

CT Data Center at Beacon Falls

Qualified Data Center Host Municipality Fee Agreement
Memorandum of Understanding

This Qualified Data Center Host Municipality Fee Agreement Memorandum of Understanding (“MOU”) is entered into as of the ___ day of April, 2022 by and between the Town of Beacon Falls, Connecticut (“Beacon Falls”) and CT Data Center, LLC, a Connecticut limited liability company (“Developer”). Beacon Falls and Developer are each referred to individually herein as a “Party” and together as “Parties”.

WHEREAS, pursuant to Public Act No. 21-1 (“Public Act 21-1”), the State of Connecticut provides certain tax incentives for the development of large-scale data centers in the state; and

WHEREAS, Public Act 21-1 provides for the exemption from taxation of real and personal property, including equipment used to generate electricity, employed in development, acquisition, construction, rehabilitation, renovation, repair or operation of a facility to be used as a qualified data center, including the cost of land, buildings, site improvements, modular data centers, lease payments, site characterization and assessment, engineering services, design services and data center equipment acquisition and permitting related to such data center equipment acquisitions; and

WHEREAS, Public Act 21-1 applies to Qualified Data Centers, defined as a facility that is developed, acquired, constructed, rehabilitated, renovated, repaired or operated, to house a group of networked computer servers in one physical location or multiple contiguous locations to centralize the storage, management and dissemination of data and information pertaining to a particular business or classification or body of knowledge, that creates a minimum qualified investment on or before the fifth anniversary of the commencement of construction or renovation of the data center facility of at least two hundred million dollars (\$200,000,000) (the “Qualified Investment”); and

WHEREAS, Public Act 21-1 provides that any person that anticipates it will own, operate or be a colocation tenant in a Qualified Data Center in Connecticut may apply to the Commissioner of Economic and Community Development to enter into an agreement for exemption from the taxes imposed under chapters 203 and 219 of the general statutes subject to satisfying certain requirements required by the Public Act, including the obligation to enter into and satisfy the requirements of a written host municipality fee agreement with the municipality in which such Qualified Data Center is located (the “Host Municipality”); and

WHEREAS, Developer intends to develop and serve as the “Owner” of a Qualified Data Center on certain parcels of property constituting approximately 47.6 acres located at Lopus Road in Beacon Falls and identified on the map attached hereto on Exhibit A (the “Parcels”); and

WHEREAS, the building and other components expected to constitute the Qualified Data Center are described on Exhibit B attached hereto; and

WHEREAS, Developer intends to develop on-site Class I generation to power, and be a part of, said Qualified Data Center; and

WHEREAS, said Class I generation system will be designed to include the capability to capture a significant portion of the system's carbon dioxide emissions and convert them to usable products; and

WHEREAS, Developer expects that one or more colocation tenants will make investments in, and operate, Qualified Data Center Equipment in said Qualified Data Center; and

WHEREAS, Beacon Falls expects to receive substantial benefits from hosting said Qualified Data Center developed and operated by Developer; and

WHEREAS, the terms and conditions contained herein shall be incorporated into a final, definitive Qualified Data Center Host Municipality Fee Agreement ("Agreement") prior to the commencement of construction of the Qualified Data Center.

NOW THEREFORE, in consideration of the promises herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree to be legally bound as follows:

1. Definitions:

All defined terms set forth in Public Act 21-1 shall be deemed incorporated into this MOU and the Agreement. As referenced herein, references to Owner of the Qualified Data Center, Operator or affiliate of the Operator of the Qualified Data Center, or Colocation Tenant, or the like, shall include multiple Owners, Operators, Colocation Tenants, and their respective affiliates and successors as applicable in the context of this MOU and the Agreement.

2. Changes in Law:

In the event that any federal or state statute, regulation or rule, including any revisions to Public Act 21-1, materially alters the terms and conditions of this MOU, the Parties agree to enter into good faith negotiations to preserve the rights, obligations and benefits set out herein.

3. Payments:

a. Payments Prior to Issuance of a Certificate of Occupancy

During the term of the Agreement until the issuance of a building permit (the "Building Permit") to construct any component of the Qualified Data Center, the Developer shall pay all real and personal property taxes with respect to the Parcel and any personal property thereon in accordance with applicable law.

In lieu of the payment of real and personal property taxes that would otherwise be owing from the Developer to Beacon Falls on the real and personal property relating to the Qualified Data Center located on the Parcel, the Developer shall be responsible for the following payments.

Upon the issuance of the Building Permit for any component of the Qualified Data Center and prior to receipt of a temporary or final certificate of occupancy for such Qualified Data Center or any component thereof (the “Certificate of Occupancy”), the Developer, together with Operator and/or Colocation Tenants (as applicable), shall pay the following amounts each year during the period commencing with the issuance of such Building Permit and ending with the issuance of such Certificate of Occupancy (the “Construction Period”):

- i. Fifty Thousand Dollars (\$50,000) to be paid during the first year of the Construction Period;
- ii. Seventy-Five Thousand Dollars (\$75,000) to be paid during the second year of the Construction Period;
- iii. One Hundred Thousand Dollars (\$100,000) to be paid during the third year of the Construction Period; and
- iv. Two Hundred Thousand Dollars (\$200,000) to be paid during the fourth year of the Construction Period.

The Developer agrees to commence construction of the Data Center Facility (as defined in Exhibit B attached hereto) within three (3) months from the date of issuance of the Building Permit which shall, include, without limitation, the commencement of work on the foundation of such building.

b. Host Municipality Fee to be paid upon issuance of the Certificate of Occupancy

Upon the issuance of the Certificate of Occupancy, the Developer, together with Operator and/or Colocation Tenants (as applicable), shall be responsible for the payment to Beacon Falls of an annual host municipality fee (the “Host Municipality Fee”). The Host Municipality Fee for the Qualified Data Center, subject to annual increases as provided in Section 3.d. below, shall be as follows:

- i. One Million Five Hundred Thousand Dollars (\$1,500,000) to be paid for the first year after the issuance of the Certificate of Occupancy;
- ii. Two Million Dollars (\$2,000,000) to be paid for the second year after the issuance of the Certificate of Occupancy; and
- iii. Two Million Five Hundred Thousand Dollars (\$2,500,000) to be paid for the third year after the issuance of the Certificate of Occupancy and each year thereafter;

provided that from and after the first date on which the designed data storage capacity or actual use, if in excess of design capacity, plus all other electricity utilized in connection with the operation of the Qualified Data Center ("Capacity") during a Contract Year measured in Megawatts ("MW"), as detailed in the Agreement, is equal to or more than thirty-two (32) MW, the Host Municipality Fee shall be Two Million Five Hundred Thousand Dollars (\$2,500,000) per annum.

Each payment of the Host Municipality Fee shall be due on the annual anniversary of the date that the Certificate of Occupancy is issued ("Contract Year") commencing one year after the issuance of the Certificate of Occupancy.

c. Proration

The payment of the Host Municipality Fees shall be prorated based upon the dates of issuance of the Building Permit and the Certificate of Occupancy to be detailed in the Agreement.

d. Host Municipality Fee Escalation

The Host Municipality Fee amounts shall escalate annually beginning the first anniversary following issuance of the Certificate of Occupancy at a rate equal to the greater of (i) two (2) percent, or (ii) the percentage increase, if any, reflected in the Consumer Price Index for the Northeast Region, All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor ("CPI Index") for such year, provided that in no event shall the annual increase exceed three percent (3%).

e. Other Fees

Nothing in this MOU or the Agreement shall exempt Developer from its responsibility to pay other regular and customary permit fees to Beacon Falls, including building fees.

4. Term:

The term of the Agreement shall begin on its effective date and shall continue for twenty (20) years from the issuance date of the initial Certificate of Occupancy so long as the qualified investment in said Qualified Data Center made on or before the fifth (5th) anniversary of the commencement of construction of the Qualified Data Center equals or exceeds Two Hundred Million Dollars (\$200,000,000). Said term shall extend to thirty (30) years if the qualified investment in said Qualified Data Center equals or exceeds Four Hundred Million Dollars (\$400,000,000) at any time during the term of the Agreement.

The calculation of said qualified investment amount shall include any additional building, structure, additional Qualified Data Center Equipment, services and electricity acquired or used at said Qualified Data Center to be developed, acquired, constructed, rehabilitated, renovated, repaired or operated, to house a group of networked computer servers, regardless of whether such development, acquisition, construction, rehabilitation, renovation, repair or operation was contemplated at the time of entering into the Agreement.

5. Applicability of Exemption:

Provided that the above Host Municipality Fees are paid, the tax exemptions applicable to the Qualified Data Center shall be applicable to any (i) subsequent Owner of the Qualified Data Center, (ii) Operator or affiliate of the Operator of the Qualified Data Center, or (iii) Colocation Tenant, provided the facility continues to be used as a Qualified Data Center.

6. Termination:

The Agreement shall terminate if (a) the Commissioner of the State Department of Economic and Community Development (“DECD”) terminates the agreement entered into by DECD pursuant to Public Act 21-1 for said Qualified Data Center (the “DECD Agreement”) due to the Commissioner's determination that the requirements of such agreement or of the Qualified Data Center are not being met or have not been met, (b) pursuant to section (5) of Public Act 21-1 the legislative body of Beacon Falls determines, and Beacon Falls provides notice including the specific nature of alleged noncompliance, that the requirements of the Agreement are not being met or have not been met, or (c) such other conditions expressly set forth in the Agreement.

Upon the termination of the Agreement, the owner of the property on which such Qualified Data Center is located or such owner's successors or assigns shall be subject to the tax imposed under chapter 203 of the general statutes. Said owner shall also be liable for the payment of all taxes that were exempted from payment applicable to the period of noncompliance with the Agreement, provided that if the Developer fails to make the Qualified Investment within five (5) years of the effectiveness of the DECD Agreement, the owner shall be liable for the payment of all taxes that were exempted from payment during the term of the Agreement, provided however, that the payments made pursuant to subsections 3a. and 3b. hereof during the period of noncompliance shall be deducted from any taxes owing due to such noncompliance. Such liability shall attach to the property as a charge thereon. Such tax and any related penalty and interest shall be due, payable and collectible as other municipal taxes and subject to the same liens and processes of collection. Such other rights and remedies upon termination shall be set forth in the Agreement.

7. Assignment:

Beacon Falls may not assign or transfer, directly or indirectly, any of its rights or obligations under the Agreement except as expressly permitted therein. Developer may at any time assign or delegate any or all of its rights and obligations under the Agreement provided such assignee or delegee is an Owner, Operator or Colocation Tenant of all or part of the Qualified Data Center and is reasonably determined by Beacon Falls to be creditworthy and capable of performing the obligations of Developer under the Agreement. Such judgment by Beacon Falls shall be based upon the criteria acceptable in the financial industry. Any assignment and/or delegation shall not diminish Beacon Falls' ability to lien the properties in the event taxes are re-instated under the terms of the Agreement.

8. Eligibility for Exemption:

The parties hereto agree the Developer must satisfy all requirements of Public Act 21-1 and the Agreement in order to qualify for and continue to maintain the exemption from taxes imposed by Chapter 203 of the Connecticut General Statutes described herein.

9. Other Terms and Conditions:

The Agreement shall also contain usual and customary provisions, including, but not limited to:

- a. Insurance
- b. Representations and Warranties
- c. Force Majeure
- d. Defaults and Remedies, including, but not limited to, any recapture rights of Beacon Falls
- e. Governing Law and Jurisdiction
- f. Visit and Audit Rights

10. Additional Components:

This MOU and the Agreement shall be limited to the components of the Qualified Data Center described on Exhibit B hereto unless additional components are approved by Beacon Falls, subject to an adjustment of the payments to be made hereunder and under the Agreement as mutually agreed to by the Parties.

11. Notices:

If to Developer:

CT Data Center, LLC
112 Wall Street
Torrington, Connecticut 06790
Attn: William J. Corvo, Manager
billcorvo@ctenergyandtech.com

If to Beacon Falls:

Town of Beacon Falls
Town Hall
10 Maple Avenue
Beacon Falls, Connecticut 06403
Attn: Gerard F. Smith, First Selectman
gsmith@beaconfallsct.org

12. Definitive Agreement:

The Parties agree to incorporate the terms and conditions contained herein into a more definitive Agreement which shall supersede and supplant this MOU upon its execution. The Agreement shall be entered into prior to the commencement of the construction of the Qualified Data Center and after the execution of the DECD Agreement to the extent possible. The Agreement shall not become effective until the DECD Agreement has first becomes effective.

13. Authority:

Each Party hereby represents that it has the requisite authority to execute this MOU and agrees to provide evidence of such authorization to the other Party upon request.

14. Dispute Resolution:

Either Party may bring an action in the courts of the State of Connecticut to resolve any and all disputes between the Parties arising out of or related to the Agreement, including questions concerning the construction, enforceability, validity and interpretation of the Agreement. Specifically, the Parties agree that Developer shall have the right to seek judicial review of any determination with respect to default or termination of the Agreement, provided that Developer shall have (a) given Beacon Falls written notice of its intention to contest such default or termination within fifteen (15) days after Beacon Falls has given Developer written notice of the default or termination and (b) commenced an action against Beacon Falls within sixty (60) days after Beacon Falls has given Developer written notice of the default or termination: and further provided that Beacon Falls' exercise of any remedy against Developer or the Parcels shall be stayed and the running of any statute of limitations with respect to such remedy shall be tolled until completion of judicial review if timely brought by Developer. The jurisdiction over any of such disputes shall vest solely in the courts of the State of Connecticut. The Parties hereby consent to such venue and jurisdiction and waive, to the fullest extent permitted by law, any objection thereto.

15. Choice of Law:

The laws of the State of Connecticut shall govern this MOU and the Agreement and the rights and obligations of the Parties hereunder and under the Agreement, without regard to the principles of conflicts of law.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this MOU as of the date hereof.

TOWN OF BEACON FALLS, CONNECTICUT

By: _____

Name: Gerard F. Smith

Title: First Selectman

CT DATA CENTER, LLC

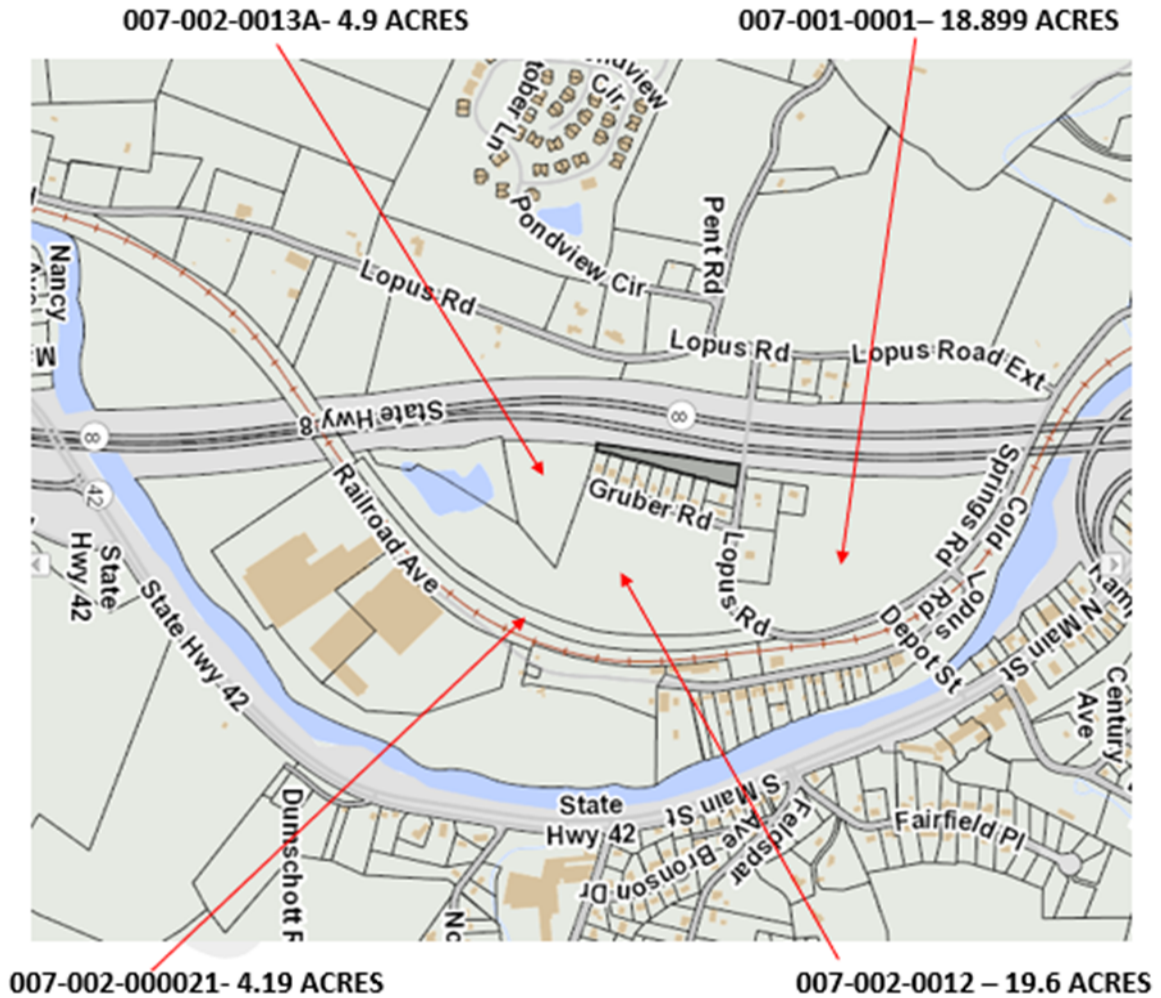
By: _____

Name: William J. Corvo

Title: Manager

EXHIBIT A

PROJECT LOCATION



O&G owns 47.6 acres of property between Route 8 and the railroad tracks off of Lopus Road in Beacon Falls.

EXHIBIT B

Preliminary Components of Qualified Data Center¹

- 1) Data Center Component- Preliminary Design calls for
 - 294,164 square foot data center building
 - 111,000 square feet of computer “white space”
 - 6 Data Halls
 - 18,385 square feet of “Administrative Office space”
 - 43,400 square feet of “Mechanical space”
 - Underground utility corridor

- 2) Solid Oxide Fuel Cell Energy Component to provide
 - 32 Megawatts+ of distributed electrical generation
 - Energy facility building – Approximately 24,000 square feet, with electrical distribution and chilled water equipment for data center
 - Emissions transfer system

- 3) Emissions Conversion Component
 - Conversion center building
 - Storage vessels

¹ Including all ancillary facilities associated with the components of the Qualified Data Center (e.g., all transformers, switchgear, substation, and metering facilities associated with the Solid Oxide Fuel Cell Energy power supply).