

IN THE COURT OF APPEALS
FOR THE THIRD DISTRICT OF TEXAS AT AUSTIN

NO. 03-19-00304-CV

STATE OF TEXAS,

Appellant,

vs.

CITY OF DOUBLE HORN, et al.,

Appellees.

Appealed from the 424th Judicial District Court
Burnet County, Texas

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STATEMENT OF THE CASE

After the City of Double Horn incorporated and elected its mayor and aldermen pursuant to state law, the State of Texas sought to challenge the city and its elected officials through a *quo warranto* proceeding. (CR 3-40).¹ As a statutory prerequisite to filing an information in the nature of *quo warranto*, the State of Texas submitted a petition for leave to the 424th District Court, Burnet County, the Honorable Evan Stubbs presiding.² (CR 3-6). The State attached documentary evidence and a verification as factual support with its Information. (CR 16-40).

Appellees, the City of Double Horn and its elected officers, were served. (CR 41-47). Appellees filed an answer (CR 177-178) and a response to the State's petition for leave, objecting to the State's verification and evidence and arguing that the State had not met its statutory burden to demonstrate a "probable ground" for the suit to proceed. (CR 48-176). The district court held a hearing and considered certified public records when evaluating its subject matter jurisdiction and whether to allow the State to proceed. (1RR-3RR). After the hearing, the court denied the State's petition, (CR 180), and the State subsequently appealed. (CR 181-182).

¹ References to the Clerk's Record are made as "CR ____" and references to the Reporter Record are made as "[Volume 1-3] RR____".

² Notably, the statute governing *quo warranto* proceedings requires that the State establish a "probable ground" for its proceeding and obtain leave from the district court to file the case before any service is allowed. *See* TEX. CIV. PRAC. & REM. CODE § 66.002(d).

STATEMENT REGARDING ORAL ARGUMENT

Appellees request oral argument because Appellees believe oral argument would materially aid in the disposition of this appeal and the multiple important issues presented—issues that affect municipalities across the state.

ISSUES PRESENTED

This case involves critically important issues for Texas municipalities that the State seeks to challenge through *quo warranto* proceedings, including:

1. Whether a district court may consider certified public documents and other matters of judicial notice when evaluating whether the State has met its statutory burden to show a “probable ground for the proceeding” sufficient to invoke subject matter jurisdiction for a *quo warranto* proceeding?
2. Whether the district court abused its discretion in denying the State’s petition for leave to file its information in the nature of *quo warranto*?
3. Whether the district court abused its discretion in sustaining Appellees’ objections to the verification and evidence the State filed and relied on in support of its petition in an attempt to meet its probable ground burden in TEX. CIV. PRAC. & REM. CODE § 66.002(d)?

STATEMENT OF THE FACTS

In 2018, following a lawful and proper petition to incorporate, Burnet County Judge James Oakley entered an order allowing voters to decide whether to incorporate Double Horn as a general law city.³ A specially called election was held on December 6, 2018, where the voters passed the proposition. (CR 73-77). Double Horn was then incorporated as a Type B general law city on December 11, 2018. (CR 73-77, 97, 100). The election results were canvassed, confirmed, and County Judge Oakley entered Double Horn's municipal incorporation into the records of Burnet County. (CR 73-77, 97, 100).

³ By way of background, the historical background of the community of Double Horn, which dates to the mid-1800s is rather remarkable. Double Horn was founded in 1855 at the headspring of Double Horn Creek, south of the Colorado River in Burnet County, fifty to sixty miles northwest of Austin, in 1855 by Jesse Burnam (or Burnham), Levi Fowler, and others. One of its early residents was Noah Smithwick. A factor in the founding of Double Horn appears to be the existence of a school run by a graduate of Yale named Professor W. H. Holland. Smithwick wrote of living in the Double Horn settlement in the late 1850s and particularly about the school and Professor Holland, to whom he sent his children for an education. He described the people living in the settlement as "people (who) were all in comfortable circumstances and had an excellent school...." The school, later known as the Double Horn School, had been founded near Grid Iron Creek and was then moved to Double Horn Creek. A post office was established for the community in October 1857, with Holland as the first postmaster. In 1884 Double Horn had a population of fifty along with the school, a cotton gin, and two churches. By 1896 its population had dropped to twenty-five, and a physician named Yett practiced there. The Double Horn post office was discontinued in 1911. The cotton gin and gristmill on Grid Iron Creek was later moved to the junction of Grid Iron and Double Horn creeks. A blacksmith shop and store were also nearby. A 1907 map of Burnet County shows the community of Double Horn near Marble Falls and Smithwick. (CR 114). The Double Horn school was still shown on the 1936 county highway map, but most traces of the community and school were gone by the second half of the twentieth century. However, a large part of the original village became a residential subdivision known as Double Horn Creek. See City of Double Horn website: www.doublehorntx.org/about-our-city and see *Towns & Small Communities of Burnet County*, Online at: <http://usgenwebsites.org/TXBurnet/towns.html>; see also, "Double Horn, Tx," *Handbook of Texas Online*, <https://tshaonline.org/handbook/online/articles/hvd33>.

On February 12, 2019, Double Horn elected its mayor and aldermen pursuant to state law. (CR 108-111). Since that time, Double Horn has engaged in numerous governmental functions and has provided and set in motion plans to provide various governmental services to the entire corporate limits of the city. (CR 112-176).

Since Appellees filed their response in opposition to the State's petition for leave, Double Horn has continued to operate as a Texas municipality engaging in governmental functions. (Appendix Tabs 1-15).⁴ For example, since the district court's ruling in this case, Double Horn has adopted a comprehensive plan for the city, including SCS's property. (Appendix Tab 1). Double Horn has also adopted a comprehensive emergency management plan (Appendix Tab 2); entered into an interjurisdictional emergency management program agreement with Burnet County (Appendix Tab 3); and adopted the National Incident Management System for any domestic incidents. (Appendix Tab 4). Double Horn's city council has met regularly and addressed important city issues. (Appendix Tabs 6-15).

⁴ Appellees ask that the Court to take judicial notice of the certified public records in Appellees' Appendix. See TEX. R. EVID. 201; also see *Besing v. Smith*, 843 S.W2d 20, 21 (Tex. 1992) ("a court may take judicial notice of matters of public record for the first time on appeal"); *Bridgeport Indep. Sch. Dist. v. Williams*, 447 S.W.3d 911, 916 fn. 4 (Tex. App.—Austin 2014); *Trapnell v. John Hogan Interests, Inc.* 809 S.W.2d 606, 608 (Tex. App.—Corpus Christi 1991, writ denied), *In re Hemsley*, 460 S.W.3d 629, 638-39 (Tex. App.—El Paso 2014, pet. denied) (judicial notice on jurisdictional issues), and *Meadows v. State*, 356 S.W.3d 33, 40 n.6 (Tex. App.—Texarkana 2011, no pet.)

Double Horn consists of 1,226.63 acres, almost two square miles. (CR 115-122).⁵ Double Horn contains 105 residences and approximately 238 residents within its city limits. (Appendix Tab 1). The majority of the 1226 acres consists of residential housing constituting the nucleus of the town, containing numerous streets, and with average lot sizes being in the range of medium density or estate lots. Double Horn's incorporation is no different than numerous other Texas' municipalities, which are composed primarily of residences with no or little commercial businesses upon first incorporation.⁶

Included within the corporate limits of the City of Double Horn, and adjacent to the Double Horn Creek residential subdivision, are 281 acres of property owned by Spicewood Crushed Stone, LLC ("SCS"), which SCS plans to use for rock quarry

⁵ A clearer copy of Double Horn's municipal map is attached as Appendix Tab 5.

⁶ Examples of such municipalities includes: Lakewood Village, Lowry Crossing, Oak Point, Hackberry, Aubrey, Valley View, Calisberg, Combine, Union Valley, Tioga, Oak Point, Mobile City, Nevada, Howe, Providence Village, Road Runner, Prosper, Trophy Club, Ivanhoe, Coyote Flats, Coupland, San Elizario, Sandy Oaks, Brock, Dennis, and Gloster. Furthermore, Appellees ask that this court take judicial notice of the State of Texas Comptroller's records, which include annual reports from each municipality in Texas reporting annual sales taxes. *See* <https://comptroller.texas.gov/transparency/>. Texas municipalities presently reporting less than \$10,000.00 in sales taxes, demonstrating a primarily residential character, include: Megargel, Baileys Prairie, Holiday Lakes, Kurten, Putnam, Bayview, Rocky Mound, Douglassville, Dean, New Hope, Weston, Paint Rock, Oglesby, Los Ybanez, Pecan Gap, Hedley, Howardwick, Carbon, Pecan Hill, Bailey, Ravenna, Windom, Lefors, Dorchester, Staples, Edmonson, Estelline, Lakeview (Hall County), Uncertain, Channing, O'Brien, Rochester, Weinert, Poynor, Aquilla, Bynum, Mertens, Mount Calm, Penelope, Opkyke West, Neylandville, Sanford, La Ward, Browndell, Valentine, Lueders Grays Prairie, Rosser, Plum Grove, Ransom Canyon, Melvin, Hallsburg, Leroy, Mullin, Westbrook, Emhouse, Eureka, Goodlow, Mildred, Mustang, Navarro, Oak Valley, Richland, Petronila, Adrian, Brock West, Seven Oaks, Austwell, Bayside, Reklaw, Kress, Impact, Lawn, Meadow, Woodson, Chester, Union Grove, Pleasant Valley, and Lake Bridgeport.

operations. (CR 9, 17-18). SCS's property, at 281 acres, makes up roughly twenty-two percent (22%) of Double Horn's corporate limits. Double Horn's comprehensive plan indicates a planned use of SCS's property as industrial. (Appendix Tab 1).

Double Horn's municipal actions benefit or are intended to benefit the entire area of Double Horn—including the SCS property.⁷ Double Horn has taken action to provide governmental services such as interlocal government cooperation for the provision of law enforcement and emergency services, garbage and recycling pickup, monitoring and reporting of air quality and seismic activity, controlling traffic through monitoring and potential reduction of speed on roadways directly adjacent to SCS's property, among other things. (CR 147-176).

Double Horn also passed a comprehensive plan for the city (Appendix Tab 1) and has declared its intent to zone all property within the city, require buildings to comply with subdivision regulations and building codes, and regulate other issues within its city, including fireworks and sexually oriented businesses. (CR 149-153). Double Horn's governance, intentions, and expectations for the SCS property constitute proper municipal purposes. *Id.*

⁷ If SCS does, in fact, use the property as a quarry, Double Horn could potentially convert from a Type B municipality to a Type A municipality. *See* TEX. LOC. GOV'T CODE § 6.011(2).

SUMMARY OF THE ARGUMENT

The State sought leave of court to pursue a *quo warranto* action to have the district court declare that Double Horn's incorporation was invalid, with the State advancing two arguments: (1) Double Horn was not an unincorporated town or village, and therefore could not incorporate; and (2) Double Horn's incorporation included SCS's property, which the State contends was not to be used strictly for town purposes under TEX. LOCAL GOV'T CODE § 7.002(b). (CR 3-40).

Quo warranto is considered an “extraordinary remedy.” *State ex rel. Angelini v. Hardberger*, 932 S.W.2d 489, 490 (Tex. 1996). The State concedes, as it must, that Texas law provides, before a *quo warranto* information may be filed and subject matter jurisdiction invoked, that a district court must evaluate whether the State has shown probable ground for its *quo warranto* proceeding. *See* TEX. CIV. PRAC. & REM. CODE § 66.002(d). Despite attaching evidence and a verification in support of its Information for that heightened determination, the State now claims that a district court evaluating the probable ground standard *cannot consider anything* other than the language of the State's pleading itself—a pleading that, according to the State, is not required to be verified, supported by any evidence, or held to anything higher than the ordinary “fair notice” pleading standard applicable to any other pleading in

any other case.⁸ The State speaks out of both sides of its mouth, taking clearly inconsistent positions.

The statutory probable ground requirement is, by its very nature, a question for a district court to answer *before* exercising subject matter jurisdiction over a *quo warranto* proceeding. *See Bute v. League City*, 290 S.W.2d 811, 815 (Tex. Civ. App.—Houston 1965, no writ) (“As a general rule, it is necessary to obtain leave of the court *to invoke its jurisdiction in a quo warranto proceeding.*”) (emphasis added).

The Texas Supreme Court has made it clear that district courts not only should—but in fact are required to—consider evidence when determining issues such as jurisdiction. *See Texas Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 227 (Tex. 2004); *see also Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 805 (Tex. 2018); *City of Waco v. Kirwan*, 298 S.W.3d 618, 622 (Tex. 2009); and *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 555 (Tex. 2000).

In fact, *Miranda* noted that Texas courts should mirror federal courts’ application of FED. R. CIV. P. 12(b), which routinely consider evidence for jurisdictional and pleading sufficiency challenges. *Miranda*, at 227-28. Certified governmental records such as the exhibits attached to Appellees’ response to the

⁸ *See* Appellant’s Brief, p. 9 (“Thus, the State need only provide ‘fair and adequate notice of the facts upon which it bases its claim.’”) and p. 23 (“The district court’s ruling sustaining Double Horn’s objections failed to apply the notice pleading standard.”)

State's petition (CR 73-176) are the types of matters routinely considered by courts in making jurisdictional and pleading sufficiency determinations.

Quo warranto law is largely archaic and the legislative intent for Section 66.002 is unascertainable. However, the clear language of Section 66.002(d) requires that the State meet something more than the basic fair notice pleading standard—the State must show probable ground for a *quo warranto* to proceed. The heightened probable ground requirement has no effect if the State must do nothing more than baldly assert generic, conclusory allegations and the district court must ignore certified public records that negate a probable ground for the *quo warranto* proceeding. It is non-sensical that a court must, as the State suggests, ignore certified evidence and find probable ground for a proceeding based on unsupported pleading language, to only then be directed by the Texas Supreme Court, as in *Miranda*, that the court *must* consider evidence in determining its jurisdiction.

The Court need look no further than the State's pleading in reviewing evidence. The State itself attached both evidence and a verification to its Information for the district court to consider. However, the State's evidence and verification were improper and inadmissible, and the district court did not abuse its discretion in sustaining Appellees' objections. The district court properly considered certified governmental records subject to judicial notice in considering the State's petition for leave—evidence the State did not object to when the district

court asked for objections. The State clearly waived any objections, which cannot be asserted for the first time on appeal. See TEX. R. APP. P. 33.1(a).

Beyond the procedural issues, the district court correctly denied the State's petition because the State did not show a probable ground for a *quo warranto* proceeding on either of the two arguments the State advanced. The undisputed facts and the established law demonstrate that Double Horn constituted an unincorporated town or village prior to incorporation (and currently). Further, Double Horn's inclusion of SCS's uninhabited property complies with the requirement of TEX. LOCAL GOV'T CODE § 7.002, as demonstrated by the applicable caselaw, as SCS's property was "physically constituted so that it can be made subject to municipal government" and Double Horn has already demonstrated its intent to use SCS's property for municipal purposes. The district court did not err in finding that the State did not meet its heightened burden to show a probable ground for a *quo warranto* proceeding and therefore denying the State's petition for leave. The district court's order/judgment should be affirmed.

ARGUMENT

1. *QUO WARRANTO* PROCEEDINGS IN GENERAL

In 1879, Texas passed legislation authorizing *quo warranto* proceedings. *Norville v. Parnell*, 118 S.W.3d 503, 505 (Tex. App.—Dallas 2003, pet. denied). Presently, Chapter 66 of Texas' Civil Practice and Remedies Code governs *quo*

warranto proceedings. Appellees do not dispute that the State, through the Attorney General, is generally authorized to pursue *quo warranto* proceedings. Appellees further do not contest that the Attorney General can generally pursue *quo warranto* proceedings when a “person usurps, intrudes into, or unlawfully holds or executes a franchise or office” or when “an association of person acts as a corporation without being legally incorporated.” TEX. CIV. PRAC. & REM. CODE § 66.001(1), (3). Finally, Appellees do not dispute that the Attorney General may, pursuant to statutory requirements, pursue *quo warranto* proceedings to challenge municipal incorporation and officials’ office holding.

However, the Attorney General’s ability to pursue *quo warranto* proceedings is not without restraint. It is entrenched in Texas jurisprudence that *quo warranto* is considered an “extraordinary remedy.” *Hardberger*, 932 S.W.2d at 490; *Save Our Springs Alliance, Inc. v. Lazy Nine Mun. Utility Dist. ex rel. Board of Directors*, 198 S.W.3d 300, 210 (Tex. App.—Texarkana 2006, pet. denied) (“A writ of *quo warranto* is an extraordinary remedy”). The legislature created a judicial screening process before such extraordinary claims can be filed and a court’s jurisdiction over a *quo warranto* proceeding invoked. Specifically, TEX. CIV. PRAC. & REM. CODE § 66.002 provides in relevant part:

(a) **If grounds for the remedy exist**, the attorney general or the county or district attorney of the proper county **may petition the district court** of the proper county or a

district judge if the court is in vacation **for leave to file** an information in the nature of *quo warranto*.

(d) **If there is probable ground for the proceeding**, the judge shall grant leave to file the information, order the information to be filed, and order process to be issued.

TEX. CIV. PRAC. & REM. CODE § 66.002 (emphasis added). No statute specifies what the district court can consider in making the probable cause determination. Section 66.002 was enacted in 1985, but for all practical purposes, it appears that similar language as that set forth above has been utilized since the original 1879 version. Unfortunately, legislative history for the current statute, or its predecessors, is not readily ascertainable.

What is known, however, is that unlike ordinary pleadings, the finding of probable ground must be made before the information can be filed and the court's subject matter jurisdiction invoked. *See* TEX. CIV. PRAC. & REM. CODE § 66.002(d).

2. STANDARD OF REVIEW

Appellees do not contest the State's contention that a district court's denial of leave to file an information in the nature of *quo warranto* is reviewed under an abuse of discretion standard. *State ex rel. Manchac v. City of Orange*, 274 S.W.2d 886, 888 (Tex. App.—Beaumont 1955, no writ), *citing State ex rel. Exkhardt v. Hoff*, 31 S.W. 290 (Tex. 1885). Also, a judge may, in the judge's exercise of discretion, deny

leave for a *quo warranto* proceeding for purposes of public policy. *See State v. Hoff*, 31 S.W. 290, 290-91 (Tex. 1895).

Appellees also agree that a district court's evidentiary rulings are reviewed under an abuse of discretion standard. *Owens-Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35 (Tex. 1998). Even an erroneous evidentiary ruling warrants reversal only if the error probably caused the rendition of an improper judgment— “the complaining party must usually show that the whole case turned on the evidence at issue.” *Richmond Condominiums v. Skipworth Commercial Plumbing, Inc.*, 245 S.W.3d 646, 666 (Tex. App.—Fort Worth 2008, pet. denied), *citing City of Brownsville v. Alvarado*, 897 S.W.2d 750, 753–54 (Tex.1995). A party that fails to object to evidence in the trial court waives any objection on appeal. See TEX. R. APP. P. 33.1(a).

A district court abuses its discretion only if it acts without reference to any guiding rules or principles or acts in an arbitrary or unreasonable manner. *Downer v. Aquamarine Operators, Inc.*, 701 S.W. 2d 238, 241-42 (Tex. 1985). “A trial court does not abuse its discretion if its ruling was at least within ‘the zone of reasonable disagreement.’” *Morris v. State*, 123 S.W.3d 425, 426-27 (Tex. App.—San Antonio 2013, pet. denied).

3. THE DISTRICT COURT WAS NOT CONSTRAINED TO LOOK ONLY TO THE LANGUAGE OF THE STATE’S INFORMATION WHEN EVALUATING SECTION 66.002(D)’S PROBABLE GROUND STANDARD AND THE COURT’S JURISDICTION.

While attaching evidence itself, the State now contends that the district court was precluded from considering anything other than the allegations in the Information to determine whether the State demonstrated a probable ground for the *quo warranto* proceeding. *See* Appellant’s Brief, pp. 8-10. Further, the State further contends that in addition to the court being restricted to the pleading, only a basic “fair notice” pleading standard applies. *See* Appellant’s Brief, pp. 9, 23. The State does not state why a hearing would be necessary for such an elementary review by a district court, on a statutorily heightened standard for an “extraordinary remedy.” In support of its argument, the State cites to *Ramirez v. State*, 973 S.W.2d 388, 392 (Tex. App.—El Paso 1998, no writ.); *State v. Huntsaker*, 17 S.W.2d 63, 65 (Tex. Civ. App.—Amarillo 1929); *State ex rel. Manchac v. City of Orange*, 274 S.W.2d 886, 888 (Tex. Civ. App.—Beaumont 1955); and *State ex rel. Brauer v. City of Del Rio*, 92 S.W.2d 287, 288 (Tex. App.—Eastland 1936, no writ).

The State’s reliance on these cases is erroneous. None of the cases hold or even suggest that the court should rely exclusively on pleadings or that a district court cannot evaluate certified documents in making a jurisdictional, probable ground determination.

Ramirez, which is 21 years old, is the most recent case the State cites. *Ramirez* involved a challenge to a city representative's right to office due to a residency requirement, in which a jury found the representative was not entitled to the office. 973 S.W.2d at 390. Among many points of appeal, *Ramirez* argued that the district court abused its discretion in allowing the information to be filed. *Id.*, at 392-93. *Ramirez* expressly discussed that the district court clearly considered matters beyond the language of the pleading itself, including an affidavit in support of the information. *Id.* Indeed, contrary to the State's contention that *Ramirez* stands for the position that evidence is immaterial and should not be considered, *Ramirez* actually stated that "*based on the evidence presented by the State*, the trial court believed probable grounds existed for proceeding." *Id.*, at 393 (emphasis added).⁹

Huntsaker involved a district attorney's petition to pursue a *quo warranto* proceeding to challenge a town's incorporation. As the 90-year-old case noted, "the petition was duly verified." 17 S.W.2d at 65. On appeal, the court noted that allegations "in the verified petition" were to be taken as true when evaluating the petition for leave. *Id.* *Huntsaker* does not support the State's position that pleadings

⁹ The Court should note that in *Ramirez* the State "argued that all the case law and existing authority requires is that a *sworn petition* be filed." *Id.*, at 392 (emphasis added). The State's position in *Ramirez* constitutes a judicial admission that this Court should not ignore. Now, after attaching an improper verification in support of its Information in this case, the State conveniently contends that it is *not* required to verify its petition or provide any factual support to meet its probable ground standard. See Appellant's Brief, pp. 21-23. The State's newest position is inconsistent with its own judicial admissions in prior judicial proceedings and should be disregarded.

do not need to be factually supported or that only a “fair notice” standard applies. *Huntsaker* also does not find nor suggest that a district court is limited to only the pleadings in making the probable ground determination.

The State’s next case, *City of Orange*, involved a county attorney’s petition for leave to challenge a city’s annexation ordinance. 274 S.W.2d at 887-88. The district court denied the petition, without a hearing or any other action. *Id.*, at 888. On those facts, the court of appeals concluded, relying on *Huntsaker*, that “the allegations contained in the petition sought to be filed must be taken as true for purposes of passing on this appeal.” *Id.* Again, *Huntsaker* considered a *verified pleading*. *Huntsaker*, at 65. Furthermore, the petition in *City of Orange* “was verified by the affidavit of the relator Manchac.” *Id.*, at 889. Like the other cases the State cites, *City of Orange* in no way suggests that unverified or otherwise unsupported pleadings satisfy the probable ground standard or that a district court is precluded from considering matters of judicial notice in making the statutory determination.

Brauer, a 1936 case, involved the State’s *quo warranto* action to challenge an ordinance fixing city limits. *Brauer* involved special exceptions and a judgment after a non-jury trial. *Id.*, at 288. Without any supporting analysis, the 1936 opinion simply noted *in addressing special exceptions* that “the allegations of the petition must, of course, be taken to be true.” *Id.* *Brauer* did not involve a denied petition

for leave to file an information in the nature of *quo warranto*. *Brauer* also did not stand for the proposition that a court could not consider certified public documents that contradict allegations in a petition when making a probable ground determination.

The State's cases do not support its contentions that a court must accept unverified and otherwise unsupported pleadings or that a court cannot consider certified documents in the pleadings to determine the probable ground standard and the court's jurisdiction.

Even if the cases stood for what the State (wrongly) suggests, those cases would no longer be good law. In 2004 the Texas Supreme Court expressly held that when a lower court evaluates issues such as subject matter jurisdiction, the lower court may, and in fact should, consider evidence appropriate to make its determination. *Miranda*, 133 S.W.3d 217, 227-29; *see also Clark*, 544 S.W.3d at 805 (Tex. 2018); *Kirwan*, 298 S.W.3d at 622 (Tex. 2009); and *Blue*, 34 S.W.3d at 555 (Tex. 2000) (court "is not required to look solely to the pleadings but may consider evidence *and must do so* when necessary to resolve the jurisdictional issues raised.") (emphasis added). This Court has noted that a trial court should consider evidence when relevant to jurisdictional inquiries. *See, e.g., Trinity Settlement Services, LLC v. Texas State Securities Board*, 417 S.W.3d 494, 501 (Tex. App.—Austin 2013, pet. denied).

In *Miranda*, the Texas Supreme Court expressly referenced Federal Rule of Civil Procedure 12(b) and federal courts' reliance on evidence in adjudicating jurisdictional challenges under Rule 12(b)(1). *Miranda*, at p. 227-28 and fn. 6.

Federal courts routinely consider documents such as certified public records when evaluating whether a complaint alleges a claim upon which relief can be granted under Rule 12. “[I]t is clearly proper in deciding a 12(b)(6) motion to take judicial notice of matters of public record.” *Norris v. Hearst Trust*, 500 F.3d 454, 461 n. 9 (5th Cir. 2007). “In addition to the complaint, the court may review documents attached to the complaint and documents attached to the motion to dismiss to which the complaint refers and which are central to the plaintiff's claim(s).” *In re Enron Corp. Sec., Derivative & ERISA Litig.*, 761 F. Supp. 2d 504, 518 (S.D. Tex. 2011), citing *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498-99 (5th Cir. 2000); also see *Stone v. Life Partners Holdings, Inc.*, 26 F.Supp.3d 75 (W.D. Tex. 2014).

The United State Supreme Court notes “courts must consider the complaint in its entirety, as well as other sources courts ordinarily examine when ruling on Rule 12(b)(6) motions to dismiss, in particular, documents incorporated into the complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S. 308, 322 (2007).

Appellees contend that the same analysis in *Miranda*, *Blue*, and the countless federal cases considering jurisdiction and pleading sufficiency should apply to the extraordinary remedy of *quo warranto*, a remedy that requires a district court to screen for jurisdiction before the case may be filed. Without a district judge making the statutory probable ground determination, the information cannot be filed, and the court's subject matter jurisdiction is not invoked over a *quo warranto* proceeding. *See, e.g., Bute*, 290 S.W.2d at 815 (“As a general rule, it is necessary to obtain leave of the court to invoke its jurisdiction in a *quo warranto* proceeding.”)

While a duly verified and properly supported petition or information may be accepted as true under the cases the State relies on¹⁰—a district court making the probable ground determination is not precluded from considering evidence. The Texas Supreme Court's decisions in *Miranda* and *Blue* expressly allow for such considerations. Furthermore, the type of evidence Appellees' attached to their response (certified county and city records) is precisely the type of information that judicial notice can be taken of and which a district court should consider. *See, e.g., In re Enron*, 761 F. Supp. 2d at 518; *Collins*, 224 F.3d at 498-99; *Norris*, 500 F.3d at 461.

¹⁰ As discussed below, the State's information was not properly verified. Thus, even based on the dated cases the State cites, the district court was not required to accept the State's information as true.

Not only does the *Miranda* and federal Rule 12(b) analysis apply, the very nature of a *quo warranto* proceeding itself requires that the district court consider evidence in evaluating whether the applicant has met the probable ground standard. The State's assertion that an ordinary fair notice pleading standard should apply to a *quo warranto* petition ignores that a *quo warranto* proceeding is an extraordinary remedy. *Hardberger*, 932 S.W.2d at 490.

A temporary injunction is another extraordinary remedy under Texas law, which utilizes a similar standard to the probable ground for a *quo warranto* proceeding. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 204 (Tex. 2002). (“A temporary injunction is an extraordinary remedy....”). Like the probable ground requirement of Section 66.002(d), a district court cannot issue a temporary injunction without first finding, *inter alia*, a “probable right to the relief sought.” *Id.* Of course, a court must consider evidence in making the “probable right” determination for injunctive relief. *See Dallas Anesthesiology Assocs., P.A. v. Texas Anesthesia Grp., P.A.*, 190 S.W.3d 891, 896–97 (Tex. App.—Tex. App.—Dallas 2006, no pet.) (“To establish a probable right to the relief sought, an applicant is required to allege a cause of action and offer evidence that tends to support the right to recover on the merits.”) And, an applicant must present a verified pleading or other evidentiary support to obtain a temporary restraining order. *See TEX. R. CIV. P.* 680.

In addition to *quo warranto* and injunctive relief, Texas law recognizes the following extraordinary remedies:

- *Habeas corpus*—*Ex parte Cruzata*, 220 S.W.3d 518, 520 (Tex. Crim. App. 2007) (“available only when there is no other adequate remedy at law.”);
- *Mandamus*—*In re Poe*, 996 S.W.2d 281, 283 (Tex. App.—Amarillo 1999), citing *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992) (“available only in limited circumstances” involving “manifest and urgent necessity”);
- Appointment of a receiver—*Benefield v. State*, 266 S.W.3d 25, 31 (Tex. App.—Houston [1st Dist.] 2008) (“[t]he appointment of a receiver, nevertheless, is a harsh, drastic, and extraordinary remedy, to be used cautiously.”);
- Writ of certiorari—38 Tex. Jur. 3d Extraordinary Writs § 326 (“On the other hand, an extraordinary remedy by writ of certiorari ordinarily will not lie when ordinary remedies such as an appeal are adequate.”) (citations omitted);
- Writ of prohibition—*Hebert v. Probate Court No. One of Harris County*, 466 S.W.2d 849, 851 (Tex. App.—Houston [14th Dist.] 1971, no writ) (“A writ of prohibition is an extraordinary remedy which is only granted in extreme cases of necessity and not for grievances which may be redressed in ordinary proceedings at law.”); and
- *Procedendo*—38 Tex. Jur. 3d Extraordinary Writs § 408 (“*Procedendo* is a high-prerogative writ of an extraordinary nature.”) (citations omitted).

Suffice it to say, Texas’ extraordinary remedies are actions that include high burdens that are not treated lightly by the courts. The State’s contention that a *quo warranto* proceeding, one of Texas’ few extraordinary remedies, should be

scrutinized only under a basic “fair notice” pleading standard is disingenuous considering the remedies similarly aligned with a writ of *quo warranto*.

In summary, section 66.002(d)’s probable ground standard should be treated no differently than the heightened “probable right” standard for injunctive relief. A district court may, and in fact should, consider evidence in making its determination for such heightened standards on extraordinary remedies such as *quo warranto* and temporary injunction.¹¹

In fact, the very cases the State relies on suggest that the court should be presented with factual support, through a verified information or other evidence when a court is evaluating a petition for leave to file an information in the nature of *quo warranto* under Section 66.002(d). In fact, in one of the oldest *quo warranto* decisions, *Deaver v. State*, 66 S.W. 256, 258 (Tex. Civ. App. 1901), the court noted that a district court erred in not dismissing an information “upon such a state of facts.” Long after the cases cited by the State, the Texas Supreme Court set forth that district courts may, and should, consider evidence in evaluating jurisdictional issues. Section 66.002(d) heightens the standard for a court evaluating whether it has jurisdiction over a *quo warranto* proceeding.

¹¹ Notably, other extraordinary remedies require that evidence be considered. For example, while the underlying statute pertaining to appointment of a receiver does not require evidence, case law has noted that because appointment of a receiver is an extraordinary remedy, evidence should be considered. See *Chapa v. Chapa*, 2012 WL 6728242, at *6 (Tex. App.—San Antonio 2012, no pet.) (“As an extraordinary remedy, appointment of a receiver must be based on evidence showing an immediate risk of harm, and that there is no other lesser remedy at law or in equity.”)

In screening the State's Information for jurisdiction under Section 66.002(d)'s probable ground standard, the district court did not err in considering the certified public records that Appellees' offered—without objection from the State.

4. THE STATE WAIVED ANY OBJECTION TO THE COURT'S CONSIDERATION OF EVIDENCE IN MAKING ITS PROBABLE GROUND DETERMINATION.

For the reasons set forth above, the district court properly considered the certified documents Appellees presented. Furthermore, the State waived any objection to the Court's consideration. When asked if it had any objections to Appellees' evidence, the State expressly declined to object. (2RR 17: ln 6-14). The district court then noted that it would admit Appellees' certified exhibits "without objection" and that the court would "take judicial notice of those for purposes of this hearing." (2RR 17: ln 13-21).

Indeed, the State admits that it did not object to Appellees' evidence. *See* Appellant's Brief, p. 28, fn. 8. Nor did the State move to strike the evidence Appellees' offered. The State's failure to object waives any objection on appeal that the district court erred in considering the evidence. *See* TEX. R. APP. P. 33.1(a); *see also Bay Area Healthcare Group, Ltd. v. McShane*, 239 S.W.3d 231, 235 (Tex. 2007); *Harvey v. State*, 173 S.W.3d 841, 850 (Tex. App.—Texarkana 2005, no pet.) (failure to object to a trial court's consideration of matters outside the record waived the issue on appeal). And, the fact that the State itself attached evidence buttresses that the State waived any objection to the district court considering evidence.

5. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING THE STATE’S PETITION FOR LEAVE.

The district court was required to apply Section 66.002(d)’s probable ground to the State’s two *quo warranto* challenges: (1) that Double Horn was not an unincorporated town or village, and therefore could not incorporate under TEX. LOCAL GOV’T CODE § 7.001; and (2) that Double Horn improperly included SCS’s property, which is not to be used strictly for municipal purposes under TEX. LOCAL GOV’T CODE § 7.002(b). The State failed to show a probable ground for a *quo warranto* proceeding on either ground, and therefore the district court did not err when it denied the State’s petition for leave under Section 66.002(d).

A. The District Court Did Not Err When It Found That the State Had Not Met the Probable Ground Standard to Show That Double Horn Failed to Constitute a Town or Village Prior to Incorporation.

Section 7.001 of the Texas Local Government Code sets forth three requirements for a community to incorporate as a Type B general-law municipality:

§ 7.001 Authority to Incorporate as Type B General-Law Municipality

A community may incorporate under this chapter as a Type B general-law municipality if it:

- (1) constitutes an unincorporated town or village;
- (2) contains 201 to 9,999 inhabitants; and
- (3) meets the territorial requirements prescribed by Section 5.901.

Requirements (2)¹² and (3)¹³ are not in dispute and the State's Information contested only one requirement: (1)—whether Double Horn constituted an unincorporated town or village upon incorporation. The jurisdictional facts before the district court did not establish a probable ground for the State's challenge to this requirement.

No Texas statute defines “town” or “village.” However, case law addressing those terms provides:

'A town or a village is an assemblage of habitations. A town is larger than a village and smaller than a city. A village is larger than a hamlet. Both have, to some degree, an urban character as distinguished from a rural character. There should be some degree of unity and proximity between the habitations so assembled to constitute a town or village. To be entitled to incorporate, the area of the town or village should be susceptible of receiving some municipal services.'

¹² Not only does the State's information not allege section (2) is not met, but by calling the election it is legally presumed that the Burnet County Judge found more than two hundred inhabitants and “the county judge's decision is conclusive.” *See Durham v. Crutchfield*, 578 S.W.2d 438, 441 (Tex. Civ. App. 1979, writ ref'd n.r.e.) (“Whether the town included two hundred or more residents as required by Art. 1133, Tex. Rev. Civ. Stat. Ann., was a matter upon which the county judge's decision is conclusive. In this case, since the county judge called the election, it must be presumed that he found two hundred or more residents within the area to be incorporated and found the area to be a town or village within the meaning of Art. 1133, *supra*.”) (citations omitted).

¹³ Section 5.901(1) requires that an incorporated municipality of fewer than 2,000 inhabitants must not have more than two square miles of surface area. Here, Double Horn consists of 1,226.63 acres, which equates to 1.9166 square miles. (CR 115-122). The State did not challenge the square mileage in its Information, nor could it have done so.

Rogers v. Raines, 512 S.W.2d 725, 729 (Tex. Civ. App.—Tyler 1974, writ ref’d n.r.e.), citing *Harang v. State ex rel. City of West Columbia*, 466 S.W.2d 8 (Tex. Civ. App.—Houston [14th Dist.] 1971, no writ).

A “town” has been further defined as “a collection of inhabited houses” and its population is distinguished from a rural population of “people scattered over the country, and engaged in agricultural pursuits, or some similar avocations, requiring a considerable area of territory for its support.” *Rogers*, at 729, citing *State ex rel. Taylor v. Edison*, 13 S.W. 263, 264 (Tex. 1890). Further, a “‘town’ designates an aggregation of houses so near one another that the inhabitants may fairly be said to dwell together.” *Rogers*, at 729, citing 87 C.J.S. Towns, Sec. 2, p. 7.

A “village” is less restrictive than a “town” and is “urban or semi-urban in its character.” *Rogers*, at 729, citing Antieau, Municipal Corporation Law, Vol 1, Sec. 104. A “town” is therefore more urban in character than a “village.”

In this case, the concentration of the residences and population of Double Horn qualifies as a town, and certainly satisfies the more relaxed standard of a village. To satisfy the town or village requirement, the district court was to consider the following:

- (1) Does Double Horn have an urban character as distinguished from a rural population of “peoples scattered over the country, and engaged in agricultural pursuits, or some similar avocations, requiring a considerable area of territory for its support”;

- (2) Is there some degree of unity and proximity between the habitations;
and
- (3) Whether the area should be susceptible to receiving some municipal services.

Rogers, at 729 (citations omitted).

In evaluating factors (1) and (2), the district court was to consider whether there is a “compact center or a nucleus of population around which the town has developed.” *Rogers*, at 730. The pleadings, city maps, and other information before the district court satisfied this standard, and certainly negated that the State had established a probable ground for a *quo warranto* proceeding on this requirement. (CR 73-176; also *see* Appendix Tab 5).

Cases which have found the lack of a compact center or nucleus are remarkably distinguishable from this case. For example, in *Rogers v. Rains, supra*, the court found no unity in a “rather unusual configuration” where 280 individuals lived in approximately 105 homes that were *scattered over 20 miles of property tracking highways, with at times as much as two miles of distance between homes*. 512 S.W.2d at 730. Further, at most, there was *only one municipal street* within the incorporated area. *Id.*¹⁴

¹⁴ The State cites to *Rogers* in support of its appeal. *See* Appellant’s Brief, pp. 12-13. However, as discussed *supra*, *Rogers* is readily distinguishable and if anything, supports the district court’s finding that the State had not shown a probable ground on the State’s challenge to the “town or village” requirement.

In *State ex rel. Needham v. Wilbanks*, 595 S.W.2d 849 (Tex. 1980) the Texas Supreme Court evaluated whether the community of Hallsburg’s incorporation was invalid. In doing so, the court noted that at the time of incorporation Hallsburg had only *three residences* in the corporate city limits and the *city’s configuration was made up of 200 to 500-foot strips along 31 miles of roadway*. *Id.*, at 850. The court found that it was not possible to drive from the northern part of the city to the southern part without leaving the city limits. *Id.* The court further noted that the *distances between residences, many over one mile and two over 3 ¼ miles apart*, suggested the lack of a common nucleus. *Id.*, at 851. In reaching its conclusion, the court noted that “residences are wildly scattered, with only occasional clusters.” *Id.*, at 853.

In *Harang v. State ex rel. City of West Columbia*, *supra*, the court of appeals found that Wild Peach’s incorporation was invalid because the community did not constitute a town or village because the incorporation included only land adjacent to a roadway *over a 15 mile stretch* with clusters of homes separated by distances as much as *one mile*. 466 SW.2d, at 11. Further, only 7 of 100 habitations were included in an area that did not constitute a roadway strip. *Id.*¹⁵

¹⁵ As with *Rogers*, the State also relies on *Harang* in support of its appeal. See Appellant’s Brief, p. 12. However, as discussed *supra*, *Harang* is clearly distinguishable from this case on the “town or village” assessment and, if anything, supports Appellees’ position and the district court’s conclusion that the State had not met its probable ground standard on the “town or village” challenge.

The facts applicable to Double Horn are quite different than the foregoing cases and clearly show a non-rural character and a compact center or a nucleus of population around which the town has developed. (CR 73-176; also *see* Appendix Tab 5).

In addition, the district court was presented with the State's concession that Double Horn is created around a nucleus of residences within a subdivision that centers around "a single common area." (CR 9). The State further alleged that Double Horn "includes within its boundaries the Double Horn subdivision and SCS's property" (CR 10), without suggesting that Double Horn's residences were separated or not clustered.

Further, the district court was presented with Double Horn's legislative finding that Double Horn "is currently, and has for many years, comprised primarily of an assemblage of residential properties and homes with an urban or semi-urban character, which homes have unity and fairly close proximity; is susceptible of receiving municipal services, which are and will be provided by the City; the City has a park, a meeting place, a common nucleus, and seeks to provide municipal services to its current and future residents and contiguous tracts of property in its extra territorial jurisdiction." (CR 152-153; also *see* Appendix Tab 1). Double Horn's legislative findings are entitled to deference and are presumed valid. *See Hunt v. City of San Antonio*, 462 S.W.2d 536, 538 (Tex. 1971).

Unlike *Rogers*, *Wilbanks*, and *Harang*, there is no dispute that Double Horn is a contiguous 1,226 acres of property—not strips of land along miles of roadway with randomly dispersed residences. (CR 76-77, 112-113, 115-122). Further, the State concedes that all residents of Double Horn live in the area of the subdivision, and that only the SCS property is uninhabited. (CR 9-12). Accordingly, the district court did not err in finding that the State had not met its probable ground standard to show that Double Horn was not created around a compact center or nucleus.

In fact, the State’s appellate brief is rather quiet on the compact center and nucleus issue. Rather, the State contends that there are no stores or businesses¹⁶ within the corporate limits, that Double Horn does not own a public building, and based on those facts Double Horn was not able to incorporate. However, the State cites no statute or case that requires stores or business or a public building for municipal incorporation.¹⁷ There is no requirement that a municipality have

¹⁶ While Appellees contend it is immaterial, the State’s contention that there are no businesses within Double Horn is factually inaccurate. Rather, along Highway 71 and at the entrance to Double Horn’s nucleus of homes exists commercial property used for office space, as a storage facility, and as a thrift store/antique business. The Double Horn City council was considering utilizing one commercial business for its own municipal meetings. (CR 156). Further, other commercial business exists. See Appendix Tab 1, p. 4.

¹⁷ The State cites to *State ex rel. Mobray v. Masterson*, 228 S.W. 623, 631 (Tex. App.—Beaumont 1921, writ ref’d) for the proposition that “towns or villages have businesses, churches, school buildings, and other buildings under construction.” See Appellant’s Brief, p. 11. However, *Masterson* simply discussed that the town at issue in that case *did* have some of those things. *Masterson* did not set forth any such requirement or cite to any case or other law for any such requirement to find a town or village.

businesses or own or rent a city hall. To the contrary, numerous Texas cities have incorporated with little or no commercial business, which clearly develops later.¹⁸

The district court also did not err in finding that the State had not met the probable ground standard to establish that the incorporated area within Double Horn was not susceptible to receiving municipal services. The cases invalidating an incorporation for the inability to receive municipal services are clearly distinguishable from the facts in this case.

In *Rogers v. Raines*, *supra*, the court found that the town of Tucker did not provide, and was unable to provide, any municipal services, other than possibly providing garbage collection (which the court found even that was not feasible). In *Needham v. Wilbanks*, *supra*, the court noted that Hallsburg was “not capable of furnishing municipal services on any reasonable basis” and that the narrow strip configuration of the incorporated area precluded the provision of municipal services. *Id.*, at 852. As noted above, Hallsburg’s configuration consisted of 200 to 500-foot strips along 31 miles of highway. 595 S.W.2d at 850. Further, the court noted that it was not possible to drive from the northern part of the city to the southern part without leaving the city limits, thus further inhibiting the provision of municipal services. *Id.* In *Harang v. State*, *supra*, the municipal functions the village of Wild Peach performed after its incorporation consisted of enacting a *single ordinance*

¹⁸ See footnote 6, *supra*.

regulating the disposal of garbage at a landfill site, which *affected only those inhabitants that lived near the landfill*. 466 SW.2d at 12-13. Further, because the territory included strips of area tracking 15 miles of county roads, there was no ability to offer public works or public safety functions. *Id.* at 13.

Contrary to the foregoing cases, the information before the district court clearly demonstrated that Double Horn is not irregularly shaped and there was no dispute that Double Horn had a concentration of residences. Further, the district court was presented with certified governmental documents establishing that Double Horn had provided municipal services and was in the process of considering and/or providing numerous other services, including:

- Passing an ordinance setting the municipal boundaries and the boundaries of its extraterritorial jurisdiction and establishing an official map. (CR 112-122);
- Establishing Rules of Order and Procedure for city council meetings and related procedures, including setting forth duties of city officials, how citizens will be able to participate in governing meetings, when governmental meetings will occur, and the like. (CR 123-131).;
- Setting forth the roles and duties of the Mayor and President Pro Tempore. (CR 132-135);
- Setting a fiscal year of October 1 through September 30. (CR 136-137);
- Designating an official newspaper of the city. (CR 138-140);
- Established an official city website for posting city news, agendas and minutes, and other governmental information (CR 157; also *see* www.doublehorntx.org)¹⁹;

¹⁹Courts may take judicial notice of matters within governmental websites. *See, e.g., City of El Paso v. Fox*, 458 S.W.3d 66, 72 (Tex. App.—El Paso 2014, no pet.) and *Dorsey v. Portfolio Equities, Inc.*, 540 F.3d 333, 338 (5th Cir. 2007). Double Horn’s website www.doublehorntx.org (including city documents tab showing city documents, agendas and minutes, budget and tax rate,

- Established a city checking account. (CR 162);
- Establishing an emergency plan for the City. (CR 152);
- Taking steps to provide law enforcement services for all areas within the corporate boundaries, including through an Interlocal Agreement with Burnet County. (CR 175);
- Taking steps to obtain or improve emergency services for all areas within the corporate boundaries, including through an agreement with Burnet County Emergency Services District No. 9. (CR 175);
- Taking steps to obtain a speed study from the State of Texas in furtherance of lowering the speed limit for drivers entering and exiting Highway 71 adjacent to the City. (CR 147-148);
- Taking steps to lease space for a City Hall. (CR 157, 163);
- Taking steps toward establishing an estimated tax rate. (CR 168);
- Identifying funding sources and fundraising activities. (CR 168);
- Taking steps toward establishing a municipal budget and estimated ad valorem tax rate. (CR 176);
- Adopting a resolution for the collection of ad valorem taxes. (CR 141-146);
- Taking steps to employ City Secretary on part time basis. (CR 155);
- Obtaining certifications of aldermen and mayor under the Texas Open Meetings Act. See www.doublehorntx.org/certifications;
- Obtaining certifications of aldermen and mayor under the Texas Public Information Act. See www.doublehorntx.org/certifications;
- Taking steps to adopt a comprehensive plan and zoning ordinance (CR 150);
- Obtaining liability insurance through the Texas Municipal League Intergovernmental Risk Pool. (CR 162);
- Taking steps to provide garbage pickup for all areas within the corporate boundaries (CR 152);
- Taking steps to provide a recycling program and pick up recycling for all areas within the corporate boundaries (CR 152);
- Taking steps to establish a municipal program to provide maintenance of municipal streets. (CR 152);

open meeting and open record training certifications, and city map) shows that Double Horn is a fully functioning municipality like any other municipality across the State of Texas.

- Implementing a program to designate and mark hiking and walking trails within the corporate limits (CR 152);
- Implementing a program to monitor and report air quality within the corporate limits and provide the results to residents and property owners. (CR 152); and
- Implementing a program to monitor and report seismic activity within the corporate limits and provide the results to residents and property owners. (CR 152).

The foregoing municipal actions, and those that continue to date, benefit or are intended to benefit the entire area of Double Horn—including the SCS property that the State focuses on. For example, and without limitation, SCS will benefit from the interlocal government cooperation for provision of law enforcement and emergency services, garbage and recycling pickup, monitoring and reporting of air quality and seismic activity, controlling traffic through monitoring and potential reduction of speed on roadways directly adjacent to SCS's property, future zoning of the SCS and adjacent property, and numerous other governmental acts set forth above and in the record before the district court and to which this court can take judicial notice.

Indeed, in addition to having a semi-urban character and unity and proximity between habitations within the incorporated area, the property within the corporate limits of Double Horn is not only susceptible to receive, but is receiving or in the process of receiving, many municipal services. *See, e.g., Rogers v. Raines*, 512 S.W.2d 725, 729 (Tex. Civ. App.—Tyler 1974, writ ref'd n.r.e.).

The district court was presented with jurisdictional evidence that left no dispute that Double Horn satisfied the “town or village” requirement of Section 7.001(1). As such, the district court did not abuse its discretion.

B. The District Court Did Not Abuse Its Discretion in Finding that the State Had Not Established a Probable Ground on its Argument that SCS’s Property Was Not Included for Municipal Purposes.

The State argued that its *quo warranto* proceeding was warranted because Double Horn’s incorporation included SCS’s approximately 281 acres that the State contends was not to be “used strictly for municipal purposes” under TEX. LOCAL GOV’T CODE § Section 7.002(b). The district court did not err in finding that the State had not met the probable ground standard on this argument.

Section 7.002 does not set forth the requirements for a municipality to incorporate, rather requirements to incorporate are expressly set forth in section 7.001. Section 7.002 sets forth the requirements for an application to be presented to a county judge for an election to proceed. Specifically, section 7.002(b) requires that an application presented to a county judge to incorporate must state the proposed boundaries and name of the municipality, “and it must be accompanied by a plat of the proposed municipality that contains only the territory to be used strictly for municipal purposes.” *See* TEX. LOCAL GOV’T CODE § 7.002(b). The county judge determines whether an application is satisfactory under Section 7.002, and if so, the county judge orders an election. *See* TEX. LOCAL GOV’T CODE § 7.003.

As a preliminary matter, the electors voted to approve Double Horn's municipal boundaries, which should be honored. In *State ex rel. Wilkie v. Stein*, 36 S.W.2d 698 (1931), the Supreme Court found that:

The law gives to the qualified voters of the inhabitants of a town or village the right to fix the boundaries of the territory sought to be embraced in the proposed incorporated town or village. What territory shall, or shall not, be included is a question of fact to be determined by the people immediately interested... If the corporate limits of a town or village are adjusted in the reasonable exercise of the judgment of the voters, and the exclusion or inclusion of lands, belonging to those who might object thereto, was not arbitrarily done, ... then in such a case the courts would be without power to interfere.

Id. at 699. Here, the State did not allege any arbitrary voter involvement or suggest any reason that Double Horn's corporate boundaries were improper—other than ignoring the voters' voices and alleging that SCS's property was not included for municipal purposes.

The State ignores that courts have repeatedly concluded that the inclusion of vacant and uninhabited land, such as the SCS property in this case, does not invalidate a municipal incorporation. The requirement is only that property “included in a municipality must be *physically constituted so that it can be made subject to municipal government.*” See 52 Tex. Jur. 3d Municipal Corporations § 36, *citing State v. Stein*, 36 S.W.2d 698 (Tex. Comm'n App. 1931) (emphasis added).

“Although the territory sought to be incorporated must be capable of being used strictly for municipal purposes and must be likely to be so used within a reasonable time, *the prospective expansion of the city or town may be taken into account.*” *Id.*, citing *Stein and Merritt v. State*, 94 S.W. 372 (1906) (emphasis added). Importantly, “*the intention of present or immediate future use of all the included area for municipal purposes is not required.*” *Id.* (emphasis added).

For example, in *State v. Masterson*, 228 S.W. 623 (Tex. Civ. App.—Beaumont 1921, writ ref’d) the State brought a *quo warranto* proceeding to invalidate a municipal incorporation due to the inclusion of unoccupied land. The court of appeals noted that the inclusion of vacant and unoccupied land does not automatically invalidate a municipal incorporation. *Id.* at 628. Rather, *Masterson* set forth that a court must evaluate the circumstances of the property at issue to determine whether it has the *potential* to be used for municipal purposes. In *Masterson*, the uninhabited property at issue consisted of 76 acres of land used as an oil field. The 76 acres was covered by 93 standing oil derricks, in no order or method, as well as “pump stations, power plants, underground tanks, slush pits, saltwater drains and ditches, as well as much other paraphernalia used in oil development.” *Id.* On those specific facts, the court found that the municipality could have no reasonable expectation or intention to do anything with the 76 acres to make the property suitable for town purposes. *Id.*

Those peculiar facts are not present here. Rather, Double Horn intends and reasonably expects to govern SCS's 281 acres for town purposes, and the district court was presented with substantial, uncontroverted evidence on that issue. (CR 152-153). Double Horn has declared its intention to, among other things, pass a comprehensive plan, zoning ordinance, subdivision regulations, park and trail plan "for all property located within the boundaries of the City"²⁰, require buildings to comply with subdivision regulations and building codes, and regulate various issues within its city, including fireworks and sexually oriented businesses. (CR 149-153). Double Horn has since passed a comprehensive plan. *See* Appendix Tab 1.

Furthermore, Double Horn has already taken action in furtherance of its intent to provide other municipal services that will extend to SCS's property, including but not limited to: provision of law enforcement and emergency services, garbage and recycling pickup, monitoring and reporting of air quality and seismic activity, and controlling traffic through monitoring and potential reduction of speed on roadways directly adjacent to SCS's property. (CR 147-176). Double Horn's intentions and expectations for the SCS property constitute proper municipal purposes, even though the SCS property is currently uninhabited.

²⁰ Under Texas Local Government Code Chapters 211 and 212, SCS's property is subject to the comprehensive plan, zoning ordinances, subdivision regulations, and the like. Also *see* CR 152 and Appendix Tabs 1 and 5.

Appellate courts have held that vacant, uninhabited, or agricultural land may be included in, and not invalidate, municipal incorporation. *See State v. Hoard*, 62 S.W. 1054 (Tex. 1901) (inclusion of 205 acres of uninhabited, cultivated land did not render incorporation invalid); *State v. Hellman*, 36 S.W.2d 1002 (Tex. Comm. App. 1931) (permissible to include unused land within corporate limits for future growth); *State v. Larkin*, 90 S.W. 912 (Tex. Civ. App. 1905, writ ref'd) (incorporation should not include an *unreasonable amount* of pasture, agricultural, and wood land therein); *State v. Town of Baird*, 15 S.W. 98 (1890) (115 acres of purely agricultural land did not invalidate incorporation, as the potential to expand is proper).

In perhaps the earliest case on the issue, *McClesky v. State*, 23 S.W. 518 (Tex. Civ. App. 1893), the trial court granted the State's request to invalidate a town's incorporation due to the inclusion of vacant land. However, the court of appeals reversed, noting that a municipality's inclusion of a "reasonable amount" of unoccupied land in the incorporation is permissible.

The question is whether a reasonable amount of uninhabited land is included and whether there can be an intent or the reasonable expectation to use the property for municipal purposes in the future. *See* 52 Tex. Jur. 3d Municipal Corporations § 36, *citing Merritt v. State*, 94 S.W. 372 (1906).

For example, an incorporation was invalid where *seventy-five percent (75%)* of property was uninhabited, agricultural land. *See Judd v. State*, 62 S.W. 543 (Tex. Civ. App. 1901). In *Brauer*, 92 S.W.2d at 290, the court found improper the inclusion of *2,500 acres* of “non-urban agriculture land, never part of the city, and never intended to be such.” In *Merritt*, the court found improper the inclusion of *eighty percent (4/5^{ths})* of the incorporated area, amounting to *4,700 acres*, which “not at the time of the election, nor is it now, embraced within the actual limits of said town, nor occupied by residences or other buildings, or in any other manner occupied or used for town purposes, nor is or was the same suitable for use, or ever intended or likely to be used for town purposes.” 94 S.W. at 373.

Here, the SCS property (281 acres) makes up only 22.9% of the square acreage of Double Horn—much less than the 75% in *Judd*, the 2,500 acres in *Brauer*, or the 4,700 acres making up 80% of the incorporated area in *Merritt*.

To the contrary, and more aligned with Double Horn’s incorporation, the incorporation of the city of Jacksonville was upheld where the town was composed of 1100 acres, and approximately 400 acres (36%) were agriculture. *Thompson v. State ex. Rel Donley*, 56 S.W. 603, 604 (Tex. Civ. App. – 1900, no writ). And the incorporation of the town of Celeste was upheld by the Texas Supreme Court where the town included 205 acres of agricultural land with the total town area of 575 acres (35%). *State ex rel. Perrin v. Hoard*, 62 S.W. 1054, 1055-56 (1901); *see also State*

ex rel. Rushing v. Town of Baird, 15 S.W. 98 (Tex. 1890) (affirming city incorporation that included 115 acres of agricultural land); *City of Waco v. Higginson*, 243 S.W. 1078, 1079 (Tex. Comm. App. 1922) (affirming city boundary extension containing 150 acres of agricultural land) (citing *Cohen v. City of Houston*, 176 S.W. 809 (Tex. Civ. App.—Galveston 1915, writ ref’d) and *Cohen v. City of Houston*, 205 S.W. 757 (Tex. Civ. App.—Beaumont 1918, writ ref’d) (where courts approved Houston extending its boundary to include agricultural land “a mile or more in each direction.”). The court in *Higginson, supra*, stated “It is but natural that farms must give way to the necessities of large adjoining cities. The cotton field frequently becomes the foundation of a skyscraper.” 243 S.W. at 1079.

The State cites to *State ex rel. Cty. Attorney v. Merchant*, 85 S.W. 483, 484 (Tex. App.—Beaumont 1905, no writ), arguing that *Merchant* supports the State’s position that Double Horn improperly included SCS’s land. However, *Merchant*, like the other *quo warranto* cases evaluating the “strictly used for municipal purposes” requirement, does not support the State’s position. In *Merchant*, roughly *one-half of the incorporated 1,100 acres* was “uninhabited land diversified with prairie and timber and palmetto swamps.” *Id.*, at 484. *Merchant* also expressly found the uninhabited land could not be occupied for town purposes and could not be subdivided. *Id.*

Unlike *Merchant*, SCS's property can and is subject to a comprehensive plan and zoning, which involves the exercise of Double Horn's police power. (CR 150-153; and *see* Appendix Tab 1). Zoning is a quintessential governmental function.²¹ Zoning is a proper exercise of a city's police power, and zoning uses for property are contained in almost all zoning regulations. *See* TEX. LOC. GOV'T CODE Chapter 211.

The United States Supreme Court finds:

The zoning function is traditionally a governmental task requiring the 'balancing [of] numerous competing considerations,' and courts should properly 'refrain from reviewing the merits of [such] decisions, absent a showing of arbitrariness or irrationality.' *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265, 97 S. Ct. 555, 563, 50 L.Ed.2d 450 (1977). Given the broad powers of states under the Twenty-First Amendment, judicial deference to the legislative exercise of zoning powers by a city council or other legislative zoning body is especially appropriate *Larken v. Grendel's Den*, 103 S. Ct. 505, 509 (1982).

The Texas Supreme Court finds:

Zoning is a governmental function that allows 'a municipality, in the exercise of its legislative discretion, to restrict the use of private property.' *City of Brookside Village v. Comeau*, 633 S.W.2d 790, 792 (Tex. 1982); *see Mayhew v. Town of*

²¹ Zoning regulations are designed to (1) lessen congestion in the streets; (2) secure safety from fire, panic, and other dangers; (3) promote health and the general welfare; (4) provide adequate light and air; (5) prevent the overcrowding of land; (6) avoid undue concentration of population; (7) or facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. *See* TEX. LOC. GOV'T CODE § 211.004.

Sunnyvale, 964 S.W.2d 922, 933 (Tex.1998) (“Zoning decisions are vested in the discretion of municipal authorities; courts should not assume the role of a super zoning board.”)

A Texas court of appeals finds:

When the city is enforcing zoning ordinances, it is serving in its governmental function. A governmental unit's zoning authority is derived from the police power of the state, and all property is held subject to the valid exercise of the power. Both zoning ordinances and land-use ordinances are valid exercises of a city's police power to safeguard the health, comfort, and general welfare of its citizens. Land-use ordinances protect local residents from the ill effects of urbanization and enhance the quality of life, and, as such, are proper exercises of a city's police power. *Truong v. City of Houston*, 99 S.W.2d 204, 210 (Tex. App. – Houston [1st Dist.] 2003, no pet.) (internal citations omitted).

All property within Double Horn, including the SCS property, is subject to the valid exercise of municipal police power. *City of College Station v. Turtle Rock Corp.*, 680 S.W.2d 802, 804 (Tex. 1984). Zoning comes under the police power of a municipality, is made to preserve the health and safety of its inhabitants, and it is within the power of a city to make regulations governing land use. *City of Breckenridge v. McMullen*, 258 S.W. 1099, (Tex. Civ. App. – Fort Worth 1923, no writ).

The undisputed facts presented to the district court established that Double Horn intends to, and has a reasonable expectation to, govern all of the property within its corporate limits for municipal purposes. In fact, Double Horn and SCS

representatives recently met to discuss a working relationship between SCS and the city, including issues regarding masonry and a gated entrance to SCS and roadway accessibility issues. (Appendix Tab 11).

Given the amount of SCS's property (22.9% of the total city), the municipal services provided and intended to be provided to the property, and Double Horn's intent to zone the SCS property which is a clear governmental function, the inclusion of SCS's property within Double Horn does not violate Section 7.002(b) and the district court did not err in finding that the State failed to establish a probable ground under Section 66.002(d).

6. THE DISTRICT COURT PROPERLY SUSTAINED APPELLEES' OBJECTIONS TO THE STATE'S IMPROPER VERIFICATION AND INADMISSIBLE EVIDENCE OFFERED IN SUPPORT OF ITS INFORMATION.

A. The State's Information Was Required to Be Properly Verified or Otherwise Factually Supported with Admissible Evidence.

As noted above, the State previously acknowledged that for a petition for leave to file an information in the nature of *quo warranto* "all the case law and existing authority requires is that a *sworn petition* be filed." *Ramirez v. State*, 973 S.W.2d at 392. (emphasis added). Indeed, the State's Information in this case contained a purported verification from its counsel, David Hacker (CR 16) and evidence attached to the Information (CR 17-40). However, the State's tune is now different, as the State contends that it was not required to verify its information or

provide *any* evidentiary support to meet its statutory probable ground standard. *See* Appellants' Brief, pp. 21-22.

In support of its inconsistent position, the State contends that Chapter 66 contains no expressed requirement that a *quo warranto* information or petition be verified and, once again, the State contends that probable ground under § 66.002(d) requires nothing more than a fair notice pleading standard. *See* Appellant's Brief, pp. 21-22.

The State concedes that it "is a best practice" for the State to verify an information in the nature of *quo warranto*, although the State claims that the best practice only applies when the State files the *quo warranto* proceeding on the relation of another; however the best practice does not apply when the State files the proceeding on its own behalf. *See* Appellant's Brief, pp. 21-22. The State cites *Hunnicut v. State ex rel. Whitt*, 12 S.W.106, 108 (Tex. 1889) and *Gifford v. State ex rel. Lilly*, 525 S.W. 2d 250, 252 (Tex. Civ.—Waco 1975, writ diss'd by agre.) for its position.

However, the State's reliance on those cases is misplaced. *Gifford* involved a district attorney, who obtained the trial court's permission to proceed on its *quo warranto* matter. After a jury trial, the court entered judgment granting the requested

relief. *Id.*, at 251. Referencing what it admitted was “dictum” in *Hunnicut*²², *Gifford* noted that the predecessor statute to Chapter 66 did not require a petition or information to be sworn to. *Id.*, at 252. However, *Gifford* did not address the probable ground standard and whether an unverified petition was sufficient to meet that standard. Rather, the appeal in *Gifford* followed a jury trial in which evidence was presented on the issues in the case. The appellant in *Gifford* sought to disregard a jury finding based on an argument that the petition and information were not verified at the beginning of the proceeding. On that argument, *Gifford* noted that while a “better practice”, the lack of verification was not jurisdictional such that a jury trial should be overturned. Indeed, neither *Gifford*, nor *Hunnicut*, provide that an unverified or otherwise unsupported petition or information is sufficient to meet the probable ground standard in the face of contrary evidence—regardless of whether the Attorney General brings the case on relation of another.

Also, neither the State, nor *Hunnicut* or *Gifford*, provide any legitimate reason for why an information in the nature of *quo warranto* should be verified when the Attorney General brings the case on relation, but no such requirement exists when the information is filed on the Attorney General’s own accord. Regardless, as

²² *Hunnicut* addressed a *quo warranto* proceeding on the relation of another. 12 S.W. at 107. The case involved a verified information and supplementations, as well as “uncontroverted evidence.” *Id.* The case noted “the original information was sworn to by the relator before the county attorney, and, on presentation to the district judge, was by him directed to be filed.” *Id.* The case was tried, and the appellant then challenged whether the relator’s affidavit could not be made to the county attorney, which the Court found proper. *Id.*, at 108.

discussed above, certainly since the Texas Supreme Court’s 2004 decision in *Miranda*, the district court should consider evidence when determining jurisdiction and whether the heightened probable ground standard is met. *See Miranda*, 133 at 227; *Clark*, 544 S.W.3d at 805; *Kirwan*, 298 S.W.3d at 622; and *Blue*, 34 S.W.3d at 555 (court “is not required to look solely to the pleadings but may consider evidence and must do so when necessary to resolve the jurisdictional issues raised.”).

Whether the supporting facts come from a verified information, or other admissible evidence, the State was required to offer some admissible support for its contentions. The State did not do so. Further, the State stood on its deficiency at the hearing.²³ The district court did not abuse its discretion in sustaining Appellees’ objections.

B. The District Court Did Not Err in Sustaining Appellees’ Objections to the State’s Verification.

The State’s verification provided that its trial counsel “has read the foregoing document and that based on knowledge gathered from the identified documents and websites the statements of fact contained therein are true and correct.” (CR 16).

Appellees objected that: (1) the verification, on its face, demonstrated Mr. Hacker’s lack of personal knowledge under TEX. R. EVID. 602 for purposes of a

²³ The State made no effort to correct its deficient verification or offer any admissible evidence. (1 RR – 3 RR).

verification²⁴; and (2) the verification, on its face, was based on “documents and websites” which were unauthenticated and constituted hearsay and hearsay within hearsay. TEX. R. EVID. 801, 803, 805.²⁵

On appeal the State does not, rightfully so, argue that its verification was proper. Further, the State did not seek to correct or cure the verification’s deficiencies before the trial court. Rather, the State simply argues that the verification was not required. As discussed above, that contention is incorrect, and the State’s information should be factually supported by verification or other evidence. The district court properly sustained Appellees’ objections to the State’s improper verification and certainly did not abuse its discretion in doing so.

C. The District Court Did Not Err in Sustaining Appellees’ Objections to the State’s Exhibits.

Double Horn also objected to Exhibits A through F attached to the State’s Information as being unauthenticated and constituting hearsay and hearsay within hearsay. The district court did not abuse its discretion in sustaining the objections.

²⁴ A party’s counsel may verify pleadings only when based on personal knowledge—which requires more than merely the status as counsel. *See In re Valliance Bank*, 422 S.W.3d 722, 726 n.1 (Tex. App.—Fort Worth 2012, orig. proceeding).

²⁵ Websites are rank hearsay. *United States v. Jackson*, 208 F.3d 633, 637 (7th Cir. 2000)(web postings from the internet constitute inadmissible hearsay). “[A]ny evidence procured off the Internet is adequate for almost nothing, even under the most liberal interpretations of the hearsay exception rules.” *St. Clair v. Johnny's Oyster & Shrimp, Inc.*, 76 F.Supp.2d 773, 775 (S.D. Texas 1999); *Conroy v. Hewlett-Packard Co.*, 2016 WL 1276552, at *5 (D. Or. Mar. 31, 2016) (excluding web page not authored by the party opponent as hearsay); *Allied Prop. & Cas. Ins. Co. v. Stuart*, 230 F. Supp. 3d 969, 980 n.1 (E.D. Mo. 2017) (“[U]nauthenticated website printouts attached as exhibits to summary judgment motions or responses are not admissible.”).

The State's arguments regarding self-authentication do not apply to the exhibits presented. Exhibit "A" is not certified, sealed or signed as required by TEX. R. EVID. 902(1), (2), or (4). Further, Exhibit A is not a "book, pamphlet, or other publication" under 902(5).

Exhibit B does not satisfy the requirements of TEX. R. EVID. 901(b)(4). Rather, the documents clearly purport to be from a homeowner's association, which is not a party in this case. Likewise, Exhibit D purports to be a newsletter from an homeowners association, which does not constitute a public entity or otherwise support self-authentication. Exhibit C purports to be a petition signed by dozens of voters, which does not fall within any self-authenticating exception of Rules 901 or 902.

Finally, the State admits that Exhibit F is an "unofficial election result", but yet in the same breath claims the exhibit is an "official publication" under Rule 902(5). Exhibit F, on its face, establishes that it is unofficial and is therefore not an official publication. Further, Exhibit F is not "a book, pamphlet, or other publication" for purposes of Rule 902(5).

Regarding hearsay, the State contends that Exhibits B and D constitute admissions by a party opponent. However, Exhibit B is a homeowner's association board meeting agenda and Exhibit D is a purported HOA newsletter and attachments thereto. The Double Horn HOA is not a defendant in this case, and therefore any

alleged admissions from the association are not imputed to Appellees. Rather, these documents are unauthenticated and inadmissible HOA records constituting hearsay—which the district court did not err in sustaining objections to.

The State argues that the remaining exhibits constitute public records not subject to the hearsay rule, citing TEX. EVID. R. 803(8). This argument is not meritorious. Exhibit A purports to be a “notice” of an application submitted to the Lower Colorado River Authority. However, Exhibit A does not include the LCRA’s activities, report a matter observed by LCRA while under a legal duty to report, or contain factual findings from an investigation. *See* TEX. EVID. R. 803(8)(A).

Exhibit C constitutes a purported petition of dozens of voters and is not “a record or statement of a public office.” *See* TEX. EVID. R. 803(8). Exhibit F expressly states that it is an “unofficial” election result, which in and of itself does not satisfy the requirements of Rule 803(8).

The State attempted to offer unauthenticated and otherwise inadmissible evidence in support of its petition and Information. Further, the State made no attempt, at the hearing or otherwise, to correct the evidentiary deficiencies when Appellees’ filed objections. The district court did not abuse its discretion in sustaining Appellees’ objections to the State’s exhibits, and this court should affirm the district court’s evidentiary rulings.

D. Even if the District Court Erred in Sustaining Appellees' Objections, the Error was Harmless and Would Not Affect the Result.

Not only did the district court properly sustain Appellees' objections, even if the exhibits constituted proper, admissible evidentiary support, the exclusion of that evidence was harmless. As noted above, an erroneous evidentiary ruling warrants reversal only if the error probably caused the rendition of an improper judgment—"the complaining party must usually show that the whole case turned on the evidence at issue." *Richmond Condominiums*, 245 S.W.3d at 666, citing *Alvarado*, 897 S.W.2d at 753–54 (Tex.1995).

Here, Exhibits A through F are not material in the district court's judicial determination of the probable ground standard applicable to the State's *quo warranto* proceeding. The State appears to have relied on its exhibits, at least the bulk of them, to argue that Double Horn incorporated for ulterior motives as to SCS's property. However, the evidence the State attached to its Information did not have anything to do with the State's ability to show that: (1) Double Horn was not an unincorporated town or village, or (2) Double Horn's incorporation included property that could not to be used for municipal purposes.

Even if the State's exhibits are considered, the State still failed to show a probable ground for a *quo warranto* proceeding on either of its two grounds. None of the State's exhibits controverted the certified public documents that negated the State's ability to establish a probable ground on either theory of its *quo warranto*

proceeding. Accordingly, even if the State could show that the district court erred in sustaining Appellees' objections, any error would be harmless and not impact the district court's finding that the State failed to meet the required probable ground standard.

CONCLUSION AND PRAYER

For the reasons stated, the district court properly sustained Appellees' objections, properly considered the certified government records in its jurisdictional assessment under the probable ground standard, and properly denied the State's petition for leave. Appellees pray that the Court affirm the district court in all respects.

Respectfully submitted,

/s/ Wm. Andrew Messer

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972.668.6414 - FACSIMILE

COUNSEL FOR APPELLEES

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been sent via electronic service to the State's lead attorney of record, David Hacker, in compliance with Rule 6.3 of the TEXAS RULES OF APPELLATE PROCEDURE, on August 5, 2019.

/s/ Wm. Andrew Messer
WM. ANDREW MESSER

CERTIFICATE OF COMPLIANCE

This is to certify that, according to the computer program used to prepare this document, the document contains 12,819 words in compliance with Texas Rule of Appellate Procedure 9.4(i)(3), excluding those items that are not to be included pursuant to Texas Rule of Appellate Procedure 9.4(i)(1).

s/ Wm. Andrew Messer
WM. ANDREW MESSER

IN THE COURT OF APPEALS
FOR THE THIRD DISTRICT OF TEXAS AT AUSTIN

NO. 03-19-00304-CV

STATE OF TEXAS,

Appellant,

vs.

CITY OF DOUBLE HORN, et al.,

Appellees.

Appealed from the 424th Judicial District Court
Burnet County, Texas

APPENDIX

- APPENDIX 1. CERTIFIED COPY OF CITY OF DOUBLE HORN
ORDINANCE NO. 2019-ORD006**
- APPENDIX 2. CERTIFIED COPY OF CITY OF DOUBLE HORN
ORDINANCE NO. 2019-ORD007**
- APPENDIX 3. CERTIFIED COPY OF CITY OF DOUBLE HORN
ORDINANCE NO. 2019-RES005**
- APPENDIX 4. CERTIFIED COPY OF CITY OF DOUBLE HORN
ORDINANCE NO. 2019-RES006**
- APPENDIX 5. CERTIFIED COPY OF CITY OF DOUBLE HORN MAP**
- APPENDIX 6. CERTIFIED COPY OF CITY OF DOUBLE HORN CITY
COUNCIL MINUTES FROM MARCH 25, 2019**

- APPENDIX 7. CERTIFIED COPY OF CITY OF DOUBLE HORN CITY COUNCIL MINUTES FROM MARCH 27, 2019**
- APPENDIX 8. CERTIFIED COPY OF CITY OF DOUBLE HORN CITY COUNCIL MINUTES FROM MARCH 30, 2019**
- APPENDIX 9. CERTIFIED COPY OF CITY OF DOUBLE HORN CITY COUNCIL MINUTES FROM APRIL 11, 2019**
- APPENDIX 10. CERTIFIED COPY OF CITY OF DOUBLE HORN CITY COUNCIL MINUTES FROM APRIL 24, 2019**
- APPENDIX 11. CERTIFIED COPY OF CITY OF DOUBLE HORN CITY COUNCIL MINUTES FROM MAY 9, 2019**
- APPENDIX 12. CERTIFIED COPY OF CITY OF DOUBLE HORN CITY COUNCIL MINUTES FROM JUNE 13, 2019**
- APPENDIX 13. CERTIFIED COPY OF CITY OF DOUBLE HORN ORDINANCE NO. 2019-ORD008**
- APPENDIX 14. CERTIFIED COPY OF JOINT ELECTION AGREEMENT**
- APPENDIX 15. CERTIFIED COPY OF CONTRACT FOR ELECTION SERVICES**

APPENDIX 1

STATE OF TEXAS §

COUNTY OF BURNET §

CITY OF DOUBLE HORN §

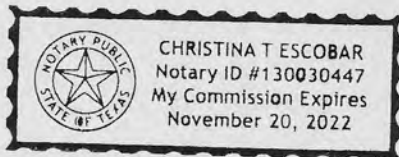
CERTIFICATE TO COPY OF PUBLIC RECORD

I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of Ordinance No. 2019-ORD006 on file in the City Secretary's office, which was passed and approved on the 13th day of June 2019, by the City Council of the City of Double Horn, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 11 DAY OF July, 2019.

Karen S. Maxwell
Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 11th day of July 2019, to certify which witness my hand and seal of office.



Christina T. Escobar
Notary Public in and for the State of Texas

ORDINANCE 2019-ORD006

AN ORDINANCE ADOPTING THE COMPREHENSIVE PLAN AND ACCOMPANYING MAP FOR THE CITY OF DOUBLE HORN, BURNET COUNTY, TEXAS; PROVIDING FOR SEVERABILITY; REPEALER; EFFECTIVE DATE; AND PROPER NOTICE AND MEETING.

WHEREAS the City of Double Horn is legally empowered to regulate development in the community through the legitimate use of police powers; **AND,**

WHEREAS, the City Council seeks to promote responsible and sustainable growth by adoption of this Comprehensive Plan ("Plan"); **AND,**

WHEREAS, Chapter 213 of the Texas Local Government Code authorizes cities to adopt a comprehensive plan for the long-range development of the municipality; **AND,**

WHEREAS, further state law allows a city to define the content and design of a comprehensive plan, and such plan may include provisions on land use, transportation, and public facilities; **AND,**

WHEREAS, the City Council of the City of Double Horn, Texas, has considered the matter at a public hearing and has invited public input and participation; recommends approval of the adoption of the Comprehensive Plan as enumerated herein, and finds that the adoption of the Plan will be in the best interest of the City and will promote the public health, safety and welfare of the community.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DOUBLE HORN, TEXAS, THAT:

SECTION I. PREAMBLE. All of the above premises are hereby found to be true and correct legislative and factual findings of the City of Double Horn and are hereby approved and incorporated into the body of this ordinance as if copied in their entirety.

SECTION II. ADOPTION. That the documents labeled Exhibit "A" and Exhibit "A.1", attached and incorporated by reference for all purposes, including the map, shall be the official Comprehensive Plan for the City of Double Horn, Texas.

SECTION III. PROVIDING FOR SEVERABILITY. If any provision, section, sentence, clause or phrase of this ordinance or application of the same to any person or set of circumstances is for reason held to be unconstitutional, void, invalid, or unenforceable, the validity of the remaining portions of this ordinance or its application to other persons or sets of circumstances shall not be affected thereby, it being the intent of the City Council of the City of Double Horn in adopting, and the Mayor in approving this Ordinance, that no portion thereof or provision or regulation contained herein shall become inoperative or fail by reason of any unconstitutionality or invalidity of any portion, provision or regulation.

SECTION IV. REPEALER CLAUSE. The provisions of this ordinance shall be cumulative of all other ordinances or parts of ordinances governing or regulating the same subject matter as that covered herein, provided, however, that all prior ordinance or parts of ordinances inconsistent or in conflict with any of the provisions of this ordinance are hereby expressly repealed to the extent that such inconsistency is apparent. This ordinance shall not be construed to require or allow any act which is prohibited by any other ordinance or state law.

SECTION V. EFFECTIVE DATE. This ordinance shall take effect immediately from and after its passage and publication as may be required by governing law.

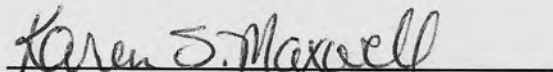
SECTION VI. NOTICE AND MEETING CLAUSE. It is hereby officially found and determined that the meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED: June 13, 2019

CITY OF DOUBLE HORN


Hon. Cathy Sereno
Mayor

ATTEST:


Karen Maxwell, City Secretary
City of Double Horn

APPROVED AS TO FORM:

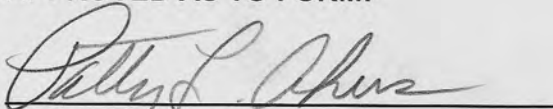

Patty L. Akers, City Attorney
City of Double Horn

EXHIBIT A

CITY OF DOUBLE HORN COMPREHENSIVE PLAN

PLAN AUTHORIZATION

Per Section 213 of the Texas Local Government Code (LGC), the City of Double Horn, a Type B General Law municipality, is authorized to adopt a Comprehensive Plan for the purposes of promoting sound development and public health, safety and welfare. A comprehensive plan may:

- include but is not limited to provisions on land use, transportation, and public facilities;
- consist of a single plan or a coordinated set of plans organized by subject and geographic area; and
- be used to coordinate and guide the establishment of development regulations.

Section 211, as applicable, states that zoning regulations may be adopted in accordance with a Comprehensive Plan.

PURPOSE AND ORGANIZATION:

“Comprehensive planning is a process by which the community assesses what it has, expresses what it wants, decides how to achieve its wants and, finally, implements what it decides. It is a process that should require the active participation of community residents--the city council, planning and zoning commissioners, city administrators, advisory committees, neighborhood leaders, business people, and others interested in improving the city. Through the planning process, local citizens must share in the formulation of policy statements, which serve as guides for decision making by city leaders.” *Outreach and Training Services Unit of the Office of Rural Community Affairs (ORCA) 2002*

The Comprehensive Plan provides guidance for the development of the City of Double Horn, its extra-territorial jurisdiction (ETJ), and future growth areas that is consistent with and supportive of the residents' expectations and desires for the city. It establishes a basis for managing development through implementation of City ordinances in accordance with the Texas Local Government Code.

- Section I provides a brief history of the City of Double Horn.
- Section II describes the services previously provided by the Double Horn Creek subdivision, ESD 9, and Burnet County and reviews the status of services to be provided in the future.
- Section III defines what residents want the City to achieve in terms of land use through the zoning process.
- Section IV outlines general zoning guidelines which will facilitate the City's land

use goals.

- Section V covers the review cycle for Comprehensive Plan approval.

SECTION I: FROM SUBDIVISION TO TYPE B GENERAL LAW CITY

The City of Double Horn Texas is a General Law Type B municipality located in the Texas Hill Country. On December 6, 2018 residents of the Double Horn Creek subdivision voted to incorporate for the purposes of exerting some level of restraint against imminent industrial development in the adjacent area and to protect its citizens from future industrial incursions which could affect the community's vision, health, safety, welfare, quality of life, and property values. On December 12, 2018 the City of Double Horn became officially re-established in Burnet County.

On February 12, 2019, the City of Double Horn elected its first mayor, five aldermen, and marshal. Since that time, the City of Double Horn has engaged in various governmental functions and has provided and set in motion plans to provide governmental services to the City.

The City is approximately 4.5 miles from the unincorporated town of Spicewood to the east and about five miles from the eastern city limit of Marble Falls at Hwy 281 (see Ordinance 2019-ORD001 City Map). The area encompassed by the city boundary is just under two square miles (1,226.63 acres) and contains 186 land parcels per the Burnet County Appraisal District, as follows:

- 173 privately owned residential parcels, of which 105 have established homes or homes under construction, with the remaining 68 vacant
- 7 parcels owned by the Double Horn Improvement Association (6) and the Double Horn Water Supply Corporation (1)
- 2 parcels owned by Spicewood Crushed Stone LLC for a rock crushing and quarry operation
- 2 parcels owned by Double Horn Properties LLC for a storage facility
- 1 parcel owned by Keeney Investments for an office building/arts and crafts shop
- 1 parcel owned by Carrington Partnership

As of April 2019, the City has 238 citizens. The Double Horn Creek subdivision's home owners association, legal name Double Horn Improvement Association or DHIA, currently owns facilities consisting of a pavilion, a swimming pool and other recreational facilities, all of the subdivision streets and street signs, the subdivision fence along Highway 71, and programmed security gates at each of the four subdivision entrances on Highway 71.

SECTION II: THE CITY OF DOUBLE HORN AND BURNET COUNTY SERVICES

The City of Double Horn streets are private and are maintained through annual DHIA dues supplemented as required with additional payments for periodic preventative maintenance projects. An independently owned water supply corporation is supported by

an initial connection charge, the connection size, and the monthly number of gallons used by each resident. All residents own and maintain their own septic systems. Burnet County provides law enforcement for the Double Horn Creek subdivision via ad valorem property taxes. Emergency services and fire protection are provided by Emergency Services District 9 through additional ad valorem taxes.

Going forward it is expected that the DHIA and Water Services Company will continue to provide the same functions and services for the subdivision residents as they did pre-incorporation, however, these services do not extend to the land parcels within the City boundary which are outside of the original Double Horn Creek subdivision. The City may enter an agreement with the Double Horn Creek Water Supply Corporation to extend water services to the portions of the City that do not currently have water services. The City may adopt an ordinance for the extension of water services in the future as the need arises. If the City intends to own and maintain its own streets and the DHIA is agreeable, the City can enter into a contract with the DHIA for such purposes.

The City Council may consider undertaking on its own or may enter into contracts or agreements with third parties or other governmental entities, including interlocal cooperation agreements under Texas Government Code Chapter 791, for the following purposes:

- (a) To provide for police protection and law enforcement services
- (b) To provide for ambulance services
- (c) To provide for animal control and management
- (d) To provide for garbage and recycling services within the City
- (e) To implement a program to monitor and report air quality within the corporate limits and provide the results to residents and property owners
- (f) To implement a program to monitor and report seismic activity within the corporate limits and provide the results to residents and property owners
- (g) To provide for maintenance of City streets and right of way
- (h) To implement a program to designate a park plan and hiking and walking trails within the City
- (i) To conduct traffic studies on Highway 71, or to contract with TxDOT for same to improve traffic safety and for construction of traffic improvements within the City;
- (j) To provide for emergency and disaster response and to obtain or improve emergency services for all areas within the corporate boundaries, including through an agreement with Burnet County Emergency Services District No. 9;

SECTION III: PLAN MUST SUPPORT CITY'S OBJECTIVES

There is a consensus on what the citizens want to achieve with the City's Comprehensive Plan:

- Maintain the look and ambience of the original Double Horn Creek subdivision.
- Limit and manage to the extent allowed by law industrial development within the City boundary.
- Transition from a Type B General to Type A General Law city.

- Establish ordinances that help buffer the impact of non-residential land uses from residential land uses.
- Maintain current DHIA covenants on property use and building construction within the original subdivision boundary and adopt regulations for areas outside of the original subdivision that will maintain the same quality of construction and the future visions of the City.
- Provide for city owned streets, recreational facilities, trails, open space, park land and other public facilities or places as financially viable and as appropriate for a city of the size and population of the City of Double Horn.
- Maintain the hill country nature and large estate lot land uses of the original Double Horn Creek subdivision and consider ordinances that mitigate adjoining non-residential land uses. Manage commercial development within the city to maintain the residential character of the City. Growth and expansion of the City's current boundaries may be dependent upon negotiations with landowners located in the extraterritorial jurisdiction of the City.
- The total City population, once all available for sale residential lots have been developed, plus residents on sparsely inhabited property within the City boundary is unlikely to exceed 500 residents unless the City boundaries expand in the future.

SECTION IV: GENERAL ZONING PLAN, CURRENT & FUTURE

1. Local Government Code 211.003 allows the governing body of a municipality to regulate, among other things, the location and use of buildings, other structures, and land for business, industrial, residential, or other purposes.
 - a. **Current: Type B General Law City**
 - i. The City has defined the Future Land Use objectives on the Map, attached hereto, which corresponds to the parcels described in Section I above as well as the property within the extra-territorial jurisdiction (ETJ):
 1. (Single Family) Residential
 2. Agricultural
 3. Commercial
 4. Industrial
 5. Open Space/Park/Recreation
 6. Non-residential
 7. Other
 - ii. According to LGC Sec. 213.005 the Map must contain the clearly visible statement "A comprehensive plan shall not constitute zoning regulations or establish zoning district boundaries."
 - b. **Future: Type A General Law City**
 - i. The City of Double Horn can transition to a Type A city once a manufacturing facility begins operations or if population increases. It is anticipated that Spicewood Crushed Stone LLC will commence rock crushing and quarry operations in 2019. A Type A General Law city is limited to four square miles unless the population is greater

than 4,999 (LGC 5.901.2). The City may expand its original two (2) square mile area by annual 10% increments until the total area is four (4) square miles or less if adjoining landowners are agreeable to expansion.

- ii. The City shall develop a growth strategy for expansion of its boundaries that will be consistent with the Hill Country character of the city and provide opportunities for mitigating between land uses that may be inconsistent with residential uses. The City can negotiate with willing landowners to determine the type of land use to be applied to the annexed areas.
- iii. The City's zoning districts as a Type A municipality may eventually require an update of the Future Land Use Map to include the following:
 - 1. (Single Family) Residential
 - 2. Agricultural
 - 3. Commercial
 - 4. Industrial
 - 5. Open Space/Park/Recreation
 - 6. Non-residential
 - 7. Other

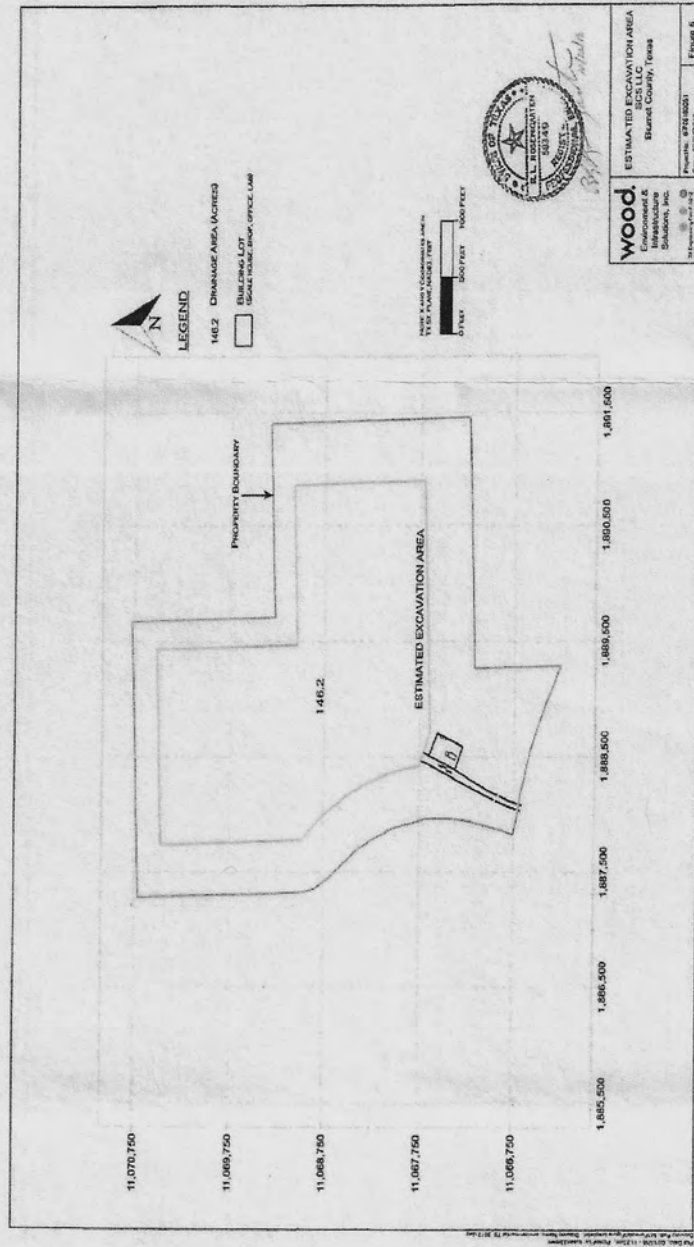
SECTION V: PUBLIC REVIEW AND APPROVAL

- 1. The City should provide citizen input into its land use ordinances and decisions and future updates or revisions of the Comprehensive Plan. The Comprehensive Plan should be updated every five (5) years. Future land use ordinances should provide for draft ordinances prior to adoption and the drafts should be posted on the City's website. The community will be encouraged to review and comment. A final draft of the land use ordinances or any changes to the Comp Plan shall incorporate community comments before being presented to City Council for approval.
- 2. The City Council should hold at least one formal Public Hearing prior to the adoption of the future updates to the Comprehensive Plan or any zoning ordinances.
- 3. The Council should consider in adopting any future updates to the Comprehensive Plan the implementation process of each update. Upon Council approval of the Comprehensive Plan following the Public Hearing, the process of writing ordinances to implement the Plan will begin and will continue with each subsequent update or amendment.

A comprehensive plan shall not constitute zoning regulations or establish zoning district boundaries



EXHIBIT A.1



APPENDIX 2

STATE OF TEXAS §

COUNTY OF BURNET §

CITY OF DOUBLE HORN §

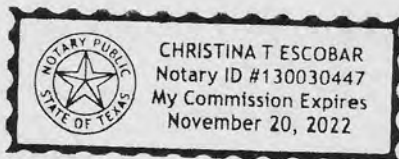
CERTIFICATE TO COPY OF PUBLIC RECORD

I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of Ordinance No. 2019-ORD007 on file in the City Secretary's office, which was passed and approved on the 9th day of May 2019, by the City Council of the City of Double Horn, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 11 DAY OF July, 2019.

Karen S. Maxwell
Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 11th day of July 2019, to certify which witness my hand and seal of office.



Christina T Escobar
Notary Public in and for the State of Texas

ORDINANCE 2019-ORD007

AN ORDINANCE ESTABLISHING A PROGRAM RESPONSE AND RECOVERY PHASES OF COMPREHENSIVE EMERGENCY MANAGEMENT; ACKNOWLEDGING THE OFFICE OF EMERGENCY MANAGEMENT DIRECTOR; AUTHORIZING THE APPOINTMENT OF AN EMERGENCY MANAGEMENT COORDINATOR; AND PROVIDING FOR THE DUTIES AND RESPONSIBILITIES OF THOSE OFFICES; IDENTIFYING AN OPERATIONAL ORGANIZATION; GRANTING NECESSARY POWERS TO COPE WITH ALL PHASES OF EMERGENCY MANAGEMENT WHICH THREATEN LIFE AND PROPERTY IN THE CITY OF DOUBLE HORN, TEXAS; AUTHORIZING COOPERATIVE AND MUTUAL AID AGREEMENTS FOR RELIEF WORK BETWEEN THIS AND OTHER CITIES OR COUNTIES AND FOR RELATED PURPOSES.

WHEREAS, the Board of Aldermen of the City of Double Horn, Texas finds that the identification of potential hazards and the prevention or mitigation of their effects must be an ongoing concern of the City if the lives and property of the populace are to be protected; and

WHEREAS, the Board of Aldermen hereby declares that the preparation of a Comprehensive Emergency Management plan, and the means for its implementation, for the protection of lives and property in the City of Double Horn, Texas, from natural or man caused disasters or threat thereof is immediately essential; and

WHEREAS, the Board of Aldermen further finds that in times of disasters which may imperil the safety of the inhabitants of the City, or their property, it becomes necessary to effectuate and place into operation the preconceived plans and preparations with a minimum of delay; and

WHEREAS, the Board of Aldermen finds, therefore, that the preparation, and implementation of such plans are now imperative.

Section 1. ORGANIZATION

There exists the office of Emergency Management Director of the City of Double Horn, which shall be held by the Mayor in accordance with State law.

- a. An Emergency Management Coordinator may be appointed by and serve at the pleasure of the Director;
- b. The Director shall be responsible for a program of comprehensive emergency management within the City and for carrying out the duties and responsibilities set forth in this ordinance. The authority to delegate shall remain with the Director.
- c. The operational Emergency Management Organization of the City of Double Horn, Texas, shall consist of the officers and employees of the city so designated by the Director, as well as organized volunteer groups. The functions and duties of this organization shall be distributed among such officers and employees in accordance with the terms of the Emergency Management Plan.

Section 2. EMERGENCY MANAGEMENT DIRECTOR – POWERS AND DUTIES

The duties and responsibilities of the Emergency Management Director shall include the following:

- a. Surveying actual or potential hazards, which threaten life and property within the City and identifying and requiring or recommending the implementation of measures which would tend to prevent the occurrence or reduce the impact of such hazards if a disaster did occur.
- b. Supervision of the development and approval of an Emergency Management Plan for the City of Double Horn, and recommendation for adoption by the Board of Aldermen all mutual aid arrangements deemed necessary for the implementation of such plan.
- c. Authority to declare a local state of disaster. The declaration may not be continued or renewed for a period in excess of 7 days except by or with the consent of the Board of Aldermen. Any order or proclamation declaring, continuing, or terminating a local state of disaster shall be given prompt and general publicity and shall be filed promptly with the City Secretary.
- d. Issuance of necessary proclamations, regulation, or directives, which are necessary for carrying out the purposes of this ordinance. Such proclamations, regulations, or directives shall be disseminated promptly by means calculated to bring its contents to the attention of the general public and, unless circumstances attendant on the disaster prevent or impede, promptly filed with the City Secretary.
- e. Direction and control of the operations of the Emergency Management Organization as well as the training of emergency management personnel.
- f. Determination of all questions of authority and responsibility that may arise within the Emergency Management Organization of the City.
- g. Maintenance of liaison with other Municipal, County, District, Regional or Federal Emergency Management organizations.
- h. Marshaling of all necessary personnel, equipment, or other supplies from any department of the City to aid in the carrying out of the provisions of the Emergency Management Plan.
- i. Supervision of the drafting and execution of mutual aid agreements, in cooperation with the representatives of the State and other local political subdivisions of the State, and the drafting and execution, if deemed desirable, of an agreement with the County in which said City is located and with other municipalities within the county-wide coordination of emergency management efforts.
- j. Supervision of, and final authorization for the procurement of all necessary supplies and equipment, including acceptance of private contributions, which may be offered for the purpose of improving emergency management within the City.

- k. Authorizing of agreements, after approval by the City Attorney, for use of private property for public shelter and other purposes.
- l. Surveying the availability of existing personnel, equipment, supplies, and services, which could be used during a disaster, as, provided for herein.
- m. Other requirements as specified in the Texas Disaster Act (Chapter 418 of the Government Code).

Section 3. EMERGENCY MANAGEMENT PLAN

A comprehensive Emergency Management Plan shall be developed and maintained in a current state. The plan shall set forth the form of the organization; establish and designate divisions and functions; assign responsibilities, tasks, duties, and powers; and designate officers and employees to carry out the provisions of this Ordinance, as provided by State law, the plan shall follow the standards and criteria established by the State Division of Emergency Management of the State of Texas. Insofar as possible, the form of organization, titles, and terminology shall conform to the recommendations of the State Division of Emergency Management. When approved, it shall be the duty of all departments and agencies to perform the functions assigned by the plan and to maintain their portion of the plan in a current state of readiness at all times. The emergency management plan shall be considered supplementary to this ordinance and have the effect of law during the time of a disaster.

Section 4. INTERJURISDICTIONAL PROGRAM

The Mayor is hereby authorized to join with the County Judge of the County of Burnet and the mayors of the other cities in said County in the formation of an Interjurisdictional Emergency Management Program for the County of Burnet, and shall have the authority to cooperate in the preparation of an interjurisdictional emergency management plan and in the appointment of a joint Emergency Management Coordinator, as well as all powers necessary to participate in a county-wide program of emergency management insofar as said program may affect the City of Double Horn

Section 5. OVERIDE

At all times when the orders, rules and regulation made and promulgated pursuant to this ordinance shall be in effect, they shall supersede and override all existing ordinances, orders, rules, and regulations insofar as the latter may be inconsistent therewith.

Section 6. LIABILITY

This ordinance is an exercise by the City of its governmental functions for the protection of the public peace, health, and safety and neither the City of Double Horn, the agents and representatives of said City, nor any individual, receiver, firm, partnership, corporation, association, or trustees, nor any agent thereof, in good faith carrying out, complying with or attempting to comply with, any order, rule or regulation promulgated pursuant to the provisions of this ordinance shall be liable for any damage sustained to persons as the result of said activity. Any person owning or controlling real estate or other premises who voluntarily and without compensation grants the City of Double Horn a license of privilege, or otherwise permits the city to inspect, designate and use the whole or any part or parts of such real estate or premises for the purpose of sheltering persons during an actual impending or practice enemy attack or natural or man-made disaster shall, together with his successors in interest, if any, not be civilly liable for the death of or injury to, any person on or about such

real estate or premises under such license, privilege or other permission or for loss of, or damage to, the property of such person.

Section 7. COMMITMENT OF FUNDS

No person shall have the right to expend any public funds of the City in carrying out any emergency management activity authorized by this ordinance without prior approval by the Board of Aldermen, nor shall any person have any right to bind the City by contract, agreement, or otherwise without prior and specific approval of the Board of Aldermen unless during a declared disaster. During a declared disaster, the Mayor may expend and/or commit public funds of the City when deemed prudent and necessary for the protection of health, life, or property.

Section 8. OFFENSES; PENALTIES

- a. It shall be unlawful for any person willfully to obstruct, hinder, or delay any member of the Emergency Management Organization in the enforcement of any rule or regulation issued pursuant to this ordinance.
- b. It shall likewise be unlawful for any person to wear, carry, or display any emblem, insignia or any other means of identification as a member of the Emergency Management Organization of the City of Double Horn, unless the proper officials so have granted authority to do to such a person.

Section 9. SEVERABILITY

If any portion of this ordinance shall, for any reason, be declared invalid such, invalidity shall not affect the remaining provisions thereof.

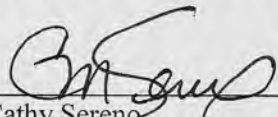
Section 10. LIMITATIONS

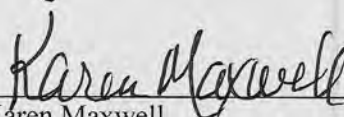
This ordinance shall not be construed so as to conflict with any State or Federal statute or with any Military or Naval order, rule, or regulation.

Section 11. REPEALER

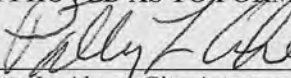
All ordinances, parts of ordinances, or resolutions in conflict herewith are expressly repealed.

Passed and approved on this the 9th day of May, 2019 by the board of aldermen of the City of Double Horn, Texas.


Cathy Sereno
Mayor City of Double Horn


Karen Maxwell
City Secretary

APPROVED AS TO FORM:


Patty L. Akers, City Attorney

APPENDIX 3

STATE OF TEXAS §

COUNTY OF BURNET §

CITY OF DOUBLE HORN §

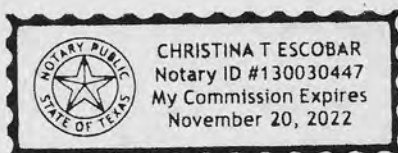
CERTIFICATE TO COPY OF PUBLIC RECORD

I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of Resolution No. 2019-RES005 on file in the City Secretary's office, which was passed and approved on the 13th day of June 2019, by the City Council of the City of Double Horn, approved by the County Commissioners Court on the 29th day of May 2019, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 11 DAY OF July, 2019.

Karen S. Maxwell
Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 11th day of July 2019, to certify which witness my hand and seal of office.



Christina T Escobar
Notary Public in and for the State of Texas

RESOLUTION 2019-RES005

**JOINT RESOLUTION ESTABLISHING AN
INTERJURISDICTIONAL EMERGENCY MANAGEMENT PROGRAM**

WHEREAS, the city of Double Horn by City Ordinance No. 2019-ORD007, and Burnet County by Commissioners Court Order dated MAY 29, 2019, have established similar programs of comprehensive emergency management which includes the mitigation, preparedness, response and recovery phases of emergency management; and

WHEREAS, the City and County find that vulnerability to many potential hazards are shared by residents of Double Horn and the unincorporated portions of Burnet County; and

WHEREAS, the City and County further finds that the common goal of emergency management can best be achieved through an organization which shares the combined resources of the City and the County; and

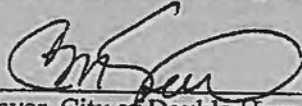
WHEREAS, the contemplated action is specifically authorized by the aforementioned Ordinance and Court Order;

THEREFORE, BE IT RESOLVED that there is hereby established the Burnet County Emergency Management program which shall consist of the officers and employees of the City and of the County as designated in an interjurisdictional emergency management plan, together with such organized volunteer groups as that plan may specify; and

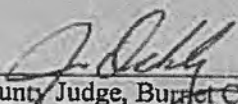
BE IT FURTHER RESOLVED that the Mayor of Double Horn and the Burnet County Judge shall mutually appoint an Emergency Management Coordinator to coordinate all aspects of the Burnet County Emergency Management program of comprehensive emergency management, including the preparation and maintenance of an interjurisdictional emergency management plan for the City of Double Horn and Burnet County in accordance with this resolution.

BE IT FURTHER RESOLVED that any party to this agreement may withdraw from the combined organization created by this resolution and its related interjurisdictional emergency management plan by giving sixty days advance notice in writing to each of the signatories to this resolution and to the Governor's Division of Emergency Management.

RESOLVED this 29th day of MAY, 2019.

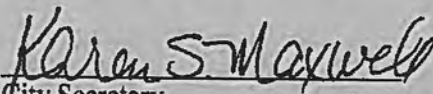


Mayor, City of Double Horn

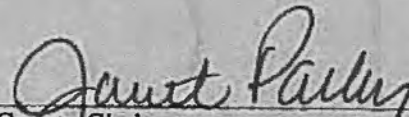


County Judge, Burnet County

Attest:



City Secretary



County Clerk

APPENDIX 4

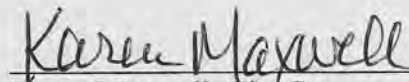
STATE OF TEXAS §

COUNTY OF BURNET § **CERTIFICATE TO COPY OF PUBLIC RECORD**

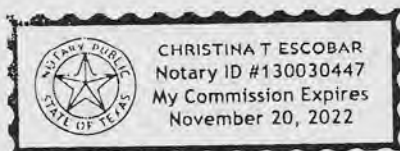
CITY OF DOUBLE HORN §

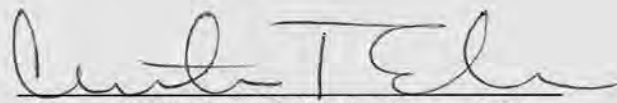
I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of Resolution No. 2019-RES006 on file in the City Secretary's office, which was passed and approved on the 9th day of May 2019, by the City Council of the City of Double Horn, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 17th DAY OF JULY, 2019.


Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 17th day of July 2019, to certify which witness my hand and seal of office.




Notary Public in and for the State of Texas

RESOLUTION 2019-RES006

**A RESOLUTION ADOPTING THE NATIONAL INCIDENT
MANAGEMENT SYSTEM (NIMS)**

WHEREAS, Homeland Security Presidential Directive / HSPD-5, 28 Feb 2003 established the National Incident Management System (NIMS); and

WHEREAS, the NIMS establishes a single, comprehensive approach to domestic incident management to ensure that all levels of government across the Nation have the capability to work efficiently and effectively together using a national approach to domestic incident management; and

WHEREAS, the NIMS provides a consistent nationwide approach for Federal, State, and local governments to work together to prepare for and respond to, and recover from domestic incidents regardless of the cause, size or complexity; and

WHEREAS, the NIMS provides for interoperability and compatibility among Federal, State and local capabilities and includes a core set of concepts, principles, terminology and technologies covering the incident command system, unified command, training, management of resources and reporting; and

WHEREAS, beginning October 1, 2004 all Federal departments and agencies shall make adoption of the NIMS a requirement, to the extent provided by law, for providing Federal preparedness assistance through grants, contracts or other activities to local governments;

NOW THEREFORE BE IT RESOLVED THAT:

The City Council of the City of Double Horn hereby adopts the National Incident Management System (NIMS) as its system of preparing for and responding to disaster incidents.

ADOPTED AND APPROVED this 9th day of May, 2019.

CITY OF DOUBLE HORN, TEXAS


Cathy Soreno, Mayor

ATTEST:


Karen Maxwell, City Secretary

APPENDIX 5

STATE OF TEXAS §

COUNTY OF BURNET §

CITY OF DOUBLE HORN §

CERTIFICATE TO COPY OF PUBLIC RECORD

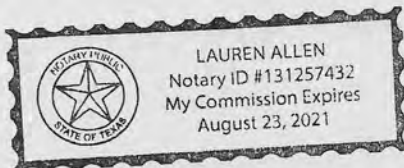
I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of the official map of the City of Double Horn on file in the City Secretary's office, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 1st DAY OF AUGUST, 2019.

Karen Maxwell

Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 1 day of August 2019,
to certify which witness my hand and seal of office.



Lauren Allen

Notary Public in and for the State of Texas

[illegible]

PROJECT NO. 101127
RESERVED FOR R. S. CANER
FISH 02/08
LAYERED DART SLIDE
FIELD WORK DATE NONE
PERIODICITY
PROJECTED FOR NO 101108

1800 OLLIE LANE
MABLE FALLS, TX 76654
PHONE: 800/266-6145
WWW.ZIPPERASSOCIATES.COM

 CA UPLINK ASSOCIATES, INC. 1400 ALBERTA AVE. #100 ALBANY, NY 12206-4209 TEL: 518/462-1100 FAX: 518/462-1101		SCALE 1" = 1000' 	2
DATE			
NO.			
REVISIONS			
SHEET 1 of 6			

EXHIBIT FOR CORPORATE LIMITS AND EXTRA-TERRITORIAL
JURISDICTION OF DOUBLE HORN CREEK
1226.63 ACRES OUT OF VARIOUS SURVEYS
BURNET COUNTY, TEXAS

APPENDIX 6

STATE OF TEXAS §

COUNTY OF BURNET §

CITY OF DOUBLE HORN §

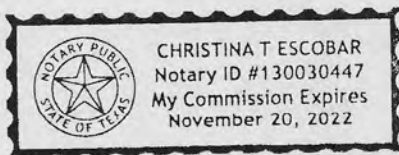
CERTIFICATE TO COPY OF PUBLIC RECORD

I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of the minutes of the meeting of the City Council on March 25, 2019 on file in the City Secretary's office, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 11 DAY OF July, 2019.

Karen S. Maxwell
Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 11th day of July 2019, to certify which witness my hand and seal of office.



Christina T. Escobar
Notary Public in and for the State of Texas

City of Double Horn Minutes

Special Meeting City Council

Monday, March 25, 2019

Located at 7901 CR 404, Spicewood, TX 78669

1. **Called Meeting to Order-** 7:00pm
2. **Rollcall to Confirm Quorum:** Cathy Sereno, RG Carver, Bob Link, Jim Millard, and Larry Trowbridge attending. Glenn Leisey is absent. The quorum is met.
3. **Invocation:** Larry Trowbridge provided invocation.
4. **Pledge of Allegiance**
5. **Approval of March 14th, 2019 Meeting Minutes**

Motion: Bob Link moved to approve 3/14/19 minutes as corrected.

Second: Larry Trowbridge seconded the motion.

Discussion: Jim Millard requests copy of corrected minutes.

Vote: Unanimous. The motion carried.
6. **Closed Regular Meeting at 7:03pm**
7. **Open Executive Meeting Time:** Open Executive session in accordance with the Texas Government Code, Section 551.071- Consultation with Attorney in which the Attorney has a duty to the City under the Texas Disciplinary Rules of Professional Conduct that clearly conflicts with the provisions of the Open Meetings Law. The Council may require the citizens to vacate the meeting room during the executive session.
 - a. **Consultation with Attorney(s) regarding lawsuit: State of Texas vs. City of Double Horn**
8. **Closed Executive Session Time:** 8:22pm
9. **Opened Regular Meeting Time:** 8:23pm
10. **Consider action, if any, from Executive Session**

Motion: Jim Millard moved to retain Messer, Rockefeller & Fort for purposes of defending the City in lawsuit filed by the State of Texas vs. the City of Double Horn.

Seconded: Larry Trowbridge seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

The hearing for the response will be Burnet County Court on April 3rd at 1:30pm. Location to be clarified.

11. Citizen Comments- This is an opportunity for the citizens to address the City Council concerning an issue of community interest not on the agenda. Any deliberation of an issue raised during the Citizens Comments is limited to a proposal to place it on the agenda for a later meeting. Each citizen will be allowed 3 minutes to speak and must sign up before the meeting begins and indicate the subject the speaker wishes to address.

No citizens signed up to speak.

12. Regular Agenda- The Council will individually discuss, consider and possibly take action on any or all of the following items:

a. Discuss and consider action to identify funding sources and fundraising activities.

We still need a lead for the committee to drive some out of the box fundraising.

Motion: Jim Millard made a motion to continue discussion to the next meeting

Second: Bob Link seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

Motion: Larry Trowbridge moved to have a meeting on Saturday at 10 am at the Pavilion to work on the response to the lawsuit.

Second: Jim Millard seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

b. Discuss and consider other matters for inclusion on the agenda for the next special meeting of the City Council.

- **Discuss and consider action to identify funding sources and fundraising activities.**

13. Adjournment

Motion: Bob Link made a motion at 8:31pm to adjourn the meeting.

Second: Jim Millard seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

Time: 8:31pm

APPENDIX 7

STATE OF TEXAS §


COUNTY OF BURNET §

CITY OF DOUBLE HORN §

CERTIFICATE TO COPY OF PUBLIC RECORD

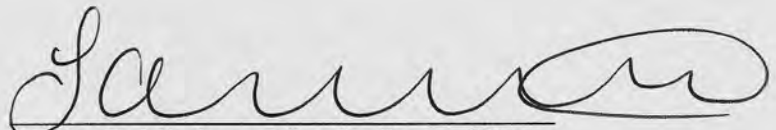
I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of the minutes of the special meeting of the City Council on the 27th day of March, 2019 on file in the City Secretary's office, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 1st DAY OF AUGUST, 2019.


Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 1 day of August 2019,
to certify which witness my hand and seal of office.




Notary Public in and for the State of Texas

CITY OF DOUBLE HORN

**Special Meeting Minutes of the City Council
WEDNESDAY, MARCH 27, 2019
SPICEWOOD COMMUNITY CENTER
Located at 7901 CR 404, Spicewood, Texas 78669**

1. **Call Meeting to Order:** 7:00 pm.
2. **Rollcall to Confirm Quorum:** Cathy Sereno, RG Carver, Bob Link, Jim Millard, and Glenn Leisey attending. Larry Trowbridge is absent from meeting.
A quorum has been met for the purposes of this meeting.
3. **Invocation:** Glenn Leisey provided the prayer.
4. **Pledge of Allegiance**
5. **Approval of 3/25/19 Minutes:**

Motion: Glenn Leisey moved to approve the 3/2/19 minutes as written.

Second: Bob Link seconded the motion.

Discussion: None

Vote: Unanimous. The motion carried.

6. **Citizen Comments** – This is an opportunity for the citizens to address the City Council concerning an issue of community interest not on the agenda. Any deliberation of an issue raised during the Citizens Comments is limited to a proposal to place it on the agenda for a later meeting. Each citizen will be allowed 3 minutes to speak and must sign up before the meeting begins and indicate the subject the speaker wishes to address.

Reynolds Shelton spoke to potential future litigation. He is a lawyer and offered his expertise as a resource to the City regarding the lawsuit.

No other citizens signed up to speak.

7. **Treasurers Report – including:**
 - a. **Discuss and determine Primary and Secondary signers on the city checking account (First United).**

Motion: Jim Millard moved to have the Mayor, Cathy Sereno, and the Treasurer, Glenn Leisey, as Primary and Secondary signers on the city checking account with First United Bank in Marble Falls.

Second: Bob Link seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

8. Regular Agenda – the Council will individually discuss, consider and possibly take action on any or all of the following items:

a. Ordinance Committee Update

Bob Link reported there was nothing to report at this time.

b. Discuss and consider action on abolishing the office of Marshal.

Motion: RG Carver moved to remove the office of Marshall which is ORD005.

Second: Bob Link seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

c. Discuss and consider action on establishing an Emergency Plan for the City

Motion: Glenn Leisey moved to carry the discussion and action of an Emergency Plan over to the 4/11/19 meeting.

Second: Bob Link seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

d. Discuss and consider action on establishing an Interlocal Agreement with Burnet County Sheriff

Motion: Glenn Leisey moved to carry forward to next the meeting at the discretion of the Mayor.

Second: Bob Link seconded the motion.

Discussion: There was verification that an interlocal agreement is being worked on with the County Sheriff to continue services. The timing of it being brought forward to the next meeting will depend on the agreement's completion by the County Sheriff's Department.

Vote: Unanimous. The motion was carried.

e. Discuss and consider action on working with TXDOT to explore options that improve the safety of drivers entering and exiting Hwy 71 where Hwy 71 borders the city limits

This is one of the advantages of a city to have the ability to request this and offer a speed reduction as a city service.

Motion: Bob Link moved to work with TXDOT to explore options that improve the safety of drivers entering and exiting Hwy 71.

Second: Glenn Leisey seconded the motion.

Discussion: There was discussion as to what would be the best speed. A citizen inquired on the boundaries of the speed reduction and was told within the city limits. It was shared that the County Commissioners have been included in the discussion of the speed reduction.

Glenn Leisey stated the businesses within the city limits will benefit from the slower speed when accessing Hwy 71

Texas Department of Transportation (TXDoT) will work the study and then make their recommendation.

Motion: Bob Link moved to approve working with TXDoT to explore options that improve the safety of drivers entering and exiting Hwy 71 recommending the reduction of the speed limit to 60 mph.

Second: Glenn Leisey seconded the motion.

Vote: Unanimous. The motion carried.

f. Discuss and consider action on establishing a permanent location for meetings and City Hall office space including possible lease agreement.

Motion: Bob Link moved to establish the SCC, as available, for all meetings for the remaining of the 2019 calendar year.

Second: Jim Millard seconds the motion.

Discussion: None

Vote: Unanimous. The motion carried.

Professional Civil Processors has offered an executive suite for \$500 for internet, phones, and office space. Jim is still waiting to see lease agreement from business.

Motion: Glenn Leisey moved to carry the discussion to the next regular meeting.

Second: Bob Link seconded the motion.

Discussion: None

Vote: Unanimous. The motion carried.

g. Discuss and consider action on Budget Guidance Committee Report – FY2020 forecasted expenses to be used to establish an estimated tax rate for the County (due March 30th).

Larry Trowbridge couldn't be at meeting, but the proposed budget has been provided. Jim Millard clarified that the budget will need a complete review before a final tax number is submitted in the fall. He stated the proposed budget is for estimating the tax rate for the March 30th deadline from the county tax assessor.

Motion: Jim Millard moved to approve the preliminary 0.081 tax rate for the tax deadline of March 30th.

Second: Glenn Leisey seconded the motion.

Discussion: None

Vote: Unanimous. The motion carried.

The City Secretary will submit the proposed rate to the county tax assessor by the deadline of March 30th.

h. Discuss and consider action to identify funding sources and fundraising activities

Looking for a chair for this committee from the community. This would include any ideas that the community might have.

Motion: Jim Millard moves to continue this item till the next meeting.

Second: Bob Link seconded the motion.

Discussion: It was pointed out that a volunteer from the community would be greatly appreciated. Glenn Leisey said he could assist the committee.

Vote: Unanimous. The motion carried.

i. Discuss and consider other matters for inclusion on the agenda for the next regular meeting of the City Council.

List:

- Discuss and consider action to identify funding sources and fundraising activities
- Discuss and consider action to adopt a logo
- Discuss and formulate an agreement with Burnet County Tax for collecting taxes
- Discuss the Comprehensive Plan
- Discuss and consider further City services

Mayor states there would be no need for an Executive Meeting and that there were no other items to discuss.

9. Adjournment

Motion: Bob Link moved to adjourn the meeting at 7:45pm.

Second: Glenn Link seconded the motion.

Discussion: None

Vote: Unanimous. The motion carried.

Meeting closed at 7:45 pm.

The Council may go into closed session at any time when permitted by Chapters 418 or 551, Texas Government Code, or Section 321.3022 of the Texas Tax Code. Before going into closed session, a quorum of the Council must be assembled in the meeting room, the meeting must be convened as an open meeting pursuant to proper notice, and the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551 or 418, Texas Government Code, or Section 321.3022 of the Texas Tax Code authorizing the closed session.

APPENDIX 8

STATE OF TEXAS §

COUNTY OF BURNET §

CITY OF DOUBLE HORN §

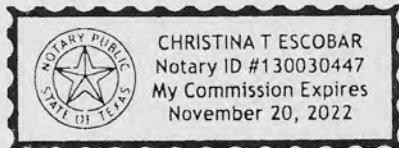
CERTIFICATE TO COPY OF PUBLIC RECORD

I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of the minutes of the meeting of the City Council on March 30, 2019 on file in the City Secretary's office, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 11 DAY OF July, 2019.

Karen Maxwell
Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 11th day of July 2019, to certify which witness my hand and seal of office.



Christina T Escobar
Notary Public in and for the State of Texas

CITY OF DOUBLE HORN

City Council Special Meeting Minutes

SATURDAY, MARCH 30, 2019

10:00AM, DOUBLE HORN PAVILION

Located at 103 Double Horn Trail

Double Horn, Texas 78669

1. **Call Meeting to Order:** 10:13am
2. **Rollcall to Confirm Quorum:** Cathy Sereno, RG Carver, Bob Link, Larry Trowbridge and Glenn Leisey attending. Jim Millard is absent. A quorum has been met for the meeting.
3. **Invocation:** Glenn Leisey
4. **Pledge of Allegiance**
5. **Closed Regular Meeting:** 10:14am
6. **Open Executive Session:** 10:15am
Executive Session was moved up in the agenda to accommodate the litigator for the petition.

Executive session in accordance with the Texas Government Code, Section 551.071 — Consultation with Attorney in which the Attorney has a duty to the City under the Texas Disciplinary Rules of Professional Conduct that clearly conflicts with the provisions of the Open Meetings Law. The Council may require the citizens to vacate the meeting room during the executive session.

(i) Consultation with Attorney(s) regarding lawsuit: State of Texas vs. City of Double Horn et al
7. **Close Executive Session:** 10:58am
No action is needed from the Executive Session.
8. **Re-open Regular Meeting:** 10:59am
9. **Approve Minutes from 3/27/19**

Motion: Bob Link moved to accept the minutes from the 3/27/19 minutes as written.
Second: RG Carver seconded the motion.
Discussion: None.
Vote: Unanimous. The motion carried.

10. **Citizen Comments** – This is an opportunity for the citizens to address the City Council concerning an issue of community interest not on the agenda. Any deliberation of an issue raised during the Citizens Comments is limited to a proposal to place it on the agenda for a later meeting. Each citizen will be allowed 3 minutes to speak and must sign up before the meeting begins and indicate the subject the speaker wishes to address.

Speaking: No none signed up to speak.

11. **Regular Agenda** – the Council will individually discuss, consider and possibly take action on any or all of the following items:

- a. **Discuss and Consider approving a resolution RES004 to provide municipal services.**

Mayor, Cathy Sereno, clarified this resolution is a road map of potential services the municipality could consider offering.

Motion: Glenn Leisey moved to approve RES004 for municipal services.

Second: Larry Trowbridge seconded the motion.

Discussion: Mayor asked for any questions from Council? There were no questions.

Mayor asked for any questions from the community? There were no questions.

Vote: Unanimous. The motion carried.

- b. **Discuss and consider approval of an interlocal agreement with Burnet County for law enforcement services.**

Mayor clarifies that the interlocal agreement is being written up by the County and is not ready to be reviewed by us. The County is waiting for the Commissioner's Court to approve.

Motion: Larry Trowbridge moved to discuss this topic at the meeting following the document's completion.

Second: Bob Link seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

- c. **Discuss and Consider approval of an agreement with ESD9 for Emergency Services.**

Motion: Glenn Leisey moved to continue the topic until the next meeting.

Second: Larry Trowbridge seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

- d. **Discuss and Consider approval of resolution for Tax Collection:**

- i. **2019-RES002 A RESOLUTION OF THE CITY OF DOUBLE HORN, BURNET COUNTY, TEXAS AUTHORIZING AN AGREEMENT WITH THE BURNET COUNTY APPRAISAL DISTRICT FOR THE COLLECTION OF TAXES.**

Motion: Bob moved to approve resolution 2019-RES002 and authorize the Mayor, Cathy Sereno, to initiate it.

Second: RG Carver seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

Items to be discussed for next meeting:

- a. Discuss and Consider approval of an agreement with ESD9 for Emergency Services
- b. Discuss and consider approval of an interlocal agreement with Burnet County for law enforcement services based on receipt of document

13. Adjournment

Motion: Glenn Leisey made the motion to adjourn the meeting.

Second: RG Carver seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

The Council may go into closed session at any time when permitted by Chapters 418 or 551, Texas Government Code, or Section 321.3022 of the Texas Tax Code. Before going into closed session, a quorum of the Council must be assembled in the meeting room, the meeting must be convened as an open meeting pursuant to proper notice, and the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551 or 418, Texas Government Code, or Section 321.3022 of the Texas Tax Code authorizing the closed session.

APPENDIX 9

STATE OF TEXAS §

COUNTY OF BURNET §

CITY OF DOUBLE HORN §

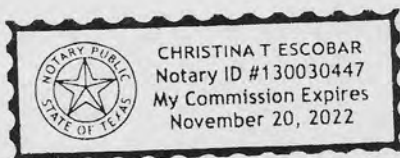
CERTIFICATE TO COPY OF PUBLIC RECORD

I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of the minutes of the meeting of the City Council on April 11, 2019 on file in the City Secretary's office, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 11 DAY OF July, 2019.

Karen Maxwell
Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 11th day of July 2019, to certify which witness my hand and seal of office.



Christina T Escobar
Notary Public in and for the State of Texas

CITY OF DOUBLE HORN

Regular City Council Meeting Minutes

THURSDAY APRIL 11, 2019

7:00PM, SPICEWOOD COMMUNITY CENTER

Located at 7901 CR 404, Spicewood, Texas 78669

1. **Call Meeting to Order:** Time 7:00pm
2. **Rollcall to Confirm Quorum:** RG Carver, Bob Link, Jim Millard, Larry Trowbridge, and Glenn Leisey were present at the meeting. Mayor, Cathy Sereno, was absent. The quorum was met.

3. **Invocation:** Glenn Leisey

4. **Pledge of Allegiance**

5. **Approval of Minutes:**

Motion: Jim Millard moved to approve minutes as presented.

Second: Glenn Leisey seconded motion.

Discussion: None

Vote: Unanimous. The motion carried.

6. **Citizen Comments** – No one signed up to speak.

7. **Treasurer's Report** –

Glenn Leisey reported the City has \$1,000 in its bank account. A meeting has been set up with the bank, Cathy Sereno, Karen Maxwell and Glenn Leisey to discuss the needs of the City. An official receipt is being developed to provide donors when donations are made to the City.

He feels a discussion is needed regarding legal fees incurred through another organization for the purposes of with Akers & Akers before agreement signed with law firm on March 14, 2019.

Motion: Glenn Leisey moves that the legal work and fees done by Akers and Akers thru a subcontract done through the Sledge Law Firm for the work establishing the city of DH and the election of the officers be considered for payment by the city.

Second: Bob Link seconded for the purposes of discussion.

Discussion: Discussion around keeping funds between keeping the payments separate between the two organization. Invoice copies given to Council members

Motion: Larry Trowbridge moves to continue discussion till the next meeting.

Seconded: Jim Millard seconded the motion to continue.

Vote: Unanimous. The motion carried.

8. **Regular Agenda** – the Council will individually discuss, consider and possibly take action on any or all of the following items:

a. Discuss and consider adoption of a city logo

The provided logo reflects the history of the original city's name.

Motion: Jim Millard moved to accept the "City of Double Horn founded 1855 Incorporated 2018" with the symbol of the interlocking horns as our city logo.

Second: Bob Link seconded the motion.

Discussion: The logo was approved.

Vote: Unanimous. The motion carried.

b. Discuss and consider action to identify funding sources and fundraising activities

Jim was hoping to see more interaction from the community regarding help with fundraising. Community input would be wonderful and appreciated. If we don't get money through fundraising, money will need to be borrowed to run the city. We need to figure out how much we will need to run this year and get a plan in place to get the word out. There was a suggestion to look at using the estimated tax percentage multiplied by the house value as an amount a homeowner might be asked to donate to the City for current funding if other fund raising measures are not supported. Larry Trowbridge and Jim Millard will get together and come up with the expenses needs for the time frame before tax revenue comes in 2020.

Motion: Jim Millard made a motion for the Fund Raising Committee to move forward in coming up with options to consider for raising funds.

Second: Glenn Leisey the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

c. Discuss and consider action on establishing an Emergency Plan for the City

The plan Jim Millard presented is the County of Burnet's Emergency Management Plan (EMP) which is just the basic plan of 48 pages. The full plan is 700+ pages and listed on the Burnet County website. Other small cities have adopted this as their plan. He provided another example of a city that had a detailed ordinance acknowledging acceptance in the plan with detailed specifics. He passed the copy of the sample ordinance to Bob Link for use developing an ordinance for Double Horn.

Motion: Glenn Leisey moved to accept the County of Burnet Emergency Management Plan for the City of Double Horn.

Second: No second

Motion: Bob Link moved to continue discussion till next meeting.

Second: Jim Millard seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

d. Discuss and consider action on implementing a program to monitor and report air quality within corporate limits and provide results to residents and property owners

Larry Trowbridge asked who has air quality air monitors? Glenn identified that Larry Trowbridge and John Gary currently have monitors. Glenn has two more monitors he is donating to the city to be installed. He suggests

those be mounted on residences on Cross Trail and Southeast Trail. They will all need to be monitored. Glenn will find residences for the new monitors.

Motion: Larry Trowbridge moved that Council standardize the reporting of air quality and identify property owners within the city limits to do that.

Second: Jim Millard seconded the motion.

Discussion: None

Vote: Unanimous. The motion carried.

e. Discuss and consider action on implementing a program to monitor and report seismic activity within the corporate limits and provide results to residents and property owners

Motion: Larry Trowbridge moved that Council standardize the reporting of seismic activity and identify property owners within the city limits to do that.

Second: Jim Millard seconded the motion.

Vote: Unanimous. The motion carried.

f. Ordinance Committee Update – Comprehensive Plan

Bob Link and his committee working on the Comprehensive Plan will go over the plan that Patty Akers, City Attorney, sent over to create a rough draft to present to the citizens for discussion at next meeting.

Motion: Bob Link made a motion to continue discussion on Comprehensive Plan to the next meeting.

Second: Glenn Leisey seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

g. Discuss and consider other matters for inclusion on the agenda for the next regular meeting of the City Council.

Some suggestions have been to not feed feral cats, make Double Horn a “Dark Sky City”, and to limit propane tank size. We need to have clarity between HOA ordinances and City concerns. We should let the HOA take care of HOA business. We need to have the comprehensive plan in place before we address zoning concerns.

Discuss and consider action on the Comprehensive Plan attempting to get citizens input

Discuss and adopt a Budget Calendar

Discuss a plan to reach out to commercial neighbors.

Discuss and consider potential locations for the City Hall.

It was noted that the Comprehensive Plan and Emergency Management Plan need to be in place before any grants can be applied for.

9. Adjournment:

Motion: Larry Trowbridge moved to adjourn the meeting.

Second: Bob Link seconded the motion.

Discussion: None

Vote: Unanimous. The motion carried.

Next regular meeting will be on May 9th at 7pm in the Spicewood Community Center.

The meeting ended at 8:19

APPENDIX 10

STATE OF TEXAS §

COUNTY OF BURNET §

CITY OF DOUBLE HORN §

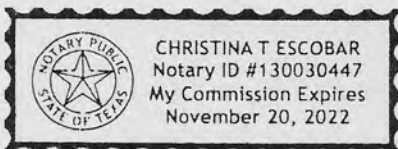
CERTIFICATE TO COPY OF PUBLIC RECORD

I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of the minutes of the meeting of the City Council on April 24th, 2019 on file in the City Secretary's office, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 11 DAY OF July, 2019.

Karen Maxwell
Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 11th day of July 2019, to certify which witness my hand and seal of office.



Christina T Escobar
Notary Public in and for the State of Texas

CITY OF DOUBLE HORN MINUTES

Special Meeting City Council

WEDNESDAY, APRIL 24, 2019

7:00PM, SPICEWOOD COMMUNITY CENTER

Located at 7901 CR 404, Spicewood, Texas 78669

1. **Call Meeting to Order:** Time 7:04pm
2. **Rollcall to Confirm Quorum:** Mayor Cathy Sereno, Jim Millard, Larry Trowbridge, and Glenn Leisey in attendance. RG Carver and Bob Link are absent. A quorum has been met.
3. **Invocation:** Glenn Leisey
4. **Pledge of Allegiance**
5. **Approval of Minutes from the April 11, 2019 meeting**

Motion: Larry Trowbridge moved to approve the minutes as written.

Second: Glenn Leisey seconded the motion.

Discussion: None

Vote: Unanimous. The motion carried.

6. **Citizen Comments –**

Chris Bradford representing Spicewood Crushed Stone

Mr. Bradford read and provided copies of a letter from Spicewood Crushed Stone (SCS). The company has a problem with the Quarry not be consulted before the Comprehensive Plan was created. SCS has been talking with TXDOT regarding covering the costs of the needed left turn, acceleration and deceleration lanes on Highway 71. They feel as a large land owner all would benefit from their input.

Larry Trowbridge thanked Mr. Bradford for coming and speaking.

7:14 Public Hearing officially opened

7. **PUBLIC HEARING:** Discuss and Consider Adoption of Comprehensive Plan for the City of Double Horn

a. ORDINANCE 2019-ORD006

An Ordinance of the City of Double Horn, Texas, Establishing a Comprehensive Plan for the City of Double Horn.

Discussion:

Mayor gave a cursory overview of ordinance for the present attendees.

A partial list of items follows:

- Maintain the look and ambiance of the original subdivision.
- Transition from a type B to Type A city
- Maintain the HOA covenants.
- Maintain the hill country nature of the area.

Mayor asked for any question's attendees might have. There was one question regarding enforceable wording using HOA covenants as guidelines for quality of buildings within the city. It was clarified that cities have a better ability to enforce zoning. There were no further questions.

Public hearing was closed at 7:16pm.

Motion: Glenn Leisey moved to open discussion of the Comprehensive Plan and potential use of properties within city limits and ETJ.

Second: Jim Millard seconded the motion

Vote: Unanimous. The motion carried.

- There were concerns with classifying Carrington's parcel within the city limits. The legal description of this parcel is needed to add into the plan, specifically Parcel 55308 of 105 acres owned by the Carrington Partnerships.
- Glenn Leisey directed attention to exhibit A, under *Purpose and Organization*, where the ETJ needs to be included into the wording. Larry Trowbridge agreed. The Council supports the ETJ being included.
- Patty Akers advised the group that getting land uses on the map is important along with having a Council consensus. The Comprehensive Plan is a guidance document. It is best to try and communicate with home owners about ordinance so everyone understands the City's intent.
- The ETJ is ½ mile beyond the City limits. Any property owner contiguous to the ETJ can apply to the City for annexation. Who are the property owners of the different properties outside of the Double Horn Creek Subdivision and within the City and ETJ?

Action Item: Larry Trowbridge will make a list of owners and lessees of the properties within the city and ETJ.

Action Item: Patty Akers, City Attorney, will be adding language to include the ETJ in the Comprehensive Plan and have it for the next Council meeting.

- A color-coded map indicating a prospective plan for areas use is needed for the ordinance. Double Horn Creek HOA subdivision will be indicated by one color for residential and other areas outside the gates will need to have different colors to indicate their uses.
- The Comprehensive Plan is the City's *wish list* for its future and will form the basis for what is designed with the zoning ordinances. *Vested property rights* are protected

within the current plans for the land owner's project. Any zoning put in place would only affect future projects.

- The City is looking to implement a 500ft. commercial corridor along Hwy 71, respecting the residential areas already in place such as Double Horn Creek, Spicewood Trails and Deer Path. The plan is for current use to not change. The Munk land is currently being used for commercial and should reflect that in the plan.
- There are several HOA open lots that are unbuildable. Those areas could be designated open areas. The Pavilion property can be labeled as park.
- Any property used by the Water Company can be listed as institutional or utility.
- The wells will need to be identified for set backs so no one can build next to the community water supply. There is a need to get the overall plats of the wells and easements.

Action Item: Larry Trowbridge will email the latest Map, dated 02/16/19, to Mayor Cathy Sereno. It can be color coded with the program Adobe Pro.

- All other ranches/property within the ETJ will be designated residential/agricultural/historic use.
- Vulcan is coded industrial.
- Terradora Ranch LLC to be residential along with Myron Ross's other parcels with commercial frontage.
- Glenn Leisey identified the map with the wells and easements are in the Water Company's storage building at the pool.

A committee is needed to create the colored areas and identified land use on the map.

Motion: Jim Millard moved to set up a committee to define the property lines and define the land use map.

Second: Glenn Leisey seconded the motion.

Vote: Unanimous. The motion carried.

Action Item: Glenn Leisey and Jim Millard will work together on committee and bring the colored map to the May 9th meeting. Make sure the phrase "A comprehensive plan shall not constitute zoning regulations or establish zoning district boundaries" is noted on the map.

The City acknowledged John Garry for his hard work on the Comprehensive Plan.

Larry Trowbridge pointing out a typo on the top page of ORD006: a redundancy and section with all capital letters to be fixed in final copy.

Harry Brunner is asking why the city would be labeling areas within the HOA subdivision. His concern was the Pavilion being identified as a "park" when it is a private park. Patty Akers clarified anything that is grandfathered in isn't affected, but the use does need to be

identified. An example would be if a property owner sells a property and the new owner wants to do something other than what is identified, they will need to ask the city for permission.

b. Discuss and consider other matters for inclusion on the agenda for the next regular meeting of the City Council.

Comprehensive Plan Map to be discussed showing land use.

Acknowledge John Garry for his hard work on the Comprehensive Plan by proclamation.

Discuss and adopt a budget calendar.

Discuss and review the budget, categories, and budget calendar.

Discuss and consider the interaction with neighbors regarding the plan.

Treasurer's report

Discuss and review search for property owners to track Air quality and seismic monitors.

Discuss the ongoing need for a City Hall and records storage.

Discuss and review the Emergency Management Plan

8-11. Executive Session not needed.

12. Adjournment: 8:35pm

Motion: Glenn Leisey moved to adjourn the meeting.

Seconded: Larry Trowbridge seconded the motion.

Discussion: None.

Vote: Unanimous. The motion carried.

The meeting adjourned at 8:35pm. The next meeting will be May 9th at the Spicewood Community Center.

APPENDIX 11

STATE OF TEXAS §

COUNTY OF BURNET §

CITY OF DOUBLE HORN §

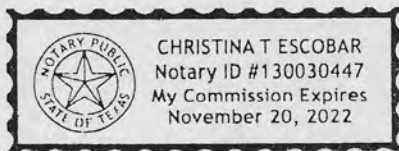
CERTIFICATE TO COPY OF PUBLIC RECORD

I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of the minutes of the meeting of the City Council on May 9th, 2019 on file in the City Secretary's office, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 11 DAY OF July, 2019.

Karen Maxwell
Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 11th day of July 2019, to certify which witness my hand and seal of office.



Christina T Escobar
Notary Public in and for the State of Texas

CITY OF DOUBLE HORN

Regular City Council Meeting Minutes

THURSDAY MAY 9, 2019

7:00PM, SPICEWOOD COMMUNITY CENTER

Located at 7901 CR 404, Spicewood, Texas 78669

1. **Call Meeting to Order:** Time 7:00pm
2. **Rollcall to Confirm Quorum:** Mayor Cathy Sereno, RG Carver, Bob Link, Larry Trowbridge, Jim Millard, and Glenn Leisey are present. All are present and a quorum has been met.
3. **Invocation:** Glenn Leisey
4. **Pledge of Allegiance**
5. **Approval of Minutes:**
Motion: Larry Trowbridge moved to approve the April 30th, 2019, minutes.
Second: Jim Millard seconded the motion.
Discussion: None
Vote: The motion to approve the minutes carried unanimously.
6. **Citizen Comments –**
Grant Dean signed up to speak....
Grant Dean, a non-resident, expressed his pride in the City of Double Horn and wants to support of the City in of Double Horn in its fundraising efforts in defense against the State of Texas petition.
7. **Mayor's Update including:**
 - a. **Texas Department of Transportation (TXDoT) Speed Study (RES003)**
TXDoT was contacted on April 10th to check on the Speed Study's compilation. The Mayor was informed by Kathy Kratz that the data has been gathered but is not ready for distribution to the City.

ACTION ITEM: Mayor Cathy Sereno will follow up with TXDoT to acquire results of the study.

- b. **Tax Collection Agreement with Burnet County Appraisal District (RES002)**
The County Commissioner's Board approved the contract included in 2019 RES002 and it is now a matter of record. The City received a letter from Stan Hemphill's office, Burnet Central Appraisal District, with estimated adjusted taxable value of \$64 million. This figure is subject to potential decreases due to protests, late exemptions and agricultural applications. A final evaluation should be in by July 25th. If all protests have not been completed by that date, the county will indicate the amount in question for adjust the City's budget.
- c. **Status on Interlocal Agreement with Sheriff's Department**
A response was received from the Burnet County Attorney, Eddie Arredondo, confirmed the City will continue to be covered by the Sheriff's Department and the Constable with the same law enforcement services the citizens have had before the City's incorporation. The letter documenting that will be filed in the City's records. A Code Enforcement Officer can be contracted through the Burnet County Sheriff's department when the City needs those services. It is not needed at this time.
- d. **Meeting with Spicewood Crushed Stone (SCS) management**

Mayor Cathy Sereno and Alderman Jim Millard met with the management team at Spicewood Crushed Stone. The goal of the meeting was to build a working relationship between SCS and the City. Mr. Dalrymple, the owner of Spicewood Crushed Stone (SCS), and Phelan Hill, the manager of SCS, expressed a desire to work directly with the city and not through lawyers. SCS's discussed their short-term plan is to show that they want to be a good neighbor. They want to create berms to block the highway or subdivisions', including Spicewood Trails, view of the quarry. The SCS quarry has plans to have a masonry and gated entrance. They are currently working with Texas Department of Transportation (TXDOT) for a center turn lane west of the Vista View Gate and acceleration lane heading towards Marble Falls. This is a \$1.3 M project to be completed by the summer of 2020 and funded by the quarry through TXDOT.

The acceleration lane to be created will start from SCS property line west bound to Gate 4's deceleration lane. The center turn lane will be added from Spicewood Trails Subdivision thru gate 4 for another 500 ft.

SCS will not be selling commercially but will be producing material for their own projects.

Action Item: The Mayor will call into SCS to check on roadway debris needing to be cleaned up. Some of the residents of Double Horn Creek have experienced cracked windshields.

Action Item: The Mayor will take up SCS on their offer to have the engineering company designing the Highway 71's lane adjustments come to a Council meeting and make a presentation.

Action Item: The Mayor will check to see if the County Commissioner, Joe Don Dockery, had any success in reaching out to other commercial entities in pitching in for road improvements for everyone's safety due to increased commercial traffic. Potentially some of the money previously committed by TXDOT for Highway 71's center lanes could now be used for more center lanes further along within the city limits, since the commercial entities are donating money.

SCS indicated their long-term future plans for the property, to be implemented at completion, would be a high-end, lake community with larger estate lots similar to Double Horn Creek, comparable to the San Antonio's *Quarry*.

John Osborne pointed out that SCS does not own the trucks or trucking firms. The trucking firms are being contracted by the Quarry and may not feel responsible to holding truck firms responsible for safe trucks. Cathy Sereno checked a reference that the Quarry provided, a town in the Corning area in New York. The town manager explained that their quarry, owned by Dalrymple, has been responsive to complaints: gravel on the road, dust on the road, third party driver issues.

e. Appointment of Emergency Management Coordinator (EMC) and Assistant

Mayor Cathy Sereno appointed Harry Brunner as the EMC and Jim Millard as his assistant. A minimum of 4 classes of training must be completed for audit purposes.

Future Action Item: The City Secretary will bundle and send certificates to Jim Barho in the Burnet County's Emergency Management Office.

8. Treasurer's Report including:

a. Review of City Financials – outstanding expenses and revenues

Revenue-

SEPATX donated \$1,000 to the City of Double Horn to increase the City account to \$2,000.

Outstanding Expenses-

Current outstanding debt \$16,622.50 most of which is from legal fees in defending the City from the State of Texas' petition.

Texas Municipal League (TML) invoice rec'd

- Automobile insurance \$38 – covers city official in any vehicle while conducting city business
- Errors and Omissions
- General Liability
- Law Enforcement
- 10% Prepay discount

TML invoice will be paid out of checking account. Funds will need to be raised thru several fundraising means to pay for the current legal bills and future bills in fighting the State's Appeal.

Any money coming into the City will be considered a donation and will be tax deductible. To be clear, it will not apply to next year's tax payment. A receipt will be provided indicating the donation amount. The City is not a 501 (c) (3) non-profit entity, but a governmental 170 (c) (1) non-profit entity.

b. Interim Budget & Budget Calendar

Interim Budget:

There were expected expenses of \$50,000 for the city's year. There is a need for at least \$30,000 for the City's current expenses to finish out the year. Fundraising will need to be done to come up with the needed money to cover the city expenses and legal fees.

An appeal to the residents for a donation to the City equaling 50% of next year's estimated tax bill is being worked up. Any money coming into the City will be considered a donation and will be tax deductible. To be clear, it will not apply to next year's tax payment. A receipt will be provided indicating the donation amount. The City is not a 501 (c) (3) non-profit entity, but a governmental 170 (c) (1) non-profit entity. Online banking has been activated for the Treasurer's use.

Glenn Leisey has been researching accounting software looking for many capabilities: income, expenditures, check writing, receipts, and a low cost. He found one with the needed attributes and it is free. He will first try this free software, *Waves*, before looking at the cost of purchasing a different package.

The Mayor pointed out there have been many additional expenditures that have been covered by individuals on the council and in this room.

Motion: RG Carver moved for the City to try the free software, *Waves*, for the City's accounting needs.

Seconded: Bob Link seconded the motion.

Discussion: None

Voted: The motion carried with a unanimous vote.

Budget Calendar

Larry Trowbridge shared that it takes 90-100 days to get a new budget approved. Someone needs to create the calendar and present it to the Council for approval by August.

The City needs to enter the new fiscal year with the budget in place. Larry Trowbridge has set up a timeline with the order of events, identifying the budget categories and line items. Larry Trowbridge will provide one with dates plugged in.

Action Item: Larry Trowbridge will provide one with dates plugged in.

Action Item: The Mayor volunteered to work with Jim Millard or Glenn Leisey in setting up the initial budget calendar.

- c. **First United Bank Services – approval for an additional account to manage the automatic deposit of tax revenues**

Motion: Glenn Leisey moved to approach First United Bank to create an interest-bearing account for the deposit of property tax payments from the County.

Seconded: Jim Millard seconded the motion.

Discussion: None

Vote: The motion carried with a unanimous vote.

- d. **Status of City of Double Horn donation receipt**

Glenn Leisey is still working on the receipt for the donations. It will be available soon.

9. **Regular Agenda – the Council will individually discuss, consider and possibly take action on any or all of the following items:**

- a. **Discuss and consider adoption of Comprehensive Plan which includes a Land Use Map for the City of Double Horn:**

ORDINANCE 2019-ORD006 An Ordinance of the City of Double Horn, Texas, Establishing a Comprehensive Plan for the City of Double Horn

Motion: Jim Millard moved to accept the Comprehensive Plan as written with the map.

Second: Glenn Leisey seconded the motion.

Discussion: Glenn Leisey expressed that he liked it as it is written and would like to approve it. Mayor Cathy Sereno shared from a letter written by SCS's owner, Mr. Dalrymple, expressing how he would like to continue discussions with the City as the quarry wants to have the same coding as the Vulcan quarry, located outside of the city limits but within the Extra Territorial Jurisdiction, as "non-residential."

Vote: There was no vote on the motion, but it was amended.

Amended Motion: Jim Millard amended his motion from "accept the Comprehensive Plan as written with the map" to "continue the discussion on the Comprehensive Plan to include the Dalrymple people with a resolution identified by the next meeting."

Seconded: Glenn Leisey seconded the amended motion.

Discussion:

RG Carver had an issue with continuing the discussion, once again, as this item needs to move forward.

Larry Trowbridge asked the Dalrymple's lawyer, in attendance at the meeting, what was the SCS's concern.

SCS's lawyer stated SCS wants to work with the City. They want the zoning and ordinances to reflect "boots on the ground."

Jim Millard expressed the need to work with Dalrymple but he also doesn't want the "can kicked down the road." He stated the Comprehensive Plan was based on previous conversations with Dalrymple. He also said Phelan Hill hasn't responded to the request for dates to meet.

Bob Link thinks that getting Dalrymple's support and blessing would be better.

Jim Millard agreed and the City should be able to approve the Comprehensive Plan by the next Council meeting set for June 13th.

Grant Dean, a non-resident, emphasizes that agreements with the SCS need to be in writing.

The Mayor spoke about developing an operating agreement between the City and SCS.

Action Item: The Mayor will be discussing an operating agreement between the City and SCS.

Vote: The amended motion carried with one dissenting vote from RG Carver.

b. Discuss and consider action on establishing an Emergency Plan for the City of Double Horn including:
i. Resolution requesting City of Double Horn participate under the Burnet County Emergency Management Plan

Motion: Jim Millard moved to approve the resolution 2019 RES005 establishing an Interjurisdictional Emergency Management Program with the county and getting the Commissioner's Court to approve it.

Second: Bob Link seconded the motion

Discussion:

Vote: The motion carried with a unanimous vote.

Motion: Larry Trowbridge moved to approve 2019 ORD007 which establishes the Emergency Management Plan.

Seconded: Bob Link seconded the motion

Vote: The motion carried with a unanimous vote.

ii. Resolution adopting National Incident Management System (NIMS)

Motion: Glenn Leisey moved to create resolution 2019 RES006 adopting the National Incident Management System (NIMS).

Second: RG Carver seconded the motion

Discussion: This resolution requires training in communication with first responders and other emergency services. If a city doesn't follow the rules laid out in the training, the city pays the bill.

Vote: The motion carried with a unanimous vote.

Future Action Item: An Emergency Management Response Team will need to be established at a later date.

c. Fund Raising Committee Update

The committee consists of several residents: Susan Carver, Wendy Wright, Sheila Safarzadeh, Karen Maxwell, Laura and Glenn Leisey.

The committee has come up with several ideas to raise money such as City logo-stamped t-shirts & cozies for the short term raising of funds. A large ticket item raffle has been talked about, also.

September 26th, 2019, has been set aside for a Silent Auction/Live Auction Event at Spicewood Vineyards. It will be a Thursday night, so the venue will be had at no cost. There is a planned entrance fee which would include an opportunity to win a door prize. There is a need to collect items for the silent and live auction. The residents will be requested to donate products or services (ex. art work, children's group art class, stained glass art, hand tied flies, quilts, dinner, cabin nights or Gift Certificates), hopefully pulling from their work access or personal gifts and skills. Outside companies will be approached for donations and sponsorships.

Bob Link reminded the Council that the information will need to get out to the public at large to rouse support. People will be more apt to give if they are informed of rental costs, and other expenses.

Harry Brunner stated there is some confusion of who to give the money to: SEPATX or the City. Jim Millard clarified that SEPATX and the City of Double Horn are two completely different organizations.

Larry Trowbridge stated his frustration at having the City's large legal bill needing this fundraising and the cause of the legal fees are due to the very entity, SCS, that claims they want to work together. The owner of Spicewood Crushed Stone (SCS) will be asked for a contribution.

d. Discuss and consider action on implementing a program to monitor and report air quality within corporate limits and provide results to residents and property owners

The Mayor asked for clarification on what data can be acquired and where the monitors are. Larry Trowbridge has an air monitor and also John Gary. The units do not record so they have to be hooked up to a dedicated computer. They read in real time. Hassan Safarzadeh has agreed to have a monitor on his property as it is close to the quarry in the ETJ.

Grant Dean, a nonresident and representative of Texas Environmental Coalition, recommended getting a specific firm at a nominal fee to record air quality and seismic information. The Mayor asked for Grant to provide the names and contact information for those company.

Motion: Jim Millard moved to continue the discussion on the air quality monitoring to the June 13th meeting.

Second: Glenn Leisey seconded the motion.

Discussion: None.

Vote: The motion carried with a unanimous vote.

e. Discuss and consider action on implementing a program to monitor and report seismic activity within the corporate limits and provide results to residents and property owners

Motion: Glenn Leisey moved to continue the discussion on the air quality monitoring to the June 13th

Second: Bob Link seconded the motion.

Discussion: The seismic monitor is up and running. The laptops record 28 days of information.

Vote: The motion carried with a unanimous vote.

f. Discuss and consider action on establishing a City Hall and/or Location for record storage

Motion: Glenn Leisey moved to discuss and consider establishing a City Hall and a location for record storage.

Second: Larry Trowbridge seconded the motion.

Discussion: Bob Link is concerned about approving something without research. Jim Millard brought up the specifics for the office space at Professional Civil Processors.

Bob Link expressed concerns on how the City would pay for it.

Susan Carver pointed out that the donations will be paying for the expenses the City has.

Glenn suggested that the Council request residents make a donation this year equaling 50% of next year's estimated city taxes.

Vote: No vote

New Motion: Bob Link moved that the discussion should be continued to the next meeting.

New Seconded: Larry Trowbridge seconded the new motion.

Vote: The new motion carried with a unanimous vote.

g. Discuss and consider other matters for inclusion on the agenda for the next regular meeting of the City Council.

Mayor Update:

- will follow up with TXDoT to acquire results of the study.
- will call into SCS to check on roadway debris needing to be cleaned up. Some of the residents of Double Horn Creek have experienced cracked windshields.
- will take up SCS on their offer to have the engineering company designing the Highway 71's lane adjustments come to a Council meeting and make a presentation.
- will check to see if the County Commissioner, Joe Don Dockery, had any success in reaching out to other commercial entities in pitching in for road improvements for everyone's safety due to increased commercial traffic. Potentially some of the money previously committed by TXDoT for Highway 71's center lanes could now be

used for more center lanes further along within the city limits, since the commercial entities are donating money.

Discuss and consider adoption of Comprehensive Plan which includes a Land Use Map for the City of Double Horn: ORDINANCE 2019-ORD006 An Ordinance of the City of Double Horn, Texas, Establishing a Comprehensive Plan for the City of Double Horn

Discuss and consider action on establishing a City Hall and/or Location for record storage. Bob Link will report back on his research for storage of files

Discuss and consider action on implementing a program to monitor and report seismic activity within the corporate limits and provide results to residents and property owners

Discuss and consider action on implementing a program to monitor and report air quality within corporate limits and provide results to residents and property owners

Discuss and consider establishing an election cycle and term limits

Discuss replacement of Council member and the process to do that- Larry Trowbridge is resigning.

Larry Trowbridge provided to Jim Millard the contact information of 76 parcels within the city limits and ETJ, but not including the Spicewood Trails property owners.

Bob Link expressed a request to the SCS lawyer, acting as representative for the Dalrymple people, for the quarry to be highly motivated to work with the City on the Comprehensive Plan.

10. & 11. Close Regular Meeting & Open Executive Session: Time 8:46pm

12. & 13. Close Executive Session & Re-open Regular Meeting: Time 9:25

14. Consider action, if any, from Executive Session

Motion: Jim Millard moved to pay to retain the firms of Akers & Akers and Messer, Rockefeller & Ford represent the City in the appeal of the State of Texas vs. the City of Double Horn.

Second: Glenn Leisey seconded the motion.

Discussion: None.

Vote: The motion was carried by a unanimous vote.

15. Adjournment: Time 9:29

Motion: Glenn Leisey moved to adjourn the meeting.

Second: Bob Link seconded the motion.

Discussion: None.

Vote: The motion carried with a unanimous vote.

The meeting was adjourned at 9:29 pm with June 13th being the next meeting.

The Council may go into closed session at any time when permitted by Chapters 418 or 551, Texas Government Code, or Section 321.3022 of the Texas Tax Code. Before going into closed session a quorum of the Council must be assembled in the meeting room, the meeting must be convened as an open meeting pursuant to proper notice, and the presiding officer must announce that a closed session will be held and must identify the sections of Chapter 551 or 418, Texas Government Code, or Section 321.3022 of the Texas Tax Code authorizing the closed session.

Open Executive Session. Executive session in accordance with the Texas Government Code, Section 551.071 – Consultation with Attorney in which the Attorney has a duty to the City under the Texas Disciplinary Rules of Professional Conduct that clearly conflicts with the provisions of the Open Meetings Law. The Council may require the citizens to vacate the meeting room during the executive session.

- (a) Consultation with Attorney regarding Litigation Status

APPENDIX 12

STATE OF TEXAS §

COUNTY OF BURNET §

CITY OF DOUBLE HORN §

CERTIFICATE TO COPY OF PUBLIC RECORD

I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of the minutes of the meeting of the City Council on June 13th, 2019 on file in the City Secretary's office, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 11 DAY OF July, 2019.

Karen Maxwell
Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 11th day of July 2019, to certify which witness my hand and seal of office.



Christina T Escobar
Notary Public in and for the State of Texas



CITY OF DOUBLE HORN

Regular City Council Meeting Minutes

THURSDAY JUNE 13, 2019

7:00PM, SPICEWOOD COMMUNITY CENTER

Located at 7901 CR 404, Spicewood, Texas 78669

THE CITY OF DOUBLE HORN COUNCIL MEETINGS ARE AVAILABLE TO ALL PERSONS REGARDLESS OF DISABILITY. IF YOU REQUIRE SPECIAL ASSISTANCE, PLEASE CONTACT CATHY SERENO AT 830-693-1508 AT LEAST 48 HOURS IN ADVANCE OF THE MEETING. THANK YOU.

1. **Call Meeting to Order:** Time 7:02pm
2. **Rollcall to Confirm Quorum:** Mayor Cathy Sereno, RG Carver, Jim Millard, Glenn Leisey, and Bob Link were present and a quorum was met.
3. **Invocation:** Glenn Leisey
4. **Pledge of Allegiance**
5. **Approval of Minutes:**

Motion: Glenn Leisey moved to approve the minutes as corrected.

Second: Jim Millard seconded the motion.

Discussion: None

Vote: The vote was unanimous and the motion carried.

6. **Citizen Comments** – This is an opportunity for the citizens to address the City Council concerning an issue of community interest not on the agenda. Any deliberation of an issue raised during the Citizens Comments is limited to a proposal to place it on the agenda for a later meeting. Each citizen will be allowed 3 minutes to speak and must sign up before the meeting begins and indicate the subject the speaker wishes to address.

No one signed up.

7. **Mayor's Update including:**
 - a. **Texas Department of Transportation (TXDOT) Updates: Speed Study (RES003), Hwy 71 Road Improvements & City Signs**
 - b. **Meeting with Spicewood Crushed Stone (SCS) management**
8. **Treasurers Report including:**
 - a. **Review of City Financials:** See attached report.
 - b. **Interim Budget & Budget Calendar**

Motion: Glenn made a motion to set up two accounts at First United, one for a separate Legal Defense Fund account and a second for tax revenues.

Second: RG Carver seconded the motion.

Discussion: None

Vote: The vote was unanimous and the motion carried.

c. Status of City of Double Horn receipt

A receipt for donations is available.

9. Regular Agenda – the Council will individually discuss, consider and possibly take action on any or all of the following items:

a. Discuss and consider adoption of Comprehensive Plan which includes a Land Use Map for the City of Double Horn: ORDINANCE 2019-ORD006 An Ordinance of the City of Double Horn, Texas, Establishing a Comprehensive Plan for the City of Double Horn

Motion: Glenn Leisey made a motion to approve the ordinance 2019 ORD006 Comprehensive Plan and to include the parcel numbers of the property owned by Spicewood Crushed Stone identifying the permitted acreage for the quarry on the map.

Second: Jim Millard seconded the motion.

Discussion:

Vote: Motion passed with one dissenting vote by RG Carver.

b. Fund Raising Committee Update

Action Item: Karen researching PayPal button for website to aid in city raising funds.

c. Discuss and consider action on establishing a City Emergency Management Team & scheduling related training

Upcoming training will be with Jack Doebbler on July 13th with the location to be announced for the Texas Public Official's workshop.

d. Discuss and consider action to fill open position on City Council (replacing Mr. Trowbridge)

Motion: Jim Millard moved to advertise for a Council member replacement on the City website and for Council to seek out residents interested in filling post.

Second: Glenn Leisey seconded the motion.

Discussion: None.

Vote: The vote was unanimous and the motion carried

Action Item: Mayor Cathy Sereno will create a posting for the website.

e. Discuss and consider action on establishing the election cycle and term limits

Action Item: Patty Akers will provide an ordinance for the election cycle for an upcoming meeting.

f. Discuss and consider action on implementing a program to monitor and report air quality within corporate limits and provide results to residents and property owners

Action Item: Karen Maxwell call GoDaddy and see if link can be added to go to another website for information on air quality.

g. Discuss and consider action on implementing a program to monitor and report seismic activity within the corporate limits and provide results to residents and property owners

Action Item: Cathy Sereno will follow up regarding the access to Vulcan's seismic monitor at the next meeting.

h. Discuss and consider action on establishing a City Hall and/or Location for record storage

Records:

Motion: Jim Millard moved to have a secured locked location of the city's records at the city secretary's residence.

Second: Glenn Leisey seconded the motion.

Discussion: None.

Vote: Unanimous and motion carried.

City Hall: The discussion will continue to the next several meetings.

**i. Discuss and consider action on requiring process for deactivation of audible house alarms
Does the city cover this?**

Action Item: City Secretary will send an email requesting the citizen making this request to come and discuss with the Council.

j. Discuss and consider other matters for inclusion on the agenda for the next regular meeting of the City Council.

- Discuss air quality link
- Discuss Vulcan's Seismic reports accessibility
- Discuss and approve an Election Ordinance
- Discuss a zoning and ordinance update
- PayPal button on Website
- Council Position posting results
- Continue discussion on City Hall

10. & 11. Close regular meeting and Open Executive Session: Time 8:31pm

Open Executive Session. Executive session in accordance with the Texas Government Code, Section 551.071 – Consultation with Attorney in which the Attorney has a duty to the City under the Texas Disciplinary Rules of Professional Conduct that clearly conflicts with the provisions of the Open Meetings Law. The Council may require the citizens to vacate the meeting room during the executive session.

(a) Consultation with Attorney regarding Litigation Status

12. & 13. Close Executive Session and Open Regular meeting: Time 9:14pm

14. Consider action, if any, from Executive Session

No action to be taken

Motion: Glenn Leisey made a motion to adjourn the meeting at 9:14 pm.

Second: Bob Link seconded the motion.

Discussion: None.


Vote: The vote was unanimous and the motion carried.

The Council will reconvene on Thursday, July 11th at 7:00pm at the next regular meeting.

The Council may go into closed session at any time when permitted by Chapters 418 or 551, Texas Government Code, or Section 321.3022 of the Texas Tax Code. Before going into closed session a quorum of the Council must be assembled in the meeting room, the meeting must be convened as an open meeting pursuant to proper notice, and the presiding officer must announce that a closed session will be held and

must identify the sections of Chapter 551 or 418, Texas Government Code, or Section 321.3022 of the Texas Tax Code authorizing the closed session.

I certify that the above notice of meeting was posted at 7901 CR 404, Spicewood, Texas, on the 10th day of June 2019 at 7PM.



Cathy Sereno, Mayor

APPENDIX 13

STATE OF TEXAS §

COUNTY OF BURNET §

CITY OF DOUBLE HORN §

CERTIFICATE TO COPY OF PUBLIC RECORD

I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of Ordinance No. 2019-ORD008 on file in the City Secretary's office, which was passed and approved on the 11th day of July 2019, by the City Council of the City of Double Horn, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 17th DAY OF JULY, 2019.

Karen Maxwell

Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 17th day of July 2019, to certify which witness my hand and seal of office.



Christina T Escobar

Notary Public in and for the State of Texas

ORDINANCE 2019-ORD008

AN ORDINANCE OF THE CITY OF DOUBLE HORN, TEXAS ESTABLISHING STAGGERED, TWO-YEAR TERMS OF OFFICE FOR THE MAYOR AND COUNCIL MEMBERS; ESTABLISHING A UNIFORM ELECTION DATE; PROVIDING FOR REPEALING, SAVINGS AND SEVERABILITY CLAUSES; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Double Horn, Texas (the "City"), is a newly created governmental entity incorporated pursuant to the laws of the State of Texas as a Type B general law municipality following an election held on December 6, 2018; and

WHEREAS, a mayor and five city aldermen were elected on February 12, 2019 to serve as the City of Double Horn's initial City Council (the "City Council"); and

WHEREAS, Section 23.026 of the Texas Local Government Code authorizes the governing body of a Type B general law municipality, such as the City, to provide for two-year staggered terms of office for the Mayor and Aldermen; and

WHEREAS, the City Council finds that the establishment of staggered, two-year terms of office is in the public's best interest; and

WHEREAS, the City Council, in accordance with Section 23.026(b) of the Texas Local Government Code, shall determine the two Aldermen who shall serve two-year terms by drawing lots at the first meeting of the City following the annual municipal general election held after this Ordinance is adopted; and

WHEREAS, pursuant to Section 41.0052(e) of the Texas Election Code may, not later than the second anniversary of the date of incorporation, change the date on which it holds its general election for officers to another authorized uniform election date.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DOUBLE HORN, TEXAS:

1. **Findings Incorporated.** The above and foregoing premises are true and correct and are incorporated into the body of this Ordinance as if fully set forth herein.
2. **Uniform Election Date.** The general election date for the offices of mayor and city council in the City of Double Horn, Texas shall be the uniform election date in November of each year, as may be established and modified by the Texas Legislature.
3. **Terms of Office - Enactment Provisions.**

- a. Purpose. This Ordinance is enacted so that the Board of Aldermen may promote efficient administration in the governance of the City in compliance with the authority granted to Type B General Law Municipalities by the Legislature of the State of Texas.
- b. Two-year terms. The regular term of office for the positions of Mayor and members of the Board of Aldermen shall be two (2) years.
- c. Staggered terms. The terms of office of the Mayor and Board of Aldermen shall be staggered so that the Mayor and two (2) members of the Board of Aldermen shall be elected in odd-numbered years and three (3) members of the Board of Aldermen shall be elected in even-numbered years.
- d. Initial Application.

The Mayor and Board of Aldermen are currently serving an initial term of one year, which term commenced after the official canvass and administration of the oath of office following the February 12, 2019 special election, and which will expire on the November uniform election date in 2019 or as soon as the oath of office for the next term of office following the official canvass of that election is administered, whichever is later.

After the election results for the Mayor and Board of Aldermen, in the upcoming uniform general municipal election to be conducted in November 2019, are canvassed and the oath of office is administered, the newly elected Board of Aldermen members shall draw lots at the first meeting of the City after such election to determine which two Aldermen shall serve a two-year term with the Mayor. The remaining three Aldermen shall hold office for an initial staggering term of one year. Thereafter, all Board of Aldermen members of the City shall serve for a term of two years.

- e. Continuing Application.

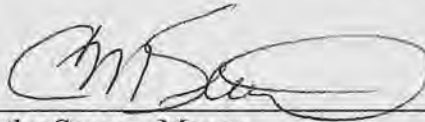
Following expiration of the initial staggering two-year term of the Mayor and two Aldermen, the office of the Mayor and two Aldermen shall be elected for two-year terms in each odd-numbered year. Such election shall be conducted at the November uniform election on odd-numbered years.

Following expiration of the initial staggering one-year term of the three Aldermen, the office of the three Aldermen shall be elected for two-year terms in each even-numbered year. Such election shall be conducted at the November uniform election on even-numbered years.

4. **Repealing/Savings Clauses.** All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict. Any remaining portions of said ordinances shall remain in full force and effect.
5. **Severability.** Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Double Horn hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.
6. **Effective Date.** This Ordinance shall be and become effective immediately upon and after its passage and publication as may be required by governing law.
7. **Open Meeting.** The meeting at which this Ordinance was passed was open to the public and that public notice of the time, place and purpose of said meeting was given as required by the Open Meetings Act, Chapter 551 of the Texas Government Code.

PASSED AND APPROVED on this the 11th of July 2019.

CITY OF DOUBLE HORN, TEXAS

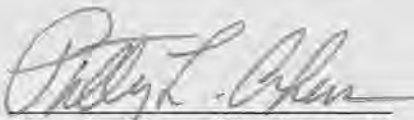


Cathy Sereno, Mayor

ATTEST:


Karen Maxwell, City Secretary

APPROVED AS TO FORM:


Patty L. Akers, City Attorney

APPENDIX 14

STATE OF TEXAS §


COUNTY OF BURNET §

CITY OF DOUBLE HORN §

CERTIFICATE TO COPY OF PUBLIC RECORD


I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of *Joint Election Agreement 2019-2020* to be signed by Burnet County on file in the City Secretary's office, which was passed and approved on the 11th day of July 2019, by the City Council of the City of Double Horn, and said documents are the official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 17th DAY OF JULY, 2019.


Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 17th day of July 2019, to certify which witness my hand and seal of office.




Notary Public in and for the State of Texas

JOINT ELECTION AGREEMENT 2019-2020

FOR BURNET COUNTY LOCAL POLITICAL SUBDIVISIONS

Whereas, the undersigned local political subdivisions, collectively referred to hereafter as the "LPSs", each anticipate holding election(s) from August 2019 to July 2020; and

Whereas, each of the LPSs is located partially or entirely within Burnet County, Texas (the "County"); and

Whereas, the County has contracted or is contracting with each LPS to conduct and provide election services for such LPS's election(s) from August 2019 to July 2020; and

Whereas, the LPSs all desire to enter into a joint election agreement for the purpose of sharing election equipment, costs, services of election officials, and sharing precinct polling locations and election ballots where appropriate.

NOW THEREFORE, the LPSs agree as follows:

- I. **Scope of Joint Election Agreement.** The LPSs enter this Joint Election Agreement ("Agreement") for the conduct of the elections to be held from August 2019 through July 2020.
- II. **Appoint Election Officer.** The LPSs appoint the Burnet County Elections Administrator to serve as the Election Officer for each LPS in order to perform and supervise the duties and responsibilities of the Election Officer for any election from August 2019 through July 2020.
- III. **Early Voting Polling Locations.** The Early Voting locations for the elections will be at the main Burnet Courthouse, 220 S. Pierce, Burnet, TX 78611 and the Courthouse South Annex in Marble Falls, 810 Steve Hawkins Pkwy., Marble Falls, TX 78654. The costs incurred in connection with the Burnet Courthouse Early Voting location will be shared only by the Burnet Consolidated Independent School District, the City of Burnet, the City of Bertram, the Central Texas Groundwater Conservation District (CTGCD) and Burnet County. The costs incurred in connection with the Courthouse South Annex Early Voting location will be shared only by the Marble Falls Independent School District, the City of Marble Falls, the City of Granite Shoals, the City of Cottonwood Shores, the City of Meadowlakes, the City of Highland Haven, the City of Horseshoe Bay, the City of Double Horn, CTGCD and Burnet County.
- IV. **Election Day Polling Locations.** Election Day voting shall be held in common precincts where appropriate at the dates, times, and locations recommended by the Election Officer and authorized and ordered by the governing body of each LPS. Those will be decided within one week after the last day to order an election.
- V. **Cost Sharing.** The LPSs agree to the cost sharing provisions below. This includes Burnet County, the school districts of the county, the cities of the county, and the Central Texas Groundwater Conservation District. Other entities pay a lump sum of \$1,000 for their election.
- VI. **Effective Date.** This Agreement becomes effective upon execution by the participating LPSs.
- VII. **Amendments.** This Agreement may not be amended or modified except in writing and executed by each LPS.

COST SHARING – NOVEMBER UNIFORM ELECTION DATE

- I. The following expenses will be shared equally by all LPSs holding an election including Burnet County: the newspaper notice for the Logic and Accuracy Test of the ballots, consumable election supplies, and ballot programming.
- II. The user fees for the voting equipment, election worker payroll, and mileage payments to poll workers will follow these cost sharing arrangements:
 - a. The county will bear at least 70% of these election costs at each voting location. The remaining 30% will be shared so that 20% is paid by the Independent School District (ISD) or CTGCD associated with the polling place and the remaining 10% is paid by any/all cities equally sharing the costs. If both the ISD and CTGCD are holding elections, they each pay 10%, with any/all cities equally sharing the remaining 10%.
 - b. If there is no city election, the ISD or CTGCD associated with the polling place pays 20% or 10% each and the county the remaining 80%. Subsequently, if there is no ISD or CTGCD election, any/all cities pay 10% of the costs associated with the polling place and the county pays 90%.
 - c. If there is no city, no ISD and no CTGCD election, the county pays 100% of the costs.
- III. It is acknowledged that cost sharing expenses will fluctuate depending upon the number of required polling locations and poll workers required as General Elections, held on even-numbered years, typically require more resources than Constitutional Amendment elections, held on odd-numbered years.

COST SHARING – MAY UNIFORM ELECTION DATE

- I. The following expenses will be shared equally by all LPSs holding an election including Burnet County: the newspaper notice for the Logic and Accuracy Test of the ballots, consumable election supplies, and ballot programming.
- II. The user fees for the voting equipment, election worker payroll, and mileage payments to poll workers will follow these cost sharing arrangements:
 - a. For polling locations conducting elections of the county: the county will bear 50% of the election costs at each voting location. The remaining 50% will be shared so that 40% is paid by the Independent School District (ISD) associated with the polling place and the remaining 10% is paid by any/all cities equally sharing the costs.
 - b. If there is no city election, the ISD associated with the polling place pays 50%. Subsequently, if there is no ISD election, any/all cities pay 50% of the costs equally.
 - c. If there is no city or ISD election the county pays 100%.
 - d. For polling locations NOT conducting elections of the county: the ISD pays 80% and any/all cities pay 20% equally.
 - e. If there is no city election, the ISD pays 100%.
 - f. If there is no ISD election, any/all cities pay 100% equally.

A cost estimate for the LPS election will be submitted upon request.

APPROVED BY THE GOVERNING BODY OF City of Double Horn in its meeting held the
11th day of July, 2019 and executed by its authorized representative.

By: [Signature]
Name: Cathy Sereno
Title: Mayor

ACKNOWLEDGED BY:

[Signature]
Doug Ferguson
Elections Administrator, Burnet County, Texas

7/17/19
Date

APPENDIX 15

STATE OF TEXAS §

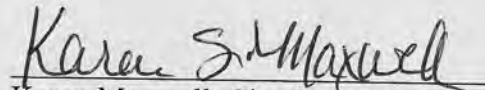
COUNTY OF BURNET §

CITY OF DOUBLE HORN §

CERTIFICATE TO COPY OF PUBLIC RECORD


I, Karen Maxwell, City Secretary of the City of Double Horn, Texas do hereby certify in the performance the functions of my office that the attached is a true and correct copy of the Contract for Elections with the County of Burnet which was approved on the 11th of July 2019, which is on file in the City Secretary's office, which is part of the City Secretary's official records from the public office of City Secretary of the City of Double Horn, Texas.

WITNESS MY HAND AS CITY SECRETARY FOR THE CITY OF DOUBLE HORN, TEXAS THIS THE 25th DAY OF JULY, 2019.


Karen Maxwell, City Secretary
City of Double Horn, Texas

SUBSCRIBED AND SWORN TO BEFORE ME on this 25 day of July 2019, to certify which witness my hand and seal of office.




Notary Public in and for the State of Texas

CONTRACT FOR ELECTION SERVICES

THIS CONTRACT FOR ELECTION SERVICES (this "Contract") is made and entered into by and between the ELECTIONS ADMINISTRATOR OF BURNET COUNTY, TEXAS ("Contracting Officer") and the Local Political Subdivision set forth on the signature page of this Contract (the "LPS") pursuant to the authority under Section 31.092(a) of the Texas Election Code.

RECITALS

WHEREAS, the LPS expects to order an election during the term of this Contract and during any renewal term of this Contract (the "Election");

WHEREAS, the LPS desires that certain election services for the Election be provided by the Contracting Officer pursuant to Chapter 31, Subchapter D of the Texas Election Code and;

WHEREAS, the Contracting Officer and the LPS desire to enter into a contract setting out the respective responsibilities of the parties;

NOW, THEREFORE, the parties to this Contract agree as follows with respect to the coordination, supervision, and conduct of the Election.

I. GENERAL PROVISIONS.

- A. The purpose of this Contract is to maintain consistency and accessibility in voting practices, polling places, and election procedures to best assist the voters of the LPS. For purposes of this Contract the term "Election" will include any resulting recount or election contest. It will also apply to any election to resolve a tie.
- B. The Contracting Officer is hereby appointed to serve as the LPS's Election Officer and Early Voting Clerk to conduct the Election for those areas of the LPS located in Burnet County. As Election Officer and Early Voting Clerk, the Contracting Officer will coordinate, supervise and conduct all aspects of administering voting in connection with the Election in compliance with all applicable law except as otherwise provided in this Contract.
- C. The LPS agrees to commit the funds necessary to pay for election-related expenses for the LPS's election.
- D. The Contracting Officer has the right to enter into agreements with other entities at any time and may require that authorities of LPSs holding elections on the same day in all or part of the same territory to enter into a joint election agreement as authorized in Chapter 271 of the Texas Election Code. The LPS agrees to enter into a joint election agreement required by Burnet County.

II. **RESPONSIBILITIES OF CONTRACTING OFFICER.** The Contracting Officer shall be responsible for performing the following services and furnishing the following materials and equipment in connection with the election:

- A. ***Nomination of Presiding Judges and Alternate Judges.*** The Contracting Officer shall recruit and appoint Election Day presiding and alternate judges, central accumulation station

judges, and the Early Voting Ballot Board (EVBB) presiding judge, all of which shall meet the eligibility requirements in Subchapter C of Chapter 32 of the Texas Election Code.

B. Notification to LPS. The Contracting Officer shall provide the LPS with the most up-to-date list of presiding and alternate judges three weeks before the statutory deadline to order the election and again three weeks before Election Day. LPS acknowledges that the information provided may not be final or complete.

C. Notification to Presiding and Alternate Judges; Appointment of Clerks.

1. The Contracting Officer shall notify each presiding and alternate judge of his or her appointment. The notification will also include the assigned polling location, the date of the election training(s), the date and time of the election, the rate of compensation, the number of clerks the judge may appoint, the eligibility requirements for election workers, and the name of the presiding or alternate judge as appropriate.
2. The election judge will make the clerk appointments in consultation with the Contracting Officer. If a presiding judge or the alternate judge does not speak both English and Spanish, and the election precinct is one subject to Sections 272.002 and 272.009 of the Texas Election Code, the Contracting Officer shall ensure that a bilingual election clerk is appointed. The Contracting Officer shall notify the clerks of the same information that the judges receive under this section.

D. Election Training. The Contracting Officer shall be responsible for conducting election training for the presiding judges, alternate judges, clerks, and Early Voting deputies in the operation and troubleshooting of the direct record electronic (DRE) voting system and the conduct of elections, including qualifying voters, issuing ballot style codes, maintaining order at the polling location, conducting provisional voting and counting votes.

E. Logic and Accuracy Testing. In advance of Early Voting (including the sending out of any mail ballots), the Contracting Officer, the tabulation supervisor, and other members the Contracting Officer designates for the testing board shall conduct all logic and accuracy testing in accordance with the procedures set forth by the Texas Election Code and under guidelines provided by the Secretary of State's office. The Contracting Officer shall also be responsible for the publication of the required notice of such testing.

F. Election Supplies. The Contracting Officer shall procure, prepare, and distribute to the presiding judges for use at the polling locations on Election Day (and to the Early Voting clerks during Early Voting) the following election supplies: election and early voting kits (including the appropriate envelopes, lists, forms, name tags, posters, and signage described in Chapters 51, 61, and 62, and Subchapter B of Chapter 66 of the Texas Election Code) seals, sample ballots, thermal paper rolls for use in the Judge's Booth Controllers (JBCs), batteries for use in the JBCs and eSlates, labels for the electronic poll books, and all consumable-type office supplies necessary to hold an election.

G. Registered Voter List. The Contracting Officer shall provide lists of registered voters required by law for use on Election Day and for the Early Voting period.

H. **Notice at Previous Polling Place.** The Contracting Officer shall post notices of a change in a polling place at the entrance to the previous polling location. Section 43.062 of the Texas Election Code provides that the notice shall state the location has changed and give the location of the new polling place.

I. **Election Equipment.** The Contracting Officer shall prepare and distribute the Direct Record Electronic (DRE) voting system components from Hart InterCivic, Inc. ("Hart") for the election. This voting system includes the equipment referred to as "eSlates" and "Judge's Booth Controllers" (JBCs). Each polling location will have at least one voting machine that is accessible to disabled voters and provides a practical and effective means for voters with disabilities to cast a secret ballot.

J. **Ballots.** The Contracting Officer or designee shall be responsible for the preparation, printing, programming and distribution of English and Spanish ballots and sample ballots, including the mail ballots, based on the information provided by the LPS, including names of the candidates, names of the offices sought, order of names on the ballot, propositions on the ballot, and the Spanish translation of the offices and any propositions. The ballot will be prepared in these formats: DRE, paper and auditory.

K. **Early Voting.** In accordance with Sections 31.096 and 32.097(b) of the Texas Election Code, the Contracting Officer shall serve as Early Voting Clerk for the election.

1. The Contracting Officer shall supervise and conduct early voting by mail and by personal appearance and shall secure personnel to serve as Early Voting Deputies.
2. Early Voting by personal appearance for the election shall be conducted during the hours and time period and at the locations as determined by the Contracting Officer.
3. The Contracting Officer shall receive mail ballot applications on behalf of the LPS. All applications for mail ballots shall be processed in accordance with Title 7 of the Texas Election Code by the Contracting Officer or deputies at the Elections Office, located at 106 W. Washington St., Burnet, TX. Applications for mail ballots erroneously sent to the LPS shall be faxed promptly to the Contracting Officer for timely processing then the original application shall be forwarded to the Contracting Officer for proper retention.
4. Early voting ballots shall be secured and maintained at the Elections Office, located at 106 W. Washington St., Burnet, TX and in accordance with Chapter 87 of the Texas Election Code. The Early Voting Ballot Board shall meet at the same location unless posted differently.

L. **Election Day Polling Locations.** The Election Day polling locations are determined by the Contracting Officer in consultation with the LPS and in accordance with the Texas Election Code. The Contracting Officer shall arrange for the use of all Election Day polling places and shall arrange for the setting up of the polling location including tables, chairs and voting booths.

M. **Election Day Activities.**

1. The Contracting Officer and staff shall be available from 6:00 am until the completion of vote counting on Election Day to render technical support and assistance to voters and

election workers.

2. The Contracting Officer and staff shall prepare and conduct Election Night intake of election equipment, supplies and records.
3. The Contracting Officer and designee shall serve as central counting station manager and tabulation supervisor, counting the votes in conjunction with the Early Voting Ballot Board and the Central Counting Station judges.

N. Election Night Reports. The Contracting Officer shall prepare the unofficial and official tabulation of precinct results under Section 66.056(a) of the Texas Election Code. The unofficial tabulation of Early Voting precinct results and Election Day precinct results shall be made available to the LPS via e-mail as soon as they are prepared and may be released under law, but no earlier than 7:05 pm on Election Day. The tabulation reports may also be provided to other counties as necessary for the election.

O. Provisional Votes/Determination of Mail Ballots Timely Received under Section 86.007(d) of the Texas Election Code. The Contracting Officer, serving as voter registrar, shall retain the provisional voting affidavits and shall provide factual information on each of the provisional voters' status. The Contracting Officer shall reconvene the EVBB after the election within the time set forth in Section 65.051 of the Texas Election Code for the purpose of determining the disposition of the provisional votes. At the same time, the EVBB will review mail ballots timely received under Section 86.007(d) of the Texas Election Code to determine whether such will be counted and to resolve any issues with such ballots.

P. Canvass Material Preparation. Promptly after determination of the provisional votes and resolution of any mail ballots, the Contracting Officer shall work with the EVBB to tally the accepted provisional votes and resolved mail ballots, amend the unofficial tabulations, and submit new unofficial tabulations to the LPS. The reports will serve as the canvass materials for the LPS.

Q. Custodian of Election Records. The election records will be submitted to the LPS except for those records that must be maintained by the Contracting Officer as Voter Registrar in accordance with Section 66.051 of the Texas Election Code. The Contracting Officer is hereby appointed the custodian of voted ballots (which in the case of the ballots cast on the DRE voting system consists of the DVD backup) and shall preserve them in accordance with Chapter 66 of the Texas Election Code and other applicable law. The Contracting Officer shall also maintain custody of the records pertaining to the operation of the JBCs and eSlates.

R. Recount.

1. If required by law, the Contracting Officer shall perform a partial manual count of electronic voting system ballots in accordance with section 127.201 of the Texas Election Code. A recount may also be requested in accordance with Chapter 212 of the Texas Election Code.
2. The LPS shall advise the Contracting Officer if a recount is required by law or requested and the Contracting Officer and the LPS shall discuss how such recount is

to be conducted. The LPS shall reimburse the Contracting Officer for the cost of such count which is not included in the original invoice.

S. *Schedule for Performance of Services.* The Contracting Officer shall perform all election services in accordance and compliance with the time requirements set out in the Texas Election Code.

T. *Contracting with Third Parties.* In accordance with Section 31.098 of the Texas Election Code, the Contracting Officer is authorized to contract with third parties for election services and supplies. The cost of such third-party services and supplies will be paid by the Contracting Officer and reimbursed by the LPS.

U. *Department of Justice Preclearance for General Elections.* If required by law, any changes to the general conduct of voting in Burnet County will be pre-cleared through the United States Department of Justice by the Contracting Officer with copies of the submission and response e-mailed to the LPS.

III. RESPONSIBILITIES OF THE LPS. The LPS shall perform the following responsibilities:

A. *Applications for Mail Ballots.* The LPS shall date stamp and then as promptly as possible fax to the Contracting Officer all applications for mail ballots that it receives. Promptly thereafter, the LPS shall deliver or send by mail the original mail ballot applications to the Contracting Officer.

B. *Election Orders, Election Notices, and Canvass.* The LPS shall be responsible for preparing, adopting, publishing, and posting all required election orders, resolutions, notices and other documents, including bilingual materials, evidencing action by the governing authority of the LPS necessary to the conduct of the election. The LPS shall be responsible for conducting the official canvass of the election.

C. *Map/ Annexations.* The LPS shall provide the Contracting Officer with an updated map and street index of its jurisdiction in an electronic or printed format and shall advise the Contracting Officer of any annexations or de-annexations.

D. *Department of Justice Preclearance for Special Elections.* If required by law, the LPS shall be individually responsible for obtaining appropriate preclearance from the United States Department of Justice for any special elections.

E. *Ballot Information.* The LPS shall prepare the text for the LPS's official ballot in English and Spanish and provide to the Contracting Officer as soon as possible at the end of the period for ordering the election or filing for candidacy. The ballot information shall include a list of propositions showing the order and the exact manner in which the candidates' names and the propositions are to appear on the ballot. The LPS shall promptly review for correctness the ballot when requested by the Contracting Officer to do so prior to finalization and shall approve by e-mail or by signature in person.

F. *Precinct Reports to the Texas Secretary of State.* Based on information provided by the Contracting Officer, the LPS shall prepare and file all required precinct reports with the Texas Secretary of State.

G. **Annual Voting Report.** The LPS shall be responsible for filing its annual voting system report to the Texas Secretary of State as required under Chapter 123 *et seq.* of the Texas Election Code.

IV. **SPECIAL PROVISIONS RELATING TO ELECTION WORKERS**

A. **Number of Election Workers at Election Day Polling Locations.** It is agreed by the Contracting Officer and the LPS that there will be at least three election workers at each Election Day polling location: the presiding judge, an alternate judge, and at least one election clerk appointed by the presiding judge. The number of necessary clerks is derived from the number of elections at the poll and the number of registered voters for that poll.

B. **Compensation for Election Workers.** The Contracting Officer shall compensate all election workers in accordance with the Contracting Officer's established compensation policies, in accordance with the Texas Election Code and using the rates set by Burnet County Commissioners Court for county elections. The Contracting Officer shall pay the workers and be reimbursed by the entities sharing the polling location unless a polling place is open for only one LPS holding an election. In this case, the LPS shall pay the election workers directly.

V. **PAYMENT**

A. **Charges and Distribution of Costs.** In consideration of the joint election services provided by the Contracting Officer, the LPS will be charged a share of election costs and an administrative fee. The costs distribution is set forth in the Joint Election Agreement. A cost estimate shall be provided upon request only after all entities participating in the election are identified.

B. **Administrative Fee.** The Contracting Officer shall charge a fee equal to 10% of the LPS's share of the cost of the election or a minimum of \$75.00.

C. **Equipment Rental Fee.** Per Section 123.032(d) of the Texas Election Code, the Burnet County Commissioners Court has set the equipment rental fee at \$150 per JBC and per eSlate. There is no charge for Early Voting rental of equipment. If the County acquires additional equipment, different voting equipment, or upgrades existing equipment during the term of this Contract, the charge for the use of the equipment may be reset by the Burnet County Commissioners Court.

D. **Fixed Lump Sum Price for Districts other than Cities, School Districts and Central Texas Groundwater Conservation District.** A LPS that is not a city, school district or the Central Texas Groundwater Conservation District shall pay the Contracting Officer a fixed lump sum price to administer its election. The only item not included in the lump sum price is the cost of any recount.

E. **Payment.** The Contracting Officer's invoice shall be due and payable to the address set forth in the invoice within 30 days from the date of receipt by the LPS.

VI. TERM AND TERMINATION

- A. **Initial Term.** The initial term of this Contract shall commence upon the last party's execution hereof and shall continue thereafter in full force and effect for one year, subject to the termination rights set forth herein.
- B. **Renewal.** Subject to the termination rights set forth herein, this Contract shall automatically renew for a one-year term.
- C. **Termination.** If either party wishes to terminate this Contract for convenience or for cause the party must provide thirty (30) business days' written notice to the other party and allow for discussion of the desired outcome and options to reach the desired outcome. In the event of termination, it is understood and agreed that only the amounts due to the Contracting Officer for services provided and expenses incurred will be due and payable.

VII. MISCELLANEOUS PROVISIONS

- A. **Nontransferable Functions.** In accordance with Section 31.096 of the Texas Election Code, nothing in this Contract shall authorize or permit a change in:
 - 1. The authority with whom or the place at which any document or record relating to the election is to be filed;
 - 2. The officers who conduct the official canvass of the election returns;
 - 3. The authority to serve as custodian of voted ballots or other election records; or
 - 4. Any other nontransferable function specified under Section 31.096 or other provisions of Texas law.
- B. **Cancellation of Election.** If the LPS cancels its election pursuant to Section 2.053 of the Texas Election Code, the Contracting Officer shall be entitled to receive an administrative fee of \$75. The Contracting Officer shall submit an invoice for the administrative fee as soon as reasonably possible after the cancellation, and the LPS shall make payment therefore in a manner similar to that set forth in V. PAYMENT above.
- C. **Contract Copies to Treasurer and Auditor.** In accordance with Section 31.099 of the Texas Election Code, the Contracting Officer agrees to file copies of this Contract with the County Treasurer and the County Auditor of Burnet County, Texas.
- D. **Election to Resolve a Tie.** In the event that an election is necessary to resolve a tie vote, the terms of this Contract shall extend to the second election, except:
 - 1. The LPS and the Contracting Officer will agree upon the date of the election and the early voting schedule subject to provisions of the Election Code and with regard to other elections conducted by the Contracting Officer.
 - 2. The LPS will be responsible for any Department of Justice preclearance submission under Section 5 of the Federal Voting Rights Act.

3. An attempt will be made to use election workers that worked in the first election; those poll workers will not have additional training provided by the Contracting Officer.
4. The cost of the election will be borne by the LPS; the Contracting Officer will work with the LPS on cost management.

E. Amendment/ Modification. Except as otherwise provided, this Contract may not be amended, modified, or changed in any respect except in writing, duly executed by the parties hereto. Both the Contracting Officer and the LPS may propose necessary amendments or modifications to this Contract in writing in order to conduct the election smoothly and efficiently, except that any such proposals must be approved by the Contracting Officer and the governing body of the LPS or its authorized agent, respectively.

F. Severability. If any provision of this Contract is found to be invalid, illegal, or unenforceable a court of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect the remaining provisions of this Contract and parties to this Contract shall perform their obligations under this Contract in accordance with the intent of the parties to this Contract as expressed in the terms and provisions.

G. Representatives. For purposes of implementing this Contract and coordinating activities, the Contracting Officer and the LPS designate the following individuals for submission of information, documents and notice:

For the Contracting Officer:

Doug Ferguson
Elections Administrator, Burnet County
220 S. Pierce
Burnet, TX 78611
Tel: (512) 715-5288
Fax: (512) 715-5287
Email: electadmin@burnetcountytexas.org

For the LPS:

Karen Maxwell
City of Double Horn, City Secretary
102 Double Horn Trail
Double Horn, TX 78669
(512) 497-3187
kmaxwell.dhc@gmail.com

* * *

WITNESS BY MY HAND THIS THE 17th DAY OF July, 2019.

CONTRACTING OFFICER:

Doug Ferguson
Doug Ferguson, Elections Administrator
Burnet County, Texas

WITNESS BY MY HAND THIS THE 17th DAY OF July, 2019.

THE LOCAL POLITICAL SUBDIVISION:

Name of Entity: City of Double Horn

By: Cathy Sereno

Printed Name: Cathy Sereno

Official Capacity: Mayor

ATTEST: Karen Maxwell