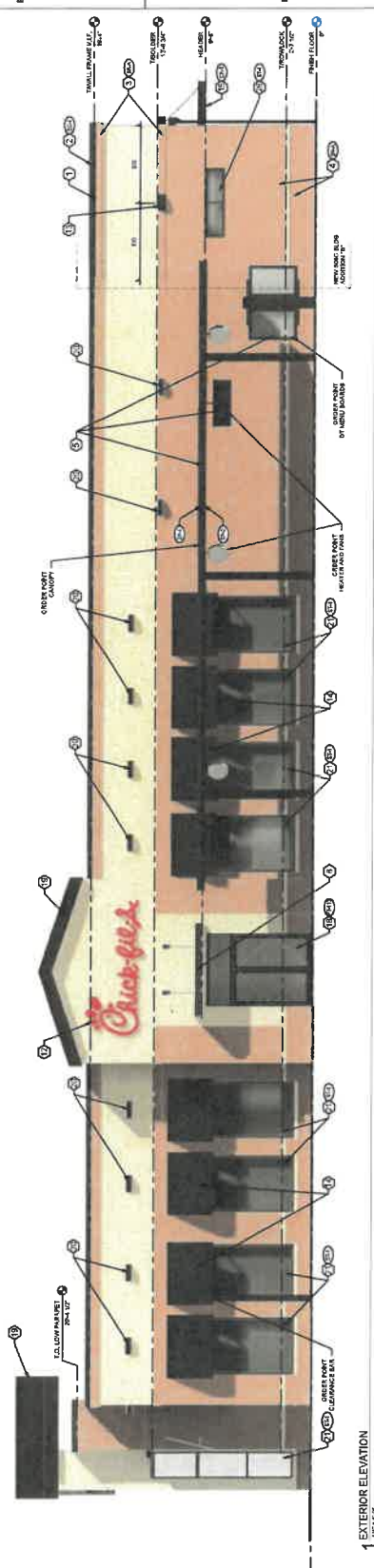
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ISSUE FOR PERMIT

- EXTERIOR REVISED**
1. NEW WALL FRAME 3/4" X 6" SIPS
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FINISH SCHEDULE - EXTERIOR

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Chick-Fil-A
 Chick-Fil-A
 5200 Buffington Road
 Atlanta, Georgia
 30345-2996



CHIPMAN DESIGN ARCHITECTURE INC
 1350 E TOMMY AVE
 DRETT LAKE DR EAST
 DRETT LAKE, GA 30120
 YP: 1-847-788-9900

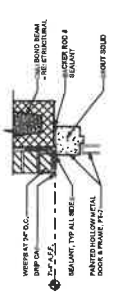
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 ARNOLD, MO 63010

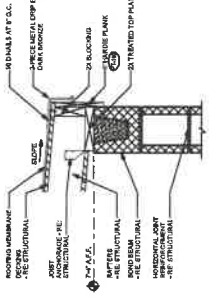
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CONTRACT NO. 2022010
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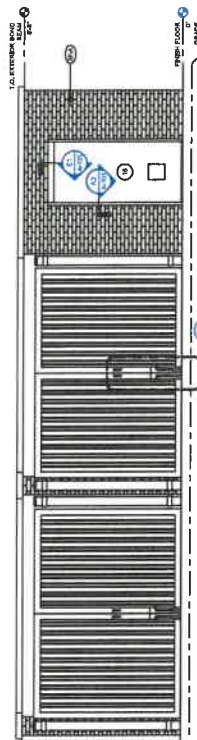
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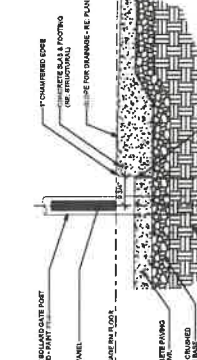
E1 REFUSE ENCLOSURE DOOR HEAD DETAIL
 1/8\"/>



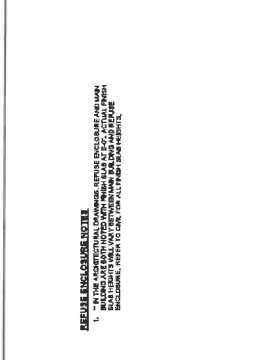
D1 REFUSE ENCLOSURE DRIP EDGE DETAIL
 1/8\"/>



C2 REFUSE ENCLOSURE ELEVATION
 1/8\"/>



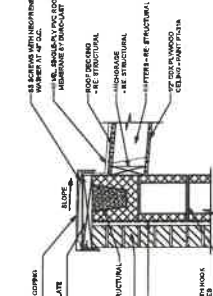
B1 REFUSE PAD AT CONCRETE PAVING DETAIL
 1/8\"/>



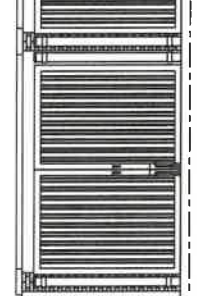
A2 REFUSE ENCLOSURE DOOR JAMB DETAIL
 1/8\"/>



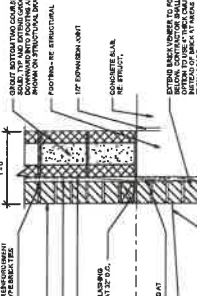
D2 REFUSE ENCLOSURE ROOF EDGE DETAIL
 1/8\"/>



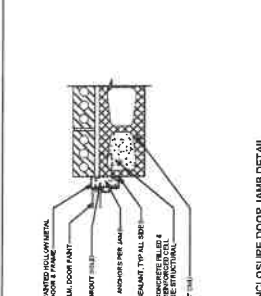
B2 REFUSE ENCLOSURE BASE DETAIL
 1/8\"/>



A3 REFUSE ENCLOSURE DROP ROD 3-D DETAIL
 1/8\"/>



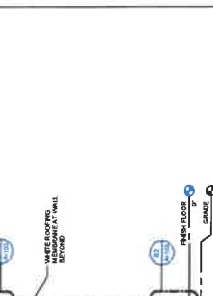
C4 REFUSE ENCLOSURE ELEVATION
 1/8\"/>



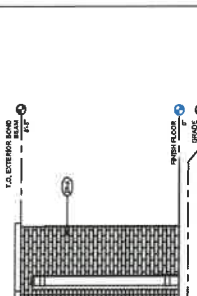
A4 REFUSE ENCLOSURE PLAN
 1/8\"/>



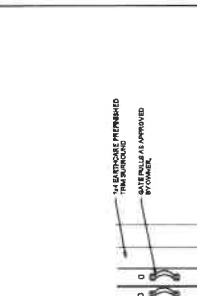
D4 REFUSE ENCLOSURE SECTION
 1/8\"/>



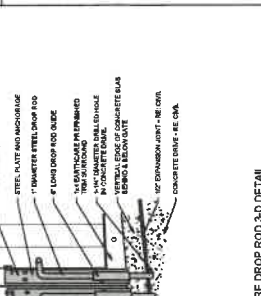
A1 REFUSE ENCLOSURE PLAN
 1/8\"/>



C1 REFUSE ENCLOSURE ELEVATION
 1/8\"/>



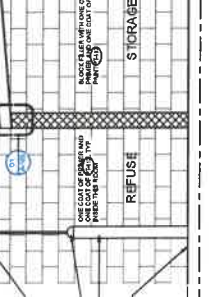
B3 REFUSE PAD AT CONCRETE PAVING DETAIL
 1/8\"/>



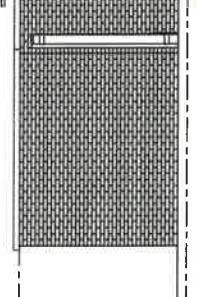
A3 REFUSE ENCLOSURE DROP ROD 3-D DETAIL
 1/8\"/>



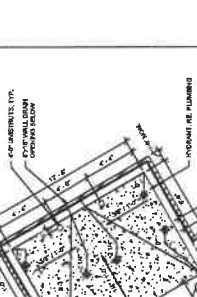
D3 REFUSE ENCLOSURE ROOF EDGE DETAIL
 1/8\"/>



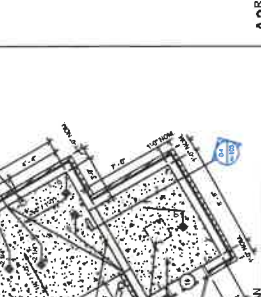
B4 REFUSE PAD AT CONCRETE PAVING DETAIL
 1/8\"/>



C3 REFUSE ENCLOSURE ELEVATION
 1/8\"/>



B5 REFUSE PAD AT CONCRETE PAVING DETAIL
 1/8\"/>



A4 REFUSE ENCLOSURE PLAN
 1/8\"/>



(AW-2D) AWNING FABRIC
MANUFACTURER: SUNBRELLA
COLOR: 4684-000 / SLATE



BRICK - VENEER PRIMARY (BR-A)
MANUFACTURER: CUNNINGHAM BRICK
SIZE: MODULAR - 3-5/8" x 2-1/4" x 7-5/8"
MODEL: RED VELOUR
COLOR: (RED)
MORTAR: MATCH EXISTING - HOLCIM, SANTEE RED



BRICK - VENEER SECONDARY (BR-B)
MANUFACTURER: CUNNINGHAM BRICK
SIZE: MODULAR - 3-5/8" x 2-1/4" x 7-5/8"
MODEL: TAN VELOUR
COLOR: (TAN)
MORTAR: MATCH EXISTING - HOLCIM, DESERT BUFF



(EC-1) PARAPET - METAL COPING
MANUFACTURER: DURALAST / EXCEPTIONAL METALS
COLOR: DARK BRONZE



(PT-113) EXTERIOR PAINT
MANUFACTURER: SHERWIN WILLIAMS
MODEL: SHER-CRYL HPA #B66-350
COLOR: DARK BRONZE
FINISH: SEMI-GLOSS

DESIGN INTENT STATEMENT

Chipman Design Architecture Inc is proposing a new back-of-house addition to this existing Chick-fil-A restaurant. To make the new construction compatible with the existing structure, we are proposing to utilize existing exterior finishes and architectural elements. This will allow us to create a seamless transition from existing to new while maintaining the overall aesthetic and language of the restaurant. Please use this material board document as a standard and reference to existing materials and conditions that will be incorporated into the design of the new construction.



ARNOLD FSU
1 ARNOLD MALL
ARNOLD, MD 21010





CITY COUNCIL AGENDA ITEM STAFF REPORT

MEETING DATE:	April 6, 2023
TITLE:	PC-2023-10 Inspirational Living Counseling Clinic (Conditional Use Permit)
DEPARTMENT:	Community Development
PROJECT MANAGER:	Sarah Turner, Senior Planner
REQUESTED ACTION:	No Action, Conditional Use Permit stands approved
ATTACHMENTS:	(1) C.U.P. 2023-10 (2) March 14, 2023 Planning Commission Meeting Minutes <i>(See S&J Snowball packet for minutes)</i>

EXECUTIVE SUMMARY:

Kimberly Sweesy LPC, practitioner/owner of Inspirational Living/Life by Design Counseling and Consulting, requested approval of a Conditional Use Permit (CUP) for a “Clinic” to allow for a mental health counseling office at 1331 Jeffco Blvd., Suite 3, within a “C-3” Commercial District.

REVIEW & ANALYSIS:

At its March 14, 2023 meeting, the Planning Commission held a public hearing for the CUP application. Staff found the request consistent with the CUP review criteria contained in the Zoning Ordinance subject to conditions of approval. The Commission had no follow-up questions for the applicant or Staff. There were no public comments on the request.

RECOMMENDATION:

On March 14, 2023, the Planning Commission, by a vote of 9 to 0, voted to recommend approval of the Conditional Use Permit subject to six (6) conditions of approval. Staff added an additional condition (#1 on the attached CUP document) to ensure that the approved site plan is satisfied for the duration of the CUP, for a total of seven (7) conditions of approval.

CONDITIONAL USE PERMIT 2023-10

WHEREAS, Kimberly Sweesy has requested a Conditional Use Permit for a "Clinic" to allow for a mental health counseling office at 1331 Jeffco Blvd., Suite 3, within a "C-3" Commercial District as provided in the Arnold Zoning Ordinance; and

WHEREAS, on March 14, 2023, the Planning Commission has held a Public Hearing, reviewed the application for CUP and associated site plan pursuant to the laws of the City of Arnold, and;

WHEREAS, on April 6, 2023, the City Council found the proposed land use not detrimental to the surrounding land uses.

NOW THEREFORE, the City Council hereby issues a Conditional Use Permit to operate a clinic for mental health counseling. This Conditional Use Permit shall be identified as C.U.P. 2023-10 and shall be developed in general conformance with City of Arnold Ordinances and with Commission findings with the following seven (7) conditions:

1. The mental health counseling clinic shall be established and operated according to the attached site plan (Exhibit A).
2. Activities and operations associated with the mental health counseling clinic shall be limited to the hours from 7:00 AM to 9:00 PM.
3. Activities and operations associated with the clinic shall only occur indoors.
4. Clinic staff shall continually monitor the area outside the clinic and immediate seating and parking area to ensure that clients, patients, or members of the clinic are not loitering.
5. This Conditional Use Permit may be revoked by the City Council if the terms of the permit have been found to have been violated. The procedure for revocation shall require a hearing before the City Council.
6. Revocation of this Conditional Use Permit shall constitute grounds for the revocation of all other City licenses and/or permits associated with this business establishment.
7. Approval for Conditional Use Permit does not supersede other local, state, or federal requirements.

Andrew Sutton
Planning Commission Chairman

Date

Before me personally appeared, Andrew Sutton known to be the Chairman of the Planning Commission for the City of Arnold, who executed the same on the City of Arnold's behalf.

Notary

Date

