PETITION AUDIT

City of Glenpool

July 1, 20007 through December 31, 2012

Oklahoma State
Auditor & Inspector

Gary A. Jones, CPA, CFE

CITY OF GLENPOOL

TULSA COUNTY, OKLAHOMA

PETITION AUDIT REPORT

JULY 1, 2007 THROUGH DECEMBER 31, 2012

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Oklahoma State Auditor & Inspector

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October 3, 2013

Citizens and Petitioners
City of Glenpool, Oklahoma

Transmitted herewith is the Special Audit Report for the City of Glenpool and its public trusts.

Pursuant to **74 O.S. § 212(L)**, 10% of the registered voters of a political subdivision may request that our office audits the books and records of the political subdivision.

Pursuant to your request and in accordance with those requirements, we performed an audit for the period July 1, 2007, through December 31, 2012.

The objectives of our audit primarily included, but were not limited to, the areas noted in your petition. Our findings and recommendations related to these objectives are presented in the accompanying report.

Because a special audit is not an audit conducted in accordance with generally accepted auditing standards, we do not express an opinion on the account balances or financial statements of the City or its trusts.

Our goal is to promote accountability and fiscal integrity in state and local government. Maintaining our independence as we provide this service to the taxpayers of Oklahoma is of utmost importance.

We wish to take this opportunity to express our appreciation for the assistance and cooperation that all city officials and employees extended to our office during the course of our audit.

This report has been prepared for the citizens of Glenpool and for city and state officials with oversight responsibilities. This document is a public document pursuant to **51 O.S. § 24A.1, *et seq*.**

Sincerely,

GARY A. JONES, CPA, CFE
OKLAHOMA STATE AUDITOR & INSPECTOR

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CITY COUNCILORS

At-large .....Alyce Korb, April 2011 – present
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Ward 1.....Tim Fox, April 2005 – present

Ward 2..... Momodou Ceesay, April 2013 – present
..... Leanne Roberts, April 2009 – April 2013
.....Kurt Scheckel, April 2005 – April 2009

Ward 3.....Patricia Agee, April 2011 – present
..... Keith Robinson, April 1991 – April 2011

Ward 4.....Tommy Carner, April 2011 – present
.....Dennis Czeschin, April 2007 – April 2011

APPOINTED OFFICIALS

MAYOR

Momodou Ceesay, April 2013 – present
Tommy Carner, April 2011 – April 2013
Shayne Buchanan, April 2005 – April 2011

VICE MAYOR

Alyce Korb, April 2011 – present
Keith Robinson, April 2003 – April 2011

CITY MANAGER

Ed Tinker, May 2007 – June 2007 (Interim), July 2007 – present

Introduction

The municipal government of the City of Glenpool is organized under the statutory Council-Manager form of government, as outlined in **11 O.S. § 10-101, *et. seq.*** The City is also subject to the provisions of other sections of Title 11 of the Oklahoma Statutes.

The City is governed by the City Council and a city manager. The Council consists of five members, four of whom are elected from wards, and one of whom is elected at large. The Council selects one of its members to serve as mayor and one to serve as vice mayor. The Council appoints the city manager and a city treasurer.

The city manager appoints a city clerk, who serves as the clerk of the Council; a city attorney; a police chief; a fire chief; and the heads of any other departments that the Council establishes.

The Glenpool Utility Services Authority (GUSA), Glenpool Industrial Authority (GIA), and Glenpool Cemetery Trust Authority (GCTA) are public trusts established under **60 O.S. § 176**. The GUSA operates the utility services; the GIA coordinates industrial development; and the GCTA was established to operate a city cemetery, but was inactive at the time of fieldwork. The city councilors serve "ex officio" as the trustees of the public trust authorities.

A private, independent audit firm, CBEW Professional Group, currently audits the City and its public trusts annually, as required by law.

Notes

1. All dollar amounts included in this report are rounded to the nearest dollar unless full amounts needed to be specified.
2. Fiscal years in this report are abbreviated by using the ending calendar year. For example, the fiscal year of July 1, 2010 through June 30, 2011, would be identified as "FY11."
3. All material quoted in this report is written as it was originally written, regardless of grammar, spelling, or punctuation.

OBJECTIVE I: Review compliance with the Open Records, Open Meeting, and Records Management Acts

Background

Oklahoma's Open Records Act (ORA) and Open Meeting Act (OMA) exist to further the public policy "that the people are vested with the inherent right to know and be fully informed about their government" and "to encourage and facilitate an informed citizenry's understanding of the governmental processes and governmental problems."[1]

Oklahoma's Records Management Act requires cities to "promote the principles of efficient records management" by following the state records-management program "as far as practical."[2] The Act pertains to all records, including e-mail messages, made or received by; under the authority of; or coming into the custody, control, or possession of public officials in the course of their public duties.[3]

In relation to petition audits, alleged violations of the ORA and OMA are some of the most common concerns requested to be reviewed by the Office of State Auditor and Inspector.

FINDINGS RELATED TO THE OPEN RECORDS ACT:

Finding #1

City officials have estimated that fees of up to almost $40,000 would be required to respond to various records requests by one individual.

The Open Records Act stipulates "*In no case* shall a search fee be charged when the release of records is in the public interest, including, but not limited to, release to the news media, scholars, authors, and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their duties as public servants" *[emphasis added]*.[4]

In 1995, a panel of the Oklahoma Court of Civil Appeals referenced an Oklahoma Supreme Court case to affirm a trial court decision allowing a search fee to be charged to a taxpayer for 4,300 documents that was estimated to take three employees a week to compile and would require

[1] 25 O.S. § 302; 51 O.S. § 24A.2
[2] 67 O.S. § 207, 1988 OK AG 35; supported by 2001 OK AG 46, 1996 OK AG 26, and 1999 OK AG 55
[3] 67 O.S. § 209
[4] 51 O.S. § 24A.5(3)

redactions.[5] However, the Supreme Court case did not actually address the same situation that the Court of Civil Appeals panel was addressing.[6]

The following year, the Office of Attorney General relied on the same Supreme Court case while still distinguishing, as the Act itself, the "excessive disruption" provision and the "public interest" provision.[7]

In the specific instances when the Act allows officials to charge search fees, the fees must be "reasonable" and may not be "used for the purpose of discouraging requests for information or as obstacles to disclosure of requested information."[8] The Act also prohibits the charging of copying fees for electronic copies of records in a computer-readable format.[9]

Based on city officials' responses to records requests, charges or estimated charges to the taxpayer included $6,000; $2,400; $1,800; $1,500; $1,350; $1,200; $600; $536; and $480.

On March 2, 2011, the taxpayer requested copies of all e-mail messages to and from all city officials/employees since November 1, 2006, relating to city business. Susan White, the city clerk, informed him that he would be required to pay a deposit of $39,980 before city officials complied with the request. Ms. White provided the following response, drafted by Lowell Peterson, the city attorney:

[5] 1995 OK CIV APP 145
[6] 1992 OK 53
[7] 1996 OK AG 26
[8] 51 O.S. § 24A.5(3)
[9] 2005 OK AG 21

I need to advise you that compliance with this request, although admittedly required by the Open Records Act, is likely to be a monumental task that will be of substantial expense to you.

Components of meeting your request and estimated costs (based upon an extremely conservative estimate of 50,000 emails) include the following:

Description of Task	Estimated Time/Cost
Director of Human Resources will identify all employees and officials who do now or have worked for the City of Glenpool between those dates. (Estimate = approximately 135)	4 hours; $60.00
Retain a "skip tracer" or similar contractor to locate all former employees/officials.	Estimate = $3,000
Send former employees/officials (estimate of 65) certified letters requesting them to provide any emails generated or received on personal computers that comply with your request and advising them of the penalty for failure to comply.	Letter preparation/printing = 4 hours; $60.00 65 x certified mail rate of $5.54 = $360.10
Retrieval by technical consultant of all emails for the designated period of time, including past and present employees/officials, on current server and any prior systems; printing off all such emails (low estimate of 50,000)	Estimate = $6,500
Estimated time for 4 employees to sort through 50,000 emails to determine which do or do not comply with your request at the rate of 50 per employee per hour (a high estimate)	50,000 emails/200 emails per hour = 250 hours X $60.00 per hour for four employees = $15,000
Estimated time for Clerk to review low estimate of 30,000 emails that satisfy your request of 50,000 printed to determine portions that need to be redacted	At the rate of 1 minute per email, 30,000 emails = 500 hours x $15 per hour = $7,500
Copying charge of $0.25 per page for low estimate of 30,000 emails that satisfy your request.	30,000 x $0.25 = $7,500
DEPOSIT TO BE PAID IN FULL BEFORE COMMENCING PROJECT (and to be supplemented if costs overrun this estimate)	**$39,980.10**

The taxpayer submitted an amended request, asking for the e-mail messages of 15 specific employees. City officials reduced the estimated deposit to $34,098.

Mr. Peterson appears to interpret the Act's "public interest" provision narrowly, stating that it "relates to entities requesting the information who fulfill a public function, such as taxpayers acting in a similar capacity as 'news media, scholars, and authors.'" As an example, Mr. Peterson said that a taxpayer "representing a group of taxpayers of sufficient number to bring what is called a 'qui tam' action or conducting an inquiry into whether such a taxpayer lawsuit is warranted" or a taxpayer who "suspects some particular misconduct" would be exempt.

According to Mr. Peterson, "It is our duty to make an assessment as to the authenticity of eligibility for that exemption." Additionally, he stated that many municipalities, including Tulsa and Jenks, charge fees to people "just for requesting" records. According to the City of Tulsa's Web site

and the City of Jenks' records-request form, neither city charges a "request" fee.

Finding #2 **City officials estimated that it could take up to three months to respond to some records requests.**

The Open Records Act requires city officials to "provide prompt, reasonable access" to records.[10] In November 2009, the same taxpayer requested the minutes and agendas of Board of Adjustment meetings for the past two years. Mr. Peterson responded, "Compiling the agendas and minutes for meetings that occurred over a 24-month period is going to be time-consuming and costly."

In December 2009, the taxpayer requested "any and all documents related to how the City of Glenpool is paying for the design and construction of the new conference center located at 121st Street South and Hwy. 75, including but not limited to, land contracts, bonds, etc." Ms. White responded, "Estimated search time for this request is 80 hours plus 90 days to produce the documents."

In December 2009, the same taxpayer requested a "payroll report or any report" for the Police and Fire departments "that show job title and employee name for all employees that are not classified as police officers or firemen, from 2005 to present." The City's Web site indicates that the total number of employees and volunteers, classified and/or unclassified, for these two public-safety departments is *approximately 70*. Ms. White responded, "Estimated search time for this request is 160 hours."

Finding #3 **City officials appeared to interpret some records requests in a manner that was intended to avoid providing the requested records.**

The same taxpayer requested on November 30, 2009, "any and all documents related to the *financing* for the new Conference Center including but not limited to contracts, closing statements, and documents required in order to obtain the *financing*" *[emphasis added]*.

Mr. Peterson responded, "There are no public records that comply with this request." According to Ms. White, city officials did not provide records because the City did not *borrow* money from a *lending institution* to *finance* the construction but, instead, *paid* for the Conference Center with *bond funds*.

[10] 51 O.S. § 24A.5(5)

In response to the taxpayer's request for a payroll report for the police and fire departments showing non-classified personnel "from 2005 to the present," as referenced above, city officials responded that he would have to pay a deposit of $2,400. The taxpayer remarked in an email exchange, "I was charged only $2.50 to obtain the payroll report listing all of the policemen and firemen within the City of Glenpool yet I am being charged $2,400 to just review the same payroll report that would include all employees within the police and fire departments."

According to Mr. Peterson, the taxpayer "did NOT ask 'to just review the same payroll report that would include all employees within the police and fire departments.'" Rather, the request as stated was for the city clerk "to research 'payroll report or **any report** for Departments 01-03 and 01-06 [police and fire] that show job title and employee name for all employees that are **NOT** classified as police officers or firemen' for a three year period," "a substantial task" [*emphasis in original*].

According to Mr. Peterson, since the taxpayer had accused city officials of not providing *all* requested information, they "began interpreting 'all' in its broadest application" with the intent "to protect ourselves from any implication of withholding anything that might remotely fit within the scope of his request." As a result, they "quoted him search fees that, in other circumstances with a more cooperative requester, might appear exorbitant and may have the effect of discouraging his request."

FINDINGS RELATED TO THE OPEN MEETING ACT:

Finding #4 **City officials have apparently discussed business in executive session that was not one of the statutorily-authorized purposes for executive sessions.**

On June 21, 2010, and June 18, 2012, the City Council entered executive sessions "for the purpose of conferring on matters pertaining to economic development." In each instance, after exiting the executive sessions, the Council voted to approve contracts with independent economic-development firms.

There are certain issues involving economic development that are allowed to be discussed in executive session, as described in **25 O.S. § 307(C)(10)**. However, *contracts with independent contractors,* even for economic-development firms, are not authorized in those exceptions to the Act.[11]

[11] 2005 OK AG 29

Finding #5 **Minutes were not kept for some City Council meetings during the early years of the audit period.**

Minutes were not taken for at least nine City Council "workshop" meetings between July 2008 and June 2010. *Any* time a quorum of city councilors meets to discuss city-related business, the Open Meeting Act applies.[12] The City began keeping minutes of workshop meetings starting in FY11.

FINDINGS RELATED TO RECORDS MANAGEMENT ACT:

Finding #6 **The City does not adequately retain e-mail messages sent to and from city employees.**

The City contracts with a Tulsa computer company to manage the City's computer network and server. David Tillotson, the assistant city manager, handles minor, internal computer issues.

City employees use Microsoft Outlook for work e-mail. E-mail messages are saved on individual computers for as long as each user keeps them. After a user deletes a message, it is archived on the server for 30 days and then deleted permanently.

On May 24, 2011, the same taxpayer requested e-mails to and from the city manager since April 1 of that year. The City's computer contractor searched the City's network and individual computers at City Hall, and billed the City $1,200 for 14.5 hours of work and $200 for printing 1,059 pages of 624 e-mails. Mr. Peterson informed the taxpayer that he would have to pay $1,400 to obtain the e-mails.

Conclusion City officials have not consistently followed all provisions of the Open Records Act or Open Meeting Act during the audit period.

Recommendation A copy of this report will be provided to legal authorities to evaluate whether the above instances constitute "willful" violations, subject to prescribed penalties[13].

[12] 25 O.S. § 304(2)
[13] per 51 O.S. § 24A.17(A) and 25 O.S. § 314

City officials should consider the purchase of an e-mail-archiving system to save expenses and time when searching for and producing e-mail communications.

Commendation

Significant improvement has been made in the quality of meeting minutes after Ms. White was appointed city clerk on August 4, 2008. The minutes of public meetings included noticeably more information and better details than previous meeting minutes.

OBJECTIVE II: Review purchasing and bidding procedures

Background

Oklahoma's **Title 61** Public Competitive Bidding Act requires public entities, including municipalities and their public trusts, to competitively bid all public-construction projects in excess of $50,000 and to solicit written bids or competitive quotes for public-improvement projects of $50,000 or less.[14]

Oklahoma's **Title 60** Public Trust Act requires public trust authorities to competitively bid "construction, labor, equipment, material, or repairs" in excess of $50,000.[15]

A Glenpool city ordinance requires city officials to competitively bid construction projects of $7,500 or more; non-"professional" contract services of more than $7,500; and purchases of supplies, materials, and equipment that cost more than $7,500.[16]

Another Glenpool city ordinance allows the city manager to approve change orders less than $7,500 or 10% of a contract (whichever is less) if necessary to avoid a cost increase before the next City Council meeting, and it requires the city manager to report such change orders to the City Council at its next meeting and provide documentation to verify that they were "necessary and prudent".[17]

Finding #1

The City contracted with a construction manager for the construction of the Conference Center.

On August 4, 2008, the City Council voted to issue bonds through the Glenpool Utility Services Authority to construct a conference center that would house a new City Hall as well as the Glenpool Chamber of Commerce's offices.

[14] 61 O.S. § 103
[15] 60 O.S. § 176(H)
[16] City Code § 3.04.050, per 11 O.S. § 10-116, supported by 61 O.S. § 133
[17] City Code § 3.04.070(G)

City officials solicited bids for a construction company to manage the construction of the Conference Center, as allowed by state law.[18] The City subsequently contracted with Key Construction to manage the construction of the building for a maximum price of $9,596,470 and to manage the construction of lake amenities in front of the building for a maximum price of $1,500,000.

The contracts provided respective contingency funds of $219,493 and $34,421 for Key Construction to use for "omissions in the scope of work, supplementing subcontractors' performance issues, and the resolution of subcontractor or supplier default issues." Additionally, the contract for the lake amenities provided an "allowance" of $105,626 for the City.

Key Construction bid the project as 50 different parts and contracted with subcontractors to perform the work, as allowed by state law.[19]

During the course of construction, city officials approved 20 change orders to the contracts as follows:

Change(s)	Approval	Number
Added $254,216 to the contracts	City Council	3
Added $5,259 to the contracts	City manager	2
Deducted $3,146 from the contracts	City Council	1
Expended $246,182 from contingency funds	City staff	8

[18] 61 O.S. §§ 62(I), 220
[19] 61 O.S. § 202.1, supported by 2009 OK AG 19

Added working days to the project	City staff	5
Corrected a previous mathematical error	City staff	1

The City paid Key Construction $11,352,799. Additionally, the City paid MATRIX Architects $708,554 for designing the Conference Center and Howell & Vancuren $101,860 for designing the lake amenities.

Conclusion

City officials added $502,511 to the initial cost of the project, or less than 10% of the total contract amount. An increase in excess of 10% would have required the City to rebid the contract.[20]

Finding #2

Part of the Conference Center construction project was awarded without competitive bidding to a company that employed the city manager's daughter.

The Public Competitive Bidding Act prohibits the "chief administrative officer and members of the governing body" and their "relatives within the third degree" from being "*interested* directly *or indirectly* through stock ownership, partnership interest, *or otherwise*" in any public-construction contract that the city "authorizes or awards or supervises" *[emphasis added]*.[21]

Key Construction, the construction manager for the Conference Center project, bid 48 of 50 separate projects/subcontracts for the complete

[20] 61 O.S. § 121(B)
[21] 61 O.S. § 114

project. One of the two parts that were administered differently at a later date was the signage. The other was the metal architectural mesh, which, according to Key Construction officials, had to "meet certain architectural and engineering standards." Key Construction issued change order #007, dated December 27, 2010, for the signage at the request of "GCC owner," meaning Glenpool Conference Center owner.

GCC Owner Change Order Request	
DESCRIPTION	SUBNAME
Signage	Acurra
Foundations and Wall	Northeastern

On June 10, 2010, Acura Neon, A-max Signs, and CNF Signs had submitted proposals to construct and install the signage inside and outside the Conference Center. Lynn Burrow, the community-development director, wrote responses to the three companies, and his letter to Acura Neon was addressed to Mr. Tinker's daughter, an employee of the company.

On June 21, 2010, the City Council discussed the three proposals but did not vote. According to Mr. Burrow:

> The Council reviewed the three proposals as related to overall concept design, colors, and appropriateness. Generally, the instructions from the Council coming from that meeting were that the concepts presented by Acura Neon Sign Co. seemed to be the closest to what would be acceptable by the Council moving forward through final design, but that they would need to incorporate several modifications discussed in the workshop. At that point in the process, there were no costs associated with any of the design proposals – only design concepts to be finalized and priced at a later date.

On June 30, 2010, Mr. Burrow sent letters to A-max Signs and CNF Signs, notifying them that city officials selected "another company" to provide the signs. On January 3, 2011, the City Council approved a $107,078 change order for the signs, $85,000 of which was for Acura Neon to create the signs.

According to Mr. Burrow, "The final design and pricing for these signs were developed between" the June 21, 2010, and January 3, 2011, City Council meetings. The final design and pricing for the contract was apparently set through negotiation rather than a competitive bid process.

Acura Neon manufactured and installed the following signs:

Signage	Cost
Parking-lot sign with electronic message board	$56,360
"Glenpool Conference Center & City Hall" lettering on exterior wall	$14,630
"Glenpool Conference Center" lettering on outdoor stone wall	$10,930
Multiple room-identification signs on interior walls	$3,755
"City Council", *"City Administration"*, *"City Clerk /Finance"*, and *"Community Development"* lettering on interior walls	$3,703
"Entrance" lettering on exterior wall	$3,080
"Chamber of Commerce" lettering on interior wall	$1,003
"City of Glenpool" lettering on interior wall	$875
Temporary *"Construction Site"* sign	$750
Total	$95,086

Acura Neon's invoices listed Mr. Tinker's daughter as the sales representative for the project.

Mr. Tinker stated that, while his daughter did work for Acura Neon, she was not the company's sales representative for the project, and the paperwork listed her that way only because it was easier for Acura Neon to have her get documents signed by city officials since she lived in

Glenpool. He maintained that the Council chose the signage design and that he "did not have anything to do with it." He also said that he disclosed to the Council that his daughter worked for the company.

Former Vice Mayor Robinson and former City Councilor Kurt Scheckel (in relation to Finding #3 below) said that they were not informed that Mr. Tinker's daughter was an employee of Acura Neon. Former Mayor Buchanan and former Councilor Leanne Roberts said that they did not recall that he informed them but that he probably did because he was "always good about disclosing" things of that nature. Councilor Tim Fox said that he was aware of her employment because Mr. Tinker had been "forthcoming" about it. However, he believed that she worked in a non-sales capacity and did not know that some documentation identified her as the sales representative.

Mr. Tinker said that, because city councilors do not work in City Hall every day and, instead, simply attend meetings, they often do not remember specific details about some things.

Conclusions

Although the signage subcontract cost nearly twice the $50,000 bid limit in **Title 61**, this aspect of the Conference Center project was awarded without a competitive bid process.[22] City officials awarded the signage subcontract to a company that employs the city manager's daughter.

Some of the documentation for this subcontract identified the city manager's daughter as the company's sales representative for the project. Without regard to any disclosures or nondisclosures on the part of city officials, a relative within the third degree receiving a benefit from a public construction contract would be contrary to the conflict of interest provision of the Public Competitive Bidding Act."[23]

Recommendations

A copy of this report will be provided to legal authorities to evaluate whether the circumstances regarding the signage subcontract described above constitutes a "willful" violation, subject to prescribed penalties.[24]

The city manager should disclose to the Council any conflicts of interest or potential conflicts of interest of any kind that he has or may have, and city councilors should disclose the same to the full Council. Adequate documentation should be kept for all such disclosures.

[22] 61 O.S. § 220(F), supported by 61 O.S. §§ 103(A) and 202.1(D), supported by 2009 OK AG 19
[23] 61 O.S. § 114
[24] per 61 O.S. § 114

Finding #3

The City has purchased other signs from the company that employs the city manager's daughter, including one contract that exceeded the bid limit, following a change order.

In November 2008, two months after Mr. Tinker's daughter began working for Acura Neon, the company submitted a proposal to manufacture and install three signs for $39,324.

Mr. Tinker recommended, and the Council approved, spending up to $49,900 for the signs. Acura Neon then submitted a proposal to manufacture and install *four* signs for *$48,416*, and Mr. Tinker accepted the proposal.

The Council later voted to approve (with former Vice Mayor Robinson voting against) paying three companies, none of which was Acura Neon, for costs associated with relocating one of the signs and increasing its height.

City officials later approved a change order to pay Acura Neon an additional $3,625 for costs associated with the height increase, resulting in payment of $2,141 more than what the Council initially approved, and resulting in a total cost in excess of the $50,000 statutory bid limit.

Mr. Tinker apparently did not report the change order or provide supporting documentation to the Council.

Conclusion

City officials awarded the manufacture and installation of the "*Welcome to the City of Glenpool"* signs without a formal bid process.

City officials awarded the manufacture and installation of the *"Welcome"* signs to the company that employs the city manager's daughter who, according to documentation, served as the company's sales representative for the project.

The city manager did not properly inform the City Council after he approved the change order to pay the company additional money with respect to increasing the height of one of the *"Welcome"* signs.

Recommendation A copy of this report will be provided to legal authorities to evaluate whether the circumstances regarding the *"Welcome"* signs constitute a "willful" violation, subject to prescribed penalties.[25]

[25] per 61 O.S. § 114

OBJECTIVE III: Provide an analysis of the costs of debt issuance

Background

The creation of public trust authorities was authorized in 1951 to provide a way for municipalities to issue *revenue* bonds.[26] Issuing such bonds was otherwise illegal for municipalities, prohibited by the State Constitution.[27] Prior to 1951, municipalities could issue *general-obligation* bonds for capital improvements, payable from property-tax levies. Revenue bonds are secured by "pledged" revenue, generally from utility services and/or a municipal sales tax.

Revenue bonds are considered as carrying more risk than general-obligation bonds. The bond prospectus and related filings are somewhat more complex, but they are still essentially a large amount of "boilerplate" regulatory language, along with the dollar amounts and some additional financial information that is compiled to provide potential investors with the data needed to make a decision on whether to invest in the municipality's revenue bonds.

Issuing municipal revenue bonds to the investing public and/or institutional investors, such as insurance companies, pension funds, labor unions, and mutual funds, requires some financial preparation and financial related contractors. Fees paid to bond attorneys, financial analysts, underwriters, insurers, trustee banks, and rating agencies generally comprise the major portion of revenue-bond issuance costs. A provision in **Title 60** allows three-fourths of a city council / trust-authority board to issue bonds without competitive bidding.[28]

Finding #1

Since 2007, the bond issues and loans of the Glenpool Utility Services Authority have cost approximately $3 million in fees and other costs.

In Oklahoma, it has been the customary and almost standard procedure for municipalities and other political subdivisions to "waive competitive bidding procedures" for the services related to issuing general-obligation and/or revenue bonds. Bid statutes for political subdivisions, including public trust authorities, generally do not apply to "professional services."

The bond indentures for the revenue bond issues and the Oklahoma Water Resources Board (OWRB) loan documents were reviewed to determine

[26] 60 O.S. § 176
[27] Okla. Const. art. X § 26
[28] 60 O.S. § 176(F)

the amount of costs related to the amounts borrowed by the Glenpool Utility Services Authority (GUSA) from 2007 through 2011. The analysis included the Utility Revenue Refunding Bond Payable, Series 2007, through the 2011 promissory note to the OWRB. A detailed analysis of the various fees is included in Appendix I.

The total cost of issuance during the period was $2,941,776. The largest fee subtotal was $814,896 paid for "insuring" the 2007, 2010, and 2011 bond issues, followed by $752,014 paid to financial advisor firms; $555,477 paid to bond attorneys; $409,994 paid to underwriters; and $262,251 paid to the former and current city attorneys.

City Councilor Tim Fox said that he was aware of the costs of issuance associated with the bonds and that they were part of "the cost of doing business." Former Mayor Shayne Buchanan also said that he was aware of the costs and that the Council knew the direction that it wanted to take the city and had to issue bonds to make it happen.

Former Vice Mayor Keith Robinson said that he was aware of the costs but not of all of the specific amounts that were paid to whom because the councilors were typically not provided many of the details. Former Councilor Kurt Scheckel also said that the councilors were not provided specifics. Former Councilor Leanne Roberts stated that she was generally aware of the costs, but not of specifics.

Finding #2 **The current city attorney, a full-time city employee, received $50,000 from the 2010 and 2011 bond proceeds.**

Lowell Peterson, the current city attorney, received two payments totaling $50,000 from the 2010 and 2011 bond proceeds. Mr. Peterson was a full-time employee with an annual base salary of $75,000 at the time of these bond issues. We found no formal contract for the city-attorney position describing the scope of duties or the pay rate for duties performed.

Mr. Peterson indicated in an interview that he had taken a substantial pay cut in moving from out of state and had outlined in a letter to Ed Tinker, the city manager, that his salaried services would not include litigation or bond issues. Bond records indicated the previous city attorney, Phil Frazier, who was a contract attorney rather than a city employee, was paid $212,251 for the 2007, 2008, and 2009 bond issues.

According to Mr. Peterson, his compensation for the bond issuances did not result in additional expense because the bond attorneys' fee was going to be a certain percentage, and they agreed to share part of their fees. This

explanation was somewhat contradicted by John Weidman, with the bond-attorney firm, who said that the sharing of fees with "local counsel" was a prior practice seldom done anymore. Mr. Weidman explained that the fees for the bond counsel and local counsel were "separate from each other" and set by "the Authority".

The payment of fees from bond-issue proceeds to local municipal attorneys is a long-standing practice and not unusual for municipalities. However, municipal attorneys have usually been "contract" attorneys paid on a monthly-retainer basis. What makes this issue somewhat different is the payment of bond-issue-related legal fees to a full-time employee, with no formal contract that specifies such an arrangement.

Finding #3

The legal and financial-advisor fees paid by the Glenpool Utility Services Authority were substantially higher than those paid by the State of Oklahoma, which obtains competitive quotes for professional services based on hourly rates.

Since 2007, the bond-counsel, GUSA-counsel, and financial-advisor fees for the GUSA's bond issues and promissory note have totaled $1,569,742. This amount is approximately 2.2 percent of the total $71,670,625 borrowed and/or refinanced.

By comparison, the State of Oklahoma paid $440,517 in bond-counsel and financial-advisor fees for five particular bond issues between 2009 and 2011. The total of those five bond issues was $656,280,000, or approximately nine times the total of the GUSA bond issues. Per $1,000 borrowed, the cost paid by the GUSA was nearly *33 times* the cost incurred by the State for similar services. This comparison is a likely result of the long-standing customary practice of waiving competitive bidding of fees for local-government bond issues.

The State Bond Advisor has substantially reduced costs to the State of Oklahoma for its bond issuance by using Requests for Proposal or RFPs for professional services based on *hourly* fees and estimated hours of service, rather than the *percentage*-based fees, more often charged for bond indebtedness issued by Oklahoma's political subdivisions.

Conclusion

The costs related to the increase in long-term-bond and note obligations issued by the GUSA were significant, but those costs could have been reduced by prudent planning and obtaining competitive hourly rates rather than waiving competitive bidding for professional services.

Recommendation City officials should contact the State Bond Advisor's Office for information on how to competitively award contracts for financial-related professional services.

In the absence of a competitive-selection process, the GUSA could negotiate fixed fees for these services. Such fees should reflect not only a reasonable estimate of the time required to provide the service but also a reasonable hourly rate, as determined by a competitive or negotiation process.

OBJECTIVE IV: Review bond issues and debt service requirements

Background

The State Constitution allows the *City* to become indebted in any given year in an amount exceeding the income and revenue provided for the year, only if voters approve the indebtedness and an increase in taxes to pay for it.[29]

A state statute allows a *public trust authority* of the City to become indebted if two-thirds of the trust board, which is often comprised of the city councilors, approves the indebtedness.[30] However, any increase in general taxation to help pay for the new trust indebtedness, such as a sales or property tax, requires a vote of the citizens.

Finding #1

The City's trust authority issued bonds or obtained loans totaling $71,670,625 since 2007.

In June 2007, the Glenpool Utility Services Authority (GUSA) had outstanding long-term debt from bonds payable, notes payable, and two capital leases that totaled $7,299,068, according to the City's independent FY07 audit report.

Since July 2007, the GUSA has issued bonds and obtained an Oklahoma Water Resources Board (OWRB) loan totaling $71,670,625, as follows:

Year	Amount	Interest Rates	Maturity Dates
2007	$6,355,000	3.5% - 4.5%	October 2010-2017, 2022, 2027, 2032, 2037
	$3,945,000	5.75% - 6.45%	October 2017, 2022, 2027, 2037
2008	$10,000,000	4%	August 2013
	$6,000,000	6%	
2009	$2,000,000	3.7%	August 2013
2010	$29,575,000	3.5% - 5.15%	December 2015-2025, 2030, 2035, 2040
	$2,740,000	3% - 6%	December 2015, 2020, 2025
2011	$7,315,000	5% - 5.15%	December 2011, 2013-2025, 2030, 2035, 2040
	$3,740,625*	2.16% + .5% fee	Earlier of 20 years after project completion or September 2032

*The loan from the OWRB was by promissory note.

[29] Okla. Const. art. X § 26
[30] 60 O.S. § 176(F)

The GUSA issued the bonds and obtained the OWRB loan for the following purposes:

Bond	Purpose
$6,355,000 (2007)	• Refinance bonds issued in 2001 • Construct, equip, operate, and maintain a new Fire Station and acquire Fire Department equipment • Perform other capital-improvement projects
$3,945,000 (2007)	Acquire and develop property for industrial, cultural, and economic-development purposes
$10,000,000 (2008)	• Construct, equip, operate, and maintain a new City Hall - Conference Center complex • Perform other capital-improvement projects
$6,000,000 (2008)	• Acquire and develop property for industrial, cultural, and economic-development purposes • Construct, equip, and furnish a Utility-billing/Emergency-responder building and a Public-safety building • Construct and equip a sports complex, including new baseball/softball facilities, and upgrade existing facilities • Perform other capital-improvement projects
$2,000,000 (2009)	*(Part of first 2008 bond issuance)*
$29,575,000 (2010)	• Refinance bonds issued in 2001, 2007, and 2008 • Pay off a loan obtained in 1992
$2,740,000 (2010)	
$7,315,000 (2011)	• *(Part of 2010 bond issuance)* • Acquire, construct, equip, and furnish capital improvements to the utility systems and city
$3,740,625 (2011 Note)*	Make improvements to the wastewater-treatment system

Finding #2 **The GUSA bond and note issue records show a *net* long-term debt burden of approximately $82,000,000.**

As of fieldwork, the GUSA's long-term debt burden included the following:

Debt	*Principal*	*Interest*	Total	Scheduled Payoff
OWRB Note 2001	*$612,625*	*$14,550*	$627,175	March 2021
Bond 2007	*$6,110,000*	*$1,541,328*	$7,651,328	October 2017
Bond 2007A	*$3,915,000*	*$1,446,818*	$5,361,818	October 2017
Bond 2010A	*$29,575,000*	*$28,862,670*	$58,437,670	December 2040
Bond 2010B	*$2,740,000*	*$1,267,275*	$4,007,275	December 2025
Bond 2011	*$7,265,000*	*$6,633,135*	$13,898,135	December 2040
OWRB Note 2011	*$3,740,625*	*$1,091,788*	$4,832,413	September 2032
TOTALS	*$53,958,250*	*$40,857,564*	$94,815,814	

However, a portion of the 2010A bond series was pledged to pay off, or refund, both of the 2007 bond series. As of June 30, 2012, the FY12 audit reported "restricted" cash and investment assets of $13,928,663, most of which is designated for paying the 2007 and 2007A bond series, leaving a net long-term debt burden of $81,802,668.

To be clear, this debt burden includes interest that will accrue over time, while the bonds and notes are being paid off in future years. As of June 30, 2012, the audited financial statements reported $51,556,212 as the long-term debt liability. At that date, only $1.34 million of the $3.74 million 2011 OWRB Note had been drawn down. Again, removing the $10,025,000 related to the two 2007 bond issues left the long-term liability at $41,531,212, as of June 30, 2012.

	Balance June 30, 2012
$	6,110,000
	3,915,000
	-
	-
	-
	29,575,000
	2,740,000
	7,265,000
	1,338,587
	612,625
$	51,556,212

GUSA long-term bonds and notes amounted to a per-capita debt obligation of approximately $3,843 for every citizen of Glenpool, based on the 2010 census, or $15,372 for a family of four. The FY13 financial statement audit report is required to be filed with our office by December 31st of this year. That report, along with the FY11 and FY12 reports already posted, will be added to our website for public viewing at: www.sai.ok.gov.

Finding #3 **The City/GUSA is relying on growth in its sales-tax revenue to meet its long-term debt obligations.**

According to Ed Tinker, the city manager, city officials use one cent of Glenpool's four-cent sales tax to make bond principal and interest payments, and the City has "never made a payment late". A review of the revenue and expenditure trends for the two main operating funds (General Fund and Utility Services Fund) confirms Mr. Tinker's statement.

The GUSA utility revenues have been relatively stable from FY07 through FY12, ranging from approximately $3.16 million to $3.54 million. Following the completion of the Wal-Mart Supercenter, along with other nearby business developments, the City's sales and use tax revenues rose from approximately $1.93 million in FY07 to $5.73 million in FY12, or an approximate 197% increase, as reported by the City's independent audit firm.

However, during the same period, the GUSA's debt burden increased from approximately $10.2 million to the approximate net $82 million reported previously, an increase of 702%. GUSA *net* interest expense has risen dramatically, increasing from $271,228 in FY07 to $2,038,153 in FY12, a rise of $1,766,925, or 652%.

In addition, other GUSA operating expenses have increased (see Objective V). The results in FY11 and FY12 were net *losses* "before transfers" of $3,378,807 and $3,353,096, respectively.

Income (Loss) Before Non-Operating Revenue, Expenses, and Transfers	
FY07	$1,137,799
FY08	$112,079
FY09	($1,155,752)
FY10	($674,635)
FY11	($3,378,807)
FY12	($3,353,096)
Source: City's Audited Financial Statements	

Former Vice Mayor Keith Robinson said that he was always concerned about the numbers, amounts, and frequency of the GUSA's bonds, but he knew that the city would grow, especially after Wal-Mart built its Supercenter. Former Mayor Shayne Buchanan also said that he was sure that the city would grow. Former City Councilor Leanne Roberts said that city officials did not "negatively" speak about the possibility of growth not occurring.

Councilor Tim Fox said that the Council was "aggressively seeking to grow retail" and discussed growth based on existing water revenues. Former Councilor Kurt Scheckel stated that the Council "looked at the percentage of taxes and the possibility of growth" but "never counted taxes from business that may be created." Mr. Tinker said that city officials had an idea of the amounts of revenue that would be available to make bond payments because of sales tax revenues that they were receiving from the Wal-Mart Supercenter, which opened in FY08.

Finding #4 **For the past five fiscal years, the "bottom-line" number for the City's General Fund has improved, while the comparable number for the GUSA has substantially declined.**

The City's two largest operating funds are the City General Fund and the GUSA Fund. These two funds share the municipal four-cent sales-tax revenue on an "as needed" basis for the changing financial circumstances and budgetary and management decisions.

The "fund balance" of the City General Fund and the "net assets" of the GUSA Fund are comparable to "capital" and "retained earnings" accounts in a private sector enterprise. These two "bottom-line" accounts incorporate the changes in assets, liabilities, "non-operating" transactions (such as capital improvements, debt accumulation, transfers, and interest revenue/expense), and "operating" revenue and expenditures/expenses in a *single* number that reflects changes related to the total financial activity of each fund from year to year.

The following is a comparison of the trends in shared sales-tax revenue, City General Fund "fund balance", and GUSA Fund "net assets".

Fiscal Year	Sales & Use Taxes*	General Fd "fund balance"	GUSA "net assets"
FY07*	$1,927,984	$472,578	$6,364,924
FY08	$3,252,298	$1,257,170	$5,621,079
FY09	$5,072,063	$1,386,833	$3,153,501
FY10	$5,228,686	$1,608,480	$3,722,418
FY11	$5,356,879	$1,877,658	($1,171,432)
FY12	$5,725,825	$2,147,622	($3,039,458)
Change from FY07	$3,797,841	$1,675,044	($9,404,382)

*FY07 reported just "taxes".
Sources: City's Audited Financial Statements and Oklahoma Tax Commission (FY07).

As shown in the above comparison, the increased sales-tax revenues improved the City's General Fund's financial bottom-line. However, the GUSA's "net assets" number experienced a "swing" from positive to negative totaling $9,404,382 over five years, apparently due to increasing operating and debt-service expenses that have not been fully covered by the shared sales-tax revenues.

Conclusion

The City/GUSA is leveraging its actual and anticipated increase in sales-tax revenue to implement economic-development plans and build infrastructure. These are management decisions that only future events and trends will determine to be either beneficial or "high-risk" and potentially detrimental to the City and its citizens. If increases in sales-tax revenue do not meet expectations for whatever reason(s), increases in utility rates and/or sales-tax rates, and/or cuts in municipal services, could result.

OBJECTIVE V: Review provisions of the utility-maintenance contract with Severn Trent Services

Background

The Glenpool Utility Services Authority (GUSA) owns the wastewater-treatment system in Glenpool and discharges treated wastewater pursuant to a state permit. The permit required the GUSA to install a system to comply with certain treating requirements, and the GUSA was supposed to begin the installation by submitting an engineering report to the Oklahoma Department of Environmental Quality (DEQ) by September 1, 2007.

According to the DEQ, the GUSA did not submit the engineering report until April 20, 2009. According to Ed Tinker, the city manager, the GUSA submitted a report, but it was unacceptable to the DEQ. After a year of discussion and planning, the GUSA entered into a consent order with the DEQ to work on complying with the permit.

As of September 1, 2010, the GUSA contracted with Severn Trent Environmental Services, for "base pay" of $915,405 for the first year, to provide the following:

- Wastewater collection, pumping, and treatment
- Water storage, distribution, and metering equipment
- Routine preventive maintenance of the wastewater and water facilities
- Repairs and replacement of the facilities' equipment
- Water-meter reading
- Spare-parts and supplies inventory control

Former Vice Mayor Keith Robinson abstained from voting (which is legally deemed a 'no' vote) to approve the initial contract with Severn Trent because he "did not have enough adequate information prior to the vote", and he "did not like that the process was so quick."

Severn Trent provided to the Office of State Auditor and Inspector copies of its monthly invoices to the GUSA but would not provide any other records. Since the contract did *not* include an "audit clause", the private company can refuse to provide its other internal records related to the Glenpool contract.

Finding #1

The GUSA awarded the $915,405 "base pay" contract to Severn Trent without using a competitive-bidding process.

The **Title 60** Public Trust Act requires cities' public trust authorities to competitively bid contracts for "construction, labor, equipment, material, or repairs" of more than $50,000.[31]

According to David Tillotson, the assistant city manager, city officials spoke with companies besides Severn Trent (including Veolia Water, for example) in 2010 but did not bid the contract due to legal advice from the city attorney. Lowell Peterson, the city attorney, advised that no bid process was necessary since the contract was for "professional services".

According to Mr. Tinker:

- The contract "is professional services no matter how you twist it;"
- Severn Trent officials provided information to Mr. Peterson regarding how other cities contract with the company;
- The primary reason that the GUSA chose not bid the contract was because Severn Trent was "already doing Jenks' sewer" (wastewater services) when the GUSA contracted with the company, and "Jenks did not bid either."

According to Mr. Peterson:

- The contract was deemed exempt from the Title 61 Public Competitive Bidding Act's requirements because it was "solely for professional engineering and design services", was "for the rendering of professional services to improve city administration", and did not include "the construction of improvements or the purchase of products";
- The Central Purchasing Act stipulates that contracts for architectural, engineering, legal, or other professional services shall be exempt from competitive-bidding procedures, and, although the Act does not apply directly to municipalities, the exemption from competitive bidding practices for "professional services" has been found applicable to municipalities.

The **Title 61** statute specifically applies to "public construction" contracts. The Central Purchasing Act does not directly apply to municipalities, although certain provisions of the Act can be used by local governments and school districts.

The GUSA's contract required Severn Trent to:

[31] 60 O.S. § 176(H)

- "Provide the *labor and tools* necessary for the *operation and maintenance*" of the systems *[emphasis added]*
- "Utilize its *best efforts to meet the requirements* of the discharge permits and consent order" *[emphasis added]*
- Perform *or "contract with a laboratory* certified by the State to perform all sampling and laboratory analysis required" by the discharge permits *[emphasis added]*

As in many situations where local governments have "outsourced" certain traditional local "government" functions, the former utility-service employees of the GUSA were simply transferred to Severn Trent's employ. In effect, these employees were placed on the private-sector payroll of Severn Trent and continued to perform the same job duties. City officials' position that these same job duties could be considered "professional services" appears to be questionable.

According to Mr. Tinker, City Councilor Tim Fox, former Vice Mayor Robinson, and former City Councilor Leanne Roberts, the Council privatized the water and wastewater systems because of the need for specialized professionals to correct the problems under the DEQ consent order. According to former Mayor Shayne Buchanan, the Council privatized "for cost savings"; when asked if the consent order was also a factor, he said that it may have been since Severn Trent would have "experts", but if so, it was not the primary reason.

While a portion of the Severn Trent contract may have included "professional services", it appears that the "labor and tools" for "operation and maintenance" duties performed by former GUSA employees fall within the definition of the **Title 60** bid statute. These labor and benefits costs represent a considerable percentage of Severn Trent's contract billings to the GUSA.

Finding #2 **Severn Trent's contracts with other Oklahoma municipalities were awarded through a competitive bid process.**

According to Mr. Peterson, Severn Trent was "specifically retained due to its greater expertise in wastewater treatment". According to former Mayor Buchanan, Severn Trent "was the big game in Oklahoma" and "was in 15 or 20 other municipalities in Oklahoma", including Jenks. According to City Councilor Fox, Severn Trent's "resume' was quite impressive", and he believed that the company "was chosen because of their track record in Jenks and several places throughout the state".

Mr. Tinker alluded to the City of Jenks' wastewater contract as another example of Severn Trent contracting without a competitive bid process. Mr. Tinker's brother is the city manager of Jenks.

Severn Trent operates other water and wastewater systems in Oklahoma, including those in Chickasha, Claremore, Clinton, Hugo, and Mustang. These municipalities used a competitive bid process to award the Severn Trent contracts.

Finding #3 **Operating expenses have increased since the GUSA privatized the water and wastewater operations.**

Around the nation, "outsourcing" of formerly governmental enterprises, such as sanitation, water systems, and sewer or wastewater systems, has been increasingly used as one method to reduce costs of local government functions. Comments by a former mayor included "cost savings" as part of the reason for the GUSA's contract with Severn Trent.

The GUSA's contract began on September 1, 2010, two months into FY11. Between FY08 and FY12, the GUSA's total operating expenses changed by the amounts and percentages presented in the following table.

The operating expenses include "depreciation" expense, but do not include "non-operating expenses, revenues, and transfers", such as the increased net interest expense discussed in Objective IV. The table indicates that "operating expenses" for GUSA utility services have increased approximately $2 million since FY10.

Fiscal Year	Operating Expenses	Yr over Yr $ Incr/(Decr)	Yr over Yr % Incr/(Decr)
FY08	$2,676,739	---	---
FY09	$2,868,122	$191,383	7.15%
FY10	$2,700,486	($167,636)	(5.84%)
September 1, 2010: contracted with Severn Trent			
FY11	$3,882,865	$1,182,379	43.78%
FY12	$4,723,648	$840,783	21.65%
Source: City's Audited Financial Statements			

There was some disagreement regarding the stated purpose of privatizing the water and wastewater functions. City Councilor Fox and former Vice Mayor Robinson said that they knew that privatizing likely would increase expenses, but they felt that it had to be done because of the DEQ consent

order. Former Councilor Roberts said that there was no talk of major cost savings. Former Mayor Buchanan said that he wanted to privatize for cost savings.

According to Mr. Tinker, by privatizing, the City now avoids the liability connected to safety issues, such as electricity and chemicals, and contracting out water and sewer management was the "smartest thing" he had done in city management.

The GUSA's contract with Severn Trent coincides with the "trend" of the GUSA moving from a net-income situation to the approximate $3.3-million net *losses* "before transfers" for FY11 *and* FY12, as noted in Objective IV. However, other factors, such as the increasing interest expense, contributed to reported net losses "before transfers".

Finding #4 **In FY12, the GUSA approved a contract for maintaining the water-storage tank, apparently without using a competitive bid process, and a portion of the contract appears to duplicate services in Severn Trent's contract.**

The 2010 Severn Trent contract for water and wastewater services included "Exhibit C", which listed "water tower" among the facilities that the company was to operate and maintain. Normally, water-storage facilities are an integral part of water-distribution systems, helping to maintain adequate water pressure in distribution lines during periods of peak usage or emergencies.

On May 7, 2012, the GUSA voted to approve a contract with Utility Service Co., a Georgia company, to repair and maintain the water-storage tank. Although the contract exceeded the **Title 60** bid limit of $50,000, there was no competitive bidding process recorded in the GUSA minutes. The contract itself identifies *the City of Glenpool*, rather than the GUSA, as the contracting entity.

The new contract provided for a first-year cost of $306,306 for "exterior renovation, interior renovation, and repairs." The new contract also provided for an annual maintenance fee of $19,387 for each successive year to "annually inspect and service the tank" and "furnish engineering and inspection services needed to maintain and repair the tank and tower". If it is a *City* contract, it did not include the required provision citing the state Constitution's prohibition against cities becoming indebted beyond a term of one year without voter approval[32], as required by law[33].

[32] Okla. Const. art. X § 26(a)
[33] 61 O.S. § 19(A)

Exterior and interior "renovations" could be considered obligations beyond the "normal" maintenance and repair of a water-distribution system. However, the annual engineering and inspection services appear to be the same "professional services" that Severn Trent contracted to provide in 2010. These subsequent annual contract provisions appeared to be duplicative and, as such, an unnecessary expense.

Finding #5 **In FY13, the *City* contracted with Severn Trent to maintain streets and parks and handle animal-control duties but did not competitively bid the contract.**

As of November 1, 2012, the City contracted with Severn Trent for base pay of $182,288 through June 30, 2013. Included in the contract were the functions for the former Parks/Streets and Animal-control departments. The City was responsible for the cost of all utilities, vehicles, fuel, vehicle maintenance, equipment, tools, chemicals, and consumables. Severn Trent was responsible only for "direct labor costs and related benefits" of the city personnel that were to be privatized.

A city ordinance requires city officials to competitively bid contracts for services of more than $7,500 unless they are "of a professional nature, such as engineering, architectural, and medical services."[34] Contrary to the City's own ordinance, city officials did not competitively bid this contract.

The contract required Severn Trent to "provide the labor necessary to perform the following typical, routine tasks," including park, street, and animal-control functions, such as mowing, street repairs and maintenance, equipment maintenance, and animal-control enforcement.

The contract stipulated that Severn Trent would "provide qualified and, where required, certified staffing", specifying that the employees who would issue animal-control citations were required to "meet or exceed all certification requirements mandated by applicable law".

According to Mr. Tinker, the City's contract is not on the "same level" as the GUSA contract for water and wastewater management, and the Severn Trent employees simply "cut grass and fill potholes". Since these services were not on the "same level" as the GUSA contract, there appeared to be no "professional services" exemption and, therefore, the contract should have been competitively bid in accordance with the City's ordinance.

[34] City Code § 3.04.050

Conclusion

It appeared that one or more of the City's and/or GUSA's contracts with Severn Trent Environmental Services may have required competitive bidding and that failure to do so may have been a violation of either the **Title 60** Oklahoma Public Trust Act or City Ordinance § 3.04.050.

Not routinely incorporating "audit clauses" in contracts of the City and the GUSA contradicts prudent management policies and controls for the oversight of municipal functions and finance.

Recommendation

The Office of Attorney General should be asked to address the issue of whether or not these "privatization" contracts, or portions of such contracts, are considered "professional services" that may be all or in part exempt from **Title 60** statutory competitive bid requirements.

There is no statutory prohibition against using competitive processes or negotiations to obtain "professional services." As illustrated by the bond issuance costs noted in Objective III, substantial cost savings may be realized.

OBJECTIVE VI: Review the city manager's contract

Background

The City Council hired Ed Tinker as the interim city manager effective May 1, 2007, and as the permanent city manager two months later.

The Council provided Mr. Tinker with a contract, effective July 1, 2007. The employment contract would initially last until June 30, 2008. After which, the contract would automatically renew each year unless the Council provided notification, at least three months in advance (which would be a few days before municipal elections every other year) that it would not renew the contract. The employment contract also provided Mr. Tinker with $3,500 moving expense reimbursement for relocating to Glenpool.

The city manager has had a retirement plan, a defined-contribution plan with the Oklahoma Municipal Retirement Fund, separate from all other full-time city employees since November 1, 2004.

Finding #1

The city manager's salary increased nine times in approximately five years, from $77,250 to $142,843; the documentation for some increases was ambiguous.

Mr. Tinker received the following annual salaries:

- $65,000 beginning on May 1, 2007 (as interim city manager)
- $77,250 beginning on July 1, 2007
- $90,000 beginning on January 1, 2008
- $105,000 beginning on July 1, 2008
- $113,300 beginning on July 1, 2009
- $116,600 beginning on January 1, 2010
- $119,865 beginning on July 1, 2010
- $123,221 beginning on January 1, 2011
- $129,961 beginning on July 1, 2011
- $142,843 beginning on July 1, 2012

Some of the documentation supporting the increases was ambiguous. For example, Mr. Tinker received two increases that were a higher percentage than the across-the-board increase approved by the Council and received

by all other city employees. Five increases were traceable to direct Council action.

(See Appendix II for a history of Mr. Tinker's salary increases.)

Finding #2 **The city manager received a new contract with some provisions that were legally questionable, which the City Council subsequently corrected.**

Mr. Tinker's original contract automatically renewed for the third time effective July 1, 2010.

On September 7, 2010, the Council approved a new contract, effective immediately. The contract initially lasted until June 30, 2013, at which time it would automatically renew each year unless the Council provided notification that it would end the contract at least three months in advance.

A comparison of Mr. Tinker's first and second contracts is included in Appendix III.

The State Constitution prohibits cities from becoming indebted "in any manner" beyond a term of one year without voter approval.[35]

Mr. Tinker's second contract specified:

> The City agrees there shall, at all times this agreement is in effect, be sufficient funds budgeted and appropriated to pay all compensation and benefits Mr. Tinker may be entitled to receive should this contract be fully performed, either by continued employment or termination. By approval of this agreement, city staff is authorized to make any and all necessary budgetary allocations or amendments to fulfill the terms of this agreement without further approval by the City Council.

State law allows city councils to "suspend or remove" city managers "at any time" by a vote of a majority of all councilors.[36]

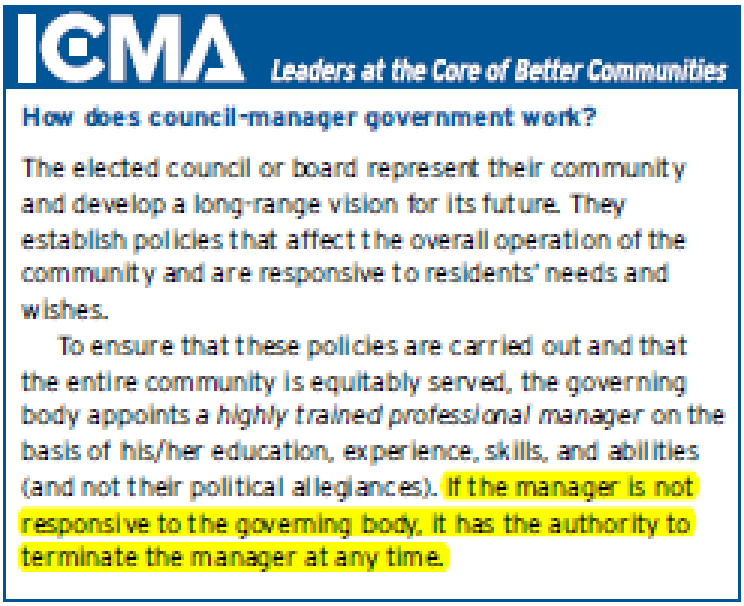
The 2010 contract prohibited the Council from terminating Mr. Tinker's employment (or asking him to resign) unless there was "just cause" *and* certain procedures were followed, including limitations on how and when to discuss termination.

[35] Okla. Const. art. X § 26(a), supported by 2010 OK 55, 2005 OK AG 40, 2005 OK AG 14, 2000 OK AG 74, 1997 OK AG 47, and 1987 OK AG 43
[36] 11 O.S. § 10-115

According to Mr. Tinker, he obtained the termination provision of the contract from the International City/County Management Association (ICMA)'s "model contract", and his contract "had been tested," and the "ICMA said they would defend it."

The ICMA provides only one model contract that is "complete in its content" and includes multiple options for each provision. This model contract does not include a pre-termination procedure and lists as the first instance of termination being "when the majority of the governing body votes to terminate the employee at a duly authorized public meeting." The model contract also provides for an annual performance evaluation.

In its broad, national overview of the council-manager form of city government, the ICMA writes:


ICMA Leaders at the Core of Better Communities

How does council-manager government work?

The elected council or board represent their community and develop a long-range vision for its future. They establish policies that affect the overall operation of the community and are responsive to residents' needs and wishes.

To ensure that these policies are carried out and that the entire community is equitably served, the governing body appoints *a highly trained professional manager* on the basis of his/her education, experience, skills, and abilities (and not their political allegiances). If the manager is not responsive to the governing body, it has the authority to terminate the manager at any time.

On March 18, 2013, the Council approved an amended contract for Mr. Tinker, effective July 1, 2013. It lasts until June 30, 2015, and will not renew unless the Council renews it by this date.

Regarding funding for the contract's term, the contract specifies:

> The City and Mr. Tinker understand and acknowledge that the term of this agreement beyond one year is subject to the appropriation of adequate and sufficient funds for which adoption must be considered by the City Council prior to adoption of the City's 2013-2014 and 2014-2015 fiscal-year budgets. In the event the City Council does not appropriate funds in either annual period during the term of this agreement, such funds shall be guaranteed by the Glenpool Utility Service Authority.

The contract also specifies that, "pursuant to Oklahoma state statutes, the City reserves the right to terminate Mr. Tinker at any time, for any reason, or for no specific reason". This contract provides that the Council may reprimand him or terminate his employment for "just cause" *or* for a reason other than "just cause" after certain procedures are followed, and provides for an annual performance-review process.

This contract reduced Mr. Tinker's annual base salary to $121,417, eliminated automatic salary and retirement-annuity increases, and restricted paid-time-off accrual and compensation.

Conclusions

Certain provisions of Mr. Tinker's second contract appeared to be legally questionable, particularly the employment term of multiple years and the restrictions on how and when his employment could be terminated.

Commendation

The Council approved a new contract in March 2013 that appeared to have corrected the legally-questionable provisions of the 2010 contract.

OBJECTIVE VII: Review other uses and management of public funds

Finding #1 **The City has paid economic-development consultants approximately $410,000 since 2007.**

The City contracts with Retail Attractions and Crossroads Communications, two economic-development firms based in the Tulsa area.

The City first contracted with Crossroads Communications on July 16, 2007, for the firm to create a City logo, analyze the city's demographics, produce a brochure about the city and create a Web site.

The City contracted to pay the two firms as follows:

Term	Retail Attractions	Crossroads Communications
January-June 2008*	$30,000	$18,000
FY09*	$60,000	$36,000
FY10	$60,000	$36,000
FY11	$48,000	$36,000
FY12	$27,000	$36,000
FY13	$27,000	$36,000
Totals	*$252,000*	*$198,000*

* Contract through Industrial Trust Authority

Some city councilors voted against entering the FY10, FY11, and FY12 contracts. The City's contracts with the firms provided that "travel and lodging when on City of Glenpool business" and specific services such as "printing, Web-site development, posters, etc." were not included in the firms' routine "consultation fees."

The City has paid Retail Attractions as follows:

Fiscal Year	From City Funds	From Bond Funds	*Total*
FY08	$0	$25,000	*$25,000*
FY09	$0	$60,000	*$60,000*
FY10	$55,000	$0	*$55,000*
FY11	$48,000	$0	*$48,000*
FY12	$27,000	$0	*$27,000*
Total	*$130,000*	*$85,000*	*$215,000*

The City has paid Crossroads Communications as follows:

Fiscal Year	From City Funds	From Bond Funds	*Total*
FY08	$15,732	$15,000	*$30,732*
FY09	$4,818	$33,000	*$37,818*
FY10	$43,675	$3,000	*$46,675*
FY11	$36,560	$0	$36,560
FY12	$42,897	$0	$42,897
Total	*$143,682*	*$51,000*	*$194,682*

In FY10, the City paid $7,675 for Web-site-design work. In FY12, the City paid $2,897 for marketing materials for the Conference Center and events, and $4,000 for participation in a trade show in Texas on behalf of all client cities.

The City paid the two firms a total of $136,000 from a bonds series, issued in 2007. The purpose of those bonds was to "acquire real property (including options to purchase) and construct improvements thereon for industrial-development, cultural, and economic-development purposes". The payments to the two firms were for "consultation for retail development."

According to Mr. Tinker, the two firms provide the "tools and contacts" that he needs for economic development. Crossroads Communications does "analysis and marketing and back-scene support", and Retail Attractions' has "the contacts" and does "demographics."

Finding #2 **The City paid a government-relations lobbyist approximately $181,000 from FY09 through FY11.**

From February 18, 2009, through June 30, 2011, the City contracted with Capitol Hill Consulting Group, a government-relations lobbying firm in Washington, DC. The firm was founded by Bill Brewster, a former U. S. congressional representative from southeast Oklahoma. Mr. Tinker said that he proposed the contract so that Mr. Brewster could lobby the new (in 2008) presidential administration for federal funds for a highway intersection.

The City contracted to pay the firm as follows:

Term	Payments
February-June 2009*	$40,000
FY10	$120,000
FY11	$72,000
Totals	$232,000

* Contract through Industrial Trust Authority

Some councilors voted against entering the contracts.

Between September 2009 and June 2011, meeting minutes reference several trips to Washington, DC, by city administrators and councilors.

The Council has not renewed the contract with Capitol Hill Consulting since June 2011. Mr. Tinker said that the firm's lobbying efforts were unsuccessful.

The City paid Capitol Hill Consulting as follows:

Fiscal Year	From City Funds	From Bond Funds	*Total*
FY09	$0	$35,000	$35,000
FY10	$60,000	$20,000	$80,000
FY11	$66,000	$0	$66,000
Total	$126,000	$55,000	$181,000

The City paid Capitol Hill Consulting $55,000 out of the same bond series from which it paid Crossroads Communications and Retail Attractions. The payments to the firm were titled "professional services."

Conclusion The City utilized bond funds borrowed to acquire property and construct improvements in order to pay economic development and lobbyist consulting contracts. This use of bond funds for unauthorized purposes may have regulatory implications.

Recommendation The GUSA bond counsel should review the payments from bond funds for possible regulatory concerns.

Disclaimer

In this report, there may be references to state statutes and legal authorities that appear to be potentially relevant to the issues reviewed by the Office of State Auditor and Inspector. The State Auditor and Inspector has no jurisdiction, authority, purpose, or intent by the issuance of this report to determine the guilt, innocence, culpability, or liability, if any, of any person or entity for any act, omission, or transaction reviewed. Such determinations are within the exclusive jurisdiction of regulatory, law-enforcement, and judicial authorities designated by law.

Appendix I

Costs of Issuance Paid on Bonds and Note, 2007-2011

	2007 Bonds	2008 Bonds	2009 Bonds	2010 Bonds	2011 Bonds	2011 Note	TOTALS
Insurer[1]	$172,340	-	-	$527,352	$115,204	n/a	$814,896
Financial Advisor[2]	$115,012	$204,470	$28,849	$328,963	$74,720	-	$752,014
Bond Attorney[3]	$83,251	$121,000	$15,500	$249,863	$57,363	$28,500	$555,477
Underwriter[4]	$180,243	$204,750	-	$20,417	$4,584	n/a	$409,994
City Attorney[5]	$77,251	$120,000	$15,000	$40,832	$9,168	-	$262,251
Trustee[6]	$19,000	$18,500*	$4,000	$5,445	$4,556	$1,000	$52,501
Rating Agency[7]	$9,000	-	-	$16,333	-	n/a	$25,333
Accountant[8]	$9,500	-	-	$8,167	$1,834	-	$19,501
Statements Printer[9]	$2,602	$6,500	$2,235	$3,500	$2,627	n/a	$17,464
Trustee Attorney[10]	$4,000	-	-	$2,722	$2,278	-	$9,000
Miscellaneous	-	$14,530	$2,151	$6,664	-	-	$23,345
TOTALS	$672,199	$689,750	$67,735	$1,210,258	$272,334	$29,500	$2,941,776

[1] XL Capital Assurance - 2007; Assured Guaranty Municipal Corporation - 2010, 2011
[2] The Baker Group
[3] Hilborne & Weidman
[4] Wells Nelson & Associates
[5] Phil Frazier - 2007, 2008, 2009; Lowell Peterson - 2010, 2011
[6] Bank of Oklahoma
[7] Standard & Poor
[8] Magee Rausch & Shelton - 2007; Eide Bailly - 2010, 2011
[9] Financial Printing Resource - 2007, 2009; The Baker Group – 2008; Clements Printing - 2010, 2011;
[10] Riggs & Abney
* includes fees to Riggs & Abney

Appendix II

City Manager's Salary Increases, 2007-2012

- July 1, 2007: Following an "interim" salary of $65,000 for the months of May and June 2007, the City Council approved hiring Ed Tinker as actual city manager at $77,250, starting annual salary.
- In December 2007, the City Council increased Mr. Tinker's salary to $90,000 per year (a 16.505% increase) effective January 1, 2008.
- In May 2008, the Council approved a budget that included a five-percent pay increase for all employees. However, Mr. Tinker's salary subsequently increased to $105,000 annually, which was a 16.667% increase. According to Charles Barnes, the finance director since November 2011:

  > During the executive session at the December 2007 council meeting, Ed was asked to present a budget plan to get his salary up to $110,000 in stages. (That was the same meeting where they voted to increase his salary in January 2008 to $90,000.) During a budget workshop meeting in the spring of 2008 (where all employees' salaries are presented to the council for consideration), the council agreed, in principle, to increase Ed's salary to $100,000 in July 2008 and $110,000 in January 2009, which was subsequently approved in the FY08-09 budget. The mayor later suggested that the salary should be taken as $105,000 for the twelve months, which would provide the same amount of monies.

  Mr. Tinker agreed with Mr. Barnes, and, according to City Councilor Tim Fox, former Mayor Shayne Buchanan, and former Vice Mayor Keith Robinson, they remembered discussing giving Mr. Tinker a pay increase in stages one year; however we found , but there was no documentation.
- In June 2009, the Council approved a budget that included a six-percent "across the board pay raise for employees (excluding fire department employees, who will get a five-percent increase)". However, Mr. Tinker's salary subsequently increased to $113,300 per year, which was a 7.905% increase. According to Mr. Barnes:

  > Since the council had already agreed to increase Ed's salary to $110,000 effective January 2009, his salary was increased to $113,300, effective July 2009, which was a 3% increase. The basis for that 3% increase is in the 6% employee increase. The uniformed personnel got their 6% increase in July 2009, and the non-uniformed personnel got their 6% in January 2010. So, Ed took 3% in July and 3% in January.
- In January 2010, Mr. Tinker's annual salary increased to $116,600, which was a 2.913% increase. As noted above, according to Mr. Barnes, that was the "balance" of the six-percent increase that non-union (non-uniformed) employees did not receive until six months after the uniformed personnel.
- In June 2010, the City Council approved a budget that included an average 2.8% pay increase for all employees. This actionThat increased Mr. Tinker's salary to $119,865.

- In January 2011, Mr. Tinker's salary increased to $123,221 annually. The new contract that the Council approved for him in September 2010 included a salary increase effective four months later of 2.8% ("commensurate with the step-in-grade schedule applicable to the City's union employees").
- In July 2011, Mr. Tinker's salary increased by 5.47%, resulting in an annual salary of $129,961. Union employees received a 7.97% pay increase, and Mr. Tinker proposed a 2.5% pay increase for non-union employees; however, but the Council did not approve this proposal.it. According to Mr. Barnes, Mr. Tinker voluntarily reduced (by 2.5%) the 7.97% increase that he would receive per his contract.
- In July 2012, Mr. Tinker's salary increased by 9.912%, resulting in an annual salary of $142,843. Although, according to Mr. Barnes, there was a calculation error, and Mr. Tinker's salary should actually have increased by 10.23% based on the following:
  - The highest pay increase that union employees received was 4.4%, and non-union employees received a four-percent pay increase, so Mr. Tinker received the higher increase per his contract.
  - City sales-tax revenues increased by 6.66% from the prior fiscal year, so Mr. Tinker received a 3.33% pay increase per his contract.
  - Mr. TinkerHe took the remaining 2.5% of the 7.97% increase from the prior year that he had voluntarily reduced in 2011.chose not to take then.

Appendix III

Comparison of City Manager's Contracts, 2007 versus 2010

	2007 Contract	2010 Contract
Term	One year, then automatic annual renewal	Two years and 10 months, then automatic annual renewal
Salary	• Annual consideration of increase • Increased by average across-the-board increase granted to other employees	• Automatic 2.8% salary increase effective four months after effective date of contract • Possible annual increase based on City's sales-tax revenue: o Revenue increase of 4-10% = salary increase equivalent to half that (i.e., 2-5%) o Revenue increase of 11%+ = salary increase of 5% • Increased by higher of increases granted to union and non-union employees
Paid Leave	• Automatic 10 days of sick leave and 10 days of vacation leave[1] • Annual accrual of sick leave and vacation leave at same rate as employee with highest rate[1] • Accrual of all unused leave and compensation for all accrued vacation time, paid holidays, executive leave, and other benefits upon resignation or employment termination[2]	• Annual accrual of paid time off at highest rate provided in City Code, Personnel Policies, or by practice[3] • Unlimited accrual of paid time off from time of beginning of employment[4] • Compensation for up to 240 accrued hours within first year of contract term and up to 120 accrued hours each subsequent fiscal year[4] • Compensation for remainder of all unused accrued paid time off upon resignation, employment termination, or contract expiration[5] • Compensation for all paid holidays, all unused accrued extended-illness-accrual-bank hours, and other benefits upon resignation or employment termination[5]
Severance Pay	• Compensation of six months' salary and benefits paid as lump sum upon employment termination (except for conviction of felony or crime of moral turpitude), request	Compensation of six months' salary and benefits paid over six months upon employment termination (except for conviction of felony or crime of moral turpitude), request for

	for resignation (by Council), or breach of contract (declared by him or Council) • Compensation of salary and benefits for any portion of un-worked six-month period following swearing-in of any new city councilor upon employment termination during six months following swearing-in • Compensation of salary and benefits for remainder of contract term upon employment termination	resignation (by Council), or breach of contract (declared by him or Council)
Insurance	Health, hospitalization, surgical, vision, dental, and medical (for him and dependents) at same level as employee with highest level	• *same as 2007 provisions* • Life equal to twice base salary
Retirement	Annuity at 13% of salary	Annuity at 15% of salary for FY11, 17% for FY12, and 19% for FY13
Vehicle	Vehicle or monthly "allowance"	Vehicle
Memberships	Professional dues, membership fees, subscription fees, and travel and subsistence expenses related to participation in city-related organizations, official work and travel, professional development, and civic involvement	*same as 2007 provisions*

[1] The City's Personnel Policies provided eight hours of sick leave per month for all full-time employees who had worked for the City for at least six months, and they provided 20 days of vacation leave per year for all full-time employees who had worked for the City for at least 10 years.

[2] All other employees were compensated for a maximum of 40 days of sick leave upon their retirements, and they could accrue a maximum number of vacation-leave days each year based on the numbers of years that they had worked for the City and be compensated for all accrued vacation leave upon their resignation or employment termination or death; employees who had worked for the City for at least 10 years could accrue a maximum of 36 days each year.

[3] The City's Personnel Policies provided 20 hours per month for salaried employees who had worked for the City for at least 10 years or for non-salaried employees who had worked for the City for at least 20 years. At the time of the approval of the contract, the city manager had been a city employee for fewer than four years.

[4] All other employees could carry over a maximum of 80 hours of paid time off each fiscal year and could transfer any remaining unused hours to their extended-illness accrual banks.

[5] All other employees were compensated for accrued paid time off and lost their extended-illness accrual banks upon their resignations or terminations of their employment.

Appendix IV

City of Glenpool Response

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To: Gary A. Jones, CPA, CFE, Oklahoma State Auditor and Inspector

CC: Richard Riffe, CFE, CGAP, Special Investigative Unit Audit Manager
Mickey W. Dodson, JD, Investigative Auditor

Hon. Momodou Ceesay, Mayor
Alyce Korb, Vice Mayor
Tim Fox, Councilor
Trish Agee, Councilor
Tommy E. Carner, Councilor

Re: City of Glenpool, Oklahoma
DRAFT Petition Audit Report
Exit Conferences – September 19, and September 24, 2013

Date: Wednesday, October 2, 2013

Dear Mr. Jones:

Thank you for providing the City of Glenpool ("City" or "Glenpool") with a draft of the Oklahoma State Auditor's Petition Audit Report ("Draft Report") for the period July 1, 2007, through June 30, 2013 (the "Audit Period"). The City also appreciates this opportunity to submit a response to the Draft Report and respectfully requests that this response be included in the final report.

This response is offered on behalf of Glenpool to the Draft Report as initially presented in "talking points" to members of the City Council, senior staff and to me on Thursday, September 19, 2013, and in more complete form by yourself and Richard Riffe to Mayor Momodou Ceesay and me on Tuesday, September 24, 2013. I provide this response as the City Attorney at the direction of Mayor Ceesay and in consultation with the City Manager, Ed Tinker; Assistant City Manager, David Tillotson; City Clerk, Susan White; City Finance Director/Treasurer, Charles Barnes; and Director of Community Development, Lynn Burrow (collectively, the City's "Senior Staff").

EXECUTIVE SUMMARY

The City's response will follow the order of the Draft Report and will attempt to give a constructive response to each topic in a spirit of cooperation and mutual regard for legal compliance and the public interest of the citizens of Glenpool. An overview of this response to all seven areas of inquiry, in the order presented, is as follows:

1. **Compliance with the Oklahoma Open Records, Open Meeting and Records Management Acts.**

    a. **Open Records Act**

    Although the City regularly receives requests for records under the Open Records Act from residents, businesses and media, OASI investigated *only* whether the City had complied with requests for records submitted by the initiator of the petition audit (the Requester). The Draft Report ignored all other Open Records requests over the course of a six-year period. The Auditor questioned whether certain search fees charged to the Requester were either impermissible or excessive in certain identified cases and whether the City's estimate of the time that would be required to comply with three of his requests submitted in 2009 was excessive. Given the scope and imprecise nature of many of these requests, the City believes all charges were appropriate and would draw the reader's attention to the fact that the Auditor specifically questioned only 13 of more than 200 requests submitted by the Requester since 2009.

    The City agrees with the field Auditor's presentation of legal authorities noting that the "public interest" prohibition against search fees is not absolute and that search fees may be charged in cases of "excessive disruption" of governmental function unless the requesting entity is news media. The Draft Report concluded that, with respect to a single Glenpool citizen making multiple Open Records requests, the City may have charged "search fees" that were excessive. The City continually reassesses its search fee requirements and scrutinizes all requests in an effort to minimize costs to the public.

    The City agrees that the ORA prohibits copying charges for electronic records provided in computer readable format and has endorsed a policy of charging only for electronic records when paper reproduction is necessary for redaction or inspection purposes.

    The Draft Report found three requests in 2009, out of more than 200 submitted by this single individual through the present date, as to which the City may have provided excessive estimates of the time that compliance would require. The City has taken measures to expedite all requests to the fullest extent reasonably possible.

    b. **Open Meeting Act**

    The Draft Report notes two past City Council meetings in which minutes suggest that certain contracts for professional consultants may have been discussed in executive session. The City takes great care to conduct executive sessions for only identified and authorized purposes.

    The Draft Report noted a practice that, until 2010, minutes had not consistently been taken of City Council workshops. All workshop minutes are recorded and have been provided to the Council for over three years.

    c. **Records Management Act**

    The City has a policy of treating all emails that pertain to the transaction of public business as public records and has agreed to draft an ordinance or resolution formalizing the current records retention policies with respect to emails, as well as other records.

2. **Purchasing and bidding procedures.**

    a. The City agrees with the Draft Report that the City's practice of retaining a construction manager for public construction contracts is permissible under the law. The construction manager selected for the Conference Center used all procedures required by the Public

Competitive Bidding Act and recommendations of the Oklahoma Department of Central Services in its selection of subcontractors. The City acknowledges that the construction manager selected a sign company that employed the City Manager's daughter in a position which confers no financial interest.

b. The City does not dispute the Draft Report's observations in connection with a prior (2008) signage project unrelated to the Conference Center in which the initial purchase price fell under the competitive bidding requirement. That amount, when combined with a subsequent change order, exceeded the threshold for bidding. The City has consistently scrutinized change orders over the last five years without incident and will continue to do so.

3. Costs of debt issuance.

a. Without any implication of unlawful or improper practices, the Draft Report suggests that the City may be able to effect substantial savings in the costs of issuing bonds by competitively bidding or negotiating the fees of bond counsel and financial advisors. This is a recommendation the City agrees to take into consideration.

4. Bond issues and debt service requirements.

a. The Draft Report has correctly observed that the current principal long-term debt of the City, including bond issues and promissory notes to the Oklahoma Water Resources Board and adjusting for dedicated escrow funds, is $41,531,212. This corrects misleading figures that have included both current principal and future interest.

b. The Draft Report has made the practical and indisputable observation that long-term debt service is dependent upon continued patterns of growth in municipal sales tax revenues, and cautions that such projections may be speculative in nature. The City is fully aware of the unique predicament that Oklahoma municipalities are limited to sales tax as the only source of revenue (other than utilities) and is aggressively pursuing all avenues to enhance its prospects for retail expansion.

5. Utility maintenance contract with Severn Trent Environmental Services.

a. The City acknowledges that its own and other city attorneys have a differing opinion from that of the State Auditor regarding whether service privatization contracts require competitive bidding. The City endorses the Auditor's offer to obtain an Attorney General Opinion on this question and agrees to abide by the result.

b. In 2012, the City approved a contract for renovation, rehabilitation and on-going repairs of the municipal water tower and tank without competitive bidding because of an express statutory exemption from competitive bidding for "multi-year contracts for painting and maintenance of water storage tanks and facilities."

c. The City notes that maintenance provisions of the foregoing contract are not redundant of maintenance provisions in the Severn Trent contract because the terms of the Severn Trent contract pertain to, and are specifically budgeted for, maintenance of the grounds, not the interior or exterior of the tank and not the tower.

d. The City has negotiated with Severn Trent for the City to resume operation of its streets and parks facilities and has repealed the 2002 ordinance requiring competitive bidding for supplies, equipment and materials in excess of $7,500.

6. **The City Manager's contract.**

   a. The City agrees with the Draft Report that the City Council has voted periodic increases, along with a recent reduction, in the compensation of the City Manager.

   b. The most recent contract has also resolved the Auditor's questions regarding multi-year contracts and at-will employment provisions.

7. **Other uses and management of public funds.**

   a. The City acknowledges that past payments to its economic development consultants and a governmental relations consultant have been made from bond funds and will request an opinion from bond counsel as to any regulatory limitations on doing so. The City notes that all such payments were approved in advance by a CPA and the designated bond trustee, Bank of Oklahoma. The City is confident all payments conformed to the purposes for which the bonds were issued.

The City's full response immediately follows.

Objective I: Review compliance with the Oklahoma Open Records, Open Meeting and Records Management Acts.

FINDINGS RELATED TO THE OPEN RECORDS ACT

Finding #1: City officials have estimated that fees up to nearly $40,000 would be required in response to various records requested by one individual.

Response #1: As noted in the Auditor's Finding, the City wishes to point out that every Open Records request cited in the Draft Report, without exception, is related to requests made by a single citizen of Glenpool (the "Requester"), who is the same person that initiated the audit petition. Since commencing a long-term campaign of Open Records Act requests in the summer and fall of 2009, the Requester has submitted more than 200 requests in a self-acknowledged effort to find anything that may discredit the current City administration. As noted by myself frequently to Senior Staff for over four years, and by the field Auditor during the exit conference, no amount of distraction or annoyance that may be generated by such a persistent effort can justify anything less than the same rigorous compliance with the Open Records Act that would apply to any other taxpayer. This directive has been repeatedly reinforced and all persons charged with responding to his requests have complied.

On multiple occasions, the Requester has not only submitted extensive and time-consuming requests, but has also taken up untold hours of staff time while inspecting records before deciding which he would like copied. His conduct has been the very epitome of requests that "would clearly cause excessive disruption of the essential functions of the public body." 51 O.S. § 24A.5. Even so, out of more than 200 requests submitted by the Requester, the field Auditor cited a total of 13 "possible" violations. **The Draft Report's focus on a single Requester exemplifies the extent to which this person has dominated staff time and attention. The Draft Report contains no allegation that the City has ever denied or withheld records it had a duty to disclose to this Requester or to any other person during the Audit Period.**

The Draft Report quotes an excerpt from the Open Records Act at 51 O.S. § 24A.5(3)(b) which prohibits charging a "search fee" when the release of records is "in the public interest, including but not limited to, release to the news media, scholars, authors and taxpayers seeking to determine whether those entrusted with the affairs of the government are honestly, faithfully, and competently performing their

duties as public servants." The Draft Report conspicuously omits the qualification stating, "However, if the request … would clearly cause excessive disruption of the essential functions of the public body, then the public body may charge a reasonable fee to recover the direct cost of record search and copying," except in the case of providing records to news media.

The apparent ambiguity between stating that "in no case" shall a public body charge for a search of records requested in the public interest, and allowing a charge for direct costs if a request is disruptive of essential governmental functions, has been discussed at length in *decisions relied on by the Draft Report.* The 1992 Supreme Court decision in *Merrill v. Oklahoma Tax Com'n*, 1992 OK 53, 831 P.2d 634 (OK 1992) and a 1996 Attorney General Opinion, 1996 OK AG 26, both stand for the proposition that the City relies on when assessing its fees for compliance with Open Records Act requests.

As the Draft Report notes, the AG emphasized the need to balance the "*would clearly cause excessive disruption*" provision with the "*in no case shall a search fee be charged when the release of said documents is in the public interest*" provision. In an earlier opinion, the AG had pointed out that the public interest exemption is absolute ***only*** with respect to requests from members of the news media: "… the Act generally contemplates that public bodies subject to its terms may … in certain circumstances, … assess ***special 'search fees'*** for documentary search requests that are of a private commercial nature ***or*** which would excessively disrupt the essential business operations of the agency." 1988 OK AG 35 (emphases added).

The AG Opinion states, "It is ***clear*** that a public body … may charge a search fee in connection with responding to a request if it can be demonstrated that the request … 'would clearly cause excessive disruption of the public body's essential functions.' 51 O.S. § 24A.5(3)." (Emphasis added.) The Opinion found that the "*Merrill* case [cited by the Draft Report] is … instructive in this regard. In *Merrill*, the Oklahoma Supreme Court affirmed the trial court's finding that … employees of the Tax Commission would have to be diverted from their regular jobs to respond to the request 'for computer-readable copies [because] there [was] a five-year backlog in developing computer jobs and systems' (excessive disruption)." 1996 OK AG 26 ¶¶ 11, 12, quoting from *Merrill*, 831 P.2d at 642.

The City will address only the most conspicuous example raised in Finding # 1. Two requests for which the City charged fees denominated as $39,980 and $34,098 were actually a single charge for a single request. By letter dated March 11, 2011, the City Clerk sent to the Requester a detailed explanation that I prepared as to how the sum of $39,980 was arrived at. In response, he submitted an amended request, which resulted in the somewhat reduced fee of $34,098. This request asked for "all electronic mail created, received and stored on city email accounts ***and*** on private accounts used by public officials and public employees" pertaining to the transaction of public business for the period of November 2006 through that date through March 2011. The Requester initially extended this request to all present and former officials and employees during that period, then revised his request to include fifteen current officials and employees. The tasks and associated costs of demanding persons over whose private email accounts the City exercises no jurisdiction to comply with this request, locating and segregating emails on multiple computers that comply with this request from others that do not, downloading and printing, then reviewing and redacting information exempt from disclosure, were carefully itemized. The Requester was encouraged to narrow his request further, but never complied. In setting out this detailed itemization of costs, I also sent a copy to the Requester's attorney in an effort to invite him to identify any non-compliance with the Act. The City's position was and remains that this request was analogous to that in *Merrill* for which the Supreme Court upheld the imposition of a search fee – even though there was uncontroverted evidence that the requester in that case sought the information "to conduct an independent audit of the Commission to detect any wrongdoing." *Merrill*, 831 P.2d at 642.

Other exorbitant requests included "all communications to any business within Glenpool city limits that have their address registered with the Secretary of State and said address is within a residential zone area." Although the City has no duty under the Open Records to conduct a search of the records of an unrelated agency or to create such a report, the City agreed to do the search upon payment of a charge for direct costs consistent with a search that would have been disruptive of essential governmental functions. The Requester requested the City to produce payroll reports or "any report" for the City's police and fire departments that show job title and employee name over a five-year period. This required not only conducting a search for "any report" that might have a public safety officer's job title and name, but also confirming what information in those reports and payroll records should be exempt from disclosure as confidential.

The Draft Report correctly notes that "[t]he Act also prohibits copying fees to be charged for electronic copies of records in a computer readable format" *but without citing a single case in which the City imposed such fees*. The Draft Report misleadingly references only a limited portion of the AG Opinion it relies on (2005 OK AG 21). In this Opinion, the AG noted "…it is the opinion of this office that if a county clerk [or other records custodian] makes a 'paper' copy of a stored image, he/she may charge the per-page fees authorized by 28 O.S. Supp.2004, § 32…. Accordingly, the county [and municipal] clerks of this state may charge a fee '… for recovery of the reasonable, direct costs' of mechanical reproduction of records in a computer-readable format, *including production of electronic copies*. 51 O.S. 2001, § 24A.5(3)." ¶¶ 7, 10. The Requester in question has been charged a copying fee for electronic copies of records in a computer-readable format in only two instances: (i) when it was necessary to mechanically reproduce paper copies because this individual requested extensive banking records containing information that had to be redacted in order to preserve confidentiality; and (ii) when he requested physical copies in order to facilitate his inspecting them before making a decision as to which records he wished to be copied. The City has consistently rejected this Requester's insistent demand that either he or his "IT consultant" be allowed access to the City's computer files in order to find whatever he may be looking for. The Act imposes no such ill-advised requirement on any public agency.

Generalized comment regarding Finding # 1: The City administration strenuously denies and objects to any characterization of its interaction with the Requester as being "for the purpose of discouraging requests for information or as obstacles to disclosure of requested information." Members of the Senior Staff, including myself, have met individually with the Requester multiple times and have gone to great lengths to accommodate his requests even when they had no duty to do so. The City Clerk would frequently have been justified in responding simply that no such record exists. The Open Records Act includes no requirement for City personnel to request access to employees' private computers; or require a former Council member to produce five-year old emails that do not pertain to public business; or inquire of the Secretary of State regarding private business registration information. Rather than flatly turn down these excessive and unreasonable requests, staff consistently chose to inform the Requester of the cost that would be incurred if they complied. Every request (whether from this Requester or otherwise) is scrutinized closely on an *individual, not collective* basis and a good faith estimate as to the time that will be required to respond fully is provided. Although the City may be able to improve on its efforts to prepare such estimates, it is important to point out that any requester is charged only the direct cost of any time, labor and materials *actually incurred*, regardless of what may have been estimated at the time the request was presented. (In fact, at $15 per hour after the first hour, it is arguable that our search fee is substantially less than the investment in staff time.)

There is no mention of the City's full compliance with the Open Records Act with respect to requests submitted by other Glenpool citizens and the media, nor did the field Auditor ever request to inspect any Open Records requests other than those submitted by the Requester.

Finding # 2: City officials estimated that it could take up to three months to respond to some records requests.

Response #2: I will only comment on the three examples recited:

1. The statement attributed to me in the Draft Report to the effect that the request for BOA minutes and agendas over a two-year period would be time-consuming and costly was one part of an email to the Requester from me dated November 11, 2009. The time register attached to the request shows that a total of two hours and 30 minutes were actually expended on this request and the Requester was charged nothing due to the fact he requested only inspection rather than copying. The reason for the expectation that it would be time-consuming was the challenge the City Clerk faced to comply with this request, partly because of a recent change in planning department personnel, the fact that records were stored in four separate locations, and most significantly the fact that the City's record archivist, Iron Mountain, had 182 unidentified boxes in its vault. The process to retrieve the boxes was extremely time consuming and required the City Clerk to make an appointment, order a dozen or so boxes at a time, travel to the facility, look through each box, then set up another appointment to go through the same process. She did the best she could at estimating how long it might possibly take to make certain that she had collected the requested records.

2. The December 16, 2009, request for "all documents" related to how the City is paying for the design and construction of the new conference center, was reported to Mr. Jones as potentially taking up to 80 hours of staff time and 90 days to produce because of the scope of the project. The Draft Report does not state any recognition of the fact that full compliance with the request would require (at least): all documentation with developers MonTapp and Monumental Trading Company regarding the acquisition of the land for the conference center; all reports pertaining to how the City arrived at an estimated cost for the conference center; documentation including resolutions, security agreements, official statements, legal opinions, collateral agreements, underwriter certificates, trust indentures, bank records, disclosure agreements and receipts/accounting for proceeds, among others related to three bond issues; construction contracts with Key Construction Oklahoma, LLC, and all its subcontractors; and planning documents. The City gave what it believed to be a fair estimate.

3. As to the December 7, 2009, request, the time estimate quoted to the Requester may have been in error. As I read the request at this time, it was for payroll reports or "any report" showing job title and employee name for only those employees employed by the police and fire departments who are *not* police officers or fire fighters. That is an admittedly small number. The Requester himself noted that he had previously been charged only $2.50 to obtain a payroll report listing all the police officers and fire fighters. Looking at notes in the file, I find a written record of the City Clerk's concern that the additional language on the December 7 request of "any report," may have substantially complicated compliance.

All three examples given in the Draft Report occurred during the fall of 2009, about the time that this Requester began his barrage of Open Records requests. We had not yet become acquainted with any process for discerning what he might ultimately be looking for and we tried to be exhaustive in our anticipation of the scope of any given request. The last of these examples was approximately four years ago and the City's ability to estimate more "prompt, reasonable" time requirements has improved significantly. The City attempts to be as promptly accommodating to all requests, not just those of this Requester, as staff and time constraints will permit.

Finding #3: City officials appeared to interpret some records requests in a manner that was intended to avoid providing the requested records.

Response #3: The Draft Report suggests that City staff, particularly the City Attorney and City Clerk, may have engaged in deliberate obfuscation "for the purpose of discouraging requests for information or as obstacles to disclosure of requested information." The Draft Report refers to the City's response to a November 30, 2009, request for "any and all documents related to the financing of the new Conference Center…" as an example of such an avoidance strategy. City staff reasonably interpreted the Requester's request as one for evidence of "money [borrowed] from a lending institution," in part, because he had previously requested and received all 2009 budget documents (which would show bond fund distributions), all proposals for construction manager/bid tabulations for the conference center, and all 2009 expenditures that, again, would disclose bond fund monies. Over time we have provided this Requester with entire bond transcripts for the 2010/2011 bond issues, and "all revenue and expense reports for the City Hall/Conference Center since opening, including but not limited to debt service and final construction costs."

As a general comment on Finding #3, the City asserts that no records request has ever been returned to this Requester without a response because of a fabricated pretext. The City concedes there have been numerous times it has asked the Requester to provide clarification when staff could not interpret what was being requested The City's experience with this Requester has taught staff to scrutinize his requests closely and, when not clear, attempt to ascertain his precise meaning.

FINDINGS RELATED TO THE OPEN MEETING ACT

Finding #4: City officials have apparently discussed business in executive session that was not one of the statutorily authorized purposes for executive session.

Response #4: The City agrees with the Draft Report's reading of the economic development provision for executive session at 25 O.S. § 307.C.(10) and acknowledges that it does not permit entering into executive session for the purpose of discussing contracts with economic development consultants. The City has consistently taken the position that it is not at liberty to divulge what has been discussed in executive session because of the Act's confidentiality provisions. In reviewing minutes from the June 21, 2010, and June 18, 2012, Council meetings it is accurate to say that, in each case, the Council voted to approve contracts with economic development consultants, although at the June 21, 2010, meeting two such contracts were approved *before* the Council entered into executive session. To my knowledge, one or more of the City's economic development consultants have been invited into executive session on occasion to provide advice with respect to "matters pertaining to economic development, including the transfer of property, financing, or the creation of a proposal to entice a business to locate within [the City's] jurisdiction [because] public disclosure of the matter discussed would interfere with the development of products or services or if public disclosure would violate the confidentiality of the business."

The Draft Report's advice is well taken and the City diligently ensures that no executive session is held for the specific purpose of discussing the contracts of economic development consultants.

Finding # 5: Minutes were not kept for some City Council meetings.

Response #5: The City official charged with taking minutes of open City Council meetings in Glenpool is the City Clerk. Prior to the tenure of the current City Manager and City Clerk, it had never been the practice to take minutes during workshops. Initially, our current City Clerk continued the standing practice. The City Manager, City Clerk and I had discussions regarding whether the Open Meeting Act actually intends to include workshops, given that 25 O.S. § 312.A. defines minutes as "an official

summary of the proceedings showing clearly those members present and absent, all matters considered by the public body, and *all actions taken by such public body.*" Although no actions may be taken in a workshop, leaving it ambiguous as to whether minutes are required, we agreed to take the conservative approach that the Act does apply to workshops. Since 2010, the City Clerk has created and kept all workshop minutes. **Given that this is and has been the practice for more than three years, an adverse finding seems out of place in the Draft Report.**

Finding #6: The City does not adequately retain e-mail messages sent to and from city employees, as required by the Records Management Act.

Response # 6: Although it is impossible to comprehend what the Draft Report means by "adequately" retain email messages, the most succinct response to this finding is to note that the Records Management Act, by its own language and in accordance with an Attorney General Opinion, does not apply to political subdivisions of the State. 2001 OK AG 46, ¶ 24. However, the AG also opined that 67 O.S. § 207 of the Act does require that, "The governing body of each … city … shall promote the principles of effective records management for local records. Such governing body shall, ***as far as practical***, follow the program established for the management of state records." ¶ 26 (emphasis added). Although not pertaining directly to emails, the City notes that it is the responsibility of the governing body to adopt by ordinance or resolution a municipal retention policy for records not enumerated in 11 O.S. § 22-131(A). 11 O.S. § 22-131(B). **Therefore, the City will commit to drafting an ordinance or resolution that formally establishes the current policies governing retention of records, including emails, not listed in § 22-131(A).**

Current City policy treats emails as public records to the extent that such emails pertain to the "transaction of public business, the expenditure of public funds or the administering of public property … regardless of physical form or characteristics." 51 O.S. § 24A.3.(1) and 67 O.S. § 209. Once any email has been properly categorized as a "record," the City strictly complies with all applicable requirements of the Records Management Act and with Title 11 O.S. § 22-131 governing the destruction, sale or disposition after certain time limitations of municipal records. To the extent that any email pertains to one or more of the categories enumerated in subsection A of the latter statute, the City abides by the applicable retention period. With respect to matters not comprehended by § 22-131(A), the City complies with the requirement of 67 O.S. § 207 that "the governing body of each … city … shall promote the principles of efficient records management for local records [and] shall, as far as practical, follow the program established for the management of state records." This program distinguishes explicitly between records that document the organization, functions, policies, procedures, operations and essential transactions of an agency from others that are routine in nature, having no informational value beyond the immediate use for which they were created or received. O.A.C. § 60: 10-3-5(a), (b). The latter may be destroyed when their usefulness has passed. 2001 OK AG 46 ¶ 11.

The foregoing policies, and commitment to formalize them by ordinance or resolution, are more than "adequate" to ensure the retention of emails to the fullest extent required by law.

Conclusion: The City disagrees with the Draft Report conclusion that officials have not consistently followed all provisions of the Open Records Act or Open Meeting Act. The City notes that the Draft Report has not reached that conclusion with respect to the Records Management Act.

Recommendation #1: A copy of this report will be provided to legal authorities to evaluate whether the above instances constitute "willful" violations, subject to prescribed penalties.

Based on the City's responses to the foregoing findings, it seems unlikely that any "willful violations" of the Open Records Act or Open Meeting Act merit the attention of legal authorities. Neither the Records Management Act nor the Municipal Records statute provide for criminal liability in any case and so do

not fall within the jurisdiction of such legal authorities. **Given the City's efforts to address all of the foregoing findings and willingness to implement or adopt such measures as may more completely ensure compliance, the prejudicial effect of this recommendation is unwarranted and it should, therefore, be removed.**

Recommendation #2: City officials should purchase an email archiving system.

City officials will take the recommendation regarding the purchase of an email archiving system under advisement.

Objective II: Review purchasing and bidding procedures.

Finding #1: The City contracted with a construction manager for the construction of the Conference Center.

Response #1: The field Auditor acknowledged that the stated practice is allowed by State law. The field Auditor also noted that the City's construction manager "bid the project as 50 different parts and contracted with subcontractors to perform the work, as allowed by state law." Unless Finding #1 is intended to serve as a commendation, its purpose is unclear.

Finding #2: Part of the Conference Center construction project was awarded without competitive bidding to a company that employed the city manager's daughter.

Response #2: This finding is a compound of two separate issues: (a) Whether the award of the Conference Center signage project conformed to the Public Competitive Bidding Act; and (b) whether there was a statutory conflict of interest involved in the award of this project contract to a company that employed the City Manager's daughter.

(a) Whether the award of the Conference Center signage project conformed to the Public Competitive Bidding Act.

The Draft Report correctly notes that the Public Competitive Bidding Act ("PCBA") requires competitive bidding of public construction contracts exceeding $50,000.00 and that such contracts must be awarded to the lowest responsible bidder after solicitation for sealed bids. Although the City did not directly award the signage contract for the Conference Center project, the City acknowledges that the Construction Manager, Key Construction Oklahoma, LLC, was acting as the City's agent in this regard and acknowledges that the City cannot avoid compliance with the PCBA by delegating that duty to another party. The City does not dispute that the contract for fabrication and installation of the signage was a public construction contract as defined in the PCBA or that the dollar amount of the contract exceeded $50,000.00. For these reasons, the signage project contract awarded by the Construction Manager in connection with Change Order #7 and as approved by the Council on January 3, 2011, was subject to the same competitive bid requirements that the Draft Report acknowledges Key followed in 48 of 49 other subcontractor project contracts. (No issues have been raised as to the single other project that was not competitively bid.)

These provisions, however, beg the question as to what the bidding requirements were in connection with the signage project under examination. Key Construction was selected as construction manager for this project pursuant to the provisions of Title 61 § 62 of the Oklahoma Statutes, *Construction Management and Consultant Services*, which provides at subsection (I) that : "In the selection of a construction manager or consultant, all political subdivisions of this state shall follow these procedures: The subdivision shall select a construction manager or consultant based upon the professional qualifications and technical experience of the construction manager or consultant. The subdivision shall negotiate a contract with the highest qualified construction manager or consultant, provided that a fee

can be negotiated that is fair and reasonable to both parties." In order to maintain their registration as a qualified construction manager under Title 61, construction managers regularly consult with the Construction and Properties Division of the Department of Central Services for guidance with respect to the award of public contracts by political subdivisions of the State.

By letter to the Glenpool Director of Community Development dated June 15, 2010, Eric Spade, Project Manager for Key Construction, represented to the City that he had contacted the State Department of Central Services ("DCS") prior to issuing the design build RFP (Request for Proposals) for the signage project at the Conference Center and City Hall. Mr. Spade further attests that the RFP was issued in accordance with directions that Key received from DCS. Three companies (Acura Neon, Claude Neon Federal and A-Max Signs) submitted proposals on June 10, 2010. The recommended procedure then required an interview of the three sign companies to be conducted by the City. A City Council workshop was conducted on June 21, 2010, at which the three proposals were discussed in order to receive input from the Council as to its preferences. Although no vote was taken, the Director of Community Development was enabled to have a sense of what the Council was looking for. **On June 23, 2010, as required by Key and DCS, the City conducted interviews with all three companies at which they were invited to communicate their experience with similar projects, capacity to complete the anticipated design, fabrication and installation within the designated time-frame and references.** The Director of Community Development and the Key Construction Project Manager conducted these interviews. (*It becomes significant to note that the City Manager did not participate in these interviews.*)

Following the interview process, as the Draft Report states, the City and Key agreed upon the selection of Acura Neon for the design, fabrication and installation of signage based upon qualifications, schedule, capabilities and references. The companies were notified of this fact by letter dated June 30, 2010.

As further recommended in the Key Construction Project Manager's letter regarding his consultation with DCS, the final design and pricing for the signs were negotiated in a series of "team meetings" among Key, the City and Acura Neon before Key submitted its Change Order # 7 on January 3, 2011.

The procedures followed by the City and Key in this instance were virtually identical to those required of State agencies in contracting for the services of design consultants.

In 2001 OK AG 49, the Oklahoma Attorney General devoted a section of his Opinion to the subject of "Statutorily Mandated Procedures for Contracting for the Services of Design Consultants Imposed by 61 O.S. 1991 & Supp. 2000 §§ 60-65, and Related Statutes." He further noted that the State Legislature has prescribed the procedures that all State entities are to use in contracting for construction management and design consulting services and flatly stated that decision-making powers are vested in the Department of Central Services in regard to the mandated procedures to be used in contracting for construction management and design consulting services. **According to the AG, the mandatory process requires the Construction and Properties Division to advise the requesting State agency "of the methods to be used to conduct the evaluation, interview, selection, contract negotiation and fee negotiation processes pursuant to rules promulgated by the Department of Central Services."**

Given that the lawfully appointed construction manager contacted and scrupulously followed the direction of the Department of Central Services to the same extent as that direction would apply to State agencies, the City is at a loss to comprehend how the Auditor can conclude a "possible" violation of the PCBA may have occurred.

It should also be pointed out that any alleged, but unsubstantiated, non-compliance with the PCBA on the Conference Center signage project is a moot point. In reviewing a complaint by the Westinghouse Corporation that the Grand River Dam Authority had failed to comply with bidding requirements and had engaged in a conflict of interest (the same allegations as are in this Finding), the Oklahoma Supreme

Court ruled that the complaint was moot, in part, "[b]ecause the contract has been substantially performed." *Westinghouse Elec. Corp. v. Grand River Dam Authority*, 1986 OK 20, 720 P.2d 713.

In conclusion, it becomes apparent from a closer scrutiny of all the relevant documentation and procedures that the City *did* in fact comply precisely with the Public Competitive Bidding Act as it applies to the circumstances of a design-build project and as interpreted by the Department of Central Services. According to the City's Director of Community Development, all of the foregoing information was made available to, but was conspicuously omitted by, the field Auditor.

b) Whether there was a statutory conflict of interest involved in the award of this project contract to a company that employed the City Manager's daughter.

The City acknowledges that the Public Competitive Bidding Act ("PCBA") prohibits, in the case of Glenpool, the City Manager or Council members from "authorizing or awarding or supervising the execution of a public construction contract" as to which any relative within the third degree of consanguinity or affinity is "interested directly or indirectly through stock ownership, partnership interest or otherwise" in any such contract. 61 O.S. § 114. The City further acknowledges that there may be circumstances under which it would violate this provision for the City Council to authorize, award or supervise the execution of any public construction contract with a company by which a family member of the City Manager is employed, although it is dubious whether employment alone conforms to the interest requirement.[1] However, the City takes the position that such circumstances as might create a conflict of interest do not prevail with respect to the contract under consideration.

In reviewing the series of events described in connection with the competitive bidding analysis, and comparing them to the language of § 114 of the PCBA, it appears there was no violation of the conflict of interest provision for at least the following reasons: No evidence has been presented indicating that Mr. Tinker's daughter had any economic interest in Acura Neon other than drawing a paycheck. The Draft Report seems to attach some significance to the position in which Ms. Machnicki served at Acura Neon, in particular noting that Ms. Machnicki had signed an invoice as "sales representative." Mr. Tinker has explained that Ms. Machnicki signed the line for sales representative because she had delivered the invoice to the work site (she lives in Glenpool, making it convenient for her to do so). However, Ms. Machnicki is prepared to testify that the only position she has ever held at Acura Neon from the inception of her employment to the date of this response is that of comptroller.

Even though the statute prohibits contracting with a company if a related person is "interested directly or indirectly through stock ownership, partnership interest, ***or otherwise***" (emphasis added), it is reasonable to conclude that the prohibited interest is akin to stock ownership or partnership – some relationship that would cause the contract to result in monetary gain to the relative. There is no evidence that Mr. Tinker's daughter received any kind of personal gain and Ms. Machnicki is prepared to testify that she did not. Also, although we have acknowledged that Key was acting as the City's agent for purposes of "authorizing or awarding or supervising execution of the contract," nothing in this chain

[1] Although I found no Oklahoma cases or AG Opinions directly on point for the purpose of defining precisely what type of "interest" a related employee must have to disqualify a company from bidding under the PCBA, I note that the Oklahoma Code of Ethics for State Officials and Employees, at 74 O.S. § 541.5 states that no state agency may enter into any contract with a business in which an employee holds a **substantial financial interest**, unless the contract is made after public notice by the agency and compliance with competitive bidding procedures." (Emphasis added). Since the State has determined that a "substantial financial interest" may be cured by competitive bidding, it seems reasonable to conclude that at least a similar interest would be required when contracting is barred altogether, as in 61 O.S. § 114, whether with or without bidding.

of events alters the fact that it was Key, as Construction Manager, that entered into the contract with Acura Neon and all other contractors identified on Change Order #7 following approval of the change order. Under Key's *Standard Form of Agreement Between Owner and Construction Manager,* at § 2.3.2.1, Key reserved the right of refusal "to contract with anyone to whom the Construction Manager has reasonable objection."

It should further be noted that the mootness analysis cited above in the *Westinghouse v. GRDA* case was expressly applicable to an alleged conflict of interest.

As to whether the City Manager disclosed to the Council his relationship to an employee of the sign company, that question is really not relevant. If, for the reasons discussed above, there was no conflict of interest, then there was no reason for disclosure. If a conflict of interest were in fact found to have occurred, it does not appear from the language of the statutory prohibition that this is a conflict the Council had authority to waive. Nevertheless, the Draft Report recites the recollections of former Vice Mayor Keith Robinson, former Councilor Kurt Scheckel, former Mayor Shayne Buchanan, former Councilor Leanne Roberts, then-and-current Councilor Tim Fox and unsuccessful efforts to reach former Councilor Dennis Czeschin. Kurt Scheckel was not a Councilor at the time of either the June 21, 2010 workshop or the January 3, 2011 Council meeting, so his comments are irrelevant. Mayor Buchanan arrived late for the workshop on June 21 and did not attend the Council meeting on January 3, facts which explain his inability to recall whether the City Manager brought this up or not. Tim Fox described the City Manager as "forthcoming" about this, and Dennis Czeschin couldn't be reached. So, of five Councilors, one claims not to have been informed and one says she does not recall. The evidence supporting whether the City Manager did or did not disclose this relationship is inconclusive at best. Moreover, Director of Community Development Lynn Burrow is prepared to testify to his clear recollection of Mr. Tinker's not only disclosing this information but of doing so more than once with great emphasis. According to Mr. Burrow, Mr. Tinker was anxious to avoid precisely the type scenario that the Draft Audit has suggested and, therefore, studiously avoided all decision-making situations with respect to Acura sign.

In conclusion, the City takes exception to the Draft Report's implication that the award of the signage subcontract to a company that employed the City Manager's daughter constitutes a statutory conflict of interest. The account given in the Draft Report, even without independent verification, verifies that Key Construction awarded the signage subcontract after following all prescribed procedures required by the Public Competitive Bidding Act. The City will commit to scrutinizing all future contracts awarded by a construction manager equally closely and, if warranted, will insist on competitive bidding. That should resolve all issues connected with this Finding.

Conclusions: The City's only response to the Conclusions section under Finding #2 is that it merely reiterates the substance of the Finding, all of which has been addressed above.

Recommendation #1: The implication of this "Recommendation," that circumstances regarding the signage subcontract constitute a violation of the PCBA at all, is demonstrably false. **Therefore, the question whether any such non-existent violations were "willful" is moot and this prejudicial language should be removed.**

Recommendation #2: The City cannot dispute that all real or potential conflicts of interest should be fully disclosed. However, the City disputes the implication that any have not been so disclosed. The City will continue to follow this procedure in the future.

Finding #3: City officials have purchased other signs from the company that employs the city manager's daughter, including one that exceeded the bid limit.

Response #3: As in the case of Finding #2, this Finding is actually a compound of two separate questions: (a) Whether selecting for the sign project the company that employed the City Manager's daughter creates a conflict of interest; and (b) Whether the bidding requirements of the PCBA were violated.

As indicated in response to Finding #2, the fact that Ms. Machnicki was an Acura Neon employee is inconsequential and will not be addressed any further in regard to this Finding.

As to the PCBA question, it appears that the Council avoided the public bid requirement by approving an expenditure of just under $50,000. It further appears that a subsequent change order resulted in an aggregate payment to Neon Acura that was $2,041 in excess of the $50,000 threshold to invoke the bid requirement. Because the $3,625 second payment to Acura Neon was in conjunction with a relocation of the sign project awarded to other companies, and because that amount is within the City Manager's spending limit, the City Manager concluded that bidding the contract was not legally required.

Without commenting one way or another on the correctness of this conclusion, the City points out that, as noted above in reference to the *Westinghouse* decision, compliance or non-compliance with the PCBA in this respect is now moot. Nevertheless, in an effort to be as fully compliant with the law as possible, the City scrutinizes all change orders closely to determine whether change orders affect the bidding requirement.

Objective III: Provide an analysis of the costs of debt issuance.

Background: The City does not contradict any of the historical or analytical comments in the Draft Report's explanation of the implications of public trust authority-issued revenue bonds. The City will point out, however, that, according to statements of the Audit Manager, this analysis could more accurately be described as a "performance" audit than an "investigative audit." That is, Objective III does not address or implicate compliance or non-compliance with *any legal requirements*. It only offers the Auditor's considered opinion of best management practices.

Finding #1: Since 2007, the bond issues and loans of the Glenpool Utility Services Authority have cost approximately $3 million in fees and other costs.

Response #1: The Draft Report correctly notes the common practice of political subdivisions in Oklahoma and, in fact, throughout the nation, of retaining the services of financial advisors and bond counsel on a percentage of issue basis rather than competitively bid. This practice has become common, particularly with respect to bond counsel, in part because of the liability risk undertaken when issuing their legal opinion as to the current and on-going tax-exempt status of interest earned on municipal bonds. That liability remains high even on a small bond issue, for which counsel will be paid a smaller amount on a percentage basis. Unlike the State of Oklahoma, local issuers do not have the advantage of leveraging multiple millions of dollars in bond issuance as an incentive for bond professionals to negotiate fees.

The Draft Report also correctly identifies the costs of issuance, both in the text of Finding #1 and in Appendix I. The City takes issue, however, with the implication of the Draft Report that these details were in any way concealed from the Council. As part of every bond transcript the Authority is required to provide to the Bond Trustee (in Glenpool's case, the Bank of Oklahoma) a "Certificate of Trustees" that articulates in detail, by entity name and amount paid, each cost and expense incidental to the issuance of the bonds. With respect to the bonds in this discussion, those amounts were disclosed to the Board of Trustees. The Chairman of the Trustees was directed to sign the certificates on behalf of all members of the Board.

Finding #2: The present city attorney received $50,000 from the 2010 and 2011 bond proceeds, although a full-time city employee.

Response #2: The City does not contradict any statement in Finding #2 but does point out that the arrangement with the City Attorney, to function not as City Attorney but as Trust Authority Counsel for the purpose of providing a legal opinion required by the bond counsel, was presented to the Board of Trustees in open session, discussed at length and approved by the Board. The fact that his compensation for this service would represent 1/10 of 1% of the amount of bonds issued was also discussed openly and approved by the Trustees.

Finding #3: The legal and financial advisor fees paid by the Glenpool Utility Services Authority were substantially higher than those paid by the State of Oklahoma, which obtains competitive quotes for professional services based on hourly rates.

Response #3: The City has acknowledged that the procedures for contracting bond issuance professionals vary a great deal between local municipal/trust authority issues and those of the State of Oklahoma.

Conclusion: The conclusion reflects an opinion of the field Auditor and requires no response.

Recommendation: The City will take the Auditor's recommendation that the City and its trust authorities either competitively bid or negotiate for lower costs of issuance into serious consideration.

Objective IV: Review bond issues and debt service requirements.

Finding #1: The City's trust authority issued bonds or obtained loans totaling $71,670,625 since 2007.

Response # 1: Although the City does not dispute the mathematical accuracy of calculating loans totaling $71,670,625 since 2007, this figure is misleading insomuch as $32,315,000 of that amount was issued for the purpose of paying down prior debt and so, to that extent, could not accurately be described as new, additional debt.

Finding #2: The City's trust authority has a *net* long-term debt burden of $41,531,212.

Response #2: The Auditor has acknowledged that certain potential calculations of the municipal debt burden are misleading in two significant ways. First, they calculate the authority's "total" debt obligation as of June 30, 2012, to include both the *current* principal amount of debt obligation and *future* contingent interest obligations. This is not consistent with either generally accepted accounting practices or GASB standards as a method for calculating present debt burden. Secondly, as in the case of Finding #1, such misleading calculations would not give sufficient consideration to the amount of debt burden that has effectively been paid by escrowed reserve funds from subsequent refunding bonds. While GASB standards require the City to show the 2007 and 2007A Series bonds on the financial statements, the City has restricted funds escrowed to pay for them.

Because the refunded bonds include the Series 2007 and 2007A bonds, it is appropriate to perform the calculation of current bonded debt load with the 2010A Series at $29,575,000; 2010B Series at $2,740,000 and the 2011 Series at $7,265,000. The City calculates this to result in a total of $39,580,000 as of June 30, 2012.

Adding in a calculation for the 2001 and 2011 OWRB Notes, the City calculates that the trust authority has long-term debt of $40,305,962. [This is not substantially different than the Auditor's calculation of $41,531,212.] That amounts to a per capita debt obligation of approximately $3,729 (based on the 2010 Census of 10,808 resident population,) or $14,916 for a family of four. Given that these total amounts

are to be collected over a 28 year period, the *annual* per capita debt obligation is approximately $133 and the *annual* debt obligation for a family of four is approximately $532.

Finding #3: The City/GUSA is relying on growth in its sales-tax revenue to meet its long-term debt obligations.

Response #3: This Finding acknowledges that the City uses 1 cent of its 4 cent sales tax for bond payments; that utility revenues have risen slightly since FY07; and that sales and use taxes have increased 197%. However, it adds that GUSA's debt burden has increased 702% and GUSA's net interest expense has risen 652%. The Auditor claims this results in FY11 and FY12 net losses (before transfers) of $3,378,807 and $3,353,096. He concludes that GUSA cannot continue making debt service payments with current sales tax revenues and current growth.

However, according to the City's independent financial auditor, the proposition that net losses (before transfers) of $3,378,807 and $3,353,096 is a significant indicator of whether the City can continue to make debt service payments with current sales tax revenues and current growth is inaccurate. First, these amounts ignore non-operating expenses that include interest on the 2007 and 2007A series bonds (even though the money to pay that expense is sitting in escrow), as well as such non-cash expenditures as depreciation and bond issue cost amortization. The Auditor also ignores the fact that the money used to make these bond debt service payments comes from capital funds (which are considered part of the General Fund on the financial statements). This is why one ***must*** look at Government Wide Statements, not merely GUSA's, to draw a conclusion about sustainability.

Next, the Draft Report does not consider the actual bond debt service expenses compared to sales tax revenues. Current bond debt service is $2,039,681 annually. Current dedicated sales tax revenues (the 1 cent portion) transferred to debt service are in the amount of $1,473,073, which provides 73% of necessary funds. The balance comes out of additional sales tax revenues.

Finding #4: For the past five fiscal years, the "bottom line" number for the City's General Fund has improved, while the comparable number for the GUSA has substantially declined.

Response #4: The Draft Report observes that the two largest operating funds are the City's General Fund and the GUSA Utility Service Fund, which share the 4 cent sales tax as needed. It then compares the "fund balance" of the General Fund to a capital account in private business and the "net assets" of GUSA to a retained earnings account. The Auditor discusses the effect of changes in assets, liabilities, non-operating transactions and operating revenue/expense and concludes that "a single number reflects changes related to the total financial activity of each fund from year to year."

Based on this faulty analysis, he comes to the conclusion that GUSA's "net assets" have been depleted in the five years from FY 2007 through FY 2012 by $9,404,382.

Comparison of the "fund balance" in the General Fund to a capital account in a private business *is not* appropriate because on a Government Balance Sheet there are restricted assets and future sales tax collections. These are not liquid assets. Comparing "net assets" of GUSA to a retained earnings account is also not appropriate because these include non-cash operating expenses (*i.e.*, depreciation expense and bond issuance costs) and transfers of property (from Construction In Progress (CIP) using funds from bonds issued by GUSA to acquire property belonging to the City).

Conclusion: The Draft Report makes an irrefutable common sense observation that the City and GUSA have pledged actual and anticipated sales tax revenues for economic development and infrastructure. If reasonably predicted and/or explicitly adopted increases in sales tax revenues don't meet expectations, then the City would experience a revenue shortfall that might result in either of increased utility rates; increased sales tax rates; or cuts in municipal services. Investing in future growth

by the judicious use of bonded debt financing inevitably and unavoidably carries risk. Whether that risk factor is excessive in the case of Glenpool is strictly a matter of opinion.

Objective V: Review provisions of the utility maintenance contract with Severn Trent Services.

Finding #1: The GUSA awarded the nearly $1 million "base pay" contract to Severn Trent Services without using a competitive bidding process, a potential violation of the Title 60 bid statute for public trust authorities.

Response #1: The City agrees with the Draft Report's reading of the Oklahoma Public Trust Act and with its requirement of competitively bidding for certain categories of contracts, not including professional services contracts. The City disputes the interpretation of the City Manager's comments to the effect that GUSA's principal reasoning for selecting Severn Trent without a competitive bid was the fact that the City of Jenks had done it. Glenpool personnel, including myself, were certainly aware of the Jenks contract and I contacted the Jenks City Attorney to inquire of his opinion regarding the bid question. But, in the final analysis, the "primary reason" that GUSA chose not to bid the contract was my legal opinion that neither the competitive bidding requirements of Title 60 (Oklahoma Public Trust Act) nor title 61 (Public Competitive Bidding Act) applied to this contract.

In regard to the dispute as to whether the Severn Trent contract was a professional services contract or a "construction, labor, equipment, material, or repairs" contract, the City acknowledges a good faith disagreement as to its and the Auditor's interpretation and effect of certain contract provisions. Since the Auditor has indicated his intent to seek an Attorney General Opinion on this matter, the City will commit to abiding by such opinion.

Finding #2: Severn Trent contracts with other Oklahoma municipalities were awarded with competitive bids.

Response #2: As in response to Finding #1, the City acknowledges that there is a split among municipal legal authorities as to the need and/or advisability of competitively bidding privatization of public service contracts. However, even when competitive bidding is not legally required, a municipal authority may choose for reasons of its own to engage the competitive bidding process. Thus, the mere "fact that other municipalities used competitive procedures" does not, without knowing the reasons for that decision, give evidence of a belief that they were required to do so. Most importantly, the City reiterates that it will abide by any forthcoming opinion from the Attorney General.

Finding #3: Operating expenses have increased since the GUSA privatized water and wastewater operations.

Response #3: At this point in the Draft Report, the Auditor observes that utility service costs have increased by approximately $2 million since FY 10, but cannot provide any evidence that this increase in costs is directly attributable to the privatization contract with Severn Trent. Nor does he provide any recognition of the fact that such costs were likely to rise by a substantial amount with or without the Severn Trent contract because of the need to comply with the DEQ Consent Order, dramatic increases in the cost of chemicals and significant system upgrades. Notably, this observation has no legal implications or consequences whatever and is only a "performance" oriented audit inquiry.

Finding #4: In FY 12, the GUSA board voted to approve a contract to maintain the City's water storage tank. There was no mention of a bid process in the trust minutes, and at least a portion of the contract appeared to duplicate services included in the Severn Trent Contract.

Response #4:

a. The field Auditor notes that Section 4.1 of the Severn Trent contract reads, in part, "Operator [Severn Trent] shall provide the labor and tools necessary for the operation and maintenance of the Facilities, as described in Exhibit C…." Facilities listed in Exhibit C expressly include the water tower. Subsequently, GUSA entered into a "Water Tank Maintenance Contract" with Utility Service Co., Inc., as approved May 7, 2012. Clearly, the Utility Service Contract covers substantially more work than the Severn Trent contract contemplates. Exterior renovation, interior renovation and internal tank repairs are not covered in the Severn Trent contract. The Utility Service contract includes an annual fee for annual "inspection and service" and provides that Utility Service will "furnish engineering and inspection services needed to maintain and repair the tank and tower during the term of the contract, including steel parts, expansion joints, water level indicators, sway rod adjustments and manhole covers/gaskets." Severn Trent's contract duties with respect to the City water tower, and certain other Facilities, extend only to maintenance of the grounds and ordinary wear and tear at ground level.

b. The field Auditor next questions why the Utility Service Contract was not competitively bid, as he believes is required by the Public Trust Act under Title 60 for "labor, equipment, material, or repairs." This requirement is separate from that in the Public Competitive Bidding Act in Title 61 for construction contracts only. Title 61 § 19 gives an exemption from competitive bidding for "multi-year contracts for painting and maintenance of water storage tanks and facilities" *if* the contract contains a contingency provision for funding beyond one fiscal year (as required by the Oklahoma Constitution for municipalities). However, the field Auditor has acknowledged knowing that the one-year spending limitation does not apply to a trust authority. The result is that GUSA was exempt from competitive bidding under Title 61 § 19 and was also exempt from a contractual limitation on multi-year spending that does not apply to trust authorities. (The field Auditor notes the anomaly that the Utility Service Co. maintenance contract appeared on the GUSA agenda and was approved by GUSA, although the signature line inadvertently identified City of Glenpool as the signatory party. The City takes the position that this was a GUSA contract entered into for maintenance of a GUSA facility.)

Finding #5: In FY 13, the *City* contracted with Severn Trent to maintain streets and parks and handle animal control duties. This contract was not bid, contrary to city ordinance.

Response #5: This Finding requires several responses, all of which reach the same conclusion as the Draft Report that § 3.04.050 of the 2002 City Code would require the November 1, 2012, Interim Services Contract with Severn Trent (including animal control and streets & parks services) to have been competitively bid. Those responses include the following: (a) All prior and subsequent contracts with Severn Trent have been with GUSA, not the City. The interim services contract was inexplicably written with the City as the contracting party and was approved at the October 15, 2012, City Council meeting, with no action by GUSA. The interim services contract was intended to be supplemental to the master agreement with Severn Trent for utility services, but that distinction was not made; (b) The ordinance requiring City officials to competitively bid for supplies, equipment, materials or contractual services with a cost in excess of $7,500 includes no exemption that would apply to this contract; and (c) Ordinance § 3.04.050 had historically been interpreted to apply only to a requirement that Council approve expenditures between $7,500 and $50,000 (or earlier, lower amount) for competitive bidding when applicable. It was read as not *intending* to require competitive bidding, although such interpretation admittedly violates the plain language of the ordinance.

The City points out that this inadvertent violation of Ordinance § 3.04.050 is a moot point in any case for the following reasons: (a) Ordinance § 3.04.050 contains no remedy for violation; (b) The City has

entered into contract negotiations with Severn Trent to take back streets & parks services; and (c) Ordinance § 3.04.050 has been repealed by adoption of the 2013 Municipal Code on August 5, 2013.

Conclusion: With respect to the utility services contracts negotiated between GUSA and Severn Trent, the City acknowledges a difference of opinion with the Auditor regarding whether the Public Trust Act requires competitive bidding. The City has admitted that it did not competitively bid the November 1, 2012, Interim Services Contract, which violated Ordinance § 3.04.050, although no remedy for that oversight exists and the applicable ordinance has been repealed.

Recommendation: The City agrees to abide by any response to a request for an Attorney General Opinion addressing whether privatization contracts may be considered professional services contracts exempt from the Public Trust Act's bid requirements.

Objective VI: Review the City Manager's contract.

Finding #1: The city manager's salary increased nine times in approximately five years from $77,250 to $142,483; the documentation for some increases seems ambiguous.

Response #1: It is difficult at best to comprehend what the field Auditor means by the documentation of the City Manager's salary increases being "ambiguous" and equally impossible to discern what he believes to be the effect of such "ambiguity." During the period October 24, 2012 through February 20, 2013, records show that Finance Director Charles Barnes directed at least ten email messages, along with supporting documentation, to the field Auditor explaining the two City Manager contracts that took effect, respectively, on July 1, 2007, and July 1, 2010. Mr. Barnes also went into extensive detail explaining how each subsequent increase occurred, either directly by vote of the Council or contractually by terms of the current contract and as approved in annual budgets by the Council.

This documentation verifies that the City Manager commenced employment with Glenpool as Interim City Manager on May 1, 2007, upon the death of his immediate predecessor John Rogers. His FY 06-07 salary was $65,000, prorated to the final two months of FY 07. By the terms of his contract effective July 1, 2007, Mr. Tinker's salary increased to $77,250 for the first half of FY 07-08 and again to $90,000 on January 1, 2008. In the same Council meeting that voted for an increase to $90,000, there was discussion of giving the City Manager incremental increases to $110,000. This was accomplished by voting for him to receive an increase to $100,000 effective July 1, 2008 and a second increase to $110,000 in January 2009. At the direction of former Mayor Shayne Buchanan, the City Manager agreed to receive these increases by accepting an average payment of $105,000 for the full FY 08-09 term. Nevertheless, the City Manager's adopted salary as of June 30, 2009, was $110,000, not $105,000 as mistakenly referenced by the field Auditor. When the Council approved a budget for FY 09-10 in June 2009, it reflected a 6% wage increase for uniformed employees effective July 1, 2009, and a 6% wage increase for non-uniformed employees effective January 1, 2010. Mr. Tinker opted to receive his corresponding 6% increase in two increments: 3% in July 2009 and 3% in January 2010, resulting in respective increases, first, to $113,300, and then to $116,600 (again, based on $110,000 salary at the close of FY 08-09). In June 2010, the Council approved a budget for FY 10-11 that included a 2.8% "across the board" increase for all employees, including the City Manager, effective July 1, 2010, resulting in a salary of $119,865 as of that date. The Council and City Manager negotiated the terms of a second City Manager contract in September 2010 that included a 2.8% increase matching the step-in-grade increase for union employees effective on January 1, 2011 ($123,221). As provided by the new contract, the City Manager had negotiated to receive a salary increase comparable to that of the higher of any increase to uniformed or non-uniformed employees. When the fire department received a 7.97% increase, Mr. Tinker also lobbied for 2.5% increase for non-union employees. When the Council did not approve this, Mr. Tinker opted to reduce his increase by that amount to 5.47%, resulting in a salary

effective on July 1, 2011, of $129,961. Finally, again as provided by contract and as approved by the Council in budget appropriations, effective July 1, 2012, he received an increase that consisted of three components: a 4.4% union employee increase; a sales tax "incentive" increase equal to one-half of the prior year's 6.6% increase in revenues; and recapture of the 2.5% increase declined the previous year. As noted by the field Auditor, this resulted in a salary of $142,843 for FY 12-13.

Perhaps more important than elucidating again the historical documents that the field Auditor finds ambiguous, it should be emphasized that at no point does the Auditor identify any action taken by either of the City Manager, the City Council or any member of Senior Staff that he describes as illegal or unethical. Thus, I am once again stumped by the significance of his "ambiguous" comment.

Finding #2: The city manager received a new contract with some provisions that were legally questionable, which the City subsequently corrected.

Response #2: The field Auditor claims that a prior multi-year contract of the Council with the City Manager violated the Oklahoma Constitutional prohibition against incurring indebtedness beyond the current fiscal year. This claim ignores language that had been deliberately added to the 2010 contract for the purpose of enabling the Council to make annual budget allocations commensurate with the increases. The Auditor does not believe that the language whereby the Council agreed to make the necessary budgetary allocations or amendments to comply with the contract is enough to cure this problem.

The field Auditor also believes that including conditions and steps of termination violates the statutory "at-will" employment provision regarding city managers in Oklahoma. He apparently chose to disregard the basic contract law principle that permissive powers may be negotiated and implemented by contract.

The Auditor added a lengthy discussion contradicting Mr. Tinker's claim that the 2010 contract was adapted from the ICMA model contract. This is nonsensical, however, in that no city manager is obligated to conform her/his contract to ICMA recommendations. The Auditor does not dispute that all provisions in the City Manager's contract did in fact originate in the ICMA with the exception of the conditions of termination.

Finally, the field Auditor makes a passing reference to Mr. Tinker's FY 13-15 contract. He fails to note that the City Manager voluntarily took a 15% decrease in salary and agreed to other changes affecting benefits. These changes were part of negotiating for an extended term after expiration of the 2010 contract. **The Auditor does, however, point out that this contract expressly corrected the alleged flaws he uncovered in the 2010 contract. Since, the Auditor does not dispute that these prior "defects" have been amended, the foregoing comments in the Finding seem gratuitous.**

Objective VII: Review other uses and management of public funds.

Finding #1: The City has paid economic development consultants approximately $410,000 since 2007.

Response #1: The City has no comment on Finding #1. It is factually accurate in its description of the value to Glenpool of its economic development team of experts.

Finding # 2 The City paid a governmental relations lobbyist approximately $181,000 from FY09 through FY11.

Response #2: The City has no comment on Finding #2.

Conclusion: The Auditor expresses concern that expenditures from bond funds for the purpose of making payments to the foregoing consultants might not be consistent with the economic development purposes for which the bonds were issued. It should be pointed out that all such payments were authorized by a CPA before being submitted to the indentured bond trustee, Bank of Oklahoma, for approval before payment. The City is confident all payments conformed to the purposes for which the bonds were issued.

Recommendation: The City will consult with bond counsel to determine whether steps are needed to maintain regulatory compliance.

The City wishes to express its thanks to State Auditor and Inspector Gary A. Jones and to Special Investigative Unit Audit Manager Richard Riffe for the professional courtesy they have extended to the City of Glenpool and for their efforts to make the petition audit experience a meaningful and productive exercise.

The Glenpool City Council and Senior Staff take seriously their responsibility to serve the citizens of Glenpool in a manner that reflects strict compliance with all statutes, ordinances, regulations and policies pertaining to sound municipal governance. Although the City has agreed with certain findings of the Draft Report and has respectfully disagreed with the State Auditor's analysis on some points, the City has in all cases carefully reviewed the findings, conclusions and recommendations. This has resulted and will continue to result in heightened scrutiny of administrative policies and practices. Most importantly, the audit process has strengthened the City's confidence in the course it is set upon and affirms our resolve to continue providing outstanding leadership to this growing community.

Respectfully Submitted,

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