

AGREEMENT NO. _____

PROFESSIONAL SERVICES AGREEMENT

This **PROFESSIONAL SERVICES AGREEMENT** ("Agreement"), by and among **BW INDUSTRIES, INC.**, a Delaware corporation ("BITWISE" herein) and **CITY OF BAKERSFIELD**, a municipal corporation, ("CITY" and/or "Sponsor" herein), and is entered into and effective as of _____, 2021 ("Effective Date").

RECITALS

WHEREAS, BITWISE is in the business of providing professional training, consulting, and workforce development services for historically underrepresented individuals entering the technology industry; and

WHEREAS, BITWISE offers such services to cohorts of students teaching technical skills and providing practical training as it relates to technology ("WorkForce Training"); and

WHEREAS, Within WorkForce Training, BITWISE selects certain individuals who have started new ventures ("Founders") to receive advanced training as independent contractors of its subsidiary Geekwise Academy, LLC, a California limited liability company, dba Alpha Works ("Alpha Works") (collectively, the activity to be referred to as the "Apprenticeship Program"); and

WHEREAS, BITWISE, its various subsidiaries, and other community stakeholders will provide the Apprenticeship Program to those certain Founders in the Ignite Innovation Lab Proposal, as better defined in **Exhibit "A"** ("Ignite Innovation Lab Proposal") attached hereto and incorporated by reference herein; and

WHEREAS, CITY desires to fund a certain number of Founders and the costs related to the Apprenticeship Program, and BITWISE wishes to train and contract with such Founders, pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, incorporating the foregoing recitals herein, CITY and BITWISE mutually agree as follows:

1. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings described herein, and shall include the plural as well as the singular.

1.1 "Client Work" means any and all Technology that BITWISE may solely, or with its clients, develop or reduce to practice in the process of

developing and delivering services to BITWISE clients, including such Technology that may already be owned by BITWISE clients.

1.2 “Confidential Information” means any and all technical and non-technical information, including trade secrets, know-how and proprietary information, firmware, designs, schematics, techniques, plans or any other information relating to any research project, work in process, future development, scientific, engineering, manufacturing, marketing or business plans or financial or personnel matters relating to either party or its present or future products, curriculum, presentations, course materials, syllabi, any and all educational materials, sales, suppliers, clients, employees, investors or affiliates and disclosed or otherwise supplied in confidence by either party to the other party. Confidential Information will not include information to the extent that: (a) such information is or becomes publicly available other than through any act or omission of either party in breach of this Agreement; (b) such information was received by the receiving party, other than under an obligation of confidentiality, from a third party who had no obligation of confidentiality to the other party; (c) such information was in the possession of the receiving party at the time of the disclosure or was independently developed by the receiving party as proven by documentary evidence; or (d) any applicable regulation, court order or other legal process requires the disclosure of such information, provided that prior to such disclosure the disclosing party will give notice to and will cooperate with the other party so that the other party may take reasonable steps to oppose or limit such disclosure, and that the disclosing party does not disclose any more information than strictly necessary to comply with such legal process. The burden of proof that Confidential Information falls into any one of the above exemptions will be borne by the party claiming such exemptions.

1.3 “Founder Work” means any and all Technology that Founder may solely, or with the assistance of BITWISE, develop or reduce to practice in the process of developing and delivering services to Founder's clients, including Technology that may already be owned by the Founder's clients.

1.4 “Intellectual Property Rights” means any and all patents, copyrights, trademarks, trade secrets and other intellectual property rights in any country of the world or contract rights having the equivalent effect.

1.5 “Technology” means algorithms, concepts, data, designs, developments, documentation, discoveries, HTML, XML and other codes, inventions, methods, multimedia files (including audio, graphic, photographic, and video files), object code, procedures, programs, source code, text, documentation, web pages and any other item generally

recognized as technology in the technology industry.

2. TERM. The term of this Agreement shall commence on the Effective Date and shall continue until the earlier of (i) completion of the Apprenticeship Program or (ii) termination by both parties upon thirty (30) days prior written notice by the Parties ("Term").

3. SCOPE OF WORK. In exchange for the Compensation (defined below), BITWISE shall perform the following services:

3.1 Apprenticeship Program. BITWISE will provide experiential learning opportunities to the Founders through the Apprenticeship Program. Sponsor shall subsidize a portion of those costs related to the Apprenticeship Program, as stated in the Ignite Innovation Lab Proposal.

3.2 Founders. BITWISE, in its sole discretion, will admit a select amount of individuals to become Founders. Founders will be admitted under AlphaWorks's standard independent contractor agreements, as more fully described in **Exhibit "B"**, attached and incorporated herein by this reference. Founders will be independent contractors and freely terminable by AlphaWorks. AlphaWorks has no obligation to replace any terminated Founder with a substitute. Sponsor agrees and acknowledges that, due to the nature of the services provided in the Apprenticeship Program and the nature of the Founder's business, the Apprenticeship Program may not produce tangible, demonstrable, or obvious results for the Founder's business.

3.3 The Scope of Work shall include all items and procedures necessary to properly complete the task BITWISE has been hired to perform, whether specifically included in the Scope of Work or not.

4. COMPENSATION/PAYMENT PROCEDURE. Subject to the conditions of this section, CITY will pay BITWISE as follows for performing the Scope of Work ("Compensation") as set forth in **Exhibit A**, a total not to exceed \$640,000 as follows:

4.1 Fees. Fees shall be paid in installments as stated in the Ignite Innovation Lab Proposal, which may be subject to periodic adjustment based on changes in the deliverables or the scope of the Apprenticeship Program.

4.2 Payments. CITY will pay BITWISE within 30 days after BITWISE submits an itemized invoice for the portions of the Scope of Work completed and that invoice is approved by CITY. The Compensation will be the total

amount paid to BITWISE for performing the Scope of Work and includes, but is not limited to, all out-of-pocket costs and taxes. CITY will pay no other compensation to BITWISE. In no case will CITY compensate BITWISE more than \$640,000 for performing the Scope of Work.

4.3 Disputed Charges. If Sponsor disputes any fees, Sponsor shall notify BITWISE in writing of such dispute, with all relevant evidence attached thereto, within ten (10) days of receipt of the disputed invoice. Both parties agree to resolve all disputes over charges in good faith.

5. TERMINATION. Either party may terminate this Agreement after giving the other party written notice, as provided herein, thirty (30) days before the termination is effective.

6. COMPLIANCE WITH ALL LAWS. BITWISE shall, at BITWISE's sole cost, comply with all of the requirements of Municipal, State, and Federal authorities now in force, or which may hereafter be in force, pertaining to this Agreement, and shall faithfully observe in all activities relating to or growing out of this Agreement all Municipal ordinances and State and Federal statutes, rules or regulations, and permitting requirements now in force or which may hereafter be in force including, without limitation, obtaining a City of Bakersfield business tax certificate (Bakersfield Municipal Code Chapter 5.02) where required.

7. INDEPENDENT CONTRACTOR. This Agreement calls for BITWISE's performance of the Scope of Work as an independent contractor. BITWISE is not an agent or employee of the CITY for any purpose and is not entitled to any of the benefits provided by CITY to its employees. This Agreement shall not be construed as forming a partnership or any other association with BITWISE other than that of an independent contractor.

8. CONFIDENTIALITY.

8.1 Obligations. Each party will at all times, both during the Term and for a period of three (3) year thereafter, keep in confidence all of the other party's Confidential Information, and will not use such Confidential Information, directly or indirectly, without the other party's prior written consent. Neither party will disclose the other party's Confidential Information to any person except its employees, affiliates, subcontractors, independent contractors and or any individual to whom it is necessary to disclose the Confidential Information for purposes permitted under this Agreement and the implementation of the Apprenticeship Program. Each party will take commercially reasonable measures to maintain the confidentiality of the other party's Confidential Information. Each party will immediately give notice to the other party of any unauthorized use or

disclosure of the other party's Confidential Information of which it becomes aware.

8.2 Marketing Materials. For the avoidance of doubt, the obligations defined in this Section 5 do not include BITWISE's use of Sponsor's company name, logos, trademarks, or service marks in portfolios, advertising and marketing materials, and the like, in print or electronic form, to advertise that BITWISE has performed services for Sponsor.

9. OWNERSHIP.

9.1 Client Work. Sponsor agrees and acknowledges the following shall not constitute the property of Sponsor or Founder under this Agreement: (i) Client Work; (ii) all present and future Technology developed or owned by BITWISE; (iii) software, including but not limited to any proprietary code (source and object), which is subject to third-party license agreements; (iv) all present and future Intellectual Property Rights now owned, previously owned, or owned in the future by BITWISE; (v) any and all developed or owned projects deriving from the Apprenticeship Program or Workforce Training, excluding such projects defined as Founder Work; and (vi) those portions of the above which are or refer to information that is generally known, in the public domain, readily ascertainable by proper means, or which would otherwise not qualify as Confidential Information as that term is defined herein.

9.2 BITWISE's Other Projects. Sponsor understands and agrees that BITWISE may perform similar services for third parties, including by using the same personnel that BITWISE may use for rendering services for Sponsor hereunder, but will nonetheless remain subject to BITWISE's obligations respecting Client's Confidential Information pursuant to this Agreement.

9.3 Founder Work. Sponsor agrees and acknowledges that the following shall not constitute the property of Sponsor under this Agreement, but shall be the sole property of Founder: (i) Founder Work; (ii) all present and future Technology developed or owned by Founder during the course of or prior to the Apprenticeship Program used in the furtherance in or in the development of Founder's business; and (iii) all present and future Intellectual Property developed or owned by Founder during the course of or prior to the Apprenticeship Program used in the furtherance in or in the development of Founder's business.

10. DIRECTION. BITWISE retains the right to control or direct the manner in which the services described herein are performed.

11. EQUIPMENT. BITWISE will supply all equipment, tools, materials and supplies necessary to perform the services under this Agreement.

12. STARTING WORK. BITWISE shall not begin work until authorized to do so in writing by CITY. No work will be authorized before the date first written above.

13. KEY PERSONNEL. BITWISE shall name all key personnel to be assigned to perform the Scope of Work. All key personnel shall be properly licensed and have the experience to perform the work called for under this Agreement. BITWISE shall provide background for each of the key personnel including, without limitation, resumes and work experience performing work similar to the Scope of Work. CITY reserves the right to approve key personnel. Once the key personnel are approved, BITWISE shall not change such personnel without CITY's written approval.

14. INCLUDED DOCUMENTS. Any bid documents, including, without limitation, special provisions and standard specifications and any Request for Proposals, Request for Qualifications and responses thereto relating to this Agreement are incorporated by reference as though fully set forth herein.

15. LIMITED WARRANTY. BITWISE's sole warranty to Sponsor is that it will use commercially reasonable efforts, with reference to the technology industry, to develop and deliver the Apprenticeship Program. In the event that Sponsor believes that BITWISE has breached this warranty, the Sponsor shall promptly notify BITWISE in writing and shall specifically describe the deficiency and identify whether re-performance is practicable under the circumstances. Sponsor must make any claim for breach of this warranty by written notice to BITWISE within ninety (90) business days to the end of the Term.

16. DISCLAIMER. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SET FORTH IN SECTION 15, ALL SERVICES, TECHNOLOGY, DOCUMENTATION AND OTHER PRODUCTS, INFORMATION, MATERIALS AND SERVICES PROVIDED BY BITWISE ARE PROVIDED "AS IS" AND "WITH ALL FAULTS". BITWISE HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER (INCLUDING ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE), AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. WITHOUT LIMITING THE FOREGOING, BITWISE MAKES NO WARRANTY OF ANY KIND THAT THE WORKFORCE TRAINING, APPRENTICESHIP PROGRAM, ANYTHING CONTAINED WITHIN THE IGNITE INNOVATION LAB PROPOSAL, OR RELATED DOCUMENTATION OF ANYTHING THEREIN, OR ANY THIRD-PARTY GOODS, SERVICES, TECHNOLOGIES OR MATERIALS (INCLUDING ANY SOFTWARE OR HARDWARE), OR ANY PRODUCTS OR RESULTS OF THE USE OF ANY OF THEM, WILL MEET SPONSOR'S, FOUNDER'S, OR OTHER PERSONS' REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, BE LAWFUL TO USE,

ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY OTHER GOODS, SERVICES, TECHNOLOGIES OR MATERIALS (INCLUDING ANY SOFTWARE, HARDWARE, SYSTEM OR NETWORK), NOT INFRINGE ANY RIGHT OF ANY THIRD PARTY, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY OF THEM IS STRICTLY BETWEEN SPONSOR AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF SUCH COMPONENTS AND THIRD-PARTY MATERIALS. WITHOUT LIMITING THE FOREGOING, BITWISE DISCLAIMS ANY WARRANTY THAT ANY MATERIAL PRODUCED WITHIN THE CONTEXT OF THIS AGREEMENT IS FREE AND CLEAR OF CLAIMS FOR INTELLECTUAL PROPERTY INFRINGEMENT.

17. LIMITATION OF LIABILITY.

17.1 DIRECT DAMAGES. BITWISE'S LIABILITY FOR DAMAGES OR INDEMNITY UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WILL NOT EXCEED PER CLAIM AND IN THE AGGREGATE THE TOTAL AMOUNT ACTUALLY PAID BY SPONSOR TO BITWISE UNDER THIS AGREEMENT DURING THE THREE (3) MONTHS PRECEDING THE EVENTS GIVING RISE TO THE LIABILITY. THE FOREGOING LIMITATION SHALL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

17.2 NO CONSEQUENTIAL DAMAGES. IN NO EVENT WILL BITWISE OR SPONSOR BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS, REVENUES, DATA, USE, ANY OTHER ECONOMIC ADVANTAGE, INCURRED BY FOUNDER, BITWISE, OR SPONSOR ARISING OUT OF OR RELATING TO THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY.

18. LICENSES. BITWISE shall, at its sole cost and expense, keep in effect or obtain at all times during the terms of this Agreement any licenses, permits and approvals which are legally required for BITWISE to practice its profession and perform the Scope of Work. If BITWISE is a corporation, at least one officer or key employee shall hold the required licenses or professional degrees. If BITWISE is a partnership, at least one partner shall hold the required licenses or professional degrees.

19. STANDARD OF PERFORMANCE. The Scope of Work shall be performed in conformity with all legal requirements and industry standards observed by a specialist of BITWISE's profession in California.

20. SB 854 COMPLIANCE. To the extent Labor Code Section 1771.1 applies to this Agreement, a contractor or subcontractor shall not be qualified to bid on, be

listed in a bid proposal, be subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, as defined in this chapter, unless currently registered and qualified to perform public work pursuant to Section 1725.5. It is not a violation of Labor Code Section 1771.1 for an unregistered contractor to submit a bid that is authorized by Section 7029.1 of the Business and Professions Code or by Section 10164 or 20103.5 of the Public Contract Code, provided the contractor is registered to perform public work pursuant to Section 1725.5 at the time the contract is awarded. The prime contractor is required to post job site notices in compliance with Title 8 California Code of Regulations Section 16451. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

21. NO WAIVER OF DEFAULT. The failure of any party to enforce against another party any provision of this Agreement shall not constitute a waiver of that party's right to enforce such a provision at a later time and shall not serve to vary the terms of this Agreement.

22. INSURANCE.

22.1 Types and Limits of Insurance. In addition to any other insurance or security required under this Agreement, BITWISE must procure and maintain, for the duration of this Agreement, the types and limits of insurance below ("Basic Insurance Requirements").

22.1.1 Automobile liability insurance, providing coverage for owned, non-owned, and hired autos on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than \$1,000,000 per occurrence.

22.1.2 Commercial general liability insurance, unless otherwise approved by CITY's Risk Manager, providing coverage on an occurrence basis for bodily injury, including death, of one or more persons, property damage, and personal injury, with limits of not less than \$1,000,000 per occurrence. The policy must:

22.1.2.1 Provide contractual liability coverage for the terms of this Agreement;

22.1.2.2 Provide products and completed operations coverage;

22.1.2.3 Provide premises, operations, and mobile equipment coverage; and

22.1.2.4 Contain an additional insured endorsement in favor of CITY and its mayor, council, officers, agents, employees, and designated volunteers.

22.1.3 **Workers' compensation insurance** with limits of not less than \$1,000,000 per occurrence. In accordance with the provisions of Labor Code Section 3700, every contractor will be required to secure the payment of compensation to his employees. Pursuant to Labor Code Section 1861, BITWISE must submit to CITY the following certification before beginning any work on the Improvements:

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for worker's compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

By executing this Agreement, BITWISE is submitting the certification required above.

The policy must contain a waiver of subrogation in favor of CITY and its mayor, council, officers, agents, employees, and designated volunteers.

22.2 **General Provisions Applying to All Insurance Types.**

22.2.1 All policies required of BITWISE must be written on a first-dollar coverage basis, or contain a deductible provision. Subject to CITY's advance approval, BITWISE may utilize a self-insured retention in any or all of the policies provided, but the policy or policies may not contain language, whether added by endorsement or contained in the policy conditions, that prohibits satisfaction of any self-insured provision or requirement by anyone other than the named insured or by any means including other insurance or which is intended to defeat the intent or protection of an additional insured.

22.2.2 All policies required of BITWISE must be primary insurance as to CITY and its mayor, council, officers, agents, employees, or designated volunteers and any insurance or self-insurance maintained by CITY and its mayor, council, officers, agents,

employees, and designated volunteers must be excess of BITWISE's insurance and must not contribute with it.

22.2.3 The insurance required above, except for workers' compensation insurance, must be placed with insurers with a Best's rating as approved by CITY's Risk Manager, but in no event less than A-:VII. Any deductibles, self-insured retentions, or insurance in lesser amounts, or lack of certain types of insurance otherwise required by this Agreement, or insurance rated below Best's A-:VII, must be declared prior to execution of this Agreement and approved by CITY in writing.

22.2.4 The insurance required in this section must be maintained until the Scope of Work is satisfactorily completed as evidenced by CITY's written acceptance. All policies must provide that there will be continuing liability thereon, notwithstanding any recovery on any policy.

22.2.5 Full compensation for all premiums which the BITWISE is required to pay to satisfy the Basic Insurance Requirements shall be considered as included in the prices paid for the performance of the Scope of Work, and no additional allowance will be made therefor or for additional premiums which may be required by extensions of the policies of insurance.

22.2.6 It is further understood and agreed by BITWISE that its liability to CITY will not in any way be limited to or affected by the amount of insurance obtained and carried by BITWISE in connection with this Agreement.

22.2.7 Unless otherwise approved by CITY, if any part of the Scope of Work is subcontracted, the Basic Insurance Requirements must be provided by, or on behalf of, all subcontractors even if CITY has approved lesser insurance requirements for BITWISE, and all subcontractors must agree in writing to be bound by the provisions of this section.

23. THIRD PARTY CLAIMS. In the case of public works contracts, CITY will timely notify BITWISE of third-party claims relating to this Agreement. CITY shall be allowed to recover from BITWISE, and BITWISE shall pay on demand, all costs of notification.

24. INDEMNITY. BITWISE shall indemnify, defend, and hold harmless CITY and CITY's officers, agents and employees against any and all liability, claims, actions,

causes of action or demands whatsoever against them, or any of them, before administrative or judicial tribunals of any kind whatsoever, arising out of, connected with, or caused by BITWISE or BITWISE's employees, agents, independent contractors, companies, or subcontractors in the performance of, or in any way arising from, the terms and provisions of this Agreement whether or not caused in part by a party indemnified hereunder, except for CITY's sole active negligence or willful misconduct.

25. ASSIGNMENT. Neither this Agreement nor any rights, interests, duties, liabilities, obligations or responsibilities arising out of, concerning or related in any way to this Agreement (including, but not limited to, accounts, actions, causes of action, claims, damages, demands, liabilities, losses, obligations, or reckonings of any kind or nature whatsoever, for compensatory or exemplary and punitive damages, or declaratory, equitable or injunctive relief, whether based on contract, equity, tort or other theories of recovery provided for by the common or statutory law) may be assigned or transferred by any party. Any such assignment is prohibited, and shall be unenforceable and otherwise null and void without the need for further action by the non-assigning party or parties.

26. ACCOUNTING RECORDS. BITWISE shall maintain accurate accounting records and other written documentation pertaining to all costs incurred in performance of this Agreement. Such records and documentation shall be kept at BITWISE's office during the term of this Agreement, and for a period of three years from the date of the final payment hereunder, and made available to CITY representatives upon request at any time during regular business hours.

27. BINDING EFFECT. The rights and obligations of this Agreement shall inure to the benefit of, and be binding upon, the parties to the Agreement and their heirs, administrators, executors, personal representatives, successors and assigns.

28. CORPORATE AUTHORITY. Each individual signing this Agreement on behalf of entities represents and warrants that they are, respectively, duly authorized to sign on behalf of the entities and to bind the entities fully to each and all of the obligations set forth in this Agreement.

29. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be considered as an original and be effective as such.

30. EXECUTION. This Agreement is effective upon execution. It is the product of negotiation and all parties are equally responsible for authorship of this Agreement. Section 1654 of the California Civil Code shall not apply to the interpretation of this Agreement.

31. EXHIBITS. In the event of a conflict between the terms, conditions or specifications set forth in this Agreement and those in exhibits attached hereto, the terms, conditions, or specifications set forth in this Agreement shall prevail. All exhibits to which reference is made in this Agreement are deemed incorporated in this Agreement, whether or not actually attached.

32. FURTHER ASSURANCES. Each party shall execute and deliver such papers, documents, and instruments, and perform such acts as are necessary or appropriate, to implement the terms of this Agreement and the intent of the parties to this Agreement.

33. INTERPRETATION. Whenever the context so requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural.

34. MERGER AND MODIFICATION. This Agreement sets forth the entire agreement between the parties and supersedes all other oral or written representations. This Agreement may be modified only in a writing approved by the City Council and signed by all the parties.

35. NON-INTEREST. No CITY officer or employee shall hold any interest in this Agreement (California Government Code section 1090).

36. NOTICES. All notices relative to this Agreement shall be given in writing and shall be personally served or sent by certified or registered mail and be effective upon actual personal service or depositing in the United States mail. The parties shall be addressed as follows, or at any other address designated by notice:

CITY: **CITY OF BAKERSFIELD
CITY HALL NORTH
1600 Truxtun Avenue
Bakersfield, California 93301**

BITWISE: **BW Industries, Inc.
Attn: Ms. Lydia Galbreath
7000 Van Ness Avenue
Fresno, CA 93721
(559) 5500-3305 legal@bitwiseindustries.com**

37. GOVERNING LAW AND FORUM SELECTION. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to the conflicts of law provisions of the State of California or any other state. The parties agree that any legal proceedings or arbitration arising out of or related to this Agreement shall be brought or take place in the County of Kern, State of California.

38. ENFORCEMENT; ATTORNEYS' FEES AND COSTS. In the event suit or litigation is brought to enforce or interpret any part of this Agreement, the prevailing party shall be entitled to recover as an element of its costs of suit, and not as damages, a reasonable attorneys' fee to be fixed by the court. The "prevailing party," as used in this Agreement shall be the party who is entitled to recover its costs of suit, whether or not the suit proceeds to final judgment. A party not entitled to recover its costs shall not recover attorneys' fees.

39. SEVERABILITY. Should any part, term or provision of this Agreement be declared or be determined by any court to be illegal or invalid, the validity of the remaining parts or provisions shall not be affected thereby and said illegal or invalid part, term or provision(s) shall be deemed not to be a part of this Agreement. Sections 8, 9, 15, 16, 17, 24, 37, 38, and 39 shall survive termination of this Agreement.

40. INTEGRATION. This Agreement incorporates the entire understanding among the parties and recites the sole consideration for the promises exchanged herein. In reaching this Agreement, no party has relied upon any representation or promise except those expressly set forth herein.

41. RESOURCE ALLOCATION. All CITY obligations under the terms of this Agreement are subject to the appropriation and allocation of resources by the City Council.

42. TITLE TO DOCUMENTS. All documents, plans, and drawings, maps, photographs, and other papers, or copies thereof prepared by BITWISE pursuant to the terms of this Agreement, shall, upon preparation, become CITY property.

43. TAX NUMBERS.

BITWISE's Federal Tax ID Number: _____
 BITWISE is a corporation? Yes X No _____
 (Please check one.)

44. COUNTERPARTS AND FACSIMILE SIGNATURES. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and when taken together shall constitute one and the same Agreement. The parties agree that this Agreement will be considered signed when the signature of a party is in the form of a facsimile transmission, photocopy, electronic scan or electronic signature. Such signature shall be treated in all respects as having the same effect as an original signature.

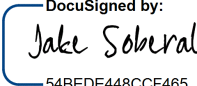
[Signatures on following page]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above.

"CITY"
CITY OF BAKERSFIELD

By: _____
KAREN GOH
Mayor

"BITWISE"
BW INDUSTRIES, INC., A DELAWARE CORPORATION

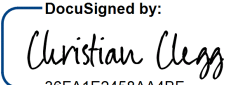
By:  _____
54BEDE448CCF465
Jake Soberal
Print Name: _____
CEO
Title: _____

APPROVED AS TO FORM:
VIRGINIA GENNARO
City Attorney

By: _____
JOSHUA H. RUDNICK
Deputy City Attorney

Insurance: _____

APPROVED AS TO CONTENT:
ECONOMIC AND COMMUNITY DEVELOPMENT DEPARTMENT

By:  _____
36FA1E2458AA4BF...
Christian Clegg
City Manager

COUNTERSIGNED:

By: _____
RANDY MCKEEGAN
Finance Director

JHR/ag
Attachment: Exhibit A – Ignite Innovation Lab Proposal
Exhibit B – Independent Contractors Agreement