

**AGREEMENT  
CITY OF FRESNO, CALIFORNIA  
CONSULTANT SERVICES**

THIS AGREEMENT is made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the CITY OF FRESNO, a California municipal corporation (hereinafter referred to as "CITY"), and Akel Engineering Group, Inc., a California corporation (hereinafter referred to as "CONSULTANT").

**RECITALS**

WHEREAS, CITY desires to obtain professional engineering services for Infrastructure Renewal and Replacement Plan Development, hereinafter referred to as the "Project;" and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a professional engineering and hereby represents that it desires to and is professionally and legally capable of performing the services called for by this Agreement; and

WHEREAS, CONSULTANT acknowledges that this Agreement is subject to the requirements of Fresno Municipal Code Section 4-107 and Administrative Order No. 6-19; and

WHEREAS, this Agreement will be administered for CITY by its Director of Public Utilities (hereinafter referred to as "Director") or his/her designee.

**AGREEMENT**

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. Scope of Services. CONSULTANT shall perform to the satisfaction of CITY the services described in **Exhibit A**, including all work incidental to, or necessary to perform, such services even though not specifically described in **Exhibit A**.

2. Term of Agreement and Time for Performance. This Agreement shall be effective from the date first set forth above and shall continue in full force and effect through the earlier of complete rendition of the services hereunder or June 30, 2018, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon CITY'S issuance of a written "Notice to Proceed." Work shall be undertaken and completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed within four hundred twenty five (425) consecutive calendar days from such authorization to proceed.

3. Compensation.

(a) CONSULTANT'S sole compensation for satisfactory performance of all services required or rendered pursuant to this Agreement shall be a total fee not to exceed four hundred ninety six thousand one hundred twenty two dollars (\$496,122), paid on a time and materials basis in accordance with the schedule of fees contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly and will be payable in the normal course of CITY business. CITY shall not be obligated to reimburse any expense for which it has not received a detailed invoice with applicable copies of representative and identifiable receipts or records substantiating such expense.

(c) The parties may modify this Agreement to increase or decrease the scope of services or provide for the rendition of services not required by this Agreement, which modification shall include an adjustment to CONSULTANT'S compensation. Any change in the scope of services must be made by written amendment to the Agreement signed by an authorized representative for each party. CONSULTANT shall not be entitled to any additional compensation if services are performed prior to a signed written amendment.

#### 4. Termination, Remedies and Force Majeure.

(a) This Agreement shall terminate without any liability of CITY to CONSULTANT upon the earlier of: (i) CONSULTANT'S filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against CONSULTANT; (ii) 7 calendar days prior written notice with or without cause by CITY to CONSULTANT; (iii) CITY'S non-appropriation of funds sufficient to meet its obligations hereunder during any CITY fiscal year of this Agreement, or insufficient funding for the Project; or (iv) expiration of this Agreement.

(b) Immediately upon any termination or expiration of this Agreement, CONSULTANT shall (i) immediately stop all work hereunder; (ii) immediately cause any and all of its subcontractors to cease work; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of CONSULTANT that are owned by CITY. Subject to the terms of this Agreement, CONSULTANT shall be paid compensation for services satisfactorily performed prior to the effective date of termination. CONSULTANT shall not be paid for any work or services performed or costs incurred which reasonably could have been avoided.

(c) In the event of termination due to failure of CONSULTANT to satisfactorily perform in accordance with the terms of this Agreement, CITY may withhold an amount that would otherwise be payable as an offset to, but not in excess of, CITY'S damages caused by such failure. In no event shall any payment by CITY pursuant to this Agreement constitute a waiver by CITY of any breach of this Agreement which may then exist on the part of CONSULTANT, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.

(d) Upon any breach of this Agreement by CONSULTANT, CITY may (i) exercise any right, remedy (in contract, law or equity), or privilege which may be available to it under applicable laws of the State of California or any other applicable law; (ii) proceed by appropriate court action to enforce the terms of the Agreement; and/or (iii) recover all direct, indirect, consequential, economic and incidental damages for the breach of the Agreement. If it is determined that CITY improperly terminated this Agreement for default, such termination shall be deemed a termination for convenience.

(e) CONSULTANT shall provide CITY with adequate written assurances of future performance, upon Director's request, in the event CONSULTANT fails to comply with any terms or conditions of this Agreement.

(f) CONSULTANT shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of CONSULTANT and without its fault or negligence such as, acts of God or the public enemy, acts of CITY in its contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of

common carriers. CONSULTANT shall notify Director in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, and shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to Director of the cessation of such occurrence.

5. Confidential Information, Ownership of Documents and Copyright License.

(a) Any reports, information, or other data prepared or assembled by CONSULTANT pursuant to this Agreement shall not be made available to any individual or organization by CONSULTANT without the prior written approval of CITY. During the term of this Agreement, and thereafter, CONSULTANT shall not, without the prior written consent of CITY, disclose to anyone any Confidential Information. The term Confidential Information for the purposes of this Agreement shall include all proprietary and confidential information of CITY, including but not limited to business plans, marketing plans, financial information, designs, drawings, specifications, materials, compilations, documents, instruments, models, source or object codes and other information disclosed or submitted, orally, in writing, or by any other medium or media. All Confidential Information shall be and remain confidential and proprietary in CITY.

(b) Any and all original sketches, pencil tracings of working drawings, plans, computations, specifications, computer disk files, writings and other documents prepared or provided by CONSULTANT pursuant to this Agreement are the property of CITY at the time of preparation and shall be turned over to CITY upon expiration or termination of the Agreement or default by CONSULTANT. CONSULTANT grants CITY a copyright license to use such drawings and writings. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein. CITY may modify the design including any drawings or writings. Any use by CITY of the aforesaid sketches, tracings, plans, computations, specifications, computer disk files, writings and other documents in completed form as to other projects or extensions of this Project, or in uncompleted form, without specific written verification by CONSULTANT will be at CITY'S sole risk and without liability or legal exposure to CONSULTANT. CONSULTANT may keep a copy of all drawings and specifications for its sole and exclusive use.

(c) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 5.

(d) This Section 5 shall survive expiration or termination of this Agreement.

6. Professional Skill. It is further mutually understood and agreed by and between the parties hereto that inasmuch as CONSULTANT represents to CITY that CONSULTANT and its subcontractors, if any, are skilled in the profession and shall perform in accordance with the standards of said profession necessary to perform the services agreed to be done by it under this Agreement, CITY relies upon the skill of CONSULTANT and any subcontractors to do and perform such services in a skillful manner and CONSULTANT agrees to thus perform the services and require the same of any subcontractors. Therefore, any acceptance of such services by CITY shall not operate as a release of CONSULTANT or any subcontractors from said professional standards.

7. Indemnification. To the furthest extent allowed by law, CONSULTANT shall indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents

and volunteers from any and all loss, liability, fines, penalties, forfeitures, costs and damages (whether in contract, tort or strict liability, including but not limited to personal injury, death at any time and property damage), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) that arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of CONSULTANT, its principals, officers, employees, agents or volunteers in the performance of this Agreement.

If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor to indemnify, hold harmless and defend CITY and each of its officers, officials, employees, agents and volunteers in accordance with the terms of the preceding paragraph.

This section shall survive termination or expiration of this Agreement.

## 8. Insurance.

(a) Throughout the life of this Agreement, CONSULTANT shall pay for and maintain in full force and effect all insurance as required in **Exhibit B**, which is incorporated into and part of this Agreement, with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated no less than "A-VII" in the Best's Insurance Rating Guide, or (ii) as may be authorized in writing by CITY'S Risk Manager or his/her designee at any time and in his/her sole discretion. The required policies of insurance as stated in Exhibit B shall maintain limits of liability of not less than those amounts stated therein. However, the insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified therein or the full limit of any insurance proceeds to the named insured.

(b) If at any time during the life of the Agreement or any extension, CONSULTANT or any of its subcontractors/sub-consultants fail to maintain any required insurance in full force and effect, all services and work under this Agreement shall be discontinued immediately, and all payments due or that become due to CONSULTANT shall be withheld 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 Agreement. No action taken by CITY pursuant to this section shall in any way relieve CONSULTANT of its responsibilities under this Agreement. 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.

(c) The fact that insurance is obtained by CONSULTANT shall not be deemed to release or diminish the liability of CONSULTANT, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify CITY 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 CONSULTANT. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of CONSULTANT, its principals, officers, agents, employees, persons under the supervision of CONSULTANT, vendors, suppliers, invitees, consultants, sub-consultants, subcontractors, or anyone employed directly or indirectly by any of them.

(d) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall require each subcontractor/sub-consultant to provide insurance protection, as an additional insured, to the CITY and each of its

officers, officials, employees, agents and volunteers in accordance with the terms of this section, except that any required certificates and applicable endorsements shall be on file with CONSULTANT and CITY prior to the commencement of any services by the subcontractor. CONSULTANT and any subcontractor/sub-consultant shall establish additional insured status for CITY, its officers, officials, employees, agents and volunteers by using Insurance Service Office (ISO) Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.

9. Conflict of Interest and Non-Solicitation.

(a) Prior to CITY'S execution of this Agreement, CONSULTANT shall complete a City of Fresno conflict of interest disclosure statement in the form as set forth in **Exhibit C**. During the term of this Agreement, CONSULTANT shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by CONSULTANT in such statement.

(b) CONSULTANT shall comply, and require its subcontractors to comply, with all applicable (i) professional canons and requirements governing avoidance of impermissible client conflicts; and (ii) federal, state and local conflict of interest laws and regulations including, without limitation, California Government Code Section 1090 et. seq., the California Political Reform Act (California Government Code Section 87100 et. seq.), the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.) and Section 4-112 of the Fresno Municipal Code (Ineligibility to Compete). At any time, upon written request of CITY, CONSULTANT shall provide a written opinion of its legal counsel and that of any subcontractor that, after a due diligent inquiry, CONSULTANT and the respective subcontractor(s) are in full compliance with all laws and regulations. CONSULTANT shall take, and require its subcontractors to take, reasonable steps to avoid any appearance of a conflict of interest. Upon discovery of any facts giving rise to the appearance of a conflict of interest, CONSULTANT shall immediately notify CITY of these facts in writing.

(c) In performing the work or services to be provided hereunder, CONSULTANT shall not employ or retain the services of any person while such person either is employed by CITY or is a member of any CITY council, commission, board, committee, or similar CITY body. This requirement may be waived in writing by the City Manager, if no actual or potential conflict is involved.

(d) CONSULTANT represents and warrants that it has not paid or agreed to pay any compensation, contingent or otherwise, direct or indirect, to solicit or procure this Agreement or any rights/benefits hereunder.

(e) Neither CONSULTANT, nor any of CONSULTANT'S subcontractors performing any services on this Project, shall bid for, assist anyone in the preparation of a bid for, or perform any services pursuant to, any other contract in connection with this Project. CONSULTANT and any of its subcontractors shall have no interest, direct or indirect, in any other contract with a third party in connection with this Project unless such interest is in accordance with all applicable law and fully disclosed to and approved by the City Manager, in advance and in writing.

(f) If CONSULTANT should subcontract all or any portion of the work to be performed or services to be provided under this Agreement, CONSULTANT shall include the provisions of this Section 9 in each subcontract and require its subcontractors to comply therewith.

(g) This Section 9 shall survive expiration or termination of this Agreement.

10. Recycling Program. In the event CONSULTANT maintains an office or operates a facility(ies), or is required herein to maintain or operate same, within the incorporated limits of the City of Fresno, CONSULTANT at its sole cost and expense shall:

- (i) Immediately establish and maintain a viable and ongoing recycling program, approved by CITY'S Solid Waste Management Division, for each office and facility. Literature describing CITY recycling programs is available from CITY'S Solid Waste Management Division and by calling City of Fresno Recycling Hotline at (559) 621-1111.
- (ii) Immediately contact CITY'S Solid Waste Management Division at (559) 621-1452 and schedule a free waste audit, and cooperate with such Division in their conduct of the audit for each office and facility.
- (iii) Cooperate with and demonstrate to the satisfaction of CITY'S Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

11. General Terms.

(a) Except as otherwise provided by law, all notices expressly required of CITY within the body of this Agreement, and not otherwise specifically provided for, shall be effective only if signed by the Director or his/her designee.

(b) Records of CONSULTANT'S expenses pertaining to the Project shall be kept on a generally recognized accounting basis and shall be available to CITY or its authorized representatives upon request during regular business hours throughout the life of this Agreement and for a period of three years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of CONSULTANT pertaining to the Project shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. If any litigation, claim, negotiations, audit or other action is commenced before the expiration of said time period, all records shall be retained and made available to CITY until such action is resolved, or until the end of said time period whichever shall later occur. If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this paragraph. This Section 11(b) shall survive expiration or termination of this Agreement.

(c) Prior to execution of this Agreement by CITY, CONSULTANT shall have provided evidence to CITY that CONSULTANT is licensed to perform the services called for by this Agreement (or that no license is required). If CONSULTANT should subcontract all or any portion of the work or services to be performed under this Agreement, CONSULTANT shall require each subcontractor to provide evidence to CITY that subcontractor is licensed to

perform the services called for by this Agreement (or that no license is required) before beginning work.

12. Nondiscrimination. To the extent required by controlling federal, state and local law, CONSULTANT shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Subject to the foregoing and during the performance of this Agreement, CONSULTANT agrees as follows:

(a) CONSULTANT will comply with all applicable laws and regulations providing that no person shall, on the grounds of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity made possible by or resulting from this Agreement.

(b) CONSULTANT will not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. CONSULTANT shall ensure that applicants are employed, and the employees are treated during employment, without regard to their race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era. Such requirement shall apply to CONSULTANT'S employment practices including, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. CONSULTANT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provision of this nondiscrimination clause.

(c) CONSULTANT will, in all solicitations or advertisements for employees placed by or on behalf of CONSULTANT in pursuit hereof, state that all qualified applicants will receive consideration for employment without regard to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex, age, sexual orientation, ethnicity, status as a disabled veteran or veteran of the Vietnam era.

(d) CONSULTANT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice advising such labor union or workers' representatives of CONSULTANT'S commitment under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(e) If CONSULTANT should subcontract all or any portion of the services to be performed under this Agreement, CONSULTANT shall cause each subcontractor to also comply with the requirements of this Section 12.

13. Independent Contractor.

(a) In the furnishing of the services provided for herein, CONSULTANT is acting solely as an independent contractor. Neither CONSULTANT, nor any of its officers, agents or employees shall be deemed an officer, agent, employee, joint venturer, partner or associate of CITY for any purpose. CITY shall have no right to control or supervise or direct the manner or method by which CONSULTANT shall perform its work and functions. However, CITY shall retain the right to administer this Agreement so as to verify that CONSULTANT is performing its obligations in accordance with the terms and conditions thereof.

(b) This Agreement does not evidence a partnership or joint venture between CONSULTANT and CITY. CONSULTANT shall have no authority to bind CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, CONSULTANT shall bear its own costs and expenses in pursuit thereof.

(c) Because of its status as an independent contractor, CONSULTANT and its officers, agents and employees shall have absolutely no right to employment rights and benefits available to CITY employees. CONSULTANT shall be solely liable and responsible for all payroll and tax withholding and for providing to, or on behalf of, its employees all employee benefits including, without limitation, health, welfare and retirement benefits. In addition, together with its other obligations under this Agreement, CONSULTANT shall be solely responsible, indemnify, defend and save CITY harmless from all matters relating to employment and tax withholding for and payment of CONSULTANT'S employees, including, without limitation, (i) compliance with Social Security and unemployment insurance withholding, payment of workers' compensation benefits, and all other laws and regulations governing matters of employee withholding, taxes and payment; and (ii) any claim of right or interest in CITY employment benefits, entitlements, programs and/or funds offered employees of CITY whether arising by reason of any common law, de facto, leased, or co-employee rights or other theory. It is acknowledged that during the term of this Agreement, CONSULTANT may be providing services to others unrelated to CITY or to this Agreement.

14. Notices. Any notice required or intended to be given to either party under the terms of this Agreement shall be in writing and shall be deemed to be duly given if delivered personally, transmitted by facsimile followed by telephone confirmation of receipt, or sent by United States registered or certified mail, with postage prepaid, return receipt requested, addressed to the party to which notice is to be given at the party's address set forth on the signature page of this Agreement or at such other address as the parties may from time to time designate by written notice. Notices served by United States mail in the manner above described shall be deemed sufficiently served or given at the time of the mailing thereof.

15. Binding. Subject to Section 16, below, once this Agreement 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, transferees, agents, servants, employees and representatives.

16. Assignment.

(a) This Agreement is personal to CONSULTANT and there shall be no assignment by CONSULTANT of its rights or obligations under this Agreement without the prior written approval of the City Manager or his/her designee. Any attempted assignment by

CONSULTANT, its successors or assigns, shall be null and void unless approved in writing by the City Manager or his/her designee.

(b) CONSULTANT hereby agrees not to assign the payment of any monies due CONSULTANT from CITY under the terms of this Agreement to any other individual(s), corporation(s) or entity(ies). CITY retains the right to pay any and all monies due CONSULTANT directly to CONSULTANT.

17. Compliance With Law. In providing the services required under this Agreement, CONSULTANT shall at all times comply with all applicable laws of the United States, the State of California and CITY, and with all applicable regulations promulgated by federal, state, regional, or local administrative and regulatory agencies, now in force and as they may be enacted, issued, or amended during the term of this Agreement.

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

19. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, 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 Agreement and any rights and duties hereunder shall be Fresno County, California.

20. Headings. The section headings in this Agreement 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 Agreement.

21. Severability. The provisions of this Agreement are severable. The invalidity, or unenforceability of any one provision in this Agreement shall not affect the other provisions.

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

23. 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 Agreement, 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.

24. Exhibits. Each exhibit and attachment referenced in this Agreement is, by the reference, incorporated into and made a part of this Agreement.

25. Precedence of Documents. In the event of any conflict between the body of this Agreement and any Exhibit or Attachment hereto, the terms and conditions of the body of this Agreement shall control and take precedence over the terms and conditions expressed within the Exhibit or Attachment. Furthermore, any terms or conditions contained within any Exhibit or

Attachment hereto which purport to modify the allocation of risk between the parties, provided for within the body of this Agreement, shall be null and void.

26. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

27. No Third Party Beneficiaries. The rights, interests, duties and obligations defined within this Agreement are intended for the specific parties hereto as identified in the preamble of this Agreement. Notwithstanding anything stated to the contrary in this Agreement, it is not intended that any rights or interests in this Agreement benefit or flow to the interest of any third parties.

28. Extent of Agreement. Each party acknowledges that they have read and fully understand the contents of this Agreement. This Agreement represents the entire and integrated agreement between the parties with respect to the subject matter hereof and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and CONSULTANT.

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IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, the day and year first above written.

CITY OF FRESNO,  
a California municipal corporation

By: \_\_\_\_\_  
Thomas C. Esqueda,  
Director  
Department of Public Utilities

ATTEST:  
YVONNE SPENCE, CMC  
City Clerk

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

No signature of City Attorney required.  
Standard Document #DPU-S 8.2 has been  
used without modification, as certified by  
the undersigned.

By: Michael Carbajal  
Michael Carbajal  
Planning Manager  
Department of Public Utilities

REVIEWED BY:  
Michael Carbajal  
Michael Carbajal, Planning Manager  
Department of Public Utilities

Addresses:  
CITY:  
City of Fresno  
Attention: Michael Carbajal,  
Planning Manager  
2101 G Street, Building A  
Fresno, CA 93706  
Phone: (559) 621-1622  
FAX: (559) 498-4126

Attachments:

1. Exhibit A - Scope of Services
2. Exhibit B - Insurance Requirements
3. Exhibit C - Conflict of Interest Disclosure Form

Akel Engineering Group, Inc.,  
a California corporation

By: Tony Akel  
Name: : TONY AKEL

Title: PRESIDENT  
(if corporation or LLC, Board  
Chair, Pres. or Vice Pres.)

By: Tony Akel  
Name: TONY AKEL

Title: SECRETARY  
(if corporation or LLC, CFO,  
Treasurer, Secretary or Assistant  
Secretary)

Any Applicable Professional License:  
Number: C041682  
Name: ANTHONY AKEL  
Date of Issuance: 8/21/1987

CONSULTANT:  
Akel Engineering Group, Inc.  
Attention: Tony Akel, PE,  
President  
7433 North First Street  
Fresno, CA 93720  
Phone: (559) 436-0600  
FAX: (559) 436-0622

## **Exhibit A**

### **SCOPE OF SERVICES**

#### **Consultant Service Agreement between City of Fresno ("City") and Akel Engineering Group, Inc. ("Consultant")**

#### **Infrastructure Renewal and Replacement Plan Development**

PROJECT TITLE

#### **Task 1: Project Management and Meetings**

This task emphasizes continuous communication between the project team members throughout the duration of the project. The AKEL-Kleinfelder team will schedule necessary face to face meetings and/or as needed web-conferences with City staff, and depending on progress. This task includes a kickoff meeting which purpose is to introduce the team members, confirm the project goals and objectives, establish the communication protocol, review the approach, review the project schedule and QA/QC process, and request available data.

#### **Task 1 Deliverables:**

- Meeting minutes

#### **Task 2: Development of R&R Framework**

##### **Task 2.1 Regulatory Demands and Levels of Service, and Workshop**

The ultimate goal of asset management is to meet regulatory demands and the desired levels of service (LOS) expected by the customer, with the minimum investment in infrastructure. For the City of Fresno, this means delivering quality water to 500,000 customers. This 5-year plan will take into consideration the current regulatory framework, which the team review and summarize as it applies to water system infrastructure planning.

The team will conduct a workshop (No. 1, LOS) with the city to develop levels of service, their targets, and discuss tools for assessing and tracking the levels of service and regulatory demands over time. Having these tools and metrics in place is crucial for assessing the return on the investment in any enhancements on the infrastructure itself, on operations and maintenance tasks, and in asset management. The LOS developed here will be taken into consideration in a qualitative manner when developing the 5-year plan.

##### **Task 2.2 Risk Framework and Workshop**

The first stages of an asset management program focus on creating an asset inventory or registry. This starts by defining asset types. An asset type is the smallest infrastructure piece which maintenance is tracked over time. The identification of asset types and their relationship to their parent asset is important because it drives risk analysis and the life-cycle cost analysis. The team will identify the main asset types to be part of the risk framework.

Risk analysis consist of calculating an asset's likelihood of failure and consequence of failure. The likelihood of failure is calculated by assessing the asset's failure modes. Obviously, failure modes will depend on the type of asset. Consequences of failure will depend of the relevance of the asset as a part of the water network, or a facility and ultimately of the water system. Developing a risk framework consists of:

1. Identifying asset types and hierarchy
2. Identifying failure modes per each asset type
3. Determining consequence factors
4. Identifying the risk matrix per asset type (not all types of failure have the same consequences, for example, an asset that fails because it doesn't have enough capacity may not have necessarily an environmental impact).
5. Determining the scoring system to be used for both consequence factors and likelihood of failure
6. Determining the methodology and rules for assessing likelihood of failure under each failure mode, per each asset type, data needs, proxies and key performance indicators.
7. Determining the methodology and rules for assigning consequence of failure scores to each asset type
8. Developing the mathematical expression to calculate a risk score from failure modes scores, consequence factors and hierarchical level.

The City will provide an extract of all the assets from their GIS and CMMS systems. The AKEL-Kleinfelder team will compile the information and use to create the preliminary risk framework. We foresee creating a risk framework for the water distribution mains, the wells, the pump stations (as an asset), and the main groups of the water processing system.

The team will then conduct a workshop (No. 2, Risk) with The City. The workshop will cover basics of risk analysis for asset management, and a discussion to review the preliminary risk model.

### Task 2.3 Renewal/Replacement Framework and Workshop

Renewal/Replacement optimization consists of setting up computer simulation models that will determine the lowest cost strategy to maintain the desired levels of service at an acceptable level of risk across the entire asset portfolio for the duration of the simulation. The basis for the methodology, assumptions and scenarios to be considered will be addressed in this task, including:

- Deterioration models
- Scenarios
- Methodology
- Renewal/Replacement strategies
- Costs

The team will conduct a workshop (No. 3, R&R Strategies) with the City staff to discuss current strategies used.

### Task 2 Deliverables:

- Levels of service and regulatory requirements: Description and target goals. This document will be part of the City's Water Infrastructure Asset Management Plan (AMP)
- Documentation providing recommendations for assessing and tracking LOS over time
- Levels of Service Workshop (Workshop 1) materials (Microsoft PowerPoint)
- Risk Framework (Microsoft Excel)
- Risk Workshop (Workshop 2) materials (Microsoft PowerPoint)
- Renewal/Replacement framework (Microsoft Excel)
- Renewal/Replacement workshop (Workshop 3) materials

Note: Workshops 1-3 can be conducted on the same week.

### Task 3: Well, Pump and Groundwater Treatment System R&R

#### Task 3.1 Asset Inventory

The team will rely on past City efforts to develop a groundwater treatment system inventory and a basic maintenance history for each well site. The team will request information about the wells from the City, and compile the information to create an accurate inventory that includes performance metrics for each well. This task includes site visits to gather additional information if necessary.

#### Task 3.2 Risk Analysis

The team will conduct a data gap analysis for the assets in the registry including wells, pump stations and groundwater treatment facilities. The City will provide the data to conduct the analysis. The team will analyze well and pump operational data to identify and understand operational trends and performance indicators to estimate likelihood of well and pump failure, following the framework designed in Task 2. The results of this analysis will be criticality scores, likelihoods of failure and overall risk scores for each asset in this group. The analysis will take into consideration groundwater quality concerns and constraints using the City's historical water quality data, evaluations, and reports. The project team shall evaluate the groundwater quality concerns the City may have to gain understanding of the historical aspects of the groundwater supply in different regions of the City.

#### Task 3.3 Well, Pump and Groundwater Treatment R&R

The team will review the maintenance and operations data provided by the Client for the most critical asset types in this group including pumps and wells, and critical assets of the facilities processing systems to identify deterioration patterns and forecast maintenance and replacement costs. The team will identify a list of renewal and replacement strategies that Fresno water staff practice for each asset type in this group based on asset deterioration, age, criticality and attributes. Each treatment will have a cost and an outcome associated with it (the outcome represents the improvement in the condition score of the asset). The team will use the outcomes of the deterioration/maintenance analysis to create a 5-year R&R plan for the Wells, Pumps and Groundwater Treatment facilities under the scenarios identified in Task 2.

#### Task 3 Deliverables:

- Results of Risk Analysis and R&R in Excel
- Technical Memorandum – Well Sites R&R Improvements, Ranking and Prioritization

### Task 4: Surface Water Treatment Facility

#### Task 4.1 Asset Inventory

The team will conduct the tasks outlined in Task 3.1 for the Surface Water Treatment Facility Asset Types. Throughout this task we anticipate evaluating the following components:

- Plant Influent System
- Water Clarification System
- Ozone System. Based on initial field survey, Ozone Destruction system is not included
- Filtration System
- Chlorine Residual System

- Product Water Pump Station
- Residual Handling System
- Power Supply and Distribution System
- Instrumentation and Control System

The team will compile the plant's asset inventory and gather information provided by The Client to assess condition and performance metrics for the treatment facility assets.

#### Task 4.2 Risk Analysis

In this task the team will apply the risk framework developed in Task 2 the surface water treatment facilities assets. Useful service life, physical conditions and remaining service life will assess for key equipment of the above identified plants' critical components

#### Task 4.3 Water Treatment Facility R&R

For the Northeast Surface Water Treatment Facility (NESWTF), we will define and describe the identified R&Rs, propose technical concepts and estimate cost to address R&Rs (up to 3 R&Rs are assumed for the plant's critical component, totaling up to 27 R&Rs). The identified R&Rs will be ranked and prioritized based on ranking criteria that will be proposed to and approved by the City. A workshop will be held with the City staff to discuss the proposed R&R improvements, ranking criteria, ranks and priorities of the identified R&Rs. The workshop recommendations will be addressed and a technical memorandum will be issued documenting the R&Rs for the NESWTF.

In this task, the team will conduct the 5-year RR analyses for the critical assets of the NESWTP, under the selected scenarios.

#### Task 4 Deliverables:

- Results of Risk Analysis and R&R (Microsoft Excel)
- Technical Memorandum – SWTP R&R Improvements, Ranking and Prioritization

#### Task 5: Distribution System R&R

##### Task 5.1 Asset Inventory and Gap Analysis

The team will rely on available GIS data including but not limited to material type, soil conditions, age, condition of pipe (if known based on records provided by the City), and maintenance records of repairs (leaks). The information will be compiled to create an accurate inventory that includes performance metrics for each type of pipe. The team will review the existing information about the water network and identify data gaps.

##### Task 5.2 Hydraulic Modeling and InfoMaster Development

The team will utilize the City's existing water distribution system hydraulic model (currently in the latest version of Innovyze InfoWater) to assess system capacity and perform hydraulic modeling scenarios for the following:

- Assessing well criticality under the different demand and water availability scenarios determined in Task 2
- Assessing distribution system criticality under the same scenarios
- Assessing system capacity focusing on pressure and flow, under the same scenarios

The results from the hydraulic model will be used to assess failure modes for water network assets (such as capacity), and criticality for water network assets and facilities.

The team will use the asset data provided in Task 5.1 to develop the Innovyze InfoMaster risk model. The risk framework developed in Task 2 will also be incorporated into the InfoMaster model, and will include likelihood and consequence of failure scenarios and scoring.

The task also includes a review of information provided by the City and available demographic data to conduct a demand forecast of the system and a water availability analysis. The demand scenarios identified in this section will be used in the risk and life-cycle cost analysis.

### Task 5.3 Distribution System Risk Analysis

In this task the team will apply the risk framework developed in Task 2 with the data gathered for the distribution system and the data outputs from the hydraulic model. The Innovyze InfoMaster software will be used to combine the likelihood and consequence of failure scoring to determine an overall risk score. The risk scores will be documented graphically and submitted to City staff for review.

### Task 5.4 Distribution System R&R

The team will analyze the maintenance and operations data provided by the Client for the water mains to identify deterioration patterns and forecast maintenance and replacement costs for a 5-year time frame. High-risk water main segments will be grouped into discrete projects, and assigned an implementation year, optimizing the budget allocation for each year of the 5-year plan, under the scenarios identified in Task 2. Factors influencing RR project grouping may include but are not limited to the following: risk score, proximity to other projects, overall lifecycle cost, budgetary constraints, and level of service improvement. The analyses will be completed using Innovyze InfoWater and InfoMaster Water.

#### Task 5 Deliverables:

- Results of Risk Analysis and R&R in GIS
- Technical Memorandum – Distribution System R&R Improvements, Ranking and Prioritization

### Task 6: Overall R&R Plan and Report

The team will compile the results of the R&R models into feasible capital projects across that will have priority scores derived from the risk analysis, costs, and implementation year. The team will present the methodology in a documented asset management plan. Details about risk analysis and RR will also be presented at the asset level in Excel format, and in GIS.

#### Task 6 Deliverables:

- 5-year Plan

## **SCHEDULE OF FEES**

Akel Engineering Group, Inc  
Effective Through June 30, 2017

Category	Hourly Rate
Principal Engineer	\$180.00
Associate Engineer	\$144.00
Assistant Engineer	\$109.00
GIS Technician	\$98.00
Word Processing/Secretarial	\$74.00
Other Direct Expenses	
Travel and Subsistence	at Cost
Mileage	\$0.54/mile
Other Direct Cost	Cost plus 10%

\*Fee Schedule is subject to an annual increase at the end of the fiscal year

## Kleinfelder

Professional .....	\$	133/ hour
Staff Professional .....	\$	145/ hour
Project Professional .....	\$	168/ hour
Principal Professional .....	\$	194/ hour
Senior Principal Professional.....	\$	229/ hour
Project Manager .....	\$	184/ hour
Senior Project Manager.....	\$	229/ hour
Designer/Drafter .....	\$	121/ hour
Senior Designer/Drafter.....	\$	135/ hour
Project Controls Professional .....	\$	131/ hour
Senior Project Controls Professional .....	\$	188/ hour

## TECHNICAL STAFF RATES

Technician.....	\$	93/ hour
Senior Technician.....	\$	105/ hour
Inspector .....	\$	105/ hour
Senior Inspector .....	\$	126/ hour
Construction Manager .....	\$	163/ hour

## ADMINISTRATIVE STAFF RATES

Administrator .....	\$	89/ hour
Project Administrator .....	\$	119/ hour

Minimum Charges for Office Time Per Day.....One Hour at Applicable Rate

Kleinfelder reserves the right to adjust the fee schedule on projects not completed within 180 days from the contract signature date.

Public works projects or projects receiving public funds may be subject to Prevailing Wage laws. The above rates do not apply to projects subject to prevailing wages. Hourly rates for those projects will be supplied separately.

\* Applies to all professional rates including but not limited to civil, mechanical, chemical, electrical, geotechnical and environmental engineers; industrial hygienists; geologists; hydrogeologists; hydrologists; and computer specialists.

Hourly rates assume that other direct costs will be billed and reimbursed by the client. Kleinfelder reserves the right to adjust the fee schedule on projects where other direct costs are not reimbursed.

## **Exhibit B**

### **INSURANCE REQUIREMENTS**

**Consultant Service Agreement between City of Fresno ("CITY")  
and Akel Engineering Group, Inc. ("CONSULTANT")**  
Infrastructure Renewal and Replacement Plan Development  
PROJECT TITLE

### **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, providing liability coverage arising out of your business operations. The Commercial General Liability policy shall be written on an occurrence form and shall provide coverage for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Agreement) with limits of liability not less than those set forth under "Minimum Limits of Insurance."
2. The most current version of ISO \*Commercial Auto Coverage Form CA 00 01, providing liability coverage arising out of the ownership, maintenance or use of automobiles in the course of your business operations. The Automobile Policy shall be written on an occurrence form and shall provide coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1- Any Auto). If personal automobile coverage is used, the CITY, its officers, officials, employees, agents and volunteers are to be listed as additional insureds.
3. Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.
4. Professional Liability (Errors and Omissions) insurance appropriate to CONSULTANT'S profession. Architect's and engineer's coverage is to be endorsed to include contractual liability.

### **MINIMUM LIMITS OF INSURANCE**

CONSULTANT, or any party the CONSULTANT subcontracts with, shall maintain limits of liability of not less than those set forth below. However, insurance limits available to CITY, its officers, officials, employees, agents and volunteers as additional insureds, shall be the greater of the minimum limits specified herein or the full limit of any insurance proceeds available to the named insured:

1. **COMMERCIAL GENERAL LIABILITY:**
  - (i) \$1,000,000 per occurrence for bodily injury and property damage;
  - (ii) \$1,000,000 per occurrence for personal and advertising injury;
  - (iii) \$2,000,000 aggregate for products and completed operations; and,

- (iv) \$2,000,000 general aggregate applying separately to the work performed under the Agreement.

2. **COMMERCIAL AUTOMOBILE LIABILITY:**

\$1,000,000 per accident for bodily injury and property damage;

OR\*

**PERSONAL AUTOMOBILE LIABILITY** insurance with limits of liability not less than:

- (i) \$100,000 per person;
- (ii) \$300,000 per accident for bodily injury; and,
- (iii) \$50,000 per accident for property damage.

3. **WORKERS' COMPENSATION INSURANCE** as required by the State of California with statutory limits.

4. **EMPLOYER'S LIABILITY:**

- (i) \$1,000,000 each accident for bodily injury;
- (ii) \$1,000,000 disease each employee; and,
- (iii) \$1,000,000 disease policy limit.

5. **PROFESSIONAL LIABILITY** (Errors and Omissions):

- (i) \$1,000,000 per claim/occurrence; and,
- (ii) \$2,000,000 policy aggregate.

**UMBRELLA OR EXCESS INSURANCE**

In the event CONSULTANT 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). In addition, such Umbrella or Excess insurance policy(ies) shall also apply on a primary and non-contributory basis for the benefit of the CITY, its officers, officials, employees, agents and volunteers.

**DEDUCTIBLES AND SELF-INSURED RETENTIONS**

CONSULTANT shall be responsible for payment of any deductibles contained in any insurance policy(ies) required herein and CONSULTANT shall also be responsible for payment of any self-insured retentions. Any deductibles or self-insured retentions must be declared on the Certificate of Insurance, 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) (ii) CONSULTANT 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/ENDORSEMENTS**

The General Liability and Automobile Liability insurance policies are 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. CONSULTANT shall establish additional insured status for the City and for all ongoing and completed operations by use of ISO Form CG 20 10 11 85 or both CG 20 10 10 01 and CG 20 37 10 01 or by an executed manuscript insurance company endorsement providing additional insured status as broad as that contained in ISO Form CG 20 10 11 85.
2. The coverage shall contain no special limitations on the scope of protection afforded to CITY, its officers, officials, employees, agents and volunteers. Any available insurance proceeds in excess of the specified minimum limits and coverage shall be available to the Additional Insured.
3. For any claims related to this Agreement, CONSULTANT'S insurance coverage shall be primary insurance with respect to the CITY, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the CITY, its officers, officials, employees, agents and volunteers shall be excess of CONSULTANT'S insurance and shall not contribute with it. CONSULTANT shall establish primary and non-contributory status by using ISO Form CG 20 01 04 13 or by an executed manuscript insurance company endorsement that provides primary and non-contributory status as broad as that contained in ISO Form CG 20 01 04 13.

The Workers' Compensation insurance policy is to contain, or be endorsed to contain, the following provision: CONSULTANT and its insurer shall waive any right of subrogation against CITY, its officers, officials, employees, agents and volunteers.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by CONSULTANT.
2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first, or, in the alternative, the policy shall be endorsed to provide not less than a five (5) year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by CONSULTANT, CONSULTANT

must purchase "extended reporting" coverage for a minimum of five (5) years after completion of the Agreement work or termination of the Agreement, whichever occurs first.

4. A copy of the claims reporting requirements must be submitted to CITY for review.
5. These requirements shall survive expiration or termination of the Agreement.

All policies of insurance required herein shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after thirty (30) calendar days written notice by certified mail, return receipt requested, has been given to CITY. CONSULTANT is also responsible for providing written notice to the CITY under the same terms and conditions. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, CONSULTANT 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, CONSULTANT shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than fifteen (15) calendar days prior to the expiration date of the expiring policy.

#### **VERIFICATION OF COVERAGE**

CONSULTANT shall furnish CITY with all certificate(s) and **applicable endorsements** effecting coverage required hereunder. All certificates and **applicable endorsements** are to be received and approved by the CITY'S Risk Manager or his/her designee prior to CITY'S execution of the Agreement and before work commences. All non-ISO endorsements amending policy coverage shall be executed by a licensed and authorized agent or broker. Upon request of CITY, CONSULTANT shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, 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 Agreement.

### Exhibit C

#### DISCLOSURE OF CONFLICT OF INTEREST

Infrastructure Renewal and Replacement Plan Development  
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
4	Are you or any of your principals, managers or professionals, owners or investors in a business which does business with the City of Fresno, or in a business which is in litigation with the City of Fresno?	<input type="checkbox"/>	<input type="checkbox"/>
5	Are you or any of your principals, managers or professionals, related by blood or marriage to any City of Fresno employee who has any significant role in the subject matter of this service?	<input type="checkbox"/>	<input type="checkbox"/>
6	Do you or any of your subcontractors have, or expect to have, any interest, direct or indirect, in any other contract in connection with this Project?	<input type="checkbox"/>	<input type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

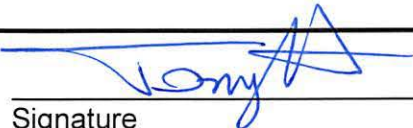
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☐ Additional page(s) attached.

  
Signature

4/4/17  
Date

TONY AKEL  
(name)

AKEL ENGINEERING GROUP  
(company)

7433 N. FIRST ST. SUITE 103  
(address)

FRESNO, CA 93720  
(city state zip)