

ORDINANCE NO. 67

**AN ORDINANCE AMENDING ORDINANCE NO. 53
GRANTING THE GOSHEN FIRE DISTRICT ASSOCIATION
THE EXCLUSIVE RIGHT AND PRIVILEGE TO PROVIDE
FIRE PROTECTION WITHIN THE CITY LIMITS OF
GOSHEN, ARKANSAS; APPROVING THE TERMS OF THE
CONTRACT BETWEEN THE CITY OF GOSHEN AND GOSHEN FIRE
DISTRICT ASSOCIATION; REQUIRING ALL RESIDENTS TO BECOME A
MEMBER AND PAY DUES TO THE GOSHEN FIRE DISTRICT ASSOCIATION;
AND TO PROVIDE PENALTIES FOR VIOLATIONS; AND TO DECLARE AN
EMERGENCY AND FOR OTHER PURPOSES**

WHEREAS, the City Council of the City of Goshen adopted Ordinance No.53 on April 12, 2005 granting the Goshen Fire District Association the exclusive right and privilege to provide fire protection with the corporate limits of the City of Goshen; and

WHEREAS, the City Council of the City of Goshen deems it necessary and appropriate to readopt the provisions of Ordinance No. 53 inasmuch as the contract mentioned therein was not finalized and executed by the parties; and

WHEREAS, Goshen Fire District Association is a not-for-profit corporation organized and existing pursuant to the laws of the State of Arkansas, organized as a volunteer fire department and serves a geographic area which includes the corporate limits of the City of Goshen; and

WHEREAS, the City of Goshen recognizes the valuable service provided to its citizenry by the Goshen Fire District Association and desires to make more formal the arrangement between the Goshen Fire District Association and the City of Goshen; and

WHEREAS, it is in the interest of the City of Goshen and its citizens to establish the exclusive rights and privileges of the Goshen Fire District Association and execute a contract between the City of Goshen and Goshen Fire District Association.

NOW, THEREFORE, BE IT ORDAINED by the City Council for the City of Goshen, Arkansas:

SECTION 1: That the City of Goshen hereby enters into the attached contract with the Goshen Fire District Association (“Grantee”) and grants to Grantee the right and privilege within the present and all future expansions of the corporate limits of the City of Goshen (1) to provide the service of fire protection to all residents and inhabitants within said limits; and (2) subject to the terms, conditions and stipulations mentioned in this ordinance and the attached contract, the

right and permission is hereby given to Grantee of providing such services to the public and using public rights-of-way, including streets, highways, or other public places of any kind whatsoever within the corporate limits of the City of Goshen and for any related purpose of providing fire protection to the residents or inhabitants of said City.

SECTION 2. Grantee is expressly given the right and privilege to use the streets, avenues, roads, highways, alleys, sidewalks and other public places, as now laid out, or hereafter to be established, of any kind whatsoever within municipal boundaries, for the purpose of providing fire protection to the public from any point within the City or to any point beyond the corporate limits of the City, or to any other point, through and beyond the corporate limits of the City.

SECTION 3. It is hereby mandated that each residence and business within the corporate limits shall be required to utilize the fire protection services as provided by the Goshen Fire District Association pursuant to this grant of rights and privileges. Grantee shall report those residences and businesses who have not contracted with it for fire protection services.

SECTION 4. The Grantee shall fully indemnify and save harmless the City from any and all claims for damage for which the City shall or might be made or become liable by reason of the granting of these rights and privileges, or any negligence or carelessness on the part of said Grantee or because of any act or omission of the Grantee in the provision of fire protection.

SECTION 5. Fire Protection shall be provided by the Goshen Fire District Association under the terms and conditions herein specified and pursuant to state law, related to the provision of fire protection. The rates which are to be charged by Grantee for fire protection shall be set by Grantee in its discretion. Upon request, Grantee shall make available to the proper authorities for review by the City Council its rate structure and all rules and regulations related to the provision of fire protection service by Grantee.

SECTION 6. The Grantee shall furnish to the proper authorities any and all information, including but not limited to, rate structure and rules and regulations, which may be asked for by them in regard to the provision of fire protection by Grantee. Whenever the word, "Grantor," occurs in this ordinance, it shall mean and it shall be understood to be the City of Goshen, Arkansas. Whenever the word, "Grantee," occurs in this ordinance, it shall mean and it shall be understood to be the Goshen Fire District Association, and whenever the words "authorities" or "proper authorities" occur in this ordinance they shall mean and shall be understood to mean the authorized officer or officers, committee or board representing the City of Goshen, Arkansas, or Grantor.

SECTION 7. The terms and conditions of a contract with the Goshen Fire District Association for the provision of fire protection, a copy of which is attached hereto, are hereby approved.

SECTION 8. The rights and privileges granted to Grantee shall take effect on the date this ordinance is approved and upon the written acceptance by the Grantee of the terms and conditions of the attached contract. The contract shall continue and remain in force for seven years.

SECTION 9. After the effective date hereof, no person or entity other than Grantee shall be permitted to provide fire protection within the corporate limits of the City of Goshen.

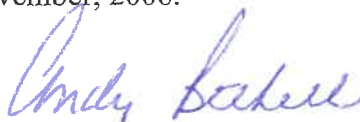
SECTION 10. Every residence and business within the corporate limits of the City of Goshen shall be required to pay the dues as set by the Board of the Grantee and thereby become a member of Grantee. Any person, firm or corporation who is more than 60 days delinquent in paying the annual dues to Grantee shall be considered in violation of this ordinance.

SECTION 11. Any person, firm or corporation violating the provisions of this ordinance shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than \$30 and not more than \$250 for each offense. Any violation may form the basis of a citation to be issued by the City Marshall or may be referred to the City Attorney who shall apply to the appropriate court for relief, seeking either penalties or injunctive relief as permitted by law.

SECTION 12. If any section, paragraph, subdivision, clause, phrase or provision of this ordinance shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this ordinance as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional.

SECTION 13. EMERGENCY CLAUSE: Because fire protection is vital to the safety and welfare of each resident and business owner within the City of Goshen, because the funding of the activities of the Goshen Fire District Association impacts each resident, and because the grant of exclusive rights to the Goshen Fire District Association will provide stability to the Association as it plans its future and the fire protection it can provide to the citizens of Goshen, it is hereby declared that based on the conditions set forth herein, an emergency exists and this ordinance, being necessary for the immediate protection of the health, safety, and welfare of the citizens in Goshen, Arkansas, shall be in effect immediately upon its passage, approval and publication.

PASSED AND APPROVED this 14th day of November, 2006.



Andy Bethel, Mayor

ATTEST:



Fara Ferguson, City Recorder

APPROVED AS TO FORM:



Charles L. Harwell, City Attorney

ROLL CALL VOTE ADOPTING THE ORDINANCE

Names Of Those Voting YEA

Joe Benson
Jamie Boyd
John Meek
Max Poye
Dick Seddon

Names Of Those Voting NAY

Absent

Chuck Huskey

ROLL CALL VOTE ADOPTING THE EMERGENCY CLAUSE

Names Of Those Voting YEA

Joe Benson
Jamie Boyd
John Meek
Max Poye
Dick Seddon

Names Of Those Voting NAY

Absent

Chuck Huskey

The Goshen Fire District Association, a not-for-profit corporation, grantee, hereby accepts the above rights and privileges subject to the terms and conditions therein this 16 day of November 2006.

GOSHEN FIRE DISTRICT ASSOCIATION

By Harry Jackson

FIRE PROTECTION SERVICE AGREEMENT

THIS AGREEMENT, made this 14th day of November, 2006, by and between the Goshen Fire District Association, (hereinafter referred to as the "GFDA"), and the City of Goshen, Arkansas (hereinafter referred to as the "City").

WITNESSETH:

WHEREAS, Goshen Fire District Association is a not-for-profit corporation organized and existing pursuant to the laws of the State of Arkansas, organized as a volunteer fire department and serves a geographic area which includes the corporate limits of the City of Goshen; and

WHEREAS, the City of Goshen recognizes the valuable service provided to its citizenry by the Goshen Fire District Association and desires to make more formal the arrangement between the Goshen Fire District Association and the City of Goshen; and

WHEREAS, the City of Goshen is a city of the second class and desires to provide fire protection for all citizens and property owners within the city limits; and

WHEREAS, the Goshen Fire District Association has the authority, resources, and capability to provide such fire protection services, and in fact has provided such services on a subscription basis to the territory that includes the City's corporate limits; and

WHEREAS, it is in the interest of the City of Goshen and its citizens to establish the exclusive rights and privileges of the Goshen Fire District Association and execute a contract between the City of Goshen and Goshen Fire District Association.

NOW THEREFORE in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree and covenant as follows:

1. GRANT BY CITY: Subject to the terms, conditions and stipulations mentioned in this Agreement, the City hereby grants to GFDA the exclusive right and privilege within the present and all future expansions of the corporate limits of the City (1) to provide the service of fire protection to all residents and inhabitants within said limits; and (2) to provide such services to the public by use of public rights-of-way, including streets, highways, or other public places of any kind whatsoever within the corporate limits of the City and for any related purpose of providing fire protection to the residents or inhabitants of said City. GFDA is expressly given the right and privilege to use the streets, avenues, roads, highways, alleys, sidewalks and other public places, as now laid out, or hereafter to be established, of any kind whatsoever within municipal boundaries, for the purpose of providing fire protection to the public from any point within the City or to any point beyond the corporate limits of the City, or to any other point, through and beyond the corporate limits of the City.

2. OBLIGATIONS OF CITY: The City shall pay GFDA the amount of its accumulated interest on its certificate of deposits as of the end of the calendar year, which amount shall not exceed Twenty Five Thousand Dollars (\$25,000.00), the first payment due on or before February 1, 2007, and each year thereafter. In addition the City shall provide by ordinance that each residence and business within the corporate limits shall be required to utilize the fire protection services provided by GFDA and pay the dues as established by the Board of Directors of GFDA.

3. OBLIGATIONS OF GFDA: Any salaries, stipends, and other benefits provided to any employees of GFDA shall be paid directly by GFDA to the personnel of GFDA, no such payment coming directly from the City. The personnel which constitute GFDA shall be under the direction, supervision, authority, and control of GFDA Chief and GFDA Board of Directors pursuant to all GFDA policies, rules, and regulations. GFDA shall provide all vehicles and equipment for use in fire protection services. GFDA shall be responsible for all fuel and maintenance as required for all said vehicles. GFDA shall designate and make available the appropriate individuals with the authority and expertise necessary to approve and sign plats of subdivisions per the City's subdivision ordinance.

4. TERM: The contract shall continue and remain in force for seven years. It is the intent of the parties hereto to create a long standing relationship with regard to the matters contained in this Agreement. The City and GFDA shall coordinate their efforts to provide for greater fire protection at a reduced costs for their citizens through this Agreement.

5. TERMINATION: Either party may, by majority vote of its respective governing body, elect to terminate this Agreement. The party desiring to terminate this Agreement shall give the other party written notification at least six months in advance of December 31 of their intent to terminate, which notice shall be given by certified mail, return restricted to the addressee, and mailed to the Mayor of the City of Goshen or the President of GFDA Board of Directors, as the case may be. Notice shall be considered given on the date of the postmark. Termination shall be effective as of December 31 of the year given. Upon termination, neither party shall have any further obligation under this Agreement and specifically no payment shall be due to GFDA from the City thereafter.

6. INDEMNITY BY GFDA: GFDA shall fully indemnify and save harmless the City from any and all claims for damage for which the City shall or might be made or become liable by reason of the granting of these rights and privileges, or any negligence or carelessness on the part of said GFDA or because of any act or omission of GFDA in the provision of fire protection.

7. RATES AND RULES OF GFDA: GFDA shall provide fire protection under the terms and conditions herein specified, pursuant to state law related to the provision of fire protection and pursuant to GFDA by-laws and protocols. GFDA shall establish, in its discretion, the rates which are to be charged by GFDA for fire protection. GFDA shall make its rate

structure and all rules and regulations related to the provision of fire protection service available to the public generally and to the City upon request.

8. COLLECTION OF DUES: GFDA shall be entirely responsible for sending out dues notices to the residents of the City as well as its other customers outside the City. In the ordinance approving this agreement, the City shall also require that every residence and business become a member of GFDA and pay dues. If any person, firm or corporation who is more than 60 days delinquent in paying the annual dues to GFDA, GFDA shall provide that list to the City. The City shall then take the appropriate action under its ordinance. GFDA agrees to provide timely reports of persons or entities who pay their dues after having been delinquent by more than 60 days.

9. REQUIRED ACTIONS OF PARTIES: The City shall, upon acceptance of this Agreement, provide the funds and ordinances necessary to accomplish this Agreement. In a like manner, GFDA, upon acceptance of this Agreement, shall take all steps necessary for providing enactment and enforcement of this Agreement. Each party agrees to act in good faith and to take all steps necessary for the enforcement of the provisions and agreements contained herein.

10. BOARD: There shall be a Board created by the City and GFDA for the purpose of effectuating this Agreement and coordinating the efforts necessary to carry out this Agreement. This Board shall consist of GFDA board president and two (2) members of GFDA board and three (3) aldermen of the City as appointed and approved by the City Council with one (1) alderman from each of the three (3) city wards. The Board shall meet at least annually or as needed. Meetings may be called as the need arises by any member of the Board. Minutes shall be kept and copies shall be provided to be posted on the Goshen City website. The Board shall in no way be construed to be a Civil Service Commission or Grievance Committee and shall serve for the effectuation and coordination of this Agreement. The Board shall comply with the Arkansas Freedom of Information Act (Ark. Code Ann. §§ 25-19-101 et seq.) both as to its public meeting and its public records provisions.

11. IMMUNITY AND INSURANCE: It is acknowledged and understood that the City enjoys tort immunity. Nothing in this agreement is intended to abrogate or otherwise alter that status. The City is a participant in a risk management program designed to protect it from certain types of federal and state law claims. Nothing in this Agreement shall, however, be interpreted to affect any insurance or risk management contract which the City has, nor shall it be construed to require the City to indemnify GFDA. If the City has or acquires liability insurance, the City shall name GFDA as an additional insured on its policy, assuming it can do so without increasing the premium amount for that insurance coverage. If GFDA has or acquires liability insurance, GFDA shall name the City as an additional insured on its policy, assuming it can do so without increasing the premium amount for that insurance coverage. This Agreement shall not require either party to acquire a policy of liability insurance.

12. AMENDMENT: This Agreement may be amended from time to time by the governing bodies of the City and GFDA. The party desiring to amend this Agreement shall draft their proposed amendment and, after passage by their governing body, shall submit the proposed amendment to the other party, whereupon said party's governing body shall vote upon said proposed amendment. Should the amendment be accepted by both parties, it will thereafter become a part and parcel of this Agreement. Should either party fail to approve a proposed amendment, it will have no force or effect.

13. SEVERABILITY: The various provisions and parts of this Agreement are hereby declared to be severable and if any phrase, clause, sentence or paragraph of this Agreement shall be declared invalid by the judgment or decree of a court of competent jurisdiction, such invalidity shall not affect any of the remaining sentences, paragraphs, or clauses of this Agreement.

14. SUPERCEDES PRIOR AGREEMENTS: This Agreement supersedes all previous agreements and amendments thereto that relate to the Agreement of Fire Protection Services.

15. EFFECTIVE DATE: This Agreement shall be effective upon its execution and approval by the city council of the City.

16. COMPLETE AGREEMENT: It is agreed that neither party hereto is relying upon any oral or written information or representations made by the other prior to the signing of this Agreement unless expressly provided herein. Except as provided herein, this Agreement constitutes the entire agreement between the parties and the same shall not be hereafter amended or modified unless reduced to writing and signed by the parties hereto.

17. GOVERNING LAW: This Agreement shall be construed in accordance with and governed by the laws of the State of Arkansas except as preempted by the laws of the United States. Jurisdiction, both personal and subject matter, for any disputes or controversies shall rest with the courts within the state of Arkansas.

18. BINDING EFFECT: This Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, we have hereunto set our hands and seals the day and year first above written.



Andy Bethel, Mayor

ATTEST:



Fara Ferguson, City Recorder

GOSHEN FIRE DISTRICT ASSOCIATION

By  _____