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AGREEMENT BETWEEN OWNER AND CONTRACTOR

THIS AGREEMENT is dated as of the _____ day of _____ in the year 20²⁵ by and between the **Town of Aurora**, hereinafter called (OWNER) and Oakgrove Construction, Inc. (hereinafter called CONTRACTOR).

OWNER AND CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1 - WORK

CONTRACTOR shall perform and complete all Work as specified or indicated in the Contract Documents. The Work is a portion of the Project which is generally described as follows:

REPLACEMENT OF THE CHURCH ST. &
E. FILLMORE AVE. CULVERTS
Town of Aurora, County of Erie

Bid No. D040611, D040612

ARTICLE 2 - ENGINEER

The Project has been designed by Azar Design Co., who is hereinafter called ARCHITECT/ENGINEER and who is to act as OWNER's representative, assume all duties and responsibilities and have the rights and authority assigned in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3 - CONTRACT TIMES

3.1 Completion Times: The Work shall be substantially complete on or before 10/1/2025.

3.2 Damages for Delay in Completion Attributable to Contractor: Damages for delay occasioned by the acts or omissions of CONTRACTOR or its subcontractors or any party for whom it is responsible shall be assessed to the CONTRACTOR as follows:

3.2.1 Engineering Charges: If the Work is not substantially completed, or is not completed and ready for final acceptance, within the respective maximum allowable times specified in paragraph 3.1, engineering charges incurred by the OWNER after the aforesaid completion time will be charged to the CONTRACTOR in addition to the total amount of liquidated damages and other definable damages to be assessed pursuant to paragraph 3.2.2 below and deducted from monies owed the CONTRACTOR.

The amount will be determined by OWNER, based on ENGINEER's accounting records and fee invoices submitted to OWNER for services rendered by ENGINEER during the applicable time periods. The engineering charges shall be allocated equally to all the contractors held responsible for the delay in completion of the Project.

3.2.2 Liquidated Damages: OWNER and CONTRACTOR recognize that time is of the essence in this Agreement, and that OWNER will suffer financial loss in addition to extra engineering costs if the Work is not completed within the times specified in paragraph 3.1 above, plus any extensions thereof. They also recognize the delays, expenses, and difficulties involved in proving in a legal proceeding the actual loss suffered by OWNER if the Work is not completed on time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty), CONTRACTOR shall pay OWNER five-hundred dollars (\$500) per day that expires after the time specified in paragraph 3.1 and for Substantial Completion until the Work is substantially complete, plus any engineering charges assessed pursuant to paragraph 3.2.1 above.

After Substantial Completion, if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the time specified in paragraph 3.1 for final completion and final acceptance or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER as liquidated damages for delay (but not as a penalty) \$1,000 per day that expires after the time specified in paragraph 3.1 for final acceptance of work until the Work has received final acceptance from the Engineer.

The calculated amounts of liquidated damages will be deducted from payments made to CONTRACTOR beginning with the payment period within which liquidated damages have begun. However, at its option, OWNER may deduct the total amount of such damages from CONTRACTOR's final payment.

3.3 No Damage for Delay attributable to OWNER: CONTRACTOR agrees to make no monetary claims for delay in the performance of this Contract occasioned by any act or omission of the OWNER or any of its representatives and agrees that such a claim shall be fully compensated for by an extension of time to complete the performance of the Work as provided herein.

ARTICLE 4 - CONTRACT PRICE

4.1 The OWNER will pay CONTRACTOR for completion of the Work in accordance with the Contract Documents the amount of the BASE BID PRICE \$ 1,557,548.02), Allowances (if any) and accepted, Alternates (if any) stated in the CONTRACTOR's Bid Proposal, hereby identified as the Contract Price.

4.2 When unit bid price items are included in the Contract Price, the quantities of various units contained in the Bid Proposal are estimated and payment will be made only for the actual quantities of units that are incorporated in the Work, as determined by the ENGINEER.

ARTICLE 5 - PAYMENT PROCEDURES

5.1 Applications for Payment: CONTRACTOR shall submit Applications for Payment to ENGINEER. Applications for Payment will be processed by ENGINEER.

5.2 Progress Payments: OWNER will make monthly progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment, as recommended by ENGINEER during construction. Payments will be on the basis of the progress of the Work and in the case of unit price items, on the basis of quantities incorporated in the Work. Payments will be in an amount equal to: 95% of the Work completed (with the balance being retained) and 95% of the value of undamaged materials and equipment not incorporated in the Work but delivered, suitably stored, and accompanied by documentation satisfactory to OWNER, less in each case the aggregate of payments previously made, and less such amounts which may be lawfully deducted.

5.3 Payment After Substantial Completion: Once the project is deemed substantially complete, OWNER will pay as its next progress payment to CONTRACTOR an amount sufficient to increase total payments to CONTRACTOR to 100% of the final Contract price, less a retained amount which shall equal two times the dollar value of any work remaining to be completed, as determined by ENGINEER and agreed to by OWNER; less retained amounts necessary to satisfy any claims, liens or judgments against the CONTRACTOR which have not been suitably discharged; less amounts previously paid the CONTRACTOR; and less any other sums which may be lawfully deducted, the net retained amount being termed the "Final Payment".

5.4 Release of Final Payment: OWNER will release retained monies due the CONTRACTOR within thirty days after the date when the requirements for and conditions associated with the release of such amounts have been met.

5.5 Withholding of Payments: OWNER may withhold any payment which ENGINEER refuses to recommend or because claims have been made against OWNER or Liens have been filed in connection with the Work. OWNER may continue to withhold such payment until said citations have been removed or remedied to ENGINEER's satisfaction or until the claims have been settled and liens discharged to OWNER's satisfaction. The CONTRACTOR shall not hold any retainage from any subcontractor.

ARTICLE 6 - DEFENSE AND INDEMNIFICATION

To the fullest extent permitted by law, the CONTRACTOR shall defend, indemnify and hold harmless the OWNER, Engineer, and /or the consultants, agents, officers, directors, and employees of any of them, from and against any claim, damage, loss or expense, including, but not limited to attorney fees, arising out of or resulting from performance of the work or events occurring in or about the premises of the OWNER, but only to the extent caused in whole or in part by (i) the negligent acts, omissions, fault or breach of the Contractor, its agents, subcontractors or suppliers, anyone directly or indirectly employed by any of them or anyone for whose act they be liable for or (ii) the breakage or malfunctioning of any tools, supplies, scaffolding or equipment used or furnished by the CONTRACTOR, its agents, subcontractors or suppliers, anyone directly or indirectly employed by any of them or anyone for whose act they be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder.

ARTICLE 7 - CONTRACTOR'S REPRESENTATIONS

In executing this Agreement, CONTRACTOR makes the following representations:

- 7.1** CONTRACTOR has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents including "technical data".
- 7.2** CONTRACTOR has visited the site and become familiar with and is satisfied as to the general, local and site conditions that may affect cost, progress, performance, or furnishing of the Work.
- 7.3** CONTRACTOR is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, performance, and furnishing of the Work.
- 7.4** CONTRACTOR has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site (except Underground Facilities). CONTRACTOR acknowledges that such reports and drawings are not Contract Documents and may not be complete for CONTRACTOR's purposes. CONTRACTOR acknowledges that OWNER and ENGINEER do not assume responsibility for the accuracy -or completeness of information and data shown or indicated in the Contract Documents with respect to Underground Facilities at or contiguous to the site. CONTRACTOR has obtained and carefully studied (or assumes responsibility for having done so) all such additional supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the site or otherwise which may affect the cost, progress, performance or furnishing of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by CONTRACTOR and safety precautions and programs incident thereto. CONTRACTOR does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Times and in accordance with the other terms and conditions of the Contract Documents.
- 7.5** CONTRACTOR is aware of the general nature of work to be performed by OWNER and others at the site that relates to the Work as indicated in the Contract Documents.
- 7.6** CONTRACTOR has correlated the information known to CONTRACTOR, information, and observations obtained from visits to the site, reports, and drawings identified in the Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 7.7** CONTRACTOR has given ENGINEER written notice of all conflicts, errors, ambiguities, or discrepancies that CONTRACTOR has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR, and the Contract Documents are generally sufficient to indicate and convey

understanding of all terms and conditions for performance and furnishing of the Work.

7.8 CONTRACTOR has examined the Contract Documents for all prime contracts and has acquired sufficient knowledge of the required work of the other prime contractors to the extent that CONTRACTOR clearly understands its own obligations and responsibilities relative to the other prime contracts.

ARTICLE 8 - CONTRACT DOCUMENTS

The Contract Documents which comprise the entire Agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

8.1 This Agreement Between OWNER and CONTRACTOR.

8.2 Bid Proposal #D040611, D040612 February 12th, 2025

8.3 Bid form

8.4 The following which may be delivered or issued after the Effective Date of the Agreement and is not attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents.

There are no Contract Documents other than those listed above in this Article 8 and the documents so listed comprise the entire integrated agreement between the parties.

8.5 In the event of contradiction or ambiguity between the language of this Agreement and any other document incorporated into the Agreement said documents shall be interpreted in the following order of priority, with the document having the higher priority also having the controlling language for interpretation:

1. Amendments and any other changes to the Contract Documents issued in accordance with the Contract Documents or Bid Documents
2. This Agreement
3. Request for Bids
4. Addendum to Request for Bids dated
5. CONTRACTOR's Bid, dated: 2-12-2025

ARTICLE 9 - MISCELLANEOUS

9.1 For the purposes of this Agreement, reference to the feminine shall include the masculine, reference to the singular shall include the plural, and reference to a person in the form of he or his shall also refer to a business entity.

9.2 Pursuant to the provisions of Section 109 of the General Municipal Law, no vendor to whom a contract is granted or awarded shall assign, transfer, convey, subcontract, or otherwise dispose of all or part of such contract, or of its right, title, and interest therein, including the performance of this contract or the right to receive monies due, or to become due, or of its

power to execute this without the prior written consent of the OWNER. In the event the CONTRACTOR shall, without prior written consent, assign, transfer, convey, subcontract or otherwise dispose of this contract, or of its right, title, and interest therein, including the performance of this contract, or the right to receive monies due, or to become due, or its power to execute such contract, to any other person or corporations or upon receipt by OWNER of an attachment against the CONTRACTOR the OWNER shall be relieved and discharged from any and all liability and obligation growing out of such contract to such vendor and the person or corporation to which such contract shall have been assigned, its assignee, transferee, or sublessee shall forfeit and lose all monies theretofore assigned on this contract, except so much as may be required to pay its employees.

In accordance with Section 106 of the General Municipal Law, this Agreement shall be void and of no effect, unless the CONTRACTOR shall secure compensation for the benefit of, and keep insured during the life of such contract, such employees, in compliance with the provisions of the Workmen's Compensation Law.

9.3 OWNER and CONTRACTOR each bind itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

9.4 Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER or CONTRACTOR, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

9.5 Each and every provision of law and clause required by law to be inserted in this Contract should be, is and is deemed to be inserted herein, and if through a mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the Contract shall forthwith be amended physically to make such insertion.

9.6 Representations and Responsibility of CONTRACTOR: The CONTRACTOR warrants that he is financially solvent; that he has successfully completed work of comparable size, quality, and importance; that he accepts full responsibility for the actions or omissions, and for the satisfactory completion of the work of its subcontractors, workers, material suppliers, and all other of its agents; that he has read and is familiar with the CONTRACT DOCUMENTS; that he will comply fully with all federal, state and local laws, ordinances and regulations pertaining to its performance of the Work; that he will furnish within ten (10) days upon request of the OWNER a current financial statement and current bank statements at any time during the progress of the Work.

9.7 Anti-Discrimination: In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the CONTRACTOR shall not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration, demolition, or repair of any public building or public park or for the manufacture, sale, or distribution of materials, equipment or supplies, and to the

extent that this contract shall be performed within New York State, CONTRACTOR agrees that neither it nor its subcontractors shall be reason of race, creed, color disability, sex, age, or national origin:

Discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or

Discriminate against or intimidate any employee hired for the performance of work under this contract.

9.8 Waiver of Immunity Clause: As provided in Article 5-A of the General Municipal Law the CONTRACTOR hereby agrees, if called before a Grand Jury to testify concerning this contract, to sign a waiver of immunity against criminal prosecution or to answer any relevant question concerning this transaction or contract. The refusal of the CONTRACTOR to do so shall:

Disqualify CONTRACTOR from all contracts with municipalities for a period of five (5) years and

Permit municipalities to terminate any contracts made with the CONTRACTOR after July 1, 1959.

9.9 Independent Contractor: The CONTRACTOR is an independent contractor and shall not be considered an agent of the OWNER, nor shall any of the CONTRACTOR'S employees or agents be considered subagents for the OWNER. The Work required under this Agreement to be performed by the CONTRACTOR is not a joint venture between the OWNER and the CONTRACTOR. The CONTRACTOR is completely responsible for the proper handling and disposal of any hazardous materials required to be removed under the Contract Documents.

9.10 Set-Off Rights: The OWNER shall have all its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the OWNER'S option to withhold for the purposes of set-off any monies due to the CONTRACTOR under this contract up to any amounts due and owing to the OWNER with regard to this contract, and any other contract with any other Department or Agency of the OWNER, including any contract commencing prior to the term of this contract, plus any amounts due and owing to the OWNER for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto.

9.11 Records: The CONTRACTOR shall establish and maintain complete and accurate books, records, documents, accounts, and other evidence directly pertinent to its performance under this contract and to the performance of Subcontractors (hereinafter, collectively "the records"). The Records must be kept for six years following the date of Final Payment by the OWNER to the CONTRACTOR. The OWNER shall, at no cost and upon reasonable notice, have access to and

the right to examine and copy any directly pertinent books, document papers, and records of the CONTRACTOR, in whatever form such records are maintained, relating to its performance of this Agreement, or relating to employees or agents, or equipment for which reimbursement is sought under this Agreement for so long as the records are maintained. All reports, documents, drawings, studies, specifications, subject data, memoranda, estimates, computations, etc., secured by and for the OWNER for the prosecution of a bid irrespective of the form in which such material has been maintained, including, but not limited to, hard copy, computer data, or other electronic media, shall become and remain the property of the OWNER upon termination or completion of the work at the direction of the OWNER. The OWNER shall have the right to use the same for any public purpose without compensation to the CONTRACTOR. Reports and data shall be kept in the strictest confidence and shall not be released to any other persons or agency without the expressed written permission of the OWNER.

9.12 Executory Clause: The parties specifically agree that the CONTRACTOR'S duty to perform Work under this Agreement and the OWNER'S obligation to pay for that Work shall be limited to the amount of money actually appropriated by the Lewis County Board of Legislators and encumbered for the purposes of this Agreement. The CONTRACTOR shall have the right from time to time to demand proof from the OWNER of the availability of funding to fulfill the OWNER'S obligations to the CONTRACTOR under this Agreement.

9.13 No Waiver: In the event that the terms and conditions of the Agreement are not strictly enforced by the OWNER, such non-enforcement shall not act as or be deemed to act as a waiver or modification of this Agreement, nor shall such non-enforcement prevent the OWNER from enforcing each and every term of this Agreement thereafter.

9.14 Compliance with All Laws: The CONTRACTOR agrees that during the performance of the Work required pursuant to this Agreement, the CONTRACTOR and all employees working under its direction shall strictly comply with all local, state, or federal laws, ordinances, rules, or regulations controlling or limiting in any way the performance of the work required by this Agreement.

9.15 Third-Party Relationships: Nothing contained in the Agreement shall create a contractual relationship with, an obligation to, or a cause of action in favor of any third party against either the OWNER, ENGINEER, or CONTRACTOR.

9.16 This Agreement shall be governed by and interpreted according to the laws of the State of New York.

9.17 Severability: If any provision of the Agreement is held invalid by a court of law, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to conform to the laws of the State of New York.

ARTICLE 10-INSURANCE REQUIREMENTS

CONTRACTOR shall maintain or cause to be maintained, in full force and effect during the term of this Agreement, at its expense, Workers' Compensation Insurance, Employer's Liability Insurance, Disability Insurance, Commercial General Liability Insurance, Motor Vehicle Liability Insurance, and Professional Liability Insurance, and other insurance with stated minimum coverages, all as listed below. Such policies are to be in the broadest form available on usual commercial terms, shall be written by insurers licensed to do business in the State of New York and which have an A.M. Best Rating of A(-) or better as determined in the most recent A.M. Best publication, and who have been fully informed as to the nature of the SERVICES to be performed, and shall cover risks and liability to CONTRACTOR resulting from this Agreement. Commercial General Liability shall include personal injury liability.

The OWNER, its officers, employees, and agents shall be named as additional insureds on a primary and non-contributory basis on CONTRACTOR'S Commercial General Liability policy. In addition, a waiver of subrogation shall apply in favor of the OWNER, its officers, employees, and agents on CONTRACTOR'S Commercial General Liability policy, as well as on CONTRACTOR'S Workers' Compensation Insurance policy. It is further understood that any obligations imposed upon the insured (including, without limitation, the liability to pay premiums) shall be the sole obligation of the CONTRACTOR and not those of the OWNER.

Notwithstanding anything to the contrary in this Agreement, CONTRACTOR irrevocably waives all claims against the OWNER for all losses, damages, claims, or expenses resulting from risks commercially insurable under this insurance described in this Section. The provision of insurance by CONTRACTOR shall not in any way limit CONTRACTOR's liability under this Agreement.

<u>Type of Coverage</u>	<u>MINIMUM Limits of coverage</u>
Workers' Compensation and NYS Disability	Statutory
Business Automobile Liability (Combined Bodily Injury and Property Damage arising out of the ownership, operation, use, loading, or unloading of all owned, leased, hired and non-owned vehicles)	\$1,000,000 Combined Single Limit

Commercial General Liability, (including Broad form contractual Liability combined bodily injury and property damage)	\$1,000,000 Each Occurrence \$2,000,000 General Aggregate Limit \$2,000,000 Products-Completed Operations \$1,000,000 Advertising/Personal Injury \$5,000 Premises Medical Payment
Professional Liability	\$2,000,000 Aggregate \$1,000,000 Each Claim

Each policy of insurance required herein shall be specifically endorsed to provide that in the event of cancellation, non-renewal, or material change on the part of the insurer, prior written notice shall be provided to OWNER in accordance with the terms of the CONTRACTOR'S policy. The inclusion of such endorsement shall be confirmed on the certificates of insurance required herein.

At the time of execution of this Agreement, and upon each policy renewal, CONTRACTOR shall submit to OWNER certificates of insurance evidencing CONTRACTOR's compliance with the requirements of this Section, including certificates of insurance from any approved subcontractors. The CONTRACTOR shall furnish the appropriate ACORD Form Certificate of Insurance to OWNER to evidence all coverage set forth above except Workers' Compensation and Disability Insurance. **A copy of the additional insured and waiver of subrogation endorsement forms must be submitted with the insurance certificates.**

Workers' Compensation coverage must be evidenced by Form C105.2 or New York State Insurance Fund Form U26.3. Disability Insurance coverage must be evidenced by Form DB120. **A copy of the waiver of subrogation endorsement form must be attached to the Workers' Compensation certificate of insurance.**

Property Insurance (Builders Risk/Installation Floater):

Property insurance shall be provided by the CONTRACTOR and shall be in conformance with paragraph 5.6 of the NSPE Standard General Condition and as specified herein. Unless specifically authorized by the OWNER, the amount of such insurance shall not be less than the Contract Price stated in the Bid Proposal. Each property insurance policy shall include the following endorsement: "It is made a condition of this insurance that, until the OWNER approves the ENGINEERS Certificate of Substantial Completion and has made the final payment to CONTRACTOR, occupancy of the premises shall not require the consent of this Company endorsed hereon nor adjustment of rate." In case the OWNER occupies or places in service all or part of any building, structure, or equipment (included in the Contract prior to issuance of Certificate of Substantial Completion, the CONTRACTOR shall notify the insurance company or companies prior to such action by OWNER. Refer to paragraph 5.14 of the NSPE Standard General Condition for insurer's requirements in this regard.

Owners Protective Liability:

Furnish to the OWNER complete OWNER'S Protective Liability Insurance in the amounts specified in Coverage above for Commercial General Liability.

Both the ENGINEER/ARCHITECT and the OWNER shall be named on insurance certificates as additionally insured parties.

REQUIRED EXTENDED REPORTING COVERAGE FOR CLAIMS BASED POLICIES

In the event that CONTRACTOR'S Professional Liability Policy is a "claims made" policy, and coverage thereunder is canceled or otherwise not renewed, and such policy is not replaced with another "claims made" Professional Liability Policy which provides continuing, uninterrupted coverage, CONTRACTOR shall be required to purchase extended reporting coverage for a minimum of three (3) years after completion of all work required of CONTRACTOR under this Agreement.

REQUIRED MINIMUM RETROACTIVE DATE FOR CLAIMS BASED POLICIES

In the event that CONTRACTOR'S Professional Liability Policy is a "claims made" policy, the retroactive date for such policy must be at least one (1) year prior to the commencement date of this Agreement and must be shown on the appropriate ACORD Form Certificate of Insurance furnished to OWNER.