

# **28E AGREEMENT FOR MUTUAL ASSISTANCE**

## **for Polk County Area Fire/Rescue Services**

**WHEREAS**, the undersigned entities (“Party” or collectively “Parties”) provide fire/rescue services and/or emergency medical services (“Emergency Services”) in Polk County and/or the adjoining counties of Boone County, Dallas County, Jasper County, Madison County, Marion County, Marshall County, Story County and Warren County (“adjoining counties”); and

**WHEREAS**, there has been a long standing Mutual Aid Agreement among Polk County fire/rescue and emergency medical services and/or other entities to provide mutual aid in Polk County and adjoining counties in a time of need;

**WHEREAS**, the current Mutual Aid Agreement is entitled 28E Agreement for Mutual Assistance for Polk County Fire/Rescue Services and is filed with the Iowa Secretary of State at 10:51 a.m. on June 24, 2015, numbered M508206 (“2015 Agreement”); and

**WHEREAS**, the 2015 Agreement has been in force for one year and Parties desire to update; and

**WHEREAS**, the Parties have a desire to assist each other in time of need; and

**WHEREAS**, the Parties each maintain adequate Emergency Services equipment and personnel to respond to the normal emergencies occurring within their respective jurisdictions; and

**WHEREAS**, situations may arise in regard to emergencies or circumstances which exhaust available personnel and equipment, or require additional or specialty personnel or additional and/or special equipment that the responsible jurisdiction may not have available at any given time; and

**WHEREAS**, to combat such emergency situations, it is desirable for the Parties to render needed Emergency Services upon a reciprocal basis; and

**WHEREAS**, the governing bodies of each party are desirous of entering into this 28E Agreement (“Agreement”), the purpose of which is to provide for the Emergency Services of one entity to the other in such emergency or needed situations requiring additional, special personnel, and/or equipment.

**NOW, THEREFORE, BE IT AGREED AS FOLLOWS:**

### **I. Incorporation of Recitals**

The foregoing Recitals are incorporated herein as if fully set forth in this paragraph.

## **II. Definitions**

- A. Mutual Aid. The assistance of Emergency Services personnel and equipment provided by one Party (“Providing Entity”) and requested by the other Party (“Requesting Entity”) to this Agreement.
- B. Incident Commander. The person who, by virtue of his/her position with the Requesting Entity, is responsible for the overall command and direction of the Emergency response activities.
- C. Emergency. Any situation where a Party, due to lack of personnel or training, special equipment needs or magnitude of event, and based upon actual circumstances, concludes that assistance is needed to protect life, stabilize the incident, and/or protect property within its jurisdiction.

## **III. Purpose**

This Agreement is made pursuant to Chapter 28E, Code of Iowa. The purpose of this Agreement is to provide for Mutual Aid in case of an Emergency arising within the jurisdiction of the Parties to this Agreement.

## **IV. Request for Assistance**

All requests for Mutual Aid in an Emergency shall be made by an Emergency Services director or designee of the Requesting Entity. Such requests shall state the exact nature of the Emergency and shall include the amount and type of equipment and the number and skills of personnel required, and shall specify the location where the personnel and equipment are needed. The final decision of type and amount of equipment and number of personnel to be provided by the Providing Entity to the Requesting Entity shall be at the sole discretion of the Providing Entity. Further, the Providing Entity shall be held harmless by the Requesting Entity from liability in connection with its final decision on type and amount of equipment and number of personnel to be provided to the Requesting Entity.

## **V. Authority over Joint Operations**

The Incident Commander of the Requesting Entity shall retain overall control of all Emergency response activities. The ranking supervisor of the Providing Entity shall remain in command of his/her personnel and equipment subject, however, to the direction and control of the Incident Commander.

## **VI. Liability**

Employees or volunteers of either Party acting pursuant to this Agreement shall be considered as acting under the lawful orders and instructions pertaining to their

employment or volunteer status with such Party. Under no circumstances are employees or volunteers of one Party to be considered employees or volunteers of the other Party.

Each Party waives all claims against the other for compensation for any property loss or damage and/or personal injury or death to its personnel as consequence of the performance of this Agreement. Each Party shall bear the liability and/or costs of damage to its equipment and facilities, and the compensation of its employees or volunteers, including injury or death of its personnel, occurring as a consequence of the performance of this Agreement, whether the damages, costs, injury or death occurs at an Emergency in the Party's own jurisdiction or in the jurisdiction of the other Party. Nothing in this agreement is intended nor does it waive any right to seek federal or other assistance provided for disaster relief.

Except as provided herein, each Party shall be responsible for the acts or omissions of its own employees, and shall indemnify, defend and hold harmless the Other Party, its officers, agents and employees from and against any and all suits, actions, debts, damages, costs, charges and expenses, including court costs and attorney's fees arising from loss of or damage to private property, and/or the death of or injury to private persons, arising from services of response rendered pursuant to this Agreement. Provided, however, the Requesting Entity shall indemnify, defend and hold harmless the Providing Entity where any suits, actions, debts, damages, costs, charges or expenses arise from execution of a specific command or order pursuant to paragraph V of this Agreement.

Nothing in this Agreement shall prevent or limit either Party to this Agreement from recovering or attempting to recover costs of services rendered to a third party where such recovery of costs is provided for by law.

The Parties to this Agreement do not waive any defenses, immunities or other limitations applicable to a respective party and nothing herein shall be so construed. Each Party to this Agreement reserves the right to fully defend all claims arising from loss of or damage to private property and/or death of or injury to private persons who are not parties to this Agreement including, but not limited to asserting defenses of immunities available under applicable law.

This article shall survive the termination of this Agreement where necessary to protect each Party to this Agreement.

## **VII. Compensation**

- A. **Emergency Services.** For Emergency Services, no Party shall be required to reimburse any other Party for the cost of providing the services set forth in this Agreement, unless the incident lasts twelve hours or longer. If an incident lasts twelve hours or longer, the Providing Entity may seek compensation from the Requesting Entity for the cost of providing the services set forth in this Agreement.

All services are billable if the incident lasts a minimum of twelve consecutive hours. Services include, but are not limited to:

- a. Personnel (including backfill personnel)
- b. Equipment (at rates defined by FEMA)
- c. Supplies (actual cost incurred, including shipping of replacement supplies)

Documentation is required in the form of an incident report which clearly lists personnel, equipment and supplies used. Supply usage also requires an actual invoice copy.

- B. Emergency Medical Services. The Party transporting a patient from an emergency location to a medical facility will be responsible for billing the patient for services rendered.

If the Providing Entity provides supplemental services or a higher level of medical services than the Requesting Entity, such as paramedic services, the Requesting Entity may bill the patient for the supplemental services pursuant to accepted billing standards. In the event the Requesting Entity does not charge for ambulance services, the Providing Entity will bill the patient for services rendered and retain one hundred percent (100%) of fees collected.

- C. Hazardous Materials Services. The Providing Entity may bill the responsible person (as defined by Iowa Administrative Code Sections 133.2 and 133.3) at a hazardous substance or condition incident (as defined in Iowa Administrative Code Section 133.1(2)) to reclaim costs associated with responding to the incident.

### **VIII. Termination**

This Agreement may be terminated with respect to that Party for any reason by any Party by giving written notice, by certified mail to the President of the Polk County Fire Chief's Association. This Agreement shall thereafter terminate, with respect to that Party only, sixty (60) days from the date of receipt of termination notice. Upon termination, said terminating Party shall have no further responsibility or obligation or benefits from the other Parties to the Agreement, under this Agreement, except as provided herein.

### **IX. Effective Date**

This Agreement shall be in full force and effect at 12:01 a.m., January 1, 2017, by and between the Parties who have obtained approval hereof by their respective governing bodies. Prior to January 1, 2017, the President of the Polk County Fire Chief's Association shall have filed this Agreement with the Iowa Secretary of State as required by Iowa Code section 28E.9. This Agreement shall remain in full force and effect for an indefinite period of time from the effective date hereof until terminated as provided in paragraph VII.

**X. Prior Mutual Assistance Agreements**

This Agreement supersedes the 2015 Agreement in full.

**XI. Amendments**

This Agreement represents the entire Agreement of the Parties. Any amendments must be in writing, approved by the governing body of all Parties, and executed by the authorized representatives of all Parties. Any and all amendments must comply with the provisions of Iowa Code section 28E.8. Any and all such requirements shall be done by the then presiding President of the Polk County Fire Chief's Association or President's designee.

**XII. Validity**

In the event any part or paragraph of this Agreement is declared void as being contrary to Iowa law, the remaining portions of this Agreement that are valid shall continue in full force and effect.

**XIII. No Separate Entity Created -- Administration**

It is the Intent of the Parties not to create a separate legal entity or administrative agency under this Agreement. The then presiding President of the Polk County Fire Chief's Association shall serve as Administrator of this undertaking.

**XIV. No Real or Personal Property**

No real or personal property will be acquired, held or disposed of during this undertaking as no separate entity has been created.

**XV. Applicable Law**

This Agreement shall be governed by and construed in accordance with the laws of the State of Iowa (excluding conflicts of laws rules), and applicable federal law.

**XVI. Counterparts**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

**28E AGREEMENT FOR MUTUAL ASSISTANCE  
for Polk County Area Fire/Rescue Services**

By authorized signature of this Agreement, Parties agree to the 28E Agreement for Mutual Assistance for Polk County Area Fire/Rescue Services.

**Effective Date:** January 1, 2017

**Legal Name of Jurisdiction:** City of Knoxville, IA

\_\_\_\_\_  
Jurisdiction Official

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Attest

\_\_\_\_\_  
Dated

\_\_\_\_\_  
Chief/Director

\_\_\_\_\_  
Dated