



## MEMORANDUM OF UNDERSTANDING San Marcos Municipal Court Associate Judge

This Memorandum of Understanding (“MOU”) is hereby entered into on this \_\_\_\_ day of \_\_\_\_\_, 2021, by and between the CITY OF SAN MARCOS, TEXAS (“CITY”), and DANIEL MATTHEW BURNS (“Appointee”) to be effective upon the date of the last signature below (“Effective Date”).

### WITNESSETH:

WHEREAS, pursuant to the authority granted to the City Council through the City Charter and the laws of the State of Texas, the City Council of the San Marcos has appointed Daniel Matthew Burns as Associate Municipal Court Judge; and

WHEREAS, the parties desire to enter into a written agreement setting forth all terms, conditions, and obligations of the parties; and

NOW, THEREFORE, in consideration of the mutual covenants and promises, the parties agree as follows:

### **SECTION 1. DUTIES:**

A. The appointed Associate Judge for the San Marcos Municipal Court will have all the same powers and duties as the presiding judge, as required by Texas Government Code, Chapter 29 and all other applicable laws. The appointee agrees to comply with applicable provisions of law related to his judicial functions, including without limitation, Chapter 45 of the Texas Code of Criminal Procedure, and the Texas Code of Judicial Conduct.

The following is a list of the more common responsibilities, but it is not intended to be all-inclusive list of duties of the associate judge:

1. Perform magistration duties as outlined in Texas State law including, but not limited to, issuing warrants and summons, presiding over property hearings, issuing juvenile warnings and arraigning prisoners at the county jail when necessary.
2. Preside over Municipal Court dockets offering clear and concise verdicts to all parties involved.
3. Interact with the Court Prosecutor on trials, pre-trial matters, pleas, agreements and dismissals of cases in order to operate an efficient court.
4. Review and process court paperwork including, but not limited to, arrest warrants, appeal bonds, judgments and dismissals, in a timely and efficient manner.
5. Maintain a personal and professional integrity in cooperation with the presiding judge, court staff and Prosecutor.

6. Provide the Court Administrator with advance notice of periods they will not be available to serve as an associate judge whenever possible.
7. Maintain an oath of office by completing one every other year on their anniversary date.
8. Comply with State mandated continuing judicial and mandatory State Bar continuing legal education requirements and remain current on state and municipal law. The appointed Associate Judge shall also comply with any charter provisions applicable to the position.
9. Submit timely reimbursement requests and timesheets to the Court Administrator.
10. Comply with any judicial administrative directives issued by the presiding Municipal Court Judge and Regional Administrative Judge. The appointed Associate Municipal Judge is subject to assignment by the presiding Municipal Court Judge and Regional Administrative Judge.

B. City Obligations.

The San Marcos Municipal Court and the City of San Marcos will:

1. Serve as host to the Associate Judge who will fill in for the Presiding Judge as needed.
2. The City of San Marcos Municipal Court shall be held at the municipal court facility located at 712 S. Stagecoach Trail or as otherwise directed by the Presiding Municipal Court Judge. At all times, the City reserves the right to designate days of the week, hours, and alternate locations where the municipal court may be held in the event that the facility should not be available.
3. Provide reasonable notice to permit the Associate Judge to manage their schedules whenever possible.
4. Reimburse the Associate Judge for expenses associated with required judicial training including course registration fees, mileage, lodging and meals not covered as part of the event/conference at current mileage and per diem rates adopted by the City. Expenses incurred at out-of-state trainings are not reimbursable.
5. Pay the Associate Judge a flat rate of \$90 per hour as established in the current fiscal year budget, for actual time worked for the court or when providing services as a magistrate; however, mileage to and from the jail and court will not be reimbursed.
6. Provide the needed equipment and supplies in the municipal judge's office, including a computer and office supplies at the City's expense. The City will not reimburse the associate judge for these types of expenditures made out-of-pocket.

**SECTION 2. TERM:**

In accordance with the City Charter, the City Council will appoint an Associate Judge to the San Marcos Municipal Court for a two (2) year term. The date on which City Council approves the appointment shall be the official date of appointment and, thereafter, will be their anniversary date. If City Council does not wish to reappoint the associate judge for another term, they must take action by majority vote on the non-appointment of the associate judge no later than 90 days after the expiration of the term of office. After such action by City Council, the city manager or designee must provide written notice to the

Associate Judge. If City Council by majority vote does not take action to not reappoint the Associate Judge by the 91<sup>st</sup> day following the expiration of the term of office, then the Associate Judge is automatically reappointed to another two-year term by operation of state law. The anniversary date of the appointment is September 1 of each odd year. In that instance, this MOU will remain in effect, except that the parties may agree to amend the terms and conditions of this MOU. Nothing in this MOU shall prevent, limit or otherwise interfere with the right of the Appointee to resign at any time from the position. Nothing in this MOU prevents the appointed Associate Judge from being removed prior to the expiration of a term based on any grounds authorized by law. (See Section 3: Termination for Cause)

### **SECTION 3. TERMINATION FOR CAUSE**

The City may terminate the Associate Judge for cause. Such termination shall require the majority vote of the City Council and shall be preceded by notice to Appointee of the time and location of the meeting, the nature of the charge against Appointee, and the opportunity for a hearing thereon. Upon such termination, the City shall have no further obligations under this MOU, except for the payment of salary and other benefits earned through the date of termination. For purposes of this MOU, "cause" shall include, without limitation, the following:

1. Substantial failure of Appointee to perform the duties of the Appointee's position for 30 days or more after written notice by the City Council sent by and through the city manager or designee, of inadequate or unsatisfactory performance;
2. Failure of Appointee to obey orders or directives of the City Council regarding the Appointee's administrative functions;
3. Misconduct in connection with the performance of any of Appointee's duties, including, without limitation, misappropriation of funds or property of the City, securing or attempting to secure any personal profit or commercial advantage in connection with any transaction entered into by the City, any falsification or misrepresentation of fact or any violation of law or regulation to which the City is subject;
4. Commission by Appointee of an act involving moral turpitude, fraud, dishonesty, theft or unethical conduct;
5. Failure to cooperate fully in any investigation by the City Council or by other law enforcement authority;
6. A breach of City policies or published rules of conduct, or other misconduct that amounts to a substantial breach of Appointee's duties under this MOU;
7. Conviction of a felony offense, or of a misdemeanor involving moral turpitude, whether committed within or outside the scope of Appointee's obligations hereunder and pursuant to state and local law; or
8. In the event the Appointee is removed from the judiciary by the Texas Supreme Court upon recommendation from the State Commission on Judicial Conduct upon a finding a violation(s) of the Texas Code of Judicial Conduct.

**SECTION 4. COMMITMENT**

If any provision or any portion thereof, contained in this MOU is held unconstitutional, invalid or unenforceable, the remainder of this MOU, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

Agreed Upon and Signed this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Appointee:

\_\_\_\_\_  
Daniel Matthew Burns  
San Marcos Municipal Court Associate Judge

City of San Marcos:

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Bert Lumbreras, City Manager