

5/15/19

**CONTRACT BETWEEN
COUNTY OF GLOUCESTER
AND
GRAYSHIFT, LLC**

THIS CONTRACT is made effective the 15th day of May, 2019, by and between the **COUNTY OF GLOUCESTER**, a body politic and corporate, with offices at 2 South Broad Street, Woodbury, New Jersey 08096, hereinafter referred to as "**County**", and **GRAYSHIFT, LLC** with offices at 931 Monroe Drive, NE, Suite A102-340, Atlanta, GA 30308, hereinafter referred to as "**Contractor**".

RECITALS

WHEREAS, the County of Gloucester has a need for computer hardware and software for the proprietary GrayKey Unit, provided by Grayshift, LLC, which provides forensic access technology for law enforcement, to be used by the County Prosecutor's office, and N.J.S.A. 40A:11-5(dd) permits the performance of services for the support and maintenance of proprietary computer hardware and software without public advertising for bids; and

WHEREAS, in accordance with N.J.S.A. 19:44A-20.4 et seq. this contractor has certified that it has not previously made and will not make a disqualifying contribution during the term of the contract; and

NOW, THEREFORE, in consideration of the mutual promises, agreements and other considerations made by and between the parties, the County and Contractor do hereby agree as follows:

TERMS OF AGREEMENT

1. **TERM.** The contract shall be for the period of one (1) year from May 15, 2019 to May 14, 2020.
2. **COMPENSATION.** Contractor shall be compensated the total amount of \$18,075.00 (\$18,000.00 for the GrayKey annual license-online fixed, \$500.00 for the GrayKey Unit and \$75.00 s&h) for the contract period of one (1) year.

Contractor shall be paid in accordance with this Contract document within 30 days upon date of an invoice and a properly executed voucher. After approval by County, the payment voucher shall be placed in line for prompt payment.

Each invoice shall contain an itemized, detailed description of all work performed during the billing period. Failure to provide sufficient specificity shall be cause for rejection of the invoice until the necessary details are provided.

3. **DUTIES.** The specific duties of the Contractor shall be as set forth in this Contract, and the End User License Agreement and as set forth in Quote #20190307134318-1063027114007 submitted by the Contractor, all of which are attached hereto, incorporated and made a part of this Contract.

4. **FURTHER OBLIGATIONS OF THE PARTIES.** During the performance of this Contract, the Contractor agrees as follows:

a. The Contractor where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the Contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

b. The Contractor where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

c. The Contractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the Contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

d. The Contractor where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

e. The Contractor agrees to make good faith efforts to meet targeted County employment goals established in accordance with N.J.A.C. 17:27-5.2.

5. **LICENSING AND PERMITTING.** If the Contractor or any of its agents is required to maintain a license, or to maintain in force and effect any permits issued by any governmental or quasi-governmental entity in order to perform the services which are the subject of this Contract, then prior to the effective date of this Contract, and as a condition precedent to its taking effect,

Contractor shall provide to County a copy of its current license and permits required to operate in the State of New Jersey, which license and permits shall be in good standing and shall not be subject to any current action to revoke or suspend, and shall remain so throughout the term of this Contract.

Contractor shall notify County immediately in the event of suspension, revocation or any change in status (or in the event of the initiation of any action to accomplish such suspension, revocation and/or change in status) of license or certification held by Contractor or its agents.

6. **TERMINATION.** This Contract may be terminated as follows:

A. If Contractor is required to be licensed in order to perform the services which are the subject of this Contract, then this Contract may be terminated by County in the event that the appropriate governmental entity with jurisdiction has instituted an action to have the Contractor's license suspended, or in the event that such entity has revoked or suspended said license. Notice of termination pursuant to this subparagraph shall be effective immediately upon the giving of said notice.

B. If, through any cause, the Contractor or subcontractor, where applicable, shall fail to fulfill in timely and proper manner his obligations under this Contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this Contract, the County shall thereupon have the right to terminate this Contract by giving written notice to the Contractor of such termination and specifying the effective date thereof. In such event, all finished or unfinished documents, data, studies, and reports prepared by the Contractor under this Contract, shall be forthwith delivered to the County.

C. The County may terminate this Contract for public convenience at any time by a notice in writing from the County to the Contractor. If the Contract is terminated by the County as provided herein, the Contractor will be paid for the services rendered to the time of termination.

D. Notwithstanding the above, the Contractor or subcontractor, where applicable, shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the Contract by the Contractor.

E. Termination shall not operate to affect the validity of the indemnification provisions of this Contract, nor to prevent the County from pursuing any other relief or damages to which it may be entitled, either at law or in equity.

7. **NO ASSIGNMENT OR SUBCONTRACT.** This Contract may not be assigned nor subcontracted by the Contractor, except as otherwise agreed in writing by both parties. Any attempted assignment or subcontract without such written consent shall be void with respect to the County and no obligation on the County's part to the assignee shall arise, unless the County shall elect to accept and to consent to such assignment or subcontract.

8. **INDEMNIFICATION.** The Contractor or subcontractor, where applicable, shall be responsible for, shall keep, save and hold the County of Gloucester harmless from, and shall indemnify and shall defend the County of Gloucester against any claim, loss, liability, expense (specifically including but not limited to costs, counsel fees and/or experts' fees), or damage resulting from all personal injury, including death, to employees or recipients of the Contractor's services or to any other persons, or from any damage to any property of third parties sustained in connection with this contract which results from any negligent acts or omissions of any of its officers, directors, employees, agents, servants or independent contractors. The Contractor's liability under this agreement shall continue after the termination of this agreement with respect to any liability, loss, expense or damage resulting from acts occurring prior to termination.

9. **POLITICAL CONTRIBUTION DISCLOSURE AND PROHIBITION.** This contract has been awarded to Contractor based on the merits and abilities of Contractor to provide the goods or services described in this Contract. This Contract was awarded through a non-competitive process in compliance with N.J.S.A. 19:44A-20.4 et seq. and N.J.S.A. 19:44A-20.26, with Contractor having certified that it has not previously made and will not make a disqualifying contribution during the term of the Contract. Further, the signer of this Contract does hereby certify that Contractor, its subsidiaries, assigns or principals controlling in excess of 10% of the Contractor, will not make a reportable contribution during the term of the Contract to any political party committee in Gloucester County, if a member of that political party is serving in an elective public office of Gloucester County when the Contract is awarded, or to any candidate committee of any person serving in an elective public office of Gloucester County when the Contract is awarded.

10. **INSURANCE.** Contractor shall, if applicable to the services to be provided, maintain general liability, automobile liability, business operations, builder's insurance, and Workers' Compensation insurance in amounts, for the coverages, and with carriers deemed satisfactory by County, and which shall be in compliance with any applicable requirements of the State of New Jersey. Contractor shall, simultaneously with the execution of this Contract, deliver certifications of said insurance to County.

If Contractor is a member of a profession that is subject to suit for professional malpractice, then Contractor shall maintain and continue in full force and effect an insurance policy for professional liability/malpractice with limits of liability acceptable to the County. Contractor shall, simultaneously with the execution of this Contract, and as a condition precedent to its taking effect, provide to County a copy of a certificate of insurance, verifying that said insurance is and will be in effect during the term of this Contract. The County shall review the certificate for sufficiency and compliance with this paragraph, and approval of said certificate and policy shall be necessary prior to this Contract taking effect. Contractor also hereby agrees to continue said policy in force and effect for the period of the applicable statute of limitations following the termination of this Contract and shall provide the County with copies of certificates of insurance as the certificates may be renewed during that period of time.

11. **PREVENTION OF PERFORMANCE BY COUNTY.** In the event that either party is prevented from performing this Contract by circumstances beyond its control, then any

obligations owing such party to the other party shall be suspended without liability for the period during which the party is so prevented.

12. **NON-WAIVER.** The failure by either party to enforce any particular provision of this Contract, or to act upon a breach of this Contract, the other party shall not operate as or be construed as a waiver of any subsequent breach, nor a bar to any subsequent enforcement.

13. **PARTIAL INVALIDITY.** In the event that any provision of this Contract shall be or become invalid under any law or applicable regulation, such invalidity shall not affect the validity or enforceability of any other provision of this Contract.

14. **CHANGES.** This Contract may be modified by change orders, consistent with applicable laws, rules and regulations. The County, without invalidating this Contract, may order changes consisting of additions, deletions, and/or modifications, and the contract sum shall be adjusted accordingly. This Contract and the contract terms may be changed only by change order. The cost or credit to the County from change in this Contract shall be determined by mutual agreement before executing the change involved.

15. **NOTICES.** Notices required by this Contract shall be effective upon mailing of notice by regular and certified mail to the addresses set forth above, or by personal service, or if such notice cannot be delivered or personally served, then by any procedure for notice pursuant to the Rules of Court of the State of New Jersey.

16. **GOVERNING LAW, JURISDICTION AND VENUE.** This agreement and all questions relating to its validity, interpretation, performance or enforcement shall be governed by and construed in accordance with the laws of the State of New Jersey. The parties each irrevocably agree that any dispute arising under, relating to, or in connection with, directly or indirectly, this agreement or related to any matter which is the subject of or incidental to this agreement (whether or not such claim is based upon breach of contract or tort) shall be subject to the exclusive jurisdiction and venue of the state and/or federal courts located in Gloucester County, New Jersey or the United States District Court, District of New Jersey, Camden, New Jersey. This provision is intended to be a "mandatory" forum selection clause and governed by and interpreted consistent with New Jersey law and each waives any objection based on forum non conveniens.

17. **INDEPENDENT CONTRACTOR STATUS.** The parties acknowledge that Contractor is an independent contractor and is not an agent of the County.

18. **CONFIDENTIALITY.** Contractor agrees not to divulge or release any information, reports, or recommendations developed or obtained in connection with the performance of this Contract, during the term of this Contract, except to authorized County personnel or upon prior approval of the County.

19. **BINDING EFFECT.** This Contract shall be binding on the undersigned and their successors and assigns.

20. **CONTRACT PARTS.** This Contract consists of this document, the End User License Agreement, and Contractor's Quote ##20190307134318-1063027114007. Should there occur a conflict between this Contract and the documents identified above, then this Contract shall prevail.

THIS CONTRACT is effective as of the 15th day of **May, 2019.**

IN WITNESS WHEREOF, the County has caused this instrument to be signed by its Director and attested by its Board Clerk, pursuant to a Resolution of the said party of the first part passed for that purpose, and Contractor has caused this instrument to be signed by its properly authorized representative and its corporate seal affixed the day and year first above written.

ATTEST:



**LAURIE J. BURNS,
CLERK OF THE BOARD**

COUNTY OF GLOUCESTER



**ROBERT M. DAMMINGER,
DIRECTOR**

ATTEST:

GRAYSHIFT, LLC



**By: David Miles
Title: Managing Member**

8-6-2019



Date of Quote: March 7, 2019
Expiration of Quote: April 6, 2019

DUNS number: 081045174
CAGE Code: 7R0W9

To:
Nicholas Schock
Gloucester County Prosecutor's Office
70 Hunter St
Woodbury, New Jersey 08096
United States
nschock@co.gloucester.nj.us

From:
Grayshift, LLC
931 Monroe Dr NE, Suite A102-340
Atlanta, GA 30308
https://graykey.grayshift.com
Phone: (833) 472-9539 Ext #1
Fax: (404) 420-2797
sales@grayshift.com

GrayKey Quote

Item	List Price	Quantity	Extended Price
GrayKey Unit	\$500.00 USD	1	\$500.00 USD
GrayKey Annual License - Online Fixed	\$18,000.00 USD	1	\$18,000.00 USD
SUB-TOTAL			\$18,500.00 USD
First Year License Discount			-\$500.00 USD
Domestic Shipping and Handling			\$75.00 USD
TOTAL			\$18,075.00 USD

NOTE: The final invoice may include tax if applicable.

Quote Terms

- License Term = 12 months
- Number of unlocks during license term = unlimited
- Continuing software updates delivered during the license term
- Delivery of the GrayKey solution requires the end-user's prior acceptance of Grayshift's End User License Terms Agreement ("EULA"). Your acceptance of this quotation will indicate your acceptance of the terms of Grayshift's EULA, without exception or reservation.

[Click here for the EULA](#)

Payment Terms

Purchase Order method:

- Net30 (Payment due 30 days from receipt of invoice)
- Payments received after 30 days will be assessed a 2% late fee and result in a suspended license.
- An additional 2% will be assessed for non-payment each month thereafter.

Immediate method:

- Grayshift accepts major credit cards including Visa, MasterCard, and American Express.