



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 3/23/2023

File ID: TMP-2724

Department: Police

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into an End User License Agreement between the City of Huntsville and Grayshift, LLC.

Type of Document: Resolution No.

Finance Information:

Account Number: 1000-41-41110-515340-00000000

City Cost Amount: \$ 11,620 annually

Total Cost: \$ 11,620 annually

Special Circumstances:

Grant Funded: \$ 0.00

Grant Title - CFDA or granting Agency: N/A

Resolution #: N/A

Location: (list below)

Address: N/A

District: District 1 ☐ District 2 ☐ District 3 ☐ District 4 ☐ District 5 ☐

Additional Comments:

End user license agreement with Grayshift, LLC who provides software for the Huntsville Police NAMACC.
Annual fee of \$11,620

RESOLUTION NO. 23 - _____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and is hereby authorized to enter into an Agreement by and between the City of Huntsville and Grayshift, LLC, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that certain document attached hereto and identified as "End User License Agreement Between The City of Huntsville and Grayshift, LLC." consisting of six (6) pages, and the date of March 23, 2023, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and executed copy of said document being permanently kept on file in the office of the City Clerk-Treasurer of the City of Huntsville, Alabama.

ADOPTED this the 23rd day of March, 2023.

President of the City Council of
the City of Huntsville, Alabama

APPROVED this the 23rd day of March, 2023.

Mayor of the City of
Huntsville, Alabama

GRAYSHIFT, LLC

END USER LICENSE TERMS

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2. ACCEPTANCE AND DELIVERY. Software will be provided by electronic means. Acceptance of Software ("Acceptance") shall be automatic upon the successful completion of Grayshift's standard installation procedures on the Product.

3. LICENSE GRANT. Subject to the terms of this Agreement and for the consideration specified in the Order (defined below), Grayshift, LLC ("Grayshift") hereby grants to you ("Licensee" or "You") a limited, revocable, nontransferable, non-assignable, non-sublicensable, non-exclusive license to use and allow Authorized Users to use the Software, in object code form, solely as such Software is embedded in proprietary equipment provided herewith ("Product") and solely for the intended purpose and consistent with Section 9 hereto when accessing mobile devices ("Devices") in your possession or control. Licensee may only use the Product in online mode at authorized physical locations (the "Authorized Locations") specified in the online order (the "Order") or that Licensee has otherwise registered with Grayshift, and Licensee further acknowledges and agrees that in order for the Product to function properly in online mode, the Product must be connected to the Internet. Use of the Product in offline mode does not require the Product to be connected to the Internet. Grayshift may use certain

third-party monitoring tools to ensure that Licensee is in compliance with the foregoing restrictions, which such tools may be subject to Third Party Components terms as further described herein. For purposes of this Agreement, "Authorized Users" means collectively, employees, agents, or contractors who are empowered by Licensee to access or use the Product and Software. The Licensee shall notify Grayshift in writing within thirty (30) calendar days following a change of an Authorized User's employment status such that the Authorized User ceases to be empowered by the Licensee to access or use the Product and Software either through ceasing to be employed by the Licensee or a change in his or her position within the Licensee's organization such that he or she is no longer authorized to access or use the Product and Software.

4. THIRD PARTY COMPONENTS. The Software makes use of or otherwise incorporates third party components, including certain Google Maps features and content. Use of Google Maps features and content is subject to the then-current versions of the: (1) Google Maps/Google Earth Additional Terms of Service at https://maps.google.com/help/terms_maps.html; and (2) Google Privacy Policy at <https://www.google.com/policies/privacy/>.

5. LICENSE RESTRICTIONS. Notwithstanding anything to the contrary in this Agreement, Licensee will not (or allow an Authorized User or any other individual to): (a) modify any Product; (b) reverse compile, reverse assemble, reverse engineer or otherwise translate all or any portion of any Product, including by removal, disassembly or alteration of any of the Product's components; (c) pledge, rent, lease, share, distribute, sell or create derivative works of any Product; (d) use any Product on a time sharing, service bureau, application service provider (ASP), rental or other similar basis; (e) make copies of any Product; (e) remove, alter or deface (or attempt any of the foregoing) proprietary notices, labels or marks in any Product; (f) distribute any copy of any Software to any third party, including without limitation selling any Product in a secondhand market; (g) use the Software other than with Products provided by

President of the City Council of the
City of Huntsville, AL
Date: _____

Grayshift; (h) use the Product in online mode other than at an Authorized Location; (i) deactivate, modify or impair the functioning of any disabling code in any Software; (j) circumvent or disable Grayshift copyright protection mechanisms or license management mechanisms; (k) use any Product in violation of any applicable Law or to support any illegal activity; (l) use any Product to violate any rights of any third party; or (m) photograph any of the Product's components, whether internal or external. To the extent legally practicable, Devices must remain in the Licensee's possession and control until after the software agent has been successfully uninstalled on the Devices. Grayshift expressly reserves the right to seek all available legal and equitable remedies to prevent any of the foregoing and to recover any lost profits, damages or costs resulting from any of the foregoing.

6. FEES. Licensee shall pay the license fees set forth in the relevant Quote for the Software and Product. Except as exempt by law, Licensee will be responsible for payment of any applicable sales, use and other taxes and all applicable export and import fees, customs duties and similar charges (other than taxes based on Grayshift's income), and any related penalties and interest for the grant of license rights hereunder, or the delivery of related services. Licensee will make all required payments to Grayshift free and clear of, and without reduction for, any withholding taxes. Any portion of any amount payable hereunder that is not paid when due will accrue interest at two percent (2%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

7. TITLE. As between the parties, Grayshift and its licensors retain all right, title, and interest, including, without limitation, all intellectual property rights to the Product. Licensee understands that Grayshift may modify or discontinue offering the Product at any time. The Product is protected by the copyright laws of the United States and international copyright treaties. This Agreement does not give Licensee any rights not expressly granted herein. This Agreement does not constitute a sale of the Product or any portion or copy of it. All rights not granted are reserved for Grayshift.

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Licensee acknowledges that all case stakeholders are aware of and understand the associated risk that the Device may become damaged and/or Device data may be unrecoverable when used with the Product or Software, in particular for Devices (a) with aftermarket repairs or hardware and nonstandard software builds; (b) that boot loop or are otherwise unable to boot normally; (c) that have preexisting damage, defects, or faults that may or may not be detectable; or (d) with software, software builds, states, or usage profiles not identified on the applicable support matrix. Licensee further understands that not all permutations of Device software, software builds, Device states, and usage profiles have been tested by Grayshift. Before utilizing the Product and Software on Devices under any of the above conditions, please consult support.grayshift.com.

11. CONFIDENTIALITY AND NON-DISCLOSURE OBLIGATIONS. Subject to applicable law, Licensee acknowledges that the Product and Software are sensitive technologies whose Confidential Information requires the highest duty of care. Licensee, Licensee's employees or agents who require access in order to perform hereunder, and all final users of the Product (collectively, "Receiving Party") shall not disclose, use, sell, transmit, inform or make available to any entity, person or body any of the Confidential Information, as defined below, nor shall it copy, photograph, or otherwise reproduce any Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and Grayshift's rights therein, at all times exercising the highest duty of care. Further, the Receiving Party shall not attempt to use any Confidential Information to discover, reverse compile, reverse assemble or reverse engineer the Product, including by removal, disassembly or alteration of any of the Product's components,

whether internal or external. Receiving Party agrees to restrict access to Grayshift's Confidential Information to those Authorized Users who require access in order to perform hereunder, and, except as otherwise provided, the Receiving Party shall not make Confidential Information available to any other person or entity without the prior written consent of Grayshift.

11.1. For the purposes of this Agreement, "Confidential Information" means any proprietary, trade secret, financial, technical and non-technical information related to Grayshift's business and current, future and proposed products and services and any derivatives therefrom containing, including, referring to, or otherwise reflecting and/or generated from such Confidential Information. Confidential Information includes, without limitation, (i) information concerning the methods of use, internal components, features, functions and solutions of Grayshift's software or product offerings (including the Product and the Software), information found on the Grayshift support website, and (ii) any copies, photographs, or other reproductions of the foregoing, whether or not marked as "confidential" or "proprietary."

11.2. Confidential Information shall not include any information that is (i) already known to the Receiving Party at the time of the disclosure; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the Receiving Party; (iii) subsequently disclosed to the Receiving Party on a non-confidential basis by a third party not having a confidential relationship with Grayshift that rightfully acquired such information; or (iv) communicated to a third party by the Receiving Party with Grayshift's express written consent.

11.3. A disclosure of Confidential Information that is legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process shall not be considered a breach of this Agreement; provided the Receiving Party promptly notifies Grayshift in writing, if notification is permitted by law, and uses commercially reasonable efforts to assist Grayshift, at Grayshift's expense, in opposing such disclosure or obtaining a protective order or other reliable assurance preventing or limiting such disclosure and/or ensuring that confidential treatment will be accorded to any Confidential Information that is disclosed. Such disclosure does not remove the Confidential Information so disclosed from the protection of this Agreement. No further disclosure beyond the scope of such order is allowed.

11.4. The Receiving Party acknowledges and agrees that due to the unique nature of Grayshift's Confidential Information, there can be no adequate remedy at law for any breach of its obligations under this Section 11, that any such breach will cause irreparable and continuing damage to Grayshift and, therefore, that upon any such breach or any threat thereof, Grayshift shall be entitled to whatever remedies it might have by law and equity, including injunctive relief, a decree for specific performance, and all other relief as may be proper (including money damages, if appropriate). The Receiving Party further acknowledges and agrees that the covenants contained herein are necessary for the

protection of legitimate business interests and are reasonable in scope.

12. TERM AND TERMINATION. This Agreement shall continue until terminated as set forth herein. Notwithstanding the foregoing, the license to any Product or Software is only during the license term applicable to such Product or Software. The license term shall be determined in the Quote. At Grayshift's sole discretion, Grayshift may also revoke such license and/or terminate this Agreement immediately without refund or reimbursement if Licensee violates any Material Provision of this Agreement. For the purposes of this Section 12, "Material Provision" means each of Sections 3 (License Grant), 5 (License Restrictions), 9 (Licensee Warranties), and 11 (Confidentiality and Non-Disclosure Obligations). Any termination of this Agreement shall terminate the licenses granted hereunder. All Confidential Information, Software and/or derivatives therefrom delivered pursuant to this Agreement shall be and remain the property of Grayshift, and upon expiration or termination of this Agreement for any reason, Licensee shall destroy (or return, at Grayshift's election) (i) all materials in the possession of Licensee in any medium that contain, refer to, or relate to all other written, printed, or tangible materials containing Confidential Information; and (ii) any derivatives therefrom, and shall so certify to Grayshift that such actions have occurred. No such material shall be retained or used by the Receiving Party in any form or for any reason. Except for the license and except as otherwise expressly provided herein, the terms of this Agreement, including the Confidentiality and Non-Disclosure obligations in Section 11 hereto and any additional terms agreed-to in writing by both parties pursuant to Section 1 hereto, shall survive expiration and termination. Notwithstanding any other provision of this Agreement, the obligations of the parties as to Confidential Information shall remain binding in perpetuity until such information no longer qualifies as Confidential Information or until Grayshift sends the Receiving Party written notice releasing the Receiving Party from its obligations under Section 11 hereto, whichever occurs first.

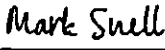
13. RESERVED.

14. GOVERNMENT USE. If Licensee is part of an agency, department, or other entity of the United States Government ("Government"), the use, duplication, reproduction, release, modification, disclosure or transfer of the Product or any related documentation is restricted in accordance with the Federal Acquisition Regulation 12.212 for civilian agencies and the Defense Federal Acquisition Regulation Supplement 227.7202 for military agencies. The Product and documentation is a "commercial item", "commercial computer software" and "commercial computer software documentation." The use of the Product and documentation is further restricted in accordance with the terms of this Agreement, or any modifications thereto.

15. EXPORT CONTROLS. Licensee shall comply with the U.S. Foreign Corrupt Practices Act and all applicable export laws, restrictions, and regulations of the United States or foreign agency or authority. Licensee will not export, or allow the export or re-export, of the Product in violation of any such laws, restrictions or regulations.

16. **MISCELLANEOUS.** If any provision of this Agreement is held to be invalid, illegal, or unenforceable in any respect, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. The failure of Grayshift to act with respect to a breach of this Agreement by Licensee or others does not constitute a waiver and shall not limit Grayshift's rights with respect to such breach or any subsequent breaches. This Agreement is personal to Licensee and may not be assigned, sublicensed, or transferred for any reason whatsoever (including, without limitation, by operation of law,

merger, reorganization, or as a result of an acquisition or change of control involving Licensee) without Grayshift's consent and any action or conduct in violation of the foregoing shall be void and without effect. This Agreement shall be governed by and construed under the laws of the State of Georgia, U.S.A. without regard to the conflicts of laws provisions thereof, and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be the state and federal courts in Georgia; Licensee hereby agrees to service of process in accordance with the rules of such court.

<p>GRAYSHIFT, LLC</p> <p>DocuSigned by:  <small>F933E1950E5A420...</small></p> <p>Signature: _____</p> <p>Name: <u>Mark Snell</u></p> <p>Title: <u>Chief Financial Officer</u></p> <p>Date: <u>3/7/2023</u></p>	<p>LICENSEE: <u>City of Huntsville, AL Police</u></p> <p>Signature: _____</p> <p>Name: <u>Tommy Battle</u></p> <p>Title: <u>Mayor</u></p> <p>Date: _____</p>
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The Parties agree that any form of electronic signature, including but not limited to signatures via facsimile, scanning, or electronic mail, may substitute for the original signature and shall have the same legal effect as the original signature.



GRAYSHIFT

Grayshift LLC

931 Monroe Drive NE Suite A102-340
Atlanta, GA 30308
USA
Phone: +1 (833) 472-9539

Quote Number: Q-16985-1
Created Date: 3/7/2023
Expiration Date: 3/25/2023
Contract Start Date: 3/20/2023

CAGE Code: 7R0W9
DUNS Number: 081045174
NAICS: 513210

Ship To

Byron Thompson
Huntsville Police Department
815 Wheeler Avenue Northwest
Huntsville, Alabama 35801
United States
byron.thompson@huntsvilleal.gov

Bill To

Byron Thompson
Huntsville Police Department
815 Wheeler Avenue Northwest
Huntsville, Alabama 35801
United States
byron.thompson@huntsvilleal.gov

SALESPERSON	EMAIL	DELIVERY METHOD	PAYMENT TERMS
Jake Downs	jdowns@grayshift.com	FedEx	Net 45

All prices below are in U.S. Dollar

PRODUCT NAME	START	END	PART	QTY	PRICE	EXTENDED
GrayKey License - Essential Unlimited Consent and BFU Extractions. 30 AFU, Instant Unlock or Brute Force Advanced actions Action Credits Included: 30	3/20/2023	3/19/2024	GKL-ONF-ES	1.00	10,995.00	10,995.00
GrayKey Unit			GK101	1.00	550.00	550.00
Shipping & Handling			SH	1.00	75.00	75.00

TOTAL: USD 11,620.00

Quote Terms

- Access to the ArtifactIQ by Grayshift service requires the purchasing entity's prior acceptance of the ArtifactIQ by Grayshift Software Services Agreement available at <https://grayshift.com/grayshift-software-services-agreement/>
- Delivery of GrayKey requires the end-user's prior acceptance of the GrayKey End User License Terms Agreement ('EULA') available at <https://grayshift.com/graykey-eula>
- The final invoice may include tax, if applicable.
- Your contract will start on 3/20/2023 and will end after the term identified above expires.
- Please reference quote number on payment method.

Payment Terms

- Non-payment thirty days after issuance of your invoice may result in a suspended license.
- Credit Cards: Major credit cards accepted including Visa, Mastercard, and American Express.
- Additional Information: Fees under this Agreement are exclusive of all taxes, including national, state or provincial and local income, use, sales, value-added, property and similar taxes, if any. Customer agrees to pay such taxes (excluding US taxes based on Grayshift's net income). In the case of any withholding requirements, Customer will pay any required withholding itself and will not reduce the amount paid to Grayshift on account thereof. As an example, if the price to be paid is \$100 but there is, for example, 10% withholding, Grayshift will still directly be paid \$100. The payor may need to "gross up" the overall payment so the amount due Grayshift after any withholding is \$100.

Terms & Conditions

A signed quote is acceptable in lieu of a purchase order to execute this order under the following conditions:

- a. The purchasing entity identified in the quote does not require the issuance of a Purchase Order and any subsequent issuance of a Purchase Order will render the below signature void and cause the service to be suspended until the parties have entered into a formal agreement,
- b. No additional terms and conditions outside of the ArtifactIQ by Grayshift Software Services Agreement and/or the GrayKey End User License Agreement, as applicable, and this Quote apply to this purchase whatsoever, and
- c. The above quote is issued for an amount not to exceed \$15,000 for the ArtifactIQ by Grayshift service, or \$50,000 for any new online GrayKey license(s) and/or an amount not to exceed \$100,000 for renewal online GrayKey license(s), respectively.

ATTENTION: PLEASE READ CAREFULLY:

BY SIGNING THIS QUOTE, YOU CERTIFY THAT THE ABOVE IS ACCURATE, THAT YOU HAVE READ THE TERMS OF THE ARTIFACTIQ BY GRAYSHIFT SOFTWARE SERVICES AGREEMENT AND/OR THE GRAYKEY END USER LICENSE AGREEMENT, AS APPLICABLE TO THE PRODUCTS IDENTIFIED IN THIS QUOTE, AND AGREE TO THE APPLICABLE TERMS IN THEIR ENTIRETY WITHOUT EXCEPTION OR RESERVATION, AND THAT YOU ARE AN AUTHORIZED REPRESENTATIVE OF THE INTENDED PURCHASING ENTITY IDENTIFIED IN THIS QUOTE WITH THE AUTHORITY TO LEGALLY BIND YOUR AGENCY AND TO ENTER INTO THIS AGREEMENT, AND THAT YOU CAN PROVIDE WRITTEN VERIFICATION OF SUCH AUTHORITY UPON REQUEST.

Signature: _____

Effective Date: _____/_____/_____

Name (Print): _____

Title: _____

Please sign and email to Jake Downs at jdowns@grayshift.com

Grayshift LLC
THANK YOU FOR YOUR BUSINESS!
A subsidiary of Grayshift LLC