

**EXAMPLE**

This Agreement is not binding on the Naples Central School District until approved by its Board of Education, signed by an authorized agent, and delivered to the Clerk.

**ENHANCED CLERK AGREEMENT**

**THIS AGREEMENT**, is made and effective this            day of May, 2021, by and between the **NAPLES CENTRAL SCHOOL DISTRICT**, with offices located at 136 North Main Street, Naples, New York 14512 ("OWNER") and    TBD, with offices located at

("CLERK") as follows:

**W I T N E S S E T H:**

**WHEREAS**, the Owner has contracted for certain construction work at the Owner's property located at 136 North Main Street, Naples, New York 14512 as shown on Contract Documents prepared or to be prepared by SEI Design Group Architects, DPC ("ARCHITECT"), and all addenda thereto ("PROJECT"); and,

**WHEREAS**, the Owner has retained Architect to provide architectural & engineering services during all design and construction phases of the Project; and,

**WHEREAS**, the Enhanced Clerk ("CLERK") represents that it has reviewed the Project scope and possesses the requisite training, expertise, skill and experience to fulfill the duties and responsibilities set forth herein; and,

**WHEREAS**, the Owner wishes to retain Clerk to provide construction management and related services as hereafter set forth and as delineated in the attached RFP for Enhanced Clerk services.

**NOW, THEREFORE** the parties hereto mutually covenant and agree as follows:

**A. GENERAL:**

1. **Clerk's Authority:** The Clerk shall have only the authority with respect to the Project delegated to him by the Owner under this Agreement.

2. **The Work:** The Work shall consist of the construction of the Project.

**B. CLERK'S DUTIES:**

1. The Clerk shall at all times perform its duties and responsibilities under this agreement in accordance with Clerk's professional skill and judgment, and in accordance with industry customs and standards.

2. Utilizing information from the Multiple Prime Contractors, the Clerk shall assist the Architect in scheduling and coordinating the sequence of construction and assignment of space in areas where the Multiple Prime Contractors are performing Work, in accordance with the Contract Documents and the Construction Schedule.

3. The Clerk shall perform all duties outlined in the attached RFP which shall be incorporated in the final version of this Agreement.

4. Pursuant to the Safe Schools Against Violence in Education Act ("SAVE" legislation) and Part 87 of the Regulations of the Commissioner of Education, any individual(s) assigned by the Clerk on this Project must be finger-printed and must wear an identification badge provided by Owner while on Owner's property. The Clerk shall be responsible to ensure that all of its employees are in full compliance with the fingerprinting provisions of New York's SAVE Legislation and Part 87 of the Regulations of the Commissioner of Education at its sole cost and expense.

5. The Clerk shall at all times comply with the Owner's rules and protocols related to safety at the Project site, including but not limited to rules and protocols related to the COVID-19 health emergency.

**C. LIMITATIONS OF AUTHORITY:**

1. The Clerk shall not authorize deviations from the Contract Documents.
2. The Clerk shall not personally conduct tests or inspections required pursuant to the Contract Documents unless specifically authorized in writing by the Architect.
3. The Clerk shall not assume any of the responsibilities of any Contractor's superintendents or of Subcontractors.
4. The Clerk shall not advise on or issue directions concerning, or have control over or charge of or be responsible for aspects of construction means, methods, techniques, sequences or procedures, or safety precautions and programs in connection with the Work. The Clerk shall make no comment directly to the Contractor when such means, methods, techniques, sequences or procedures or safety precautions are contrary to the Contract Documents or law, but shall report in detail any such deviation to the Owner and the Architect.
5. The Clerk shall not prepare or certify to the preparation of Record Drawings, Specifications, Addenda, Change Orders and other Modifications
6. The Clerk shall not reject work or require special inspection or testing, except as authorized in writing by the Architect
7. The Clerk shall not order the Contractor to stop work or any portion thereof.
8. The Clerk shall not expedite the Work for the Contractor.

**D. COMPENSATION/TERMINATION:**

**1. Independent Contractor:** The Clerk is providing service pursuant to this Agreement as an independent contractor and not as an employee of the Owner. The Clerk shall act in accordance with its independent contractor status. Neither the Clerk, nor any employees or agents of the Clerk shall hold themselves out as, nor claim to be, officers or employees of the Owner. The cost of health insurance, disability insurance, liability insurance, social security, and any other expenses incurred by the Clerk, whether or not connected with the Project covered by this Agreement, shall be the sole responsibility of the Clerk. The Clerk, and any employees or agents of the Clerk shall make no claim for, nor shall be entitled to, Workers' Compensation coverage, medical and unemployment benefits, social security or retirement membership benefits from the Owner.

**2.** The Clerk shall be compensated based upon the attached RFP.

which sum shall be paid upon the submission by the Clerk of timely filed invoices in writing to the Owner in accordance with the Owner's invoice submission procedures. Each payment to the Clerk shall be for services rendered during the preceding period. Payments shall be made within thirty (30) days of Owner's receipt of Clerk's invoice.

**3. Termination:** The Owner may, in its sole discretion, and for any reason or no reason, terminate the services of the Clerk under this Agreement upon delivery of written notice of termination fourteen (14) calendar-days prior to the date of termination. Owner may, in its sole discretion, for any reason or no reason, revoke the Clerk's authority to act under this agreement and/or to go upon the Project site at any time to be effective immediately upon

delivery of written notice of same to the Clerk. The Clerk may terminate this Agreement upon advance written notice to Owner only upon: 1) Three months after Substantial completion and occupancy of the entire Project as defined in the Contract Documents entered into between the Owner and the various contractors; or 2) Upon material breach of this contract by the Owner after fourteen (14) days prior written notice of such breach and of the Clerk's intention to terminate which refers to this paragraph, received by the Superintendent of Schools and the failure of the Owner to cure such material defect within the fourteen (14) day period.

**4. Insurance:** As set forth in the attached RFP – the provisions will be incorporated in the final version of this Agreement.

**E. MISCELLANEOUS:**

**1.** This Agreement represents the entire and integrated agreement between the Owner and the Clerk and supersedes all prior negotiations, representations or agreements either written or oral. This Agreement may be amended only by written instrument signed by both the Clerk and the Owner.

**2.** The parties hereto understand and agree that each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to have been inserted herein, and if through mistake or inadvertence such provision is not inserted, said clause shall be deemed to have been present in this Agreement at the time that it was executed.

**3.** Commencement of Clerk's performance of this Agreement shall begin on the effective date of this Agreement.

**4.** The Clerk agrees that it shall not assign, transfer, convey, subcontract or otherwise dispose of this Agreement or its responsibility to perform under this Agreement or its right, title

or interest in and/or to the same, nor any part thereof, nor to any monies which are or will become due and payable to it thereunder, nor the power to execute such Agreement to any other person, company or corporation.

**5.** By execution of this Agreement, the Clerk acknowledges receipt of copies of the Contract Documents currently available and a redacted copy of the Owner and Architect's agreement for this Project.

**6.** This Agreement shall be governed by the law of the State of New York applicable to contracts executed, delivered and to be fully performed in New York State without regard to its choice of law principles. The County of Ontario, State of New York, shall be the exclusive place of trial of any action or proceeding relating to this Agreement and the New York State Supreme Court for Ontario County shall have exclusive jurisdiction of the action or proceeding.

**7.** To the extent that any portion of this Agreement is deemed by a court of competent jurisdiction to be unenforceable, the unenforceable provisions shall be deemed eliminated, but only to the extent necessary to permit the remaining provisions to be enforced.

**8.** Paragraph headings have been provided for convenience or reference only and shall not control, affect the meaning or be used in the interpretation of any provisions of this Agreement.

**9.** In the event any term or condition of this Agreement is breached by any party and waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach prior or subsequent to the waived breach.

**10. Confidentiality:** The Clerk agrees not to disclose any data, facts, or information concerning services performed by it for the Owner or obtained while performing such services, except as authorized by the Owner in writing or as may be required by law.

**11. Statutory Compliance:** In accepting this Agreement, the Clerk covenants and agrees to comply in all respects with all federal, state, and county laws which pertain to services for municipal corporations, including, but not limited to, workers' compensation, disability, and employees' liability insurance, hours of employment, wages, and civil rights.

**12. Indemnification Of Owner/Clerk:** Notwithstanding anything to the contrary contained herein, the Clerk agrees to defend, indemnify and hold the Owner Indemnitees (the Owner, its officers or its employees) harmless from any and all claims, judgments and liabilities, including but not limited to attorney's fees, for injuries to persons (including death), economic loss, and/or damage to property, if and to the extent the same results from any negligent act, negligent error or negligent omission of the Clerk, its officers or its employees,. The Clerk shall not be obligated to indemnify Owner for the portion of any such claims, liabilities, obligations, damages or causes of action which are the result of the negligence of the Owner. This Article shall survive the expiration or earlier termination of this Agreement. Notwithstanding anything to the contrary contained herein, the Owner agrees to defend, indemnify and hold the Clerk (the Clerk, its officers or its employees) harmless from any and all claims, judgments and liabilities, including but not limited to attorney's fees, for injuries to persons (including death), economic loss, and/or damage to property, if and to the extent the same results from any negligent act, negligent error or negligent omission of the Owner, its officers, employees, or agents, or if same results from any breach of this Agreement by the Owner, its officers or its employees. The

Owner shall not be obligated to indemnify Clerk for the portion of any such claims, liabilities, obligations, damages or causes of action which are the result of the negligence of the Clerk. This Article shall survive the expiration or earlier termination of this Agreement.

**13. Mediation:** Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to commencing litigation. If either party will be prejudiced by waiting until the mediation has concluded, then either party may proceed in accordance with applicable law to comply with filing deadlines prior to resolution of the matter by mediation.

**14.** The Owner and Clerk shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint but, in such event, mediation shall proceed in advance of the litigation, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

**15.** The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**16.** If the parties do not resolve a dispute through mediation the parties shall proceed to litigation with exclusive jurisdiction and venue in the New York State Supreme Court for the

County of Ontario. The Owner shall be entitled to recover its reasonable attorney's fees and costs if it prevails in the litigation.

**IN WITNESS WHEREOF**, intending to be bound, the parties have caused this Agreement to be signed by authorized agents in the spaces provided below:

**OWNER**  
Naples Central School District

By: \_\_\_\_\_  
Its:

Date: \_\_\_\_\_

**CLERK**

By: \_\_\_\_\_  
Its:

Date: \_\_\_\_\_