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Oil and Gas Alert: A Win-Win Solution – Using Tax Increment Financing to Pay for Infrastructure Improvements in Areas Impacted by Oil and Gas Production from Shale

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The Problem:

The development of oil and gas from Utica shale is one of the most significant opportunities for economic development in Ohio in the recent past. For example, geologists have estimated that Ohio's portion of Utica shale alone could contain up to 15 trillion cubic feet of natural gas and 5 million barrels of oil-related liquids. Extracting the natural gas and especially the liquids is expected to create many thousands of jobs.

Many of the areas where oil and gas are present are rural in nature, and the roads and other infrastructure currently in place may need to be upgraded to handle the expected traffic needed to drill and produce the oil and gas. Companies that drill for oil and gas often fund these road and infrastructure improvements themselves, resulting in millions of dollars of capital expenditures that could be used for production and the creation of additional jobs.

The Solution:

Companies and local authorities can work together to take advantage of tax increment financing ("TIF") to pay for the construction and reconstruction of roads and other public infrastructure. TIF is a tool that captures increases in the assessed value of real property and diverts the payments made on those increases into a special fund to be used for public infrastructure improvements. These payments, called "service payments," are in the same amount, and made at the same time and in the same manner as the real property taxes otherwise due on the increase in assessed value. In other words, the establishment of a TIF does not result in an increase in taxes, a decrease in taxes or a decrease in overall payments by the property owner. A TIF would cover all increases in assessed value, including values associated with oil and gas interests – both from active wells (the "6/6A tax") and from un-mined interests. Moreover, it would apply over an entire specified area, which can include numerous different property owners.

In this case, the TIF service payments could be used to reimburse companies for the required infrastructure improvements, or they could be used to pay debt service on bonds issued by local authorities to fund those infrastructure improvements or other infrastructure improvements. Depending on the type and cost of the infrastructure improvements, the TIF could involve a port authority as a financing vehicle, or other potential creative TIF structures can be used.

The TIF could be structured in such a way that all parties benefit. The companies benefit through the availability of reliable, regular funding for public infrastructure improvements that otherwise would be paid out-of-pocket. The local community benefits from improved infrastructure and the significant jobs that are created in connection with oil and gas production. Finally, depending on the terms of the TIF, the local school district and joint vocational school district can be compensated using TIF revenues, allowing them to benefit from the increase in property values.

Using TIF in this manner is complicated, and in many ways, unprecedented in Ohio. Vorys is well-equipped to address those issues and develop an effective TIF structure. Our TIF experts have structured and led TIF deals for some of the largest development projects in Ohio in the past 20 years. If you feel that your company or community could benefit from the use of TIF in connection with oil and gas production activities, please contact us.

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