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July 20, 2023

VIA FEDERAL EXPRESS

Kevin Kolnowski
Electric Utility Chief Operating Officer
City of Santa Clara
1500 Warburton Avenue
Santa Clara, California 95050

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ELECTRIC DEPARTMENT
ACCOUNT CLERK

Re: Request for Mediation Pursuant to Special Facilities Agreement

To the Electric Utility Chief Operating Officer:

We represent Oracle America, Inc. ("Oracle"). I write on behalf of Oracle regarding the provision of electric power by Silicon Valley Power ("SVP") to the Oracle Santa Clara Campus at 4150 Network Circle in Santa Clara (the "Property").

As you know, the provision of electric power to the Property by SVP is governed by a Special Facilities Agreement (the "Agreement"), which Agreement was originally entered into on February 20, 2007, by SVP and Sun Microsystems, Inc. ("Sun"), the prior owner of the Property until Sun was merged with and subsumed by Oracle, which became Sun's successor-in-interest in the Property and the Agreement. A true and correct copy of the Agreement is enclosed as Exhibit A with this letter.

The Agreement, among other things, required SVP to provide the Property with up to 27 MVA of electric capacity "within twenty-two (22) calendar months after the effective date of this Agreement," *i.e.*, by December 20, 2008. *See* section 2.C. of Agreement. The Agreement likewise requires SVP to "make commercially reasonable efforts" to provide the Property with an additional 27 MVA of electric capacity, for a total capacity of up to 54 MVA, "within twenty-four (24) calendar months after notice and payment of load development fees." *See* section 2.E. of Agreement. The Agreement also provides that the amount of the development fees to be paid for additional load capacity shall be calculated using fees in effect at the time of installation of the primary capacity, which fee at that time was \$90.34 per KVA. *See* section 3.A. and Exhibit D of Agreement.

Pursuant to the terms and conditions of the Agreement identified above, on June 22, 2023, Oracle sent a letter to SVP providing SVP with notice that Oracle needed 54 MVA of electric load capacity at the Property. Oracle also tendered payment of the load development fees for the requested additional capacity by means of a check in the amount of \$3,194,241.72. This amount represented the difference between the quantity of capacity requested (54 MVA) and the quantity that SVP claims Sun had previously paid for (18.642 MVA), multiplied by the agreed-upon rate of \$90.34 per KVA. Oracle requested that SVP provide written confirmation by July 14, 2023, that (1) SVP had received Oracle's payment of load development fees, and (2) SVP was proceeding with commercially reasonable efforts to provide the Property with the requested 54 MVA of electric load capacity.

SVP has failed to provide the requested confirmation, has taken the position that the Agreement does not require it to provide the Property with 54 MVA of electric load capacity within twenty-four months at the rate of \$90.34 per KVA, and represented that it has returned the check that Oracle tendered with its June 22 letter. Moreover, SVP's failure to provide the Property with up to 27 MVA of electric load capacity by December 20, 2008, and refusal to make commercially reasonable efforts to provide the additional 27 MVA of capacity within twenty-four months constitutes a breach of the Agreement.

Clearly, there is a dispute between Oracle and SVP regarding the rights and obligations of the parties under the Agreement. Section 16 of the Agreement provides the following regarding resolution of any dispute relating to the Agreement:

A. Unless otherwise mutually agreed to by the Parties, any controversies between Sun and City regarding the construction or application of this Agreement, and claims arising out of this Agreement or its breach, shall be submitted to mediation within thirty (30) days of the written request of one Party after the service of that request on the other Party.

B. The Parties may agree on one mediator. If they cannot agree on one mediator, the Party demanding mediation shall request the Superior Court of Santa Clara County to appoint a mediator. The mediation meeting shall not exceed one day (eight (8) hours). The Parties may agree to extend the time allowed for mediation under this Agreement.

C. The costs of mediation shall be borne by the Parties equally.

D. Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation or mediation that arises out of any dispute related to this Agreement, the Parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome of the litigation.

Pursuant to section 16 of the Agreement, Oracle therefore makes this request for mediation with SVP. Oracle proposes that the parties select a mediator from the JAMS roster of Bay Area

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mediators and conduct the mediation at the mediator's office of choice in the Bay Area. Please have your legal counsel contact me to discuss the selection of a mediator.

Nothing contained herein shall be construed to be a waiver of Oracle's rights or remedies, all of which are specifically reserved.

Very truly yours,

A handwritten signature in black ink, appearing to read "Joseph V. Mauch", written in a cursive style.

Joseph V. Mauch

JVM:jli

Enclosure

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