

W. G. A.

TO: Board of County Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Bill Morgan, County Engineer and
Frank Simas, Right of Way Manager

AGENDA ITEM TITLE: In the Matter of Approving an Intergovernmental Agreement with the City of Eugene Regarding the Construction of the Delta Ponds Bridge Project and Authorizing the County Administrator to Sign the Agreement

I. MOTION

Move approval of the Order.

II. AGENDA ITEM SUMMARY

The City of Eugene is planning for the construction of the Delta Ponds Pedestrian-Bicycle Bridge in the summer of 2009 and requires a permanent easement to accommodate the crossing of Delta Highway.

III. BACKGROUND/IMPLICATIONS OF ACTION

A. Board Action and Other History

The City of Eugene has recently received approval of a Federal Highway Transportation Enhancement Grant in the amount of \$2.25 million to be used in the construction of an elevated bicycle-pedestrian path over a portion of the Delta Ponds and Delta Highway. This project is proposed to be built using a combination of federal, state and local funding. This grant was the last component of the amount needed to begin construction of the bridge and path, and was part of the American Recovery and Reinvestment Act (ARRA) stimulus package.

This project will be a link connecting the Ruth Bascom Riverbank Trail in the Valley River Area to the Cal Young neighborhood. The total cost of the project is estimated to be \$6.2 million, and is estimated to provide 85 construction jobs. The project will require permanent right of way over a portion of Delta Highway, which is owned in fee simple by Lane County. A copy of a sketch illustrating the general location and design of the proposed bridge is attached and labeled "Attachment 2"

Lane County and the Oregon Department of Transportation (ODOT) are proposing another project in the immediate area of the pedestrian bridge for the 2010 construction season. It is the Delta Highway Intelligent Transportation

System. A component of this system is an electronic variable message sign, which coupled with traffic sensors and a surveillance camera will assist in management of traffic on Delta Highway during peak hours, and in the event of crashes and other incidents. This project will require the installation of an electrical service line from Robin Hood Lane westerly to the east right of way line of Delta Highway in order to power the variable message sign board and other appurtenances. The City has acquired a public access way and utility easement which Lane County can use to route electric power from Robin Hood Lane to the Delta Highway right of way, where there will be a Eugene Water and Electric Board (EWEB) transformer.

The proposed Intergovernmental Agreement (IGA), in substantially the form shown as "Attachment 1", calls for Lane County to grant a permanent aerial easement for the overhead portions of the bridge as well as a surface easement to accommodate the center support tower and footing for the proposed suspension bridge. The City agrees to obtain County approval for project plans and specifications prior to construction to assure that 17 foot minimum vertical clearance is maintained between the present pavement surface and the lowest point of the bridge structure, and that the safety of users of Delta Highway is not adversely impacted. The City will also need a Facility Permit from Lane County to allow contractor operations during construction and for any maintenance or repair operations which will include lane closures of traffic disruptions.

Information regarding the plans to construct this facility was previously sent to you by Bill Morgan, County Engineer, on January 23, 2008. A copy of the transmittal memo is included and marked as "Attachment 3".

There is no cost to Lane County for the bridge construction or the provision of the utility easement which Lane County and ODOT will need for the Variable Message Sign and which has been previously obtained by the City. The proposed IGA contains mutual "hold harmless" provisions pursuant to direction from Lane County Legal Counsel. The city further agrees to obtain a Lane County Facility Permit to allow construction operations during the construction of the bridge and continuing maintenance once it is finished.

B. Policy Issues

Both the Pedestrian-Bicycle Bridge and Intelligent Transportation System are located within the City of Eugene, and both projects are beneficial to the City, the County and their respective residents.

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 cost or revenue associated with this agreement or the permanent easement. Past practice has been to not require payment for authorization of rights or easements to cross county roads in connection with projects involving mutual public interest.

E. Analysis

The granting of this permanent easement is permitted pursuant to ORS 271.310(1), provided that the Board makes a finding that the public interest may be furthered.

The City plans to advertise the project for Bidding on May 27, 2009 and is required to certify the right of way to ODOT prior to that date. In addition, if the project is delayed portions of the funding allocated under stimulus programs may be jeopardized.

F. Alternatives/Options

1. Approve the Order authorizing the execution of the Easement Deed and authorizing the County administrator to sign the IGA.
2. Deny the Order and direct staff otherwise.

V. TIMING/IMPLEMENTATION

If the Board approves the Order, Public Works staff will forward the Easement Deed for acceptance and recordation by the City of Eugene.

VI. RECOMMENDATION

Option 1.

Authorizing IGA and Easement Deed
Delta Ponds Bridge

VII. FOLLOW-UP

N. A.

VIII. ATTACHMENTS

Attachment 1 - Intergovernmental Agreement with attachment with Exhibit "A"

Attachment 2 - Schematic of Proposed Bridge

Attachment 3 - Memo to the Board from Bill Morgan, County Engineer, dated
January 23, 2008

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

ORDER NO.

(**IN THE MATTER OF APPROVING AN**
(**INTERGOVERNMENTAL AGREEMENT WITH**
(**THE CITY OF EUGENE REGARDING THE**
(**CONSTRUCTION OF THE DELTA PONDS**
(**BRIDGE PROJECT AND AUTHORIZING THE**
(**COUNTY ADMINISTRATOR TO SIGN THE**
(**AGREEMENT**

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

WHEREAS, the City of Eugene is planning to construct the Delta Ponds Path in the summer of 2009 which will incorporate a pedestrian-bicycle bridge crossing Delta Highway in the vicinity of Valley River Center in Eugene and which will require a permanent easement to allow the construction of the bridge as well as for the continuing operation and maintenance of said bridge when construction is completed; and

WHEREAS, the City of Eugene has acquired an easement in connection with said project that will allow Lane County and the Oregon Department of Transportation (ODOT) to obtain electrical power for a project in the immediate area planned jointly by the County and ODOT which will include installation of an electronic variable message sign board to aid in traffic management on Delta Highway during peak hours and in the event of crashes and other emergencies; and

WHEREAS, the City of Eugene has requested a permanent easement in the form of the attached "Exhibit A" and has offered Lane County and ODOT the use of its easement to convey electric power to the planned message sign board; and

WHEREAS, both the granting of said easement to the City of Eugene and the use of the City of Eugene's easement by Lane County and ODOT are in the public interest in that they will serve citizens of Lane County by improving traffic safety and encouraging non-motorized travel in the vicinity of the respective proposed projects.

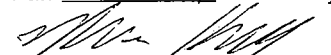
NOW THEREFORE,

IT IS ORDERED that the County Administrative Officer is authorized to sign an Intergovernmental Agreement in substantial conformance with "Attachment 1" and that the Permanent Easement as described on said "Exhibit A", be executed on behalf of Lane County.

DATED this _____ day of _____, 2009.

APPROVED AS TO FORM

Date: 5-7-2009 Lane County



OFFICE OF LEGAL COUNSEL

Chair,
Board of County Commissioners



**Delta Ponds Path and Bridge Project
City of Eugene
FY 2009
City Project No. 4378**

THIS AGREEMENT entered into by and between Lane County, a political subdivision of the State of Oregon, hereinafter referred to as **COUNTY**, and the City of Eugene, a municipal corporation of the State of Oregon, hereinafter referred to as **CITY**.

RECITALS

WHEREAS, Lane Manual 21.124, ORS 190.010 and the Lane County Home Rule Charter, provide that units of local government may enter into agreements for the performance of any and all functions and activities that a party to the agreements, its officers or agents, have authority to perform; and

WHEREAS ORS 373.260(1)(a) provides that counties and cities may enter into intergovernmental agreements for the construction, improvement or repair of, and the acquisition of right-of-way for any county road or city street within the corporate limits of the city; and

WHEREAS, **CITY** plans to construct the Delta Ponds Path and Bridge Project ("Project") between Goodpasture Island Road and Robin Hood Lane within the City of Eugene using a combination of federal funds and local System Development Charges during the 2009-2011 construction seasons; and

WHEREAS, the proposed path includes a cable-stayed suspension pedestrian/bicycle bridge over Delta Highway, County Maintenance Road No. 1740-00, a County-maintained facility; and

WHEREAS, **CITY** will require temporary rights during the construction period of the project as well as permanent rights upon completion of the project to allow the bridge to remain within County right-of-way and to allow the continuing maintenance, repair and/or reconstruction of said structure by **CITY**.

AGREEMENT

COUNTY AGREES TO:

1. Issue a Facility Permit to **CITY** to allow construction and continued operations of the Project within County right-of-way contingent upon **COUNTY** approval of **CITY** construction plans and specifications and other associated documents as applicable.
2. Convey the necessary permanent surface and air rights in substantially the form as shown attached as "Exhibit A" over Delta Highway as well as any necessary temporary construction easements required for the Project.

CITY AGREES TO:

1. Obtain **COUNTY** approval of project plans and specifications and any other applicable documents prior to construction, and to abide by any and all lawful terms and conditions of a Facility Permit issued by **COUNTY** in connection with the construction of the Project.
2. Acquire all other property rights as needed for the Project. **CITY** also agrees to furnish **COUNTY** with necessary surveys and legal descriptions necessary for the preparation of required conveyance documents.
3. Complete wetland impact studies, prepare necessary permits, and do any required wetland mitigation as part of the Project. Copies of impact studies and other applicable documentation will be forwarded to **COUNTY** upon request.
4. Subject to unforeseen contingencies that would make completion of the Project in this time frame impossible, **CITY** agrees to complete the construction of all facilities included within the scope of the approved Project plans within 24 months of execution of this Agreement unless mutually agreed by both parties to extend that completion date.
5. **CITY** shall comply with all federal, state and local laws, regulations, executive orders and ordinances applicable to this Agreement.
6. **CITY** shall require that the contractor, its subcontractors, if any, and all employers performing work on the Project are subject employers under the Oregon workers compensation law and shall comply with ORS 656.012, which requires them to provide workers' compensation coverage for all their subject workers.
7. **CITY** agrees to assign or otherwise transfer to **COUNTY** by means of an assignment, agreement or by other means, the authority to use a portion of that certain Public Accessway Easement conveyed to **CITY** under Reception No. 2008-55802 in the Office of Deeds and Records of Lane County, Oregon. Subject to the Public Accessway Easement, **COUNTY'S** use shall permit the installation of conduits to be used to install electrical service lines and/or data lines to service from the west line of Robin Hood Avenue to the east line of Delta Highway to serve the proposed Variable Message Sign to be installed along Delta High through a joint effort between **COUNTY** and the State of Oregon. Affected property within the Public Accessway Easement shall be left by the **COUNTY**, to the extent it is commercially reasonable, in as good condition as before the **COUNTY'S** access.
8. To the extent allowed by law, **CITY** agrees to maintain and operate the completed Project bridge and path facilities and to be solely responsible as between the parties for their operation and maintenance, and for the protection of the traveling public in the vicinity of said facilities with respect to hazards resulting from their operation and maintenance.

BOTH PARTIES AGREE:

1. Both parties agree that Delta Highway is currently under **COUNTY** jurisdiction and the completed Project path and bridge facilities will be under **CITY** jurisdiction and that each respective agency will be responsible for the maintenance of their respective facilities.

2. The Project will be funded with a combination of federal and local funds and at no cost to **COUNTY**. **COUNTY'S** use of the Public Accessway Easement and associated Variable Message Sign project, will be funded at no cost to **CITY**.

3. The term of this Agreement is 24 months, or until completion of the Project, which ever is later, commencing on the date ("Effective Date") on which this Agreement has been fully executed.

4. **COUNTY** or **CITY** may, at any time upon 30 days prior written notice to the other party, terminate this Agreement for any or no reason. However, any such termination shall be without prejudice to any liabilities or obligations of any part already accrued as of receipt of the written notice. The **COUNTY** or **CITY** may terminate if federal, state, or local laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or **COUNTY** or **CITY** is prohibited from participation in the Project. The date of the termination shall be no later than the effective date of the change in the law.

5. Delta Highway is currently under the jurisdiction of **COUNTY**, but at some time in the future, jurisdiction may be transferred to the State of Oregon. The rights and obligations granted herein shall be binding on the respective parties and/or their successors and assigns in interest.

6. To the extent allowable by the Oregon Constitution, Oregon Revised Statutes and limitations of the Oregon Tort Claims Act, each of the parties hereto agree to indemnify and save the other harmless from any claims, liability or damages resulting from any error, omission or act of negligence on the part of the indemnifying party, its officers, agents or employees relative to the responsibilities of the indemnifying party in performance of this Agreement.

7. The parties hereto shall exert every effort to cooperatively resolve any disagreement they may have under the Agreement. In the event that the parties alone are unable to resolve any conflict under this Agreement, they agree to present their disagreement to a mutually selected mediator. Each party shall bear its own costs for mediation and the parties shall share equally the cost of the mediation. This procedure shall be followed to its conclusion prior to either party seeking relief from a court, except in the case of an emergency.

If the dispute remains unresolved through mediation the parties may agree in writing to submit the dispute to binding arbitration, using such arbitration process as they may choose at the time and which include the following conditions:

- a) The location of the arbitration shall be in Eugene, Oregon;
 - b) Each party shall bear its own costs (except arbitration filing costs), witness fees, and attorney fees;
 - c) Arbitration filing costs and any arbitrators' fees will be divided equally between the parties;
- and

d) Judgment upon award rendered by the Arbitrator may be entered in a court in Lane County, Oregon.

THIS AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN **COUNTY** AND **CITY** ON THE SUBJECT MATTER HEREOF. NO WAIVER, CONSENT, MODIFICATION OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH **COUNTY** AND **CITY**. SUCH WAIVER, CONSENT, MODIFICATION OR CHANGE, IF MADE, SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN. THERE ARE NO UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS, ORAL OR WRITTEN, NOT SPECIFIED HEREIN REGARDING THIS AGREEMENT. THE DELAY OR FAILURE OF **COUNTY OR CITY** TO ENFORCE ANY PROVISION OF THIS AGREEMENT SHALL NOT CONSTITUTE A WAIVER BY **COUNTY OR CITY** OF THAT PROVISION OR ANY OTHER PROVISION. **CITY AND COUNTY**, BY THE SIGNATURES BELOW OF THEIR AUTHORIZED REPRESENTITIVES, HEREBY ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

CITY

LANE COUNTY

By: _____
Jon R. Ruiz

By: _____
Jeff Spartz

Title: City Manager

Title: County Administrator

Date: _____

Date: _____

Address for Notice: _____

Address for Notice: _____

DRAFT

APPROVED AS TO FORM

Date _____ Lane County

OFFICE OF LEGAL COUNSEL

EXHIBIT A
TO
ATTACHMENT 1

After Recording Return to, and
Send Tax Statements to:
City of Eugene- Public Works Engineering
Attn: Russ Royer
99 East Broadway, Suite 400
Eugene, Oregon 97401

RECORDING INFORMATION

DO NOT WRITE IN THIS SPACE

PERMANENT EASEMENT

LANE COUNTY, a political subdivision of the State of Oregon, hereinafter called **GRANTOR**, for the true and actual consideration of (no monetary consideration), does hereby grant to the **CITY OF EUGENE, AN OREGON MUNICIPAL CORPORATION, GRANTEE**, a Permanent Easement for the construction, operation and continuing maintenance of a bicycle-pedestrian bridge and path over and across the following described property situated in Lane County, State of Oregon, described as follows:

A parcel of land lying in the Southwest quarter (SW ¼) of Section 19, Township 17 South, Range 3 West, Willamette Meridian, and being a portion of Delta Highway, County Road Number 1354, as established by Lane County Commissioner's Order Number 2646, filed August 14, 1968, and as Altered in Order of Alteration Number 05-3-30-12, dated March 30, 2005 and also including that parcel of land accepted as a part of said County Road Number 1354 in Lane County Board of County Commissioners Order Number 85-6-5-14 dated June 5, 1985, included within a strip of land lying 60 in width being 30 feet on each side of the centerline being described as follows:

Beginning at Engineer's centerline Station 0+00.0, said station being South 22° 11' 50" West 4,976.20 feet from the Northwest corner of the Alexander King D. L. C. No. 55, Township 17 South, Range 3 West, Willamette Meridian; thence North 3° 02' 39" East, 66.03 feet; thence along the arc of a 40.00 foot radius curve to the right (the long chord of which bears North 49° 58' 03" East 58.44 feet) 65.52 feet; thence South 83° 06' 33" East, 35.75 feet; thence along the arc of a 40.00 foot curve to the left (the long chord of which bears North 81° 38' 06" East, 21.05 feet) 21.30 feet; thence North 66° 22' 46" East, 253.10 feet; thence along the arc of a 100.00 foot radius curve to the right (the long chord of which bears North 88° 21' 14" East, 74.84 feet) 76.71 feet; thence South 69° 40' 09" East 322.58 feet to Engineer's Centerline Station 8+40.99 P.C. and there ending in Lane County, Oregon.

The rights to use and occupy the above-described property shall be limited to aerial rights only lying above Elevation 424.51 feet MSL based on the National Geodetic Vertical Datum of 1929; except for that portion lying between Engineer's Centerline Stations 6+60 and 6+80 along the above centerline description, situated 10 feet on each side of the above-described centerline, within which use of the surface and subsurface of the land shall be permitted for the placement of the center supporting tower structure and footing for said pedestrian-bicycle bridge.

The bearings used herein are based on the Oregon Coordinate System South Zone NAD83(91), per County Survey File No. 40898, filed January 25, 2008, in Lane County, Oregon.

EXHIBIT A
TO
ATTACHMENT 1

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

IN WITNESS WHEREOF, the undersigned have executed this instrument this _____ day of _____, 2009.

Commissioner

Commissioner

Commissioner

Commissioner

Commissioner

STATE OF OREGON)
) ss.
County of Lane)

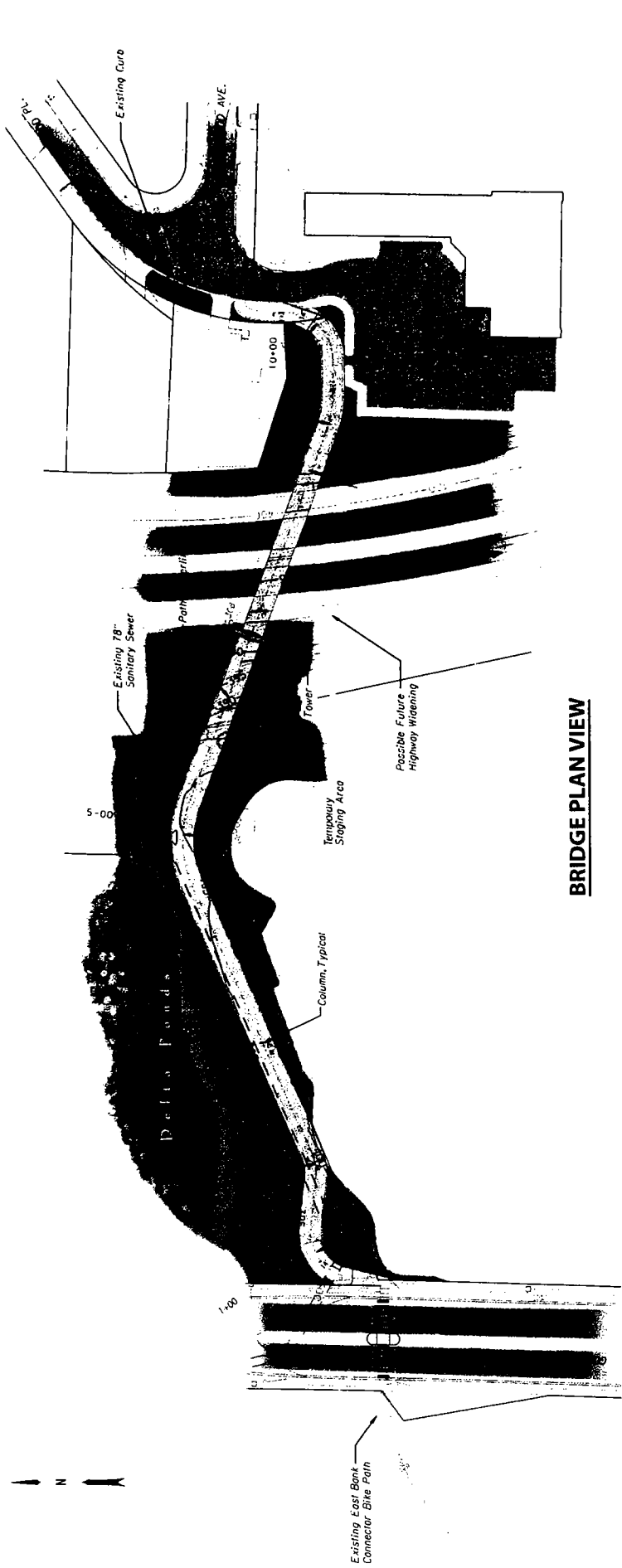
On _____, 2009, personally appeared _____

who, duly being sworn, did say that they are members of the Board of Commissioners of Lane County, Oregon and that said instrument was signed and sealed in behalf of Lane County by authority of its Board of Commissioners; and they acknowledged said instrument to be its voluntary act and deed. Before me:

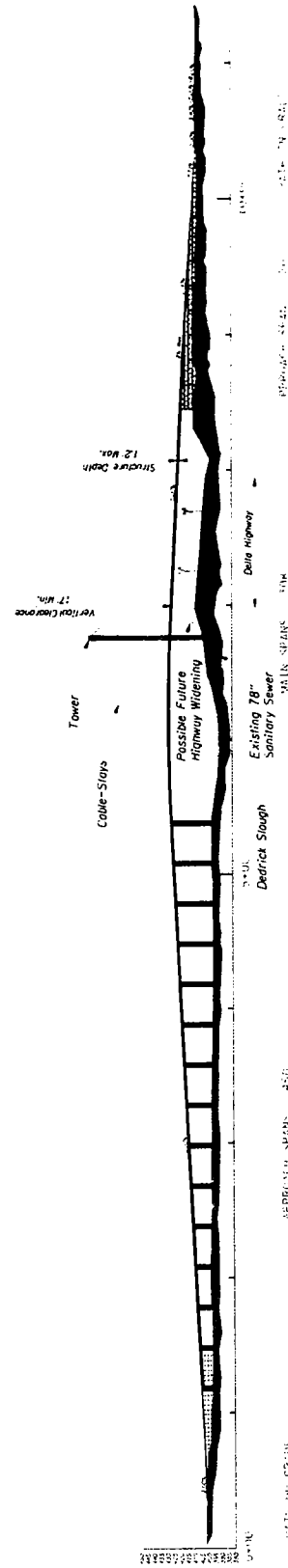
Notary Public for Oregon

My Commission Expires: _____

DELTA PONDS PEDESTRIAN BRIDGE



BRIDGE PLAN VIEW



BRIDGE ELEVATION VIEW



SIMAS Frank D

From: MORGAN Bill F
Sent: Wednesday, January 23, 2008 2:32 PM
To: STEWART Faye H; SORENSON Peter; FLEENOR Bill A; GREEN Bobby; DWYER Bill J
Cc: SPARTZ Jeff R; SNOWDEN Oliver P; BARRY Celia; WILSON Teresa J; SIMAS Frank D
Subject: Proposed Bridge over Delta Highway-City of Eugene Delta Ponds Project

Dear Commissioners:

For your information, I am sending a packet (via interoffice mail) relating to the City of Eugene's proposed project to **construct a bridge crossing over Delta Highway (a Lane County facility)**. The bridge will facilitate a multi-use path connection between Goodpasture Island Road and Willakenzie Road via Robin Hood Avenue.

This project will be funded by a combination of federal funds and City of Eugene System Development Charge revenues and is slated for completion in 2011. The approaches to the bridge will be constructed on existing and to-be-acquired City of Eugene right of way, **but the actual crossing of the Delta Highway will require that an easement be granted in favor of the City to allow the joint use of this right of way.**

Other items of interest to the County will be the coordination of work schedules during construction to minimize public inconvenience and provision for emergency service access, temporary work within County right of way, and clarification of maintenance responsibilities and liability for the completed structure.

It is likely these **issues can be addressed in an IGA** that will be brought before the Board as the plans for the project progress.

The City's design consultant (OBEC) will be giving a presentation at the Cal Young Neighborhood meeting to be held Thursday, January 24, at 7:00 PM in the Sheldon Community Center meeting room. The presentation will include background on the project and a brief summary of the two design alternatives: the cable stayed and concrete slab proposals.

Additional outreach by the City is planned, but we wanted you to know about the project and how it relates to Delta Highway.

Once you receive the packets, please let me know if the Board desires additional information or a separate Work Session item. Thank you,

Bill Morgan, PE
County Engineer
Lane County Public Works
bill.morgan@co.lane.or.us
(541) 682-6990