

A RESOLUTION determining SUBSTANTIAL COMPLIANCE OR NON-COMPLIANCE with Statement of Benefits (CF-1) form filing for 2022 for Conestoga, LLC for property at 3404 Conestoga Drive, Fort Wayne, IN 46804 under Confirming Resolution R-44-12 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 Conestoga, LLC 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, Conestoga, LLC has filed CF-1 forms with the City of Fort Wayne and the Allen County Auditor; and

WHEREAS, Conestoga, LLC's approved SB-1 form stated that 20 full-time jobs would be retained and two full-time jobs created by December 31, 2013; and

WHEREAS, Conestoga, LLC's approved SB-1 form stated \$622,601 in annual payroll would be retained for the 20 full-time retained jobs and \$52,000 in annual payroll would be created for the two full-time jobs to be created; and

WHEREAS, Conestoga, LLC's 2022 CF-1 form filing stated that 12 full-time jobs have been retained and zero full-time jobs have been created; and

WHEREAS, Conestoga, LLC's 2022 CF-1 form filing stated \$527,558 in annual payroll for the 12 full-time jobs retained and \$0 in annual payroll for zero full-time jobs created; and

WHEREAS, Common Council designated the City of Fort Wayne Community Development Division as the entity for the administration, application, processing and

1 monitoring of Economic Revitalization Areas under Section 153.13 of the Municipal Code
2 of the City of Fort Wayne; and

3 **WHEREAS**, Common Council has defined substantial compliance under Section
4 153.21 of the Municipal Code of the City of Fort Wayne as:

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

11 **WHEREAS**, meeting 75% of the 20 full-time jobs to be retained and two full-time
12 jobs to be created means retaining 15 full-time jobs and creating one full-time job; and

13 **WHEREAS**, meeting 75% of the \$622,601 retained annual payroll means
14 \$466,950 in retained annual payroll and 75% of the \$52,000 in created annual payroll
15 means \$39,000 in created annual payroll; and

16 **WHEREAS**, Common Council will determine no later than forty-five (45) days after
17 receipt of the CF-1 form that an approved business has either failed to substantially
18 comply or has substantially complied with the original SB-1 form approved by Common
19 Council; and

20 **WHEREAS**, Common Council made a determination on June 28, 2022 that
21 Conestoga, LLC was not in substantial compliance as a result of its failure to retain at
22 least 15 full-time jobs with a retained annual payroll of at least \$466,950 and create at
23 least one new full-time job with at least \$39,000 in created annual payroll; and

24 **WHEREAS**, Council directed the Community Development Division to mail written
25 notice to Conestoga, LLC explaining the reasons for Council's determination and a date,
26 time, place of a hearing to be conducted by Council for the purpose of further considering
27 Conestoga, LLC's compliance with Statement of Benefits; and

28 **WHEREAS**, the aforementioned notice was properly prepared and served upon
29 Conestoga, LLC to appear before Council on August 9, 2022 at 5:30pm in Room 030 at
30 Citizen's Square 200 E. Berry Street Fort Wayne, IN; and

WHEREAS, Conestoga, LLC [appeared/failed to appear] before Common Council
on August 9, 2022 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 Conestoga,
LLC with an approved Economic Revitalization Area for 2022 is not in substantial

1 compliance pursuant to I.C. 6-1.1-12.1 and Section 153.21 of the Municipal Code of the
2 City of Fort Wayne for failure to retain 75% of the 20 full-time, or 15 full-time jobs, as stated
3 would be retained and create 75% of the two full-time jobs, or one job and create 75% of
4 the \$52,000, or \$39,000, in annual payroll that was stated that would be generated by the
5 created jobs.

6 **SECTION 2a.** Conestoga, LLC failed to appear and otherwise testify and
7 therefore Council confirms its determination of June 28, 2022 that Conestoga, LLC has
8 failed to substantially comply pursuant to IC 6-1.1-12.1 and Section 153.21 of the
9 Municipal Code of the City of Fort Wayne as detailed in Section 1 above. Council therefore
10 finds that Conestoga, LLC has failed to substantially comply and said failure was not
11 caused by factors outside of Conestoga, LLC's control. As a result of said failure,
12 Conestoga, LLC's deduction/abatement under R-44-12 is hereby terminated

13 **SECTION 2b.** That Conestoga, LLC appeared and testified at the hearing and
14 from its testimony it was determined that notwithstanding Conestoga, LLC's failure to
15 substantially comply as detailed in Section 1 above that Conestoga, LLC did make
16 reasonable efforts to substantially comply with the statement of benefits and Conestoga,
17 LLC's failure to substantially comply was caused by factors beyond the control of
18 Conestoga, LLC. Therefore, the continuation of Conestoga, LLC's deduction/abatement
19 under R-44-12 is hereby approved.

20 **SECTION 2c.** That Conestoga, LLC appeared and testified at the hearing and
21 from its testimony it was determined in addition to Conestoga, LLC's failure to substantially
22 comply as detailed in Section 1 above, that Conestoga, LLC did not make reasonable
23 efforts to substantially comply with the statement of benefits and Conestoga, LLC's failure
24 to substantially comply was not caused by factors beyond the control of Conestoga, LLC.
25 As a result of said failure, Conestoga, LLC's deduction/abatement under R-44-12 is
26 hereby terminated.

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

29 _____
30 Member of Council

APPROVED AS TO FORM A LEGALITY

Malak Heiny, City Attorney

Admn. Appr. _____

DIGEST SHEET

TITLE OF ORDINANCE: Resolution Confirming Substantial Compliance or Non-Compliance with a Statement of Benefits (SB-1) for 2022

DEPARTMENT REQUESTING ORDINANCE: Community Development Division

SYNOPSIS OF ORDINANCE: This resolution confirms that Compliance with Statement of Benefits (CF-1) Form filings made by Conestoga, LLC in May 2022 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 Sharon Tucker