

RESOLUTION NO. 2022- 2885

A RESOLUTION OF THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, APPROVING AN AGREEMENT FOR DOCUMENT STORAGE, HANDLING, SCANNING, AND DIGITIZATION SERVICES FOR THE TOWN BUILDING DEPARTMENT WITH GRM INFORMATION MANAGEMENT SERVICES, INC.; FINDING THAT THE PURCHASE IS EXEMPT FROM COMPETITIVE BIDDING PURSUANT TO SECTION 3-13(2) OF THE TOWN CODE AS A CONTRACT FOR PROFESSIONAL SERVICES; AUTHORIZING THE TOWN MANAGER TO ENTER INTO AN AGREEMENT IN SUBSTANTIALLY THE FORM ATTACHED HERETO AS EXHIBIT "A" WITH THE CONTRACTOR; PROVIDING FOR IMPLEMENTATION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Town of Surfside (the "Town") is in need of physical document storage and handling (the "Storage Services") and scanning and digitizing (the "Scanning Services") for the Town's Building Department public records (collectively, the "Services"); and

WHEREAS, the Services will allow the Town to more efficiently and effectively retain records and respond to public records requests as are necessary for the Town Building Department's transition to a digital and paperless permitting system; and

WHEREAS, GRM Information Management Services, Inc. (the "Vendor") has proposed entering in an agreement, attached hereto as Exhibit "A," for the Services in an amount not to exceed \$250,000 for the Scanning Services and \$15,000 per fiscal year for the Storage Services (the "Agreement"); and

WHEREAS, pursuant to Section 3-13(2) of the Town's Code, contracts for professional services, except those governed by the Consultant's Competitive Negotiations Act, are exempt from competitive bidding; and

WHEREAS, the Town Commission wishes to authorize the Town Manager to enter into

the Agreement with the Vendor for the Services in substantially the form attached hereto as Exhibit "A" and to expend budgeted funds in an amount not to exceed \$250,000 for the Scanning Services and \$15,000 per fiscal year for the Storage Services; and

WHEREAS, the Town Commission finds that the Agreement for the Services and this Resolution are in the best interests of the Town.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COMMISSION OF THE TOWN OF SURFSIDE, FLORIDA, AS FOLLOWS:

Section 1. Recitals Adopted. Each of the above stated recitals are hereby adopted, confirmed, and incorporated herein.

Section 2. Approval of the Agreement. That the Town Commission approves the Agreement with Vendor in substantially the form attached hereto as Exhibit "A." The Town Commission finds that pursuant to Sections 3-13(2) of the Town's Code, the Agreement for the Services is exempt from competitive bidding.

Section 3. Authorization. That the Town Manager is hereby authorized to execute the Agreement in substantially the form attached hereto as Exhibit "A," subject to the final approval by the Town Manager and Town Attorney as to form, content, and legal sufficiency.

Section 4. Implementation. The Town Manager and/or Town officials are authorized to take any and all action necessary to implement the purposes of this Resolution and the Agreement.

Section 5. Effective Date. This Resolution shall be effective immediately upon adoption.

PASSED AND ADOPTED on this 14th day of June, 2022.

Motion By: Vice Mayor Rose

Second By: Commissioner Meischeid

FINAL VOTE ON ADOPTION:

Commissioner Fred Landsman	<u>Yes</u>
Commissioner Marianne Meisheid	<u>Yes</u>
Commissioner Nelly Velasquez	<u>Absent</u>
Vice Mayor Jeff Rose	<u>Yes</u>
Mayor Shlomo Danzinger	<u>Yes</u>



Shlomo Danzinger, Mayor

Attest:



Sandra McCready, MMC
Town Clerk

Approved as to Form and Legal Sufficiency:



Weiss Serota Helfman Cole & Bierman, P.L.
Town Attorney



Master Services Agreement

THIS MASTER SERVICES AGREEMENT (the "Agreement") is being entered into by and between GRM Information Management Services of Miami LLC, having its place of business at 1801 NW 1st Avenue, Miami FL 33136 ("GRM"), VisualVault, LLC ("VisualVault"), having its principal place of business at 2050 East ASU Circle, Suite 103, Tempe, AZ 85284, and TOWN OF SURFSIDE, having its place of business at 9293 HARDING AVENUE, SURFSIDE FL 33154 ("Customer") as of the Effective Date (defined below).

WHEREAS, GRM provides (i) document storage and retrieval warehousing services of hard copy documents (the "Document Storage Services"), (ii) imaging and conversion services designed to facilitate the conversion of paper files to electronic images (the "Imaging Services"), and (iii) on-site bins for collection of confidential wastepaper material to be shredded (the "Shredding Services");

WHEREAS, GRM and VisualVault (individually a "Service Provider" and collectively, the "Service Providers") are affiliated companies, operating under common ownership, that have partnered to combine (i) the best-in-class secure enterprise content management application (aptly named "VisualVault") with (ii) GRM's extensive experience in managing its customers' data and providing unparalleled customer service, in order to best serve their customers' needs;

WHEREAS, VisualVault is in the business of providing a secure, cloud-based enterprise content management software solution, known as VisualVault, which allows Customer to access and retrieve Customer's stored electronic content and data (collectively, the "Electronic Data") via the Internet. The VisualVault software and all related components, templates, features, enhancements, modifications, data, and related fields shall hereinafter collectively be referred to as the "Software". GRM is in the business of supporting the Software and assisting its customers in, among other things, capturing, transferring, and retaining customers' data; workflow creation; business process improvement; and obtaining other ancillary services in connection therewith (such services together with the Software shall hereinafter be collectively referred to as the "Hosting Services");

WHEREAS, All of Customer's data, whether in the form of hard copy documents (the "Documents"), , electronic data (the "Electronic Data"), and/or confidential wastepaper material (the "Confidential Waste Material") being stored or serviced hereunder, shall hereinafter be collectively referred to as the "Customer Data";

WHEREAS, the Document Storage Services, the Imaging Services, the Shredding Services and the Hosting Services shall hereinafter be collectively referred to as the "Services"; and,

WHEREAS, Customer has a need for such Services.

NOW, THEREFORE, in consideration of the mutual premises and covenants hereinafter set forth, the parties agree as follows:

1. **Term of Agreement/Renewal.** The term of this Agreement shall commence on the Effective Date and shall continue for twelve (12) consecutive months thereafter (the "Initial Term"). This Agreement shall automatically renew on a month-to-month basis (each such term shall be referred to as a "Renewal Term" and together with the Initial Term, the "Term") until such time as either party terminates this Agreement, upon written notice to the other party given not less than thirty (30) days prior to the expiration of the then-current Term.
2. **Services.** GRM and/or VisualVault shall provide the Services to Customer in accordance with the terms of this Agreement and, as applicable, any Service Order (defined below) annexed hereto as Exhibit A and made a part hereof upon execution by all parties. "Service Order" shall mean an addendum to this Agreement that defines a particular Imaging Services or Hosting Services project to be undertaken by GRM and/or VisualVault at the request of Customer. Each Service Order shall include: (i) a description of the Services to be provided; (ii) the schedule on which such Services are to be performed; and, (iii) the fees for the Services. To the extent that any provision contained in the Service Order is inconsistent with a provision set forth in this Agreement, the provisions of this Agreement shall control unless expressly stated otherwise in the Service Order.
3. **Fees; Payment for Services.**
 - a. Customer will pay GRM and/or VisualVault the then-applicable Service fees and charges described in the Service Order and/or the Schedule of Charges (hereinafter defined) in accordance with the terms contained therein and those contained in this Agreement. With respect to the Hosting Services, Customer shall be invoiced separately, with one invoice issued by GRM and another invoice issued by VisualVault. Customer will pay VisualVault and GRM, each separately and in accordance with the instructions set forth on each of their invoices. The Service Providers shall issue

invoices on a monthly basis and payment shall be due in accordance with the Florida Prompt Payment Act. Rates are subject to change on an annual basis upon thirty (30) days' written notice to Customer. Unless Customer provides GRM with a certificate showing its tax exempt status, Customer shall pay all sales taxes which may be levied or assessed in connection with the provision of Services. Customer shall be liable for all reasonable expenses incurred (including, without limitation, attorneys' and collections agency fees) in collecting charges which are in arrears. Failure of Customer to dispute any invoice within one hundred eighty (180) days of receipt thereof shall be deemed to be an admission of the correctness of the invoice.

- b. GRM and/or VisualVault may give Customer at least sixty (60) days prior written notice of Customer's breach of its payment obligations hereunder; and if Customer has not paid such amount within such sixty (60) day period, GRM and/or VisualVault may, as applicable, (i) suspend the provision of some or all of the Services to Customer until payment is received, (ii) deny Customer access to Customer's Data; and/or (iii) terminate this Agreement and return all Documents to Customer, at Customer's sole cost and expense; Customer shall remain liable to GRM and/or VisualVault for all fees and charges incurred up to and including the date of such return.
- c. With regard to Document Storage Services only, (i) charges shall be at the rates shown on GRM's schedule of charges annexed hereto as Exhibit B and made a part hereof (the "Schedule of Charges"); (ii) invoices may include various surcharges implemented by GRM, at GRM's sole but reasonable discretion, on an as-needed basis; such surcharges include, but shall not be limited to, higher than usual fuel costs, re-boxing records arriving in damaged boxes upon their arrival to GRM's facilities, and transportation of records to a remote location; (iii) a full month's storage shall be charged for all Documents remaining in storage for a fraction of a month; in no event shall Customer be entitled to a pro-rated charge; (iv) Customer's request for the removal of boxes shall not reduce the current monthly storage charge then in effect, unless such request is in writing and calls for the permanent removal thereof, in which event a permanent removal charge shall apply in addition to all access/reference charges; and (v) GRM shall destroy Documents only upon Customer's written directive and in accordance with commercially acceptable methods of destruction, in which event Customer shall pay a destruction charge in addition to all access/reference charges, and Customer hereby releases GRM from all liability resulting from destruction pursuant to such directive.
- d. With regard to Imaging Services and Hosting Services only, charges shall be in accordance with the rates set forth in the Service Order. Customer acknowledges that the Hosting Services are subject to certain usage capacities specified in the Service Order. If Customer's use of the Software exceeds the usage capacity set forth on the applicable Service Order, Customer will be notified of such excess usage and will be invoiced by VisualVault therefor. The Service Providers reserve the right to change fees or applicable charges in accordance with this Agreement, and Customer's continued use of the Hosting Services shall be deemed an acceptance of such changes to the fees or applicable charges.
- e. With regard to Shredding Services only, charges shall be at the rates shown on the Service Proposal for Certified Shredding Services (or similar document). Customer shall be charged for a Confidential Waste Material pick-up a minimum of once (1x) every month.

4. Special Terms Relating to Document Storage Services.

- a. **Minimum Monthly Storage Charge:** There shall be a minimum monthly storage charge assessed by GRM (the "Minimum Monthly Storage Charge") for each month throughout the Term (hereinafter defined). During the Initial Term and unless otherwise noted on the Schedule of Charges, the Minimum Monthly Storage Charge shall equal an amount representing seventy five percent (75%) of the monthly storage charges payable by the Customer for the Document Storage Services. Notwithstanding anything contained in this Agreement to the contrary, should Customer's actual monthly storage charges fall below the Minimum Monthly Storage Charge in any given month, Customer shall nevertheless be required to pay an amount equal to the Minimum Monthly Storage Charge for each such month.
- b. **Moving Documents by GRM.** GRM reserves the right to move, at GRM's expense, any Documents from the storage facility in which they may be stored to (i) any other LOCAL storage facility owned and/or operated by GRM, and/or (ii) any other location within the storage facility in which they are stored.
- c. **Examination and Refusal for Reasonable Cause:** GRM has *not* examined the Documents to be stored hereunder and expressly makes no representation as to their type or content. GRM may refuse to accept Customer's Documents for any commercially reasonable cause.
- d. **Authorization:** Customer shall furnish, in writing, the names of those agent(s) Customer authorizes (the "Authorized Agent(s)") to (i) have access to the Documents, (ii) remove or add Documents, and (iii) order services for Customer's account. Customer will promptly notify GRM in writing of the revocation of any such Authorized Agent's authority; no revocation shall be binding until received by GRM.

5. Special Terms Relating to Imaging Services and Hosting Services.

- a. **Inspection Period.** With regard to the Imaging Services only, unless otherwise agreed to by the parties, GRM shall upload the scanned images onto the Software so that Customer may view the scanned deliverables. Customer shall have sixty (60) days from the date that such scanned deliverables are made available to Customer to inspect such deliverables. Failure to make any objection within such sixty (60) day period shall be conclusive evidence of Customer's full satisfaction with the Imaging Services provided and any deliverables made in connection therewith, and any right to thereafter object shall be forever waived.
- b. **Access to Customer Data.** The Service Providers shall use commercially reasonable efforts to make the Software available for use twenty-four (24) hours a day, seven (7) days per week. The foregoing times of Software availability may be modified to provide for (i) regularly scheduled maintenance, (ii) maintenance required as a result of matters beyond the Service Providers' reasonable control, or (iii) events beyond either Service Provider's reasonable control. VisualVault or GRM shall endeavor to give Customer at least twenty-four (24) hours' notice of scheduled maintenance by email to Customer's designated point of contact.
- c. **Authorized Users.** When a user previously authorized by Customer is no longer authorized to access the Software, Customer shall (i) promptly notify GRM of the revocation of such user's authority, and (ii) ensure that each such user ceases accessing the Software.
- d. **Use Policy, Restrictions and Responsibilities.**

(i) All uses of the Software and the Hosting Services must comply with all applicable laws and regulations, and with the acceptable use policy (hereinafter referred to as the "Use Policy") attached hereto as Exhibit C and made a part hereof, which Use Policy may be amended from time-to-time. VisualVault or GRM shall endeavor to give Customer notice of any such changes to the Use Policy. Although neither Service Provider has an obligation to monitor Customer's use of the Services, each of them reserves the right to do so, and Customer hereby authorizes same. Notwithstanding anything contained herein to the contrary, the Service Providers reserve the right to suspend the Services or terminate this Agreement effective immediately, with notice to Customer, in the event of Customer's violation of the Use Policy.

(ii) Customer (including Customer's authorized users) shall not engage in or permit any unacceptable use of the Services. "Unacceptable use" of the Services shall include, but shall not be limited to, (1) dissemination or transmission (or establishment of links with the Software therefor) of material that, to a reasonable person, may be abusive, obscene, pornographic, defamatory, harassing, grossly offensive, vulgar, threatening or malicious; (2) dissemination or transmission of files, graphics, software or other material that actually or potentially infringes upon the copyright, trademark, patent, trade secret, or other intellectual property right of any person; (3) interference with, disruption of, or attempt to gain unauthorized access to other accounts of either VisualVault or GRM or any other third party computer network; (4) dissemination or transmission of viruses, Trojan horses or any other malicious codes or programs; or (5) engaging in any other activity reasonably considered by either Service Provider to conflict with the spirit and intent of this Agreement and/or the Services being rendered.

(iii) Customer will not make any Services available to, or use any Services for the benefit of, anyone other than Customer, unless otherwise expressly stated in a Service Order(s). Customer will not sell, resell, license, distribute, make available, rent or lease any Service, or use any Service for timesharing or service bureau purposes or otherwise for the benefit of a third party.

(iv) Customer will not directly or indirectly reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services, the Software, or any Materials (hereinafter defined); modify, translate, or create derivative works based on the Services or any Software; remove any proprietary notices or labels; access or use any of the Service Providers' intellectual property except as expressly permitted under this Agreement; or frame or mirror any part of the Services, other than framing on Customer's own intranets or otherwise for its own internal business purposes.

(v) Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise utilize the Services, including, without limitation, computer hardware, web browsers, and internet utility services.

(vi) Customer (1) owns and accepts all responsibility for the Customer Data; (2) agrees to separately back up all Customer Data; and (3) shall at all times retain ownership of Customer Data. Customer shall provide notices to, and obtain any consents from, third parties as may be required by applicable law, rule, or regulation in connection with the Service Providers' processing of the Customer Data via the Services.

6. Special Terms Relating to Shredding Services.

- a. GRM shall furnish bins to Customer for the exclusive purpose of depositing into such bins Confidential Waste Material, which Customer desires to have shredded and recycled. GRM's bins shall not be used by Customer for the disposal of materials other than Confidential Waste Material, unless approved in writing by GRM in advance of Customer's disposal in the provided bins. In no event shall GRM's bins be used by Customer for the disposal of any hazardous or toxic materials, or metals (except staples), solids or other materials that could damage or contaminate GRM's bins or shredding equipment.

- b. GRM agrees, throughout the term of this Agreement, to collect from Customer's locations such Confidential Waste Material or other materials approved by GRM, and cause same to be destroyed by shredding or repulping equipment so as to render the contents unreadable and indecipherable. GRM shall collect such Confidential Waste Material from its bins in accordance with a collection schedule for each location. Such Confidential Waste Material shall be collected by GRM and transported to GRM's facility for destruction or by emptying the bins into a sealed collection truck using certified, bonded personnel. Upon collection of Confidential Waste Material from the bins, GRM shall issue to Customer a receipt showing the date and time of collection. GRM shall provide a certificate of destruction to the Customer.
- c. Customer shall maintain GRM's bins in a secure location and exercise reasonable care to avoid theft, vandalism or other damage or loss to the bins. Customer shall pay to GRM the cost (i) to repair any of GRM's bins that are damaged, and/or (ii) to replace any of GRM's bins that are lost or stolen or damaged beyond repair, while in Customer's custody and care. Customer shall provide areas at Customer's location for placement of GRM's bins that are readily accessible to GRM's personnel and equipment.
- d. GRM shall, at all times, retain title to and all rights of possession of the bins. GRM may remove the bins, along with any Confidential Waste Material contained therein, upon the expiration or sooner termination of this Agreement. GRM shall assume title to and all right of possession to the Confidential Waste Material following its destruction.
- e. All Confidential Waste Material shall be shredded within forty-eight (48) hours of pick up by GRM. Any Confidential Waste Material that cannot be shredded immediately upon delivery to the GRM destruction facility shall be stored in a secured location at such facility.
- f. Customer agrees to cancel any scheduled pick-up, if at all, at least one (1) business day before the scheduled pick-up day. In the event Customer fails to do so, Customer shall be charged a fee as if the pick-up occurred.
- g. Once the bins are delivered to Customer, Customer shall be responsible for safekeeping the keys to the bins delivered. If the keys are lost or not returned with the return of the bins, Customer shall pay to GRM a \$50.00 replacement fee for each key that is lost or not returned.

7. Warranties; Ownership.

- a. Customer represents and warrants that: (i) it is the owner or legal custodian of the Customer Data; (ii) it has full authority to direct the disposition of the Customer Data in accordance with this Agreement; and (iii) GRM's storage, imaging, or other processing of the Customer Data shall not violate the rights of any third party. Customer agrees to pay all costs and expenses which GRM and/or VisualVault may incur or become liable for or by judgment be compelled to pay in connection with the breach of such representation, including but not limited to, reasonable attorneys' fees.
 - b. Customer acknowledges and agrees that all software, programs, tools, systems, data or other materials made available to Customer in connection with this Agreement, including, without limitation, the Software, as well as any information and materials provide to Customer relating to any of the foregoing (collectively, the "Materials") are and shall at all times remain the sole and exclusive property of GRM or VisualVault, as the case may be, and each of them retains all right, title, and interest in and to their respective Materials. Customer does not and will not be deemed to acquire any right, title, or interest therein, except as expressly granted in this Agreement.
 - c. The Service Providers warrant that the Services to be provided hereunder shall be provided in a professional manner by trained personnel. EXCEPT AS EXPRESSLY SET FORTH HEREIN, NEITHER PARTY MAKES ANY EXPRESS WARRANTIES AND EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
- 8. No Consequential Damages. IN NO EVENT SHALL GRM, VISUALVAULT, OR THEIR SHAREHOLDERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, SUPPLIERS OR AFFILIATES (COLLECTIVELY, THE "AFFILIATES") BE LIABLE TO CUSTOMER (OR ANYONE CLAIMING BY, THROUGH, OR UNDER CUSTOMER) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS.**
- 9. Limitations of Liability. NOTWITHSTANDING OR ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, GRM, VISUALVAULT, AND THEIR AFFILIATES SHALL ONLY BE LIABLE FOR FAILURE TO USE ORDINARY CARE, AND ANY SUCH LIABILITY IMPOSED SHALL IN NO EVENT EXCEED, IN THE AGGREGATE: (i) WITH RESPECT TO THE DOCUMENT STORAGE SERVICES, A TOTAL VALUE EQUAL TO THE MONTHLY STORAGE CHARGE PER CONTAINER FOR EACH SUCH CONTAINER DAMAGED OR LOST; (ii) WITH RESPECT TO THE DOCUMENT STORAGE SERVICES AND VAULT STORAGE SERVICES, IN THE CASE OF LIABILITY OTHER THAN LOSS OR DAMAGE, THE AMOUNTS PAID BY CUSTOMER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE LIABILITY; (iii) WITH RESPECT TO THE IMAGING**

SERVICES, THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO GRM FOR THE IMAGING SERVICES; (iv) WITH RESPECT TO HOSTING SERVICES, THE TOTAL AMOUNT OF FEES PAID BY CUSTOMER TO GRM AND VISUALVAULT DURING THE PRIOR TWELVE (12) MONTH PERIOD FOR THE HOSTING SERVICES; AND, (v) WITH RESPECT TO THE SHREDDING SERVICES, THE AMOUNT OF FEES PAID BY CUSTOMER TO GRM FOR THE SHREDDING SERVICES.

Confidential Information; Exceptions; Security.

- a. Confidential Information. Subject to Chapter 119, "Public Records," of the Florida Statutes, the parties agree as follows:
10. i. Each party shall regard any information and documents provided to it by the other parties as proprietary or confidential ("Confidential Information").
- ii. Each party shall use reasonable efforts to maintain the other parties' Confidential Information in strict confidence, and shall not knowingly use, transfer or disclose such Confidential Information to a third party without the prior written consent of the other party(ies), unless required to do so in order to comply with an order or subpoena issued by a court or government agency or tribunal, in which event such party shall promptly notify the other party(ies) (where legally permitted to do so) so as to afford the other party(ies) a reasonable time within which to oppose such process or seek an appropriate protective order.
- iii. Customer expressly agrees that the Software, eAccess (defined below), and any other software utilized in connection with the Services are the Confidential Information of VisualVault or GRM, as the case may be.
- iv. Any copying, modification, distribution, translation, reverse engineering, reverse compiling, making derivative works or other dealing in the Confidential Information of a party is strictly prohibited, except to the extent deemed absolutely necessary to perform the Services hereunder or to utilize the Service provided hereunder.
- v. Customer will not remove or destroy any proprietary markings or restrictive legends placed upon or contained within any of the software or any associated documentation.
- vi. Customer shall not transfer, assign, distribute, re-sell, sublicense or otherwise make available the Services, the Software, and/or to GRM's remote web-based document and data inventory control service (the "eAccess") to any third party. The Services are intended for the internal use of Customer only.
- b. Exceptions. The term "Confidential Information" shall not include information that: (i) is known to the receiving party prior to receipt from the disclosing party directly or indirectly, other than from a source having an obligation of confidentiality to the disclosing party; (ii) becomes known (independently of disclosure by the disclosing party) to the receiving party directly or indirectly from a source other than one having an obligation of confidentiality to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement by the receiving party; or (iv) is independently developed by the receiving party without access to or use of the disclosing party's information.
- c. Security Measures by Customer. Customer shall implement reasonable information technology and data security procedures relating to Customer's access to the Software and/or to eAccess. Customer shall be responsible for administering the procedures relating to the assignment and administration of all identification codes and passwords authorizing access to Software and/or to eAccess on behalf of or for the benefit of Customer, and Customer shall be responsible for taking appropriate security measures relating to protection of such identification codes and passwords. Customer shall be solely responsible for any and all acts or omissions that occur under any account or password issued to Customer (and its authorized users). To the extent not prohibited by applicable laws, Customer shall defend, indemnify, protect and hold GRM, VisualVault and their Affiliates harmless from and against any liabilities, actions, losses, costs, expenses, or claims (including reasonable attorneys' fees and court costs) incurred by any of them as a result of any misuse of the Software and/or eAccess by Customer, its agents, employees, contractors, and/or authorized users.
- d. Notwithstanding anything to the contrary, both Service Providers shall have the right to collect and analyze data and information relating to the provision, use and performance of various aspects of the Services and related systems and technologies (including, without limitation, information concerning storage usage, data transfers, login activity, API transactions, creation of unique logins, and data derived therefrom), and both Service Providers will be free (during and after the Term) to (i) use such information and data to improve and enhance the Services and for other development, diagnostic and corrective purposes in connection with the Services and their other offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with their businesses.

11. Termination/Transition.

- a. Termination for Cause. A party may terminate this Agreement (i) in the event that the other party materially breaches any term or provision of this Agreement and fails to cure such breach within thirty (30) days following the breaching party's receipt of written notice from a non-breaching party specifying the nature of such breach, or (ii) if one other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. A termination in accordance with the foregoing shall be deemed a termination "for cause".
- b. Termination Obligations. **(A)** Upon the expiration of this Agreement or its earlier termination in accordance with Section 11(a), Customer shall be liable for: (i) all fees and any additional charges incurred up to and including (x) the date of termination for Services other than Document Storage Services, and (y) for Document Storage Services, the date on which all of Documents have been removed from GRM's facilities, and (ii) all fees incurred as a result of GRM's return of the Documents, including, as applicable, all permanent withdrawal and access fees as described in the Schedule of Charges for the permanent removal of Customer's Documents from storage. **(B)** With respect to the Hosting Services only, upon the expiration or earlier termination of this Agreement for any reason, (1) Customer shall cease accessing the Software, and (2) upon Customer's request, the Service Providers will make all Electronic Data available to Customer for electronic retrieval for a period of thirty (30) consecutive days following the expiration or termination of this Agreement, after which the Service Providers may delete or destroy all copies of Electronic Data in the Software or otherwise in their possession or control. **(C)** With respect to Document Storage Services and Vault Storage Services only. With respect to Document Storage Services only, in the event that (i) Customer shall terminate this Agreement prior to the expiration of the then-current Term other than for cause, or (ii) GRM terminates this Agreement for cause, GRM shall have, in addition to all other remedies, the option of treating all or any part of the charges payable by Customer hereunder throughout the remainder of such Term as immediately due and payable, in which event Customer shall pay to GRM the Minimum Monthly Storage Charge for each and every month remaining in the then-current Term. **(D)** With respect to the Hosting Services, (1) if Customer terminates this Agreement for cause, GRM and VisualVault will refund to Customer any prepaid fees and charges, if any, covering the remainder of the then-current Term, or portion thereof, within thirty (30) days following termination; and (2) if this Agreement is terminated by GRM and/or VisualVault for cause, Customer will pay any unpaid fees covering the remainder of the then-current Term, including, without limitation, any and all fees and charges payable to GRM and/or VisualVault for the period prior to the effective date of termination.
- c. Post-Termination Transition Period. With respect to Document Storage Services only: except as otherwise provided in this Agreement, GRM will, at Customer's sole cost and expense, reasonably cooperate with Customer in connection with the removal and transfer of Customer's Documents from GRM's facilities to Customer's and/or its agent's storage facilities (the period during which such cooperation, removal, and transfer occurs hereinafter being referred to as the "Transition Period"), and in the event that the Transition Period and GRM's storage of Customer's Documents shall extend beyond the expiration or sooner termination of this Agreement, the terms and provisions of this Agreement shall nevertheless continue to apply (and all storage and service charges shall nevertheless continue to accrue) until all of the Documents have been removed from GRM's facilities and all monies owed hereunder to GRM have been paid in full, and Customer shall pay all estimated storage and services charges that shall accrue during the Transition Period to GRM prior to GRM's removal of Customer's Documents from its facilities. Customer shall be entitled to a refund for any overpayments made in accordance with the foregoing.

- 12. Time for Filing Claims.** As a condition precedent to recovery, all claims must be in writing and filed with GRM and/or VisualVault in a timely manner (but in no event more than ninety (90) days) after the Customer's discovery of the loss of, destruction of, or damage to the Customer Data or any part thereof.

13. Indemnification.

- a. Subject to the limitations of Section 768.28, Florida Statutes, in the event that Customer's personnel are on GRM's property or GRM's personnel are on Customer's property, then Customer and GRM shall each defend and indemnify the other and the other's employees, officers, directors, members, and agents against all damages for bodily injury, death, or damage to real or tangible personal property (other than the Documents being stored hereunder) to the extent proximately caused by the indemnifying party.
- b. Subject to the limitations on liability set forth in this Agreement, GRM and VisualVault shall indemnify and hold harmless the Customer, its officers, agents and employees, from and against any and all demands, claims, losses, suits, liabilities, causes of action, judgment or damages, arising from GRM and/or VisualVault's material breach of this Agreement or their negligent acts or omissions. Subject to the limitations on liability set forth in this Agreement, GRM and VisualVault shall reimburse the Customer for all its reasonable expenses (including reasonable attorneys' fees) incurred by Customer in its defense of any such claim.
- c. To the extent permitted by applicable law, with respect to Hosting Services only: **(I)** Customer hereby agrees

to indemnify, defend, and hold harmless VisualVault, GRM and their Affiliates from and against any damages, settlements, liabilities, actions, losses, costs, expenses (including reasonable attorneys' fees and court costs) in connection with any claim or action alleging (x) the use or misuse of the Software or the Services by Customer, its agents, employees and/or authorized users, including but not limited to Customer's use of the Services in an unlawful manner or in violation of this Agreement, or (y) that any Customer Data or Customer's use of the Customer Data infringes or misappropriates a third party's intellectual property rights. (ii) Service Providers hereby agree to indemnify, defend and hold harmless Customer and its Affiliates from and against any damages, settlements, liabilities, actions, losses, costs, expenses (including reasonable attorneys' fees and court costs) in connection with any claim or action alleging that any of the Software, the Materials, or the Services infringe upon or misappropriate a third party's intellectual property rights. In the event that any of the Services, Software, or Materials become, or, in the opinion of either VisualVault or GRM, are likely to become, the subject of an infringement claim, VisualVault and/or GRM may, at their option and expense, (x) procure for Customer the right to use the Services, Software, or Materials free of any liability, or (y) modify, in whole or in part, the Services, Software or Materials to make them non-infringing, provided that the replaced or modified portion(s) is substantially equivalent in functionality and performance. This subsection 14(b) states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any third party claims described in this subsection.

- d. Nothing herein is intended to serve as a waiver of sovereign immunity by the Customer nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. The Customer is subject to section 768.28, Florida Statutes, as may be amended from time to time.
- e. The provisions of this section shall survive termination of this Agreement.

14. Miscellaneous.

- (a) Entire Agreement. This Agreement, together with the exhibits attached hereto and incorporated herein, constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous proposals, negotiations, agreements, or discussions between the parties related to this Agreement. Each party acknowledges that it has not been induced to enter into this Agreement by any representation or statements, oral or written, not expressly contained herein and in any attachments, schedules, exhibits or addenda not attached hereto.
- (b) Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of Florida, without regard to its conflict of laws principles. Any claims or legal actions brought by one party against the other arising out of the relationship between the parties contemplated herein shall be commenced and maintained in a court of competent jurisdiction located in Miami-Dade County, Florida, and each party hereto hereby consents and submits to the exclusive jurisdiction and venue of such court.
- (c) Notices. All notices hereunder shall be in writing and shall be delivered in person or sent by courier, express mail, or certified mail, addressed to the party for whom it is intended, at the address set forth herein.
- (d) Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall, to such extent it shall be determined to be invalid or unenforceable, be deemed to be null and void, but the remaining terms of this Agreement shall otherwise remain in full force and effect.
- (e) Assignment. Customer may assign this Agreement as part of a corporate reorganization, consolidation, merger, or sale of substantially all of its assets upon prior written notice to both Service Providers. Any other assignment of this Agreement on the part of Customer, whether in whole or in part, shall require the prior written consent of both Service Providers. This Agreement will bind and inure to the benefit of each party's successors and permitted assigns.
- (f) Waiver and Amendment. Any waiver, supplement or modification of this Agreement will not be effective unless set forth in writing and signed by an authorized representative of all parties. The failure of either party to exercise any of its rights under this Agreement will not be deemed a waiver or forfeiture of such rights.
- (g) Counterparts. This Agreement may be executed in counterparts, which taken together, will constitute one Agreement, and any party hereto may execute this Agreement by signing such counterpart.
- (h) Surviving Provisions. The provisions of Sections 3, 5, 7 through 14 of this Agreement (and any other obligations in this Agreement that by their nature are continuing) shall survive the termination hereof. The parties agree that the limitations and exclusions of liability and disclaimers specified in this Agreement will survive breach or termination and apply even if found to have failed of their essential purpose.
- (i) Anti-Corruption. Neither party has received or been offered any illegal or improper bribe, kickback, payment, gift or thing of value from an employee or agent of the other parties in connection with this Agreement. Reasonable gifts and entertainment provided in the ordinary course of business do not violate the aforesaid restriction.
- (j) Relationship of the Parties. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. Each party will be solely responsible for payment of all compensation owed to its employees, as well as all employment-related taxes.
- (k) Third Party Beneficiaries. There are no third party beneficiaries under this Agreement.
- (l) Insurance. GRM and VisualVault shall secure and maintain throughout the duration of this agreement insurance of such types and in such amounts not less than those specified below, naming the Customer as an Additional Insured,

underwritten by a firm rated A-X or better by A.M. Best and qualified to do business in the State of Florida. The insurance coverage shall be primary insurance with respect to the Customer, its officials, employees, agents, and volunteers naming the Customer as additional insured. Any insurance maintained by the Customer shall be in excess of the GRM and VisualVault's insurance and shall not contribute to the GRM and VisualVault's insurance. The Service Providers' insurance coverage shall in no way be construed as limiting or expanding its liability hereunder.

1. Commercial General Liability coverage with limits of liability of not less than a \$1,000,000 per Occurrence combined single limit for Bodily Injury and Property Damage. This Liability Insurance shall also include Completed Operations and Product Liability coverages and eliminate the exclusion with respect to property under the care, custody and control of GRM and VisualVault. The General Aggregate Liability limit and the Products/Completed Operations Liability Aggregate limit shall be in the amount of \$2,000,000 each.
2. Workers Compensation and Employer's Liability insurance, to apply for all employees for statutory limits as required by applicable State and Federal laws. The policy(ies) must include Employer's Liability with minimum limits of \$1,000,000.00 each accident. No employee, subcontractor or agent of the GRM and VisualVault shall be allowed to provide Services pursuant to this Agreement who is not covered by Worker's Compensation insurance.
3. Professional Liability Insurance in an amount of not less than One Million Dollars (\$1,000,000.00) per occurrence, single limit.
4. Cyber Liability Insurance in an amount of not less than one million dollars (\$1,000,000) for each occurrence, two million dollars (\$2,000,000) in the aggregate.

(m) Force Majeure. Except with respect to Customer's monetary obligations hereunder, neither party hereto will be liable for any failure or delay in the performance of its obligations hereunder by reason of any event or circumstance beyond its reasonable control ("force majeure"), including, without limitation, Acts of God, war, terrorism, fire, flood, shortage or failure of suppliers, riots or civil disorder, pandemics, interruptions of or delays in transportation or communications, or decisions or requirements of any government agency, board, official or other public body; provided, however, that for any force majeure extending for more than sixty (60) days, the party not claiming the existence of a force majeure will have the right to terminate this Agreement upon written notice to the other parties.

(n) Notice Pursuant to Section 119.0701(2)(a), Florida Statutes. IF GRM OR VISUALVAULT HAVE QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE GRM AND VISUALVAULT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS.

Custodian of Records: Sandra McCreedy, MMC
Mailing address: 9293 Harding Avenue
Surfside, FL 33154
Telephone number: 305-861-4863
Email: smccreedy@townofsurfsidefl.gov

IN WITNESS WHEREOF, the parties have caused this Master Services Agreement to be executed as of this _____ day of _____, 2022 (the "Effective Date").

**GRM Information Management Services
[OF MIAMI LLC]**

[TOWN OF SURFSIDE]

Printed Name:
Title:

Printed Name:
Title:

VisualVault, LLC

Printed Name:
Title:

EXHIBIT A

Schedule of Charges (if any)
(for Document Storage Services only)



TOWN OF SURFSIDE

Account #: TBD			
Date: 1/13/2022			
Record Center Storage	Billable Measurement	Rate	Unit
Per cubic foot rate	1.0	\$0.10	Cubic Foot
Storage Minimum		75%	per month
<i>Storage charges are based on a 30-day billing period and are adjusted to reflect the actual number of days in a month.</i>			
Record Center Services		Rate	Unit
Containers Added		\$3.50	Cubic Foot
Container Access		\$3.50	Cubic Foot
Container Refilled		\$3.50	Cubic Foot
Files Added (any additional files being barcoded for the first time)		\$5.00	Per Item
Access File for Delivery or Files Refilled		\$4.50	Per Item
File Search		\$65.00	per hour
Rush Reference Surcharge (plus retrieval charges)		\$10.00	Cubic Foot
Shredding - per file (plus retrieval and Handling charges)		\$5.50	Per Item
Shredding (plus retrieval and Handling charges)		\$7.95	Cubic Foot
Permanent Removal (plus retrieval charges & record changes)		\$7.50	Cubic Foot
Late Reference		\$5.00	per occurrence
Pick-up/Delivery Services		Rate	Unit
Next Day Regular Service (Includes First Item)-order by 4:30 p.m., Receive next business day by 5:00 p.m. Zone 2 (Within 25 miles)		\$58.00	per trip
Each additional		\$2.50	Per cubic foot
A.M. Service-order by 4:30 p.m., Receive by 12:00 p.m. next business day		\$18.00	trip surcharge
Same Day Service-order by 12:00 p.m., Receive by 5:00 p.m. that day		\$18.00	trip surcharge
Morning Rush Service-order by 4:30 p.m., Receive next business day by 9:30 a.m.		\$65.00	trip surcharge
Emergency Service-order by 4:30 p.m., Receive within 3 hours of request		\$65.00	trip surcharge
Materials - Subject to market change		Rate	Unit
GRM 1-Archive Box		\$3.25	each
GRM 4-Letter Box		\$4.75	each
GRM 3-Legal Box		\$5.50	each
GRM 8-Push Down Carton Archive		\$3.75	each
Sheets of Barcode Labels		\$3.20	each
Other Services		Rate	Unit
Records Center Hourly Services		\$65.00	per hour
Minimum Service Order Charge		\$21.66	per order
Off-Hour opening-3 hour minimum		\$120.00	per hour
Filefolder Tracking		0.010	each
Client Access Room Charge (to be quoted upon request)		tbid	per room
Handling Charge		\$2.50	cubic foot
Record Change (any manual database change)		\$0.50	per item
Dock Access Fee for Pick Up		2.50	per cubic foot
Account Maintenance Fee - Billing under \$500.00/month		\$20.00	monthly
Vbiz		\$0.00	monthly
Scan on Demand		scan on demand	Unit
Scan on demand - includes the first 50 images (next day service)		\$25.00	Image
		\$0.20	Per Image
<p>Standard GRM Hours: 8:30am to 5:00pm; Monday Through Friday excluding New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving and Christmas Day. During non-standard hours service is available Monday through Sunday, at the rate of time and a half the hourly rate. There is a 3-hour minimum charge. Any service not listed will be quoted upon request.</p>			

Exhibit B

Service Order (if any)

(for Imaging Services and Hosting Services only)

EXHIBIT C

(For Hosting Services only)

VisualVault Acceptable Use Policy

This Acceptable Use Policy specifies the actions prohibited by VisualVault to Customer. VisualVault reserves the right to modify the Policy at any time, effective upon posting of the modified policy to <https://www.VisualVault.com>.

Illegal/Prohibited Use

The VisualVault Software may be used only for lawful purposes. Transmission, distribution or storage of any material in violation of any applicable law or regulation is prohibited. This includes, without limitation, material protected by copyright, trademark, trade secret or other intellectual property right used without proper authorization, and material that is obscene, defamatory, constitutes an illegal threat, or violates export control laws.

Unauthorized Uses

The VisualVault Software is intended for use only as a document storage, access, and retrieval system in support of a subscriber's or end-user's need to store, access, and retrieve documents. It is not intended for use as a temporary data or document storage and transportation mechanism or system. Documents, either individually or in volume, may not be uploaded to the VisualVault Software and then retrieved by and/or transferred to any person and shortly thereafter be deleted from VisualVault Software. This type of activity within an VisualVault Software account will be considered unauthorized data or document transportation and in violation of this Acceptable Use Policy under the subscriber's agreement with VisualVault.

VisualVault Software services sold on a per-Entity basis can only be utilized by a single company, enterprise, proprietorship, government agency, or individual (Entity). If per-Entity services are required by or for more than one Entity, they must be purchased for each individual Entity. Per-Entity services are not authorized for use on a project-level basis that involves multiple Entities unless stated within the Service Order Form. Unless otherwise stated in the Service Order Form, utilizing per-Entity services at a project level for more than one Entity, whether by a subscriber, end-user, or reseller, will be considered an unauthorized use, in violation of this Acceptable Use Policy under the subscriber's agreement with VisualVault.

Software Installations

VisualVault may make available software to be installed by users. Any new installations of said software must be performed using the latest available version. Installing older versions of the software will be considered a violation of this Acceptable Use Policy.

System and Network Security

Violations of system or network security are prohibited, and may result in criminal and civil liability. VisualVault will investigate incidents involving such violations and may involve and will cooperate with law enforcement if a criminal violation is suspected. Examples of system or network security violations include, without limitation, the following:

- Unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorization of the owner of the system or network.
- Unauthorized monitoring of data or traffic on any network or system without express authorization of the owner of the system or network.
- Interference with service to any user, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload a system and broadcast attacks.
- Forging of any TCP-IP packet header or any part of the header information in an email or a newsgroup posting.

INDIRECT OR ATTEMPTED VIOLATIONS OF THE POLICY, AND ACTUAL OR ATTEMPTED VIOLATIONS BY A THIRD PARTY ON BEHALF OF A VISUALVAULT CUSTOMER OR A CUSTOMER'S END USER, SHALL BE CONSIDERED VIOLATIONS OF THE POLICY BY SUCH CUSTOMER OR END USER.

Complaints regarding Illegal Use or System or Network Security issues should be sent to support-edm@grmdocument.com.

For live incidents, please contact GRM Administration at 1-800-886-6567.