

154.20-229 Memorandum of agreement -- Required terms.

The authority, with preliminary approval of an eligible company, may execute a memorandum of agreement with the eligible company. The terms and conditions of the memorandum of agreement shall be negotiated between the authority and the company. The terms of the memorandum of agreement shall include but not be limited to the following provisions:

- (1) The estimated capital investment for the qualified data center project;
- (2) That the preliminarily approved company shall provide the authority with all documentation requested in a manner acceptable to the authority and within the timeframes required by the authority related to the minimum capital investment requirement to be used in monitoring compliance of the memorandum of agreement;
- (3) That failure of a preliminarily approved company to meet the minimum capital investment on or before the fifth anniversary of the preliminary approval shall result in cancellation of the memorandum of agreement with the preliminarily approved company;
- (4) The term of the agreement, which shall not exceed:
 - (a) Fifteen (15) years for a qualified data center project of a project organizer; or
 - (b)
 1. Fifty (50) years for a qualified data center project having a capital investment of at least four hundred fifty million dollars (\$450,000,000);
or
 2. Twenty-five (25) years for any other qualified data center project;
- (5) A provision requiring the preliminarily approved company to notify the authority immediately if the eligible company sells or otherwise transfers or disposes of the land on which a qualified data center project is located;
- (6) Authorization for the department to issue a certificate of exemption to the preliminarily approved company under KRS 139.499;
- (7) A provision detailing the elimination of the sales and use tax exemption and the notice of assessment by the department provided under KRS 139.499 that shall occur if the preliminarily approved company fails to make the minimum capital investment;
- (8)
 - (a) A statement that the memorandum of agreement may remain in effect, even if there is a future transfer, sale, or disposition, directly or indirectly, of the qualified data center project, upon the adoption of a resolution by the authority to that effect.
 - (b) If continuation of the sales and use tax exemption is desired by the subsequent owner:
 1. The memorandum of agreement may be assigned to that owner under paragraph (a) of this subsection provided the subsequent owner assumes the prior owner's obligations under that agreement; or
 2. The subsequent owner shall enter into a memorandum of agreement with the authority for the remainder of the eligibility period.
 - (c) The authority shall notify the department regarding the events that transpire

under paragraphs (a) and (b) of this subsection;

- (9) That the approved company shall make available to the authority all of its records pertaining to the qualified data center project, including but not limited to records relating to eligible costs and any other records pertaining to the project that the authority may require;
- (10)
 - (a) That the authority may share information with the department; and
 - (b) That the department may share information with the authority;for the purposes of monitoring and enforcing the terms of the memorandum of agreement;
- (11) That, if the preliminarily approved company fails to comply with its obligations under the memorandum of agreement by the fifth anniversary of the preliminary approval, the authority shall:
 - (a) Suspend the memorandum of agreement;
 - (b) Terminate the incentives available to the preliminarily approved company under the memorandum of agreement;
 - (c) Notify the department of the authority's actions;
 - (d) Instruct the department to proceed with the notice of assessment; and
 - (e) Pursue any other remedy set forth in the memorandum of agreement or to which it may be entitled by law; and
- (12) Any other provisions not inconsistent with this subchapter and determined to be necessary or appropriate by the parties to the memorandum of agreement.

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