BILL NO. R-18-07-25

RESOLUTION NO. R-________

A RESOLUTION determining SUBSTANTIAL COMPLIANCE OR NON-COMPLIANCE with Statement of Benefits (CF-1) form filing for 2018 for Brooks Construction Company, Inc. for property at 2711 Banks Avenue, Fort Wayne, IN 46802 under Confirming Resolution R-30-10 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 (hereinafter "SB-1") forms, certain property for **Brooks Construction Company, 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 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 (hereinafter "CF-1") with the City of Fort Wayne and in some cases either the Allen County Auditor, the Allen County Assessor, or both, showing information on the extent to which there has been compliance with the approved SB-1 form for the project; and

WHEREAS, Brooks Construction Company, Inc. has filed CF-1 forms with the City of Fort Wayne and the Allen County Assessor; and

WHEREAS, Brooks Construction Company, Inc.'s approved SB-1 form stated that **six** full-time jobs would be created by **September 30, 2010**; and

WHEREAS, Brooks Construction Company, Inc.'s approved SB-1 form stated **$390,000** in annual payroll would be generated by the **six** full-time jobs to be created; and

WHEREAS, Brooks Construction Company, Inc.'s 2018 CF-1 form filing stated that **zero** jobs were created; and

WHEREAS, Brooks Construction Company, Inc.'s 2018 CF-1 form filing stated **$0.00** in annual payroll for the **zero** jobs created; 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 **six** full-time jobs to be created means creating **four** full-time jobs; and

WHEREAS, meeting 75% of the **$390,000** in annual payroll to be created means **$292,500** in created annual payroll; and

WHEREAS, Common Council may determine not later than forty-five (45) days after receipt of the CF-1 form that **Brooks Construction Company, Inc.** has either failed to substantially comply or has substantially complied with the original SB-1 form approved by Common Council; and

WHEREAS, Common Council made a determination on **June 26, 2018** that **Brooks Construction Company, Inc.** was not in substantial compliance as a result of its failure to generate at least **four** jobs and at least **$292,500** in annual payroll created, and that the failure to substantially comply was not caused by factors beyond the control of **Brooks Construction Company, Inc.**; and

WHEREAS, Council directed the Community Development Division to mail written notice to **Brooks Construction Company, 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 **Brooks Construction Company, Inc.**'s compliance with Statement of Benefits; and

WHEREAS, the aforementioned notice was properly prepared and served upon **Brooks Construction Company, Inc.**; and

WHEREAS, Brooks Construction Company, Inc. [appeared/failed to appear] before Common Council to provide additional information concerning compliance.

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

SECTION 1. That, Common Council finds that the CF-1 form filed by **Brooks Construction Company, Inc.** with an approved Economic Revitalization Area for **2018** are not in substantial compliance pursuant to I.C. 6-1.1-12.1 and Section 153.21 of the Municipal Code of the City of Fort Wayne for failure to create 75% of the **six** full-time jobs or **four** jobs that were stated that would be created and create 75% of the **$390,000** in annual payroll or **$292,500** that was stated that would be generated by the created jobs.

SECTION 2a. **Brooks Construction Company, Inc.** failed to appear and otherwise testify and therefore Council confirms its determination of **June 26, 2018** that **Brooks Construction Company, 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 as detailed in Section 1 above. Council therefore finds that **Brooks Construction Company, Inc.** has failed to substantially comply and said failure was not caused by factors outside of **Brooks Construction Company, Inc.**'s control. As a result of said failure, **Brooks Construction Company, Inc.**'s deduction/abatement under **R-30-10** is hereby terminated

SECTION 2b. That **Brooks Construction Company, Inc.** appeared and testified at the hearing and from its testimony it was determined that notwithstanding **Brooks Construction Company, Inc.**'s failure to substantially comply as detailed in Section 1 above that **Brooks Construction Company, Inc.** did make reasonable efforts to substantially comply with the statement of benefits and **Brooks Construction Company, Inc.**'s failure to substantially comply was caused by factors beyond the control of **Brooks Construction Company, Inc.**. Therefore, the continuation of **Brooks Construction Company, Inc.**'s deduction/abatement under **R-30-10** is hereby approved.

SECTION 2c. That **Brooks Construction Company, Inc.** appeared and testified at the hearing and from its testimony it was determined in addition to **Brooks Construction Company, Inc.**'s failure to substantially comply as detailed in Section 1 above, that **Brooks Construction Company, Inc.** did not make reasonable efforts to substantially comply with the statement of benefits and **Brooks Construction Company, Inc.**'s failure to substantially comply was not caused by factors beyond the control of **Brooks Construction Company, Inc.** As a result of said failure, **Brooks Construction Company, Inc.**'s deduction/abatement under **R-30-10** is hereby terminated.

SECTION 3. That, this Resolution shall be in full force and effect from and after its passage and any and all necessary approval by the Mayor.

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Member of Council

APPROVED AS TO FORM A LEGALITY

Joseph G. Bonahoom, Attorney for Common Council

Admn. Appr.____________

DIGEST SHEET

TITLE OF ORDINANCE: **Resolution Confirming Substantial Compliance or Non-Compliance with a Statement of Benefits (SB-1) for 2016**

DEPARTMENT REQUESTING ORDINANCE: **Community Development Division**

SYNOPSIS OF ORDINANCE: **This resolution confirms that Compliance with Statement of Benefits (CF-1) Form filings made by Brooks Construction Company, Inc. in May 2018 with an approved economic revitalization area are either in substantial compliance or non-compliance pursuant to both Council policy and Indiana law.**

EFFECT OF PASSAGE: **Potential retention or loss of economic revitalization area deduction (property tax abatement/phase-in).**

EFFECT OF NON-PASSAGE:

MONEY INVOLVED (DIRECT COSTS, EXPENDITURES, SAVINGS): **No expenditures of public funds required.**

ASSIGNED TO COMMITTEE (PRESIDENT): **Geoff Paddock and Jason Arp**