

MONTANA

DNRC



Forestry Division

Fire and Aviation

Management Bureau

DNRC 600 MANUAL

Section 605

Rural Fire Districts

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605 RURAL FIRE DISTRICTS

A. AUTHORIZATION OF RURAL FIRE DISTRICTS

The authority to form Rural Fire Districts originates in the following section of Montana Law (see **Attachment #1**): MCA 7-33-2101 - The board of county commissioners is authorized to establish fire districts in any unincorporated territory incorporated third-class city (if approved by city), or town upon presentation of a petition in writing signed by the owners of 40% or more of the real property in the proposed district and owners of property representing 40% or more of the taxable value of property in the proposed district.

NOTE: State, federal and county land can be included in the District acreage, but not in the 40% requirement. These lands are exempt from taxation per MCA 15-6-2019(a)(I), (ii). Caution should be exercised when drawing boundaries, as the district will be responsible ALL fires on ALL land and improvements contained within. **Remember:** If you don't want to fight fire on certain lands, don't include them within your district boundaries.

B. ORGANIZATION OF RURAL FIRE DISTRICTS

The idea to organize a Rural Fire District usually begins with either a volunteer fire company's desire to improve its firefighting capabilities by investing in better equipment; or a community's need for initial fire protection, which is best served by a district. Fire districts have the advantage of an optional tax levy to raise funds for either their own operation (personnel, apparatus, capital outlay) or contracting for services with another district.

1. Formation of a New Fire District

Start by holding a meeting of property owners in the area. If people decide to form a district, proceed as follows:

- a. Appoint a chairperson, who then selects a committee to circulate petitions (**Sample A** - see also 605.23 Instructions).
- b. Decide on a boundary for a proposed district. One or more school districts make a good fire district; this saves compilation of area and taxable valuation. Care should be used in this process, as the District is responsible for fire suppression on all areas within its boundaries. Exclusion of federal or state land might be prudent; exclusion of all land in an incorporated city or town is mandatory. Maps can usually be completed by the County Surveyor or Planner. He can also write the legal description.

- c. The petition is usually drawn up by the County Attorney. Members of the committee then circulate copies for signatures. Refer to MCA 7-33-2101 to review required percent of property owners' signatures. Try to get at least 70%-80% (the law requires a minimum of 40%) to allow for some who will be disqualified or perhaps have a change of heart.
- d. The petition is presented to the County Commissioners. If approved, the commissioners may contract with a city, town, private fire company or other public entity to furnish fire protection or they can appoint five (5) trustees to administer the district and serve until an election can be held. Trustees elect a chairperson and a secretary (**Sample B**), draw up by-laws or a constitution (**Samples C and D**), and decide on the type of fire protection to adopt. Besides contracting for fire services with other fire agencies, a district can form its own volunteer fire company to operate the district's equipment.

2. **Annexation to an Existing Fire District**

An alternative to forming a fire district is to consider annexing into an existing district. The area to be annexed must be adjacent to the district. A petition, containing signatures with identical requirements to forming a district, is presented to the fire district board. This process is similar to forming a new district; find interested person(s) to work on annexation and have a public meeting to elect or appoint a committee. This committee will:

- Get maps of area.
- Agree on boundaries.
- Prepare petitions.
- Circulate petitions.
- Encourage petition carriers to get signatures as soon as possible.
- Collect petitions on established dates.
- Check the petitions to be sure a majority of property owners who own at least 50% of the land have signed.
- Turn in petitions to the original fire district.
- Keep public informed on progress.
- Notify people of hearing date for fire district approval.

If approved by the district, it is then presented to the Board of County Commissioners. If annexation is approved by the Commissioners, the annexed territory becomes liable for any outstanding warrants and bonded indebtedness of the original district (only to their fair share unless outlined by the original district and approved by the new signers).

NOTE: Petitions cannot be changed or boundaries changed after they are given out for signatures. Petitions cannot be taken for corrections or additions after they are given to the Clerk and Recorder.

3. **Instructions for Petition Carriers**

Inform petition carriers of the following:

- a. Only taxpayers who are owners of real property (land, tenements, etc.) are eligible to sign a petition. Get full instructions from your County Clerk & Recorder's Office.
- b. Both husband and wife must sign if their names are on the assessment list.
- c. If a corporation, have the president or other officer sign and list the name of the corporation.
- d. If a business, have the owners sign and list the name of the business.
- e. If a corporation or business signer owns or is buying land in the area, have him sign twice; once for business and once for privately-owned land.
- f. Where there is a % symbol (in contract for deed), have person or persons listed AFTER symbol sign, as they are the taxpayers. Do not need other signatures.

EXAMPLE: Neil A. & Alice S. Bratton
% Harold J. Stearns

Get Harold J. Stearn's signature; he is the purchaser.
Do not need Brattons' signatures.

- g. Only need signatures once even if people own several pieces of land.
EXCEPTION: If people own land in their business name, they need to sign twice, once listing the business name and signing and then signing separately for private land.

4. **Electing Trustees to a District**

The five initially appointed trustees shall hold office until their successors are elected or appointed and qualified. The procedures include (**Attachment #2**):

- Hold election on the school election day; the first Tuesday in April of each year.
- Candidates for office of trustee may be nominated by petition filed with election administrator at least 75 days prior to election day, signed by a least five (5) electors of the district (**Sample E**).
- The term of office shall be three (3) years. See 7-33-2106.
- If no nominations are made for trustee(s), the county governing body shall appoint one or more.
- Trustees shall organize by choosing a chairman and appointing a secretary.

a. **Instructions for District Clerk or Secretary**

After ballots are counted and canvassed, the election administrator sends the results, along with a certificate of election and oath of office, to the District Clerk. The clerk then presents the certificate and oath of office to each duly elected trustee, who must return the oath within 15 days (**Sample F**).

A statement of election results should be filed with the election administrator after the clerk determines the terms of the five trustees elected by having them draw by lot from a container in which have been placed two (2) slips showing three-year terms each, two (2) slips showing two-year terms each and one (1) slip showing a one-year term. Thereafter, vacancies or expirations are filled by election for three-year terms.

C. **OPERATION OF A RURAL FIRE DISTRICT**

Fire districts operate with a five member board of trustees. Following the initial organization and election of officers, many important decisions have to be made, including:

- Whether to contract with another fire entity for fire protection.
- Whether to form a Volunteer Fire Company(ies).

- If equipment is needed for the fire district and, if so:
 - What to purchase.
 - How to house the equipment.
 - How to pay for the equipment and its housing.
- How to set up a budget for long-term operation.

1. **Contracting for Fire Protection**

The Board of Trustees may contract for protection with another fire district or the council of any city or town which has any boundary line within five (5) straight line miles of any boundary line of the fire district (**Sample G**). The new fire district:

- Can be in the same county or another county.
- May agree to pay a reasonable fee.
- Can contract with other districts or towns and cities to use the fire district's equipment.
- Shall be an independent contractor in relation to the city or town.

2. **Forming Volunteer Fire Companies**

A fire district can form fire companies that have the same duties, exemptions and privileges as other fire companies. For a more detailed report on forming fire companies, please refer to **Attachment #3**.

NOTE: No one should respond to fire calls before being properly trained, equipped, and officially listed on the Department's roster of firefighters.

There are a couple of reasons for fire districts to form fire companies. One, of course, is the district's need to provide personnel to staff the equipment and actually fight the fires. A less obvious reason is to have an organization in place to be able to accept donations of equipment and money from philanthropic sources in the community. Fire companies can accept and utilize such gifts directly, whereas a tax-supported fire district is somewhat more constrained in this regard. Some points to emphasize in forming fire companies:

- a. File Certificate of Organization with Clerk of the County.
 - 1) List foreman or president, secretary and treasurer; plus all active members.

- b. Elect Fire Chief.
- c. Chief files Annual Certificate stating:
 - 1) Thirty (30) hours of training in matters pertaining to firefighting were attended by each listed member.
 - 2) Company maintained firefighting equipment and owns one or more buildings used to store that equipment that all together is valued at \$12,000 or more for that year.
 - 3) Company, or the district served by it, was rated class 5, 6, 7, 8, 9 or 10 for fire insurance premium rates.

3. **Providing Equipment**

The Board of County Commissioners, at the time of the annual levy of taxes, may levy a special tax upon all property within the district to purchase or maintain fire protection facilities or apparatus. This levy can also be used to pay for contracted services to cities, towns or other fire districts for furnishing fire protection. Such tax must be collected as are all other taxes. This tax levy is authorized by MCA 7-33-2109. Some ideas on equipment purchase and financing:

- a. New apparatus is best if you can afford it.
- b. An engine with 300-gallon* tank and 500 G.P.M. pump should be the minimum for structure protection.
- c. In rural areas, a water tender and a portable tank for shuttle operations will compensate for a lack of water.
- d. County Commissioners may purchase a fire engine and place it in your district.
- e. Ask advice of other fire districts on equipment purchase. Joining the Montana Fire Districts Association is a good place to start. For application and information, contact the Missoula Rural Fire District, 2521 South Avenue, Missoula, MT 59801.
- f. Financing the purchase:
 - A time payment plan, with payments made with annual levy.
 - Issue bonds; pay off installments by levy.

*Minimum standard with hydrant available; 750 gallon if not!

- A community effort to build fire hall; bake sales, dances, etc.
- Application to Farmers Home Administration for Community Facility Loan for purchase of apparatus or building fire hall (**Sample H**).
- Application to the Department of Natural Resources and Conservation for matching funds for fire equipment through RFA, Title IV program (**Sample I**).
- Application to the Department Natural Resources and Conservation through the County Commissioners or County Firewarden for equipment under the State-County Cooperative Wildland Fire Protection program in those counties participating.

4. **Budgeting for Fire Protection**

For the most part, fire districts are governed by county budget procedures. District trustees should refer to MCA 7-6 Part 23, County Budget Law (**Attachment #4**). Basically, a fire district presents its budget to the commissioners, who then set the mill levy for fire protection on property within the district. If a district's total budget request is 5% over the last year's total budget, a hearing is called by the County Commissioners. Otherwise, most budgets are accepted and the mill levy set accordingly.

The budget must be presented to the County Commissioners by the second Monday in August. Also, accompanying the budget must be a reconciliation of the County Treasurer's cash balance (less outstanding warrants) as of June 30. Questions which may arise during preparation of a budget are best answered by checking with your county's Budgeting Director. When setting up a budget (**Sample J**), include the following five basic categories, as a minimum:

- Salary, payroll benefits, and worker's compensation.
- Maintenance and operations.
- Capital outlay.
- Debt reduction (interest and principal on long-term debt).
- Reserve fund.

5. **Audit Requirements**

The Montana Single Audit Act, which became effective July 1, 1992, is codified under Montana Codes Annotated (MCA) 2-7, part 5 (**Attachment #5**). Under this

act, rural fire districts are now required to file annual financial reports with the Department of Commerce. In addition, any fire district receiving “revenues or financial assistance provided by a federal, state, or local government entity . . .” must file a financial report and can fall under the requirements of an audit. This “financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance.”

This act also substantially changed the audit requirements for Montana local governments. As a result, fewer fire districts will be audited. In the past, fire districts were required to be audited unless they had an annual budget of less than \$20,000. Now fire districts need annual revenues in excess of \$200,000, or federal financial assistance in excess of \$25,000. Those fire districts not required to be audited under the rules stated above can still be subject to a “financial review” at least once every four years, if so directed by the Department of Commerce. The scope of the work and the cost would be less than that of an audit.

D. AGREEMENTS OF RURAL FIRE DISTRICTS

Most agencies face the following problems:

- Lack of adequate funding.
- Shortages of trained personnel.
- Aging or non-existent equipment.
- Increasing responsibilities and liabilities.

Short of an infusion of non-existent funds and other improbable solutions, banding together with others in similar circumstances may prove to be a workable way of coping. Rather than working with another fire district or State agency just on a handshake, cooperating agencies must draw up an agreement spelling out specific areas of responsibility, methods of response, and amount and type of equipment and personnel. Mutual aid and interlocal are two types of agreements which create a framework for cooperating with other agencies.

1. **Mutual Aid Agreements**

MCA 7-33-2108 gives fire district trustees the legal authority to enter into mutual aid agreements with the proper authority of:

- Other fire districts;
- Unincorporated municipalities;

- Incorporated municipalities;
- State agencies with fire protection services;
- Private fire-prevention agencies;
- Federal agencies;
- Fire service areas;
- Governing bodies of other political subdivisions in Montana; and
- Governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States.

Refer to Mutual Aid Agreements - A Handbook for Users (**Attachment #6**) when checking on contents of mutual aid agreements. Also refer to **Sample K**. When working with mutual aid agreements, consider the following points. These agreements:

- Cannot always pinpoint the precise resources needed, since these are contingent on each incident of mutual assistance.
- Are dedicated to protecting and preserving lives and property as a primary goal, rather than compliance with the conditions of the contract.
- Are based on the concept that resources, materials or services are voluntarily provided by parties to the agreement, with the idea that there will be a reciprocal exchange, if and when required, of roughly comparable value.
- Are based on the idea that parties providing resources, materials or services will provide them at no profit for the providing party.
- Commit participating parties to a mutually beneficial cooperative agreement based on principles of contract law.
- Provide a mechanism that is in place prior to need, so participating parties can receive assistance.
- Provide a quick response mechanism in emergency situations, with flexibility in the use of resources.

- Allow parties providing assistance to withhold all or part of their resources under certain conditions.
- Should provide that a party requesting assistance will indemnify the party providing assistance for any resulting liability.

NOTE: **Sample K** is the approved Disaster and Emergency Services form for Montana.

2. **Interlocal Agreements**

MCA 7-11-102, 104, and 105 give fire districts, as part of the county governmental structure, specific authorization to enter into interlocal agreements. The purpose and contents are much more specific than those of mutual aid agreements. Refer to **Sample L** as an example and **Attachment #7** for general provisions. The following is a list of items to be spelled out:

- Contract's duration.
- Precise organization and composition of any separate legal entity created.
- Specific purpose(s).
- Manner of financing joint or cooperative undertaking.
- Method(s) to be used to terminate agreement.
- Manner of acquiring, holding and disposing of real and personal property.
- Provision for administration and representation of each party by a joint board.

3. **Contents of Agreements**

Following is a list of contents to be included as a minimum for both mutual aid and interlocal agreements:

- Statement of purpose(s) or intent.
- Legal authorities authorizing such agreements.
- Precise descriptions of the organizations or jurisdictions entering into agreement.
- Effective date of the agreement.

- Method to terminate, partially terminate or amend the agreement.
- Scope of agreement, including the service, activity or undertaking to be provided.
- Statement of command and coordination of responsibilities.
- Statement of participants' liability under the agreement.
- Statement of compensation provision, if any, for materials, services, or equipment and losses incurred.
- Statement of responsibility for providing workers' compensation coverage.
- Statement on insurance coverage requirements.
- Statement of procedures for administering the agreement.
- Designation of administrators of the agreement, and provision for including their successors.
- Statement that entering into an agreement does not exclude entering into other agreements.
- Statement of severability so if one part or section of the agreement is determined by the courts to be invalid, only that section is affected and not the whole agreement.
- Statement of ownership provisions, to include the manner of acquiring, holding and disposing of real and personal property obtained as a result of the agreement.
- Statement about the standard of service required when fulfilling the agreement, if different from that normally provided.
- Method of financing a cooperative undertaking and establishing and maintaining a budget thereafter.
- A signature block, date block and notarization for all participating parties.

4. **Suggestions for Putting Agreements Together**

As has been shown, similar goals can be attained by distinctly different means. Local officials or fire district representatives should make the necessary comparisons and select the agreement that best fits their needs. These agreements

are legal documents and should be reviewed by legal counsel before agreeing to terms and signing. Remember the following items when putting together (or writing) any of these agreements:

- a. Conduct a comprehensive needs assessment.
 - 1) Decide what it is you expect of other agencies and what you are prepared to give in return.
- b. Determine whether a mutual aid or an interlocal agreement best suits your needs.
- c. Contact appropriate people in jurisdictions or organizations you want agreements with.
- d. Conduct meetings and discussions to get input on the agreement.
- e. Conduct a review and incorporate comments into the agreement.
- f. Revise the draft document and brief key officials.
- g. Have legal counsel review document.
- h. Prepare final copy for signature.
- i. Exchange and file signed agreements.

E. INSURANCE PROGRAMS OF RURAL FIRE DISTRICTS

Insurance is always a hot topic, with availability and cost the main concerns. If you have a local agent, try to include him/her in district planning and, if possible, membership. Following are some ideas and contacts for obtaining needed (worker's comp, liability, health & safety, and apparatus) insurance:

1. Insurance Information

Attachment #8, a cover letter from the Thomas J. Wood Insurance Agency, gives some particulars about personal insurance programs *for members, retirees, and fire board members only*.

Attachment #9 is a blanket insurance policy available from Eddie Thomas Insurance Agency, if your fire department is a member of the Montana Volunteer Firefighters Association. Note that all insurance policies offered through the Association are only available to those fire departments that are current dues payers (similar policies are available to non-members, but a different rate would be established). The dues are paid to the Association, and their premiums are paid

to the insurance company. If you have further questions, contact Eddie Thomas Insurance Agency, 124 W. Broadway, Butte, MT 59701, or call (406) 723-3233.

Attachment #10 gives an overview of what to look for when purchasing insurance. It's important to talk to your local insurance agent and also ask other districts how they cope with insurance problems. If you have a Volunteer Fire Department, note the availability of \$75 per year per mobile unit (maximum of two) paid toward maintenance of group insurance by the State Public Employees' Retirement (PERS) Board (refer to **Attachment #11**); MCA 19-17-103.

NOTE: A new insurance pool that fire districts have been taking advantage of is underwritten by EMC Insurance Companies, Bismarck, ND, and it is also administered by the Montana State Volunteer Firefighters Association. A district has to be a current dues-paying member of the association to take advantage of this deal. Fire departments who become members of the Safety Group Insurance Program may be entitled to a dividend if the claims experience is favorable. Coverage offered can apply to fire apparatus, portable equipment, property, general liability, and others. For further questions you can contact the Montana State Volunteer Firefighters Association: (Current President - Carus Kappen, 424 Kings Way, Kalispell, MT, 59901 - call 755-777 wk. or 752-1235 hm.).

2. **Public Safety Officers' Benefit Act**

Note the part of **Attachment #12** which explains the availability of monies to a firefighter's family in the event of his/her death in the line of duty. One important thing to remember when applying for this benefit is that if a firefighter dies or is hospitalized because of a heart attack while fighting fire, a chemical analysis for absolute levels of carbon monoxide (CO) must be performed. This has to be done to prove that high enough (toxic) levels of CO were present to cause a heart attack. Don't delay in having this done, or the claim will surely be disallowed (**Attachment #13**).

3. **"Release from Harm" Form**

One last mention of liability problems: Some districts get requests to use their fire halls for dances, parties, etc. **Attachment #14**, a "Release from Harm" agreement, has been included to help meet this need. The legality of such a form is suspect, but it gives you a starting point to address future problems and present the subject to the County Attorney.

4. **Benefits through PERS for Volunteer Firefighters**

The State, through the PERS board, provides some insurance coverage and retirement benefits to volunteer firefighters. Again, you should reference **Attachment #10**. Included is an application for service retirement (**Sample M**).

Personnel and contents must be covered separately.

5. **Workers' Compensation for Volunteer Firefighters**

A change in the law after the 1995 Legislative session found that "volunteer firefighters" could now be included for coverage under the State Fund for workers' compensation insurance (MCA 39-71-118 4(a)), **Attachment #15**. The big change occurred because the State Fund accepted that volunteer firefighting has value in terms of a salary or "hourly wage." Volunteers are given credit for training hours, station, and response hours made the previous year. The averaged hours per volunteer are multiplied by the total number of volunteers to come up with a total number of hours per year. These total hours are then multiplied by the "hourly rate" (which in 1995 was \$9.33) to come up with a "payment value." Finally, the "payment value" is multiplied by the "work comp rate" (which was 7.89% in 1995) to come up with the **ANNUAL WORKERS' COMPENSATION PREMIUM**. This is a fairly involved process which may have changed by the time this update is published. Specific questions can be answered by calling or writing the State Fund at:

State Compensation Insurance Fund
5 South Last Chance Gulch
P.O. Box 4759
Helena, MT 59604-4759
Phone: (406) 444-6440

6. **Insurance Services Office**

Before leaving the subject of insurance, a short note on the Insurance Services Office (ISO) is in order. These are the people your department will have to contact to receive a Fire Protection Rating (ratings vary from 10 down to 5). A rating of 10 would mean that no fire protection is provided for that area. With a 10 rating, insurance, if available to a business or home owner at all, would be very costly. By meeting some minimal standards for fire protection, an area can often avoid increased taxes on property in a district with lower fire insurance rates. To receive copies of these standards as well as to apply for an inspection by ISO, you must contact:

ISO Commercial Risk Services, Inc.
1385 South Colorado Blvd.
Suite 225
Denver, Colorado 80222
Phone: (303)759-3511

Within the State, the number to call for information is (406) 453-8025 in Great Falls; ask for Earl Huestis. All requests for inspections have to go through the Denver office. When they receive a request from an officer of a department or a

district trustee of the board, they will send several forms to be filled out and returned. When they receive your completed forms, an appointment will be set up for Earl Huestis to perform the inspection. Unfortunately, Earl is the only one doing inspections in this area, so there will be a delay of a few months, at least. Before an inspection, it's important to keep very good records. These records should include training (ongoing and proposed), dates and times of fires, number of firemen responding, maintenance of apparatus and equipment, and an up-to-date roster of fire department members. Since it takes so long to get one of these inspections, be well prepared.

TOPICS	ATTACHMENT NUMBER
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ANNEX “A” SAMPLE LISTINGS INDEX

The following sample forms are examples of subjects discussed in this document.

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B - Sample of Minutes of Meeting	A-2
C - Rural Fire District By-Laws.....	A-4
D - Constitution for a Rural Fire District.....	A-7
E - Petition for Nomination.....	A-9
F - Oath of Candidacy.....	A-10
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H - Community Facilities Loan	A-12
I - RCFP, Title IV - Instruction and Application.....	A-15
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K - Mutual Aid Agreement.....	A-23
L - Interlocal Agreements	A-28
M - Application for Service Retirement	A-31

ANNEX “B” ATTACHMENT LISTINGS INDEX

Following is the list of Attachments for this manual, in numerical order:

1 - Rural Fire Districts MCA 7-33 part 21.....	B-1
2 - Elections MCA 13-1 parts 1 and 4	B-6
3 - Fire Protection Unincorporated Places MCA 7-33 part 23	B-11
4 - County Budget Law MCA 7-6 part 23	B-12
5 - Audits of Political Subdivisions MCA 2-7 part 5.....	B-13
6 - Mutual Aid Agreements - A Handbook for Users MCA 44-11-305.....	B-19
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8 - Tom Wood Letter	B-25
9 - Blanket Insurance Policy	B-26
10 - Fire Department Insurance: Don't Get Burned.....	B-29
11 - Vol. Firefighters' Compensation Act MCA 19-17 parts 1 thru 5	B-35
12 - Public Safety Officers' Benefit Act	B-41
13 - Actions to Be Taken in Line-of-Duty Death	B-42
14 - "Release from Harm" Form.....	B-43
15 - Workers' Compensation Act MCA 39-71 part 1	B-45

NOTE: Whenever there is a question regarding the Montana Codes (MCA), please refer to the latest published updates from the last legislative session, or ask an attorney. Codes cited within are current to date published.

SAMPLE A

PETITION FOR RURAL FIRE DISTRICT

TO: BOARD OF COUNTY COMMISSIONERS OF MEAGHER COUNTY, MONTANA

We, the undersigned, being collectively (on this or other identical petitions) the owners of 40% or more of the real property in the proposed District, and owners of property representing 40% or more of the taxable value of property in the proposed district, DO HEREBY REQUEST AND PETITION THAT YOU ESTABLISH A RURAL FIRE DISTRICT as provided under Sections 7-33-2101 through 7-33-2129 inclusive, Montana Codes Annotated (MCA), with all the powers, duties, and authority contained therein, including the authority to request the levy of taxes for District purposes.

PROPOSED AREA: The area of Meagher County proposed for such Rural fire District is described as follows: T11N, R8E, Sec. 27, 28, 29, 30, 31, 32, 33, and 34; T11N, R7E, Sec. 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36; T11N, R6E, Sec. 25, 26, 27, 28, 33, 34, 35, and 36; T11N, R5E, Sec. 25, 26, 27, 28, 33, 34, 35, 36; T10N, R8E, Sec. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, & 34; T10N, R7E, ALL; T10N, R6E, ALL; T10N, R5E, Sec. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, & 36; T9N, R5E, Sec. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, & 36; T9N, R6E, ALL; T9N, R7E, ALL; T9N, R8E, Sec. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, & 34; T8N, R8E, Sec. 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, & 30; T8N, R7E, Sec. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, & 30; T8N, R6E, Sec. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, & 30; T8N, R5E, Sec. 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, & 27.

EXCLUDING, however, all lands contained within the limits of the incorporated city of White Sulphur Springs.

Printed Name and Address
(as it appears on the Assessment Records)

Signature

SAMPLE B

SAMPLE OF MINUTES OF MEETING

ORGANIZATION OF _____ RURAL FIRE DISTRICT

The trustees of the _____ fire district met, by mutual consent of all the trustees, for the purpose of organizing and choosing a chairman, appointing a secretary, and adopting by-laws for said fire district at _____, _____ County, Montana on the _____ day of _____, 19____. All of the trustees of said district, duly appointed by the county commissioners of _____ County were present at said meeting, said trustees being as follows:

The meeting was called to order by _____.

Notice of the time and place of holding this meeting was expressly waived by all of said trustees and it was agreed that said waiver should be expressed by each of said trustees by signing the minutes of this meeting and the by-laws of this district.

Upon motion duly made, seconded and carried, _____ was elected temporary secretary of this meeting and _____, who called this meeting to order, was named as the temporary chairman to complete the organization of this district to elect officers and to adopt by-laws for the government of said fire district.

Whereupon, _____ introduced and read proposed by-laws for this rural fire district, said by-laws were read discussed section by section, and upon motion duly made, seconded and carried, said by-laws were adopted as the by-laws of this fire district; a copy of these by-laws are as follows, to-wit:

INSERT BY-LAWS

The chairman then announced that the next order of business was the election of a chairman.

_____ was nominated to that position; further nominations were called for; there were no further nominations, and after a motion duly made and seconded, the nominations were closed, votes were cast and _____ was elected chairman of said fire district.

Thereupon _____ was nominated vice-chairman of said fire district. There were no further nominations; on motion duly made, seconded and passed, nominations were closed and _____ was duly elected vice-chairman of said board of trustees.

_____ was nominated secretary; there were no further nominations and after a motion was made and seconded, nominations were closed and _____ was duly elected secretary of said board of trustees.

There being no further business to come before this meeting, the meeting adjourned.

Chairman

Secretary

Trustees

SAMPLE C

BY-LAWS OF _____ RURAL
FIRE DISTRICT, _____ COUNTY, MONTANA

ARTICLE I

POWERS AND DUTIES OF TRUSTEES

- SECTION I. That the authority to provide adequate and standard fire fighting equipment, housing and facilities for the protection of this district shall be vested in the trustees of the district in accordance with the laws of the State of Montana; said trustees shall be responsible for the preparation of annual budgets and request for special levies and the consumation of any contract with any city or town or with the trustees of any other fire district established in any unincorporated territory, town or village, lying within five miles of the farthest limits of this district for the extension of fire protection service by such city or town property included within this district and the payment of a reasonable consideration therefore provided that the district may elect to make a contract with the city, town, fire district, or other public entity and said fire protection shall be vested in the trustees of this district in accordance with the laws of the State of Montana.
- SECTION 2. Said trustees shall further have the power to appoint and form fire companies that shall have the same duties, exemptions and privileges as other fire companies under the laws of the State of Montana.

ARTICLE II

- SECTION 1. A quoram at any meeting of the trustees of this district shall consist of a majority of the five trustees and a majority of such quoram shall decide any question that may come before the meeting.
- SECTION 2. At all meetings of the trustees - each trustee shall be entitled to cast one vote.
- SECTION 3. The election of a chairman, vice-chairman and secretary shall be held at the annual meetings of the trustees.
- SECTION 4. The order of business of the annual meeting, as far as possible and at all other business meeting of the trustees shall be:
- (a) call of roll
 - (b) reading and disposing of any unapproved minutes
 - (c) annual reports of officers
 - (d) unfinished business
 - (e) new business
 - (f) adjournment
 - (g) that in addition to the chairman and secretary elected from the duly appointed and qualified trustees shall be a vice-chairman, who shall preside at meetings of the trustees of this district in the absence of the duly elected chairman.

ARTICLE III

MEETINGS

- SECTION 1. The annual meeting of the trustees of this district shall be held on the _____ day of _____ of each year.

SECTION 2. Any meetings, other than the annual meeting, may be called by the duly elected chairman of this district by written notice at least three days prior thereto, given by the secretary of this fire district to each of the trustees of this district; that said notice may be waived in the event of the necessity of a meeting where a three day's notice would result in the delay of the business of this fire district by a motion made and passed by majority of the trustees of this district and entered in the minutes of the meeting.

ARTICLE IV

OFFICERS

SECTION 1. The secretary shall issue notice of all meetings and shall attend and keep the minutes of the same; he shall have charge of the books of this fire district and shall sign with the chairman or vice-chairman, as the case may be, such instruments as require his signature.

SECTION 2. The officers of this fire district shall be chairman, a vice-chairman and a secretary, all of whom shall be elected for a term on one year and shall hold their offices until their successors are elected and qualified.

SECTION 3. The chairman shall preside at all meetings of the trustees of this fire district; he shall sign such instruments as require his signature and shall perform such other duties as are incidental to his office or are properly required of him by the board of trustees of this fire district; in the absence of or the disability of the chairman, the vice-chairman shall perform his duties.

ARTICLE V

AMENDMENTS

SECTION 1. Any proposed amendment to these by-laws shall first be submitted to the county attorney of _____ County, Montana, before they are presented for vote to ascertain whether or not the proposed amendments are in harmony and in compliance with the laws of the State of Montana.

SECTION 2. These by-laws may be amended, repealed or altered in whole, or in part, by a majority of the vote of the board of trustees of this district provided that such vote comprises of at least three trustees at any regular meeting of the trustees or any special meeting called for that purpose.

We the undersigned, being duly appointed, qualified and acting trustees of said fire district hereby adopt the foregoing by-laws as and for the by-laws of said fire district.

IN WITNESS WHEREOF, we have hereunto set our hands and seals
this _____ day of _____, 19____.

SAMPLE D

CONSTITUTION OF THE _____ RURAL FIRE DISTRICT

We, the registered owners of the real property within the County of _____, State of Montana, designated as the _____ Rural Fire District and established as said _____ Rural Fire District, by act of the Board of Commissioners of _____, County, Montana, desirous of providing the best fire protection for all citizens within the said Fire District, do ordain and establish this Constitution of the _____ Rural Fire District of _____, County, Montana.

ARTICLE I

The names of the said Fire District shall be the _____ Rural Fire District hereinafter referred to as the Fire District and all tax paying owners of real property residing or owning land within the geographical territory of the County of _____, State of Montana, known as the _____ Rural Fire District as established by the order of the Board of County Commissioners of the County of _____, State of Montana, shall be members of the said fire district with all the rights, duties and privileges attached thereto.

ARTICLE II

The purpose of the said Fire District is to act in accordance with the provisions of Title VII, Chapter 33, part 21 of the Revised Codes of Montana, 2007, and all amendments thereto, and more specifically to purchase, equip and maintain apparatus for the fighting and prevention of fire within the said District.

ARTICLE III

The management of the said Fire District shall be done and performed by the Board of Trustees consisting of five (5) members who shall be elected at the annual meeting of the said Fire District from the membership of the said Fire District. In addition thereto the Board of County Commissioners of the said _____ County shall be ex-officio members chosen from the Fire Company of the _____ Volunteer Fire Department of the Town of _____, County of _____, State of Montana, by the Board of Trustees.

ARTICLE IV

The officers of said Fire District shall consist of a president, vice-president, and a secretary-treasurer to be elected from the Board of Trustees by the Board of Trustees.

ARTICLE V

Biannual meetings shall be held on the first Tuesday of April and the last Monday of October of each year.

ARTICLE VI

An amendment to this Constitution may be made by a vote of two-thirds of the members present at the annual meeting, provided notice of the proposed amendment be given a least ten (10) days prior to the annual meeting, and that

ARTICLE VII

Section 1. All meetings shall be run by the "Roberts Rules of Order".

Section 2. A member wishing to speak on any question shall arise and address the chair, confine his remarks to the subject under discussion and avoid all personalities.

Section 3. Any member leaving a meeting while same is in session without being excused through the authority of the chair shall be reported absent on the roll.

Section 4. No political or improper debate shall be permitted by the chair.

Section 5. Visitors are welcome to attend all meetings and their counsel is solicited, but they will have no vote in the business affairs of this department.

Section 6. All members must attend at least one hour of any one meeting to the credited with attendance at that meeting.

ORDER OF BUSINESS

- | | |
|---|---------------------------------------|
| 1. Reading minutes of previous regular or special meetings. | 8. Report of Investigating Committee. |
| 2. Bills and Communications. | 9. Election of Members. |
| 3. Treasurer's Report. | 10. Election of Officers. |
| 4. Reports of Special Committees. | 11. Miscellaneous Business. |
| 5. Reports of Officers. | 12. Roll Call. |
| 6. Reports of Standing Committees. | 13. Adjourned. |
| 7. Application for Membership. | |

SPECIAL MEETINGS

1. Transaction of such special business as the meeting was called for.
2. Roll Call.
3. Adjourned.

Passed, approved and adopted this _____ day of _____, 1977.

_____ President

_____ Secretary

Constitution and By-laws Revised 5/1/96

SAMPLE E

PETITION FOR NOMINATION

To the Election Administrator of the County of Missoula, State of Montana:

We, the undersigned having the necessary qualifications to vote in the election described below, hereby certify that we nominate, in accordance with Section 7-33-2106, Montana Code Annotated:

1. Name of Candidate as it is to appear on the official ballot is

2. Complete post office address of candidate is

(Street and Number or Post Office Box Number) (Telephone #)

(City or Town) (Zip Code)

as nonpartisan candidate for the office of Trustee, for a - Year Term,
(Independent/nonpartisan)

for _____
(City/Town/District Name or Number)

and respectively request that the candidate's name, as set forth above, be placed on the ballot in the School Election to be held April 1, 1996, as prescribed by (law/resolution).

	Printed LAST Name of Elector COMPLETE SIGNATURE (Complete Name of Property Owner)	Address Street & No. or PO Box No. & City	Precinct Number (if applicable)
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____
5.	_____	_____	_____
6.	_____	_____	_____
7.	_____	_____	_____
8.	_____	_____	_____
9.	_____	_____	_____
10.	_____	_____	_____
11.	_____	_____	_____
12.	_____	_____	_____
13.	_____	_____	_____
14.	_____	_____	_____

SAMPLE G

C O N T R A C T

The WEST HELENA VALLEY RURAL FIRE DISTRICT, hereinafter known as the Fire District, a duly incorporated district of Lewis and Clark County, hereby enters into a fire protection agreement with _____, owner of all land and buildings according to the attached description.

At the request of said party, his agent or assignee, the Fire District will send one fire truck and as many firemen on a volunteer basis as deemed necessary by the officer in charge, to fight a fire on the described property.

Should a fire of major proportions develop within the primary fire district covered by the West Helena Valley Rural Fire District, all men and equipment can, at the determination of the officer in charge, be withdrawn from the contractee's land to fight said fire within the district.

For this protection the contractee, his heirs, agents or assignees, will pay the same mill levy as is assessed on the main fire district plus an additional two (2) mills. This money is to be collected with the county taxes each year and deposited in the normal manner to the Trustee's Fund of the Fire District. Failure to pay said levy when due and owing will act to void any and all obligations of the Fire District under this Contract. The Trustees of the Fire District reserve the right to cancel this Contract upon thirty (30) day written notice to the contractee.

Dated this ____ day of _____, 19____.

TRUSTEES WEST HELENA VALLEY RURAL FIRE DISTRICT

SAMPLE H

Rural Economic and Community Development

Community Facility

Clark Johnson, State Director

Steve Troendle, Program Director

Rural Housing Services



Loans

(RHS)

**P.O. Box 850
Bozeman, MT 59771
(406)585-2580**

Discrimination on the basis of race, color, religion, sex, or national origin, or on the basis of a handicap is forbidden in government contracts.

Community Facility Loans

Rural Housing Services (RHS) can make and guarantee loans to develop essential community facilities in rural areas and towns of up to 20,000 in population. Guaranteed loans are made and serviced by lenders such as banks, savings and loans, mortgage companies which are part of bank holding companies, banks of the Farm Credit System or insurance companies regulated by the National Association of Insurance Commissioners. RHS may guarantee up to 90 percent of any loss of interest or principal on the loan. Normally, guarantees will not exceed 80 percent. RHS can also make direct loans to applicants who are unable to obtain commercial credit. All applications are treated with equal consideration, without regard to race, color, religion, sex, marital status, age handicap, or national origin. Opportunity to construct, develop, and use the facilities financed by RHS must be extended on the same basis.

How May Funds Be Used?

Loan funds may be used to contract, enlarge, or improve community facilities for health care, public safety, and public services. This can include costs to acquire land needed to develop the facility, pay necessary professional fees, and purchase equipment required for its operation. Examples of essential community facilities include:

- ! Health Care: Clinics, ambulatory care centers, hospitals, rehabilitation centers, and nursing homes.
- ! Telecommunications: Medical and educational telecommunication links.
- ! Public Safety: Communications centers, police and fire stations, fire trucks, rescue vehicles, and jails.
- ! Public Services: Adult and child care centers, city halls, court houses, airports, garages, off-street parking facilities, fairgrounds, and animal shelters.

Who May Apply?

Loans and guarantees are available to public entities such as municipalities, counties, and special purpose districts. Nonprofit corporations and tribal governments may also apply.

In addition, applicants must have the local authority to borrow and repay loans, to pledge security for loans, and to construct, operate, and maintain the facilities. They must also be financially sound and able to organize and manage the facility effectively.

Repayment of the loan must be based on tax assessments, revenue, fees, or other sources of money sufficient for operation and maintenance, reserves, and debt retirement.

What Security is Required?

Bonds or notes pledging taxes, assessments, or revenue will be accepted as security if they meet statutory requirements. Where State laws permit, a mortgage may be taken on real and personal property. Tax-exempt notes or bonds may be issued to secure direct loans, but cannot be used for guaranteed loans.

What is the Interest Rate?

Interest rates for direct loans are based on current market yields for municipal obligation, although loans for facilities impacting prime or unique farmland may require a slightly higher rate. Certain other direct loans may qualify for a lower interest rate, depending upon the median household income of the residents of the community to be served. The interest rates for guaranteed loans may be fixed or variable and are determined by the lender and borrower, subject to RHS review and approval.

Montana Offices

State Office - Bozeman

406-585-2580

Missoula	406-829-3395 Ext 4
Billings	406-657-6297 Ext 4
Bozeman	406-585-2530
Great Falls	406-727-7580 Ext 4
Kalispell	406-756-2005
Helena	406-449-5000 Ext 4

APPENDIX I

DEPARTMENT OF NATURAL RESOURCES AND CONSERVATION

2705 Spurgin Road, Missoula, MT 59804-3199
(406) 542-4300 Telefax (406) 542-4217



BRIAN SCHWEITZER
GOVERNOR

STATE OF MONTANA

DIRECTOR'S OFFICE (406) 444-2074
TELEFAX: (406) 444-2684

January 18, 2007

Dear Grant Applicant:

The 2007 application period for matching funds through the federally funded Volunteer Fire Assistance (VFA) program (U.S. Forest Service) and the Rural Fire Assistance (RFA) program (U.S. Department of Interior Agencies-Bureau of Land Management, US Fish & Wildlife Service, Bureau of Indian Affairs, and National Park Service) is now open. Completed applications must be received no later than 5:00 pm **March 1, 2007**. While we realize this to be a short turnaround time, it is necessitated by changes within the federal system. It is possible that applications received after that time will not be considered for this year's funding, so please return as soon as possible.

Submit applications to:

**Montana DNRC
Forestry Division/Fire & Aviation Management Bureau
Attn: VFA/RFA Grant Program Administrator
2705 Spurgin Road
Missoula, MT. 59804-3199**

Changes have been made to the application. Single applications representing countywide fire organizations are required. Attach an Appendix A for each individual organization (Fire Company, District, Fire Service Area, etc) and list the project(s) for that organization. At the top of the Appendix please write the name of the applicant organization that Appendix corresponds to. For countywide projects (a project that benefits all departments within the county (i.e. repeater system, etc) include one Appendix A and denote that it is a countywide project that includes the fire departments listed in the main body of the application.

The funding for 2007 VFA/RFA program may be below that of last year, although the exact amounts will not be known for some time. The Department of Interior and the U.S. Forest Service fact sheets are enclosed with the grant application and I urge you to make sure that your request falls within those guidelines. I will also add that communications equipment should be capable of integrating with other agency fire fighting forces (analog and narrowband). The maximum grant amount for a single applicant is \$20,000. Construction or improvement of fire stations for housing fire equipment, normal

operational expenses, and maintenance do not qualify for VFA/RFA funds. It is strongly suggested that every application contain some element for training, whether that's paying student expenses, sponsoring wildland classes, rental, etc.

Please note that there are changes within the application from previous years. Applications missing elements or incomplete may not be considered, so please look them over carefully when filling out and do not just copy last year's application without checking. Please note that grants are dependent on Congress funding the programs, which has not yet been done. As in every grant, do not expend requested funds prior to them being formally awarded by written notice. The VFA/RFA grant has been an excellent source for local fire organizations, and we encourage your participation. We appreciate the work involved in getting county agencies together and in putting the applications together fairly.

Details are available by contacting your local DNRC office, by calling (406) 622-5455, or on the internet at: www.dnrc.mt.gov/forestry/fire.

Sincerely,



Doug Williams
Rural Fire Program Coordinator
Fire and Aviation Management Bureau
Forestry Division

Volunteer Fire Assistance and Rural Fire Assistance Program

Date Rcv'd.: _____
For DNRC Use Only

Application Period: January 22 – March 1, 2007

APPLICANT:

Date _____

Name of Organization _____

Address _____

City _____ County _____, Montana / Zip _____

Person to Contact (name) _____ (Title) _____

Phone _____ Cell _____ Email _____

Chief Officer _____ (Title) _____

Federal Identification number to be used for grant: # 81 - _____

DUNS number: _____

JURISDICTION

Briefly describe your jurisdiction. _____

Do you protect all property/residents in your community, district or area? Yes ___ No ___

PROJECT INVOLVEMENT - Countywide Application

Communities involved (names) _____

List Departments involved (complete Appendix A for each dept) _____

DOES THE PROJECT HAVE, OR HAVE THEY APPLIED FOR AN FHA COMMUNITY FACILITY LOAN THAT RELATES TO IMPROVE FIRE PROTECTION? Yes ___ No ___ If "Yes", when _____

DOES FIRE DEPARTMENT HAVE A CURRENT COOPERATIVE WILDLAND FIRE AGREEMENT WITH
(circle one) **DOI** **Tribal** **State** **USFS** **None**

IS THE FIRE DEPARTMENT A TRIBAL DEPARTMENT? Yes _____ No _____

**DOES THE DEPARTMENT HAVE INDIAN TRUST AND/OR RESTRICTED INDIAN LAND WITHIN
PRIMARY RESPONSE AREA?** Yes ____ No ____

WHAT ASSISTANCE DOES THIS APPLICATION COVER?

Organizing Fire Protection _____
Training _____
Fire Equipment _____
Fire Prevention _____
Wildland PPE _____

ESTIMATED TOTAL PROJECT COST: *From Appendix "A"*

TOTAL \$ _____

FIRE SERVICE INFORMATION:

Do you file your fire reports using the NFIRS system?	Yes	No
Number of wildland urban intermix acres protected by applicant:		
Number of wildfire responses within primary response area in 2006 - DOI lands:	USFS lands:	
Total number of wildfire responses in 2006:	# of Initial Attack	# of Extended Attack
Number of mutual aid responses within primary response area in 2006 (include ALL agencies):		
Total number of all Fire Department responses in 2006 (wildfire, structure, EMS, all-risk):		
Minimum number of firefighters responding to structure fire in past three years:		
Maximum response distance (do not include mutual aid):		
Does your Fire Department have a wildland fire prevention program?	Yes	No
How many members of department meet basic wildland firefighter safety training (S130,S190)?		
How many members meet advanced wildland firefighter qualifications (ENGB,STEN,ICT3,etc)?		
What basic/advanced wildland fire training courses are necessary to meet department's needs?		
Does the department currently have wildland fire PPE for all active members? If not, how many members are equipped with PPE?		
Do you have a Community Wildland Fire Protection Plan (CWPP) or equivalent plan?	Yes	No

NOTE:

- **One Appendix "A" must be attached for each department included in this application.**
- **Contracts are valid for six months from date of issuance; all allocated funds are to be expended by the contract expiration date.**
- **ONLY Countywide applications will be considered for grant participation, with exception of departments in counties without a countywide organization. In the case of departments in counties without a county fire association or fire council, countywide fire department, etc., your applications must be submitted through your County Fire Warden.**

I understand that grant awards are conditional on Congressional funding of the VFA/RFA Program.

NIMS CERTIFICATION: I certify that our organization has adopted and uses the National Incident Management System (NIMS) in day-to-day emergency operations. Yes ___ No ___

Application Prepared By: _____ **Date:** _____

Signature: _____

Mail application and appendixes to:

Montana DNRC
Forestry Division/ Fire & Aviation
ATTN: VFA/RFA Grant Program
2705 Spurgin Road
Missoula, MT 59804-3199

DNRC contacts:

Doug Williams 406-622-5455 DWilliams4@mt.gov
Ann Evans 406-542-4233 aevans@mt.gov

SAMPLE J

INSTRUCTIONS FOR PREPARATION OF BUDGET

I. SALARY & PAYROLL BENEFITS:

ANNUAL SALARIES: Amount paid if department employs personnel year round.

EXTRA HELP: Seasonal or part time help.

SOCIAL SECURITY & RETIREMENT: Employer has to pay half and withholds half of tax from employee.

CLERICAL: Pay for keeping records & bookkeeping

VOLUNTEER PAY OR REIMBURSEMENT: Some places pay for volunteer help. Others reimburse volunteers for costs of cleaning & wear and tear on their own equipment if used at fire or training. NOTE: Check with State Compensation Insurance Fund for Workers' Comp.

II. MAINTENANCE & OPERATIONS:

TRAVEL EXPENSE: Pay for using own equipment on fire or expense of administrative travel.

SUPPLIES & CLOTHING: Cost of necessary supplies and clothing for department.

CHEMICALS: Cost of fire fighting chemicals.

TRUCK MAINTENANCE & REPAIR: Self explanatory.

GAS & OIL: Cost necessary to run department vehicles.

INSURANCE: Vehicle insurance, Volunteer medical insurance, Liability insurance, Fire insurance, Workers' Compensation Insurance, etc.

DUES, SUBSCRIPTIONS, EXAMINERS FEES, MISC., ETC.: Dues for Volunteer Fireman's Assn., Fire Chiefs Assn., Fire Districts Assn. etc. Subscriptions to Fire Chief, Fire Command, Volunteer Fireman, etc. Examiners fees for auditing records, misc. items - only purchased when not in other categories.

CONVENTIONS & WORKSHOPS: Convention expense and training expense.

III. OTHER MAINTENANCE & UTILITIES:

MAINTENANCE: Maintenance of buildings and grounds.

RENT: Rent of buildings or equipment.

UTILITIES: Self explanatory.

IV. CAPITAL OUTLAY: Capital Outlay & Debt Reduction involve County budget laws, so it becomes extremely difficult to discuss in a letter form. Check

County budgeting director for necessary information.

with the

V. DEBT REDUCTION:

PROPOSED BUDGET CATAGORIES ---- FISCAL YEAR

COUNTY_____

EXPENSES

1. Professional Fees & Salaries

- A. Clerk _____
- B. Attorney _____
- C. Fire Marshall _____
- D. Chief _____

TOTAL _____

2. Office Supplies

- A. Postage _____
- B. Printing _____
- C. Reg. Supplies _____
- D. Duplicating _____
- E. Clerk _____

TOTAL _____

3. Heat & Lights

- A. Fuel Oil _____
- B. Electricity _____
- C. Fill Stations _____

TOTAL _____

4. Dispatch & Phone

- A. 911 Fees _____
- B. Fire Phone _____
- C. Business Phone _____

TOTAL _____

5. Repair & Maintenance

- A. Truck _____
- B. Radio _____
- C. Building-Reg. _____
- D. Winterization _____
- E. Rewiring-Code Upgrd. _____
- F. Airpack-Testing _____

TOTAL _____

6. Supplies

- A. Truck Fuel _____
- B. Vol. Fuel _____
- C. Lub. & Filters _____
- D. Janitorial _____
- E. Medical Supplies _____
- F. Food at Fires _____
- G. Chemicals _____

TOTAL _____

PROPOSED BUDGET CATAGORIES ---- FISCAL YEAR

COUNTY _____

EXPENSES cont.

7. Operating Supplies

- A. Travel _____
- B. Mag., Dues, Etc. _____
- C. Fire Prevention _____
- D. Physical Fitness _____
- E. Training Aids _____
- F. MCA Code Books _____
- G. Photo Supplies _____
- H. Chief's Fund _____
- Trustees' Fund _____
- J. Convention Supplies _____
- K. Audit _____

TOTAL _____

8. Insurance

- A. Trucks _____
- B. Building _____
- C. Disability _____
- D. Clerk's Bond _____
- E. Special Insurance _____
- F. Errors & Omissions _____

TOTAL _____

9. Lease-Purchase

- A. Truck Contracts _____
- B. New Vehiles _____
- C. Building _____

TOTAL _____

10. Elections

- A. Annual Trustee Election _____

TOTAL _____

11. Capital Outlay

- A. Water Fills _____
- B. Oxy-Acty Set _____
- C. Elec. Welder _____
- D. Drill Press _____
- E. Word Processor _____
- F. Airoacks _____

TOTAL _____

12. Small Assets

- A. Gloves _____
- B. PASS System _____
- C. Clothing(Uniform) _____
- D. Backpack Pumps _____

TOTAL _____

GRAND TOTAL _____

SAMPLE K

EMERGENCY SERVICES MUTUAL AID AGREEMENT

Whereas, it has become apparent in recent years that a potential for holocaustal fires and emergency situations exists in Montana;

Whereas, a threat of major or significant fires and/or disasters in one geographical area is a threat to all areas;

Whereas, it is necessary that provision be made for disaster and emergency services as defined in Section 10-3-103, M.C.A. by mutual cooperation and aid among the various local governing bodies and emergency services entities;

Whereas, it is to the mutual advantage and benefit of all agencies that each render supplemental assistance in the event of an emergency incident of a magnitude that has or appears to have developed beyond the control of a single agency, and assistance is required from one or more other agencies;

Whereas, Section 10-3-202, M.C.A. specifically encourages political subdivisions to conclude mutual aid arrangements with other public and private agencies within this state for reciprocal aid and assistance in coping with emergencies and disasters;

Whereas, local and interjurisdictional disaster and emergency agencies may assist in negotiations of reciprocal mutual aid agreements and have the authority to carry out arrangements of any such agreements;

Whereas, it has been determined by the signatories hereto that it is mutually advantageous to render emergency, disaster, and fire assistance to one another and that the benefit to be derived by each of the agencies in having available additional protection to life and property against loss is ample consideration to the parties;

Whereas, it appears to be in the best public interest for all taxpayers and residents of the respective jurisdictions, a party hereto, that this agreement be created.

Now, therefore, in mutual consideration of the promises and covenants contained herein, the parties agree as follows:

I

The purpose of this compact is to provide voluntary assistance among participating jurisdictions in responding to any disaster or emergency that overextends the ability of an individual local government to reduce, counteract, or remove the danger. Assistance may include, but is not limited to rescue, fire, police, medical, communication and transportation services and facilities to cope with problems which require use of special equipment, trained personnel, or personnel in large numbers not locally available.

II

It is agreed by participating parties that the following conditions will guide implementation of this mutual aid agreement:

(1) Participating parties through their designated officials are authorized to request and receive assistance from a participating party. Requests will be granted Only if the requesting party is committed to a response to the emergency and Other resources are not immediately available.

(2) Personnel and equipment of the aiding party made available to the requesting party shall remain under the control and direction of the aiding party. The activities of personnel and equipment of the aiding party must be coordinated by the requesting party.

(3) The aiding party may also request aid, under this Agreement, to provide continued emergency response service within its jurisdiction

III

(1) The requesting party shall reimburse the aiding party as soon as possible after the receipt by the requesting party of an itemized voucher requesting reimbursement of labor costs.

(2) After a period of twenty-four (24) hours the requesting party shall, in addition to the costs in subsection (1), within a reasonable time, reimburse the aiding party for costs incurred for equipment and material expended in accordance with the schedule of reasonable charges promulgated under Section VIII

(3) Upon the expenditure by the requesting party of its permissible two-mill emergency levy, reimbursement from the requesting party shall cease.

(4) This reimbursement of costs policy shall not apply where the requesting party shall be the State or Federal Governments or their agents. The requesting party shall utilize all necessary means to collect funds payable to aiding parties.

IV

(1) All privileges and immunities from liability, exemptions from law, ordinances, and rules and all pension, disability relief, workers' compensation, and other benefits that apply to the activity of officers, agents, or employees when performing their respective functions within the territorial limits of the respective political subdivisions apply to them to the same extent while engaged in the performance of any of their functions and duties extraterritorially under the provisions of this agreement.

(2) All privileges and immunities from liability, exemptions from law, ordinances, and rules and workers' compensation and other benefits that apply to duly enrolled or registered volunteers when performing their respective functions.

at the request of their state and within its territorial limits extraterritorially under the provisions of this agreement.

(3) The signatory parties shall hold harmless the corresponding entities and personnel thereof from the other party with respect to the acts and omissions of its own agents and employees that occur while providing assistance pursuant to the common plan.

(4) Nothing in this arrangement may be construed as repealing or impairing any existing mutual aid agreements.

(5) Upon enactment of this agreement by two or more parties, and annually by each January 1, thereafter, the participating parties will exchange with each other the names of officials designated to request and/or provide services under this agreement. In accordance with the cooperative nature of this agreement, the parties shall exchange Operational procedures to be followed in requesting assistance and reimbursement of expenses.

(6) This agreement becomes effective and is binding upon the execution hereof.

(7) This agreement shall remain binding upon a party until it gives notice to the appropriate officials of all other parties. An actual withdrawal may not take effect until the 30th consecutive day after the notice has been sent. Such withdrawal does not relieve the withdrawing party from its obligations assumed under this agreement prior to the effective date of withdrawal.

V

Upon receipt of a request for aid from a party, the responding party shall respond to its fullest ability to do so, but in doing so, it is not required to leave its jurisdiction unprotected. The decision of the duly designated officer in charge of the responding party as to what resources are available for mutual aid response is final.

IV

The party legally responsible for disaster and emergency services at the scene of the same shall remain in charge and provide general direction to all aiding agencies through their officers in charge.

VII

It is mutually agreed and understood that this agreement shall not relieve any agency of the responsibility for disaster or emergency service within its own jurisdiction nor does this agreement create any right in or obligation to third persons by any party hereto which would not exist in the absence of this agreement.

VIII

The technical heads of the parties to this agreement are authorized and directed to meet and draft detailed plans and procedures of operation necessary to effectively implement this agreement.

IX

In the event that any part or portion of this agreement shall be declared unenforceable by a competent court of justice, all other parts or portions shall remain in full force and effect.

x

All other agreements between or among the parties hereto shall remain in full force and effect unless repealed impliedly or expressly by this Agreement.

IN WITNESS WHEREOF, the parties have ~executed this agreement on the date above written.

ADOPTED THIS ____ DAY OF OCTOBER, 1986

BOARD OF COUNTY COMMISSIONERS
Missoula County, Montana

Approved for Form and Content:

Barbara Evans, Chairman

County Attorney's Office

Ann Mary Dussault, Commissioner

Attest:

Janet Stevens Commissioner

Clerk and Recorder

SAMPLE L

**AMENDMENT OF CONTRACT
FOR FIRE PROTECTION**

THIS INTERLOCAL AGREEMENT made and entered into the 12th day of June, 1979, between the City of Columbia Falls, Montana, hereinafter called "City" and Columbia Falls Rural Fire District, hereinafter called "District", acting by and through its Board of Trustees:

WHEREAS, the City is an incorporated city of the third class, duly organized under the laws of the State of Montana: and

WHEREAS, the City has a fire department, with equipment furnished and purchased by public funds, but with all personnel except the Chief being unpaid volunteer firemen; and

WHEREAS, the District is formed under the Laws of Montana with the purpose and authority of providing fire protection for property within the boundaries of the District, more particularly described on Exhibit A, attached: and

WHEREAS, the parties previously operated under a contract whereby the fire department of the City provided fire fighting service, and the District furnished certain equipment and paid certain charges; and

WHEREAS, the original contract has become outdated, charges are no longer sufficient, and certain changes in the mode of operating need to be made.

NOW, THEREFORE, in consideration of the foregoing, and in consideration of the mutual covenants herein expressed, the City and the District agree:

I. The City will furnish the fire fighting services as shall be required by the District for the fiscal year commencing July 1, 1979 and terminating June 30, 1980, subject to the following conditions, limitations, and exceptions:

a. The only city equipment which shall be obligated to proceed to any fire in the District shall be the equipment furnished by the District to the City pursuant to this contract.

b. The City shall have no obligation to furnish anymore personnel with the equipment of the District than the normal minimum necessary to man such equipment

c. The District shall indemnify and save the City harmless of and from any and all actions, suits, proceedings, claims and judgments based upon any failure of the City's fire department and equipment promptly to respond to any fire call or any asserted negligence, malfeasance or nonfeasance in the manner of responding to any fire call, or fighting any fire, including travel to and from the same.

2. The District shall have the following obligations.

a. To pay the City a sum of \$2,000.00 for the services of the fire department and the additional sum of \$2,000.00 for the services of the City's fire and police message center.

b. To pay the City for equipment storage space resulting from keeping and storing equipment furnished by the District and one hydrant rental in the amount of \$1,000.00 per year.

c. To reimburse the City for any insurance, liability or property, found desirable by the City to insure operations on behalf of the District.

d. As additional equipment becomes desirable and is requested by the City, to mutually agree to furnish such equipment promptly as the same becomes within the financial capabilities of the District.

3. Equipment furnished by the District may be used upon fires within the boundaries of the City if the equipment of the District is needed and available. It is intended that equipment of the District shall be used as standby equipment in the normal case, with first priority on the use of the same to be on fires in the District. Upon discretion of the Chief of the Columbia Falls Fire Department any city fire equipment may be used in the Columbia Falls Rural Fire District on any fire fighting mission

4. The City's fire and police message center will receive and process fire calls within the District on the same basis as it now receives and processes fire calls within the boundary of the City.

5. This contract shall be subject to review by all parties concerned at the end of each fiscal year, and they shall in good faith negotiate any and all requests for changes. If no party objects to this contract or any part thereof, the contract shall be deemed as renewed for the ensuing fiscal year.

6. The equipment of the District shall consist of the following:

The 1965 GMC Pumper Fire Truck, fully equipped:

The 1958 International Tanker;

The equipment, excluding the pump, on the 1965 Dodge Pickup Truck. This vehicle is owned by Civil Defense; Such other miscellaneous fire fighting items heretofore furnished by the District;

Such further vehicles, equipment and supplies as the District shall hereafter furnish.

7. No separate legal entity is created by this agreement or by the previous agreement between the parties which this supersedes.

8. Financing of the operations under this agreement shall be by the assessment revenues of the District paid pursuant to the City as herein stated.

9 This agreement shall be renewed from year to year by the procedure stated herein and shall be indefinite in term. All property furnished by the District shall remain in the ownership of the District and retained by it in event of termination.

10. No joint board or administrator shall be appointed to administer this agreement. Any conflict or disagreement as to the intent, scope, purpose, or operations under this agreement shall be resolved by joint meeting of the City Council of the City and the Board of Trustees of the District.

11. This agreement shall not take effect until executed by both parties and also approved at a regular meeting of the Columbia Falls Volunteer Fire Department.

IN WITNESS WHEREOF, the City has caused these presents to be executed by its mayor and city clerk, and the District has caused the same to be executed by its trustees.

CITY OF COLUMBIA FALLS

Mayor

ATTEST:

City Clerk

COLUMBIA FALLS RURAL FIRE DISTRICT

BY _____

BY _____

BY _____

BY _____

BY _____

APPROVED by the Volunteer Fire Department of Columbia Falls at a regular meeting July 5, 1979

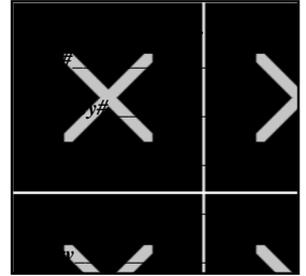
President _____

ATTEST

Secretary _____

SAMPLE M

VOLUNTEER FIREFIGHTERS' COMPENSATION ACT
1712 NINTH AVE
PO BOX 200131
HELENA MT 59620-0131



APPLICATION FOR SERVICE RETIREMENT

In accordance with the provision of Section 19-17-401, MCA (see reverse); I hereby make application for retirement from active service.

TO BE COMPLETED BY THE RETIRING MEMBER:

(Please Print or Type)

1. Name _____ SSN _____

2. Date of Birth _____ ****ATTACH COPY OF BIRTH CERTIFICATE**

3. Fire Company Retiring From _____

4. Address _____

(Street or PO Box)

City _____ State _____ Zip _____

5. Last Year of Credited Service: June 30, _____

6. Anticipated date of retirement _____

7. Name of Beneficiary _____ Date of Birth _____

(Wife or Children-under age 18)

Beneficiary's SSN _____ Relationship _____

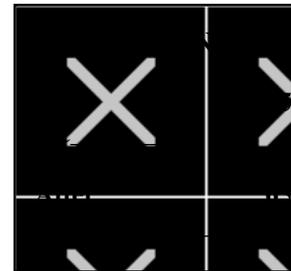
8. **SERVICE CERTIFICATION**

Years of service **prior** to 7/1/65 (credited @ 50%)

From _____ To _____

Years of service **after** 7/1/65:

From _____ To _____



Please send me a Direct Deposit Form YES _____ NO _____

I certify the above service is correct to the best of my knowledge.

Signature of District Fire Chief

Date

Signature of Retiree

Date

ELIGIBILITY FOR PENSION BENEFITS

The Volunteer Firefighters' Compensation Act; Section 19-17-401, MCA, states:

A volunteer firefighter is eligible to a full participation pension benefit after completing 20 years of qualified service and attaining age 55. A member does not have to be an active member of a volunteer firefighting company when age 55 is attained.

A volunteer firefighter with at least ten years but less than 20 years of credited service, qualifies for partial participation benefits after attaining age 60.

The years of service are cumulative and need not be continuous. The service may be acquired through separate periods of service with different fire companies. Fractional years may **not** count toward service retirement, to receive credit for any year., the volunteer firefighter must have been a member for an entire year **and** must have received the minimum 30 hours of instructional training. These two requirements are documented through the filing of **Annual Certificates** by each fire company's fire chief with the Public Employees' Retirement Division.

A volunteer firefighter receiving benefits may not be an active member of any fire company.

RETURN TO: **PUBLIC EMPLOYEES' RETIREMENT DIVISION**
 1712 NINTH AVE
 PO BOX 200131
 HELENA MT 59620-0131

ATTACHMENT #1

Part 21 Rural Fire Districts

7-33-2101. Rural fire districts authorized -- petition. (1) The board of county commissioners is authorized to establish fire districts in any unincorporated territory or, subject to subsection (2), incorporated third-class city or town upon presentation of a petition in writing signed by the owners of 40% or more of the real property in the proposed district and owners of property representing 40% or more of the taxable value of property in the proposed district.

(2) (a) Third-class cities and towns may be included in the district upon approval by the city or town governing body.

(b) A third-class city or town may withdraw from a district 2 years after providing to the board of county commissioners notice of intent to withdraw.

7-33-2102. Notice of hearing. The board shall, within 10 days after the receipt of the petition, give notice of the hearing at least 10 days prior to the hearing:

(1) by mailing a copy of the notice as provided in 7-1-2122 or as provided in 7-1-4129 if the proposed district or a portion of the proposed district is in an incorporated third-class city or town to each registered voter and real property owner residing in the proposed district; and

(2) by publishing the notice as provided in 7-1-2121 or as provided in 7-1-4127 if the proposed district or portion of the proposed district is in an incorporated third-class city or town.

7-33-2103. Hearing on petition -- decision. (1) (a) The board shall hear the petition at the time set or at any time within 5 days of the time set if reasonable notice of the postponement is given. The board may establish the district unless it determines that the petition bears insufficient signatures or, if originally sufficient, that by reason of written withdrawals of signatures it has become insufficient.

(b) Signatures may not be withdrawn fewer than 20 days before the date set for adoption of the petition.

(2) The board may adjust the boundaries of the proposed district to reflect the written request of any real property owner who resides in the proposed district for subtraction or annexation of parcels of the property owner's land adjacent to the boundary line of the proposed district. The written request must be submitted to the board prior to or on the date set for hearing on the petition.

(3) The board shall render its decision within 30 days after the hearing.

7-33-2104. Operation of fire districts. When a board of county commissioners establishes a fire district in any unincorporated territory or incorporated third-class city or town, the commissioners:

(1) may contract with a city, town, private fire company, or other public entity to furnish all fire protection services for property within the district; or

(2) shall appoint five qualified trustees to govern and manage the fire district.

7-33-2105. Powers and duties of trustees. (1) The trustees:

(a) shall prepare and adopt suitable bylaws;

(b) have the authority to provide adequate and standard firefighting and emergency response apparatus, equipment, personnel, housing, and facilities, including real property and emergency medical services and equipment, for the protection of the district;

(c) may appoint and form fire companies that have the same duties, exemptions, and privileges as other fire companies for retirement purposes only;

(d) shall prepare annual budgets and request special levies for the budgets. The budget laws relating to county budgets must, as far as applicable, apply to fire districts.

(e) may enter into contracts as provided in 7-33-2107; and

(f) may pledge income to secure financing of the district as provided in 7-33-2109.

(2) All money received by the trustees must be deposited in the county treasurer's office and credited to the fire district.

7-33-2106. Details relating to board of trustees of fire district. (1) (a) The five trustees initially appointed by the county commissioners hold staggered terms of office until their successors are elected or appointed and qualified as provided in this section.

(b) The initial trustees' terms of office must be drawn by lot and include:

- (i) 3 years for one trustee;
- (ii) 2 years for two trustees; and
- (iii) 1 year for two trustees.

(c) Upon expiration of the terms provided in subsection (1)(b), each trustee shall serve a 3-year term of office.

(2) Trustees must be elected as provided in 13-1-104(3), 13-1-401, and subsection (3) of this section or appointed as provided in subsection (4) of this section. The term of office is 3 years beginning at the first district meeting following their election or appointment and continuing until their successors are elected or appointed and qualified. Appointments to fill vacancies occurring during the term of office of a trustee must be made by the county governing body and appointees shall hold office until the next regular election. An elector, as defined in Title 13, who resides in the district or any holder of title to lands within the district who presents a proof of payment of taxes on the lands at the polling place is eligible to vote in the election.

(3) Candidates for the office of trustee of the fire district to be filled by election may be nominated by petition filed with the election administrator or deputy election administrator at least 75 days before the election day and signed by at least five electors of the district.

(4) If the number of candidates is equal to or less than the number of positions to be elected, the election administrator may cancel the election in accordance with 13-1-304. If an election is not held, the county governing body shall declare elected by acclamation each candidate who filed a nominating petition for a position. If a nomination is not made for one or more trustee offices, the county governing body shall appoint one or more trustees as necessary to fill those offices. A trustee taking office pursuant to this subsection serves the trustee term of office as if that trustee had been elected.

(5) The trustees shall organize by choosing presiding officers and appointing one member to act as secretary.

7-33-2107. Contracts for fire protection services. (1) The trustees of a fire district may enter into contracts for fire protection services.

(2) All money received from contracts must be deposited in the county treasurer's office and credited to the fire district fund holding the contracts.

(3) The relationship between the fire district and the entity with which the district has contracted is that of an independent contractor.

7-33-2108. Mutual aid agreements -- request if no agreement exists -- definitions. (1) A mutual aid agreement is an agreement for protection against disasters, incidents, or emergencies.

(2) Fire district trustees may enter mutual aid agreements with the proper authority of:

- (a) other fire districts;
- (b) unincorporated municipalities;
- (c) incorporated municipalities;
- (d) state agencies;
- (e) private fire prevention agencies;
- (f) federal agencies;
- (g) fire service areas;
- (h) governing bodies of other political subdivisions in Montana; and
- (i) governing bodies of fire protection services, emergency medical care providers, and local government subdivisions of any other state or the United States pursuant to Title 10, chapter 3, part 11.

(3) If the fire district trustees have not concluded a mutual aid agreement, then the trustees, a representative of the trustees, or an incident commander may request assistance pursuant to 10-3-209.

(4) As used in this section, "incidents", "disasters", and "emergencies" have the meanings provided in 10-3-103.

7-33-2109. Tax levy, debt incurrence, and bonds authorized -- voted levy for volunteer firefighters' disability income coverage. (1) At the time of the annual levy of taxes, the board of county commissioners may, subject to 15-

10-420, levy a tax upon all property within a rural fire district for the purpose of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district or for the purpose of paying to a city, town, or private fire service the consideration provided for in any contract with the council of the city, town, or private fire service for furnishing fire protection service to property within the district. The tax must be collected as are other taxes.

(2) Subject to 15-10-425, the board of county commissioners may levy a tax upon all taxable property within a rural fire district for the purpose of purchasing disability income insurance coverage for the volunteer firefighters of the district as provided in 7-6-621.

(3) The board of county commissioners or the trustees, if the district is governed by trustees, may pledge the income of the district, subject to the requirements and limitations of 7-33-2105(1)(d), to secure financing necessary to procure equipment and buildings, including real property, to house the equipment.

(4) In addition to the levy authorized in subsection (1), a district may borrow money by the issuance of bonds to provide funds for the payment of all or part of the cost of buying or maintaining fire protection facilities, including real property, and apparatus, including emergency response apparatus, for the district.

(5) The amount of debt incurred pursuant to subsection (3) and the amount of bonds issued pursuant to subsection (4) and outstanding at any time may not exceed 1.1% of the total assessed value of taxable property, determined as provided in 15-8-111, within the district, as ascertained by the most recent assessment for state and county taxes prior to the incurrence of debt or the issuance of the bonds.

(6) The bonds must be authorized, sold, and issued and provisions must be made for their payment in the manner and subject to the conditions and limitations prescribed for the issuance of bonds by counties under Title 7, chapter 7, part 22.

7-33-2110. Volunteer fire districts or companies -- fire departments -- not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) No right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan, or payments provided under 19-17-103 may be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.

7-33-2111. Fire district capital improvement fund authorized. The trustees of a fire district may establish a capital improvement fund in accordance with the provisions of Title 7, chapter 6, part 6.

7-33-2120. Consolidation of fire districts -- mill levy limitations. (1) Two or more rural fire districts may consolidate to form a single rural fire district upon an affirmative vote of each rural fire district's board of trustees. At the time they vote to consolidate, the boards of trustees shall also adopt a consolidation plan. The plan must contain:

(a) a timetable for consolidation, including the effective date of consolidation, which must be after the time allowed for protests to the creation of the consolidated rural fire district under subsection (3);

(b) the name of the new rural fire district;

(c) a boundary map of the new rural fire district; and

(d) the estimated financial impact of consolidation on the average taxpayer within the proposed district.

(2) Within 14 days of the date that the trustees vote to consolidate, notice of the consolidation must be published as provided in 7-1-2121 or as provided in 7-1-4127 if the district or part of the district is in an incorporated third-class city or town in each county in which any part of the consolidated fire district will be located. A public hearing on the consolidation must be held within 14 days of the first publication of notice. The hearing must be held before the joint boards of trustees at a time and place set forth in the publication of notice.

(3) Real property owners in each affected rural fire district may submit written protests opposing consolidation to the trustees of their district. If within 21 days of the first publication of notice the owners of 40% or more of the real property in an existing district and owners of property representing 40% or more of the taxable value of property in an existing district protest the consolidation, it is void.

(4) After consolidation, the former rural fire districts constitute a single rural fire district governed under the provisions of 7-33-2104 through 7-33-2106.

(5) The consolidation of two or more rural fire districts pursuant to this section results in the creation of a new rural fire district for the purposes of determining mill levy limitations.

7-33-2125. Annexation of adjacent territory not contained in a fire district. (1) Adjacent territory within or outside of the limits of an incorporated third-class city or town that is not already a part of a fire district may be annexed in the following manner:

(a) A petition in writing by the owners of 40% or more of the real property within the proposed area to be annexed and owners of property representing 40% or more of the taxable value of property within the proposed area to be annexed must be presented to the board of trustees of the district for approval. If the proposed annexation is approved by the board of trustees, the petition must be presented to the board of county commissioners.

(b) At the first regular meeting of the board of county commissioners after the presentation of the petition, the commissioners shall set a date to hold a hearing on the petition. The date of the hearing may not be less than 4 weeks after the date of the presentation of the petition to the board of county commissioners. The board of county commissioners shall publish notice of the hearing as provided in 7-1-2121 or as provided in 7-1-4127 if any part of the area proposed to be annexed is within an incorporated third-class city or town.

(2) On the date set for the hearing, the board of county commissioners shall consider the petition and any objections to the annexation. The board shall approve the annexation unless a protest petition signed by at least 40% of the owners of real property in the area proposed for annexation and owners of property representing 40% or more of the taxable value of the property in the area proposed for annexation is presented at the hearing, in which case the annexation must be disapproved.

(3) The annexed territory is liable for any outstanding warrant and bonded indebtedness of the original district.

(4) (a) Territory that is within the limits of an incorporated third-class city or town may be annexed only upon the approval of the city or town governing body.

(b) A third-class city or town may withdraw from the district territory that has been annexed under this section 2 years after providing to the board of county commissioners notice of intent to withdraw.

7-33-2126. Annexation of adjacent territory contained in a fire district. (1) Adjacent territory that is already a part of a fire district may withdraw from the fire district and become annexed to another fire district in the following manner:

(a) A petition in writing by 40% or more of the owners of real property within the area proposed to be transferred and owners of 40% or more of the taxable value of the property within the area proposed to be transferred must be presented to the county commissioners, asking that the area be transferred to and included in any other organized fire district to which the area is adjacent. The petition must describe the change of boundaries to be affected by the proposed transfer of area.

(b) The commissioners shall hold a hearing on the petition in accordance with the procedure outlined in 7-33-2142. The transfer must be allowed unless protests are presented at the hearing by the owners of 40% or more of the real property in either district and owners of property representing 40% or more of the taxable value in either district.

(2) The transfer may be allowed only upon a showing of more advantageous proximity and communications with the firefighting facilities of the other district.

7-33-2127. Withdrawal by owner of individual tract adjacent to municipality. In lieu of the detraction procedure provided in 7-33-2142 and 7-33-2143, whenever a person owns land adjacent to a city or town and wishes to have only that land annexed to the city or town, the land may be detracted as follows:

(1) The owner shall mail notice to the presiding officer of the trustees of the fire district or, if there are no trustees, to the board of county commissioners of the owner's intention to request annexation.

(2) The owner shall attach a copy of this notice of intention to the petition to the municipal governing body requesting annexation.

(3) Following adoption of the annexation order under 7-2-4714, the land is detracted from the fire district.

7-33-2128. Dissolution of fire district. (1) Subject to subsection (2), a fire district organized under this part may be dissolved by the board of county commissioners upon presentation of a petition for dissolution signed by the owners of 40% or more of the real property in the area and owners of property representing 40% or more of the taxable value of property in the area. The procedure and requirements provided in 7-33-2101 through 7-33-2103 apply to requests for dissolution of fire districts.

(2) A board of county commissioners may not dissolve a fire district that includes territory within the limits of an incorporated third-class city or town unless the dissolution is approved by the governing body of the city or town.

7-33-2141. Division of fire district authorized. Fire districts may be divided as provided in 7-33-2142 through 7-33-2144.

7-33-2142. Division of district -- petition -- plan for division. (1) (a) A fire district's board of trustees may vote to divide the district upon an affirmative vote of the board and upon receipt of a petition signed by the owners of 40% or more of the real property within the area proposed to be detracted from the original district and owners of property representing 40% or more of the taxable value of property in the area proposed to be detracted from the original district.

(b) The petition must describe the boundaries of the proposed detracted area and the boundaries of the remaining area.

(2) At the time it votes to divide, the board shall adopt a division plan that contains:

(a) a timetable for division, including the effective date, that must be after the time allowed for protests to the division;

(b) the names of the new rural fire districts;

(c) the boundary maps of the new districts;

(d) the estimated financial impact of the division on an owner of a home valued at \$100,000; and

(e) a method for the fair and equitable division of the assets and liabilities of the original district among the new districts.

(3) The board of trustees shall forward the plan to the board of county commissioners in the county where the districts are located.

(4) Within 21 days of receipt of the plan, the board of county commissioners shall set a date for a public hearing on the division and shall give notice of the hearing as provided in 7-1-2121 or as provided in 7-1-4127 if any part of the proposed detracted area is within the limits of an incorporated city or town.

7-33-2143. Decision on petition for division -- protest. The petition must be granted and the original districts must be divided into separate districts unless at the time of the hearing on the petition protests are presented by the owners of 40% or more of the real property in the entire original district and owners of property representing 40% or more of the taxable value of property in the entire original district. If the required number of protests are presented, the petition for division may not be approved.

7-33-2144. Distribution of assets and liabilities following division. (1) Upon the division of districts, the assets and liabilities of the original rural fire district must be distributed in accordance with the division plan as provided in 7-33-2142.

7-33-2129. Annexation of rural fire district property by municipality -- responsibility for bonded indebtedness. (1) If a municipality annexes property from a rural fire district, the annexed property is liable for any bonded indebtedness of the rural fire district existing as of the date of annexation to the same extent as it would have been liable if not withdrawn.

(2) A municipality may:

(a) offset the municipal mills levied on the annexed property by the mills levied on the property for bonded indebtedness; or

(b) annually appropriate funds to the rural fire district in an amount equal to the mills levied on the annexed property for bonded indebtedness.

ATTACHMENT #2

Part 1 General Provisions Elections

13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector who voted in the previous federal general election and whose name is on the active list.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) "Candidate" means:

(a) an individual who has filed a declaration or petition for nomination, acceptance of nomination, or appointment as a candidate for public office as required by law;

(b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and retained contributions, made expenditures, or given consent to an individual, organization, political party, or committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure nomination or election to any office at any time, whether or not the office for which the individual will seek nomination or election is known when the:

(i) solicitation is made;

(ii) contribution is received and retained; or

(iii) expenditure is made; and

(c) an officeholder who is the subject of a recall election.

(7) (a) "Contribution" means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee.

(b) "Contribution" does not mean:

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a candidate or political committee or meals and lodging provided by individuals in their private residences for a candidate or other individual;

(ii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation;

(iii) the cost of any communication by any membership organization or corporation to its members or stockholders or employees; or

(iv) filing fees paid by the candidate.

(8) "Election" means a general, regular, special, or primary election held pursuant to the requirements of state law, regardless of the time or purpose.

(9) "Election administrator" means the county clerk and recorder or the individual designated by a county governing body to be responsible for all election administration duties, except that with regard to school elections, the term means the school district clerk.

(10) "Elector" means an individual qualified to vote under state law.

(11) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election.

(b) "Expenditure" does not mean:

- (i) services, food, or lodging provided in a manner that they are not contributions under subsection (7);
- (ii) payments by a candidate for a filing fee or for personal travel expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;
- (iii) the cost of any bona fide news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general circulation; or
- (iv) the cost of any communication by any membership organization or corporation to its members or stockholders or employees.

(12) "Federal election" means a general or primary election in which an elector may vote for individuals for the office of president of the United States or for the United States congress.

(13) "General election" or "regular election" means an election held for the election of public officers throughout the state at times specified by law, including elections for officers of political subdivisions when the time of the election is set on the same date for all similar political subdivisions in the state. For ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election, "general election" means an election held at the time provided in 13-1-104(1). For ballot issues required by Article XIV, section 9, of the Montana constitution to be submitted as a constitutional initiative at a regular election, regular election means an election held at the time provided in 13-1-104(1).

(14) "Inactive elector" means an individual who failed to vote in the preceding federal general election and whose name was placed on an inactive list pursuant to 13-2-220.

(15) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220.

(16) "Individual" means a human being.

(17) (a) "Issue" or "ballot issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to initiatives, referenda, proposed constitutional amendments, recall questions, school levy questions, bond issue questions, or a ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by the proper official that the legal procedure necessary for its qualification and placement upon the ballot has been completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

(18) "Legally registered elector" means an individual whose application for voter registration was accepted, processed, and verified as provided by law.

(19) "Person" means an individual, corporation, association, firm, partnership, cooperative, committee, club, union, or other organization or group of individuals or a candidate as defined in subsection (6).

(20) "Political committee" means a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

(21) "Political subdivision" means a county, consolidated municipal-county government, municipality, special district, or any other unit of government, except school districts, having authority to hold an election for officers or on a ballot issue.

(22) "Primary" or "primary election" means an election held throughout the state to nominate candidates for public office at times specified by law, including nominations of candidates for offices of political subdivisions when the time for nominations is set on the same date for all similar subdivisions in the state.

(23) "Provisional ballot" means a ballot cast by an elector whose identity and eligibility to vote have not been verified as provided by law.

(24) "Provisionally registered elector" means an individual whose application for voter registration was accepted but whose eligibility has not yet been verified as provided by law.

(25) "Public office" means a state, county, municipal, school, or other district office that is filled by the people at an election.

(26) "Registrar" means the county election administrator and any regularly appointed deputy or assistant election administrator.

(27) "Special election" means an election other than a statutorily scheduled primary or general election held at any time for any purpose provided by law. It may be held in conjunction with a statutorily scheduled election.

(28) "Statewide voter registration list" means the voter registration list established and maintained pursuant to 13-2-107 and 13-2-108.

(29) "Transfer form" means a form prescribed by the secretary of state that may be filled out by an elector to transfer the elector's registration when the elector's residence address has changed within the county.

(30) "Valid vote" means a vote that has been counted as valid or determined to be valid as provided in 13-15-206.

(31) "Voting system" or "system" means any machine, device, technology, or equipment used to automatically record, tabulate, or process the vote of an elector cast on a paper ballot.

13-1-102. Elections by secret ballot. All elections shall be by secret ballot.

13-1-103. Determination of winner. The individual receiving the highest number of valid votes for any office at an election is elected or nominated to that office.

13-1-104. Times for holding general elections. (1) (a) Except as provided in subsection (1)(b), a general election must be held throughout the state in every even-numbered year on the first Tuesday after the first Monday of November to vote on ballot issues required by Article III, section 6, or Article XIV, section 8, of the Montana constitution to be submitted by the legislature to the electors at a general election and to elect federal officers, state or multicounty district officers, members of the legislature, judges of the district court, and county officers when the terms of the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(b) A special election may be held on an earlier date provided in a law authorizing a special statewide election on an initiative or referendum pursuant to Article III, section 6, of the Montana constitution.

(2) A general election must be held throughout the state in every odd-numbered year on the first Tuesday after the first Monday in November to elect municipal officers, officers of political subdivisions wholly within one county and not required to hold annual elections, and any other officers specified by law for election in odd-numbered years when the term for the offices will expire before the next scheduled election for the offices or when one of the offices must be filled for an unexpired term as provided by law.

(3) The general election for any political subdivision, other than a municipality, required to hold elections annually must be held on school election day, the first Tuesday after the first Monday of May of each year, and is subject to the election procedures provided for in 13-1-401.

(4) The general election for a municipality required to hold elections annually may be held either on school election day, as provided in subsection (3), or on the first Tuesday after the first Monday in November, at the discretion of the governing body.

13-1-106. Time of opening and closing of polls for all elections -- exceptions. (1) Except as provided in subsections (2) and (3), polling places must be open from 7 a.m. to 8 p.m.

(2) A polling place having fewer than 400 registered electors must be open from noon to 8 p.m. or until all registered electors in any precinct have voted, at which time the polling place must be closed immediately.

(3) If an election held under 13-1-104(3) and a school election are conducted in the same polling place, the polling place must be opened and closed at the times set for the school election, as provided in 20-20-106.

13-1-107. Times for holding primary elections. (1) On the first Tuesday after the first Monday in June preceding the general election provided for in 13-1-104(1), a primary election shall be held throughout the state.

(2) On the Tuesday following the second Monday in September preceding the general election provided for in 13-1-104(2), a primary election, if required, shall be held throughout the state.

(3) If the general election for a municipality required to hold annual elections is held in November, as provided in 13-1-104(4), a primary election, if required, shall be held on the Tuesday following the second Monday in September. In an even-numbered year, the cost of this election must be paid by the municipality.

13-1-108. Notice of special elections. Notice of any special election must be published at least three times in the 4 weeks immediately preceding the close of registration on radio or television as provided in 2-3-105 through 2-3-107 or in a newspaper of general circulation in the jurisdiction where the election will be held. The provisions of this section are fulfilled upon the third publication.

13-1-109. Election records open to public. Unless specifically provided otherwise, all records pertaining to elector registration and elections are public records. They shall be open for inspection during regular office hours.

13-1-111. Qualifications of voter. (1) A person may not vote at elections unless the person is:

- (a) registered as required by law;
- (b) 18 years of age or older;
- (c) a resident of the state of Montana and of the county in which the person offers to vote for at least 30 days, except as provided in 13-2-514; and
- (d) a citizen of the United States.

(2) A person convicted of a felony does not have the right to vote while the person is serving a sentence in a penal institution.

(3) A person adjudicated to be of unsound mind does not have the right to vote unless the person has been restored to capacity as provided by law.

13-1-112. Rules for determining residence. For registration, voting, or seeking election to the legislature, the residence of an individual must be determined by the following rules as far as they are applicable:

(1) The residence of an individual is where the individual's habitation is fixed and to which, whenever the individual is absent, the individual has the intention of returning.

(2) An individual may not gain or lose a residence while kept involuntarily at any public institution, not necessarily at public expense; as a result of being confined in any prison; or solely as a result of residing on a military reservation.

(3) (a) An individual in the armed forces of the United States may not become a resident solely as a result of being stationed at a military facility in the state.

(b) An individual may not acquire a residence solely as a result of being employed or stationed at a training or other transient camp maintained by the United States within the state.

(c) A member of a reserve component of the United States armed forces who is stationed outside of the state but who has no intent of changing residency retains resident status.

(4) An individual does not lose residence if the individual goes into another state or other district of this state for temporary purposes with the intention of returning, unless the individual exercises the election franchise in the other state or district.

(5) An individual may not gain a residence in a county if the individual comes in for temporary purposes without the intention of making that county the individual's home.

(6) If an individual moves to another state with the intention of making it the individual's residence, the individual loses residence in this state.

(7) The place where an individual's family resides is presumed to be that individual's place of residence. However, an individual who takes up or continues a residence at a place other than where the individual's family resides with the intention of remaining is a resident of the place where the individual resides.

(8) A change of residence may be made only by the act of removal joined with intent to remain in another place.

13-1-113. Only one residence. There can be only one residence.

13-1-114. Computation of elector's age and term of residence. An elector's age and the term of his residence must be computed by including the day of election.

13-1-115. Privilege from arrest. Electors are privileged from arrest during their attendance at elections and in going to and from voting places, except in cases of treason, felony, or breach of the peace.

13-1-116. Fingerprint, mark, or agent for disabled electors -- rulemaking. (1) Except as otherwise specified by law, the provisions of this section apply.

(2) Whenever a signature is required by an elector under a provision of this title and the elector is unable because of a disability to provide a signature, the elector may provide a fingerprint, subject to subsection (6), or an identifying mark or may request that an agent, election administrator, or election judge sign for the elector as provided in this section.

(3) If an elector is unable to provide a fingerprint or an identifying mark and the elector has not established an agent pursuant to subsection (4), the election administrator or an election judge may sign for the elector after reviewing and verifying the elector's identification.

(4) (a) An elector who is unable to provide a signature may apply to the election administrator to have another person designated as an agent for purposes of providing a signature or identifying mark required pursuant to

this title and for delivering the disabled elector's absentee ballot application to the county election administrator as provided in 13-13-213.

(b) An application for designation of an agent by an elector under this section must be made on a form prescribed by the secretary of state. The secretary of state shall by rule establish the criteria that must be met and the process that must be followed in order for a person to become a designated agent for a disabled elector pursuant to this subsection (4).

(5) If an agent, election administrator, or election judge signs or marks a document for an elector pursuant to this section, the agent, election administrator, or election judge shall initial the signature or mark.

(6) A disabled elector may not be required to provide a fingerprint.

ATTACHMENT #3

Part 23

Fire Protection in Unincorporated Places

7-33-2311. Fire companies authorized. (1) Fire companies in unincorporated towns and villages are organized by filing with the county clerk of the county in which they are located a certificate in writing, signed by the presiding officer and secretary, providing the date of organization, name, officers, and roll of active and honorary members or a copy of the certificate provided for in 19-17-402. The certificate and filing must be renewed annually on or before September 1.

(2) A fire company is not allowed more than 28 certificate members.

7-33-2312. Organization of fire company. (1) A fire company organized pursuant to 7-33-2311 shall choose or elect a presiding officer, a secretary, and a treasurer and may establish and adopt bylaws and regulations and impose penalties, not exceeding \$5 or expulsion, for each offense.

(2) A regularly organized fire department may adopt a department seal, stating the name of the particular fire department to which it belongs. The seal is under the control of and for the use of the secretary and must be affixed to exempt certificates, certificates of active membership, and other documents that the bylaws may provide. The secretary of a department having a seal shall take the constitutional oath of office and give a bond that the bylaws provide for the faithful performance of the secretary's duties.

7-33-2314. Certain exemptions for firefighters. The officers and members of regularly organized unpaid fire companies and exempt firefighters are entitled to the following privileges and exemptions:

- (1) exemption from payment of poll tax, road tax, and head tax of every description;
- (2) exemption from military duty except in case of war, invasion, or insurrection.

7-33-2315. Certificate of membership in fire company. (1) A firefighter who has served 5 years in an organized company in this state is an exempt firefighter and must receive from the chief engineer of the department or company to which the firefighter belonged a certificate to that effect.

(2) (a) An active firefighter must have a certificate of that fact, signed by the chief of the fire department or the presiding officer of the company to which the firefighter belongs. The certificates must be countersigned by the secretary and over the seal of the company, if one is provided.

(b) If authorized by the bylaws of the company, in lieu of issuing certificates to exempt firefighters exempt certificates may be issued by the clerk and recorder of the county, over the clerk's official seal and signature, which entitles the holder to an exemption from military duty.

(3) Each certificate entitles the holder to an exemption from military duty. Each certificate is prima facie evidence of the facts stated in the certificate.

(4) The secretary of the fire department or company shall keep a record of each certificate of exemption or active membership, the date of the certificate and to whom issued, and, when a seal is not provided, similar entries of certificates issued to obtain certificates from the county clerk and recorder.

7-33-2316. Volunteer fire districts or companies -- fire departments -- not affected by city-county consolidation. (1) Notwithstanding any other provision of law, the adoption of a city-county consolidated local government has no effect on the existence of a volunteer fire department, a volunteer fire company, or a fire district created and legally in existence pursuant to the provisions of this part unless otherwise specifically provided by charter.

(2) No right or benefit of any member of a volunteer fire district, company, or department created pursuant to the provisions of this part in a retirement or pension plan, or payments provided under 19-17-103 may be abrogated by the adoption of a city-county consolidated local government unless otherwise specifically provided by charter.

ATTACHMENT #4

**Part 23
County Budget Law**

Prior County Budget Law was contained in MCA 7-6-part 23. As there have been many and continuous changes, refer to 7-6-part 40 in the current MCA's and under County Finance for up-to-date information on the operations of county fiscal responsibilities and operations.

ATTACHMENT #5

Part 5 Audits of Political Subdivisions

2-7-501. Definitions. Unless the context requires otherwise, in this part, the following definitions apply:

(1) "Audit" means a financial audit and includes financial statement and financial-related audits as defined by government auditing standards as established by the U.S. comptroller general.

(2) "Board" means the Montana board of public accountants provided for in 2-15-1756.

(3) "Department" means the department of administration.

(4) (a) "Financial assistance" means assistance provided by a federal, state, or local government entity to a local government entity or subrecipient to carry out a program. Financial assistance may be in the form of grants, contracts, cooperative agreements, loans, loan guarantees, property, interest subsidies, insurance, direct appropriations, or other noncash assistance. Financial assistance includes awards received directly from federal and state agencies or indirectly when subrecipients receive funds identified as federal or state funds by recipients. The granting agency is responsible for identifying the source of funds awarded to recipients. The recipient is responsible for identifying the source of funds awarded to subrecipients.

(b) Financial assistance does not include direct federal, state, or local government cash assistance to individuals.

(5) "Financial report" means a presentation of financial statements, including applicable supplemental notes and supplemental schedules, that are prepared in a format published by the department using the Budgetary Accounting and Reporting System for Montana Cities, Towns, and Counties Manual and that reflect a current financial position and the operating results for the 1-year reporting period.

(6) "Independent auditor" means:

(a) a federal, state, or local government auditor who meets the standards specified in the government auditing standards; or

(b) a licensed accountant who meets the standards in subsection (6)(a).

(7) (a) "Local government entity" means a county, city, district, or public corporation that:

(i) has the power to raise revenue or receive, disburse, or expend local, state, or federal government revenue for the purpose of serving the general public;

(ii) is governed by a board, commission, or individual elected or appointed by the public or representatives of the public; and

(iii) receives local, state, or federal financial assistance.

(b) Local government entities include but are not limited to:

(i) airport authority districts;

(ii) cemetery districts;

(iii) counties;

(iv) county housing authorities;

(v) county road improvement districts;

(vi) county sewer districts;

(vii) county water districts;

(viii) county weed management districts;

(ix) drainage districts;

(x) fire companies;

(xi) fire districts;

(xii) fire service areas;

(xiii) hospital districts;

(xiv) incorporated cities or towns;

(xv) irrigation districts;

(xvi) mosquito districts;

(xvii) municipal fire departments;

(xviii) municipal housing authority districts;

(xix) port authorities;

(xx) solid waste management districts;

(xxi) rural improvement districts;

- (xxii) school districts, including a district's extracurricular funds;
- (xxiii) soil conservation districts;
- (xxiv) special education or other cooperatives;
- (xxv) television districts;
- (xxvi) urban transportation districts;
- (xxvii) water conservancy districts; and
- (xxviii) other miscellaneous and special districts.

(8) "Revenues" means all receipts of a local government entity from any source excluding the proceeds from bond issuances.

2-7-502. Short title -- purpose. (1) This part may be cited as the "State of Montana Single Audit Act".

(2) The purposes of this part are to:

- (a) improve the financial management of local government entities with respect to federal, state, and local financial assistance;
- (b) establish uniform requirements for financial reports and audits of local government entities;
- (c) ensure constituent interests by determining that compliance with all appropriate statutes and regulations is accomplished;
- (d) ensure that the financial condition and operations of the local government entities are reasonably conducted and reported;
- (e) ensure that the stewardship of local government entities is conducted in a manner to preserve and protect the public trust;
- (f) ensure that local government entities accomplish, with economy and efficiency, the duties and responsibilities of the entities in accordance with the legal requirements imposed and the desires of the public; and
- (g) promote the efficient and effective use of audit resources.

2-7-503. Financial reports and audits of local government entities. (1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed within 6 months of the end of the reporting period. The local government entity shall submit the financial report to the department for review.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3), but regardless of the source of revenue or financial assistance, shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the department of revenue and must be deposited in the enterprise fund to the credit of the department.

2-7-503. Financial reports and audits of local government entities. (1) The governing body or managing or executive officer of a local government entity, other than a school district or associated cooperative, shall ensure that a financial report is made every year. A school district or associated cooperative shall comply with the provisions of 20-9-213. The financial report must cover the preceding fiscal year, be in a form prescribed by the department, and be completed within 6 months of the end of the reporting period. The local government entity shall submit the financial report to the department for review.

(2) The department shall prescribe a uniform reporting system for all local government entities subject to financial reporting requirements, other than school districts. The superintendent of public instruction shall prescribe the reporting requirements for school districts.

(3) (a) The governing body or managing or executive officer of each local government entity receiving revenue or financial assistance in the period covered by the financial report in excess of the threshold dollar amount established by the director of the office of management and budget pursuant to 31 U.S.C. 7502(a)(3), but regardless of the source of revenue or financial assistance, shall cause an audit to be made at least every 2 years. The audit must cover the entity's preceding 2 fiscal years. The audit must commence within 9 months from the close of the last fiscal year of the audit period. The audit must be completed and submitted to the department for review within 1 year from the close of the last fiscal year covered by the audit.

(b) The governing body or managing or executive officer of a local government entity that does not meet the criteria established in subsection (3)(a) shall at least once every 4 years, if directed by the department, or, in the case of a school district, if directed by the department at the request of the superintendent of public instruction, cause a financial review, as defined by department rule, to be conducted of the financial statements of the entity for the preceding fiscal year.

(4) An audit conducted in accordance with this part is in lieu of any financial or financial and compliance audit of an individual financial assistance program that a local government is required to conduct under any other state or federal law or regulation. If an audit conducted pursuant to this part provides a state agency with the information that it requires to carry out its responsibilities under state or federal law or regulation, the state agency shall rely upon and use that information to plan and conduct its own audits or reviews in order to avoid a duplication of effort.

(5) In addition to the audits required by this section, the department may at any time conduct or contract for a special audit or review of the affairs of any local government entity referred to in this part. The special audit or review must, to the extent practicable, build upon audits performed pursuant to this part.

(6) The fee for the special audit or review must be a charge based upon the costs incurred by the department in relation to the special audit or review. The audit fee must be paid by the local government entity to the department of revenue and must be deposited in the enterprise fund to the credit of the department.

2-7-504. Accounting methods. (1) Unless otherwise required by law, the department shall prescribe by rule the general methods and details of accounting for the receipt and disbursement of all money belonging to local government entities and shall establish in those offices general methods and details of accounting. All local government entity officers shall conform with the accounting standards prescribed by the department.

(2) The rules adopted by the department must be in accordance with generally accepted accounting principles established by the governmental accounting standards board or its generally recognized successor.

2-7-505. Audit scope and standards. (1) Each audit must be a comprehensive audit of the affairs of the local government entity and must be made in accordance with auditing standards and in accordance with federal regulations adopted by the department by rule.

(2) The department, with cooperation from state agencies, shall prepare a local government compliance supplement that contains state and federal regulations applicable to local government entities. Auditors shall use the compliance supplement adopted pursuant to this section in conjunction with government auditing standards adopted by the department to determine the compliance testing to be performed during an audit.

(3) When auditing a county or a consolidated government, auditors shall perform tests for compliance with state laws relating to receipts and disbursements of agency funds maintained by the entity. Findings related to compliance tests must be reported in accordance with the reporting standards for financial audits prescribed in government auditing standards adopted by the department.

2-7-506. Audit by independent auditor. (1) The department may prepare and maintain a roster of independent auditors authorized to conduct audits of local government entities. The roster must be available to local government entities subject to the reporting requirements of 2-7-503.

(2) The department, in consultation with the board, shall adopt rules governing the:

(a) criteria for the selection of the independent auditor;

(b) procedures and qualifications for placing applicants on the roster;

(c) procedures for reviewing the qualifications of independent auditors on the roster to justify their continuance on the roster; and

(d) fees payable to the department for application for placement on the roster.

(3) An audit made by an independent auditor must be pursuant to a contract entered into by the governing body or managing or executive officer of the local government. The department must be a party to the contract and the contract may not be executed until it is signed by the department. All contracts for conducting audits must be in a form prescribed or approved by the department.

(4) The department shall notify the local government entity of a required audit, the date the report is due, and the requirement that the local government entity, the independent auditor, and the department must be parties to the contract.

(5) If a local government entity fails to present a signed contract to the department for approval within 90 days of receipt of the audit notice, the department shall designate an independent auditor to perform the audit. The costs incurred by the department in arranging the audit must be paid by the local government entity to the department in the manner of other claims against the local government entity.

2-7-507. Duty of officers to aid in audit. The officers and employees of the local government entities referred to in this part shall provide all reasonable facilities for the audit and shall furnish all information to the independent auditor necessary for the conduct of the audit.

2-7-508. Power to examine books and papers. The independent auditor may examine any books, papers, accounts, and documents in the office or possession of any local government entity.

2-7-509. Audits of school-related organizations -- costs -- criteria. (1) The legislative auditor may conduct or have conducted an audit of the records of organizations referred to in 2-3-203(2).

(2) Before public funds are transferred to the organization, a member shall obtain the organization's written consent to:

(a) the audit provided for in subsection (1); and

(b) pay the costs of the audit.

(3) An audit of an organization performed under this section must determine if:

(a) the organization is carrying out only those activities or programs authorized by state law and its articles of incorporation, bylaws, and policies;

(b) expenditures are made in furtherance of authorized activities in accordance with applicable laws and its articles of incorporation, bylaws, and policies;

(c) the organization properly collects and accounts for all revenues and receipts arising from its activities in accordance with generally accepted accounting principles;

(d) the assets of the organization or the assets in its custody are adequately safeguarded and are controlled and used in an efficient manner; and

(e) reports and financial statements fully disclose the nature and scope of the activities conducted and provide a proper basis for evaluating the operations of the organization.

2-7-511. Access to public accounts -- suspension of officer in case of discrepancy. (1) The independent auditor may count the cash, verify the bank accounts, and verify all accounts of a public officer whose accounts the independent auditor is examining under law.

(2) If an officer of any county, city, town, school, or other local government entity refuses to provide the independent auditor access during an audit of the officer's accounts to cash, bank accounts, or any of the papers, vouchers, or records of that office or if the independent auditor finds a shortage of cash, the independent auditor shall immediately file a preliminary report showing the refusal of that officer or the existence of the shortage and the approximate amount of the shortage with the respective county, city, or town attorney and the governing body of the local government entity.

(3) Upon filing of the statement, the officer of the local government entity shall after notice and the opportunity for a hearing be suspended from the duties and emoluments of office and the governing body of the local government entity shall appoint a qualified person to the office pending completion of the audit.

(4) Upon the completion of the audit by the independent auditor, if a shortage of cash existed in the accounts of the officer, the independent auditor shall notify the governing body of the local government entity of the shortage.

(5) If the governing body finds that a shortage exists and that the officer suspended is, by act or omission, responsible for the shortage, the officer's right to the office is forfeited and the report of the audit must be referred to the county attorney.

2-7-512. Exit review conference. Upon completion of each audit, the independent auditor is required to hold with the appropriate officials an exit review conference in which the audit results must be discussed.

2-7-513. Content of audit report and financial report. (1) The audit reports must comply with the reporting requirements of government auditing standards issued by the U.S. comptroller general and federal regulations adopted by department rule.

(2) The department shall prescribe general methods and details of accounting for the financial report for local government entities other than schools. The financial report must be submitted in a form required by the department. The superintendent of public instruction shall prescribe the general methods and details of accounting for financial reports for schools.

2-7-514. Filing of audit report and financial report. (1) Completed audit reports must be filed with the department. Completed financial reports must be filed with the department as provided in 2-7-503(1). The state superintendent of public instruction shall file with the department a list of school districts subject to audit under 2-7-503(3). The list must be filed with the department within 6 months after the close of the fiscal year.

(2) At the time that the financial report is filed or, in the case of a school district, when the audit report is filed with the department, the local government entity shall pay to the department a filing fee. The department shall charge a filing fee to any local government entity required to have an audit under 2-7-503, which fee must be based upon the costs incurred by the department in the administration of this part. Notwithstanding the provisions of 20-9-343, the filing fees for school districts required by this section must be paid by the office of public instruction. The department shall adopt the fee schedule by rule based upon the local government entities' revenue amounts.

(3) Copies of the completed audit and financial reports must be made available by the department and the local government entity for public inspection during regular office hours.

2-7-515. Actions by governing bodies. (1) Upon receipt of the audit report, the governing bodies of each audited local government entity shall review the contents and within 30 days shall notify the department in writing as to what action they plan to take on any deficiencies or recommendations contained in the audit report. If no deficiencies or recommendations appear in the audit report, notification is not required.

(2) Notification to the department shall include a statement by the governing bodies that noted deficiencies or recommendations for improvement have been acted upon by adoption as recommended, adoption with modification, or rejection.

(3) The local government entity shall adopt measures to correct the report findings and submit a copy of the corrective action plan to the department and, if the local government entity is a school district, shall also send a copy to the superintendent of public instruction. The department shall notify the entity of the acceptance of the corrective measures. If the department and the local government entity fail to agree, a conference between the parties must be held. Failure to resolve findings or implement corrective measures shall result in the withholding of financial assistance in accordance with rules adopted by the department pending resolution or compliance.

(4) In cases where a violation of law or nonperformance of duty is found on the part of an officer, employee, or board, the officer, employee, or board must be proceeded against by the attorney general or county, city, or town attorney as provided by law. If a written request to do so is received from the department, the county, city, or town attorney shall report the proceedings instituted or to be instituted, relating to the violations of law and nonperformance of duty, to the department within 30 days after receiving the request. If the county, city, or town attorney fails or refuses to prosecute the case, the department may refer the case to the attorney general to prosecute the case at the expense of the local government entity.

2-7-516. Audit fees. (1) The compensation to the independent auditor for conducting an audit must be agreed upon by the governing body or managing or executive officer of the local government entity and the independent auditor and must be paid in the manner that other claims against the local government entity are paid.

(2) The compensation for an audit conducted by the department must be paid by the local government entity to the state treasurer and be deposited in an enterprise fund to the credit of the department.

2-7-517. Penalty. (1) When a local government entity has failed to file a report as required by 2-7-503(1), unless an extension has been granted by the department for good cause shown, or to make the payment required by 2-7-514(2) within 60 days, the department may issue an order stopping payment of any state financial assistance to the local government entity or may charge a late payment penalty as adopted by rule. Upon receipt of the report or payment of the filing fee, all financial assistance that was withheld under this section must be released and paid to the local government entity.

(2) When a local government entity has failed to make payment as required by 2-7-516 within 60 days of receiving a bill for an audit, the department may issue an order stopping payment of any state financial aid to the local government entity. Upon payment for the audit, all financial aid that was withheld because of failure to make payment must be released and paid to the local government entity.

2-7-518. Deposit of fees. All fees received from local government entities must be deposited in the enterprise fund to the credit of the department of administration for administration of Title 2, chapter 7, part 5.

2-7-521. Publication. (1) (a) After the expiration of the 30-day period provided for in 2-7-515(1), the local government entity shall send a copy of each audit report to a newspaper of general circulation in the area of the local government entity. However, each county audit report must be sent to the official newspaper of the county.

(b) For an audit report of a county or an incorporated city or town, the county, city, or town shall send to the appropriate newspaper a copy of a summary of significant findings regarding the audit report. The summary, which may not exceed 800 words, must be prepared by the independent auditor and contain a statement indicating that it is only a summary and is not intended to be used as an audit report.

(2) For an audit report of a county or incorporated city or town, a newspaper is required to publish only:

(a) the summary of significant findings provided for in subsection (1)(b); and

(b) a statement to the effect that the audit report is on file in its entirety and open to public inspection.

(3) For an audit report of a local government entity other than a county or incorporated city or town, the newspaper is required to publish only the statement provided for in subsection (2)(b) and a statement providing that the audited local government entity will send a copy of the audit report to any interested person upon request.

(4) Publication costs must be borne by the audited local government entity.

2-7-522. Report review. (1) The department shall determine whether the provisions of this part have been complied with by the independent auditor.

(2) Upon receipt of the audit report from the local government entity the department shall review the report. If the department determines the reporting requirements have not been met, the department shall notify the local government entity and the independent auditor submitting the report of the significant issues of noncompliance. The notification must include issuance of a statement of deficiencies by the department. The department shall allow the independent auditor 60 days to correct the identified deficiencies.

(3) If the corrections are not made within 60 days of the department's notice, the department shall notify the local government entity that the report has not been received. Failure to submit a report shall result in the withholding of payment of the audit fee pending resolution of the identified deficiencies or receipt of a corrected report.

(4) Upon review of the report, if the department determines the independent auditor has issued a report that fails to meet the auditing standards referred to in 2-7-513 or contains false or misleading information, the department shall notify the board.

(5) The department shall review the audit report findings and the response of the governing body or executive or managing officer of the local government entity submitted under 2-7-515. When the findings concern financial assistance, the department shall notify the state agency that is responsible for disbursing the state or federal funding.

(6) The department must have access in its office to the working papers of the independent auditor.

ATTACHMENT #6

MUTUAL AID AGREEMENTS - A HANDBOOK FOR USERS

Prepared by The Idaho Bureau of Disaster Services, Boise, ID 83720

Introduction

A frequently heard statement in government circles is, "There should be a mutual aid agreement between certain parties." However, years elapse and the agreement never comes to pass. The following are some of the explanations offered when one asks the status of an agreement: "Somebody in the department is working on it but I don't know who it is." "We've got a verbal agreement and it has been working fine for years!" "Nobody seems to know what the agreement should look like or contain." "Can you provide us with an example?" "The larger entity claims there would be an inequity in service and the smaller entity is getting the good deal." "The small entity feels that this is a takeover move. "Look we've got all of the equipment. What do they have to offer?" "That agreement means we would lose our authority and sovereignty." "No way can we operate outside of our Jurisdiction! Look at the liability we would Incur." "Our Insurance wouldn't cover us." "Our attorney says we can't do that. "Some other key official feels this action will rock the boat." "Some of the key officials said they wouldn't sign anything like this." "We don't need this now. We'll take care of it when something happens." (This list is in no way all inclusive.) The following information should dispel the aforementioned myths.

Mutual Aid Agreement Described

A question is, "What is and what is not a mutual aid agreement?" A written mutual aid agreement is basically a contract for goods and/or services between a client and a contractor. A client-contractor relationship is established by the party requesting assistance. Frequently the requesting party is referred to as the aided party while the party responding to the request is called the aiding party. In the absence of request for assistance or implementation of the agreement, all parties to the agreement are referred to as the participating party.

Generally, the complexity of an agreement, as opposed to a contract, is less. There are essentially two reasons for this. First, an agreement cannot always pinpoint the precise goods and services needed, or when, because of its contingency nature. Second, the agreement is humanistic in nature, dedicated to removing human suffering and preserving property, where a contract has a business orientation.

A distinguishing difference between a contract and agreement is that goods and/or services are, in many cases, voluntarily provided with the idea that there will be a reciprocal exchange of goods and/or services, if and when required. Another, is that the aiding party will provide these at cost with no profit built in. The basic idea that the participating parties are saying in an agreement is, "We will try to help support you in your time of need if you will help support us in ours and this is how we will accomplish it." Even though it is cooperative by nature, the basic principles and concepts of contract administration apply.

Since an agreement is a written contractual document, the following statements generally apply.

An agreement provides:

- ! Documentary proof of what the agreement is about, why it exists, who is involved, what are the responsibilities, how and when it is to be implemented, where will this occur, what are the procedures, who is authorized to activate the agreement and who is to perform what and how, what are its risks and liabilities, who pays for what, how long is it in effect, how it is to be terminated, who are the administrators and other necessary and proper matters. In other words,

reduce misunderstandings among and within the participating parties. Verbal agreements cannot make these assurances.

- ! Identification of critical needs which are mutually beneficial to the participating parties. In other words, there will be an exchange that has comparable value to each party.
- ! A management tool of all participating parties, a tool to conserve limited resources and allow flexibility in the use of certain resources.
- ! A means to help overcome some budgetary restrictions, equipment limitations, capability limitations and operational limits in a cost effective manner.
- ! For allocation of liability among the participating parties.
- ! Preestablished mechanism in place prior to an event in which to receive and/or request assistance.
- ! Some continuity of government, with respect to the agreement, for the participating parties as management and administrations change.
- ! A quick response mechanism to a particular situation or event.
- ! In some cases, a means to reduce the duplication of services and equipment.
- ! Enhancement of communication between the participating parties.
- ! A legal mechanism for a participating party to operate outside their jurisdiction and to acquire appropriate insurance coverage.
- ! In essence, a potentially better responsive service to the public being served by the participating parties.

An agreement does not provide:

- ! Any relief to the participating parties of any obligation or responsibility imposed upon it by law except that said performance may be offered in satisfaction of the obligation or responsibility.
- ! Or give one participating party authority or control over, nor responsibility for, another participating party. Each participating party maintains these within their jurisdictional borders. Larger entities cannot dominate smaller entities. Obviously, when two or more parties are engaged in operations in a single jurisdiction, there should be a requirement for single operational control to insure concerted action. The agreement should address how this is achieved.
- ! Either free benefits to any one party or for one party to receive all of the benefits. There is trade made of comparable value at some time under such an agreement. Consequently, there is no inequity of service because that service will be paid for in some mutually agreed form.
- ! More of an advantage to one party. If there is such an advantage, no agreement can come to pass. Usually, if a party has a significant need, another party can be found to fulfill that need but they will expect to receive comparable benefits for serving that need.

The principle is that both parties to an agreement must perform the promises they made. Participating party agreement administrators should avoid the attitude that their sole role is to

monitor the performance of the other party to assure proper conformance. Administrators must also help assure that their party is performing its promises. If one party fails to perform Its promises, this will, in many cases, totally or partially relieve the other party of the obligation to perform and/or lead to damages for breach of agreement for which the failing party will be responsible. Therefore, the party administrators are responsible to monitor both or all parties' performance.

When everyone firmly grasps the concept that both or all parties are mutually responsible for the performance of the agreement, it is easier for all parties to treat each other as partners trying to achieve a mutual goal; successful performance of the agreement. During the performance of the agreement one should not yield to the temptation evoked by frustration to treat the other party as an adversary. Remember that each party has a common interest with each other party. Remember that many agreements are not performed exactly as the parties intended and that over a period of time there are changes as agreements evolve.

- ! Any more risk or less risk than any other contract a jurisdiction may enter into. The degree of risk will be in proportion to the responsibilities to the agreement.

Mutual Responsibilities to the Agreement

The parties' attitude toward an agreement is a result of their orientation to the agreement. For the parties involved, the attitude that makes the most sense is also the most difficult to maintain. It requires avoiding a proprietary orientation. There is a temptation to see the other party as the only party who will be governed by the agreement. This perception of your party's rights and other parties' duties, your party's control and other parties performance, can set the stage for conflict and disruption between. the parties throughout the life of the agreement.

An agreement creates an obligation. It is a promise (or more often a set of promises) the parties make to each other which are enforceable by law. In some cases, the only promise the aided party will make In an agreement is to pay the aiding party when the aiding party delivers the services that are the subject of the agreement. In other agreements, however, the aided party promises to do more. In some agreements, for example, the aided party may promise to provide support services to the aiding party. In some agreements there may be just an exchange of like services.

An administrator's job is to approach the successful resolution of these problems actively and aggressively, but at the same time, in a courteous and businesslike way. If a party is treated like an adversary without substantial reason, he or she will most likely respond as an adversary. An adversary relationship will detract from what should be the goal and focal point of the parties: Agreement performance; timeliness; and within budget constraints.

Therefore, it is important to understand that parties to the agreement have a mutual responsibility to perform the agreement together.

How to Read and Interpret the Agreement

An agreement consists of the agreement document, prior documents and subsequent documents which clarify or amend it, e.g., letters, formal changes, resolutions, statutes, proclamations, ordinances, preambles, requests for assistance, responses. The language of the agreement documents usually reflects the intent of the parties clearly. However, questions may arise if two terms conflict, if a term is ambiguous, or if there is uncertainty about what a term means. In order to assist in establishing the meaning of an agreement in these instances, some recognized rules of interpretation have been arrived at.

The purpose of the rules of interpretation is to determine the probable intent of the parties at the time they entered into an agreement. The intent of the parties is ascertained by examining how the parties manifested their intent through their words, actions, or inactions, the objective manifestations of their intent. (Their intent is not determined by exploring what either of the parties was thinking at the time they contracted, which is their subjective intent.)

1. **Common Sense**

Common sense is the most important rule for interpreting agreements and the rules of interpretation are intended by the law to reflect this. The words and acts of the parties are, therefore, interpreted in light of the meaning that the words or acts would have conveyed to a reasonable person standing in the place of the parties at the time the agreement was entered into.

2. **Implied Legal Requirements**

Though not written in the agreement documents, there are many other terms of an agreement that are implied by law. For example, it is implied in every agreement that the parties are dealing with each other in good faith and cooperation. This means it is implicit that all parties to an agreement must use their best efforts to see that the goals of the agreement are achieved and do nothing contrary to the goals of the agreement.

Some implied terms can be changed if the parties so indicate in the agreement document. An example of this is that service provided by the aiding party will be the same as the service provided to the constituents of the aiding party. However, the parties cannot alter Federal or State safety standards for workers (unless they wanted to make the standards higher than the highest standard imposed by Federal or State law).

3. **Agreement Interpreted as a Whole**

Agreement documents are read as a whole to interpret the intention of the parties, not just by reading particular words, phrases, or clauses alone. All provisions of an agreement are, if possible, interpreted to have a meaning which harmonizes both with each other and with the overall intention of the agreement rather than assuming that the terms are ambiguous or in conflict with each other.

The aiding party has responsibility for pricing the work based on all elements of the contract, to include reading and interpreting the contract as a whole.

4. **Custom and Usage**

Government practice may be used in interpreting the agreement unless there is an expressed or explicit term within the agreement in conflict with the asserted customary practice or usage. Thus, in the absence of such an expressed term, the standard of performance on which the agreement is to be based is that which is the usual standard in the particular jurisdictional entity.

5. **Precedence of Words and Terms**

The agreement generally sets forth the precedence to be accorded to words and terms in case a conflict exists. Where an agreement is made up of written, typed and printed terms and there is an inconsistency, the following order of precedence applies:

The written provisions take precedence over typewritten provisions, and typewritten provisions take precedence over printed provisions. This order of precedence is established on the premise that it yields the most immediate language, which is normally the language that the parties last put into the agreement. As a general rule, where an agreement contains both general and special provisions relating to the same subject, the special provisions are controlling--unless the agreement states something to the contrary.

6. **Ambiguities Construed Against the Drafter**

This rule of interpretation is used as a rule of last resort. After applying the foregoing rules, if the meaning of the agreement is uncertain, construe the ambiguous language against the party drafting the language or drawing. (This demonstrates the previous correspondence.)

7. **Duty to Seek Clarification**

A participating party has a duty during the development phase to inquire about obvious ambiguities, omissions, or conflicts in the provisions. If a reasonable person reviewing the draft documents could be expected to detect the discrepancy, a party then has an obligation to seek clarification.

ATTACHMENT #7

Interlocal Agreements

7-11-101. Short title. This part shall be known and cited as the "Interlocal Cooperation Act".

7-11-102. Purpose. It is the purpose of this part to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other local governmental units on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.

7-11-103. Definition. For the purposes of this part, the term "public agency" shall mean any political subdivision, including municipalities, counties, school districts, and any agency or department of the state of Montana.

7-11-104. Authorization to create interlocal agreements -- issuance of bonds for joint construction -- hiring of teacher, specialist, or superintendent. One or more public agencies may contract with any one or more other public agencies to perform any administrative service, activity, or undertaking or to participate in the provision or maintenance of any public infrastructure facility, project, or service, including the issuance of bonds for the joint construction of a facility under 20-9-404, the hiring of a teacher or specialist under 20-4-201 or a superintendent under 20-4-401, or the hiring of or contracting with any other professional person licensed under Title 37, that any of the public agencies entering into the contract is authorized by law to perform. The contract must be authorized and approved by the governing body of each party to the contract. The contract must outline fully the purposes, powers, rights, obligations, and responsibilities of the contracting parties.

7-11-105. Detailed contents of interlocal agreements. The contract authorized by 7-11-104 must specify the following:

- (1) its duration;
- (2) the precise organization, composition, and nature of any separate legal entity created by the contract;
- (3) the purpose or purposes of the interlocal contract;
- (4) the manner of financing the joint or cooperative undertaking and establishing and maintaining a budget for the undertaking;
- (5) the permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and, if applicable, for disposing of property upon a partial or complete termination;
- (6) provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking, including representation of the contracting parties on the joint board;
- (7) if applicable, the manner of acquiring, holding, and disposing of real and personal property used in the joint or cooperative undertaking;
- (8) the contracting party responsible for reports and payment of retirement system contributions pursuant to 19-2-506;
- (9) if applicable, the manner of sharing the employment of a teacher or specialist under 20-4-201, a superintendent under 20-4-401, or a professional person licensed under Title 37; and
- (10) any other necessary and proper matters.

7-11-107. Filing of interlocal agreement. The interlocal contract made pursuant to this part must be filed with:

- (1) the county clerk and recorder of the county or counties where the political agencies are situated; and
- (2) the secretary of state.

7-11-108. Authorization to appropriate funds for purpose of interlocal agreement. Any public agency entering into an interlocal contract pursuant to this part may appropriate funds for and may sell, lease, or otherwise give or supply to the administrative board created for the purpose of performance of said contract and may provide such personnel or services therefore as may be within its legal power to furnish.



Montana State Volunteer Firefighter's Association

In Sponsorship With
Thomas J. Wood Insurance Agency

Dear Volunteer Firefighter:

The Montana State Volunteer Firefighter's Association is pleased to announce its endorsement of a new *specially discounted* personal insurance program *for members, retirees, and fire board members only*. The plan offers automobile, homeowner, personal articles, boat, and personal liability insurance.

This is a unique opportunity for both you and the MSVFA. As a member of the Montana State Volunteer Firefighter's Association you are eligible to take advantage of a discounted personal insurance program especially designed with you in mind. It also allows a dream to become a reality for the MSVFA by providing them with the resources to help reward all member firefighters for providing a valuable service to their community. The program is offered through the Travelers Insurance Company, whose red umbrella is its trademark and the well known symbol of security for millions of Americans. This specially discounted group rate program will be administered through my insurance agency which is located in Libby, Montana. I am currently President of the Montana State Volunteer Firefighter's Association, Assistant Chief of the Libby fire department and have been a member firefighter for over 23 years. Assisting me will be Kenneth L. Preston, another veteran volunteer firefighter with over 23 years service to Montana firefighting community and currently Chief of the Libby fire department. Both Ken and I understand the special needs and challenges faced by volunteer firefighters.

The enclosed brochure will give you more information about our exciting new program. For a free quotation, just complete and return the enclosed request for quotation form or give Thomas J. Wood Insurance Agency a call at 1-800-305-8089.

Remember, the only way to find out how much this plan can benefit *you* is to check it out. **SUPPORT** your Montana State Volunteer Firefighter's Association and call TODAY!

Sincerely,

Thomas J. Wood
President
MONTANA STATE VOLUNTEER FIREFIGHTER'S ASSOCIATION

Dedicated to the Betterment of the Fire Fighting Service

It is not what this Association is doing for you, but what are you doing for the Association.

ATTACHMENT #9

An INSURANCE PROGRAM

Designed Especially for the Member Volunteer Fire Departments of the

MONTANA STATE VOLUNTEER

FIREFIGHTERS' ASSOCIATION

EDDIE THOMAS INSURANCE AGENCY

126 WEST BROADWAY STREET

P.O. BOX 687

BUTTE, MONTANA 59701

1-800-823-3233

Underwritten by
NATIONAL CASUALTY COMPANY
Administrative Office: Columbus, Ohio

Montana State Volunteer Firefighters Association Insurance Plan

benefits the members ##### benefits the group

WHY MSVFA INSURANCE?

The MSVFA Insurance Plan is a highly practical insurance plan that provides greater peace-of-mind to individuals and groups engaged in a wide variety of activities. It gives all eligible persons the security they need and deserve. Each person is protected as well as the group itself--because all of the eligible persons within an insured group are automatically covered.

WHAT ARE THE COVERED ACTIVITIES?

- X an emergency run of an insured volunteer group.
- X a drill, a parade, or a test or trial of a piece of equipment operated by an insured volunteer group.
- X any other scheduled, approved, and supervised activity (excluding the practice for or play of league sports) of either the MSVFA or the insured group.
- X direct travel to and from such activities.

WHO IS COVERED?

- X members (volunteer or paid) of an insured volunteer group including those persons specifically requested by an official of such group to assist in an emergency situation.
- X members of an insured auxiliary group.
- X members of an insured youth group.

WHAT IS THE DIFFERENCE BETWEEN THE MEDICAL EXPENSE AND EXCESS PLANS?

- X **The medical expense primary plan** pays for all covered expenses, **regardless** of other insurance.
- X **The medical expense excess plan does not pay benefits for covered expenses to the extent that they are collectible under certain other insurance policies and/or health plans as stated in the policy.**

WHAT IS COVERED?

A **bodily injury** of an insured volunteer, auxiliary, or youth group member which meets both of the following conditions:

- X it is caused by an accident which happens while he or she is attending or taking part in a covered activity; and
- X neither the bodily injury, the loss, nor the expense may result from sickness, disease, or bodily infirmity, or from any cause other than the accident.

Smoke inhalation of an insured volunteer, auxiliary, or youth group member which happens while he or she is taking part in a covered activity.

Volunteer Group Members' Supplemental Coverage for covered Contagious or Infectious Diseases and Heart or Circulatory Malfunctions

- X A contagious or infectious disease (including influenza, la grippe, and pneumonia but excluding the common cold) which first manifests itself and is medically diagnosed as such within the

normal incubation period (not to exceed 30 days) following exposure while taking part in an emergency run of an insured volunteer group.

- X A heart or circulatory malfunction which first manifests itself and is medically diagnosed as such before the volunteer group member's 65th birthday and within 24 hours after he or she has taken part in an emergency run of an insured volunteer group.

WHAT ARE THE POLICY EXCLUSIONS AND LIMITATIONS? We will not pay benefits for expenses incurred for: (1) the examination, prescription, purchase, or fitting of eyeglasses, contact lenses, or hearing aids; (2) treatment by a person employed or retained by the MSVFA or its subsidiaries or affiliates and for which no charge is normally made; or (3) care or treatment by a person who ordinarily lives in the insured's home or is a parent, grandparent, spouse, brother, sister, or child of either the insured or the insured's spouse.

Nor will we pay benefits for loss or expenses resulting from: (4) intentional self-destruction or an attempt at it, or intentional self-inflicted injury; (5) war or an act of war, declared or undeclared; (6) air travel unless the insured is a passenger on a regularly scheduled flight of a properly licensed commercial airline; or **(7) a heart or circulatory malfunction if the insured has either received prior medical treatment for or has been medically diagnosed to have had a heart or circulatory malfunction within the last five years.**

HOW DO YOU APPLY FOR COVERAGE

1. Complete items 1 through 3 on the request to participate form, date, and sign where indicated. *
2. Complete the "Premium Calculation" form, date, and sign where indicated. *
3. Send both completed forms, along with your check make payable to: *

Eddie Thomas Insurance Agency
P.O. Box 687
126 West Broadway
Butte, Montana 59703
Telephone: (406) 723-3233

Your insurance certificate, claim forms and complete instructions will be sent to you promptly.

COVERAGE IS PROVIDED UNDER POLICY FORM NO. GR 9991 ET AL.

Certain provisions of the policy are summarized in this folder. All benefits are subject to the policy, which alone constitutes the agreement under which payments are made.

*** NOTE: Please contact Eddie Thomas Insurance Agency at the above address or phone number for a complete copy of the policy in question and/or the application form.**

Fire Department Insurance: Don't Get Burned

By JAMES A. GEIL

Chief, Apache Junction (AZ) F.D.

We see the headlines nearly every day: “Fire Department Sued by Angry Homeowner.” This type of situation, as well as the pitfalls of road accidents, natural disasters and accident-prone station house visitors, requires that every fire department purchase and maintain adequate insurance coverage.

The purchase of insurance protection can be as simple as picking up a phone and calling your local agent, or it can be as complicated as the specifications for a new pumper. You, as the manager of a fire department, are responsible for this process. The objective is for you to prepare yourself as well as possible for the task of buying insurance for your department. Buying insurance coverage is just like buying a new pumper. You can order it with as many, or as few, features as you want. Of course, the more features, the higher the price.

CHOOSING AN INSURANCE COMPANY

If you have ever discussed an insurance policy with more than one agent, you have undoubtedly been told by each that:

- ! His price is the best.
- ! His benefits are best.
- ! He can solve all your problems.
- ! You can trust him.

But how can you sort through all the public relations hype to get the facts? First, make a list of what *you* want in insurance coverage. This doesn't mean you can't listen to several sales pitches; if you do, pick the features you like and incorporate them into your list. Then send the list out to insurance agents and say, "I want your price on *this* package." Require them to submit quotations on what you have decided is best for your department.

Also, insist that agents list and explain any differences between what you are asking for and what they are quoting. If they refuse, you can figure you will probably be unhappy with the way they service your account also. In essence, tell them. "If you want the business, do the work!"

After your proposals are received, you should lay them on the table and make a comparison: get out your list of what you want and weigh the options. Review all the proposals and select the best or closest to what you want.

You can also have several agents come in at the same time and sit across the table from one another and compare coverages and prices. You'll be surprised at how the coverage will go up and the prices will come down!

Several rules to keep in mind:

- ! Compare prices and features.

- ! Agents will sell you whatever you want. (Why not, you're paying for it!)
- ! Shop around.
- ! All policies with like names are not the same.

Factors to Consider

Now that you have requested quotations and gotten prices, consider the details of each policy.

! Price

You don't always have to buy from the lowest bidder (check with your attorney). You, as an officer, have an obligation to your department not to waste its money. This doesn't mean you have to buy the cheapest policy, however, it does mean buy getting the best deal for the money spent. In an insurance program, the coverage or protection should be given greater consideration than the price.

! Security

Another area of concern is the financial reputation and security of the proposed insurance company. Remember, we are speaking not of the local agent but the company he represents. The best standard for judging individual companies is "Best's Insurance Guide." which is a peer review of the industry. Ask for a copy of the rating of the company you want to do business with, and review its administration and financial security. Some departments spend more time checking the credentials and abilities of their truck mechanics than their insurance agents and companies.

! Consolidation

It is an excellent idea to purchase all of your protection from one company if at all possible. If you compare prices and go with Agent #1 because he has the best property coverage, Agent #2 for the vehicle coverage, etc., you will be doing a lot more work than you need to. Although you may feel you got the best prices, when the time comes to file a claim, you will have to deal with five agents and companies for the same accident. Also remember that the less claims insurance companies pay, the more money they make. With several agents handling various coverages on the same accident, you will often end up with a lot of finger pointing and agents arguing over who is responsible for what part of the claim. And guess who will be in the middle. If possible, then, all liability insurance should be with the same company. However, if you go through a local agent, he may not always be in a position to furnish all of the protection you want. For this reason, if you are located in a small town or rural area, you may wish to go to a larger city for coverage, if your insurance needs warrant it. Also, seriously consider purchasing your insurance from one broker who can sell, handle and service your account.

! Other

With your insurance also **request a** 60-day written notice of cancellation, so you don't get caught short.

! Bodily injury

If you're not sure what this entails, ask that bidders spell it out in the quotation. A good policy should cover bodily injury, sickness, disease, disability, shock, fright, mental anguish, mental injury and death at any time.

! Personal injury

This means: false arrest, false imprisonment, wrongful injury, wrongful eviction, wrongful detention, malicious prosecution, humiliation and the invasion of the right of private occupancy.

! Libel or Slander

The publication or utterance of libel or slander or other defamatory or derogatory material. or publication or utterance in violation of individual rights of privacy, advertising, broadcasting or telecasting activities. The above will provide protection if you are involved in an arson case. If, after giving testimony, the case

is dismissed, you are protected from civil suits.

! Racial, religious, sex or age discrimination (unless this is prohibited by law in your locality). The following is a list of policies I feel should be purchased by all fire departments. Now, I am sure somebody is saying, "Well, my fire district is only half as big as his, so I only need half as much insurance," but this is *wrong!*

If you are unlucky enough to have an insurance claim filed against your department, the settlement may bear no relation to the size of your department. If you carry a small amount of insurance with the belief that judges will not hand down a large judgment against you because you are firefighters and "the good guys," you may be in for a rude awakening. Let's look at some of the types of insurance available.

MALPRACTICE INSURANCE (professional liability)

Most states currently have some type of "Good Samaritan" law. However, a close reading and an opinion from your department's lawyer (I hope you do have one) will probably reveal that if you provide EMS service and receive some type of payment, either as a career firefighter or a volunteer, you are probably not protected by the Good Samaritan law.

On the other hand, you say you are a volunteer and don't receive any payment for your services. But what if you are sued? True, they cannot collect since you are covered by the act, but who will pay for the lawyers' fees to defend you? The law doesn't address or exempt attorneys' fees. If you are not sure, ask a lawyer now, *before* you need one. Lawyers' fees can easily run into the hundreds of thousands of dollars, and, unless you have that much socked away, you need to be protected.

Anyone who responds with a club or association that is not a legal organization and does not provide any insurance is also at risk. You personally, your house, your car and your possessions are on the line! Have a bake sale, chicken dinner or whatever, but buy insurance. Remember, one of the basic rules of firefighting is to protect yourself. If you don't, you won't be able to help anyone else.

VEHICLE LIABILITY

Vehicle liability insurance is probably the type of insurance you are most familiar with. The most common question asked in regards to vehicle liability is, "How much insurance should I carry for my apparatus?" You may be surprised to learn that, generally, it isn't practical or cost effective to carry insurance for the full value of your apparatus. An agent will sell you insurance for anything in any amount, but there are a number of reasons why it isn't necessary to purchase the maximum amount for all vehicles.

For example, say you elect to purchase insurance for the replacement cost of a \$150,000 pumper. This costs you X amount of dollars. The next question will be, how much deductible do you want to purchase? Many people figure that because they carry \$100 deductible at home on their car, that sounds like a good figure. But do you really know what is meant by deductible insurance?

The amount of deductible you should carry on your vehicles is the amount of loss you can afford to absorb should a loss occur. If you damage or wreck a pumper, how much of the repair or replacement cost can you afford?

If the amount of the repair is \$3,000, that could probably be squeezed out of most budgets. If you can absorb up to \$5,000 in damages, that is the amount of deductible you should carry. And, a \$5,000 deductible is considerably cheaper than a \$100 deductible.

However, realize that the majority of your claims are going to be the small fender-bender type, with repair costs well under \$5,000. So, although your premiums are going to be lower, you may have to set aside some money in your budget to pay for these losses, should they occur. This sum can be placed in a contingency or a reserve fund in the budget.

If you have a bad year, they will be used. If you have a good, accident-free year, use them for the

purchase of new apparatus. This can be used as an incentive for your apparatus drivers: Drive safely, don't have accidents, and money will be available for new apparatus sooner. Wreck it, and you will drive it forever!

It's important to remember that even if you insure an older apparatus for its full replacement value of, say, \$100,000, if you have an accident it will be strictly a business decision by the insurance company as to whether the vehicle will be repaired or replaced. If it's cheaper to repair your apparatus for \$60,000 than to replace it, they will certainly repair it. After the vehicle has been repaired and returned to you, which will probably take six months longer than estimated, if it drives down the street crooked, you'll have to start arguing with the insurance company.

If a piece of apparatus is involved in a major accident, and a decision is made not to repair but to replace it, you might consider using the insurance money to provide a down payment on a new piece of apparatus. Probably, the apparatus will not be delivered until sometime in your next fiscal year, giving you time to budget for the payments. Also, remember that the majority of apparatus manufacturers now provide some type of lease-purchase plan.

I would recommend that you establish a realistic price on your vehicles, considering age, condition, usage, etc., and insure the vehicle for that amount. This current market value will be the amount the insurance will give you should you total the vehicle, and this is the amount you can use for the down payment on your new vehicle.

Remember, we are considering the cost of the apparatus only. Insuring the various equipment carried on the vehicle will be discussed later in this article.

“The coverage or protection should be given greater consideration than the price.”

ERRORS AND OMISSIONS (professional)

Your department should carry coverage known as errors and omissions for all of its employees, firefighters, EMTs, paramedics, elected officials, members of boards and commissions and volunteers. The definition of errors and omissions is extremely broad and is usually defined as **malfesance** (performance of some act that is wrongful), **misfesance** (performance of a lawful act in an unlawful manner) or **nonfesance** (failure to perform an act one is legally bound to perform).

Errors and omissions will protect you if you neglect (in good faith or because of lack of manpower) to do some act on the fire ground and the property's owner sues your department, claiming his building was lost due to your mistakes.

Unfortunately, the days when fire-fighters were considered unqualified heroes, even when the building burned down, are coming to an end. Some building owners will not hesitate to sue the fire department, however slight the reason or perceived wrong.

Despite the best and most-conscientious efforts of chiefs, elected officials and/or firefighters, things can happen that, to some people, are reason to sue. Their motives may be political. revenge, a belief they are justified, - or maybe you did make an honest mistake. Whatever the reason, you should be protected by insurance. Unfortunately, it's impossible to be so good you never expose yourself to a lawsuit.

Be sure your errors and omissions policy also covers any oral and written contracts the department may enter.

INLAND MARINE COVERAGE

Carrying protection on your vehicles is a very good idea, but have you taken inventory lately on all the equipment you carry on a pumper or truck? If not, you should. (That's good business, also .)

After you have taken an inventory, go through and cost it out. It will become evident that you should carry insurance on the many small items and property you carry on your vehicles.

Coverage should be not what you paid for it, but what it would cost you to replace the equipment today. You may be in for quite a surprise. Could you afford to replace this equipment if it were lost or damaged?

A complete inventory of items should be made including replacement costs. And don't forget the fire-clothes hanging on the wall or your paging radios. If you have any specialized equipment or items, be sure and mention them to the insurance agent as they may require special protection or coverage. A computer is a good example.

Usually, you can come to a lump sum figure for all of your equipment, and the insurance will be written for that amount for the ensuing year. That way it's not necessary to call your agent and advise him any time you buy or salvage an item.

PROPERTY INSURANCE

If your department owns property, it should also be insured. Your building and grounds should be protected from damage from the elements - rain, snow, wind, floods, etc. In addition, you also want to be sure that you are protected in case someone hurts himself in the fire station. If you hold pancake breakfasts or other events in your building, the public should be protected.

CONCLUSION

Although the above information is not complete by any means, and has not been written by someone working in the insurance industry, it hopefully will make you aware of the possible consequences of being uninsured or underinsured.

Remember, buy what you need, buy what you can, and compare, compare, compare. If you anticipate purchasing new insurance coverage and placing your insurance program out to bid, being knowledgeable and prepared will ensure a professional package and simplify the insurance-buying process.

SUGGESTED INFORMATION TO SUPPLY FOR INSURANCE QUOTES

- ! That you **are a legal fire department organized** under the laws of your state.
- ! That you serve _____ residents in an area of _____ square miles.
- ! The level of emergency medical service you provide, and how it is provided (operating **procedures**). Whether you **transport**.
- ! **A list of vehicles, showing:**
 - Year and type
 - Gross vehicle weight, arbitrary value assigned to each
 - Desired insurance coverage for each vehicle (liability, uninsured motorist, ACV such as specified perils, collision, amount of deductible.)
- ! Location of buildings. plus:
 - Are buildings owned or leased?
 - Value
 - Type of construction
 - Square footage
 - Value of building contents
 - Value of portable equipment
 - Amount of insurance coverage on buildings
 - Amount of deductible
- ! Amount of coverage you want for communications equipment Amount of deductible
- ! Amount of malpractice coverage:
 - Number of EMTs
 - Number of IEMTs
 - Number of paramedics
 - Do you transport?
 - Do you have an ambulance?

- ! Amount of blanket accident policy:
 - Medical expenses
 - A, D & D
- ! Errors and omissions coverage requested:
 - Name of department
 - Date organized
 - Population
 - Budget for last three years
 - Type of governing board
 - Number of employees
 - Bonds outstanding
 - Pending legal action
 - Loss experience (a brief listing of any claims you've made over the last few years. They will check, so list all significant claims)
- ! And, finally, request for any deviations from what you have specified.

ATTACHMENT #11

VOLUNTEER FIREFIGHTERS' COMPENSATION ACT

Part 1

General Provisions

19-17-101. Short title. This chapter shall be known and may be cited as the "Volunteer Firefighters' Compensation Act".

19-17-102. Definitions. Unless the context requires otherwise, the following definitions apply in this chapter:

(1) "Active member" means a volunteer firefighter credited with service under this chapter during the most recently reportable fiscal year.

(2) "Benefit" means the pension, disability, or survivorship benefit provided under this chapter.

(3) "Board" means the public employees' retirement board provided for in 2-15-1009.

(4) "Claim" means a request from a member, surviving spouse, or dependent child for payment of medical or funeral expenses.

(5) "Department" means the department of administration.

(6) "Dependent child" means a child who is unmarried, who is under 18 years of age, and who is the child of a deceased member.

(7) "Designated official" means a representative of a fire company appointed by the fire chief to perform specified actions and includes but is not limited to a fire company supervisor, a fire company secretary, and a fire company presiding officer as described in 7-33-2312.

(8) "Disability" or "permanent total disability" means permanent total disability as defined in 39-71-116.

(9) "Fire company" means a fire company organized under 7-33-2311 in an unincorporated area, town, or village and includes a volunteer fire department, a fire district, and a fire service area created under the provisions of Title 7, chapter 33.

(10) "Fiscal year" means the 12-month period that begins on July 1 and ends on June 30 of the following year.

(11) "Member" means a volunteer firefighter who has service credited under this chapter.

(12) "Pension trust fund" means the volunteer firefighters' pension trust fund established to pay claims and benefits under this chapter.

(13) "Retiree" or "retired member" means a member who is receiving full or partial participation benefits or disability benefits from the pension trust fund.

(14) "Service" means cumulative periods of active membership that are credited only in full fiscal year increments.

(15) "Supplemental insurance" means insurance that is carried by a fire company for the purposes of providing disability or death benefits and that is in addition to any insurance required by law, including workers' compensation insurance.

(16) "Surviving spouse" means the spouse married to a member when the member dies.

(17) "Survivorship benefit" means the monthly benefit paid to the surviving spouse or dependent child of a deceased member.

(18) "Training" means instruction pertaining to firefighting that is supervised by the chief or a designated official.

(19) "Volunteer firefighter" means a person who is an active member of an eligible fire company and is not compensated for services as a firefighter.

19-17-103. Payments to fire companies maintaining supplemental insurance. To encourage and aid fire companies to maintain supplemental insurance to provide benefits when members are injured or killed while performing duties as volunteer firefighters, the board shall authorize payment of \$75 per year for each motorized mobile unit of firefighting equipment, not to exceed \$150 per fire company per year. Payment must be a charge

against the pension trust fund and must be paid to each fire company maintaining supplemental insurance or to the organization or agency maintaining supplemental insurance for a fire company.

19-17-104. Penalty for false statements or claims. A person required to make a statement or affidavit by this chapter who willfully falsifies the statement or affidavit or a person who files a false claim under this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine in an amount not exceeding \$1,000 or by imprisonment for a term not exceeding 1 year, or both.

19-17-105. Duties of volunteer firefighters. The duties of a volunteer firefighter include any activity authorized by an officer of the fire company relating to travel to, participation in, and return from calls for fire protection, fire company meetings, training, medical assistance, search and rescue assistance, public service activities, such as parades, and calls for assistance to protect individual or public health and safety.

19-17-106. Pension trust fund established -- restrictions on use. (1) A pension trust fund is established and maintained for payment of claims and benefits provided under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan.

(2) The pension trust fund must be funded on an actuarially sound basis. For purposes of this subsection, "actuarially sound basis" means that contributions must be sufficient to pay the full actuarial cost of the fund. The full actuarial cost includes both the normal cost of providing benefits as they accrue in the future and the cost of amortizing unfunded liabilities over a scheduled period of no more than 30 years.

(3) Except as provided in this section, a member or an employee of the department or the board of investments may not:

(a) have any interest, direct or indirect, in the making of any investment or in the gains or profits accruing from the pension trust fund;

(b) directly or indirectly, for the member or employee or as an agent or partner of others, borrow from the pension trust fund or deposits;

(c) in any manner use the pension trust fund except to make current and necessary payments that are authorized by the board; or

(d) become an endorser or surety as to or in any manner an obligor for investments for the pension trust fund.

(4) The assets of the pension trust fund may not be used for or diverted to any purpose other than for the exclusive benefit of members, their surviving spouses, their dependent children, and qualified fire companies and for paying the reasonable administrative expenses of administering this chapter.

(5) Upon the termination of the pension trust fund, the substantial reduction in the number of members that would constitute a partial termination of the pension trust fund, or the complete discontinuance of contributions to the pension trust fund, the pension benefit accrued to each member directly affected by the occurrence becomes fully vested and nonforfeitable to the extent that the benefit is funded.

19-17-107. Employment of actuary -- biennial investigation. (1) The board shall retain a competent actuary who is an enrolled member of the American academy of actuaries and who is familiar with public pension systems. The actuary is the technical adviser to the board on matters regarding the actuarial funding of the pension trust fund.

(2) The board shall require the actuary to make a biennial actuarial valuation of the assets and liabilities of the pension trust fund. The actuarial valuation must include the sufficiency of the fund to pay full and partial benefits to members and benefit recipients and must include recommendations for any changes that should be made to those benefits or the contributions to the pension trust fund to ensure the actuarial soundness of the pension trust fund.

(3) The board shall require the actuary to conduct periodic actuarial experience studies of the pension trust fund and to recommend any changes in actuarial assumptions or tables based upon the studies.

19-17-108. Credit for service as volunteer firefighter -- records. (1) The annual period of service that may be credited under this chapter is the fiscal year. A fractional part of a year may not count toward the service required for participation in this system. To be eligible to receive credit for any particular year, a volunteer firefighter shall serve with a fire company throughout the entire fiscal year.

(2) The years of service are cumulative and need not be continuous. Separate periods of service properly credited with different fire companies must be credited toward a member's eligibility for full or partial benefits.

- (3) A volunteer firefighter must receive credit for service during any fiscal year if:
- (a) during the fiscal year, the volunteer firefighter completes a minimum of 30 hours of training in matters pertaining to firefighting under a formal program that has been formulated, supervised, and certified to the board by the chief or designated official of the fire company;
 - (b) the volunteer firefighter's participation in the training program is documented in the fire company's records filed and maintained by the chief or designated official; and
 - (c) the fire company maintained firefighting equipment that is in serviceable condition and owns, rents, or uses one or more buildings used for the storage of that equipment that all together are valued at \$12,000 or more.
- (4) The chief or designated official of each fire company shall keep and maintain training records for each current and former volunteer firefighter who is or was a member of the fire company.

Part 2

Administration of Fund

- 19-17-201. Administration of chapter.** (1) The board is the trustee of all money collected under this chapter and has exclusive control of the administration of the pension trust fund except as otherwise provided by law.
- (2) The department shall deposit in the state treasury all amounts received by it as provided in this chapter.
- (3) The state treasurer is the custodian of the pension trust fund, subject to the control of the board for the administration of the fund and the board of investments for the investment of the fund.
- (4) The board shall review the sufficiency of benefits provided under this chapter and recommend to the legislature those changes in benefits that may be necessary for retired members and their beneficiaries to maintain a stable standard of living.

- 19-17-202. Reports of board.** (1) As soon as practical after the close of each fiscal year, the board shall file with the governor a report covering administration of the Volunteer Firefighters' Compensation Act for that fiscal year.
- (2) The report must include:
- (a) a statement of the accumulated cash and securities in the pension trust fund as certified by the state treasurer and the board of investments; and
 - (b) the most recent published report of the actuary of the actuarial valuation of the assets and liabilities of the plan.

19-17-203. Rules to be made by board. The board shall make such rules as it considers necessary and advisable in its administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan, not inconsistent with the provisions thereof.

19-17-204. Administrative expenses. Necessary expenses for the administration of the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan are a charge against the pension trust fund. The necessary administrative expenses attributable to this chapter must be paid from the investment earnings on the public employees' pension trust fund. Before fiscal yearend closing, the board shall compute the expenses directly or proportionally attributable to this chapter over the past fiscal year and transfer that amount from the volunteer firefighters' pension trust fund to the public employees' pension trust fund.

Part 3

Contributions to Fund

19-17-301. Fire insurance premium tax to be paid into pension trust fund. The state auditor shall annually pay from the general fund to the pension trust fund a sum equivalent to 5% of the premium taxes collected from insurers authorized to effect insurance against risks enumerated in 50-3-109. The sum must be computed before the amounts provided for by 19-13-604, and 19-18-512 are deducted. The money must be used for the payment of claims, benefits, and administrative costs as provided in this chapter. The money is statutorily appropriated as provided in 17-7-502.

19-17-302. Investment of pension trust fund. (1) The pension trust fund must be invested by the board of investments as part of the unified investment program described in Title 17, chapter 6, part 2.

(2) All income earned on any assets constituting a part of the pension trust fund must be paid into the pension trust fund as received.

(3) For investment purposes, the pension trust fund may be commingled with other pension funds administered by the board, but a separate account must be maintained for each system.

Part 4

Pension Benefits

19-17-401. Eligibility for pension and disability benefits. (1) To qualify for a full pension, partial pension, or disability benefit under this chapter, a member shall meet the requirements of subsections (2) or (3) and (4).

(2) (a) For a full pension benefit, a member must have completed 20 years of service and must have attained 55 years of age, but need not be an active member of a fire company when 55 years of age is reached.

(b) A member who is prevented from completing at least 20 years of service may qualify for a partial pension benefit if the member has completed at least 10 years of service and has attained 60 years of age, but need not be an active member of any fire company when 60 years of age is reached.

(3) An active member of a fire company whose duty-related injury results in permanent total disability, as defined in 39-71-116 and determined pursuant to 19-17-410, is eligible, regardless of age or service, to receive a disability benefit.

(4) Except as provided in subsection (5):

(a) to receive a pension or disability benefit, a volunteer firefighter may not be an active member of any fire company; and

(b) a volunteer firefighter who receives a pension or disability benefit under this chapter may not become an active member of any fire company.

(5) (a) In the event of a declared national, state, or local emergency affecting Montana, a retired volunteer firefighter who is not receiving a disability benefit under this chapter may return to active service with a fire company for the duration of the declared emergency without becoming an active member under the Volunteer Firefighters' Compensation Act and the volunteer firefighters' pension plan and without loss of previously earned benefits. Only the fire chief of the fire company may determine who may return to active service. The fire chief shall prescribe the duties of any retired volunteer firefighter returning to active service.

(b) A member who is receiving a full pension benefit, as provided in 19-17-404, may return to service with a volunteer fire company without loss of benefits. A member returning to service under this section may not be considered an active member earning service credit.

19-17-402. Certificate of eligibility. The chief or designated official of each fire company that claims eligibility under this chapter shall, on or before September 1 of each year, file a certificate on a form to be provided by the board, subscribed and verified under oath before a notary, stating whether the fire company qualified under 19-17-108(3) during the preceding fiscal year. The certificate must contain the date of organization. The certificate must list the full name, social security number, and date of birth of each member of the fire company who was a member for the entire fiscal year and satisfactorily completed 30 hours of training during the preceding fiscal year, as required by 19-17-108(3). The certificate must be maintained by the board for the purpose of establishing service for members and eligibility for benefits.

19-17-403. Application for benefits. (1) A member may, as provided in this section, apply for retirement benefits before terminating service, but commencement of the benefits must be as provided in 19-17-411.

(2) A member, surviving spouse, or dependent child shall apply for benefits on a form provided by the board.

(3) The application must contain:

(a) the name, address, and date of birth of the member, surviving spouse, or dependent child;

(b) the date of birth of the member;

(c) the date of the member's death, if applicable; and

(d) the fiscal years during which service as an active member is claimed and the names of the fire companies with which the service was rendered.

(4) The board may require any proof of age, death, and service that it may consider proper, but it must accept a certificate properly completed and timely filed under 19-17-402 or subsection (3) of section 22, Chapter 157, Laws of 1977, as prima facie proof of service.

19-17-404. Amount of pension and disability benefits. (1) Each eligible member must receive a pension or disability benefit as provided in this section.

(2) (a) Except as provided in subsection (2)(c), the full pension benefit paid to eligible members is \$150 a month.

(b) A partial pension benefit is calculated by multiplying the full pension benefit in subsection (2)(a) by a fraction, the numerator of which is the eligible member's years of service and the denominator of which is 20.

(c) The full pension benefit of a member who continued to be an active member after completing 20 years of service must be increased by \$7.50 a month for each additional year of active service the member completed after 20 years of service, up to 30 total years of service.

(3) The disability benefit paid to an eligible member is calculated in the same manner as partial pension benefits described in subsection (2)(b), except that the numerator may not be less than 10.

(4) If any fraudulent change or any inadvertent mistake in records results in any member, surviving spouse, or dependent child receiving more or less than entitled to, then on the discovery of the error, the board shall correct the error and adjust the payments to the member, surviving spouse, or dependent child in an equitable manner.

19-17-405. Survivorship benefits to surviving spouse or dependent children. (1) Subject to subsection (2) and the limitation in subsection (4), survivorship benefits equal to the full or partial pension benefits otherwise payable to the deceased member must be paid or continue to be paid to:

(a) the surviving spouse, unless the spouse is convicted of knowingly, purposely, or intentionally causing a member's death or disability;

(b) the dependent children upon the spouse's death; or

(c) if the deceased member left no surviving spouse but left a dependent child, to the guardian or other person having custody of the dependent child.

(2) Benefits payable to a dependent child must be paid pursuant to 19-2-803.

(3) The survivorship benefit must be paid in each of the following circumstances:

(a) the death on or after July 1, 1995, of a member who had at least 10 years of service and who was not receiving pension benefits; or

(b) the death on or after July 1, 1985, of a retired member who was receiving pension benefits but who had not received benefits for a total of 40 months.

(4) Survivorship benefits under subsection (1) terminate when benefits have been paid for a total of 40 months, including any pension or disability benefits paid to the retiree before death. At the request of the recipient, a lump-sum payment may be made in lieu of up to 40 months of survivorship benefits.

19-17-406. Termination of pension when no surviving spouse or child. If a deceased volunteer firefighter leaves neither a surviving spouse nor a child under the age of 18, his pension shall terminate at the end of the month prior to the month in which his death occurs.

19-17-407. Exemption from taxation. The first \$3,600 or the amount determined pursuant to [15-30-111\(2\)\(c\)\(ii\)](#) of benefits received under this part is exempt from state, county, and municipal taxation.

19-17-408. Medical review of certain disability retirees. The board may require a member who receives a disability benefit to undergo periodic medical examinations. The examinations must be made by a physician or surgeon at the member's residence or a place mutually agreeable to the board and the member. Upon the basis of these examinations and the advice of the board's consulting physician, the board shall determine, by reason of physical or mental capacity, whether the member remains permanently and totally disabled.

19-17-409. Cancellation and reinstatement of disability benefits. (1) The board may cancel a member's disability benefit if:

(a) the board determines, as provided in [19-17-408](#), that the member is no longer disabled;

(b) the member refuses to submit to a medical examination under [19-17-408](#); or

- (c) the member engages in a gainful occupation during the previous year and earns compensation exceeding \$5,500.
- (2) The cancellation of a disability benefit under this section does not prejudice any right of a member to other pension benefits payable under the Volunteer Firefighters' Compensation Act.
- (3) If the member's earnings in any year after the cancellation of disability benefits under subsection (1)(c) are less than \$5,500, the disability benefit must be reinstated.

Part 5

Disability and Death Benefits

19-17-501. Eligibility for medical and funeral expenses. (1) To qualify for medical expenses under [19-17-504](#), a volunteer firefighter must be an active member of a fire company that is not covered by workers' compensation insurance when the injury or illness occurs.

(2) To qualify for funeral expenses under [19-17-505](#), a volunteer firefighter must, at the time of death, be an active member of a fire company.

19-17-502. Procedure for claiming medical expenses. (1) A member who claims medical expenses under [19-17-504](#) shall submit a claim on a form provided by the board. The claim must be verified by the member and by competent medical authority. The claim must be submitted within 1 year from the date of incurring the injury or illness.

(2) The claim must contain:

- (a) the name and address of the member;
- (b) the date, place, and manner of incurring the injury or illness;
- (c) the name and address of the attending physician, surgeon, or nurse, if any;
- (d) the dates of hospitalization, if hospitalized;
- (e) an affidavit from the attending physician, surgeon, or nurse that describes the nature of the injury or illness, the number and dates of visits, and the expenses;
- (f) if hospitalized, an affidavit from competent authority stating the nature of the injury or illness, the dates of hospitalization, and the expenses;
- (g) an affidavit from the chief or secretary of the fire company stating that the fire company was duly organized under the laws of Montana in an unincorporated town or village, that the member was, at the time of the injury or illness, an active member of the company, and that the injury or illness was incurred in the line of duty as described in [19-17-105](#).

19-17-503. Procedure for claiming funeral expenses. A person claiming the funeral expenses provided for in [19-17-505](#) shall submit the claim on a form provided by the board, in accordance with the board's rules.

19-17-504. Medical expenses. (1) The board shall authorize payment of some or all medical expenses resulting from an injury or illness that was incurred in the line of duty, as described in [19-17-105](#), and that required the services of a physician, surgeon, or nurse, whether or not the member was hospitalized. The payments must equal the amount of the member's necessary and reasonable out-of-pocket medical expenses that resulted directly from the injury or illness and that were billed within 36 months following the date of the injury or illness. The total claim for reimbursement may not exceed \$25,000.

(2) If an injury incurred in the line of duty results in the loss by amputation of an arm, hand, leg, or foot, the enucleation of an eye, or the loss of any natural teeth, the board shall authorize either a payment for the cost of a prosthesis or a payment of \$1,500 to help defray the cost of a prosthesis, whichever is less. The prosthesis may be replaced when necessary, but not more often than every 5 years. The board shall authorize payment of not more than \$1,500 of the replacement costs.

19-17-505. Funeral expenses. The board shall authorize payment of reasonable expenses or \$1,500, whichever is less, to aid in defraying the funeral expenses of an active member whose death occurs in the line of duty.

19-17-506. Payment of medical and funeral expenses. When a claim under [19-17-504](#) or [19-17-505](#) is received and approved by the board, payment must be made directly to the appropriate provider of the medical care or funeral services.



Bureau of Justice Assistance Fact Sheet Public Safety Officers' Benefits Act

Benefits

The Public Safety Officers' Benefits (PSOB) Act provides a \$100,000 benefit* to the eligible survivors of a public safety officer whose death is the direct and proximate result of a traumatic injury sustained in the line of duty. The act also provides the same benefit to a public safety officer who has been permanently and totally disabled as the direct result of a catastrophic personal injury sustained in the line of duty. To qualify, the injury must permanently prevent the officer from performing any gainful work.

*The benefit was increased from \$50,000 to \$100,000 for deaths occurring on or after June 1, 1988. Beginning on October 1, 1988, and on each October 1st thereafter, the benefit will be adjusted by the percentage of change in the Consumer Price Index,

Effective dates

Death benefits:

- o State and local law enforcement officers and fire fighters are covered for injuries sustained on or after September 29, 1976.
- o Federal law enforcement officers and fire fighters are covered for injuries sustained on or after October 12, 1984.
- o Members of Federal, State, and local public rescue squads and ambulance crews are covered for injuries sustained on or after October 15, 1986.

Disability benefits:

- o Federal, State, and local law enforcement officers, fire fighters, and members of public rescue squads and ambulance crews are covered for injuries sustained on or after November 29, 1990.

Eligible public safety officers

A public safety officer is a person serving a public agency in an official capacity, with-or without compensation, as a law enforcement officer, fire fighter, or member of a public rescue squad or ambulance crew. Law enforcement officers include but are not limited to police, corrections, probation, parole, and judicial officers. Volunteer fire fighters and members of volunteer rescue squads and ambulance crews are covered if they are officially recognized or designated members of legally organized volunteer fire, rescue, or ambulance departments.

A public safety officer's death or total and permanent disability must result from injuries sustained in the line of duty. Line of duty means any action that the public safety officer is authorized or obligated to perform by law, rule, regulation, or condition of employment or service. If law enforcement, fire suppression, rescue, or ambulance service is not a person's primary function, then to be covered by this act, that person must be engaged in his or her authorized law enforcement, fire suppression, rescue, or ambulance duties when the fall or disabling injury is sustained.

Public agency

"Public agency" means the United States, any U.S. State, the District of Columbia, the Commonwealth of Puerto Rico, any U.S. territory or possession, any unit of local government, any combination of such States or units, and any department, agency, or instrumentality of the foregoing.

ATTACHMENT #13

**Program Notice
TRADE**

Actions To Be Taken In The Event Of A Firefighter Line-Of-Duty Death

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In order for a firefighter's surviving dependents to receive the Federal Public Safety Officer's Benefit, certain tests must be made before death, or at the time of death.

It is necessary to obtain a blood sample and test for blood alcohol level (not merely the presence of alcohol in the blood).

In cases involving a non-traumatic injury, such as a heart attack, it is also necessary to measure the level of carbon monoxide saturation in the blood, (not merely to test for the presence of carbon monoxide in the blood).

It is also advisable to impound and secure any equipment involved in a firefighter fatality incident (such as protective gear; SCBA; fire apparatus), communications and other records (tapes, dispatch report; incident reports; casualty report). Failure to do so may make it difficult to determine the cause and/or contributing factors of the incident and may also result in liability suits against the fire officers; fire department and municipality.

We, the U.S. Fire Administration (USFA) and the National Fire Academy (NFA), would appreciate telephone notification in the event of a firefighter "line-of-duty" death so that we may lower the flags over the Fallen Firefighters' Memorial in respect. Please call 301-447-1272 (USFA) or 301-447-1123 (NFA) between 8:30 am - 5:00 pm Monday through Friday or 301-447-1000 (Security Office) after working hours.

The Public Safety Officers' Benefit Program Office should also be noticed at 202-724-7620, between 8:30 am and 5:00 pm Monday through Friday. To receive an Information Packet on the Public Safety Officers' Benefit Program, please write:

M. Kathleen Greene, Claims Examiner
Public Safety Officers' Benefit Program
U. S. Department of Justice
633 Indiana Avenue, NW
Washington, DC 20531



**Federal Emergency Management Agency
National Emergency Training Center
16825 South Seton Avenue
Emmitsburg, MD 21727**



ATTACHMENT #14

RELEASE

HOLD HARMLESS AND INDEMNITY AGREEMENT

WHEREAS, the _____ Volunteer Fire Department or District (herein referred to as (“Owner”)) is the owner or operator of certain premises and facilities situated at _____ in _____, Montana;

AND WHEREAS, _____, of _____, Montana (herein referred to as (“User”)) desires to make use of the said premises and facilities; and, whereas, the Owner is willing to make said premises and facilities available for use by User, but only after execution of this agreement;

NOW, THEREFORE, for good and sufficient consideration, the receipt and sufficiency whereof are hereby acknowledged by User, the parties agree as follows:

1. This agreement supplements and adds to any agreement between the parties concerning the use of the said premises and facilities, oral or written; provided, however, that in the event of any conflict between any provision or provisions of this agreement and provision or provisions of such other agreement, oral or written, the provisions of this agreement shall prevail. The terms and conditions of this agreement may not be changed or varied in any respect without the express written agreement of both parties hereto.

2. As an integral and essential part of the consideration for the use of said Premises and facilities by User, without which the Owner would not have permitted the use of said premises and facilities, the User hereby promises and agrees as follows:

(A) The User, for himself/herself/itself, and his/her/its heirs, personal representatives, successors and assigns, and all other persons claiming through or under him/her/it, hereby releases, acquits and forever discharges the Owner, and its officers, trustees, members, employees, agents, servants, successors and assigns, of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, which User now has or which may hereafter accrue, whether based upon facts now known or facts which may become known in the future, on account of or in any way growing out of, arising from, related to or connected with the said premises and facilities, or the condition thereof, or the use thereof by User or by any persons acting by, through, for or on behalf of User.

(B) User, for himself/herself/itself, and for his/her/its heirs, personal representatives, successors, assigns and all other persons claiming through or under him/her/it, hereby covenants and agrees to indemnify the Owner, and its officers, trustees, members, employees, agents, servants, successors, and assigns, severally and collectively, and hold them harmless of and from any and all claims, actions, causes of action, demands, rights, damages, costs, loss of service, expenses and compensation whatsoever, by any person or persons, by reason of any injury or damage to persons or property on account of or in any way growing out of or arising from, related to or connected with the said premises and facilities, or the condition thereof, or the use thereof by User, or any action or activity of the User in or connected with the said premises and facilities.

3. As used herein, the term, “User” shall encompass both the singular and plural, and shall refer to natural persons, corporations, partnerships, organizations and other entities.

IN WITNESS WHEREOF, the parties have executed this agreement the ____ day of _____, 19

Fire Department or District

By

Owner

User

STATE OF MONTANA

)
: ss.
)

COUNTY OF:

On this ____ day of _____, 19 , before me _____ a Notary Public for the State of Montana, personally appeared _____ to me personally known to be an officer, to-wit: the _____, of _____ Volunteer Fire Department or District, the organization that executed the within instrument, and acknowledged to me that such organization executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal the day and year in this certificate above written.

Notary Public for the State of Montana

Residing at _____

My commission expires _____

ATTACHMENT #15

WORKERS' COMPENSATION

Part 1

General Provisions

39-71-101. Short title. This chapter may be cited as the "Workers' Compensation Act".

39-71-102. Reference to plans. Whenever compensation plan No. 1, 2, or 3 is referred to, such reference also includes all other sections which are applicable to the subject matter of such reference.

39-71-103. Compensation provisions. The compensation provisions of this chapter, whenever referred to, shall be held to include the provisions of compensation plan No. 1, 2, or 3 and all other sections of this chapter applicable to the same or any part thereof.

39-71-105. Declaration of public policy. For the purposes of interpreting and applying this chapter, the following is the public policy of this state:

(1) An objective of the Montana workers' compensation system is to provide, without regard to fault, wage-loss and medical benefits to a worker suffering from a work-related injury or disease. Wage-loss benefits are not intended to make an injured worker whole but are intended to assist a worker at a reasonable cost to the employer. Within that limitation, the wage-loss benefit should bear a reasonable relationship to actual wages lost as a result of a work-related injury or disease.

(2) It is the intent of the legislature to assert that a conclusive presumption exists that recognizes that a holder of a current, valid independent contractor exemption certificate issued by the department is an independent contractor if the person is working under the independent contractor exemption certificate. The holder of an independent contractor exemption certificate waives the rights, benefits, and obligations of this chapter unless the person has elected to be bound personally and individually by the provisions of compensation plan No. 1, 2, or 3.

(3) A worker's removal from the workforce because of a work-related injury or disease has a negative impact on the worker, the worker's family, the employer, and the general public. Therefore, an objective of the workers' compensation system is to return a worker to work as soon as possible after the worker has suffered a work-related injury or disease.

(4) Montana's workers' compensation and occupational disease insurance systems are intended to be primarily self-administering. Claimants should be able to speedily obtain benefits, and employers should be able to provide coverage at reasonably constant rates. To meet these objectives, the system must be designed to minimize reliance upon lawyers and the courts to obtain benefits and interpret liabilities.

(5) This chapter must be construed according to its terms and not liberally in favor of any party.

(6) It is the intent of the legislature that:

(a) stress claims, often referred to as "mental-mental claims" and "mental-physical claims", are not compensable under Montana's workers' compensation and occupational disease laws. The legislature recognizes that these claims are difficult to objectively verify and that the claims have a potential to place an economic burden on the workers' compensation and occupational disease system. The legislature also recognizes that there are other states that do not provide compensation for various categories of stress claims and that stress claims have presented economic problems for certain other jurisdictions. In addition, not all injuries are compensable under the present system, and it is within the legislature's authority to define the limits of the workers' compensation and occupational disease system.

(b) for occupational disease claims, because of the nature of exposure, workers should not be required to provide notice to employers of the disease as required of injuries and that the requirements for filing of claims reflect consideration of when the worker knew or should have known that the worker's condition resulted from an occupational disease. The legislature recognizes that occupational diseases in the workplace are caused by events

occurring on more than a single day or work shift and that it is within the legislature's authority to define an occupational disease and establish the causal connection to the workplace.

39-71-106. No liability for reporting violation. A person, including but not limited to an insurer or an employer, may not be held liable for civil damages as a result of reporting in good faith information that the person believes proves a violation of the provisions of this chapter.

39-71-107. Insurers to act promptly on claims -- in-state claims examiners. (1) Pursuant to the public policy stated in 39-71-105, prompt claims handling practices are necessary to provide appropriate service to injured workers, to employers, and to providers who are the customers of the workers' compensation system.

(2) All workers' compensation and occupational disease claims filed pursuant to the Workers' Compensation Act must be examined by a claims examiner in Montana. For a claim to be considered as examined by a claims examiner in Montana, the claims examiner examining the claim is required to determine the entitlement to benefits, authorize payment of all benefits due, manage the claim, have authority to settle the claim, maintain an office located in Montana, and examine Montana claims from that office. Use of a mailbox or maildrop in Montana does not constitute maintaining an office in Montana.

(3) An insurer shall maintain the documents related to each claim filed with the insurer under the Workers' Compensation Act at the Montana office of the claims examiner examining the claim in Montana until the claim is settled. The documents may be either original documents or duplicates of the original documents and must be maintained in a manner that allows the documents to be retrieved from that office and copied at the request of the claimant or the department. Settled claim files stored outside of the claims examiner's office must be made available within 48 hours of a request for the file. Electronic or optically imaged documents are permitted.

(4) (a) An insurer that uses a third-party agent to provide the insurer with claim examination services shall notify the department in writing of a change of a third-party agent at least 14 days in advance of the change.

(b) The department may assess a penalty not to exceed \$200 against an insurer that does not comply with the advance notice provision in subsection (4)(a). The penalty may be assessed for each failure by an insurer to give the required advance notice.

(5) An insurer shall provide to the claimant:

(a) a written statement of the reasons that a claim is being denied at the time of denial;

(b) whenever benefits requested by a claimant are denied, a written explanation of how the claimant may appeal an insurer's decision; and

(c) a written explanation of the amount of wage-loss benefits being paid to the claimant, along with an explanation of the calculation used to compute those benefits. The explanation must be sent within 7 days of the initial payment of the benefit.

(6) An insurer shall:

(a) begin making payments that are due on a claim within 14 days of acceptance of the claim, unless the insurer promptly notifies the claimant that the insurer needs additional information in order to begin paying benefits and specifies the information needed; and

(b) pay settlements within 30 days of the date the department issues an order approving the settlement.

(7) The department may adopt rules to implement this section.

(8) (a) For purposes of this section, "settled claim" means a department-approved or court-ordered compromise of benefits between a claimant and an insurer or a claim that was paid in full.

(b) The term does not include a claim in which there has been only a lump-sum advance of benefits.

39-71-116. Definitions. Unless the context otherwise requires, in this chapter, the following definitions apply:

(1) "Actual wage loss" means that the wages that a worker earns or is qualified to earn after the worker reaches maximum healing are less than the actual wages the worker received at the time of the injury.

(2) "Administer and pay" includes all actions by the state fund under the Workers' Compensation Act necessary to:

(a) investigation, review, and settlement of claims;

(b) payment of benefits;

(c) setting of reserves;

(d) furnishing of services and facilities; and

(e) use of actuarial, audit, accounting, vocational rehabilitation, and legal services.

(3) "Aid or sustenance" means a public or private subsidy made to provide a means of support, maintenance, or subsistence for the recipient.

(4) "Beneficiary" means:

(a) a surviving spouse living with or legally entitled to be supported by the deceased at the time of injury;

- (b) an unmarried child under 18 years of age;
 - (c) an unmarried child under 22 years of age who is a full-time student in an accredited school or is enrolled in an accredited apprenticeship program;
 - (d) an invalid child over 18 years of age who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of injury;
 - (e) a parent who is dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury if a beneficiary, as defined in subsections (4)(a) through (4)(d), does not exist; and
 - (f) a brother or sister under 18 years of age if dependent, as defined in 26 U.S.C. 152, upon the decedent for support at the time of the injury but only until the age of 18 years and only when a beneficiary, as defined in subsections (4)(a) through (4)(e), does not exist.
- (5) "Business partner" means the community, governmental entity, or business organization that provides the premises for work-based learning activities for students.
- (6) "Casual employment" means employment not in the usual course of the trade, business, profession, or occupation of the employer.
- (7) "Child" includes a posthumous child, a dependent stepchild, and a child legally adopted prior to the injury.
- (8) (a) "Construction industry" means the major group of general contractors and operative builders, heavy construction (other than building construction) contractors, and special trade contractors listed in major group 23 in the North American Industry Classification System Manual.
- (b) The term does not include office workers, design professionals, salespersons, estimators, or any other related employment that is not directly involved on a regular basis in the provision of physical labor at a construction or renovation site.
- (9) (a) "Claims examiner" means an individual who, as a paid employee of the department, of a plan No. 1, 2, or 3 insurer, or of an administrator licensed under Title 33, chapter 17, examines claims under chapter 71 to:
- (i) determine liability;
 - (ii) apply the requirements of this title;
 - (iii) settle workers' compensation or occupational disease claims; or
 - (iv) determine survivor benefits.
- (b) The term does not include an adjuster as defined in 33-17-102.
- (10) "Days" means calendar days, unless otherwise specified.
- (11) "Department" means the department of labor and industry.
- (12) "Fiscal year" means the period of time between July 1 and the succeeding June 30.
- (13) (a) "Household or domestic employment" means employment of persons other than members of the household for the purpose of tending to the aid and comfort of the employer or members of the employer's family, including but not limited to housecleaning and yard work.
- (b) The term does not include employment beyond the scope of normal household or domestic duties, such as home health care or domiciliary care.
- (14) "Insurer" means an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, or the state fund under compensation plan No. 3.
- (15) "Invalid" means one who is physically or mentally incapacitated.
- (16) "Limited liability company" has the meaning provided in 35-8-102.
- (17) "Maintenance care" means treatment designed to provide the optimum state of health while minimizing recurrence of the clinical status.
- (18) "Medical stability", "maximum healing", or "maximum medical healing" means a point in the healing process when further material improvement would not be reasonably expected from primary medical treatment.
- (19) "Objective medical findings" means medical evidence, including range of motion, atrophy, muscle strength, muscle spasm, or other diagnostic evidence, substantiated by clinical findings.
- (20) (a) "Occupational disease" means harm, damage, or death arising out of or contracted in the course and scope of employment caused by events occurring on more than a single day or work shift.
- (b) The term does not include a physical or mental condition arising from emotional or mental stress or from a nonphysical stimulus or activity.
- (21) "Order" means any decision, rule, direction, requirement, or standard of the department or any other determination arrived at by the department.
- (22) "Palliative care" means treatment designed to reduce or ease symptoms without curing the underlying cause of the symptoms.
- (23) "Payroll", "annual payroll", or "annual payroll for the preceding year" means the average annual payroll of the employer for the preceding calendar year or, if the employer has not operated a sufficient or any

length of time during the calendar year, 12 times the average monthly payroll for the current year. However, an estimate may be made by the department for any employer starting in business if average payrolls are not available. This estimate must be adjusted by additional payment by the employer or refund by the department, as the case may actually be, on December 31 of the current year. An employer's payroll must be computed by calculating all wages, as defined in 39-71-123, that are paid by an employer.

(24) "Permanent partial disability" means a physical condition in which a worker, after reaching maximum medical healing:

(a) has a permanent impairment established by objective medical findings;

(b) is able to return to work in some capacity but the permanent impairment impairs the worker's ability to work; and

(c) has an actual wage loss as a result of the injury.

(25) "Permanent total disability" means a physical condition resulting from injury as defined in this chapter, after a worker reaches maximum medical healing, in which a worker does not have a reasonable prospect of physically performing regular employment. Regular employment means work on a recurring basis performed for remuneration in a trade, business, profession, or other occupation in this state. Lack of immediate job openings is not a factor to be considered in determining if a worker is permanently totally disabled.

(26) "Primary medical services" means treatment prescribed by a treating physician, for conditions resulting from the injury, necessary for achieving medical stability.

(27) "Public corporation" means the state or a county, municipal corporation, school district, city, city under a commission form of government or special charter, town, or village.

(28) "Reasonably safe place to work" means that the place of employment has been made as free from danger to the life or safety of the employee as the nature of the employment will reasonably permit.

(29) "Reasonably safe tools or appliances" are tools and appliances that are adapted to and that are reasonably safe for use for the particular purpose for which they are furnished.

(30) (a) "Secondary medical services" means those medical services or appliances that are considered not medically necessary for medical stability. The services and appliances include but are not limited to spas or hot tubs, work hardening, physical restoration programs and other restoration programs designed to address disability and not impairment, or equipment offered by individuals, clinics, groups, hospitals, or rehabilitation facilities.

(b) (i) As used in this subsection (30), "disability" means a condition in which a worker's ability to engage in gainful employment is diminished as a result of physical restrictions resulting from an injury. The restrictions may be combined with factors, such as the worker's age, education, work history, and other factors that affect the worker's ability to engage in gainful employment.

(ii) Disability does not mean a purely medical condition.

(31) "Sole proprietor" means the person who has the exclusive legal right or title to or ownership of a business enterprise.

(32) "State's average weekly wage" means the mean weekly earnings of all employees under covered employment, as defined and established annually by the department before July 1 and rounded to the nearest whole dollar number.

(33) "Temporary partial disability" means a physical condition resulting from an injury, as defined in 39-71-119, in which a worker, prior to maximum healing:

(a) is temporarily unable to return to the position held at the time of injury because of a medically determined physical restriction;

(b) returns to work in a modified or alternative employment; and

(c) suffers a partial wage loss.

(34) "Temporary service contractor" means a person, firm, association, partnership, limited liability company, or corporation conducting business that hires its own employees and assigns them to clients to fill a work assignment with a finite ending date to support or supplement the client's workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(35) "Temporary total disability" means a physical condition resulting from an injury, as defined in this chapter, that results in total loss of wages and exists until the injured worker reaches maximum medical healing.

(36) "Temporary worker" means a worker whose services are furnished to another on a part-time or temporary basis to fill a work assignment with a finite ending date to support or supplement a workforce in situations resulting from employee absences, skill shortages, seasonal workloads, and special assignments and projects.

(37) "Treating physician" means a person who is primarily responsible for the treatment of a worker's compensable injury and is:

- a) a physician licensed by the state of Montana under Title 37, chapter 3, and has admitting privileges to practice in one or more hospitals, if any, in the area where the physician is located;
- (b) a chiropractor licensed by the state of Montana under Title 37, chapter 12;
- (c) a physician assistant licensed by the state of Montana under Title 37, chapter 20, if there is not a treating physician, as provided for in subsection (37)(a), in the area where the physician assistant is located;
- (d) an osteopath licensed by the state of Montana under Title 37, chapter 3;
- (e) a dentist licensed by the state of Montana under Title 37, chapter 4;
- (f) for a claimant residing out of state or upon approval of the insurer, a treating physician defined in subsections (37)(a) through (37)(e) who is licensed or certified in another state; or
- (g) an advanced practice registered nurse licensed by the state of Montana under Title 37, chapter 8.

(38) "Work-based learning activities" means job training and work experience conducted on the premises of a business partner as a component of school-based learning activities authorized by an elementary, secondary, or postsecondary educational institution.

(39) "Year", unless otherwise specified, means calendar year.

39-71-117. Employer defined. (1) "Employer" means:

(a) the state and each county, city and county, city school district, and irrigation district; all other districts established by law; all public corporations and quasi-public corporations and public agencies; each person; each prime contractor; each firm, voluntary association, limited liability company, limited liability partnership, and private corporation, including any public service corporation and including an independent contractor who has a person in service under an appointment or contract of hire, expressed or implied, oral or written; and the legal representative of any deceased employer or the receiver or trustee of the deceased employer;

(b) any association, corporation, limited liability company, limited liability partnership, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(c) any nonprofit association, limited liability company, limited liability partnership, or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as described in 39-71-118(1)(e), with nonprofit organizations or associations or federal, state, or local government entities.

(2) A temporary service contractor is the employer of a temporary worker for premium and loss experience purposes.

(3) Except as provided in chapter 8 of this title, an employer defined in subsection (1) who uses the services of a worker furnished by another person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, is presumed to be the employer for workers' compensation premium and loss experience purposes for work performed by the worker. The presumption may be rebutted by substantial credible evidence of the following:

(a) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another retains control over all aspects of the work performed by the worker, both at the inception of employment and during all phases of the work; and

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, furnishing the services of a worker to another has obtained workers' compensation insurance for the worker in Montana both at the inception of employment and during all phases of the work performed.

(4) An interstate or intrastate common or contract motor carrier that maintains a place of business in this state and uses an employee or worker in this state is considered the employer of that employee, is liable for workers' compensation premiums, and is subject to loss experience rating in this state unless:

(a) the worker in this state is certified as an independent contractor as provided in 39-71-417; or

(b) the person, association, contractor, firm, limited liability company, limited liability partnership, or corporation furnishing employees or workers in this state to a motor carrier has obtained Montana workers' compensation insurance on the employees or workers in Montana both at the inception of employment and during all phases of the work performed.

39-71-118. Employee, worker, volunteer, and volunteer firefighter defined. (1) As used in this chapter, the term "employee" or "worker" means:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations, except those officers identified in 39-71-401(2), while rendering actual service for the corporations for pay. Casual employees, as defined by 39-71-116, are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic employment is excluded.

(b) any juvenile who is performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person who is receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer, as defined in 39-71-117, and, except as provided in subsection (9), whether or not receiving payment from a third party. However, this subsection (1)(c) does not apply to students enrolled in vocational training programs, as outlined in this subsection, while they are on the premises of a public school or community college.

(d) an aircrew member or other person who is employed as a volunteer under 67-2-105;

(e) a person, other than a juvenile as described in subsection (1)(b), who is performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer, as defined in 39-71-117, and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (1)(e):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(f) an inmate working in a federally certified prison industries program authorized under 53-1-301;

(g) a volunteer firefighter as described in 7-33-4109 or a person who provides ambulance services under Title 7, chapter 34, part 1; and

(h) a person placed at a public or private entity's worksite pursuant to 53-4-704. The person is considered an employee for workers' compensation purposes only. The department of public health and human services shall provide workers' compensation coverage for recipients of financial assistance, as defined in 53-4-201, or for participants in the food stamp program, as defined in 53-2-902, who are placed at public or private worksites through an endorsement to the department of public health and human services' workers' compensation policy naming the public or private worksite entities as named insureds under the policy. The endorsement may cover only the entity's public assistance participants and may be only for the duration of each participant's training while receiving financial assistance or while participating in the food stamp program under a written agreement between the department of public health and human services and each public or private entity. The department of public health and human services may not provide workers' compensation coverage for individuals who are covered for workers' compensation purposes by another state or federal employment training program. Premiums and benefits must be based upon the wage that a probationary employee is paid for work of a similar nature at the assigned worksite.

(2) The terms defined in subsection (1) do not include a person who is:

(a) participating in recreational activity and who at the time is relieved of and is not performing prescribed duties, regardless of whether the person is using, by discount or otherwise, a pass, ticket, permit, device, or other emolument of employment;

(b) performing voluntary service at a recreational facility and who receives no compensation for those services other than meals, lodging, or the use of the recreational facilities;

(c) performing services as a volunteer, except for a person who is otherwise entitled to coverage under the laws of this state. As used in this subsection (2)(c), "volunteer" means a person who performs services on behalf of an employer, as defined in 39-71-117, but who does not receive wages as defined in 39-71-123.

(d) serving as a foster parent, licensed as a foster care provider in accordance with 52-2-621, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person

may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

(3) With the approval of the insurer, an employer may elect to include as an employee under the provisions of this chapter any volunteer as defined in subsection (2)(c).

(4) (a) The term "volunteer firefighter" means a firefighter who is an enrolled and active member of a governmental fire agency organized under Title 7, chapter 33, except 7-33-4109.

(b) The term "volunteer hours" means all the time spent by a volunteer firefighter in the service of an employer, including but not limited to training time, response time, and time spent at the employer's premises.

(5) (a) If the employer is a partnership, limited liability partnership, sole proprietor, or a member-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any member of the partnership or limited liability partnership, the owner of the sole proprietorship, or any member of the limited liability company devoting full time to the partnership, limited liability partnership, proprietorship, or limited liability company business.

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the partners, sole proprietor, or members to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A partner, sole proprietor, or member is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (5)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$900 a month and not more than 1 1/2 times the state's average weekly wage.

(6) (a) If the employer is a quasi-public or a private corporation or a manager-managed limited liability company, the employer may elect to include as an employee within the provisions of this chapter any corporate officer or manager exempted under 39-71-401(2).

(b) In the event of an election, the employer shall serve upon the employer's insurer written notice naming the corporate officer or manager to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (5)(d). A corporate officer or manager is not considered an employee within this chapter until notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection (6)(d). For premium ratemaking and for the determination of the weekly wage for weekly compensation benefits, the electing employer may elect an amount of not less than \$200 a week and not more than 1 1/2 times the state's average weekly wage.

(7) (a) The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may elect to include as an employee within the provisions of this chapter any volunteer firefighter. A volunteer firefighter who receives workers' compensation coverage under this section may not receive disability benefits under Title 19, chapter 17.

(b) In the event of an election, the employer shall report payroll for all volunteer firefighters for premium and weekly benefit purposes based on the number of volunteer hours of each firefighter times the average weekly wage divided by 40 hours, subject to a maximum of 1 1/2 times the state's average weekly wage.

(c) A self-employed sole proprietor or partner who has elected not to be covered under this chapter, but who is covered as a volunteer firefighter pursuant to subsection (7)(a) and when injured in the course and scope of employment as a volunteer firefighter, may in addition to the benefits described in subsection (7)(b) be eligible for benefits at an assumed wage of the minimum wage established under Title 39, chapter 3, part 4, for 2,080 hours a year. The trustees of a rural fire district, a county governing body providing rural fire protection, or the county commissioners or trustees for a fire service area may make an election for benefits. If an election is made, payrolls must be reported and premiums must be assessed on the assumed wage.

(8) Except as provided in chapter 8 of this title, an employee or worker in this state whose services are furnished by a person, association, contractor, firm, limited liability company, limited liability partnership, or corporation, other than a temporary service contractor, to an employer, as defined in 39-71-117, is presumed to be under the control and employment of the employer. This presumption may be rebutted as provided in 39-71-117(3).

(9) A student currently enrolled in an elementary, secondary, or postsecondary educational institution who is participating in work-based learning activities and who is paid wages by the educational institution or business partner is the employee of the entity that pays the student's wages for all purposes under this chapter. A student who

is not paid wages by the business partner or the educational institution is a volunteer and is subject to the provisions of this chapter.

(10) For purposes of this section, an "employee or worker in this state" means:

(a) a resident of Montana who is employed by an employer and whose employment duties are primarily carried out or controlled within this state;

(b) a nonresident of Montana whose principal employment duties are conducted within this state on a regular basis for an employer;

(c) a nonresident employee of an employer from another state engaged in the construction industry, as defined in 39-71-116, within this state; or

(d) a nonresident of Montana who does not meet the requirements of subsection (10)(b) and whose employer elects coverage with an insurer that allows an election for an employer whose:

(i) nonresident employees are hired in Montana;

(ii) nonresident employees' wages are paid in Montana;

(iii) nonresident employees are supervised in Montana; and

(iv) business records are maintained in Montana.

(11) An insurer may require coverage for all nonresident employees of a Montana employer who do not meet the requirements of subsection (10)(b) or (10)(d) as a condition of approving the election under subsection (10)(d).

39-71-119. Injury and accident defined. (1) "Injury" or "injured" means:

(a) internal or external physical harm to the body that is established by objective medical findings;

(b) damage to prosthetic devices or appliances, except for damage to eyeglasses, contact lenses, dentures, or hearing aids; or

(c) death.

(2) An injury is caused by an accident. An accident is:

(a) an unexpected traumatic incident or unusual strain;

(b) identifiable by time and place of occurrence;

(c) identifiable by member or part of the body affected; and

(d) caused by a specific event on a single day or during a single work shift.

(3) "Injury" or "injured" does not mean a physical or mental condition arising from:

(a) emotional or mental stress; or

(b) a nonphysical stimulus or activity.

(4) "Injury" or "injured" does not include a disease that is not caused by an accident.

(5) (a) A cardiovascular, pulmonary, respiratory, or other disease, cerebrovascular accident, or myocardial infarction suffered by a worker is an injury only if the accident is the primary cause of the physical condition in relation to other factors contributing to the physical condition.

(b) "Primary cause", as used in subsection (5)(a), means a cause that, with a reasonable degree of medical certainty, is responsible for more than 50% of the physical condition.

39-71-123. Wages defined. (1) "Wages" means all remuneration paid for services performed by an employee for an employer, or income provided for in subsection (1)(d). Wages include the cash value of all remuneration paid in any medium other than cash. The term includes but is not limited to:

(a) commissions, bonuses, and remuneration at the regular hourly rate for overtime work, holidays, vacations, and periods of sickness;

(b) backpay or any similar pay made for or in regard to previous service by the employee for the employer, other than retirement or pension benefits from a qualified plan;

(c) tips or other gratuities received by the employee, to the extent that tips or gratuities are documented by the employee to the employer for tax purposes;

(d) income or payment in the form of a draw, wage, net profit, or substitute for money received or taken by a sole proprietor or partner, regardless of whether the sole proprietor or partner has performed work or provided services for that remuneration;

(e) board, lodging, rent, or housing if it constitutes a part of the employee's remuneration and is based on its actual value; and

(f) payments made to an employee on any basis other than time worked, including but not limited to piecework, an incentive plan, or profit-sharing arrangement.

- (2) The term "wages" does not include any of the following:
- (a) employee expense reimbursements or allowances for meals, lodging, travel, subsistence, and other expenses, as set forth in department rules;
 - (b) the amount of the payment made by the employer for employees, if the payment was made for:
 - (i) retirement or pension pursuant to a qualified plan as defined under the provisions of the Internal Revenue Code;
 - (ii) sickness or accident disability under a workers' compensation policy;
 - (iii) medical or hospitalization expenses in connection with sickness or accident disability, including health insurance for the employee or the employee's immediate family;
 - (iv) death, including life insurance for the employee or the employee's immediate family;
 - (c) vacation or sick leave benefits accrued but not paid;
 - (d) special rewards for individual invention or discovery; or
 - (e) monetary and other benefits paid to a person as part of public assistance, as defined in 53-4-201.
- (3) (a) Except as provided in subsection (3)(b), for compensation benefit purposes, the average actual earnings for the four pay periods immediately preceding the injury are the employee's wages, except that if the term of employment for the same employer is less than four pay periods, the employee's wages are the hourly rate times the number of hours in a week for which the employee was hired to work.
- (b) For good cause shown, if the use of the last four pay periods does not accurately reflect the claimant's employment history with the employer, the wage may be calculated by dividing the total earnings for an additional period of time, not to exceed 1 year prior to the date of injury, by the number of weeks in that period, including periods of idleness or seasonal fluctuations.
- (4) (a) For the purpose of calculating compensation benefits for an employee working concurrent employments, the average actual wages must be calculated as provided in subsection (3). As used in this subsection, "concurrent employment" means employment in which the employee was actually employed at the time of the injury and would have continued to be employed without a break in the term of employment if not for the injury.
- (b) Except as provided in 39-71-118(7)(c), the compensation benefits for a covered volunteer must be based on the average actual wages in the volunteer's regular employment, except self-employment as a sole proprietor or partner who elected not to be covered, from which the volunteer is disabled by the injury incurred.
- (c) The compensation benefits for an employee working at two or more concurrent remunerated employments must be based on the aggregate of average actual wages of all employments, except for the wages earned by individuals while engaged in the employments outlined in 39-71-401(3)(a) who elected not to be covered, from which the employee is disabled by the injury incurred.