

City of Woodland

REPORT TO MAYOR AND CITY COUNCIL

AGENDA ITEM

TO: THE HONORABLE MAYOR
AND CITY COUNCIL

DATE: May 4, 2010

SUBJECT: Approve Memorandum of Understanding with Yolo County Resource
Conservation District

Report in Brief

Staff has determined that the most cost effective method to provide natural systems landscaping and maintenance of natural areas for sites that require such work is through an agreement with the Yolo County Resource Conservation District (Yolo RCD). Yolo RCD is a special district of the State of California, organized as a resource conservation district subject to Division 9 (commencing with section 9000) of the California Public Resources Code. This organization is not affiliated with Yolo County government. Yolo RCD has provided similar services to Yolo County Parks and Caltrans. The City of Woodland would be developing a partnership with Yolo RCD that will produce significant savings and environmental benefits to the City.

Staff recommends that the City Council approve the Memorandum of Understanding between the Yolo County Resource Conservation District and the City of Woodland.

Background

The East Regional Storm Drain Pond is slated to be landscaped via a Capital Project (06-12). This site has been in operation for about 5 years. A design for the landscaping of the pond was prepared and approved by Council in February 19, 2008. The estimated construction cost was \$400,000. Bidding and construction was delayed due to time of year and for cash flow management purposes.

The design assumed that the pond was completely devoid of landscaping or would be completely stripped of all existing vegetation. In the meantime, various plants and grasses have established themselves, many of which could have continued value as natural vegetation in this pond. Staff researched the best method of preserving natural vegetation of long-term value and determined that Yolo RCD has the right mix of services, skills and experience to meet the goal of economically enhancing the landscaping at this pond. Yolo RCD proposes to accomplish the East Regional Pond work for an initial cost of \$29,500 and the Storz Pond work for an estimated cost of \$9,925. This proposal is \$350,000 less than staff's original estimate for the combined work for both areas which

was included in the approved FY 2010 Capital Budget. In addition, engaging the Yolo RCD provides a resource for additional natural landscaping projects and natural area management as future projects may require and future resources will allow.

Yolo RCD's jurisdiction includes some of the incorporated and the majority of unincorporated territory of the County of Yolo. The primary purposes include promotion of responsible watershed management through technical assistance to landowners and facilitation of voluntary watershed-based community land stewardship groups to implement sustainable agricultural practices, protect and enhance waterways and water quality, reduce soil erosion, preserve and restore wildlife habitat and foster an informed and knowledgeable community.

Resource Conservation Districts were first created as a result of the "Dust Bowl" crisis when millions of acres of farmland were destroyed due to drought and erosion. In California, conservation districts began forming in the 1940s, and today there are 103 districts throughout the state. Originally focusing on soil and water, the emphasis has now broadened to include additional resource issues such as air quality, wildlife habitat enhancement, control of non-native, invasive species and farmland preservation.

Yolo RCD's 50-year partnership with local landowners has contributed to the region's national reputation for implementing innovative, economical, and environmentally sound land stewardship practices. The organization employs a diverse, knowledgeable staff with projects and expertise in stream restoration & riparian ecology, water quality & irrigation efficiency measurement, non-native invasive weed control, native plantings for erosion control & on-farm habitat for beneficial insects, farm ponds for groundwater recharge & fish habitat, landscape design, report preparation, workshops & community outreach, and custom-designed environmental education curriculum for schools, organizations and special events.

The Yolo RCD works with private landowners, cities, schools, businesses, agencies, non-profits organizations, and research institutions. The Board of Directors includes local growers and landowners who work together toward solutions that are relevant to Yolo County's working lands and community.

Discussion

Staff believes that the engaging the Yolo County Resource Conservation District on conservation related projects has significant financial and management advantages. As a special district, the Yolo RCD can provide services to the City at reasonable costs. Resources saved on projects such as the East Regional Pond can be applied to other capital projects or to other resource conservation work.

The primary purpose of the Yolo RCD is to protect and enhance the natural resources of the county. Therefore, unlike outside consultants, they often bring in additional funds for projects that facilitate and support the desired income. For example the Yolo RCD may have funding from weed management grants that could aid the City in project maintenance. The organization has the skills

and staff to provide services ranging from landscape ecology and design to conservation and restoration project management and wildlife monitoring. The Yolo RCD also has ready access to USDA engineering and GIS services.

With the advantages associated with the Yolo RCD as described herein, staff has developed the attached MOU to receive support for the East Regional Storm Drain Pond and Storz Pond. In addition, the MOU allows for amendments to be executed for future projects as requirements are identified and as future resources allow. Staff believes that the MOU will provide the foundation for a productive and mutually beneficial partnership between the City and a local agency that is dedicated to the best management practices for natural lands in Yolo County.

Fiscal Impact

The funds for CIP 06-12, Spring Lake East Regional Pond are included in the approved FY 2010 Capital Budget in the amount of \$484,000, Spring Lake Initial Facilities. This fund will have no impact to the General Fund.

The funds for the maintenance of the work at Storz Pond are included in the approved Capital Budget for Storm Drain in Lieu Fee, in the amount of \$30,000.

Engaging the Yolo RCD for the services as described herein would save the City an estimated \$330,000 for the Spring Lake East Regional Pond project and \$20,000 for the Storz pond work.

Public Contact

Posting of the City Council agenda.

Alternative Courses of Action

1. Approve the Memorandum of Understanding between the Yolo County Resource Conservation District and the City of Woodland and authorize the City Manager to execute the agreement on behalf of the City.
2. Do not approve the recommendation and provide direction to staff for further investigation.

SUBJECT: Approve Memorandum of Understanding with Yolo County
Resource Conservation District

PAGE: 4

ITEM:

Recommendation for Action

Staff recommends that the City Council approve Alternative No. 1.

Prepared by: Michael Karoly
Senior Civil Engineer

Mark Cocke
Senior Civil Engineer

Reviewed by: Doug Baxter
Principal Civil Engineer

Gregor Meyer
PW Director

Mark G. Deven
City Manager

Attachment(s): MOU

AGREEMENT NO. __-__

**MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF WOODLAND
AND THE YOLO COUNTY RESOURCE CONSERVATION DISTRICT FOR
CONSERVATION PROJECT AND PLANNING SERVICES**

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is made and entered into as of this ____ day of _____ 2010, by and between the CITY OF WOODLAND, a municipal corporation, hereinafter referred to as “CITY,” and YOLO COUNTY RESOURCE CONSERVATION DISTRICT, a special district of the State of California, whose business address is 221 W. Court St., #1 Woodland, California, 95695, hereinafter referred to as “RCD.”

RECITALS

WHEREAS, CITY has jurisdiction over operation and maintenance of transportation, drinking water, sanitary sewer collection and treatment, and storm water management facilities, all of which principally serve the citizens of Woodland, as well as management and maintenance of natural vegetation systems and man-made landscaping within or associated with these facilities; and

WHEREAS, RCD is a special district of the State of California organized as a resource conservation district subject to Division 9 (commencing with section 9000) of the California Public Resources Code, whose jurisdiction includes some of the incorporated and the majority of unincorporated territory of the County of Yolo, and whose primary purposes include promotion of responsible watershed management through technical assistance to landowners and facilitation of voluntary watershed-based community land stewardship groups to implement sustainable agricultural practices, protect and enhance waterways and water quality, reduce soil erosion, preserve and restore wildlife habitat and foster an informed and knowledgeable community; and

WHEREAS, in furtherance of these objectives, RCD is willing and CITY wishes to retain RCD to assist CITY with design, construction and maintenance of natural and urbanized landscaping within the East Regional Storm Drainage Pond and other Drainage Ponds within the CITY by providing planning, design and implementation services for on-ground conservation and restoration work for which RCD has unique expertise, capabilities and equipment, as well as additional services of a related nature to be negotiated and agreed to from time to time; and

WHEREAS, in furtherance of these objectives RCD is specifically skilled and staffed to provide services of landscape ecology and design, conservation and restoration project permitting and planning, native plant restoration planning, vegetation and wildlife monitoring, vegetation management and weed control, field and stream soil conservation techniques, bioengineering, agricultural water quality management, agronomy, and nutrient management, with ready access to USDA engineering and GIS services; preparation of plans and specifications for construction of native plant landscaping; preparation of maintenance guidelines and performance of maintenance for the agreed period of times; and additional services of a related nature to be negotiated and agreed to from time to time; and

MOU Between City of Woodland and Yolo Resource Conservation District

WHEREAS, the purpose of this MOU is to establish the terms that will apply to the provision of services by RCD within the jurisdictions of both RCD and CITY for the mutual benefit of both agencies.

NOW, THEREFORE, CITY hereby engages the services of RCD, and RCD agrees to serve CITY in accordance with the terms and conditions set forth herein.

TERMS

1. **Term of the MOU.** The term of this MOU shall commence on the date first above written and shall not expire unless terminated in accordance with Paragraphs 8 (Termination for Cause) or 9 (Termination for Convenience); except that the obligations of RCD to CITY under Paragraph 7 (Indemnification) shall continue in full force and effect after early termination in relation to acts or omissions occurring prior to such dates during the term of the MOU, and the obligations of RCD to CITY shall also continue after early termination in relation to the obligations prescribed by Paragraphs 14 (Confidentiality), 19 (Taxes) and 20 (Access to Records/Retention). The term of this MOU shall be automatically renewed for an additional year at the end of each fiscal year, under the same terms and conditions, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term, provided that renewal of this MOU shall not constitute a guarantee to RCD that CITY will require any particular level or type of services. For purposes of this MOU, "fiscal year" shall mean the period commencing on July 1 and ending on June 30.

2. **Scope of Services.** RCD shall provide CITY those services set forth in Exhibit "A," attached hereto and incorporated by reference herein, as directed by CITY. The CITY and RCD may amend these services from time to time by negotiating and executing amendments to this MOU.

3. **Compensation.**

(a) **Rates.** In consideration of RCD's satisfactory performance of the services described in Exhibit A, CITY shall pay RCD for RCD personnel time in accordance with the YCRCDC's annually-published schedule of billable rates (sample attached as Exhibit B).

(b) **Expenses.** CITY will reimburse travel and direct expenses that are justifiably related to the requested services.

4. **Method of Payment.** All compensation shall be made only upon presentation by RCD to CITY of an itemized billing invoice in a form acceptable to CITY which indicates, at a minimum, RCD's name, address, Taxpayer Identification Number the month for which compensation is sought, and the monthly rate. Each invoice shall also include a description of the tasks engaged in and/or completed during the month billed, the persons performing the work, and the positions held and number of hours worked by such persons. This summary description shall be in addition to any project accounting records maintained by RCD pursuant to Exhibit A, section IV(A). RCD shall submit such invoices no more often than monthly to Mark Cocke, Sr. Civil Engineer, Public Works Dept., (hereinafter referred to as City Contract Manager) who, after review and approval as to form and content, shall submit the invoices for payment to City's

MOU Between City of Woodland and Yolo Resource Conservation District

Finance Director no later than fifteen (15) calendar days following receipt unless he or she has any concerns with an invoice. If the City Contract Manager has any concerns with an invoice, he or she shall advise RCD of those concerns in writing within fifteen (15) calendar days of receiving such invoice. The parties shall then work cooperatively and expeditiously to resolve those concerns prior to the submission of the invoice to City's Finance Director for review and payment.

5. **Independent Contractor.** RCD shall perform all services covered by this MOU as an independent contractor and not as an employee, agent, partner or joint venturer of or with CITY. RCD and its officers, agents and employees are not, and shall not be deemed, CITY employees for any purpose, including workers' compensation and employee benefits. RCD shall, at RCD's own risk and expense, determine the method and manner by which duties undertaken by RCD under this MOU shall be performed; provided, however, that CITY may monitor the work performed by RCD. CITY shall not deduct or withhold any amounts whatsoever from the compensation paid to RCD, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this MOU, RCD shall be solely responsible for all such payments.

6. **Specific Performance.** It is agreed that RCD, including the agents or employees of RCD, shall be the sole providers of the services required by this MOU except where expressly authorized by the City Contract Manager or his or her designees. Because the services to be performed by RCD under the terms of this MOU are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, CITY, in addition to any other rights or remedies which CITY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this MOU by RCD.

7. **Hold Harmless/Indemnification.**

(a) In General. To the full extent permitted by law, RCD and CITY shall each defend, indemnify and hold harmless each other as well as their respective elected officials, officers, agents and employees from any claims, suits, proceedings, loss or liability, including reasonable attorneys' fees, arising out of or connected with any acts or omissions of that party or its officers, agents, employees, volunteers, contractors or subcontractors when performing any activities or obligations required of that party under this MOU. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this MOU. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege. In providing any defense under this Paragraph, the party obligated to provide such defense shall use counsel reasonably acceptable to the other party.

(b) Employee Character and Fitness. RCD accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of RCD under this MOU, including completion of a satisfactory criminal/background check and periodic rechecks to the extent permitted by law.

MOU Between City of Woodland and Yolo Resource Conservation District

Notwithstanding anything to the contrary in this Paragraph, RCD shall defend, indemnify, and hold CITY and its elected officials, officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or RCD's actions in this regard.

8. **Termination for Cause.** If either party should fail to fulfill in a timely and proper manner that party's obligations under this MOU or otherwise breach this MOU and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this MOU by giving five (5) days written notice to the defaulting party in the manner set forth in Paragraph 12 (Notices).

9. **Termination for Convenience.** This MOU may be terminated by either party for any reason and at any time by giving no less than thirty (30) days written notice of such termination to the other party and specifying the effective date thereof; provided, however, that no such termination may be effected by CITY unless an opportunity for consultation regarding the reason(s) for termination, if any, is provided by CITY to RCD prior to the effective date of the termination.

10. **Disposition of and Payment for Work upon Termination.** In the event of termination for cause under Paragraph 8 or termination for the convenience of a party under Paragraph 9, all finished or unfinished documents and other materials, if any, at the option of CITY, become the property of CITY and RCD shall be entitled to receive compensation for any satisfactory work completed prior to receipt of the notice of termination or commenced prior to receipt of the notice and completed satisfactorily prior to the effective date of the termination; except that RCD shall not be relieved of liability to CITY for damages sustained by CITY by virtue of any breach of the MOU by RCD whether or not the MOU was terminated for convenience or cause, and CITY may withhold any payments not yet made to RCD for purpose of setoff until such time as the exact amount of damages due to CITY from RCD is determined.

11. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this MOU shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this MOU.

12. **Notices.** All notices required or authorized by this MOU shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any mailed notice, demand, request, consent, approval or communication that either party desires to give the other party shall be addressed to the other party at the address set forth below. Either party may change its address by notifying the other party of the change of address. Any notice sent by mail in the manner prescribed by this Paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

MOU Between City of Woodland and Yolo Resource Conservation District

CITY

Mark Cocke, Sr. Civil Engineer
Public Works Department
655 No. Pioneer Avenue
Woodland, CA 95695

RCD

Dan Efseaff, Executive Director
Yolo County Resource Conservation District
221 W. Court St., Suite 1
Woodland, CA 95695

13. **Non-Discrimination.** RCD certifies that any service provided pursuant to this Agreement shall be without discrimination based on color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability in accordance with all applicable Federal, State and City laws and regulations and any administrative directives established by the CITY. For the purpose of this Agreement, distinctions on the grounds of color, race, creed, national origin, religion, sex, age, sexual preferences, or physical or mental disability include but are not limited to the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services.

14. **Confidentiality.** Confidential information is defined as all information disclosed to RCD in confidence which relates to CITY's past, present, and future activities, as well as activities under this MOU. Except to the extent otherwise required by law, RCD shall hold all such information as RCD may receive, if any, with the same degree of trust and confidence as if such records were confidential records of RCD, except as otherwise authorized by the City Manager or his or her designee. Upon cancellation or expiration of this MOU, RCD shall return to CITY all written and descriptive matter which contains any such confidential information, except that RCD may retain for its files a copy of RCD's work product which, except to the extent otherwise required by law, shall be maintained as a confidential RCD file unless such product has been made available to the public by CITY.

15. **No Assignments or Subcontracts.** A consideration of this MOU is the specialized knowledge and resources of RCD; therefore, RCD shall not assign any interest in this MOU or subcontract any of the services RCD is to perform hereunder without the prior written consent of CITY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by RCD, or to perform any of the remaining services required under this MOU within the same time frame required of RCD shall be deemed to be reasonable grounds for CITY to withhold its consent to assignment. For purposes of this subparagraph, the consent of CITY may be given by its City Contract Manager.

16. **Amendment/Modification.** Except as specifically provided herein, this MOU may be modified or amended only in writing and with the prior written consent of both parties. In particular, only CITY, through its City Council in the form of an amendment of this MOU, may

MOU Between City of Woodland and Yolo Resource Conservation District

authorize extra and/or changed work if beyond the scope of services prescribed by Exhibit “A.” Failure of RCD to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

17. Interpretation; Venue.

(a) **Interpretation.** The headings used herein are for reference only. The terms of the MOU are set out in the text under the headings. This MOU shall be governed by the laws of the State of California.

(b) **Venue.** This MOU is made in Yolo County, California. The venue for any legal action in state court filed by either party to this MOU for the purpose of interpreting or enforcing any provision of this MOU shall be in the Superior Court of California, County of Yolo. The venue for any legal action in federal court filed by either party to this MOU for the purpose of interpreting or enforcing any provision of this MOU lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this MOU shall be Yolo County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration of any dispute arising under this Agreement.

18. Compliance with Laws. RCD shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) **Non-Discrimination.** During the performance of this MOU, RCD shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this MOU subcontracts to RCD services or works required of CITY by the State of California pursuant to agreement between CITY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this MOU by reference and made a part hereof as if set forth in full, and RCD and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) **Documentation of Right to Work.** RCD agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of RCD performing any services under this MOU have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. RCD shall make the required documentation available upon request to CITY for inspection.

MOU Between City of Woodland and Yolo Resource Conservation District

(c) **Inclusion in Subcontracts.** To the extent any of the services required of RCD under this MOU are subcontracted to a third party in accordance with the provisions of this MOU, RCD shall include the provisions of (a) and (b), above, in all such subcontracts as obligations of the subcontractor.

19. **Taxes.** RCD agrees to file all required withholdings documents on amounts paid pursuant to this MOU and, as between RCD and CITY, RCD shall be solely liable and responsible to make such withholdings including those for state and federal income and FICA taxes. RCD agrees to indemnify and hold CITY harmless from any liability it may incur to the United States or the State of California as a consequence of RCD's failure to withhold, when due, all such taxes and obligations. In the event that CITY is audited for compliance regarding any withholdings for applicable taxes or other similar amounts, RCD agrees to furnish CITY with proof of payment of withholdings on those earnings.

20. **Access to Records/Retention.** CITY, any federal, state or local grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of RCD which are directly pertinent to the subject matter of this MOU for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, RCD shall maintain all required records for at least five (5) years after CITY makes final payment for any other work authorized hereunder and all pending matters are closed, whichever is later. The CITY recognizes and agrees that nothing in this MOU creates any greater right of access to records of the Natural Resources Conservation Service (a potential subcontractor under this MOU) than may exist under laws applicable to records disclosure at the time of any future request for access.

21. **Authority to Contract.** RCD and CITY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform the activities under this MOU.

22. **Conflict of Interest.**

(a) **Covenant of No Undisclosed Conflict.** The parties to the MOU acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to conflict of interest of public officers and employees. RCD hereby covenants that it presently has no interest not disclosed to CITY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as CITY may consent to in writing prior to the acquisition by RCD of such conflict. RCD further warrants that it is unaware of any financial or economic interest of any public officer or employee of CITY relating to this MOU other than interest resulting from employment as a CITY officer or employee. RCD agrees that if such financial interest does exist at the inception of this MOU, CITY may terminate this MOU immediately upon giving written notice without further obligation by either party to the other under this MOU.

MOU Between City of Woodland and Yolo Resource Conservation District

(b) Statements of Economic Interest. RCD acknowledges and understands that CITY has developed and approved a Conflict of Interest Code as required by state law which may require RCD or its employees performing services under this MOU to file with the City Clerk (or such other office or department as directed by CITY) “assuming office,” “annual,” and “leaving office” Statements of Economic Interest as a “consultant,” as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless the City Clerk has determined in writing that RCD, although providing the services of its employees or contractors to perform the functions of “designated” position as a contract consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. RCD agrees to require all of its affected employees and contractors to timely comply with all such filing obligations under CITY’s Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

23. **Insurance Requirements. A.** Prior to commencing any project under this MOU, and at all times prior to the completion of each such project, RCD shall at all times maintain, at its expense, at least the following coverages and requirements. The comprehensive general liability insurance shall include broad form property damage insurance.

1. Minimum Coverages (as applicable). Insurance coverage shall be with limits not less than the following:

- a. **Comprehensive General Liability** – \$1,000,000/occurrence and \$2,000,000/aggregate
- b. **Automobile Liability** – \$1,000,000/occurrence (general) and \$500,000/occurrence (property) (include coverage for Hired and Non-owned vehicles)
- c. **Professional Liability/Malpractice/Errors and Omissions** – \$1,000,000/occurrence and \$2,000,000/aggregate, required only if any engineer, architect, attorney, accountant, medical professional, psychologist, or other licensed professional performs work under this MOU. If not, then this requirement automatically does not apply.
- d. **Workers’ Compensation – Statutory Limits/Employers’ Liability** - \$1,000,000/accident for bodily injury or disease.

2. The CITY, its officers, agents, employees and volunteers shall be named as additional insured on all but the workers’ compensation and professional liability coverages. (Evidence of additional insured may be needed as a separate endorsement due to wording on the certificate negating any additional writing in the description box.)

3. Said policies shall remain in force through the life of this Agreement and, with the exception of professional liability coverage, shall be payable on a “per occurrence” basis unless the CITY specifically consents in writing to a “claims made” basis. For all “claims made” coverage, in the event that RCD changes insurance carriers RCD shall purchase “tail” coverage covering the term of any project covered by this Agreement and not less than three years thereafter. Proof of

MOU Between City of Woodland and Yolo Resource Conservation District

such “tail” coverage shall be required at any time that RCD changes to a new carrier prior to receipt of any payments due.

4. RCD shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the CITY reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.

5. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the CITY and/or its Risk Manager.

6. Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days’ prior written notice by certified mail, return receipt requested, has been given to the CITY (ten (10) days for delinquent insurance premium payments).

7. Insurance is to be placed with insurers with a current A.M. Best’s rating of no less than A:VII, unless otherwise approved by the CITY.

8. The policies shall cover all activities of RCD, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.

9. For any claims relating to this Agreement, the RCD’s insurance coverage shall be primary, including as respects the CITY, its officers, agents, employees and volunteers. Any insurance maintained by the CITY shall apply in excess of, and not contribute with, insurance provided by RCD’s liability insurance policy.

10. RCD shall waive all rights of subrogation against the CITY, its officers, employees, agents and volunteers.

B. Prior to commencing services pursuant to this Agreement, RCD shall furnish the CITY with original endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the CITY and/or its Risk Manager before work commences. Upon CITY’s request, RCD shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.

C. During the term of this Agreement, RCD shall furnish CITY with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon CITY’s request, RCD shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.

MOU Between City of Woodland and Yolo Resource Conservation District

24. **Non-Solicitation of Employees.** Except where otherwise prohibited by law, each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this MOU and a period of six (6) months after termination of this MOU except with the written permission of the other party; provided, that nothing in this Paragraph shall apply to any advertisement or other publication of a job opening published in a manner directed to the public generally.

25. **Third Party Beneficiaries.** Nothing contained in this MOU shall be construed to create any rights in third parties and the parties do not intend to create such rights.

26. **Attorneys' Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this MOU or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

27. **Severability.** If any provision of this MOU, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this MOU.

28. **Entirety of Contract; Termination of Prior Agreement.** This MOU constitutes the entire agreement between the parties relating to the subject of this MOU and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof or any portion thereof. It is the express intention of the parties by executing this MOU to terminate and replace henceforth as of the effective date of this MOU any previous agreement between RCD and CITY concerning the same or similar services to those covered under this MOU.

IN WITNESS WHEREOF, this MOU was executed by the parties hereto as of the date first above written.

[signatures on following page]

MOU Between City of Woodland and Yolo Resource Conservation District

YOLO COUNTY RESOURCE
CONSERVATION DISTRICT

CITY OF WOODLAND

By _____
BLAIR VOELZ
Chairman of the Board

By _____
MARLIN "SKIP" DAVIES
Mayor

ATTEST:

ATTEST:

By _____
DAN EFSEAFF
RCD Executive Director

By _____
SUE VANNUCCI
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:

By: _____
Ann M. Siprelle
Best Best & Krieger, LLP,
RCD Legal Counsel

By: _____
Andrew Morris
City Attorney

Date: _____

Date: _____

Exhibit A

Scope of Work

SCOPE OF WORK (AGREEMENT # 2009- __)
CITY OF WOODLAND STORZ POND MAINTENANCE

Introduction/Background

The Yolo County Resource Conservation District (YCRCD) will work under a Memorandum of Understanding (MOU) to provide maintenance and vegetation enhancement at the City of Woodland’s (City) storm water detention pond. The purpose of the project is to provide ongoing maintenance of the Storz Pond. This will consist of two primary tasks Management and Maintenance. Management will consist of Administration, planning and coordination. Maintenance will include mowing and herbicide spraying.

A. Objective

The primary objective is to provide continuing maintenance of the site to reduce the workload of the City. The long term goal is to reduce or eliminate non-native and invasive plants species and to enhance native plant populations.

B. Location of Work

See site attached map.

Site Name	Storz Pond
Address	Behind (west of) 1556 Springlake Court, Woodland, CA 95776
Tract/APN	066-050-11; 066-060-12
Size (acres)	19

C. Tasks

The YCRCD shall undertake the following tasks related to the project:

Task 1: Project Management and Coordination

This task includes planning and coordination with the City, reporting project progress, staff coordination, and invoicing. We anticipate close coordination with City Staff, but not extensive public outreach. A product of this task is to create a calendar to guide the maintenance.

Task 2: Maintenance

This task includes mowing and spraying of non-native/invasive weeds. A survey of plants on the site will be conducted to determine specific plant management needs. Native plants already present will be protected. The following activities are included:

- Mowing of grassy areas 1 to 2 times per year,
- Spot-treatment of non-native/invasive weeds 2 times per year with an herbicide approved for use around wetlands (Glyphosate product such as Aquamaster®), or other herbicides as appropriate to species present,
- Monitoring of treatment success and re-treatment as necessary,
- Trimming and/or pruning of plant material annually if needed using line-trimmers, saws and pruners.

D. Deliverables

Once this SOW is approved, the YCRCDC will deliver:

- Noticeably treated targeted non-native weeds (2 treatments) within 120 days of notice to proceed.
- Quarterly progress reports on maintenance and enhancement activities
- Quarterly invoices.

E. Budget

Depending on the nature of the MOU, this project can be set up as a lump-sum or as a not to exceed cost estimate.

Task #	Task	Item	Total Cost	
1	Project Management and Coordination	Labor	\$2,280	
		Materials	\$46	
		Travel	\$15	
		Equipment	\$0	
		Task Subtotal	\$2,340	
2	Maintenance		High estimate	Low estimate
		Labor	\$4,220	\$3,340
		Materials	\$340	\$340
		Travel	\$96	\$96
		Equipment	\$850	\$850
Task Subtotal	\$5,506	\$4,626		
Subtotal			\$7,846	\$6,966
Administration (15%)			\$1,177	\$1,045
Contingency (10%)			\$902	\$697
			high	low
Grand Total			\$9,925	\$8,707

D. Contact

Agency/Company Yolo County Resource Conservation District
Name(s) and Title(s) Dan Efseaff, Executive Director
Address 221 West Court Street
 Woodland, CA 95695
Phone Number (530) 663-2037 ext. 116
Fax Number (530) 662-4876
Email Efseaff@yolorcd.org

Created on:
Last Updated: October 26, 2009
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SCOPE OF WORK

CITY OF WOODLAND EAST DETENTION POND RE-VEGETATION (PHASE 1)

A. Introduction/Background

This Scope of Work (SOW) describes the work associated with planning of revegetation and initial weed control on the City of Woodland's (City) East Detention Pond. The overall purpose of the project is to establish native vegetation for the benefit of wildlife and citizens of Woodland. The plantings will improve habitat and food sources for wildlife, and improve aesthetics, wildlife viewing, and potential education opportunities for citizens. The project site with its proximity to residential units and wildlife habitat provides a unique experience for Woodland area residents and educate them about their natural surroundings; as well as enhance habitat for resident and migratory wildlife. Additionally, the native vegetation may help filter runoff, improving water quality.

The project will be implemented in a phased approach:

- Phase I – Planning and Targeted Weed Control, and
- Phase II – Implementation and Establishment.

Under Phase I a site-specific Revegetation Plan will be developed. The Plan will serve as a blueprint and will have sufficient details on plant composition and numbers, timelines, and costs to guide the implementation, which will include site preparation, planting, irrigation installation, and maintenance. This SOW covers only Phase I. Phase II will be initiated after the development of the plan and following City approval. An additional Scope of Work will be developed at that point to guide the implementation.

This work will be governed under a Memorandum of Understanding (MOU) that is being developed between the Yolo County Resource Conservation District (YCRCD) and the City of Woodland.

B. Goals and Objectives

The objectives of Phase I are to develop a revegetation plan that will:

- Improve wildlife habitat, and enhance wildlife viewing and aesthetics;
- Provide outdoor educational opportunities for visitors, students, and community groups;
- Consider native plants that will require minimal long-term maintenance and contribute to improved water quality.

C. Location of Work

See site map, attached

Site Name	Woodland East Detention Pond
Address	East side of the intersection of County Road 102 and Farmers Central Road
Tract/APN	42-010-64
Size (acres)	148 Acres (entire parcel)

D. Tasks

The YCRCD shall undertake the following tasks related to the project:

- Task 1 – Conduct Project Management
- Task 2 – Develop a Revegetation Plan
- Task 3 – Initiate Targeted Non-native and Invasive Plant Removal

These are described in more detail below.

Task 1 – Conduct Project Management

This task includes planning and coordination with the City, RCD Staff coordination, reporting project progress, and invoicing. We anticipate extremely close coordination and collaboration with City Staff. This task does not include public outreach, although that is likely to be an important component in the implementation of the project.

Task 2 – Develop a Revegetation Plan

This task will include collecting information and developing a planting and management plan to address goals on the site. The plan will prescribe native plants that are matched to site conditions and will address the following:

- Identify project goals, objectives, design considerations, and implementation challenges based on the City's needs and site conditions;
- Assess the site, including the setting, pertinent history, soils, hydrology, vegetation and wildlife usage;
- Describe our current understanding of the physical and biological factors that influence site ecology (a conceptual site model);
- Develop recommended management options;
- Outline the planting design, including composition, layout, and numbers; the irrigation design and operation; and weed control strategies;
- Explore the potential to incorporate educational components such as interpretive signs, a "Water Wise" garden (working with the City Water Conservation Coordinator) or community volunteers, into the project implementation.
- Present recommended monitoring efforts; and
- Provide a timeline and cost estimate for implementation.

This will be a site-specific plan, with an associated map and will address challenges such as the site's poor soils and measures to improve plant success, current weed pressures and management practices, and minimizing impacts to the existing infrastructure on the site. The planting design will be developed to minimize long-term maintenance. The plan will include a cost estimate to implement and establish the native vegetation and other improvements on the site.

Task 3 – Initiate Targeted Non-native and Invasive Plant Removal

A survey of plants on the site will be conducted to determine specific plant management needs. Any native plants already present will be protected as much as possible. Non-native and invasive plant species will be managed through a combination of methods:

- Chemical treatment with an herbicide approved for use around wetlands (Glyphosate product such as Aquamaster®).
- Physical/mechanical methods such as mowers, discs, power saws and line-trimmers.
- Monitoring of treatment success and re-treatment as necessary.

These are considered limited spot treatments to prepare the site for the full implementation in Phase II.

E. Deliverables and Schedule

Once this SOW is approved, the YCRCRCD will deliver:

- Noticeably treated targeted non-native weeds (2 treatments) within 120 days of notice to proceed.

- A draft Revegetation Plan ready for review within 90 days,
- A Final Plan within 30 days after receiving comments from City Staff.
- Quarterly progress reports and invoices.

The Plan will include a project timeline for a 2010 planting (depending on the date of authorization to proceed).

F. Budget

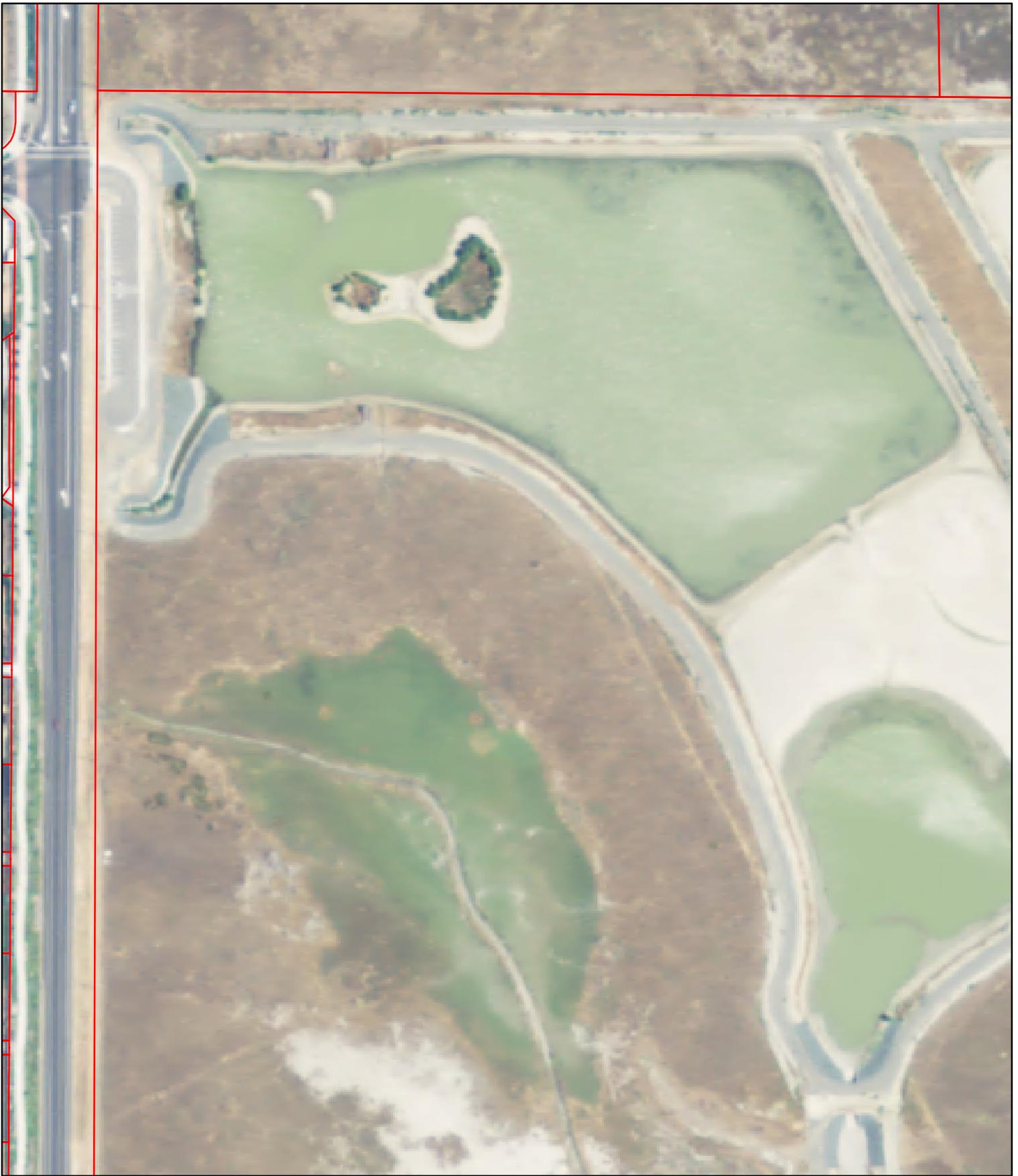
Depending on the nature of the MOU, this project can be set up as a lump-sum or as a not to exceed cost estimate. As a not-to-exceed estimate the actual costs and charges to the City may be less.

Task #	Task	Item	Total Cost
1	Project Management and Coordination		
		Labor	\$2,900
		Materials	\$55
		Travel	\$35
		Equipment	\$0
	Task Subtotal		\$2,990
2	Develop a Revegetation Plan		
		Labor	\$14,230
		Materials	\$212
		Travel	\$58
		Equipment	\$0
	Task Subtotal		\$14,500
3	Non-Native and Invasive Plant Removal		
		Labor	\$4,280
		Materials	\$430
		Travel	\$96
		Equipment	\$1,025
	Task Subtotal		\$5,830
	Subtotal		\$23,320
	Administration (15%)		\$3,498
	Contingency (10%)		\$2,682
	Grand Total		\$29,500

G. Contact

Agency/Company Yolo County Resource Conservation District
Name(s) and Title(s) Dan Efseaff, Executive Director
Address 221 West Court Street
 Woodland, CA 95695
Phone Number (530) 663-2037 ext. 116
Fax Number (530) 662-4876
Email Efseaff@yolorcd.org

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Last Updated: October 7, 2009
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City of Woodland East Detention Pond

0 62.5 125 250 375 500 Feet

Exhibit B

Compensation



Yolo County Resource Conservation District

221 West Court Street, Suite 1
Woodland, CA 95695
yolorcd@yolorcd.org

phone (530) 662-2037
fax (530) 662-4876
www.yolorcd.org

Exhibit B

**RCD Billable Rate
Fiscal Year 2009-2010
Updated Annually**

Title	Billable Rates FY 09-10
Administrative Assistant	\$35
Executive Director	\$70
Financial Manager	\$40
Grant Writer	\$50
Intern/Program Assistant	\$20
Mobile Lab Manager	\$45
Revegetation Assistant	\$40
Revegetation Specialist/ Program Manager	\$45
Senior Program Manager	\$60
Watershed Coordinator	\$40
Watershed Coordinator	\$40

Sincerely,

Jeanette Wrysinski
Interim Executive Director

Enclosure(s):
Copy:

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