LEMON GROVE CITY COUNCIL
AGENDA ITEM SUMMARY

Item No. 1.E
Mtg. Date June 20, 2017
Dept. Development Services

Item Title: **Renewal of Professional Services Agreement Stormwater Program Support Services With D-MAX Engineering, Inc.**

Staff Contact: Malik Tamimi, Management Analyst

Recommendation:

Adopt a Resolution **(Attachment A)** approving an agreement to renew professional services with D-MAX Engineering, Inc. to assist with the implementation of the City's Stormwater Program.

Item Summary:

The Regional Water Quality Control Board (RWQCB) through its Stormwater Municipal Permit requires the City to complete a number of tasks described in the Jurisdictional Runoff Management Plan (JRMP) during Fiscal Year 2017-18. These tasks include outfall monitoring, industrial, commercial and municipal field inspections, and structural best management practices maintenance verification and inspections. In addition to the JRMP, the City is required to implement its section of the San Diego Bay Watershed Water Quality Improvement Plan. The City has contracted with D-MAX Engineering, Inc. (D-MAX) in previous years to assist the City in meeting the requirements of the State's Mandated Stormwater Permit. The City's current contracts for the above mentioned services expires on June 30, 2017. City staff recommends continuing the contract with D-MAX to assist City staff with meeting these permit requirements. The proposed agreement is for a not to exceed amount of $55,000 through June 30, 2018. Funds were allocated next fiscal year within Fund 26 Storm Water Program, which receives its funding from business license fees, building permit fees, and the General Fund, to support the D-MAX agreement. City staff recommends that the City Council adopt a Resolution approving this agreement for professional services.

Fiscal Impact:

The total contract amount for this professional services agreement is not to exceed Fifty-Five Thousand Dollars ($55,000.00) and is supported through Fund 26 Storm Water Program, which receives its funding from business license fees, building permit fees, and the General Fund.

Environmental Review:

☒ Not subject to review
☐ Negative Declaration
☐ Categorical Exemption, Section
☐ Mitigated Negative Declaration

Public Information:

☒ None
☐ Newsletter article
☐ Notice to property owners within 300 ft.
☐ Notice published in local newspaper
☐ Neighborhood meeting

Attachments:

A. Resolution-Exhibit 1 D-MAX Proposal

Attachment A

RESOLUTION NO. 2017-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LEMON GROVE, CALIFORNIA APPROVING AN AGREEMENT FOR PROFESSIONAL SERVICES WITH D-MAX ENGINEERING, INC. FOR STORMWATER SUPPORT SERVICES

WHEREAS, the Regional Water Quality Control Board (RWQCB) adopted Order No. R9-2013-0001 (Permit) replacing the previously issued stormwater permit Order No. R9-2007-0001; and

WHEREAS, the Permit went into effect on June 27, 2013; and

WHEREAS, the Permit required the City to develop a Jurisdictional Runoff Management Program (JRMP) no later than June 27, 2015, which the City completed; and

WHEREAS, the City is required to conduct outfall monitoring, industrial, commercial and municipal inspections, and structural best management practices verification and inspections within Fiscal Year 2017-18; and

WHEREAS, the City is also required to implement the San Diego Bay Watershed Water Quality Improvement Plan; and

WHEREAS, the City has contracted with D-MAX Engineering, Inc. (D-MAX) to provide the aforementioned support through June 30, 2017; and

WHEREAS, the City's existing contracts with D-MAX for the above mentioned support expires on June 30, 2017; and

WHEREAS, the City has requested a stormwater services agreement to continue contracting with D-MAX to meet the Permit requirements through June 30, 2018; and

WHEREAS, funds have been allocated within Fund 26 Storm Water Program, which receives its funding from business license fees, building permit fees, and General Fund, to support the expense to provide said services by D-MAX with a not to exceed amount of $55,000.00.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Lemon Grove, California, hereby:

1. Approves an Agreement with D-MAX (Exhibit 1) for professional services for stormwater support services; and
2. Authorizes the City Manager or designee to execute said agreement.

/ / / /
/ / / /

Attachment A – Exhibit 1

AGREEMENT FOR
PROFESSIONAL STORMWATER SUPPORT SERVICES

THIS AGREEMENT is approved and effective upon the date of the last signature, by and between the CITY OF LEMON GROVE, a municipal corporation (the "CITY"), and D-Max Engineering, Inc., a water and environmental sciences firm (the "CONSULTANT").

R E C I T A L S

WHEREAS, the CITY desires to employ a CONSULTANT to provide professional stormwater services support that includes outfall monitoring, industrial, commercial, municipal inspections, structural best management practices maintenance verification and inspections, and water quality improvement plan support for the CITY.

WHEREAS, the CITY has determined that the CONSULTANT is qualified by experience and has the ability to perform the services desired by the CITY, and the CONSULTANT is willing to perform such services.

NOW, THEREFORE, THE PARTIES HERETO DO MUTUALLY AGREE AS FOLLOWS:

1. **ENGAGEMENT OF CONSULTANT.** The CITY hereby agrees to engage the CONSULTANT and the CONSULTANT hereby agrees to perform the services hereinafter set forth in accordance with all terms and conditions contained herein.

The CONSULTANT represents that all services required hereunder will be performed directly by the CONSULTANT or under direct supervision of the CONSULTANT.

2. **SCOPE OF SERVICES.** The CONSULTANT will perform services set forth in Exhibit A.

The CONSULTANT can expect to perform outfall monitoring, industrial, commercial, municipal inspections, structural best management practices maintenance verification and inspections, and water quality improvement plan support. This will involve the technical review of various stormwater documents and involve site visits and field inspections.

The CONSULTANT shall be responsible for all research and reviews related to the work and shall not rely on CITY personnel for such services, except as authorized in advance by the CITY. The CONSULTANT shall participate in meetings if required by a task order to keep staff advised of the progress on the project.

The CITY may unilaterally, or upon request from the CONSULTANT, from time to time reduce or increase the Scope of Services to be performed by the CONSULTANT under this Agreement per project. Upon doing so, the CITY and the CONSULTANT agree to meet in good faith and confer for the purpose of negotiating a corresponding reduction or increase in the compensation associated with said change in services.

3. **PROJECT COORDINATION AND SUPERVISION.** Malik Tamimi, Management Analyst, is hereby designated as the Project Manager for the CITY and will monitor the progress and execution of this Agreement. The CONSULTANT shall assign a single Project Manager to provide supervision and have overall responsibility for the progress and execution of this Agreement for the CONSULTANT. Arsalan Dadkhah, Ph. D., PE is hereby designated as the Project Manager for the CONSULTANT.

4. **COMPENSATION AND PAYMENT.** The compensation for the CONSULTANT shall be based on monthly billings covering actual work performed. Billings shall include labor classifications, respective rates, hours worked and reimbursable expenses, if any. The total cost for all work described within Exhibit A shall not exceed FIFTY-FIVE THOUSAND DOLLARS ($55,000.00) without prior written authorization from the CITY for twelve months of service. Monthly invoices will be processed for payment and remitted within

thirty (30) days from receipt of invoice, provided that work is accomplished consistent with Exhibit A as determined by the CITY.

On an annual basis, the CONSULTANT may request an increase in the schedule of fees of no more than the increase in the Consumer Price Index for the previous one year period.

The CONSULTANT shall maintain all books, documents, papers, employee time sheets, accounting records, and other evidence pertaining to costs incurred and shall make such materials available at its office at all reasonable times during the term of this Agreement and for three (3) years from the date of final payment under this Agreement, for inspection by the CITY and for furnishing of copies to the CITY, if requested.

5. **LENGTH OF AGREEMENT.** This Agreement will last through June 30, 2018 from the executed date of the Agreement or until all work has been completed by the CONSULTANT and accepted by the CITY, whichever occurs first.

6. **DISPOSITION AND OWNERSHIP OF DOCUMENTS.** The Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONSULTANT for this Project, whether paper or electronic, shall become the property of the CITY for use with respect to this Project, and shall be turned over to the CITY upon completion of the Project, or any phase thereof, as contemplated by this Agreement.

Contemporaneously with the transfer of documents, the CONSULTANT hereby assigns to the CITY and CONSULTANT thereby expressly waives and disclaims, any copyright in, and the right to reproduce, all written material, drawings, plans, specifications or other work prepared under this Agreement, except upon the CITY's prior authorization regarding reproduction, which authorization shall not be unreasonably withheld. The CONSULTANT shall, upon request of the CITY, execute any further document(s) necessary to further effectuate this waiver and disclaimer.

The CONSULTANT agrees that the CITY may use, reuse, alter, reproduce, modify, assign, transfer, or in any other way, medium or method utilize the CONSULTANT's work product for the CITY's purposes, and the CONSULTANT expressly waives and disclaims any residual rights granted to it by Civil Code Sections 980 through 989 relating to intellectual property and artistic works.

Any modification or reuse by the CITY of documents, drawings or specifications prepared by the CONSULTANT shall relieve the CONSULTANT from liability under Section 14 but only with respect to the effect of the modification or reuse by the CITY, or for any liability to the CITY should the documents be used by the CITY for some project other than what was expressly agreed upon within the Scope of this project, unless otherwise mutually agreed.

7. **INDEPENDENT CONSULTANT.** Both parties hereto in the performance of this Agreement will be acting in an independent capacity and not as agents, employees, partners or joint venture with one another. Neither the CONSULTANT nor the CONSULTANT'S employees are employees of the CITY and are not entitled to any of the rights, benefits, or privileges of the CITY's employees, including but not limited to retirement, medical, unemployment, or workers' compensation insurance.

This Agreement contemplates the personal services of the CONSULTANT and the CONSULTANT's employees, and it is recognized by the parties that a substantial inducement to the CITY for entering into this Agreement was, and is, the professional reputation and competence of the CONSULTANT and its employees. Neither this Agreement nor any interest herein may be assigned by the CONSULTANT without the prior written consent of the CITY. Nothing herein contained is intended to prevent the CONSULTANT from employing or hiring as

many employees, or subcontractors, as the CONSULTANT may deem necessary for the proper and efficient performance of this Agreement. All agreements by CONSULTANT with its subcontractor(s) shall require the subcontractor to adhere to the applicable terms of this Agreement.

8. **CONTROL.** Neither the CITY nor its officers, agents or employees shall have any control over the conduct of the CONSULTANT or any of the CONSULTANT's employees except as herein set forth, and the CONSULTANT expressly agrees not to represent that the CONSULTANT or the CONSULTANT's officers, agents, or employees are in any manner officers, agents, or employees of the CITY. It is understood that the CONSULTANT, its officers, agents, and employees are as to the CITY wholly independent consultants and that the CONSULTANT's obligations to the CITY are solely such as are prescribed by this Agreement.

9. **COMPLIANCE WITH APPLICABLE LAW.** The CONSULTANT, in the performance of the services to be provided herein, shall comply with all applicable State and Federal statutes and regulations, and all applicable ordinances, rules and regulations of the CITY OF LEMON GROVE, whether now in force or subsequently enacted. The CONSULTANT, and each of its subcontractors, shall obtain and maintain a current CITY OF LEMON GROVE business license prior to and during performance of any work pursuant to this Agreement.

10. **LICENSES, PERMITS, ETC.** The CONSULTANT represents and covenants that it has all licenses, permits, qualifications, and approvals of whatever nature that are legally required to practice its profession. The CONSULTANT represents and covenants that the CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any license, permit, or approval which is legally required for the CONSULTANT to practice its profession.

11. **STANDARD OF CARE.** The CONSULTANT, in performing any services under this Agreement, shall perform in a manner consistent with that level of care and skill ordinarily exercised by members of the CONSULTANT's trade or profession currently practicing under similar conditions and in similar locations. The CONSULTANT shall take all special precautions necessary to protect the CONSULTANT's employees and members of the public from risk of harm arising out of the nature of the work and/or the conditions of the work site.

Unless disclosed in writing prior to the date of this Agreement, the CONSULTANT warrants to the CITY that it is not now, nor has it within the preceding five (5) years, been debarred by a governmental agency or involved in debarment, arbitration or litigation proceedings concerning the CONSULTANT's professional performance or the furnishing of materials or services relating thereto.

The CONSULTANT is responsible for identifying any unique products, treatments, processes or materials whose availability is critical to the success of the project the CONSULTANT has been retained to perform, within the time requirements of the CITY, or, when no time is specified, then within a commercially reasonable time. Accordingly, unless the CONSULTANT has notified the CITY otherwise, the CONSULTANT warrants that all products, materials, processes or treatments identified in the project documents prepared for the CITY are reasonably commercially available. Any failure by the CONSULTANT to use due diligence under this sub-paragraph will render the CONSULTANT liable to the CITY for any increased costs that result from the CITY's later inability to obtain the specified items or any reasonable substitute within a price range that allows for project completion in the time frame specified or, when not specified, then within a commercially reasonable time.

12. **NON-DISCRIMINATION PROVISIONS.** The CONSULTANT shall not discriminate against any employee or applicant for employment because of age, race, color, ancestry, religion, sex,

sexual orientation, marital status, national origin, physical handicap, or medical condition. The CONSULTANT will take positive action to insure that applicants are employed without regard to their age, race, color, ancestry, religion, sex, sexual orientation, marital status, national origin, physical handicap, or medical condition. Such action shall include but not be limited to the following: employment, promotion, demotion, transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. The CONSULTANT agrees to post in conspicuous places available to employees and applicants for employment any notices provided by the CITY setting forth the provisions of this non-discrimination clause.

13. **CONFIDENTIAL INFORMATION.** The CITY may from time to time communicate to the CONSULTANT certain confidential information to enable the CONSULTANT to effectively perform the services to be provided herein. The CONSULTANT shall treat all such information as confidential and shall not disclose any part thereof without the prior written consent of the CITY. The CONSULTANT shall limit the use and circulation of such information, even within its own organization, to the extent necessary to perform the services to be provided herein. The foregoing obligation of this Section 13, however, shall not apply to any part of the information that (i) has been disclosed in publicly available sources of information; (ii) is, through no fault of the CONSULTANT, hereafter disclosed in publicly available sources of information; (iii) is already in the possession of the CONSULTANT without any obligation of confidentiality; (iv) has been or is hereafter rightfully disclosed to the CONSULTANT by a third party, but only to the extent that the use or disclosure thereof has been or is rightfully authorized by that third party; or (v) is disclosed according to law or court order.

The CONSULTANT shall not disclose any reports, recommendations, conclusions or other results of the services or the existence of the subject matter of this Agreement without the prior written consent of the CITY. In its performance hereunder, the CONSULTANT shall comply with all legal obligations it may now or hereafter have respecting the information or other property of any other person, firm or corporation.

CONSULTANT shall be liable to CITY for any damages caused by breach of this condition, pursuant to the provisions of Section 14.

14. **INDEMNIFICATION AND HOLD HARMLESS.** The CONSULTANT shall indemnify, defend, and hold harmless the CITY, and its elected officials, officers, agents and employees from any and all claims, demands, costs or liability that arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of CONSULTANT, its employees, agents, and subcontractors in the performance of services under this Agreement. CONSULTANT's duty to indemnify under this section shall not include liability for damages for death or bodily injury to persons, injury to property, or other loss, damage or expense arising from the sole negligence or willful misconduct by the CITY or its elected officials, officers, agents, and employees. CONSULTANT's indemnification obligations shall not be limited by the insurance provisions of this Agreement. The CITY AND CONSULTANT expressly agree that any payment, attorney's fees, costs or expense CITY incurs or makes to or on behalf of an injured employee under the CITY's self-administered workers' compensation is included as a loss, expense, or cost for the purposes of this section, and that this section will survive the expiration or early termination of this Agreement.

15. **WORKERS' COMPENSATION.** The CONSULTANT shall comply with all of the provisions of the Workers' Compensation Insurance and Safety Acts of the State of California, the applicable provisions of Division 4 and 5 of the California Government Code and all amendments thereto; and all similar state or Federal acts or laws applicable; and shall indemnify, and hold harmless the CITY and its elected officials, officers, agents, and employees

from and against all claims, demands, payments, suits, actions, proceedings and judgments of every nature and description, including reasonable attorneys' fees and defense costs presented, brought or recovered against the CITY or its elected officials, officers, agents, and employees for or on account of any liability under any of said acts which may be incurred by reason of any work to be performed by the CONSULTANT under this Agreement.

16. **INSURANCE.** The CONSULTANT, at its sole cost and expense, shall purchase and maintain, and shall require its subcontractors, when applicable, to purchase and maintain throughout the term of this Agreement, the following insurance policies:

☒ A. If checked, Professional Liability Insurance (errors and omissions) with minimum limits of $1,000,000 per occurrence.

B. Automobile insurance covering all bodily injury and property damage incurred during the performance of this Agreement, with a minimum coverage of $1,000,000 combined single limit per accident. Such automobile insurance shall include non-owned vehicles.

C. Comprehensive general liability insurance, with minimum limits of $1,000,000 combined single limit per occurrence, covering all bodily injury and property damage arising out of its operation under this Agreement.

D. Workers' compensation insurance covering all of CONSULTANT's employees.

E. The aforesaid policies shall constitute primary insurance as to the CITY, its elected officials, officers, agents, and employees so that any other policies held by the CITY shall not contribute to any loss under said insurance. Said policies shall provide for thirty (30) days prior written notice to the CITY of cancellation or material change.

F. Said policies, except for the professional liability and workers' compensation policies, shall name the CITY and its elected officials, officers, agents, and employees as additional insureds.

G. If required insurance coverage is provided on a "claims made" rather than "occurrence" form, the CONSULTANT shall maintain such insurance coverage for three years after expiration of the term (and any extensions) of this Agreement.

H. Any aggregate insurance limits must apply solely to this Agreement.

I. Insurance shall be written with only California admitted companies which hold a current policy holder's alphabetic and financial size category rating of not less than A VIII according to the current Best's Key Rating Guide, or a company equal financial stability that is approved by the CITY.

J. This Agreement shall not take effect until certificate(s) or other sufficient proof that these insurance provisions have been complied with, are filed with and approved by the CITY. If the CONSULTANT does not keep all of such insurance policies in full force and effect at all times during the terms of this Agreement, the CITY may elect to treat the failure to maintain the requisite insurance as a breach of this Agreement and terminate the Agreement as provided herein.

17. **LEGAL FEES.** If any party brings a suit or action against the other party arising from any breach of any of the covenants or agreements or any inaccuracies in any of the representations and warranties on the part of the other party arising out of this Agreement, then in that event, the prevailing party in such action or dispute, whether by final judgment or out-of-court settlement, shall be entitled to have and recover of and from the other party all reasonable costs and expenses of suit, including reasonable attorneys' fees.

For purposes of determining who is to be considered the prevailing party, it is stipulated that attorneys' fees incurred in the prosecution or defense of the action or suit shall not be

considered in determining the amount of the judgment or award. Attorneys' fees to the prevailing party if other than the CITY shall, in addition, be limited to the amount of attorneys' fees incurred by the CITY in its prosecution or defense of the action, irrespective of the actual amount of attorney's fees incurred by the prevailing party.

18. **MEDIATION/ARBITRATION.** If a dispute arises out of or relates to this Agreement, or the breach thereof, the parties agree first to try, in good faith, to settle the dispute by mutual negotiation between the principals, and failing that through nonbinding mediation in San Diego, California, in accordance with the Commercial Mediation Rules of the American Arbitration Association (the "AAA"). The costs of mediation shall be borne equally by the parties.

19. **TERMINATION.** This Agreement may be terminated with or without cause by the CITY. Termination without cause shall be effective only upon thirty (30) days written notice to the CONSULTANT. During said 30-day period the CONSULTANT shall perform all services in accordance with this Agreement. The CONSULTANT may terminate this agreement upon thirty (30) days prior notice in the event of a continuing and material breach by the CITY of its obligations under this Agreement including but not limited to payment of invoices. Termination with or without cause shall be effected by delivery of written Notice of Termination to the CONSULTANT as provided for herein.

This Agreement may also be terminated immediately by the CITY for cause in the event of a material breach of this Agreement that is not cured to the CITY's satisfaction within a ten (10) day prior cure period, or material misrepresentation by the CONSULTANT in connection with the formation of this Agreement or the performance of services, or the failure to perform services as directed by the CITY.

The CITY further reserves the right to immediately terminate this Agreement upon: (1) the filing of a petition in bankruptcy affecting the CONSULTANT; (2) a reorganization of the CONSULTANT for the benefit of creditors; or (3) a business reorganization, change in business name or change in business status of the CONSULTANT.

In the event of termination, all finished or unfinished Memoranda, Reports, Maps, Drawings, Plans, Specifications and other documents prepared by the CONSULTANT, whether paper or electronic, shall immediately become the property of and be delivered to the CITY, and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed on such documents and other materials up to the effective date of the Notice of Termination, not to exceed the amounts payable hereunder, less any damages caused the CITY by the CONSULTANT's breach, if any. Thereafter, ownership of said written materials shall vest in the CITY all rights set forth in Section 6.

20. **NOTICES.** All notices or other communications required or permitted hereunder shall be in writing, and shall be personally delivered; or sent by overnight mail (Federal Express or the like); or sent by registered or certified mail, postage prepaid, return receipt requested; or sent by ordinary mail, postage prepaid; or sent by facsimile or fax; and shall be deemed received upon the earlier of (i) if personally delivered, the date of delivery to the address of the person to receive such notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight mail facility, (iii) if mailed by registered, certified or ordinary mail, five (5) days within California or ten (10) days if the address is outside the State of California after the date of deposit in a post office or mailbox regularly maintained by the United States Postal Service, (iv) if given by facsimile or fax, when sent. Any notice, request, demand, direction or other communication delivered or sent as specified above shall be directed to the following persons:

Attachment A – Exhibit 1

To the CITY:	To the CONSULTANT:
Malik Tamimi, Management Analyst CITY OF LEMON GROVE 3232 Main Street Lemon Grove, CA 91945	Arsalan Dadkhah, Ph. D., PE D-Max Engineering, Inc. 7220 Trade Street Suite 119 San Diego, CA 92121

Notice of change of address shall be given by written notice in the manner specified in this Section. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given shall be deemed to constitute receipt of the notice, demand, request or communication sent.

21. **CONFLICT OF INTEREST AND POLITICAL REFORM ACT OBLIGATIONS.** During the term of this Agreement, the CONSULTANT shall not perform services of any kind for any person or entity whose interests conflict in any way with those of the CITY OF LEMON GROVE. The CONSULTANT also agrees not to specify any product, treatment, process or material for the project in which the CONSULTANT has a material financial interest, either direct or indirect, without first notifying the CITY of that fact. The CONSULTANT shall at all times comply with the terms of the Political Reform Act and the Lemon Grove Conflict of Interest Code. The CONSULTANT shall immediately disqualify itself and shall not use its official position to influence in any way any matter coming before the CITY in which the CONSULTANT has a financial interest as defined in Government Code Section 87103. The CONSULTANT represents that it has no knowledge of any financial interests that would require it to disqualify itself from any matter on which it might perform services for the CITY.

☒ If checked, the CONSULTANT shall comply with all of the reporting requirements of the Political Reform Act and the CITY OF LEMON GROVE Conflict of Interest Code. Specifically, the CONSULTANT shall:

1. Go to www.fppc.ca.gov
2. Download the Form 700: Statement of Economic Interests
3. Completely fill out the form
4. Submit the form to the Public Works Department with the signed Agreement.

The CONSULTANT shall be strictly liable to the CITY for all damages, costs or expenses the CITY may suffer by virtue of any violation of this Paragraph 21 by the CONSULTANT.

22. **MISCELLANEOUS PROVISIONS.**

A. *Computation of Time Periods.* If any date or time period provided for in this Agreement is or ends on a Saturday, Sunday or federal, state or legal holiday, then such date shall automatically be extended until 5:00 p.m. Pacific Time of the next day which is not a Saturday, Sunday or federal, state or legal holiday.

B. *Counterparts.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which, together, shall constitute but one and the same instrument.

C. *Captions.* Any captions to, or headings of, the sections or subsections of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

D. *No Obligations to Third Parties.* Except as otherwise expressly provided herein, the execution and delivery of this Agreement shall not be deemed to confer any rights upon, or obligate any of the parties hereto, to any person or entity other than the parties hereto.

E. *Exhibits and Schedules.* The Exhibits and Schedules attached hereto are hereby incorporated herein by this reference for all purposes.

F. *Amendment to this Agreement.* The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

G. *Waiver.* The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

H. *Applicable Law.* This Agreement shall be governed by and construed in accordance with the laws of the State of California.

I. *Entire Agreement.* This Agreement supersedes any prior agreements, negotiations and communications, oral or written, and contains the entire agreement between the parties as to the subject matter hereof. No subsequent agreement, representation, or promise made by either party hereto, or by or to an employee, officer, agent or representative of any party hereto shall be of any effect unless it is in writing and executed by the party to be bound thereby.

J. *Successors and Assigns.* This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

K. *Construction.* The parties acknowledge and agree that (i) each party is of equal bargaining strength, (ii) each party has actively participated in the drafting, preparation and negotiation of this Agreement, (iii) each such party has consulted with or has had the opportunity to consult with its own, independent counsel and such other professional advisors as such party has deemed appropriate, relative to any and all matters contemplated under this Agreement, (iv) each party and such party's counsel and advisors have reviewed this Agreement, (v) each party has agreed to enter into this Agreement following such review and the rendering of such advice, and (vi) any rule or construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement, or any portions hereof, or any amendments hereto.

Attachment A – Exhibit 1

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

CITY OF LEMON GROVE

Lydia Romero, City Manager

Date

D-MAX ENGINEERING, INC.

Arsalan Dadkhah, President

Date

APPROVED AS TO FORM:

James Lough, City Attorney

Date

D-MAX Engineering, Inc.
Consultants in Water & Environmental Sciences

June 4, 2017

Mr. Malik Tamimi
City of Lemon Grove
3232 Main Street
Lemon Grove, CA 91945

Re: Proposal for 2017-2018 Storm Water Program Support
City of Lemon Grove, California

Dear Mr. Tamimi,

D-MAX Engineering, Inc. is pleased to submit this proposal to assist the City of Lemon Grove (City) storm water program with tasks required by San Diego Regional Water Quality Control Board Order No. R9-2013-0001 as amended by Order No. R9-2015-0001 and Order No. R9-2015-0100 (Municipal Permit) for the 2017-2018 fiscal year.

Scope of Services

The scopes of services for the major groups of tasks to be completed are described below.

A. MS4 Outfall Monitoring

I. Dry Weather Major MS4 Outfall Monitoring and Reporting Program

The Municipal Permit requires the City to perform Dry Weather Major MS4 Outfall Discharge Monitoring each monitoring year (October 1 through September 30). The City is required to visit at least 80 percent of its major MS4 outfalls twice per monitoring year. The work will include field screening at the City's four major outfalls twice, for a total of eight field screening site visits. Field work will be completed by September 30, 2017.

This will complete the required monitoring for the period between October 1, 2016 and September 30, 2017.

The field work will include flow measurement, observations, and trash assessment at each site. Data will be recorded such that relevant parameters can be reported in the regional standard format.

The summary report associated with this monitoring will include a list of monitoring sites, results in tabular form, and results of follow-up investigations. A spreadsheet of relevant data in the regional standard format will be provided along with the report.

II. Non-Storm Water Persistent Flow Sampling

In accordance with Section D.2.b. of the Municipal Permit, the City is required to perform non-storm water persistent flow MS4 outfall discharge monitoring. If, during dry weather MS4 outfall monitoring, sites are found to have persistent flow, the City will determine which persistent non-storm water discharges contain pollutant concentrations in excess of the respective non-storm water action levels (NAL) at a minimum of five of these sites per watershed within its jurisdiction. Or, if a jurisdiction has less than five persistent outfalls, all of the persistent outfalls will be sampled.

7220 Trade Street ■ Suite 119 ■ San Diego, CA 92121 ■ (858) 586-6600 ■ Fax (858) 586-6644

Attachment A – Exhibit 1

Based on the results of the City's 2016-2017 Dry Weather MS4 Outfall Monitoring Program, one of the City's major outfalls is considered to be persistently flowing: Site 69.

As required by the Municipal Permit, we will visit the persistently flowing outfall to collect samples twice between July 1, 2017 and September 30, 2017. We anticipate completing the two rounds of sampling in one day.

Field tests will be completed for pH, temperature, conductivity, turbidity, and dissolved oxygen using calibrated field meters. Grab samples will be collected and submitted to a certified laboratory for the constituents identified in Appendix 2D of the Storm Drain Outfall Monitoring Plan of the San Diego Bay WMA WQIP. All sampling and analyses will be conducted in accordance with 40 Code of Federal Regulations (CFR) Part 136.

As directed by the San Diego Bay WMA Storm Drain Outfall Monitoring Plan, a field duplicate and a field blank will be submitted to the laboratory with each batch of samples collected. Since there will be only one batch of samples submitted to the laboratory, one duplicate and one field blank will also be submitted.

In addition, as required by the San Diego Bay WMA WQIP, we will also collect one sample for total hardness from the receiving water upstream of the point where any flow from the outfall converges with the receiving water where possible.

The monitoring summary report to completed under Task 1 will summarize the results of the analyses, and will include a comparison of results to the applicable NALs as provided in the Municipal Permit. We will also discuss potential sources of NAL exceedances and recommendations for further investigation or potential steps towards eliminating persistent flows. We will also make recommendations about the relative priority of further investigations at other sites based on the collected data and known or suspected sources of flow as well as recommendations about MS4 cleaning or maintenance based on trash assessments and MS4 outfall structural condition assessments.

III. Follow-Up and Upstream Investigations

Follow-up visits and upstream source investigations may be required in some cases. Investigations will be in accordance with the County of San Diego Follow Up Investigation Procedures and will focus mainly on identifying sources of flow, particularly in cases where observations (color, clarity, odor, floatables, etc.) indicate a high possibility of an illegal discharge occurring. After investigations have been completed, results will be summarized and included in the program's monitoring report. Any illegal discharges identified will be immediately reported to the City at the time they are discovered.

B. Industrial, Commercial, and Municipal Inspections

I. Industrial, Commercial, and Municipal Field Inspections

The City has 334 inventoried industrial and commercial businesses and 13 inventoried municipal facilities, for a total of 347 facilities. We will inspect all 74 high priority facilities plus approximately 20 more industrial facilities that are potentially subject to the Industrial General Permit, which will also meet the minimum Permit requirement of inspecting 20% of inventoried industrial, commercial, and municipal facilities per year. Our approach to these inspections is described below.

Inspection Notification and Initial Coordination
We will work with the City to prepare and send out a notification letter to businesses that have been selected for inspections, using the letter prepared last year as a template. We will prepare mailing labels for the City to use to send out these letters.

> *Optional task*: we can also directly send out the letters on behalf of the City if the City provides us with City logo envelopes for the mailing.

Sending out notification letters alerts businesses to the upcoming inspections, notifies them that a City contractor will be completing the inspections, and helps identify businesses that may have gone out of businesses.

For municipal facilities, we will contact the facility manager to set up an appointment where necessary.

Initial Inspection Coordination
In the past we have had extensive communication with City staff about how to interpret and answer the questions on the City's inspection form. We have documented that direction from the City and are familiar with the City's preferences, so we do not need to have additional meetings or discussions with City staff to understand inspection procedures. If the City has any educational materials to be passed out during inspections, we will pick those up from City Hall before beginning inspections.

Facility Inspections
We will contact the businesses and municipal facilities identified as needing scheduled appointments to set up times to inspect them. We will organize the rest of the sites on the inspection list by address so that our inspectors can visit nearby facilities at the same time, which makes the process more efficient.

The site inspection procedure involves a thorough examination of the facility and all outdoor activities that have the potential to generate urban runoff pollution. We will record information on the City's inspection form. The site inspection includes the following steps.

i. ***Meet With Responsible Party:*** Our inspectors will visit sites during normal business hours and wear company-issued photo identification. Upon meeting the responsible party, our inspector will introduce the storm water program, the purpose of the inspection, and distribute relevant educational materials. The introduction to the program will include a brief overview of the federal and state water quality laws, local requirements, impacts of urban runoff, the concept of Best Management Practices (BMPs), and a description of the local water bodies and pollutants of concern. At this time the inspector will also verify and update facility contact information and evaluate whether the assigned SIC code reflects the principal activity of the facility. Recommended inventory updates will be documented if the site visit finds that the listed business has moved out or is not conducting activities that would require it to be on the City's inventory.

   - *We understand that maintaining good relations with local businesses is important for the City of Lemon Grove and that, while interacting with businesses, we will be perceived by the public as City agents. Our inspectors are trained to interact with businesses with utmost professionalism, respect, and courtesy.*

ii. ***BMP and Potential Pollutant Assessment:*** Our inspector will conduct a thorough walk-through of the facility accompanied by the facility manager/responsible party, to inspect all areas exposed to storm water. The inspector will evaluate existing BMP

effectiveness and evaluate the site to assess whether illegal discharges or illicit connections are present.

- *Since the City is subject to bacteria and metals TMDLs for Chollas Creek, our inspections will pay extra attention to potential sources of these pollutants and corresponding BMPs. We will work with responsible parties to identify simple and cost-effective BMPs to address sources of these pollutants whenever possible. Our inspectors are experienced in identifying sources of metals and bacteria at industrial and commercial businesses and municipal facilities.*
- *We understand the City has committed to reducing the percentage of uncovered grease bins in its portion of the Chollas Creek watershed in the San Diego Bay WQIP. We will track this information during inspection and include it in the final inspection summary spreadsheet so that the City can track progress toward the WQIP numeric goal.*

If specific BMPs are not implemented or are found to be ineffective, corrections will be recommended and recorded in the appropriate section of the inspection form. Photographs will be taken to document BMP deficiencies. If an illegal discharge or illicit connection is observed or significant corrective action is needed right away, the City will be notified promptly.

- *We will work with businesses to make corrections during the inspection whenever possible. This approach is responsive to the Regional Board's stated desire to resolve problems quickly, and it also reduces the amount of follow-up and enforcement work that City staff will need to do.*

iii. ***Industrial Permit Subjectivity Assessment:*** Based on the SIC code assigned based on part "i" above, we will identify whether the business may be subject to the State Industrial General Permit. We will check records at the business and/or on the State's SMARTS website to determine whether businesses have already obtained coverage under the Permit. Businesses that may be subject but cannot demonstrate that they have filed for coverage will be identified as potential non-filers. This will allow the City to report them to the Regional Board, as required by the Municipal Permit.

iv. ***Inspection Summary and Conclusion:*** At the completion of the walk-through, the inspector will summarize and clearly communicate all required corrective actions to the responsible party and discuss potential options for resolving the deficiencies noted. The inspector will also assign a storm water knowledge score and an overall BMP implementation score.

- *We take a collaborative approach with businesses to achieve compliance rather than simply tabulate BMP deficiencies. Our inspectors make every effort to identify practical and cost effective solutions and to leave a positive impression on business personnel.*

Documentation

i. Using our experience with the City's conventions and preferences, the inspection form will be completed for each site visit and reviewed for quality control in our office. We will provide hard copies and scanned copies (pdf format) of inspection forms and electronic copies of inspection photos to the City.

ii. We will provide copies of completed inspection forms to businesses that have corrective actions that require follow-up.

iii. We will prepare a summary spreadsheet of inspection results to the City. The spreadsheet will be based on the initial inspection list. It will also include the following:

a. Updated address information, where applicable

b. Updated SIC codes and priorities where appropriate based on inspection results

i. This includes identifying when a business was no longer at the stated address or when the business was found to conduct activities that do not require it to be on the industrial/commercial inventory (e.g., nail salons or dry cleaners). In these cases the priorities will be changed to "not inventoried" and they will be considered to have been removed from the inventory.

c. Updated "potential pollutant sources" information for the pollutants listed on the City's inspection form.

i. Together with the information in parts "a" and "b" above, this will provide an updated inventory as of the end of the inspection program. This will help the City in preparing its inventory for the next fiscal year and with annual reporting.

d. Inspection date

e. Whether the business needs a follow-up inspection. If yes, notes about the reason a follow-up is required will also be included.

f. Whether the business was identified as a potential Industrial General Permit non-filer.

i. This will give the City data it needs to report potential non-filers to the Regional Board.

g. Grease bin storage status: covered, uncovered, or N/A (no grease bin).

i. This will give the City data to report on grease bin coverage for the San Diego Bay WQIP.

II. Inspection Follow-Up and Enforcement Support

Based on our experience, some businesses will have deficiencies that need to be corrected. Where possible, we will work with businesses to resolve these issues at the time of the inspection as part of Task I. Where resolution during an inspection is not possible, we will follow-up with businesses. Generally this will involve emails or phone calls to businesses to remind them that they need to send in proof of correction, typically emailed photos along with brief text descriptions. We will also complete follow-up site inspections where necessary to document corrections or support City enforcement efforts, and we will prepare case histories and other documentation as requested by the City to support enforcement actions.

III. Industrial and Commercial Inventory Update

Based on the results of the inspections completed under Task I and business license information provided by the City, we will update the City's industrial and commercial business inventory. The end product of this process will be the 2018-2019 industrial and commercial inventory.

IV. Prepare Inspection Numbers for Annual Reporting

Based on the inspections completed under Task I, we will prepare information to be input to the City's JRMP Annual Report form. This includes identifying numbers of inventoried facilities, inspection, discharges, violations, enforcement actions, and similar data for each class of inspected facilities: industrial, commercial, and municipal. We will prepare this information in the same format as shown on the JRMP Annual Report form so that City staff can easily insert the numbers when preparing the 2017-2018 report.

C. Structural BMP Maintenance Verification and Inspections

I. Structural BMP Inventory Update

D-MAX will work with the City to obtain contact information for sites being added to the inventory. We will also re-prioritize the inventoried projects using the flow chart in the City's recently updated JRMP and add in approximate size/area for each project, as required by the Permit. We expect the approximate project size will be estimated based on viewing the project areas in Google Maps or by project reports provided by the City. We also expect that the City will provide us with paper or electronic copies of plan sheets and/or Water Quality Technical Reports for all inventoried projects that D-MAX did not review and therefore does not already have copies of the documents.

II. Structural BMP Maintenance Verification

We will update the 2016-2017 maintenance verification letters and create new letters for any other projects added to the inventory (Task I), using contact information provided by the City as part of the inventory update in Task I. We will mail out the letters and respond to questions from recipients of the letters as needed. Where letters are returned as undeliverable or the person to which the letter is mailed indicates they are no longer the party responsible, we will work with the City to identify the new contact person. City assistance may be needed to determine current parcel owners if other avenues to identify contacts are not successful. We will process returned forms and enter them into the City's inventory spreadsheet to document that maintenance was verified. If projects do not return forms, we will send them one follow-up mailing to remind them to return the form.

III. Structural BMP Inspections

We will inspect all high priority sites before October 1, 2017. We expect this will be about five sites. We will also inspect sites that do not return maintenance verification forms (Task II). We expect that will be approximately four more inspections, for a total of nine inspections. At each inspection, we will document results on an inspection form and record the overall inspection result (compliant or not) in the City's inventory spreadsheet. Where deficiencies are noted, we will follow up with the responsible person to obtain proof of correction. In cases where a responsible party cannot be contacted, we will request assistance from the City in identifying the appropriate person to contact regarding the required corrections. Where responsible parties are not responsive, we will request enforcement assistance from the City. If deficiencies that require corrections beyond standard maintenance actions, such as correcting grading or outlet structures within a BMP, are noted, we will work with the City to prepare case files based on past plan sheets and other submittals on an as-needed basis as part of the as-needed component of service group D below.

D. Water Quality Improvement Plan (WQIP) and Trash Amendments Support

The City of Lemon Grove, as one of the agencies that is a party to the San Diego Bay WQIP, has developed a variety of water quality improvement strategies that the City will implement. We will assist the City with working out implementation details for these strategies, including how their implementation will be tracked. Strategy implementation tracking is important since following the end of the fiscal year the City will need to report back to the Regional Board on the implementation of its strategies. We will also help the City revise strategies as needed based on implementation experience, to make them more effective or to address upcoming new requirements, such as the State Trash Amendments.

We will also support the City in other as-needed WQIP implementation tasks, such as the following, to the extent budget allows and as directed by the City's project manager:

- Providing additional analysis and technical support to the City for the State Trash Amendments, such as assisting the City with preparing a response to the Regional Board's Trash Amendments investigative order, revising cost estimates for Track 1 and Track 2 compliance scenarios, and assisting the City with identifying specific locations and dimensions of structural BMPs to be installed in the first few years of program implementation.
- Researching feasibility of a low flow sewer diversion to eliminate persistent flow at the City's one flowing outfall. Eliminating persistent flow would help the City comply with the strict requirements of the Bacteria TMDL.
- Providing technical assistance related to contaminated sediment investigation and clean up at the mouth of Chollas Creek in San Diego Bay.
- Responding to additional comments from the Regional Board and/or environmental groups related to the WQIP; we will help the City prepare responses as needed.
- Other services, such as additional follow-up visits to verify trash cleanup at monitoring sites, conducting inspections at facilities or areas identified as potential sources of exceedances, additional monitoring, data analysis, reporting, responding to regulatory requests or orders, and literature review.

Attachment A – Exhibit 1

Cost Estimate

Our proposed costs to complete the scope of services described in our proposal are as follows:

Service	Cost
A. MS4 Outfall Monitoring	
I. Dry Weather MS4 Outfall Monitoring and Reporting	$5,000
II. Non-Storm Water Persistent Flow Sampling	$5,000
III. Follow-Up and Upstream Investigations	$2,500
B. Industrial, Commercial, and Municipal Inspections	
I. Industrial, Commercial, and Municipal Field Inspections	$16,580
II. Inspection Follow-Up and Enforcement Support	$3,600
III. Industrial and Commercial Inventory Update	$1,500
IV. Prepare Inspection Numbers for Annual Reporting	$800
C. Structural BMP Maintenance Verification and Inspections	
I. Structural BMP Inventory Update	$2,000
II. Structural BMP Maintenance Verification	$3,000
III. Structural BMP Inspections	$3,500
D. WQIP Support	$11,520
Overall Total	**$55,000**

All services will be provided on a time and materials services in accordance with our attached fee schedule, not to exceed the overall cost total.

Please feel free to contact us if you have any questions or would like to discuss this proposal in more detail. We look forward to working with you on this project.

Sincerely,
D-MAX Engineering, Inc.

Arsalan Dadkhah

Arsalan Dadkhah, Ph.D., P.E.
Principal

SCHEDULE OF FEES

January 1, 2017

LABOR

Classification	Hourly Rate
Word Processor/Admin	60
Drafter	70
Technician	70
Senior Technician	80
Staff Scientist/Engineer I	90
Staff Scientist/Engineer II	100
Assistant Project Scientist/Engineer	115
Project Scientist/Engineer	130
Senior Scientist/Engineer	150
Principal Scientist/Engineer	170

Field and hourly services will be charged portal to portal from our office, with a two-hour minimum.

Appearance as expert witnesses at court trials, mediation, arbitration hearings and depositions will be charged at $200/hour. Time spent preparing for such appearances will be charged at the above standard hourly rates.

OTHER CHARGES

Subcontracted services, such as sub consultants, outside testing, drilling, and surveyors, will be charged at cost plus 15%. Other project-specific costs, such as rentals, expendable or special supplies, special project insurance, permits and licenses, shipping, subsistence, tolls and parking, outside copying/printing, etc., will be charged at cost plus 15%. Mileage will be charged at the current IRS rate. Meals, lodging, and travel expenses, when pre-approved by the City, will be charged at cost or at standard per diem rates, as applicable.

Client will be responsible for any applicable taxes in addition to the fees due for Services.