



Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Steve Tyler

Ward 2 – Andre’ Good

Ward 3 – Don Hutchings

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

**Fort Smith Board of Directors
Joint Meeting with Sebastian County Quorum Court
and Special Meeting
February 16, 2012 ~ 7:30 p.m.
Sebastian County Courthouse
35 South 6th Street, Room 204**

PLEDGE OF ALLEGIANCE & INVOCATION

ROLL CALL

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

(Section 2-37(a) of the Fort Smith Municipal Code)

1. Resolution approving a revised agreement with Sebastian County regarding certain projects at Ben Geren Regional Park

ADJOURN



OFFICE OF THE CITY CLERK
Sherri Gard, CMC, City Clerk
Heather James, Assistant City Clerk

MEDIA RELEASE
February 13, 2012

The City of Fort Smith Board of Directors will participate in a joint meeting with the Sebastian County Quorum Court at 7:30 p.m., Thursday, February 16, 2012. The meeting will be held at the Sebastian County Courthouse, 35 South 6th Street, Room 204.

An agenda packet will be posted to the City's website; however, for additional information, please contact the City of Fort Smith Administration Department at 784-2201.

Directors Steve Tyler, Andre' Good, Don Hutchings, George Catsavis and Kevin Settle have also called a special meeting to immediately follow the joint meeting (at same location) to consider the following:

- Resolution approving a revised agreement with Sebastian County regarding certain projects at Ben Geren Regional Park

For agenda information, please contact the City Clerk's Office at 784-2208. Once finalized, the agenda will be posted on the city website, www.fortsmithar.gov.

A handwritten signature in blue ink that reads "Sherri Gard". The signature is written in a cursive style and is positioned above a horizontal line.

Sherri Gard, City Clerk

623 Garrison Avenue
P.O. Box 1908
Fort Smith, Arkansas 72902
(479) 784-2208
FAX (479) 784-2256
E-mail: cityclerk@fortsmithar.gov

RESOLUTION NO. _____

**A RESOLUTION APPROVING A REVISED AGREEMENT
WITH SEBASTIAN COUNTY REGARDING
CERTAIN PROJECTS AT BEN GEREN REGIONAL PARK**

WHEREAS, the Mayor and Board of Directors and the Sebastian County Quorum Court and County Judge have held joint meetings to discuss projects of mutual interest at Ben Geren Regional Park; and

WHEREAS, by the passage and approval of Resolution No. R-8-12, the City of Fort Smith approved an agreement with Sebastian County; and

WHEREAS, Sebastian County and the City of Fort Smith are now desirous of revising said agreement;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the City of Fort Smith, Arkansas that:

The revised agreement between the City of Fort Smith and Sebastian County regarding Ben Geren Regional Park attached hereto as Exhibit "A" is hereby approved. The Mayor and City Clerk are hereby authorized to execute said revised agreement on behalf of the City.

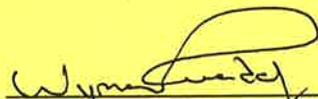
This Resolution approved this _____ day of February, 2012.

Mayor

ATTEST:

APPROVED AS TO FORM

City Clerk



No Publication Required



MEMORANDUM

February 14, 2012

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Ben Geren Park Projects -
Agreement with Sebastian County

Last month, the board of directors approved an agreement with Sebastian County for an aquatics center and softball field projects at Ben Geren Regional Park. Sebastian County has requested revisions to the agreement. A copy of the revised agreement is attached. Changes from the previous version are shown in underline and strikeout typeface.

The most significant change concerns annexation of the park. The previous agreement provided for the entire park to be annexed. The revised agreement provides for annexation of only the areas of the aquatic center, the 2 softball fields, and a narrow connecting strip of land. An exhibit showing these approximate areas is attached to the agreement.

Other minor changes affect the submittal of information to Sebastian County regarding operation of the aquatic center; expanding the group who will annually review operations to include representatives from the quorum court, the city board, and the city and county parks commissions; and providing for reversion of the city's ownership interest in the land back to Sebastian County in the event the aquatic center or ballfields are abandoned in the future.

The staff recommends approval of the revised agreement. These changes are more likely to gain Sebastian County's support for the projects, and will advance one of the board's strategic priorities: Ben Geren Park improvements.

Attachment

cc: David Hudson, Sebastian County Judge

A handwritten signature in cursive script, appearing to read "Ray", located in the bottom right corner of the document.

**AN AGREEMENT BETWEEN THE CITY OF FORT SMITH
AND SEBASTIAN COUNTY REGARDING BEN GEREN REGIONAL PARK**

This Agreement made and entered into between Sebastian County, Arkansas ("County"), and the City of Fort Smith, Arkansas ("City"), regarding Ben Geren Regional Park in Sebastian County, Arkansas ("Park").

WITNESSETH:

WHEREAS, Ben Geren Regional Park was established in 1972 from land dedicated to public recreation purposes allocated under the authority of the National Parks Service in perpetuity; and,

WHEREAS, softball facilities referred to as Andrews Fields were closed thereby requiring the Sebastian County Girls Softball Association to relocate their programs, which were then accommodated by the Ben Geren Regional Park softball facilities and by Park administrative support in cooperation with the Ben Geren Softball Association for joint utilization of these softball facilities during 2009-2011 and for 2012; and,

WHEREAS, the strategic Park planning process for Sebastian County has encouraged the active collaboration, involvement and cooperation of other governmental entities in order to effectively and efficiently utilize tax resources in a cooperative and collaborative fashion to enhance and improve recreational programming and services; and,

WHEREAS, Sebastian County owns and operates Ben Geren Regional Park in Sebastian County, Arkansas, as the consequence of an allocation of land under the authority of the National Parks Service, to be dedicated for public recreation purposes; and,

WHEREAS, the City of Fort Smith and Sebastian County are desirous to proceed with projects of mutual interest to both governmental entities for the collective benefit of the citizens and inhabitants of the City and County; and,

WHEREAS, the City and County are also desirous of sharing and/or allocating the expenses of designing and constructing an aquatic center as well as two softball fields; and,

WHEREAS, partial City ownership interest in the improvement property allows the financing of improvements by the City of Fort Smith through the issuance of bonds; and

WHEREAS, annexation of Ben Geren Park into the City of Fort Smith jurisdiction does not denote ownership, but facilitates investment of stated City funds for recreational facility enhancements at the Park; and

WHEREAS, both parties and their respective citizens and inhabitants will benefit by the joint use and operation of such facilities,

NOW, THEREFORE, in exchange of the mutual benefits received by the County and the City, including the assistance of the other party in the discharge of their respective governmental operations, it is agreed as follows:

1. Conditions Precedent. This Agreement is conditioned on the County appropriating and earmarking four million dollars (\$4,000,000) for the aquatic center project no later than February 28, January 31, 2012. It is also conditioned on the City, through its voters, authorizing the issuance of four million dollars (\$4,000,000) in sales tax bonds for the aquatic center project and authorizing a one-quarter percent (1/4%) sales tax to be designated for fire and parks and recreation which will fund the two (2) new softball fields, with the election to occur in or about March, 2012. If one of those conditions precedent does not occur, then the affected portions of this Agreement shall be null and void. If both of those conditions precedent do not occur, then this Agreement shall be null and void.

2. Aquatic Center Project

- A. The County and City agree to share equally in the cost of designing and constructing an aquatic center project, currently estimated to cost eight million dollars (\$8,000,000). The County and City, ~~acting through their respective governing bodies,~~ agree to jointly to select an architect for the project, and will then jointly agree on the final design for the project. The County and the City will jointly contract for the project and the County will serve as the project manager. The bidding for and the construction of the aquatic center shall be managed by the City. Payments to the architect and to the selected contractor shall be made jointly by the County and the City. ~~The City County shall then reimburse the County and the City for one half (1/2) of such payments within twenty one (21) days of payment of same by the County City.~~
- B. The County and City will equally share in any net operating loss or profit from the operation of the aquatic center. The center will be managed and operated by the City, which shall initially pay all operating costs and ~~receipt~~ receive and account for all revenues. The City Park Administrator shall work closely with the County Park Administrator to review facility operations, meeting monthly or more frequently when the facility is open. The County Judge and/or the County Park Administrator shall have full access to all Aquatics Facility operations. The accounting for the disbursements and revenues received shall be accomplished in a separate fund/account so that all financial activity associated with the aquatic center can be segregated from all other City financial records. The City shall provide a monthly report to the County on Aquatics Facility operations, including attendance, budget expenses and revenues.

Payment for any operating loss or profit shall be due no later than ninety (90) days after the last day of operation for each calendar year. The County and City shall annually agree upon an operating budget by November 1 of each preceding year. The Operating budget shall include a reasonable depreciation allowance for future capital maintenance needs. A depreciation account shall be maintained by the City. Depreciation account balances may be invested as the City invests its other funds, and interest income shall be credited to the depreciation account. Expenditures from the depreciation account shall be approved by both the City and County. If the City and County determine to dissolve the depreciation account or the account is otherwise dissolved by operation of law, then any funds remaining after payment of all legal obligations shall be shared equally by the County and City.

- C. The County Judge or the County Judge's designee(s) and the City Administrator or the City Administrator's designee(s) shall meet at least once a year to discuss and agree upon operating policies and practices, hours of operation, admission fees, and other relevant matters. A member of the City Park Board and County Park Board and a representative from the City Board of Directors and the Quorum Court will meet with the County Judge and City Administrator, or their designees, as an Aquatics Facility Oversight Review Committee. In advance of such meetings, the City shall prepare an annual report showing operating income and expenses, attendance, any operational problems/concerns, identifying significant capital maintenance needs, and any recommendations for changes in operations.

3. Softball Fields Project

- A. The City shall provide up to one million two hundred fifty thousand dollars (\$1,250,000) for the design and construction of two (2) softball fields and for fencing, lighting, bleachers, parking, and restrooms/concession building adjacent to existing softball fields at Ben Geren Regional Park for principal, but not exclusive, use by the Sebastian County Girls Softball Association. These two (2) fields are intended as replacements for the loss of fields at Andrews Field previously used by the Sebastian County Girls Softball Association. If there are insufficient construction funds to complete the softball fields project, the County may provide site preparation work, e.g., grading, at its own expense. The City will be responsible for providing the design of the two softball fields and associated facilities, subject to the County's approval. The City will be responsible for managing the bidding process on the softball fields project and shall be responsible for overseeing construction of the project.

- B. Upon completion of construction, the two (2) newly constructed softball fields shall be managed and maintained by the County as it does the other softball fields currently in existence at the Park, subject to the principal use provision above. The City shall reimburse the County for the reasonable costs of maintaining the two (2) softball fields constructed by the City. The County currently spends a total of five thousand five hundred dollars (\$5,500) per year per field to maintain the existing softball fields including materials, labor, and utilities. The anticipated total annual costs of maintaining the two new softball fields is eleven thousand dollars (\$11,000). ~~which will be the initial maximum reimbursement that may be submitted.~~ In determining what the reimbursement will be from the City to the County, the County will initially pay all operating costs and collect all rental/lease fees (which fees for the two (2) new softball fields shall be charged in the same manner as other fields operated by the County) and will provide documentation of such to the City's Parks and Recreation Department for reimbursement at the end of the softball season. Within thirty (30) days of receiving an invoice, the City will then reimburse those operating costs less the credit for the rental/lease fees collected by the County. Prior to November 1st of each year, the County and City shall annually agree upon the budget for field maintenance for the ensuing year.

4. Annexation

- A. Within ninety (90) days of the finalization of the funding commitments described above in paragraph 1, the County shall initiate the process to annex the land, in conformance with the requirements of state law, upon which the improvements are made, including the aquatics facilities and the softball fields at Ben Geren Regional Park into the city limits of Fort Smith. A map showing the approximate location of aquatic and softball facilities is shown in Exhibit "A" attached hereto. The City shall then annex the property and establish appropriate land uses and zoning compatible with the existing and contemplated recreational uses of Ben Geren Regional Park.
- B. Except as provided in paragraph 4C below, ~~the~~ Park shall continue to be owned by Sebastian County. Park roads and infrastructure shall continue to be property of the County and will not become public infrastructure maintained by the City except for the public sewer line as shown in Exhibit "A" "B" attached hereto. Furthermore, the current water and sanitary sewer facilities of the City constructed and maintained to the boundary of the Park shall remain as they are without additional extension by the City into the Park. Operations of the Park shall continue to adhere to County governmental rules and regulations, including county road standards, and to County policies for special events and related activities.

- C. Though the Park will continue to be owned by the County, ownership of the real property on which the aquatic center and the two (2) newly constructed softball fields, as well as associated parking and other facilities, shall be considered as fifty/fifty ownership by the County and City, ~~and such percentage of ownership shall continue beyond the term of this Agreement.~~ As a part of the design of the aquatic center and softball fields projects, an applicable legal description and concomitant deed will be prepared conveying to the City an undivided one-half (1/2) equal ownership interest of said real property. Provided, however, if the aquatics facility or the softball fields cease to operate in the future, the City ownership interest of the land shall revert ~~convert~~ to the County. Such reversion of City ownership interest will be executed provided the City has no outstanding bonds used to pay aquatic project costs, or until these bonds have been retired. ~~Prior to conveyance of such deed and prior to commencement of construction, the County will in good faith make inquiry as to whether conveyance of one-half ownership to the City will violate the terms and conditions of the original grant to the County under the authority of the National Parks Service.~~
- D. The County has been advised by letter that the terms of this agreement do not violate the terms and conditions of the original grant to the County under the authority of the National Parks Service, listed as Exhibit "C" attached hereto.
- E. The Park name will continue to be Ben Geren Regional Park but it may be referred to as a "County/City Park."
- F. The County will continue to be responsible for all other park facilities and operations not specifically addressed in this Agreement. ~~However, subsequent to annexation by the City, police and fire protection will be available to the Park in the same manner as other areas within the City limits.~~
5. The County will ensure compliance with all requirements of the federal government arising from land grants made by the federal government for the establishment and expansion of Ben Geren Regional Park.
6. The County shall be responsible for providing fire, storm and casualty insurance insuring the replacement value of the aquatic center and softball fields constructed pursuant to this Agreement. The cost of obtaining any insurance required herein shall be reimbursed to the party obtaining it from the operating budget for the involved facilities. Any insurance proceeds shall be used to repair or reconstruct the

improvements, unless the County and City agree otherwise in writing. Additionally, the County shall be responsible for providing liability insurance for the aquatic center and softball fields constructed pursuant to this Agreement and shall be reimbursed the cost of same by the City.

7. Either party may propose amendments to this Agreement at any time. Any amendments to the Agreement must be approved by each party's governing body and shall be in writing.
8. The initial term of this Agreement shall be twenty (20) years. The Agreement shall renew automatically for five (5) year terms unless either party terminates by giving the other party notice at least one hundred eighty (180) days before the termination date. Termination may occur at any time if the County and City jointly determine any of the facilities that are the subject of this Agreement are no longer usable or are no longer feasible to operate.
9. The County and the City each agree to act in good faith and with reasonableness in their respective performance under this Agreement.
10. To ensure compliance with the accounting provisions of this Agreement, the County and City each agree to make available to the other all records relating to expenditures made and revenues received pursuant to this Agreement and to allow the other party to audit same, at its own expense, at all reasonable times.
11. Any action required to be taken pursuant to this Agreement shall be by the governing body of each party unless specified otherwise herein or unless such authority to act is delegated by the applicable governing body.
12. If a dispute arises out of or relating to this Agreement, or the breach thereof, and, if the dispute cannot be resolved through negotiation, the parties agree first in good faith to attempt to settle the dispute by mediation administered by a mediator certified by the State of Arkansas to conduct mediations. In the event that the parties are unable to resolve the dispute through mediation, then either party may seek judicial relief through a court of competent jurisdiction.
13. Any notices required to be given by this Agreement shall be effective if communicated at the following addresses:

County
Sebastian County Judge
Sebastian County Courthouse
35 South 6th Street, Suite 106
Fort Smith, AR 72901

City
Fort Smith City Administrator
P.O. Box 1908
Fort Smith, AR 72902

14. This Agreement represents the full and complete agreement between the County and City and supersedes any prior oral or written agreements not included herein.

This Agreement is executed on behalf of the County by the County Judge thereof and on behalf of the City by the Mayor thereof on this ___ day of _____, 2012.

Sebastian County:

County Judge

ATTEST:

County Clerk

City of Fort Smith, Arkansas:

Mayor

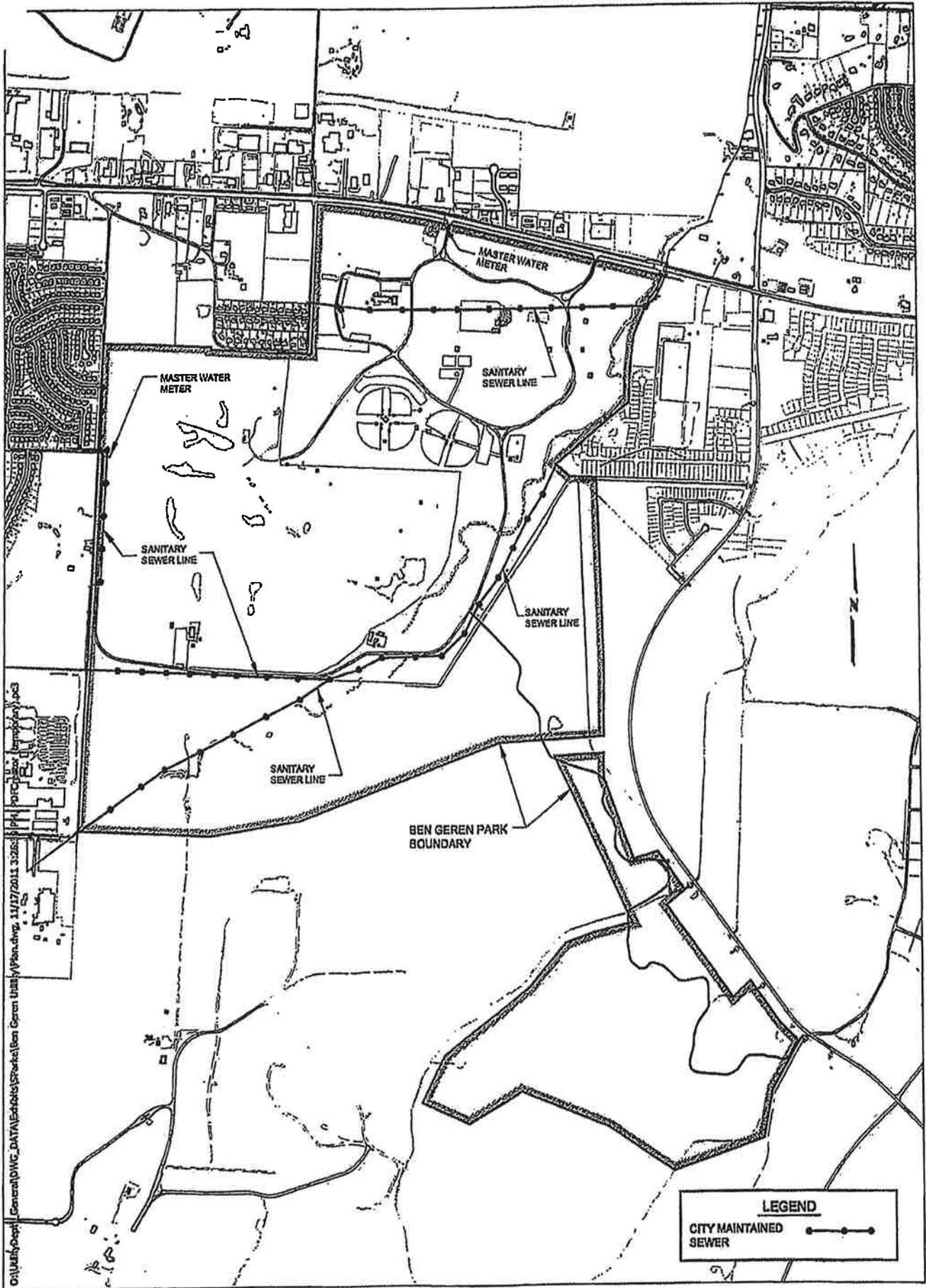
ATTEST:

City Clerk

Sample Annexation Map. The annexation would stem from current city limit boundary along Zero Street to the Property and encompass areas of proposed recreation.

Note: This map is conceptual and not a representation of final design plans. Annex boundary would adjust to meet design requirements. Note: Annex areas would not necessarily fall under city partial ownership. See Agreement.





C:\UtilityDept\General\DWG_DATA\Exhibits\Starks\Ben Geren Util\Y17Ben.dwg, 11/17/2011 3:25:53 PM, P:\CADD\Ben Geren\Ben Geren.dwg

LEGEND
CITY MAINTAINED SEWER



**DEPARTMENT OF
PARKS & TOURISM**

1 Capital Mall
Little Rock, AR 72201
501-682-7777
Arkansas.com

History Commission
501-682-6900 (TDD)
Ark-ives.com

Keep Arkansas
Beautiful Division
501-682-3507 (TDD)
KeepArkansasBeautiful.com

Personnel Section
501-682-7742 (TDD)

State Parks Division
501-682-1191 (TDD)
ArkansasStateParks.com

Tourism Division
501-682-7777 (TDD)

**Mike Beebe
GOVERNOR**

**Richard W. Davies
EXECUTIVE DIRECTOR**

**STATE PARKS,
RECREATION
& TRAVEL
COMMISSION**

Bob Knight
CHAIRMAN

Darin Gray
VICE-CHAIRMAN

Steve Arison
Bill Barnes

Jay Bunyard
LeRoy Dangeau

Danny Ford
Jim Gaston

John Gill
Debra Haak

Barbara Harvel
Billy Lindsey

Montine McNulty
Mike Mills

Ness Sechrest
Jim Shamburger

Cindy Smith

DIVISION DIRECTORS

Cynthia Dunlap
ADMINISTRATION

Greg Bults
STATE PARKS

Joe David Rice
TOURISM

Nancy Clark
GREAT RIVER ROAD

Dr. Wendy Richter
HISTORY COMMISSION

Robert Phelps
KEEP ARKANSAS
BEAUTIFUL

**AN EQUAL
OPPORTUNITY/
AFFIRMATIVE ACTION/
AMERICANS WITH
DISABILITIES ACT
EMPLOYER**



February 10, 2012

The Honorable David Hudson
Sebastian County Judge
35 South 6th, Room 106
Fort Smith, AR 72901

Dear Judge Hudson:

After reviewing the agreement between Sebastian County and the City of Fort Smith regarding Ben Geren Park, the terms set forth do not violate the terms and conditions of the original grant to the county under the authority of the National Parks Service.

Sincerely,

Bryan Kellar, Director
Outdoor Recreation Grants Program



Mayor – Sandy Sanders

City Administrator – Ray Gosack

City Clerk – Sherri Gard

Board of Directors

Ward 1 – Steve Tyler

Ward 2 – Andre’ Good

Ward 3 – Don Hutchings

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
Joint Meeting with Sebastian County Quorum Court
and Special Meeting
February 16, 2012 ~ 7:30 p.m.
Sebastian County Courthouse
35 South 6th Street, Room 204**

PLEDGE OF ALLEGIANCE & INVOCATION

ROLL CALL

All present, except Director Merry

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

(Section 2-37(a) of the Fort Smith Municipal Code)

Information available by viewing the meeting minutes on the City website

1. Resolution approving a revised agreement with Sebastian County regarding certain projects at Ben Geren Regional Park

Approved 5 in favor, 1 opposed (Catsavis) / Resolution No. R-33-12

ADJOURN

7:46 P.M.

MINUTES OF BOARD OF DIRECTORS SPECIAL MEETING

THURSDAY ~ FEBRUARY 16, 2012 ~ 7:30 P.M.

SEBASTIAN COUNTY COURTHOUSE

The special meeting was called by Directors Steve Tyler, Andre' Good, Don Hutchings, George Catsavis and Kevin Settle for the purpose of considering the following:

- Resolution approving a revised agreement with Sebastian County regarding certain projects at Ben Geren Regional Park

The special meeting, held in conjunction with a special meeting of the Sebastian County Quorum Court, was called to order by Mayor Sandy Sanders, presiding. All in attendance recited the Pledge of Allegiance followed by invocation given by Director Don Hutchings. On roll call the following members of the Board were present: Directors Steve Tyler, Andre' Good, Don Hutchings, George Catsavis, Pam Weber and Kevin Settle; absent - Director Philip Merry. The Mayor declared a quorum present.

The Mayor inquired if any Board member had any item of business to present that was not already on the agenda. There was none presented.

The Sebastian County Quorum Court conducted their special meeting and, as required by their meeting protocol, approved the revised agreement on its first reading.

Settle, seconded by Hutchings, moved adoption of the proposed resolution. The members present all voting affirmatively, with the exception of Director Catsavis voting "no", the Mayor declared the motion carried and the resolution was adopted and given No. R-33-12.

The following individual was present to address the Board and members of the Quorum Court:

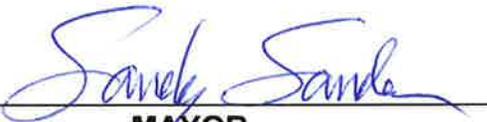
February 16, 2012 Special Meeting

- Sam Phillips, Jr.
Fort Smith, Arkansas

Re: Due to the state of the economy, he spoke in opposition to the item alleging such is a financially irresponsible decision for both the city and county.

There being no further business to come before the Board, Settle moved that the meeting adjourn. The motion was seconded by Hutchings, and the members present all voting aye, the Mayor declared the motion carried, and the special meeting stood adjourned at 7:46 p.m.

APPROVED:



MAYOR

ATTEST:



CITY CLERK