

A RESOLUTION determining SUBSTANTIAL COMPLIANCE OR NON-COMPLIANCE with Statement of Benefits (CF-1) form filing for 2022 for LH Carbide Corporation for property at 4420 Clubview Drive, Fort Wayne, IN 46818 under Confirming Resolution R-21-14 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 LH Carbide Corporation 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, LH Carbide Corporation has filed CF-1 forms with the City of Fort Wayne, the Allen County Auditor and the Allen County Assessor; and

WHEREAS, LH Carbide Corporation's approved SB-1 form stated that 79 full-time jobs would be retained and 18 full-time jobs would be created by December 31, 2019; and

WHEREAS, LH Carbide Corporation's approved SB-1 form stated \$5,449,569 in annual payroll for the 79 full-time retained jobs and \$1,197,500 in annual payroll would be generated by the 18 full-time jobs to be created; and

WHEREAS, LH Carbide Corporation's 2022 CF-1 form filing stated that 65 jobs were retained and zero jobs were created; and

WHEREAS, LH Carbide Corporation's 2022 CF-1 form filing stated \$5,213,979 in annual payroll for the 65 jobs retained and \$0 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

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 79 full-time jobs retained means retaining 59 jobs;
12 and

13 **WHEREAS**, meeting 75% of the 18 full-time jobs to be created means creating 13
14 full-time jobs; and

15 **WHEREAS**, meeting 75% of the \$5,449,569 in retained annual payroll means
16 \$4,087,176 in retained annual payroll; and

17 **WHEREAS**, meeting 75% of the \$1,197,500 in annual payroll to be created means
18 \$898,125 in created annual payroll; and

19 **WHEREAS**, Common Council shall determine not later than forty-five (45) days
20 after receipt of the CF-1 form that an approved business has either failed to substantially
21 comply or has substantially complied with the original SB-1 form approved by Common
22 Council; and

23 **WHEREAS**, Common Council made a determination on June 28, 2022 that LH
24 Carbide Corporation was not in substantial compliance as a result of its failure to retain at
25 least 59 full-time jobs and at least \$4,087,176 in retained annual payroll and create at
26 least 13 full-time jobs and at least \$898,125 in annual payroll created; and

27 **WHEREAS**, Council directed the Community Development Division to mail written
28 notice to LH Carbide Corporation explaining the reasons for Council's determination and
29 a date, time, place of a hearing to be conducted by Council for the purpose of further
30 considering LH Carbide Corporation's compliance with Statement of Benefits; and

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

WHEREAS, LH Carbide Corporation [appeared/failed to appear] before Common
Council on August 9, 2022 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 forms filed by LH
4 Carbide Corporation with an approved Economic Revitalization Area for 2022 are not in
5 substantial compliance pursuant to I.C. 6-1.1-12.1 and Section 153.21 of the Municipal
6 Code of the City of Fort Wayne for failure to create 75% of the 18 full-time jobs, or 13 full-
7 time jobs, that were stated that would be created and create 75% of the \$1,197,500 in
8 annual payroll, or \$898,125, that was stated that would be generated by the created jobs.

9 **SECTION 2a.** LH Carbide Corporation failed to appear and otherwise testify and
10 therefore Council confirms its determination of June 28, 2022 that LH Carbide Corporation
11 has failed to substantially comply pursuant to IC 6-1.1-12.1 and Section 153.21 of the
12 Municipal Code of the City of Fort Wayne as detailed in Section 1 above. Council therefore
13 finds that LH Carbide Corporation has failed to substantially comply and said failure was
14 not caused by factors outside of LH Carbide Corporation's control. As a result of said
15 failure, LH Carbide Corporation's deduction/abatement under R-21-14 is hereby
16 terminated.

17 **SECTION 2b.** That LH Carbide Corporation appeared and testified at the hearing
18 and from its testimony it was determined that notwithstanding LH Carbide Corporation's
19 failure to substantially comply as detailed in Section 1 above that LH Carbide Corporation
20 did make reasonable efforts to substantially comply with the statement of benefits and LH
21 Carbide Corporation's failure to substantially comply was caused by factors beyond the
22 control of LH Carbide Corporation. Therefore, the continuation of LH Carbide
23 Corporation's deduction/abatement under R-21-14 is hereby approved.

24 **SECTION 2c.** That LH Carbide Corporation appeared and testified at the hearing
25 and from its testimony it was determined in addition to LH Carbide Corporation's failure to
26 substantially comply as detailed in Section 1 above, that LH Carbide Corporation did not
27 make reasonable efforts to substantially comply with the statement of benefits and LH
28 Carbide Corporation's failure to substantially comply was not caused by factors beyond
29 the control of LH Carbide Corporation. As a result of said failure, LH Carbide Corporation's
30 deduction/abatement under R-21-14 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

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 LH Carbide Corporation 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