

Mayor – Sandy Sanders
City Administrator – Ray Gosack
City Clerk – Sherri Gard

Board of Directors

Ward 1 – Keith Lau
Ward 2 – Andre’ Good
Ward 3 – Mike Lorenz
Ward 4 – George Catsavis
At Large Position 5 – Pam Weber
At Large Position 6 – Kevin Settle
At Large Position 7 – Philip H. Merry Jr.

AGENDA ~ Summary
Fort Smith Board of Directors
Regular Meeting
November 19, 2013 ~ 6:00 P.M.
Fort Smith Public Schools Service Center
3205 Jenny Lind Road

THIS MEETING IS BEING TELECAST LIVE ON THE GOVERNMENT ACCESS CHANNEL 6

INVOCATION & PLEDGE OF ALLEGIANCE

ROLL CALL

All present, except Director Andre’ Good, who arrived during presentation of Item No. 1

PRESENTATION BY MEMBERS OF THE BOARD OF DIRECTORS OF ANY ITEMS OF BUSINESS NOT ALREADY ON THE AGENDA FOR THIS MEETING

(Section 2-37 of Ordinance No. 24-10)

Information available by viewing rebroadcast of the meeting on the City Access Channel 6 or City website

APPROVE MINUTES OF THE NOVEMBER 5, 2013 REGULAR MEETING

Unanimously approved as written

ITEMS OF BUSINESS:

1. Public hearing and ordinance authorizing the issuance of taxable industrial development revenue bonds under the authority of Act No. 9 of 1960, as amended, for the purpose of securing and developing industry within the city; authorizing the execution and delivery of a bond purchase agreement providing for the sale of the bonds; authorizing the execution and delivery of a trust indenture securing the bonds; authorizing the execution and delivery of a lease agreement between the city, as lessor, and Gerber Products Company, as lessee; authorizing the execution and delivery of an agreement for payments in lieu of taxes; authorizing the execution and delivery of other documents relating to the issuance of the bonds and prescribing other matters relating thereto; and declaring and emergency
Approved 7 in favor, 0 opposed / Ordinance No. 59-13
2. Public hearing and ordinance certifying to the Sebastian County Tax Collector delinquent property cleanup liens

Approved 7 in favor, 0 opposed / Ordinance No. 60-13

3. Ordinance amending Section 16-15 of the Fort Smith Municipal Code changing the annual cutoff date for consideration of appeal for delinquent property cleanup liens
Approved 7 in favor, 0 opposed / Ordinance No. 61-13
4. Ordinance amending Section 2-26 of the Fort Smith Municipal Code setting the dates, time and location for regular meetings of the Board of Directors for the year 2014 ~ *Settle/Lorenz placed on agenda at the November 12, 2013 study session*
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Approved 7 in favor, 0 opposed / Ordinance No. 62-13
5. Resolution authorizing partial payment to Archer Western Construction, LLC for the construction of the Zero Street Pump Station Wet Weather Improvements – Pump Station and EQ Storage (\$973,415.65 / Utility Department / Budgeted – 2012 Sales and Use Tax Bonds)
Approved 7 in favor, 0 opposed / Resolution No. R-170-13

OFFICIALS FORUM ~ presentation of information requiring no official action
(Section 2-36 of Ordinance No. 24-10)

- Mayor
- Directors
- City Administrator

Information available by viewing rebroadcast of the meeting on the City Access Channel 6 or City website

EXECUTIVE SESSION

Appointments: **FORT SMITH MUNICIPAL EMPLOYEES BENEVOLENT FUND BOARD OF ADVISORS**

April Byrd *(to fill the unexpired term of Rhonda Harper who resigned)*
Term expires June 30, 2016

OAK CEMETERY COMMISSION

Pam Weiler (reappointment)
Joseph Irwin (reappointment)
Joel Stubblefield (reappointment)
Terms expire November 30, 2016

ADJOURN

ORDINANCE NO. 59-13

AN ORDINANCE AUTHORIZING THE ISSUANCE OF TAXABLE INDUSTRIAL DEVELOPMENT REVENUE BONDS UNDER THE AUTHORITY OF ACT NO. 9 OF 1960, AS AMENDED, FOR THE PURPOSE OF SECURING AND DEVELOPING INDUSTRY WITHIN THE CITY; AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND PURCHASE AGREEMENT PROVIDING FOR THE SALE OF THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A TRUST INDENTURE SECURING THE BONDS; AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT BETWEEN THE CITY, AS LESSOR, AND GERBER PRODUCTS COMPANY, AS LESSEE; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT FOR PAYMENTS IN LIEU OF TAXES; AUTHORIZING THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS RELATING TO THE ISSUANCE OF THE BONDS AND PRESCRIBING OTHER MATTERS RELATING THERETO; AND DECLARING AN EMERGENCY.

WHEREAS, the City of Fort Smith, Arkansas (the "City") is authorized under the provisions of the Municipalities and Counties Industrial Development Revenue Bond Law, Arkansas Code Annotated (1998 Repl. & 2013 Supp.) Sections 14-164-201 *et seq.* (the "Act"), to own, acquire, construct, reconstruct, improve, equip and lease facilities to secure and develop industry and to assist in the financing thereof by the issuance of bonds payable from the revenues derived from such facilities; and

WHEREAS, pursuant to the authority of the Act, the City has previously issued its not to exceed \$65,000,000 Taxable Industrial Development Revenue Bonds (Gerber Products Company Project), Series 2004 (the "Prior Bonds"), in order to assist Gerber Products Company, a Michigan corporation (the "Company"), in the financing of a substantial industrial project located within the corporate boundaries of the City; and

WHEREAS, the City, pursuant to Resolution No. R-149-10 adopted on August 3, 2010, as amended by Resolution No. R-81-13 adopted on June 4, 2013, the City has previously expressed its intent to issue its industrial development revenue bonds under the Act for the purposes hereinafter described for the benefit of the Company, such bonds to be issued as described below; and

WHEREAS, the necessary arrangements have been made with the Company for the financing of an additional industrial project consisting of the acquisition, construction and equipping of additional manufacturing facilities (the "Project") to be located at the site of the Company's existing facilities at 4301 Harriet Lane within the corporate boundaries of the City and to be utilized in the Company's infant and toddler foods production and packaging business; and

WHEREAS, permanent financing of the Project costs, necessary costs and expenditures incidental thereto and the cost of the issuance of bonds is being furnished by the City pursuant to the Act through the issuance of its Taxable Industrial Development Revenue Bonds, Series 2013, in the principal amount of not to exceed One Hundred Fifty Million Dollars (\$150,000,000) (the "Bonds"); and

WHEREAS, an open public hearing on the question of the issuance of the Bonds was held before the City Board of Directors on November 19, 2013, following publication of notice in the *Southwest Times Record* on November 8, 2013; and

WHEREAS, the Bonds will be issued pursuant to the terms and provisions of a Trust Indenture dated as of December 1, 2013 (the "Indenture"), by and between the City and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"); and

WHEREAS, the necessary arrangements have been made by the City to lease the Project to the Company pursuant to the terms of a Lease Agreement dated as of December 1, 2013 (the "Lease Agreement");

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

Section 1. The Board of Directors makes the following findings and determinations:

(a) Based on information compiled and released by the Arkansas Employment Security Department, unemployment in the Fort Smith Metropolitan Statistical Area (MSA) during July of 2013 averaged 7.6%. Completion of the Project is expected to ensure additional employment and other benefits to residents of the City.

(b) The Company currently intends to utilize the Project in its infant and toddler foods manufacturing and packaging business.

(c) The Company's continued presence within the City is expected to be an important factor in the economic well being and employment base for the City and its inhabitants.

(d) The Bonds shall not constitute general obligations of the City within the meaning of any constitutional or statutory limitation, but shall be special limited obligations of the City as provided in the Act, the principal and interest on which shall be payable solely from the revenues or other receipts, funds, monies and property pledged therefor under the Indenture.

Section 2. There is hereby authorized and directed the issuance from time to time of the Bonds and the sale thereof to Nestle Capital Corporation or another affiliate of the Company (the "Purchaser") pursuant to the terms and provisions of a Bond Purchase Agreement to be dated as of the date of delivery of the Bonds (the "Bond Purchase Agreement"), which Bond Purchase Agreement is specifically approved in Section 3 hereof. The Bonds shall be sold at the purchase price of par plus accrued interest, if any, and shall be issued and delivered according to the terms and provisions of the Bond Purchase Agreement. The Bonds shall be issued in the original aggregate principal amount of not to exceed One Hundred Fifty Million Dollars (\$150,000,000), shall be dated as of the date of their delivery, shall have a final maturity of December 1, 2024, shall

bear interest at the rate of 5.85% per annum, shall be in the form, and shall be issued upon the terms and conditions recommended by the Company, all as more particularly set forth in the Trust Indenture approved in Section 4 hereof. The Mayor is hereby authorized and directed to execute and deliver the Bonds from time to time as requested by the Company, and the City Clerk is hereby authorized and directed to execute and deliver the Bonds and to affix the seal of the City thereto, and the Mayor and City Clerk are hereby authorized and directed to cause the Bonds to be authenticated by the Trustee.

Section 3. To prescribe the terms and conditions upon which the Bonds are to be sold to the Purchaser, the Mayor is hereby authorized and directed to execute at the request of the Company the Bond Purchase Agreement on behalf of the City, by and between the City and the Purchaser, and approved by the Company. The Bond Purchase Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Purchaser, the Company and Kutak Rock LLP, Little Rock, Arkansas ("Bond Counsel"), in order to complete the Bond Purchase Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Bond Purchase Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 4: To prescribe the terms and conditions upon which the Bonds are to be secured, executed, authenticated, issued, accepted and held, the Mayor and the City Clerk are hereby authorized and directed to execute, acknowledge and deliver the Trust Indenture, by and between the City and the Trustee, and the Mayor and City Clerk are hereby authorized and directed to cause the Trust Indenture to be accepted, executed and acknowledged by the Trustee. The Trust Indenture is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Trustee, the Company, the Purchaser and Bond Counsel in order to complete the Trust Indenture in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Trust Indenture in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 5. There is hereby authorized and directed the execution and delivery of the Lease Agreement by and between the City, as lessor, and the Company, as lessee, and the Mayor and the City Clerk are hereby authorized to execute, acknowledge and deliver the Lease Agreement for and on behalf of the City. The Lease Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Company, the Trustee, the Purchaser and Bond Counsel in order to complete the Lease Agreement in substantially the form submitted to this

meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the Lease Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 6. The City and the Company recognize that under Article 16, Section 5, of the Constitution of the State of Arkansas, as interpreted under past decisions of the Supreme Court of the State of Arkansas applicable to facilities financed pursuant to the Act, including particularly the case of Wayland v. Snapp, 232 Ark. 57, 334 S.W.2d 663 (1960), the Project will be exempt from *ad valorem* taxation. Although the City makes no representation as to the continued precedential value of such past decisions, the Company has agreed to enter into an Agreement for Payments in Lieu of Taxes to be dated as of the date of its execution (the "PILOT Agreement") requiring the Company to make certain payments in lieu of all *ad valorem* taxes which would otherwise be levied on the Project real and personal property by local public bodies with taxing power. In order to provide for such payments, there is hereby authorized and directed the execution and delivery of the PILOT Agreement, and the Mayor is hereby authorized to execute and deliver the PILOT Agreement for and on behalf of the City. The PILOT Agreement is hereby approved in substantially the form submitted to this meeting, and the Mayor, with the counsel of the City Attorney, is hereby authorized to confer with the Company and Bond Counsel in order to complete the PILOT Agreement in substantially the form submitted to this meeting, with such changes as shall be approved by such persons executing the document, their execution to constitute conclusive evidence of such approval.

(Advice is given that a copy of the PILOT Agreement in substantially the form authorized to be executed is on file with the City Clerk and is available for inspection by any interested person.)

Section 7. The Mayor and City Clerk, for and on behalf of the City, are hereby authorized and directed to do any and all things necessary to effect the execution and delivery of the Bonds, the Bond Purchase Agreement, the Trust Indenture, the Lease Agreement and the PILOT Agreement, and to perform all of the City's obligations under and pursuant thereto. The Mayor and the City Clerk are hereby further authorized and directed, for and on behalf of the City, to execute all papers, documents, certificates and other instruments that may be required for the carrying out of such authority or to evidence the exercise thereof.

Section 8. Because the City is here involved with the expansion, renovation and equipping of a complex industrial project requiring highly specialized work and specialized types of machinery and equipment, it has been and is hereby determined by the Board of Directors that competitive bidding be, and the same is hereby, waived as to this particular industrial project. This action is taken by the City pursuant to applicable laws of the State of Arkansas, including particularly the Act.

Section 9. Kutak Rock LLP, Little Rock, Arkansas, is hereby appointed as Bond Counsel with respect to the issuance of the Bonds, the fees and expenses of which firm shall be costs of the Project and paid from the proceeds of the Bonds or by the Company.

Section 10. The provisions of this Ordinance are hereby declared to be severable, and if any section, phrase or provision shall for any reason be declared to be invalid, such declaration shall not affect the validity of the remainder of the sections, phrases or provisions.

Section 11. All ordinances, resolutions and parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

Section 12. There is hereby found and declared to be an immediate need for the securing and developing of substantial industrial operations in order to provide additional employment, retain existing employment, alleviate unemployment, and otherwise benefit the public health, safety and welfare of the City and the inhabitants thereof, and the issuance of the Bonds authorized hereby and the taking of the other actions authorized herein are immediately necessary in connection with the securing and developing of substantial industrial operations and deriving the public benefits referred to above. It is, therefore, declared that an emergency exists and this Ordinance being necessary for the immediate preservation of the public health, safety and welfare shall be in force and take effect immediately upon and after its passage.

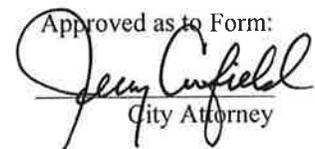
ADOPTED: November 19, 2013.


Mayor

ATTEST:


City Clerk



Approved as to Form:

City Attorney

This ordinance was adopted with a provision that all liens paid in full prior to formal submission to the Sebastian County Tax Collector may be removed; therefore, this ordinance will be provided in its entirety when all payments have been determined.

ORDINANCE NO. 60-13

2.
REVISED

AN ORDINANCE CERTIFYING TO THE SEBASTIAN COUNTY TAX COLLECTOR DELINQUENT PROPERTY CLEANUP LIENS

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS THAT:

SECTION 1: It is hereby determined by the Board of Directors that the hereinafter described properties and the amount of lien filed against each, shall be certified to the Sebastian County Tax Collector and placed on the tax books as delinquent taxes and collected accordingly. The amount of lien shown for each property shall be increased by ten percent (10%) as a penalty for collection. The amount, less three percent (3%) thereof, when so collected, shall be paid to the City by the Sebastian County Tax Collector, all in accordance with Section 16-11 of the Fort Smith Code of Ordinances:

NAME	ADDRESS OF PROPERTY CLEANED	AMOUNT OF LIEN	LIEN + 10% PENALTY
4 Diamonds Enterprises, LLC	2119 North 13	\$273.42	\$300.76
616 North 19th LLC	616 North 19	\$258.95	\$284.85
616 North 19th LLC	616 North 19	\$243.24	\$267.56
Al Sher Inc.	1719 North 13	\$221.52	\$243.67
Ames, Thomas Dewayne	3400 Johnson	\$203.74	\$224.11
Ames, Thomas Dewayne	3400 Johnson	\$207.74	\$228.51
Ames, Thomas Dewayne	3400 Johnson	\$225.24	\$247.76
Arkansas District Council of Assemblies	3023 North	\$434.66	\$478.13
Arkansas Valley Habitat for Humanity	2325 North 29, lot north of	\$274.08	\$301.49
Arkansas Valley Habitat for Humanity	2325 North 29, lot north of	\$400.43	\$440.47
Arkansas Valley Habitat for Humanity	2325 North 29, lot north of	\$561.24	\$617.36
AR-NM-1203-030 LLC	1805 South Vicksburg	\$276.52	\$304.17
AR-NM-1203-030 LLC	1805 South Vicksburg	\$255.71	\$281.28
Austin, Mike	706 South 22	\$258.62	\$284.48
Avanya, Eric	1604 South "W"	\$229.24	\$252.16
Avanya, Eric	1604 South "W"	\$225.24	\$247.76
AVS Properties	1424 South 12, lot north of	\$304.67	\$335.14
AVS Properties	1424 South 12, lot north of	\$241.99	\$266.19
AVS Properties	1924 Birnie	\$278.24	\$306.06
AVS Properties	1924 Birnie	\$221.74	\$243.91
AVS Properties	2023 North 12	\$276.24	\$303.86

ORDINANCE NO. 61-13

AN ORDINANCE AMENDING SECTION 16-15 OF THE FORT SMITH MUNICIPAL CODE CHANGING THE ANNUAL CUTOFF DATE FOR CONSIDERATION OF APPEAL FOR DELINQUENT PROPERTY CLEANUP LIENS

BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: Sections 16-15(a), (i) and (j) of the Fort Smith Municipal Code are hereby amended to read as follows:

- (a) *Right of appeal. Any property owner who is ninety (90) days delinquent on the payment of abatement fees as of June 30 of each year shall have the right of review of such matters by the property owners appeal board in accordance with the procedures set forth in subsection (i) below.*
- (i) *Notice, hearing. After June 30 of each year, the city clerk shall send a notice to all property owners who are 90 days delinquent on abatement charges informing them that said charges are subject to collection through the property taxes of Sebastian County. The notice will include two (2) hearing dates during the month of September at which the property owner may appeal the charges to the appeal board. The appeal board will then make a recommendation to the board of directors on the disposition of each appeal.*
- (j) *Appeal to board of directors. The city clerk shall send to property owners who are 90 days delinquent on June 30 and who remain delinquent as of September 1 of each year written notice of the public hearing before the board of directors in accordance with the provisions set forth in section 16-11 of this Code.*

SECTION 2: The codifier of the Fort Smith Municipal Code shall codify the provisions of this ordinance as noted above.

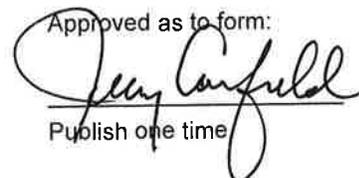
THIS ORDINANCE ADOPTED this 19th day of November, 2013.

APPROVED:

MAYOR

ATTEST:

CITY CLERK

Approved as to form:

Publish one time

ORDINANCE NO. 62-13

AN ORDINANCE AMENDING SECTION 2-26 OF THE
FORT SMITH MUNICIPAL CODE SETTING THE DATES, TIME AND
LOCATION FOR REGULAR MEETINGS OF THE BOARD OF DIRECTORS
FOR THE YEAR 2014

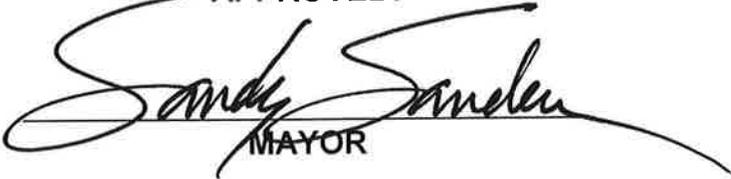
BE IT ORDAINED AND ENACTED BY THE BOARD OF DIRECTORS OF THE
CITY OF FORT SMITH, ARKANSAS, THAT:

SECTION 1: Section 2-26 of the Fort Smith Municipal Code is hereby amended
to read as follows:

In 2014, all regular meetings of the Fort Smith Board of Directors shall
be held at 6:00 p.m. at the Fort Smith Public Schools Service Center,
Building B, 3205 Jenny Lind Road, on the first and third Tuesday
evenings of each month.

THIS ORDINANCE ADOPTED this 19th day of November, 2013.

APPROVED:


MAYOR

ATTEST:


CITY CLERK

Approved as to form:


Publish one time

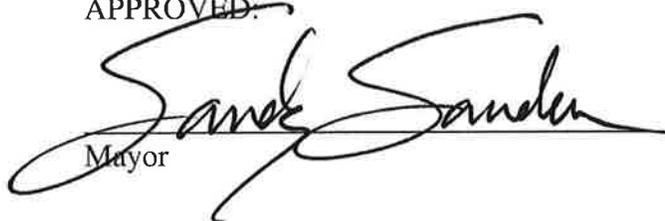
RESOLUTION AUTHORIZING PARTIAL PAYMENT TO ARCHER WESTERN CONSTRUCTION, LLC FOR THE CONSTRUCTION OF THE ZERO STREET PUMP STATION WET WEATHER IMPROVEMENTS-PUMP STATION AND EQ STORAGE

BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE CITY OF FORT SMITH, ARKANSAS, that:

Partial payment number six to Archer Western Construction, LLC in the amount of \$973,415.65, for the construction of the Zero Street Pump Station Wet Weather Improvements-Pump Station and EQ Storage, Project Number 09-17-C2, is hereby approved.

This Resolution adopted this 19th day of November 2013.

APPROVED:


Mayor

ATTEST:


City Clerk

APPROVED AS TO FORM:


npr