

**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  
7 of the City of Fort Wayne; and

8                   **WHEREAS**, Common Council has defined substantial compliance under Section  
9 153.21 of the Municipal Code of the City of Fort Wayne as:

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

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

18                   **WHEREAS**, meeting 75% of the \$368,160 in created annual payroll means  
19 \$276,120 in created annual payroll; and

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

24                   **WHEREAS**, Common Council made a determination on June 27, 2023 that  
25 Indiana Oxygen Company, Inc./Fort Brant Limited Partnership was not in substantial  
26 compliance as a result of its failure to create at least six (6) new full-time jobs with at least  
27 \$276,120 in created annual payroll; and

28                   **WHEREAS**, Council directed the Community Development Division to mail written  
29 notice to Indiana Oxygen Company, Inc./Fort Brant Limited Partnership explaining the  
30 reasons for Council's determination and a date, time, place of a hearing to be conducted  
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.

31           ~~**SECTION 2c.** That Indiana Oxygen Company, Inc./Fort Brant Limited Partnership  
32 appeared and testified at the hearing and from its testimony it was determined in addition  
33 to Indiana Oxygen Company, Inc./Fort Brant Limited Partnership's failure to substantially  
34 comply as detailed in Section 1 above, that Indiana Oxygen Company, Inc./Fort Brant  
35 Limited Partnership did not make reasonable efforts to substantially comply with the  
36 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 ~~49-10 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 \_\_\_\_\_  
14 Malak Heiny, City Attorney

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

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**

**BILL NO. R-23-07-12**

**REPORT OF COMMITTEE ON FINANCE**

**August 8, 2023**



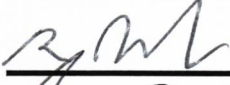


***Geoff Paddock Chair***

***Jason Arp Co-Chair***

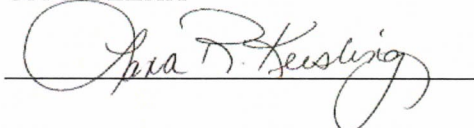
***All Council Members***

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

**COMMITTEE ON REGULATIONS HAVE HAD SAID Ordinance under consideration and beg leave to report back to the Common Council that said Ordinance**

<u>COUNCIL MEMBER</u>	<u>DO PASS</u>	<u>DO NOT PASS</u>	<u>ABSTAIN</u>
<u>ARP</u>	_____	_____	_____
<u>CHAMBERS</u>	_____	_____	_____
<u>DIDIER</u>	_____	_____	_____
<u>ENSLEY</u>	_____	_____	_____
<u>FREISTROFFER</u>		_____	_____
<u>HINES</u>	_____		_____
<u>JEHL</u>		_____	_____
<u>PADDOCK</u>		_____	_____
<u>TUCKER</u>	_____		_____

**LANA R. KEESLING  
CITY CLERK**



Public Hearing Date: N/A

Read the first time in full and on motion by Councilperson Paddock.

Read the second time by title and referred to the Finance Committee.

Read the third time in full and on motion by Councilperson Paddock, placed on passage by the following vote:

<u>TOTAL VOTES</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAINED</u>	<u>ABSENT</u>
ARP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
CHAMBERS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
DIDIER	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
ENSLEY	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FREISTROFFER	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
HINES	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
JEHL	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PADDOCK	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
TUCKER	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>


DATED: August 8, 2023

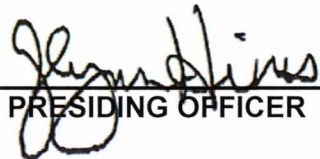
  
LANA R. KEESLING, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as


Resolution No. R-23-07-12 on the 8th day of August, 2023

ATTEST:

  
LANA R. KEESLING  
CITY CLERK

  
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 10th of August 2023, at the hour of 10:10 o'clock A.M. E.S.T.

  
LANA R. KEESLING, CITY CLERK

Approved and signed by me this 10<sup>TH</sup> day of AUGUST 2023, at the hour of 1:30 o'clock PM E. S.T.

  
THOMAS C. HENRY, MAYOR

