New York State Guidance for Host Communities

Implementing the Community Investment Framework for Data Center Development

I. PURPOSE OF THIS GUIDANCE

Data Centers are among the fastest-growing forms of industrial development across the United States. Under Governor Hochul's leadership, New York is taking a proactive approach to ensure this growth is managed responsibly – balancing economic opportunity with thoughtful planning and engagement with the communities that host these facilities.

In alignment with **New York State Executive Order No. 62**, which encourages community benefit commitments associated with data center development, New York has developed a voluntary **Community Investment Framework** (the Framework or CIF)**.** The Framework provides localities with a structured approach to identifying, negotiating, and documenting investments from data center developers / operators / owners (Data Center Parties) that address local priorities and create lasting community benefits.

This Guidance accompanies New York State's Community Investment Framework and is intended to be a resource to support productive negotiations for community investments which:

- Strengthen local infrastructure
- Improve quality of life
- Prepare residents for new economic opportunities
- Address project impacts
- Create lasting community assets

Fundamental to this Guidance is a recognition that every project and every community is different. And while the Framework is intended to establish a consistent structure, it is not intended to produce identical outcomes. Municipalities are encouraged to utilize or modify the CIF as they see fit, and to tailor commitments to reflect local priorities, existing infrastructure, and community needs. This Guidance seeks to help inform the ways in which the Framework could be customized to best serve individual host communities.

The Framework is not intended to serve as a comprehensive agreement between the host community and the Data Center Parties. It is recommended that localities engage legal counsel to both negotiate the topics outlined in the Community Investment Framework and to memorialize any final agreements - including the implementation of Framework

agreements and all applicable terms and conditions. It is up to municipalities to decide, with the advice of counsel, whether to make the Framework binding.

In addition to the terms negotiated in a CIF, Data Center projects may be subject to review pursuant to the State Environmental Quality Review Act (SEQRA) or other statutes and regulatory processes. Therefore, the CIF and related agreements should be undertaken in coordination with other necessary environmental and regulatory approvals to ensure consistency and compliance with SEQRA or other applicable laws and regulations.

Importantly, as a locality negotiates benefit terms with a developer, they may be asked to sign a Non-Disclosure Agreement (NDA). The local government should think carefully about whether such NDA benefits the community, and if it decides to move forward with one, it should limit the agreement to protecting proprietary or commercially sensitive information or trade secrets that are exempt from mandatory disclosure under the New York Freedom of Information Law.

II. ASSESSING COMMUNITY IMPACTS

PILOT Agreements: Data center projects may result in direct fiscal benefits to a community in terms of property tax revenue. However, it is important for localities to assess the projected revenue gains against Payment In Lieu of Taxes (PILOT) incentive structures, if any, which may reduce direct fiscal benefits.

Construction Labor Impacts: While construction projects often create temporary local construction jobs, many data center projects incorporate traveling teams of builders, who follow building projects nationwide. Localities are advised to assess the degree to which New York construction workers will be utilized.

Visual, Noise, and Other Environmental Impacts: Data centers can be of significant size and scale. These projects commonly emit noise and light that can disturb local residents or wildlife. Data centers may also involve other environmental impacts that require identification and thorough evaluation to ensure consistency with local, state, and federal regulatory requirements (*e.g.* potential air quality impacts and water quality/quantity impacts). After a thorough environmental impact evaluation, most often accomplished pursuant to the SEQRA, ways to mitigate such impacts may be identified. Localities may implement identified mitigation measures through commitments by Data Center Parties regarding the site design.

Site and Energy Usage: Data Center projects typically require large industrial sites and consume significant energy. Siting a data center on an industrial site often means that a community expends the limited resources of space, energy, water and other resources on a project which typically results in fewer permanent jobs. Therefore, localities are encouraged to assess the degree to which siting a data center creates significant demand on community resources and infrastructure and how Data Center Parties can help address or offset the increased usage.

III. GUIDING PRINCIPLES

The Community Investment Framework should be designed to address economic development and municipal needs to ensure residents are not on the hook for costs caused by the data center or harmed by missed opportunities. This will result in avoided energy costs as part of a well-structured CIF.

Additionally, the CIF should build on statewide regulatory frameworks being finalized by the Department of Public Service that are designed to protect New York ratepayers from costs associated with data center development *and* create a funding pathway to directly lower bills for residential and commercial customers. A locality should engage with a developer to understand opportunities for customer-sited distributed energy, infrastructure upgrades, and other energy efficiency upgrades.

Together, these efforts will unlock new growth, help keep the costs associated with energy investments down, and ensure communities across the State directly benefit from this new development.

Should localities choose to utilize the CIF, New York recommends adhering to the following principles throughout:

$ **Investment Benchmark**	Hosting a data center represents a significant land use and infrastructure commitment. Relative to alternative industrial development, data centers typically generate fewer permanent jobs per megawatt of electric demand. This Framework, pursuant to Governor Hochul's Executive Order No. 62, establishes a recommended community investment benchmark of **$1 million-per-megawatt** of utility demand to help host communities share equitably in the long-term economic value created by these projects. Localities are encouraged to negotiate the timeline of the Data Center Parties' payments into the fund.
⏳ **Long-Term Planning**	A data center may be present within the community for decades, and so the commitments should be responsive to long-term presence. Localities should also plan around what happens if a data center leaves the facility.

Ongoing Costs	In addition to upfront costs, projects funded through the CIF may require ongoing maintenance. Localities should plan for these ongoing costs.
Establish Community Priorities	Preparing a list of local priority investment areas, reflective of local input, will help structure CIF negotiations, resulting in a community-informed plan that includes upfront costs, ongoing costs, and an anticipated timeline. The community should periodically revisit the plan as local needs and priorities change.
Confirm Local Ownership	The CIF is intended to focus on community-held assets. For example, road improvement investments would need to be limited to publicly- maintained roads, and not privately owned roads. Throughout the CIF development process, localities are encouraged to confirm they have ownership over the project assets receiving funding and are therefore able to undertake the project.
Project Readiness	Priority projects will advance on different timelines. Some may be ready to begin immediately, while others may take years to prepare. Both may be important investments, however localities should understand the timing of project start and project end, to provide clear timelines to residents, and to allow localities to contemplate a multi-year and phased investment strategy.

Negotiating Community Investments.

Localities are encouraged to:

- **Focus on Community Engagement:** Local residents and stakeholders should be invited through transparent public processes to share input into priority projects, and to share their reactions related to the incoming data center project. This feedback should inform the structure of the CIF throughout.
- **Identify Priorities Early:** Residents should be engaged early to inform a prioritized list of investments based on local planning input, identified infrastructure needs,

and community feedback so that negotiations are driven by established community objectives rather than project-by-project requests.

- **Engage with Decision Makers:** Understand who has decision making authority on behalf of the data center developer/operator/owner. In some cases, the project developer differs from the long-term owner or operator, and municipalities should ensure that any commitments are made by the entity that will ultimately be responsible for fulfilling them. Localities are encouraged to engage developers even if they are not the owner or long-term operator as developers can also make commitments and investments throughout the design and construction of the project.
- **Incentivize Good Faith and Timely Negotiations:** To encourage good faith and timely negotiations that result in binding agreements host communities can rely on, localities are encouraged to engage their legal counsel to assist with the execution of a binding agreement prior to the start of construction.
- **Engage Counsel**: Knowledgeable counsel can help municipalities transform their Framework into a binding document with clear implementation processes and negotiate provisions on behalf of municipalities that are protective of the specific host communities' interests. Localities may require, as part of the Framework negotiation process, that Data Center Parties deposit funds into an imprest account to pay for a counsel of choice for the municipalities.
- **Start Negotiations Early**: Ideally before design and construction plans are finalized and labor agreements are signed, when community benefit commitments can be incorporated into the overall development strategy.
- **Define Investment Areas Clearly:** Localities should identify the project, upfront funding needed, ongoing funding needed, implementation timing, and project details. Defining specific investment areas provides greater certainty to both parties than general statements of intent.
- **Plan for the Future:** Agreements should specify whether additional community investments will be required if the project expands beyond its initial scope or increases its infrastructure or utility demands over time.
- **Coordinate Existing Plans:** Community investments should complement—rather than duplicate—existing local investment plans, and should be designed to leverage additional funding wherever possible.
- **Document Responsibilities Clearly:** The agreements should identify who is responsible for implementing each commitment, the timeline for completion, and any reporting or verification requirements. Implementation is most effective when roles and responsibilities are well-defined.
- **Maintain Flexibility:** While commitments should be clearly defined, municipalities may wish to establish a process for mutually agreeing to substitute projects if priorities change over the life of the agreement.

Establishing the Fund.

The **Community Investment Fund** should be established early in the development

process to provide a transparent and accountable mechanism for receiving, managing, and deploying the developer/operator's commitments. Localities are advised to adhere to the Investment Benchmark (Section III(A) of the Community Investment Framework) to establish the baseline investment level for the fund. The Investment Benchmark offers a proposed community investment benchmark of $1 million-per-megawatt of utility demand, inclusive of investments into grid modernization as required by New York State. For example, a project utilizing 50MW has an associated recommended community investment level of $50M, much of which may be distributed through a Community Investment Fund.

Parties are encouraged to negotiate payment schedules that include initial deposit amounts as well as the timing and amounts of subsequent payments. Localities may also consider setting a minimum threshold that requires replenishment. Depending on how long the data center is expected to be in operation, localities may wish to factor inflation into long term payment schedules. If the developer and the owner/operator are different parties and are both involved, separate schedules should be set to make clear each party's obligations.

Before receiving contributions, localities should establish how the Fund will be administered. They should identify:

- The entity responsible for managing the Fund (municipality, local development corporation, industrial development agency, or other governmental entity);
- Roles and responsibilities for approving expenditures;
- Financial management and accounting procedures;
- Public reporting requirements; and
- Processes for evaluating and approving projects.

Municipalities may consider defining certain broad categories of authorized usage for the Fund such as administration costs for the Fund, costs for enforcing the agreements with Data Center Parties, mitigation funds (for any adverse impacts on the environment, community water sources, or infrastructure), or to remediate defunct or abandoned data center project sites.

Clearly defining governance at the outset helps ensure accountability and builds public confidence.

IV. RESOURCES

The following state agencies are resources to localities:

New York State Agency or Authority	Description

Department of Environmental Conservation (DEC)	DEC protects the land, water, and air resources in New York. DEC uses policies and regulations to limit environmental impacts. DEC issues permits and licenses to individuals, municipalities, and corporations so they can comply with these regulations. https://dec.ny.gov/
Department of Homes and Community Renewal (HCR)	HCR develops, preserves and protects affordable housing and invests in economically vibrant communities. HCR works with many private, public and nonprofit partners to create safe, healthy and affordable housing opportunities for all New Yorkers. https://hcr.ny.gov/
Department of Labor (DOL)	DOL builds and supports New York's businesses, helping them find qualified workers and keeping them informed about tools and incentives to make their businesses thrive. DOL empowers and protects New York's workers by supporting the unemployed and by ensuring all workers have a safe workplace where they receive a fair wage. https://dol.ny.gov/
Department of Public Service (DPS)	DPS has a broad mandate to ensure access to safe and reliable utility service at just and reasonable rates. DPS is the staff arm of the Public Service Commission and is responsible for regulating the State's electric, gas, steam, telecommunications, and water utilities, and overseeing the cable industry. https://dps.ny.gov/
Department of State (DOS)	DOS' mission is to provide a better quality of life and expand opportunities for all New Yorkers by, among other things, fostering community revitalization, catalyzing economic growth through business formation, and supporting local governments. https://dos.ny.gov/

Department of Transportation (DOT)	DOT's mission is to provide a safe, reliable, equitable, and resilient transportation system that connects communities, enhances quality of life, protects the environment, and supports the economic well-being of New York State. https://www.dot.ny.gov/index
Empire State Development (ESD)	ESD works to attract new businesses to the state and support the growth of existing firms by means of financial incentives, real estate development, marketing, and small business services. https://esd.ny.gov/