

City of Visalia RFP No. 24-25-04  
**Uninterruptible Power Supply (UPS) Refresh**

This Agreement, entered into and effective this \_\_\_\_\_ day of \_\_\_\_\_, 2024, by and between the City of Visalia, hereinafter referred to as the "CITY", and GigaKOM Corp. hereinafter referred to as the "VENDOR", "CONTRACTOR", "BIDDER", or "SUBRECIPIENT".

RECITALS

**WHEREAS**, VENDOR is a Corporation (insert individual or entity type), with a primary business address of 9245 Activity Road, Suite 105, San Diego, CA 92126 and EIN: 50-0026417; and

**WHEREAS**, CITY is a municipal corporation and Charter Law City; and

**WHEREAS**, CITY desires Uninterrupted Power Supply (UPS) Battery Back Up Systems, as evidenced by RFP No. 24-25-04, Uninterruptible Power Supply Refresh; and

**WHEREAS**, City of Visalia reviewed and evaluated responses to the Proposal and determined to award a contract to VENDOR to provide product specified in RFP 24-25-04; and

**WHEREAS**, VENDOR represents it is licensed, qualified and willing to provide the product pursuant to terms and conditions of this Agreement,

**NOW, THEREFORE**, CITY and VENDOR agree as follows:

1. TERM:

The term of this Agreement shall commence upon issuance of a Purchase Order and expire upon City's payment to vendor in full.

2. ATTACHMENTS INCORPORATED:

The following are attachments for this Agreement. Said attachments are incorporated into this Agreement as if included in full in the body:

<b>ATTACHMENT NO.</b>	<b>DESCRIPTION OF ATTACHMENT</b>
Attachment 1	General Contract Provisions
Attachment 2	City of Visalia RFP 24-25-04, Uninterruptible Power Supply (UPS) Refresh
Attachment 3	Vendor's proposal in response to RFP No. 24-25-04
Attachment 4	Quote

3. VENDOR SCOPE OF SERVICES and COMMITMENTS\*:

VENDOR shall provide the following services for the stated compensation ("Scope of Services"):

- A. The VENDOR agrees to provide product as described in the Specifications of RFP 24-25-04, for the cost identified in Attachment 4 of this Agreement.

4. CITY COMMITMENTS:

CITY shall perform the following tasks on or before the stated completion dates:

<b>TASK</b>	<b>COMPLETION DATE</b>
City to inspect product for any damage during shipping	Within 10 days of delivery

5. COMPENSATION:

CITY shall pay VENDOR compensation for product requested; however, CITY shall pay not more than the following amount under this Agreement, unless otherwise agreed in writing. Such sum shall be expended and paid by CITY after inspection of product by City staff and receipt of approved invoice.

<b>Cost</b>	\$189,703.94
<b>Source of Funds:</b>	ARPA (Federal Funds)
<b>Payment Schedule:</b>	Within 30 days from receipt of approved invoice and inspection of product.

**IN WITNESS WHEREOF**, this Agreement is executed on the day and year first above written.

**VENDOR**

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

By: \_\_\_\_\_

Authorized Officer: I certify under penalty of perjury under the laws of the State of California that I am fully authorized to execute this Agreement for VENDOR in the capacity I have stated, and that such execution is sufficient to bind the CONTRACTOR.

**CITY OF VISALIA**

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

By: \_\_\_\_\_

City Manager

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

By: \_\_\_\_\_

City Attorney

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

By: \_\_\_\_\_

City of Visalia Risk Manager

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

By: \_\_\_\_\_

City of Visalia Project Manager

**Attachment 1**  
**GENERAL CONTRACT PROVISIONS**

- A. **Successors and Assigns:** This Agreement shall be binding upon and shall inure to the benefit of any successors to or assigns of the parties.
- B. **Prohibition of Assignment:** Neither party shall assign, delegate or transfer their rights and duties in this Agreement without the written consent of the other party.
- C. **Notices:** Notice shall be sufficient hereunder if personally served upon the City Clerk of the CITY or an officer or principal of the CONTRACTOR, or if sent via the United States Postal Service, postage prepaid, addressed as follows:
- |  |   |
|--|---|
| CITY OF VISALIA<br>707 W. Acequia Ave.<br>Visalia, CA 93291<br>Attention: City Clerk | GigaKom Corporation<br>9245 Activity Road, Suite 105<br>San Diego, CA 92126<br>Attention: Hadi Nasr |
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- D. **Independent Contractor:** It is understood and agreed by the parties herein that CONTRACTOR, in the performance of this Agreement, shall act as an independent contractor, and therefore shall obtain no rights to any fringe benefits that accrue to regular full-time CITY employees.
- E. **Jurisdiction/Venue/Waiver Of Removal:** This Agreement shall be administered and interpreted under the laws of the State of California. Jurisdiction of litigation arising from this Agreement shall be in California. Any action brought to interpret or enforce this Agreement, or any of the terms or conditions hereof, shall be brought in Tulare County, California. The CONTRACTOR hereby expressly waives any right to remove any action to a county other than Tulare County as permitted pursuant to Section 394 of the California Code of Civil Procedure.
- F. **Integration/Modification:** This Agreement and each of the documents and exhibits or attachments referenced herein, which are incorporated by reference, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may not be modified or altered except in writing signed by the parties, unless otherwise explicitly authorized.
- G. **Conflict With Law:** If any part of this Agreement is found to be in conflict with applicable laws, such part shall be inoperative, null and void insofar as it is in conflict with said law, but the remainder of the Agreement shall be in full force and effect.
- H. **Indemnification:** The CONTRACTOR waives any and all claims and recourse against the CITY, including the right of contribution of loss or damage to person or property arising from, growing out of, or in any way connected with or incidental to the CONTRACTOR's performance of this Agreement, except claims arising from the concurrent or sole negligence of the CITY or its officers, agents or employees. The CONTRACTOR will indemnify, hold harmless, and defend (at CITY's option) the CITY against any and all claims, demands, damages, costs, expenses, or liability arising out of the CONTRACTOR's performance of this Agreement except for liability arising out of the concurrent or sole negligence of the CITY or its officers, agents, or employees.
- I. **Guarantees and Warranties:**
1. **IN GENERAL:** All guarantees and warranties specifically called for by the specifications and/or this Agreement shall expressly run to the benefit of the CITY.
  2. **ONE YEAR GUARANTEE:** Besides guarantees required elsewhere, CONTRACTOR shall and hereby does guarantee the project work for a period of one year after the date of acceptance by CITY.
  3. **WARRANTIES:** Warranties required by this Agreement shall commence on the date of acceptance of the work by CITY, unless otherwise provided in a Certificate of Substantial Completion.

CONTRACTOR warrants that the materials and equipment furnished under the Agreement will be new and of recent manufacturer unless otherwise specified, and that all work will be of good quality, free from faults

and defects, and in conformance with the Agreement. Work that does not conform may be considered defective. This warranty excludes remedy for damage or defect caused by abuse, modifications not executed by the CONTRACTOR, improper or insufficient maintenance, improper operation, or normal wear and tear under normal usage.

CONTRACTOR warrants that title to all work covered by an application for payment will pass to the CITY either by incorporation in the construction or upon the receipt of payment by the CONTRACTOR, whichever occurs first, free and clear of all liens.

CONTRACTOR warrants and guarantees that title to all work, materials, and equipment covered by any application for payment, whether incorporated in the project or not, will pass to CITY no later than the time of payment free and clear of all liens.

No materials or supplies for the project shall be purchased by the CONTRACTOR or SUBCONTRACTOR subject to any mortgage or under a condition of sale contract or other agreement by which an interest is retained by the seller. CONTRACTOR warrants that it has good title to all materials and supplies used by it in the project, free from all liens.

CONTRACTOR shall indemnify and hold CITY harmless from all claims growing out of the lawful demands of SUBCONTRACTORS, laborers, workers, mechanics, material persons, and furnishers of machinery and parts thereof, equipment, power tools, and all supplies, incurred in furtherance of the performance of this Agreement. CONTRACTOR shall, at CITY's request, furnish satisfactory evidence that all obligations of the nature here and above designated have been paid, discharged, or waived. If CONTRACTOR fails to do so, then CITY may, after having served written notice on the CONTRACTOR, either pay directly unpaid bills, of which the CITY has written notice, or withhold from the CONTRACTOR's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged where upon payment to the CONTRACTOR shall be resumed, in accordance of the terms of this Agreement, but in no event shall the provisions of this sentence be construed to impose any obligations on the CITY to either the CONTRACTOR or its surety. In paying any unpaid bills of the CONTRACTOR, the CITY shall be deemed the agent of the CONTRACTOR and any payment so made by the CITY shall be considered as payment made under the contract by the CITY to the CONTRACTOR and the CITY shall not be liable to the CONTRACTOR for any such payments made in good faith.

Any defective work that is either corrected or replaced shall be warrantied and guaranteed for a period of one year from the date of such correction or replacement.

- J. **Attorney's Fees**: In the event either party commences any action, arbitration or legal proceedings for the enforcement of this Agreement, the prevailing party, as determined by the court or arbitrator, shall be entitled to recovery of its attorney's fees and court costs incurred in the action brought thereon.
- K. **Headings**: Section headings are provided for organizational purposes only and do not in any manner affect the scope or intent of the provisions thereunder.
- L. **Firearms Prohibited**: Guns may not be carried by contractors /vendors/consultants while working on City of Visalia premises without the expressed written approval of a City of Visalia Department Head, or an exemption in the contract. If a contractor/vendor/consultant is caught carrying a gun, without City permission, their contract will be terminated.
- M. **Executive Order N-6-22 – Russia Sanctions** On March 4, 2022, Governor Gavin Newsom issued Executive Order N-6-22 (the EO) regarding Economic Sanctions against Russia and Russian entities and individuals. "Economic Sanctions" refers to sanctions imposed by the U.S. government in response to Russia's actions in Ukraine, as well as any sanctions imposed under state law. The EO directs state agencies to terminate contracts with, and to refrain from entering into any new contracts with, individuals or entities that are determined to be a target of Economic Sanctions. Accordingly, should the State determine Contractor is a target of Economic Sanctions or is conducting prohibited transactions with sanctioned individuals or entities, that shall be grounds for termination of this agreement. The State shall provide Contractor advance written notice of such termination, allowing Contractor at least 30 calendar days to provide a written response. Termination shall be at the sole discretion of the State.