

A RESOLUTION determining SUBSTANTIAL COMPLIANCE OR NON-COMPLIANCE with Statement of Benefits (CF-1) form filing for 2020 for Indiana Oxygen Company, Inc./Fort Brant Limited Partnership for property at 3806 Option Pass, Fort Wayne, IN 46818 under Confirming Resolution R-5-16 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 **Indiana Oxygen Company, Inc./Fort Brant Limited Partnership** 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, **Indiana Oxygen Company, Inc./Fort Brant Limited Partnership** has filed CF-1 forms with **the City of Fort Wayne, the Allen County Auditor and the Allen County Assessor**; and

WHEREAS, **Indiana Oxygen Company, Inc./Fort Brant Limited Partnership's** approved SB-1 form stated that **six** full-time jobs would be created by **December 31, 2018**; and

WHEREAS, **Indiana Oxygen Company, Inc./Fort Brant Limited Partnership's** approved SB-1 form stated **\$368,160** in annual payroll would be retained for the **six** full-time jobs to be created; and

WHEREAS, **Indiana Oxygen Company, Inc./Fort Brant Limited Partnership's** **2020** CF-1 form filing stated that **four** jobs were created; and

WHEREAS, **Indiana Oxygen Company, Inc./Fort Brant Limited Partnership's** **2020** CF-1 form filing stated **\$179,456** in annual payroll for the **four** jobs created; and

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

5 **WHEREAS**, Common Council has defined substantial compliance under Section
6 153.21 of the Municipal Code of the City of Fort Wayne as:

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

13 **WHEREAS**, meeting 75% of the **six** jobs to be created means creating **four** full-
14 jobs; and

15 **WHEREAS**, meeting 75% of the **\$368,160** in annual payroll to be created means
16 **\$276,120** in created annual payroll; and

17 **WHEREAS**, Common Council may determine not later than forty-five (45) days
18 after receipt of the CF-1 form that **Indiana Oxygen Company, Inc./Fort Brant Limited**
19 **Partnership** has either failed to substantially comply or has substantially complied with
20 the original SB-1 form approved by Common Council; and

21 **WHEREAS**, Common Council made a determination on **July 28, 2020** that
22 **Indiana Oxygen Company, Inc./Fort Brant Limited Partnership** was not in substantial
23 compliance as a result of its failure to create at least **\$276,120** in annual payroll, and
24 that the failure to substantially comply was not caused by factors beyond the control of
25 **Indiana Oxygen Company, Inc.**; and

26 **WHEREAS**, Council directed the Community Development Division to mail written
27 notice to **Indiana Oxygen Company, Inc./Fort Brant Limited Partnership** explaining
28 the reasons for Council's determination and a date, time, place of a hearing to be
29 conducted by Council for the purpose of further considering **Indiana Oxygen Company,**
30 **Inc./Fort Brant Limited Partnership's** compliance with Statement of Benefits; and

WHEREAS, the aforementioned notice was properly prepared and served upon
Indiana Oxygen Company, Inc.; and

WHEREAS, **Indiana Oxygen Company, Inc./Fort Brant Limited Partnership**
[appeared/failed to appear] before Common Council to provide additional information
concerning compliance.

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

3 **SECTION 1.** That, Common Council finds that the CF-1 form filed by **Indiana**
4 **Oxygen Company, Inc./Fort Brant Limited Partnership** with an approved Economic
5 Revitalization Area for **2020** are not in substantial compliance pursuant to I.C. 6-1.1-12.1
6 and Section 153.21 of the Municipal Code of the City of Fort Wayne for failure to create
7 75% of the **\$368,160** in annual payroll or **\$276,120** that was stated that would be
8 generated by the created jobs.

9 **SECTION 2a. Indiana Oxygen Company, Inc./Fort Brant Limited Partnership**
10 failed to appear and otherwise testify and therefore Council confirms its determination of
11 **July 28, 2020** that **Indiana Oxygen Company, Inc./Fort Brant Limited Partnership** has
12 failed to substantially comply pursuant to IC 6-1.1-12.1 and Section 153.21 of the
13 Municipal Code of the City of Fort Wayne as detailed in Section 1 above. Council therefore
14 finds that **Indiana Oxygen Company, Inc./Fort Brant Limited Partnership** has failed to
15 substantially comply and said failure was not caused by factors outside of **Indiana**
16 **Oxygen Company, Inc.'s** control. As a result of said failure, **Indiana Oxygen Company,**
17 **Inc.'s** deduction/abatement under **R-5-16** is hereby terminated

18 **SECTION 2b.** That **Indiana Oxygen Company, Inc./Fort Brant Limited**
19 **Partnership** appeared and testified at the hearing and from its testimony it was
20 determined that notwithstanding **Indiana Oxygen Company, Inc./Fort Brant Limited**
21 **Partnership's** failure to substantially comply as detailed in Section 1 above that **Indiana**
22 **Oxygen Company, Inc./Fort Brant Limited Partnership** did make reasonable efforts to
23 substantially comply with the statement of benefits and **Indiana Oxygen Company,**
24 **Inc./Fort Brant Limited Partnership's** failure to substantially comply was caused by
25 factors beyond the control of **Indiana Oxygen Company, Inc./Fort Brant Limited**
26 **Partnership.** Therefore, the continuation of **Indiana Oxygen Company, Inc./Fort Brant**
27 **Limited Partnership's** deduction/abatement under **R-5-16** is hereby approved.

28 **SECTION 2c.** That **Indiana Oxygen Company, Inc./Fort Brant Limited**
29 **Partnership** appeared and testified at the hearing and from its testimony it was
30 determined in addition to **Indiana Oxygen Company, Inc./Fort Brant Limited**
Partnership's failure to substantially comply as detailed in Section 1 above, that **Indiana**
Oxygen Company, Inc./Fort Brant Limited Partnership did not make reasonable efforts
to substantially comply with the statement of benefits and **Indiana Oxygen Company,**
Inc./Fort Brant Limited Partnership's failure to substantially comply was not caused by
factors beyond the control of **Indiana Oxygen Company, Inc./Fort Brant Limited**

Partnership. As a result of said failure, **Indiana Oxygen Company, Inc./Fort Brant Limited Partnership's** deduction/abatement under **R-5-16** 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.

Member of Council

APPROVED AS TO FORM A LEGALITY

Carol Helton, City Attorney

Admn. Appr. _____

DIGEST SHEET

TITLE OF ORDINANCE: Resolution Confirming Substantial Compliance or Non-Compliance with a Statement of Benefits (SB-1) for 2020

DEPARTMENT REQUESTING ORDINANCE: Community Development Division

SYNOPSIS OF ORDINANCE: This resolution confirms that Compliance with Statement of Benefits (CF-1) Form filings made by Indiana Oxygen Company, Inc./Fort Brant Limited Partnership in May 2020 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): Jason Arp and Sharon Tucker