

W.4.C.1.

Memorandum Date: October 23, 2008

Order Date: November 26, 2008

TO: Board of County Commissioners

DEPARTMENT: Public Works

PRESENTED BY: Frank Simas, Right of Way Manager

AGENDA ITEM TITLE: In the Matter of Authorizing Consent to the Execution of an Underground Easement for a Water Line by the City of Eugene Over a Portion of T. L. 17-04-02-21-00500 Previously Conveyed to the City by Lane County.

I. **MOTION**

Move approval of the Order.

II. **AGENDA ITEM SUMMARY**

Eugene Water and Electric Board (EWEB) has requested that Lane County join with the City of Eugene in the authorization of the execution of an easement for an underground water line easement across a portion of Awbrey Park. Awbrey Park was conveyed to the City of Eugene in 1989 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".

In connection with the extension of utilities to a proposed subdivision on adjacent property as shown on the attached aerial photo identified as Attachment 1, the City of Eugene proposes to Grant to the City of Eugene, by and through EWEB, a perpetual easement for an underground waterline.

This item was previously brought before the Board on June 18, 2008. The Board did not vote on whether to approve or disapprove the consent for the granting of the easement, and the direction to staff at that time was to contact EWEB and request modification of the easement language to restrict the usage of the easement to only permit an underground water line. The language of the easement has been modified as requested as shown on Attachment A.

B. Policy Issues

The granting of this easement will assure that EWEB may 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 appear to constitute a violation of the deed restriction requiring that the land shall revert if not used for park purposes. The easement will not impact the suitability of the land for park use because there is no limitation on the use of the surface of the land in the easement other than that no buildings may be placed in the easement area without prior consent of EWEB.

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 and EWEB wishes to obtain an easement in perpetuity to serve the proposed subdivision with water service. If the City were at some time in the future to cease use of the park and it therefore reverted to Lane County ownership due to the reversionary clause in the 1989 deed to the City, the validity of the easement might be challenged without the County having given consent for the City’s granting of the easement.

Because of the cost of the waterline to be installed in the easement and the continuing obligation to serve the proposed dwellings, EWEB wishes to obtain the County’s consent to avoid legal challenges in the future.

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 A.
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

After execution the Deed should be returned to the Right of Way Section of the Public Works Department for further processing.

IX. ATTACHMENTS

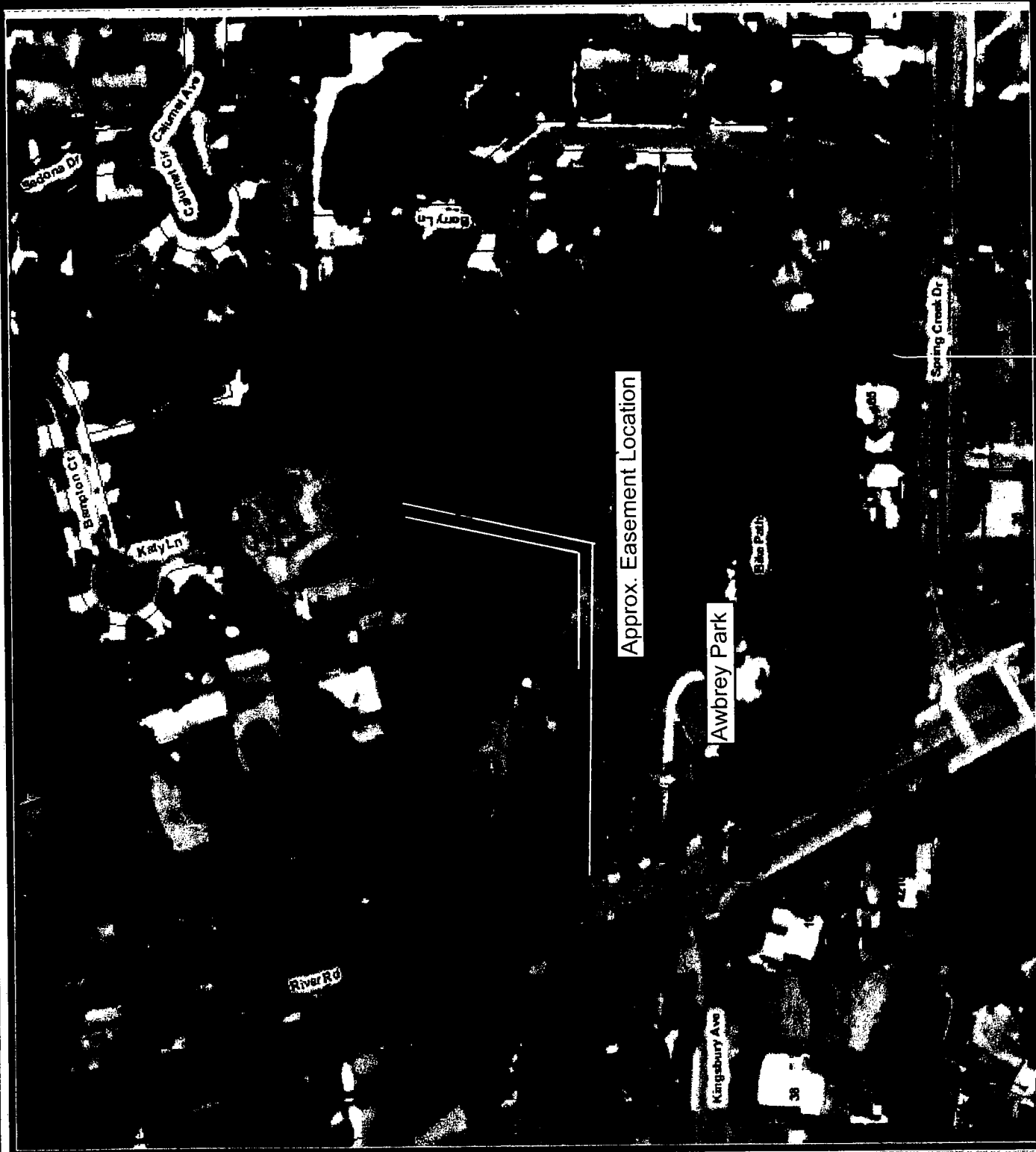
Exhibit A – Utility Easement with Exhibits

Attachment 1 – Aerial Photo Showing Location of Easement



Legend

Scale 1:2,041
1 in = 170 ft



ATTACHMENT 1

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

ORDER NO.

(**IN THE MATTER OF AUTHORIZING**
(**CONSENT TO THE EXECUTION OF AN**
(**UNDERGROUND EASEMENT FOR A**
(**WATER LINE BY THE CITY OF EUGENE**
(**OVER A PORTION OF T. L. 17-04-02-21-**
(**00500 PREVIOUSLY CONVEYED TO THE**
(**CITY BY LANE COUNTY.**

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 used 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 an underground easement for a waterline 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 reversionary clause placed in the deed, Lane County join in the authorization of said easement over the portion of said property described on the attached "Attachment A"; and

WHEREAS, the granting of said easement will allow the continued use of the property for park purposes, including the easement area, and is therefore not in violation of the recorded deed restriction, and the consent of the County to the granting of the easement will help to avoid legal challenges to its validity in the future.

NOW THEREFORE,

IT IS ORDERED that the County Administrative Officer is authorized to sign said Utility Easement as described on said Attachment 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: _____ Lane County

Chair,
Board of County Commissioners

OFFICE OF LEGAL COUNSEL

APPROVED AS TO FORM

Date 11-3-08 lane county

OFFICE OF LEGAL COUNSEL

Lane County Recording Sticker

**UNDERGROUND WATER
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 **water** utility purposes to construct, maintain and repair, remove and replace **underground water** utility facilities **under** 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.~~

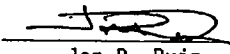
Subject to the foregoing limitations said easement area may be used by the Grantor for road, parking, or any purpose not inconsistent with said easement.

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 14 day of October, 2008.

GRANTOR: **THE CITY OF EUGENE, an Oregon Municipal Corporation**


STATE OF OREGON)
)
COUNTY OF LANE)

RR
MR
K


Jon R. Ruiz
City Manager

On this 14 day of October, 2008, before me personally appeared the within named _____ who did acknowledge that s/he is the ~~CITY manager~~ City Manager of 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**.





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

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.

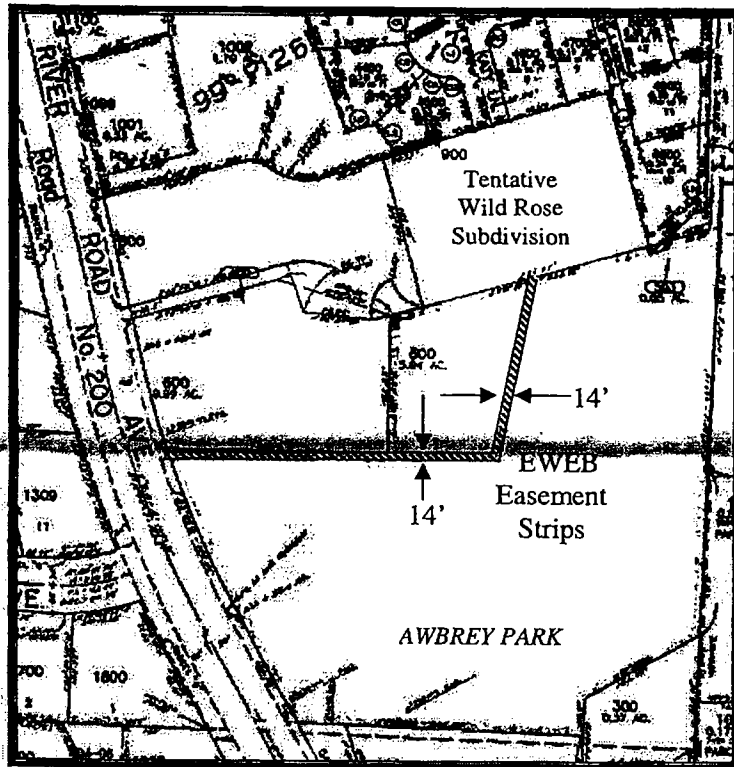
IN WITNESS WHEREOF, the undersigned have executed this instrument the ____ day of _____, 2008.

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



Note: This exhibit does not represent a survey and is only intended to complement the attached easement for clarification purposes.		
Grantor / Mailing Address: City Of Eugene 777 Pearl Street Eugene, OR 97401	Grantee / Mailing Address: Eugene Water & Electric Board 500 East 4 th Avenue Eugene, OR 97401	Date: January 15, 2008
Lane County Assessor's Map #17-04-02-21 Tax Lot 500	Scale: None	By: Eggleston
		EXHIBIT "A"