

**SEBASTIAN COUNTY QUORUM COURT SPECIAL MEETING JOINTLY WITH THE
CITY OF FORT SMITH BOARD OF DIRECTORS IN A SPECIAL MEETING
MONDAY, JANUARY 6, 2014 @ 6:00 P.M.
ELM GROVE COMMUNITY CENTER
1901 NORTH GREENWOOD AVENUE
FORT SMITH, ARKANSAS
(Dinner Served at 5:30 PM)**

AGENDA

- I. Call to Order
 - A. Pledge of Allegiance
 - B. Invocation
 - C. Roll Call
 1. Sebastian County Quorum Court
 2. Fort Smith City Board of Directors

- II. Presentation by Members of the City Board of Directors of Any Items of Business Not Already Included on the Agenda for this Meeting (Section 2-37 of Ordinance 24-10)

- III. Review Aquatics Facility Features

- IV. Facility Considerations by Kent Lemasters, Amusement Aquatics Management Group

- V. Review Project Schedule

- VI. Public Comments

- VII. Quorum Court – A Resolution Approving of the Water Amenities to be Included in the Design of the Aquatics Facility to be Built at Ben Geren Regional Park.

- VIII. City Board of Directors – A Resolution Approving of the Water Amenities to be Included in the Design of the Aquatics Facility to be Built at Ben Geren Regional Park.

- IX. Adjournment



David Hudson

Sebastian County Judge
County Court House
35 South 6th Street, Room 106
Fort Smith, Arkansas 72901
(479) 783-6139
FAX (479) 784-1550

January 2, 2014

MEMO

To: Quorum Court

From: County Judge 

Subject: January 6, 2014 Joint Meeting with the City of Fort Smith Board of Directors and the Quorum Court to Review and Approve the Final Design for the \$10,900,000 Aquatics Facility

A meeting has been set for Monday, January 6, 2014, 6:00 PM with the City Board of Directors to jointly review and approve the final design for the \$10,900,000 Aquatics Facility project. This meeting is a follow-up to the Amendment to the Agreement between the County and the City of Fort Smith passed in the December 17, 2013 Regular Quorum Court Meeting, a copy of which is enclosed [see enclosure 1].

Please review Section 5 of the Amendment to the Agreement that states as follows:

“The final design for the \$10,900,000 Aquatics Facility will be reviewed and approved in a Joint Meeting by the Fort Smith City Board of Directors and the Sebastian County Quorum Court. In order to keep the project on schedule, it is the intent to schedule this joint meeting as soon as feasible during the month of December or early January in order for design work and the preparation of bid documents and bid specifications to remain on schedule.”

A follow-up status report on this project was distributed to the Quorum Court by memo dated, December 19, 2013 [see enclosure 2].

Modifications to this project have been widely discussed by City and County representatives, specifically focusing on adding a wave pool to the facility and modifying the budget to accommodate this feature.

Facility features that have been discussed for modification include the following:

1. Add wave pool
2. Longer lazy river
3. Higher slides

Modification of the facility layout to accommodate the above three features is in process by Larkin Aquatics and will be reviewed in the joint meeting on January 6.

As outlined in the previous memo dated December 19 concerning this project, it is essential that decisions be made to keep the project on schedule for a Memorial Day 2015 opening.

In order to assist in evaluating facility features, a representative from Amusement Aquatic Management Group has been invited to this joint meeting for advice and consultation.

It is recommended that the Quorum Court approve the modified facility design to include addition of the wave pool, longer lazy river and higher slides in the January 6 meeting.

A resolution [see enclosure 3] is attached approving the water amenities to be included in the design of the Aquatics Facility, which specifies:

- a. Wave pool
- b. Lazy river
- c. Activity pool
- d. At least four (4) water slides
- e. Tot/children's play area

Each of the features of the revised facility will be reviewed in the meeting January 6 to provide recreational amenities to all age groups.

Andy Smith with Larkin Aquatics and Brent Farmer and Scott Jones with Flintco Construction Company will attend the meeting and will make a presentation. Mr. Kent Lemasters with Amusement Aquatic Management Group is also scheduled to make comments at this meeting concerning facility features and operational benefits to all these features to serve the regional recreational marketplace.

It is essential that decisions be made to move forward with this project in order to allow Larkin Aquatics to complete design specifications in a ten week time period to March 14, 2014 for bids to go out and be submitted by mid-April for facility construction. Site work bids will be released in January/February and the construction of the parking lot will begin in January.

A Power Point presentation is currently under preparation and will be copied and distributed to all concerned in the meeting Monday night.

Proposed modifications to the Aquatics Facility are significant enhancements to this project in both recreational service and in capability of the project to generate additional revenue.

I have also attached a copy of the information regarding this meeting which was sent to the City Board of Directors [see separate enclosure].

Should you have questions concerning the enclosed materials and meeting plan, please do not hesitate to contact me.

jw

Attachments: 1) County Ordinance 2013-23, amending the Agreement
2) December 19, 2013 Memo Concerning Project Planning and Schedule
3) Resolution Approving Water Amenities to Include the Design of the Aquatics Facility

ORDINANCE NO. 2013-23

"BE IT ENACTED BY THE QUORUM COURT OF THE COUNTY OF SEBASTIAN, STATE OF ARKANSAS, AN ORDINANCE TO BE ENTITLED:"

AN ORDINANCE AUTHORIZING THE COUNTY JUDGE TO ENTER INTO AN AMENDMENT TO THE AGREEMENT BETWEEN THE CITY OF FORT SMITH AND SEBASTIAN COUNTY REGARDING BEN GEREN REGIONAL PARK.

NOW, THEREFORE, BE IT ORDAINED BY THE QUORUM COURT OF SEBASTIAN COUNTY, ARKANSAS:

- Section 1. Sebastian County and the City of Fort Smith entered into an agreement February 16, 2012 (County Ordinance 2012-4), regarding capital projects and operations of specific facilities at Ben Geren Regional Park.
- Section 2. Sebastian County and the City of Fort Smith wish to amend such agreement to reflect that the updated cost of designing and building the aquatics facility are shared equitably between the County and the City.
- Section 3. The Quorum Court hereby authorizes the County Judge to enter into the Amendment to the Agreement between Sebastian County and the City of Fort Smith regarding Ben Geren Regional Park.

DATED: 12/17/2013

APPROVED: *David Hudson*
COUNTY JUDGE

ATTEST: *Sharon Brewster*
COUNTY CLERK

2013 AMENDMENT TO AN AGREEMENT BETWEEN THE CITY OF FORT
SMITH AND SEBASTIAN COUNTY REGARDING BEN GEREN REGIONAL PARK

This 2013 Amendment to an Agreement Between the City of Fort Smith and Sebastian County regarding Ben Geren Regional Park (2013 Amendment) is made and entered into between Sebastian County, Arkansas ("County") and the City of Fort Smith, Arkansas ("City").

WHEREAS, pursuant to authorizations of the governing bodies of the County and the City, the County and the City have previously entered into An Agreement Between the City of Fort Smith and Sebastian County Regarding Ben Geren Regional Park dated February 16, 2012 (the "Agreement"); and

WHEREAS, the conditions precedent outlined in paragraph 1 of the Agreement whereby the voters of the City of Fort Smith approved the issuance of four million dollars (\$4,000,000) in sales tax bonds and the County has earmarked four million dollars (\$4,000,000) for the construction of an Aquatics Facility have come to pass; and

WHEREAS, the annexation provisions of paragraph 4 of the Agreement have been completed; and

WHEREAS, the County and the City desire to adopt a 2013 Amendment to the Agreement for the purpose of providing additional funding for the Aquatics Facility to be constructed pursuant to the Agreement and make provisions regarding the equalizing of funding by the County and the City of facilities to be constructed pursuant to the Agreement.

NOW, THEREFORE, based on the mutual considerations accruing to the City and the County and their citizens, it is agreed as follows:

1. The recitals set forth in the foregoing whereas clauses are confirmed by the parties and incorporated into this Agreement, and the City and County confirm the continued effectiveness of the Agreement executed on February 16, 2012.

2. Section 2(A) of the Agreement is hereby amended to read as follows:

"A. The County and City agree to share equally in the cost of designing and constructing an aquatic center project, currently estimated to cost ten million nine hundred thousand dollars (\$10,900,000). The County and City agree to jointly 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. Payments to the architect and the selected contractor shall be made jointly by the County and the City."

B. An updated recap of the budget and cost-sharing between the County and the City for the \$10,900,000 cost-sharing agreement as set forth below:

Original Design/Const	8,000,000		City	County
Add'l Design/Const	2,900,000	Original	4,000,000	4,000,000
Parking lot	450,000	In-Kind Value	335,000	450,000
Utilities/Traffic Signal	335,000	Subtotal	4,335,000	4,450,000
Total Cost	<u>11,685,000</u>	Add'l Cash	1,507,500	1,392,500
	5,842,500	Totals	<u>5,842,500</u>	<u>5,842,500</u>

each

3. In addition to equally dividing the design and construction costs above, the County and City agree to provide in-kind services including construction of a parking lot for the Aquatics Facility at an estimated cost of \$450,000 (the County) and construction of water and sewer facilities and a coordinated traffic light on Zero Street for ingress and egress into Ben Geren Park in support of the Aquatics Facility at an estimated cost of \$335,000 (the City).

4. The sums identified in this Agreement are current estimates. In the event the parties' estimates as compared to actual costs vary, the parties agree to adjust the figures set forth in this 2013 Amendment to reflect the actual figures determined by the construction and design activities, and agree to apportion all actual costs associated with the project (including the value of in-kind services) on an equal basis.

5. The final design for the \$10,900,000 Aquatics Facility will be reviewed and approved in a Joint Meeting by the Fort Smith City Board of Directors and the Sebastian County Quorum Court. In order to keep the project on schedule, it is the intent to schedule this joint meeting as soon as feasible during the month of December or early January in order for design work and the preparation of bid documents and bid specifications to remain on schedule.

6. Except as amended by this 2013 Amendment, the parties' Agreement shall continue in full force and effect according to the terms of the Agreement.

This 2013 Amendment is executed on behalf of the County by the County Judge thereof and on behalf of the City by the Mayor thereof on this 17th day of DECEMBER, 2013.

ATTEST:

Sharon Portwotes
County Clerk

Sebastian County:

David Hulson
County Judge

ATTEST:

Sherril Good
City Clerk

City of Fort Smith, Arkansas:

James Smith
Mayor



David Hudson

Sebastian County Judge
County Court House
35 South 6th Street, Room 106
Fort Smith, Arkansas 72901
(479) 783-6139
FAX (479) 784-1550

December 19, 2013

MEMO

To: Quorum Court

Copy: Ray Gosack

From: County Judge *AH*

Subject: Joint Meeting of the Quorum Court with the City Board of Directors on Monday, January 6, 2014 at 6:00 PM, Elm Grove Community Center
Dinner provided at 5:30 PM

A Joint Meeting of the Quorum Court with the City Board of Directors has been set for Monday, January 6, 2014 at 6:00 PM at the Elm Grove Community Center in Fort Smith.

The purpose of this meeting is to develop a consensus between the City of Fort Smith and Sebastian County for final design components for the Aquatics Facility.

This meeting is to review features for the Aquatics Facility including:

- Adding a wave pool
- Height of the slides
- Length of lazy river
- Size of the bathhouse
- Cost of other features such as:
 - Dive well
 - Climbing wall
 - Water walk

It is essential that decisions be made in this meeting in order to keep this project on schedule for construction to be completed in order to open the facility by Memorial Day 2015.

A general schedule for the project is as follows:

- Finalize facility design in Joint Meeting January 6, 2014, 6:00 PM
- Larkin Aquatics to complete design specifications in a ten week time period to March 14, 2014
- Bid site work January-February, 2014
- Earth work contractor selected, to begin March, 2014
- Parking lot construction to begin January – March, 2014
[Parking lot to serve as staging area for the project] some work may be completed jointly when the earth work contractor is onsite.
- Bid facilities

Bids out – March, 2014

Bids in – Mid April, 2014

- Notice to proceed to begin construction – May 2014
- Start construction – May 2014
[Eleven months to construct, May 2014 to May 2015]
- Opening date, Memorial Day – May 25, 2015

Should you have questions concerning the purpose of this joint meeting, please do not hesitate to contact me.

jw

RESOLUTION NO. 2013 -

"BE IT RESOLVED BY THE QUORUM COURT OF THE COUNTY OF SEBASTIAN, STATE OF ARKANSAS:"

A RESOLUTION APPROVING OF THE WATER AMENITIES TO BE INCLUDED IN THE DESIGN OF THE AQUATICS FACILITY TO BE BUILT AT BEN GEREN REGIONAL PARK.

WHEREAS, Sebastian County and the City of Fort Smith entered into an agreement in 2012 regarding capital projects and operations of specific facilities at Ben Geren Regional Park; and

WHEREAS, Sebastian County and the City of Fort Smith amended such agreement to reflect that the updated cost of designing and building the facility (estimated at \$10,900,000) are shared equitably between the County and the City; and

WHEREAS, such agreement, as amended in December, 2013, specifies that the design for the facility will be reviewed and approved in a Joint Meeting by the Fort Smith Board of Directors and the Sebastian County Quorum Court.

NOW, THEREFORE BE IT RESOLVED, by the Sebastian County Quorum Court that:

SECTION 1. While the specific layout of the Aquatics Facility will be arranged in order to maximize both construction and operational efficiencies, it is mutually agreed by the Fort Smith Board of Directors and the Sebastian County Quorum Court that the design of the Aquatics Facility shall include the following main water attractions/amenities:

- a. Wave Pool
- b. Lazy River
- c. Activity Pool
- d. At Least Four (4) Water Slides
- e. Tot/Children's Play Area

SECTION 2. The Aquatics Facility shall include the main attractions amenities listed in Section 1, and such amenities may be supplemented by as many other features/smaller amenities as possible within the allotted budget of \$10.9 million.

DATED: _____

APPROVED: _____

COUNTY JUDGE

ATTEST: _____

COUNTY CLERK



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

MEDIA RELEASE

December 31, 2013

Directors Andre' Good, Mike Lorenz, George Catsavis and Kevin Settle have called a special meeting, to be held jointly with the Sebastian County Quorum Court, for 6:00 p.m., Monday, January 6, 2014 at the Elm Grove Community Center, 1901 North Greenwood Avenue.

As noted in a previous media release, a special study session was originally scheduled for the same date and time; however, such was changed to a special meeting to allow formal consideration of the following:

- Resolution approving of the water amenities to be included in the design of the aquatics facility to be built 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's website, www.fortsmithar.gov.

A handwritten signature in blue ink that reads "Sherri Gard".

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

Printed on 100% Recycled Paper

RESOLUTION NO. _____

A RESOLUTION APPROVING OF THE WATER AMENITIES TO BE INCLUDED IN THE DESIGN OF THE AQUATICS FACILITY TO BE BUILT AT BEN GEREN REGIONAL PARK

WHEREAS, Sebastian County and the City of Fort Smith entered into agreement in 2012 regarding capital projects and operations of specific facilities at Ben Geren Regional Park; and

WHEREAS, Sebastian County and the City of Fort Smith amended such agreement to reflect that the updated cost of designing and building the facility, (estimated at \$10,900,000) are shared equitably between the County and the City; and

WHEREAS, such agreement, as amended in December, 2013, specifies that the design for the facility will be reviewed and approved in a Joint Meeting by the Fort Smith Board of Directors and the Sebastian County Quorum Court.

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

Section 1. While the specific layout of the Aquatics Facility will be arranged on the site in order to maximize both construction and operational efficiencies, it is mutually agreed by the Fort Smith Board of Directors and the Sebastian County Quorum Court that the design of Aquatics Facility shall include the following main water attractions/amenities:

- a. Wave Pool
- b. Lazy River
- c. Activity pool
- d. At least four water slides
- e. Tot/children’s play area

Section 2. The Aquatics Facility shall include the main attractions/amenities listed in Section 1, and such amenities may be supplemented by as many other features/smaller amenities as possible within the allotted budget of \$10.9 million.

THIS RESOLUTION passed this ____ day of January, 2014.

APPROVED:

Mayor

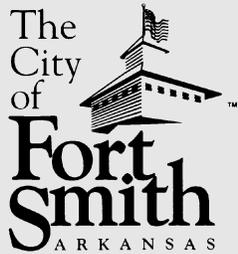
ATTEST:

City Clerk

APPROVED AS TO FORM:



City Attorney, NPR



MEMORANDUM

January 3, 2014

TO: Mayor and Board of Directors

FROM: Ray Gosack, City Administrator

SUBJECT: Aquatics Center

Last month, the City Board and the Sebastian County Quorum Court determined to provide additional funding for the aquatics center to be constructed at Ben Geren Regional Park. The additional funding brings the project budget to \$10.9 million. The original agreement and the amendment are attached.

The amendment provides that the city and county will jointly approve the design, which is the purpose of the January 6th special meeting. Below is a list of possible water features that could be included. The cost of the entire list exceeds the \$10.9 million budget.

Slides (4)	Tot/Children's Pool
Wave Pool	Activity Pool
Diving Well	Lazy River
Climbing Wall	

The project architect and construction manager will be prepared to discuss conceptual cost estimates for each feature. We will also have present a representative of Amusement Aquatic Management Group to discuss the operational value of each feature. This company operates aquatic centers from California to Florida, and brings considerable expertise to the discussion.

The staff recommends that we include the slides with heights higher than originally anticipated, tot/children's pool, wave pool, activity pool, and lazy river. The taller slides and the

wave pool will give us features that no other nearby water park (Alma, Rogers, Clarksville) has. These features will set apart the Fort Smith/Sebastian County aquatic center from the other water parks in our area, and help attract people from beyond our immediate area. Attached is a resolution which accomplishes this recommendation.

The architect and construction manager will also discuss the design and construction schedule. Decisions will need to be made expeditiously in order to keep the project on schedule for opening on Memorial Day weekend 2015. The county plans to start the parking lot construction this month, and we anticipate the site work contract being bid and awarded in March. The remaining contracts will be bid and awarded in April/May.

The aquatic center will provide a much-anticipated recreational amenity for our region. It will be important to include features that give the greatest desirability and usefulness for the community.

A handwritten signature in black ink, appearing to read "Ray", is positioned to the right of the "Attachments" label.

Attachments

RESOLUTION NO. R-33-12

**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 16th day of February, 2012.



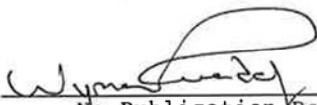
Mayor

ATTEST:



City Clerk

APPROVED AS TO FORM



No Publication Required

R-33-12

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, 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, agree to jointly 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. Payments to the architect and to the selected contractor shall be made jointly by the County and the 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 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 cost of maintaining the two new softball fields is eleven thousand dollars (\$11,000). 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 aquatic 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 "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. 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 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.

- 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.
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:

<u>County</u> Sebastian County Judge Sebastian County Courthouse 35 South 6 th Street, Suite 106 Fort Smith, AR 72901	<u>City</u> Fort Smith City Administrator P.O. Box 1908 Fort Smith, AR 72902
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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.

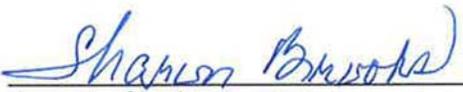
This Agreement is executed on behalf of the County by the County Judge thereof and on behalf of the City by the Mayor thereof on this 16th day of February, 2012.

Sebastian County:



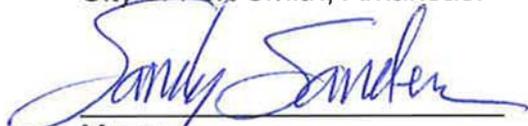
County Judge

ATTEST:



County Clerk

City of Fort Smith, Arkansas:



Mayor

ATTEST:



City Clerk

RESOLUTION NO. R-186-13

A RESOLUTION APPROVING THE 2013 AMENDMENT TO AN AGREEMENT BETWEEN THE CITY OF FORT SMITH AND SEBASTIAN COUNTY REGARDING BEN GEREN REGIONAL PARK FOR AQUATIC CENTER DESIGN AT AN ESTIMATED \$10,900,000

WHEREAS, Sebastian County and the City of Fort Smith entered into agreement in 2012 regarding capital projects and operations of specific facilities at Ben Geren Regional Park; and

WHEREAS, Sebastian County and the City of Fort Smith wish to amend such agreement to reflect that the updated cost of designing and building the facility, (estimated at \$10,900,000) are shared equitably between the County and the City.

BE IT RESOLVED by the Board of Directors of the City of Fort Smith, Arkansas, that the 2013 Amendment to an Agreement between the City of Fort Smith and Sebastian County regarding Ben Geren Regional Park is hereby approved, and that the Mayor is hereby authorized to execute said Supplement on behalf of the city.

BE IT FURTHER RESOLVED that Resolution No. R-37-13 is hereby repealed.

THIS RESOLUTION passed this 17th day of December, 2013.

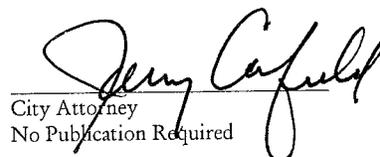
APPROVED:


 Mayor

ATTEST:


 City Clerk

APPROVED AS TO FORM:


 City Attorney
 No Publication Required

R-186-13

2013 AMENDMENT TO AN AGREEMENT BETWEEN THE CITY OF FORT
SMITH AND SEBASTIAN COUNTY REGARDING BEN GEREN REGIONAL PARK

This 2013 Amendment to an Agreement Between the City of Fort Smith and Sebastian County regarding Ben Geren Regional Park (2013 Amendment) is made and entered into between Sebastian County, Arkansas (“County”) and the City of Fort Smith, Arkansas (“City”).

WHEREAS, pursuant to authorizations of the governing bodies of the County and the City, the County and the City have previously entered into An Agreement Between the City of Fort Smith and Sebastian County Regarding Ben Geren Regional Park dated February 16, 2012 (the “Agreement”); and

WHEREAS, the conditions precedent outlined in paragraph 1 of the Agreement whereby the voters of the City of Fort Smith approved the issuance of four million dollars (\$4,000,000) in sales tax bonds and the County has earmarked four million dollars (\$4,000,000) for the construction of an Aquatics Facility have come to pass; and

WHEREAS, the annexation provisions of paragraph 4 of the Agreement have been completed; and

WHEREAS, the County and the City desire to adopt a 2013 Amendment to the Agreement for the purpose of providing additional funding for the Aquatics Facility to be constructed pursuant to the Agreement and make provisions regarding the equalizing of funding by the County and the City of facilities to be constructed pursuant to the Agreement.

NOW, THEREFORE, based on the mutual considerations accruing to the City and the County and their citizens, it is agreed as follows:

1. The recitals set forth in the foregoing whereas clauses are confirmed by the parties and incorporated into this Agreement, and the City and County confirm the continued effectiveness of the Agreement executed on February 16, 2012.

2. Section 2(A) of the Agreement is hereby amended to read as follows:

“A. The County and City agree to share equally in the cost of designing and constructing an aquatic center project, currently estimated to cost ten million nine hundred thousand dollars (\$10,900,000). The County and City agree to jointly 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. Payments to the architect and the selected contractor shall be made jointly by the County and the City.”

B. An updated recap of the budget and cost-sharing between the County and the City for the \$10,900,000 cost-sharing agreement as set forth below:

Original Design/Const	8,000,000		City	County
Add'l Design/Const	2,900,000	Original	4,000,000	4,000,000
Parking lot	450,000	In-Kind Value	335,000	450,000
Utilities/Traffic Signal	335,000	Subtotal	4,335,000	4,450,000
Total Cost	11,685,000	Add'l Cash	1,507,500	1,392,500
	5,842,500	each	Totals	5,842,500

3. In addition to equally dividing the design and construction costs above, the County and City agree to provide in-kind services including construction of a parking lot for the Aquatics Facility at an estimated cost of \$450,000 (the County) and construction of water and sewer facilities and a coordinated traffic light on Zero Street for ingress and egress into Ben Geren Park in support of the Aquatics Facility at an estimated cost of \$335,000 (the City).

4. The sums identified in this Agreement are current estimates. In the event the parties' estimates as compared to actual costs vary, the parties agree to adjust the figures set forth in this 2013 Amendment to reflect the actual figures determined by the construction and design activities, and agree to apportion all actual costs associated with the project (including the value of in-kind services) on an equal basis.

5. The final design for the \$10,900,000 Aquatics Facility will be reviewed and approved in a Joint Meeting by the Fort Smith City Board of Directors and the Sebastian County Quorum Court. In order to keep the project on schedule, it is the intent to schedule this joint meeting as soon as feasible during the month of December or early January in order for design work and the preparation of bid documents and bid specifications to remain on schedule.

6. Except as amended by this 2013 Amendment, the parties' Agreement shall continue in full force and effect according to the terms of the Agreement.

This 2013 Amendment is executed on behalf of the County by the County Judge thereof and on behalf of the City by the Mayor thereof on this 17th day of DECEMBER, 2013.

Sebastian County:



 County Judge

ATTEST:



 County Clerk

City of Fort Smith, Arkansas:



 Mayor

ATTEST:



 City Clerk