A86520

11R-224 Introduce: 9-12-11

RESOLUTION NO. A- 86520

BE IT RESOLVED by the City Council of the City of Lincoln, Nebraska:

That the Agreement between the City of Lincoln and Lancaster County for a Combined Weed Control Program to provide for abatement and control of noxious weeds, common weeds and worthless vegetation within the limits of the City, upon the terms and conditions set out in the Agreement which is attached hereto marked as Attachment "A", is hereby approved and the Mayor is authorized to execute the same on behalf of the City of Lincoln.

1016 The City Clerk is directed to transmit an executed copy of the Agreement to the Clerk of Lancaster County.

See further Council Proceedings on next page..

Introduced by:

AYES: Camp, Carroll, Cook, Emery, Eskridge, Hornung;
NAYS: None.

Approved as to Form & Legality:

City Attorney

ADOPTED
OCT 03 2011
BY CITY COUNCIL

Approved this 6th day of Oct., 2011

Mayor

11R-224

09/12/11 Council Proceedings:

COOK Moved to have Bill No. 11R-224 placed on pending w/ P.H. and Action on October 3, 2011.

Seconded by Emery & carried by the following vote: AYES: Camp, Carroll, Cook, Emery, Eskridge, Hornung; NAYS: None.

09/19/11 Council Proceedings:

COOK Moved to have P.H. on Bill No. 11R-224 on September 26, 2011 with Action on October 3, 2011.

Seconded by Emery & carried by the following vote: AYES: Camp, Carroll, Cook, Emery, Eskridge, Hornung; NAYS: None.

CITY OF LINCOLN

Request for: ☐ Ordinance
X Resolution

(Do Not Write in this Space)
Bill Control No. 11R-224 Date: 9-6-11
Docketing Date 9-12-11 P.H. 9-19-11
(To Be Entered by City Clerk)

DATE September 6, 2011	REQUEST MADE BY Chris Connolly	DEPARTMENT Law
DESIRED DOCKET DATE: Sept. 12, 2011	IF EMERGENCY, GIVE REASON (See Art. 6, Sec. 2 of Charter)	
Emergency Measure Required: ☐ Yes ☐ No		

REASONS OR JUSTIFICATION FOR PROPOSED LEGISLATION

Approving an Agreement between the City of Lincoln and Lancaster County for a Combined Weed Control Program to provide for noxious and common weed control within the limits of the City.

CITY CLERK'S OFFICE
2011 SEP 9 PM 2 12
CITY OF LINCOLN
NEBRASKA

REQUESTOR ☐ DOES ☐ DOES NOT	WISH TO REVIEW AND APPROVE THIS ORDINANCE PRIOR TO ITS INTRODUCTION	DIRECTOR'S SIGNATURE	DATE

TO BE USED BY THE FINANCE DEPARTMENT

BUDGET REVIEW DATE:	ACCOUNT NUMBER AND APPROPRIATE BALANCES DATE:	FUND AVAILABILITY APPROVED DATE: DIRECTOR OF FINANCE SIGNATURE

DISTRIBUTION
Return two (2) copies to City Clerk for Docket Number

GENERAL FACT SHEET **BILL NUMBER** 11R-224

BRIEF TITLE	APPROVAL DEADLINE	REASON
Combined Weed Control Interlocal Agreement	9/19/11	Approval of Agreement with Lancaster County for Weed Control Program

DETAILS

This agreement updates the combined weed control program approved by both Lancaster County and the City of Lincoln in 1996, with the most recent update being in 2003. The agreement runs year to year until terminated by one of the parties. Changes include more effective notice procedures and creation of a notice of potential lien. Prior program did not provide for lien notification until after the lien was assessed. Some properties changed hands between the control activity and the time of lien assessment, resulting in new owners having to pay for weed control done before they became the owners. City procedures will be similar to County procedures. The Lancaster County Board has approved the agreement.

Discussion (Including Relationship to other Council Actions)

No impact on the budget as no new costs will be incurred. Not related to other pending actions by the Council.

POSITIONS/RECOMMENDATIONS

Sponsor	City Law Department
Program Departments, or Groups Affected	Public Works and Utilities will be handling appeals
Applicants/ Proponents	Applicant city Law Department City Department Other
Opponents	Groups or Individuals Unknown Basis of Opposition
Staff Recommendations	☐ For ☐ Against Reason Against
Board or Commission Recommendation	BY ☐ For ☐ Against ☐ No Action Taken ☐ For with revisions or conditions (See Details column for conditions)

	CITY COUNCIL ACTIONS (For Council Use Only)	❑ Pass ❑ Pass (As Amended) ❑ Council Sub. ❑ Without Recommendation ❑ Hold ❑ Do not Pass

DETAILS	POLICY/PROGRAM IMPACT	
	POLICY OR PROGRAM CHANGE	❑ NO ❑ YES _____ _____ _____
	OPERATIONAL IMPACT ASSESSMENT	_____ _____ _____
	FINANCES	
	COST AND REVENUE PROJECTIONS	COST of total project: $ COST of this Ordinance/ Resolution $
		RELATED annual operating Costs $
		INCREASE REVENUE EXPECTED/YEAR $
	SOURCE OF FUNDS	CITY [Approximately] _____$_____%____ _____$_____%____ _____$_____%____ NON CITY [Approximately] _____$_____%____ _____$_____%____ _____$_____%____
	BENEFIT COST ❑ Front Foot ❑ Square Foot	Average Assessment $_____ $_____

APPLICABLE DATES:

FACT SHEET PREPARED BY:

REVIEW BY:

REFERENCE NUMBER

ATTACHMENT "A"

C-11-0498
RECEIVED
AUG 25 2011
LANCASTER COUNTY CLERK

INTERLOCAL AGREEMENT BETWEEN CITY OF LINCOLN AND COUNTY OF LANCASTER FOR A COMBINED WEED CONTROL PROGRAM

THIS AGREEMENT made and entered into by and between the County of Lancaster, Nebraska, a governmental subdivision of the State of Nebraska, hereinafter referred to as "County", and the City of Lincoln, Nebraska, a municipal corporation, hereinafter referred to as "City".

WHEREAS, Neb. Rev. Stat. § 2-945.02 (Reissue 2007) establishes the responsibility of the County for administration of noxious weed control laws at the county level; and

WHEREAS, The County has established the Lancaster County Weed Control Authority (hereinafter referred to as "the Authority") to enforce noxious weed control for the County; and

WHEREAS, Neb. Rev. Stat. § 2-946.02 (Reissue 2007) provides that the City shall provide for the control of noxious weeds within its jurisdiction; and

WHEREAS, Neb. Rev. Stat. § 15-268 (Reissue 1991) and Chapter 8.46 of the Lincoln Municipal Code establish provisions for control of weeds and worthless vegetation within the City: and

WHEREAS, Neb. Rev. Stat. § 2-954(3)(C) (Reissue 1991) provides that an agreement may be entered into between the City and County for the purpose of weed control by the County within the limits of the City and pursuant to City ordinances; and

WHEREAS, the Interlocal Cooperation Act, Neb. Rev. Stat. §§ 13-801 to 13-827 (Reissue 2007), permits local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units to provide services and facilities on a basis of mutual advantage; and

WHEREAS, the County and City desire to cooperate in order to provide for noxious and common weed control in the jurisdiction of the City in the most efficient manner possible and to their mutual advantage; and

WHEREAS, the County and City desire to replace and substitute the Combined Weed Control Program, City of Lincoln Interlocal Agreement, dated May 21, 1996 with a new agreement for abatement and control of noxious weeds, common weeds, and worthless vegetation within the limits of the City.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter contained, it is agreed by and between the parties as follows:

1. Administration of Agreement; Conflicts. The County hereby designates the Authority as the County department responsible for administering and enforcing this agreement. The City hereby recognizes the Authority as the responsible County department. In the event of a conflict between state law and City ordinance, state law will control. In the event of a conflict between state law and this agreement, state law will control. In the event of a conflict between City ordinance and this agreement, for purposes of enforcement of the City's weed control program only, City ordinance shall control. No new legal entity is created by this agreement. The County shall appoint a superintendent who shall be responsible for daily operations of the Authority. All real and personal property acquired by the Authority or the County for the benefit of the City pursuant to this agreement shall belong to the County.

2. Submission of Plan for Approval. The Authority shall submit a plan for a combined weed control program annually to the Mayor, City Council, and County Commissioners for approval. The plan shall comply with all applicable state laws and ordinances of the City.

3. Operations; bidding process. The Authority shall use state statutes and County rules and procedures for procurement of contractors, equipment, and any other property procured by the Authority.

4. Enforcement Duties. The Authority will manage all aspects of control of noxious weeds pursuant to the provisions of Neb. Rev. Stat. §§ 2-955 through 2-960 for the County

including, but not limited to control activities (as defined herein), notices, collections, imposition of liens and conducting appeal hearings. The Authority shall also manage and enforce all aspects of the City's weed control program pursuant to Chapter 8.46 of the Lincoln Municipal Code and this agreement. Such enforcement, for either the County or the City, shall include, but not be limited to, cutting, trimming, removal, clearing, and any other forms of abatement and control (hereinafter collectively referred to as "control" or "control activity") of noxious weeds, common weeds, and worthless vegetation as those terms may be defined by state law or city ordinance. The owner or owners (as defined below) of the property controlled shall be responsible for the costs incurred in the control activity.

5. Vegetation to be controlled. For purposes of this agreement, the term "weeds and worthless vegetation" shall include, but not be limited to, the definition of "weed" and "worthless vegetation" as established by the Authority. The Authority shall not conduct control activities on lots of one acre or more if such lots meet the following conditions:

a. Grassy areas are kept free of weeds;

b. Mowed when vegetation is mature in the fall;

c. The lot is mowed back no less than 50 feet from streets, residences, or businesses at all times.

6. Notice of Control Activities; Procedure. Upon notice to the Authority through a complaint or any other method of notice of the failure of any owner, lessee, occupant, or any agent, servant, representative or employee of any such owner, lessee, or occupant (hereinafter collectively referred to as "owner") having control of any real estate within the limits of the City (hereinafter referred to as "the property") to control all weeds, noxious weeds, or worthless vegetation (as may be described in paragraph 5 above) to no more than six inches in height from the ground, then and in that event, the Authority may give notice to the owner that the property

must be controlled within five (5) days of the date of the notice or the Authority may control the property and assess the costs thereof to the property. Notice may be given by publishing once in a daily newspaper of general circulation in the City or notice may be given by certified mail, return receipt requested. The Authority may post the notice in a conspicuous location on the property. Publication, posting, or mailing of the notice shall be deemed good service of the notice for purposes of this section. Upon failure of the owner to control the property within the notice period, the Authority shall enter the property and conduct control activity necessary to comply with Chapter 8.46 of the Lincoln Municipal Code and this agreement. The Authority shall send an invoice for the control activity to the owner withing five business days of the control activity.

7. Collection of Costs; Notice of Potential Lien. Within five business days of any control activity for the City, the Authority shall record with the Lancaster County Register of Deeds, a notice of potential lien on the property controlled. The notice shall contain the following information:

a. Address for the property.

b. Legal description.

c. Date of the control activity, along with a general description of the action taken.

d. Cost of the control activity.

e. Notification language in large, conspicuous lettering, stating that the owner of the property is responsible for paying for the control activity and that the cost for the control activity shall be considered for assessment as a lien against the property at a meeting of the Lincoln City Council unless the cost of the control activity is paid in full. Notice of the date and time of the Lincoln City Council meeting when the assessment will be considered shall be sent at a later date, but not less than 30 days before such City Council meeting.

f. The owner of property subjected to control activity shall have the right to appeal the decision to control and the cost of the control by filing a written appeal with the Department of Public Works and Utilities within 30 days of the date of the control activity. If good cause is shown, the deadline for filing an appeal may be extended by the Director of the Department. A hearing on the appeal shall be held within 14 days of the filing of the appeal and shall be conducted by the Director or his or her designee. The owner, or his or her attorney, may present evidence in support of the appeal. The hearing may be continued from time to time as may be appropriate. Following the submission of evidence by the owner, the Director or his or her designee shall render a decision on the appeal in five business days or less. The decision on the appeal shall be final.

g. Interest shall begin to accrue at the rate set for delinquent real estate taxes thirty (30) days after the control activity.

h. In the event the City assesses the cost of control activity against the property as a lien, then, and in that event, the lien shall become effective as of the date of the control activity.

i. Contact information, including telephone number and mailing address, for the Authority.

A copy of the notice shall also be placed on any website used by the Authority for purposes of providing information regarding potential liens. Collection activity, including liens, for the County shall be governed by Neb. Rev. Stat. §§ 2-945.01 to 2-968.

8. Service of Notice. The notice described in Section 7 above shall be served by the Authority on the owner of the property by sending a copy of the notice by certified mail, United States Postal Service tracking confirmation, or a similar service, to the last known address of the

owner as shown in the records of the Lancaster County Assessor. The Authority may also post a copy of the notice in a conspicuous place on the property. The sending of a notice by certified mail, with or without a signed receipt, shall be deemed good and sufficient service of the notice.

9. City Funding. The City shall provide funding for one half of the budget for the Authority for services rendered within the limits of the City each fiscal year. The County shall prepare and submit to the City a request for such funding by May 1 of each year for the next fiscal year. Such funding request shall be a part of the proposed budget submitted to and subject to the approval of the City Council. In the event the City Council does not approve the funding request of the County, the County may terminate this agreement as set forth in paragraph 14. The Authority shall collect all revenues generated from control activities and deposit such revenue in the Lancaster County Weed Control Authority fund. The Authority shall account to the City for revenues collected for control activities within the City limits. All sources of funding for the County shall be deposited in the Lancaster County Weed Control Authority fund.

10. County Funding. The County shall provide funding to the Authority for services rendered within the limits of the County, except for any areas within the limits of the City. The Authority shall prepare and submit to the County a funding request for the next fiscal year that includes and accounts for the contribution of the City. Procedures for submitting the budget request shall be pursuant to Nebraska law and established County procedures.

11. Liens and Collections; Releases; Procedures. All liens assessed and imposed by the City shall remain in effect until fully paid, released by the City, foreclosed by the City or removed by effect of state law or court order. The Authority shall be responsible for collecting monies paid for control activities. All such collections shall be deposited in the noxious weed control fund of the County. The County shall release weed liens imposed on real estate within the limits of the City when the amount due for the control activity has been fully paid or when the County is

presented a certified copy of a resolution of the City Council authorizing the release of such a lien or as may be ordered by a court of competent jurisdiction.

12. Control on City Property. The Authority may control noxious weeds on City-owned property in accordance with Nebraska law. The Authority may control weeds and worthless vegetation only after the passage of 14 days after service to the City of a Notice of Control Activities with no control activities taken by the City.

13. Annual Report. An annual report will be submitted to the County Commissioners and to the Mayor and City Council and will include the results of the combined weed program actions, and any recommendations for further improving the program.

14. Termination. This Agreement shall remain in full force and effect from year to year until terminated. This Agreement shall be subject to termination or review and revision at any time with the mutual consent of both parties and may be terminated by either party giving to the other no less than thirty (30) days advance written notice of termination prior to the close of the fiscal year of the County Upon termination, the County shall remit to the City all amounts held by the County for weed control within the limits of the City minus any amounts due and owing the County for weed control within the limits of the City, prorated on monthly basis. In the event it is finally determined that the City owes the County money for weed control purposes, the City shall pay such monies within 30 days of any such final determination.

15. Indemnification. To the fullest extent permitted by law, the County shall indemnify, defend and hold harmless the City, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is

caused in whole or in part by the intentional or negligent act or omission of the County, or anyone for whose acts any of them may be liable. This section will not require the County to indemnify or hold harmless the City for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the City. The City does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law to the extent that said defenses are applicable. This section survives any termination of this Agreement.

To the fullest extent permitted by law, the City shall indemnify, defend and hold harmless the County, its officers, agents and employees from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from performance of this Agreement, that results in any claim for damage whatsoever, including without limitation, any bodily injury, sickness, disease, death, or any injury to or destruction of tangible or intangible property, including any loss of use resulting therefrom that is caused in whole or in part by the intentional or negligent act or omission of the City, or anyone for whose acts any of them may be liable. This section will not require the City to indemnify or hold harmless the County for any losses, claims, damages, and expenses arising out of or resulting from the sole negligence of the County. The County does not waive its governmental immunity by entering into this Agreement and fully retains all immunities and defenses provided by law to the extent that said defenses are applicable. This section survives any termination of this Agreement.

16. Audit Provision. The County shall be subject to audit pursuant to Chapter 4.66 of the Lincoln Municipal Code and shall make available to a contract auditor, as defined therein, copies of all financial and performance related records and materials germane to this Agreement, as allowed by law.

17. E-Verify. In accordance with Neb. Rev. Stat. §§ 4-108 through 4-114, the County agrees to register with and use a federal immigration verification system, to determine the work

eligibility status of new employees performing services within the state of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 USC 1324 a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized. The County shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C.A. 1324b. The County shall require any subcontractor to comply with the provisions of this section.

18. Fair Employment. For purposes of this agreement only, the County shall not discriminate against any employee (or applicant for employment), related to this agreement, with respect to compensation, terms, advancement potential, conditions, or privileges of employment, because of such person's race, color, religion, sex, disability, national origin, ancestry, age, or marital status pursuant to the requirements of Lincoln Municipal Code Chapter 11.08, and Neb. Rev. Stat. § 48-1122, as amended.

19. Fair Labor Standards. The County shall maintain Fair Labor Standards in the performance of this Agreement, as required by Chapter 73, Nebraska Revised Statutes, as amended.

20. Severability and Savings. Each section and each subdivision of a section of this Agreement is hereby declared to be independent of every other section or subdivision of a section so far as inducement for the acceptance of this Agreement and invalidity of any section or subdivision of a section of this Agreement shall not invalidate any other section or subdivision of a section thereof.

21. Nebraska Law. This Agreement shall be governed and interpreted by the Laws of the State of Nebraska without reference to the principles of conflicts of law.

EXECUTED this 30 day of August, 2011, by Lancaster County, Nebraska.

BY THE BOARD OF COUNTY COMMISSIONERS OF LANCASTER COUNTY, NEBRASKA

Bernie Heier

Larry Hudkins

Jane Raybould

Deb Schorr

Brent Smoyer

Approved as to form this 30 day of August, 2011.

for Joe Kelly, County Attorney

EXECUTED this 6th day of Oct., 2011, by the City of Lincoln, Nebraska.

Attest:

City Clerk

CITY OF LINCOLN, NEBRASKA

Chris Beutler, Mayor