

Memorandum Date: March 23, 2009
Meeting Date: April 8, 2009

W. 10. a.

TO: Board of County Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Celia Barry, Transportation Planning

AGENDA ITEM TITLE: ORDER/IN THE MATTER OF AUTHORIZING EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF FLORENCE TO FACILITATE TRANSFER OF RHODODENDRON DRIVE AND SEBASTIAN STREET FROM THE COUNTY TO THE CITY

I. MOTION

Move approval.

II. AGENDA ITEM SUMMARY

The County wishes to approve a City of Florence request for jurisdictional transfer of portions of Rhododendron Drive, and Sebastian Street, to the City, while limiting its liability in the event the annexation now in place for this right of way is overturned under the appeal now pending before the Court of Appeals. Execution of the Intergovernmental Agreement (IGA) in Attachment A to the Board Order (attached) will accomplish this.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

The Board of Commissioners held a public hearing to consider adoption of Board Order 09-1-7-11, on the City's request for surrender of a portion of Rhododendron Drive, from the city limits north to Sebastian Street, and a portion of Sebastian Street itself, on February 4, 2009. The hearing record was left open to resolve matters associated with a pending appeal of the City's annexation of the road. The Board held a follow-up work session including discussions with the City of Florence, on March 4, 2009. During those two meetings, staff apprised the Board of the following circumstances:

1. Annexation of Rhododendron Drive and Sebastian Street is under appeal to the Oregon Court of Appeals. It is unknown when this process will be brought to full closure.
2. The Fawn Ridge Subdivision associated with the annexation of the road segments that are the subject of the surrender request is subject to performance agreements with Lane County for road improvements adjacent to the subdivision. If the County were to approve the surrender, the performance agreements would be subject to termination. If the annexation or surrender of roads was then overturned, the county would be potentially responsible for these road improvements and for maintenance of Rhododendron Drive, including a city-installed sewer line and City road improvements that do not meet County Urban

Jurisdictional transfer of the road involves two steps: first, the city must annex the road, and then request surrender from the County. The annexation was approved in 2007 and is now under appeal at the Court of Appeals. The surrender is now before the Board for consideration.

To reduce the risk of liability to Lane County in the event the annexation or surrender is overturned, legal counsel advised execution of an agreement with the city pursuant to Oregon Revised Statutes (ORS) 373.260, described in III.B. below. Legal counsel is working with the City's attorney to finalize the IGA. The City is expected to approve execution of the IGA on April 6, 2009. The status of the IGA will be reported at the April 8th Board meeting.

B. Policy Issues

Oregon Revised Statutes (ORS) 373.260 authorizes counties and cities to enter into agreements for the construction, improvement or repair of rights of way for any road within the limits of a city and any road outside the limits of a city if the population of the city is less than 100,000 and the road leads directly to the city. The City of Florence is a city with a population of less than 100,000 and Rhododendron Drive is a road that is within the City and leads directly to the City.

C. Board Goals

The following Strategic Plan Goal statements relate to this Board item:

- Contribute to appropriate community development in the areas of transportation and telecommunications infrastructure, housing, growth management and land development.

D. Financial and/or Resource Considerations

The financial implications of taking action on this item relates to the cost of road operation and maintenance that will no longer be borne by Lane County if the Order is adopted. If the Order is not adopted, and the road is surrendered, then if the annexation or surrender is overturned, the County will be financially responsible for operation and maintenance of the road, including recent city road and sewer improvements that do not meet County Urban Road standards, and will also be potentially responsible to address impacts of the Fawn Ridge subdivision with regard to urban road improvements.

E. Analysis

The City is requesting surrender of this portion of Rhododendron Drive due to a modification in subdivision requirements that works to the City's benefit, requested by the Fawn Ridge subdivision developer. The subdivision developer approached the City and requested waiver of the County Road improvement requirements in exchange for installation of the sewer in Rhododendron Drive. Since this arrangement is of no benefit to the County and would have resulted in a shift of the financial burden of the county road improvements that were necessary to serve the development to the citizens of Lane County, Public Works agreed to the exchange only if the City agreed to take over jurisdiction of the county roads in question. This would shift the financial

burden associated with the impacts of the subdivision on this section of road to the City, where it appropriately resides, since the sewer project is of benefit to the residents of Florence. The City could then install urban road improvements necessary to serve the development, using city system development charges or other means at its disposal at a time convenient to the City.

Then, after agreeing to this arrangement the City and County were approached by a private fiber optic cable enterprise to initiate installation of the cable, including within Rhododendron Drive. To maximize efficiency the City requested, under a facility permit with the County, to install the sewer at the same time as the cable. It happens that the City had also recently adopted a plan for future City improvements to Rhododendron Drive, so in reconstruction of the road after the cable and sewer were installed, the City constructed improvements to Rhododendron Drive that meet City, but not County Urban Road standards.

Once the attached Board Order is approved and the IGA executed, surrender of this portion of the county roadway system to the City can go forward with any liability risks associated with the pending annexation appeal minimized. The County can also terminate performance agreements with the Fawn Ridge subdivision developer. The City will become responsible for this section of Rhododendron Drive and Sebastian Street.

IV. Alternatives/Options

1. Approve the Order
2. Approve the Order with modifications
3. Decline to approve the Order

V. TIMING/IMPLEMENTATION

The developer has two performance agreements for the road improvements pending with Lane County. One was just renewed for one more year until March 2010. The second will expire June 26, 2009 unless renewed or terminated. Surrender of the road to the City prior to these expiration dates after execution of the IGA will allow the County to terminate these road improvements and release the associated letters of credit.

The IGA needs to be executed prior to adoption of the Board Order approving the road surrender request.

VI. RECOMMENDATION

Option 1 is recommended. The consequences of not approving the Order are described in III.D.

VII. FOLLOW-UP

No follow-up at this time is necessary.

ATTACHMENTS

Board Order and Exhibit A, Intergovernmental Agreement and Exhibit A attached thereto

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

ORDER NO.

) IN THE MATTER OF AUTHORIZING
) EXECUTION OF AN INTERGOVERNMENTAL
) AGREEMENT WITH THE CITY OF
) FLORENCE TO FACILITATE TRANSFER OF
) RHODODENDRON DRIVE AND SEBASTIAN
) STREET FROM THE COUNTY TO THE CITY

WHEREAS, the City of Florence enacted Resolution Number 37, Series 2008 formally requesting jurisdictional transfer over portions of Rhododendron Drive (County Road No. 65) and Sebastian Street (County Road No. 1969); and

WHEREAS, Lane County is contemplating approving the City's request by adopting Board Final Order No. 09-2-4-3; and

WHEREAS, the City's annexation of these road segments was approved by the Lane County Boundary Commission by Annexation Order 1316, File C FL 07-36, and this action was subsequently appealed to the Oregon Court of Appeals; and

WHEREAS, the County wishes to approve the City's request in a timely manner while limiting County liability in the event the annexation or surrender actions are overturned on appeal, in which case there may be a period of time when the roads requested to be transferred are no longer within the City's boundaries; and

WHEREAS, the form of Intergovernmental Agreement attached hereto as Exhibit A, will resolve the matter under provisions of Oregon Revised Statutes (ORS) 373.260 as more fully described in the Intergovernmental Agreement; now, therefore, it is hereby

ORDERED that an Intergovernmental Agreement substantially in conformance with Exhibit A be approved and executed with the City of Florence and the County Administrator is hereby authorized to sign such an agreement.

Dated this _____ day of April, 2009.

Pete Sorenson, Chair
Lane County Board of Commissioners

APPROVED AS TO FORM

Date 3-30-2009 Lane County

OFFICE OF LEGAL COUNSEL

**INTERGOVERNMENTAL AGREEMENT
FOR THE MAINTENANCE OF TRANSFERRED RIGHTS OF WAY**

THIS AGREEMENT is entered into by and between LANE COUNTY, a political subdivision of the State of Oregon, hereinafter referred to as "COUNTY," and the CITY OF FLORENCE, an Oregon municipal corporation, hereinafter referred to as "CITY."

RECITALS

WHEREAS, ORS 190.010 and the Lane County Home Rule Charter provide that units of local governments may enter into agreements for the performance of any or all functions and activities that a party to the agreements, its officers or agents, have authority to perform, and

WHEREAS, ORS 373.260 authorizes counties and cities to enter into agreements for the construction, improvement or repair of rights of way for any road within the limits of a city and any road outside the limits of a city if the population of the city is less than 100,000 and the road leads directly to the city. The City of Florence is a city with a population of less than 100,000 and Rhododendron Drive is a road that is within the City and leads directly to the City, and

WHEREAS, portions of Rhododendron Drive (County Road No. 65) and Sebastian Street (County Road No. 1969) lie within areas recently annexed to the City of Florence and are the subject of a County Road surrender proceeding pending before Lane County. The applicable portions of these two roadways for purposes of this Agreement are a 1.32 mile portion of Rhododendron Drive extending from the last surrender concerning Rhododendron Drive via Board Order No. 91-5-15-19 and a .11 mile portion of Sebastian Street. A description of the applicable portions of these roadways along with a map is attached hereto as Exhibit A. These roadways are together referred to as "the Annexed Rights of Way," and

WHEREAS, the Annexed Rights of Way correspond to the rights of way that are part of the Lane County Local Government Boundary Commission annexation proceedings resulting in Boundary Commission Order 1316 (C-FL-07-36) and an earlier annexation proceeding resulting in Boundary Commission Order 937 (C-FL-91-01), and

WHEREAS, City Resolution No. 37, Series 2008, requests transfer from the County to the City of authority over the Annexed Rights of Way pursuant to ORS 373.270, and

WHEREAS, portions of the Annexed Rights of Way are the subject of performance agreements between the County and the developer of the Fawn Ridge East and Fawn Ridge West subdivision developments ("Performance Agreements"). The Performance Agreements require the developer to improve portions of the Annexed Rights of Way to County Urban Road standards to address road impacts of the subdivision development, and

WHEREAS, the City's adopted Rhododendron Drive corridor plan provides that the residents of this area favor keeping the current character of Rhododendron Drive and do not favor improving the roadway to current County Urban Road standards, and

WHEREAS, an appeal is currently pending before the Oregon Court of Appeals as to Boundary Commission Order 1316 (C-FL-07-36). If the Boundary Commission's annexation order is overturned, there may be a period of time when a portion of the Annexed Rights of Way is no longer within the boundaries of the City. This Agreement is intended to plan for this contingency, solidifying the City's authority over the Annexed Rights of Way should the Boundary Commission's annexation order or the Board of Commissioners' surrender order be reversed or remanded.

AGREEMENT

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The parties agree that the County may presently transfer jurisdiction of the Annexed Rights of Way to the City pursuant to ORS 373.270. When the County completes this transfer, the City will take over full jurisdiction and responsibility for the Annexed Rights of Way as provided in ORS 373.270(7). The City acknowledges that the transfer of the Annexed Rights of Way will be a transfer of the roadways in their current condition, which is acceptable to the City.
2. The parties agree that once the transfer is complete pursuant to ORS 373.270, the County will terminate the Performance Agreements that call for roadway improvements to the Annexed Rights of Way. The City acknowledges that releasing the Performance Agreements will end the developer's requirement to pay for and complete roadway improvements to the Annexed Rights of Way as required by the County subdivision approval.
3. Should a court reverse or remand the Boundary Commission Order 1316 (C-FL-07-36), or such subsequent annexation or surrender actions covering those same portions of the Annexed Rights of Way, the parties agree that this Agreement shall constitute an agreement under ORS 373.260 to provide for the City's authority and obligation to maintain those portions of the Annexed Rights of Way impacted by such court ruling. If such circumstances arise, the parties agree that under ORS 373.260(2) the County is not responsible for any contribution toward the acquisition, construction, improvement or repair of the Annexed Rights of Way.
4. The applicable provisions of the Lane Manual setting forth standard provisions for public contracts (LM 21.130) are incorporated by this reference as if fully set forth.
5. Indemnity. Upon transfer of the Annexed Rights of Way from the County to the City pursuant to ORS 373.270 or 373.260, the City shall indemnify the County

and hold it harmless from any and all claims, expenses, costs, and liabilities for the Annexed Rights of Way for purposes of acquisition, repair, construction, improvement and the levying and collection of assessments authorized by applicable law or this agreement. The indemnity and hold harmless obligations are subject to the limitations of the Oregon Tort Claims Act and any applicable limitations of the Oregon Constitution.

6. Term. This Agreement shall be effective upon execution and shall continue in force indefinitely unless terminated earlier as set out below.
7. Termination. This Agreement will terminate upon a final decision affirming the annexation of those portions of the Annexed Rights of Way at issue in the Boundary Commission Order 1316 (C-FL-07-36), or such subsequent annexation or surrender actions covering those same portions of the Annexed Rights of Way. Termination of this Agreement under this provision shall not terminate the statutory obligations of the City over the Annexed Rights of Way as provided in ORS 373.270(7).
8. Amendments. No amendment to this Agreement shall be effective unless made in writing and signed by both parties.
9. Third Parties. This Agreement is not intended to create, and does not create, any third party beneficiaries.

CITY OF FLORENCE

LANE COUNTY

By: _____
Robert Willoughby

By: _____
Jeff R. Spartz

Title: City Manager

Title: County Administrator

Date: _____

Date: _____

APPROVED AS TO FORM

Date _____ Lane County

LANE COUNTY OFFICE OF LEGAL COUNSEL

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EXHIBIT "A"

LEGAL DESCRIPTIONS

MILEAGE

RHODODENDRON DRIVE (COUNTY ROAD NUMBER 65)

1.32

All that segment of Rhododendron Drive (County Road Number 65, from the North line of the Southwest one-quarter of the Northwest one-quarter of Section 15, Township 18 South, Range 12 West of the Willamette Meridian, Northerly 1.3 miles, more or less, to the projection of the Northern Right of Way of Sebastian Street, all in Sections 4, 9, 10 and 15, Township 18 South, Range 12 West of the Willamette Meridian.

SEBASTIAN STREET (COUNTY ROAD NUMBER 1969)

0.11

All that segment of Sebastian Street within East Heceta Beach as Platted and Recorded in Book 30, Page 7, Lane County Deed Records, Lane County Oregon, from Rhododendron Drive, West 556 feet, more or less, to the Western boundary of said East Heceta Beach, all in Section 4, Township 18 South, Range 12 West of the Willamette Meridian.

The above descriptions Rhododendron Drive and Sebastian Street are shown on Attachment "A" attached hereto and made a part hereof these descriptions.

ATTACHMENT "A"
DEPICTION OF COUNTY ROADS
PROPOSED TO BE SURRENDERED
TO CITY OF FLORENCE
SECTIONS 4, 9, 10 & 15, T.18S., R.12W.

