

CAUSE NO. 49209

STATE OF TEXAS,	§	IN THE DISTRICT COURT OF
	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	
	§	
CITY OF DOUBLE HORN, TEXAS;	§	BURNET COUNTY, TEXAS
CATHY SERENO; R.G. CARVER;	§	
JAMES E. MILLARD; GLENN	§	
LEISEY; JOHN OSBORNE; and TOM	§	
KING,	§	
	§	
<i>Defendants.</i>	§	424th JUDICIAL DISTRICT

ASSURANCE OF VOLUNTARY COMPLIANCE

This Assurance of Voluntary Compliance ("AVC") is entered into by the Attorney General of Texas, on behalf of Plaintiff the State of Texas, and Defendants the City of Double Horn, Texas (the "City"); Cathy Sereno; R.G. Carver; James E. Millard; Glenn Leisey¹; John Osborne; and Tom King (collectively, the "Parties"). This AVC sets forth the terms and conditions with which the City of Double Horn has agreed to comply in order to demonstrate to the State over the next year that it is operating as, and performing the functions required of, an incorporated city in the State of Texas, including providing municipal services to all within its boundaries. The State of Texas has agreed to stay further proceedings in the above-captioned case for the period of one year in order to permit the City of Double Horn to demonstrate its compliance with the terms and conditions specified herein.

¹ Mr. Leisey has been replaced on the City Council by Bob Schmitz.

At the conclusion of the one-year period, the State will dismiss the above-captioned case with prejudice if the City of Double Horn has substantially complied with the terms of this AVC, with all parties incurring their own costs and attorneys' fees, pursuant to the terms and conditions specified herein.

Nothing contained herein shall constitute or be construed as an admission by the City of Double Horn that its incorporation was or is legally improper as alleged by the State, or as an admission by the State that the City of Double Horn's incorporation was or is legally proper.

PARTIES

1. The parties are as follows:
 - a. The State of Texas, represented by its Attorney General, is authorized to bring an action in the nature of quo warranto to obtain a declaration that the incorporation of a city is invalid, an order of dissolution, and a declaration removing from office persons unlawfully holding office. Tex. Civ. Prac. & Rem. Code. §§ 66.001-.003; *see State v. City of Double Horn*, No. 03-19-00304-CV, 2019 WL 5582237, at *3, 5–6 (Tex. App.—Austin 2019, pet. denied).
 - b. The City of Double Horn is a Type B Municipality incorporated under the laws of Texas. Cathy Sereno is the Mayor of the City of Double Horn. R.G. Carver, James E. Millard, Glenn Leisey, John Osborne, and Tom King are, or were, Aldermen and members of the City Council of the City of Double Horn. The City of Double Horn, Cathy Sereno, R.G. Carver,

James E. Millard, Glenn Leisey, John Osborne, and Tom King shall be referred to collectively in this AVC as Defendants.

TERMS OF AGREEMENT

Response to Plaintiffs' Discovery Requests

2. Defendants agreed to serve their written responses to Plaintiffs' First Requests for Production (Nos. 1–23), and produce all documents, data, and information responsive to these requests, no later than July 7, 2021. Defendants produced Defendants' Objections and Responses, including the production of more than 6,000 pages of documents and offering to make available another 7,774 pages of records received from a third party produced in paper form only.

Provision of Municipal Facilities and Services

3. The City of Double Horn shall maintain a city hall at a physical location within the boundaries of the city. The city hall shall be used for conducting city business, maintaining city records, and providing notices to the public as required by state law. *See, e.g.,* Tex. Gov't Code §§ 551.050(b), 1251.003(d)(1)(B); Tex. Loc. Gov't Code §§ 143.024(a), 143.029(b), 143.033(d), 143.107(a)-(b), 252.041(a), 392.054(a)(2), 552.019(c), 552.020(f). The city hall shall be accessible and open to the citizens of the City of Double Horn during the City's established normal business days and hours, which shall include, at a minimum, Tuesdays, Wednesdays, and Thursdays, 12:00 p.m. to 2:00 p.m., and by appointment for other days and times, excluding business days designated as state or federal holidays.

4. The City of Double Horn shall undertake good-faith efforts to make public amenities available to the citizens of the City of Double Horn for their general use and enjoyment. The Double Horn Improvement Association, Inc. (the "DHIA") currently owns, maintains, and operates parks and a pavilion within the Double Horn Creek Subdivision (the "DHCS"), which is within the boundaries of the City of Double Horn. The City of Double Horn shall negotiate with the DHIA regarding the City purchasing, or sharing of costs and responsibilities of, public amenities, including the parks and pavilion, as well as making those amenities open and available for the general use and enjoyment of the citizens of the City of Double Horn.
5. The DHIA currently owns and maintains roads within the DHCS, which is within the boundaries of the City of Double Horn. The City of Double Horn shall negotiate with the DHIA regarding the City of Double Horn purchasing, maintaining, sharing the costs of maintaining, and/or sharing responsibility for maintaining, these roads.
6. The City of Double Horn shall ensure that utilities are available within the City, as provided below:
 - a. Water service is currently provided by the Double Horn Creek Water Supply Corporation ("DHCWSC"). The DHCWSC holds a certificate of convenience and necessity ("CCN") for the portion of the city limits made up of the property located in the DHCS. However, DHCWSC also owns water line facilities that are stubbed out at the boundaries of property

located in the city limits but outside of the boundaries of the DHCS, and such water service could be extended beyond the boundaries of the DHCS if DHCWSC agrees to provide such service. The City of Double Horn shall (a) enter into planning discussions with the DHCWSC to facilitate potable water service by DHCWSC to those properties in the city limits that are located outside of the DHCS to the extent that potable water service is requested by such property owners; or (b) enter into planning discussions with other water service providers in the area if such providers have facilities located in close enough proximity to the City of Double Horn to provide potable water services at a reasonable cost to the citizens. If alternative providers can provide potable water service at a reasonable price, the City of Double Horn will enter into such wholesale or retail potable water contracts as necessary to secure water service for those areas outside of the DHCS. Notwithstanding other terms in this section, the City of Double Horn shall continue to authorize landowners the right to construct and operate ground water wells meeting TCEQ requirements to serve their properties if public potable water is not yet available; or alternatively, to the extent reasonably feasible based on new development and anticipated increases in population density, create a city-owned treated water system. The City of Double Horn shall provide information links on its

website from such third-party providers responsible for providing water service within the City.

- b. Currently, density requirements within the City of Double Horn allow septic systems to be used for sewage handling. The City shall generate plans for the provision of sewage services to account for the needs of the City resulting from future growth and development.
- c. The City of Double Horn shall generate plans for the provision of trash and recycling services within the City, including that the City of Double Horn shall explore contracting with trash and recycling providers to provide trash and recycling services within the City.
- d. The City of Double Horn shall provide information on its website regarding the provision of septic/sewage and trash and recycling services.
- e. The City of Double Horn shall prepare and adopt a subdivision ordinance that regulates development in the city limits and the extraterritorial jurisdiction and ensures sewage services are available to the entirety of the City commensurate with the development request and proposed density of the development. The City will authorize septic systems to be used in development, as appropriate, and shall contract with Burnet County for septic permitting and inspections within the City.

- f. The City shall enter into an agreement with Burnet County regarding subdivision authority in the City's extraterritorial jurisdiction.
- 7. The City of Double Horn shall ensure that law enforcement, fire protection, and emergency medical services are available within the City.
 - a. The City of Double Horn shall seek entry into one or more memorandum(s) of understanding or interlocal agreements, as applicable, for public safety services with county or private entities to provide: (a) police services through the Burnet County Sheriff's office; (b) fire services through Burnet County or ESD; (c) emergency EMS services through Burnet County; (d) emergency management services, including through Burnet County's disaster response program; and (e) water storage tank(s) for fire-protection usage, such tank(s) to be located in the City of Double Horn.
- 8. As required by the Texas Government Code, Chapter 418, Subchapter E, the City of Double Horn shall establish, operate, and maintain a municipal or interjurisdictional emergency management program for the City, including the designation of emergency management directors.
- 9. Currently, the Marble Falls Independent School District provides public schools available to children in the City of Double Horn. The City of Double Horn shall note on its website that public schooling within the City of Double Horn is provided by the Marble Falls Independent School District. The City of

Double Horn shall update this information if and when there is a change in the school district providing public schools to children in the City of Double Horn.

10. Pursuant to Section 43.004 of the Texas Election Code, the City of Double Horn is required to “designate the location of the polling place for each of its election precincts.” The City of Double Horn shall designate a polling location for its elections as required by state law. The City shall make its city hall available for use as a polling place in elections covering the territory in which the city hall is located. *See* Tex. Elec. Code § 43.031(c). The City may contract with Burnet County for election services and ultimate designation of a polling location.

Open Meetings, Open Records, and Compliance Training

11. The City of Double Horn shall hold monthly city council meetings as required by, and in full compliance with, state law, including the Open Meetings Act (Title 5, Subtitle A, Chapter 551 of the Texas Government Code) and the Public Information Act (Title 5, Subtitle A, Chapter 552 of the Texas Government Code).
12. The City of Double Horn shall ensure that all city officials complete and stay up to date on training required by state law, including emergency management training required under Sections 418.005 and 418.101 of the Texas Government Code, open meetings training required under Section 551.005 of the Texas Government Code, open records training required under Section

552.012 of the Texas Government Code, and cybersecurity training under Section 2054.5191 of the Texas Government Code.

13. The City of Double Horn shall otherwise comply with all state laws relating to local municipal government management. *See generally* Tex. Gov't Code, Tex. Local Gov't Code, Tex. Elec. Code, Tex. Tax Code.

Publicly Accessible Website

14. The City of Double Horn shall maintain and inform the citizens of the City of Double Horn about the existence of a regularly updated city website that is accessible to the public and provides access to city documents and information, including, but not limited to: the agenda and minutes of city meetings; city ordinances; city resolutions; monthly financial data, accountings, and audits; and public notices regarding services provided by the City of Double Horn to its citizens. *See, e.g.*, Tex. Local Gov't Code §§ 41.001, 102.005, 102.008, 140.008, 176.009.

QUARTERLY AND FINAL COMPLIANCE UPDATES

15. In order to demonstrate the efforts to comply with the terms and conditions of this AVC, the Mayor of the City of Double Horn shall provide quarterly compliance updates to the State (via the point of contact for notifications to the State provided below) regarding the efforts undertaken by Defendants since the previous quarterly compliance update, and to date, to comply with the terms of this AVC.

16. The State shall inform the City of Double Horn (via the point of contact for notifications to the Defendants provided below) of any concerns regarding the City's efforts to comply with the terms and conditions of this AVC after receiving the City's quarterly compliance updates.
17. The City of Double Horn shall provide its first quarterly compliance update to the State no later than September 15, 2021.
18. The City of Double Horn shall provide subsequent quarterly compliance updates to the State no later than the 15th day in the months of December, March, and June, and a final compliance update as provided in the following paragraph.
19. The City of Double Horn shall provide a final compliance update to the State (via the point of contact for notifications to the State provided below) at the end of the one-year period of this AVC. The State shall promptly move to dismiss the above-captioned case with prejudice (all parties bearing their own fees and costs) at the end of the one-year period of this AVC if the City of Double Horn has substantially complied with the terms of this AVC. If the State reasonably determines that the City of Double Horn has not substantially complied with the terms of the AVC at the end of the one-year period of this AVC, the State shall promptly inform the City of Double Horn of the reasons for its non-compliance determination and provide the City with thirty days to cure any issues. After the thirty-day cure period expires, and

only if the City has not substantially complied with the terms of the AVC, the State may resume litigation of the case.

TIME TO IMPLEMENT AND DURATION

20. This AVC shall become effective upon the signatures below, approval by the City of Double Horn through a majority vote of its city council (the record of which shall become Exhibit A to this AVC), and the district court's entry of the Agreed Abatement Order referencing this AVC in the above-captioned case.

NOTIFICATIONS

21. All notices under this AVC shall be provided to the following points of contact via email and overnight mail:

For the State of Texas:

Jeffrey M. White
Office of the Attorney General
P.O. Box 12548, MC 009
Austin, Texas 78711-2548
jeff.white@oag.texas.gov

For Defendants:

Patty Akers (patty@txmunicipallaw.com)
Kevin M. Curley (kevin@txmunicipallaw.com)
Messer, Fort & McDonald, PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034

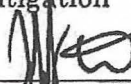
22. If either party needs to update its point of contact listed above, the change shall be communicated via email and overnight mail to the other party.

AGREED:

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

PATRICK K. SWEETEN
Deputy Attorney General for Special
Litigation



JEFFREY M. WHITE
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Dated: 7/23/2021

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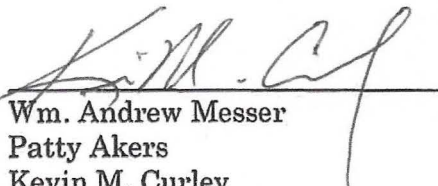
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Attorneys for the State of Texas



Cathy Sereno

Mayor, City of Double Horn, Texas
Dated: 7-29-2021



Wm. Andrew Messer
Patty Akers
Kevin M. Curley
MESSER, FORT & McDONALD, PLLC
6371 Preston Road, Suite 200
Frisco, Texas 75034
Dated: 7/29/2021

Attorneys for the City of Double Horn

Motion: RG Carver moved to approve the Voluntary Compliance Agreement with the State of Texas represented by the Attorney General's office, subject to minor modifications approved by the Mayor and City of Attorney and authorizing the mayor to execute.

Second: Bob Schmitz seconded the motion.

Vote:

Alderman	Yes	No	Abstain	Absent
John Osborne	X			
RG Carver	X			
Bob Schmitz	X			
Jim Millard				X
Tom King				X

The vote was unanimous and the motion carried.

