



# Memorandum

**TO:** HONORABLE MAYOR AND  
CITY COUNCIL

**FROM:** Joseph Horwedel

**SUBJECT:** SEE BELOW

**DATE:** November 17, 2006

Approved

Date

11/20/06

Council District: Citywide

**SUBJECT: APPROVAL OF THE AMENDED AND RESTATED AGREEMENT FOR THE ABATEMENT OF WEEDS BY THE COUNTY OF SANTA CLARA FOR THE CITY OF SAN JOSE**

## RECOMMENDATION

Approval of the Amended and Restated Agreement with the County of Santa Clara for the abatement of weeds.

## OUTCOME

Approval of the amended and restated agreement that would reflect the change in administration of the program from the Office of the Santa Clara County Fire Marshal to the Office of the Santa Clara County Agricultural Commissioner and allow weed abatement on all vacant parcels of land within the City.

## BACKGROUND

The County of Santa Clara has administered the weed abatement agreement with the City of San Jose since 1995. At the beginning of each program year, the County Agricultural Commissioner's Office sends a notice to owners of all parcels in the Weed Abatement Program. This notice describes the minimum fire safety standards by which parcels must be maintained and enumerates the costs that would be incurred should the County Agricultural Commissioner's Office have to abate the public nuisance created by un-maintained weeds and refuse. In addition, the notice advises owners of a public hearing before the City Council, during which they may object to the placement of their property in the program. Four previous amendments, in June 9, 1998, August 18, 1998, September 28, 1999 and September 26, 2000, were made to the original agreement to authorize the County to recover the cost of abatement by increasing the weed abatement fee.

## **ANALYSIS**

This most recent amendment to the agreement is necessary due to the change in administration of the Weed Abatement Program from the Office of the Santa Clara County Fire Marshal to the County of Santa Clara, Department of Agriculture and Environmental Management under the direction of the Office of the Santa Clara County Agricultural Commissioner.

This amendment would also provide that vacant parcels currently unoccupied by any structures can be abated even if these parcels were at one time developed with residential or commercial structures. The original agreement limited the abatement services to vacant, undeveloped properties. The original agreement did not allow for the abatement of a vacant parcel wherein all buildings and structures previously developed on the lot had been demolished. Over the past few years, the Code Enforcement Division has found a number of previously developed properties on large acres of land that had been left vacant to become overgrown with weeds, creating serious fire hazards. This amendment would allow the program to address all currently undeveloped lots with hazardous vegetation.

The fees for this program would not change and would remain at the current level of actual costs plus a 150% Administrative Fee. The agreement also provides for actual costs incurred by the County for surveys to determine the presence of burrowing owls in order to prevent the destruction of nests, eggs or habitat to comply with California Fish and Game regulations and San Jose Municipal Code Chapter 9.54. There are no administrative costs to the City for this service.

## **PUBLIC OUTREACH/INTEREST**

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach.

The County of Santa Clara, Department of Agriculture and Environmental Management provides notice to owners of all parcels in the Weed Abatement Program Commencement Report. This report advises owners that they must remove seasonal and recurrent weeds or the County would abate the weeds and assess a cost recovery fee.

Honorable Mayor and City Council

November 17, 2006

**Subject: Approval of an Amended and Restated Agreement for the Abatement of Weeds**

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**COORDINATION**

This memorandum has been coordinated with the City Attorney's Office and the Office of the Santa Clara County Agricultural Commissioner.

**CEQA**

Exempt.

A handwritten signature in black ink, appearing to read "Joseph Horwedel". The signature is fluid and cursive, with a large initial "J" and a long, sweeping underline.

JOSEPH HORWEDEL, DIRECTOR  
Planning, Building and Code Enforcement

For questions, please contact Michael Hannon, Deputy Director, at 277-4703.

**AMENDED AND RESTATED  
AGREEMENT FOR THE ABATEMENT OF  
WEEDS BY COUNTY OF SANTA CLARA  
FOR CITY OF SAN JOSE**

This Amended and Restated Agreement for the Abatement of Weeds (“AGREEMENT”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2006 (“EFFECTIVE DATE”), by and between the CITY OF SAN JOSE, a municipal corporation (“CITY”), and the COUNTY OF SANTA CLARA, a political subdivision of the State of California (“COUNTY”).

**RECITALS**

**WHEREAS**, the CITY has duly established under Chapter 9.12 of Title 9 of the San José Municipal Code a program to abate as a public nuisance seasonal or recurrent weeds that are noxious or dangerous and situated on private properties; 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 on private properties; 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 vacant, private properties, which may include previously improved properties that no longer have structures on them, in the CITY and to administer certain parts of the CITY's weed abatement program under Chapter 9.12 of Title 9 of the San José Municipal Code, all in accordance with the terms and provisions set forth in this AGREEMENT; and

**WHEREAS**, the CITY and COUNTY entered into an “Agreement for the Abatement of Weeds”, effective November 2, 1995, and as amended on June 9, 1998, August 18, 1998, September 28, 1999 and September 26, 2000, that provided for the abatement of weeds on vacant, private properties by COUNTY on behalf of CITY; and

**WHEREAS**, the CITY and COUNTY desire to enter into a new AGREEMENT for the abatement of weeds on private, vacant properties that modifies the schedule of performance in the prior Agreement to reflect current PROGRAM needs and to make other clarifying technical changes.

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

**SECTION 1. PURPOSE; DELEGATION.**

The purpose of this AGREEMENT is to promote efficiency and an 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 vacant, private properties in the CITY and administering the CITY's weed abatement program, set forth in Chapter 9.12 of Title 9 of the CITY's Municipal Code ("PROGRAM"), subject to and in accordance with this AGREEMENT.

**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 12 of this AGREEMENT. This AGREEMENT supercedes and replaces the previous "Agreement for the Abatement of Weeds by the County of Santa Clara for the City of San Jose" and any and all subsequent amendments related thereto.

**SECTION 3. SCOPE OF SERVICES; PERFORMANCE SCHEDULE.**

- A. The COUNTY shall perform weed abatement services on vacant, private properties located in the CITY and administer the PROGRAM (collectively, the "SERVICES") in accordance with all applicable laws, rules and regulations of the

CITY, including Chapter 9.12 of Title 9 of the San José Municipal Code, and the provisions of this AGREEMENT, all as may be amended from time to time.

- B. The COUNTY shall perform these SERVICES in accordance with the schedule set forth on EXHIBIT "A," entitled "SCHEDULE OF PERFORMANCE," attached hereto and incorporated herein by this reference.
- 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. In order to ensure that the level and quality of the provision of the SERVICES in the CITY does not diminish and is not impaired, 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 upon properties located in the CITY.
- E. The COUNTY shall obtain the written consent of the CITY prior to performing any chemical treatment or control of weeds upon any properties located in the CITY.
- F. The COUNTY may perform emergency abatements of weeds upon vacant, private properties located in the CITY only in strict accordance with the provisions, conditions and procedures set forth in San Jose Municipal Code Section 9.12.250, as may be amended from time to time. The COUNTY shall obtain the consent of the CITY prior to performing any emergency abatement of weeds upon properties located in the CITY.

**SECTION 4. NOTICES.**

The COUNTY shall provide to the CITY for the CITY's prior review and approval copies of all notices, leaflets, brochures, invoices, and mailings that the COUNTY intends or is required to post, publish, mail or otherwise distribute in connection with the SERVICES. The COUNTY shall provide these copies to the CITY 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.

The term "days" for purposes of this AGREEMENT shall mean calendar days.

#### **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 under Chapter 9.12 of Title 9 of the San José Municipal Code, as the same may be amended from time to time.

#### **SECTION 6. STATEMENT OF COSTS.**

A. At least ten (10) days prior to the date of the public hearing before the CITY Council 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 an itemized report of weed abatement SERVICES performed by the COUNTY on vacant, private 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. The number of complaints received regarding weeds on vacant, private properties located in the CITY;
4. An itemized statement of all of the costs and expenses incurred by or on behalf of the COUNTY for weed abatement SERVICES performed on vacant, private properties located in the CITY, including the following:
  - a. The administrative costs incurred by the COUNTY, which costs will not exceed an amount equal to one hundred and fifty percent (150%) of the costs of the COUNTY's weed abatement contractor for weed abatement SERVICES rendered on vacant, private properties located in the CITY; and
  - b. The actual costs incurred by the COUNTY for conducting surveys on vacant, private properties which are necessary to determine the presence of burrowing owls in order to prevent the destruction of the nest, eggs or habitat of any such bird as prohibited by California Fish and Game Code Section 3503.5 and San José Municipal Code Chapter 9.54. The COUNTY shall not impose any administrative costs for this service;
5. A description of all of the properties, by address and Assessor's Parcel Number, on which weed abatement SERVICES were performed;
6. A description of all the properties, by address and Assessor's Parcel Number, on which surveys for burrowing owls were performed ; and
7. 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. The sole source of compensation to the COUNTY for the provision of the SERVICES shall be those amounts remitted by private property owners to the COUNTY under the PROGRAM.
- B. 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. ADJUSTMENTS; REFUNDS.**

- A. On or before the date of the public hearing before the CITY Council 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 handle and process all requests for adjustments in weed abatement charges, or portions thereof, pursuant to and in accordance with all applicable policies, processes and procedures of the COUNTY in effect at the time of the adjustment request.
- B. After the date of the public hearing before the CITY Council 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 investigate all requests for refunds of weed abatement charges, or portions thereof, pursuant to and in accordance with all applicable policies, processes and procedures of the COUNTY in effect at the time of the refund request; provided, however, that the refund request must meet the requirements of Section 9.12.600 of the San Jose Municipal Code, as may be amended from time to time. Within thirty (30) days of receiving a refund request, the COUNTY shall provide the CITY with a report containing, at a minimum, a summary of the history of the particular weed abatement matter and refund request, the reasons why the COUNTY believes that a refund of weed abatement charges is or is not appropriate, and the amount of weed abatement charges that is the subject of the refund request.

- C. If, in the determination of the CITY Council, a refund is appropriate, the CITY Council may order a refund pursuant to Section 9.12.600 of the San Jose Municipal Code, as may be amended from time to time.

## **SECTION 9. 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 a party shall not be shared pro rata but instead the CITY and COUNTY agree that, pursuant to Government Code Section 895.4, each of the parties hereto shall fully indemnify and hold each of the other parties, its officers, board members, employees and agents, harmless from any claim, expense or cost, damage or liability imposed for injury (as defined by Government Code Section 810.8) occurring by reason of the negligent acts or omissions or willful misconduct of the indemnifying party, its officers, board members, 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, employee or agent thereof shall be responsible for any damage or liability occurring by reason of the negligent acts or omissions or willful misconduct of 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 10. RECORDS.**

- A. Each officer or department of COUNTY performing any SERVICES pursuant to this AGREEMENT shall keep itemized and detailed work or job records covering the cost of any and all SERVICES performed. 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.

- B. The COUNTY shall maintain all other documents and records demonstrating performance under this AGREEMENT for a minimum period of three (3) years from the date of termination of this AGREEMENT, or such longer period as may be required by law.

**SECTION 11. INDEPENDENT CONTRACTOR.**

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. As an independent contractor, the COUNTY shall obtain no rights to retirement benefits or other benefits that accrue to CITY employees, and the COUNTY hereby expressly waives any claim it may have or that may arise under this AGREEMENT to any such rights.

**SECTION 12. 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 next September 1.
- B. If the COUNTY fails to perform any of its material obligations under this AGREEMENT, then, in addition to all other remedies available by law, the CITY may terminate this AGREEMENT immediately upon written notice to the COUNTY.
- C. The CITY's City Manager, or his delegatee or designee, is authorized to terminate this AGREEMENT on behalf of the CITY.
- D. The COUNTY's Agricultural Commissioner, or his or her delegatee or designee, is authorized to terminate this AGREEMENT on behalf of the COUNTY.

E. In the event of termination, the COUNTY shall deliver to the CITY copies of all reports, documents, property address or owner lists, or other data generated by the COUNTY for or under this AGREEMENT.

**SECTION 13. AMENDMENTS.**

This AGREEMENT may be modified only by a written amendment duly executed by the parties to this AGREEMENT.

**SECTION 14. NONDISCRIMINATION.**

COUNTY shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of this AGREEMENT.

**SECTION 15. ASSIGNABILITY.**

The COUNTY acknowledges and understands that the expertise and experience of the COUNTY are material considerations inducing the CITY to enter into this AGREEMENT. The COUNTY may not assign nor transfer any interest in this AGREEMENT, nor the performance of the SERVICES or any other duties or obligations of the COUNTY hereunder, without the prior written consent of the CITY. Any attempt by the COUNTY to so assign or transfer this AGREEMENT, the performance of SERVICES, or any of the COUNTY's other duties, obligations or interests hereunder, shall be null and void and of no force or effect.

**SECTION 16. NOTICES.**

All notices and other communications required or allowed to be given under this AGREEMENT to a party shall be in writing and shall be personally served or mailed, postage prepaid and return receipt requested, addressed to the respective party as follows:

RD:JLP  
11/13/06

COUNTY: County of Santa Clara  
Department of Agriculture and Resource Management  
1553 Berger Drive  
Building 1, San Jose, California 95112  
  
Attention: AGRICULTURAL COMMISSIONER

CITY: City of San José  
200 East Santa Clara Street  
San José, California 95113  
  
Attention: CITY MANAGER

**SECTION 17. GOVERNING LAW.**

The CITY and the COUNTY agree that the law governing this AGREEMENT is that of the State of California.

**SECTION 18. VENUE.**

The COUNTY and the CITY agree that, if suit is brought under this AGREEMENT, venue shall be vested exclusively in the state courts of the County of Santa Clara, or, if federal jurisdiction is appropriate, exclusively in the United States District Court, Northern District of California, San José, California.

**SECTION 19. COMPLIANCE WITH LAWS.**

The COUNTY shall comply with all applicable laws, rules, regulations, codes and ordinances of the federal, state and local governments in the performance of the SERVICES and its other duties and obligations under this AGREEMENT.

**SECTION 20. OWNERSHIP OF MATERIALS.**

All reports, documents, photographs, or other materials generated by the COUNTY or other person engaged directly or indirectly by the COUNTY to perform the SERVICES and other work for the CITY hereunder shall be and remain the property of the CITY.

**SECTION 21. WAIVER.**

The COUNTY agrees that the waiver by the CITY of any breach or violation of any term or condition of this AGREEMENT shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the

same or any other term or condition of this AGREEMENT. The acceptance by the CITY of the performance of the SERVICES or any other work or service under this AGREEMENT shall not be deemed to be a waiver of any term or condition of this AGREEMENT.

**IN WITNESS WHEREOF**, the parties hereto have executed this AGREEMENT as of the EFFECTIVE DATE first set forth above.

**“COUNTY”**

APPROVED AS TO FORM:

COUNTY OF SANTA CLARA

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Kathy Kretchmer  
Deputy County Counsel

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Greg Van Wassenhove  
Agricultural Commissioner  
Department of Agriculture and  
Environmental Management

ATTEST:

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Phyllis Perez, Clerk  
Board of Supervisors

**“CITY”**

APPROVED AS TO FORM:

CITY OF SAN JOSE,  
a municipal corporation

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Jennifer Pousho  
Deputy City Attorney

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Deanna Santana  
Deputy City Manager

**EXHIBIT "A"**

**SCHEDULE OF PERFORMANCE**

The COUNTY shall perform the SERVICES on vacant, private properties in the CITY through the PROGRAM as follows:

- |  |  |
|--|--|
| On or before October 15 of each year:  | The COUNTY shall request a resolution from CITY declaring that certain weeds located on properties in the CITY constitute a public nuisance and setting a date for a public hearing. (SJMC §9.12.100.)   |
| On or before ten (10) days before the CITY Council hearing of objections to proposed weed abatement:                 | The COUNTY shall provide to the Director of Planning, Building and Code Enforcement, or his or her designee, for review and processing by the CITY a complete Master List (Commencement Report) of private properties, including Assessor's Parcel Numbers, located in the CITY upon which noxious or dangerous weeds are growing or are likely to grow. (SJMC §9.12.110.) |
| No later than six (6) days prior to the day of the CITY Council hearing on objections to proposed weed abatement:    | The COUNTY shall post notices at property or mail notices to property owners regarding the CITY Council hearing, as directed by resolution of the CITY Council. (SJMC §§9.12.130 through 9.12.180, inclusive.)   |
| On or before January 15 <sup>th</sup> of each year   | The CITY Council shall hear objections to proposed weed abatement and, by resolution at the conclusion of the hearing, allow or overrule any or all objections to proposed weed abatement. (SJMC §9.12.190.)   |
| After adoption of CITY Council resolution ordering the abatement of weeds on certain properties as public nuisances: | The COUNTY shall comply fully with the resolution adopted by the CITY Council and shall proceed with weed abatement work on vacant, private properties located in the CITY in strict accordance with the resolution, the PROGRAM and this AGREEMENT, all as may be amended from time to time.  |

On or about March 1 of each year:

The COUNTY shall commence initial discing of properties. The COUNTY shall commence a second discing of properties by no later than June 30. The COUNTY shall perform handcleaning, mowing and other handwork on properties throughout the weed abatement season.

At least ten (10) days prior to the date of the public hearing before the CITY Council regarding the placement of special assessment liens on properties for weed abatement charges:

Pursuant to SECTION 6 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. (SJMC §9.12.500.)

On or before July 30 of each year:

The COUNTY shall obtain a resolution from the CITY Council, or its delegatee or designee, to confirm the REPORT and order the weed abatement costs to be a special assessment against the affected properties. (SJMC §9.12.540.)

At least ten (10) days prior to the CITY Council meeting to hear objections to the REPORT:

The CITY shall post the REPORT at CITY's City Hall (SJMC §9.12.510).

The COUNTY shall mail a notice to all property owners, identified in the REPORT, which provides the date, time, and place of the CITY Council hearing on the REPORT at which persons 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:

The COUNTY shall fully comply with the resolution adopted by the CITY Council.