

**AMENDED AND RESTATED AGREEMENT BETWEEN
THE COUNTY OF SANTA CLARA AND THE CITY OF
SANTA CLARA FOR WEED ABATEMENT SERVICES**

THIS AGREEMENT for the Abatement of Weeds by County of Santa Clara for the City of Santa Clara ("AGREEMENT") is made and entered into by and among the County of Santa Clara, a political subdivision of the State of California ("COUNTY"), and the City of Santa Clara ("CITY"), a municipal corporation, effective this _____ ("EFFECTIVE DATE"). COUNTY and CITY may be collectively referred to herein as the "PARTIES" and individually as a "PARTY," unless specifically identified otherwise.

RECITALS

WHEREAS, pursuant to California Government Code Sections 39501 et seq., the CITY has the authority to require and provide for the abatement of hazardous weeds on properties within its jurisdiction either by ordinance or pursuant to the procedures set forth in Article 2 of Chapter 13, Division 3 of Title 4 of the Government Code (commencing with Section 39560); and

WHEREAS, the CITY has duly established under Chapter 8.15 of the Santa Clara City Code a program to abate as a public nuisance hazardous weeds and brush situated on properties in the CITY; and

WHEREAS, under provisions of the California Health and Safety Code and its ordinances, the County also has duly established a program to enforce the abatement of hazardous weeds; and

WHEREAS, for reasons of efficiency, economy of operations and resources, and the mutual benefit of both parties, the CITY and the COUNTY desire the COUNTY to provide weed abatement services on properties in the CITY and to assist the CITY in administering certain parts of the CITY'S weed abatement program under Chapter 8.15 of the Santa Clara City Code, all in accordance with the terms and provisions set forth in this AGREEMENT; and

WHEREAS, the CITY may contract with COUNTY pursuant to Government Code section 51300 et seq. for the County's performance of specified City functions; and

WHEREAS, the CITY and COUNTY entered into an "Agreement for the Abatement of Weeds by County of Santa Clara for City of Santa Clara" on February 23, 1976, as subsequently amended, which provided for the abatement of weeds by the COUNTY on behalf of the CITY; and

WHEREAS, the CITY and COUNTY desire to enter into an amended and restated AGREEMENT for the abatement of weeds to provide for the COUNTY to fully recover its service costs in administering the CITY's weed abatement program and to make other clarifying changes.

NOW, THEREFORE, in consideration of their mutual promises, covenants, and agreements set forth in this AGREEMENT, the PARTIES hereby agree as follows:

SECTION 1. PURPOSE.

The purpose of this AGREEMENT is to promote efficiency and economy of operations and resources in the abatement of weeds in the CITY and COUNTY. To achieve this end, the CITY hereby delegates to the COUNTY and the COUNTY hereby accepts the responsibility of abating weeds on properties in the CITY and administering the CITY's weed abatement program, set forth in Chapter 8.15 of the Santa

Clara City Code (“PROGRAM”), subject to and in accordance with this AGREEMENT.

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SECTION 2. TERM.

This AGREEMENT shall become effective as of the EFFECTIVE DATE and shall continue until the governing body of the CITY or the COUNTY exercises the right to terminate this AGREEMENT pursuant to SECTION 18 of this AGREEMENT. This AGREEMENT supersedes and replaces the previous “Agreement for the Abatement of Weeds by County of Santa Clara for City of Santa Clara” and any and all subsequent amendments thereto.

SECTION 3. SCOPE OF SERVICES; PERFORMANCE SCHEDULE.

- A. The COUNTY shall perform weed abatement services on properties located in the CITY and administer the PROGRAM (collectively, the “SERVICES”) in accordance with all applicable laws, rules, and regulations, including Chapter 8.15 of the Santa Clara City Code, and the provisions of this AGREEMENT, as they may be amended from time to time.
- B. The COUNTY shall perform these SERVICES in accordance with the schedule set forth in EXHIBIT “A,” entitled SCHEDULE OF PERFORMANCE,” attached hereto and incorporated herein by this reference, except that SERVICES on properties owned by the CITY shall be performed only upon written request by the CITY.
- C. The COUNTY shall attend all meetings of the CITY Council or meetings of other CITY committees, boards or hearing bodies at which weed abatement SERVICES, refunds of weed abatement charges, or other issues related to the SERVICES or this AGREEMENT are discussed, when the COUNTY’s attendance is requested by the CITY.
- D. Upon request by the CITY, the COUNTY shall provide to the CITY for its review and comment the COUNTY’s specifications and qualifications for contractors or other agents of the COUNTY obtained or hired by the COUNTY to perform weed abatement SERVICES on behalf of the COUNTY on properties located in the CITY.

SECTION 4. NOTICES.

The COUNTY shall prepare copies of all notices required in connection with the SERVICES and cause such notices to be posted, published, mailed, and/or distributed as required by applicable law. The COUNTY shall provide copies of such notices to the CITY for prior review and approval as set forth on EXHIBIT A, entitled “SCHEDULE OF PERFORMANCE,” or where not provided for in the SCHEDULE OF PERFORMANCE, at least thirty (30) days prior to the date that the COUNTY desires or is required to post, publish, mail, or otherwise distribute the material.

SECTION 5. HEARINGS.

The CITY Council, or the committee, board, or other hearing body designated by the CITY Council to conduct hearings in connection with the PROGRAM, retains the responsibility to conduct public hearings and adopt appropriate resolutions and orders in accordance with Chapter 8.15 of the Santa Clara City Code and this AGREEMENT, including its EXHIBIT A, “SCHEDULE OF PERFORMANCE.

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SECTION 6. STATEMENT OF COSTS.

- A.** In December of each calendar year, the COUNTY shall deliver to the CITY a schedule of all reasonable and necessary fees and costs approved and adopted by the COUNTY Board of Supervisors for administrative, enforcement, and abatement services to be provided under this AGREEMENT ("FEE SCHEDULE"). Such fees and costs shall not exceed the reasonable costs of providing such services. All fees and costs in said FEE SCHEDULE shall be recoverable by the COUNTY pursuant to this SECTION and SECTION 7 of this AGREEMENT unless within sixty (60) days of the COUNTY's delivery of said schedule to the CITY, the City Council of the CITY expressly declines to accept any fee or cost in said FEE SCHEDULE. In the event the City Council does decline to accept any fee or cost in said FEE SCHEDULE, the COUNTY shall be relieved of any and all obligations to provide any SERVICES under this AGREEMENT for the weed abatement season associated with the disapproved fee or cost.
- B.** At least ten (10) days prior to the date of the public hearing before the CITY regarding the placement of special assessment liens on properties for weed abatement charges, which meeting usually occurs before August 10 of each year, the COUNTY shall render to the CITY a report of weed abatement SERVICES performed by the COUNTY on properties within the CITY during the preceding twelve (12) months ("REPORT"). The REPORT shall include, without limitation, all of the following information:
1. The total number of weed abatements performed in the CITY;
 2. The total number of properties upon which weed abatements were performed in the CITY;
 3. A statement of all the costs and expenses incurred by or on behalf of the COUNTY for weed abatement SERVICES performed on properties located in the CITY, itemized with the aggregate administrative, enforcement, and abatement expenses and costs incurred by the COUNTY on each property, which shall be in accord with the fees and costs in the FEE SCHEDULE submitted by the COUNTY to the CITY pursuant to Section 6.A of this AGREEMENT;
 4. A description of all the properties in the CITY, by address and Assessor's Parcel Number, on which weed abatement SERVICES were performed; and
 5. Verification of the truthfulness, accuracy, and completeness of the REPORT, executed by the COUNTY employee charged with the supervision of the SERVICES.

SECTION 7. PAYMENT FOR SERVICES.

- A.** Except as provided in SECTIONS 7.B and 7.C, the COUNTY shall be reimbursed for SERVICES provided under this AGREEMENT by remittances from property owners for weed abatement and related costs and expenses for SERVICES performed on their respective lots and parcels of land. The CITY, after hearing, shall require the costs and expenses of SERVICES performed for the current year to be entered as a special assessment on bills for taxes levied against the respective lots and

parcels of land. Such special assessments shall be liens on the respective properties until paid to the COUNTY.

- B.** Within 60 days of receipt of an invoice for costs and expenses incurred on CITY-owned parcels, the CITY shall reimburse the COUNTY for the costs of such SERVICES. Charges for SERVICES on parcels owned by the CITY shall equal the cost of SERVICES performed by the weed abatement contractor on the CITY-owned parcels plus 20% of said contractor service costs.
- C.** If the amounts submitted for collection from property owners in Santa Clara County for provision of weed abatement services by the COUNTY are inadequate to reimburse the COUNTY for its fixed costs of administering countywide services during the preceding twelve (12) months, the COUNTY may make a demand to the CITY for its proportional share of the shortfall (less amounts offset by accrued program revenues) by September 1 of each year. The CITY agrees to pay the COUNTY for the CITY's proportional share of any such shortfall within sixty (60) days of demand by the COUNTY. The CITY'S proportional share shall be calculated based on the percentage of parcels on which weed abatement services were performed which are located in the CITY. The COUNTY's demand for payment under this SECTION 7.C. shall be accompanied by a statement of the total shortfall in the COUNTY's reimbursement for fixed program costs for the preceding twelve (12) months and of any accrued program revenues available to offset the shortfall, as well as a statement of the CITY's proportional share of that shortfall (minus offsets by accrued program revenues).
- D.** Except as provided in SECTIONS 7.B and 7.C., the CITY has and assumes no liability for the payment of salary, wages, benefits, compensation or any other amounts to officers, agents, employees or contractors of COUNTY performing SERVICES hereunder.

SECTION 8. INDEMNIFICATION.

In lieu of and notwithstanding the pro rata risk allocation, which might otherwise be imposed between the PARTIES pursuant to Government Code Section 895.6, the PARTIES agree that all losses or liabilities incurred by PARTY shall not be shared pro rata but, instead, COUNTY and CITY agree that, pursuant to Government Code Section 895.4, each of the PARTIES hereto shall fully indemnify and hold each of the other PARTIES, their officers, board members, employees, and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined in Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying PARTY, its officers, employees or agents, under or in connection with or arising out of any work, authority or jurisdiction delegated to such party under this AGREEMENT. No PARTY, nor any officer, board member or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of the other PARTIES hereto, their officers, board members, employees, or agents, under or in connection with or arising out of any work authority or jurisdiction delegated to such other PARTIES under this AGREEMENT.

SECTION 9. RECORDS.

Each officer or department of the COUNTY performing any SERVICES pursuant to this AGREEMENT shall keep itemized and detailed work or job records covering the costs of services performed under this AGREEMENT. COUNTY shall maintain these records for a minimum period of three (3) years, or for any longer period required by law, following the performance of any SERVICES.

SECTION 10. ENTIRE AGREEMENT.

This AGREEMENT and its Appendices (if any) constitutes the final, complete and exclusive statement of the terms of the agreement between the PARTIES. It incorporates and supersedes all the agreements, covenants and understandings between the PARTIES concerning the subject matter hereof, and all such agreements, covenants and understandings have been merged into this AGREEMENT. No prior or contemporaneous agreement or understanding, verbal or otherwise, of the PARTIES or their agents shall be valid or enforceable unless embodied in this AGREEMENT.

SECTION 11. AMENDMENTS.

This AGREEMENT may only be amended by a written instrument signed by the PARTIES.

SECTION 12. GOVERNING LAW, VENUE.

This AGREEMENT has been executed and delivered in, and shall be construed and enforced in accordance with, the laws of the State of California. Proper venue for legal action regarding this AGREEMENT shall be in the County of Santa Clara.

SECTION 13. ASSIGNMENT.

No assignment of this AGREEMENT or of the rights and obligations hereunder shall be valid without the prior written consent of the other PARTY.

SECTION 14. WAIVER.

No delay or failure to require performance of any provision of this AGREEMENT shall constitute a waiver of that provision as to that or any other instance. Any waiver granted by a PARTY shall be in writing and shall apply to the specific instance expressly stated.

SECTION 15. COMPLIANCE WITH LAWS.

COUNTY and CITY shall comply with all applicable Federal, State, and local laws, regulations, rules, and policies in the performance of services under this AGREEMENT.

SECTION 16. THIRD PARTY BENEFICIARIES.

This AGREEMENT does not, and is not intended to, confer any rights or remedies upon any person or entity other than the PARTIES.

SECTION 17. INDEPENDENT CONTRACTORS.

The COUNTY and the CITY agree that this AGREEMENT is by and between independent contractors. This AGREEMENT is not intended, nor shall it be construed, to create a relationship of agent, servant, employee, partnership, joint venture, or association between the COUNTY and the CITY.

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SECTION 18. TERMINATION

- A. The COUNTY or the CITY may terminate this AGREEMENT as of the first day of September of any year by giving notice to the other PARTY not less than thirty (30) days prior to the date of termination.
- B. The [City Manager], or his or her delegatee or designee, is authorized to terminate this AGREEMENT on behalf of the CITY.
- C. The COUNTY's Agricultural Commissioner, or his or her delegatee or designee, is authorized to terminate this AGREEMENT on behalf of the COUNTY.

SECTION 19. NOTICES

Except as otherwise stated, any notice required or permitted by this AGREEMENT will be in writing and delivered as follows with notice deemed given as indicated: (a) by personal delivery when delivered personally; (b) by overnight courier upon written verification of delivery; (c) by email, telecopy, or facsimile transmission upon acknowledgment of receipt of electronic transmission; or (d) by certified or registered mail, upon confirmation of delivery. The PARTIES may deliver notice as follows:

TO COUNTY:

County of Santa Clara Consumer and Environmental Protection Agency
1553 Berger Drive #200, San Jose, CA 95112
Fax: 408-286-2460
Email: SCCweedabatement@cep.sccgov.org
Attn: Weed Abatement Manager

TO CITY:

City of Santa Clara, Community Risk Reduction Division
1500 Warburton Ave.
Santa Clara, CA 95050
Email: FPfrontdesk@santaclaraca.gov
Attn: Weed Abatement

SECTION 20. INTERPRETATION.

The captions preceding the sections of this AGREEMENT have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this AGREEMENT. This Agreement has been negotiated at arm's length and between parties sophisticated and knowledgeable in the matters contained herein. This AGREEMENT shall be interpreted to achieve the intents and purposes of the PARTIES, without any presumption against the PARTY responsible for drafting any part of this AGREEMENT. Provisions in this AGREEMENT relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or COUNTY holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. The Recitals are incorporated and made a part of this AGREEMENT.

SECTION 21. COUNTERPARTS.

This AGREEMENT may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

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SECTION 22. CONTRACT EXECUTION

Unless otherwise prohibited by law or COUNTY policy, the PARTIES agree that an electronic copy of a signed contract, or an electronically signed contract, has the same force and legal effect as a contract executed with an original ink signature. The term “electronic copy of a signed contract” refers to a transmission by facsimile, electronic mail, or other electronic means of a copy of an original signed contract in a portable document format. The term “electronically signed contract” means a contract that is executed by applying an electronic signature using technology approved by the COUNTY.

THE PARTIES TO THIS AGREEMENT hereby indicate their acknowledgement and acceptance of the terms and conditions stated herein as evidenced by the following signatures of their duly authorized representatives.

COUNTY OF SANTA CLARA

CITY OF SANTA CLARA

Jeffrey V. Smith
County Executive

Dated: _____

Title: _____

Dated: _____

APPROVED AS TO FORM AND LEGALITY:

Willie Nguyen
Deputy County Counsel

EXHIBIT “A”

SCHEDULE OF PERFORMANCE

The COUNTY shall perform the SERVICES as follows:

On or before November 15 of each year:	The County shall request a resolution from the CITY declaring that certain weeds located on properties in the CITY constitute a public nuisance and setting a date for a public hearing.
Before the date of the CITY governing body meeting declaring weeds a nuisance subject to abatement:	The COUNTY shall provide to the CITY for review and processing by the CITY a complete Master List of properties, including Assessor’s Parcel Numbers, located in the CITY upon which hazardous weeds are growing or are likely to grow.
No later than ten (10) days prior to the day of the CITY hearing on objections to the notices to destroy weeds:	The COUNTY shall post notices to destroy weeds at property or mail notices to destroy weeds to property owners regarding the CITY hearing, as directed by resolution of the CITY Council.
No later than ten (10) days prior to the day of the CITY hearing on objections to the notices to destroy weeds:	The COUNTY shall deliver to the CITY a FEE SCHEDULE listing all reasonable and necessary fees and costs approved and adopted by the COUNTY Board of Supervisors for administrative, enforcement, and abatement services to be provided under this AGREEMENT in accordance with SECTION 6.A of this AGREEMENT.
	The CITY Council shall hold a public hearing to hear objections to the notices to destroy weeds. By resolution at the conclusion of the hearing, the CITY Council shall allow or overrule any or all objections to the proposed abatement of weeds.
After adoption of CITY resolution ordering the abatement of weeds on certain properties as public nuisances:	The CITY shall proceed with weed abatement work on properties located in the CITY in accordance with the resolution adopted by the CITY Council and this AGREEMENT.
At least ten (10) days prior to the date of the public hearing before the CITY’s governing body regarding the placement of special assessment liens on properties for weed abatement charges:	Pursuant to SECTION 6.B of this AGREEMENT, the COUNTY shall provide to the CITY for review and processing a complete and accurate REPORT of costs and expenses incurred by or on behalf of the COUNTY for weed abatement SERVICES performed in the CITY during the preceding twelve (12) months under this AGREEMENT.

On or before August 10 of each year:	The COUNTY shall obtain a resolution from the CITY to confirm the REPORT and order the weed abatement costs to be a special assessment against the affected properties.
At least ten (10) days prior to the CITY meeting to hear objections to the REPORT:	The CITY shall mail a notice to all property owners identified in the REPORT, which provides the date, time, and place of the CITY Council's hearing on the REPORT at which person may appear and object to the REPORT.
Upon adoption of resolution by the CITY Council confirming or amending REPORT and ordering weed abatement costs become a special assessment lien against the affected properties and filing of REPORT with COUNTY Auditor:	The COUNTY shall enter each such assessment on the COUNTY tax roll and cause such amounts to be collected at the same time, and in the same manner, as general CITY taxes are collected.
Upon request by CITY	The COUNTY shall perform weed abatement SERVICES on CITY-owned lots and parcels.