

**AGREEMENT FOR SERVICES
BETWEEN
CITY OF FRESNO
AND
EDWARD J. JOHNSON
(Administrative Hearing Officer)**

This Services Agreement, (hereinafter referred to as the "Agreement"), effective November 1, 2013 is entered between the CITY OF FRESNO, a municipal corporation, (hereinafter referred to as "CITY"), and Edward J. Johnson, an individual and a resident of Mariposa, California, (hereinafter referred to as "PROVIDER").

PREFACE

This Agreement sets forth the terms and conditions under which PROVIDER shall perform services as Administrative Hearing Officer and includes an appointment by CITY's Chief Administrative Officer as more completely set forth in section 2 below and **Exhibit A** attached hereto and incorporated herein (hereinafter collectively referred to as the "Services").

RECITALS

WHEREAS, the CITY is itself unable to provide the Services; and

WHEREAS, CITY desires to obtain the Services from PROVIDER, and PROVIDER desires to provide the Services to CITY, on a non-exclusive basis and in full compliance with controlling federal, state and local laws, rules and regulations; and

WHEREAS, PROVIDER is possessed of unique and superior knowledge, skill, resources, training, and expertise in the rendition of the Services, and is fully competent, qualified, authorized, and able to perform the Services, holding any and all required licenses, permits and/or approvals; and

WHEREAS, PROVIDER provides such Services on a contract basis, as an independent contractor, possessed of and exercising the complete right to control the means of accomplishing said Services; and

WHEREAS, Section 4-107 of the Fresno Municipal Code and Administrative Order No. 6-19 provide certain guidelines for selection of service providers.

NOW THEREFORE, in consideration of the above recitals, which recitals are contractual in nature, the mutual promises herein contained, and for other good and valuable consideration hereby acknowledged, the parties agree as follows:

TERMS AND CONDITIONS

1. Term. This Agreement shall be effective from the date first set forth above and continuing through October 31, 2016, subject to such termination rights as are provided below. The City's Chief Administrative Officer shall twice have the prerogative to extend this Agreement for an additional one-year period upon written notification from the Chief Administrative Officer to PROVIDER.
2. Scope of Work. PROVIDER shall perform the Services described in **Exhibit A**.

- 2.1 Depending on the number of appeals for which PROVIDER is responsible, PROVIDER shall provide at least eight (8) days of Services per month, at eight (8) hours per day, for each month hereunder. Subject to the foregoing, PROVIDER'S daily schedule and hours worked under this Agreement on a given day shall generally be subject to PROVIDER'S discretion and **Exhibit A**.
- 2.2 PROVIDER acknowledges and agrees that any Services he provides to CITY shall be on a non-exclusive basis.
- 2.3 The parties acknowledge and agree that the PROVIDER, in his performance of this Agreement and the authority delegations provided for in this Agreement and **Exhibit A** hereto, shall exercise his independent judgment and shall not take direction, directly or indirectly, in connection therewith from the Chief Administrative Officer, the Mayor, the City Council (or any member thereof), or any other person. Decisions and dispositions of the PROVIDER shall have the full force and effect provided by law.
- 2.4 PROVIDER represents and warrants that he is qualified to act as an administrative hearing officer for purposes of Cal. Vehicle Code §§ 40200 et seq., meeting all experience, training, and current requirements thereunder.
3. Compensation. CITY shall pay PROVIDER as follows:
 - 3.1 On a flat rate basis according to PROVIDER'S fee schedule described in **Exhibit B** attached hereto and incorporated herein, compensating PROVIDER upon satisfactory rendition of each incidence of Services provided hereunder.¹
 - 3.2 Such fee shall be payable monthly in arrears upon CITY'S receipt and approval of PROVIDER'S certified written payment request and within thirty (30) business days thereof. PROVIDER shall utilize the payment certification and request form supplied by the CITY.
 - 3.3 PROVIDER agrees that, exclusive of cost reimbursement, PROVIDER'S total payments hereunder for each year of this Agreement shall not in any event exceed the sum of One Hundred Thousand and 00/100 dollars (\$100,000.00).
 - 3.4 PROVIDER agrees to provide any substantiation and support for Services, fees, costs, and expenses upon the reasonable request of the CITY for a period of three (3) years after final payment. Records of PROVIDER'S expenses pertaining to the Services 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 (3) years after final payment or, if longer, for any period required by law. In addition, all books, documents, papers, and records of PROVIDER pertaining to the Services shall be available for the purpose of making audits, examinations, excerpts, and transcriptions for the same period of time. This paragraph shall survive expiration or termination of this Agreement.
 - 3.5 CITY will make available in its City Hall a suitable room for the conduct of hearings. In addition, CITY will provide PROVIDER with a parking permit for the City Hall South parking lot. CITY will provide a private office in its City Hall for related business and

¹ Subject to any required Cal. Rev. & Tax Code § 18662 nonresident withholding.

reasonably necessary office equipment and supplies, including a computer, appropriate software, printer, audio recorder. PROVIDER is obligated to provide adequate and competent clerical support.

4. Termination, Remedies and Force Majeure.

- 4.1 CITY may not terminate this Agreement without cause unrelated to the outcomes of hearings. This Agreement shall terminate without any liability of CITY to PROVIDER upon the earlier of: (i) PROVIDER's filing for protection under the federal bankruptcy laws, or any bankruptcy petition or petition for receiver commenced by a third party against PROVIDER; (ii) ten (10) business days prior written notice with cause by CITY to PROVIDER; (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 Services; or (iv) expiration of this Agreement.
- 4.2 Immediately upon any termination or expiration of this Agreement, PROVIDER shall (i) immediately stop all work hereunder, except for completing those hearings that have commenced and where evidence has been presented prior to termination or expiration of this Agreement; (ii) immediately cause any and all of its subcontractors to cease work, except for completing those hearings that have commenced and where evidence has been presented prior to termination or expiration of this Agreement; and (iii) return to CITY any and all unearned payments and all properties and materials in the possession of PROVIDER that are owned by CITY. Subject to the terms of this Agreement, PROVIDER shall be paid compensation for satisfactory rendition of services prior to the effective date of termination. PROVIDER shall not be paid for any work or Services performed, or costs incurred, which reasonably could have been avoided. PROVIDER shall complete those hearings that have commenced and where evidence has been presented prior to termination or expiration of this Agreement, and subject to the terms of this Agreement, PROVIDER shall be paid compensation for satisfactory rendition of such services. The requirements of the preceding sentence shall survive expiration or termination of this Agreement.
- 4.3 In the event of termination due to the failure of PROVIDER to satisfactorily render services 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 PROVIDER, nor shall such payment impair or prejudice any remedy available to CITY with respect to the breach.
- 4.4 Upon any termination or expiration of the Agreement, 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.
- 4.5 PROVIDER shall provide CITY with adequate written assurances of future performance, upon CITY's Chief Administrative Officer's request, in the event PROVIDER fails to comply with any terms or conditions of this Agreement.

- 4.6 PROVIDER shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of PROVIDER 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. PROVIDER shall notify CITY's Chief Administrative Officer 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 CITY's Chief Administrative Officer of the cessation of such occurrence.
5. Indemnity. Except to the extent of California statutory tort immunities afforded CITY as a governmental agency, CITY agrees to indemnify, defend and save PROVIDER harmless against and from any and all claims made by or on behalf of any persons, firms, or corporations for loss, damages, or injury proximately caused by, or alleged to be proximately caused by, the parties' pursuit of this Agreement, and in any case any action or proceeding that may be brought against PROVIDER by reason of any such claim, CITY, upon notice from PROVIDER, covenants to resist or defend such action or proceeding through legal counsel chosen by CITY. PROVIDER agrees that this Agreement shall in no way act to abrogate or waive any immunity of CITY available under the Tort Claims Act of the State of California. Under no circumstances will CITY afford PROVIDER any greater rights of defense or indemnity than California law requires CITY to extend to its employees.
- 5.1 Without limiting CITY'S obligations under Section 5 above, the parties acknowledge and agree that CITY shall establish and maintain at all times hereunder reasonable reserves to "self insure" against liabilities provided for in this section 5.
- 5.2 This section 5 will survive expiration or termination of this Agreement.
6. Conflict of Interest. Prior to CITY'S execution of this Agreement, PROVIDER shall complete a City of Fresno Conflict of Interest Disclosure Statement. Said Statement is attached hereto as **Exhibit C** and incorporated herein by reference. During the term of this Agreement, PROVIDER shall have the obligation and duty to immediately notify CITY in writing of any change to the information provided by PROVIDER on **Exhibit C**.
- 6.1 PROVIDER 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 commission, board, committee, or similar CITY body. This requirement may be waived in writing by the CITY'S Chief Administrative Officer if no actual or potential conflict is involved.
- 6.2 PROVIDER shall comply with all applicable laws, rules, regulations and professional canons/requirements governing avoidance of impermissible client conflicts, including without limitation the requirements of the California Political Reform Act (Government Codes Section 87100 et. seq.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.).
- 6.3 PROVIDER represents and warrants that as of the effective date hereof, he represents no client whose interests are adverse to the CITY's.

6.4 In performing the Services to be provided hereunder, PROVIDER shall not be employed, managed or controlled by a person whose primary duties are parking enforcement, parking citation, processing, collection or issuance. PROVIDER shall be separate and independent from the citation, collection or processing function.

6.5 This section 6 shall survive expiration or termination of this Agreement.

7. Nondiscrimination. PROVIDER shall not employ discriminatory practices in the provision of services, employment of personnel, or in any other respect on the basis of race, color, creed, religion, sex, sexual preference, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability. During the performance of this Agreement, PROVIDER will comply with all laws and regulations, as applicable. Specifically, no person in the United States shall, on the grounds of race, color, creed, religion, sex, sexual preference, national origin, ancestry, ethnicity, age, marital status, status as a disabled veteran or veteran of the Vietnam era, medical condition, or physical or mental disability 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.
8. Invalid Provisions. The provisions of this Agreement are severable. In the event any term, covenant, condition or provision of the Agreement, or the application thereof to any person, entity, or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person, entity, or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated, provided that such invalidity, voiding or unenforceability of such covenant, condition or provision does not materially prejudice either party in its respective rights and obligations contained in the then remaining valid covenants, conditions or provisions of this Agreement.
9. Independent Contractor. PROVIDER is and throughout this Agreement shall be an independent contractor and not an employee, partner or agent of the CITY. However, CITY shall retain the right to verify that PROVIDER is performing his respective obligations in accordance with the terms hereof.
 - 9.1 Because of his status as an independent contractor, PROVIDER shall have absolutely no right to employment rights and benefits available to CITY employees. PROVIDER 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 his other obligations under this Agreement, PROVIDER shall be solely responsible for all matters relating to employment and tax withholding for and payment of PROVIDER'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, PROVIDER may be providing services to others unrelated to CITY or to this Agreement.

10. Partnership/Joint Venture. This agreement does not evidence a partnership or joint venture between PROVIDER and CITY. Unless specifically provided for herein, the PROVIDER shall have no authority to bind the CITY absent CITY'S express written consent. Except to the extent otherwise provided in this Agreement, PROVIDER shall bear his own costs/expenses in pursuit hereof.
11. 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 or deposited into the United States mail, by registered or certified mail, return receipt requested with postage prepaid, 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.
 - 11.1 Personal service, as aforesaid, shall be deemed served and effective upon delivery thereof. Service by mail, as aforesaid, shall be deemed to be sufficiently served and effective as of 12:00:01AM, on the fourth (4th) calendar day following date of deposit in the United States mail of such registered or certified mail, properly addressed and postage prepaid.
12. Non-Assignment. This Agreement is personal to PROVIDER and there shall be no assignment by PROVIDER of his rights or obligations under this Agreement without the prior written approval of CITY.
13. Non-Solicitation. PROVIDER represents and warrants that he has not paid or agreed to pay any compensation, contingent or otherwise, to solicit or procure this Agreement or any rights/benefits hereunder.
14. Compliance with Law. In providing the services required under this Agreement, PROVIDER 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.
15. Governing Law and Venue. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of California. Venue for purposes of the filing of any case, controversy or proceeding regarding the enforcement or interpretation of this Agreement and any rights and duties hereunder shall be Fresno County, California.
16. Attorney's Fees. If either party is required to commence any proceeding or legal action to enforce 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 in addition to any other relief to which such party may be entitled.
17. 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.

18. 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.

19. General Provisions.

19.1 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.

19.2 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.

19.3 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.

19.4 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.

19.5 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.

20 Final Agreement. This Agreement and any documents, instruments and materials referenced and incorporated herein represents the entire agreement between the parties with respect to the subject matter hereof. This Agreement may be modified only by written instrument duly authorized and executed by both CITY and PROVIDER.

21 Recycling Program. In the event PROVIDER 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, PROVIDER 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.

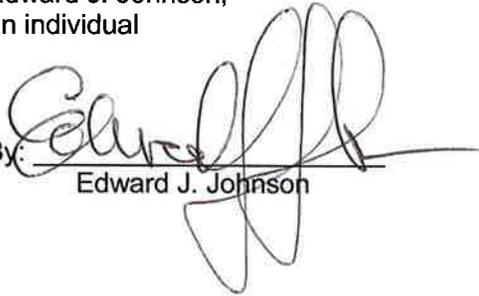
- (iii) Cooperate with and demonstrate to the satisfaction of CITY's Solid Waste Management Division the establishment of the recycling program in paragraph (i) above and the ongoing maintenance thereof.

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

CITY OF FRESNO,
a municipal corporation

Edward J. Johnson,
an individual

By: 
Bruce Rudd
City Manager

By: 
Edward J. Johnson

ATTEST:
YVONNE SPENCE
City Clerk

By: 
Deputy

APPROVED AS TO FORM:
DOUGLAS T. SLOAN
City Attorney

By: 
Mary Anne B. Tooke Date
Deputy

CITY:
City of Fresno
Attention Bruce Rudd
Fresno, CA 93721-3601
Fax: 559-621-7776
Phone: 559-621-7780

PROVIDER:
Edward J. Johnson
5622 Heddon Ct.
Mariposa, CA 95338-9765
Phone: 559-760-7659
Fax:

Attachments:

1. Exhibit A – Scope of Services
2. Exhibit B – Fee Schedule
3. Exhibit C – Conflict of Interest Disclosure Form

EXHIBIT A
SCOPE OF SERVICES
Agreement for Services between City of Fresno and Edward J. Johnson
Administrative Hearing Officer
PROJECT TITLE

PROVIDER shall perform services as the Administrative Officer for the City of Fresno pursuant to and subject to Fresno Municipal Code Chapter 1, Article 4 and Vehicle Code §40215, as provided in this Agreement and in accordance with the following additional requirements and descriptions:

1. Depending on the number of appeals for which PROVIDER is responsible, PROVIDER shall provide at least eight (8), eight (8) hour days of Services in each month hereunder, prorated for portions of any month. Subject to the foregoing, PROVIDER'S daily schedule and hours worked under this Agreement on a given day shall generally be subject to PROVIDER'S discretion and without limitation PROVIDER may pro-rate a day's work over more than one calendar day.
2. PROVIDER'S point of contact with the CITY shall be Assistant City Manager, Renena Smith.
3. PROVIDER and CITY each acknowledge and agree that PROVIDER will be a fair and impartial hearing officer; and that CITY, except for purposes of submitting evidence and testimony as part of the hearing proceeds, will not in any manner influence, directly or indirectly, decisions made or to be made by PROVIDER.
4. PROVIDER shall perform services, on a nonexclusive basis, as one of the City Manager's appointed independent administrative "Permanent" Hearing Officers pursuant to and subject to Chapter 1, Article 4 of the Fresno Municipal Code, and California Vehicle Code Section 40215.
5. PROVIDER shall immediately notify the City Manager of (i) any specific matter coming before PROVIDER for which PROVIDER must recuse himself/herself from hearing the matter because of a conflict of interest, and (ii) any practical reason why PROVIDER is unable to serve. Under such circumstances, the City Manager may appoint a temporary hearing officer to hear the respective administrative hearing(s) or have the matter assigned to another permanent hearing officer.
6. PROVIDER shall sit as the trier of fact and shall rule on questions of law and admissibility of evidence. PROVIDER shall demonstrate the objectivity necessary to conduct a fair and impartial review.
7. PROVIDER shall provide fair and impartial hearings for appeals of CITY-issued administrative citations, orders, decisions or determinations which may involve violations of CITY's zoning or housing regulations; public nuisance abatements; business permit denials, suspensions and revocations, such as taxicab or massage business permits; violations, or denials, of CITY regulatory permits, such as for card rooms, funeral processions or dance halls; and miscellaneous other matters such as dangerous animal determinations, parking citations, debarment of bidders, and certain appeals in the competitive procurement processes of CITY.

8. PROVIDER shall be responsible for performance of all aspects of conducting the administrative hearings, including related correspondence with appellants and respondents, scheduling of hearings, preparation and preservation of the hearing record and the rendering of a decision in each matter, all in accordance with and subject to controlling law and the time frames provided therein.
9. PROVIDER shall conduct hearings in the facility designated and provided by CITY.

EXHIBIT B
FEE SCHEDULE FOR SERVICES
Agreement for Services between City of Fresno and Edward J. Johnson
Administrative Hearing Officer
PROJECT TITLE

Administrative Hearing Officer Services: At the rate of Eight Thousand Three Hundred Twenty and 00/100 Dollars (\$8,320.00) per month for at least eight (8), eight (8) hour days of Services rendered per month, but in no case exceeding One Hundred Thousand Dollars and 00/100 (\$100,000) per year.

Costs, Expenses and Reimbursables: Up to Two Thousand Dollars (\$2000) per year in reimbursement for reasonable costs incurred, such as: any required licensure; mileage in connection with site visits; and expenses in connection with attendance at one meeting of the California Public Parking Association annual meeting per year. Provided, however, that all such costs, expenses and reimbursables shall not exceed any applicable CITY rates.

Exclusive of costs, expenses and reimbursables, total compensation payable to PROVIDER for each year under this Agreement shall not in any event exceed One Hundred Thousand Dollars (\$100,000.00).

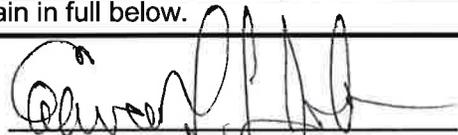
EXHIBIT C

DISCLOSURE OF CONFLICT OF INTEREST

Administrative Hearing Officer
PROJECT TITLE

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	<input type="checkbox"/>	<input checked="" 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 checked="" 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 checked="" 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 checked="" 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 checked="" type="checkbox"/>
* If the answer to any question is yes, please explain in full below.			

Explanation: _____



Signature
Edward Johnson
(name)

(company)

5622 Heddon Ct
(address)

Mariposa CA 95338
(city state zip)

(city state zip)

Additional page(s) attached.