

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

THIS AGREEMENT is made and entered into effective the _____ day of _____, 2018, by and between the CITY OF FRESNO, a California municipal corporation (CITY), and [NBS], [NBS Government Finance Group] (CONSULTANT).

RECITALS

WHEREAS, CITY desires to obtain professional financial fee analysis services for Code Enforcement Fee Study Analysis,(Project); and

WHEREAS, CONSULTANT is engaged in the business of furnishing services as a [financial fee analysis emphasizing municipalities] 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 Development and Resource Management Director (Administrator) or designee.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and of the covenants, conditions, and premises 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 (Effective Date) and shall continue in full force and effect through December 31, 2018, subject to any earlier termination in accordance with this Agreement. The services of CONSULTANT as described in **Exhibit A** are to commence upon the Effective Date and shall be completed in a sequence assuring expeditious completion, but in any event, all such services shall be completed prior to expiration of this Agreement and in accordance with any performance schedule set forth in **Exhibit A**.

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 \$50,000, paid on the basis of the rates set forth in the schedule of fees and expenses contained in **Exhibit A**.

(b) Detailed statements shall be rendered monthly for services performed in the preceding month 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 Administrator'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 Administrator 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 Administrator of the cessation of such occurrence.

5. Confidential Information and Ownership of Documents.

(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 the Administrator. 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, 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 writings and 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. CONSULTANT shall not permit the reproduction or use thereof by any other person except as otherwise expressly provided herein.

(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.) and the regulations of the Fair Political Practices Commission concerning disclosure and disqualification (2 California Code of Regulations Section 18700 et. seq.). 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 unless fully disclosed to and approved by the City Manager, in advance and in writing. 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. Notwithstanding any approval given by the City Manager under this provision, CONSULTANT shall remain responsible for complying with Section 9(b), above.

(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 Administrator 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.

[Signatures follow on the next page.]

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: Jennifer K. Clark
Jennifer K. Clark, AICP
Director, Development and Resource
Management Department

ATTEST:
YVONNE SPENCE, MMC
City Clerk

By: _____

Deputy

No signature of City Attorney required.
Standard Document #ALL-S 3.1 has
been used without modification, as
certified by the undersigned.

By: Kelli Furtado
Kelli Furtado
Assistant Director, Development and
Resource Management Department

Addresses:

CITY:
City of Fresno
Attention: Kelli Furtado,
[Assistant Director]
2600]
Fresno, CA [93721]
Phone: (559) 621-8002
FAX: (559) [457-1547]

Attachments:

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

NBS,
NBS Government Finance Group

By: Dave Ketcham

Name: Dave Ketcham

Title: Vice President

(If corporation or LLC, Board
Chair, Pres. or Vice Pres.)

By: Mike Rentner

Name: Mike Rentner

Title: Secretary

(If corporation or LLC, CFO, Treasurer,
Secretary or Assistant Secretary)

Any Applicable Professional License:

Number: _____

Name: _____

Date of Issuance: _____

CONSULTANT:

[NBS]

Attention: Michael Rentner,
[President]

32605 Temecula Parkway Suite 100

Temecula, CA 92592

Phone: [800-676-7516]

FAX: [951-296-1998]

EXHIBIT A

SCOPE OF SERVICES

**Consultant Service Agreement between City of Fresno (City)
and [NBS] (Consultant)
Code Enforcement Fee Study Analysis**



32605 Temecula Parkway, Suite 100
Temecula, CA 92592
Toll free: 800.676.7516
www.nbsgov.com

June 21, 2018

Jennifer Clark
Director
Development and Resource Management Department
City of Fresno
2600 Fresno Street, Room 3065
Fresno, CA 93721

Subject: Proposal for Code Enforcement Fee Study

Dear Ms. Clark,

NBS thanks you for the opportunity to assist the City in updating its code enforcement fees. As Director of NBS' Financial Consulting Group, I have worked with the City's development services and fire departments for more than a decade on user and regulatory fee analyses. We at NBS collectively have decades of fee setting experience and in particular have completed other similar and recent studies with a focus on code enforcement fees for service. We can begin this project in mid-August or early September 2018 should the City wish to proceed.

SCOPE OF SERVICES

The goal of this effort is to establish fees for service in accordance with the Development and Resource Management Department's (DARM) code enforcement operations and practices. The Study will identify the full cost of service required for these activities and facilitate the development of strategies/policy for recovery of those costs in user/regulatory fees. We would summarize the unique nature and issues of this particular Study as follows:

1. Clarification of the difference between user/regulatory fees for service and fines or penalties, per various sections of the State Constitution, subsequent code sections, and local City ordinances.
2. Though fines and penalties are not limited to the cost of providing the service, the City may wish to understand the cost of providing services whenever feasible
3. Comparison of fee, fine, and penalty amounts to other similar agencies

In general, the Scope of Services includes fees for service that can be analyzed on a staff-time estimate per activity or service basis. The key deliverables for this project include:

- A written report detailing the justification of fees to be considered for adoption

- Technical appendices displaying the analytical support for findings and action items
- Sufficient onsite events and/or meetings with staff during the analytical phases of the project to develop Study outcomes
- Future access to NBS experts as the need arises

The outline below describes the step-by-step Work Plan to be followed by NBS in completion of the Scope of Services:

TASK 1: COMMENCEMENT AND DATA COLLECTION

Acquire published or accessible data from the City, centering on adopted budgets, recent financial performance (revenues and expenditures), current labor cost detail and classifications, organizational structures, existing relevant policies, existing time-tracking and volumetric data, and other items of a more global nature. NBS consultants will gather information independently as accessible through online resources, and issue a consolidated data request to City staff for the balance.

Conduct a project commencement meeting with City staff members who will manage the overall progress, completion, and implementation of the Study's findings. This meeting will include a discussion of expectations and an overview of the process for conducting the analysis, including: coordination for onsite and remote interactions with City personnel in all divisions, timeline for project completion, and other topics.

TASK 2: ORGANIZATIONAL ANALYSIS AND FEE STRUCTURE DESIGN

Conduct on-site interviews with key staff to acquire a broad understanding of the organization, performance of core services, functions of service, and staffing structure/lines of command.

Conduct additional meetings with staff responsible for discussing current and future fee schedules. Applying industry expertise, NBS consultants will review, discuss, recommend and develop fee structures (as opposed to amounts) for each area under review. Fee structure options will include a complete discussion of available fee methodologies, consideration of flat fees, variable fees based on measurable service characteristics (e.g., project types, size, etc.), and variable fees based on staff time (e.g., hourly rates with deposits), etc. Fee structure can also mean rewriting fee categorical descriptions to retain flat fees for administrative ease but introducing variation in the applicable fee for an applicant or user (such as non-resident, etc.).

TASK 3: CORE DATA COLLECTION

Determine and communicate the subsequent steps to acquire and/or develop organizational, performance, and time information necessary for establishing costs of service for justifying fees. Develop an approach and tools for acquiring and/or developing the organizational, performance, and time information necessary for justifying fees. For areas where simple remote questionnaires may suffice, develop and route forms to key personnel. For areas where onsite interviews or data gathering workshops will be necessary, coordinate scheduling and develop interview tools.

To analyze costs at a specific fee level, the Study will require collection of tracked and/or estimated average volumetric data, depending on availability. Our data requests generally include the number of each fee item collected.

Evaluate performance capacity measures versus workload and staffing levels. Up to two (2) iterations of the time and service analysis are included to ensure that the cost of service analysis is defensible and reasonable. The product of this task will be a model of the complete organizational, performance, and time requirements for the services under review in this Study.

TASK 4: TIME VALUATION

Prepare the analytical module that will perform the time valuation analysis. Integrate City financial/budget data, payroll/labor data, and established overhead charges or cost allocations, and display various types of costs as separate line items in the analytical models, as follows:

- Define the **direct costs** of service for each service under review in this Study. Direct costs reflect those specifically related to the provision of service embodied by the activities reflected in the fee schedule, as well as any potential additions to that list.
- Define the **indirect and support costs** of service for each service under review in this Study. Indirect costs are those incurred to support the provision of direct service, and may be reflected in many functional forms, depending on the division and/or direct services in questions. Examples of indirect functions include administrative support, customer service/public information, code/policy/standards maintenance, training, and management. Outside of discrete functions, indirect costs may also include tangible items, such as materials and supplies, or support from one division to another.
- Determine applicable **Citywide indirect costs**, such as those defined by the City's internal Cost Allocation Plan to determine appropriate shares of administrative, support services, and/or governance costs. The City is responsible for providing this data.

Calculate fully-burdened hourly rates considering the applicability of productive hours or direct-billed hours as the basis for the rate calculation, depending on the division or function in question.

TASK 5: COST OF SERVICE ANALYSIS

Determine the full cost of service at an activity level for each individual service currently associated with a fee or selected as a candidate for a new fee. Apply performance/time estimates at identified activity levels to the fully-burdened hourly rates developed in previous tasks to determine the full cost of service for each fee-related service.

Review the draft Cost of Services analysis with the Department and determine any necessary refinements to core assumptions. Discuss applicability in current and/or alternative fee structures. Discuss pricing objectives from the divisional perspective, i.e., comfort with full cost recovery or some alternative level of cost recovery. Consultants will facilitate this conversation by discussing public/private benefits or causation of each activity, potential market sensitivity, interaction with established City goals or policies, behavior modification influence, and other considerations.

Based on review with City staff, revise core analytical modules and finalize the activity costs of service. (This represents one planned iteration of the analytical work products.) Calculate the final unit costs of service that will serve as the foundation for any revised fee amounts and/or fee structure.

Assist the Department in defining recommended cost recovery targets which the community can bear, and which support existing cost recovery policies established by the City. Apply existing cost recovery policies and/or pricing objectives. Discuss typical pricing and cost recovery objectives seen in other jurisdictions. Model the impacts of recommended fee levels on total revenues.

TASK 6: COMPARATIVE STUDIES

Compare similar user and regulatory fees in up to five (5) neighboring and comparable communities. A list of communities will be selected and approved by City staff. NBS will download the respective fee schedules from the Internet. If schedules are not available on the Internet, NBS will make a reasonable attempt to contact the agency to obtain a copy of their current fee schedules. NBS will then compile a comparison of the fee categories and amounts, for the most readily comparable fee items that match the City's existing fee structure. NBS will make a reasonable attempt to contact each comparison agency for clarification regarding fee categories and amounts. The City may also wish to provide contact information to individuals known in each agency that may be available to assist NBS in confirming information regarding fee schedules and amounts.

TASK 7: DOCUMENTATION

Prepare a written report describing the complete work and findings of the project. Include an executive summary, narrative sections detailing the Fee Structure Design, Organizational Analysis, Time Valuation, and Cost of Service Analysis. Include discussion of cost recovery policies advocated in the final, recommended schedule of fees and revenue impacts. Issue the draft report in electronic form (portable document format) to Department management for review. Incorporate one round of review and comment from the department and issue the final report.

TASK 8: PRESENTATION OF RESULTS AND LEGISLATIVE PROCESS

Prepare foundational presentation materials for use in one (1) public meeting, and present Study findings and respond to questions on behalf of or in support of Department staff.

PROJECT TIMELINE

A Study of this nature typically requires 90-120 days to complete, not including public meetings and adoption hearings. This is a reasonable timeline allowing for quality data submittals to be accomplished by staff amongst competing priorities. Upon project commencement, NBS would provide a more detailed timeline for the City's review and mutual acceptance.

PROJECT TEAM

The following provides an overview of NBS professional staff that would be assigned to this project, as well as their roles and responsibilities.

Full-length resumes for the key project team staff and client reference information are available upon request.

NICOLE KISSAM, DIRECTOR

Nicole Kissam, Director of NBS' Financial Consulting Group, will manage the ongoing administration of the project. She will work closely with the Department's project manager to monitor schedule and delivery of work products and also provide consulting and analysis as warranted.

GRETA DAVIS, ASSOCIATE DIRECTOR

Greta Davis is an Associate Director in NBS' Financial Consulting Group with over 25 years of experience in cost allocation and user fee analysis for local governments. Depending on availability and timeline for this engagement, Greta may participate in the technical and analytical aspects of the fee model's development, as well as presentation of outcomes to the City's staff, management, and Council as required.

KEVIN GARDNER AND ARIELLE PLOURDE, FINANCIAL ANALYSTS

NBS Financial Analysts perform large-scale data analysis and validation, design and implement cost allocation and rate models, and prepare technical outcomes at the direction of the Project Manager. They also facilitate data collection and reminders to City staff in order to keep projects moving along the agreed upon timeline for completion. All NBS Financial Analysts have a minimum Bachelors-level degree in Business, Finance, or Economics and between one to three years of professional work experience with NBS or in a related field.

TIM SEUFERT, CLIENT SERVICES DIRECTOR

As Client Services Director, Tim Seufert will ensure that the City's fundamental objectives are being met at all times and that the project is proceeding on a timely basis. He is included on the team as an active representative of our company's commitment to the highest level of service. Tim Seufert has two decades of local government experience with a wide variety of revenue tools. He also has a decade of corporate financial experience.

FEES

Our professional fees are based on our understanding of the City's needs and the effort we believe is necessary to complete the scope of services/task plan described. We express this honestly and transparently through our price proposal. **Should the proposed project cost noted here fall outside of the City's expectations, please let us know so we can discuss a scope and project fee that are mutually agreeable.**

The following hourly rates are applied to derive the overall not-to-exceed pricing for the requested scope of services. Hourly rates for NBS are inclusive of all costs associated with professional time, such as travel, document production, and incidentals. The rates will apply for the duration of our contract:

NBS HOURLY RATES

Title	Hourly Rate
Director	\$205
Associate Director	190
Consultant	140
Analyst	120

DETAILED PROJECT BUDGET

We would complete the Scope of Services as described in this document for fixed fee amount of **\$24,780**. A detailed budget estimate by task is included for the City's review:

PROJECT COST DETAIL City of Fresno - Code Enforcement Fee Study	NBS Consultant Labor (Hours)		Grand Totals	
	Director	Financial Analyst	Consultant Labor (Hours)	Consultant Costs (\$)
Task Plan				
<i>Hourly Rate</i>	\$205	\$120		
Task 1. Commencement and Data Collection	2.0	1.0	3.0	530
Task 2. Organizational Analysis and Fee Structure Design	8.0	16.0	24.0	3,560
Task 3. Core Data Collection	14.0	20.0	34.0	5,270
Task 4. Time Valuation	6.0	12.0	18.0	2,670
Task 5. Cost of Service Analysis	8.0	12.0	20.0	3,080
Task 6. Comparison Survey	2.0	16.0	18.0	2,330
Task 7. Documentation	8.0	10.0	18.0	2,840
Task 8. Legislative Process	12.0	2.0	14.0	2,700
Subtotal	60.0	89.0	149.0	\$ 22,980
Travel Expenses	-	-	-	1,800
TOTAL	60.0	89.0	149.0	\$ 24,780

Optional Services

Should the City wish to retain NBS for additional public meetings or presentations, a fee of \$1,500 per meeting would apply, plus any related travel expenses.

Terms

At no time will we invoice for charges in excess of the fee to which the City of Fresno and NBS mutually agree. Should the City specifically request additional services beyond those described in this document, we will discuss those requests and associated costs at that later time, and only invoice for additional fees upon separate written authorization from the City. NBS proposes to invoice the City on a monthly basis following recorded consultant time on the project and paralleling our completion of the work. If payment is not

received within 90 days, simple interest will begin to accrue at the rate of 1.5% per month. Either party can cancel contracts with 30 days' written notice.

City's Responsibilities

The City shall furnish NBS with any pertinent information that is available to City and applicable to the Services. The City shall designate a person to act with authority on its behalf in respect to the Services. The City shall promptly respond to NBS' requests for reviews and approvals of its work, and to its requests for decisions related to the Services. The Client shall notify NBS of the occurrence of any events listed in the Continuing Disclosure Certificate. City understands and agrees that NBS is entitled to rely on all information, data and documents (collectively, "Information") supplied to NBS by City or any of its agents, contractors or proxies or obtained by NBS from other usual and customary sources including other government sources or proxies, as being accurate and correct, and NBS will have no obligation to confirm that such Information is correct and that NBS will have no liability to City or any third party if such Information is not correct.

CLOSING

NBS deeply values our professional relationship with the City over the years. If awarded this project, NBS will provide an excellent product. Please feel free to contact me at any time if with questions or needs for additional information.

Sincerely,



Nicole Kissam
Director - NBS

SCHEDULE OF FEES AND EXPENSES

Cost not to exceed \$50,000.

EXHIBIT B

INSURANCE REQUIREMENTS

Consultant Service Agreement between City of Fresno (CITY) and [NBS] (CONSULTANT)

Code Enforcement Fee Study Analysis

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.
- 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 to on the Certificate of Insurance, and approved by, the CITY's Risk Manager or designee. At the option of the CITY's Risk Manager or 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) ~~CONSULTANT shall provide a financial guarantee, satisfactory to CITY's Risk Manager or 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.~~

waived

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 relating 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)~~ ^{three (3)} 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)~~ ^{three (3)} 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)~~ ^{three (3)} years 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.

Should any of the required policies provide that the defense costs are paid within the Limits of Liability, thereby reducing the available limits by any defense costs, then the requirement for the Limits of Liability of these policies will be twice the above stated limits.

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 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.

SUBCONTRACTORS - If CONSULTANT subcontracts any or all of the services to be performed under this Agreement, CONSULTANT shall require, at the discretion of the CITY Risk Manager or designee, subcontractor(s) to enter into a separate Side Agreement with the City to provide required indemnification and insurance protection. Any required Side Agreement(s) and associated insurance documents for the subcontractor must be reviewed and preapproved by CITY Risk Manager or designee. If no Side Agreement is required, CONSULTANT will be solely responsible for ensuring that its subcontractors maintain insurance coverage at levels no less than those required by applicable law and is customary in the relevant industry.

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

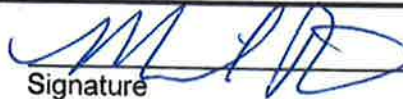
DISCLOSURE OF CONFLICT OF INTEREST

Code Enforcement Fee Study Analysis

		YES*	NO
1	Are you currently in litigation with the City of Fresno or any of its agents?	☐	☒
2	Do you represent any firm, organization or person who is in litigation with the City of Fresno?	☐	☒
3	Do you currently represent or perform work for any clients who do business with the City of Fresno?	☐	☒
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?	☐	☒
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?	☐	☒
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?	☐	☒
* If the answer to any question is yes, please explain in full below.			

Explanation: _____

☐ Additional page(s) attached.


Signature

6/28/18
Date

Mike Rentner
(name)

NBS
(company)

32605 Temecula Parkway, Ste 100
(address)

Temecula, CA 92592
(city state zip)