



Huntsville, Alabama

308 Fountain Circle
Huntsville, AL 35801

Cover Memo

Meeting Type: City Council Regular Meeting **Meeting Date:** 2/22/2024

File ID: TMP-3855

Department: Police

Subject:

Type of Action: Approval/Action

Resolution authorizing the Mayor to enter into an Enrollment Form for Law Enforcement between the City of Huntsville and Carfax.

Resolution No.

Finance Information:

Account Number: N/A

City Cost Amount: \$ 0.00

Total Cost: \$ 0.00

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:

Contract provides for CarFax to manage online traffic accident report distribution, in addition to citizens obtaining copies of their accident reports in-person directly from HPD.

RESOLUTION NO. 24-_____

BE IT RESOLVED by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized to enter into an agreement by and between the City of Huntsville and CARFAX, Inc. 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 "Enrollment Form for Law Enforcement – Huntsville, AL," consisting of four (4) pages, and the date of February 22, 2024 appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

ADOPTED this the 22nd day of February, 2024.

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

APPROVED this the 22nd day of February, 2024.

Mayor of the City of
Huntsville, Alabama



CARFAX® For Police Program Terms and Conditions

These CARFAX® For Police Program Terms and Conditions (the "Terms and Conditions"), any enrollment form (each, an "Enrollment Form") signed or accepted by Agency, and any written exhibits and addenda to any Enrollment Form (whether entered into at the same time or at a later date) collectively form the agreement (the "Agreement") between CARFAX, Inc. ("CARFAX") and Agency and govern Agency's participation in the CARFAX® For Police Program (the "Program").

1. Definitions.

- 1.1 "Agency Crash Report" is defined as a motor vehicle crash or incident report created and/or collected by or on behalf of Agency (including but not limited to all data and information contained therein or derived therefrom).
- 1.2 "Alternative Vehicle History Provider" is defined as a provider or reseller of motor vehicle history data, information, products, and/or services other than CARFAX.
- 1.3 "Crash Data" is defined as all Agency Crash Reports (including but not limited to all eCrash Reports) and all other data and information related to motor vehicle crashes or other incidents (that are: (a) provided by or on behalf of Agency to CARFAX under this Agreement, (b) uploaded, submitted and/or otherwise transmitted to or through any of the Services by or on behalf of Agency or any authorized user of the Services, and/or (c) otherwise received by CARFAX under this Agreement).
- 1.4 "DPPA" is defined as the Federal Driver's Privacy Protection Act (18 U.S.C. § 2721 et seq.) and/or analogous state laws.
- 1.5 "DPPA Permissible Use" is defined as a permissible use set forth in the DPPA.
- 1.6 "eCrash Report" is defined as an Agency Crash Report created by or on behalf of Agency using the eCrash Service.
- 1.7 "eCrash Service" is defined as the CARFAX motor vehicle crash report writing service that allows authorized users to create motor vehicle crash and incident reports.
- 1.8 "Effective Date" is defined as the date on which Agency first provides Crash Data to CARFAX in the form and format that allows CARFAX to upload such Crash Data to the VHDB and the Law Enforcement Database.
- 1.9 "Intellectual Property" is defined as the Services (expressly excluding any Agency Crash Reports or Crash Data) and all intellectual property relating either directly or indirectly to the Services, including but not limited to patents, design rights, copyrights, database rights, trade secrets, know-how and all derivative works thereof, including but not limited to future enhancements and modifications.
- 1.10 "Investigative Tools" is defined as: (a) the VHDB, (b) the VH Tools, (c) the Law Enforcement Database, (d) the Law Enforcement Information, and (e) all data and information contained in or derived from each of the foregoing.
- 1.11 "Law Enforcement Database" is defined as the CARFAX crash report database(s) that contains Law Enforcement Information.
- 1.12 "Law Enforcement Information" is defined as motor vehicle crash and incident reports that CARFAX obtains from or on behalf of law enforcement agencies (including but not limited to all data and information contained therein or derived therefrom).
- 1.13 "Report Distribution Service" is defined as the CARFAX online platform that allows CARFAX to distribute and/or sell motor vehicle crash and incident reports on behalf of law enforcement agencies.
- 1.14 "Services" is defined as the Investigative Tools, the Report Distribution Service, the eCrash Service, and any other products and services that CARFAX makes available to Agency from time to time under this Agreement.
- 1.15 "VH Tools" is defined as CARFAX Vehicle History Reports, QuickVIN®, VINAlert®, Partial License Plate Search and such other products and services that CARFAX makes available to Agency from time to time under this Agreement.

- 1.16 "VHDB" is defined as the CARFAX vehicle history database(s) that contains data and information regarding motor vehicle transactions.

2. Services.

- 2.1 "Investigative Tools". If Agency elects to use the Investigative Tools, CARFAX grants to Agency a limited, revocable, nontransferable, nonsublicensable and nonexclusive license to: (a) access and use the VH Tools solely for Agency's use in law enforcement investigations, and (b) access the Law Enforcement Database to obtain and use the Law Enforcement Information solely for Agency's use in law enforcement investigations. To the extent "personal information" (as such term is defined under the DPPA) is contained in any Law Enforcement Information and the disclosure and use of such personal information is subject to the DPPA, Agency represents and warrants for itself and each Agency user that it shall comply with the DPPA, including without limitation disclosing such personal information only in connection with a DPPA Permissible Use.
- 2.2 "Reserved".
- 2.3 "Report Distribution Service". If Agency elects to use the Report Distribution Service, Agency authorizes CARFAX to offer to sell and sell (or at Agency's request, offer to provide or provide at no cost) through the Report Distribution Service all Agency Crash Reports (including but not limited to e-Crash Reports) that CARFAX receives under this Agreement and/or all Agency-authorized rendered versions of the Agency Crash Reports, as applicable (collectively, the "Distributed Reports"). Agency authorizes CARFAX to issue press releases and public statements relating to Agency's use of the Report Distribution Service. Agency shall: (a) include on its website(s) and social media site(s) one or more hyperlinks to the Report Distribution Service; (b) direct all individuals and entities that want to purchase Distributed Reports to the Report Distribution Service; and (c) direct all calls that Agency receives relating to CARFAX or the Report Distribution Service to 1-800-990-2452 or such other phone number designated by CARFAX. Within thirty (30) days after the end of each calendar month, CARFAX will pay Agency the Reimbursed Fee for each Distributed Report sold through the Report Distribution Service. Agency will notify CARFAX in writing of any change to the Reimbursed Fee and any such change will take effect thirty (30) days after CARFAX's receipt of such notice.
- 2.4 "eCrash Service". If Agency elects to use the eCrash Service, CARFAX grants to Agency a limited, revocable, nontransferable, nonsublicensable and nonexclusive license to access and use the eCrash Service solely to create eCrash Reports. Agency shall be solely responsible for: (a) any and all data and information entered into the eCrash Service and (b) approval of the data and information to create the eCrash Report. Agency shall notify CARFAX in writing if any applicable state or local law or regulation limits CARFAX's use or distribution of the eCrash Reports. Once an eCrash Report has been approved by Agency, CARFAX may use and distribute such e-Crash Report as permitted under this Agreement. If CARFAX or Agency terminates Agency's use of the eCrash Service, Agency will no longer have access to the eCrash Service to create new eCrash Reports or approve previously-created eCrash Reports.
- 2.5 "Agency Account". Promptly following the Effective Date, CARFAX will establish an account to allow Agency and authorized employees of Agency to access the Services that Agency elected and is permitted to use under this Agreement (the "Agency Account"). Agency acknowledges and agrees that it is responsible for all use and misuse that arise out of the Agency Account and the username(s) and password(s) used to gain access to the Agency Account.
- 2.6 "Restrictions on Access and Use of CARFAX Services". Agency shall not: (a) provide, offer, distribute, sell, resell, or otherwise disclose

any data or information made available or derived from the Investigative Tools in any way to any third party (except to the extent necessary to comply with applicable law); (b) allow any third party to view, access or use any of the Services; (c) use or permit the use of any of the Services for personal purposes or in contravention of any federal, state, local, foreign or other laws, rules or regulations; or (d) introduce into the Services any viruses, spyware or other software that is intended to disrupt, delete, damage or alter any of the Services. Systematic access to the Services or retrieval of data or information included in or derived from the Services, including but not limited to the use of "bots" or "spiders," is strictly prohibited. Without limiting CARFAX's other rights under this Agreement, CARFAX may, upon written notice (e-mail acceptable) to Agency, suspend Agency's access to one or more of the Services (in whole or in part) for any breach of this Agreement by Agency.

2.7 Security. Agency acknowledges that the Law Enforcement Database contains Law Enforcement Information that may include personally identifiable information (collectively, "PII"). Agency shall keep all such PII confidential and secure, including but not limited to by: (a) restricting access to such Law Enforcement Information to employees of Agency who have a need to know as part of their official duties; (b) ensuring that the Agency Account and such Law Enforcement Information is accessed solely for law enforcement investigations as permitted under this Agreement; (c) maintaining and complying with any applicable data retention policy governing the security and retention of Law Enforcement Information; and (d) maintaining an information security program that is designed to meet applicable state and federal law requirements for safeguarding PII, including, at a minimum, to: (i) ensure the security and confidentiality of such Law Enforcement Information; (ii) protect against any anticipated threats or hazards to the security or integrity of data contained in such Law Enforcement Information; and (iii) protect against unauthorized access to or use of the PII and other data contained in such Law Enforcement Information. In the event of any actual or reasonably suspected breach or unauthorized access of Law Enforcement Information (collectively, "Agency Breach"), Agency shall promptly notify CARFAX of such Agency Breach and shall fully cooperate with CARFAX in investigating such Agency Breach and preventing the recurrence of an Agency Breach. As between CARFAX and Agency, Agency shall be solely responsible for any legal or regulatory obligations which may arise under applicable law in connection with such Agency Breach, shall bear all costs associated with complying with legal and regulatory obligations in connection therewith and shall reimburse CARFAX for any expenses incurred by CARFAX in connection with such Agency Breach or any actions required as a result thereof. For purposes of clarification, and without limiting the generality of the foregoing, Agency shall, in compliance with law and at its own expense, notify the individuals whose information is the subject of such Agency Breach and shall also notify any other parties (including but not limited to regulatory entities and credit reporting agencies) as may be required by law. Agency agrees that such notification shall not reference CARFAX or the Law Enforcement Database, nor shall CARFAX be otherwise identified or referenced in connection with such Agency Breach, without CARFAX's express written consent. As between CARFAX and Agency, Agency shall remain solely liable for claims that may arise from such Agency Breach, including but not limited to costs for litigation (including attorneys' fees), and reimbursement sought by individuals, including but not limited to costs for credit monitoring or allegations of loss in connection with such Agency Breach.

3. Provision of Crash Data. Agency hereby provides (or authorizes its third party service provider to provide) to CARFAX all Agency Crash Reports and Crash Data (as applicable). Agency understands that CARFAX relies on its sources for the accuracy and reliability of the Crash Data, and therefore Agency shall notify CARFAX of erroneous data and information in any Crash Data. Agency authorizes CARFAX to include any and all non-personal data and information from the Crash Data in the VHDB, and to use such data and information from the Crash Data in connection with any data, products or services provided by CARFAX. Agency authorizes CARFAX to include any and all data and information from the Crash Data in the Law Enforcement Database and to use such data and information in connection with any data, products or services that CARFAX provides to law enforcement agencies. Agency agrees to use its best efforts to provide to CARFAX, upon CARFAX's request, another copy of any previously provided Crash Data as soon as reasonably possible after such request.

4. Crash Data Restrictions. Because of the significant investment CARFAX has made and continues to make in the Services that CARFAX licenses to Agency for free, Agency shall not, directly or indirectly: (a) offer, sell, resell, distribute, license, sublicense, transfer, or otherwise provide any Crash Data, in whole or in part, whether in electronic, digital, paper or any other form or manner, to any Alternative Vehicle History Provider or (b) allow any person or entity to offer, sell, resell, distribute, license, sublicense, transfer, or otherwise provide any Crash Data, in whole or in part, whether in electronic, digital, paper or any other form or manner, to any Alternative Vehicle History Provider (collectively, the "Crash Data Restrictions"). Without limiting the foregoing, Agency shall ensure that each person or entity that receives any Crash Data, excluding Agency Crash Reports, from Agency (or a third party on Agency's behalf) (each, a "Crash Data Recipient") shall be bound by a written agreement that: (i) obligates such Crash Data Recipient to comply with the Crash Data Restrictions and (ii) names CARFAX as an intended third party beneficiary with the right to enforce the Crash Data Restrictions directly against such Crash Data Recipient. Agency agrees to notify CARFAX of any suspected or known breach of the Crash Data Restrictions by a Crash Data Recipient.

5. Intellectual Property; Marks. Agency acknowledges that Intellectual Property is and will remain the property of CARFAX. Each party hereby grants to the other party a nonexclusive, nontransferable, revocable right to use such of its trademarks, service marks, logos and trade names and other designations that are provided by the granting party to the other party (collectively, the "Marks") for the sole purpose of performing such party's obligations and exercising such party's rights under this Agreement. Each party represents and warrants that it has all necessary right, title, interest, and/or license in and to its Marks to grant to the other party the license to use its Marks as provided herein. All use of a party's Marks will inure to the benefit of such party.

6. Disclaimers. Agency acknowledges that CARFAX collects data from public records and other sources for use in the Investigative Tools and that this data may contain errors and omissions. CARFAX does not guarantee the correctness or completeness of the Investigative Tools, and CARFAX will have no liability for errors or omissions with respect to the Investigative Tools. Agency assumes full responsibility with respect to its decisions and transactions using the Investigative Tools. THE SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE." CARFAX MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND CARFAX EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

7. Limitation of Liability. IN NO EVENT WILL CARFAX BE LIABLE FOR CONSEQUENTIAL, SPECIAL, PUNITIVE, INDIRECT, OR INCIDENTAL DAMAGES ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF CARFAX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. The cumulative liability of CARFAX under this Agreement will not exceed \$1,000, and such amount will be Agency's exclusive remedy.

8. Term and Termination.

8.1 Term. The term of this Agreement commences on the Effective Date and continues in effect for a period of one (1) year and thereafter Agency may renew the term of this Agreement for additional one (1) year periods by providing written notice (e-mail acceptable) to CARFAX of its intention to renew the term of this Agreement.

8.2 Termination; Survival. Agency may terminate this Agreement at any time for its convenience by giving at least thirty (30) days' prior written notice to CARFAX. Any termination of Agency's access to and use of a Service does not terminate any other Services that Agency may access and use under this Agreement. CARFAX may terminate this Agreement and/or any Service immediately upon written notice if Agency breaches any provision of this Agreement. Upon any expiration or termination of a Service or this Agreement (as applicable), CARFAX may continue to use the Crash Data already acquired under this Agreement, and sell or offer to sell the Distributed Reports already acquired or rendered by CARFAX under this Agreement. Upon expiration or termination of this Agreement, Agency will no longer have access to the eCrash Service (including but not limited to the eCrash Reports) and Agency understands it is responsible for retaining all eCrash Reports on its own systems prior to

the effective date of such expiration or termination. All provisions of this Agreement that expressly or should by their nature survive any expiration or termination of this Agreement shall so survive, including but not limited to this Section 8.2 and Sections 2.6(a), 2.7, 5, 6 and 7.

9. General Provisions. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and terminates and supersedes all previous agreements, whether oral or written, relating to the same subject matter. In the event of any ambiguity or conflict between any of the terms and conditions contained in the Enrollment Form and those set forth in these Terms and Conditions, the Terms and Conditions shall govern. CARFAX reserves the right to discontinue or modify, upon notification to Agency, any aspect of any of the Services licensed to Agency hereunder. CARFAX reserves the right to modify these Terms and Conditions and to impose new or additional terms and conditions at any time. Such minor and non-material modifications and additional terms and conditions will be effective immediately upon being posted online on the CARFAX For Police website (or such other successor website) and incorporated into this Agreement, and Agency's continued use of any of the Services will be deemed acceptance thereof. Notwithstanding the foregoing, CARFAX will provide Agency with at least thirty (30) days written notice prior to making any material modification to these Terms and Conditions and Agency may terminate this Agreement upon written notice following receipt of any such written notification. Each party shall comply with all applicable federal, state and local laws, rules and regulations with respect to its performance under this Agreement. This Agreement does not create a joint venture, partnership, agency, franchise, dealership, distributorship or employment relationship between the parties or any other relationship other than independent contractors. A party's failure to insist in any one or more instances upon the performance of any term, obligation, or condition of this Agreement by the other party, or to exercise any right or privilege conferred in this Agreement, will not be construed as a waiver of such term, obligation, or condition or a relinquishment of such right or privilege. Any waiver of a breach of any term or condition of this Agreement by a party will not be considered a waiver of any subsequent breach of the same or any other condition. If any provision of this Agreement is found invalid or unenforceable, that provision will be enforced to the maximum extent permissible, and the other provisions of this Agreement will remain in force, unless the invalidity or unenforceability of a provision materially alters the rights or obligations of a party. Agency shall not assign this Agreement without the prior written consent of CARFAX. A signed Agreement sent by fax or scanned and emailed, or signed via a recognized electronic signature service, shall be legally binding and enforceable.

10. Governing Law and Venue. This Agreement, and any claim or dispute relating in any way to the activities under this Agreement, shall be governed by and construed in accordance with the laws of the State of Alabama, without regard to its conflict of law principles. Venue for all actions arising out of this Agreement shall be in the courts of Madison County, Alabama.