

**AN ORDINANCE APPROVING AN AGREEMENT BETWEEN THE
CITY OF TWIN OAKS AND TAI CHI CONSULTING SERVICES, LLC
FOR HUMAN RESOURCES CONSULTING SERVICES**

BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, AS FOLLOWS:

Section 1. The Board of Aldermen hereby approves, and the Mayor is hereby authorized to execute, a contract substantially in the form of Exhibit 1 (attached hereto and incorporated herein by reference) on behalf of the City of Twin Oaks with Tai Chi Consulting Services, LLC for Human Resources management, evaluation, planning, and support as more fully set forth in the Contract.

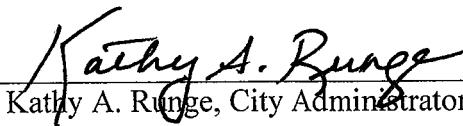
Section 2. This Ordinance shall be in full force and effect on and after its passage and approval by the Mayor.

PASSED AFTER HAVING BEEN READ IN FULL OR BY TITLE TWO TIMES PRIOR TO PASSAGE BY THE BOARD OF ALDERMEN OF THE CITY OF TWIN OAKS, MISSOURI, THIS 16th DAY OF MAY, 2018.



Russ Fortune, Mayor

Attest:



Kathy A. Runge, City Administrator/Clerk



MASTER SERVICES AGREEMENT

The parties to this **Master Services Agreement** (the "Agreement") are **The City of Twin Oaks**, a Missouri municipal corporation, whose address (for billing purposes) is located at *1381 Big Bend Road, Twin Oaks, MO 63021* (the "City"), and **TAI-CHI Consulting Services, LLC** ("TAI-CHI") d/b/a TAI-CHI Consulting located at *2 City Place, Suite 200, St. Louis, MO 63141*. The date of this Agreement is last signed by either Party. The purpose of this Agreement is to set forth the terms and conditions under which TAI-CHI will provide Human Resources Consulting Services for **The City of Twin Oaks**.

1. Agreement structure. The signing of this Agreement by the parties creates a set of agreed upon provisions that will be incorporated by reference into contemporaneous and/or future documents or Statement of Work ("SOW") describing specific services to be performed by TAI-CHI for the City. An SOW must be signed by both parties and must state that it is made pursuant to this Agreement. Each SOW, including the incorporated provisions of this Agreement, will constitute a separate contract. All references in this Agreement will be deemed to refer to the applicable SOW and the incorporated provisions of this Agreement.

2. Amendments. All amendments must be clearly identified as an amendment to this Agreement or to a specified SOW, and must be in writing and signed by authorized personnel of both parties. Any amendment to this Agreement will apply to each SOW signed on or after the date of the amendment, and will apply to a previously executed Addendum, if the amendment expressly so states.

3. Services. "Services means the services to be provided my TAI-CHI, as specified in SOW.

4. Term and termination. Each SOW will take effect when last signed by both parties. The actual provision of Services will begin on the "Start Date" specified in the SOW, which may or may not be the same as the effective date. Each SOW will continue in effect until terminated by one of the parties in accordance with the paragraph of this Agreement titled "Termination for convenience", but in the absence of such a termination for convenience: (a) if an SOW specifies a term of months or a specific termination date, that SOW will automatically terminate upon expiration of the "Initial Term" (defined as the period beginning on the Start Date and ending on the specified termination date or at the end of the specified number of months) unless the SOW is renewed by the parties; or (b) if the Services consist of a specific project to be completed and no term of months or termination date is specified in the SOW, the SOW will automatically terminate upon completion of the project.

5. Charges. Each Statement of Work will specify all fees and charges the City will

incur for the Services to be rendered by TAI-CHI pursuant to that SOW.

6. Taxes. Each party will pay their own taxes in accordance with IRS, State and Local taxing organization rules and regulations. The City is a tax-exempt entity.

7. Invoices. Each invoice rendered by TAI-CHI will include an invoice number, the specific SOW, a purchase order or job order number or department number and/or information sufficient in detail to allow the party to determine the accuracy of the invoice. Except to the extent the invoiced party has a right to withhold or delay payment pursuant to the express provisions of this Agreement, invoices will be paid within 10 days of the invoice date, or on a bi-weekly payment schedule.

8. Disputed invoices. TAI-CHI will use reasonable efforts to ensure the accuracy of invoices. The City will timely pay all undisputed invoice items as provided above, and will notify TAI-CHI of any disputed invoice items no later than 10 days after the invoice date, or such invoice will be presumed to be correct. The parties agree to act reasonably to resolve any disputed items.

9. Force majeure. If either party is unable to perform, or is delayed in performing, an obligation under this Agreement because of circumstances outside its control (other than obligations to pay money): (a) the party so affected will promptly give notice to the other party and will use its best efforts to promptly resume performance, and (b) subject to compliance with subpart (a) of this paragraph, the party so affected will not be liable for any failure or delay to perform its obligations under this Agreement to the extent such failure or delay is caused by circumstances outside that party's control.

10. Service levels and remedies. Intentionally deleted.

11. Warranties. TAI-CHI represents and warrants: (a) that all Services will be performed in a professional manner, by qualified personnel, and in accordance with the terms of this Agreement and applicable industry standards; (b) that in performing the Services, neither party will make unauthorized use of any trade secrets or confidential or proprietary information of a third party. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH ABOVE, THERE ARE NO OTHER WARRANTIES, EXPRESS OR IMPLIED, CREATED BY THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

12. Independent contractor. It is agreed and understood that each party's relationship to each other is that of an independent contractor. Neither Party will be deemed to be a partner, agent, employee or joint venture of the other party. Neither Party and its employees, agents and contractors will represent or imply that they are employees, agents, partners or joint venture of the other. All persons performing Services for TAI-CHI under this Agreement will be considered to be solely the

employees, contractors or agents of TAI-CHI y or its contractors. Consequently, each Party is responsible for ensuring payment of any and all salaries, wages, payroll taxes, insurance and other items payable to or on behalf of such personnel, and for maintaining worker's compensation insurance for their respective personnel.

13. Compliance with law. In performing each Party's obligations under this Agreement, both parties and its personnel will comply with all applicable laws, ordinances, rules and regulations. This Agreement will be governed by the laws of the State of Missouri, without reference to conflict of law principles. This is to include but not limited to the Missouri Sunshine Law, Chapter 610, RSMo.

14. Personnel on site. If any portion of the Services will be performed at City's premises, TAI-CHI's personnel will comply with the City's site rules at all times while on City's premises. City will provide TAI-CHI with a copy of its then-current site rules, if applicable.

15. Non-solicitation of employees. Each Party agrees not to hire or solicit for employment (or as an individual independent contractor) any employee of the other Party until twelve (12) months after the date such person terminates employment with the other party. Each Party further agrees not to hire or solicit for employment (or as an individual independent contractor) any other individual while he or she is performing Services for a Party's City pursuant to a contract. If this paragraph is breached by the hiring of an employee of the other Party, damages for such breach are agreed to be equal to the demonstrated cost of training a replacement for such individual. This paragraph does not apply to the hiring or solicitation of any individual who did not become known to the hiring or soliciting party as a result of the relationship between parties created by this Agreement.

16. Insurance. Each Party agrees to obtain such insurance as it deems necessary and/or appropriate for the services to be provided under each SOW. TAI-CHI shall maintain at its own expense and in amounts acceptable to the City (1) Comprehensive General Liability Insurance, (2) Professional Liability Insurance for errors and omissions, and (3) Worker's Compensation Insurance, which insurance shall provide coverage for liabilities or claims for damages resulting solely from Services performed or undertaken by the either or both parties hereunder. City shall be named as additional insured. Certificates of Insurance shall be furnished to City upon execution of this Agreement or as requested.

17. Indemnification. TAI-CHI shall indemnify and agrees to defend and hold The City of Twin Oaks harmless against and from any and all loss, cost, damage, liability and expense incurred by The City of Twin Oaks as a result of negligent acts, negligent errors, negligent omissions or willful misconduct on the part of TAI-CHI or TAI-CHI's agents, employees or subcontractors in the performance of this Agreement, excepting such liability as may arise out of The City of Twin Oaks negligence or willful misconduct. Such

cost and expense shall include, without limitation, (i) reasonable attorneys' fees and costs of litigation, (ii) reasonable costs arising from any investigation of any governmental agency for purported violation of any environmental law or regulation relating as hazardous substances; (iii) costs of any investigative response, clean-up or remedial actions with respect to the same; and any and all of the foregoing which parties may be required under any applicable law or regulation to take, cause to be taken, or pay for.

18. Confidentiality. For purposes of this Agreement, "City's Confidential Information" consists of: (a) all non-public information (including, but not limited to, individually identifiable personnel records, performance ratings or records pertaining to employees or applicants for employment, or other confidential or proprietary information) of the City whether marked or otherwise identified as confidential or proprietary; and information that City is obligated by law to treat as confidential for the benefit of third parties, including but not limited to personal, financial, and/or health information about individuals employed by or who have applied for employment by the City. Parties acknowledge that, in connection with the performance of this Agreement or otherwise in the course of its dealings with City, TAI-CHI may receive Confidential Information from City or may otherwise have access to or learn of City's Confidential Information. In the absence of City's prior written consent to a specific disclosure or use, TAI-CHI will not disclose to any third party any of City's Confidential Information, either orally or in writing, and will not appropriate any of City's Confidential Information to TAI-CHI's own use or to the use of any third party. Confidential Information that is provided by City to TAI-CHI will be used by TAI-CHI and its agents only for the purpose for which it was provided, and access to such information will be restricted to individuals who require the information (or access to the information) to further that purpose. Without limiting any of the foregoing, TAI-CHI will take at least such precautions to protect City's Confidential Information as it takes to protect its own confidential information, and in any event will take all precautions that are reasonably necessary to protect the security of City's Confidential Information.

19. Notification obligation. Upon learning of any unauthorized disclosure or use of City's Confidential Information, TAI-CHI will notify City promptly and cooperate fully with City to protect City's Confidential Information.

20. Disclosure required by law. If TAI-CHI believes it is required by law or by a subpoena or court order to disclose any of City's Confidential Information, prior to any disclosure, TAI-CHI will promptly notify City in writing, attaching a copy of the subpoena, court order or other demand, and parties will make all reasonable efforts to allow City an opportunity to seek a protective order or other judicial relief.

21. Non-restricted information. Except as stated in the final sentence of this paragraph, nothing in this Agreement will be construed to restrict disclosure or use of information that: (a) was in the possession of or rightfully known by parties, without an obligation to maintain its confidentiality, prior to receipt from City; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by parties in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by parties without the participation of

individuals who have had access to City's Confidential Information. Parties acknowledge that certain laws governing information about individuals are more restrictive than the foregoing statements and Parties agree to comply in all respects with such laws.

22. Duration of obligations. The obligations imposed by this Agreement with respect to Confidential Information will survive termination of this Agreement and will remain in effect with respect to each item of Confidential Information until that information becomes unprotected under the terms of the paragraph above titled "Non-restricted information". However, if applicable law sets a maximum period for the duration of obligations of nondisclosure and non-appropriation of confidential information, the obligations imposed by this Agreement with respect to each item of Confidential Information (other than trade secrets and other than information about individuals that is protected by law) will remain in effect only until such period expires.

23. Electronic file transfers. If data files will be transferred electronically between the parties in connection with the performance of Services under this Agreement, the details pertaining to such file transfers will be set forth in the applicable SOW. In connection with such file transfers, each party agrees to comply with the security requirements specified in the applicable Addendum, and to use all commercially reasonable efforts to safeguard data belonging to the other party that is in its possession or control.

24. Computer system access. If TAI-CHI will have access to any part of City's computer system in the course of performing under this Agreement, the provisions of this paragraph will apply. TAI-CHI and its personnel will use such access solely to perform party's obligations under this Agreement, and will not attempt to access any City system, electronic file, software or other electronic service except as specifically required to perform such obligations. Parties will limit access to City's computer system to those of its personnel who require such access in order to perform party's obligations under this Agreement, and will provide City with a list of the names of all such individuals. TAI-CHI agrees that each of its personnel who have access to City's computer system: (a) will be assigned a separate log-in ID by City and will use only that ID when logging on to City's system; (b) will log-off City's system immediately upon completion of each session of service; (c) will not allow the use of his or her log-in ID or password by other individuals to access City's computer system; and (d) will keep strictly confidential the log-in ID and all other information that enables such access. In addition, TAI-CHI and its personnel will strictly follow all other City security rules and procedures for the use of City's electronic resources that are provided by City from time to time. TAI-CHI will promptly notify City upon termination of employment or reassignment of personnel with access to City's computer system so that login IDs may be changed and other necessary preventive measures may be taken by City to prevent unauthorized access. If City revises the requirements for access to its computer system, TAI-CHI will be notified of the changed or additional requirements and will comply with

them as a prerequisite to further access. Each individual who is to be allowed access to City's computer system will be required by City to read a summary of the conditions under which such access is allowed, and to sign that summary indicating they understand their responsibilities in connection with such access. TAI-CHI will cooperate fully with City in the investigation of any apparent unauthorized access to City's computer or electronic data storage systems by TAI-CHI or its personnel.

25. Remote access. If TAI-CHI will have remote access to any part of City's computer system in the course of performing under this Agreement, the provisions of this paragraph will apply in addition to all provisions of the paragraph titled "Computer system access". TAI-CHI agrees: (a) to use only a remote access method approved by City; (b) to provide City with the full name of each individual who will have remote access to City's computer system and the phone number at which the individual may be reached while connected to City's system. If the connection to City's network is an ongoing connection such as frame relay or T1 line, access will be allowed only if City receives satisfactory evidence that TAI-CHI's firewall is maintained with adequate security.

26. Equitable relief. In that any breach of the confidentiality provisions of this Agreement, it is agreed that such breach is likely to cause irreparable harm to City for which damages will be an inadequate remedy; therefore, Parties agree that any court of competent jurisdiction may enter an order restraining such breach.

27. Prohibition on publicity. Neither Party may advertise nor promote itself using the name, service mark, logo or description of the other Party, without the prior written consent of the owner in the case of each such use.

28. Termination for convenience. If the applicable SOW states that TAI-CHI guarantees that the Services will be made available to City for a specified period of time, then TAI-CHI agrees that, absent a material breach by City, TAI-CHI will make the Services available to City for at least the period of time so specified in the SOW. Otherwise, Parties may terminate any SOW without cause by: (a) giving the other party 30 days' written notice that it is terminating the SOW for convenience; and (b) refunding to the other party the unearned portion of any payments made in advance in connection with the Services.

29. Insolvency as Material breach. The voluntary or involuntary commencement of bankruptcy, receivership, insolvency, reorganization or other similar proceedings by or against either Party or the appointment of a receiver for all or substantially all of either Party's assets will be considered a material breach of this Agreement by such party.

30. Effect of termination. Except where expressly agreed, termination of a SOW will not terminate this Agreement, and the Parties will remain free to enter into any future SOW pursuant to this Agreement. In addition, termination of a SOW will not relieve

either Party of any previously accrued obligations or of any obligations that by their nature are intended to survive termination. In addition to obligations relating to Confidential Information, which survive subject to the terms of the paragraph of this Agreement titled "Duration of obligations," obligations that survive termination will include but not be limited to obligations in connection with warranties and indemnification.

31. City property. All items furnished by Parties in connection with performance of the Services will remain the property of its owner/provider unless otherwise expressly stated in the SOW. Upon termination of a SOW for any reason (or when items are no longer needed for the performance of the Services, if earlier), TAI-CHI or **the City** will promptly return the property or allow the owner to retrieve it.

32. Dispute resolution. In the event of any dispute arising out of or relating to this Agreement, the parties agree to attempt in good faith to resolve the dispute first by direct negotiation. If negotiation fails to resolve the dispute, the Parties understand that suit may be filed in St. Louis County Circuit Court or in the Eastern District of Missouri. Should a lawsuit be filed to enforce the terms of this Agreement or SOW, the prevailing party shall be entitled to recover costs associated with such lawsuit.

33. Non-waiver. No term or provision of this Agreement will be deemed waived and no breach will be deemed excused unless such waiver or consent will be in writing and signed by the Party claimed to have waived or consented. No consent by any Party to, or waiver of, a breach by the other will constitute a consent to, waiver of, or excuse for any different or subsequent breach.

34. Partial invalidity. If any provision of this Agreement is held to be unenforceable, the remaining provisions will continue in full force and effect. In addition, the parties or the court will modify any unenforceable provision so as to make it enforceable under applicable law, while keeping the modified provision as consistent as possible with the original intent of the parties.

35. Assignment. Neither Party's rights or obligations under this Agreement (except the right to receive money) will be assigned or delegated without the written consent of the other Party, except that either Party may without such consent assign all of its rights and delegate all of its obligations under this Agreement to an entity: (a) which such Party owns or controls; (b) which is under common ownership or control with such Party.

36. Successors and assigns. Subject to the limitations on assignment set forth above, this Agreement will inure to the benefit of and be binding upon the respective successors and assigns, if any, of the Parties. Nothing in this paragraph will be construed to permit any attempted assignment that would be unauthorized pursuant to any other provision of this Agreement.

37. **Authority to Bind.** Intentionally deleted.

38. **Notice.** The Parties agree that any notice to be provided under this Agreement shall be mailed to the address first provided above to the attention of the signers of this Agreement. If mailed, proof of receipt is the responsibility of the sender. If email or facsimile notice is sent, proof of receipt is the responsibility of the sender.

39. **Entire agreement.** This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof.

THE CITY OF TWIN OAKS

TAI-CHI CONSULTING SERVICES, LLC

Signature: _____
Russ Fortune, Mayor

Signature: _____
Bing Dempewolf, CEO

Date: _____

Date _____

STATEMENT OF WORK (SOW) #1

Human Resources Support Services

This Statement of Work (“SOW”) is made pursuant to the Master Services Agreement (the “Agreement”) between **The City of Twin Oaks** and its affiliates, and TAI-CHI Consulting Services, LLC, d/b/a TAI-CHI Consulting. This SOW incorporates by reference all terms and provisions of the Agreement signed on *May __, 2018* (date Agreement last signed by the Parties).

GENERAL:

During a discovery meeting **The City of Twin Oaks** expressed a need for Human Resources (HR) assistance. Within this SOW, TAI-CHI has outlined two separate Tasks described below. During this process, the CEO of TAI-CHI will work with the **Mayor of The City of Twin Oaks** to streamline HR functions, implement government compliance controls, improve HR operational efficiencies and effectiveness.

TASK #1 - HR Strategic Management Evaluation & Planning - Develop a Strategic Human Resources Business Plan that includes at a minimum:

- Human Resources Balance Scorecard (2 Day on-site Discovery Session/Evaluation and a Summary Report)
- HR Generalist available remotely to administer functions listed below
 - Review/Recommend Best Practice for **The City of Twin Oaks** Employee Handbook
 - Provide 2 Activity Vector Analysis assessments (can provide more at additional cost)

TASK #2 - HR Services Support – Provide HR Support to **The City of Twin Oaks**.

POINTS OF CONTACT:

Mr. Russ Fortune
The City of Twin Oaks
1381 Big Bend Rd.
Twin Oaks, MO 63021
(636) 225-7373

Ms. Bing Dempewolf
CEO TAI-CHI Consulting, LLC.
2 CityPlace Dr., Suite 200
St. Louis, Missouri 63141
314-750-3323

RESOURCES PROVIDED:

- Strategic HR Resource – Ms. Bing Dempewolf

- Bing has 30+ years of HR experience and has held or managed every function in the HR department. She is an accomplished CPO working with the Board and C-Suite leadership of numerous organizations.

- Tactical HR Resource – TAI-CHI HR Generalist

FEES:

TASK #1:

HR Strategic Management Evaluation & Planning – 40 hours:

- Fee = \$7,400. Any additional hours above 40 will be billed at \$185 per hour.

TASK #2:

Human Resources Support to The City of Twin Oaks – up to 20 hours per month.

- Fee = \$2,000 per month. Any additional hours above 20 will be billed at \$100 per hour.
- Fee = (Fee arrangement per this SOW) All additional expenses to labor hours or project costs will be invoiced at cost +10% administrative fee.

PAYMENT TERMS: (if different from Net 10)

PROJECT LOCATION: City of Twin Oaks and Remote

PROJECT START DATE: TBD

PROJECT END DATE: TBD

TERMS: The terms of this SOW will commence and terminate on the Start Date and End Date indicated above. Unless written notice is delivered by “Company” to TAI-CHI Consulting, LLC at least sixty (60) calendar days before the end of the Term, as it may have been extended, the Term will be automatically extended for a further period of one (1) year. This automatic extension will continue to apply at the end of each extended period until this Agreement is terminated.

Approved and Accepted by:

The City of Twin Oaks

By: _____

Name: Mr. Russ Fortune

Title: Mayor

Date: _____

TAI-CHI CONSULTING, LLC.

By: _____

Name: Ms. Bing Dempewolf

Title: CEO

Date: _____