

28E AGREEMENT

RADIOLOGICAL INCIDENT RESPONSE ASSISTANCE

City of Independence & Buchanan County Emergency Management Authority

COMES NOW the City of Independence (“City”), and the Buchanan County Emergency Management Agency (“BCEMA”), the City and BCEMA being at times referred to herein as a “Party” or jointly as “Parties”, and hereby agree to the following terms and provisions related to the provision of emergency services related to “Radiological Incident Response Assistance” as described herein, all in accordance with Chapter 28E of the Iowa Code. (This 28E Agreement at times being referred to as the “Agreement”)

PURPOSE: The Parties find it appropriate to establish terms and provisions related to their agreement to provide emergency assistance to persons living in areas that are at risk of a radiological incident involving the Duane Arnold Energy Center (“DAEC”) and to work with one another as necessary to provide emergency assistance in such emergency.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the Parties do hereby agree as follows.

I. EMERGENCY RESPONSE / PREPAREDNESS:

The Parties agree to the following division of responsibilities:

A. City agrees:

- i. To maintain a team of personnel trained for radiological monitoring and decontamination, with the total number of personnel to be determined by the City based on our ongoing assessment of operational needs, provided the team shall never consist of fewer than 25 qualified individuals.
- ii. To maintain a team of personnel trained for traffic flow response if necessary, with said team attending up to four trainings per year.
- iii. To provide vehicle and evacuee monitoring.
- iv. To assist with emergency shelter operations when requested.

- v. To provide personnel and apparatus during declared DAEC emergencies, so long as those personnel and apparatus are not otherwise engaged in emergencies within the normal coverage area of the City of Independence or the Independence Fire District.
- vi. To participate in emergency planning and training exercises related to potential DAEC responses, with BCEMA.
- vii. To support incident command operations under the National Incident Management System (NIMS), with command authority to be applied consistent with Iowa law and established mutual aid protocols.

B. BCEMA agrees:

- i. To enter into an agreement or understanding with DAEC, related to BCEMA's obligations to provide emergency assistance in the event of a radiological incident involving the Duane Arnold Energy Center ("DEAC")
- ii. To coordinate emergency planning, response, and exercises pertaining to radiological incidents.
- iii. To provide situational awareness and resource coordination.
- iv. To pursue and facilitate state and federal resources, including DAEC reimbursement where appropriate, whether by grant application or informal or formal requests, as appropriate for the purpose of responding to a radiological incident.
- v. To be primarily responsible for the preparation and coordination of reimbursement documentation for the Parties tied to the receipt of any funds where reporting or accounting tied thereto is appropriate and required.
- vi. To support incident command operations under the National Incident Management System (NIMS), with command authority to be applied consistent with Iowa law and established mutual aid protocols.

II. EXPENSES

Each Party shall be responsible to cover and pay all expenses incurred by said Party to meet its responsibilities under the terms of this Agreement, with the understanding and agreement that BCEMA will reimburse the City for all City expenses incurred by the City when providing emergency assistance under and in accordance with the terms of this

Agreement. Participating entities shall remit funding to the City of Independence in full no later than 30 days after the conclusion of any quarter within a calendar year. Such funding is intended to support ongoing operational needs, including training, equipment maintenance, and gear replacement, and to allow sufficient time for budget amendments and fiscal planning.

III. LIABILITY

- A. **Worker's Compensation Coverage:** The Parties agree to provide worker's compensation insurance coverage for their respective employees as required by the Iowa Code at all times while performing hereunder.
- B. **Automobile Liability Coverage:** The Parties agree to comply with the motor vehicle financial responsibility laws of the State of Iowa.
- C. **General liability, Public Officials Liability, and Law Enforcement Liability:** Personnel responding to emergencies as part of this 28E Agreement, regardless of command authority at any incident, shall at all times be considered an employee of the Party with whom they are employed, and shall never, under any circumstance, be considered an employee, agent, or contractor of the other Party.
- D. **Indemnification:** The Parties agree to defend and indemnify and hold one another harmless from and against third party claims arising out of the Indemnifying party's performance under this Agreement, to the extent allowed by law.
- E. **Third Party(ies):** The execution of this Agreement shall not give rise to any liability or responsibility for failure to respond to any request for assistance made pursuant to this Agreement. This Agreement shall not be construed as or deemed to be an Agreement for the benefit of any third party or parties, and no third party or parties shall have any right of action whatsoever hereunder for any cause whatsoever.

IV. EFFECTIVE DATE

- A. This Agreement shall be effective when approved and executed by the City and BCEMA. City shall see to the filing of this Agreement with the Iowa Secretary of State, at its' expense, in a manner specified by the Iowa Secretary of State.
- B. In addition, each of the Parties shall submit, in an electronic format, an initial report to the Secretary of State as prescribed by the Secretary of State. The report

shall include, as applicable, the name of the entity created, whether the entity is exempt from the publication requirements of section 28E.6, subsection 3, a valid electronic mail address, and any additional information the Secretary of State deems appropriate. Following submission of an initial report, each Party shall submit, in an electronic format, a biennial report to the secretary of state in a manner prescribed by the secretary of state by April 1 of every odd-numbered year, all pursuant to Iowa Code Section 28E.8.

V. **TERM, TERMINATION & WITHDRAWAL, AND AMENDMENT**

- A. **Term:** This Agreement shall commence on the Effective Date and continue for a period of five (5) years unless earlier terminated by either Party in accordance herewith. At the end of the initial five (5) year term this Agreement will automatically renew for subsequent one (1) year terms, unless and until terminated by either Party pursuant to the terms hereof.
- B. **Termination & Withdrawal:** Either Party to this Agreement may withdraw from this Agreement upon sixty (60) days' written notice delivered to the other Party pursuant to the Notice section of this Agreement.
- C. **Amendment:** This Agreement may be amended or modified from time to time, but only by unanimous written approval of all Parties through their respective Governing Bodies and filed with the Secretary of State in conformance with Iowa Code Section 28E.8(1)(b).

VI. **NOTICE**

- A. Unless specifically provided otherwise, any notice, request, or other communication that a Party desires or is required to give to another Party (or any other person) in connection with this Agreement ("Notice") shall be in writing and may be delivered by hand, by facsimile, served in the manner provided for an original notice, or mailed by United States registered or certified mail, postage paid, addressed to the Party or person at the address provided in this Agreement (below) or otherwise designated by written notice. The Notice shall be deemed given or delivered, as the case may be, on the date of receipt if delivered by hand or served as an original notice; on the date of sending and sent by facsimile; or on the date it is deposited in the United States mail if sent by registered or certified

mail.

For the City of Independence:

City Manager
Independence City Hall
331 1st Street East
Independence, Iowa 50644

For BCEMA:

Buchanan County EMA

Independence, Iowa 50644

B. Any change to the above notice requirements shall be communicated to the other Party in writing and will be effective upon receipt.

VII. INTERPRETATION AND ENFORCEMENT

This Agreement shall be interpreted and enforceable in accordance with Iowa law and jurisdiction shall be with the District Court in and for Buchanan County, Iowa.

VIII. SEVERABILITY

If any provision of this Agreement shall be finally declared unenforceable, invalid, void or illegal by any court or administrative agency having jurisdiction over the Parties, the entire Agreement shall not be void, unenforceable, or invalid, the remaining provisions to continue in effect as nearly as possible in accordance with the original intent of the Parties.

IX. ASSIGNMENT

The rights and obligations of the Parties set forth herein are not assignable.

X. MISCELLANEOUS PROVISIONS

- A. **No Entity:** No separate, legal or administrative entity is created by this Agreement. No real or personal property will be purchased in the performance of this Agreement.
- B. **Administrators:** The City Manager of the City of Independence and the _____ of the BCEMA shall jointly administer the performance of this Agreement.
- C. **Legal Counsel:** Each Party has had ample opportunity to seek independent advice with regard to the terms of this Agreement.
- D. **Time:** Time is of the essence of each provision in this Agreement.

- E. **Disputes:** The Parties will make good-faith efforts to resolve any dispute between them. Upon written notice of such dispute, each Party will appoint a senior level executive to meet and resolve the dispute. If the dispute is not resolved within ten (10) business days after such written notice, or a longer period as agreed to in writing by the Parties, either party may pursue further legal action. Each Party shall be initially liable for its own legal fees and expenses; however, the Court shall be permitted to award attorney fees and expenses to a Party if the Court finds any other Party, against whom said fee and expense judgment would be entered, has acted in a manner found by the Court to justify such a fee and expense judgment.
- F. **Consent:** Whenever a Party's consent or approval is required, the Party will not unreasonably withhold such consent or approval.
- G. **Headings:** The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation thereof.
- H. **Execution of Documents:** The parties agree to timely execute any documents necessary to carry out the terms of this Agreement. The parties further agree that this document may be executed outside the presence of the other party and in separate counterparts, each of which will be considered an original and all of which will constitute one agreement.

XI. ENTIRE AGREEMENT

This Agreement sets forth the entire agreement of the Parties. There are no other covenants, promises, agreements, or conditions either oral or written, not included herein.

XII. SIGNATURES

By their signatures below, the undersigned declare and certify that they have been duly authorized by their Governing Bodies to approve this Agreement.

SIGNATURE PAGE TO FOLLOW

CITY OF INDEPENDENCE, IOWA

By: _____ Attest: _____

Brad Bleichner

Susi Lampe

Mayor

Assistant City Manager/City Clerk/Treasurer

City of Independence

City of Independence

BUCHANAN COUNTY EMERGENCY MANAGEMENT AGENCY

By: _____ Attest: _____