



NOTICE
GLENPOOL CITY COUNCIL
REGULAR MEETING

A Regular Session of the Glenpool City Council will be held at 6:00 p.m. on February 21, 2023, at Glenpool City Hall, City Council Chambers, 12205 S. Yukon Ave., 3rd Floor, Glenpool, Oklahoma.

NOTE: The Glenpool City Council will be assembled for the meeting at the City Council Chambers, 12205 S. Yukon Ave, Glenpool, Oklahoma. Members of the public are invited to attend the in-person meeting, or join a live broadcast at this link:

Join Zoom Meeting

<https://us02web.zoom.us/j/89753555435?pwd=QzdFVjA1b0lKa1lSUFlKbUNrUUxtdz09>

Meeting ID: 897 5355 5435

Passcode: 974088

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+13462487799, US (Houston)

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Find your local number: <https://us02web.zoom.us/j/89753555435?pwd=QzdFVjA1b0lKa1lSUFlKbUNrUUxtdz09>

The City Council welcomes comments from citizens of Glenpool who wish to address any item on the agenda.

- Speakers attending in **PERSON** are required to complete the Request to Speak form located on the agenda table and return to the City Clerk **PRIOR TO THE CALL TO ORDER**.
- Speakers attending via **ZOOM** are required to complete the Request to Speak form located on our website: <https://glenpoolonline.civicweb.net/document/19057/Request%20to%20Speak%20Form.pdf> and email it to the City Clerk: Wknight@cityofglenpool.com **PRIOR TO 6:00 PM, FEBRUARY 21, 2023**.

AGENDA

Page

- A) **Call to Order - Joyce G. Calvert, Mayor**
- B) **Roll Call, Declaration of Quorum – Wendy Knight, City Clerk; Joyce G. Calvert, Mayor**
- C) **Invocation – David Gray, Church of Christ**
- D) **Pledge of Allegiance – Joyce G. Calvert, Mayor**
- E) **Recognition of Glenpool Cub Scout Pack 188 - Jacqueline Triplett-Lund, Councilor**
- F) **Recognition of BreAnna Hall, Candidate for Ms. Oklahoma - Joyce G. Calvert, Mayor**
- G) **Departmental Reports**
 - 1) [CM Report.02212023](#)
- H) **Mayor Report – Joyce G. Calvert, Mayor**
- I) **Council Comments**
- J) **Public Comments**

4 - 5

- K) **Consideration and appropriate action relating to a request for approval of the Consent Agenda. (All matters listed under "Consent" are considered by the City Council to be routine and will be enacted by one motion. Any Councilor may, however, remove an item from the Consent Agenda by request. A motion to adopt the consent Agenda is non-debatable.)**
- 1) Minutes from February 6, 2023 meeting. 6 - 13
[City Council Regular Meeting - 06 Feb 2023 - Minutes - Html](#)
 - 2) Nomination of Pam Polk to OMAG Board of Trustees. 14 - 16
[OMAG Trustee Nomination](#)
 - 3) Appointment of Jesse Hale to the Metropolitan Environmental Trust (MET) Board. 17
[MET Board Appointment](#)
- L) **Consideration and appropriate action relating to items removed from the Consent Agenda**
- M) **Scheduled Business**
- 1) Discussion and possible action to approve, deny or amend the Agreement for Automatic Aid in Fire Protection, between the City of Glenpool, and the City of Bixby. 18 - 22
(Paul Newton, Fire Chief).
[Auto Aid Agreement - Bixby](#)
[Proposed Mutual Response Area- Bixby-Glenpool](#)
 - 2) Discussion and possible action to approve, deny or amend the Agreement for Automatic Aid in Fire Protection, between the City of Glenpool, and the City of Jenks. 23 - 27
(Paul Newton, Fire Chief).
[Auto Aid Agreement - Jenks](#)
[Jenks Auto Aid Map](#)
 - 3) Discussion and possible action to approve, deny or amend the Morris Park User Agreement with Glenpool Baseball League. 28 - 44
(David Tillotson, City Manager)
[Staff Report - Baseball User Agreement](#)
 - 4) Discussion of legal opinion by Eric Wade, City Attorney, outlining social media usage by City staff, elected officials and appointed officials. No action will be taken. 45 - 53
(David Tillotson, City Manager)
[Opl. Ltr. \(01.31.23\)](#)
 - 5) Discussion and possible action to enter into Executive Session for the purpose of engaging in confidential communications between the City Council and its attorney concerning Jenks Outdoor Advertising v. City of Glenpool Board of Adjustment, Oklahoma Supreme Court Case No. 120070, the Council having been advised by its attorney that disclosure will seriously impair the ability of the City to conduct the litigation in the public interests, pursuant to 25 O.S. § 307.B.4 of the Open Meeting Act.
(David Tillotson, City Manager) (Joyce G. Calvert, Mayor)
 - 6) Discussion and possible action to reconvene in Regular Session.
(Joyce G. Calvert, Mayor)
 - 7) Discussion and possible action to approve or deny authorizing the City Attorney to proceed in the pending appeal in Jenks Outdoor Advertising v. City of Glenpool Board of Adjustment, Oklahoma Supreme Court Case No. 120070, in a manner consistent with the discussion in executive session.
(David Tillotson, City Manager)

N) **Adjournment**

This notice and agenda was posted at Glenpool City Hall, 12205 S. Yukon Ave., Glenpool, Oklahoma, on February 17, 2023, by 11:30 am.

Signed: Wendy Knight

City Clerk



To: Mayor and Council

From: David Tillotson

Date: February 16, 2023

Re: City Manager Report

Open Positions

We currently have 16 open positions.

I have noted those positions below that are in the process.

- Public Works: 5 Positions
 - Streets and Parks Laborer – Interviews scheduled for Feb 21st.
 - Water & Sewer Laborer (4)
- Police Department: 8 Positions
 - Police Officer (5 positions) –
 - 2 new officers scheduled to start Feb 27th.
 - Applications accepted through March 3rd for the remaining 3 positions.
 - Dispatch (3) – Interviews scheduled for Feb 22nd.
- Development Services: 1 Position
 - Planner
- Administration: 2 Positions
 - Finance Director
 - IT Director

Capital Projects Update

- Sewer Plant Project – The RFQ for Project Manager Engineering Services was advertised the week of Feb 13th. Responses are expected back in mid-March.

Miscellaneous

- I will be attending the ICMA Government Reimagined Conference in OKC February 22nd – 24th. This conference will be focused on hiring and retention strategies for today's workforce market.
- Good Friday Holiday – April 7th

12205 S. Yukon, Glenpool, OK 74033 OFFICE: 918-322-5409 FAX: 918-209-4641

Mayor Joyce Calvert, Ward 3; Vice-Mayor Brandon Kearns, At-Large;

Tim Fox, Ward 1; Chris Brobst, Ward 2; Jacqueline Lund, Ward 4

City Manager David Tillotson, Assistant City Manager Susan White, City Clerk Wendy Knight

www.glenpoolonline.com



MINUTES
City Council Regular Meeting
Monday, February 6, 2023 Council Chambers 6:00 PM

COUNCIL PRESENT:

Joyce Calvert
Brandon Kearns
Tim Fox
Chris Brobst
Jacqueline Triplett-Lund

STAFF PRESENT:

David Tillotson
Susan White
Wendy Knight
Sarah Cage
Gerald Gilbert
Joe Wuest
Jesse Hale
David Agbetunsin
Paul Newton
Jeremy Plane

- A) Call to Order - Joyce G. Calvert, Mayor**
Mayor Calvert called the meeting to order at 6:00 p.m.
- B) Roll Call, Declaration of Quorum – Wendy Knight, City Clerk; Joyce G. Calvert, Mayor**
Wendy Knight called the roll, Mayor Calvert declared a quorum present.
Scott Major, District Attorney, was also in attendance.
- C) Invocation – David Tillotson**
- D) Pledge of Allegiance – Joyce G. Calvert, Mayor**
- E) Deputy Police Chief Pinning Ceremony – Jeremy Plane, Police Chief**
A Pinning Ceremony was held for Matt Graves, Deputy Police Chief.
- F) Deputy Fire Chief Pinning Ceremony – Paul Newton, Fire Chief**

A Pinning Ceremony was held for Max Wilson, Deputy Fire Chief.

G) Departmental Reports

- Paul Newton, Fire Chief, made a presentation of appreciation to retired Deputy Fire Chief, Chad Tanner.
- Tonight is phase I of the new audio/video equipment in the Council Chambers.
- Congratulations to Mayor Calvert on the Chamber of Commerce's Citizen of the Year Award.

Councilor Lund asked for updates on hiring. **Councilor Brobst** asked if there were any updates on the Highway 75/141st street interchange from ODOT.

[CM Report.02062023](#)

[Development Services Report - Feb 6 2023](#)

[2023-01 Streets & Parks Report](#)

H) Mayor Report – Joyce G. Calvert, Mayor

- Thanked the Chamber of Commerce, for the banquet Saturday night. They did an outstanding job, and it was a wonderful night.
- Congratulated Brian Cook and Mercy Regional EMS for being awarded the Chamber of Commerce Business of the Year.

I) Council Comments

Councilor Brobst announced the Glenpool Band will be having a mattress fundraising event on March 26th, 10:00 a.m. - 5:00 p.m. at the Glenpool Schools Sports Arena. Every sale helps the band with their expenses.

J) Public Comments

There were no public comments.

K) Consideration and appropriate action relating to a request for approval of the Consent Agenda. (All matters listed under "Consent" are considered by the City Council to be routine and will be enacted by one motion. Any Councilor may, however, remove an item from the Consent Agenda by request. A motion to adopt the consent Agenda is non-debatable.)

- 1) Minutes from January 3, 2023 meeting.
[City Council Regular Meeting - 03 Jan 2023 - Minutes - Html](#)
- 2) Budget Amendment CITY-03, to utilize donated funds to pay for community policing products and services.
[Budget Amendment City-03](#)
- 3) Surplus vehicles and equipment, and approving, pursuant to City Code

2-2-6.B.4, waiving the requirement for soliciting competitive bidding.

[Final 2023-02-06 Surplus Action \(003\)](#)

- 4) Appointment of Sarah Cage as Interim City Treasurer.
[Interim Treas Appt 02.06.23](#)
- 5) Certificate and Order to Tulsa County Clerk and Treasurer.

Moved by Chris Brobst, seconded by Brandon Kearns

To approve the Consent Agenda.

	For	Against	Abstained	Absent
Joyce Calvert	x			
Brandon Kearns	x			
Tim Fox	x			
Chris Brobst	x			
Jacqueline Triplett-Lund	x			
	5	0	0	0

CARRIED.

[Final Certificate and Order](#)

L) Consideration and appropriate action relating to items removed from the Consent Agenda

M) Scheduled Business

- 1) Discussion and possible action to approve or disapprove OMAG recommendation to deny Tort Claim No. 212318-1-ME, Claimant Mike Kennedy.
Wendy Knight, City Clerk)

Ms. Knight presented the OMAG recommendation to deny Tort Claim No. 212318-1-ME, Claimant Mike Kennedy. OMAG completed its investigation and found no liability on the City's part regarding this incident. Oklahoma law has consistently held that a municipality is not an insurer of its sanitary sewer system. This means that a municipality is not automatically liable for damages to property which result from a sanitary sewer overflow. A municipality may be liable only if it had prior notice of a defect or problem in the sewer line and failed to take appropriate remedial action within a reasonable time before the damage occurred.

Moved by Brandon Kearns, seconded by Chris Brobst

To approve OMAG recommendation to deny Tort Claim No. 212318-1-ME, Claimant Mike Kennedy.

	For	Against	Abstained	Absent
Joyce Calvert	x			
Brandon Kearns	x			
Tim Fox	x			
Chris Brobst	x			
Jacqueline Triplett-Lund	x			
	5	0	0	0

CARRIED.

OMAG Denial Recommendation
Redacted Tort Claim

- 2) Discussion and possible action to approve, deny, or amend Resolution No. 2023004, a Resolution of the City of Glenpool City Council denying any and all future tort claims filed with the City that have been recommended for denial by the City's liability insurance carrier, and authorizing the City Manager to provide written notice of denial to the claimants, pursuant to Title 51, Section 151 through 172 of the Oklahoma Statutes, without further action of the Council.
(David Tillotson, City Manager)

Mr. Tillotson presented Resolution No. 2023004, a Resolution of the City of Glenpool City Council denying any and all future tort claims filed with the City that have been recommended for denial by the City's liability insurance carrier, and authorizing the City Manager to provide written notice of denial to the claimants, pursuant to Title 51, Section 151 through 172 of the Oklahoma Statutes, without further action of the Council. During Council Training with OMAG last year, several council members expressed a desire for staff to automatically deny tort claims that had been recommended for denial by OMAG. After reviewing this scenario, staff believes the only appropriate path forward to accomplish this goal would be for the Council to adopt a resolution stating their intent and authorizing staff to proceed under that intent. Resolution No. 2023004 was drafted by our City Attorney to accomplish this goal.

Moved by Brandon Kearns, seconded by Joyce Calvert

To deny Resolution No. 2023004, a Resolution of the City of Glenpool City Council denying any and all future tort claims filed with the City that have been recommended for denial by the City's liability insurance

carrier, and authorizing the City Manager to provide written notice of denial to the claimants, pursuant to Title 51, Section 151 through 172 of the Oklahoma Statutes, without further action of the Council.

	For	Against	Abstained	Absent
Joyce Calvert	x			
Brandon Kearns	x			
Tim Fox		x		
Chris Brobst	x			
Jacqueline Triplett-Lund	x			
	4	1	0	0

CARRIED.

Staff Report - Tort Claim Resolution

- 3) Discussion and possible action to approve, deny or amend the proposed salary adjustment for Public Works.
(David Tillotson, City Manager)

Mr. Tillotson presented and recommended Council approval of the proposed salary adjustment for Public Works. The City is experiencing significant issues with finding and retaining employees within Public Works and have consistently run below full staffing so far this fiscal year. Based on what we are hearing from applicants, salary appears to be the largest hurdle in the hiring process. However, based on conversations with our current team we also believe we need to create a pathway internally for higher pay based on earning and maintaining ODEQ Licenses.

Moved by Tim Fox, seconded by Chris Brobst

To approve the proposed salary adjustment for Public Works.

	For	Against	Abstained	Absent
Joyce Calvert	x			
Brandon Kearns	x			
Tim Fox	x			
Chris Brobst	x			
Jacqueline Triplett-Lund	x			
	5	0	0	0

CARRIED.

[Staff Report - PW Salary Adjustment](#)

- 4) Discussion and possible action to state the Council's intent to discontinue the current practice of appointing the same individual to serve on both the Planning Commission and the Board of Adjustment.
(David Tillotson, City Manager)

Mr. Tillotson presented the action to state the Council's intent to discontinue the current practice of appointing the same individual to serve on both the Planning Commission and the Board of Adjustment.

Moved by Chris Brobst, seconded by Joyce Calvert

To discontinue the current practice of appointing the same individual to serve on both the Planning Commission and the Board of Adjustment.

	For	Against	Abstained	Absent
Joyce Calvert	x			
Brandon Kearns		x		
Tim Fox		x		
Chris Brobst	x			
Jacqueline Triplett-Lund		x		
	2	3	0	0

DEFEATED.

[Staff Report - PC.BOA Changes](#)

- 5) Discussion of Oklahoma's Open Meeting Law and options to address Council participation under the law at various outside events, including, but not limited to, legislative briefings, chamber events, training sessions and conferences. No action will be taken.
(David Tillotson, City Manager)

A discussion was held regarding Oklahoma's Open Meeting Law and options to address Council participation under the law at various outside events, including, but not limited to, legislative briefings, chamber events, training sessions and conferences. No action was taken.

MAYOR CALVERT CALLED FOR A RECESS AT 7:27 P.M.

MEETING RECONVENED AT 7:36 P.M.

[Staff Report - Open Meeting Discussion](#)

- 6) Discussion and possible action to enter into Executive Session for the purpose of conferring on matters pertaining to economic development, including the transfer of property, financing, or the creation of a proposal

to entice a business to remain or to locate within the City of Glenpool because public disclosure of the matter discussed would interfere with the development of products or services and would violate the confidentiality of such business, pursuant to 25 O.S. § 307.C.11 of the Open Meeting Act.

(David Tillotson, City Manager)

Moved by Jacqueline Triplett-Lund, seconded by Chris Brobst

To enter into Executive Session at 7:37 p.m.

	For	Against	Abstained	Absent
Joyce Calvert	x			
Brandon Kearns	x			
Tim Fox	x			
Chris Brobst	x			
Jacqueline Triplett-Lund	x			
	5	0	0	0

- 7) Discussion and possible action to reconvene in Regular Session.
(Joyce G. Calvert, Mayor)

Moved by Chris Brobst, seconded by Jacqueline Triplett-Lund

To reconvene in Regular Session at 7:54 p.m.

Councilor Fox was not present when meeting reconvened.

	For	Against	Abstained	Absent
Joyce Calvert	x			
Brandon Kearns	x			
Tim Fox				x
Chris Brobst	x			
Jacqueline Triplett-Lund	x			
	4	0	0	1

CARRIED.

- 8) Discussion and possible action to approve or deny authorizing the City Manager to proceed in a manner consistent with the discussion in executive session.
(David Tillotson, City Manager)

THIS ITEM WAS STRICKEN FROM THE AGENDA.

- 9) Discussion and possible action to determine which, if any, council members attend the ICSC Las Vegas Conference on May 21-23 in Las Vegas.
(David Tillotson, City Manager)

Moved by Jacqueline Triplett-Lund, seconded by Joyce Calvert

That no council members attend the ICSC Las Vegas Conference with David Tillotson on May 21-23 in Las Vegas.

	For	Against	Abstained	Absent
Joyce Calvert	x			
Brandon Kearns	x			
Tim Fox				x
Chris Brobst	x			
Jacqueline Triplett-Lund	x			
	4	0	0	1

CARRIED.

N) Adjournment

Mayor Calvert declared the meeting adjourned at 7:57 p.m.



To: Mayor and Council

From: Wendy Knight, City Clerk

Date: February 21, 2023

Re: OMAG Board of Trustees Nomination

Background:

The Oklahoma Municipal Assurance Group, of which the City is a member, is governed by a Board of Trustees made up of municipal officials across multiple districts within the state. Three present office holders positions are set to expire on July 1, 2023, and will be filled by an election. Any municipality that has adopted the Agreement Establishing the Oklahoma Municipal Assurance Group, may submit nominations for up to 2 candidates. Pam Polk, Collinsville City Manager, currently serves as Trustee, and has served Oklahoma municipalities for over 26 years.

Staff Recommendation:

Staff recommends approval of nominating Pam Polk, Collinsville City Manager, to the OMAG Board of Trustees, for the 2023 Election.

Attachments:

- Nomination Form

12205 S. Yukon, Glenpool, OK 74033 OFFICE: 918-322-5409 FAX: 918-209-4641

Mayor Joyce Calvert, Ward 3; Vice-Mayor Brandon Kearns, At-Large;

Tim Fox, Ward 1; Chris Brobst, Ward 2; Jacqueline Lund, Ward 4

City Manager David Tillotson, Assistant City Manager Susan White, City Clerk Wendy Knight

www.glenpoolonline.com



3650 S. Boulevard • Edmond, OK 73013 • omag.org
405.657.1400 • 800.234.9461 • FAX 405.657.1401

TO: Clerk of Member Cities and Towns of the
Oklahoma Municipal Assurance Group (OMAG)

FROM: Suzie Paulson, OMAG Executive Director

DATE: January 27, 2023

SUBJECT: 2023 Notice of Trustees Election

Notice is hereby given that three (3) positions on the Board of Trustees of the Oklahoma Municipal Assurance Group are to be filled by election to three-year terms commencing on July 1, 2023. The present office holders whose positions will expire are:

Mr. Tim Lyon, City Manager of the City of Midwest City
Ms. Pam Polk, City Manager of the City of Collinsville
Mr. Daniel Tarkington, Mayor of the City of Checotah

The remaining members on the Board of Trustees are:

Mr. Michael Bailey, City Manager of the City of Bartlesville
Ms. Lindsey Moak-Grigg, City Clerk of the City of El Reno
Ms. Vickie Patterson, City Manager of the City of Broken Bow
Mr. Craig Stephenson, City Manager of the City of Ponca City

Each municipality that has adopted the *Agreement Establishing the Oklahoma Municipal Assurance Group* may nominate up to two candidates using the attached nomination form. Nominations must be received by OMAG no later than March 15, 2023.

Each nominee must be an elected or appointed official of an OMAG-member municipality.

The election will be conducted by mail ballot in May. Only those candidates nominated by this process will appear on the election ballot.

Your nomination must be:

1. *Submitted on the attached form; and*
2. *Signed by the Mayor; and*
3. *Attested to by the City Clerk; and*
4. *Returned to OMAG no later than March 15, 2023, by: (a) faxing to OMAG at (405) 657-1401; (b) emailing to elections@omag.org or (c) sending the form by mail.*

If you have any questions about this election process, please contact Brian Holland at bholland@omag.org.

2023 NOMINATION TO THE OMAG BOARD OF TRUSTEES

Nominee's Name: Pam Polk

Check One: ☐ Nominee is an Official of This Municipality
☒ Nominee is an Official of the City/Town of: Collinsville

Nominee's Office: **Position Title:** City Manager

Position Type: ☐ Elected Official ☒ Employee ☐ Other

Rules Regarding the Biographical Sketch:

- Maximum of 50 words. If longer, only the first 50 words will be published on the ballot.
- Sketch will be published as written and without corrections.

Nominee's Biographical Sketch: Pam Polk, the ICMA credentialed Collinsville
City Manager since 2005, has served Oklahoma municipalities for over 26 years.
She currently serves as the Vice-President of OML and was named the City
Manager of the Year in 2017 and the Oklahoma Women in Municipal Government
Woman of the Year in 2020.

The City/Town of Glenpool hereby nominates the above-named person as a Candidate for a three-year term on the OMAG (Oklahoma Municipal Assurance Group) Board of Trustees for the term commencing on July 1, 2023.

Signed: _____
Mayor

Attest: _____
Clerk

Date: _____



To: Mayor and City Council

From: David Tillotson, CM

Date: February 21, 2023

Re: MET Appointment

Background:

As members of the Metropolitan Environmental Trust (MET), Glenpool holds a position on the MET Board of Directors. Gerald Gilbert is our current board member. Over the years this position on the MET Board has been held by the Public Works Director. With the recent addition of Jesse Hale as the Public Works Director, I would recommend that we return to our practice of the Public Works Director representing Glenpool on the Board. I have spoken with Jesse, and he has agreed to serve in this position for the City.

Staff Recommendation:

Staff recommends the Council appoint Jesse Hale to the MET Board of Directors as a replacement for Gerald Gilbert.

Attachments:

- None

12205 S. Yukon, Glenpool, OK 74033 OFFICE: 918-322-5409 FAX: 918-209-4641

Mayor Joyce Calvert, Ward 3; Vice-Mayor Brandon Kearns, At-Large;

Tim Fox, Ward 1; Chris Brobst, Ward 2; Jacqueline Lund, Ward 4

City Manager David Tillotson, Assistant City Manager Susan White, City Clerk Wendy Knight

www.glenpoolonline.com

Memo

To: Honorable Mayor and City Council
From: Paul Newton, Fire Chief
CC: File
Date: 02/09/23
Re: Automatic Mutual Aid

Background:

Several months ago, we were approached by the cities of Jenks and Bixby about a potential change in mutual aid response to structure fires. The current agreements provide aid to adjoining jurisdictions upon a specific request from the agency in need.

All parties agree that it would be mutually beneficial to alter this process in a way that will eliminate the need for a request and make the response automatic under certain scenarios. As proposed, dispatch centers would automatically send neighboring resources upon confirmation of an actual building fire.

This automatic response is predicated upon, visual evidence of smoke or flames being present, as related by the person reporting the incident. Additionally, each city is only obligated to respond if there are adequate resources available to do so.

Staff Recommendation:

Staff recommends accepting the agreements as proposed.

Attachments:

1. Agreement For Automatic Aid in Fire Protection (City of Jenks)
2. Jenks Auto Aid Map
3. Agreement For Automatic Aid in Fire Protection (City of Bixby)
4. Mutual Response Area-Bixby-Glenpool Map

AGREEMENT FOR AUTOMATIC AID IN FIRE PROTECTION

THIS AGREEMENT FOR AUTOMATIC AID IN FIRE PROTECTION (the “Agreement”) is made and entered into this _____ day of _____, 2023, by and between the CITY OF GLENPOOL, Oklahoma, a municipal corporation (“Glenpool”) and the CITY OF BIXBY, Oklahoma, a municipal corporation (“Bixby”).

WHEREAS, Glenpool and Bixby desire that a fire protection incident within the municipalities receive the best response time possible; and

NOW THEREFORE, the parties hereto agree as follows:

1. **Duration of Agreement:** This Agreement shall be effective as of the date it is executed by the Mayor of the City of Glenpool and the Mayor of the City of Bixby and shall remain in full force and effect for an indefinite period until terminated by either party. Either party may terminate this Agreement by giving thirty (30) days prior written notice to the other party at the address shown below, unless a party otherwise designates in writing. Notice shall be deemed effective when received.

City of Glenpool
Attn Fire Chief
14536 S. Elwood Avenue
Glenpool, OK 74033

City of Bixby
Attn Fire Chief
116 W Needles Ave
Bixby, OK 74008

2. **Services provided by Bixby:**

AUTOMATIC AID RESPONSE: When a structure fire incident occurs in the City of Glenpool, within the boundaries of 181st Street South to 121st Street South, and 33 West Avenue to Lewis Avenue, Bixby will provide a response with one fire apparatus, if available. Dispatch of the designated Bixby Fire unit will occur simultaneously with the dispatch of a Glenpool Fire Department Assignment for the incident.

3. **Services provided by Glenpool:**

AUTOMATIC AID RESPONSE: When a structure fire incident occurs within an area that is in the City of Bixby, within the boundaries of 181st Street South to 141st Street South and Mingo Road to South Lewis, Glenpool will provide a response with one fire apparatus, if available. Dispatch of the designated Glenpool Fire unit will occur simultaneously with the dispatch of a Bixby Fire Department Assignment for the incident.

4. **Ten mile radius:** Neither party is required to dispatch equipment or personnel to a fire protection or first response incident located more than ten miles from its closest Fire Station.

5. **Expenses:** Each party shall pay its own expenses for work performed according to this Agreement and shall assume the risk of damage and injury to its own equipment and personnel.

6. **No agency:** It is expressly understood and agreed that each party shall be and remain independent. No agency relationship exists between the parties. Each party shall be solely responsible for the conduct of its respective personnel and equipment. Each party agrees to hold the other free and harmless from liability that may be incurred by reason of the conduct of each respective party's equipment and personnel.

7. **Waiver:** Except as otherwise provided herein, each party waives all claims against the other for compensation for any loss damage, personal injury, or death occurring as a consequence of the performance of this Agreement.

8. **Governing law and venue:** This Agreement shall be governed by the laws of the State of Oklahoma and any lawsuit related to this Agreement shall be filed in Tulsa County, Oklahoma. Neither party hereto waives any defenses or rights available pursuant to the Government Tort Claims Act, 51 Oklahoma Statutes, Sections 151 et seq., common law, statutes, or constitutions of the United States or the State of Oklahoma.

9. **Entire agreement:** This Agreement constitutes the entire agreement of the parties and supersedes any and all prior agreements, oral or otherwise, relating to the subject matter of the Agreement. This Agreement may only be modified or amended in writing and signed by both parties.

IN WITNESS THEREOF, this Agreement has been executed in multiple copies on the dates set forth below.

**CITY OF GLENPOOL,
OKLAHOMA**, a municipal corpora-
tion

CITY OF BIXBY, OKLAHOMA, a
municipal corporation

Mayor, City of Glenpool

Mayor, City of Bixby

Date

Date

ATTEST:

ATTEST:

City Clerk

City Clerk

APPROVED as to form:

APPROVED as to form:

City Attorney

City Attorney

APPROVED:

APPROVED:

Fire Chief

Fire Chief

Memo

To: Honorable Mayor and City Council
From: Paul Newton, Fire Chief
CC: File
Date: 02/09/23
Re: Automatic Mutual Aid

Background:

Several months ago, we were approached by the cities of Jenks and Bixby about a potential change in mutual aid response to structure fires. The current agreements provide aid to adjoining jurisdictions upon a specific request from the agency in need.

All parties agree that it would be mutually beneficial to alter this process in a way that will eliminate the need for a request and make the response automatic under certain scenarios. As proposed, dispatch centers would automatically send neighboring resources upon confirmation of an actual building fire.

This automatic response is predicated upon, visual evidence of smoke or flames being present, as related by the person reporting the incident. Additionally, each city is only obligated to respond if there are adequate resources available to do so.

Staff Recommendation:

Staff recommends accepting the agreements as proposed.

Attachments:

1. Agreement For Automatic Aid in Fire Protection (City of Jenks)
2. Jenks Auto Aid Map
3. Agreement For Automatic Aid in Fire Protection (City of Bixby)
4. Mutual Response Area-Bixby-Glenpool Map

AGREEMENT FOR AUTOMATIC AID IN FIRE PROTECTION

THIS AGREEMENT FOR AUTOMATIC AID IN FIRE PROTECTION (the “Agreement”) is made and entered into this _____ day of _____, 2023, by and between the CITY OF GLENPOOL, Oklahoma, a municipal corporation (“Glenpool”) and the CITY OF JENKS, Oklahoma, a municipal corporation (“Jenks”).

WHEREAS, Glenpool and Jenks desire that a fire protection incident within the municipalities receive the best response time possible; and

NOW THEREFORE, the parties hereto agree as follows:

1. **Duration of Agreement:** This Agreement shall be effective as of the date it is executed by the Mayor of the City of Glenpool and shall remain in full force and effect for an indefinite period until terminated by either party. Either party may terminate this Agreement by giving thirty (30) days prior written notice to the other party at the address shown below, unless a party otherwise designates in writing. Notice shall be deemed effective when received.

City of Glenpool
Attn Fire Chief
14536 S. Elwood Avenue
Glenpool, OK 74033

City of Jenks
Attn Fire Chief
PO Box 2007
Jenks, OK 74037

2. **Services provided by Jenks:**

AUTOMATIC AID RESPONSE: When a structure fire incident occurs in the City of Glenpool, Jenks will provide a response with one fire apparatus, if available. Dispatch of the designated Jenks Fire unit will occur simultaneously with the dispatch of a Glenpool Fire Department Assignment for the incident.

3. **Services provided by Glenpool:**

AUTOMATIC AID RESPONSE: When a structure fire incident occurs within an area that is in the City of Jenks Station 2 response area or Kimberly Clark, Glenpool will provide a response with one fire apparatus, if available. Dispatch of the designated Glenpool Fire apparatus will occur simultaneously with the dispatch of a Jenks Fire Department Assignment for the incident.

4. **Ten mile radius:** Neither party is required to dispatch equipment or personnel to a fire protection or first response incident located more than ten miles from its closest Fire Station.

5. **Expenses:** Each party shall pay its own expenses for work performed according to this Agreement and shall assume the risk of damage and injury to its own equipment and personnel.

6. **No agency:** It is expressly understood and agreed that each party shall be and remain independent. No agency relationship exists between the parties. Each party shall be solely responsible for the conduct of its respective personnel and equipment. Each party agrees to hold the other free and harmless from liability that may be incurred by reason of the conduct of each respective party's equipment and personnel.

7. **Waiver:** Except as otherwise provided herein, each party waives all claims against the other for compensation for any loss damage, personal injury, or death occurring as a consequence of the performance of this Agreement.

8. **Governing law and venue:** This Agreement shall be governed by the laws of the State of Oklahoma and any lawsuit related to this Agreement shall be filed in Tulsa County, Oklahoma. Neither party hereto waives any defenses or rights available pursuant to the Government Tort Claims Act, 51 Oklahoma Statutes, Sections 151 et seq., common law, statutes, or constitutions of the United States or the State of Oklahoma.

9. **Entire agreement:** This Agreement constitutes the entire agreement of the parties and supersedes any and all prior agreements, oral or otherwise, relating to the subject matter of the Agreement. This Agreement may only be modified or amended in writing and signed by both parties.

IN WITNESS THEREOF, this Agreement has been executed in multiple copies on the dates set forth below.

**CITY OF GLENPOOL,
OKLAHOMA**, a municipal corpora-
tion

CITY OF JENKS, OKLAHOMA, a
municipal corporation

Mayor, City of Glenpool

Mayor, City of Jenks

Date

Date

ATTEST:

ATTEST:

City Clerk

City Clerk

APPROVED as to form:

APPROVED as to form:

City Attorney

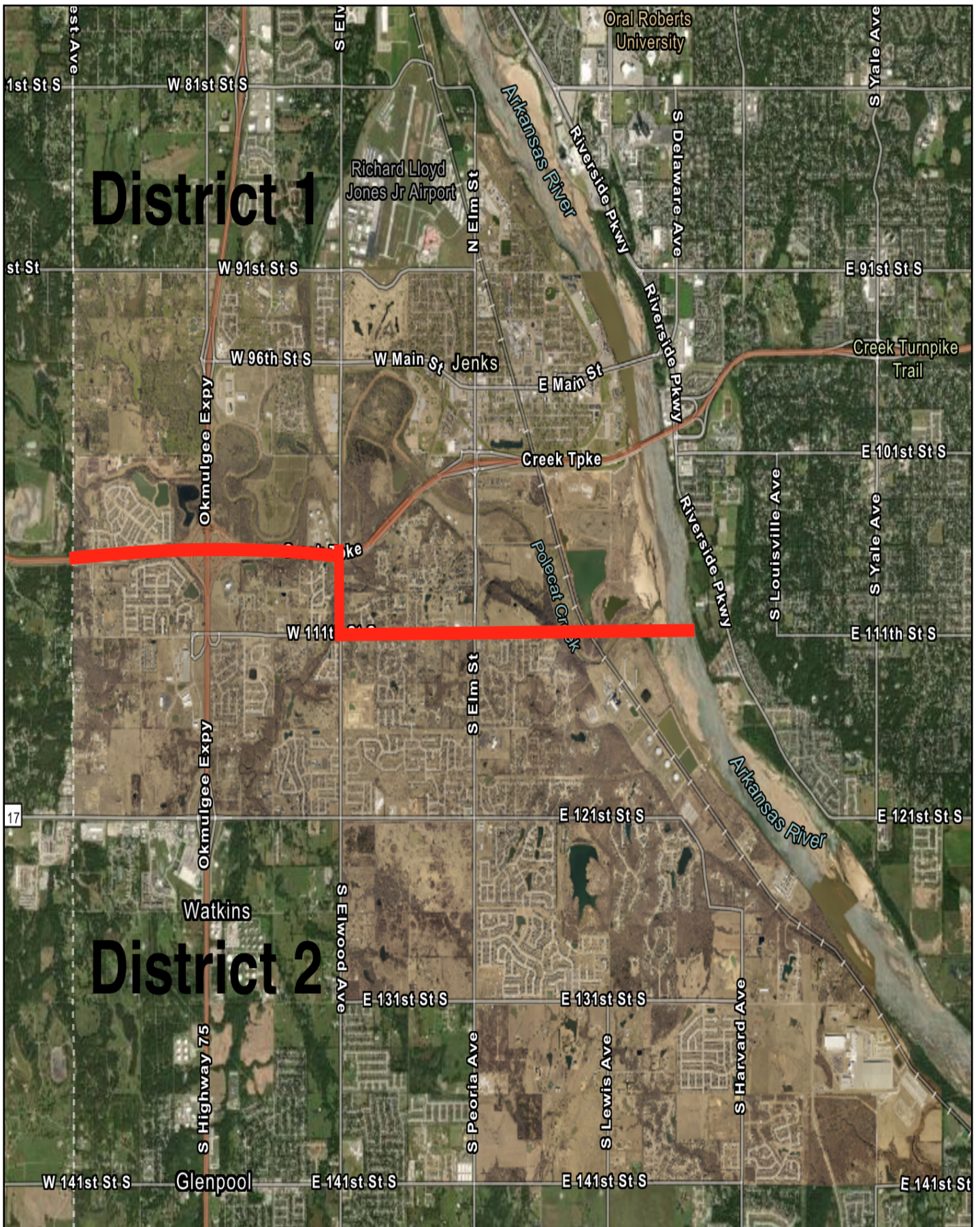
City Attorney

APPROVED:

APPROVED:

Fire Chief

Fire Chief





To: Mayor and Council

From: David Tillotson, City Manager

Date: February 16, 2023

Re: Glenpool Baseball League User Agreement

Background:

Glenpool has leased the baseball fields at Morris Park to the Glenpool Baseball League for a number of years. This Agreement extends that lease for the 2023 baseball season and runs through July 31, 2023.

Staff Recommendation:

Staff recommends approval of the User Agreement with Glenpool Baseball League.

Attachments:

- Glenpool Baseball League Morris Park User Agreement

12205 S. Yukon, Glenpool, OK 74033 OFFICE: 918-322-5409 FAX: 918-209-4641

Mayor Joyce Calvert, Ward 3; Vice-Mayor Brandon Kearns, At-Large;

Tim Fox, Ward 1; Chris Brobst, Ward 2; Jacqueline Lund, Ward 4

City Manager David Tillotson, Assistant City Manager Susan White, City Clerk Wendy Knight

www.glenpoolonline.com

City of Glenpool
Morris Park User Agreement with Glenpool Baseball League
January 1, 2023 through July 31, 2023

This agreement ("**Agreement**") is entered into between the **City of Glenpool**, an Oklahoma municipal corporation (the "**City**") and the **Glenpool Baseball League** (the "**User**"), of Glenpool, Oklahoma, a non-profit youth sports organization, for the use of City-owned Morris Park for purposes set forth herein. This Agreement shall be effective upon compliance with documentation requirements set forth in Section 17 hereof and execution by duly authorized representatives of the City and the User (the "**Effective Date**").

1. Background and Purpose

- A. Community support. The City owns Morris Park and, in addition to providing for general community park uses and areas for adult and youth sports activities, the City desires to provide the Premises defined in section 2 of this Agreement for use by the User and for the purpose of serving children in Glenpool and surrounding communities by providing recreational opportunities through youth baseball activities (the "**Sport**").
- B. Non-profit. The parties acknowledge and agree that the activities contemplated by this Agreement will be provided substantially by volunteers. Paid staff may include, without limitation, umpires and concession operators, if any. No company, person nor any other entity shall derive profit under this Agreement.

2. Definition of Premises and Ownership

- A. Property. All five baseball fields located at Morris Park, City of Glenpool, together with entry and exit ways, restroom and concession buildings, storage buildings (except as provided below), parking lot, bleacher systems, necessary electrical lighting systems, fences and all appurtenant areas (the "**Premises**").
- B. Concession Facility. The concession building is owned by the City. Contents of the concession building, such as freezers, coolers, refrigerators, microwaves, popcorn maker, ice machine, cash boxes, and shelving, are owned by the User and may be stored/retained in the concession building until such time as the City directs User to remove them, provided that all perishable food items shall be removed from the concession building at the end of the Sport season or upon expiration of this Agreement, whichever occurs sooner. The User may, in its discretion, operate the

concession facility during the Term of this Agreement for the benefit of patrons who use the Premises in accordance with the terms of this Agreement. In no case shall the City or the User allow any third party to operate the concession facility, for profit otherwise.

- C. Office/Storage Building. The office/storage building immediately north of the concession building is owned by the User.
- D. Storage Containers. Con-X boxes (storage containers) located on the Premises are owned by the City. However, the contents of these boxes are owned by the User and/or the youth football program. A designation will be created for each of the Con-X boxes by the City, designating the boxes for either of and exclusively for the football or baseball program.

3. Term of Agreement and Scheduling Requirements

- A. Semi-Annual Term. The Term of this Agreement shall extend from January 1, 2023 through July 31, 2023.
- B. Renewal. This Agreement shall not automatically renew for any additional term. However, the parties expect and intend to negotiate in good faith toward the object of a new or amended agreement with a term from July 1, 2023, through June 30, 2024, unless either party gives 30 days' notice of its intention not to renew or this Agreement is terminated for cause.
- C. Scheduling. User understands and acknowledges that Premises are owned and provided by a public entity and are, therefore, shared with the general public. User agrees to abide by the following:
 - i. During all hours of park operation not specifically scheduled for User's exclusive use for practice, regular games or tournament play, ***User will ensure that the Premises are unlocked and open to the general public,*** provided that the restroom, concession building, storeroom building and drive thru gate may be locked for safe-keeping.
 - ii. In all cases, once User has notified the Public Works Department a minimum of two weeks before its need to use the Premises on a given date and time, User shall have priority over the general public or any other user.
 - iii. City acknowledges that User has first priority for exclusive usage, throughout the Term of this Agreement as defined in section 3.A., during all periods expressly reserved by submission of the corresponding date and request for reservation to

the Public Works Department. During any period of time not within the Term of this Agreement (i.e., from July 1 through December 31 of any calendar year), reservation of the Premises for any purpose shall be on a first-come, first-served basis.

- D. Game/tournament/practice schedules. A schedule of all anticipated Sports activities shall be submitted to the Public Works Department prior to the commencement of seasonal Sport activities. This schedule shall serve to reserve use of the Premises exclusively to User at all times for which such dates have been submitted. Failure to submit such advance schedule may result in loss of priority for any given event.
- E. Unscheduled sport events. Sport events not submitted on the season schedule must be reserved as promptly as possible after such dates are known to User. If, during the Term of this Agreement, it is necessary for User to make changes in the schedule provided under section 3.D. and User notifies the Public Works Department at least 96 hours (four days) in advance, such reservation will ensure exclusive use of the Premises by User for designated date/time just as in the case of the dates previously scheduled and submitted *unless a third party to this Agreement schedules any event sooner (more than 96 hours before) its planned event*.

4. Scope of License Granted

- A. Limited exclusive use. As noted in section 3 above, this Agreement does not confer exclusive use of the Premises to User or to any other third party except for such dates and times as are on record with the Public Works Department and for which there is no prior reservation.
- B. Intended use. User acknowledges that access to the Premises is intended solely for the purpose of promoting Sport-related activities and User agrees that it shall not use, or permit the Premises to be used, for any other purpose without the prior approval of the Public Works Department.
- C. Affiliated users. Because of the nature of competitive Sport play, it is permissible for User to grant concurrent use of the Premises by other teams, leagues or Sport-related organizations ("**Affiliated Users**"). User shall not allow the Premises to be used as home field or for practice by any teams outside the User's league service area without the approval of the Public Works Department. User agrees that the indemnity provisions of this Agreement extend to use of the Premises by such Affiliated Users.
- D. Keys and access. The Public Works Department will issue to User's President, other officers or staff members, as designated in writing, keys and/or lock combinations for

necessary gates and doors to allow access to the Premises. The Public Works Department will maintain a register of key assignments and any person issued a key will be responsible for ensuring that all facilities are secure upon departure of the Premises, not permitting unregistered persons to have or use keys, and return of all keys upon either termination of this Agreement or in the event such designated person's status no longer requires use of the keys. There will be a \$5.00 replacement charge for each key lost and/or not returned. In the event User requests the locks at the Premises be changed, User will bear all costs associated with the change.

- E. Right of entry by City. The City shall have the right to enter the Premises for any reasonable purpose to include, but not limited to, safety inspections and ensuring code compliance. The City reserves the right to use any/all portions of the site in times of natural disaster, emergency or other community-wide higher use need. City will attempt to coordinate any such action with User to minimize any negative impact on scheduled Sport events.
- F. Admission charge. City agrees that User may charge admission fees or similar charges for entrance to all games, provided that admission and revenue records shall be provided to City upon request.

5. User Fee/Damage Deposit

- A. Damage deposit waived. A non-refundable damage deposit in the amount of \$350.00, otherwise payable to the Public Works Department at the time of executing this Agreement and to be kept by the City as a User Fee to offset City maintenance costs, shall be waived in its entirety for the Term of this Agreement. Such User Fee may be subject to negotiation of the parties upon renewal of this Agreement if there is renewal subject to section 3.B.
- B. Liability. User will be responsible for all damages incurred to City property inside the fenced area of the Premises (buildings, irrigation components, fences, signs, posts, gates, landscaping, roadways, walkways, playing fields, electrical, plumbing and mechanical systems, etc.), other than normal wear and tear, that are directly attributable to the actions of User or Affiliated User volunteers, coaches, players, board members, or by the general public during User or Affiliated User events. City shall notify User of damages or other violations of this Agreement promptly upon occurrence. User may correct the violation or repair such damages within 30 days of such notification. If User chooses not to do so, City shall repair the damage and send written notification to User detailing expenditures. User shall reimburse City for damage costs as applicable under this section.

6. Improvements (Responsibility, Maintenance and Ownership)

- A. Fixtures. Premises and all permanent fixtures thereto shall remain for all purposes and throughout the Term of this Agreement the property of City, except as otherwise stated for storage facilities, and may not be modified, altered, or destroyed without the prior written permission of City. Further, User may not build or bring onto the Premises any improvements, structures or fixtures of any kind without the prior written permission of the Public Works Department. User shall not make any alterations, modifications or permanent changes to ball fields, irrigation systems, concession or bathroom facilities, parking lots, trees, fences, or plumbing or electrical systems without the prior written consent of the City.
- B. Personal property. User shall retain all rights of ownership of any temporary fixtures or personal property installed, stored or otherwise maintained on the Premises and belonging to User as of and following the Effective Date of this Agreement (the "**Personal Property**"), provided that written permission has been granted for any such fixtures, until the expiration or termination of this Agreement Upon such expiration or termination, User shall have 90 days in which to remove its Personal Property. Property not removed in that period shall become property of the City. Temporary fixtures that cannot be removed without damage to the Premises will be treated as permanent fixtures belonging to the City.
- C. Maintenance. User shall be responsible for all costs of repairing, maintaining and servicing all fixtures and personal property owned by User and maintained or stored on the Premises for benefit of the User.
- D. Improvements. City and User may, solely by written separate agreement negotiated between the parties, share in the cost of permanent fixtures or improvements that are determined to have a shared benefit to the User and the general community. The amount of such shared cost, if any, will be set forth in such separately negotiated agreement. In the event of expiration of this Agreement without renewal, ownership of any such fixtures or improvements shall also be established by such separate agreement.

7. Maintenance Obligations and Schedules

- A. User: User shall be responsible to provide on-going maintenance to such personal property, fixtures and improvements to the Premises as to which it claims ownership or which are installed for its benefit and located within fenced areas of the playing fields. User shall maintain these facilities in good condition, at its own cost and expense, recognizing they are part of a park serving the general public. Specifically,

this obligation includes:

- i. User shall inspect Premises immediately prior to and immediately after each use, and shall immediately notify City of any damages or of any repairs that may be required. In the event that any defect may threaten the safety and welfare of participants or the general public, User shall not allow individuals to utilize Premises until the defective portion of Premises has been repaired or replaced. User shall be solely responsible for any replacements or repairs it authorizes or performs.
- ii. User shall provide at its own expense any chalk, lime, paint or other supplies required to ensure that playing fields are in suitable condition for use.
- iii. Stocking and cleaning the restroom facilities, including all paper goods and cleaning supplies.
- iv. Cleanliness of real and personal property inside the fenced area of Premises, including removal of all trash from the Premises.
- v. User is allowed to dump trash accumulated during its use of the Premises in commercial dumpster(s) provided by the City.
- vi. Prior to leaving the Premises following each use by User, User shall collect all trash, litter and debris from the playing field areas and parking lots and place it in the dumpster provided to the park for removal by the City. The dumpster shall be emptied in accordance **with** the City's contracted schedule.
- vii. Dumping of trash containers located in the parking area(s) of the Premises into the designated dumpster.
- viii. Maintenance of all storage sheds owned by User.
- ix. General cleanliness and upkeep of any facilities used on the Premises.
- x. All baseball field infield maintenance regarding markings and grass control.
- xi. User shall comply with any present or future federal, state, or City of Glenpool ordinances, laws and policies with regard to pesticide/herbicide use, chemical applications, energy and water consumption, including the application of such fertilizer(s) and weed control product(s) as may be necessary to maintain the Premises to a reasonably professional standard for Sport playing conditions.

- xii. All routine dirt work on baseball fields (i.e., pitching mounds, infield dirt, etc.) shall be performed by User, provided that any supplementation of dirt not available on the grounds of the Premises shall be provided by the City.
- xiii. This maintenance plan may be coordinated with Affiliated Users or nonaffiliated users who share access to exclusive use of the Premises under a similar agreement with the City.
- xiv. User agrees to ensure that, when Sport events are over, all persons have left the Premises and all electrical facilities (interior building lights, air conditioners, electrical devices, telephones, playing field lights) are turned off by the park curfew unless User obtains permission from the Public Works Department to play beyond curfew. Park curfew is set by City Ordinance. User shall also be responsible to ensure that all buildings, windows, lockable areas and gates are properly secured before leaving the Premises; and clear the site of trash, litter and debris.
- xv. User agrees to take all reasonable precautions to prevent waste, damage or injury to Premises by User or by any team or individual under User auspices or by any member of the audience attending User events.
- xvi. In addition to the foregoing minimum maintenance standards, User may provide maintenance or services to a higher or more frequent standard than identified above, provided that User shall assume all related costs resulting from such higher standard.

B. City. The City shall be responsible for:

- i. Providing the services and/or costs for services for on-going, scheduled maintenance to all aspects of the Premises other than mowing of the fenced- in Premises and upkeep of Personal Property, fixtures or improvements belonging to User as outlined in section 7.A. These services shall include, as determined necessary and scheduled by the City the following maintenance:
 - Improvements for the benefit of the general public at the playing fields, bridges, entrance gates, park access road, graveled parking lot, permanent public restroom/concession stand, paved walkways, playground equipment, irrigation system and all grass covered areas, trees and shrubs (other than playing fields);
 - Adequate trash dumpster and/or poly cart service for routine activities;

- All sewerage, concession/bathroom building electrical and plumbing related repairs;
- Parking lot and playing field lighting;
- All fences, backstops and related structures to ensure public safety;
- Mowing or treating with herbicide unwanted vegetation around and below bleachers;
- Turning off and winterizing water and related systems following the agreed upon close of Sport playing season(s);
- Returning water and related systems to operational status in time for commencement of Sport playing season, as agreed upon between User and City;
- Setting up traffic barricades when appropriate to restrict vehicular traffic from high water areas or other unsafe situations.

ii. Scheduled maintenance to be performed by the City shall be as follows:

- Mowing: All Grass covered areas within the entirety of Morris Park will be mowed, on average, once per week during the growing season;
- Park access road/parking lot: The graveled park access road and parking lot will be graded each year as needed, prior to the beginning of Sport play;
- Pruning: Pruning of trees and shrubs shall be done annually by the City.

8. Utilities

City will continue to pay for electricity, water, sewer, trash and miscellaneous utility services without charge to User, provided that User complies with the requirements of section 7.A.(xiv) of this Agreement to turn off and lock all electrical facilities (interior building lights, air conditioners, electrical devices, telephones, playing field lights) at the end of each period of use.

9. Concession Facility [optional]

- A. User may operate a concession facility after obtaining all required food handler permits and submitting copies of said permits to City. User agrees to adhere to all Oklahoma State Department of Health, Tulsa County Department of Health, and City of Glenpool regulations pertaining to such operations.
- B. User may, in its discretion, operate the concession facility during the Term of this Agreement for the benefit of third parties who are using the Premises, provided that: User remains responsible for compliance with all terms and conditions of this Agreement when serving concessions to a third party user of the Premises to the same extent as though User was using the Premises; and User agrees to indemnify the City for any and all claims, damages and liability of any kind resulting from such third party's access to the concession facility, except for intentional acts.
- C. User will receive all revenues from concession operations, if any, and will be the sole provider at Premises throughout the Term of this Agreement, whether during scheduled Sports activities or during use of the Premises by a third party and shall secure the concession facility to prevent operations by unauthorized third parties during periods not being used by User. User may retain and use revenues collected from the sale of concessions for Sport-related purposes, subject to any applicable sales tax obligation that may be due and payable in accordance with State law. (To the extent that User claims exemption from local and/or State sales tax, it will be the duty of User to maintain documentation of such exemption.)
- D. Use of the concession facility for the sale of concessions is subject to the following conditions:
 - i. All food storage/food preparation procedures and equipment must be operated under the Tulsa City-County Health Department rules and policies and City of Glenpool ordinances.
 - ii. Operation of the concession facility will at all times require the presence of at least one User representative who holds a current Tulsa City-County Health Department food handler's permit and has attended the Tulsa City County Health Department food handler's workshop.

10. Annual Compliance Report

User shall present to the Public Works Department an end-of-season report by August 15, 2023, in a form approved by the Director of the Public Works Department giving a summary of all activities undertaken by User in furtherance of User's obligations under

this Agreement. Information contained in the compliance report will be taken into consideration with respect to the decision whether to renew the Agreement and, if so, on what terms and conditions.

11. Signage and Advertising

- A. City shall retain all authority to allow or prohibit sponsor or other advertising signs within the Premises in accordance with the City's Sign Code. However, City will not unreasonably deny the exhibition of signage by program sponsors or others with User's approval.
- B. City shall install and maintain any signs indicating park rules and/or local ordinances such as, but not limited to, no tobacco products, no coolers, no glass products, no hitting against fences.
- C. Advertising shall be limited to the outfield fencing and park benches, shall be subject to prior approval by the Public Works Department and shall be allowed only so long as it is limited in size to what the outfield fencing or bench to which it may be appended can accommodate.
- D. Any additional signage not provided for in this section 11 must be reviewed and approved by the Public Works Department.

12. Coach Certification

- A. User acknowledges that it is responsible for ensuring that all head coaches are properly trained and certified under the National Youth Sports Coaches Association and agrees that no head coach shall be allowed to participate in User- sponsored Sport activities without such certification and all Sport-specific credentials that are typically required in youth sports programs.
- B. City reserves the right to run a Criminal Background Check for youth Sports managers, coaches or other User personnel.

13. Insurance; Indemnification; and Release of claims

- A. Indemnification. Without limiting City's right to indemnification, User and any contractors with which it conducts business related to the Premises shall obtain insurance in no less than or in terms more restrictive than the following:

- i. General Liability Insurance covering all Premises and activities. The applicable limit of liability shall not be less than One Million Dollars (\$1,000,000.00) per claimant, One Million Dollars (\$1,000,000.00) annual aggregate.
 - ii. Worker's Compensation Insurance Coverage, only if applicable, in compliance with the Worker's Compensation Laws of the State of Oklahoma; and
 - iii. Comprehensive Automobile Liability Insurance, only if applicable to any owned, hired or otherwise provided vehicles used for Sport-related transport in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence.
- B. Right to Adjust. Each time this Agreement is renewed, City reserves the right to review and adjust the minimum amount of insurance coverage required of User.
- C. City as Additional Insured. User shall include City, its officials, representatives, agents and employees as additional insured on all required insurance policies. User shall also require any contractors with which it conducts business related to the Premises to list City as an additional insured. User shall arrange for certificates of insurance and endorsements to be submitted to the City for approval prior to allowing any person, including but not limited to Sports participants, to commence work or engage in any activities under this Agreement.
- D. Notice of Insurance Cancellation. Such coverage shall not be canceled or materially changed without giving City at least 30 days prior written notification. The insurers shall have no recourse against City for payment of any insurance premium. Any insurance benefit protecting City against any loss relating to or arising out of the subject of this Agreement shall be made payable solely to City.
- E. User Waiver of Claims. User hereby waives, on its own behalf and on behalf of its insurers, every claim for recovery from City for any and all loss or damage to the extent that the damage is covered by valid and collectible insurance policies. User agrees to give to each insurance company which has issued, or may issue in the future, policies of insurance, written notice of the terms of this waiver and to have said insurance policies endorsed as necessary by reason of this waiver.
- F. Indemnification. User shall indemnify, defend and hold harmless the City, its officers, agents, representatives, volunteers and employees against any and all liabilities, damages, injuries (including death), property damage (including loss of use), claims, liens, judgments, costs, expenses, suit, actions or proceeding of any nature whatsoever, including reasonable attorney fees, by reason of or arising out of any act, omission, negligence or misconduct of User or of any of its Affiliated Users, guests, invitees, members, volunteers, representatives, officers, agents, employees

and contractors or subcontractors in performing or failing to perform any of its obligations or exercising any of its privileges under this Agreement. This indemnification provision shall exclude only such actions as arise directly and solely out of the negligence or willful misconduct of the City or any of its officers, agents, representatives, volunteers and employees, and in accordance with the terms, conditions and exceptions provided by the Oklahoma Governmental Tort Claims Act.

G. Scope. Events within the scope of this provision include without limitation:

- i. Failure by User to perform any of the terms or conditions of this Agreement;
- ii. Any personal injury or property damage happening on or about the Premises;
- iii. Failure to comply with any law of any governmental authority; or
- iv. Any mechanic's lien or security interest filed against equipment, materials, or alterations of buildings or improvements that belong to the City.

H. Control of premises. During those times that User is in control of the Premises, City shall not be liable for any injury or damages to any property or to any person using the Premises nor for damage to any property of User. In the event that any suit based upon such a claim, action, liability, loss, costs, expenses and damages is brought against the City, User shall defend the same at its sole cost and expense; provided that, the City retains the right to participate in said suit if any principle of governmental or public law is involved. If a final judgment is rendered against the City or any of its officers, agents, and employees, or jointly against the City and User and/or their respective officers, agents, and employees, User shall satisfy such judgment in its entirety.

I. ***User will require a parent or legal guardian of every participant in its Sport program who is not an adult to sign a release form as consideration for participating in the program, that forever releases and discharges City, its officers, agents, employees, volunteers, successors and assigns of and from, all liability, claims or demands for any and all injuries to such participant or to any minor as to which the parent or legal guardian of the participant has lawful custody arising or which may arise from any accident that may occur.***

J. ***A release in the form provided by User at Exhibit E shall be signed by a parent or legal guardian of every signed-up User participant and must be maintained by User throughout each Term of this Agreement. The City reserves the right to request that a copy of such release be provided for verification no more than 14 days prior to the start of the season and within 48 hours of signing up, or 7 days prior to the first***

game, for any participant added to the roster after the start of the season. The parent or legal guardian of any such User participant who signs up to play must sign a release in the form attached as Exhibit E to this Agreement before using the Premises for any purpose.

- K. User acknowledges and agrees that it shall be responsible for any damages occurring to City property (buildings, irrigation components, fences, signs, posts, walkways, parking lots, gates, landscaping, roadways, sports fields, electrical, plumbing and mechanical systems) that are directly attributable to deliberate or negligent acts of User or Affiliated User volunteers, coaches, players, board members, or by the general public attending User events. User shall not be responsible for damages or vandalism occurring while User is not using the Premises.

14. Accident/Incident Reporting Requirement

- A. User shall submit to the Public Works Department an accident/incident report form, approved by City, within three working days following any/all injuries, acts of vandalism, theft, or altercations of any kind. Documentation from police, fire, EMSA and/or any other emergency response service must be included if prepared.
- B. It shall be the sole and exclusive responsibility of User to ensure that there are, onsite or within call range, emergency personnel qualified to respond appropriately to any emergency situation, including accidents, and User bears full liability for any failure to do so.

15. Default and Termination Provisions

- A. This Agreement shall be subject to termination by the City upon User abandonment of Premises for a period of 30 days without adequate reason communicated to City.
- B. This Agreement shall be voluntarily terminated by User following 30 days' written notice of User's intention to terminate to City.
- C. This Agreement may be involuntarily terminated by City following User's failure to keep, perform and observe all promises, covenants, conditions and agreements set forth in this Agreement, provided that City provides User written notice and 30 days to correct any default, and further provided that time limits may be extended in the manner and to the extent allowed by City, where fulfillment of such obligation requires activity over a period of time and User has commenced to perform whatever may be required to cure the default and continues such performance diligently. City has sole discretion as to defining a material provision and whether, or how, to permit

cure of any default.

- D. The right to terminate this Agreement upon default of User shall not be exclusive and is in addition to any other rights and remedies provided by law or under this Agreement.
- E. Any waiver of any breach of any one or more of the covenants, conditions, terms and agreements contained in this Agreement shall not be construed to be a waiver of any subsequent or other breach of the same or of any other covenant, condition, term or agreement contained in this Agreement, nor shall failure to require exact, full, and complete compliance with any of the covenants, conditions, terms or agreements herein contained be construed as changing the terms of this Agreement or estopping City from enforcing the full provisions thereof.
- F. In the event of substantial or total destruction of the Premises from any cause, either party may declare this Agreement terminated if repairs or restoration cannot be effectively accomplished within 30 days of the loss at a reasonable cost, with the reasonableness of said costs being within the sole judgment of City. In the event that the Premises are repaired or restored by User at the sole expense of User or at the expense of insurance carriers, this Agreement shall not be terminated.
- G. After the termination of this Agreement for any reason, User may apply to the City within 90 days of said termination date to remove any personal property or fixtures that have been built solely with User funds and the City shall not unreasonably withhold its consent.

16. Miscellaneous

- A. Choice of law and venue. This Agreement has been and shall be construed as having been made and delivered in the State of Oklahoma and it is mutually agreed and understood by both parties that this Agreement shall be governed by the laws of the State of Oklahoma. Venue shall be Tulsa County, Oklahoma.
- B. Compliance with all federal, state, local laws. User agrees, in all its on-Premises activities, to abide by, uphold and adhere to all City park rules and regulations, ordinances of the City of Glenpool, laws of the State of Oklahoma and any applicable federal laws or regulations.
- C. Non-discrimination provision. User agrees not to discriminate in providing its services and shall provide those services without regard to race, religion, or sex.
- D. Notice provision. Any notice or demand required or permitted to be given by the

terms of this Agreement or by law shall be in writing and may be given by depositing said notice or demand in the U.S. Mail, certified mail with return receipt requested, or by personal delivery. Service of such notice or demand shall be complete upon verified receipt of said notice or demand.

- E. Entire agreement. This Agreement constitutes the entire agreement of the parties and contains all obligations and representations of the parties with respect to the subject matter covered herein, and no prior agreement of any kind to the contrary shall be effective to the contrary.
- F. Severability. If any section or provision of this Agreement shall be held invalid, such invalidity shall not affect the other provisions hereof, and to this extent, the provisions of this Agreement are intended to be and shall be deemed severable.
- G. Authority to sign. Both parties represent that their respective signatories are fully and duly authorized members of City staff or User personnel, as applicable.
- H. Amendment provisions. The provisions of this Agreement may be amended only upon the mutual written consent of the parties. No additions to, or alterations of, the terms of this Agreement shall be valid unless made in writing and formally approved and executed by the duly authorized agents of both parties.
- I. Assignment to third parties. Neither this Agreement, nor any of the rights hereunder, shall be sold, assigned, or encumbered by User. Any attempt to sell, assign, alienate or encumber Premises or this Agreement shall be cause for immediate termination of this Agreement.

17. Checklist of Documents Required as Condition of Performance [This Agreement shall not become effective until all items have been provided and attached, even if executed by both parties.]

- A. Copy of all required health department permits and any other licenses or permits required by law, in connection with operation of the concession facility, if User opts to operate the concession facility.
- B. Scheduled practices, games and tournaments.
- C. Board member roster and staff contact list.
- D. Insurance declaration page identifying City as additional insured.
- E. Form of User Participant Release

IN WITNESS THEREOF, City and User have adopted and caused this Agreement to be executed in their respective names by their duly authorized officers and have cause this Agreement to be effective as of January 1, 2023.

CITY: City of Glenpool, Oklahoma

Joyce G. Calvert, Mayor

Date

Attest:

Approved as to Form:

Wendy Knight, City Clerk

City Attorney

USER: Glenpool Baseball League

President

Verification

State of Oklahoma)
) ss
County of Tulsa)

Before me, a notary public on this ____ day of _____, 2023, personally appeared _____, known to me to be the President of the Glenpool Baseball League [User] and to be the identical person who executed the within and foregoing instrument, and acknowledged that he/she executed the same as his/her free and voluntary act and deed for the uses and purposes therein set forth.

My Commission Expires:

Date

Notary Public

ROSENSTEIN, FIST & RINGOLD

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January 31, 2023

CONFIDENTIAL – SUBJECT TO ATTORNEY-CLIENT PRIVILEGE

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Re: Legal Opinion on Questions about Social Media Pages

Dear David and Susan:

This letter is responsive to your requests for a legal opinion on several questions related to social media pages maintained by the City, as well as social media pages maintained by elected and appointed officials of the City and its related entities, such as the Planning Commission and Board of Adjustment. Specifically, you have presented the following questions:

1. Is it legally permissible for the City to selectively block, remove or hide comments or replies by members of the public and ban members of the public from posting on the City's social media pages, such as Facebook and Twitter, because of their past comments or replies?
2. Are social media pages maintained by elected and appointed officials of the City and its related entities (e.g., Planning Commission and Board of Adjustment) subject to the same rules applicable to the City's social media pages?
3. Under what circumstances are social media accounts maintained by elected or appointed officials subject to the Open Records Act?
4. Is the City legally liable for content on social media pages maintained by council members?

It is my understanding that the City maintains official social media pages on Facebook and Twitter to inform and communicate with constituents about events and activities in the City, and that members of the public are allowed to comment or reply to posts on those pages. It is also my

understanding that some elected and appointed officials with the City maintain their own social media pages on which they post about matters related to the City, and I assume that these pages also allow public comments or replies to be posted.¹ If any of these statements are incorrect, please notify me as it may result in a material alteration of my opinion.

I. Censoring Speech on the City's Social Media Pages

The First Amendment to the U.S. Constitution guarantees freedom of speech to the people and limits the restrictions that government can impose on speech. The First Amendment applies to government-created public forums on social media. *Packingham v. North Carolina*, 137 S. Ct. 1730, 1735 (2017). Removing, blocking or hiding a comment or reply by a member of the public on the City's social media page and/or banning a member of the public from making future comments or replies on the City's social media page(s) is a restriction on speech.

To determine whether a restriction on speech is lawful, the U.S. Supreme Court has recognized a distinction between content discrimination, which can be permissible if it preserves the purposes of the limited forum, and viewpoint discrimination, which is presumed impermissible (*i.e.*, unconstitutional). *Rosenberger v. Rector & Visitors of the Univ. of Va.*, 515 U.S. 819, 829-30 (1995).

I assume that the City's intent in opening up its social media pages for public comment is to create a limited public forum. This means that the City has set reasonable parameters to serve the purpose of the forum, which very generally is to inform and communicate with constituents about events and activities in the City. This is in contrast to an open public forum, which would be a place traditionally used by the public for assembly, speech and debate, such as public streets, sidewalks and parks, with almost no limitation on content. *Christian Legal Soc'y. v. Martinez*, 561 U.S. 661, 678-79 n.11 (2010); *Pleasant Grove City, Utah v. Summum*, 555 U.S. 460, 469 (2009) (quoting *Perry Educ. Assoc. v. Perry Local Educators' Assoc.*, 460 U.S. 37, 45 (1983)).

I was not able to locate a statement on the City's Twitter page defining its limited purpose. The City's Facebook page has a statement that says: "Official Facebook page for City of Glenpool, Oklahoma; used for sharing information with the public." This is a very general statement. I would recommend adding more specific parameters about the purpose of the forum on all of the City's

¹ The legal analysis used to determine whether a social media page maintained by an elected or appointed government officer constitutes an "official" or "personal" social media page is fact intensive and beyond the scope of this opinion letter. If there is a specific social media page or facts that you would like considered, please let me know. Otherwise, in the interests of brevity and out of an abundance of caution, this opinion assumes that the social media pages maintained by elected or appointed officers of the City (and its related entities) on which those officers post comments about the City constitute limited public forums, just like the City's official social media pages.

social media pages with the objective being to impose reasonable restrictions on the content of speech so that the forum is not open to content that falls outside the purpose of the forum.

When the government permits discussion of certain content, it may not impose restrictions that discriminate among viewpoints. “Viewpoint discrimination is censorship in its purest form and government regulation that discriminates among viewpoints threatens the continued vitality of ‘free speech.’” *Perry Educ. Assoc.*, 460 U.S. at 61. Exclusion of speech that restricts particular views, opinions or perspectives is presumed unconstitutional. *Rosenberger*, 515 U.S. at 828-29; *see also, Iancu v. Brunetti*, 139 S. Ct. 2294, 2299 (2019) (“The government may not discriminate against speech based on the ideas or opinions it conveys.”). This is particularly true when the viewpoint is one critical of elected officials, even if those criticisms may be false and injurious to reputation. As the Supreme Court explained in its landmark decision in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964):

[There is] a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.

Authoritative interpretations of the First Amendment guarantees have consistently refused to recognize an exception for any test of truth -- whether administered by judges, juries, or administrative officials -- and especially one that puts the burden on proving truth on the speaker.

To persuade others to his own point of view, the pleader, as we know, at times, resorts to exaggeration, to vilification of men who have been, or are, prominent in church or state, and even to false statement. But the people of this nation have ordained in the light of history, that, in spite of the probability of excesses and abuses, these liberties are, in the long view, essential to enlightened opinion and right conduct on the part of the citizens of a democracy.

Id. at 270-71 (internal citations omitted); *see also, Matal v. Tam*, 137 S. Ct. 1744, 1763 (2017) (“We have said time and again that ‘the public expression of ideas may not be prohibited merely because the ideas are themselves offensive to some of their hearers.’”).

In recent years, there have been a number of federal appellate court decisions in cases involving state actors (*i.e.*, government and public officials) restricting speech on social media websites, like Facebook and Twitter. While there is no U.S. Supreme Court or published Tenth Circuit opinion on point, there appears to be uniformity in how circuit courts of appeals are analyzing these cases. Unfortunately, it is very challenging to summarize the entire analysis because it can be so fact intensive – especially when a defendant claims they were not acting in their official capacity, but merely operating their personal social media page.

A. Tenth Circuit

In a recent unpublished opinion, the Tenth Circuit Court of Appeals, considered a claim for violation of the First Amendment by a citizen who had been blocked from reviewing and commenting on a Facebook page maintained by a county commissioner after the citizen posted comments critical of the commissioner.² *Swanson v. Griffin*, Case No. 21-2034, 2022 WL 570079 (10th Cir. Feb. 25, 2022). In its opinion, the Tenth Circuit noted that there is no U.S. Supreme Court or Tenth Circuit opinion addressing this question, and there were (at that time) only three circuit courts of appeals that had considered similar questions. The Tenth Circuit briefly summarized some of the general principles of law from the U.S. Supreme Court on government regulation of speech:

“It is axiomatic that the government may not regulate speech based on its substantive content or the message it conveys.” *Rosenberger v. Rector & Visitors of Univ. of Va.*, 515 U.S. 819, 828 (1995). If the government opens “a limited forum, ... [it] must respect the lawful boundaries it has itself set. [It] may not exclude speech where its distinction is not ‘reasonable in light of the purpose served by the forum,’ nor may it discriminate against speech on the basis of its viewpoint.” *Id.* at 829 (quoting *Cornelius v. NAACP Legal Def. & Educ. Fund, Inc.*, 473 U.S. 788, 804–06 (1985)). Furthermore, “the law is settled that as a general matter the First Amendment prohibits government officials from subjecting an individual to retaliatory actions . . . for speaking out.” *Hartman v. Moore*, 547 U.S. 250, 256 (2006).

The Tenth Circuit noted that “[t]hese general principles apply not only to traditional forums like a public sidewalk, but also to ‘metaphysical’ forums.” *Swanson*, 2022 WL 570079, at *8, (citing *Rosenberger*, 515 U.S. at 830). Accordingly, the Tenth Circuit held that “the First Amendment protects against viewpoint discrimination by the government in government-created public forums on social media.” *Id.* (citing *Packingham*, 137 S. Ct. at 1735) (emphasis added).

While well said, this was not a groundbreaking proclamation of new law. Generally speaking, it has been the law for many years. The real issue the Tenth Circuit was deciding was whether this was “clearly established” law under the particular facts of that case before the challenged conduct occurred. A legal right is “clearly established” when “a reasonable official would understand that what he is doing violates that right.” *Id.* at *6. The Tenth Circuit found that it was not “clearly established” because there was no Supreme Court or published Tenth Circuit case addressing a set of facts sufficiently similar to those at issue in the case, nor was there sufficient out-of-circuit authority to demonstrate that the law was clearly established “under the weight of authority.”

² Unpublished opinions have no precedential value, but may be cited as persuasive authority.

B. Opinions of Other Circuit Courts of Appeals

At the time of the Tenth Circuit's decision in *Swanson*, there were opinions by the Fourth, Fifth and Second Circuits on First Amendment rights in the context of restricting speech on social media. Since *Swanson*, the Eight and Ninth Circuits have also issued opinions.

The Fourth Circuit held that a county board member violated by the First Amendment by blocking the plaintiff from her Facebook page after the plaintiff posted comments critical of the board member. *Davison v. Randall*, 912 F.3d 666 (4th Cir. 2019). The Fourth Circuit noted that the board member created the page the day before she was sworn into office, titled the page as "Chair Phyllis J. Randall," and designated the page as a "governmental official" page.

The Fifth Circuit held that a County Sheriff's Office engaged in viewpoint discrimination in violation of the First Amendment when it deleted the plaintiff's comment and banned the plaintiff from further access and commenting on the Office's official Facebook page. *Robinson v. Hunt Cnty.*, 921 F.3d 440 (5th Cir. 2019). The deleted comment criticized a message posted by the Sheriff's Office about "people trying to denigrate or insult police officers on this page." *Id.* at 445.

The Second Circuit held that President Trump engaged in unconstitutional viewpoint discrimination by using Twitter's blocking function to limit access to his Twitter account, which he used for official purposes related to his presidency, because he disagreed with their speech that was critical of him and his policies. *Knight First Amend. Inst. at Columbia Univ.*, 928 F.3d 226 (2nd Cir. 2019); *vacated as moot* in *Biden v. Knight First Amend. Inst. at Columbia Univ.*, 141 S. Ct. 1220 (2021).

The Eight Circuit held that a Missouri state representative did not violate the First Amendment when she blocked a constituent from her Twitter account. *Campbell v. Reisch*, 986 F.3d 822 (8th Cir. 2021). The court reasoned that the account was created and used in a private capacity for her candidacy and campaigning for political office, and it continued to be used for that purpose after her election. Thus, the court decided she was not acting under color of law when she blocked the constituent.

Most recently, the Ninth Circuit held that two trustees of a school board violated the First Amendment when they blocked vocal critics from commenting on their public social media pages. *Garnier v. O'Connor-Ratcliff*, 41 F.4th 1158 (9th Cir. 2022). The trustees had used their social media pages, which were originally created to promote their campaigns for office, to keep constituents informed about "goings-on" at the school district and on the board, to invite the public to board meetings, to solicit input about important board decisions, and to communicate with parents about safety and security at school. The trustees each described themselves in the "About" section of these social media pages as a school board trustee and government official. Each of the trustees also had an additional private Facebook page that they only shared with family and friends. *Id.* at 1163.

C. Local Lawsuits

On a local level, there was a lawsuit for declaratory judgment filed in 2019 against the City of Norman and a city councilman. *Holcomb v. Hickman*, Cleveland County District Court Case No. CV-2019-276. In that case, a constituent, Holcomb, brought suit against Hickman and Norman alleging that Hickman unlawfully censored and deleted posts, comments and discussion threads that were critical of him on the official “Norman Ward 4 Facebook” page. The lawsuit was settled.

D. Conclusions and legal opinions

If it was published, the Tenth Circuit’s decision in *Swanson* would, alone, be sufficient legal authority to put reasonable officials in this jurisdiction on notice that it violates the First Amendment for the government in government-created public forums on social media to delete a social media comment or reply based on viewpoint. The mounting case law from other circuit courts reinforces that conclusion. In my opinion, they should be viewed, collectively, as clearly established law.³ For this reason, I recommend that the City **not** selectively block, remove or hide comments or replies by members of the public or ban members of the public **based on the viewpoint expressed**.

I would not recommend banning people from posting on the City’s social media pages, except in extreme circumstances. For example, if a person posted child pornography on the City’s social media page, they can be banned without hesitation. Conversely, a person who routinely makes comments that fall within the content parameters and occasionally posts a commercial advertisement (assuming that is outside the parameters) should probably not be banned. There are a lot of scenarios in-between these extremes, which should be considered on a case-by-case basis.

With regard to content, it is my opinion that it is legally permissible for the City to selectively block, remove or hide comments or replies by members of the public if the **content** of those comments clearly falls outside the purpose of the City’s social media page.⁴ The decision to block, remove or hide must be reasonable in light of the purpose of the social media page and be viewpoint neutral; i.e., not discriminate on the basis of the speaker’s point of view.

The social media pages maintained by elected and appointed officials of the City, as well as elected and appointed officials of related entities (e.g., Planning Commission, Board of

³ This is significant because violation of a clearly established constitutional right creates liability exposure for both the government entity and public official(s) involved. The county commissioner in *Swanson* was sued in his individual capacity – not his official capacity. Individual capacity claims present a **personal liability exposure** for a public official. While the Tenth Circuit found in *Swanson* that it was not clearly established law, the weight of authority has moved in that direction since *Swanson*.

⁴ The law also allows the City to operate a closed forum, so a neutral policy that disallows all comments and expressive conduct on the City’s social media pages would be permissible.

Adjustment, and various public trusts) are subject to the same rules applicable to the City's social media pages. While it is possible for an official to keep a personal or private social media page over which they have the same degree of control as any other citizen, it is important to recognize that the line between matters of a personal and official nature can easily become blurred. This is particularly true when the social media page is used for a reelection campaign for public office. "Running for public office is not state action; it is private activity." *Campbell*, 986 F.3d at 825. If there are council members or other elected/appointed officials who wish to maintain a private social media page for campaign activities, I would recommend that they read the Eight Circuit's opinion in *Campbell*. The court devotes much of its opinion to explaining how, in its view, a political candidate who currently holds public office can craft such a page without turning it into a public forum where anyone is free to post comments.

A straightforward approach that could help a public official maintain a private page without inadvertently running afoul of the prohibition on viewpoint discrimination would be to operate it as a closed forum on which no member of the public can post a comment or reply. If that is undesirable for some reason, then some examples of things that could be done to help maintain the "private" character of a personal social media page are (1) close the page to everyone except family and friends; (2) do not conduct official activity on the page; (3) do not use the page to announce, describe or defend official policies; (4) do not use the page to solicit feedback about official decisions; (5) do not use it to announce official events, such as city council meetings; (6) do not refer to an official title; (6) do not label the page as an "official" or "government" page or the like; (7) do not post photographs or videos that suggest the page is related to official duties; and (8) include a disclaimer that says the page is personal and private, and that it is not maintained in an official capacity.⁵ This is only intended to be a non-exhaustive list of examples.

II. The Open Records Act and Social Media Accounts

The Open Records Act ("ORA") creates a public right of access to certain records of public bodies and public officials. Under the ORA, a record is subject to public disclosure unless some provision of law requires or allows it to be kept confidential. The ORA defines "record" as follows:

"Record" means all documents, including, but not limited to, any book, paper, photograph, microfilm, data files created by or used with computer software, computer tape, disk, record, sound recording, film recording, video record or other material regardless of physical form or characteristic, created by, received by, under the authority of, or coming into the custody, control or possession of public officials, public bodies, or their representatives in connection with the transaction of public business, the expenditure of public funds or the administering of public property.

⁵ One example of such a disclaimer could be: "*This page is my own personal page that I use for private purposes, and the content is not endorsed by and does not reflect the official position of any government entity or public official, including myself.*"

Within the ORA and other statutes, there are many exceptions for records that are considered confidential and, therefore, not open to the public. Determining whether a record falls within an exception is a fact intensive inquiry.

There is no question that city council members and employees are “public officials” for purposes of the ORA, as are the appointed and elected officials of related entities, such as the Planning Commission, Board of Adjustment and public trusts. OKLA. STAT. tit. 51, § 24A.3.

As you can see in the above definition, to be considered a record under the ORA, the material must have one of three characteristics: (1) it must be connected with the transaction of public business, (2) the expenditure of public funds, or (3) the administering of public property. These terms are to be broadly construed to facilitate public access to government records. Oklahoma courts have been clear that any doubt about whether material is a record must be resolved in favor of public disclosure. *Ross v. City of Owasso*, 481 P.3d 278, 282 (Okla. Civ. App. 2020).

There is more clarity about the meaning of “expenditure of public funds” and “administering of public property,” than there is about “transaction of public business.” There is surprisingly little legal authority in Oklahoma that clearly defines “transaction of public business.” The Oklahoma Supreme Court has stated that the phrase means “the business of the whole people of the state.” *State ex rel. Freeling v. Lyon*, 165 P. 419 (Okla. 1917). The Oklahoma Attorney General (“AG”) has suggested, but not definitively opined, that a record is connected to the “transaction of public business” if it pertains to any part of the deliberative or decision-making process of public officials. 2002 OK AG 5, ¶ 17. This interpretation is consistent with the AG’s construction of the term “business” in the Open Meeting Act to be the entire decision-making process, including every thought, deliberation, decision or formal action by a public official as it relates to and is within the scope of his or her official duties. 1982 OK AG 212.

Posts, comments and replies on social media pages of elected and appointed officials of the City, including council members and employees, as well as related entities (*e.g.*, Planning Commission and Board of Adjustment) may or may not be a “record” under the ORA. The answer depends on whether the communication is connected with the transaction of public business, the expenditure of public funds, or the administering of public property.⁶

The AG has previously considered whether e-mails, text messages and other electronic communications that are connected with the transaction of public business, the expenditure of public funds, or the administering of public property lose their character as records subject to the

⁶ The determination of whether a specific post, comment or reply falls within one of these categories, and whether any provision of law makes the record confidential, is factually driven. If there is a question about a specific communication, I would be pleased to review it and provide an opinion on whether it is a record available to the public under the ORA.

ORA if they are created, received, transmitted or maintained by public officials on privately owned devices or personal accounts. 2009 OK AG 10. **The answer is “no.”** Ownership of the communication device or account has no bearing on whether a communication is a record under the ORA. A communication that meets the definition of a record is subject to public disclosure regardless of whether it was created, received, transmitted or maintained on a publicly or privately owned device or personal account.

It is a logical extension of this principle that social media posts, comments and replies by elected and appointed officials are “records” under the ORA if they are connected with the transaction of public business, the expenditure of public funds, or the administering of public property, regardless of whether they were created, received, transmitted or maintained on a personal or official social media account. It is the content of the post, comment or reply, not the character of the page that is relevant to determining whether it is an open record accessible to the public.

III. Liability for Content on Social Media Pages

It is possible for the content of social media pages maintained by the City or its elected/appointed officials to create exposure to claims for liability, including but not limited to, claims for defamation, invasion of privacy, violation of intellectual property rights, discrimination, harassment and other improper employment practices resulting from the use of social media sites. Likewise, the manner in which those pages are administered can create liability exposure for violation of constitutional rights (*e.g.*, First Amendment violation for deleting a comment). Just because there is exposure to a claim does not mean the claim is meritorious. It may or may not be depending on the unique facts and law at issue in each case.

I recommend that the City include on its official social media pages a disclaimer of responsibility for the content on any social media page maintained by an elected or appointed official. I would be happy to suggest some language if you are interested in adding a disclaimer.

If there are any questions or I can be of further assistance, please do not hesitate to contact me.

Respectfully yours,



Eric D. Wade
ROSENSTEIN, FIST & RINGOLD

EDW/lkl