

W.4.D.2.

Memorandum Date: May 23, 2008  
Order Date: June 18, 2008

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**TO:** Board of County Commissioners

**DEPARTMENT:** Public Works

**PRESENTED BY:** Frank Simas, Right of Way Manager

**AGENDA ITEM TITLE:** In the Matter of Authorizing the Execution of a Utility Easement Across a Portion of T. L. 17-04-02-21-00500 Previously Conveyed from Lane County to the City of Eugene by Means of a Deed Containing a Reversionary Clause.

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**I. MOTION**

Move approval of the Order.

**II. AGENDA ITEM SUMMARY**

The City of Eugene, by and through the Eugene Water and Electric Board (EWEB) has requested that Lane County join in the authorization of the execution of a utility easement across lands previously granted by Lane County to the City of Eugene via a Bargain and Sale Deed which contained a reversionary clause restricting the land to usage for park purposes.

**III. BACKGROUND/IMPLICATIONS OF ACTION**

**A. Board Action and Other History**

The property located at 4291 River Road in the Santa Clara area is known as Awbrey Park and was conveyed to the City in 1989 pursuant to Order 89-3-1-16. The Deed contained a reversionary clause stating that "should CITY fail to use the property for park purposes, ownership shall revert to County". A copy of the recorded Bargain and Sale deed is attached and marked as "Attachment 1".

In connection with the extension of utilities to a proposed subdivision on adjacent property as shown on Exhibit A to Attachment 2, the City of Eugene proposes to Grant to the City of Eugene, by and through EWEB, a perpetual easement for an underground waterline.

**B. Policy Issues**

The granting of this easement will assure that EWEB may continue to serve the proposed subdivision with water service in perpetuity, irrespective of the future use or ownership of the property. The granting of an underground easement does not constitute a violation of the deed restriction, as the entirety of the parcel of land

including the surface of the easement area, can continue to be used for park purposes.

**C. Board Goals**

This project addresses the County Goal of contributing to “appropriate community development in the area of transportation and telecommunications infrastructure, housing, growth management and land development.”

**D. Financial and/or Resource Considerations**

There is no revenue or expense associated with this proposed action by the Board.

**IV. Analysis**

ORS 271.330 provides that the County may convey real property to a nonprofit or municipal corporation to be used by the nonprofit or municipal corporation for the creation of open space, parks, or natural areas for perpetual public use.

The fee interest in this property has been previously conveyed. Because the term “Park Purposes” is not defined in the Bargain and Sale Deed conveying the property to the City, it is unknown what action(s) or lack of action would constitute failure to use the property for park purposes, therefore triggering a reversion to Lane County. Ceasing of all maintenance of the property and barring entry and use by the public would be a likely example of this, as would sale of the property for private development with the restriction in place. The likelihood of either occurrence seems remote, and it is therefore unlikely that ownership of the property would revert to Lane County in any event.

The City of Eugene and EWEB hold title to and manage real property separately and the County’s joining in the authorization of the easement will assure continued use of the easement for utility purposes to serve the proposed subdivision and the proposed easement, and in the unlikely event the property would revert, the easement could be accommodated in the context of park or other usage of the property by Lane County or others.

**V. Alternatives/Options**

1. Approve the Order authorizing the County Administrator to sign the authorization of the Utility Easement in the form shown as Attachment 2.

2. Deny the Order and direct staff otherwise.

**VI. TIMING/IMPLEMENTATION**

If the Board approves the Order, Public Works staff will transmit the Easement Deed to EWEB for recording once the County Administrator's signature has been obtained.

**VII. RECOMMENDATION**

Option 1.

**VIII. FOLLOW-UP**

N. A.

**IX. ATTACHMENTS**

Attachment 1 – Copy of Recorded Bargain and Sale Deed

Attachment 2 – Utility Easement with Exhibits

ATTACHMENT 1

BOOK 138 PAGE 1652

**FILED**

AT \_\_\_\_\_ O'CLOCK \_\_\_\_\_ M

MAR 2 1989

IN THE BOARD OF COMMISSIONERS OF LANE COUNTY

STATE OF OREGON

BY James DuRoi  
County Clerk  
Lane County, Oregon  
DEPUTY

AUTHORIZING DEEDS CONVEYING PARK )  
PROPERTY TO THE CITY OF EUGENE )

ORDER NO. 89-3-1-16

WHEREAS, ORS 275.330 authorizes the conveyance of county parks and recreational areas to incorporated cities for public use;

WHEREAS, the County has, through the urban transition process, established a policy that responsibility for the delivery of certain services occurring in the metropolitan area could appropriately be transferred from the County to the Cities;

WHEREAS, the Intergovernmental Agreement between the County and the City of Eugene, dated October 27, 1987, provides for the conveyance of Awbrey, Hileman and Whitely parks;

IT IS HEREBY ORDERED that Awbrey, Hileman and Whitely parks be conveyed to the City of Eugene;

IT IS FURTHER ORDERED that the instruments conveying ownership of these parks be signed and recorded;

DATED this 1st day of March, 1989.

Steve Morgan  
Chair, Lane County Board of Commissioners

APPROVED AS TO FORM

Date 2-21-89 Lane County  
Stephen L. Vaher  
OFFICE OF LEGAL COUNSEL

## ATTACHMENT 1

|  |                                   |
|--|-----------------------------------|
| After recording return to:<br>_____<br>_____<br>NAME, ADDRESS, ZIP<br>_____<br>Until a change is requested, mail all tax statements to:<br>_____<br>_____<br>NAME, ADDRESS, ZIP<br>_____ | BOOK 138 PAGE 1653<br><br>8912845 |
|--|-----------------------------------|

## BARGAIN &amp; SALE DEED

ANDREY PARK

This instrument does not guarantee that any particular use may be made of the property described in this instrument.  
 A buyer should check with the appropriate city or county planning department to verify approved uses.

Lane County, a political subdivision of the State of Oregon

Grantor

grant, bargain, sell and convey to City of Eugene, a municipal corporation

Grantee, the following described real property.

Beginning at a point on the East line of the James Watson Donation Land Claim No. 47 in T. 17. S.R. 4 W of the Willamette Meridian, 124.06 feet North 0° 40' East from the Southeast corner thereof and run thence North 0° 40' East along said line 714.74 feet to a point South 0° 40' West 29.00 feet from the Southwest corner of the Garrett Maupin Donation Land Claim No. 54; thence North 89° 20' West 10.00 feet; thence South 0° 40' West, along a line parallel with and 10.00 feet Westerly of said Watson D.L.C. line, 268.74 feet; thence South 73° 10' West 363.81 feet; thence South 0° 23' East 152.25 feet; thence South 89° 37' West 253.5 feet to the Easterly right-of-way line of the Old Pacific Highway as now constructed; thence along said right-of-way line on the arc of a 1115.91 feet radius curve left (the long chord of which bears South 25° 35' East 196.46 feet) a distance of 196.71 feet; thence South 30° 38' East 138.78 feet; thence South 89° 24' East 326.87 feet; thence North 0° 34' East 40.7 feet; thence North 59° 23' East 142.59 feet, to the place of beginning.

## Subject To:

2127MAR.24'89#01\*PFUND 10.00

- Should CITY fail to use the property for park purposes, ownership shall revert to COUNTY.
- CITY shall not charge a higher fee to out-of-City residents than is charged to CITY residents for use of park property.
- Should the property be included within the boundaries of an

(IF INSUFFICIENT SPACE, CONTINUE DESCRIPTION ON ADDITIONAL PAGE)

SEE ATTACHED PAGE FOR SIGNATURE BLOCK

True consideration for this conveyance is \$

Dated..... 19.....

STATE OF OREGON, County of Lane, ss.

Personally appeared the above named

and acknowledged the foregoing instrument to be ..... voluntary act and deed. Before me:

Dated..... A.D. 19.....

My Commission Expires:

Notary Public for Oregon

CASCADE TITLE COMPANY



1075 Oak Street, Eugene

Form No. 109

05/28/2008

## ATTACHMENT 2

Lane County Recording Sticker

UTILITY EASEMENT

BE IT KNOWN, THAT THE CITY OF EUGENE, an Oregon Municipal Corporation, who took title as City of Eugene, a municipal corporation, the Grantor herein, does hereby covenant that the Grantor is the owner of the following described real property in Lane County, Oregon to-wit:

That parcel of land known as Awbrey Park conveyed to Grantor in that certain Bargain and Sale Deed, recorded on March 24, 1989, as Instrument Number 8912845, Reel 1564R, Lane County Official Records, Lane County, Oregon.

The undersigned, as Grantor, does hereby grant unto the CITY OF EUGENE, LANE COUNTY, OREGON, by and through the EUGENE WATER & ELECTRIC BOARD, (EWEB), as Grantee, a perpetual easement for utility purposes to construct, maintain and repair, remove and replace utility facilities under, across, and upon the above described real property along the route and location as actually constructed and installed described as follows:

**Two (2) strips of land fourteen feet (14') in width** being seven feet (7') each side of the centerline of an underground water line as actually constructed and installed.

The approximate location of the above described easement area is shown on the attached Exhibit A.

Other than the agreements herein contained there is **no consideration** for this conveyance.

The Grantor herein acknowledges that any and all equipment or replacement thereof, installed in or upon said real property by said Grantee, shall remain the sole property of said Grantee and may be removed from said real property at any time at the discretion of the Eugene Water & Electric Board.

The Grantee and its joint users with whom it contracts shall at all times have the rights and privileges therein necessary for the full enjoyment and use thereof for the purpose above described, including the right of ingress and egress across the real property of the Grantors over the most convenient and practical route.

Grantee agrees to return the easement area to the condition that existed prior to Grantee's work.

At no time shall any structure be erected or placed on said easement area without prior written consent of the Eugene Water & Electric Board.

Subject to the foregoing limitations said easement area may be used by the Grantor for road, parking, or any purpose not inconsistent with said easement.

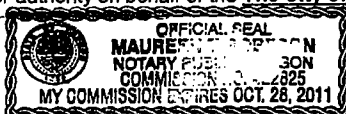
TO HAVE AND TO HOLD the same unto the Grantee, its successors and assigns forever; and the rights, conditions and provisions of this easement shall inure to the benefit of and be binding upon the heirs, executors, administrators, successors and assigns of the respective parties hereto.

IN WITNESS WHEREOF, the undersigned have executed this instrument the 25<sup>th</sup> day of April, 2008.

GRANTOR: THE CITY OF EUGENE, an Oregon Municipal Corporation

STATE OF OREGON )  
COUNTY OF LANE )

On this 25<sup>th</sup> day of April, 2008, before me personally appeared the within named San R. Ruiz who did acknowledge that s/he is the City Manager for the The City of Eugene and that s/he has executed the within instrument freely and voluntarily and with the proper authority on behalf of the The City of Eugene.



Maureen J. Bohannon  
Notary Public - Oregon

(See next page for authorization by Lane County)

EWEB accepts this conveyance of real property or easement. Approved by: \_\_\_\_\_  
Mark Oberle, EWEB Property Manager

Page 1 of 2

After recording send document to:  
EUGENE WATER & ELECTRIC BOARD  
500 E. 4<sup>th</sup> Ave., Eugene, OR 97401

Map #17-04-02-21 TL 500  
City of Eugene Awbrey Park Ease.DOC  
Job #27559 Ferc #9-325-00

Page 1 of 2

ATTACHMENT 2

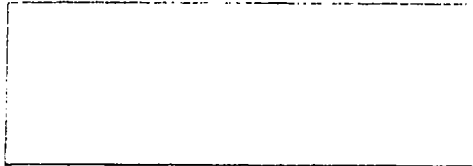
Due to a reversionary clause in the conveyance deed from Lane County to City of Eugene, Lane County has also reviewed and authorizes this utility easement.

IN WITNESS WHEREOF, the undersigned have executed this instrument the \_\_\_\_ day of \_\_\_\_\_, 2008.

**AUTHORIZED ON BEHALF OF LANE COUNTY:**

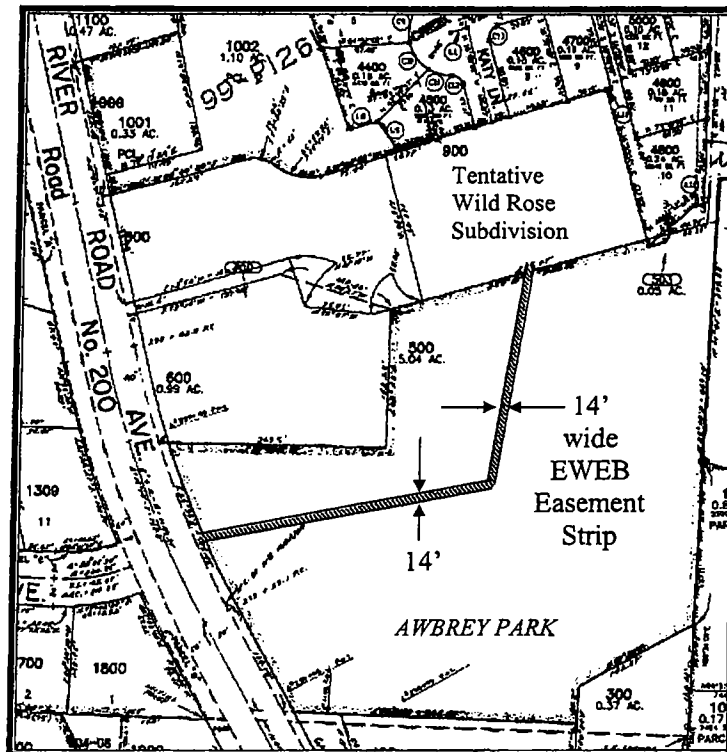
STATE OF OREGON )  
COUNTY OF LANE )

On this \_\_\_\_ day of \_\_\_\_\_, 2008, before me personally appeared the within named \_\_\_\_\_ who did acknowledge that s/he is the \_\_\_\_\_ for the Lane County and that s/he has executed the within instrument freely and voluntarily and with the proper authority on behalf of the Lane County.



\_\_\_\_\_  
Notary Public – Oregon

# ATTACHMENT 2



**Note:** This exhibit does not represent a survey and is only intended to compliment the attached easement for clarification purposes.

|   |   |   |
|---|---|---|
| <b>Grantor / Mailing Address:</b><br><br>City Of Eugene<br>777 Pearl Street<br>Eugene, OR 97401 | <b>Grantee / Mailing Address:</b><br><br>Eugene Water & Electric Board<br>500 East 4 <sup>th</sup> Avenue<br>Eugene, OR 97401 | <b>Date:</b> October 16, 2007<br><br><b>By:</b> Eggleston |
| <b>Lane County Assessor's</b><br><b>Map #17-04-02-21 Tax Lot 500</b>                            | <b>Scale:</b> None<br>Page 3 of 3   | <b>EXHIBIT "A"</b>  |



**IN THE BOARD OF COUNTY COMMISSIONERS  
OF LANE COUNTY, OREGON**

**ORDER NO.**

( **IN THE MATTER OF AUTHORIZING THE**  
( **EXECUTION OF A UTILITY EASEMENT**  
( **ACROSS A PORTION OF T. L. 17-04-02-21-**  
( **00500 PREVIOUSLY CONVEYED FROM**  
( **LANE COUNTY TO THE CITY OF EUGENE**  
( **BY MEANS OF A DEED CONTAINING A**  
( **REVERSIONARY CLAUSE**

**WHEREAS**, ORS 217.330 provides that any political subdivision may convey real property to a municipal corporation for the creation of open space, parks, or natural areas for perpetual public use provided that a restriction is placed on the conveyance limiting the use of the property to creation of open space, parks, or natural areas for perpetual use providing that the property shall revert if not use in conformance with the restriction; and

**WHEREAS**, pursuant to said statute, Lane County conveyed to the City of Eugene Tax Lot 500 on Lane County Assessor's Map 17-04-02-21 per Order 89-3-1-16 on March 1, 1989; and

**WHEREAS**, the City of Eugene has continued to use said property known as Awbrey Park for park purposes since said conveyance ; and

**WHEREAS**, the City has granted a utility easement to the City of Eugene, Lane County, Oregon, acting by and through the Eugene Water and Electric Board (EWEB) over a portion of said property to allow the installation of utilities to serve a proposed subdivision on an adjacent property; and has asked that in view of the restrictions on the use of said property Lane County join in the authorization of said easement over the portion of said property described on the attached Exhibit A; and

**WHEREAS**, the granting of said easement will allow the continued of use of the property for park purposes, including the easement area, and is therefore not in violation of the recorded deed restriction.

**NOW THEREFORE,**

**IT IS ORDERED** that the County Administrative Officer is authorized to sign said Utility Easement as described on said Exhibit A, signifying authorization on behalf of Lane County in the granting of the easement to EWEB.

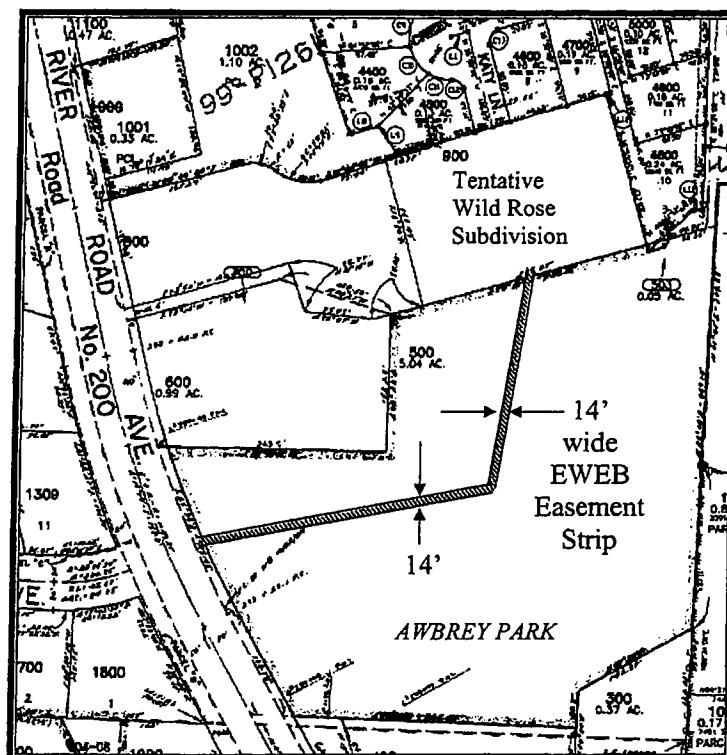
**DATED** this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

APPROVED AS TO FORM

Date: 6-4-08 Lane County

  
OFFICE OF LEGAL COUNSEL

\_\_\_\_\_  
Chair,  
Board of County Commissioners



**Note:** This exhibit does not represent a survey and is only intended to compliment the attached easement for clarification purposes.

|   |   |  |
|---|---|--|
| <b>Grantor / Mailing Address:</b><br><br>City Of Eugene<br>777 Pearl Street<br>Eugene, OR 97401 | <b>Grantee / Mailing Address:</b><br><br>Eugene Water & Electric Board<br>500 East 4 <sup>th</sup> Avenue<br>Eugene, OR 97401 | <b>Date:</b> October 16, 2007                  |
| <b>Lane County Assessor's</b><br><b>Map #</b> 17-04-02-21 <b>Tax Lot</b> 500                    | <b>Scale:</b> None  | <b>By:</b> Eggleston<br><br><b>EXHIBIT "A"</b> |