

THE STATE OF TEXAS
COUNTY OF WILLIAMSON

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WILLIAMSON EMERGENCY SERVICES DISTRICT NO. 7

THIS AGREEMENT IS ENTERED INTO BY AND BETWEEN WILLIAMSON COUNTY EMERGENCY SERVICES DISTRICT NO. 7 (HEREINAFTER REFERRED TO AS THE "DISTRICT") ACTING THROUGH THE DISTRICT'S BOARD OF EMERGENCY SERVICES COMMISSIONERS AND, FLORENCE VOLUNTEER FIRE DEPARTMENT, INC., A TEXAS NON-PROFIT CORPORATION, (HEREINAFTER REFERRED TO AS THE "SERVICE PROVIDER") ACTING THROUGH THE SERVICE PROVIDER'S DULY ELECTED GOVERNING BODY.

The mailing address for the District is P. O. Box 523, Florence, Texas 76527. The mailing address for the Service Provider is P. O. Box 422, Florence, Texas 76527. If either party's address changes, that party shall notify the other in writing within 10 days following the change in address.

Whereas, the District's commitment is to provide protection of life and property from fire, hazardous materials incidents, accident, disaster, and other emergencies, and for the conservation of natural resources; and

Whereas, the Service Provider has available personnel and equipment to provide fire protection and suppression services, hazardous materials, emergency rescue services, and emergency medical first responder services.

NOW, THEREFORE, BE IT RESOLVED THAT the parties hereto agree as follows:

1. CONSIDERATION

1.1 In consideration for the monies and equipment to be provided to the Service Provider under the terms of this Agreement, the Service Provider will provide the following services (collectively referred to below as "Fire Services") within the District's legal boundaries on a 24-hour basis:

Fire Protection and Suppression;
Fire Prevention;
Hazardous Materials response to the level currently trained;
First Responder Emergency Medical Services;
Emergency Rescue; and,
Other assistance to the public as necessary.

1.2 The Service Provider provides Emergency Medical First Responder Services, and such services are as backup and support to the Emergency Medical Services Provider contracted by the Williamson County Commissioners Court and the Service Provider shall operate its First

Responder Emergency Medical Services in accordance with the medical and other protocols provided by the appropriate medical director and Williamson County Emergency Medical Services or other appropriate agency.

1.3 The Service Provider shall provide Fire Services and other services in the District in conjunction with any other contracted Service Provider of the District. The Service Provider has the authority to request other agencies to provide mutual aid or other assistance in providing the services listed above through mutual aid or automatic aid agreements or on a call-by-call basis. Any such agreements shall be provided to the District for approval prior to execution.

2. TERMS

2.1 In consideration for the terms of this Agreement, the District, being a duly created political subdivision of the State of Texas located in Williamson County, Texas, agrees to provide the Service Provider with funds, as available and as approved and appropriated by the District's Commissioners, from the District's tax revenues or from other sources legally available to the District. The amount and method of payments of these funds will be approved by the District's Commissioners for the life of this contract, prior to the close of the fiscal year proceeding the term for which the allocations are made. Title to funds so disbursed shall remain in the District at all times. No funds provided by the District may be used by the Service Provider for legal representation, costs, or expenses of any kind or nature whatsoever of the Service Provider for issues or disputes related to or arising from this Agreement or otherwise, without the previous written permission of the District. Any District funds provided to the Service Provider by the District for any budget period that are not expended at the end of the budget period shall be returned in full to the District within 30 days of the end of that budget period. The Service Provider agrees and shall maintain all District funds in a separate account from all other accounts of the Service Provider at all times.

2.2 The funds for the term of this Contract shall be paid to the Service Provider upon request to the District and with supporting justification complying with the approved budget process of the District. When appropriating funds for use by the Service Provider, the District will consider the citizens' needs for the services provided by the Service Provider, other sources of such services, the Service Provider's annual budget and request for funds, reports by the Service Provider of how previous District funds have been spent, the tax revenues received from the area served by the Service Provider, the results of the previous year's financial audit/financial review, and past compliance by the Service Provider with the terms of agreements between the Service Provider and the District, and any other issue deemed relevant by the District. Any appropriation by the District shall be subject to the District's right of non-appropriation.

2.3 Nothing in this Agreement shall obligate the District to appropriate to the Service Provider the full amount of funds, or any funds, requested by the Service Provider.

3. PAYMENTS

3.1 The funds allocated to the Service Provider shall be transferred to the Service Provider upon request to the District and with supporting justification complying with the

approved budget. If the tax revenues collected and other funds held by the District are not sufficient to cover all of the District's obligations under this and similar agreements with other entities providing emergency services to the District, the parties agree that the District shall transfer to the Service Provider a lesser amount to be determined by the District's Commissioners after considering the amount of funds available, the District's obligations under tills and similar agreements, and the District's financial obligations under applicable local, state, and federal law and administrative regulations, and any other issue deemed relevant by the District. Title to funds so disbursed shall remain in the District, and any funds provided to the Service Provider by the District for any budget period that are not expended at the end of the budget period shall be returned in full to the District within 30 days of the end of that budget period.

3.2 The payment of money by the District under any provision hereof is contingent upon the availability of funds appropriated by the Board of Emergency Services Commissioners of the District to cover the provisions hereof. Neither the District nor its officials, officers, employees, agents, attorneys, or other individuals acting on behalf of District, make any representations or warranty as to whether any appropriation will, from time to time during the term of this Agreement, be made by the District. In the event District's funds for this Agreement become unavailable due to non-appropriation, the District shall have the right to terminate this Agreement without penalty. Any payments required hereunder shall be from current funds only, and paid, subject to availability and non-appropriations, on October 1, January 1, April 1, and July 1 of each year, but only after a proposed budget has been provided by the Service Provider to the District and approved by the District.

4. REPORTING REQUIREMENTS

4.1 The Service Provider agrees to submit to the District monthly financial reports, showing revenue and expenditures and monthly activity reports. Each of these monthly reports shall be delivered to the District at least seven days before the District's next regular meeting immediately following the month in which the report applies, or as otherwise decided by the District. The format of these reports will be determined solely by the District.

4.2 The parties agree that the Service Provider shall submit to the District an annual inventory and an annual budget request showing all estimated sources of revenue and all estimated expenses, and the format for these reports will be determined solely by the District. The annual inventory and budget request shall be submitted no later than the first regular meeting of the District's Board of Emergency Services Commissioners ("Board") in June immediately prior to the fiscal year for which the Service Provider is seeking funds. The annual inventory shall contain a listing of all real and personal property of the Service Provider with a replacement value of \$100.00 or more. The District's fiscal year runs from October 1 through September 30. The District's Commissioners shall not consider an appropriation of funds to the Service Provider until the annual budget request and annual inventory are submitted to the District.

4.3 The Service Provider shall comply with and maintain compliance with all licensing, training, fiscal, and other requirements imposed on the Service Provider by this

Agreement, and local, state, and federal law or administrative regulations applicable to the Service Provider.

4.4 The parties agree that the Service Provider shall submit to an annual audit or financial review by an independent auditor selected by the District, unannounced inspections of all records, property, or equipment, and any other requirement reasonably imposed by the District, or local, state, federal law, or administrative regulations. The District shall pay for the audit or financial review. The Service Provider shall promptly provide any and all financial, operational, or other information requested by the District for this audit or otherwise, and shall strictly comply with all applicable statutes, laws, rules, or regulations applicable to the Service Provider, including, but not limited to, the Texas Non-Profit Corporations Act and the Internal Revenue Code of 1986, and as amended from time-to-time.

5. MUTUAL AID

5.1 The parties agree that at the time of the execution of this Agreement, the Service Provider shall enter into a Mutual Aid Agreement with all other providers in the District of the services set forth in paragraph 1. These other emergency service providers shall include volunteer fire departments, emergency medical services, and other entities that provide similar services. The Mutual Aid Agreement shall include, at a minimum, the following provisions:

5.1.1 A complete and detailed description of the types of services to be provided by each of the parties.

5.1.2 Protocols for determining which entity will respond to a given type of emergency call and when a contracting party may or will respond to calls emanating from an area outside its service area.

5.2 In accordance with this Agreement, the Service Provider agrees to provide emergency medical first responder services to the District in accordance with District Policies and the Williamson County First Responder Program. The Service Provider understands and agrees that it is an independent contractor to the District.

6. STATEMENT OF PARTICULARS

6.1 The Service Provider agrees to use the funds from the District to provide services set forth in paragraph 1, maintain its physical facilities, educate its members, purchase equipment, repair and maintain equipment, pay operating expenses, and purchase supplies necessary to provide fire services within the Service Provider's area of responsibility under this Agreement. It is understood and agreed that for the provision of fire services by the Service Provider, the Service Provider's area of responsibility will be as shown on the attached map, attached hereto, and incorporated herein as Exhibit A. The Service Provider shall strictly comply with any joint or cooperative purchasing resolutions or orders of the Board, and shall not obtain, purchase, or otherwise accept any real or personal property or services without the prior approval of the Board.

6.2 All real or personal property purchased by the Service Provider with District funds may be assigned to the Service Provider and/or titled in the Service Provider's name, but shall remain the sole property of the District, regardless of how titled. Any such real or personal property will be immediately transferred to the District in the event of dissolution of the Service Provider or termination of this contract. It is understood and agreed that all personal or real property purchased, leased, or otherwise obtained by the Service Provider with District funds shall be and remain the sole property of the District, for use by the Service Provider, regardless of how encumbered, nominally owned, or otherwise titled. The Service Provider, for so long as this Agreement remains in effect, shall be authorized to use any real or personal property of the District in the provision of Fire Services hereunder, but this license shall immediately expire upon the termination of this Agreement for any reason, and the Service Provider shall immediately return possession to all real or personal property of the District as provided for herein. This license is at the sole discretion of the District, and may be terminated at any time by the District. The Service Provider shall be solely responsible for all insurance and/or expenses related to the possession, use, or operation of any such real or personal property, and shall request any necessary funds and account for same in its annual budget requests to the District.

6.3 If any funds provided to the Service Provider by the District are used in a manner other than that specified in this Agreement or as approved by the Board, or in contravention of applicable local, state, or federal law, or applicable administrative regulations, in addition to the rights the District has to terminate any additional funds being distributed to the Service Provider, the Service Provider shall immediately reimburse the District for the amount of the funds improperly used. Funds provided to the Service Provider by the District shall not be used for expenses incurred while providing Fire or EMS services outside the boundaries of the District, except while in response to a mutual aid request from any other Fire or EMS provider or as defined in the applicable mutual aid agreements presented to and approved by the District.

6.4 All audit/financial review documents will be available to the auditor of the District's choice within 30 days of the last day of the Service Provider's fiscal year for which the audit is to be conducted.

6.5 The Service Provider shall implement policies and procedures to ensure that individuals performing services under this Agreement behave in a lawful, safe, courteous, professional and respectful manner to the public it serves and with all other individuals or entities involved in rendering assistance under this Agreement. The Service Provider recognizes that the forms of service being provided under this Agreement involve highly dangerous and life-threatening situations and that cooperative and unified action by the individuals or entities providing services under this Agreement is imperative. The Service Provider will act promptly to impose the necessary discipline to ensure that individual members of the Service Provider providing services under this Agreement consistently comply with the standard of conduct imposed by this section of the Agreement.

6.6 The Service Provider agrees to amend its By-Laws and other applicable documents and procedures to ensure that all current and future applicants for membership with Service Provider shall provide a complete criminal history and three year driving record before they are accepted as members of the Service Provider. Service Provider also agrees to

implement policies and procedures to preclude or restrict membership in Service Provider of individuals with unsafe driving records or criminal histories which may affect the perception of the Service Provider or the District or otherwise endanger the life, health, safety, or property of residents or visitors in the District.

6.7 The Service Provider agrees to amend its By-Laws and other applicable documents and procedures to allow for the governance of the Service Provider by its board of directors, if necessary.

6.8 The Service Provider understands and agrees that the District requires that the policies and procedures (hereafter "Standard Operating Guidelines") required herein, will be provided to each and every paid and volunteer member of any category upon the commencement of the member's participation with the Service Provider. The Service Provider shall prepare and utilize Standard Operating Guidelines for use by all members of the Service Provider, whether paid or volunteer. The Standard Operating Guidelines shall contain not only that information required above, but also the general policies of the Service Provider outlining the proper procedures and policies for the services provided to the District by the Service Provider under this Agreement.

6.9 While the District recognizes the Service Provider and its individual members have the right to participate in an appropriate manner in any political activity, the District requests the Service Provider and its members to refrain from any campaign or other political activity by its members when they are working, volunteering, or otherwise providing services under this Agreement. As each resident of the District has a right to his or her own political decisions and opinions, the Service Provider, as a non-profit corporation under the laws of the State of Texas and a tax exempt organization under the applicable provisions of the Internal Revenue Code of 1986, agrees voluntarily not to campaign, support, or promote any candidate for public office during the duration of this Agreement. If a member of the Service Provider's organization desires to publicly endorse a candidate verbally or in writing, he or she agrees to do so as an individual and not use the organization's title or position in any endorsement. This provision is not inserted herein to prevent or infringe on any individual's or organization's rights of free speech, but rather as a reasonable and necessary compromise and agreement between the District and the Service Provider to behave in a courteous, professional and respectful manner to the residents of the District and the general public.

6.10 It is recognized that the Service Provider has other sources of income and nothing in this Agreement limits how the Service Provider can utilize these other funds. All disbursement of these funds must be accounted for as a separate item from the District funds and reported in the Monthly Budget Report and Annual Budget Estimate and Request for Funds from the District.

6.11 The Service Provider shall retain all rights in accordance with the Williamson County First Responder Program as set forth by the appropriate authority. The Service Provider shall also retain the right to summon rescue, extrication, or other emergency or non-emergency services in accordance with other mutual aid or other agreements with other entities outside the territorial limits of the District.

6.12 The Treasurer for the Board of Directors of the Service Provider and all other persons having access to the funds of the Service Provider shall be bonded for an amount sufficient to cover one year's funding from the District and proof of this bond coverage will be submitted to the District

6.13 The parties to this Agreement affirm that the District and the Service Provider are separate entities and as such, the Service Provider is responsible for its actions as an emergency services organization or provider, and the District is responsible for its actions as a political subdivision of the State of Texas. Neither party shall be responsible for the actions of the other in case of any liability for damages or other relief. Neither the Service Provider, its agents, nor any other person operating under this Agreement, shall be deemed to be an agent or employee of the District and the District shall not be liable for negligence, tortuous or other conduct of any such person.

6.14 The Service Provider further agrees to maintain appropriate insurance upon its real and personal property, including vehicles, whether leased, owned, or otherwise utilized by the Service Provider herein, and those of its members used in the provision of Fire Services, to cover minimum liability of the Service Provider under the Texas Tort Claims Act as it now exists and as it may be amended from time to time. The Service Provider will require its members to maintain the minimum level of financial responsibility as required by state law. In the event that liability insurance on real or personal property other than vehicles is required by the Texas Tort Claims Act, the Service Provider agrees to maintain the minimum amount required under the Texas Tort Claims Act. Proof of such insurance required under this paragraph shall be submitted to the District at the time the policies are renewed. Any insurance obtained by the Service Provider hereunder shall name the District as an additional insured and loss payee.

6.15 The Service Provider also agrees to provide liability, management liability and other applicable insurance for its activities and operations hereunder, and, if requested by the District to obtain such insurance for the benefit of the District. The Service Provider also agrees to name the District as the loss payee for any real or personal property purchased by the Service Provider with District funds or as approved in any budgets presented to the District by the Service Provider.

7. PERFORMANCE STATEMENT

Service Provider shall:

7.1 Assure all fire prevention, firefighting, and other personnel providing emergency services hereunder, including, but not limited to, emergency medical services personnel, are appropriately trained and certified for the levels of service provided.

7.2 Assure, to the extent reasonably possible for a volunteer organization, that qualified personnel are available to respond to each emergency call on which the Service Provider is dispatched.

7.3 Provide adequately equipped and operational emergency vehicles, equipment, and personnel to respond to each emergency call that requires a Code 3 (emergency lights and sirens response) with an average response time for an emergency vehicle owned or used by the Service Provider of not more than 25 minutes, and such average response times shall be measured from the time of initial dispatch until the first appropriate unit marks arrival on scene. The average response time is calculated over a period of one month by dividing the sum of incident response times by the total number of incidents.

7.4 Provide educational programs for any schools in the Service Provider's service area, upon request.

7.5 Provide for not less than 10% of the Service Provider's firefighters, or one (1) firefighter, whichever number is greater, to attend and participate in the Annual Fire School at Texas A&M or a similarly qualified school.

7.6 Submit at least one (1) F.E.M.A., Fire Act or similar grant application and one (1) Texas Forest Service grant application each fiscal year as approved by the District.

7.7 Prepare and promptly submit such financial, administrative, or other reports or information as required by the District or its representatives in its sole discretion and without objection by the Service Provider.

8. DISSOLUTION OR TERMINATION

Although equipment purchased with funds from the District may be used by the Service Provider and/or titled in the Service Provider's name, for the consideration mentioned above, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged and confessed for all purposes by the Service Provider, and regardless of any language to the contrary herein, the Service Provider agrees to immediately transfer to the District all assets of the Service Provider, whether real or personal, tangible or intangible, upon the dissolution of the Service Provider, or the termination of this Agreement. The Service Provider shall amend its articles of incorporation, by-laws, or any other applicable documents or instruments to allow for the execution of this section and the agreements contained herein. This provision shall survive the termination of this Agreement, and the District shall be entitled to all attorney's fees, costs, and expenses related to the enforcement of this provision against the Service Provider, whether outside litigation, and whether at law or in equity. Title to funds disbursed to the Service Provider by the District shall remain in the District.

9. INDEMNIFICATION

The Service Provider shall fully indemnify and hold the District harmless, as well as its officials, agents, representatives, and employees, from any and all claims of any type, including negligence, and all attorney's fees and related costs, made on account of any loss through personal injuries, deaths, or property damages, arising directly or indirectly out of the sole or concurrent negligence, or the sole or concurrent intentional acts or omissions of the Service Provider or its contractors, officials, agents, volunteers, representatives, employees,

subcontractors, or consultants, in performing the services required under this Agreement. The preceding indemnity clause shall be construed to also mean that the Service Provider shall indemnify the District for personal injuries, deaths, or property damages arising solely or partly from negligence or intentional acts or omissions of the Service Provider, its contractors, officials, agents, employees, volunteers, subcontractors, or consultants but shall not indemnify the District for the District's sole or partial negligence, or sole or concurrent intentional tortious acts or omissions.

10. BREACH AND TERMINATION

10.1 In the event that the District believes the Service Provider has violated any of the terms of this Agreement, the District may notify the Service Provider of the alleged violation in writing. The Service Provider shall, within thirty (30) days following the date of notice, correct the deficiency and provide the District with written confirmation that the deficiency has been corrected. If the Service Provider contends that the alleged violation has not occurred or that any act or omission does not constitute a violation, it shall provide a written objection to the District of its contention within ten (10) calendar days following the date of the notice of violation. The parties then shall attempt to resolve their differences informally. If the parties cannot reach an agreement within thirty (30) days following the Service Provider's notice of objection, the parties will submit the matter either to mediation, or if both parties agree, to binding arbitration. If arbitration is selected, the matter shall be submitted to an arbitrator with membership in the American Arbitration Association. If mediation is selected, the mediator selected will be by agreement of the parties, or if the parties cannot agree on a mediator, the Williamson County Alternative Dispute Resolution Coordinator or similar office shall select the mediator.

10.2 Notwithstanding any other provision of this Agreement, the District may terminate this Agreement for any reason by providing the Service Provider a ninety (90) day written notice of termination, unless the Service Provider is in violation of any provision of this Agreement and the District desires to terminate this Agreement for cause or this Agreement has not been renewed and is under the month-to-month term as set forth in Section 11.4, in which event the Agreement may be terminated on a thirty (30) day notice from the District to the Service Provider.

11. MISCELLANEOUS PROVISIONS:

11.1 This Agreement is executed in Williamson County, Texas, and venue over any action relating to any provision of this Agreement shall be exclusively in Williamson County, Texas. This Agreement shall be governed by the laws of the State of Texas.

11.2 In any action brought to enforce any provision of this Agreement, the District may recover from the Service Provider its attorney's fees, costs, and expenses. This section shall survive the termination of this Agreement.

11.3 The individuals executing this Agreement warrant that they are authorized to enter into this Agreement on behalf of the respective entities that they represent and to bind those entities to the provisions of this Agreement.

11.4 This Agreement shall become effective upon execution by the parties and shall remain in full force and effect from the date of execution through September 30, 2011. In the event that this Agreement is not renewed at the end of its term as stated herein, this Agreement shall remain in full force and effect after such expiration of this Agreement and shall be automatically renewed thereafter on a month-to-month basis until a new agreement is reached between the District and the Service Provider or the Agreement is otherwise terminated by either party hereto. A party desiring to terminate this Agreement will give a ninety (90) day written notice to the other party, unless one of the parties is in violation of any provisions of this Agreement and the party desiring to terminate this Agreement desires to terminate for cause, in which event the Agreement may be terminated upon a thirty (30) day written notice. If this Agreement has become a month-to-month agreement as set forth above, this Agreement may be terminated upon thirty (30) days written notice. Any written notice required herein shall be mailed to the other party's last known mailing address via U.S. certified mail, postage prepaid and return receipt requested; and the date of mailing shall be deemed the date of the postmark. Upon notice of the desire to terminate or amend the agreement, both parties may negotiate any mutually satisfactory amendment or renewal of the Agreement.

11.5 This Agreement contains the entire agreement between the parties and all prior negotiations, statements, representations, or agreements are superseded and displaced hereby. A waiver, alteration, or modification of this Agreement shall not be binding unless it is in writing and signed by both parties.

11.6 The headings of the various paragraphs of the Agreement have been inserted for convenient reference only and shall not be construed to enlarge, diminish, or otherwise change the express provisions hereof.

11.7 In the event that any one or more of the provisions contained in the Agreement shall be held to be invalid or unenforceable in any respect by a court of competent jurisdiction, such invalidity of unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision did not exist

11.8 Any rights or obligations that the Service Provider may have under this Agreement may not be assigned without the express written permission of the District.

11.9 Pursuant to § 775.040, *et seq.*, Texas Health & Safety Code, the District and the Service Provider are specifically authorized to charge a reasonable fee for emergency services performed for or on behalf of a person or entity, including a fee for responding to a false alarm or for a fire code inspection, and such fees may be collected as set forth therein, either by the District or the Service Provider, and at the rates and under the conditions as may be agreed to from time-to-time by the parties hereto.


11.10 The Service Provider understands and agrees that the District has the sole discretion and authority to determine the emergency services organizations or governmental units that provide emergency services in the District, or that the District may provide such


emergency services itself, and the District reserves the right to retain volunteers or employ employees to provide or coordinate on behalf of the District emergency services in the District.

11.11 All titles, categories, and/or ranks of personnel of the Service Provider and the District are recognized as they exist at the time of the execution of this Agreement and such chain of command or other structural or organizational outlines may be followed during the term of this Agreement. It is understood and agreed that personnel titles, categories, and/or ranks should be followed by the personnel acting for the Service Provider or the District regardless of whether that individual is paid or volunteer. Any desired change by the District in such titles, categories, ranks or chain of command shall be adopted by the Service Provider immediately upon written notice from the District to the Service Provider.

11.12 The District's Board of Emergency Services Commissioners, chief, administrator, or other designee shall have the sole authority as to the coordination or provision of the emergency services provided for under this Agreement, which the Service Provider herein recognizes. The District retains the sole discretion to amend, change, or reorganize said command or organizational structure, or the method or manner of providing emergency services in the District, as necessary during the term of this Agreement. The Service Provider further agrees to provide the District's representatives a monthly operational status report (more often, if necessary). At minimum, the operational report will detail the status of equipment, volunteer availability and identify any events the contractor is participating in for the month. The Service Provider further agrees that the District or its designee may request special reports requiring timely response from the Service Provider. This authority does not change the independent contractor status of the Service Provider, and by entering into this Agreement, neither party hereto waives, and shall not be deemed to waive, any immunity, right, or defense either party may have under the Texas Tort Claims Act, Chapter 775, Texas Health & Safety Code, or other applicable law, rule, doctrine, or regulation.


This Agreement is executed and signed on this 18 of December, 2014.

By: 
Tina Geiselbrecht, President
Williamson County ESD # 7

By: 
James Mullins, President
Florence Volunteer Fire Dept.

ATTEST:

By: 
Jim Moreland, Secretary
Williamson County ESD # 7

By: 
David Skeen, Secretary
Florence Volunteer Fire Dept.