

BEFORE THE BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

RESOLUTION NO. 2010-035

Approving an Intergovernmental Agreement to Provide for the Coordinated Regulation and Management of Invasive Plants

The Multnomah County Board of Commissioners Finds:

- a. The State of Oregon (State), City of Portland (City) and Multnomah County have long recognized invasive plants as a problem. The proliferation of invasive plants can have environmental and economic impacts, including reducing tree health and longevity, creating fuel sources for wildfires, and out competing and displacing native plants that provide food and cover for native wildlife.
- b. In September 2008, the City funded a multi-bureau project referred to as the Invasive Plant Policy Review and Regulatory Improvement Project that included review of the City code and other regulatory and policy documents.
- c. City and County staff have worked collaboratively throughout the project, and have prepared an *"Intergovernmental Agreement to Provide for the Coordinated Regulation and Management of Invasive Plants Between City of Portland and Multnomah County"* (IGA) in the "urban pocket areas" of Multnomah County.
- d. The IGA allows for uniform application of City Code Chapters 29.10 - 29.20 within the City and the urban pockets and will result in a more coordinated and effective approach to the removal and eradication of invasive, nuisance plants.
- e. On February 10, 2010, the City approved the attached IGA.

The Multnomah County Board of Commissioners Resolves:

1. The attached *Intergovernmental Agreement to Provide for the Coordinated Regulation and Management of Invasive Plants* is approved; and the County Chair is authorized and directed to sign the attached agreement.

ADOPTED this 1st day of April 2010.

BOARD OF COUNTY COMMISSIONERS
FOR MULTNOMAH COUNTY, OREGON

Jeff Cogen, Chair

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By Sandra Duffy
Sandra N. Duffy, Assistant County Attorney

SUBMITTED BY:

M. Cecilia Johnson, Director, Department of Community Services



**INTERGOVERNMENTAL AGREEMENT TO PROVIDE FOR THE COORDINATED
REGULATION AND MANAGEMENT OF INVASIVE PLANTS**

BETWEEN

CITY OF PORTLAND AND MULTNOMAH COUNTY

This is an Intergovernmental Agreement to provide for the coordinated regulation and management of invasive plants (Agreement) between MULTNOMAH COUNTY (County), a home rule county and a political subdivision of the State of Oregon, and the CITY OF PORTLAND (City), a home rule city and political subdivision of the State of Oregon.

RECITALS:

A. The City and County are authorized under the provisions of ORS 190.003 to 190.030 to enter into intergovernmental agreements for the performance of any or all functions that a party to the agreement has authority to perform. This Agreement is made pursuant to the authority granted by ORS Chapter 190.

B. The State of Oregon (State), City and County have long recognized invasive plants as a problem. The proliferation of invasive plants can have environmental and economic impacts, including reducing tree health and longevity, creating fuel sources for wildfires, and outcompeting and displacing native plants that provide food and cover for native wildlife. Certain invasive plants are identified as noxious weeds by the State of Oregon. There are regulations related to noxious weeds; not every invasive plant is designated as a noxious weed.

C. The State Department of Agriculture has established priority ranks for noxious weeds, as has the 4-County Cooperative Weed Management Area for Multnomah, Washington, Clackamas, and Clark Counties under authority granted by state law.

D. Multnomah County has adopted and uses nuisance abatement procedures to regulate nuisance plants, such as tansy ragwort and scotch broom. The County has also adopted zoning regulations that prohibit the planting of specific nuisance plants in certain zones, such as the Significant Environmental Concern zone. The County identifies certain invasive plants as nuisance plants and has regulations specific to these nuisance plants.

E. In 1991, the City published the *Portland Plant List*, which contains three lists: a Native Plants List, a Nuisance Plant List and a Prohibited Plant List. Plants on the Nuisance Plant List and the Prohibited Plant List are not allowed to be planted in the City's Environmental Overlay Zones, Greenway Overlay Zones, and Pleasant Valley Natural Resources Overlay Zones. In addition, plants on the Prohibited Plant List and the Nuisance Plant List are not allowed to be planted in required landscaping anywhere within the City. The terms nuisance and

prohibited are specific to the City of Portland; the terms refer to certain invasive plants that are regulated by the City of Portland.

F. In 2005, the City adopted the *Portland Watershed Management Plan* (PWMP) to provide a comprehensive approach to restoring watershed health and identified the detrimental impacts of invasive plants. The City also adopted Resolution No. 36360 in 2005, which required the City to develop a work plan and goals to reduce invasive plants and to support invasive plant management efforts within City bureaus.

G. In response to Resolution No. 36360, the City's Bureau of Environmental Services led a multi-bureau effort that culminated in publication in November, 2008 of the Invasive Plant Management Strategy (Strategy). Among the actions the Strategy calls for is the incorporation of new invasive plant regulations into existing City Codes.

H. In August, 2009, the City adopted Resolution No. 36726, which adopted the Strategy to guide work within all City bureaus related to invasive plants from the present to 2020. To implement the Strategy, the City's Bureau of Planning and Sustainability (BPS) led an evaluation of City policies and rules relating to invasive plants entitled the *Invasive Plant Policy and Regulatory Improvement Project* (*Invasive Plant Project*) and developed recommendations for code updates and improvements. The final report for the *Invasive Plant Project* recommends, among other things, updating the *Portland Plant List* to include priority ranks and guidance regarding invasive plants, and to amend City Code Titles 33 (Planning and Zoning) and 29 (Property Maintenance Regulations) to improve invasive plant control and require removal of plants on the Nuisance Plant List in certain areas throughout the City. As part of the *Invasive Plant Project*, the Nuisance Plant List and the Prohibited Plant List were consolidated and renamed the Nuisance Plants List. The City of Portland uses the term nuisance plants to refer to invasive plants that are regulated by the City.

I. The City and County previously entered into an intergovernmental agreement that transferred responsibilities from the County to the City for implementing and administering comprehensive plan and zoning regulations, including Title 33 of the City Code, for all property within the County that is also within the City's Urban Services Boundary. These areas are often referred to as the "urban pockets." See the "Intergovernmental Agreement to Transfer Land Use Planning Responsibilities Between City of Portland and Multnomah County," with the effective date in January, 2002. The amendments to Title 33 recommended by the *Invasive Plant Project* will be governed by the terms of that intergovernmental agreement, which is currently effective.

J. The City and County desire to enter into a separate intergovernmental agreement to make Chapters 29.10 through 29.20 of the City Code, including the amendments to Title 29 recommended by the *Invasive Plant Project*, applicable within the urban pockets. These amendments require eradication of certain plants – those plants on the Nuisance Plants List, Required Eradication List - if they are found on a property. For purposes of this Agreement, the plants regulated by Chapters 29.10 through 29.20 of the City Code are referred to as "nuisance plants." Uniform application of Chapters 29.10-29.20 of the City Code within the City and the urban pockets, also known as the Affected Area described below, will result in a more coordinated and effective approach to the removal and eradication of nuisance plants.

NOW, THEREFORE, THE CITY AND COUNTY MUTUALLY AGREE AS FOLLOWS:

I. INTENT OF AGREEMENT

- A. This Agreement provides for the coordinated regulation and management of nuisance plants by the City and County in the area specified in paragraph I.B below. Specifically, this Agreement provides for the County's adoption of Chapters 29.10 through 29.20 of the City Code and the transfer of responsibilities for implementing these chapters from the County to the City for properties within unincorporated Multnomah County that are within the City's Urban Services Boundary, the METRO Urban Services Area and Urban Growth Boundary;
- B. The area that is subject to this Agreement is defined as depicted in Exhibit 1, attached to this Agreement (the Affected Area). The Affected Area, in general, includes all of the properties within unincorporated Multnomah County that are also within Portland's Urban Services Boundary, with two exceptions. The first, West Hayden Island (map attached as Exhibit 2), is already covered by an intergovernmental agreement and will retain County zoning. It is not subject to this Agreement. The second, a site known as Fred's Marina (attached as Exhibit 3), will remain under County land use jurisdiction and is not subject to this Agreement for all matters related to the settlement agreement entered into on February 6, 2001 in the United States District Court, and confirmed in writing on February 27, 2001.
- C. All costs to implement and enforce city Code Chapters 29.10 - 29.20 within the Affected Area pursuant to this Agreement shall be the responsibility of the City.
- D. All actions specified by this Agreement shall be taken to assure that the County's regulation of nuisance plants remains consistent with the City's. The County has adopted Chapters 29.10 – 29.20 of the City Code as the County's for the Affected Area and intends to adopt future amendments to these chapters. The City intends to administer these chapters for County properties in the Affected Area in the same manner as it does for City properties within the City's boundaries.
- E. If any property in the Affected Area annexes to the City or is removed from the City's Urban Services Boundary, it will no longer be subject to this Agreement.

II. DELEGATION OF AUTHORITY

The County agrees to adopt Chapters 29.10 - 29.20 of the City Code for the County Affected Area and to delegate to the City any and all authority that it possesses and that is needed by the City to carry out the regulation and enforcement of City Code Chapters 29.10 – 29.20 for the Affected Area. The effective date and terms of the delegation of authority are as provided for in this Agreement. Among the actions that the County authorizes the City to take in the Affected Area are those enumerated in Section II.C below, which are hereby incorporated into this Delegation of Authority by reference. This delegation of authority should be construed broadly.

A. Fees and Costs

The parties intend that all costs and expenses incurred by City in performing tasks described in Section II.C of this Agreement shall be paid or reimbursed by the City. For purposes of this Agreement, “costs and expenses incurred by the City” include without limitation employee salaries, fringe benefits and City overhead attributed to such employees, expenses incurred for publication and mailing related to implementation, enforcement and nuisance abatement, provided such costs, expenses and fees are attributed to enforcement and/or nuisance abatement actions the City processes under this Agreement.

B. COUNTY RESPONSIBILITIES

The County agrees to perform the following activities for the Affected Area as part of this Agreement:

1. General Responsibilities

- a. The County will adopt City regulations for the Affected Area.
- b. The County will review and propose for adoption by the County Board of Commissioners any necessary amendments to Chapters 15.225 through 15.236 of the County Code to ensure continued implementation and enforcement of these code provisions is coordinated with implementation and enforcement of Chapters 29.10 – 29.20 of the City Code in the Affected Area.

The County will notify the City of the proposed amendments at least 45 days before the County Board is scheduled to consider and adopt them and will give the City an opportunity to comment on the proposed amendments before adoption.

- c. The County, with assistance from the City, will provide appropriate information to familiarize the County Vector Control staff, the County Land Use Planning staff, and County Counsel to ensure County staff understands the provisions of Chapters 29.10 – 29.20 of the City Code; that staff informs citizens in the Affected Area about the substance and

applicability of these City Code chapters; and that staff is prepared to answer questions and refer complaints from the public about nuisance plants in the Affected Area to appropriate City staff. This provision in no way conveys a responsibility of implementing Chapter 29.10 - 29.20 provisions to Multnomah County staff.

2. Amendments to City and County Regulations

- a. The County will ensure that any City Council adopted amendments to Chapters 29.10 – 29.20 of the City Code will be considered by the County Board of Commissioners at the earliest possible meeting. The County Board of Commissioners will enact all amendments to Chapters 29.10 – 29.20 so that they take effect on the same date specified by the City’s enacting ordinance, except as provided in b. below.
- b. In the event the City Council adopts amendments to Chapters 29.10 – 29.20 by emergency ordinance to be effective immediately, the County Board of Commissioners will consider the amendments at their next regularly scheduled meeting. The County Board of Commissioners will also consider adoption of the amendments as an emergency ordinance with an immediate effective date. Any and all immediately effective amendments adopted by the City Council by emergency ordinance will not apply to properties within the Affected Areas until the County Board of Commissioners adopts the same immediately effective amendments by emergency ordinance.
- c. In the event the County Board of Commissioners chooses not to adopt amendments to Chapters 29.10 – 29.20 of the City Code as adopted by the City Council, the City may terminate this Agreement as provided in Section IV.

C. CITY RESPONSIBILITIES

The City is authorized by the County and agrees to perform the following activities in the Affected Area as part of this Agreement:

1. General Responsibilities

- a. The City will provide information to the County to familiarize the County Vector Control staff, the County Land Use Planning staff, and the County Counsel about the substantive requirements of City Code Chapters 29.10-29.20; the City will respond to questions about and complaints under these City Code chapters; and the City will provide enforcement of Chapters 29.10 – 29.20 in the Affected Areas.

- b. The City will adopt administrative rules that implement City Code Chapters 29.10 – 29.20 for use within the City and the Affected Area.

2. Enforcement and Nuisance Abatement

- a. The City will enforce the provisions of City Code Chapters 29.10 – 29.20 within the Affected Area using the nuisance abatement procedures specified in those code chapters and in the administrative rules described in paragraph II.C.1.b above.

3. Amendments to City and County Regulations

- a. The City will provide appropriate opportunity for residents and property owners in the Affected Area to provide input to any legislative public process that may result in changes to Chapters 29.10 – 29.20 of the City Code adopted by the County. It is to be understood that the public process for the Affected Area is one and the same as the process held in the City.
- b. The City will include County decision-making bodies in any legislative public process that may result in changes to Chapters 29.10 – 29.20. County decision-makers and staff will be encouraged to participate in the City’s public process.
- c. After the City Council has taken final action on any ordinance amending Chapters 29.10 – 29.20, the City will forward the ordinance to the County Board of Commissioners for adoption.

III. OPERATING PROCEDURES AND RELATIONSHIPS

A. Dispute Resolution

In the case of a dispute under this Agreement, the County through its Director of Vector Control, Director of Land Use Planning and County Counsel and the City through its Director of the Bureau of Environmental Services, Director of the Bureau of Development Services and City Attorney shall attempt

to resolve the dispute informally. If the dispute cannot be resolved through this process, the parties shall submit their dispute to intergovernmental arbitration pursuant to ORS 190.710 through 190.800. Each of the parties shall bear its own expense of attorney fees and arbitration.

B. Amendment

This Agreement may be amended by mutual written agreement of the parties. An amendment will be valid only when reduced to writing, approved as required and signed.

IV. TERM OF AGREEMENT AND TERMINATION

A. General Term

This Agreement shall be effective on July 1, 2010 and shall remain in effect until terminated by mutual written agreement of both parties, or as determined by dispute resolution.

B. Termination by City

This Agreement may be terminated by the City if the County fails to adopt Chapters 29.10 – 29.20 or amendments to these chapters adopted by the City Council in a timely manner as provided in Section II.B above. The City shall notify the County in writing 90 days before such termination.

C. Non-appropriation

In the event of non-appropriation of funds or staff resources by the City or County, either party may terminate or reduce the scope of services to be provided and contract funding accordingly, but such party must provide notification of termination or reduction in scope of services to the other party as soon as practicable.

V. INDEMNIFICATION

A. General Provisions

Subject to the conditions and limitations of the Oregon Constitution and the Oregon Tort Claims Act, ORS 30.260 through 30.300, County shall indemnify, defend and hold harmless City from and against all liability, loss and costs arising out of or resulting from acts of County, its officers, employees and agents in the performance of this Agreement. Subject to the conditions and limitations of the Oregon Constitution and the monetary limits of the Oregon Tort Claims Act, ORS 30.260 through 30.300, City shall indemnify, defend and hold harmless County from and against all liability, loss and costs arising out of or resulting from the acts of the City, its officers, employees and agents in the performance of this Agreement.

VI. INSURANCE

County and City shall each be responsible for providing worker's compensation insurance as required by law. Neither party shall be required to provide or show proof of any other insurance coverage.

VII. ADHERENCE TO LAW

Each party shall comply with all federal, state and local laws and ordinances applicable to this Agreement.

VIII. NONDISCRIMINATION

Each party shall comply with all requirements of federal and state civil rights and rehabilitation statutes and local nondiscrimination ordinances.

IX. ACCESS TO RECORDS

Each party shall have access to the books, documents and other records of the other that are related to this Agreement for the purposes of examination, copying and audit, unless otherwise limited by law.

X. PROPERTY OF COUNTY

In the event of termination of this Agreement, all files and documents of any kind related to the scope of work set forth in this Agreement shall be transferred back to the County. The County shall only pay the actual costs of the transfer.

XI. CONTRACT ADMINISTRATION

The County designates the Land Use and Transportation Program Planning Director (1600 SE 190th Avenue, Portland, OR 97233), to represent the County in all matters pertaining to the administration of this Agreement.

The City designates the Director of the Bureau of Environmental Services or the designee (1120 SW 5th Avenue, Portland, OR 97204), and the Director of the Bureau of Development Services or the designee (1900 SW 4th Avenue, Portland, OR 97201), to represent the City in all matters pertaining to the administration of this Agreement.

XII. ENTIRETY OF AGREEMENT

This Agreement constitutes the entire Agreement between the parties. No waiver, consent, modification or change of the terms of this Agreement shall bind either party unless made in writing and signed by both parties.

XIII. SEVERABILITY

The County and City agree that if any terms or provision of this Agreement is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not

contain the particular term or provision to be held invalid.

MULTNOMAH COUNTY

By: _____
Jeff Cogen, Chair

Date: _____

CITY OF PORTLAND

By: _____
Sam Adams, Mayor

Date: _____

By: _____
LaVonne Griffin-Valade
Auditor

Date: _____

REVIEWED:

AGNES SOWLE, COUNTY ATTORNEY
FOR MULTNOMAH COUNTY, OREGON

By: _____
Sandra Duffy, Assistant County Attorney

APPROVED AS TO FORM

City Attorney