

## NON-DISCLOSURE AGREEMENT

This Non-Disclosure Agreement ("NDA") is entered into on **Sept 19**, 2019 ("Effective Date") by and between American Modular Systems, Inc., a California corporation located at 787 Spreckels Avenue, Manteca, CA 95336 ("AMS") and Davis Joint Unified School District, a California State school district, located at 1919 5th Street, Davis CA 95616 ("Authorized Recipient").

**1. Nature of Disclosure.** AMS designs, manufacturers, and erects quality, healthy, energy-efficient, educational, modular buildings ("Gen7 building(s)"). In order to serve the Authorized Recipient, AMS will be disclosing confidential proprietary information and know-how that is protected under AMS's intellectual property rights including, but not limited to, information related to ideas, concepts, manufacturing processes and know-how, experimental works and works in process, models, renderings, technical plans and specifications, and other technical, business, and marketing information whether transmitted electronically or physically ("Confidential Information"). AMS's intellectual property rights include any and all copyrights (including rights in audio visual works), moral rights, patent rights (including patent applications, history and disclosures), trade secrets, and trademarks recognized under common law, federal or California state law. The Authorized Recipient acknowledges that the Confidential Information related to the Gen7 building(s) is the exclusive property of AMS, except for those uses described in Sections 3 through 3.3.

**2. Non-Disclosure Obligation.** The Authorized Recipient agrees that all Confidential Information obtained from AMS will be treated and maintained as strictly confidential and not disclosed to others beyond the authorized use described in Section 3 without the written consent of AMS, which consent will not be unreasonably withheld. Disclosure includes copying, photographing, reproducing, reverse engineering, or transcribing Confidential Information whether through electronic transfer or other means. The Authorized Recipient's non-disclosure obligations apply jointly and severally to its successors, heirs, assigns, agents, employees, separate consultants, and separate contractors. Authorized Recipient will not be liable for disclosure of Confidential Information if it can demonstrate that:

(a) such information was available to the public at the time of disclosure or becomes public information through no act or omission of the Authorized Recipient; or

(b) Confidential Information was required to be disclosed by a California Public Records Act or Freedom of Information Act request, or by administrative or judicial action, provided that Authorized Recipient attempts to maintain the confidentiality of the Confidential Information by immediately notifying AMS to allow it an opportunity to seek legal remedies to maintain such confidentiality.

**3. Authorized Use.** The Authorized Recipient acknowledges and agrees that the documents and electronic files related to the Gen7 building(s) are being released by AMS for the sole purpose of providing services to the Authorized Recipient and preparing design and construction documents, plan sets, submittals (shop drawings and field coordination drawings), requests for information, as-built drawings, and related work for a particular project ("Project"). The Authorized Recipient acknowledges and agrees that the Confidential Information developed and furnished by AMS is for use solely with respect to the Project and cannot be used by the

Authorized Recipient for any other buildings or facilities on the same campus, within the school district, that are not a part of the Project without the specific written consent of AMS. Other than required submittals to approval agencies having jurisdiction over the Project, such as the Department of State Architects ("DSA"), or for use to coordinate AMS's work with the Authorized Recipient's separate consultants and separate contractors, inspectors or testing agencies performing work or services on the Project, no copying or other transmission of the documents and files to third parties is permitted unless required to be disclosed under Section 2(b) or allowed under Sections 3.1 or 3.3. No reuse of know-how, manufacturing processes, ideas, concepts, technical plans and specifications, experimental works, business and marketing information, models, renderings, and/or symbols is permitted by Authorized Recipient, its successors, heirs, assigns, agents, employees, separate consultants, and separate contractors.

**3.1 License.** If the Authorized Recipient enters into a contract with AMS to design, manufacture, and erect Gen7 building(s) in connection with the Project and complies with the payment provisions under the contract, then the Authorized Recipient will be granted a limited, non-exclusive license to use and reproduce applicable portions of the Confidential Information for the performance of the work or services described in Section 3 related to the Project and for future repair, maintenance, renovation, modernization to the Gen7 building(s) as provided under this Section 3.1, and Section 3.3. No other right, license, or authorization to use the Confidential Information for any other purpose will be permitted, granted, or implied. If the Authorized Recipient does not contract with AMS to design, manufacture, and erect the Gen7 building(s), then the Authorized Recipient must promptly return all Confidential Information to AMS.

**3.2 Copies.** AMS and its design consultants are the authors and owners of their respective instruments of service and retain all common law, statutory and other reserved rights, including copyrights. All copies made under the license in Section 3.1 or per Section 3.3 will bear the statutory copyright notice shown on the plans, specifications, and other documents prepared by AMS and/or its design consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project as described in Section 3 will not be construed as publication in derogation of AMS's copyright or other reserved intellectual property rights and interests. Any use or copying of Confidential Information by Authorized Recipient or any party for whom the Authorized Recipient may be liable under Section 2 constitutes acceptance of the stated terms and conditions of this NDA.

**3.3 Compliance with Education Code section 17316.** All plans, including, but not limited to, record drawings, specifications, and estimates prepared by AMS and its certified architect or structural engineer pursuant to California Education Code section 17302, will remain the property of the Authorized Recipient for the purposes of repair, maintenance, renovation, modernization, or other purposes only as they relate to the Project for which AMS and its certified architect or structural engineer were retained. Nothing contained in this provision, however, transfers or waives AMS's or its certified architect's or structural engineer's copyrights over these documents, including, but not limited to, all common law, statutory, and other reserved rights as stated in Section 1.

**4. Disclaimers.** The documents and file(s) considered instruments of service of AMS and its design consultants may or may not contain all the information available on the final generation documents. The Authorized Recipient agrees that only the 2-dimensional plans, calculations, and specifications that are signed and sealed by a registered professional engineer and/or licensed architect and permitted by the governmental authority with jurisdiction over the Project constitute the construction documents illustrating the details of what is being constructed

("Construction Documents"). If there are any differences between Construction Documents and the electronic file, the 2-dimensional Construction Documents will control. AMS is not responsible for any modifications made to the electronic file or for any information derived from the electronic file, which have not been reviewed, signed and sealed by AMS's registered professional engineer or licensed architect.

**4.1 Electronic Media.** The Authorized Recipient agrees that the electronic media may be subject to machine reading errors, or inadvertent alteration by the Authorized Recipient, or its separate consultants or separate contractors. In using, modifying, or retrieving information from the file(s), the Authorized Recipient and its separate consultants and/or separate contractors are responsible for confirmation and checking for accuracy against the 2-D Construction Documents. AMS disclaims any and all responsibility for errors and omissions arising from the use of electronic documents and data and does not warrant or guarantee the accuracy of the information.

**5. Indemnification.** To the fullest extent permitted by law, the Authorized Recipient will indemnify and hold harmless AMS, its employees, agents and consultants, from any damage, liability, claims, losses, or cost, including reasonable attorney's and expert witness fees and costs of defense, arising from improper use, re-use, or misuse of the Confidential Information related to the Gen7 building(s), or modification or misinterpretation of any electronic media by the Authorized Recipient or any person or entity which acquires or obtains the Confidential Information from or through the Authorized Recipient without the written consent of AMS.

## **6. Miscellaneous Provisions**

**6.1 Governing Law.** This NDA will be governed and construed under the laws of the State of California without giving effect to any choice of law or rule of conflict that would cause the application of the laws of any other jurisdiction.

**6.2 Notices.** Any notice required to be given by this NDA will be in writing and deemed effective upon the date of personal delivery or 1 business day after being sent by overnight commercial courier providing next-business-day delivery. Notices will be address as follows:

<b>AMS</b>	<b>Authorized Recipient</b>
Anthony Sarich American Modular Systems, Inc. 787 Spreckels Avenue Manteca, CA 95336	David Burke Davis Joint Unified School District 1919 5 <sup>th</sup> Street Davis, CA 95616

**6.3 Assignment.** AMS and Authorized Recipient respectively bind themselves, their partners, successors, assignees, agents, and legal representatives to the other party to this NDA. Authorized Recipient may not assign this NDA without the express written consent of AMS.

**6.4 Interpretation and Severability.** This NDA's terms and conditions will be interpreted according to their plain meaning, and not strictly for or against either AMS or Authorized Recipient. Any contrary rule of construction or interpretation will be of no force or effect with respect to this NDA. If a court of competent jurisdiction finds any term or provision of

this NDA to be void or unenforceable for any reason, the term or provision will be amended to comply with the law, or severed. If a term or condition is severed, the remainder of the NDA will remain in full force and effect to the maximum extent permitted by law and consistent with AMS's and Authorized Recipient's overall intent.

**6.5 Third Party Beneficiaries.** The parties entered into this NDA solely for their respective benefit and nothing contained in this NDA creates a contractual relationship or a cause of action in favor of any third party against AMS.

**6.6 Termination.** Each party has a right to terminate this NDA upon written notice. Upon termination, the Authorized Recipient must immediately return all Confidential Information to AMS.

**6.7 Attorney's Fees.** If either party commences an action or employs attorneys to enforce any rights or resolve claims arising out of, or relating to this NDA, the prevailing party will be entitled to recover all reasonable attorneys' fees and costs (including charges and expenses related to the suit, expert witness, and consultants' fees) as may be determined by a court with competent jurisdiction.

**6.8 Entire Agreement.** This NDA constitutes the entire agreement between the parties with respect to non-disclosure of Confidential Information and supersedes any prior oral or written agreements, and any conflicting terms in subsequently executed contracts between the parties for design and construction of the Project with respect to non-disclosure and authorized use of the Confidential Information related to the Gen7 building(s).

This NDA is executed as of the Effective Date set forth above. By executing this NDA, each of the signatories represents that he or she has authority to bind the party on whose behalf his or her execution is made.

AMS American Modular Systems, Inc.	Authorized Recipient Davis Joint Unified School District
By: _____ Anthony Sarich, Vice President	By: _____ David Burke, Director of FMO