COUNTY COMMISSION

BALDWIN COUNTY
312 Courthouse Square, Suite 12
BAY MINETTE, ALABAMA 36507
(251) 937-0264
Fax (251) 580-2500
www.baldwincountyal.gov

MEMBERS
DISTRICT 1 FRANK BURT, JR.
3 J. TUCKER DORSEY
4 CHARLES F GRUBER

August 5, 2014

Mr. Martin Emerson
Chief
Fort Morgan Volunteer Fire Department
12105 State Highway 180 West
Gulf Shores, Alabama 36542

RE: Disaster Assistance Agreement

Dear Chief Emerson:

The Baldwin County Commission, during its regularly scheduled meeting held on August 5, 2014, approved a *Disaster Assistance Agreement/Contract for Volunteer Services* between the Baldwin County Commission and the Fort Morgan Volunteer Fire Department. The *Agreement* shall be effective and commence immediately upon the same date as full execution, and the same shall terminate upon the expiration of thirty-six (36) months or upon a written notification thereof received by either party within the required thirty (30) day period.

Enclosed, please find a **fully executed copy** of the *Agreement* for your records.

If you have any questions or need further assistance, please do not hesitate to contact me at (251) 972-6833 or Mitchell Sims, Emergency Management Agency Director, at (251) 972-6806.

Sincerely,

CHARLES F. GRUBER, Chairman
Baldwin County Commission

CFG/cfc Item BF1

cc: Mitchell Sims
Reggie Chitwood
Nancy Banks
David Brewer

ENCLOSURE

(BALDWIN COUNTY IS AN EQUAL OPPORTUNITY EMPLOYER M/F)

STATE OF ALABAMA)

COUNTY OF BALDWIN)

DISASTER ASSISTANCE AGREEMENT/CONTRACT FOR VOLUNTEER SERVICES
(Volunteer Fire Department)

This DISASTER ASSISTANCE AGREEMENT/CONTRACT FOR VOLUNTEER SERVICES, during and after emergencies affecting the County of Baldwin, Alabama, is made and entered into by and between the County of Baldwin, Alabama, acting by and through its governing body, the Baldwin County Commission, a political subdivision of the State of Alabama (hereinafter referred to as "COUNTY"), and Fort Morgan Volunteer Fire Department (hereinafter referred to as either "PROVIDER" or "VFD").

WITNESSETH:

WHEREAS, pursuant to Code of Alabama (1975), §31-9-10, the COUNTY has the power and authority to take certain and appropriate actions as it deems necessary to direct and coordinate the development and execution of emergency management plans and programs in accordance with the policies and plans set by the federal and state emergency management agencies, and has the power and authority to appropriate and expend funds and enter into contracts to implement and carry out said plans and programs; and

WHEREAS, additionally, as authorized by Code of Alabama (1975), §31-9-10, the COUNTY has appointed a director of its local emergency management program (hereinafter referred to as "DIRECTOR") with direct responsibility for the organization, administration, and operation of the local program, subject to the direction and control of the COUNTY; and

WHEREAS, as a part of the above-referenced authority and in anticipation of the possible need for additional assistance in addressing the needs of the COUNTY during and after an emergency, in the event that adequately responding to the emergency is beyond the resources of the COUNTY, the COUNTY, in consultation with the County Emergency Management Agency (hereinafter referred to as "COUNTY EMA), has determined that in order to properly protect and provide for the health and safety of persons and property in the event of such emergency affecting citizens of the COUNTY, it is necessary and appropriate to enter agreements with certain volunteer organizations to provide additional assistance to the COUNTY and the COUNTY EMA as needed during and after an emergency; and

WHEREAS, PROVIDER is a volunteer fire department as defined in Code of Alabama (1975), §9-3-17, which provides fire protection to the citizens in its area, and which, under Code of Alabama (1975), §9-3-18, is deemed by the Alabama Legislature to be public in nature by protecting the health, safety, and welfare of the public; and

WHEREAS, the PROVIDER has expressed an interest in assisting the COUNTY and the

COUNTY EMA as necessary in the event of an emergency, and the COUNTY desires to retain PROVIDER to provide said services as an independent contractor.

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the sufficiency of which being hereby acknowledged, PROVIDER and COUNTY do hereby agree as follows:

I. Obligations Generally. The COUNTY hereby employs, and the PROVIDER agrees to perform for the COUNTY, those services as herein set forth. This document shall serve as the binding contract for the services of PROVIDER. PROVIDER shall commence performance of the said services as and at the times outlined herein upon full execution of this Contract. All work shall be commenced and completed in a timely manner as, and at the times, herein set out.

II. Recitals Included. The above recitals and statements are incorporated as part of this Contract and shall have the effect and enforceability as all other provisions herein.

III. Professional Qualifications. For the purpose of this Contract, the PROVIDER represents and warrants to the COUNTY that it is a duly certified Volunteer Fire Department.

IV. No Prohibited Exclusive Franchise. The COUNTY neither perceives nor intends, by this Contract, to grant an exclusive franchise or violate Art. I, Section 22 of the Alabama Constitution.

V. Insurance. PROVIDER shall maintain a general liability policy of insurance and further maintain workers' compensation insurance as required by law.

VI. Legal Compliance. PROVIDER shall at all times comply with all applicable Federal, State, local and municipal laws, rules and regulations.

VII. Independent Contractor. PROVIDER acknowledges that it is an independent contractor, and PROVIDER shall at all times remain as such in performing the services under this Contract. PROVIDER is not an employee, servant, partner, or agent of the COUNTY and has no authority, whether express or implied, to contract for or bind the COUNTY in any manner. The parties agree that PROVIDER shall be solely responsible for and shall have full and unqualified control over developing and implementing its own means and methods, as it deems necessary and appropriate in providing the aforementioned services, and that the COUNTY's interests herein are expressly limited to the results of said services. PROVIDER is not entitled to unemployment insurance benefits, and PROVIDER is responsible for and obligated to pay any and all federal and state income tax on any monies paid pursuant to this Contract, if any.

VIII. No Agency Created. It is neither the express nor the implied intent of PROVIDER or COUNTY to create an agency relationship pursuant to this Contract. The PROVIDER does not in any manner act on behalf of COUNTY, and the creation of such a relationship is prohibited and void.

IX. Unenforceable Provisions. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof. This Contract shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

X. Entire Agreement. This Contract represents the entire and integrated agreement between COUNTY and PROVIDER and supersedes all prior negotiations, representations, or agreements, either written or oral. This Contract may be amended only by written instrument signed by all parties.

XI. Failure to Strictly Enforce Performance. The failure of the COUNTY to insist upon the strict performance of any of the terms, covenants, agreements and conditions of this Contract shall not constitute, and shall never be asserted by PROVIDER as constituting, a default or be construed as a waiver or relinquishment of the right of the COUNTY to thereafter enforce any such term, covenant, agreement, or condition, but the same shall continue in full force and effect.

XII. Assignment. This Contract or any interest herein shall not be assigned transferred or otherwise encumbered by PROVIDER without the prior written consent of the COUNTY, which may be withheld or granted in the sole discretion of the COUNTY.

XIII. Notice. Notice required herein shall be in writing, unless otherwise allowed, and said notice shall be deemed effective when received at the following addresses:

PROVIDER:

Fort Morgan Volunteer Fire Department
Attn: Martin Emerson
12105 St. Hwy 180 West
Gulf Shores, AL 36542

COUNTY: Baldwin County Commission
C/O Chairman of County Commission
312 Courthouse Square, Suite 12
Bay Minette, Alabama 36507

XIV. Services to be Rendered and Timing Thereof. PROVIDER is retained by the COUNTY as a qualified provider of Volunteer Fire Department services as defined in Code of Alabama (1975), §9-3-17, which provides fire protection to the citizens in its area.

XV. Request for Services. The parties acknowledge and agree that PROVIDER shall provide the services hereunder upon the request of the DIRECTOR and/or the COUNTY. The general scope of work for the services will encompass:

A. Subject to the conditions set out herein, the PROVIDER shall, upon request of the DIRECTOR, provide the necessary personnel, equipment, and supplies to assist the COUNTY in necessary emergency work during and after an emergency affecting the COUNTY. It is hereby recognized that the VFD has limited resources, and such services will be provided as those resources are available.

B. The VFD may, within its discretion, temporarily decline a request for assistance if, at the time the request is made, its personnel, equipment, and supplies are involved in responding to a fire or rescue call in the area served by the PROVIDER, or if conditions are unfit and unsafe for personnel. In that event, the fire chief of PROVIDER shall advise the DIRECTOR whether it will be available to provide assistance at the time, and if not, the approximate time at which assistance will be available.

C. The Fire Chief of PROVIDER shall, within thirty (30) days following execution of this Contract, provide the DIRECTOR with a complete listing of available personnel, equipment, and supplies he (or she) anticipates will be available in the event of a request for assistance under the terms of this Contract and shall revise and update this listing as necessary.

D. PROVIDER will provide ongoing communications with COUNTY regarding this service, including updates, emails and etc. as requested. Additionally, PROVIDER will meet with COUNTY as needed or requested.

E. PROVIDER is responsible for the professional quality, technical accuracy, timely completion and coordination of all services furnished by or in relation to this Contract.

F. PROVIDER represents and warrants that its services shall be performed according to its own standard operating procedures and in a manner consistent with the level of care and skill

ordinarily exercised by similar providers of volunteer fire services under similar circumstances at the time the services are performed.

XVI. General Responsibilities of the County.

A. The COUNTY shall provide reasonable notice to PROVIDER whenever the COUNTY actually observes or otherwise actually becomes aware of any development that affects the scope or time of PROVIDER's services hereunder or any defect or nonconformance in the work of PROVIDER.

B. The COUNTY shall pay to PROVIDER the compensation as set forth, and subject to the terms set out below.

XVII. Coordination. Both parties agree that all arrangements regarding assistance shall be coordinated between the DIRECTOR and the Fire Chief of the PROVIDER, or their duly appointed representatives, and that neither entity shall be responsible for any activities which are not approved by or coordinated between these individuals.

XVIII. Provider Employees Not County. Both parties agree that the responsibility for personnel lies solely with the PROVIDER and that any personnel of the PROVIDER dispatched to assist the COUNTY during and after an emergency shall be operating under the directions and supervision of the PROVIDER and shall not in any manner be viewed as employees or agents of the COUNTY nor the COUNTY EMA.

XIX. Provider Equipment. Both parties further agree the PROVIDER shall be solely responsible for all equipment and materials utilized by PROVIDER, and that, except for reimbursement for actual costs as provided herein, neither the COUNTY nor the COUNTY EMA shall be responsible for loss or damage to any equipment or materials utilized by the PROVIDER. This provision shall in no way limit such reimbursement from any other source.

XX. Termination of Services. The COUNTY or PROVIDER may terminate this Contract, with or without cause or reason, by giving thirty (30) days written notice of such to the other party. Upon receipt of such notice, Provider shall discontinue its work to the extent specified in the notice.

XXI. Compensation Limited. The compensation to be paid to the PROVIDER in the form of reimbursement for expenses incurred as set forth in this Contract shall be the sole compensation for all work performed by PROVIDER at the request of the COUNTY under this Contract. Any and all additional expenditures or expenses of PROVIDER, not listed in full within this Contract, shall not be considered as a part of this Contract and shall not be demanded by PROVIDER or paid by COUNTY.

XXII. Direct Expenses. When the PROVIDER does provide assistance to the COUNTY or COUNTY EMA under the terms of this Contract, the COUNTY shall reimburse the PROVIDER for its actual costs incurred while providing such assistance. Said compensation shall be all inclusive, including without limitation, reimbursement of all cost, incidentals and operating expense associated with those directly engaged in performance of the requested services, subject to the terms of this Contract. In the event of termination, the COUNTY shall pay Provider for all services satisfactorily rendered, and for any expenses deemed by COUNTY to be a reimbursable expense incurred pursuant to this Contract and prior to the date of termination. The County will utilize, without limitation, State and Federal EMA guidelines when making a determination of whether such expenses are due to be reimbursed.

XXIII. Method of Payment. In order to receive reimbursement under any terms of this Contract, the PROVIDER shall provide the COUNTY with an itemized statement of all expenses incurred and any additional or further information requested in the time frame and manner prescribed by the COUNTY. Payment shall be made by the COUNTY within thirty (30) days of the approval of the invoice submitted by the PROVIDER. The COUNTY agrees to review and approve invoices submitted for payment in a timely manner.

XXIV. Effective and Termination Dates. This Contract shall be effective and commence immediately upon the same date as its full execution, and the same shall terminate upon the expiration of thirty-six (36) months or upon a written notification thereof received by either party within the required thirty (30) day period.

XXV. Force Majeure. The Parties hereto shall incur no liability to the other if performance becomes impossible or impracticable by reason of an event or effect that the parties could neither have neither anticipated nor controlled. This allowance shall include both an act of nature and acts of third parties. Any costs that would otherwise be incurred and or necessitated by the provisions herein shall be alleviated for either party by such event or effect.

XXVI. Amendments. Both parties agree that this Contract may be altered or amended only by written consent of both parties.

XXVII. Hold Harmless. PROVIDER shall fully indemnify and hold the COUNTY, its County Commissioners, departments, employees, supervisors, agents, representatives and attorneys (referred to collectively in this Section XXVII as "COUNTY") completely harmless from any and all claims, demands, notices, violations, findings, actions or orders of whatsoever kind or character which may arise from, or which are in any way related to, the work done and duties or obligations performed by the COUNTY pursuant to this Contract, including, without limitation, attorney fees and legal expenses and costs incurred as a result of the COUNTY enforcing, defending or complying with this Contract,

or otherwise addressing or defending any actions or claims related in any way to this Contract. This provision shall survive the expiration or termination of this Contract.

IN WITNESS WHEREOF, the parties hereto have executed this contract on the last as written below.

COUNTY OF BALDWIN, ALABAMA,
BALDWIN COUNTY COMMISSION,
A POLITICAL SUBDIVISION OF THE STATE OF ALABAMA

8/5/14, Chairman of the Baldwin County Commission
Charles F. Gruber Date

ATTEST:
8-5-2014, County Administrator
David A. Z. Brewer Date

VOLUNTEER FIRE DEPARTMENT,
PROVIDERCONTRACT

Date 7/22/14

Martin E. Emerson Sr. (Signature)

Martin E. Emerson Sr. Print Name

Chief (Authority/Title) (Chief)

NOTARY PAGE TO FOLLOW

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, Monica E. Taylor, a Notary Public in and for said County, in said State, hereby certify that Charles F. Gruber, as Chairman, and David A Z Brewer, as County Administrator, of the Baldwin County Commission, a political subdivision of the State of Alabama, whose names are known to me, acknowledged before me on this day that, being informed of the contents of the Disaster Assistance Agreement/Contract for Volunteer Services, they, as such officers and with full authority, executed same with full authority to do so on behalf of said commission.

Given under my hand and official seal, this 5th day of August, 2014.

Monica E. Taylor
Notary Public, Baldwin County, Alabama
My Commission Expires:

My Commission Expires 09/05/2016

STATE OF ALABAMA)

COUNTY OF BALDWIN)

I, Nancy S Banks, a Notary Public in and for said County, in said State, hereby certify that Martin Emerson, whose name as Chief of Fort Morgan VFD, an Alabama Volunteer Fire Dept who is known to me, acknowledged before me on this day that, being informed of the contents of the Disaster Assistance Agreement/Contract for Volunteer Services, he/she, as such officer and with full authority, executed same with full authority to do so on behalf of said departement.

Given under my hand and official seal, this 22nd day of July, 2014

Nancy S Banks
Notary Public
My Commission Expires:

NANCY S. BANKS
My Commission Expires
July 1, 2018