

AGREEMENT TO MEDIATE/CONFIDENTIALITY AGREEMENT
American Arbitration Association Mediation Case: 01-24-0000-1375

Stephen K. Davis – and - Fresno Unified School District – and - Harris Construction Co.,
Inc. – and - Atkinson Andelson Loya Ruud & Romo

This agreement is made between the undersigned parties and their attorneys, hereinafter collectively referred to as "Disputants", and Deborah Rothman, hereinafter referred to as "Mediator." It is made to implement the parties' desire to reach a settlement of existing controversies between and among them through mediation.

In consideration of the above, the Disputants and Mediator agree as follows:

1. Engagement and Fee of Mediator. Disputants other than Stephen K. Davis hereby agree to engage and pay the American Arbitration Association on behalf of Mediator a fee of \$11,000 per day (10 hours) of mediation, plus expenses, if any, and \$1100 per hour for time spent beyond 10 hours of mediation, including time for necessary pre- and/or post-mediation services, including phone calls, e-mails, reviewing and analyzing the parties' mediation positions and interests, and otherwise preparing for and conducting the mediation. In all other respects, all Disputants, including Mr. Davis, are bound by the provisions of this Agreement.
2. Obligation of Mediator. Mediator agrees to serve the Disputants as mediator at such times and places requested by the Disputants, or any of them, and the Mediator, subject to the Mediator' reasonable availability. The Mediator is an impartial, neutral intermediary who is not an advocate for any party. Her role is to encourage and facilitate the resolution of the dispute in an informal and non-adversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement by, e.g., assisting the parties in identifying issues, fostering joint problem-solving, and exploring settlement alternatives. The decision-making authority rests with the parties.
3. Full Disclosure. Disputants acknowledge that Mediator has informed them that mediation is most likely to be successful when the parties fully disclose to her in confidence all information relevant to the issues raised in mediation.
4. Confidentiality. Notwithstanding any contrary choice of law provision governing the parties' dispute, this mediation is governed by the provisions of California Evidence Code §§1115 *et seq.* Thus, Mediator promises to keep confidential all communications with, and all documents submitted by Disputants. Disputants agree that all oral and written communications, work analysis, documentation and agreements of any Disputant or Mediator, made or presented at any mediation session held under this Agreement, and any other act or omission of any Disputant or Mediator at any such session (except as expressly noted below), are part of, and

shall be deemed to be, settlement negotiations within the meaning of Evidence Code Section 1119, and are therefore privileged and non-prejudicial, and non-discoverable and inadmissible in any court of law or private adjudicatory proceeding, absent the written consent of the Mediator and the Disputants. Post-mediation communications between the Mediator and any participant related to the mediation shall also be confidential. **By signing below, Disputants hereby waive the provisions of Evidence Code Section 1119 solely with respect to any settlement agreement executed by all Disputants in the course of or pursuant to the within mediation.**

The Parties agree that they will not record or permit the recording of all or any part of the mediation without the written consent of all Parties and the Mediator. The Parties will ensure that each additional attendee at the mediation for which that Party is responsible also acknowledges and agrees to this by signing the Agreement below.

The Disputants agree that the Mediator may consult with colleagues about this matter and may describe this matter to colleagues for educational purposes so long as the Mediator does not disclose the Disputants' names or any other information which might identify the Disputants.

5. Right to terminate. Disputants acknowledge they understand that mediation is a consensual, voluntary process; as such, Mediator or any Disputant shall have the right to terminate the mediation at any time.
6. Voluntary Agreement; Mediator's Limited Liability. Disputants agree that any decision reached by them will be voluntary and at the sole and exclusive discretion of each of them, respectively, and that Mediator has no authority to make any binding decisions or to complete the making of an agreement or the granting of any concession. Disputants hereby release Mediator from any and all claims arising out of or in connection with the mediation process contemplated by this Agreement and agree to indemnify Mediator from any loss or damage, including court costs and attorneys' fees, as a result of any such claim. Further, any party who brings any claim, action or proceeding of any nature against the Mediator, or who seeks to have the Mediator testify, shall be responsible to indemnify the Mediator for any expenses incurred in connection with such claim, action or proceeding brought by such participant. Disputants agree to hold Mediator harmless and indemnify her from any responsibility, liability, costs or expenses in connection with this mediation.

Agreed to: January 30, 2024

Mediator: *Deborah Rothman*

