

A RESOLUTION determining SUBSTANTIAL COMPLIANCE OR NON-COMPLIANCE with Statement of Benefits (CF-1) form filing for 2023 for Indiana Oxygen Company, Inc./Fort Brant Limited Partnership for property at 3806 Option Pass, Fort Wayne, IN 46818 under Confirming Resolution R-49-16 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 eight (8) 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 created for the eight (8) full-time jobs to be created; and

WHEREAS, Indiana Oxygen Company, Inc./Fort Brant Limited Partnership's 2023 CF-1 form filing stated that four (4) full-time jobs have been created; and

1 **WHEREAS**, Indiana Oxygen Company, Inc./Fort Brant Limited Partnership's 2023
2 CF-1 form filing stated \$305,805 in annual payroll for the four (4) full-time jobs created;
3 and

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

7 **WHEREAS**, Common Council has defined substantial compliance under Section
8 153.21 of the Municipal Code of the City of Fort Wayne as:

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

15 **WHEREAS**, meeting 75% of the eight (8) full-time jobs to be created means
16 creating six (6) full-time jobs; and

17 **WHEREAS**, meeting 75% of the \$368,160 in created annual payroll means
18 \$276,120 in created annual payroll; and

19 **WHEREAS**, Common Council will determine no later than forty-five (45) days after
20 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 27, 2023 that
24 Indiana Oxygen Company, Inc./Fort Brant Limited Partnership was not in substantial
25 compliance as a result of its failure to create at least six (6) new full-time jobs with at least
26 \$276,120 in created annual payroll; and

27 **WHEREAS**, Council directed the Community Development Division to mail written
28 notice to Indiana Oxygen Company, Inc./Fort Brant Limited Partnership explaining the
29 reasons for Council's determination and a date, time, place of a hearing to be conducted
30 by Council for the purpose of further considering Indiana Oxygen Company, 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./Fort Brant Limited Partnership to appear before Council
on August 8, 2023 at 5:30pm in Room 030 at Citizen's Square 200 E. Berry Street Fort
Wayne, IN; and

1 **WHEREAS**, Indiana Oxygen Company, Inc./Fort Brant Limited Partnership
2 [appeared/failed to appear] before Common Council on August 8, 2023 to provide
3 additional information concerning compliance.

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

6 **SECTION 1.** That, Common Council finds that the CF-1 form filed by Indiana
7 Oxygen Company, Inc./Fort Brant Limited Partnership with an approved Economic
8 Revitalization Area for 2023 is not in substantial compliance pursuant to I.C. 6-1.1-12.1
9 and Section 153.21 of the Municipal Code of the City of Fort Wayne for failure to create
10 75% of the eight (8) full-time jobs, or six (6) full-time jobs, as stated.

11 **SECTION 2a.** Indiana Oxygen Company, Inc./Fort Brant Limited Partnership
12 failed to appear and otherwise testify and therefore Council confirms its determination of
13 June 27, 2023 that Indiana Oxygen Company, Inc./Fort Brant Limited Partnership has
14 failed to substantially comply pursuant to IC 6-1.1-12.1 and Section 153.21 of the
15 Municipal Code of the City of Fort Wayne as detailed in Section 1 above. Council therefore
16 finds that Indiana Oxygen Company, Inc./Fort Brant Limited Partnership has failed to
17 substantially comply and said failure was not caused by factors outside of Indiana Oxygen
18 Company, Inc./Fort Brant Limited Partnership's control. As a result of said failure, Indiana
19 Oxygen Company, Inc./Fort Brant Limited Partnership's deduction/abatement under R-
20 49-16 is hereby terminated

21 **SECTION 2b.** That Indiana Oxygen Company, Inc./Fort Brant Limited Partnership
22 appeared and testified at the hearing and from its testimony it was determined that
23 notwithstanding Indiana Oxygen Company, Inc./Fort Brant Limited Partnership's failure to
24 substantially comply as detailed in Section 1 above that Indiana Oxygen Company,
25 Inc./Fort Brant Limited Partnership did make reasonable efforts to substantially comply
26 with the statement of benefits and Indiana Oxygen Company, Inc./Fort Brant Limited
27 Partnership's failure to substantially comply was caused by factors beyond the control of
28 Indiana Oxygen Company, Inc./Fort Brant Limited Partnership. Therefore, the
29 continuation of Indiana Oxygen Company, Inc./Fort Brant Limited Partnership's
30 deduction/abatement under R-49-16 is hereby approved.

SECTION 2c. That Indiana Oxygen Company, Inc./Fort Brant Limited Partnership
appeared and testified at the hearing and from its testimony it was 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

1 failure to substantially comply was not caused by factors beyond the control of Indiana
2 Oxygen Company, Inc./Fort Brant Limited Partnership. As a result of said failure, Indiana
3 Oxygen Company, Inc./Fort Brant Limited Partnership's deduction/abatement under R-
4 49-16 is hereby terminated.

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

7
8 _____
Member of Council

9
10 APPROVED AS TO FORM A LEGALITY

11
12
13 _____
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 2023

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. in May 2023 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 (CHAIR & CO-CHAIR): Geoff Paddock and Jason Arp