



## Council Agenda Report

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Item 6g

**Department:** Public Works  
**Cost Center:** 4003  
**For Agenda of:** 5/21/2024  
**Placement:** Consent  
**Estimated Time:** N/A

**FROM:** Timmi Tway, Community Development Director  
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**SUBJECT:** AMENDMENT NO. 1 TO THE REIMBURSEMENT AGREEMENT FOR 600 TANK FARM PROJECT

### RECOMMENDATION

1. Adopt a Draft Resolution entitled, "A Resolution of the City Council of the City of San Luis Obispo, California, approving Amendment No. 1 to the 600 Tank Farm Reimbursement Agreement"; and
2. Authorize the transfer of \$267,138.10 from the Airport Area Specific Plan Transportation Impact Fee undesignated fund balance (Fund 503) to the Development Agreements project account (2000056-01).

### POLICY CONTEXT

Public improvements associated with the 600 Tank Farm Project are being installed in greater size and capacity than required to serve only the project (i.e. Excess Public Improvements), qualifying the developer for reimbursement as set forth in San Luis Obispo Municipal Code Section 4.56.080 and 16.20.110. Because of this, the developer and City have entered into a Reimbursement Agreement, and that agreement needs to be amended to update the costs which are the basis of the reimbursement obligation.

### REPORT-IN-BRIEF

The Reimbursement Agreement for 600 Tank Farm Road, executed between the City and Covelop, Inc. (the "Developer") in February 2022, specifies that the City will provide reimbursements to the Developer for certain oversized transportation improvements eligible for reimbursement. Reimbursement is to be provided from a mix of fund sources, including General Fund and Transportation Impact Fees (TIF). The Reimbursement Agreement originally included estimates provided by the Developer for the cost of these improvements; however, since then, the anticipated costs of these improvements have significantly increased above the original estimates, which requires an amendment to the agreement.

### Need for a Reimbursement Agreement Amendment

Mirroring national and local trends of significant infrastructure construction cost escalation over the past several years, actual costs for the public improvements included in the Reimbursement Agreement have escalated significantly beyond original estimates. This has been exacerbated by added complexity, administrative costs, and delays related to challenges with regulatory agency permitting and right-of-way acquisition for the Tank Farm/Santa Fe Roundabout. As a result of these circumstances, the Developer has submitted change orders to the original cost estimates identifying an additional \$4,818,675 in reimbursable costs, increasing the total reimbursement-eligible project costs from \$5,003,980 to \$9,822,654.

The original and updated reimbursement costs are summarized in Table 1 below, and broken down in detail in Attachment B.

**Table 1: Reimbursable Project Cost Summary**

	Reimbursable Costs by Project				
	Area 3 (Santa Fe Road)	Area 4 (Tank Farm Road)	Acacia Creek Bike Path	Tank Farm Bike Path PS&E	TOTAL
Original Reimbursement Agreement (February 2022)	\$424,251	\$3,976,023	\$376,006	\$227,700	<b>\$5,003,980</b>
Reimbursement Agreement Amendment #1 (April 2024)	\$547,286	\$7,872,264	\$1,060,712	\$342,392	<b>\$9,822,654</b>
<b>Change</b>	<b>\$123,035</b>	<b>\$3,896,241</b>	<b>\$684,706</b>	<b>\$114,692</b>	<b>\$4,818,675</b>
<b>% Change</b>	<b>29%</b>	<b>98%</b>	<b>182%</b>	<b>50%</b>	<b>96%</b>

Not reflected in the table above are the Developer's share of these costs, which are not eligible for public reimbursement, which currently total approximately \$5.3 million.

Pursuant to Section 6(a), 6(b), and 6(c) of the Reimbursement Agreement, any increase or decrease in cost must be reflected in the contractor bid or change order and approved by the City. The developer has submitted change orders and cost documentation totaling \$4,818,675 which exceeds the amounts authorized by Section 6(b) for approval by a City Engineer (\$45,000) or City Manager (\$175,000). Since these limits are exceeded, City Council approval of the cost increase is required. The cost documentation has been reviewed by the City Engineer, or their official designee, and deemed complete as of April 22, 2024.

Table 2 below provides summary of how the City's reimbursement obligations are impacted by these cost increases, and reflects the additional funding required to provide reimbursement for eligible public improvements.

**Table 2: Reimbursable Costs by Fund Source**

	Reimbursable Costs by Project				
	Area 3 (Santa Fe Road)	Area 4 (Tank Farm Road)	Acacia Creek Bike Path	Tank Farm Bike Path PS&E	TOTAL
<b>Original Reimbursement Agreement</b>					
General Fund	\$254,551	\$1,560,657	\$376,006	\$68,310	<b>\$2,259,523</b>
Citywide TIF	\$169,700	\$2,415,366	\$0	\$159,390	<b>\$2,744,457</b>
<b>Total</b>	<b>\$424,251</b>	<b>\$3,976,023</b>	<b>\$376,006</b>	<b>\$227,700</b>	<b>\$5,003,980</b>
<b>Amendment #1 to Reimbursement Agreement</b>					
General Fund	\$328,372	\$2,361,679	\$1,060,712	\$102,718	<b>\$3,853,481</b>
Citywide TIF	\$218,915	\$5,483,121	\$0	\$0	<b>\$5,702,036</b>
AASP TIF	\$0	\$27,464	\$0	\$239,674	<b>\$267,138</b>
<b>Total</b>	<b>\$547,286</b>	<b>\$7,872,264</b>	<b>\$1,060,712</b>	<b>\$342,392</b>	<b>\$9,822,654</b>
<b>Reimbursement Funds Available or Requiring Further Authorization</b>					
General Fund					<b>\$3,853,481</b>
<i>Already Appropriated</i>					<i>\$2,460,000</i>
<i>Additional Funds Requiring Future Budget Request</i>					<i>\$1,393,481</i>
Transportation Impact Fees					<b>\$5,969,174</b>
<i>Existing AASP TIF Available</i>					<i>\$267,138</i>
<i>Citywide TIF Authorized (On-Site Credits &amp; Off-Site Fees from Benefiting Properties)</i>					<i>\$3,718,915</i>
<i>Additional Citywide TIF Funds Requiring 2025 Citywide TIF Update</i>					<i>\$1,983,121</i>
<b>Total</b>					<b>\$9,822,654</b>

As a result of the substantial cost increases, staff is recommending the following actions:

1. Adopt a Resolution (Attachment A) approving Amendment #1 to the 600 Tank Farm Reimbursement Agreement (Attachment B), and
2. Approve appropriation of \$267,138 in undesignated Airport Area Specific Plan (AASP) Transportation Impact Fee fund balance towards this reimbursement obligation.

As discussed further below in the Fiscal Impact section, it should be noted that the approval of the amended Reimbursement Agreement itself does not require the City to appropriate additional funding at this exact moment or guarantee that the additional funding needed will be available at a specific date in the future. It does, however, affirm City's good faith intent to request appropriation of additional funds at the next budget-setting opportunity (the 2025-27 Financial Plan) and pursue updates to the Citywide TIF program to reflect updated costs for the Tank Farm/Santa Fe Roundabout project. There is already an update to the Citywide TIF program in progress, with plans to present updated fees to the City Council for consideration in early 2025. Approving these recommended actions will allow the orderly and timely completion of high priority transportation improvements and production of additional housing, both of which are aligned with the City Council's adopted Major City Goals.

## DISCUSSION

### Background

On February 15, 2022, Covelop, Inc. (the “Developer”) obtained approval for a new mixed-use development project consisting of 280 residential units and up to 12,500 square feet of commercial uses within the Airport Area Specific Plan. The 11.7-acre project site is located at 600 Tank Farm Road.

As conditions of approval, the project is required to design and construct several transportation improvements envisioned in the City’s General Plan Circulation Element, Airport Area Specific Plan, and Active Transportation Plan. Several of these required improvements will be constructed in greater size and capacity than required by the project and are therefore eligible for reimbursement under the City’s Municipal Code. The improvements which have been identified as eligible for reimbursement include:

1. Santa Fe Road: Construction of a portion of the Santa Fe Road Extension north of Tank Farm Road (includes two travel lanes, landscaped parkway, northbound protected bike lane, southbound striped bike lane, and sidewalk on east side)
2. Tank Farm Road: Construction of a roundabout at the intersection of Tank Farm Road and Santa Fe Road.
3. Acacia Creek Bike Path: Construction of the Acacia Creek Bikeway, a shared-use bicycle/pedestrian path along the western bank of Acacia Creek, connecting the Damon Garcia Path network to Santa Fe and Tank Farm Roads.
4. Tank Farm Bike Path Project Specifications and Estimates (PS&E): Advanced planning and preparation of 65% designs and environmental technical studies to accelerate future construction of a shared-use pedestrian/bicycle path along Tank Farm Road connecting Santa Fe Road to Innovation Way.

The City and Developer executed a Reimbursement Agreement on February 18, 2022<sup>1</sup>, authorizing reimbursement in the amount of up to \$5,003,980 to the Developer for eligible costs related to design, permitting and construction of these improvements that exceed the development’s fair share costs. This reimbursement included a mix of approximately \$2,259,523 from the General Fund and \$2,744,457 from the Citywide TIF. These figures do not include additional costs for portions of these public improvements that are the sole responsibility of the developer and not eligible for public reimbursement, which includes the portions of Santa Fe Road and Tank Farm Road that are considered frontage improvements for the development, and a portion of the on-site Acacia Creek Bike Path.

Between 2022 and 2023, the City appropriated a total of \$2,460,000 in General Funds towards the 600 Tank Farm reimbursement obligations—covering the full amount of reimbursement required from the General Fund per the original Reimbursement Agreement.

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<sup>1</sup> [City Council Resolution 11305 \(2022 Series\) Approving a Reimbursement Agreement for 600 Tank Farm Road](#)

The share of the reimbursements coming from the Citywide TIF fund source were to come from a mix of credits towards the 600 Tank Farm development's on-site fees, and TIF fees paid by neighboring off-site development projects that also benefit from these infrastructure improvements. As of April 2024, there have been no eligible TIF fees paid by either the Developer or by Benefiting Properties.

See Table 1 and Table 2 above for a summary of the original costs, or Attachment B to Exhibit 4 of the [February 18, 2022 Reimbursement Agreement](#) for a detailed breakdown of reimbursable project costs and funding sources, as originally approved.

Amendment to Reimbursement Agreement

To address the necessary updates to the projected costs of the reimbursable improvements, Amendment No. 1 to the Reimbursement Agreement includes:

- A. Updating and replacing several of the exhibits to reflect and document the new cost estimates, the new funding sources/amounts/limits, and providing an updated excerpt of the Citywide and AASP Transportation Impact Fee Program Project Lists.
- B. Adds reference to AASP TIF Fund as a funding source.
- C. Adds the City's intent to allocate the AASP TIF undesignated balance of \$267,138 prior to July 1, 2024.
- D. Affirms the City's intent to submit a budget request for an additional \$1,393,481 in General Funds to be used towards this reimbursement obligation during or prior to the 2025-27 Financial Plan. Should the budget requests be declined; staff will request again at the next available budgeting opportunity until the additional General Fund appropriation has been approved.
- E. Affirms the City's intent to update the Citywide TIF program to reflect updated project costs in the amount of \$1,983,121 for the Tank Farm/Santa Fe Roundabout project. This is required to reimburse the developer for eligible costs. The TIF update is currently in progress and these updated costs will be incorporated into that new Impact Fee Study, which is estimated to be presented to City Council early in 2025.
- F. Clarifies that since reimbursement requires amending the Citywide TIF program, the Developer's fair share percent of the increased project cost coming from the TIF will need to be subtracted from the Developer's eligible TIF reimbursement, as the Developer's share of this increased cost would not be captured in the current fee schedule applied to the 600 Tank Farm development. This fair share increment is estimated at \$33,421, as calculated by the City Transportation Division, and is not eligible for reimbursement.

It should be noted that Amendment No. 1 to the Reimbursement Agreement includes no costs or reimbursement funding for right-of-way acquisition. As noted above, due to the challenges and delays encountered during right-of-way negotiations, there is still much uncertainty regarding timing and cost with this acquisition. For this reason, no right-of-way costs are built into the updated agreement—staff expects to return to the Council for subsequent adjustments to this agreement at a future date when there is greater confidence on the anticipated costs for this component of the project.

Appropriation of the Airport Area Transportation Impact Fee Fund

Due to the need for additional funding and the lack of eligible impact fees paid by developer and/or benefiting property owners to date, staff has identified the AASP TIF as an additional funding source for the reimbursement of certain projects. The AASP TIF was previously a subarea TIF fee that was ultimately collapsed into the Citywide TIF in 2018. The AASP TIF program collected costs towards Tank Farm Road corridor improvements, the Tank Farm/Santa Fe Roundabout, the Santa Fe Road Extension, and future pedestrian/bicycle paths along Tank Farm Road. City Council Approval of Amendment No. 1 to the Reimbursement Agreement and adoption of the related Resolution allocates the existing uncommitted fund balance of \$267,138 to the reimbursable project components (as of 4/24/2024), which is not eligible for use for any other City-led capital improvement projects currently in development. Per AB 1600 requirements, the City could risk the need to forfeit these funds if not used for eligible projects in a timely manner.

Inclusion of the AASP TIF as a funding source will provide immediate availability of funds to provide reimbursements for the Developer's ongoing pre-construction activities on transportation infrastructure improvements, as well as reduce the amount of additional appropriation needed from the Citywide TIF Fund.

Appropriation of Additional General Fund

Per the original Reimbursement Agreement, the City has committed to providing a specific percentage of the reimbursable cost of each improvement from the General Fund, which represents the costs for these public improvements that cannot be legally collected via the TIF program. Since the cost of the improvements have increased, the City must plan to allocate sufficient General Funds in the future to satisfy the updated reimbursement obligation. The City has already allocated \$2,460,000 in General Funds and would need to request additional \$1,393,481 in General Funds at a future budget-setting opportunity--during or prior to the 2025-27 Financial Plan.

Impact Fee Study to Update the Citywide TIF Program

The existing Citywide TIF program is collecting up to \$3,500,000 from new development towards the Tank Farm/Santa Fe Roundabout project. For the City to increase the amount of TIF credits and/or reimbursements based on the updated costs, the City must complete a Impact Fee Study to update the Citywide TIF Program to update the project costs for the roundabout project. It is expected that roughly \$1,983,121 in updated project costs will need to be added to the Citywide TIF Program to fully satisfy the reimbursement obligation to Developer. An Impact Fee Study is currently in progress which will update all the City's Impact Fees, including the TIF programs. Staff is anticipating this Impact Fee Study will be completed and presented to Council in early 2025. Due to the uncertainty of the timing for the Impact Fee Study to be completed, and fact that the final Impact Fee Study and TIF rates may not allow for full collection of the additional \$1,983,121 needed for this reimbursement, the amendment includes a provision that clarifies if the TIF Program update is not completed by July 1, 2025, then City Staff will meet with Developer to discuss and explore alternative funding sources which may be appropriately used towards the reimbursement obligations.

### **Previous Council or Advisory Body Action**

The entitlement process for the 600 Tank Farm development project included review by the City's Active Transportation Committee, Planning Commission, and ultimately the City Council. The following is a list of the specific Council Resolutions and Ordinances approved in conjunction with the entitlement process and original Reimbursement Agreement:

1. February 15, 2022, [Resolution No 11304](#) – A Resolution Approving the 600 Tank Farm Development Project
2. February 15, 2022, [Resolution No 11305](#) – A Resolution Approving a Reimbursement Agreement with Covelop, Inc.
3. February 18, 2022, [Resolution No 11307](#) – A Resolution Approving Amendments to the Adopted 2021-22 Budget Appropriations
4. March 4, 2022, [Ordinance 1708](#) – Approving a Rezone for Property at 600 Tank Farm Rd (PR-0005-2021, GENP-0814-2019, SPEC-0407-2020, EID-0608-2020)

### **Public Engagement**

Consistent with the City's Public Engagement and Noticing (PEN) Manual and the City's Municipal Code, the specific Council action requested in this staff report has a "notify" level of public engagement, which has been accomplished through public notification of this agenda item and associated staff report.

### **CONCURRENCE**

The City's Attorney, Community Development Department, Finance Department, Public Works Department, and Community Services Group have reviewed this staff report and concur with its recommendation.

### **ENVIRONMENTAL REVIEW**

The proposed Amendment to the Reimbursement Agreement relates only to the financial mechanism by which the developer's cost which exceeds their fair share will be reimbursed and does not cause change to the project or the environment and therefore no further environmental review is required. The 600 Tank Farm development and related infrastructure improvements were thoroughly evaluated in the Final Environmental Impact Report (EIR; State Clearinghouse Number 2020110426) for the project and certified by Resolution No 11304 (2022 Series), on February 1, 2022

### **FISCAL IMPACT**

Budgeted: No  
Funding Identified: Yes

Budget Years: 2023-27

**Fiscal Analysis:**

<b>Funding Sources</b>	<b>Total Budget Available</b>	<b>Current Funding Request</b>	<b>Remaining Balance</b>	<b>Annual Ongoing Cost</b>
General Fund	\$2,139,255*	\$0**	\$2,139,255	N/A
State	\$0	\$0	\$0	N/A
Federal	\$0	\$0	\$0	N/A
Fees: AASP TIF (Fund 503)	\$0	\$267,138	\$267,138	N/A
Fees: Citywide-TIF (Fund 507)	\$0***	\$0***	\$0	N/A
<b>Total</b>	<b>\$2,139,255</b>	<b>\$267,138</b>	<b>\$2,406,393</b>	<b>N/A</b>

*\*Reflects \$2,460,000 starting balance minus reimbursements already paid to date.*

*\*\*No funding request at this time; however, approval of Reimbursement Agreement Amendment affirms City's intent to request at least \$1,393,481 in additional general funds in the future, as part of 2025-27 Financial Plan.*

*\*\*\*No existing Citywide TIF fund balance to be programmed to 600 Tank Farm Reimbursement Agreement. Per Agreement, reimbursement from TIF will be from not yet realized TIF revenues in the form of on-site fee credits from 600 Tank Farm and off-site TIF fees to be received from other benefiting private development, totaling a commitment of up to \$5,702,036 future Citywide TIF revenues in total towards reimbursement.*

As described above, the immediate fiscal impact associated with the proposed Reimbursement Agreement Amendment would involve appropriating \$267,138 in undesignated fund balance from the AASP TIF fund towards this reimbursement. Additional fiscal impacts would be realized in the future, as the agreement affirms the City's intent to request appropriation of \$1,393,481 in additional General Funds at the 2025-27 Financial Plan and prioritize up to \$5,702,036 in yet-to-be realized Citywide TIF funds towards reimbursement to the Developer.

**ALTERNATIVES**

1. ***Council could decide not to approve the amendment to the 600 Tank Farm Reimbursement Agreement.*** This action is not recommended by staff because the reimbursement agreement is related to the delivery of a high-priority transportation improvement that is needed not only to accommodate development of the 600 Tank Farm development, but additional planned housing and non-residential development envisioned in the Margarita Area and Airport Area Specific Plans. The reimbursement agreement is a mutually beneficial agreement that allows the housing project to move forward without realizing significant carrying costs and uncertainty that would be the result if reimbursement for these additional costs was not available in the near term.



The infrastructure costs, if not appropriately reimbursed, would delay both the delivery of housing and important transportation infrastructure. This project is identified as a "Partnership Project" in the City's Capital Improvement Plan and includes important public benefits. Pursuant to the Reimbursement Agreement Section 6(b), change orders greater than \$175,000 require City Council Approval and Section 6(c) specifies that the City's approval of a change order shall not be unreasonably withheld, delayed, or conditioned.

2. ***Council could direct staff to modify the Amendment to the Reimbursement Agreement to approve only cost increases associated with Developer's pre-construction activities, with staff to return for Council approval for a subsequent amendment to fund construction costs when there is more certainty regarding construction schedule for the Tank Farm/Santa Fe Roundabout.*** This action is not recommended by staff, as this identification of additional funding sources enables the Developer to advance the reimbursable improvements.
3. ***Council could decide to continue consideration of this item.*** The City Council may continue consideration of the recommendation if more information is needed to make a determination. Direction should be provided to staff regarding the additional analysis or data needed for the Council to conclude the item.

#### **ATTACHMENTS**

- A - Draft Resolution adopting Amendment No. 1 to the 600 Tank Farm Reimbursement Agreement
- B - Exhibit A to Resolution - Amendment No. 1 600 Tank Farm Reimbursement Agreement