

FIFTEEN ROPE FERRY ROAD
WATERFORD, CT 06385-2886



PHONE: 860-442-0553
www.waterfordct.org

**AGENDA
BOARD OF SELECTMEN
SPECIAL MEETING
Wednesday, April 16, 2025
5:00 P.M. - Waterford Town Hall
BOE Conference Room**

RECEIVED FOR RECORD
WATERFORD, CT
2025 APR 15 1 P 3:00
ATTEST: *David H. Langford*
TOWN CLERK

1. Call to Order
2. Pledge of Allegiance
3. Public Comment
4. To consider and act on a request from NE Edge, LLC to the Board of Selectmen to approve an assignment of NE Edge, LLC's interest in the March 17, 2023 Host Municipality Fee Agreement to NE Edge Waterford, LLC.
5. Adjournment

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April 14, 2025

Via email: rbrule@waterfordct.org
Robert Brule, First Selectman
Town of Waterford
15 Rope Ferry Road
Waterford, CT 06385

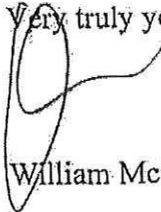
Re: Host Fee Agreement-Town of Waterford/NE Edge, LLC

Dear First Selectman Brule:

On behalf of my client, NE Edge, LLC, I am requesting that the Board of Selectmen have a special meeting of the Board of Selectmen to consider a request by NE Edge, LLC. NE Edge, LLC is seeking the Board of Selectmen's approval to assign its rights and responsibilities, pursuant to Section 23 of the Host Fee Agreement, with the Town of Waterford to NE Edge Waterford, LLC.

Your prompt attention to this request would be greatly appreciated.

Very truly yours,


William McCoy

WEM/slw
Cc Nicholas Kepple, Esq.

RECEIVED FOR RECORD
WATERFORD, CT
2025 APR 15 1 P 2:58
ATTEST: 
TOWN CLERK

**QUALIFIED DATA CENTERS
HOST MUNICIPALITY FEE AGREEMENT**

between

NE EDGE, LLC

and

THE TOWN OF WATERFORD

March 17, 2023

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QUALIFIED DATA CENTERS HOST MUNICIPALITY FEE AGREEMENT

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This QUALIFIED DATA CENTERS HOST MUNICIPALITY FEE AGREEMENT (this "Agreement") is entered into as of the ____ day of _____, 2023 (the "Execution Date"), by and between the Town of Waterford, Connecticut, a municipal corporation with its Town Hall located at 15 Rope Ferry Road Waterford, CT 06385, hereinafter "Waterford", and NE Edge, LLC, hereinafter "NE Edge", a Connecticut limited liability company with an office at 4433 Post Road, East Greenwich, RI, 02818, its successors and assigns. Waterford and NE Edge are each referred to individually herein as a "Party" and together as "Parties".

WHEREAS, the State of Connecticut has enacted legislation known as House Bill No. 6514, Public Act No. 21-1, to incentivize the development of large-scale data center facilities within Connecticut, hereinafter the "Legislation", which Legislation was effective July 1, 2021 and is incorporated herein by reference and that all capitalized terms in this Agreement shall be as defined in the Legislation; and

WHEREAS, the Legislation sets forth that any entity which anticipates that it will be an "Owner", "Operator" or "Colocation Tenant" of or in a "Qualified Data Center" (as such terms are defined in the Legislation and/or Section 1 of this Agreement) may seek and apply for an exemption from certain taxes imposed under Chapters 203 and 219 of the Connecticut General Statutes, subject to satisfying certain requirements expressed in the Legislation, including but not limited to the obligation to enter into and satisfy the provisions of a negotiated Host Municipality Fee Agreement with the municipality in which such Qualified Data Center is located (the "Host Municipality"); and

WHEREAS, NE Edge intends to develop and operate two such Qualified Data Centers in Waterford on property owned by Dominion Energy Nuclear Connecticut, Inc. ("Dominion Energy") on Millstone Road (the "Property") and the Parties expressly hereby agree that NE Edge's investment in the two Qualified Data Centers will be Eligible Qualified Data Center Costs and Qualified Investments and that this Agreement shall serve as a negotiated Host Municipality Fee Agreement for both the first Qualified Data Center and the second Qualified Data Center and approval of this Agreement by Waterford shall serve as the approval for the second Qualified Data Center without need of a separate Agreement for such additional facility as referenced in the Legislation and each building shall be separately reviewed by DECD pursuant to the qualifying Legislation; and

WHEREAS, the development and operation of Qualified Data Centers are expected to contribute substantially to economic development and employment growth in Waterford, and Waterford expects to receive substantial benefits from hosting two Qualified Data Centers developed and operated by NE Edge in Waterford; and

WHEREAS, Waterford is receptive to such development of two Qualified Data Centers within Waterford because it could help Dominion Energy remain in Waterford through its existing licenses and possibly beyond; and

WHEREAS, NE Edge appreciates and will continue to benefit from the successful operation of any Qualified Data Center located in Waterford; and

WHEREAS, the Parties mutually desire to enter into this Agreement pursuant to the requirements of the Legislation, subject to the terms and conditions hereinafter contained.

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 as follows:

1. Definitions

The Parties agree that all defined terms set forth in the Legislation shall be deemed incorporated into this Agreement as if fully recited herein, including but not limited to the following defined terms:

(a) "Eligible Qualified Data Center Costs" means expenditures made on or after July 1, 2021, for the 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. "Eligible Qualified Data Center costs" does not include expenditures made in connection with real or personal property that is located outside the boundaries of the facility to be used as a Qualified Data Center;

(b) "Facility" means one or more contiguous tracts of land in the state and any structure and personal property contained on such land (i.e. the Property);

(c) "Qualified Data Center" means 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. For consistency, clarity and ease of reference throughout this Agreement hereafter, the term "Qualified Data Center" shall fall under the umbrella and definition of "Facility";

(d) "Qualified Investment" means the aggregate, non-duplicative eligible Qualified Data Center costs expended by an owner, operator, and colocation tenant of a Qualified Data Center.

2. Eligibility for Exemption

The Parties agree that all requirements of the Legislation, as from time to time amended, are deemed incorporated into this Agreement as if fully restated herein. To the extent the Legislation changes such that it materially alters the rights afforded by this Agreement or amends any definition utilized in Section 1 above, this Agreement shall continue to control. In such an event, either Party may request that the other Party modify this Agreement consistent with said modified Legislation; provided no modifications shall be made to this Agreement

unless mutually agreed to in writing by both Parties. The Parties agree that NE Edge must satisfy all requirements of the Legislation and this Agreement in order to qualify for and to continue to maintain the benefit of those certain exemptions authorized by the Legislation from taxes imposed by Chapters 203 and 219 of the Connecticut General Statutes, including but not limited to the following requirements pertaining to the Qualified Data Centers contemplated by this Agreement:

(a) Facilities

The Facilities to be developed, acquired, constructed, rehabilitated, renovated, repaired, or operated shall be used as Qualified Data Centers. For purposes of this Agreement, two structure(s) may be located on the Facility property for Qualified Data Center purposes. The property in Waterford that will ultimately be the subject of this Agreement shall be the same property that is the subject of NE Edge's agreements with the Commissioner of the Department of Economic and Community Development (the "DECD Commissioner") pursuant to the Legislation and the site plan approvals received by NE Edge by the Waterford Planning and Zoning Commission for construction of two Qualified Data Centers contemplated by this Agreement;

(b) Qualified Investment

Notwithstanding anything in the Legislation to the contrary, for purposes of this Agreement, NE Edge shall make, on or before the fifth anniversary of the date on which construction, rehabilitation, renovation or repair of a Qualified Data Center first commences, a Qualified Investment of at least Two Hundred Million Dollars (\$200,000,000); provided, however, if the agreement entered into between NE Edge and the DECD Commissioner has a term of greater than twenty (20) years, such Qualified Investment shall be at least Four Hundred Million Dollars (\$400,000,000) with a term of thirty (30) years;

3. Building Permits and Appeals

NE Edge shall make an application for a building permit to construct a building for use as a Qualified Data Center on each parcel on which it intends to construct such a Qualified Data Center in Waterford on or before thirty-six (36) months after the Execution Date of this Agreement for the first Qualified Data Center and sixty (60) months after the Execution Date of this Agreement for the second Qualified Data Center. In the event of an appeal at any stage of the permitting process, including an appeal of the building permit, the above thirty-six (36) month and sixty (60) month requirements shall be extended by the number of days from the first notice of any appeal to thirty (30) days after a final judgment or dismissal of said appeal, whichever occurs first.

4. Building Efficiency Standards, Efficiency Standards

Within one hundred and eighty (180) days after being placed in service, the Qualified Data Center Owner needs to attain certification under one or more of the following green building standards. If for any reason the building is not fully occupied at one hundred and eighty (180) days the certifications below shall be allowed additional time (not to exceed 360 days) to complete to full occupancy, subject to Section 5 below.

- (i) BREEAM for New Construction or BREEAM In-Use
- (ii) ENERGY STAR;
- (iii) Envision;
- (iv) ISO 50001-energy management;
- (v) LEED for Building Design and Construction or LEED for Operations and Maintenance;
- (vi) Green Globes for New Construction or Green Globes for Existing Buildings;
- (vii) UL 3223

5. DECD Agreement

NE Edge shall enter into and satisfy all requirements of an agreement with the DECD Commissioner as required by the Legislation with respect to each such Qualified Data Center. In the event said agreement with the DECD Commissioner terminates for any reason whatsoever, this Agreement shall terminate, without limitation of any other right of Waterford to sooner terminate this Agreement in accordance with the Legislation and/or this Agreement. As a condition precedent to the tax exemptions afforded by this Agreement, NE Edge shall furnish Waterford with a duly executed copy of its agreements with the DECD Commissioner displaying to Waterford's reasonable satisfaction that NE Edge has satisfied all requirements of the Legislation related to such agreements with the DECD Commissioner. In the event NE Edge receives any written notice of default or termination from the DECD Commissioner with respect to said agreements, NE Edge shall promptly provide a copy of such notice to Waterford. If such termination occurs following construction of either Qualified Data Center, the termination, default and remedies provisions cited herein shall apply. If such default or termination occurs prior to construction of the Qualified Data Centers, NE Edge shall keep Waterford reasonably informed as to NE Edge's plan and actions in response to such notice.

6. NE Edge as Owner

NE Edge or its permitted assign shall serve as the "Owner", "Operator" or "Colocation Tenant" of all Qualified Data Centers that are the subject of this Agreement continuously throughout the term of this Agreement. As a condition precedent to the tax exemptions afforded by this Agreement, NE Edge shall provide documentation to the satisfaction of Waterford that it qualifies as an Owner, Operator or Colocation Tenant under the Legislation as it relates to the proposed Qualified Data Centers in Waterford. NE Edge shall also keep Waterford informed, and provide documentation reasonably requested by Waterford to confirm all Owners, Operator(s) and Colocation tenant(s) located or to be located at the Qualified Data Centers in Waterford and their respective rights to serve in such capacities. In the event NE Edge receives or sends any written notice of default or termination from any Owner, Operator or Colocation Tenant with respect to the Qualified Data Centers in Waterford, NE Edge shall promptly provide a copy of such notice to Waterford. If such termination occurs following construction of either Qualified Data Center, the termination, default and remedies provisions cited herein shall apply. If such default or termination occurs prior to construction of the Qualified Data Centers, NE Edge shall keep Waterford reasonably informed as to NE Edge's plan and actions pertaining to such notice.

7. Construction Schedule

Upon commencement of construction, NE Edge shall provide documentation to the reasonable satisfaction of Waterford of its anticipated construction schedule for each building to be used as a Qualified Data Center and evidence that such construction is adequately bonded to ensure the completion thereof.

8. Sound Analysis

For the two Qualified Data Centers proposed to be located on the Facility, the Owner shall retain an Institute of Noise Control Board Certified Noise Control Engineer ("Owner Consultant") who will prepare a sound monitoring protocol to determine the pre-existing background sound level. The monitoring protocol plan shall indicate where, when and how sound monitoring is to be conducted. Said plan shall measure the sound at one or more locations nearest to the residences in hourly increments for one week (168 hours continuously) (hereinafter referred to as "Noise Baseline"). Said monitoring protocol plan shall be submitted to Waterford for its consultant's review and any recommendations. The Owner's Consultant shall complete the monitoring per the protocol, analyze the data and create design goals to achieve a standard which is acceptable to Waterford as advised by its consultant.

The Owner's Consultant shall then model sound levels transmitted from all structures to the nearest residences, propose controls and demonstrate compliance through modeling of the sound standards approved by the Town. The Owner's Consultant shall prepare a report describing limits/design goals, noise, and vibration control concepts to be implemented in the design of the Facility. The report and computer modeling shall be in Cadna/A compliant format to be submitted to Waterford for its consultant's review and comment within sixty (60) days of receipt of the Owner's Consultant's monitoring protocol plan by Waterford. If approved by Waterford in consultation with its consultant, the Owner's Consultant will collaborate with the Owner in designing and implementing the acoustical concepts into the design drawings for the approved plan. A final acoustical design report signed by the Owner's Consultant detailing the acoustic design shall be submitted to Waterford along with the permitting documents which shall be reviewed by Waterford's consultant for its review and comment. To be clear, the structures must meet the protocol set forth herein separately and cumulatively as developed. Waterford, in conferring with its consultant, shall determine if the final acoustical design report complies with the approved plan within thirty (30) days of receipt of the Owner's Consultant's final acoustical design report by Waterford.

9. NE Edge Obligation to Pay Host Municipality Fee

(a) First Qualified Data Center

The Host Municipality Fee for the first Qualified Data Center, subject to annual increases as provided herein, shall be Three Million Five Hundred Thousand Dollars (\$3,500,000) per annum for thirty (30) years; based on total development requirements of a minimum of a five hundred and sixty-six thousand (566,000) square foot of building footprint within a

single two story building comprised of up to one million one hundred thirty-two thousand (1,132,000) square feet of buildable area. The first such Host Municipality Fee shall be due three hundred and sixty-five (365) days after the issuance of a Certificate of Occupancy for the first Qualified Data Center and annually every year from such date thereafter for thirty (30) years. In addition, a supplemental payment of Ten Million Dollars (\$10,000,000) shall be made thirty (30) days from the issuance of the building permit for the first Qualified Data Center. Subsequently, five (5) additional supplemental payments of Six Million Dollars (\$6,000,000) shall be made (in addition to the Host Municipality Fee) at the fifth (5th), tenth (10th), fifteenth (15th), twentieth (20th), and twenty-fifth (25th) anniversaries of the issuance of a Certificate of Occupancy for the first Qualified Data Center. Each payment of Six Million Dollars (\$6,000,000) shall be made to Waterford in addition to the Host Municipality Fee payment. The above payments are set forth on Exhibit A attached hereto and incorporated herein by reference. NE Edge may, at their sole discretion, opt to propose a building less than the square footage herein identified, based on site conditions, but shall pay the Host Municipality Fees stated herein regardless of such size reduction. Building a Qualified Data Center smaller than proposed herein shall not be considered a default by NE Edge.

(b) Second Qualified Data Center

The annual Host Municipality Fee shall be increased with the addition of a second Qualified Data Center on a separate parcel on the Dominion's Millstone property. The Host Municipality Fee for the second Qualified Data Center building shall be One Million Three Hundred Twelve Thousand Five Hundred Dollars (\$1,312,500) per annum, based on a total development of a minimum of a two hundred and fourteen thousand (214,000) square foot building footprint within a single, two-story building comprised of four hundred and twenty-eight thousand (428,000) square feet of buildable area. In addition, a supplemental payment of Three Million Seven Hundred Fifty Thousand Dollars (\$3,750,000) shall be made thirty (30) days from the issuance of the building permit for this building. Subsequently, five (5) additional payments of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) shall be made (in addition to the Host Municipality Fee) at the fifth (5th), tenth (10th), fifteenth (15th), twentieth (20th) and twenty-fifth (25th) anniversaries of the issuance of a Certificate of Occupancy for the second Qualified Data Center. Each payment of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) shall be made to Waterford in addition to the Host Municipality Fee payment for the second Qualified Data Center. The above payments are set forth on Exhibit A attached hereto and incorporated herein by reference. NE Edge may, at their sole discretion, opt to propose a building less than the square footage herein identified, based on site conditions, but shall pay the Host Municipality Fees stated herein regardless of such size reduction. Building a Qualified Data Center smaller than proposed herein shall not be considered a default by NE Edge.

(c) Project Coordinator

Due to anticipated municipal requirements for the proposed Qualified Data Centers, NE Edge agrees to provide a Project Coordinator hired by NE Edge for a period not to exceed five years from the building permit approval date for the first building/structure in the Qualified Data Centers. Waterford and NE Edge shall discuss and provide for defined tasks for the Qualified Data Centers Development Project Coordinator including permitting

compliance, inspection reporting, police, fire and traffic coordination along with other safety coordination and shall include updating the Board of Selectmen relating to construction progress. NE Edge shall pay the compensation for such Qualified Data Centers Development Project Coordinator. NE Edge shall have no obligation whatsoever to fund the position of Qualified Data Centers Development Project Coordinator after the last day of the sixtieth month from the initial date of engagement for such Coordinator.

10. Annual Increase in Amount of Host Municipality Fees

The amount paid to Waterford for Host Municipality Fees each year shall be increased annually two (2%) percent over the immediately preceding year's Host Municipality Fee payment for the applicable Qualified Data Center. This two 2% percent annual increase shall only apply to the Three Million Five Hundred Thousand Dollar(\$3,500,000) payment due in connection with the first Qualified Data Center and the One Million Three Hundred Twelve Thousand Five Hundred (\$1,312,500) Dollar payment due in connection with the second Qualified Data Center. The supplemental payments are not subject to annual increases, and shall be paid as posted to Exhibit A.

11. Payment of Fees to Waterford

NE Edge is required to pay all regular and customary fees for any permits issued by Waterford in accordance with Waterford's applicable fee schedules and regulations then in effect as may be required for purposes of the development, construction, rehabilitation, renovation and/or repair of each proposed Qualified Data Center in Waterford;

12. Effective Date, Term and Termination Events

This Agreement shall be deemed made by and binding on the Parties as of the Execution Date first set forth above. The Agreement shall be deemed effective as of _____, 2023 (the "Effective Date"). Subject to the provisions concerning conditions precedent set forth herein, this Agreement shall remain in effect for a period of thirty (30) years (so long as a Qualified Investment of at least \$400,000,000 is made pursuant to Section 2(b) above) or for a period of twenty (20) years (so long as a Qualified Investment of at least \$200,000,000 but less than \$400,000,000 is made pursuant to Section 2(b) above) following the issuance of a certificate of occupancy for the building constructed to serve as each Qualified Data Center that is a subject of this Agreement.

Provided, however, notwithstanding the foregoing, this Agreement shall terminate sooner upon the earliest occurrence of the following events:

- (i) Immediately upon termination of an agreement with the DECD Commissioner with respect to each Qualified Data Center contemplated hereunder;
- (ii) Immediately upon failure to make the Qualified Investment pursuant to Section 2(b) above within the five-year period contemplated therein, and/or to timely make application for all building permit(s) required by Section 3 above;
- (iii) Immediately as to either Qualified Data Center upon it no longer being used as a

Qualified Data Center after the date when a certificate of occupancy is issued for such Center allowing such use; provided, if any building on such parcel ceases being used as a Qualified Data Center after the date when a certificate of occupancy is issued for all such structures on such parcel allowing such use, this Agreement shall terminate as to such parcel and any structures upon it in its entirety upon the last date the final structure on such parcel is no longer used as a Qualified Data Center;

- (iv) termination of this Agreement by mutual written agreement of the Parties;
- (v) upon future modification of the Legislation in such a manner that it materially eliminates, diminishes, or otherwise impairs the tax exemptions, rights and benefits provided for in this Agreement based on the Legislation as initially enacted. The Party(ies) negatively impacted by such modification shall have the right to terminate;
- (vi) termination of this Agreement pursuant to Section 13 below; or
- (vii) termination of this Agreement by the non-breaching Party upon an event of default by a breaching Party, following written notice and expiration of all cure periods without cure pursuant to Section 16(c)(i) below.

13. Condition Precedent to Obligation to Pay Host Municipality Fee

NE Edge's obligation to pay a Host Municipality Fee for any Qualified Data Center shall be conditioned on NE Edge entering into a satisfactory binding power purchase agreement with Dominion Energy to serve the Qualified Data Centers contemplated herein on or before thirty-six (36) months following the later of the expiration of any appeal period related to the allowance of the zoning text amendment or thirty (30) days after the entry of final judgment in connection with any appeal of the zoning text amendment. Such agreement shall be for purposes of obtaining power necessary for operation of the Qualified Data Centers proposed for Waterford. In the event that NE Edge determines, in its sole discretion, that this condition has not been met and is not likely to be met, it shall give timely written notice to Waterford of such determination on or before expiration of said thirty-six (36) month period, in which case this Agreement shall become null and void on the date such notice is given. In the event that NE Edge fails to provide such notice pursuant to the requirements of this Section, the condition precedent set forth in this Section shall be deemed waived by NE Edge. Extensions to the term of this contract shall be agreed by the Parties should Dominion Energy, Eversource, or infrastructure contractors be delayed in delivering the electricity necessary to fully operate the proposed Qualified Data Centers within thirty-six (36) months. Waterford and NE Edge shall agree to automatic extensions of up to an additional thirty-six (36) months should the electricity infrastructure and delivery of service be delayed for any reason unrelated to conduct of NE Edge. NE Edge shall provide the Town with quarterly progress reports during such additional thirty-six (36) month extension period.

14. Information; Annual Visit

NE Edge shall also perform or cause to be performed, annual inspections of the Qualified Data Centers and furnish to Waterford a copy of its annual inspection report. In addition, NE Edge

agrees to provide, upon Waterford's request, any documents in the public domain, and in NE Edge's possession or control, as may be requested by Waterford, to allow Waterford, in its sole discretion, to determine that NE Edge is satisfying its obligations pursuant to this Agreement. The Waterford Tax Assessor shall be permitted to visit on an annual basis and tour, with advance scheduling, accompanied by NE Edge personnel, each Qualified Data Center covered by this Agreement.

In addition, notwithstanding any exemption afforded by the Legislation, for at least two full tax years prior to the expiration date of this Agreement (or, if this Agreement is terminated prior to the expiration date hereof, for the two full tax years prior to such termination date), NE Edge shall file annual personal property declarations with the Waterford Tax Assessor declaring all personal property located at each Qualified Data Center for such tax years. Each declaration shall be accompanied by invoices of all equipment purchases for the prior year applicable to each Qualified Data Center.

15. Events of Force Majeure

For purposes of this Agreement, "Event of Force Majeure" means acts of God, war, revolution, civil commotion, acts of public enemy, embargo, casualty, or any other circumstances beyond the reasonable control and not involving any fault or negligence of the Party affected that prevents, restricts, or interferes with that Party's performance under this Agreement. A delay of performance hereunder by either Party shall not constitute an event of default or result in any liability under this Agreement to the extent caused by an Event of Force Majeure during the duration of such Event of Force Majeure. The occurrence of an action, circumstance, condition, or event which gives rise to an Event of Force Majeure shall not excuse, but merely shall delay as provided in this Agreement, the performance of the covenant, obligation or other undertaking, or the observance of a term or condition, contained in this Agreement by the Party hereto relying on an Event of Force Majeure for such purposes and only for so long as the duration of such Event of Force Majeure. The financial or fiscal inability of a Party hereto to perform any of its obligations, agreements, or other undertakings, or to observe any term or condition contained in the Agreement, shall not constitute an Event of Force Majeure.

In no event shall either Party be liable to the other for monetary damages on account of the breach of the terms of this Agreement caused by an Event of Force Majeure during the duration of such Event of Force Majeure. All rights and remedies under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available. If an Event of Force Majeure shall prevent the operation of a Qualified Data Center for its intended use, then a pro rata portion of the Host Municipality Fee shall be abated until the operation of such Qualified Data Center may recommence. The pro rata portion shall be based upon a fraction, the numerator of which shall be the number of days in the 365-day period during which the Qualified Data Center shall be unable to operate, and the denominator of which shall be 365.

16. Defaults and Remedies

(a) Events of Default by Waterford

Each of the following shall be an event of default by Waterford under this Agreement. (i) Waterford fails to observe and perform any material term, covenant or agreement contained in this Agreement and such failure continues for, or is not remedied within, a period of sixty (60) days after written notice to Waterford specifying the nature of such failure and requesting that it be remedied; or (ii) Waterford makes a general assignment for the benefit of creditors, files a petition in bankruptcy or a request to the Governor of the State of Connecticut to file such petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any custodian, receiver or trustee for it or any substantial part of its property, commences any proceeding related to it under any bankruptcy, reorganization, arrangement, re-adjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereafter in effect, or if there shall have been filed any such proceeding, in which an order for relief is entered or which remains undismissed for a period of one hundred twenty (120) days or more or if by any act indicates its consent to, approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of any custodian, receiver of or any trustee for it or any substantial part of its property or suffers any such custodianship, receivership or trusteeship to continue undismissed for a period of one hundred twenty (120) days or more.

In no event shall Waterford be in default or liable for monetary damages or other relief to NE Edge on account of a declaration of termination event pursuant to Section 5, above, made in good faith.

(b) Events of Default by NE Edge

Each of the following shall be an event of default by NE Edge under this Agreement:

- (i) NE Edge fails to pay any payments which are properly due from NE Edge hereunder, within the one hundred and eighty (180) day cure period following written notice of noncompliance by Waterford;
- (ii) NE Edge fails to observe and perform any material term, covenant or agreement contained in this Agreement and such failure continues for, or is not remedied within, a period of one hundred and eighty (180) days after written notice to NE Edge specifying the nature of such failure and requesting that it be remedied;
- (iii) NE Edge makes a general assignment for the benefit of creditors, files a petition in bankruptcy, is adjudicated insolvent or bankrupt, petitions or applies to any tribunal for any custodian, receiver or trustee for it or any substantial part of its property, commences any proceeding related to it under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction whether now or hereinafter in effect, or if there shall have been filed any such proceeding, in which an order for relief is entered or which remains undismissed for a period of one hundred twenty (120) days or more or if by any act indicates its consent to, approval or acquiescence in any such petition, application or proceeding or order for relief or the appointment of any custodian,

receiver of or any trustee for it or any substantial part of its property or suffers any such custodianship, receivership or trusteeship to continue undismissed for a period of one hundred twenty (120) days or more;

- (iv) A determination that any representation or warranty made by NE Edge under this Agreement was materially inaccurate, misleading, or incomplete when made as of the Effective Date of this Agreement; or
- (v) NE Edge's agreement with the DECD Commissioner as contemplated herein terminates prior to the expiration date thereof.

(c) Remedies on Default

Wherever any event of default, as determined by the Waterford Representative Town Meeting pursuant to Public Act No. 21-1 Section 1 (e)(4)(B) and (e)(5), shall have occurred and be continuing, the non-defaulting Party shall have, in addition to any other rights at law or equity, including but not limited to those afforded by the Legislation, the following rights and remedies:

- (i) Upon one hundred and eighty (180) days written notice by the Town to NE Edge if NE Edge is then in default, Waterford shall have the option to terminate this Agreement unless the event of the default is cured prior to the expiration of the one hundred and eighty (180) day cure period.
- (ii) Upon one hundred and eighty (180) days written notice to Waterford, if Waterford is then in default, NE Edge shall have the option to terminate this Agreement.

Without limitation of the generality of the foregoing or other rights and remedies available to Waterford at law and in equity (including without limitation under this Agreement), upon the termination of this Agreement pursuant to Section 1 (e)(5) of the Legislation and/or Section 5 of this Agreement, or subdivision (2) of Subsection (f) of the Legislation, as from time to time amended, the Qualified Data Center, the Owner of the property on which such Qualified Data Center is located or such Owner's successors or assigns shall be subject to all applicable taxes imposed under Chapter 203 of the Connecticut General Statutes and shall be liable for payment of such, and Waterford may collect taxes assessed with respect to the Qualified Data Center from the date of notice of noncompliance under this Agreement or the date of termination by the Town or the DECD Commissioner of any agreements with NE Edge required of the Legislation, as applicable, whichever is earlier. Upon any such termination, Waterford, through its Tax Assessor, may issue a supplemental tax bill to assess all such taxes within one hundred eighty (180) days of the date of any such termination. Such assessed taxes shall be payable within thirty (30) days of the associated supplemental tax bill issued by Waterford. Any unpaid portion of such taxes which are not paid within a thirty (30) day period shall be subject to interest as provided by Connecticut General Statutes §12-146, as amended (or similar provision then in effect), which interest shall accrue from the date such payment was due until paid in full, and Waterford shall retain all rights and remedies it may have under law if any such payment remains unpaid, including those afforded by Chapters 204 and 205 of the Connecticut General Statutes, including Section 12-172 thereof. In addition to and without limitation of other rights and remedies available to Waterford, said assessed tax shall

constitute a lien on the personal property as well as the real property upon which the Qualified Data Centers are located and may be foreclosed upon pursuant to all relevant Connecticut Statutes. Waterford shall be entitled, pursuant to such statutes, to collect its actual costs of collection and reasonable attorneys' fees incurred in connection with such collection activities. The Parties hereto acknowledge and agree that taxes authorized by this Section 16, following termination of this Agreement, which shall be payable by NE Edge to Waterford are taxes imposed pursuant to Connecticut General Statutes Chapters 203 and 204 and that all rights and remedies available to Waterford under applicable law (including, without limitation, Connecticut General Statutes Chapter 205) with respect to nonpayment of taxes shall apply to the payment and collection of such taxes. The Town does not waive and expressly retains all rights and remedies at law or in equity for enforcement of this Agreement and collection of amounts due under this Agreement.

17. Representations and Warranties

(a) Representations and Warranties of Waterford

As of the Execution Date of this Agreement, Waterford hereby represents and warrants to NE Edge that:

- (i) This Agreement has been executed by officers of Waterford acting with the approval and under the authority of the Charter of the Town of Waterford and Public Act No. 21-1, and Waterford has heretofore delivered to NE Edge evidence of such approval;
- (ii) Waterford has the full power and authority to execute and deliver this Agreement to NE Edge and carry out Waterford's obligations hereunder, all of which have been duly authorized in accordance with applicable law, and this Agreement shall be in full force and effect and be legally binding upon, and enforceable against, Waterford in accordance with its terms upon its due execution and delivery by Waterford and NE Edge and shall serve as an Agreement regarding both an initial Qualified Data Center as well as an additional such Qualified Data Center as required by Public Act No. 21-1 Section 1 (e)(2)(C) and (e)(4)(A) of the Legislation referenced herein; and
- (iii) There is no action, suit, investigation, or other proceeding pending or, to the knowledge of Waterford, threatened, which questions the enforceability of this Agreement, or which affects or may affect the performance of either Party's obligations hereunder.

(b) Representations and Warranties of NE Edge

As of the Execution Date of this Agreement, NE Edge hereby represents and warrants to Waterford that:

- (i) NE Edge has the full power and authority to execute and deliver the Agreement to Waterford and to conduct NE Edge's obligations hereunder, and this Agreement shall be in full force and effect and be legally binding upon, and enforceable against NE Edge in accordance with its terms upon its due execution and delivery by NE Edge and Waterford;

- (ii) There is no action, suit, investigation or other proceedings, to the knowledge of NE Edge, which affects or may affect the performance of either Party's obligations hereunder;
- (iii) NE Edge will share with Waterford, as of the date it makes application to the DECD Commissioner, how it anticipates being an "Owner" of the two Qualified Data Centers that are the subject of this Agreement;
- (iv) NE Edge is a limited liability company organized under the laws of the State of Connecticut. NE Edge is in good standing with the Secretary of the State of Connecticut;
- (v) The execution and delivery of this Agreement, the performance of the obligations of NE Edge contained in this Agreement, the consummation of the other transactions contemplated hereby, and the fulfillment of the compliance with the terms and conditions of this Agreement by NE Edge are not prevented by or result in a breach of, the terms, conditions or provisions of any statute, law, ordinance or regulation by which NE Edge is bound, or any contractual restriction, financing, agreement or instrument of whatever nature to which NE Edge is now a Party by which it is bound, nor do they constitute default under any of the foregoing;
- (vi) NE Edge has duly authorized this Agreement, and the Agreement is a valid and binding obligation of NE Edge and is enforceable in accordance with its terms against NE Edge; and
- (vii) The member of NE Edge executing this Agreement is duly authorized to execute and deliver this Agreement in such capacity.

18. Dispute Resolution

The Parties agree to provide timely notice to one another regarding any issue regarding the performance of the Parties' respective obligations under this Agreement. Once such notice is provided, reasonable efforts shall be made to resolve any dispute between the Parties. If after such efforts the parties are unable to resolve their differences, the Parties agree to utilize arbitration through whichever alternate dispute resolution services the Parties choose to utilize, in order to resolve any issues. If arbitration is unsuccessful, each Party is free to bring an action in a court of competent jurisdiction.

19. Governing Law

The interpretation and performance of this Agreement shall be governed by the laws of the State of Connecticut without regard to its conflict of law principles. In the event an action is brought to enforce any provision of this Agreement, the exclusive venue and jurisdiction shall be a court of competent jurisdiction located in the State of Connecticut.

20. Entire Agreement

This Agreement constitutes the entire agreement between the Parties in respect of the subject matter hereof. This Agreement supersedes all prior negotiations, representations, and agreements between the Parties with respect to the subject matter hereof.

21. Waiver

No delay in exercising or failure to exercise any right or remedy accruing to or in favor of any Party shall impair any such remedy or constitute a waiver thereof. Every right and remedy given hereunder or by law may be exercised from time to time and as often as may be deemed expedient by the Parties. Any extension of time for payment hereunder or other indulgences shall not alter, affect, or waive rights or obligations hereunder.

Acceptance of any payment, whether partial or otherwise, after it shall have become due, shall not be deemed to alter, affect, or waive the obligations of either Party.

22. Modifications

This Agreement may not be modified or amended except in writing pursuant to all requisite approvals and signed by or on behalf of both Parties by their duly authorized officers.

23. Successors and Assigns

This Agreement shall inure to the benefit of and bind the successors and permitted assigns of NE Edge. Without limitation of the generality of the preceding sentence, the provisions of this Agreement shall, during the term hereof, bind any Owner, Operator and/or Colocation tenant, or subsequent Owner, Operator, Colocation Tenant, and all affiliates of each of them, of the Qualified Data Centers contemplated herein, provided the Facility continues to be used as a Qualified Data Center.

Waterford may not assign or transfer, directly or indirectly, any of its rights or duties under this Agreement. With the prior approval of Waterford, which approval shall not be unreasonably withheld or delayed, NE Edge may assign all or any portion of its rights and obligations under this Agreement or delegate any of its obligations under this Agreement at any time so long as such assignee or delegee shall be an Owner, Operator or Colocation Tenant of the Qualified Data Centers that are the subject of this Agreement, creditworthy and capable of performing the obligations of NE Edge under this Agreement.

24. Notices

All notices, reports and other communications required or permitted under this Agreement shall be in writing and shall be deemed to have been given when delivered personally or deposited in the mails, postage prepaid, registered, or certified mail, return receipt requested, or by commercial overnight courier addressed to the Party to whom notice is being given at its address set forth below. Either Party may change its address by notice similarly given.

Town of Waterford
15 Rope Ferry Road
Waterford, CT 06385
Attn: First Selectman

With a Copy to:

Town Attorney
Nicholas Kepple
Suisman Shapiro
20 South Anguilla Road
P.O. Box 1445
Pawcatuck, CT 06379

NE Edge, LLC
c/o Thomas P. Quinn
4433 Post Road
East Greenwich, RI, 02818

With a Copy to:

George A. McLaughlin, III
The McLaughlin Brothers, P. C.
One Washington Mall, 16th floor
Boston, MA 02108

25. Further Actions

Each Party agrees that it will, at its own expense, to the extent not reimbursable by the other Party under this Agreement, execute any and all certificates, documents, and other instruments, and take such other further actions as may be reasonably necessary to give effect to the terms of this Agreement.

26. Counterparts

This Agreement may be executed in several counterparts, any one of which shall be considered an original hereof for all purposes.

27. Severability

In the event that any of the provisions, portions or applications of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the remaining provisions, portions, and applications thereof shall not be affected thereby. In such event, the Parties agree that the court making such determination shall have the power to alter or amend such provisions so that it shall be enforceable; provided, however, in the event the severed and unenforceable provision would release or relieve NE Edge from the obligation to pay any Host Municipality Fee to Waterford hereunder, or would materially alter the tax exemption afforded by this Agreement, despite a compliance with this Agreement, the Parties shall amend this Agreement to the minimum extent necessary to render such provision legal and enforceable to require the exemption and/or payment of Host Municipality Fee to Waterford

hereunder as initially intended. In the event an amendment described in the preceding sentence is not executed within thirty (30) days of such judgment or effective date of such law, whichever is earlier, the Party that would benefit from the amendment, at its election, may terminate this Agreement by written notice to the other Party. If NE Edge is the terminating Party it acknowledges and shall not dispute the Town's right to fully tax any land or any building which houses either of the Qualified Data Centers and all their respective personal property under applicable Connecticut statutes, but NE Edge shall have the right to dispute the assessments and amount of taxes

28. No Third-Party Beneficiaries

Nothing in this agreement is intended to confer any right on any Person other than the Parties and their or successors and permitted assigns; nor is anything in this Agreement intended to modify or discharge the obligation or liability of any third party to any Party or give any third party any right of subrogation or action over or against any Party.

29. Headings for Convenience

The headings in this Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

30. Confidentiality

The Town of Waterford shall endeavor to respect the confidentiality of sensitive or preliminary information provided to the Town during both the negotiations for and construction of the proposed Qualified Data Center, so long as such information falls within the definitions of certain specific items in the Connecticut General Statute §1-210(b) thereby qualifying such records as exempt from disclosure under the Freedom of Information Act.

31. No Additional Municipal Tax Benefits

NE Edge agrees that it will not pursue from Waterford any additional tax incentives, tax exemptions or tax abatements or any subsequent adjustment to its taxes or payments to Waterford that are the subject of this Agreement unless permitted herein. Nothing in this Section shall prohibit NE Edge from seeking additional tax relief and rebates from the State of Connecticut, federal authorities, or authorities other than Waterford, provided that no such relief shall reduce the amounts payable by NE Edge to Waterford under this Agreement.

32. Late Payments

If NE Edge fails to make any Host Municipality Fee payment to Waterford required hereunder within thirty (30) days following the due date provided for payment, interest at the rate set forth in CGS §12-146 shall accrue on any unpaid portion of such Host Municipality Fee from the date such payment was due until paid, and Waterford shall retain all rights and remedies it may have as described herein if any such payment remains unpaid.

33. Correction of Clerical Errors

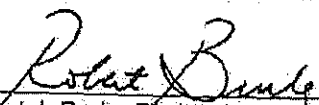
In the event that any clerical error or typographical error is discovered within this Agreement that results in language that neither Party intended upon the Execution Date of this Agreement, the Parties shall promptly execute an amendment to this Agreement to correct such error upon the discovery thereof prior to the Effective Date.

(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties have executed the Agreement as of the Effective Date.

TOWN OF WATERFORD

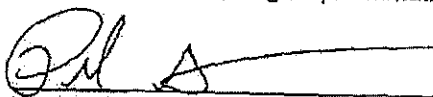
On behalf of Board of Selectmen:



Robert J. Brule, First Selectman
Duly Authorized

Date 3/17/2023

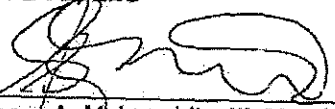
On behalf of concurring Representative Town Meeting:



Paul Goldstein, RTM Moderator
Duly Authorized

Date 3/17/2023

NE EDGE, LLC



George A. McLaughlin, III, Member
Duly Authorized

Date 3/17/23

Suisman Shapiro

Attorneys-At-Law

February 16, 2023

Robert A. Avena

Raymond L. Baribeault, Jr.

James P. Berryman

Michael A. Blanchard

Eric W. Callahan

Michael P. Carey

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John A. Collins, III

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Theodore W. Heiser

Jeffrey W. Hill

Carolyn P. Kelly

Kristi D. Kelly

Nicholas P. Kepple

Robert B. Keville

William K. Miller

Samuel M. Nassetta

Laura A. Raymond

Kyle J. Zrenda

In Memoriam

Andrew J. Brand

James F. Brennan

James J. Coutney

L. Patrick Gray, III

Michael V. Sage

Matthew Shafer

Max M. Shapiro

Charles J. Suisman

Thomas B. Wilson

Louis C. Wool

Of Counsel

Hinda K. Kimmel

Jay B. Levin

Richard A. Schatz

Mr. Paul Goldstein, Moderator
Waterford Representative Town Meeting
34 Fifth Avenue
Waterford, CT 06385

RE: Host Municipality Fee Agreement

Dear Moderator Goldstein:

In advance of the RTM's consideration of the NE Edge, LLC's data center project I would like to share my perspective as Town Attorney on the issue of the role of the RTM in this process. I do so because I believe it is very important for the RTM to be aware of just how unusual this topic is compared to the normal business which comes before it. My review of the Charter and Ordinances leads me to conclude that, in sum, the RTM's role as Waterford's legislative body is principally to adopt budgets and make other financial decisions, make or amend ordinances, appoint individuals to certain positions and occasionally as required by local or state law approve or deny a contract. The only role among those I just cited which is before you with agenda item number three on the Call of the February 22, 2023 meeting is the last role I mentioned.

The State of Connecticut, acting through its legislature but at the behest of Governor Lamont, in July of 2021 adopted a specific piece of legislation whose mission is to incentivize the siting of data centers in Connecticut, principally by exempting any new data centers from state sales tax and local real and personal property taxes for up to 30 years. A condition of the siting of such data centers is that a Host Municipality Fee Agreement must be negotiated with the municipality. Note that under Waterford's Charter, with certain exceptions not applicable here, all contracts to which the Town shall be a party shall be subject to approval by the Board of Selectmen.

The RTM, as the Town's legislative body, has an explicit role in the legislation regarding data centers, as noted in your background material, to determine whether the owner of a data center has defaulted under a Host Municipality Fee Agreement and to terminate the Host Municipality Fee Agreement if such noncompliance is not cured within 180 days. Notably this legislation includes no explicit role for a Town's legislative body in the initial approval of a negotiated agreement; the legislation simply refers to negotiation of a Host Municipality Fee Agreement with "the municipality".

It is my legal opinion, joined by the Town's bond counsel, Thomas Marrion of Hinckley Allen, that despite the fact that the legislation provides no express role for the legislative body in the process of approving the Host Municipality Fee Agreement, the

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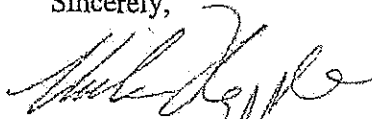
Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, P.C.
2 Union Plaza, Suite 200 • P.O. Box 1591, New London, CT 06320
Phone 860-442-4416 • Fax 860-442-0495 • www.suismanshapiro.com

prudent procedure is to have the RTM vote whether it concurs with the decision of the Board of Selectmen to approve the negotiated Agreement should the Board choose to do so. We reach this conclusion for several reasons, including 1) the amount of revenue in question (\$231,000,000), 2) the comparable role that the RTM plays in large gifting (over \$10,000) and tax abatements, and 3) the benefits that RTM concurrence provides in defending against any potential legal challenge to the legitimacy of the approval process for such a financially significant project. On this last point, it is worth noting that in our view, the legislation is not perfectly clear on the scope of the legislative body's authority in the process of approving a Host Municipality Fee Agreement.

We believe, however, that the RTM's participation in the process should be limited to an up or down vote on the question of whether to concur with the decision of the Board of Selectmen to approve the negotiated Agreement should the Board choose to do so. To allow any different or greater role by the RTM in the formulation or negotiation of the Agreement would be inconsistent with the literal language of the legislation and the express language of the Waterford Charter: the legislation provides that "the municipality" negotiates the Host Municipality Fee Agreement, and the Waterford Charter provides that the Board of Selectmen has the authority to approve contracts. As support for these findings, I refer you to the data center legislation and the relevant charter provisions in the background material provided to both the RTM members and Board of Selectmen.

For these reasons I am advising you as the Moderator of the RTM that while thorough discussion of the proposed Host Municipality Fee Agreement is in order, the RTM's role should be limited to an up or down vote on whether to concur with a decision of the Board of Selectmen to approve the Host Municipality Fee Agreement. Any motion to amend, revise or modify would be, in my opinion, out of order.

Sincerely,



Nicholas F. Kepple
Waterford Town Attorney

NFK/pmn



Secretary of the State of Connecticut
Certificate of Organization
Domestic Limited Liability Company

Filing Details

Filing Number: 0010166626 Number of Pages: 2 Filed On: 12/14/2021 04:40 PM

Primary Details

Name of Limited Liability Company: NE EDGE, LLC
Business ALEI: US-CT.BER:2403040
Business Email Address: gjii@mclaughlinbrothers.com
NAICS Information: N/A

Business Location

Principal Office Address: 54 Clairemont Rd, Belmont, MA, 02478, United States
Mailing Address: 54 Clairemont Rd, Belmont, MA, 02478, United States

Appointment of Registered Agent Appointment of Statutory Agent for Service of Process

Type: Business
Agent's Name: ROGIN NASSAU LLC
Agent's ALEI: US-CT.BER:0515937
Business Address: CITYPLACE I 22ND FL 185 ASYLUM STREET, HARTFORD, CT, 06103, United States
Mailing Address: CITYPLACE 1 22ND FL, 185 ASYLUM STREET, HARTFORD, CT, 06103, United States

Agent Appointment Acceptance

Agent Signature: WILLIAM CROWE
Title: Agent
This signature has been executed electronically



Secretary of the State of Connecticut Certificate of Organization

Domestic Limited Liability Company

Manager or Member Information

Name	Title	Business Address	Residence Address
George A. McLaughlin III	Manager	One Washington Mall, 16th floor, Boston, MA, 02108 United States	54 Clairemont Rd, Belmont, MA, 02478 United States

Acknowledgement

I hereby certify and state under penalties of false statement that all the information set forth on this document is true.

I hereby electronically sign this document on behalf of:

Name of Organizer: William R. Crowe
Organizer Title: Authorized Person

Filer Name: Joseph Teodoro
Filer Signature: Joseph Teodoro
Execution Date: 12/14/2021
This signature has been executed electronically