

# SETTLEMENT AGREEMENT AND RELEASE

This settlement agreement and release is dated September 25, 2018, and is between the COUNTY OF FRESNO, a political subdivision of the State of California ("County"), and WILLIAMS & FICKETT, a California general partnership ("Plaintiff").

## Recitals

On February 13, 2013, the Plaintiff filed an action against the County for refund of personal property taxes, titled *Williams & Fickett v. County of Fresno, et al.*, Fresno County Superior Court Case No. 13CECG00461 ("Action").

The Plaintiff, in essence, alleges in the Action that the County, for tax years 1994 through 2001, assessed certain personal property to the Plaintiff for purposes of property taxes. The Plaintiff further alleges that it did not own that personal property on the relevant lien dates for those years, and thus disputes the assessment of that property to Plaintiff as unlawful. The Plaintiff seeks a refund of property taxes that it paid based on the disputed assessments.

The County has denied, and continues to deny, that Plaintiff is entitled to a refund of property taxes.

The parties wish to avoid the disruption, inconvenience, uncertainty, and expense associated with further litigation in this matter. To that end, the parties wish to compromise, settle, and resolve the matter on the terms provided in this agreement.

## The parties therefore agree as follows:

1. **Recitals.** The recitals above are true and correct.
2. **Effective Date.** This agreement is effective on September 25, 2018.
3. **Payment by County.** No later than October 11, 2018, the County shall pay to the Plaintiff, in immediately available funds, the total sum of \$297,000.00. Payment shall be made to Dowling Aaron Incorporated Client Trust Account.

1       **4. Request by Plaintiff for Dismissal.** Within ten (10) days after receipt of payment,  
2       the Plaintiff shall cause to be executed and filed a request for dismissal of the Action  
3       with prejudice.

4       **5. Attorney's Fees.** Each party shall bear its own attorney's fees and costs arising  
5       from the Action and related matters.

6       **6. Release and Discharge of County.** In consideration for the covenants in this  
7       agreement, the Plaintiff, for itself, its officers, employees, agents, administrators,  
8       successors, and assigns, hereby releases and forever discharges the County, its  
9       elected and appointed officials, officers, employees, agents, attorneys,  
10      administrators, successors, and assigns, from any and all claims, demands, and  
11      causes of action of whatever kind or nature arising out of or in any way connected  
12      with the matters, transactions, or events which are the subject of the above-  
13      referenced Action.

14      **7. Release and Discharge of Plaintiff.** In consideration for the covenants in this  
15      agreement, the County, for itself, its elected and appointed officials, officers, employees,  
16      agents, administrators, successors, and assigns, hereby releases and forever  
17      discharges the Plaintiff, for itself and its officers, employees, agents, attorneys,  
18      administrators, successors, and assigns, from any and all claims, demands, and causes  
19      of action of whatever kind or nature arising out of or in any way connected with the  
20      matters, transactions, or events which are the subject of the above-referenced Action.

21      **8. Waiver of Section 1542.** The parties acknowledge and affirm that they are  
22      familiar with Section 1542 of the California Civil Code, which provides that:

23               **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
24               **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO**  
25               **EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING**  
26               **THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST**

1                   **HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT**  
2                   **WITH THE DEBTOR.**

3           The parties hereby knowingly and voluntarily agree that the releases provided for herein  
4 are intended to cover claims, known or unknown, whether mature or contingent, arising out of or  
5 in any way related to the Action and acknowledge and agree that this waiver is an essential and  
6 material term of the settlement that led to this agreement.

7           9. **No Admission.** The parties agree that this agreement compromises and settles the  
8           Action and that nothing in this agreement is an admission of liability by either party.

9           10. **Voluntary Settlement.** The parties negotiated the terms of this agreement in good  
10           faith, and those terms reflect a settlement that the parties reached voluntarily after  
11           consultation with competent legal counsel. Each party specifically represents that,  
12           before signing this agreement, it has had a reasonable time to consider whether to  
13           accept this agreement. Each party further represents that it has carefully read and  
14           fully understands all terms of this agreement, and that it is voluntarily, knowingly, and  
15           without coercion, entering into this agreement based upon its own judgment.

16           11. **Severability.** If anything in this agreement is found by a court of competent  
17           jurisdiction to be unlawful or otherwise unenforceable, the balance of this agreement  
18           remains in effect, and the parties shall negotiate in good faith to modify this  
19           agreement to effectuate the original intent of the parties so that the transaction  
20           contemplated by the parties is fulfilled to the greatest extent possible.

21           12. **Warranty of Capacity.** The Plaintiff represents and warrants that: (a) no other  
22           person or entity has, or has had, any interest in the claims, demands, obligations, or  
23           causes of action referred to in this agreement; and (b) it has not sold, assigned,  
24           transferred, conveyed, or otherwise disposed of any of the claims, demands,  
25           obligations, or causes of action referred to in this agreement.

26           13. **Authorization.** The Plaintiff represents and warrants to the County that:

1 (a) The Plaintiff is duly authorized and empowered to sign and perform its  
2 obligations under this agreement.

3 (b) The individual signing this agreement on behalf of the Plaintiff is duly authorized  
4 to do so and his or her signature on this agreement will legally bind the Plaintiff to the  
5 terms of this agreement.

6 **14. Entire Agreement.** This agreement is the entire agreement between the Plaintiff and  
7 the County with respect to the subject matter of this agreement, and it supersedes all  
8 previous negotiations, proposals, commitments, writings, advertisements,  
9 publications, and understandings of any nature unless those things are expressly  
10 included in this agreement.

11 **15. Enforceability of Agreement.** The parties agree that the terms of this agreement  
12 are admissible in any proceeding to enforce or interpret its terms and that the terms  
13 of this agreement are specifically enforceable pursuant to the provisions of California  
14 Code of Civil Procedure Section 664.6 and other relevant authorities.

15 **16. Modification.** This agreement may not be modified, and no waiver is effective,  
16 except by another written agreement that is signed by both parties.

17 **17. Future Attorney's Fees.** If any additional or future legal proceedings are necessary  
18 by either of the parties to enforce this agreement or a declaration of any rights under  
19 the terms of this agreement, the prevailing party in that proceeding shall be entitled  
20 to receive from the other party who opposes such action all costs incurred including,  
21 but not limited to, reasonable attorney's fees.

22 **18. Additional Documents.** Both parties will cooperate fully, execute all supplementary  
23 documents, and take all additional actions that are necessary or appropriate to give  
24 full force and effect to the terms and intent of this agreement.

25 **19. Headings.** The headings of this agreement are for convenience only and may not be  
26 used to construe, interpret, or determine the validity of this agreement.

20. **Counterparts.** This agreement may be signed in counterparts, each of which is deemed an original, and all of which together constitute this agreement.

The parties have executed this settlement agreement and release as of the date first written above.

PLAINTIFF

COUNTY OF FRESNO

Mary Fickett  
(Authorized Signature)  
Mary Fickett, partner  
Print Name & Title  
P.O. Box 276  
Firebaugh, CA 93622  
Mailing Address

Sal Quintero  
Sal Quintero, Chairperson of the Board of  
Supervisors of the County of Fresno

ATTEST:  
Bernice E. Seidel  
Clerk of the Board of Supervisors  
County of Fresno, State of California

By: Susan Bishop

For accounting use only:

Fund 1150

Subclass 19240

Account 1450