



Venice of America

City of Fort Lauderdale
Police Department

1300 West Broward Boulevard
Fort Lauderdale, Florida 33312
(954)828-5700

<http://ci.ftlaud.fl.us/police/index.html>



MEMORANDUM

To: Aixa D. Penedo, Administrative Assistant to Lee R. Feldman, City Manager
From: Bradley H. Weissman, Esquire
Date: September 13, 2016
Re: CarFax Police Crash Assistance

● **Message:**

Dear Aixa:

Enclosed is the agreement between CarFax Police Crash Assistance and the City of Fort Lauderdale. This item was approved by the City Commission on September 7, 2016. Please obtain the signature of the City Manager [on pages 1 and 2], and the Mayor and City Clerk [on page 2]. Once the agreement has been fully executed, please return the original document to my office.

If you have any questions, please do not hesitate to contact me. Thank you.

Bradley H. Weissman, Esquire – ext. 5622

CARFAX® Police Crash Assistance Program Terms and Conditions

These CARFAX® Police Crash Assistance Program Terms and Conditions ("Terms and Conditions"), any enrollment form signed by the Agency ("Enrollment Form"), and any exhibits and addenda to any Enrollment Form (whether entered into at the same time or at a later date) collectively form the agreement ("Agreement") between CARFAX, Inc. ("CARFAX") and the Agency and govern Agency's participation in the Program. The 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, and will continue in full force and effect so long as the Agency participates in the Program. Termination of Agency's subscription to any CARFAX service pursuant to the Program does not terminate any other CARFAX services to which Agency may have subscribed.

1. Provision of Data. Agency agrees to provide, or authorizes its third party service provider to provide, to CARFAX all motor vehicle accident reports (or any data contained therein, as mutually agreed by the parties) that are created or collected by Agency and that Agency is permitted to provide to CARFAX ("Accident Data"). Agency understands that CARFAX relies on its sources for the accuracy and reliability of their information, and therefore Agency will notify CARFAX of erroneous information in any Accident Data provided to CARFAX. Agency authorizes CARFAX to use any and all non-personal information from the Accident Data in connection with the VHS and any products and services offered by CARFAX, and include such information in the VHS database. To the extent Agency participates in the Data Sharing Program, Agency authorizes CARFAX to include any and all information from the Accident Data provided by Agency (including, without limitation, any personal information) in CARFAX's Crashdocs database ("Crashdocs") to share such information with other law enforcement agencies. Agency agrees to use its best efforts to provide to CARFAX, upon CARFAX's request, another copy of any previously provided Accident Data within one (1) business day after such request. Agency understands that, in the event of any termination of Agency's participation in the Program, CARFAX may continue to use the Accident Data already acquired by CARFAX.

2. Term and Termination. Agency agrees that its participation in the Program will be effective from the date on which Agency provides Accident Data to CARFAX in the form and format that allows CARFAX to upload such Accident Data in the VHS and/or Crashdocs and will continue in effect for a period of one (1) year and thereafter will automatically renew for additional one (1) year periods until either party provides the other party ninety (90) days written notice prior to any renewal date (the "Term"). CARFAX may terminate this Agreement immediately if Agency breaches any provision of this Agreement. All provisions of this Agreement that expressly or should by their nature survive the termination of this Agreement shall so survive, including without limitation this last sentence of Section 2, the last sentence of Section 3, 5, 6, 7, 8, 9, and 10.

3. License: Ownership. Subject to the terms and conditions of this Agreement, CARFAX hereby grants to Agency a limited, revocable, nontransferable and nonexclusive license to use the (a) VHS to access the Investigative Tools (as defined below) and (b) Crashdocs to access Shared Reports (as defined below). The license to use the VHS and Crashdocs is limited to the extent required for criminal investigative purposes ("Permitted Use"), and in accordance with Florida Public record laws. Agency acknowledges that the VHS, the Investigative Tools, Crashdocs and Shared Reports and all intellectual property relating thereto are and will remain the property of CARFAX. However, the information obtained from and the reports generated by the VHS, the Investigative Tools, Crashdocs and Shared Reports may be disseminated as required by the Federal and/or Florida rules of court procedure and/or Florida Public Records law.

4. Agency Account. Upon Agency's enrollment in the Program, CARFAX will establish an Agency Account and will provide Agency with username(s) and password(s) to access (a) the VHS to obtain Investigative Tools and (b) Crashdocs to obtain the Shared Reports. Agency will ensure that only authorized representatives of Agency are given access to the Agency Account. Agency will ensure that a separate username and password is issued for each authorized representative of Agency, and Agency will be responsible for the administration of such username(s) and password(s) (including, without limitation, in connection with change in authorized personnel). Agency understands that it is responsible for the security of the username(s) and password(s) issued by CARFAX and all charges or fees arising out of the unauthorized or improper use of such username(s) and password(s), including access by non-authorized individuals or use for commercial purposes. Agency will not share the username(s) and/or password(s) issued by CARFAX with any third party (other than with CARFAX-approved third party vendors to facilitate the Permitted Use).

5. Security. Agency acknowledges that Crashdocs may include personally identifiable information (collectively, "PII"). Agency will keep all such PII confidential and secure, including without limitation by (a) restricting access to the Agency Account and/or accident report to those employees who have a need to know as part of their official duties; (b) ensuring that the Agency Account and accident reports are accessed for a Permitted Use only, and accident report information is not shared with any third party except as permitted by law and pursuant to the Agreement; (c) maintaining and complying with a data retention policy governing the security and retention of accident reports and the state record retention schedules; and (d) maintaining an information security program that is designed to meet federal guidelines establishing standards for safeguarding PII, including, at a minimum, maintenance of an information security program that is designed to (i) ensure the security and confidentiality of the accident reports; (ii) protect against any anticipated threats or hazards to the security or integrity of data contained on accident reports; and (iii) protect against unauthorized access to or use of the data contained in accident reports. In the event

of any actual or reasonably suspected breach of accident reports data, Agency will promptly notify CARFAX of such actual or suspected breach and will fully cooperate with CARFAX in investigating such breach or unauthorized access and preventing the recurrence of any unauthorized or attempted possession, use or knowledge of the data. Agency shall be solely responsible for any legal or regulatory obligations which may arise under applicable law in connection with such a breach of security and shall bear all costs associated with complying with legal and regulatory obligations in connection therewith and will reimburse CARFAX for any expenses incurred by CARFAX in connection with a breach of Agency's security, or any actions required as a result thereof. However, nothing contained in this section shall be construed as a waiver of the privileges, rights, and immunities as defined in Section 768.28, Florida Statutes, as may be amended from time to time. 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 the breach or potential breach of security, and shall also notify any other parties (including without limitation regulatory entities and credit reporting agencies) as may be required in CARFAX's reasonable discretion. Except to the extent otherwise expressly prohibited by applicable law, Agency agrees to not reference or identify CARFAX or Crashdocs in connection with any such breach or potential breach of security. Agency shall remain solely liable for claims that may arise from a breach of security, including without limitation costs for litigation (including attorneys' fees), and reimbursement sought by individuals, including without limitation costs for credit monitoring or allegations of loss in connection with the breach of security, and to the extent that any claims are brought against CARFAX, Agency shall indemnify CARFAX from such claims. Agency shall provide samples of all proposed materials to notify consumers and any third-parties, including regulatory entities, to CARFAX for review and approval prior to distribution.

6. Access to the VHS; Restrictions on Access and Use. In consideration of Agency's authorization to include non-personal information contained in the Accident Data in the VHS, CARFAX will provide to Agency a free subscription to the VHS to access CARFAX Vehicle History Reports, QuickVIN®, VINAlert® and such other investigative tools that CARFAX may offer from time-to-time (collectively, "Investigative Tools"). Agency shall not: (i) sell the Investigative Tools or information derived from the Investigative Tools, (ii) permit the use of the VHS or the Investigative Tools by any third party, except as required by the state's open records law or the rules of court procedure, (iv) use or permit the use of the VHS or Investigative Tools in the operation of a service bureau, or (v) use the VHS or the Investigative Tools for purposes other than the Permitted Use, including without limitation for personal or unlawful purposes, or (v) upload or otherwise introduce any viruses, spyware or other software that jeopardizes the security or integrity of Crashdocs or the VHS or otherwise interferes with the functioning of Crashdocs as intended by CARFAX. Systematic access or retrieval of Investigative Tools or the information derived from Investigative Tools, including, but not limited to, the use of "bots" or "spiders," is strictly prohibited. In the event Agency provides any Investigative Tool or the information derived from the Investigative Tool to another party, Agency shall not: (A) provide such Investigative Tools or information to any party for resale or remarketing in any manner or (B) modify such Investigative Tool or information in any way. Agency shall make no representation or provide any warranty to any person or entity regarding CARFAX, the VHS, the Investigative Tools, or the information derived from the Investigative Tools, whether written or oral, that is inconsistent with the provisions of this Agreement or the information contained on the Investigative Tools (including all disclaimers). CARFAX reserves the right, in its sole discretion, to discontinue, modify or terminate any aspect of the Investigative Tools at any time.

7. Access to and Use of Data Sharing Program. CARFAX will provide Agency with access to Crashdocs to obtain, as necessary, copies of motor vehicle accident reports that were provided to CARFAX by current Data Sharing Program participants (collectively, the "Shared Reports") and any information contained in the foregoing for the Permitted Use only. Agency shall not, and shall not permit others, to directly or indirectly: (i) provide, offer, distribute, sell, resell or otherwise disclose any of the Shared Reports or any information derived from the Shared Reports to any third party (except to the extent such Shared Report becomes part of Agency's criminal investigation record, subject to the state's open records laws or rules of court procedure), or (ii) search Crashdocs or use any of the Shared Reports or any information contained in the foregoing on behalf of any third party or for purposes other than criminal investigative purposes (including personal or unlawful purposes). CRASHDOCS, THE SHARED REPORTS AND ALL INFORMATION CONTAINED IN THE FOREGOING ARE PROVIDED "AS IS" AND "AS AVAILABLE." Except to the extent prohibited by applicable law, Agency will indemnify and hold CARFAX, its affiliates and their respective directors, officers, employees and agents harmless from any claims, suits or damages, either direct or indirect, arising out of any negligent or intentional act of any employee of the Agency. However, nothing contained in this section shall constitute a waiver of the Agency's privileges, rights, and immunities as defined in Section 768.28, Florida Statutes, as may be amended from time to time. Agency may terminate its participation in the Data Sharing Program upon thirty (30) days prior written notice to CARFAX. CARFAX reserves the right, in its sole discretion, to modify or terminate the Data Sharing Program at any time.

8. Disclaimers; Limited Warranty. Agency acknowledges that CARFAX collects data from public records and other sources for use in the VHS, Crashdocs, the Investigative Tools and Shared Reports and that this data may contain errors and omissions. CARFAX does not guarantee the correctness or completeness of the VHS, Crashdocs, the Shared Reports, the Investigative Tools or any information contained therein, and CARFAX will not be liable for any loss or injury caused, in whole or part, either by its negligence or circumstances beyond its control in procuring, compiling, collecting, interpreting or making available the VHS, Crashdocs, the Shared Reports or the Investigative Tools. Agency understands that not all information is available for all states and that CARFAX does not have access to some information that may be available to other parties. Agency also understands there may be a period of time between receipt of certain information by CARFAX and its inclusion of such information into the VHS, Crashdocs, the Shared Reports or the Investigative Tools. Agency acknowledges that the VHS,



Crashdocs, the Shared Reports, and the Investigative Tools do not provide any conclusions regarding the condition of any vehicle, and Agency assumes full responsibility with respect to its decisions and transactions using the VHS, Crashdocs, the Shared Reports and the Investigative Tools. CARFAX MAKES AND THE AGENCY RECEIVES NO WARRANTIES, EXPRESS OR IMPLIED, AND CARFAX EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CARFAX DOES NOT GUARANTEE THAT THE VHS, CRASHDOCS, SHARED REPORTS OR THE INVESTIGATIVE TOOLS WILL FUNCTION WITHOUT INTERRUPTION OR ERRORS IN FUNCTIONING. IN PARTICULAR, THE OPERATION OF THE VHS CRASHDOCS, SHARED REPORTS OR THE INVESTIGATIVE TOOLS MAY BE INTERRUPTED DUE TO MAINTENANCE, UPDATES, OR SYSTEM OR NETWORK FAILURES. CARFAX, ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS DISCLAIM ALL LIABILITY FOR ANY LOSS OR DAMAGES CAUSED BY USE OF THE VHS, CRASHDOCS, SHARED REPORTS OR INVESTIGATIVE TOOLS.

9. Limitation of Liability; Indemnification. Except for damages arising out of CARFAX's gross negligence or willful misconduct, Agency agrees that CARFAX's liability hereunder for damages, regardless of the form of action, shall not exceed five hundred dollars (\$500.00). This shall be Agency's exclusive remedy. IN NO EVENT WILL CARFAX BE LIABLE FOR CONSEQUENTIAL, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES TO PROPERTY, DAMAGES FOR LOSS OF USE, LOSS OF TIME, LOSS OF PROFITS OR INCOME, OR ANY THIRD PARTY CLAIM OR DEMAND) EVEN IF CARFAX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Except to the extent prohibited by applicable law, the Agency will indemnify and hold CARFAX, its affiliates and its and their respective directors, officers, employees and agents harmless from any claims, suits or damages, either direct or indirect, arising out of the Agency's use of the VHS, Crashdocs, a Shared Report, or the Investigative Tools for any purpose other than the Permitted Use or in a manner otherwise prohibited by this Agreement. However, nothing contained in this section shall be construed as a waiver of sovereign immunity in accordance with Section 768.28, Florida Statutes.

10. Governing Law. 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 Florida, without regard to its conflict of law principles. The proper venue for any action brought under this Agreement shall be in the Seventeenth Judicial Circuit in and for Broward County, Florida in the case of federal jurisdiction in the United States District Court for the Southern District of Florida.

11. Entire Agreement; Modification; Assignment. 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. CARFAX reserves the right to modify these Terms and Conditions and to impose new or additional terms and conditions at any time. Such modifications and additional terms and conditions will be effective immediately upon being posted here and incorporated into the Agreement. Agency's continued use of the VHS or participation in the Data Sharing Program, as applicable, will be deemed acceptance thereof. The Agency shall not assign this Agreement without the prior written consent of CARFAX.

SEE SIGNATURE PAGE ATTACHED.

CARFAX POLICE CRASH ASSISTANCE

ATTEST:

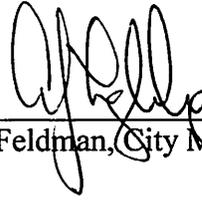


Jeffrey A. Modarelli, City Clerk

CITY OF FORT LAUDERDALE:



John R. "Jack" Seiler, Mayor



FOR Lee R. Feldman, City Manager

Approved as to form:
Cynthia A. Everett, City Attorney

By: 
Bradley H. Weissman, Esquire
Assistant City Attorney