

# Municipal Court Judge Agreement

**THIS AGREEMENT** (the "Agreement") is dated effective as of the 1st day of March 2012, by and between the City of Kirksville ("City"), and Phoebe Powell Herrin (Ms. Herrin), a professional attorney practicing in Macon County, Missouri.

## **WITNESS TO:**

**WHEREAS**, Phoebe Powell Herrin is a licensed attorney in the State of Missouri and qualified to provide Municipal Court judicial services; and

**WHEREAS**, the City desires that Ms. Phoebe Powell Herrin provide such judicial services to the City.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants and agreements hereinafter set forth, the Parties hereto have agreed, and do hereby agree as follows:

1. **Term of Appointment.** The City Council hereby appoints Ms. Herrin for a period commencing on the effective date hereof and continuing for a term of three (3) years, unless such appointment shall have been sooner terminated as hereinafter provided. This Agreement may be renewed by execution of a letter by both Parties to that effect. Ms. Herrin hereby accepts such appointment and agrees to perform the services hereinafter described, all upon the terms and conditions herein stated.

2. **Scope of Services to be Provided.** Ms. Herrin is hereby appointed by the City Council as Municipal Court Judge, and will be responsible for all Municipal Court proceedings, supervision of the activities of the Kirksville Municipal Court, and the discharge of other duties of the Municipal Court Judge as required by law.

Except for reasonable vacation and absences due to temporary illness, Ms. Herrin shall devote up to one full day each week (or the equivalent thereof) to the City and shall not during her employment be engaged in any activity which in the reasonable judgment of the City, conflicts with the duties of Municipal Court Judge; whether or not such activity is pursued for gain, profit or other pecuniary advantage. The foregoing restrictions shall not be construed as preventing Ms. Herrin from participating in any professional private practice, provided that such practice will not require services on the part of Ms. Herrin which would directly or indirectly impair the performance of her duties under this Agreement. If Ms. Herrin does participate in any private practice considered to be in contradiction to this clause, Ms. Herrin will be given ample time to disengage in such activity Ms. Herrin will not provide legal representation for persons, firms or corporations

in any proceeding where the City of Kirksville is a party.

Ms. Herrin shall endeavor to be supportive of the City's business and its best interests and shall not, directly or indirectly, take any action which could reasonably be expected to have an adverse effect upon the business or best interests of the City. Ms. Herrin covenants, represents and warrants that she will at all times honestly and fairly conduct her duties as described herein or as otherwise directed by the City and will at all times maintain the highest of professional standards in representing the interests of the City.

3. **Fees.** For the services rendered pursuant to this Agreement, Ms. Herrin shall be paid by the City the sum of \$1,580.00 per month payable to the "Law Office of Phoebe Powell Herrin." As additional compensation, Ms. Herrin shall be eligible to participate in the City's group health and dental benefits plan with the City paying one hundred percent (100%) the premium cost for the Judge. Additional compensation for Ms. Herrin will be based on compensation increases given to general employees.

4. **Expenses.** Ms. Herrin will pay all costs of travel to and from her home and Kirksville Municipal Court, phone and FAX charges, and other miscellaneous fees from the monthly fees delineated in Section 3.

5. **Professional Training.** Ms. Herrin agrees to attend statutorily required continuing municipal legal education training sessions, at her own cost and expense, and will provide documentation of said training to the City.

6. **Indemnification.** Ms. Herrin shall indemnify and hold the City harmless for any and all liability, loss, expenses and claims for damages or injury arising from acts or omissions of Ms. Herrin in providing services pursuant to this Agreement which are determined to be the result of Ms. Herrin's negligence, malfeasance or misconduct as determined by a court of competent jurisdiction. The City shall indemnify and hold Ms. Herrin harmless from any and all liability, loss, expenses and claims for damages or injury arising from acts or omissions of the City or its employees in connection with the provision of services hereunder.

7. **Independent Contractor.** In performing the services herein specified, Ms. Herrin is acting as an independent contractor, and shall not be considered an employee of the City. In no event shall this Agreement be construed as establishing a partnership or joint venture or similar relationship between the parties hereto, and nothing herein contained shall be construed to authorize either party to act as agent for the other. Each party shall be liable for its own debts, obligations, acts and omissions. Each party shall, with respect to its employees and independent contractors, be solely responsible for payment of all applicable compensation, wages, taxes, withholdings, fringe benefits, and contributions to

insurance, pensions, worker's compensation and other withholdings and benefits.

**8. Compliance with Law.** In performing their duties pursuant to this Agreement, both parties shall act in compliance with all applicable federal, state and local laws, rules and regulations. This agreement in no way diminishes Ms. Herrin's accountability, as a Municipal Court Judge, to the Presiding Judge of the 2nd Circuit.

**9. Termination.**

**9.1 Death.** If Ms. Herrin should die during this Agreement period, the City shall have no further obligation hereunder to Ms. Herrin, her spouse, or her estate, except to pay to Ms. Herrin's estate the amount of compensation earned by Ms. Herrin through the month of her death, such compensation to be prorated to the date of death.

**9.2 Disability.** If, during this Agreement, Ms. Herrin shall be prevented for a continuous period of nine (9) weeks from performing her duties by reason of disability, the City may terminate the Agreement, in which event Ms. Herrin shall receive any compensation earned or accrued to the date upon which any determination of disability shall have been made as hereinafter provided, and any compensation Ms. Herrin would have earned pursuant to Section 3 herein. For the purposes of this Agreement, Ms. Herrin shall be deemed to have become disabled when the City, upon the advice of two qualified physicians of its selection, determines that Ms. Herrin has become physically or mentally incapable (excluding infrequent and temporary absences due to ordinary illnesses) of performing her duties under this Agreement and that such disability has disabled Ms. Herrin for a cumulative period of twelve (12) weeks.

**9.3 Voluntary Termination.** Notwithstanding herein to the contrary, Ms. Herrin or the City may elect to terminate this Agreement, with a notice period of at least thirty (30) days by Ms. Herrin and ninety (90) days by the City, by notifying the other party of such termination in writing at any time during the term of this Agreement. In the event of termination of this Agreement pursuant to this Section 9.3, neither the City nor Ms. Herrin shall have any further liability to the other hereunder, and Ms. Herrin shall be entitled to the amount of earned compensation, stipulated in Section 3 prorated to the date of such termination.

**9.4 Termination for Cause.** The City shall have the right to terminate this Agreement "for cause" upon the occurrence of one or more of the following events

or circumstances:

9.4.1 The neglect, malfeasance, nonfeasance, or other conduct of Ms. Herrin in the performance of the services contemplated by this Agreement which, in the reasonable judgment of the City and the Circuit Court, is detrimental to the best interests of the City; or

9.4.2 Any other breach of this Agreement by Ms. Herrin as determined in the reasonable judgment of the City; or

9.4.3 Any intentional dishonesty, discrimination or other ethical misconduct by Ms. Herrin, as determined in the reasonable judgment of the City and the Circuit Court; or

9.4.4 Conviction of a felony by a court of competent jurisdiction; or

9.4.5 Death of Ms. Herrin, as provided in Section 9.1; or

9.4.6 Disability of Ms. Herrin, as defined in Section 9.2.

**10. Effect of Expiration of Termination.** This Agreement will be of no further force or effect as of the date of expiration or termination except that the parties shall cooperate to promptly resolve any outstanding issues upon the expiration of this Agreement.

**11. Entire Agreement; Modification.** This Agreement contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the parties relating to such subject matter. This Agreement may not be amended or modified except by mutual written agreement. All continuing covenants, duties and obligations shall survive the expiration or earlier termination of this Agreement. Although appointment of Ms. Herrin is for a period of two years, the parties to this Agreement will examine fee provisions after one year to determine if the contractual workload and direct expenses incurred are compatible with the compensation provided.

**12. Governing Law.** This Agreement shall be construed in accordance with the laws of the State of Missouri. Although no conflict is anticipated, where the terms of this Agreement may be found to be in conflict with state or local laws concerning municipal court and municipal judges, then state and local laws shall prevail.

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13. **Partial Invalidity**. If any provision of this Agreement is prohibited by any applicable law or court decree, said prohibition shall not invalidate or affect the remaining provisions of this Agreement.

14. **Waiver**. A waiver by either party of a breach or failure to perform hereunder shall not constitute a waiver of any subsequent breach or failure.

15. **Assignment: Binding Effect**. Neither party shall assign nor transfer, in whole or in part, this Agreement or any of its rights, duties or obligations under this Agreement without the prior written consent of the other party, and any assignment or transfer without such consent shall be null and void. This Agreement shall inure to the benefit of and be binding upon the parties hereto.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date and year first above written.

**City of Kirksville, Missouri**

**Municipal Court Judge**

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

\_\_\_\_\_

Date: \_\_\_\_\_