

A RESOLUTION determining SUBSTANTIAL COMPLIANCE OR NON-COMPLIANCE with Statement of Benefits (CF-1) form filing for 2019 for FXI, Inc. for property at 3005 Commercial Road, Fort Wayne, IN 46809 under Confirming Resolution R-40-11 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 **FXI, 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, **FXI, Inc.** has filed CF-1 forms with the **City of Fort Wayne** and the **Allen County Assessor**; and

WHEREAS, **FXI, Inc.** approved SB-1 form stated that **180** full-time jobs would be retained by **January 31, 2011**; and

WHEREAS, **FXI, Inc.** approved SB-1 form stated **\$12,877,524** in annual payroll would be retained for the **180** full-time retained jobs; and

WHEREAS, **FXI, Inc.** **2019** CF-1 form filing stated that **140** jobs were retained and; and

WHEREAS, **FXI, Inc.** **2019** CF-1 form filing stated **\$6,536,714** in annual payroll for the **140** jobs retained; 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 1. Meeting 75% or more of the numbers of full-time and/or part-time jobs stated
- 2 to be created or retained as delineated in the original Statement of Benefits
- 3 Form (SB-1) approved by Common Council; and
- 4 2. Meeting 75% or more of the total payroll stated to be created or retained as
- 5 delineated in the original Statement of Benefits Form (SB-1) approved by
- 6 Common Council; and

7 **WHEREAS**, meeting 75% of the **180** full-time jobs retained means retaining **135**

8 jobs; and

9 **WHEREAS**, meeting 75% of the **\$12,877,524** in retained annual payroll means

10 **\$9,658,143** in retained annual payroll; and

11 **WHEREAS**, Common Council may determine not later than forty-five (45) days

12 after receipt of the CF-1 form that **FXI, Inc.** has either failed to substantially comply or

13 has substantially complied with the original SB-1 form approved by Common Council;

14 and

15 **WHEREAS**, Common Council made a determination on **June 25, 2019** that **FXI,**

16 **Inc.** was not in substantial compliance as a result of its failure to retain at least **135** jobs

17 and at least **\$9,658,143** in annual payroll retained, and that the failure to substantially

18 comply was not caused by factors beyond the control of **FXI, Inc.**; and

19 **WHEREAS**, Council directed the Community Development Division to mail

20 written notice to **FXI, Inc.** explaining the reasons for Council's determination and a date,

21 time, place of a hearing to be conducted by Council for the purpose of further

22 considering **FXI, Inc.**'s compliance with Statement of Benefits; and

23 **WHEREAS**, the aforementioned notice was properly prepared and served upon

24 **FXI, Inc.**; and

25 **WHEREAS**, **FXI, Inc.** [appeared/failed to appear] before Common Council to

26 provide additional information concerning compliance.

27 **NOW, THEREFORE, BE IT RESOLVED BY THE COMMON COUNCIL OF THE**

28 **CITY OF FORT WAYNE, INDIANA:**

29 **SECTION 1.** That, Common Council finds that the CF-1 form filed by **FXI, Inc.**

30 with an approved Economic Revitalization Area for **2019** 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 retain 75% of the **180** jobs or **135** jobs that were stated

 that would be retained and retain 75% of the **\$12,877,524** in annual payroll or

\$9,658,143 that was stated that would be generated by the retained jobs.

SECTION 2a. **FXI, Inc.** failed to appear and otherwise testify and therefore

 Council confirms its determination of **June 25, 2019** that **FXI, Inc.** has failed to

1 substantially comply pursuant to IC 6-1.1-12.1 and Section 153.21 of the Municipal
2 Code of the City of Fort Wayne as detailed in Section 1 above. Council therefore finds
3 that **FXI, Inc.** has failed to substantially comply and said failure was not caused by
4 factors outside of **FXI, Inc.**'s control. As a result of said failure, **FXI, Inc.**'s
deduction/abatement under **R-40-11** is hereby terminated

5 **SECTION 2b.** That **FXI, Inc.** appeared and testified at the hearing and from its
6 testimony it was determined that notwithstanding **FXI, Inc.**'s failure to substantially
7 comply as detailed in Section 1 above that **FXI, Inc.** did make reasonable efforts to
8 substantially comply with the statement of benefits and **FXI, Inc.**'s failure to substantially
9 comply was caused by factors beyond the control of **FXI, Inc.**. Therefore, the
continuation of **FXI, Inc.**'s deduction/abatement under **R-40-11** is hereby approved.

10 **SECTION 2c.** That **FXI, Inc.** appeared and testified at the hearing and from its
11 testimony it was determined in addition to **FXI, Inc.**'s failure to substantially comply as
12 detailed in Section 1 above, that **FXI, Inc.** did not make reasonable efforts to
13 substantially comply with the statement of benefits and **FXI, Inc.**'s failure to substantially
14 comply was not caused by factors beyond the control of **FXI, Inc.** As a result of said
failure, **FXI, Inc.**'s deduction/abatement under **R-40-11** is hereby terminated.

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

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18 _____
Member of Council

19
20
21 APPROVED AS TO FORM A LEGALITY

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23 _____
24 Carol Helton, City Attorney
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Admn. Appr. _____

DIGEST SHEET

TITLE OF ORDINANCE: Resolution Confirming Substantial Compliance or Non-Compliance with a Statement of Benefits (SB-1) for 2019

DEPARTMENT REQUESTING ORDINANCE: Community Development Division

SYNOPSIS OF ORDINANCE: This resolution confirms that Compliance with Statement of Benefits (CF-1) Form filings made by FXI, Inc. in May 2019 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): Russ Jehl and Jason Arp