

**SUBSTATION AGREEMENT  
BY AND BETWEEN  
THE CITY OF SANTA CLARA, CALIFORNIA  
AND  
Vantage Data Centers CA31, LLC**

**PREAMBLE**

This Substation Agreement (“Agreement”) is made and entered into on the date last signed by the Parties (“Effective Date”) by and between the City of Santa Clara, California, a chartered California municipal corporation (“City”) and Vantage Data Centers CA31, LLC (a Delaware limited liability company), with its principal place of business located at 2820 Northwestern Parkway Santa Clara, CA 95050 (“Customer”), The City and Customer may be referred to in this Agreement individually as a “Party” or collectively as the “Parties”.

**RECITALS**

- A. The City of Santa Clara owns and operates an electric utility, doing business as Silicon Valley Power (“SVP”), and currently provides electric service pursuant to standard electric rate schedules authorized by the City Council of the City of Santa Clara to Customer at 2590 Walsh Avenue, (parcel number 216-28-112), in the City of Santa Clara, California including all services addresses (“Premises”), which is shown on Exhibit A – Parcel Map attached hereto and incorporated into this Agreement by reference;
- B. Customer has requested that the City provide 99 MVA of total capacity (“Total Capacity”) to meet Customer’s anticipated operating needs;
- C. City has determined that a new single customer electric substation is required to be built to meet Total Capacity. The proposed new substation with a Total Capacity of 99 MVA will be known as the Bowers Avenue Junction (BAJ) and is shown as the area and equipment marked as the Substation Facilities on Exhibit C – Substation Plan attached hereto and incorporated into this Agreement by reference (“Substation Facilities”);
- D. City has determined that the Substation Facilities as depicted on Exhibit C require new 60kV transmission line extensions (“Transmission Facilities”) to connect the Substation Facilities to SVP’s electrical system;
- E. The Parties acknowledge that significant System Capacity Improvement Facilities as defined in this Agreement will be required to provide the Total Capacity;
- F. The Parties further acknowledge that improvements required to increase system capacity are not fully within their control and factors outside of the control of either Party may impact the Customer’s Available Capacity Schedule outlined in Exhibit E – Available Capacity Schedule attached hereto and incorporated into this Agreement by reference;

- G. In addition to significant System Capacity Improvement Facilities, capacity available to the City's customers is subject to a Transmission Planning Process (TPP) with the California Independent System Operator (CAISO) and this process may affect Available Capacity Schedule;
- H. SVP will use commercially reasonable efforts to provide the Customer with capacity according to the Available Capacity Schedule in Exhibit E;
- I. The Project (defined below) is subject to capacity operation limits set forth in Exhibit G which the Parties mutually agreed to place on the Premises and other properties as memorialized in Exhibit G1.
- J. The purpose of this Agreement is to set forth the mutual obligations of the Parties with respect to supplying Customer with initial interim electric power and then with ongoing capacity and transmission infrastructure for the Premises.

Therefore, in consideration of the foregoing, the Parties agree as follows:

## **AGREEMENT PROVISIONS**

### **I. DEFINITIONS**

- A. "Capacity" is the maximum or peak amount of electric power (electricity) that may be received by Customer for use at a specific point in time and is determined by Transmission System Operating Limits
  - 1. "Available Capacity" is the Capacity depicted in Exhibit E and is the maximum Capacity available to be used by the Customer during each year of each Load Phase.
  - 2. "Available Capacity Schedule" the phased schedule by which the City anticipates Capacity requested by Customer will be available. The Available Capacity Schedule is outlined in Exhibit E.
  - 3. "Interim Capacity" is the Capacity available from SVP's 12 kV distribution feeders prior to operation of the Substation Facilities and as further defined in Section II.D.
  - 4. "Cumulative Paid Capacity" is the Capacity for which Customer has paid Load Development Fees. Cumulative Paid Capacity is greater than or equal to Available Capacity as set forth in Exhibit E.
  - 5. "Total Capacity" is the Customer requested maximum MVA capacity and cannot exceed 99 MVA. While the Substation Facilities and Transmission Facilities will be designed to meet Total Capacity, the maximum Capacity available to Customer is Available Capacity for each Load Phase.
- B. "Electric Service" is defined in SVP Rules and Regulations No. 1C – Definitions.
- C. "Estimated Duration" in Exhibit D – Project Schedule and Costs attached hereto and incorporated into this Agreement by reference is an estimated duration for a set of tasks. This is a best-case scenario and does not include

potential delays caused by weather or force majeure events.

- D. "Load Development Fee" is the Commercial Facilities Dedicated 60kV Fee in the City of Santa Clara Municipal Fee Schedule. This fee represents the share of costs associated with System Capacity Improvement Facilities required for the Project. This fee funds systemwide capital expenditures directly related to the addition of infrastructure associated with new load increases and does not include costs directly attributed to the Project. Customer will be obligated to pay the fee based on the City's Municipal Fee Schedule at the time of the invoice. "Load Phase" is depicted in Exhibit D and represents the periods for which a specific Available Capacity is in effect and available for Customer to use.
- E. "Peak Demand" is the sum of the highest average kW delivery, at the Premises, of any 15-minute interval.
- F. "Rules and Regulations" means any applicable City and SVP laws, rules, regulations, ordinances, resolutions, and regulations as may be amended from time to time.
- G. "System Capacity Improvement Facilities" are the system improvements required by City to support the Total Capacity requested by Customer. System Capacity Improvement Facilities include projects on SVP's 230kV, 115kV, and 60kV transmission lines, receiving stations, and Pacific Gas & Electric Bulk Electric System Improvements.
- H. "Transmission System Operating Limits" mean the maximum allowable Bulk Electric System (BES) operating limits the SVP electric system is capable of operating as determined by the National Electric Reliability Corporation (NERC) Reliability Standards or as otherwise required by Federal Energy Regulatory Commission (FERC);

## II. PROJECT OVERVIEW

- A. Project Description: The proposed Project (Project), (PLN: 2021-14964) includes the following site improvements on a 6.7-acre property to construct a 479,022 square foot four-story data center consisting of eight data halls, mechanical penthouse, backup generators, power equipment and office space.
- B. Electric Facilities:
  - 1. Customer will fund the development and construction of the Substation Facilities and Transmission Facilities ("Substation Development Phase") to serve the Premises.
  - 2. Customer will construct electrical Substation Facilities with a Total Capacity of 99 megavolt amps (MVA) at 2590 Walsh Ave, on the west side of the Premises near Bowers and Walsh Avenues.
- C. Interconnection Facilities:
  - 1. In the course of the development of the Premises, City and Customer will finalize requirements for the interconnection facilities necessary

for supplying electrical power to the Project (“Connection Phase”).

2. The layout of and requirements for the interconnection facilities shall be complete and agreed upon by the Parties prior to commencement of any construction on the Substation Facilities.
- D. Interim Phase: Customer is also requesting electric power capacity of up to 2500 KVA (“Interim Capacity”) from SVP prior to operation of the Substation Facilities (“Interim Phase”).
- E. The beginning and the ends of the Interim Phase and the Substation Development Phase may overlap. The respective responsibilities and obligations of the City and Customer for each of these phases are further described in the following sections.
- F. Customer has requested a Total Capacity of 99 MVA. SVP will make commercially reasonable efforts to provide Available Capacity for Customer’s use based on Table E1 –Available Capacity Schedule – of Exhibit E.
- G. In the event that 99 MVA is not included in Exhibit E, SVP and Customer shall meet at least every two (2) years beginning upon the Effective Date and may mutually agree to amend Table E1 of Exhibit E and, if accepted by City, an Amendment to the Agreement will be executed between the Parties.

### **III. INTERIM PHASE**

#### **A. CUSTOMER OBLIGATIONS**

1. In order to enable Customer to begin construction and operate without interruption until the Substation Facilities are fully constructed, energized, and operating, Customer shall construct the infrastructure required by SVP in order to use the Interim Capacity of Electric Service (“Interim Service”).
2. Customer acknowledges that up to 2500 KVA Interim Service requested for the Premises is included in Total Capacity requested by the Customer and the Total Capacity is the total allocation for the Premises.
3. Customer shall pay all costs associated with the construction and removal of the Interim Service and pay any Load Development Fees associated with the Interim Service.
4. Customer shall work with SVP to transfer Customer’s existing load from the Interim Service to the new Substation Facilities within three (3) months after energization of the Substation Facilities.

#### **B. SVP OBLIGATIONS**

If Customer meets all requirements of Section A of this Section III, SVP will provide Interim Service from 12 kV distribution feeders at or near the location set forth in Exhibit B – Interim Service Diagram attached hereto and incorporated into the Agreement by reference.

#### IV. SUBSTATION DEVELOPMENT PHASE

The following activities and obligations shall constitute the Substation Development Phase (“Substation Development Phase”):

##### A. SUBSTATION DEVELOPMENT SCHEDULE:

Customer shall provide a proposed project schedule to SVP that is aligned with the Schedule in Exhibit D for review and approval by SVP. Each Party shall notify the other Party as soon as practicable when the schedule is anticipated to change.

##### B. SVP OBLIGATIONS

1. SVP will provide up to the Available Capacity indicated in MVA to the Premises as further detailed in Exhibit E, after successful energization of the Substation Facilities, Transmission Facilities and System Capacity Improvement Facilities.
  - a) Because the System Capacity Improvement Facilities completion schedules are not fully controlled by SVP, SVP, at its sole discretion, may limit Customer and their tenant’s Available Capacity until the capacity is made fully available to SVP.
  - b) The approved Available Capacity for each Load Phase is identified in Exhibit E. Exhibit E may only be modified subject to the provisions of Section VI.F. (Capacity Reduction) of the Agreement or through an Amendment to the Agreement executed between the Parties.
  - c) The Parties agree that the capacity from Substation Facilities will be provided pursuant to the Rules and Regulations, applicable Silicon Valley Power Rate Schedules, current Load Development Fees, and subject to the completion of any system upgrades necessary to serve the load at the time the load capacity increase is initiated.
2. SVP will make Electric Service available to the Customer, at the Utility Connection Point, from the Substation Facilities and connected to the Premises through the Transmission Facilities. The Utility Connection Point for a SVP junction facility is the Customer side of the 60kV disconnect switches located within the Substation Facilities as shown in Exhibit C.
3. SVP will use commercially reasonable efforts to test and commission the Substation Facilities within thirty (30) months after the Effective Date of this Agreement.
4. SVP shall use commercially reasonable efforts to design, construct, test and commission the Transmission Facilities within thirty (30) months after the Effective Date of this Agreement.
5. Completion of the Substation Facilities and Transmission Facilities is

subject to the following additional terms:

- a) SVP will own, operate, and maintain all City-owned Substation Facilities and Transmission Facilities, to the Utility Connection Point.
- b) SVP will own, operate and maintain all City-owned Substation Facilities and Transmission Facilities, SVP control building and all equipment therein, as shown in Exhibit C.
- c) The Parties agree to coordinate the design and construction of the Substation Facilities and Transmission Facilities to assure timely completion in accordance with Exhibit D.
- d) SVP will design the City-owned control building within the Substation Facilities.
- e) SVP will keep Customer informed on an ongoing basis as to the costs it is incurring associated with the design, construction, testing, commissioning, and completion of the Substation Facilities and Transmission Facilities, including periodic updates to Exhibit D as needed. Once preliminary engineering review is complete, SVP will provide Customer with a detailed estimate of SVP project cost to fully complete the control building with the Substation Facilities. SVP will provide Customer with reasonable access to SVP's records that substantiate any costs SVP proposes to bill to Customer related to the Substation Facilities and Transmission Facilities.
- f) In no way will City be held responsible or subject to any penalty if System Capacity Improvement Facilities are not complete by Customer's anticipated or proposed energization date.
- g) The Substation Facilities shall be Substantially Complete before SVP begins testing and commissioning activities. For purposes of this Agreement, "Substantially Complete" means that Substation Facilities construction is complete as determined by SVP, in accordance with SVP's standards and requirements, and no Customer contractors remain working within the perimeter wall of the Substation Facilities. Location of Substation Perimeter Wall (as defined below) is as specified in Exhibit C. SVP is not obligated to compress its testing and commissioning schedule to meet Customer's anticipated service date.
- h) SVP acknowledges that the required interconnection study has been completed and reflects Available Capacity known at that time. SVP will update the Customer on projects and schedules that may impact the Available Capacity feasibility as that information becomes available.

## C. CUSTOMER OBLIGATIONS

1. Customer must pay a Load Development Fee according to the

current applicable fee set forth in the City of Santa Clara Municipal Fee Schedule and in the timelines in Exhibit D.

2. Customer shall design (with the exception of the City-owned control building), procure, and construct Substation Facilities (including control building), as shown in Exhibit C, to provide 60kV service to the Premises. Customer shall perform design, procurement, and construction pursuant to SVP's standards and requirements, at Customer's own financial risk.
3. The Substation Facilities would consist of two 100 MVA transformers. In the event one transformer fails, then the load, not to exceed 99 MVA, would be transferred to the redundant transformer.
4. Completion of the Substation Facilities and Transmission Facilities is subject to the following additional terms:
  - a) The Substation Facilities shall be for the exclusive use of the Project to be constructed on the Premises.
  - b) Substation Facilities 60kV bus will be a breaker and half scheme with the complete 60kV junction being constructed to serve the Premises.
  - c) Customer shall obtain any necessary land use entitlements, and provide any property rights, including easements, to the City, necessary to construct, complete and maintain the Substation Facilities.
  - d) Customer shall be responsible for all costs associated with the acquisition of any additional easements necessary for the Transmission Facilities.
  - e) SVP and Customer shall negotiate and execute one or more easement agreements providing easements on the Premises, as may be required by SVP, to install, operate, and maintain any necessary distribution facilities.
  - f) Customer shall provide documents required to transfer any Substation Facility-related equipment to City such as, but not limited to bill of sale in a form acceptable to City.
  - g) Customer shall construct a Substation Perimeter Wall, marked as "Perimeter Wall" on Exhibit C, which shall create a physical boundary around the Substation Facilities for ensuring the Substation Facilities' security ("Substation Perimeter Wall"). The Substation Perimeter Wall shall be for SVP's exclusive use. Only SVP approved signage is permitted on the Substation Perimeter Wall. The Substation Facilities shall have an all-weather asphalt surface underlain by an aggregate base.
  - h) The Customer shall procure the Substation Facilities control building to comply with SVP's standards and requirements. Any changes or substitutions to SVP's design package for the

control building must have SVP approval prior to implementation. SVP, or SVP's designated representative, shall oversee factory acceptance testing of the control building and inspect the control building prior to shipment of the building to the Premises. All deficiencies identified by SVP during any factory inspection visits or factory acceptance testing shall be corrected prior to shipment of the control building to the Premises.

- i) Customer-owned control, communication, and protection wiring from the Customer's control building to the marshalling termination cabinet located on Customer side of demarcation fence, and related equipment, will be owned and maintained by Customer. Customer shall clearly label and identify all control and protection wiring as required by SVP to avoid (1) confusion during troubleshooting, maintenance, or repair of City-owned equipment and (2) misoperation of any SVP equipment.
- j) Customer shall pay the City estimated and actual costs pursuant to Payment Milestones set forth in Exhibit D. These costs shall include but not be limited to all travel expenses incurred by SVP to (1) perform factory acceptance testing, (2) oversee testing for any equipment purchased by Customer to be turned over for SVP's ownership, and (3) perform all punch list items necessary to fully integrate the Substation Facilities into SVP's network. Payments to City shall be due within thirty (30) days of the date of invoice from City. Invoices from City shall describe the basis of estimated or actual costs to Customer.
- k) Standards of Care: Customer shall ensure that its contractors perform the construction of the Substation Facilities and other facilities to be transferred to SVP in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California and that contractors maintain all required all licenses, permits, qualifications, insurance and approvals. Customer shall further ensure that these contractors maintain expertise in the professional calling necessary to the construction of the Substation Facilities and other facilities to be transferred to SVP.
- l) Warranty: By delivery of the Substation Facilities to be transferred to SVP, Customer expressly warrants that the Substation Facilities to be transferred to SVP shall be fit for the purpose intended, be free from defect, conform to the to the standards and requirements specified by SVP, and comply with all applicable federal, state and local laws. Customer shall cause its contractor to promptly replace or correct any incomplete, inaccurate, or defective materials or services at no



cost to City when the Substation Facilities fail to conform with the foregoing. If Customer fails to promptly correct or replace materials or services, City may make corrections or replace materials or services and charge Contractor for the cost incurred by City.

## **V. CONNECTION PHASE**

The following activities and obligations shall constitute the Connection Phase:

### **A. SVP OBLIGATIONS**

1. Upon completion of the Substation Facilities, Transmission Facilities and System Capacity Improvement Facilities, SVP shall provide the Available Capacity (inclusive of any Interim Service that is transferred to the Substation Facilities) for each Load Phase as detailed in Exhibit E. Such capacity shall include primary and, as necessary, secondary, services to the Premises.
2. All electrical equipment, installed by Customer upon the Premises for the purpose of, but not limited to, delivery and metering of Customer's Electric Service, shall become the property of SVP. SVP shall own, operate, and maintain the Substation Facilities (including the City-owned control building and all other City-owned equipment) and the Transmission Facilities at SVP's sole cost and expense, in accordance with good utility practices and Rules and Regulations.

### **B. CUSTOMER OBLIGATIONS**

1. Customer shall work with SVP to transfer Customer's existing load from any temporary power such as temporary construction power, or other Interim Service to the new Substation Facilities within three (3) months after energization of the Substation Facilities.

## **VI. LOAD FORECAST AND LOAD DEVELOPMENT FEE PAYMENT SCHEDULE**

- A. During Interim Service and after Substation Facilities are energized, Customer is permitted to use Available Capacity based on Exhibit E as it may be amended pursuant to this Section.
- B. City will invoice Load Development Fees based on the following schedule:
  1. Following the Effective Date, City will invoice Customer for Load Development Fees based on 20 MVA. This amount will be reduced by the dollar amount of Load Development Fees paid for Interim Service.
  2. Each time that Available Capacity exceeds Cumulative Paid Capacity in Exhibit E, City will invoice Load Development Fees in 10 MVA increments based on the fee in the municipal fee schedule at the time of invoice.
- C. SVP may request, and the Customer shall provide, a 10-Year load forecast by month within thirty (30) days of SVP's request in a form required by SVP. SVP may make such request up to twice per year. This forecast will be used

to determine applicable capacity available for use and incorporated into SVP's TPP with CAISO. This 10-Year load forecast (which may also be referred to as load ramp schedule) is for transmission planning purposes only and does not amend Exhibit E. Exhibit E may only be modified by amendment to this Agreement or pursuant to subsection F of this Section VI.

- D. SVP will evaluate Customer's load forecast and determine applicable capacity available for use and incorporated into SVP's TPP with CAISO. SVP may adjust load forecast to meet SVP's system capacity requirements.
- E. Customer shall be responsible for operating within the Available Capacity for each Load Phase in Exhibit E. In the event that Available Capacity for a Load Phase is exceeded, the Customer shall pay any penalties, damages, or any other cost associated with Customer's load exceeding Available Capacity. Such costs include, but are not limited to, (1) costs of the de-energization of SVP electric system for asset inspection; and (2) any penalties assessed to SVP by CAISO relating to resource adequacy forecasted capacity based on the Customer's excess load above Available Capacity for that Load Phase identified in Exhibit E.
- F. Capacity Reduction:
  - 1. SVP will monitor Peak Demand at the end of each Load Phase and annually after the last phase depicted in Exhibit E.
  - 2. After the end of each Load Phase, City, in its sole discretion, may reduce the Available Capacity and Cumulative Paid Capacity based on Peak Demand during the last completed phase (Reduced Available Capacity).
  - 3. During the Load Phases defined in Exhibit E, average Peak Demand is calculated as the highest demand average over three (3) consecutive monthly billing periods (Average Peak Demand) for each year during that Load Phase.
  - 4. In the event that Available Capacity in a Load Phase is 15% or more greater than Average Peak Demand, SVP may take action to reduce Available Capacity and unilaterally amend Exhibit E ("Capacity Reduction").
  - 5. SVP shall notify the Customer of any Capacity Reduction by means of a Capacity Reduction Notice in substantially the same format as Exhibit F – Sample Capacity Reduction Notice attached hereto and incorporated into this Agreement by reference. Such notice will include an updated Exhibit E and, through that notice, Exhibit E will be effectively amended and incorporated into the Agreement.
  - 6. In the event that SVP issues a Capacity Reduction Notice which includes capacity for which Customer has paid Load Development Fees, SVP will refund the amounts Customer paid for the amount of available capacity that has been reduced unless such capacity is included in a future Load Phase. Customer shall have no right to any

interest accrued by the entire payment or any amount refunded.

7. If the Cumulative Paid Capacity has been subject to a Capacity Reduction at any time during the term of the Agreement and, if the Customer's demand is expected to increase above the reduced Available Capacity, then the Customer may request an amendment to the Agreement to amend Exhibit E. Customer shall provide any supporting information requested by SVP and, if acceptable to City, the Parties will execute an Amendment to the Agreement modifying Exhibit E.
  8. After Final Load Phase, SVP may continue to evaluate the highest demand average over (3) three consecutive monthly billing periods during a five-year window beginning with end date of the final phase of the currently effective Available Capacity Schedule. SVP may issue Capacity Reduction Notices at any time that the Available Capacity in the Final Load Phase is 15% greater than Average Peak Demand.
- G. When evaluating Customer Peak Demand, SVP may evaluate any anomalies such as needle peaks that may artificially increase peak demand and, at SVP's sole discretion, such anomalies may be excluded from the calculation of Average Peak Demand.
  - H. Customer shall provide at least 14-day advance notice of any maintenance or commissioning activities.

## **VII. NON-INTERFERENCE**

Neither Party nor any of its agents or contractors shall perform any work relating to the Interim Service, the Substation Facilities, the Transmission Facilities, or the Premises in a manner which unreasonably interferes with the other Party's work or property. Customer and each of its respective agents and contractors shall use their best efforts to minimize disruption to the City. Without limiting the generality of the foregoing, each party shall consult in good faith with the other regarding the manner in which work will be performed.

## **VIII. FORCE MAJEURE**

- A. Notwithstanding anything to the contrary in this Agreement, neither Party shall be considered to be in default in performance of any of its obligations under this Agreement when a failure of performance is due to a Force Majeure event.
- B. For the purpose of this Agreement, "Force Majeure" is defined as any cause beyond the reasonable control of the Party affected, and which by exercise of reasonable due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence it has been unable to overcome or obtain or cause to be obtained a commercially reasonable substitute therefore.
- C. Force Majeure includes failure or threat of failure of facilities, Acts of God, flood, drought, earthquake, storm, tornado, fire, explosion, lightning, epidemic, public emergency, war, riot, civil disobedience, labor strike, labor dispute, labor or materials shortage (however labor or materials shortage does not

include the mere inability to obtain that labor or material at a particular price), sabotage, restraint by court order, restraint by public authority, or action or non-action by governmental authority or accident), which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by exercise of due diligence has been unable to overcome.

- D. Notwithstanding Section VIII.C, a Force Majeure does not include (a) any cost and expense increase; (b) any strike or lockout or other labor-related disturbance involving only the employees of Customer or its contractors and which is not part of a nationwide strike, (c) typical weather or climatic conditions, including precipitation (including rain and snow), heat or wind conditions as would be expected for the geographic area of the Premises, (d) unavailability of labor, equipment, material or other resources (e) economic hardship of any Party; (f) machinery or equipment breakdown due to inadequate maintenance, (g) price fluctuations with respect to labor or materials, supplies or components of equipment related to items to be supplied by Contractor under this Agreement; and (h) the application of laws and/or implementation of health and safety guidelines, whether legally mandated or merely recommended, that exist on the Effective Date and relate to the Coronavirus pandemic, including laws or guidelines regarding wearing of protective masks, social distancing, on-site COVID testing or other related medical screening, rental of additional portable restrooms and/or additional trailers to promote social distancing, additional cleaning and disinfection, procurement of hand sanitizer, masks, air filters, thermometers and signage, and management and oversight of the foregoing.
- E. The Party claiming that a Force Majeure event has occurred shall notify the other Party in writing within thirty (30) days from the date that such Party knew of the event or circumstance giving rise to the claim. Such notice shall fully describe the claimed Force Majeure event, and outline the affected Party's efforts to prevent, avoid, overcome, delay or mitigate such Force Majeure event and the impacts on its performance hereunder, as well as the anticipated duration of such delay. The affected Party shall keep the other Party informed, in writing, on a regular basis during the pendency of the Force Majeure event to any updated information regarding such anticipated duration.

## **IX. ASSIGNMENT OF AGREEMENT/SUCCESSORS IN INTEREST**

- A. Customer and City bind themselves, their successors, and assigns, to all covenants of this Agreement. Except as otherwise set forth in this Agreement, no interest in this Agreement or any of the work provided for under this Agreement shall be assigned or transferred, either voluntarily or by operation of law, by either Party without the prior written approval of the other Party, which approval shall not be unreasonably withheld, conditioned, or delayed; any such assignment shall not relieve the assignor from any of its obligations under this Agreement.
- B. Customer shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Customer is for the acts and omissions of persons directly employed

by it.

**X. NO THIRD PARTY BENEFICIARY**

Except permitted assignees subject to Section IX, this Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

**XI. HOLD HARMLESS/INDEMNIFICATION**

- A. To the extent permitted by law, Customer agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with this Agreement – including claims of any kind by Customer's employees or persons contracting with Contractor to perform any portion of this Agreement– and shall expressly include passive or active negligence by City connected with the Agreement. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Customer's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Customer, against City (either alone, or jointly with Customer), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.

**XII. AMENDMENTS**

It is mutually understood and agreed that no alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the Parties and incorporated as an Amendment to this Agreement.

**XIII. SEVERABILITY CLAUSE**

In case any one or more of the provisions contained herein shall be held invalid, illegal or unenforceable by a court of competent jurisdiction, it shall not affect the validity of the other provisions which shall remain in full force and effect.

**XIV. WAIVER**

Waiver by either Party of any provision of this Agreement shall not be construed as waiver(s) of any other provision of this Agreement. This specifically includes active or passive waiver of actions after Available Capacity for a specific phase is exceeded.

**XV. NOTICES**

All notices to the Parties shall, unless otherwise requested in writing, be sent to

City addressed as follows:

Chief Electric Utility Officer  
City of Santa Clara  
1500 Warburton Avenue  
Santa Clara, California 95050  
And by e-mail at [svpcontracts@santaclaraca.gov](mailto:svpcontracts@santaclaraca.gov), and  
[manager@santaclaraca.gov](mailto:manager@santaclaraca.gov)

And to Customer addressed as follows:

Vantage Data Centers CA31, LLC  
2820 Northwestern Parkway  
Santa Clara, CA 95051  
Attention: General Counsel  
Email: [legal@vantage-dc.com](mailto:legal@vantage-dc.com)

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. Pacific Standard Time on a Friday shall be deemed to have been transmitted on the following business day.

#### **XVI. CAPTIONS**

The captions of the various sections, paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of interpretation.

#### **XVII. GOVERNING LAW AND VENUE**

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

#### **XVIII. COMPLIANCE WITH LAWS**

Customer shall at its own cost and expense comply with all statutes, ordinances, regulations and requirements of all governmental entities, including federal, state, county or municipal, whether now in force or hereinafter enacted, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Customer's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally, Customer has read and agrees to comply with City's Ethical Standards (<http://santaclaraca.gov/home/showdocument?id=58299>).

#### **XIX. DISPUTE RESOLUTION**

A. Unless otherwise mutually agreed to by the Parties, any controversies between the Parties 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.

## **XX. OTHER AGREEMENTS**

This Agreement shall not prevent either Party from entering into similar agreements with other entities or individuals.

## **XXI. TERMINATION**

### **A. Termination for Cause**

1. For purposes of this Agreement, the term "default" shall mean the failure of any Party to perform any material obligation in the time and manner provided by this Agreement.
2. Either Party may terminate this Agreement in the event of a default by the other Party by providing a written Notice of Termination to the defaulting Party. Such Notice of Termination shall become effective no less than thirty (30) calendar days after a Party receives such notice. Such Notice of Termination for cause shall include a statement by the terminating Party setting forth grounds for determination of default under the Agreement.
3. Opportunity to Cure Default: Upon receipt of a Notice of Termination by a Party arising from its default under this Agreement, the defaulting Party shall have thirty (30) days from the receipt of such notice to cure the default by making such payment or performing the required obligation (or additional time, if any that is reasonably necessary to promptly and diligently cure the default). If the default is cured to the reasonable, mutual satisfaction of the Parties, the Agreement shall remain in effect upon written acceptance of the cure by the Party who issued the Notice of Termination for cause.

### **B. Termination without Cause**

At any time, Customer may elect to terminate construction of the Substation Facilities upon delivery of (180) days written notice thereof to the City. If Customer chooses to terminate construction of the Substation Facilities and Transmission Facilities, Customer will reimburse any and all City expenses,

termination fees, and cancellation fees reasonably incurred by the City related to the Substation Facilities and Transmission Facilities prior to the expiration of such 180-day notice period. Customer shall not be entitled to a refund of any Load Development Fees.

**XXII. COUNTERPARTS**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

**XXIII. INTEGRATED DOCUMENT - TOTALITY OF AGREEMENT**

This Agreement and its Exhibits embody the entire agreement between the Parties regarding the subject matter of this Agreement. In the event of a conflict between the terms of the Agreement and the Exhibits, the terms of the Agreement shall control. No other understanding, agreements, conversations, or otherwise, with any officer, agent, or employee of the City shall affect or modify any of the terms in or obligations created by this Agreement.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date.

**CITY OF SANTA CLARA, CALIFORNIA**  
a chartered California municipal corporation

Approved as to Form: \_\_\_\_\_ Dated: \_\_\_\_\_

\_\_\_\_\_  
Office of the City Attorney  
City of Santa Clara

\_\_\_\_\_  
Office of the City Manager  
1500 Warburton Avenue  
Santa Clara, CA 95050  
Telephone: (408) 615-2210  
Fax (408) 241-6771

“CITY”

**VANTAGE DATA CENTERS CA31, LLC**  
a Delaware limited liability company

Dated: \_\_\_\_\_

By (Signature): \_\_\_\_\_

Name: Jeffery Tench

Title: President

Principal Place of  
Business Address: 2820 Northwestern Parkway

Email Address: jtench@vantage-dc.com

Telephone: (303) 562-6744

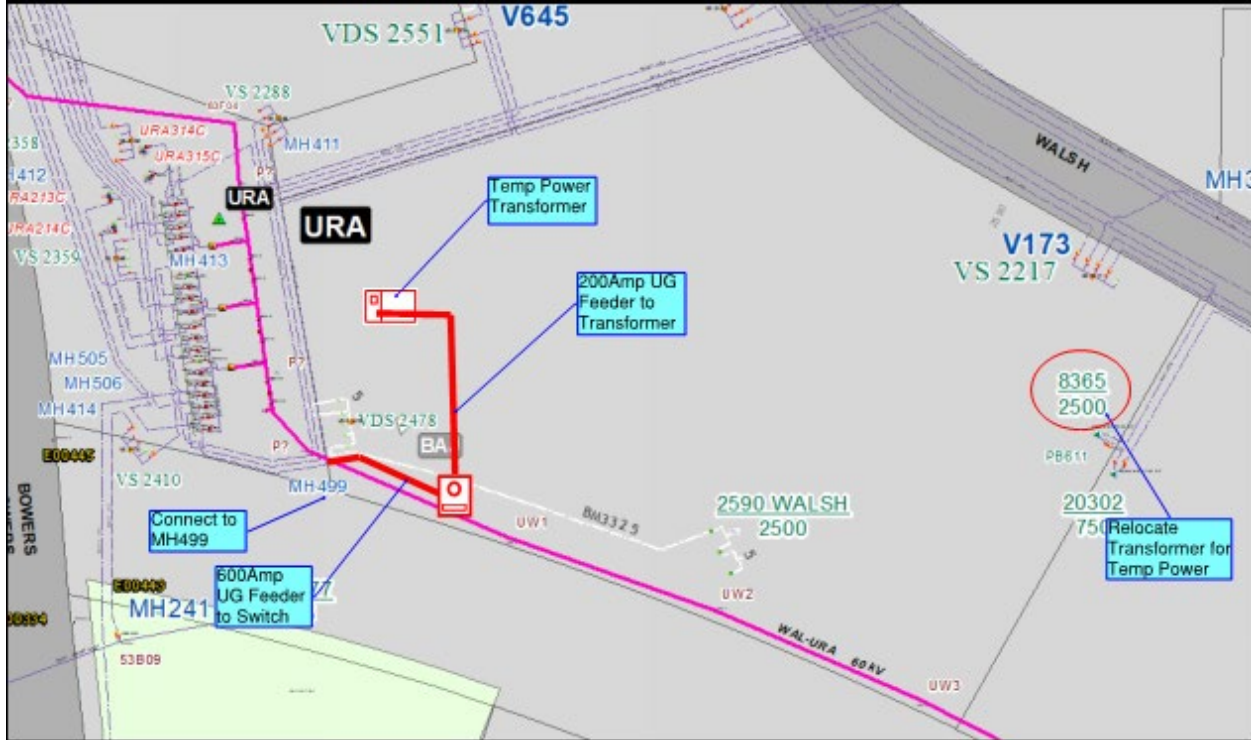
“CUSTOMER”





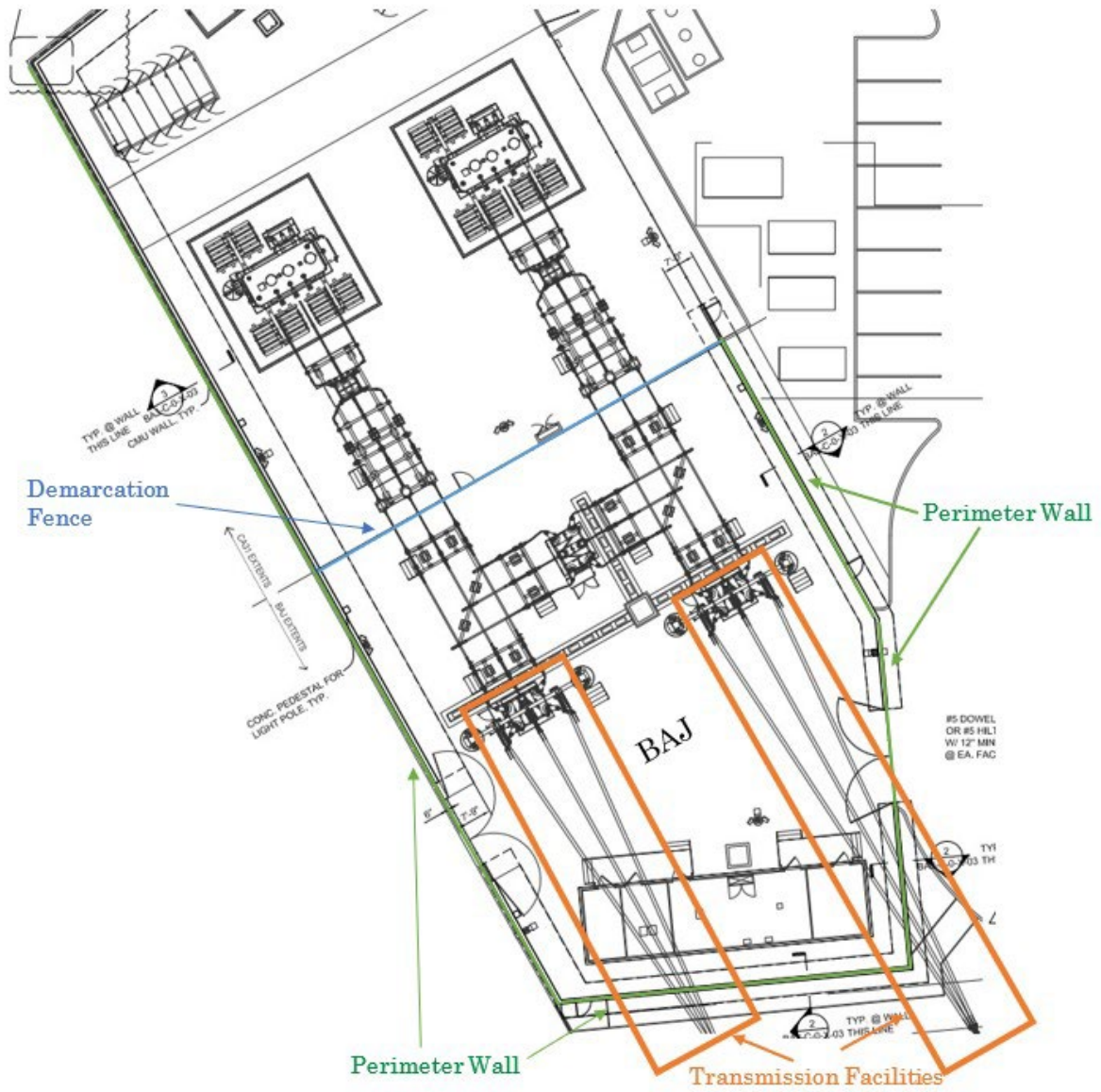
# EXHIBIT B

## Interim Service Diagram



# EXHIBIT C

## Substation Plan



**EXHIBIT D**  
**Project Schedule and Costs**

**I. PAYMENT RATES**

- A. Customer shall pay the Load Development Fee according to the schedule in Table D1 based on the Load Development Fee at the time of payment in the City of Santa Clara Municipal Fee Schedule adopted by the City Council of the City of Santa Clara as amended from time to time.
- B. In addition to any costs paid to directly to third parties by Customer for construction and other Customer responsibilities under this Agreement, Customer shall also be responsible for actual costs for Substation Facilities and Transmission Facilities including, but not limited to actual City costs for any associated work, services, or materials.

**II. PAYMENT SCHEDULE**

- A. City will invoice Customer based on the milestone schedule on Table D1. Payment is due within 30 days of Invoice Date.
- B. **All Estimated Amounts are based on fees at the time of this Agreement. Actual Amounts will be based on fees at the time of invoice.**

**Table D1 - Payment Milestone Schedule**

Payment Milestone (PM)	City Invoice Date	<u>Estimated</u> Amount of Invoice
PM 1	City will issue an invoice within 30 Days of the Effective Date of this Agreement.  City will invoice Load Development Fees for the difference between 20 MVA and the # of MVA as already paid for Interim Service.	\$ 8,162,026
PM 2	City will issue an invoice 30 Days before Public Works contract is submitted to Council for approval.	\$ 2,708,879
PM 3	After energization of Substation Facilities, City will invoice Customer for the difference between estimated costs billed in PM 1 and PM 2 and actual costs.	\$TBD
PM 4	Phase 0: Load Development Fee; City will invoice Customer according to the provisions of Section VI of the Agreement no sooner than 3 years following energization of Substation Facilities.	\$ 6,979,800
PM 5	Phase 1: Load Development Fee; City will invoice Customer according to the provisions of Section VI of the Agreement no sooner than 4 years following energization of Substation Facilities.	\$ 6,979,800

**III. PROJECT SCHEDULE & ESTIMATED COSTS**

Table D2 sets forth (1) the design and construction activities associated with the Substation Facilities and Transmission Facilities; and (2) associated schedule and payment estimates. Tasks and activities in this schedule may overlap and Estimated Duration is a best-case scenario estimate.

**Table D2 - Substation Facilities and Transmission Line Design and Construction Elements**

Task / Activity	Estimated Duration	Estimated Amount to be paid to SVP	Payment Milestone	Comments
1. Substation Facilities design 2. Transmission Facilities design	4 months	\$ 113,181.00	<b>PM 1</b>	Customer also pays Interim Load Development Fee
3. Control Building Procurement Drawings 4. Preparation of Public Works Construction Specification Documents	6 months	\$ 115,260.00	<b>PM 1</b>	Concurrent with preparation of Substation Facilities and Transmission Facilities drawings
5. Substation Facilities Construction Support	8 months	\$ 41,500.00	<b>PM 2</b>	Construction costs paid directly by Customer
6. Substation Facilities Commissioning and Testing	4 months	\$ 524,379.00	<b>PM 2</b>	Begins after Substation Facilities construction is complete.

Task / Activity	Estimated Duration	Estimated Amount to be paid to SVP	Payment Milestone	Comments
Transmission Facilities Interconnection Process (Estimated Duration 26 months) includes tasks associated with #7 - #14 below. This process will occur concurrent with Substation Facilities design, construction, commissioning, and testing				
7. Transmission Facilities Line Consultant	3 months	\$ 88,785.00	PM 1	
8. Transmission Line Interconnection Design (Concurrent with #9)	6 months	\$ 75,000.00	PM 1	
9. Steel Transmission Facilities Pole and Materials Procurement (Concurrent with #8)	12 months	\$ 790,000.00	PM 1	
10. Public Works Construction Bid process for Transmission Facilities line construction	8 months	\$ 5,000.00	PM 2	
11. Transmission Facilities line construction associated with connecting the Substation Facilities to the SVP 60kV loop 12. Work necessary at adjacent stations for relay panel replacement or upgrades necessary for the new interconnection	3 months	\$1,088,000.00	PM 2	This Task / Activity does not include any work associated with capacity increases on the loop.
13. Transmission Facilities Line interconnection (City Labor)	6 months	\$ 210,000.00	PM 2	
14. Miscellaneous costs may include, but are not limited to <ul style="list-style-type: none"> <li>• Encroachment permits from City of Santa Clara, Santa Clara County, and Santa Clara Valley Water District;</li> <li>• Utility relocation work;</li> <li>• Soil remediation or disposal of hazardous materials not previously identified;</li> <li>• Stormwater Pollution Prevention Plan (SWPPP) permit fees,</li> <li>• in lieu transfer to City of Santa Clara General Fund</li> </ul>		\$ 840,000.00	PM 2	
City will invoice Customer (and Customer shall pay) the difference between estimated and actual costs		TBD	PM 3	
<b>TOTAL ESTIMATED DURATION AND COSTS</b>	<b>30 MONTHS</b>	<b>\$ 3,891,105</b>		<b>Estimated duration includes net duration with schedule overlaps included. Schedule assumes best case scenario (Transmission Facilities Interconnection Process) and no delays due to Force Majeure</b>

#### IV. LOAD DEVELOPMENT FEE (LDF) PAYMENT SCHEDULE

Total Capacity Anticipated (99 MVA)

**All Estimated Amounts are based on fees at the time of this Agreement.  
Actual Amounts will be based on fees at the time of invoice.**

Load Phase	Timeline	Estimated amount to be paid to SVP	Payment Milestone	Comments
Interim Service – 2.5 MVA + 17.5 MVA (1 <sup>st</sup> LDF payment)	Within 30 days of the Effective Date of this Agreement	\$ 6,979,800	PM 1	LDF \$348.99
Phase 0 – 20 MVA	No sooner than 3 years after energization of Substation Facilities	\$ 6,979,800	PM 4	
Phase 1 – 20 MVA*	No sooner than 4 years after energization of Substation Facilities	\$ 6,979,800	PM 5	
ESTIMATED TOTAL LOAD DEVELOPMENT FEES		<b>\$ 20,939,400</b>		

\* To go above 52.2 MVA at this location, additional loop configuration or an additional loop may be required and may delay ramp increase.

#### V. ESTIMATED TOTAL PROJECT COSTS TO BE PAID TO SVP

All costs are estimates based on current rates and fees at the time of execution of this Agreement. Actual costs will be based on rates at the time of activity and fees at the time of payment.

- A. Substation/Transmission Line Design and Construction Costs: \$ 3,891,105
- B. Load Development Fees: \$ 20,939,400
- C. Grand Total: \$ 24,330,505

**EXHIBIT E**  
**AVAILABLE CAPACITY SCHEDULE**

- I. SVP will make commercially reasonable efforts to provide Available Capacity for Customer's use based on the timeline shown in Table E1 ("Available Capacity Schedule").
- II. The start date of the Available Capacity Schedule is the July 1st following the energization of the Substation Facilities ("Capacity Start Date"). Where load development fees are due pursuant to Table E1, City will invoice customer for Load Development Fee Payment after July 1 of the applicable year.
- III. The Phase Start Date for each phase assumes Customer has paid all amounts due including, but not limited to, Load Development Fees and charges included in Exhibit D before the start of that Phase.
- IV. Table E1 – Available Capacity Schedule is subject to the provisions of Section VI.F. (Capacity Reduction) of the Agreement.

DRAFT



Table E1 –Available Capacity Schedule

Load Phase	Phase Start Date	Phase End Date	Year	Available Capacity (MVA)	Capacity for Load Development Fee Payment (MVA)	Cumulative Paid Capacity (Max 99 MVA)
Interim Service	Interim Service Facilities complete	3 months after substation facilities energized	2022 to 2023	2.5 MVA	20 MVA	20 MVA
0	Substation Facilities Energized	3 years after energization of Substation Facilities Date	2024	3.0 MVA	0 MVA	20 MVA
			2025	18 MVA	0 MVA	20 MVA
			2026	32 MVA	20 MVA	40 MVA
1	Date Substation Facilities Energized +3 years	3 years after Phase 1 Start Date	2027	52.2 MVA*	20 MVA	60 MVA
			2028	52.2 MVA*	0 MVA	60 MVA
			2029	52.2 MVA*	0 MVA	60 MVA
2	Date Substation Facilities Energized +6 years	3 years after Phase 2 Start Date	2030	52.2 MVA*	0 MVA	60 MVA
			2031	52.2 MVA*	0 MVA	60 MVA
			2032	52.2 MVA*	0 MVA	60 MVA
3	Date Substation Facilities Energized +8 years	2 years after Phase 3 Start Date	2033	52.2 MVA*	0 MVA	60 MVA
			2034	52.2 MVA*	0 MVA	60 MVA

\* To go above 52.2 MVA at this location, additional loop configuration or an additional loop may be required and may delay ramp increase.

**EXHIBIT F**  
**Sample Capacity Reduction Notice**

This Capacity Reduction Notice is made pursuant to the [INSERT SUBSTATION NAME] Substation Agreement (the "Agreement"), between the City of Santa Clara, California, a chartered California municipal corporation ("City") and [INSERT NAME OF ENTITY], [INSERT TYPE OF ENTITY] ("Customer") dated \_\_\_\_\_, 20\_\_\_\_. This Capacity Reduction Notice is governed by the provisions of the Agreement, and this Capacity Reduction Notice is incorporated into that Agreement.

Customer is hereby notified that the Available Capacity Schedule (Exhibit E – Available Capacity Schedule) of the Agreement has been modified according to the below calculations:

Capacity Reduction Calculation pursuant to Phase # \_\_\_\_\_: [INSERT SUBJECT PHASE]

Available Capacity for year: \_\_\_\_\_ has been modified based on the following calculation:

1. Peak Demand for [INSERT FIRST CONSECUTIVE MONTH], 20\_\_\_\_ during evaluation period [INSERT PHASE OR YEAR STATED IN STEP 1]: \_\_\_\_\_ MVA
2. Peak Demand for [INSERT SECOND CONSECUTIVE MONTH], 20\_\_\_\_ during evaluation period [INSERT PHASE OR YEAR STATED IN STEP 1]: \_\_\_\_\_ : \_\_\_\_\_ MVA
3. Peak Demand for [INSERT THIRD CONSECUTIVE MONTH], 20\_\_\_\_ during evaluation period [INSERT PHASE OR YEAR STATED IN STEP 1]: \_\_\_\_\_ : \_\_\_\_\_ MVA
4. Average Peak Demand of three consecutive monthly billing periods: [INSERT AVERAGE OF STEPS 1, 2, AND 3] MVA
5. If Available Capacity is 15% or greater than Average Peak Demand : [INSERT MVA FROM STEP 5 MULTIPLIED BY 1.15] MVA

Based on the above reduction calculation, Table E1- Available Capacity Schedule in Exhibit E of the Agreement has been modified. This Capacity Reduction Notice is effective 30 days from the date signed by the SVP official below.

The new Available Capacity for each Load Phase of Agreement is as shown on Exhibit E – AVAILABLE CAPACITY SCHEDULE – AMENDED [ENTER DATE OF NOTICE + 30 Days] attached and incorporated into the Agreement by reference. Such Exhibit E shall supersede any previous Exhibit E whether those Exhibits were modified by amendment to the Agreement or by Capacity Reduction Notice.

By:

Name: \_\_\_\_\_

Title: Chief Electric Utility Officer

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT G**  
**Vantage Portfolio Operating Limit**

Table G-1 –Available Capacity Schedule for Vantage Properties

Vantage Portfolio Capacity Operation Limits for the following Vantage Properties per the Letter from Manuel Pineda to Sam Huckaby, dated 9/24/2020 and attached as Exhibit G-2:

- 2820 Northwestern
- 2897 Northwestern
- 737 Mathew
- 2590 Walsh

Year	2897 Northwestern (MVA)	2820 Northwestern (MVA)	737 Mathew (MVA)	2590 Walsh (MVA)	Total Portfolio (MVA)
2022	7.0	54.0	34.0	2.5	97.5
2023	7.0	57.0	47.0	2.5	113.5
2024	7.0	57.0	64.0	3.0	131.0
2025	7.0	57.0	71.0	18.0	153.0
2026	7.0	57.0	71.0	32.0	167.0
2027	9.0	60.0	71.0	52.0	192.0
2028	9.0	60.0	71.3	52.2	192.5*
2029	9.0	60.0	71.3	52.2	192.5*
2030	9.0	60.0	71.3	52.2	192.5*
2031	9.0	60.0	71.3	52.2	192.5*
2032	9.0	60.0	71.3	52.2	192.5*
2033	9.0	60.0	71.3	52.2	192.5*

**\* Limited to 192.5 MVA until such time as SVP, in its sole discretion, determines that SVP can accommodate additional MVA; provided, however, that such determination shall not occur earlier than (1) the completion of SVP transmission and CAISO controlled transmission grid projects and (2) the increase of system capacity.**

**Exhibit G2**  
**Letter from Manuel Pineda to Sam Huckaby, dated 9/24/2020**



**SILICON  
VALLEY POWER.**  
CITY OF SANTA CLARA

September 24, 2020

Vantage Data Centers  
Sam Huckaby, Vice President – Construction  
2820 Northwestern Parkway  
Santa Clara, CA 95051

Subject: New Data Center at 2590 Walsh

Dear Mr. Huckaby,

The City of Santa Clara's Electric Department, Silicon Valley Power, is the electric utility for the City of Santa Clara. Electric service to the subject project will be provided in accordance with the Rules and Regulations for the utility as approved by the Santa Clara City Council. Silicon Valley Power has reviewed the power needs and commitments at all Vantage sites within the City per the property list below:

- 2820 Northwestern
- 2897 Northwestern
- 737 Mathew
- 2590 Walsh (new proposed project not yet approved – request for 90 MVA)

Based on Vantage's existing and future power needs, Silicon Valley Power should be able to provide the following total power combined for all the sites:

- Up to 126.5 MVA from the current date to the end of Second Quarter of 2022
- Up to 192.5 MVA at Third Quarter of 2022 upon completion of the South Loop Project.
  - If there are delays on the South Loop Project, it will affect the timeline to increase from 126.5 to 192.5.
  - 737 Mathew is limited to 33 MW until the South Loop Project is completed.
- Silicon Valley Power is starting the process for additional transmission capacity to the City. The conceptual timeline for completion is Fourth Quarter of 2025. Upon completion of additional transmission, Vantage can increase from 192.5 MVA to 273 MVA.
- If Vantage has a need to exceed 192.5 MVA prior to these timeframes, the City would be interested in partnering on a battery storage project or other generation facility to serve those needs.

The specific details of this service and SVP system modifications required to provide this capacity for 2590 Walsh will be worked out in a Substation Service Agreement at a future date. The City is also in the process of reviewing and updating its load development fee, which will be applicable for any new project (or above 192.5 MVA). It is also important to note that all appropriate fees will need to be paid, and this letter does not supersede any requirements or agreements for the already approved sites at 2820 Northwestern, 2897 Northwestern, and 737 Mathew.

Questions can be directed to Wendy Stone at (408) 615-5648.

Thank you,



Manuel Pineda  
Chief Electric Utility Officer  
City of Santa Clara – Silicon Valley Power

cc: Michael Stoner

881 Martin Avenue • Santa Clara, CA 95050 • 408-615-6600 • Fax 408-249-0217  
[www.siliconvalleypower.com](http://www.siliconvalleypower.com)