

Resolution No. 16-0654

A RESOLUTION APPROVING A 28E AGREEMENT BETWEEN POLK COUNTY IOWA AND THE CITY OF WINDSOR HEIGHTS FOR CRIMINAL PROSECUTION OF CHARGES IDENTIFIED HEREIN

WHEREAS, this agreement is entered into for the purpose of transferring authority from the Polk County Attorney to the City in order to provide for uniform and efficient prosecution of criminal charges categorized as motor vehicle violations and simple misdemeanors under the Code of Iowa except for stated exceptions provided within this Agreement which occur within the city limits of the City of Windsor Heights, or immediately adjacent to or adjoining the City as follows; and

WHEREAS, the Polk County Attorney has for many years by agreement prosecuted certain criminal and motor vehicle cases arising in Windsor Heights; and

WHEREAS, Windsor Heights is desirous of assuming the prosecution of some but not all cases arising in the city of Windsor Heights and the Polk County Attorney is agreeable to such change in practice.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Windsor Heights, Iowa, that the Mayor is hereby authorized to enter into a 28E agreement, EXHIBIT 1, Polk County hereby agrees and confers upon the City and the City Attorney designated by the City all authority under Section 331.756, Code of Iowa 2015, to prosecute, pursue and otherwise act in conformity with said Section all offenses committed within the City's jurisdictional limits or immediately adjacent to or adjoining the City and which are categorized by state law as motor vehicle violations and simple misdemeanors under the Code of Iowa except for stated exceptions provided within this Agreement. The City agrees to prosecute such offenses within its City limits or immediately adjacent to or adjoining the City that were investigated and charged by the City's Police Department and be identified as the plaintiff, City of Windsor Heights or the State of Iowa, at the discretion of the City Attorney.

Passed and Approved this 20th day of June, 2016

Diana Willits, Mayor

Attest: Marcia Woodke, City Clerk

**28E AGREEMENT BETWEEN
CITY OF WINDSOR HEIGHTS, IOWA
and POLK COUNTY, IOWA**

THIS AGREEMENT is entered into on the ____ day of _____, 2016, by and between the City of Windsor Heights, Iowa, hereinafter designated as “the City” and Polk County, Iowa, for the purpose of transferring authority from the Polk County Attorney to the City in order to provide for uniform and efficient prosecution of criminal charges categorized as motor vehicle violations and simple misdemeanors under the Code of Iowa except for stated exceptions provided within this Agreement which occur within the city limits of the City of Windsor Heights, or immediately adjacent to or adjoining the City as follows:

WHEREAS, the Polk County Attorney has for many years by agreement prosecuted certain criminal and motor vehicle cases arising in Windsor Heights: and

WHEREAS, the City is desirous of assuming the prosecution of some but not all cases arising in the city of Windsor Heights and the Polk County Attorney is agreeable to such change in practice.

NOW THEREFORE, Polk County hereby agree and confers upon the City and the City Attorney designated by the City all authority under Section 331.756, Code of Iowa 2015, to prosecute, pursue and otherwise act in conformity with said Section all offenses committed within the City’s jurisdictional limits or immediately adjacent to or adjoining the City and which are categorized by state law as motor vehicle violations and simple misdemeanors under the Code of Iowa, except for stated exceptions provided within this Agreement. The City agrees to prosecute such offenses within its City limits or immediately adjacent to or adjoining the City that were investigated and charged by the City’s Police Department and be identified as the plaintiff, City of Windsor Heights or the State of Iowa, at the discretion of the City Attorney.

The Polk County Attorney’s Office will continue to prosecute the following charges categorized as simple misdemeanors of the Code of Iowa that occur within the City of Windsor Heights: (a) Violation of the Code of Iowa section 708.2A(2)(a) (Domestic abuse assault), including any related violations of no-contact orders, filed pursuant to Iowa Code section 664A.7; and (b) Violations of Iowa Code section 708.7(4) (Harassment), including any related violations of no-contact orders, filed pursuant to Iowa Code section 664A.7.

The Polk County Attorney’s Office will continue to prosecute charges categorized as motor vehicle violations and as simple misdemeanors of the Code of Iowa that occur within the City of Windsor heights that have been committed in conjunction with a criminal offense greater than a simple misdemeanor and resulted from the same incident.

That this Agreement shall be in full force and effect upon the happening of all of the following: a. Its execution by the parties to this Agreement; b. An executed counterpart or photocopy of this Agreement is filed with the Secretary of State, and c. An executed counterpart of this Agreement being recorded in the Office of the Recorder of Polk County.

This Agreement shall remain in effect for five years thereafter unless terminated first by either party providing notice of termination at least sixty (60) days prior to the effective date of termination. The notice of termination shall be sent by certified mail, return receipt requested. Termination does not require any showing of cause.

No new legal or administrative entity is created by this Agreement. No transfer of funds will be made, nor will any other financial mechanism be created. No joint or cooperative budget will be created. No property will be purchased jointly to fulfill this Agreement. The rights and interests under this Agreement are not assignable. Any notices required to be sent by the terms of this Agreement shall be mailed by certified mail to:

Chief of Police
Public Safety Building
1133 – 66th Street
Windsor Heights, IA 50324

Polk County Attorney
Polk County Justice Center Annex
225 Fifth Street
Des Moines, IA 50309

This Agreement constitutes the entire agreement of the parties conferring authority upon the City to prosecute motor vehicle violations and simple misdemeanors under the Code of Iowa occurring within the city limits of the City or immediately adjacent to or adjoining the City, except for the simple misdemeanors previously and specifically identified as being retained by the Polk County Attorney's Office and simple misdemeanors occurring in conjunction with criminal offenses greater than simple misdemeanors. This Agreement replaces any and all prior agreements, whether written or oral, regarding the substance of this Agreement.

Pursuant to Iowa Code 28E.6, the Windsor Heights City Attorney shall be the administrator of this Agreement.

If any terms or provisions of this Agreement, or the application thereof to any person or circumstances, is held to be invalid by a decision in any court of law, such invalidity shall be grounds for either party to withdraw and hold this Agreement invalid in its entirety and cease to operate pursuant to the terms of this Agreement. Said withdrawal shall be made only after giving thirty days notice to the other governmental body which is a party of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the _____ day of _____, 2016.

**POLK COUNTY
BOARD OF SUPERVISORS**

ATTEST:

Tom Hockensmith, Chair

Jamie Fitzgerald, Auditor

APPROVED AS TO FORM:

Ralph E. Marasco, Jr.
Assistant County Attorney

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this _____ day of _____, 2016, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared Tom Hockensmith and Rebecca Dewey to me personally known, and who, being by me duly sworn did state that they are the Chair of the Polk County Board of Supervisors and the Deputy Auditor, respectively, of the County of Polk, a municipal corporation, that the instrument was signed on behalf of Polk County Iowa, by authority of its Board of Supervisors, as contained in Resolution adopted by the Board of Supervisors and that Tom Hockensmith and Rebecca Dewey acknowledge the execution of the instrument to be the voluntary act and deed of Polk County, Iowa, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa

CITY OF WINDSOR HEIGHTS ATTEST:

Attest:

Diana Willits, Mayor

Marcia Woodke, Interim City Clerk

STATE OF IOWA)
) ss:
COUNTY OF POLK)

On this ____ day of _____, 2016, before me, the undersigned, a Notary Public in the State of Iowa, personally appeared Diana Willits and Marcia Woodke to me personally known, and who, being by me duly sworn did state that they are the mayor and the Acting City Clerk, respectively, of the City of Windsor Heights, Iowa, a municipal corporation, that the instrument was signed on behalf of City of Windsor Heights, Iowa by authority of City Council as contained in Resolution adopted by the City Council and that Diana Willits and Marcia Woodke acknowledge the execution of the instrument to be the voluntary act and deed of Windsor Heights, Iowa, by it and by them voluntarily executed.

Notary Public in and for the State of Iowa