

**AGREEMENT TO DEFEND PUBLIC OFFICER OR EMPLOYEE, RESERVATION OF RIGHTS  
AND NON WAIVER AGREEMENT**

1           WHEREAS, the undersigned public officer or employee is a party defendant in the  
2 following action:

3           NAME OF CASE: William Jesse Gilliam v County of Fresno, et al.

4                           ACTION NO: 1:19-CV-01711-DAD-SAB

COURT: Eastern District  
5 Court

6           WHEREAS, the undersigned officer or employee claims that the said action  
7 referenced above arose out of acts or omissions which, if they occurred at all, occurred within  
8 the course and scope of the officer's or employee's employment with the County of Fresno or of  
9 a Judicial District thereof and were not the result of fraud, corruption or malice; and

10           WHEREAS, the undersigned officer or employee has requested that the County of  
11 Fresno undertake his/her defense in said action pursuant to Article 4 (commencing with section  
12 825), Chapter 1, Part 2, Division 2.6 of Title 1 of the Government Code and said County is  
13 willing to conduct said defense subject to a reservation of its rights/non waiver agreement to the  
14 full extent permitted in said provision of the Government Code.

15           Matters Covered Under this Reservation of Rights:

- 16                   • Violation(s) of Constitutional rights which occurred within the course and  
17 scope of your employment.

18           Matters NOT COVERED by the County of Fresno under this Reservation of  
19 Rights/Non-Waiver Agreement:

- 20                   • Any actions outside the course and scope of your employment.
- 21                   • Any actions within the course and scope of your employment that were/are  
22 reckless, grossly negligent, willful, wanton, fraudulent, oppressive,  
23 malicious, arbitrary or capricious.
- 24                   • Punitive damages (which are currently alleged in this case).
- 25           • Pursuant to this agreement, the County of Fresno may take the following actions if  
26 the facts of this case warrant:
- 27                   1. Seek a declaration of rights and duties regarding its defense and/or  
28 indemnity obligations;

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2. Withdraw our defense and seek reimbursement for defense fees incurred in defending claims with no potential for coverage;
3. Seek reimbursement for any judgement or settlement paid by County of Fresno on the ground that the sums were not paid in connection with covered claims;
4. The right to have separate verdict form at trial for non-covered claims;
5. The right to amend this agreement at a later time.

*Please bear in mind that the County of Fresno is not in any way asserting the allegations against you have merit. The County of Fresno is simply stating that the claims, or a portion of them, may not be covered.*

PLEASE NOTE: the Public Officer or Employee signing this document has the right to seek advice of outside counsel/independent counsel at any time.

I, Judy Case McNairy, have read the above information and have had an opportunity to ask questions. I am requesting that the County of Fresno undertake my defense in the above-entitled action subject to a RESERVATION OF RIGHTS. Notwithstanding the terms of this agreement, I do not waive any rights to provision of counsel and indemnification afforded under California law. I understand that I have the continuing right to seek advice of outside/independent counsel at any time and will advise the County of Fresno as soon as possible should I want to do so.

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2 IN WITNESS WHEREOF, the parties hereto have executed this Agreement on this  
3 \_\_\_\_ day of \_\_\_\_\_, 2020, in the County of Fresno, State of California.

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5 **COUNTY OF FRESNO**

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7  
8 By:   
9 **Public Officer or Employee**

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12 \_\_\_\_\_  
13 Ernest Buddy Mendes, Chairman of the  
14 Board of Supervisors of the County of  
15 Fresno

16 **ATTEST:**  
17 Bernice E. Seidel  
18 Clerk of the Board of Supervisors  
19 County of Fresno, State of California

20 By: \_\_\_\_\_  
21 Deputy  
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