

**SERVICES AGREEMENT BETWEEN  
THE CITY OF SUNNYVALE AND ZAYO GROUP  
FOR CO-LOCATION FACILITY AND RELOCATION SERVICES OF HARDWARE  
FOR CITY OF SUNNYVALE DATA CENTER**

THIS AGREEMENT dated \_\_\_\_\_ is by and between the CITY OF SUNNYVALE, a municipal corporation ("CITY"), and ZAYO GROUP ("CONTRACTOR").

WHEREAS, CITY is in need of a colocation facility and relocation services of hardware to said facility;  
and

WHEREAS, CONTRACTOR possesses the skill and expertise to provide the required services;

NOW, THEREFORE, THE PARTIES ENTER INTO THIS AGREEMENT.

1. Contract Documents

The complete Contract consists of the following documents: Request for Proposal No. F17-104, consisting of a Notice Inviting Proposals, Instructions to Proposers, Specifications, Terms and Conditions and CONTRACTOR's completed Proposal. These documents are all incorporated by reference. The documents comprising the complete contract are collectively referred to as the Contract Documents.

Any and all obligations of the CITY and the CONTRACTOR are fully set forth and described therein.

All of the above documents are intended to cooperate so that any work called for in one and not mentioned in the other or vice versa is to be executed the same as if mentioned in all documents.

2. Services by CONTRACTOR

It is understood and agreed that tools, equipment, apparatus, Facility, labor, transportation, and material shall be furnished and work performed and completed as required in the proposal documents under the sole direction and control of the CONTRACTOR, and subject to approval of the City.

3. Time for Performance

Time is of the essence in the performance of the Agreement. If services cannot be performed at the specified time, CONTRACTOR shall promptly notify CITY of the earliest possible date for performance of the services. Notwithstanding such notice, if CONTRACTOR, for any reason whatsoever, fails to perform the services within the time specified, CITY may terminate the Agreement or any part thereof without liability except for services previously performed and accepted.

4. Compensation

Total compensation shall not exceed Two Million Eight Hundred Thirty-Seven Thousand Three Hundred Three and No/100 Dollars (\$2,837,303). CONTRACTOR shall submit invoices to CITY to be paid in accordance with the Contract Documents and as detailed in Exhibit "B".

All invoices, including detailed backup, shall be sent to the City of Sunnyvale, Accounts Payable, PO Box 3707, Sunnyvale, CA 94088-3707 or [accountspayable@sunnyvale.ca.gov](mailto:accountspayable@sunnyvale.ca.gov).

5. Conflict of Interest

CONSULTANT shall avoid all conflicts of interest, or appearance of conflict, in performing the services and agrees to immediately notify CITY of any facts that may give rise to a conflict of interest. CONSULTANT is aware of the prohibition that no officer of CITY shall have any interest, direct

or indirect, in this Agreement or in the proceeds thereof. During the term of this Agreement CONSULTANT shall not accept employment or an obligation which is inconsistent or incompatible with CONSULTANT'S obligations under this Agreement.

6. Confidential Information

CONTRACTOR shall maintain in confidence and at no time use, except to the extent required to perform its obligations hereunder, any and all proprietary or confidential information of CITY of which CONTRACTOR may become aware in the performance of its services.

7. Compliance with Laws

- a. CONTRACTOR shall not discriminate against, or engage in the harassment of, any City employee or volunteer or any employee of CONSULTANT or applicant for employment because of an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, cancer or HIV/AIDS-related medical condition, genetic characteristics, and physical or mental disability (whether perceived or actual). This prohibition shall apply to all of CONSULTANT's employment practices and to all of CONSULTANT's activities as a provider of services to the City.
- b. CONTRACTOR shall comply with all federal, state and city laws, statutes, ordinances, rules and regulations and the orders and decrees of any courts or administrative bodies or tribunals in any manner affecting the performance of the Agreement.

8. Independent Contractor

CONTRACTOR is acting as an independent contractor in performing the work required by this Agreement and is not an agent, servant or employee of CITY. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employer and employee between CITY and CONTRACTOR. CONTRACTOR is responsible for paying all required state and federal taxes.

9. Indemnity

CONTRACTOR shall indemnify, defend, and hold harmless the CITY, its officers, officials, employees and volunteers from and against all claims, damages, losses and expenses, including attorney fees, arising out of the performance of the services described in Exhibit "A", caused in whole or in part by any negligent act or omission of CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, except where caused by the active negligence, sole negligence or willful misconduct of the CITY.

10. Insurance

CONTRACTOR shall take out and maintain during the life of this Agreement policies of insurance as specified in Exhibit "A" attached and incorporated by reference, and shall provide all certificates or endorsements as specified in Exhibit "A."

11. CITY Representative

Eddie Soliven, Information Technology Manager, as City Manager's authorized representative, shall represent CITY in all matters pertaining to the services to be rendered under this Agreement. All requirements of CITY pertaining to the services and materials to be rendered under this Agreement shall be coordinated through the CITY representative.



12. CONTRACTOR Representative

John Derham, Account Director, shall represent CONTRACTOR in all matters pertaining to the services and materials to be rendered under this Agreement. All requirements of CONTRACTOR pertaining to the services to be rendered under this Agreement shall be coordinated through the CONTRACTOR representative.

13. Notices

All notices required by this Agreement, other than invoices for payment which shall be sent directly to Accounts Payable, shall be in writing, and shall be personally delivered, sent by first class with postage prepaid, or sent by commercial courier, addressed as follows:

To CITY: Eddie Soliven, Information Technology Manager  
Information Technology Department  
CITY OF SUNNYVALE  
P. O. Box 3707  
Sunnyvale, CA 94088-3707

To CONTRACTOR: John Derham, Account Director  
Zayo Group  
501 2<sup>nd</sup> Street, Suite 400  
San Francisco, CA 94107

Nothing in this provision shall be construed to prohibit communication by more expedient means, such as by email or fax, to accomplish timely communication. Each party may change the address by written notice in accordance with this paragraph. Notices delivered personally shall be deemed communicated as of actual receipt; mailed notices shall be deemed communicated as of three business days after mailing.

14. Assignment

Neither party shall assign or sublet any portion of this Agreement without the prior written consent of the other party.

15. Termination

If CONTRACTOR defaults in the performance of this Agreement, or materially breaches any of its provisions, CITY at its option may terminate this Agreement by giving written notice to CONTRACTOR. CONTRACTOR will then have 30 days to cure the breach. If CITY fails to pay CONTRACTOR, CONTRACTOR at its option may terminate this Agreement if the failure is not remedied by CITY within thirty (30) days after written notification of failure to pay.

Without limitation to such rights or remedies as CITY shall otherwise have by law, CITY also shall have the right to terminate this Agreement for any reason upon no less than forty-five (45) days' written notice to CONTRACTOR. In the event of such termination, CONTRACTOR shall be compensated in proportion to the percentage of services performed or materials furnished (in relation to the total which would have been performed or furnished) through the date of receipt of notification from CITY to terminate. CONTRACTOR shall present CITY with any work product completed at that point in time.

16. Entire Agreement; Amendment

This writing constitutes the entire agreement between the parties relating to the services to be performed or materials to be furnished hereunder. No modification of this Agreement shall be effective unless and until such modification is evidenced by writing signed by all parties.

17. Governing Law, Jurisdiction and Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of law principles. Proper venue for legal actions will be exclusively vested in a state court in the County of Santa Clara. The parties agree that subject matter and personal jurisdiction are proper in state court in the County of Santa Clara, and waive all venue objections.

18. Miscellaneous

Time shall be of the essence in this Agreement. Failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or any other provision. This Agreement shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties have executed this Agreement.

ATTEST:

CITY OF SUNNYVALE ("CITY")

By \_\_\_\_\_  
City Clerk

By \_\_\_\_\_  
City Manager

APPROVED AS TO FORM:

\_\_\_\_\_  
("CONTRACTOR")

By \_\_\_\_\_  
City Attorney

By \_\_\_\_\_

\_\_\_\_\_  
Title and Date

By \_\_\_\_\_

\_\_\_\_\_  
Title and Date

## **EXHIBIT A INSURANCE REQUIREMENTS**

Contractor shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Contractor, his agents, representatives, or employees.

Minimum Scope and Limits of Insurance - Contractor shall obtain and maintain during the Term at its sole expense during the entire term of this Agreement on an occurrence basis or, in the case of coverage that cannot be obtained on an occurrence basis:

- (a) Workers' compensation insurance in accordance with the applicable laws of the states or countries where Zayo performs Professional Services hereunder;
- (b) Employee benefits liability insurance in accordance with the applicable laws of the states or countries where Zayo performs hereunder, but no less than \$1,000,000 per occurrence;
- (c) Commercial general liability insurance with a combined bodily injury and property damage single limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate which covers, at a minimum, premises, independent contractor, products liability, contractual liability, personal and advertising injury, and broad form property damage;
- (d) Professional liability/Technology Errors and Omissions insurance (E&O insurance) in an amount of \$2,000,000 per occurrence and in the aggregate;
- (e) Excess or Umbrella Liability Coverage with a minimum limit of Two Million Dollars (\$2,000,000) coverage in excess of the coverage set forth in items a, b, c and d above.

### Deductibles and Self-Insured Retentions

Any deductibles or self-insured retentions must be declared and approved by the City of Sunnyvale. The contractor shall guarantee payment of any losses and related investigations, claim administration and defense expenses within the deductible or self-insured retention.

### Other Insurance Provisions

The **general liability** policy shall contain, or be endorsed to contain, the following provisions:

1. The City of Sunnyvale, its officials, employees, agents and volunteers are to be covered as additional insureds with respects to liability arising out of activities performed by or on behalf of the Contractor; products and completed operations of the Contractor; premises owned, occupied or used by the Contractor; or automobiles owned, leased, hired or borrowed by the Contractor. The coverage shall contain no special limitations on the scope of protection afforded to the City of Sunnyvale, its officers, employees, agents or volunteers.
2. For any claims related to this project, the Contractor's insurance shall be primary. Any insurance or self-insurance maintained by the City of Sunnyvale, its officers, officials, employees, agents and volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
3. Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the City of Sunnyvale, its officers, officials, employees, agents or volunteers.
4. The Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, cancelled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of Sunnyvale.

#### Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII, unless otherwise acceptable to the City of Sunnyvale.

#### Verification of Coverage

Contractor shall furnish the City of Sunnyvale with original a Certificate of Insurance effecting the coverage required. The certificates are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates are to be received and approved by the City of Sunnyvale prior to commencement of work.

**APPENDIX A  
FORM 4, Page 1 of 4****PROPOSER RESPONSE PAGES  
PRICING PAGE**

Proposers shall itemize costs for the colocation facility on this Pricing Page. **Pricing Page must be submitted in a separate, sealed envelope.**

**A. One-Time Costs**

## 1. Equipment

Attach a detailed equipment list with pricing and summarize the cost on this sheet.

Quantity	Part#	Description	Unit Price	Discount	Total Price
10		Cabinets	\$700		\$7,000
250		Space (by Sq. Ft.)	\$25/Sq. Ft.		\$9,375
10		208V/30A Primary Feeds	\$960		\$9,600
10		208V/30A Redundant Feeds	\$100		\$1,000
1		48 Port Patch Panel (Fiber SC)	\$1,000		\$1,000

SUBTOTAL \$ 27,975

SALES TAX 9.00% \$ 2,517.75

TOTAL \$ 30,492.75

## 2. One Year, 24/7 Support Warranty

\$ N/A; for actual maintenance support costs, please see attached remote hands flyer.

If applicable, state cost to provide this level of service during the 1-year warranty period. If no additional cost, state "not applicable".



**APPENDIX  
FORM 4, Page 2 of 4**

**PROPOSER RESPONSE PAGES  
PRICING PAGE**

3. Training  
a) On Site training for a minimum of 5 City staff.  
\$ 0
4. Project Management to Include Design and Implementation  
\$ Included
5. Documentation  
\$ 0
6. Other Costs – Please describe. Any costs not listed below  
will not be paid by City.  
a) N/A \$  
b) \$  
c) \$
- Total One-Time Costs – Section A** \$ 30,492.75

**APPENDIX  
FORM 4, Page 3 of 4****PROPOSER RESPONSE PAGES  
PRICING PAGE****F. Optional Pricing Elements**

Attach a detailed list with pricing similar to this table and summarize the cost on this sheet.

Quantity	Item	Description	Unit Price One-Time	Unit Price - Ongoing	Discount Price	Total Price
60		Space (MRC)		\$6,250		\$375,000
60		Power (MRC)		\$10,600		\$636,000

\*10 cabinet secure cage & power for 60 months (refer to Form 4, page 1 for details)

**Total Costs – Section B**     \$ 1,011,000

**C. Ongoing Costs - Maintenance and Support to be awarded under separate contract for a 4-year period following initial 1-year warranty.**

Attach a detailed list with pricing similar to this table and summarize the cost on this sheet to include ad hoc ongoing costs such as IP Transport costs, Cloud Exchange costs, Cross-Connect Fees, etc.

Quantity	Item	Description	Unit Price One-Time	Unit Price - Ongoing	Discount Price	Total Price
5		Remote Hands		\$175/hour		\$875

Annual Maintenance and Support

Second Year     \$ \$875

Third Year     \$ \$875

Fourth Year     \$ \$875

Fifth Year     \$ \$875

**Total Ongoing Costs – Section C**     \$ 3,500

**D. TOTAL FIVE (5) YEAR COST OF COLOCATION FACILITY  
(Sum of Section A Total, Section B Total,  
and Section C Total)**

\$ 1,044,992.75

# EXHIBIT B

Request for Proposals No. F17-104  
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<b>APPENDIX FORM 4, Page 4 of 4</b>	<b>PROPOSER RESPONSE PAGES PRICING PAGE</b>
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What discounts are available for the City to pay for multiple year of maintenance at once?

\_\_\_\_\_ 20%

What is the maximum amount of price increase the City will experience with the renewal of future maintenance agreements (after the fifth year)?

\_\_\_\_\_ 30%

Network Services Proposal for (SEE ATTACHED SPREADSHEET APPENDIX B)

Attach a detailed list with pricing similar to this table and summarize the cost on this sheet to include ad hoc ongoing costs such as IP Transport costs, Cloud Exchange costs, Cross-Connect Fees, etc

Quantity	Item	Description	Unit Price One-Time	Unit Price - Ongoing	Discount Price	Total Price
5		Remote Hands		\$175/hour		\$875

Zayo Legal:

Any local government (e.g. city, county, district, public authority, public agency, municipality or other political subdivision of California) located in the State of California has an option to procure software and services from Zayo based on the RFP process that the City of Sunnyvale conducted. Zayo agrees to provide such municipality, local government or public agency equivalent pricing as the pricing in effect under this Agreement. Notwithstanding the foregoing, each order form entered into between Zayo and another municipality, local government or public agency located in the State of California shall be separate and distinct from this Order Form and the Agreement. No termination of any other order form will impact the term of this Order Form. Further, Client has no right to access any information of any other municipality, local government or public agency. The City of Sunnyvale incurs no financial responsibility in connection with the orders issued by another public agency.



## New Items

Item No.	Item Code	Description	Unit Price		Qty	Extended Price	
			Setup (NRC)	Monthly (MRC)		Setup (NRC)	Monthly (MRC)
Network (Irvine/OC1)							
1.1	NET-BANDWIDTH-MULTI-95TH	1 Mbps Multi-carrier Network Bandwidth billed at the 95th Percentile. <b>Committed:</b> 100 Mbps burstable to 250 Mbps <b>Overages:</b> Overages billed at \$6.00 per 1 Mbps	USD 150.00 (USD 150.00)	USD 5.00	100.0	USD 0.00	USD 500.00
1.2	IP-28-D	Allocation of a /28 IP block for a dedicated VLAN. 16 IP addresses (13 usable, 11 usable with HSRP).	USD 0.00	USD 16.00	1.0	USD 0.00	USD 16.00
1.3	NET-DIVERSE-IPCONN	Adds an Active/Passive or Active/Active Diverse Connection to the Zayo Network.	USD 0.00	USD 0.00	1.0	USD 0.00	USD 0.00
Cross Connects to Azure ExpressRoute (Irvine/OC1)							
2.1	NET-PORT-1G	1 Gigabit network port for the purpose of connecting colocation environment to managed hosting/cloud environment within the same Zayo facility.	USD 200.00 (USD 200.00)	USD 50.00	2.0	USD 0.00	USD 100.00
2.2	NET-XCONN-ETH	Standard Ethernet Cross Connect within the Zayo Facility.	USD 0.00	USD 150.00	2.0	USD 0.00	USD 300.00
Firewall Service (Irvine/OC1)							
3.1	SVC-NET-FW-MT-250	Firewall Services Multi-Function Capable Context including one security zone and up to 10 policy change requests per month. Provides resources for up to 250 Mbps or 20,000 connections per second and up to 20 network address translations.	USD 500.00 (USD 500.00)	USD 350.00	1.0	USD 0.00	USD 350.00
Private vCloud Hosts (Irvine/OC1)							
4.1	SVR-CHASSIS-2SCK-FC	Zayo Managed Server base chassis including redundant fibre channel HBA SAN connectivity and redundant public and private network connectivity. Supports up to two Intel based processors. No RAM included.	USD 250.00 (USD 250.00)	USD 200.00	6.0	USD 0.00	USD 1,200.00
		Reference Cloud Service Schedule 4.18.15 Form.docx for Service Level Agreements.					
4.2	SVR-MEMORY-1GB	Adds 1 GB of RAM to a Zayo Managed Server Large quantities of memory may not be in stock. Please allow up to two weeks for delivery.  Reference Cloud Service Schedule 4.18.15 Form.docx for Service Level Agreements.	USD 0.00	USD 1.00	1536.0	USD 0.00	USD 1,536.00
4.3	LIC-VMW-RAM-GB	Vmware vSphere Enterprise Plus for one GB of virtual RAM in Private Cloud environment enabled with Self-Service. Customer will be charged the entire MRC for this license for each month or partial month in the SOF Term.  Reference Cloud Service Schedule 4.18.15 Form.docx for Service Level Agreements.	USD 0.00	USD 3.50	1536.0	USD 0.00	USD 5,376.00
4.4	SVC-MON-ADV-OS-ESX	Operating system level health monitoring for a VMWare ESX host, including CPU, storage and memory utilization for servers/hosts which are reachable via public IP address.	USD 50.00 (USD 50.00)	USD 10.00	6.0	USD 0.00	USD 60.00
4.5	SVC-3RD-PTY	SVR-CPU-ODCH-230 2.3 GHz 18-core Intel Processors	USD 0.00	USD 200.00	12.0	USD 0.00	USD 2,400.00
Storage - Hybrid SAN and Object-based Storage (Irvine/OC1)							
5.1	STORAGE-SAN-HYBRID	1 GB of SAN storage that utilizes both Fibre Channel and SATA storage based on block access frequency. <b>Committed:</b> 15000 GB  Reference Cloud Service Schedule 4.18.15 Form.docx for Service Level Agreements.	USD 0.00	USD 0.20	15000.0	USD 0.00	USD 3,000.00
						Total NRC	Total MRC
Total: (including discounts)						USD 0.00	USD 14,838.00
Total Discounts Received: (included in total above)						(USD 3,850.00)	USD 0.00



## New Items

Item No.	Item Code	Description	Unit Price		Qty	Extended Price	
			Setup (NRC)	Monthly (MRC)		Setup (NRC)	Monthly (MRC)
1.1	STORAGE-OBS	100 TB of object based storage	USD 10.00 (USD 10.00)	USD 38.00	100.0	USD 0.00	USD 3,800.00
	60 month term					<b>Total NRC</b>	<b>Total MRC</b>
				<b>Total:</b> (including discounts)		USD 0.00	USD 3,800
				<b>Total Discounts Received:</b> (included in total above)		(10.00)	USD 0.00

## ZAYO- Appendix B, Network Services for City of Sunnyvale

4 Node Private Ethernet Multi Point to Point Network & IP Transit at Zayo Data Center							
Quantity	Service Address	Description	Unit Price One-Time	Cross Connects	Unit Price- Ongoing (Monthly)	Term in Months	Total Price
1	650 West Olive Avenue, Sunnyvale, CA	500 Mbps, Private Ethernet Connection	\$0.00	\$0.00	\$8,650.00	60	\$519,000.00
1	700 All America Way, Sunnyvale, CA	500 Mbps, Private Ethernet Connection	\$0.00	\$0.00	Included	60	Included
1	1444 Borregas Avenue, Sunnyvale, CA	500 Mbps, Private Ethernet Connection	\$0.00	\$0.00	Included	60	Included
2	5101 Lafayette St, Santa Clara, CA (Zayo Data Center)	1G, Private Ethernet Connection (2 diverse routes)	\$0.00	Included	Included	60	Included
2	5101 Lafayette St, Santa Clara, CA (Zayo Data Center)	500 Mbps, IP Transit Service for Internet Access (2 diverse routes)	\$0.00	Included	Included	60	Included

Maintenance and customer support included at no additional cost for 60 month term

### D. TOTAL FIVE (5) YEAR COST for Zayo Network Services

**\$519,000.00**

Disaster Recovery at Zayo Data Center, 393 Inverness, Englewood, Co.							
Quantity	Service Address	Description	Unit Price One-Time	Cross Connects	Unit Price- Ongoing (Monthly)	Term in Months	Total Price
1	393 Inverness Pkwy, Englewood CO	24" W x 42"D x42 RU Secure Cabinet	\$2,200.00	n/a	\$468.00	60	\$30,280.00
1	393 Inverness Pkwy, Englewood CO	120V 30A A Feed	\$350.00	n/a	\$540.00	60	\$32,750.00
1	393 Inverness Pkwy, Englewood CO	120V 30A B Feed	\$350.00	n/a	\$100.00	60	\$6,350.00
1	393 Inverness Pkwy, Englewood CO	Fiber Cross Connect	\$150.00	Included	\$150.00	60	\$9,150.00
3	393 Inverness Pkwy, Englewood CO	3 hours remote hands support per month by Zayo \$175.00 per hour	\$0.00	n/a	\$525.00	60	\$31,500.00
1	393 Inverness Pkwy, Englewood CO	500 Mbps, Private Ethernet Connection	\$0.00	n/a	\$750.00	60	\$45,000.00

Cabinet size can be changed to accomidate City of Sunnyvale requirements

500 Mbps will connect and be a part of City of Sunnyvales private ethernet network.

### E. TOTAL FIVE (5) YEAR COST for Disaster Recovery in Remote Data Center

**\$155,030.00**

Any local government (e.g. city, county, district, public authority, public agency, municipality or other political subdivision of California) located in the State of California has an option to procure software and services from Zayo based on the RFP process that the City of Sunnyvale conducted. Zayo agrees to provide such municipality, local government or public agency equivalent pricing as the pricing in effect under this Agreement. Notwithstanding the foregoing, each order form entered into between Zayo and another municipality, local government or public agency located in the State of California shall be separate and distinct from this Order Form and the Agreement. No termination of any other order form will impact the term of this Order Form. Further, Client has no right to access any information of any other municipality, local government or public agency. The City of Sunnyvale incurs no financial responsibility in connection with the orders issued by another public agency.