Data Centers, Development, and Balancing Project Confidentiality with Public Transparency

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Free resource: *DevelopOhio* Toolkit

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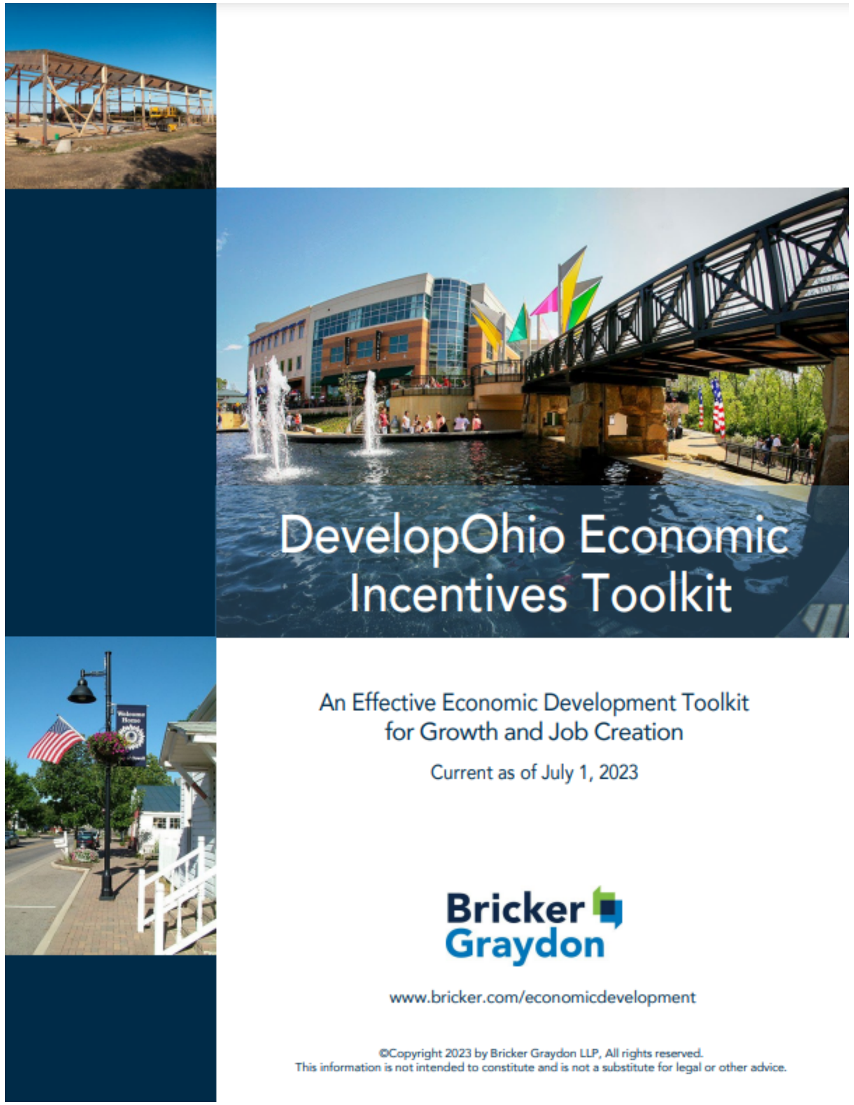

DevelopOhio Economic Incentives Toolkit

An Effective Economic Development Toolkit for Growth and Job Creation

Current as of July 1, 2023

Bricker Graydon

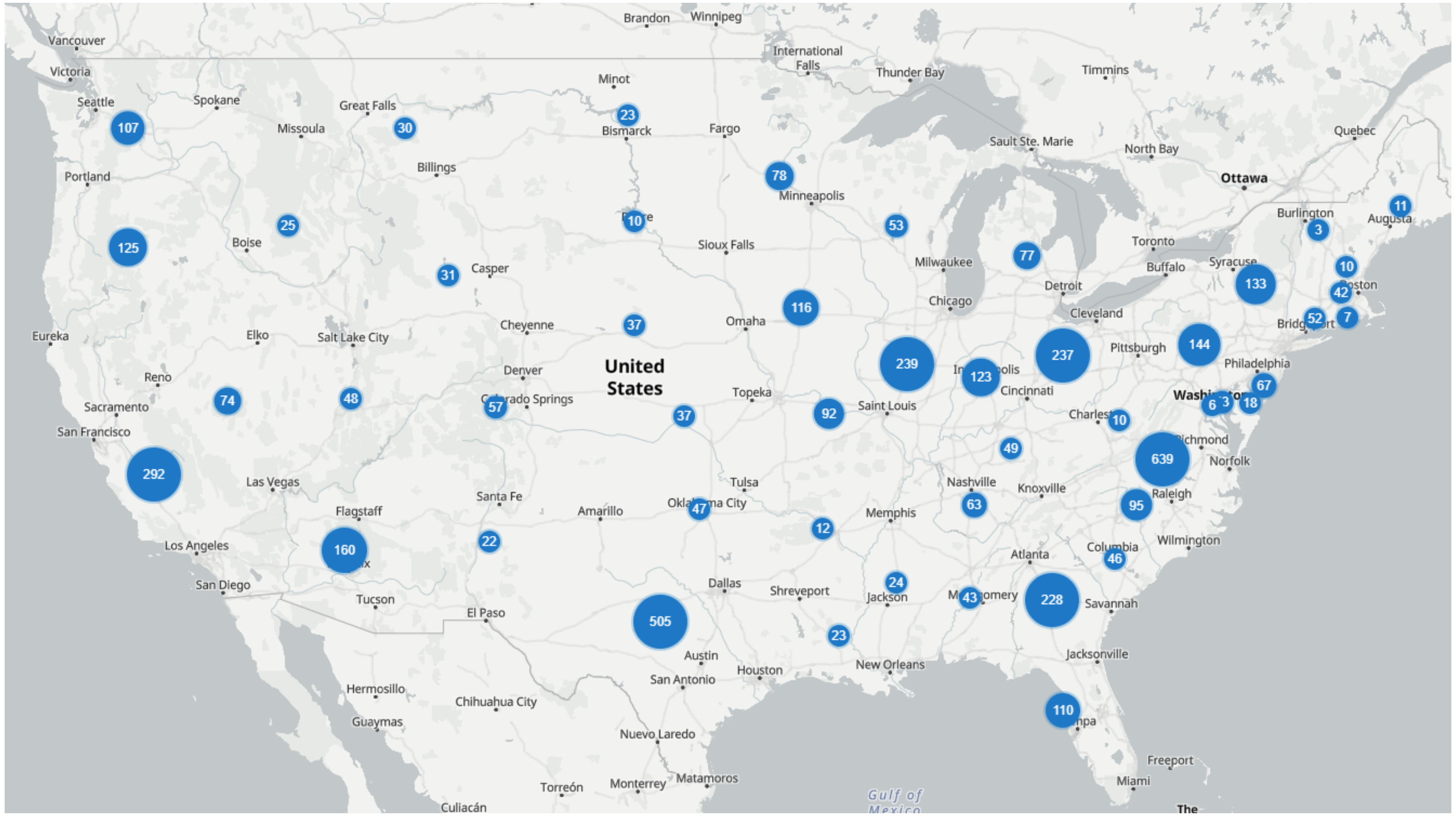
www.bricker.com/economicdevelopment

- *DevelopOhio* blog's free resource:
  - Economic Incentives Toolkit
  - State & local public finance tools
- Since 2011
- User-friendly by design
  - Desk reference guide for "greenhorns" to experienced economic developers

Data Center Locations across USA

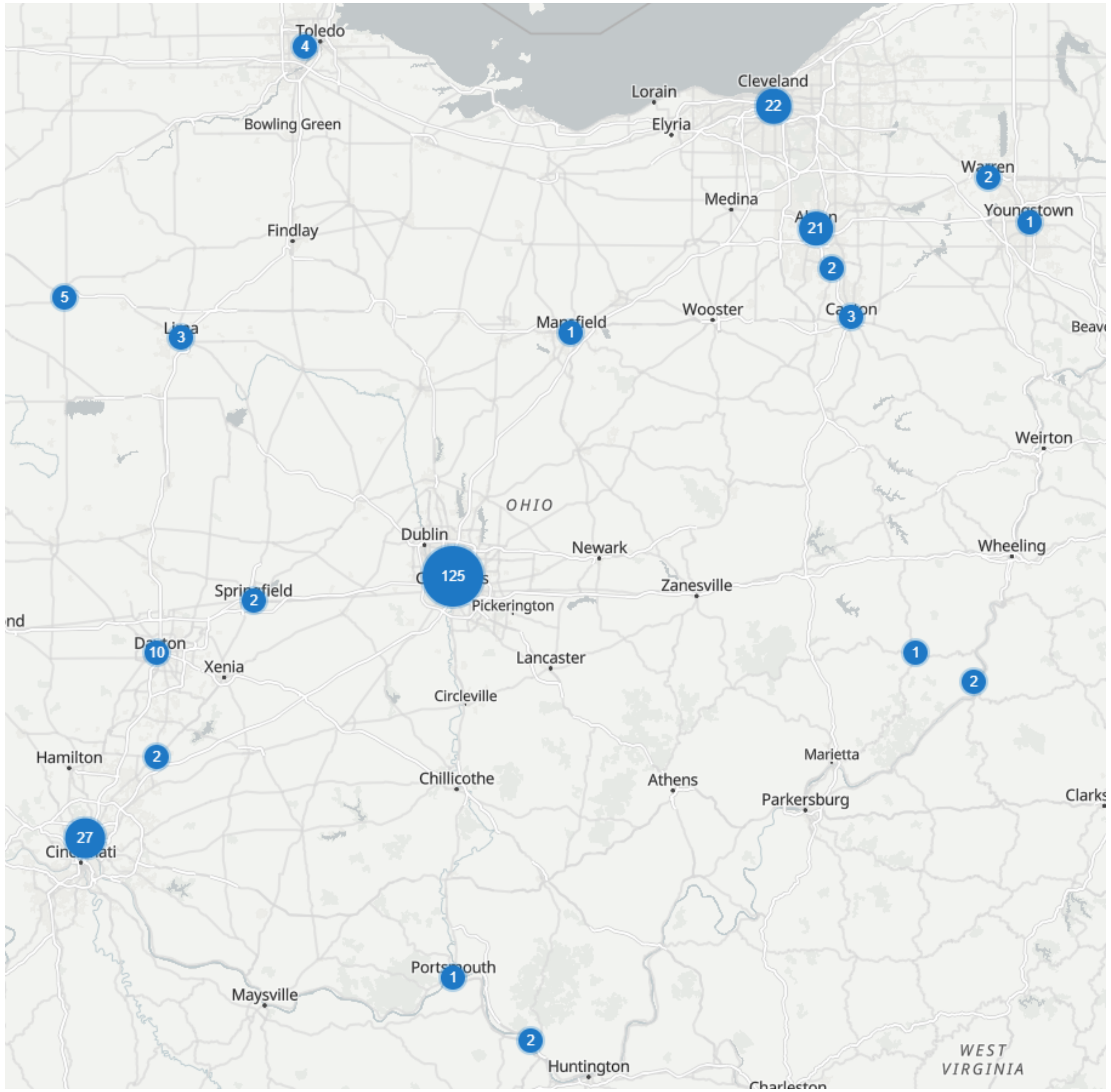
Source: DataCenterMap.com

- Northern Virginia is the national leader w/ 639
- TX (505), CA (292) and IL (239) also leaders
- Ohio ranked #5 and growing w/ 237



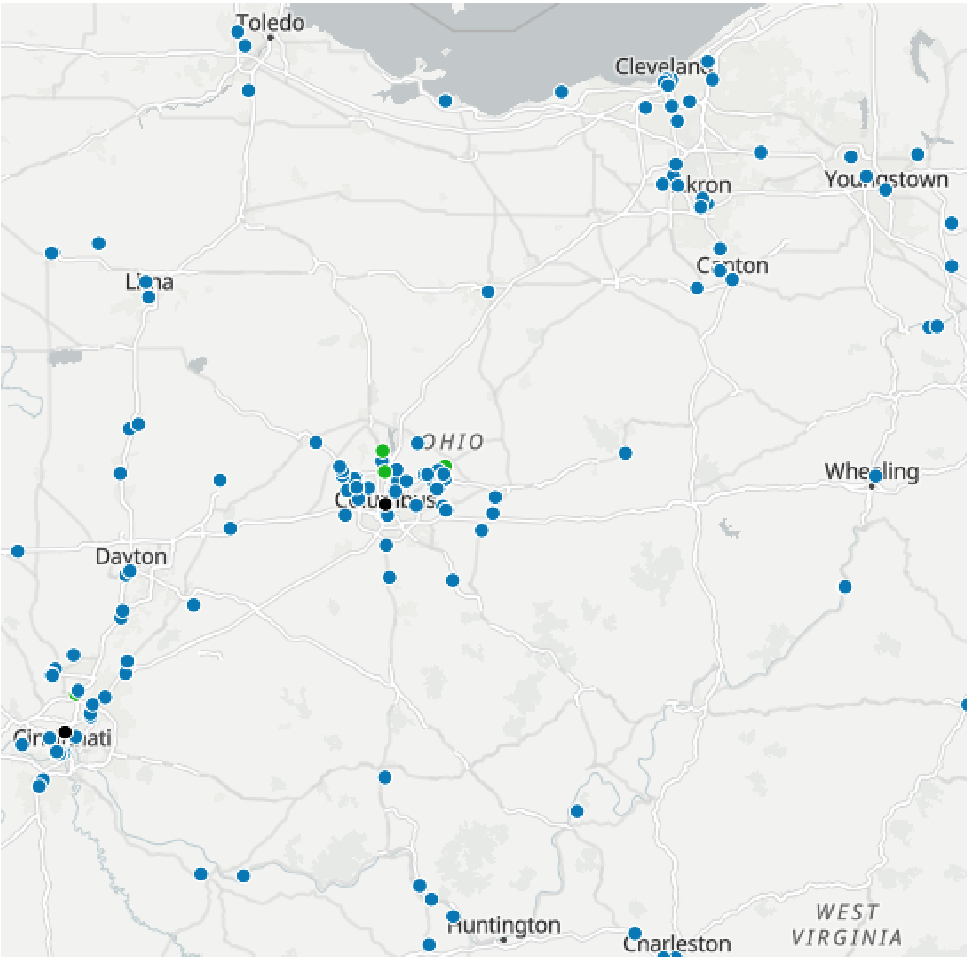
237 Data Centers in Ohio

- According to JobsOhio, hyperscaler announced investments:
  - AWS = $23 Billion
  - Google = $6.7 Billion
  - Meta = $4.7 Billion
  - Microsoft $1 Billion
- Projects are being developed all across Ohio, including in rural locations and brownfield sites, likely because of high electric capacity demands elsewhere

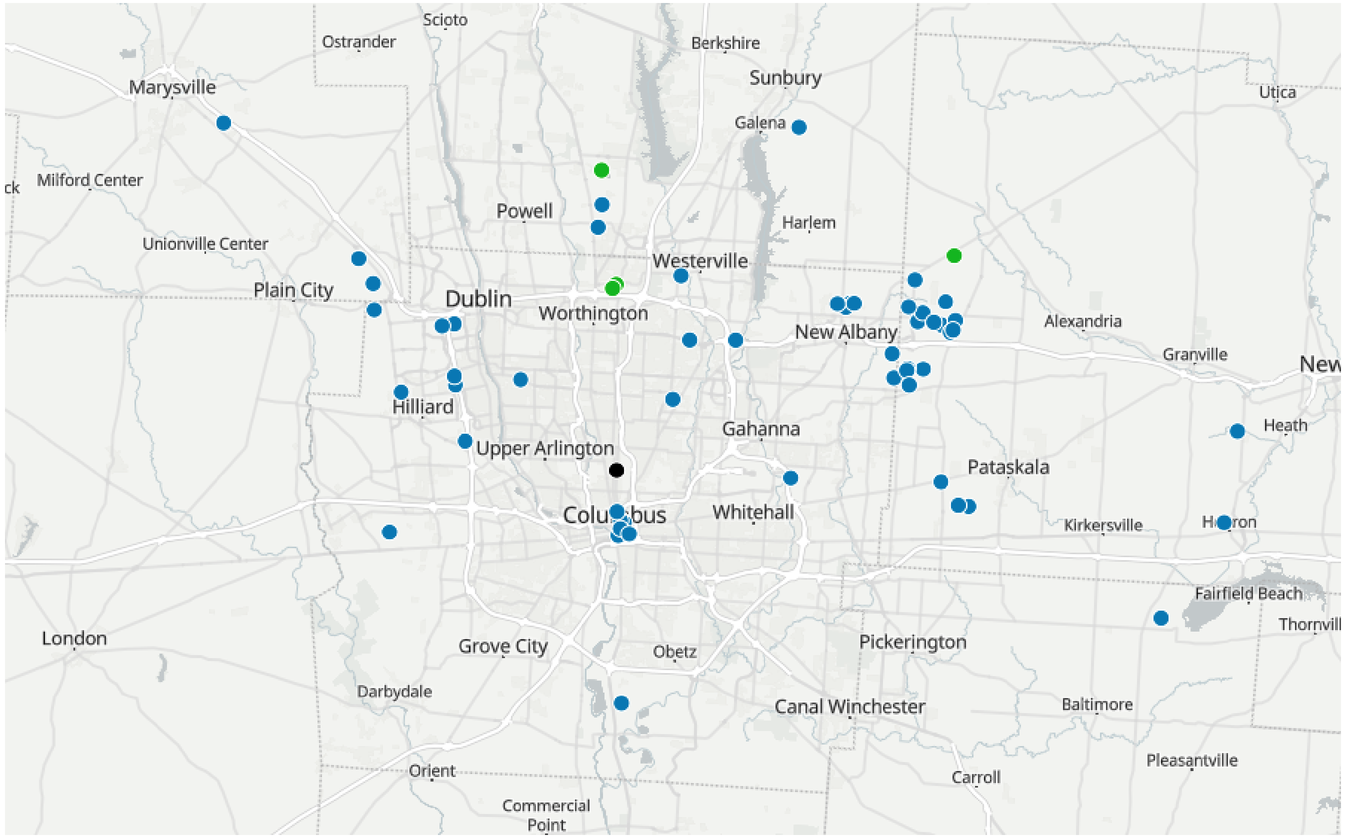


Specific Locations in Ohio

Ohio sourced from Datacentermap.com



Central Ohio



Typical Data Center Characteristics

Physical Size

- Range of 70 acres to 1,500 acres
- Norm: 100 acres to 300 acres (purchase price range $70k - $344k/acre)
- Multi-stage projects typical, often with more than one building per stage/deployment/region
- Individual buildings typically range from 150,000 SF to 500,000 SF

Jobs

- 50 jobs per deployment is typical
- Multiple deployment project sites can reach hundreds of jobs.
- Average wages $80,000 to $100,000 per year
- Co-locations may have operator jobs and client jobs on site

Electric Usage

- Historic range: 10 MW to 200MW
- Ohio examples
  - Vantage 192 MW
  - Cologix 27MW
  - Stack Infrastructure 60MW
- Gigawatt (1,000 MW)+ projects have been proposed.

Water Usage

- Will depend upon the technology used. Air cooling is an option.
- We have seen ranges of 15,000 GPD to 5,000,000 GPD*
- Trend is for recycling water, which greatly reduces water use.
- The amount of water recycling can be a function of water purity/mineral content

** We believe the high range is peak usage not an average usage. Recycling water is normal.*

Data Center Moratoriums

Enacted Moratoriums

- Jerome Township, Union County
- Washington Township, Franklin County
- Village of Mt. Orab, Brown County
- Village of Ashville, Pickaway County
- Grove City, Franklin County
- City of Sunbury, Delaware County
- Village Ada, Hardin Co.
- Green Twp., Jefferson County
- Montgomery Twp., Ashland County
- St. Albans Twp., Licking County (Zoning Prohibited Use)
- City of Cincinnati
- City of Dayton
- City of Monroe (Zoning Prohibited use)
- State of New York

Proposed Moratoriums

- City of Conneaut, Ashtabula County
- Plain City, Madison County

Public Records

- A public record is a "<u>record</u>" kept by a "<u>public office</u>" (R.C. 149.43(A)(1))
- A "record" under R.C. 149.011(G) is defined as:
  - A document, device, or item, regardless of physical form or characteristic, including an electronic record as defined in R.C. 1306.01 . . .
  - . . . created, received by, or coming under the jurisdiction of a public office . . .
  - . . . which services to document the organization, functions, policies, decisions, procedures, operations, or other activities of the office.
- Any record that meets the definition of "public record" – regardless of where it is held – is generally subject to release.
- Public entities can push back on overly broad FOIA requests and redact exempted information.

Public Meetings

- Any “meeting” (R.C. 121.22(B)(2)
  - Prearranged discussion
  - Of the public business of the public body
  - By a majority of its members
- Every public body must, by rule, establish a reasonable method for individuals to determine the time and place of regular meetings and the time, place, and purpose of special meetings. R.C. 121.22(F)
  - MAKE SURE YOU HAVE THIS – many places do not, even if they have it by practice
- Need to provide notice to news media and individuals who have previously requested to be provided notice.

Executive Session

- Can only enter into executive session for permitted reasons in R.C. 121.22(G):
  - Personnel matters (but identify *which* matters listed in (G)(1))
  - Purchase or sale of property – (G)(2)
  - Pending or imminent court action – (G)(3)
  - Collective bargaining – (G)(4)
  - Matters required to be kept confidential – (G)(5) (attorney-client doesn’t count)
  - Security matters – (G)(6)
  - Confidential business information of an applicant for economic development – (G)(8)

Non-Disclosure Agreements

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- There is nothing in Ohio law that prohibits a public official or employee from signing an NDA, but there are a few important caveats:
  - Ohio courts have made clear that you cannot get out of the Public Records Act by contract.
  - So, if there is a public-records request for a nondisclosure agreement, it must be produced in response.
- If it doesn't cover records, then what can NDAs cover?
  - Confirming whether a project even exists
  - Public comments on a project or confidential information
  - Private discussions of the project or confidential information with individuals not under an NDA
- Think about the NDA covering *oral comments/discussions* and not covering any written documents/communications
- Strategy: Make clear to the project/developer that at certain thresholds, public announcements need to be made and the project needs to be involved

Key Elements Senate Bill 646 as introduced

1. New data centers with a monthly demand of 250+ MW must contract for new electricity generation and pay their own electric costs separate from general customer rates via a tariff arrangement approved by PUCO.
2. Prohibits utilities from charging other customers for costs of retail electric service to data centers.
3. Requires electric distribution companies to develop data center tariff rates.
4. Prohibits port authorities from entering capital leases with DCs outside of their territorial jurisdiction
5. Caps state sales tax exemption at 50%. DCs of 250+ MW must meet requirement #1 to be eligible.
6. Excludes data centers from "mega project" designation
7. Caps property tax abatements at 50% and requires communities to include security provisions from DCs in their abatement agreements.
8. Requires DCs to report consumptive water use and use best practices for water conservation as well as requires OEPA to develop sewer discharge testing protocols.

Hypothetical Tax Increment Financing Scenario

TIF Year	Tax Year	Collection Year	Land Increment	Improvement Increment	Total Increment	% Complete	Total TIF Increment	Gross TIF Revenues	Less Auditor Collection Fee 1%	Allocated To Schools	Proportional JVS Compensation	Net TIF Revenues	Allocated to Public Infrastructure Debt	Excess TIF Revenues
0	2025	2026	-	-	-	0%	-	-	-	-	-	-		
0	2026	2027	-	-	-	0%	-	-	-	-	-	-		
1	2027	2028	17,015,625	209,859,375	226,875,000	50%	226,875,000	3,668,431	(36,684)	(1,703,075)	(222,246)	1,706,426	(1,023,855)	682,570
2	2028	2029	25,523,438	314,789,063	340,312,500	75%	340,312,500	5,502,647	(55,026)	(2,554,613)	(333,369)	2,559,639	(1,535,783)	1,023,855
3	2029	2030	34,031,250	419,718,750	453,750,000	100%	453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
4	2030	2031	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
5	2031	2032	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
6	2032	2033	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
7	2033	2034	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
8	2034	2035	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
9	2035	2036	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
10	2036	2037	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
11	2037	2038	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
12	2038	2039	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
13	2039	2040	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
14	2040	2041	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
15	2041	2042	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
16	2042	2043	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
17	2043	2044	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
18	2044	2045	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
19	2045	2046	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
20	2046	2047	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
21	2047	2048	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
22	2048	2049	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
23	2049	2050	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
24	2050	2051	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
25	2051	2052	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852	(2,047,711)	1,365,141
26	2052	2053	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852		3,412,852
27	2053	2054	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852		3,412,852
28	2054	2055	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852		3,412,852
29	2055	2056	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852		3,412,852
30	2056	2057	34,031,250	419,718,750	453,750,000		453,750,000	7,336,862	(73,369)	(3,406,150)	(444,492)	3,412,852		3,412,852
							Totals	214,603,222	(2,146,032)	**(99,629,898)**	(13,001,382)	**99,825,909**	**(49,656,991)**	**50,168,918**
							PV at 6%	85,348,381	(853,484)	(39,623,126)	(5,170,691)	39,701,080	(24,755,103)	19,853,031

Hypothetical CRA and TIF Scenario

Project Assumptions	
Auditor Property Valuation	$ 144,150,000
[redacted] County Tax District	300
TIF Percentage	100%
TIF Term	30 Years
CRA Percentage	75%
CRA Term	15 Years
TIF School Comp	100%
CRA School Comp	0%

Effective Millage Rates	
[redacted]	6.974285
	20
	3.162039
	0.9
	7.037619
Total Effective Rate	**38.073943**

TIF Year	Tax Year	Collection Year	Land Increment	Improvement Increment	Total Increment	Abated CRA Value	CRA Benefit to Company	Gross TIF Revenues	Less Auditor Collection Fee 1%	[redacted] LSD	Allocated to [redacted] JVSD	Net TIF Revenues to Village
1	2026	2027	$ 750,000	$ 71,700,000	$ 72,075,000	$ 53,775,000	$ 716,599	$ 243,864	$ (2,439)	$ (126,819)	$ (20,050)	$ **94,556**
2	2027	2028	750,000	107,550,000	108,112,500	80,662,500	1,074,899	365,795	(3,658)	(190,229)	(30,075)	**141,833**
3	2028	2029	750,000	143,400,000	144,150,000	107,550,000	1,433,198	487,727	(4,877)	(253,638)	(40,101)	**189,111**
4	2029	2030	750,000	143,400,000	144,150,000	107,550,000	1,433,198	487,727	(4,877)	(253,638)	(40,101)	**189,111**
5	2030	2031	750,000	143,400,000	144,150,000	107,550,000	1,433,198	487,727	(4,877)	(253,638)	(40,101)	**189,111**
6	2031	2032	750,000	143,400,000	144,150,000	107,550,000	1,433,198	487,727	(4,877)	(253,638)	(40,101)	**189,111**
7	2032	2033	750,000	143,400,000	144,150,000	107,550,000	1,433,198	487,727	(4,877)	(253,638)	(40,101)	**189,111**
8	2033	2034	750,000	143,400,000	144,150,000	107,550,000	1,433,198	487,727	(4,877)	(253,638)	(40,101)	**189,111**
9	2034	2035	750,000	143,400,000	144,150,000	107,550,000	1,433,198	487,727	(4,877)	(253,638)	(40,101)	**189,111**
10	2035	2036	750,000	143,400,000	144,150,000	107,550,000	1,433,198	487,727	(4,877)	(253,638)	(40,101)	**189,111**
11	2036	2037	750,000	143,400,000	144,150,000	107,550,000	1,433,198	487,727	(4,877)	(253,638)	(40,101)	**189,111**
12	2037	2038	750,000	143,400,000	144,150,000	107,550,000	1,433,198	487,727	(4,877)	(253,638)	(40,101)	**189,111**
13	2038	2039	750,000	143,400,000	144,150,000	107,550,000	1,433,198	487,727	(4,877)	(253,638)	(40,101)	**189,111**
14	2039	2040	750,000	143,400,000	144,150,000	107,550,000	1,433,198	487,727	(4,877)	(253,638)	(40,101)	**189,111**
15	2040	2041	750,000	143,400,000	144,150,000	107,550,000	1,433,198	487,727	(4,877)	(253,638)	(40,101)	**189,111**
16	2041	2042	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
17	2042	2043	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
18	2043	2044	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
19	2044	2045	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
20	2045	2046	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
21	2046	2047	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
22	2047	2048	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
23	2048	2049	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
24	2049	2050	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
25	2050	2051	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
26	2051	2052	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
27	2052	2053	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
28	2053	2054	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
29	2054	2055	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
30	2055	2056	750,000	143,400,000	144,150,000			1,920,926	(19,209)	(998,960)	(157,937)	**744,819**
						Totals	$ 20,423,077	$ 35,763,997	$ (357,640)	$ (18,598,734)	$ (2,940,496)	$ **13,867,127**
						NPV @ 6%	$ 12,924,657	$ 12,183,058	$ (121,831)	$ (6,335,686)	$ (1,001,684)	$ **4,723,857**

Thank You

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