

**A RESOLUTION CONFIRMING SUBSTANTIAL
COMPLIANCE/NON-COMPLIANCE with a Statement of
Benefits (SB-1) for 2014 for Nemcomed FW,
LLC/Avalign Technologies, Inc. for property at 8727
Clinton Park Drive under Confirming Resolution R-02-10
with an "Economic Revitalization Area" approved under
I.C. 6-1.1-12.1**

WHEREAS, Common Council has previously designated and declared by Declaratory Resolution and Confirming Resolution with approved Statement of Benefits (SB-1) forms property for Nemcomed FW, LLC/Avalign Technologies, Inc. as an "Economic Revitalization Area" under Sections 153.13-153.24 of the Municipal Code of the City of Fort Wayne, Indiana, and I.C. 6-1.1-12.1; and

WHEREAS, property owners whose Statement of Benefits (SB-1) form was approved after July 1, 1991 who file a deduction application under Sections 3 and 4.5 of I.C. 6-1.1-12.1 and Section 153.21 of the Municipal Code of the City of Fort Wayne, Indiana, must file a Compliance with Statement of Benefits Form (CF-1) with the Allen County Auditor, the Allen County Assessor and the City of Fort Wayne showing information on the extent to which there has been compliance with the approved Statement of Benefits for the project; and

WHEREAS, Nemcomed FW, LLC/Avalign Technologies, Inc. has filed Compliance with Statement of Benefit Forms with the Allen County Auditor's Office, Allen County Assessor's Office and the City of Fort Wayne; and

WHEREAS, Nemcomed FW, LLC/Avalign Technologies, Inc.'s approved Statement of Benefits (SB-1) form stated that **55** full-time jobs would be retained and **75** full-time jobs would be created by December 2012; and

WHEREAS, Nemcomed FW, LLC/Avalign Technologies, Inc.'s approved Statement of Benefits (SB-1) form stated that **\$2,579,720** in annual payroll for retained jobs and **\$3,653,035** in annual payroll would be generated by the created jobs; and

WHEREAS, Nemcomed FW, LLC/Avalign Technologies, Inc.'s 2014 Compliance with Statement of Benefits (CF-1) form filings stated that **55** jobs were retained and **54** jobs had been created; and

WHEREAS, Nemcomed FW, LLC/Avalign Technologies, Inc.'s 2014 Compliance with Statement of Benefits (CF-1) form filings stated that **\$2,579,720** in annual payroll for the retained jobs and **\$3,825,846** in annual payroll for the created jobs; and

WHEREAS, Common Council designated the City of Fort Wayne Community Development Division as the entity for the administration, application, processing and monitoring of Economic Revitalization Areas under Section 153.13 of the Municipal Code of the City of Fort Wayne; and

WHEREAS, Common Council has defined substantial compliance under Section 153.21 of the Municipal Code of the City of Fort Wayne as:

1. Meeting 75% or more of the numbers of full-time and/or part-time jobs stated to be created or retained as delineated in the original Statement of Benefits Form (SB-1) approved by Common Council; and
2. Meeting 75% or more of the total payroll stated to be created or retained as delineated in the original Statement of Benefits Form (SB-1) approved by Common Council; and

WHEREAS, meeting 75% of the 55 retained jobs means retaining **42** jobs; and

WHEREAS, meeting 75% of the 75 jobs to be created means creating **57** jobs; and

WHEREAS, meeting 75% of the \$2,579,720 in retained annual payroll means **\$1,934,790** in annual payroll retained; and

WHEREAS, meeting 75% of the \$3,653,035 in annual payroll to be created means **\$2,739,776** in annual payroll created; and

WHEREAS, Common Council made a determination on June 24, 2014 that Nemcomed FW, LLC/Avalign Technologies, Inc. was not in substantial compliance as a result of its failure to generate at least 57 jobs and that the failure to substantially comply was not caused by factors beyond the control of Nemcomed FW, LLC/Avalign Technologies, Inc.; and

WHEREAS, Council directed the Community Development Division to mail written notice to Nemcomed FW, LLC/Avalign Technologies, Inc. explaining the reasons for Council's determination and a date, time, place of a hearing to be conducted by Council for the purpose of further considering Nemcomed FW, LLC/Avalign Technologies, Inc.'s compliance with Statement of Benefits; and

WHEREAS, the aforementioned notice was properly prepared and served upon Nemcomed FW, LLC/Avalign Technologies, Inc. on July 7, 2014; and

WHEREAS, Council conducted a hearing on August 5, 2014 for the purpose of further considering Nemcomed FW, LLC/Avalign Technologies, Inc.'s compliance with statement of benefits; and

WHEREAS, Nemcomed FW, LLC/Avalign Technologies, Inc. **appeared/failed to appear** at the hearing.

NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

SECTION 1. Nemcomed FW, LLC/Avalign Technologies, Inc. failed to appear and otherwise testify and therefore Council confirms its determination of June 24, 2014 that Nemcomed FW, LLC/Avalign Technologies, Inc. has failed to substantially comply pursuant to IC 6-1.1-12.1 and Section 153.21 of the Municipal Code of the City of Fort Wayne for its failure to create 75% of the 75 jobs or 57 jobs in that Nemcomed FW, LLC/Avalign Technologies, Inc. Council therefore finds that Nemcomed FW, LLC/Avalign Technologies, Inc. has failed to substantially comply and said failure was not caused by factors outside of Nemcomed FW, LLC/Avalign Technologies, Inc.'s control. As a result of said failure, Nemcomed FW, LLC/Avalign Technologies, Inc.'s deduction/abatement under R-02-10 is hereby terminated.

Or

SECTION 1. That Nemcomed FW, LLC/Avalign Technologies, Inc. appeared and testified at the hearing and from its testimony it was determined that notwithstanding Nemcomed FW, LLC/Avalign Technologies, Inc.'s failure to substantially comply by its failure to create 57 jobs or more, that Company did make reasonable efforts to substantially comply with the statement of benefits and Nemcomed FW, LLC/Avalign Technologies, Inc.'s failure to substantially comply was caused by factors beyond the control of Nemcomed FW, LLC/Avalign Technologies, Inc.. Therefore the continuation of Nemcomed FW, LLC/Avalign Technologies, Inc.'s deduction/abatement under R-02-10 is hereby approved.

SECTION 2. That, this Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

Member of Council

APPROVED AS TO FORM A LEGALITY

Carol Helton, City Attorney