14-182
9/11/2014

CITY OF FRESNO
City Clerk's Office (Original)

LEASE AGREEMENT
MUNICIPAL SERVICE CENTER – BUILDING A

This Lease (hereinafter referred to as "Lease") is entered into and effective on October 1, 2014 ("Effective Date"), by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "City"), and CH2M HILL ENGINEERS, INC., a Delaware corporation (hereinafter referred to as "Tenant"), for property located in Fresno, California.

RECITALS

WHEREAS, City owns Building A, a 10,000 square foot office building (the "Property"), which is part of its Municipal Services Center located at 2101 "G" Street, Fresno, California; and

WHEREAS, Tenant wants to lease 7,250 square feet of Building A from City,(the "Premises") for the purpose of providing consultant services to the City Water Division; and

WHEREAS, City and Tenant have agreed that City will lease, and the Tenant will rent, the Premises subject to the terms and conditions of this Lease.

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and promises hereinafter contained, to be kept and performed by the respective parties, it is mutually agreed as follows:

1. **LEASE OF PREMISES**. City hereby leases to Tenant and Tenant hereby hires from City the Premises, subject to the terms, covenants and conditions hereinafter set forth.

2. **CONDITION OF THE PREMISES.** Tenant accepts the Premises "as is", in its existing physical condition with all faults, without warranty by City or any duty or obligation on the part of City to maintain the Premises.

3. **TERM.** This Lease shall continue from month to month commencing on the Effective Date, until terminated upon thirty (30) days' notice from either party, or upon the terms and conditions herein. Upon the expiration or earlier termination of this Lease, at Tenant's sole cost and expense, Tenant shall remove all of Tenant's improvements, personal property, remove all debris and waste material resulting from Tenant's activities, and repair and restore the Premises to the condition that existed prior to Tenant's entry hereunder, reasonable wear and tear excepted. Tenant shall bear the entire cost of such removal, repair and restoration, and City shall bear no liability for any costs caused or related to any termination of this Lease. In the event Tenant fails to comply with the requirements of this section, City may elect to remove such improvements and personal property and effect such removal, repair or restoration as reasonably necessary and recover such costs and expenses therefore from Tenant. Tenant shall pay such reasonable

costs and expenses within 10 days of receipt of an invoice therefor. Tenant's obligations under this section shall survive the expiration or termination of this Lease.

4. **RENT.** Rent for the term of this Lease will be $9,787.50 per month payable by Tenant, in advance, to City at the address on the signature page beginning on the Effective Date and the same day each month thereafter.

5. **MAINTENANCE AND SECURITY DURING TERM OF LEASE.** Tenant covenants and agrees to keep the Premises clean and free from debris and trash during the term of the Lease. Tenant shall prohibit any person from using the Premises for any use other than the use set forth in Section 6 of this Lease. City shall provide security during the term of the Lease, however, absent gross negligence or willful misconduct by City, Tenant assumes all responsibility for its protection of Tenant, its employees, agents and invitees and property from acts of third parties.

6. **USE OF PREMISES.** The Premises shall be used as an office building, and for no other purpose.

7. **UTILITIES.** City will pay for all water, sewer, garbage, electricity, natural gas, telephone and other utilities during the term of the Lease and any extension.

8. **PROPERTY TAXES AND INSURANCE.**

(a) Omitted.

(b) Tenant acknowledges that any possessory property interest arising by entering into this Lease may be subject to property taxation and that Tenant shall pay any property taxes levied on such interest. NOTIFICATION TO TENANT PURSUANT TO CALIFORNIA REVENUE AND TAXATION CODE SECTION 107.6: A POSSESSORY INTEREST SUBJECT TO PROPERTY TAXATION MAY BE CREATED BY ENTERING INTO THIS LEASE AND TENANT MAY BE SUBJECT TO THE PAYMENT OF PROPERTY TAXES LEVIED ON SUCH INTEREST.

(c) Tenant and each of its consultants, contractors and subcontractors shall pay for and maintain in full force and effect all insurance as required in **Exhibit B** or as may be authorized or required in writing by City's Risk Manager or his/her designee at any time and in his/her sole discretion. Tenant and its insurers will, with respect to any claims covered by such property and hazard insurance, waive any subrogation rights that it may have against City, its officials, officers, agents, employees or volunteers. Nothing herein is intended to require City to maintain property and hazard insurance covering the Premises or for whatever cause.

(d) If at any time during the life of the Lease or any extension, Tenant or

any of its consultants, contractors or subcontractors fail to maintain any required insurance in full force and effect, all Tenant's activities under this Lease shall be discontinued immediately, until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Lease. No action taken by City pursuant to this section shall in any way relieve Tenant of its responsibilities under this Lease. The phrase "fail to maintain any required insurance" shall include, without limitation, notification received by City that an insurer has commenced proceedings, or has had proceedings commenced against it, indicating that the insurer is insolvent.

(e) The fact that insurance is obtained by Tenant shall not be deemed to release or diminish the liability of Tenant, including, without limitation, liability under the indemnity provisions of this Lease. The duty to indemnify Indemnitees (as defined in this Lease) shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Tenant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Tenant, or its representatives, consultants, contractors or subcontractors.

(f) Upon request of City, Tenant shall immediately furnish City with a complete copy of any insurance policy required under this Lease, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Lease.

(g) Tenant is also responsible for the compliance of Tenant's consultants, contractors and subcontractors with the insurance requirements in Subsections (c), (d), (e), (f) and (g) of this section, except that any required certificates and applicable endorsements shall be on file with Tenant and City prior to the commencement of any work or services by the respective consultant, contractor or subcontractor.

9. **IMPROVEMENTS.** Tenant shall make no improvements to the Property or the Premises without the prior written consent of City, which consent will not be unreasonably withheld.

10. **CONDEMNATION.**

(a) Total Condemnation. Should, during the term of this Lease, title and possession of all or any portion of the Premises be taken under the power of eminent domain by any public or quasi-public agency or entity, this Lease shall terminate as of 12:01 a.m. of, whichever first occurs, the date legal title of said Premises becomes vested in or actual physical possession of said Premises is

taken by the agency or entity exercising the power of eminent domain and both City and Tenant shall thereafter be released from all obligations under this Lease.

(b) Condemnation Award. Any compensation or damages awarded or payable because of the taking of all or any portion of the Premises by eminent domain shall be allocated between City and Tenant as follows:

(1) All compensation or damages awarded or payable for the taking by eminent domain of any land that is part of the Property shall be paid to and be the sole property of City free and clear of any claim of Tenant or any person claiming rights to the Premises through or under Tenant.

(2) Upon condemnation and allocation of proceeds, hereunder, this Lease shall terminate.

11. **RIGHT OF ENTRY.** City, or City's representatives, shall have the right to enter the Premises at any time upon 24 hours advance notice during the Lease, to protect, inspect, exercise or investigate any rights of City herein reserved. However, City's activities, connected with the exercise of this right of entry, shall not interfere with the operations of Tenant or its use of the Premises.

12. **LEGAL REQUIREMENTS.** Tenant covenants and agrees, at Tenant's sole cost and expense, promptly to comply, and cause all of Tenant's representatives, to comply, with (i) all laws, statutes, ordinances, rules, regulations, requirements or orders of municipal, state, and federal authorities now in force or that may later be in force, including, without limitation, those laws which relate to the generation, use, storage, handling, treatment, transportation or disposal of Hazardous Substances or to health, safety, noise, environmental protection, air quality or water quality; (ii) with the conditions of any permit, occupancy certificate, license or other approval issued by public officers relating to Tenant's activities, or Tenant's use or occupancy of the Premises; and (iii) with any liens, encumbrances, easements, covenants, conditions, restrictions and servitudes (if any) of record, or of which Tenant has notice, which may be applicable to the Premises (collectively, "Legal Requirements") regardless of when they become effective, insofar as they relate to Tenant's activities or Tenant's use or occupancy of the Premises. The judgment of any court of competent jurisdiction, or the admission of Tenant in any action or proceeding against Tenant, whether or not City is a party in such action or proceeding, that Tenant has violated any Legal Requirement relating to Tenant's activities and Tenant's use or occupancy of the Premises, shall be conclusive of that fact as between City and Tenant. Tenant shall furnish satisfactory evidence of such compliance upon request by City.

13. **INDEMNIFICATION; RELEASE; SAFETY AND INSURANCE.**

(a) Tenant shall, to the maximum extent permitted by law, indemnify, protect, defend and hold harmless City, its officials, officers, representatives, agents, employees, volunteers, transferees, successors and assigns (each an "Indemnitee"

and collectively, "Indemnitees") from and against all claims, losses (including, but not limited to, diminution in value), actions, demands, damages, costs, expenses (including, but not limited to, experts fees and reasonable attorneys' fees and costs) and liabilities of whatever kind or nature (collectively, "Claims"), which arise from or are in any way connected with Tenant's activities, or the entry on, occupancy or use of, the Premises by Tenant or Tenant's representatives, or the performance of, or failure to perform, Tenant's duties under this Lease, including, but not limited to, Claims arising out of: (i) injury to or death of persons, including but not limited to employees of City or Tenant (and including, but not limited to, injury due to exposure to Potential Environmental Hazards in, on or about the Premises); (ii) injury to property or other interest of City, Tenant or any third party; (iii) violation of any applicable federal, state, or local laws, statutes, regulations, or ordinances, including all Legal Requirements relating to the environment and including any liability imposed by law or regulation without regard to fault. Notwithstanding the foregoing or anything herein to the contrary, Tenant shall have no obligation to defend or indemnify the Indemnitees for any claims, losses, liabilities or damages arising on account of the Indemnitees' or any third party's negligence or willful misconduct.

(b)Tenant acknowledges that all Claims arising out of or in any way connected with releases or discharges of a Hazardous Substance, or the exacerbation of a Potential Environmental Hazard, occurring as a result of or in connection with Tenant's use or occupancy of the Premises, Tenant's activities or the activities of any of Tenant's representatives, and all costs, expenses and liabilities for environmental investigations, monitoring, containment, abatement, removal, repair, cleanup, restoration, remediation and other response costs, including reasonable attorneys' fees and disbursements and any fines and penalties imposed for the violation of any Legal Requirements relating to the environment or human health, are expressly within the scope of the indemnity set forth above.

(c) Tenant's use and occupancy of the Premises shall be at Tenant's sole risk and expense. Tenant accepts all risk relating to Tenant's occupancy and use of the Premises. City shall not be liable to Tenant for, and Tenant hereby waives and releases City and the other Indemnitees from, any and all liability, whether in contract, tort, strict liability or on any other basis, for any injury, damage, or loss resulting from or attributable to an occurrence on or about the Premises.

(d) Tenant shall, to the maximum extent permitted by law, indemnify, protect, defend and hold Indemnitees harmless against claims, losses, costs (including attorneys' fees and costs), liabilities and damages resulting from the failure of Tenant, or any of Tenant's consultants, contractors or subcontractors, to comply with the insurance requirements set forth in **Exhibit B**.

(e) The provisions of this Section 13 shall survive the expiration or termination of this Lease.

14. **SURRENDER OF POSSESSION.** It is mutually understood and agreed that upon expiration or earlier termination of the Lease, Tenant will surrender the

Premises to City in the same condition as immediately prior to the Effective Date, reasonable wear and tear excepted. All improvements constructed or placed in or upon the Premises shall have been removed by Tenant.

15. **ASSIGNMENT.** Tenant shall not assign this Lease, or any interest therein, or sublet the Premises, or any part thereof, or any right or privilege pertaining thereto; without City's prior written consent.

16. **DEFAULT.** If either party materially defaults in the performance of any condition or covenant in this Lease, the other party may terminate this Lease, but only if the defaulting party fails to rectify said default within 10 business days after written notice thereof is served upon defaulting party by the other party. In the event, however, that any default complained of hereunder is of such nature that the same cannot be rectified in10 business days, then such default shall be deemed to be rectified if the defaulting party shall have commenced the compliance of the provisions hereof breached by it within such 10 business days period and shall with all diligence prosecute the work or perform the particular provisions until the same shall have been fully rectified or performed.

17. **CHOICE OF LAW.** Subject to any provisions hereof, this Lease shall bind the parties, their personal representatives, successors and assigns. This Lease shall be governed by the laws of the State of California, excluding, however, any conflict of laws rule which would apply the law of another jurisdiction. Venue for purposes of the filing of any action regarding the enforcement or interpretation of this Lease and rights and duties hereunder shall be Fresno County, California.

18. **NOTICES.** All notices, demands, consents or requests which may be or are required to be given by a party hereunder, shall be in writing. All notices, demands, consents or requests given shall be sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the respective party at the address set forth on the signature page of this Lease or at such other place as the party may from time to time designate in a written notice to the other party. Notices, demands, consents or requests served in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

19. **ATTORNEY'S FEES.** If either party is required to commence any proceeding or legal action to enforce or interpret any term, covenant or condition of this Lease, the prevailing party in such proceeding or action shall be entitled to recover from the other party its reasonable attorney's fees and legal expenses.

20. **THIRD PARTY BENEFICIARIES.** The rights, interests, duties and obligations defined within this Lease are intended for the specific parties hereto as identified in the preamble of this Lease. It is not intended that any rights or interests in this Lease benefit or flow to the interest of any third parties.

21. **GENERAL PROVISIONS**.

(a) The section headings in this Lease are for convenience and reference only and shall not be construed or held in any way to explain, modify or add to the interpretation or meaning of the provisions of this Lease.

(b) The provisions of this Lease are severable. The invalidity, or unenforceability of any one provision in this Lease shall not affect the other provisions.

(c) The parties acknowledge that this Lease in its final form is the result of the combined efforts of the parties and that, should any provision of this Lease be found to be ambiguous in any way, such ambiguity shall not be resolved by construing this Lease in favor or against any party, but rather by construing the terms in accordance with their generally accepted meaning.

(d) Each exhibit and attachment referenced in this Lease is, by the reference, incorporated into and made a part of this Lease.

(e) No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

(f) Once this Lease is signed by all parties, it shall be binding upon, and shall inure to the benefit of, all parties, and each parties' respective heirs, successors, assigns, transferee, agents, servants, employees and representatives.

(g) The waiver by a party of a breach by another of any provision of this Lease shall not constitute a continuing waiver or a waiver of any subsequent breach of either the same or a different provision of this Lease. No provisions of this Lease may be waived unless in writing and signed by all parties to this Lease. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein.

22. **ENTIRETY-SUCCESSION.** This Lease merges and supersedes all prior negotiations, representations, agreements, and constitutes the entire agreement concerning City's leasing of the Premises to Tenant and the consideration therefore. This Lease may be modified only by written instrument duly authorized and executed by both Tenant and City.

IN WITNESS WHEREOF, the parties have caused this Lease to be executed by their authorized representatives in Fresno, California as of the date first above written.

City:

City of Fresno,
a California municipal corporation

By _____
Bruce Rudd, City Manager

Attest:
YVONNE SPENCE, CMC
City Clerk

By _____
Deputy
9/24/2014

Approved as to form:
DOUGLAS T. SLOAN
City Attorney

By _____
Deputy

Tenant:

CH2M Hill Engineers, Inc.,
a Delaware corporation

By _____
Name Richard Ruby
Director, Corporate Real Estate

Title _____

By _____

Name Elisa M. Speranza

Title Sr. VP

Addresses:

City of Fresno
Attention: City Manager
2600 Fresno Street
Fresno, CA 93721

Telephone: (559) 621-7700

CH2M Hill Engineers, Inc.
Attention: Director of Real Estate
9191 S. Jamaica St.
Englewood, CO 80112

Telephone: (720) 286-2348

Attachments:

Exhibit A – Map/Legal Description of Property and the Premises
Exhibit B – Insurance Requirements

EXHIBIT A
MAP

EXHIBIT "B"
INSURANCE REQUIREMENTS
Lease between City of Fresno ("City")
and CH2MHILL ("Tenant")
Municipal Service Center – Building A
Minimum Scope of Insurance

Coverage shall be at least as broad as:

1. The most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01, which shall include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for Premises and operations, products and completed operations, fire legal liability and contractual liability (including, without limitation, indemnity obligations under the Lease).

2. Property insurance with a Cause of Loss – Special or All Risk Form. **Only required of Tenant and not of Tenant's consultants, contractors or subcontractors.**

3. Workers' Compensation insurance as required by the California Labor Code and Employer's Liability Insurance.

Minimum Limits of Insurance

Tenant shall maintain limits of liability of not less than:

1. General Liability:

   $3,000,000 per occurrence for bodily injury and property damage
   $3,000,000 per occurrence for personal and advertising injury
   $2,000,000 aggregate for products and completed operations
   $2,000,000 general aggregate applying separately to the work performed under the Lease

2. Property: Limits of insurance in an amount equal to the full (100%) replacement cost (without deduction for depreciation) of Tenant's business property.

3. Workers' Compensation Insurance as required by the State of California, with Statutory Limits of no less than $1,000,000 per accident for bodily injury or disease (for lessees with employees)

4. Employer's Liability:
   $1,000,000 each accident for bodily injury
   $1,000,000 disease each employee
   $1,000,000 disease policy limit

Umbrella or Excess Insurance

In the event Tenant purchases an Umbrella or Excess insurance policy(ies) to meet the "Minimum Limits of Insurance," this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

Deductibles and Self-Insured Retentions

Tenant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Tenant shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared to, and approved by, the City's Risk Manager or his/her designee. At the option of the City's Risk Manager or his/her designee, either (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City, its officers, officials, employees, agents and volunteers; or (ii) Tenant shall provide a financial guarantee, satisfactory to City's Risk Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall City be responsible for the payment of any deductibles or self-insured retentions.

Other Insurance Provisions

The General Liability insurance policy is to contain, or be endorsed to contain, the following provisions:

1. City, its officers, officials, employees, agents and volunteers are to be covered as additional insureds.

2. The coverage shall contain no special limitations on the scope of protection afforded to City, its officers, officials, employees, agents and volunteers.

3. Tenant's insurance coverage shall be primary and no contribution shall be required of City.

The property insurance policy is to contain, or be endorsed to contain, the following provisions:

1. City shall be named as a loss payee.

2. The coverage shall contain:

   (i) No coinsurance penalty.

   (ii) No limitations or exclusions for vacancy of any part of the Premises.

(iii) No special limitations on the scope of protection afforded to City.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: Tenant and its insurer shall waive any right of subrogation against City, its officers, officials, employees, agents and volunteers. All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day (or 10 day in the event of cancellation for non-payment) written notice by certified mail, return receipt requested, has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Tenant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Tenant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

Acceptability of Insurers

All policies of insurance required hereunder shall be placed with an insurance company(ies) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A-VII" in Best's Insurance Rating Guide.

Verification of Coverage

Tenant shall furnish City with all certificate(s) effecting coverage required hereunder. All certificates are to be received and approved by the City's Risk Manager or his/her designee prior to City's execution of the Lease and before work commences.