

## INTERNAL CONNECTIONS and/or BASIC MAINTENANCE CONTRACT

THIS AGREEMENT is made and entered into this May 11th, 2016, in the County of San Diego, State of California, by and between GigaKOM, a California corporation, with its principle place of business in San Diego, California hereafter "GigaKOM" and San Carlos ESD hereinafter called the "School".

The following recitals are made part of this Category 2 Internal Connections Contract, hereafter Agreement:

WHEREAS, the School is pursuing E-Rate discounts to help fund the Technology Project(s) identified as Attachment A and incorporated by reference herein; and

WHEREAS, the School has determined that there is a need to contract with organizations that furnish Internet products and services in technology; and

WHEREAS, GigaKOM represents that it will provide trained and experienced personnel to provide such Internet equipment and services set forth called for by this Agreement; and

WHEREAS, the School has determined that it has a need to enter into this Agreement with GigaKOM for the Internet products, services and advice described herein;

NOW THEREFORE, it is mutually agreed by the parties herein, as follows:

**Article 1. Contract with GigaKOM:** The School hereby contracts with GigaKOM to provide the necessary products, services and advice as hereinafter set forth contingent upon the School receiving approval of its e-Rate funding request.

**Article 2. GIGAKOM's Services:**

- (a) GigaKOM hereby agrees to provide the following equipment and services set forth to the satisfaction of the School and described in Attachment A and Attachment B if applicable.
- (b) GigaKOM warrants that the recommendations, guidance, and performance of any person assigned under this Agreement shall be in accordance with sound engineering (technical practice and/or Internet access and maintenance standards), and the requirements of this Agreement. If any portion of the services supplied fails to comply with this warranty, and GigaKOM is so notified in writing within thirty (30) days after completion of this Agreement, GigaKOM will correctly perform such portion of the services at its own expense, within ninety (90) days or refund the amount of the compensation paid for such portion.

**Article 3. Time of Performance and Term of Agreement:** The services called for under this agreement shall be provided by GigaKOM during the period commencing after **July 1st, 2016** and ending upon completion of the project, but in no event later than the end of the ERATE **2016** Funding Year unless otherwise agreed upon in writing, executed by both parties.

Basic Maintenance Contract can be extended by five (5) additional one (1) year contract extensions based on mutual agreement by both parties.

**Article 4. GigaKOM's Fee:** The School shall pay GigaKOM for the providing all equipment rates/pricing established by Attachment A. This agreement is considered to be a "fixed price" contract with any related expenses such as travel and photocopying to be billed at cost. The total estimated contract amount is based on Attachment A. Any rates and estimates should be considered to be a good faith estimates based on the information received through the date of the contract. Any additional work required will be submitted in writing for approval on a time and materials basis. Unknown factors and/or additional requirements and tasks may require pricing adjustments.

**Article 5. Payments:** School will be invoiced in progress invoices for equipment delivered and services rendered. All invoices are due and payable upon receipt. Payments should be remitted to:

GigaKOM  
Attn: Accounting  
3615 Kearny Villa Road, Suite 201  
San Diego, CA 92123

GigaKOM will invoice the School's discounted amount, based on its ERATE discount. The School will be liable, however, for the ERATE discounted portions, should the SLD deny payment on ordered items or services previously approved. A service charge of 18% per annum (1 1/2% per month) will be added monthly to all accounts more than 15 days overdue. The School will pay reasonable attorney's fees and other collections costs in the event that GigaKOM has to enforce payment.

For Basic Maintenance Contracts at the District's discretion and in accordance with the rules of the SLD, the district may opt to pre-pay for this agreement. In such a case, the District and GigaKOM will monitor the hours used on the contract to ensure there is no overpayment of funds. In case of SLD denial of payment of any portion of this contract, School will be responsible for paying 100% of unpaid balance.

**Article 6. Employee Benefits:** GigaKOM shall be responsible for all salaries, payments, and benefits for all of its officers, agents, and employees in performing services pursuant to this Agreement as GigaKOM is a vendor to said School.

**Article 7. Worker's Compensation Insurance:** GigaKOM agrees to produce and maintain in full force and effect Workers' Compensation Insurance covering its employees and agents while these persons are participating in the activities hereunder. In the event a claim under the provisions of the California Workers' Compensation Act is filed against School by a bonafide employee of GigaKOM participating under this Agreement, GigaKOM agrees to defend and hold harmless the School from such claim, and pay for, or

reimburse the School for, any costs incurred by the School in defending against such claims, including but not limited to all of the School's attorneys fees and any other legal costs.

**Article 8. Insurance:** GigaKOM shall, at its expense, carry and if required by the School, provide written proof of adequate insurance to fully protect both GigaKOM and the School from any and all claims of any nature for damage to property or for personal injury including death, which may arise while GigaKOM is traveling to or from a work-related location.

**Article 9. Confidentiality and Use of Information:**

- (a) GigaKOM shall hold in trust for the School, and shall not disclose to any person, any confidential information.
- (b) The School shall keep confidential information which is related to GigaKOM's research, development, trade secrets and business affairs; but does not include information which is generally known or easily ascertainable by nonparties through available public documentation.
- (c) GigaKOM shall advise School of any and all materials used, or recommended for use by GigaKOM to achieve the project goals, that are subject to any copyright restrictions or other requirements.

**Article 10. Administrator of Agreement:** This Agreement shall be administered on behalf of the School. Any notice desired or required to be sent to a party hereunder shall be addressed to:

For School:

San Carlos ESD

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For GigaKOM:  
GigaKOM  
Attn: Contract Department  
3615 Kearny Villa Rd., Suite 201  
San Diego, CA 92123  
Tel: 858-769-5408

**Article 11. Ownership of Work-Product:** All products of work performed pursuant to this Agreement will be the sole property of the School except GigaKOM's proprietary information/products.

**Article 12. Termination:** The School or GigaKOM may terminate this Agreement at any time and for any reason by giving written notice of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date of such termination. If the Agreement is terminated by the School as provided in this section, GigaKOM shall be entitled to receive compensation for any equipment delivered and any satisfactory work completed up to the receipt by GigaKOM of notice of termination and the effective date of termination pursuant to specific request by the School for the performance of such work.

**Article 13. Status of GigaKOM:** It is agreed that School is interested only in the results obtained from service hereunder and that GigaKOM shall perform as a supplier/vendor with sole control of the manner and means of performing the services required under this Agreement. GigaKOM shall complete this Agreement according to its own methods of work which shall be in the exclusive charge and control of GigaKOM and which shall not be subject to control or supervision by the School except as to the results of the work. GigaKOM is, for all purposes arising out of this Agreement, a supplier/vendor, and neither GigaKOM nor its employees shall be deemed an employee of the School for any purpose. It is expressly understood and agreed that GigaKOM and its employees shall in no event be entitled to any benefits to which School employees are entitled, including, but not limited to, overtime, retirement benefits, insurance, vacation worker's compensation benefits, sick or injury leave, or other benefits.

**Article 14. Attorney's Fees:** If suit is brought by either party to this Agreement to enforce any of its terms, each party shall pay its own litigation expenses incurred by the prevailing party, including attorneys' fees, court costs, expert witness fees, and investigation expenses. The forum for any disputes hereunder shall be the Superior Court of the State of California, County of San Diego, and all interpretations of all shall be those under the laws of the State of California.

**Article 15. Assignment:** No portion of this Agreement or any of the work to be performed hereunder may be assigned by GigaKOM without the express written consent of School, and without such consent all services hereunder are to be performed solely by GigaKOM, its officers, agents and employees.

**Article 16. Alternations or Variance:** No alterations to this Agreement or variance from the provisions hereof shall be valid unless made in writing and executed by both of the parties hereto.

**Article 17. A. B. 1610:** If GigaKOM personnel are in contact with students on a more than limited or occasional basis as determined by the School, GigaKOM, upon written notification, agrees to provide the School with: written certification under penalty of perjury that all of its employees who may come in contact with students have been fingerprinted and had their criminal histories checked by GigaKOM and that none of these employees have been convicted of a serious or violent felony. This contract may, at the School's discretion, be immediately terminated in the event GigaKOM fails to comply with this law.

**Article 18. Contingency of ERATE Funding.** GigaKOM understands that purchase of the goods and services identified in Attachment A is based upon ERATE funding being approved for the School. Should such funding be denied, the School will have no obligation to purchase any items or services listed, however GigaKOM will continue to offer the goods and services as the prices listed. School has the option to purchase 0 or more of the items listed in Attachment A based on current SLD guidelines.

**Article 19. Basic Maintenance Details.** The services provided under this E-Rate Contract, which include Basic Maintenance elements, shall be limited to "basic maintenance services" as defined by the FCC's current E-rate rules. In general, this service will be limited to the provision of "break/fix" and preventive hardware maintenance, and of software updates and reconfigurations for E-rate eligible equipment. Other technical support services required by the School will be covered by a separate Technical Support Contract which will include: (a) any maintenance of ineligible equipment; and (b) any technical support that is over an above E-rate defined "basic" maintenance of eligible equipment.

## GENERAL EXCLUSIONS

- Unless identified previously within the scope of work, this proposal is not inclusive of fire penetration sleeves, conduit, concrete cores and/or roof penetrations. If required for installation, additional charges will apply.
- Unless identified previously within the scope of work, Gigakom will install racks in specified locations and in the appropriate manner. Additional charges will apply if the location is not structurally compliant with the installation requested and facilities work is needed.
- Unless identified previously within the scope of work, all existing conduit is expected to be free and clear of debris with an appropriate pull string provided. Additional charges will apply for debris removal or the fishing of conduit.
- Unless identified previously within the scope of work, this proposal is not inclusive of the removal and replacement of furniture during the installation, additional charges will apply, if necessary.
- Unless identified previously within the scope of work, this proposal is based upon normal working hours and does not include weekend or overtime. If weekend or overtime hours are required for this project, additional charges will apply.
- Unless identified previously within the scope of work, this proposal is not inclusive of a Lift rental. If a Lift is required, additional charges will apply.
- Unless identified previously within the scope of work, this proposal is not inclusive of additional labor time required for clean room environments. If clean room environments require special clothing, cleaning of tools, etc, additional charges will apply.
- Unless identified previously within the scope of work, this proposal is not inclusive of installing horizontal cable in a "sequential-by-building" fashion. If a "sequential-by-building" installation is required, this must be identified prior to cable installation and will require additional charges.
- Unless identified previously within the scope of work, this proposal is not inclusive of any voice or data cross-connects and/or patch cord installation. If cross-connects and/or patch cords are to be installed by Gigakom, additional charges will apply.
- Unless identified previously within the scope of work, this proposal is not inclusive of any and all plywood backboards within each closet. If plywood backboards are required, additional charges will apply.
- Unless identified previously within the scope of work, cost associated with parking is not included within this proposal. If parking fees are required during the installation, additional charges will apply.
- Unless identified previously within the scope of work, cost associated with securing material on site is not included within this proposal. If adequate secured storage is not able to be provided by the Customer, additional charges will apply.
- Unless identified previously within the scope of work, this proposal is based upon utilizing onsite trash receptacles for removal of trash debris. If trash receptacles are not made available, additional charges will apply.
- This proposal requires a minimum 2 weeks notice of installation for any and all modular furniture installed during this project. Additional charges may apply if notice of less than 2 weeks is provided.
- Unless identified previously within the scope of work, this proposal is based upon the Customer providing all necessary Ring and String or Conduit necessary for each work station location. Additional charges will apply to each location requiring Gigakom to provide ring and string or conduit.

- Unless identified previously within the scope of work, this proposal is not inclusive of Gigakom providing temporary power or sanitary facilities. Additional charges will apply if required.
- Unless identified previously within the scope of work, this proposal is not inclusive of removing any and all existing cable or cable supports. Additional charges will apply if required.
- Telephone Vendor will be responsible for labeling any and all patch panels related to voice circuit extensions. GigaKOM will provide said Telephone Vendor with a Cut-Sheet for each cable location.
- A 25% restock fee will be charged for all returned items. Special order items are non-returnable.
- Gigakom has several blanket endorsements included in its insurance policies. If separate endorsements are required, additional charges may apply.

IN WITNESS WHEREOF the parties hereto have executed this Agreement as of the date hereinabove first written.

GIGAKOM

San Carlos ESD

\_\_\_\_\_  
GigaKOM Representative

Robert Porter, Co  
School Representative

\_\_\_\_\_  
Authorized Signature

[Signature]  
Authorized Signature

\_\_\_\_\_  
DATE

5/24/16  
DATE

# ATTACHMENT A

## School ERATE Scope of Work

*The items covered by this agreement are listed in the RFP, GigaKOM's Proposal and Response, Quotation and item 21.*

Quantity	Units	Make	Make - Other	Model	Lease or Non-Purchase Arrangement	Monthly Recurring Eligible Cost	Monthly Recurring Ineligible Cost	One-time Eligible Cost
21	Each	Hewlett Packard		J9836A#ABA	No			\$48,060.18
88	Each	Hewlett Packard		J9731A	No			\$43,938.40
88	Each	Hewlett Packard		J9733A	No			\$44,818.40
88	Each	Hewlett Packard		J9735A	No			\$8,312.48
88	Each	Hewlett Packard		J9150A	No			\$29,872.48
							SUB-TOTAL	\$175,001.94
							TAX	\$15,750.17
							<b>TOTAL</b>	<b>\$190,752.11</b>

## **ATTACHMENT B**

### **Basic Maintenance School District ERATE Scope of Work IF APPLICABLE**

The following describes the range of maintenance services to be provided by GigaKOM. The proposed services are contingent upon final approval by the District.

Basic maintenance services are “necessary” if, but for the maintenance at issue, the connection would not function and serve its intended purpose with the degree of reliability ordinarily provided in the marketplace to entities receiving such services without e-rate discounts.

Basic maintenance services do not include services that maintain equipment that is not supported or that enhance the utility of equipment beyond the transport of information, or diagnostic services in excess of those necessary to maintain the equipment’s ability to transport information.

The primary purpose of the services for which support is sought must be the delivery of services to the classrooms or other places of instruction at schools and libraries that meet the statutory definition of an eligible institution. Support for the administrative functions of library or education programs is permitted so long as the services are part of the network of shared services for learning. Support will be limited to services delivered to the onsite educational facility or facilities.

GigaKOM will provide support for all services under this contract that will provide a minimum of switched 100BT network service and T-1 Internet Access to all eligible areas of the district. This includes unanticipated component replacement and expansion of the district's network.

All services must be performed in the ERATE funding window.

Duties will be limited to only those dealing with maintenance and operation of telecommunications and internal connections as specified in FCC Document *CC Docket No. 96-45 Schools and Libraries Eligibility List*. (Attachment C). Any work not covered on the eligibility list must be covered under a separate contract or invoice.

### LIST OF ELIGIBLE COMPONENTS

This list is required by the Schools and Libraries Division to identify the scope of equipment and services that are covered by this contract. Additionally, the SLD wishes to determine that no ineligible components are included for maintenance. All components must be a part of a network of shared services for learning.

***The items covered by this agreement are listed in the RFP, GigaKOM's proposal in response to the RFP and the quotation / pricing form provide***

**From:** Andrej Komatina ak@gigakom.com  
**Subject:** erate 2016 GigaKOM  
**Date:** May 20, 2016 at 9:46 AM  
**To:** tkeating@scsdk8.org

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Hi Tom,

Thank you very much for your time today on the phone.

Per our conversation School has an option to reduce or expend the order at the quoted price. Shipping charges may apply.

Best Regards,

**ANDREJ KOMATINA**  
**GigaKOM**  
3615 Kearny Villa Road  
Suite 201  
San Diego, CA 92123

T: 858-769-5410  
F: 858-565-2453  
E: [ak@gigakom.com](mailto:ak@gigakom.com)