AGREEMENT

THIS AGREEMENT (this "Agreement") made and entered into this ***8th*** day of ***July, 2019,*** by and between ***Marra Services, Inc.***, (the "Contractor"), and the City of Lakewood (the "City").

NOW, THEREFORE, in consideration of the mutual promises herein contained, the Contractor and the City hereby agree as follows:

ARTICLE 1. The Contractor, to the satisfaction of the City, shall provide all necessary materials, tools and equipment, and all utility and transportation services, and perform all labor, coordination and supervision necessary to complete in a satisfactory manner all the Work for ITEM NO. ***19-011*** - BASE BID, for a project known as ***Overflow Regulator Modifications Project*** as set forth in the Bid Form dated June 20, 2019 including any and all Addenda thereto in strict accordance with the Contract Documents on file in the office of the **Division of Purchasing,** including but not limited to the Plans and Specifications prepared by **the Dept. of Public Works, Division of Engineering** (the "Architect"). The City reserves the right to accept any alternates bid upon or substitutions proposed as provided in the Contract Documents.

ARTICLE 2. Except for any submittals, including but not limited to Shop Drawings, which the Contractor is required to provide by the Contract Documents, the City shall furnish the Contractor such further drawings or explanations as may be necessary to detail and illustrate the Work to be done. The Contractor shall conform to any drawings or explanations provided to the Contractor as a part of the contract. The Contractor shall conform to any drawings or explanations provided by the Contractor, including but not limited to Shop Drawings, and approved in accordance with the Contract Documents as a part of the contract. It is mutually understood and agreed that all Plans and Specifications are and remain the property of the City.

ARTICLE 3. No extras, additions or alterations shall be made to the Work shown or described by the Contract Documents, including but not limited to the Plans and Specifications, except upon the written Change Order, and when so made, the value of the Work added or omitted shall be computed in accordance with the Contract Documents and approved by the City, and the amount so ascertained shall be added to or deducted from the contract price. No modification, amendment or alteration shall be made in or to the Contract Documents, except by Change Order in accordance with the Contract Documents.

ARTICLE 4. The Contractor shall complete all Work to be performed under the contract within Fifty-three (53) consecutive calendar days in accordance with the Notice of Commencement with Work and the Project Schedule unless an extension of time is granted by the City in accordance with the Contract Documents.

ARTICLE 5. Upon failure by the Contractor to have all Work to be performed under the contract completed within the period above mentioned, then the Contractor shall forfeit and pay, or cause to be paid, to the City as liquidated damages, the sum of **Seven Hundred Dollars ($700.00)** per day, for each and every calendar day thereafter that such Work remains in an unfinished condition.

ARTICLE 6. The Contractor shall be held liable for any incidental damages suffered by the City as a result of Contractor's breach including expenses reasonably incurred in the inspection, receipt, transportation, and care and custody of goods rightfully rejected, any commercially reasonable charges, expenses, or commissions in connection with effecting cover and any other reasonable expense incident to the delay or other breach.

ARTICLE 7. The Contractor shall provide that eight hours shall constitute a day's work and that the prevailing wage rate of the locality as determined by the Department of Industrial Relations of the State of Ohio shall control the contract wages as stipulated in Chapter 4115, Ohio Revised Code.

ARTICLE 8. The City shall pay the Contractor for the performance of the contract as follows: Contract 19-011 THE CONTRACT PRICE IS **Three Hundred Sixty-Five Thousand, Eight Hundred Dollars and no/xx ($365,800.00)** subject to any additions or deductions during construction pursuant to Change Orders. Such sum shall be paid in current funds by the City upon payment requests issued by the Contractor and approved by the City or the Authorized Representative and proportioned by item to agree with the total amount of the contract.

An escrow account shall be established in accordance with Section 153.63, Ohio Revised Code. When the major portion of the contract is substantially complete and occupied, or in use, or otherwise accepted, and there exists no other reason to withhold retainage, the retained percentages held in connection with such portion will be released from escrow and paid to the Contractor, withholding only that amount necessary to assure completion. The balance of funds in the escrow account with accumulated interest shall be paid to the Contractor within thirty days from the date of completion or either acceptance or occupancy by the City, provided, however, that nothing in the contract shall be construed to create an obligation or incur a liability against the City in excess of any encumbrances issued to support the contract or in excess of the contract price, as modified by all Change Orders.

This contract shall be fifty percent completed when the Contractor has been paid pursuant to the contract, an amount equal to fifty percent of the total cost of the labor and materials of the contract.

The Contractor shall promptly make payment to all Subcontractors and Material Suppliers. The Contractor further agrees not to withhold a larger percentage of Subcontractors' and Material Supplier's payments, than the percentage of the Contractor's payments retained by the City.

No partial or progress payment made by the City to the Contractor shall be construed as evidence of, or represent, the actual Work performed or material delivered or installed as of the date of approval of payment of said partial or progress payment.

If at any time there should be evidence of any lien or claim for which, if established, the City may become liable and which is chargeable to the Contractor, the City or the Authorized Representative shall cause to be retained an amount equal to the lien or claim from subsequent payments due the Contractor, as required by Section 1311.25, et seq., Ohio Revised Code or other applicable provisions of the Ohio Revised Code, for the purpose of securing such lien or claim. Should there prove to be any such claim after payments are made, the Contractor shall refund to the City, a sum of money equal to the sum of all monies, including attorneys' fees, that the City may be compelled to pay, other than from funds retained from the Contractor, in discharging any lien or claim on the premises made obligatory by the Contractor's actions.

ARTICLE 9. No certificate of payment, no provision in the Contract Documents, and no partial or entire occupancy of the premises by the City shall constitute an acceptance of Work not done in accordance with the Contract Documents or relieve the Contractor of liability in respect to any express or implied warranties or responsibility for faulty materials or workmanship. In addition to any other warranty set forth in the Contract Documents, the Contractor shall, at its own expense, remedy any defects in the Work and pay for any damage resulting therefrom, which shall appear within the period of the applicable statute of limitations.

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the City, Architect, Architect's consultants, and the officers, directors, partners, consultants, subcontractors, agents, and employees of any of them from and against claims (whether alleged or proven), demands, costs, losses, and/or damages, including but not limited to all fees and charges of architects, attorneys, and other professionals and all court, arbitration, or other dispute resolution costs, arising out of or relating to any claim or action, legal or equitable, caused or alleged to have been caused by the Contractor's performance of the Work or any breach of the Contractor's obligations under the Contract Documents, including but not limited to the breach of any warranty provided in the Contract Documents.

ARTICLE 10. Note: Each party to this transaction recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser of goods and services; in this instance the ultimate purchaser is the City. Therefore, the following assignment is made:

For good cause and as consideration for executing the contract and intending to be legally bound, the Contractor, acting herein by and through the person signing this contract on behalf of the Contractor as a duly authorized agent, hereby assigns, sells, conveys and transfers to the City any and all right, title and interest in and to any and all claims and causes of action the Contractor may have or hereafter acquire under the antitrust laws of the United States of America or the State of Ohio, PROVIDED that the claims or causes of action relate to the particular goods, products, commodities, intangibles, or services purchased, procured, or acquired by or rendered to , the City pursuant to the contract, and EXCEPT as to any claims or causes of action which result from antitrust violations

commencing after the price is established under the contract and which are not passed on to the City under an escalation clause, Change Order, or through some other means. In addition, the Contractor warrants and represents that the Contractor will require any and all of the Contractor's subcontractors and first-tier suppliers to assign any and all federal and state antitrust claims and causes of action to the City, subject to the provision and exception stated above. The provisions of this article shall become effective at the time the City awards or accepts the contract, without further acknowledgment by any of the parties.

ARTICLE 11.The parties for themselves, their heirs, executors, administrators, successors and assigns do hereby agree to the full performance of the covenants herein contained.

ARTICLE 12.The City hereby appoints the Director of Public Works as the Authorized Representative for all uses and purposes under the contract. In the absence or unavailability of the Director of Public Works, the designee of the Director of Public Works may serve as the Authorized Representative for all uses and purposes under the contract.

ARTICLE 13.The Contractor hereby agrees to take direction from the Architect and the Authorized Representative and cooperate with the Architect, the Authorized Representative and all other persons involved in the Project.

ARTICLE 14. The contract and any modifications, amendments or alterations thereto shall be governed, construed and enforced by and under the laws of the State of Ohio and the Charter and ordinances of the City of Lakewood.

ARTICLE 15. The Contract Documents consist of this Agreement, the Notice to Bidders, the Instructions to Bidders, the Bid Form, the Substitution Sheet, the Non-Collusion Affidavit, the Bid Guaranty and Contract Bond, the General Conditions, the Plans and Specifications, the Prevailing Wage Rates, the Bidder Qualification Statement, the MacBride Principles Disclosure Statement, the Insurance Requirements Checklist, and any Supplementary Conditions, Special Conditions, Addenda and Change Orders. The Contract Documents form the contract between the City and the Contractor, are incorporated by reference into this Agreement to be as fully a part of this Agreement as if attached hereto or fully rewritten herein, and shall remain in effect during the term of the contract.

ARTICLE 16.The Contract Documents constitute the entire agreement between the City and the Contractor and supersede any prior agreements or understandings, written or oral.

ARTICLE 17. If any term or provision of the contract or the application thereof to any person or circumstance, is finally determined including any appeal taken, to be invalid or unenforceable by a court of competent jurisdiction, the remainder of the contract or the application of such term or provision to other person or circumstances, shall not be affected thereby, and each term and provision of the contract shall be valid and enforced to the fullest extent permitted by law.

ARTICLE 18.This Agreement has been executed in several counterparts, each of which shall constitute a complete original Agreement, which may be introduced in evidence or used for any other purpose without production of any other counterparts.

IN WITNESS WHEREOF, the parties hereto have set their hands to as of the day and year first above mentioned.

CITY OF LAKEWOOD:

BY: _____
Director of Public Works

CONTRACTOR:

MARRA SERVICES, INC.
_____
(Name of Contractor)

BY: Nikola Marra
_____
(Signature of Contractor)

APPROVAL:

The legal form and correctness
within document is hereby approved:

_____
Director of Law

CERTIFICATE OF FUNDS

In the matter of: Agreement with ***Marra Services, Inc.***

IT IS HEREBY CERTIFIED that the moneys required to meet the obligations of the City of Lakewood under the foregoing Agreement have been lawfully appropriated for such purposes and are in the treasury of the City of Lakewood or are in the process of collection to an appropriate fund, free from any previous encumbrances.

Dated: _____, 20___

CITY OF LAKEWOOD

By: _____

Director of Finance