

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, GRANTING AUTHORITY TO THE CITY MANAGER OR DESIGNEE TO TERMINATE THE AGREEMENT WITH BW INDUSTRIES, INC., FUNDED BY THE AMERICAN RESCUE PLAN ACT (ARPA) TO AID IN THE COVID-19 RECOVERY EFFORT

WHEREAS, in 2021, the City of Fresno (City) was awarded American Rescue Plan Act (ARPA) funding in the amount of \$170,808,029. Of this funding, approximately \$10,000,000 was identified as a resource to provide grant funding to local Community Based Organizations (CBOs) for projects that aid in the recovery of the COVID-19 pandemic; and

WHEREAS, through a formal request for proposals process, 46 proposals were submitted, totaling \$77,779,315, through the City's Planet Bids portal. All proposals were vetted for eligibility based on each agency's self-identified ARPA category determination. Of eligible ARPA categories, priorities were identified by City Council via an anonymous survey; and

WHEREAS, on June 23, 2022, Council voted to allocate funds and selected fifteen Community Based Organizations for an award of ARPA funding totaling \$10,000,000; and

WHEREAS, BW Industries, Inc. (commonly known as Bitwise), was one of the CBO proposals selected and was allocated a total \$1,000,000 in funds to initiate a small business digital empowerment program to boost local businesses' profitability and creative capacity by connecting them to broadband internet and information technology resources, building custom technology for them, and growing their digital literacy; and

WHEREAS, BW Industries, Inc., has received a disbursement of \$500,000 of their total allocation to date; and

WHEREAS, according to recent news articles BW Industries, Inc., acute financial issues have forced the Fresno-based company to furlough its entire workforce of about 900 employees in Fresno, Merced, Bakersfield, Oakland and seven other cities across the country on Monday, May 29, 2023; and

WHEREAS, it was reported by the Fresno Bee that Bitwise co-founder and co-CEO Jake Soberal stated late Monday that: "Several critical (financial) transactions either did not materialize or materialized unfavorably, and the quantum of that is quite large... We held an emergency board meeting today and the difficult decision was arrived at that it was in the best interest of the company to furlough all employees effective immediately"; and

WHEREAS, the BW Industries, Inc. home office in the City of Fresno is home to 300 of those Bitwise workers, who have been furloughed and advised banks might not honor their paychecks right away; and

WHEREAS, continuing the Agreement with ARPA funds would not be in the best interest of the City or its residents given the current financial and employment state of BW Industries, Inc.; and

WHEREAS, BW Industries, Inc., previously acknowledged that grant funds being provided under this Agreement would be derived from the City's allocation under the American Rescue Plan Act (Pub.L. 117-2) (ARPA), and are subject to any constraints set forth therein including but not limited to, the Coronavirus State and Local Fiscal Recovery Funds (CSLFRF) Final Rule (31 CFR Part 35) and the U.S. Treasury Department; and

WHEREAS, the Grant Agreement requires that BW Industries, Inc., return all unearned payments of funds immediately upon termination of the Agreement; and

WHEREAS, Council desires that the remaining \$500,000 and any unearned payments be used to fund the Fresno Water Tower Project, or otherwise support Downtown small businesses impacted by the COVID-19 pandemic in a timely fashion; and

WHEREAS, any contribution of funds by the City shall be contingent upon a determination that the proposed use is an allowable expenditure and/or activity under the ARPA Final Rule; and

WHEREAS, on May 31, 2023, Mayor Jerry Dyer submitted a letter to Bitwise, attached herein as Exhibit A, reminding them of their obligations under the California WARN Act, which includes notification to impacted employees, the Employment Development Department, the local Workforce Development Board, and the chief elected official of each city/county government before the layoff/furlough occurs.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The Council of the City of Fresno authorizes the City Manager or designee to issue a Notice of Termination of the Agreement.
2. The Council of the City of Fresno directs that no further City business be conducted with BW Industries, Inc., Bitwise, and any affiliated entities until such a time as the current financial situation is resolved.
3. The Council of the City of Fresno directs staff to review all business activities with BW Industries, Inc., Bitwise, and any affiliated entities, and report back to the Economic Development Subcommittee.

4. The Council of the City of Fresno supports the Mayor's effort to obtain Bitwise's compliance with the California WARN Act which will allow government entities to provide support to affected employees.

5. This resolution shall be effective upon final approval.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, TODD STERMER, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____ 2023.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2023
Mayor Approval/No Return: _____, 2023
Mayor Veto: _____, 2023
Council Override Vote: _____, 2023

TODD STERMER, CMC
City Clerk

By: _____
Deputy Date

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Taylor W. Rhoan Date
Deputy City Attorney

Exhibit A: City of Fresno Letter to BW Industries, Inc. dated 5/31/23



JERRY P. DYER
MAYOR

May 31, 2023

Bitwise Industries
700 Van Ness Avenue
Fresno, CA 93721

Mr. Soberal and Ms. Olguin Jr.:

The sudden and devastating employment action taken in recent days by Bitwise, reportedly classified as a “furlough” of approximately three-hundred Bitwise employees within the Fresno area has sent ripple effects throughout our community. Many long-time supporters of your entrepreneurial presence in our community have reached out to express concern. Unfortunately, it appears that neither Bitwise employees nor the City of Fresno (City) received any advanced notice of this company-wide furlough, which has upended the lives of hundreds of Fresno residents and has caused considerable anxiety based on this lack of communication.

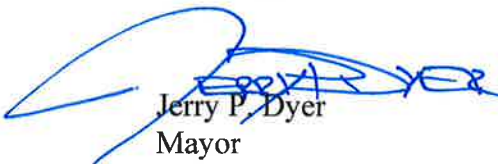
As you are aware, the California Worker Adjustment and Retraining Notification Act (Cal WARN Act) requires advance notification to impacted employees, the Employment Development Department, and the chief elected official of the impacted municipality where the employment action occurs, when a “furlough” of this magnitude is imposed.

Unfortunately, the appropriate agencies, including the City, received no such notice and were therefore unable to prepare to offer immediate and essential support to the impacted employees. This is an essential first step in providing services. While it remains to be seen whether this “furlough” is temporary or results in permanent layoffs, the City reminds Bitwise that regardless, it has legal obligations to its employees, and to the City. Bitwise and its affiliated entities are encouraged to immediately comply with all applicable state and federal law, including statutes regarding advance notice of qualifying employment actions.

Additionally, it has been brought to my attention that Bitwise related entities have not reported any gross receipts nor paid City business taxes since September of 2021. Please provide an accounting to the City Controller within 30 days of receipt of this letter, failure to do so may result in further action against Bitwise and its Board of Directors.

Amidst this difficult time, I want to thank each of you for your attention to the importance of this letter, and working collaboratively to ensure that proper steps are taken to address these concerns.

Sincerely,


Jerry P. Dyer
Mayor