


CITY OF COOS BAY CITY COUNCIL
Agenda Staff Report

MEETING DATE December 15, 2015	AGENDA ITEM NUMBER
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TO: Mayor Shoji and City Councilors
FROM: Susanne Baker, Finance Director 
THROUGH: Rodger Craddock, City Manager
ISSUE: Steve Auer Sewer Recovery Agreement 2005-02 Extension

BACKGROUND:

In 2005 contractor Steve Auer installed the main sewer line through several blocks in the southern portion of Empire near Fulton Avenue. The Coos Bay Municipal Code allows contractors to perform this type of work if completed to engineering standards and allows the contractor to be reimbursed for their expenses from the adjacent benefitting properties. The process includes the City filing a lien against the benefitting properties after the project has been accepted by the City and the contractor executing a Recovery Agreement with the City. With the development of the adjacent benefitting properties the lien is paid, the City retains 5% of the recovered fee for administering the process, and the balance is remitted to the contractor.

Mr. Auer completed the process to set up a Recovery Agreement in 2005 which will now expire in January of 2016. The agreement, Section 8, allows the contract to be extended if the contractor submits a letter requesting the extension before the contract expires, which Mr. Auer submitted on December 8, 2015. The contract, with Council approval, can be extended only once for ten years in order to further allow the contractor time to possibly be reimbursed by the benefitted properties if they develop.

DISADVANTAGES:

None.

BUDGET IMPLICATIONS:

None at this time.

ACTION REQUESTED:

If it pleases the Council, approve the extension to Mr. Auer's Recovery Agreement No. 2005-02.

12/15/15
8 SA

To The City of Coos Bay

I Steve Auer would like
to extend Recovery Agreement
No. 2005-02 As per Item
8 on SAID Agreement.

Steve Auer

RECOVERY AGREEMENT NO. 2005-02

AGREEMENT between the CITY OF COOS BAY, an Oregon municipal corporation (the City), and Steve Auer (the Developer).

WHEREAS, the Developer has incurred certain costs in constructing collection lines (the Improvements) within the Webster Avenue, Fulton Avenue, and Clay Street Right-of-Way, Coos Bay, Oregon.

WHEREAS, the Developer will convey the Improvements to the City; and

WHEREAS, the Developer and the City agree that owners of properties abutting the Development benefitting from the Improvements should equitably share in the cost; and

WHEREAS, Coos Bay Ordinance No. 132 allows for the execution of recovery agreements between developers and the City; and

WHEREAS, the Developer and the City are willing to enter into a recovery agreement, which allows the Developer to recover the costs incurred by the Developer in constructing the Improvements at the time owners of properties abutting the development connect to the City's wastewater system;

NOW, THEREFORE, the City and the Developer agree as follows:

1. **Scope:** This agreement is for the recovery of costs associated with the following:

the construction of collection lines through or adjacent to unserved or undeveloped lands not serviceable by existing collection lines as follows:

Construction of a 1592' long, 8" diameter collection line from an existing manhole located at the centerline of Webster Avenue and S. Main Street; thence East along the centerline of Webster Avenue 378' to a point 5' east of the centerline of Clay Street; thence South parallel to the centerline of Clay Street 307'. Also, via an easement through Block 91 for a distance of 430' to a point 5' north of the centerline of Fulton Avenue; thence East parallel to the said centerline 177' to the terminus point; all being in the First Addition to Empire, Coos County, State of Oregon.

the construction of a collection line larger than that required to serve the needs of the Developer's property, or development, to provide service for property adjacent to the development as follows:

After Recording Return To:
City of Coos Bay - Public Works
500 Central Ave
Coos Bay, Oregon 97420

[] the construction of a pump station and/or force main to serve the Developer's property and intended to serve more properties:

This agreement is limited to recovery of the following costs of construction:

Costs of Engineering, Design, and Construction of Sanitary Sewer Collection Line.

This agreement is limited to the recovery of costs from the properties abutting the development and listed in **Exhibit A**.

As used in this Recovery Agreement, "total cost" means the estimated cost or actual cost incurred in constructing the improvements, whichever is less, but does not include any fees, assessments, inspection charges, or other costs charged by the City against all properties as a condition of connecting to the wastewater system.

2. Calculation of Amounts Due: The Developer shall be entitled to recover, on a pro rata basis, a portion of the total cost incurred by the Developer in constructing the improvements. The amount to be calculated is as follows:

$$\frac{\text{Square Footage of Benefitted Property}}{\text{Square Footage of Entire Development}} \times \text{Total Cost of Constructing Improvement} = \text{Pro Rata Share}$$

The Developer shall only be entitled to receive such pro rata share if, and only if, an owner of one of the properties listed in Exhibit A connects to the City of Coos Bay wastewater system.

3. Term: The Developer shall be entitled to receive a pro rata share of the costs incurred by the Developer for a period of ten years from the date of the execution of this agreement, plus simple interest at the statutory rate, to accrue from the date of the execution of this agreement and to end upon the date the connection permit is issued. Unless renewed as provided herein, this Recovery Agreement shall expire and may not be renewed.

4. Certified Statement of Costs: The Developer shall file with City of Coos Bay Director of Community Services a certified statement setting forth the complete and final itemization of the total cost incurred by the Developer in constructing the improvement not later than ninety days after the date the improvement is substantially complete. No amendment or modification to the certified statement shall be allowed after the date of filing. As used in this section, "substantially complete" means the date the improvement is ready for final inspection by the appropriate inspection agency. At the time of filing of the certified statement of costs, the Developer will execute a deed of transfer, transferring ownership to the City.

5. Determination of Costs: As soon as practicable after the certified statement of total cost has been filed, the City shall calculate the pro rata share of the total cost for each benefitted property which is the subject of this Recovery Agreement. This pro rata share of the total cost shall be listed in the City's lien docket as a charge against the property subject to this recovery agreement and shall be reported as such to any title company or prospective purchaser.

6. Reimbursement: The City shall, within a reasonable time after the date the fee is paid, remit to the Developer the pro rata share collected pursuant to this agreement. The Developer shall only be entitled to recover the total cost of constructing the improvement as defined herein. The City shall be entitled to deduct 5% of the pro rata share, to cover administrative expenses associated with recovery of the Developer's pro rata share under this agreement.

7. Notices: The Developer shall provide the City with a written notice of any change of address within six months of the date the change of address takes effect. The Developer specifically agrees this requirement is of a special and extraordinary character, and the failure to timely provide a change of address as provided by this section shall operate as a complete and total discharge of the City's responsibilities under this agreement and a waiver of the Developer's claim to recover a pro rata share of the costs incurred in constructing the improvement. A first class letter returned to the City of Coos Bay by the U.S. Post Office marked "No Forwarding Address" or other similar designation shall establish a conclusive presumption that the Developer has failed to comply with this section. A certified or registered letter that is not accepted by the Developer shall also be deemed to establish a conclusive presumption of failure to comply with this section.

8. Extension: The Developer may file an application for a one-time ten-year extension of this Recovery Agreement. The application shall be in writing and filed with the City Recorder on or before the expiration date of this Recovery Agreement. As used in this Recovery Agreement, the expiration date is the last date of signature. Any extension shall be subject to approval by the City Council of the City of Coos Bay.

9. Personal Nature of the Obligation: This Recovery Agreement is a personal obligation only, and may not be assigned, transferred, pledged as security, or otherwise conveyed, either voluntarily or involuntarily. The City's obligation shall terminate upon the death of the Developer, the Developer's filing of a petition in bankruptcy, the appointment of a receiver or assignment for the benefit of creditors, or the dissolution of the Developer if the Developer is partnership, corporation, or other business entity.

10. Severability. The parties agree that if any term or provision of this contract is declared by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular term or provision held to be invalid.

11 Merger. This agreement constitutes the entire agreement between the parties. No waiver,

consent, modification, or change of terms of this agreement shall bind either party unless in writing and signed by both parties. Any 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 contract.

CITY OF COOS BAY

By: [Signature]
Mayor Joe Benetti
City of Coos Bay

Jan. 10, 2006
DATE

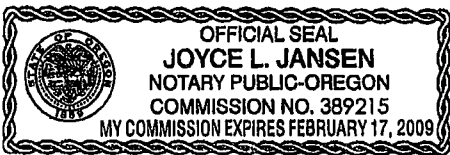
DEVELOPER

BY: [Signature]
Steve Auer
Developer

1-10-06
DATE

STATE OF OREGON,)
) ss.
County of Coos.)

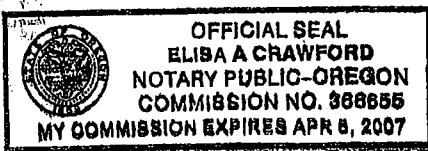
On this 10th day of Jan, 200⁶, before me appeared Joe Benetti, to me personally known, who being duly sworn, did say that he, Joe Benetti, was the Mayor of the City of Coos Bay, an Oregon municipal corporation, and that the foregoing instrument was signed and sealed on behalf of the City of Coos Bay by authority of the Council of the City of Coos Bay, and did acknowledge the foregoing instrument to be the free act and deed of the City of Coos Bay.



[Signature]
NOTARY PUBLIC FOR OREGON
My Commission Expires: 2-17-09

STATE OF OREGON,)
) ss.
County of Coos.)

Before me on this 10th day of January, 200⁶, personally appeared the above-named Steve Auer and acknowledged the foregoing instrument to be his voluntary act and deed.

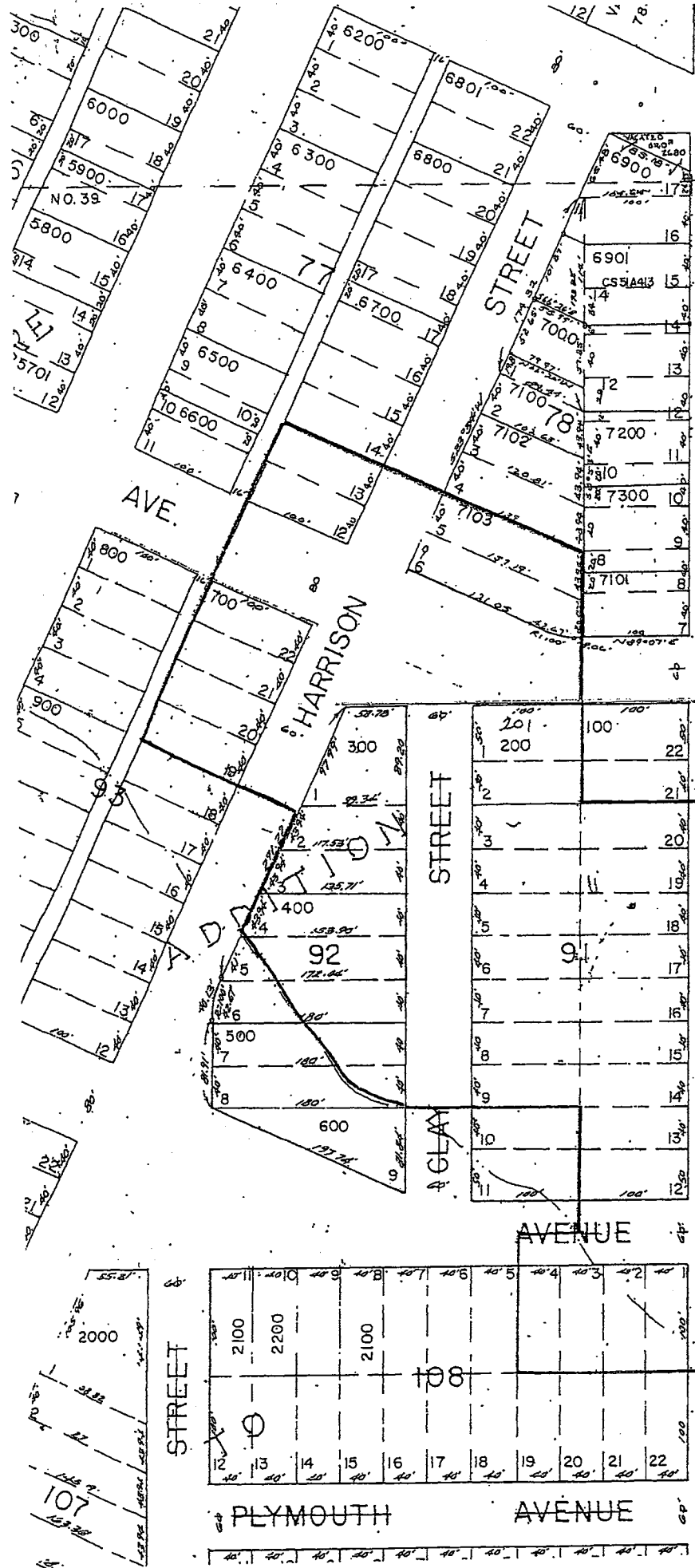


[Signature]
NOTARY PUBLIC FOR OREGON
My Commission Expires: 4-6-2007

EXHIBIT A
STEVE AUER SEWER REIMBURSEMENT DISTRICT – November 16, 2005
All In First Addition to Empire Subdivision

Co. Map No. Tax Lot	Account No.	Name Address	Block, Lot All in First Addition to Empire	Area Auer	Area Other	Cost per Sq Ft.	Cost per Tax Lot
25-13-20CB 6700	19654.00	Daniel Strong 2095 SW Blvd. Coos Bay, OR 97420	77 12,13 #2004-17251		8,000	0.79	\$6,322.88
25-13-20CB 7103	19665.04	Jack P. O'Leary 590 Fillmore Coos Bay, OR 97420	78 5, 6 #2001-13686		12,336		\$9,749.88
25-13-20CC 700	19972.00	Dan & Jackie Strong 2095 Southwest Blvd. Coos Bay, OR 97420	93 19 – 22 #2004-14880		16,000		\$12,645.76
25-13-20CC 300	19952.00	Jack P. O'Leary 590 Fillmore Coos Bay, OR 97420	92 1 – 3 #2000-3159		19,952		\$15,769.26
25-13-20CC 400	19955.00	Steve Auer 1200 Ingersoll Coos Bay, OR 97420	92 portion 4,5,6 #2004-11778	14,500			\$11,460.22
25-13-20CC 500	19958.00	Steve Auer 1200 Ingersoll Coos Bay, OR 97420	92 portion 7, 8 #2004-11778	5,000			\$3,951.80
25-13-20CC 100	19950.00	Connie Toliver 15076 Eastvale Rd. Poway, CA 92064	91 21,22 #2006-4738		9,000		\$7,113.24
25-13-20CC 200	19930.00	Steve Auer 1200 Ingersoll Coos Bay, OR 97420	91 3 - 9,12 – 20 #2005-10128	64,000			\$50,583.04
25-13-20CC 201	19930.01	Jack P. O'Leary 590 Fillmore Coos Bay, OR 97420	91 1, 2 #2004-3692		9,000		\$7,113.24
25-13-20CD 300	19908.06	Steve Auer 1200 Ingersoll Coos Bay, OR 97420	90 12 – 19 #2006-2338	32,000			\$25,291.52
25-13-20CC 2100	20214.00	Michael B. Currie 55416 Melton Rd. Bandon, OR 97411	108 1 – 4 #2002-13971		16,000		\$12,645.76
25-13-20CD 400	20244.00	Steve Auer 1200 Ingersoll Coos Bay, OR 97420	109 9 – 11 #2006-4116	12,000			\$9,484.32
25-13-20CD 500	20241.00	Thomas G. Johnson P.O. Box 42 Gardiner, OR 97441	109 6 – 8 #96-02-0066		12,000		\$9,484.32
25-13-20CD 600	20236.00	Thomas G. Johnson P.O. Box 42 Gardiner, OR 97441	109 3 – 5 #96-02-0066		12,000		\$9,484.32
TOTALS				127,500	114,277		\$191,100

LEGEND Properties owned by developer. No assessment owing.



12	13	14	15	16	17	18	19	20	21	22
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PACIFIC

11	10	9	8	7	6	5	4	3	2	1
12300	12200	12100	12000	11900	11800	11700	11600			
CS51A412										
	10	9		7796					3	2
12400	12500	12600	12700	12800	12900	13000	13100	13200		
12	13	14	15	16	17	18	19	20	21	22

ARAGO

11	10	9	8	7	6	5	4	3	2	1
14000	13900	13800	13700	13600	13500	13400	13300			
7846										
14001	14100	14101	14200	14300	14301	13801				
12	13	14	15	16	17	18	19	20	21	22

WEBSTER

11	10	9	8	7	6	5	4	3	2	1
14400	14401	14402	14403	14404	14405	14406				
85										
14407										14408
12	13	14	15	16	17	18	19	20	21	22

BLANCO

11	10	9	8	7	6	5	4	3	2	1
301	300	307						305	304	303
90										
2	13	14	15	16	17	18	19	20	21	22

FULTON

11	10	9	8	7	6	5	4	3	2	1
400		500				600				
09										
702	701	703	704	700						
2	13	14	15	16	17	18	19	20	21	22

11	10	9	8	7	6	5	4	3	2	1
2100	2200	2100								
108										
12	13	14	15	16	17	18	19	20	21	22

PLYMOUTH AVENUE

PLYMOUTH AVENUE