

**TAX INCREMENT FINANCING
FUNDING AGREEMENT
East Berry Corridor Study**

This **TAX INCREMENT FINANCING DEVELOPMENT AGREEMENT** (“**Agreement**”) is entered into by and between the **BOARD OF DIRECTORS OF TAX INCREMENT REINVESTMENT ZONE NUMBER TWELVE, CITY OF FORT WORTH, TEXAS** (“**Board**”), an administrative body appointed in accordance with Chapter 311 of the Texas Tax Code (“**TIF Act**”) to oversee the administration of Tax Increment Reinvestment Zone Number Twelve, City of Fort Worth, Texas, a reinvestment zone designated by ordinance of the City of Fort Worth in accordance with the TIF Act, and the **CITY OF FORT WORTH** (“**City**”), a Texas Limited Partnership.

The Board and Developer hereby agree that the following statements are true and correct and constitute the basis upon which the Board and Developer have entered into this Agreement:

A. On July 18, 2006, the City Council adopted Ordinance No. 17061-07-2006, establishing Tax Increment Reinvestment Zone Number Twelve, City of Fort Worth, Texas (“**TIF District**”), and establishing the tax increment fund of the TIF District (“**TIF Fund**”).

B. On April 11, 2007 the Board adopted a project and financing plan for the TIF District, (“**TIF Project Plan**”). The TIF Project Plan was approved by the City Council on June 19, 2007, pursuant to Ordinance No. 17621-06-2007.

C. The City is pursuing a design and planning study for a multi-modal, walkable, mixed-use corridor along East Berry Street to enhance connectivity and access to jobs and commercial investment, with the Board to contribute up to \$200,000.00 (“**Project**”).

D. The TIF Project Plan specifically authorizes the Board to enter into agreements dedicating revenue from the TIF fund for public improvements that benefit the general public and facilitate development of the TIF district as an eligible expense. Accordingly, the costs of the Project qualify as lawful “project costs,” as that term is defined in Section 311.002(1) of the TIF Act (“**Project Cost**”). Accordingly, the Board is willing to provide funding for the purchase of the land solely in accordance with and pursuant to this Agreement.

NOW, THEREFORE, the Board and City, for and in consideration of the terms and conditions set forth herein, do hereby contract, covenant and agree as follows:

1. CITY’S OBLIGATIONS.

City will oversee and be responsible for all aspects of the Project in accordance with this Agreement, the Plans, and all Legal Requirements.

2. FUNDING BY THE BOARD

2.1 Amount of Funding.

Provided that the City pursues the Project, and the City has complied with all terms and conditions of this Agreement, the Board will provide funding for the Project in an amount up to Two Hundred

Thousand Dollars and Zero Cents (\$200,000.00) (“Funds”) in accordance with provisions provided in this Section 2; provided, however, that if there are not sufficient revenues in the TIF Fund at such time, the financial obligations of the Board to City under this Agreement will be carried forward without interest to the next fiscal year of the TIF District in which there are sufficient revenues in the TIF Fund to satisfy such obligations. In no event will the Board pay City any portion of the Funding in excess of Funds.

2.2 Reimbursement.

All costs incurred pursuant to the Project will be advanced and paid for by City and will not, in any event, be paid by the Board except as a reimbursement to City in accordance with this Agreement. Prior to the any reimbursement, the City will provide an invoice with supporting documentation to the TIF administrator in the City’s Economic Development Department including the plan as set for the Request for Proposal for the Project in order to demonstrate that the Project is complete. The TIF accountant in the City’s Economic Development Department or other staff as designated by the Director of the City’s Economic Development Department will be responsible for issuing any reimbursement. Under no circumstances will the City transfer funds without prior written approval of both the TIF administrator and TIF accountant.

2.3 TIF Fund Contributions.

The Board acknowledges and consents to the transfer from the TIF Fund of up to the total amount of the Funds, in whole or in part, to the funds or accounts of the City that will be used to pay for the costs of the Project.

2.4 Limited to Available TIF Funds.

Notwithstanding anything to the contrary herein, City understands and agrees that the Board will be required to pay the Funds only from available revenues in the TIF Fund that are attributable solely to tax increment (as defined in Section 311.012 of the Texas Tax Code) generated annually from property located in the TIF District and deposited into the TIF Fund in accordance with the TIF Act.

2.5 Priority of Payment.

Notwithstanding anything to the contrary herein, City understands and agrees that any obligation of the Board to pay all or any portion of the Reimbursement Amount will be subject and subordinate to the Board’s right to retain reserves in the TIF Fund in any fiscal year to meet all existing contractual obligations of the Board. Specifically, and without limiting the generality of the foregoing, the following payments, as obligated by the following existing contractual obligations, will have priority over payment by the Board of all or any portion of the Reimbursement Amount:

- a. Mason Heights Mixed-Use Project

3. TERM.

The term of this Agreement will be effective upon full execution of this Agreement is upon the earlier of (i) the complete performance of all obligations and conditions precedent by the Board and City; (ii) termination by either the Board or City as permitted by this Agreement; or (iii) termination of the TIF District in accordance with Section 311.017 of the TIF Act.

4. **SUCCESSORS AND ASSIGNS.**

City may not assign its rights or obligations under this Agreement to any other party without the advance written approval of the Board, which may be withheld at the Board's discretion. This Agreement will be binding on and inure to the benefit of the parties, their respective successors and assigns.

5. **NOTICES.**

All written notices called for or required by this Agreement must be addressed to the following, or such other party or address as either party designates in writing, by certified mail, postage prepaid, or by hand delivery:

Board:

Board of Directors
East Berry Renaissance TIF
Attn: Director of Economic Development
1150 South Freeway
Fort Worth, TX 76102

City:

Assistant City Manager
200 Texas Street
Fort Worth, Texas 76109

6. **VENUE AND CHOICE OF LAW.**

This Agreement will be construed in accordance with the laws of the State of Texas and applicable ordinances, rules, regulations or policies of the City. Venue for any action under this Agreement will lie in the State District Court of Tarrant County, Texas or the United States District Court for the Northern District of Texas, Fort Worth Division. This Agreement is performable in Tarrant County, Texas.

7. **COMPLIANCE WITH LEGAL REQUIREMENTS.**

This Agreement is subject to all applicable federal, state and local laws, ordinances, rules and regulations, including, but not limited to, all provisions of the City's Charter and ordinances, as amended, and violation of the same constitutes a default under this Agreement. In undertaking any work in accordance with this Agreement, City, its officers, agents, servants, employees, contractors and subcontractors must comply with all federal, state and local laws and all ordinances, rules and regulations of the City, as such laws, ordinances, rules and regulations exist or may hereafter be amended or adopted (collectively, "**Legal Requirements**").

8. **SEVERABILITY.**

If any provision of this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

9. **COUNTERPARTS.**

This Agreement may be executed in any number of counterparts, each of which will be deemed an original and constitute one and the same instrument.

10. CAPTIONS.

The captions to the various clauses of this Agreement are for informational purposes only and will not alter the substance of the terms and conditions of this Agreement.

11. NO WAIVER.

The failure of either party to insist upon the performance of any term or provision of this Agreement or to exercise any right granted hereunder will not constitute a waiver of that party's right to insist upon appropriate performance or to assert any such right on any future occasion.

12. GOVERNMENTAL POWERS.

It is understood that by execution of this Agreement, neither the Board nor the City waives or surrenders any of their governmental powers or immunities.

13. FORCE MAJEURE.

It is expressly understood and agreed by the parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, governmental restrictions, regulations, or interferences, unreasonable delays by the City in issuing any permits or certificates of occupancy or conducting any inspections of or with respect to the Project (based on the amount of time that the City customarily requires in undertaking such activities and based on the then-current workload of the City department(s) responsible for undertaking such activities), or delays caused by unforeseen construction or site issues, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted will be excused from doing or performing the same during such period of delay, so that the time period applicable to such design or construction requirement will be extended for a period of time equal to the period such party was delayed.

14. BOARD REPRESENTATIVE.

City understands and agrees that, in addition to the Administrator, the Board, in its sole discretion, may also appoint certain City staff members, a City department or another entity to serve as its representative in carrying out any or all of the responsibilities of the Board hereunder, and that references to "the Board" in this Agreement mean the Board in its entirety or any such designated representative.

15. NO THIRD PARTY RIGHTS.

This Agreement is solely for the benefit of the parties hereto and is not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

16. **ENTIRETY OF AGREEMENT.**

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Board and the City, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. This Agreement will not be amended unless executed in writing by both parties and approved by the Board in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed effective as of the Effective Date.

**BOARD OF DIRECTORS OF TAX
INCREMENT REINVESTMENT
ZONE NUMBER TWELVE, CITY OF
FORT WORTH, TEXAS:**

CITY OF FORT WORTH, TEXAS
a Texas municipality

By: *Chris Nettles*
Chris Nettles (Dec 19, 2022 16:49 CST)
Chris Nettles
Chair

By: *William Johnson*
William Johnson (Dec 1, 2022 08:58 CST)
William Johnson
Assistant City Manager

TIF 12 Resolution No. 12-2022-01
Date of Board Approval: June 1, 2022

M&C No: 22-0689
Date: 9/13/2022

Contract Compliance Managers:

By signing, I acknowledge that I am the person responsible for the monitoring and administration of this contract, including ensuring all performance and reporting requirements.

Martha Collins
Martha Collins (Nov 29, 2022 15:19 CST)
Martha Collins
TIF 12 Administrator
Economic Development

Mary Elliott
Mary Elliott (Nov 30, 2022 14:07 CST)
Mary Elliott
Transportation Manager
Transportation & Public Works

APPROVED AS TO FORM AND LEGALITY:

By: *Tyler Wallach*
Tyler Wallach
Assistant City Attorney

ATTEST:

By: *Jannette S. Goodall*
Jannette S. Goodall (Jan 6, 2023 12:03 CST)
Jannette Goodall
City Secretary

CITY COUNCIL AGENDA



Create New From This M&C

DATE: 9/13/2022 **REFERENCE NO.:** **M&C 22-0689 **LOG NAME:** 20BERRY STREET CORRIDOR STUDY
CODE: C **TYPE:** CONSENT **PUBLIC HEARING:** NO
SUBJECT: (CD 5, CD 8, and CD 9) Adopt Appropriation Ordinances for the East Berry Street Corridor Project in the Collective Amount Up to \$700,000.00 and Authorize Execution of a Tax Increment Financing Development Agreement with Tax Increment Reinvestment Zone Number Twelve-East Berry Renaissance for an Amount Up to \$200,000.00 and Amend the Fiscal Years 2022-2026 Capital Improvement Program

RECOMMENDATION:

It is recommended that the City Council:

1. Adopt the attached appropriation ordinance increasing estimated receipts and appropriations in the General Capital Projects Fund in the amount of \$500,000.00, from available funds for the purpose of funding the East Berry Street Corridor project (City Project No. 104214);
2. Authorize execution of a Tax Increment Financing Development Agreement with Tax Increment Financing Reinvestment Zone Number Twelve (East Berry Renaissance) for an amount up to \$200,000.00;
3. Adopt the attached appropriation ordinance increasing the estimated receipts and appropriations in the Tax Increment Reinvestment Zone - General Capital Fund in the amount of \$200,000.00 transferred from the Tax Increment Reinvestment Zone Number Twelve - East Berry Renaissance Fund, for the purpose of funding the Berry Street Corridor project (City Project No. 104214); and
4. Amend the Fiscal Years 2022-2026 Capital Improvement Program.

DISCUSSION:

East Berry Street extends from IH-35W to Cravens Road, along the western shore of Lake Arlington. The corridor project will include pre-engineering for a multi-modal, walkable mixed-use corridor. In order to enhance connectivity and access to jobs and project delivery, it is essential to understand community desires and any physical constraints, such as utility relocation. There are also opportunities to leverage momentum and funding sources across the City and with State and Federal partners.

On May 7, 2022, Fort Worth voters approved the 2022 Bond Program. Proposition A, Streets and Mobility Infrastructure Improvements, includes \$2.5 million in funding for implementation of the East Berry Street Corridor improvements (City Project No. 104222) from IH-35W to Martin Luther King Freeway (US 287). This corridor project will encourage complete streets design to enhance safety and comfort for all users, support transit and provide necessary elements for swift capital delivery and economic development.

On June 1, 2022, the Board of Directors for Tax Increment Financing Reinvestment Zone Number Twelve (East Berry Renaissance) ("TIF") approved the expenditure of up to \$200,000.00 to fund a design and planning study along the East Berry Street Corridor. The City and the board of Directors for the TIF will enter into an agreement whereby the City will be reimbursed for the study with TIF funds.

Upon approval of this Mayor and Council Communication (M&C), all appropriations and funding will be as summarized in the table below:

Fund	Entity	Appropriation Amount
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30100	General Capital Projects	\$500,000.00
30286	TIRZ - General Capital	\$200,000.00

The project will follow a four-step planning process, including public outreach, which will begin in fall 2022. First, a needs assessment will be done to document existing conditions, such as traffic counts, mode split, safety, access management, and other analysis. Second, concept development will focus on cross-sections that specify cars, freight, transit, pedestrian and bicycle improvements. The corridor will also benefit from public spaces for all-ages and community uses, parking management, smart technologies, and street grid connections. Third, recommendations and implementation strategies will address near-term, short-term (2-4 years), medium-term (5-10 years) and long-term (11 plus years). Fourth, the final plan and project program will include a prioritized list of capital projects with cost estimates and funding sources; as well as, proposed ordinances and regulating plan.

Funding for this project was not included in the Fiscal Years 2022-2026 Capital Improvement Program (CIP) because the project and funding sources were unknown at the time of its development. This action in this M&C will amend the Fiscal Years 2022-2026 Capital Improvement Program as approved in connection with Ordinance 25073-09-2021.

The East Berry Street Corridor is located in COUNCIL DISTRICTS 5, 8, AND 9.

FISCAL INFORMATION/CERTIFICATION:

The Director of Finance certifies that funds are currently available in the Unspecified-All Funds project within the General Capital Projects Fund and in the TIRZ #12-East Berry Renaissance Fund and upon approval of the above recommendations and adoption of the attached appropriation ordinances, funds will be available in the General Capital Projects Fund and the TIRZ-General Capital Fund for the Berry Street Corridor Plan project. Prior to an expenditure being incurred, the Transportation Public Works Department has the responsibility of verifying the availability of funds.

TO

Fund	Department ID	Account	Project ID	Program	Activity	Budget Year	Reference # (Chartfield 2)	Amount
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FROM

Fund	Department ID	Account	Project ID	Program	Activity	Budget Year	Reference # (Chartfield 2)	Amount
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Submitted for City Manager's Office by: William Johnson (5806)

Originating Department Head: Lauren Prieur (6035)

Additional Information Contact: Monty Hall (8662)
Mary Elliott (7844)

ATTACHMENTS

- [20BERRY STREET CORRIDOR STUDY 1.docx](#) (CFW Internal)
- [20Berry Street Non Bond Scope FID updated.XLSX](#) (CFW Internal)
- [ORD.APP20BERRY STREET CORRIDOR STUDY 30100 AO22\(r1\).docx](#) (Public)
- [ORD.APP20BERRY STREET CORRIDOR STUDY 30286 AO22\(r3\).docx](#) (Public)
- [TIF 12 presentation Berry Street June 2022.pdf](#) (Public)