

**CONTRACT NAME: AGREEMENT BETWEEN AMERICAN  
MODULAR SYSTEMS AND DAVIS JOINT UNIFIED SCHOOL  
DISTRICT**

**BRIEF DESCRIPTION OF CONTRACT:** This is an agreement between American Modular Systems and DJUSD to maintain confidentiality with respect to the non-disclosure of potential Confidential Information and trademarked products in recently executed contracts between the parties for design and construction of the Project related to the Gen7 buildings for North Davis Elementary School.

There is no anticipated fiscal impact in approving this agreement.



## CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("CA") is entered into on February 18, 2016, ("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 526 B Street, Davis CA 95616 ("Authorized Recipient").

**1. Confidentiality Agreement.** 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), patent rights (including patent applications, history and disclosures), 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. Confidentiality Obligation.** The Authorized Recipient agrees that all Confidential Information obtained from AMS will be treated and maintained as strictly confidential, AMS understands that due to regular Board of Education action relating to public disclosures, some information release is unavoidable and is considered public record. Authorized Recipient will not disclose 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 confidentiality 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, as legally allowed.

**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, 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.

1. The following shall not be authorized without the express written consent of Gen7/AMS:

- Authorized Recipient acknowledges that the doors, windows and overhangs of the Gen7 building being procured, are registered trademarks of Gen7/AMS and can not be used on future District Sites without expressed consent of AMS.
- Authorized Recipient acknowledges the DSA Approved PC drawings are intellectual property of Gen7/AMS.
- Authorized Recipient shall not re-use Gen7 DSA drawings at any other school sites within the School District without expressed consent of AMS.
- Authorized Recipient shall not re-purpose Gen7 drawings for any current or future sites without expressed consent of AMS.
- Authorized Recipient shall not use/publish Gen7/AMS drawings for other public bids without expressed consent of AMS. (Note Section 3 regarding repair, maintenance modernization and renovation)

**3.1 License.** The Authorized Recipient has entered into a contract with AMS to design, manufacture, and erect Gen7 building(s) in connection with the Project and will comply with the payment provisions under the contract, then the Authorized Recipient is 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 without consent by 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 CA.

**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.

**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 CA 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 CA 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:

AMS	Authorized Recipient
Dan Sarich American Modular Systems, Inc. 787 Spreckels Avenue Manteca, CA 95336	Bruce Colby Davis Joint Unified School District 526 B 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 CA. Authorized Recipient may not assign this CA without the express written consent of AMS.

**6.4 Interpretation and Severability.** This CA'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 CA. If a court of competent jurisdiction finds any term or provision of this Confidentiality Agreement 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 CA 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.

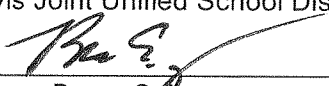
**6.5 Third Party Beneficiaries.** The parties entered into this CA solely for their respective benefit and nothing contained in this CA creates a contractual relationship or a cause of action in favor of any third party against AMS.

**6.6 Termination.** Each party has a right to terminate this CA 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 CA, 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 CA 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 CA is executed as of the Effective Date set forth above. By executing this CA, 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.  By: _____ Dan Sarich, President	Authorized Recipient Davis Joint Unified School District  By:  _____ Name: Bruce Colby Title: Associate Superintendent Business Services
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