

PRESERVATION OF HISTORICAL DOCUMENTS
SERVICE AGREEMENT

Service Agreement No. _____

THIS **Preservation of Historical Documents Service Agreement** (this "Agreement") is entered into by and between Kofile Preservation, Inc. (the "Contractor") and the City of Corpus Christi, a Texas home-rule municipal corporation (the "City"), *by and through its duly authorized City Manager or designee* ("City Manager"), effective for all purposes upon execution by the City Manager.

WHEREAS Contractor has proposed to provide **Preservation of Historical Documents**;

WHEREAS the City has determined Contractor to be a Texas Multiple Award Schedule (TXMAS) Contractor;

NOW, THEREFORE, Contractor and City enter into this Agreement and agree as follows:

1. **Services.** Contractor will provide **Preservation of Historical Documents** in accordance with Kofile Preservation, Inc.'s TXMAS Contract Number 13-36010 Quote dated June 10, 2014, for a Grand Total amount of \$147,545.73 ("Exhibit A"). Exhibit A is attached to this Agreement, the terms of which are incorporated by reference as if set out herein in their entirety.

2. **Term.** This Agreement is for four years, commencing on the date signed by the last signatory hereto and continuing for four years thereafter. The term includes an option to extend for up to two additional one-year periods subject to the approval of the Contractor and the City Manager.

3. **Contract Administrator.** The Contract Administrator designated by the City is responsible for approval of all phases of performance and operations under this Agreement including deductions for non-performance and authorizations for payment. All of the Contractor's notices or communications regarding this Agreement must be directed to the Contract Administrator, who is the **City Secretary or her designee** ("*City Secretary*").

4. **Independent Contractor.** Contractor will perform the services hereunder as an independent contractor and will furnish such services in its own manner and method, and under no circumstances or conditions may any agent, servant or employee of the Contractor be considered an employee of the City.

5. **Insurance.** Before activities can begin under this Agreement, the Contractor's insurance company(ies) must deliver a Certificate of Insurance, as proof of the required insurance coverages, to the Contract Administrator. The types of insurance and coverage limits required under this Agreement are as shown in Exhibit B, which exhibit is attached to the Agreement, and the terms of which are incorporated by reference as if set out herein in their entirety. Additionally, the Certificate must state that the **City Secretary** will be given at least thirty (30) days' notice, by certified mail, of cancellation, material change in the coverages or intent not to renew any of the policies. The City must be named as an Additional Insured.

6. **Catastrophic Loss.** For the purposes of this Agreement, in the event of partial or full destruction or the loss of one or more of the City's documents, caused either directly or indirectly by the Contractor while in the possession of the Contractor, Contractor agrees to pay the City, as liquidated damages and not as a penalty, an amount which is two (2) times the price of restoration on a title-by-records series basis per destroyed or lost book as such individual restoration price per title is shown in Exhibit A. If an event or events of destruction or loss should occur during the term of this Agreement, the

Contractor further agrees to immediately notify the Contract Administrator regarding the event and to remit to the City, within 30 days, the total value amount per book destroyed or lost. This provision is deemed to be in addition to, and not in lieu of, any claim or recovery that may be made by the Contractor or the City pursuant to any applicable insurance policy.

7. Assignment. No assignment of this Agreement nor any right or interest herein held by the Contractor is effective unless the City first gives its written consent to such assignment. The performance of this Agreement by the Contractor is of the essence of this Agreement, and the City's right to withhold consent to such assignment is within the sole discretion of the City on any ground whatsoever.

8. Fiscal Year. All parties recognize that the continuation of any contract after the close of any fiscal year of the City (the City's fiscal year ends on September 30th) is subject to appropriations and budget approval providing for such contract item as an expenditure in said budget. The City does not represent that said budget item will be actually adopted as that determination is within the sole discretion of the City Council at the time of adoption of each budget.

9. Waiver. No waiver of any breach of any term or condition of this Agreement waives any subsequent breach of the same.

10. Compliance with Laws. This Agreement is subject to all applicable federal, state and local laws. The applicable law for any legal disputes arising out of this Agreement is the law of Texas and such form and venue for such disputes is the appropriate district, county or justice court in and for Nueces County, Texas.

11. Subcontractors. The Contractor may use subcontractors in connection with the work performed under this Agreement. When using subcontractors, however, the Contractor must obtain prior written approval from the **City Secretary**. In using subcontractors, the Contractor is responsible for all their acts and omissions to the same extent as if the subcontractor and its employees were employees of the Contractor. All requirements set forth as part of this Agreement, including the requirement to obtain and maintain insurance of the types and coverages specified in Exhibit B, are applicable to all subcontractors and their employees to the same extent as if the Contractor and its employees had performed the services.

12. Amendments. This Agreement may be amended only in writing by the parties hereto and signed by the parties.

13. Termination. The City Manager may terminate this Agreement for Contractor's failure to perform the services specified herein. Failure to keep all insurance policies in force for the entire term of this Agreement is grounds for termination. The Contract Administrator must give the Contractor written notice of the breach and set out a reasonable opportunity to cure. If the Contractor has not cured within the cure period, the City Manager may terminate this Agreement immediately thereafter.

Alternatively, the City may terminate this Agreement upon ninety (90) days' written notice to the Contractor. The Contractor may terminate this Agreement upon ninety (90) days' written notice to the City.

14. Taxes. The Contractor covenants to pay payroll taxes, Medicare taxes, FICA taxes, unemployment taxes and all other related taxes according to Circular E Employer's Tax Guide, Publication 15, as it may be amended.

15. Drug Policy. The Contractor must adopt a Drug Free Workplace policy.

16. Violence Policy. The Contractor must adopt a Violence in the Workplace policy.

17. **Notice.** Notice may be given by fax, hand delivery or certified mail, postage prepaid, and is deemed received on the day faxed or hand-delivered and on the third day after deposit in the U.S. mail if sent certified mail. Notice must be sent as follows:

IF TO CITY:

City of Corpus Christi
Attention: City Secretary
P.O. Box 9277
Corpus Christi, Texas 78469-9277

IF TO CONTRACTOR:

Contractor Kofile Preservation, Inc.
Contact Michael Cobb
Address: 6300 Cedar Springs Road
City, State, Dallas TX 75235 - _____

18. **Month-to-Month Extension.** If the City has not completed the procurement process and awarded a new Agreement upon expiration of the original contract period or any extension period, the Contractor shall continue to provide goods/services under this Agreement, at the most current price under the terms of this Agreement or extension, on a month-to-month basis, not to exceed six months. This Agreement automatically expires on the effective date of a new contract.


19. **Severability.** Each provision of the Agreement shall be considered to be severable and, if, for any reason, any such provision or any part thereof, is determined to be invalid and contrary to any existing or future applicable law, such invalidity shall not impair the operation of or affect those portions of this Agreement that are valid, but this Agreement shall be construed and enforced in all respects as if the invalid or unenforceable provision or part thereof had been omitted.

20. **INDEMNIFICATION. CONTRACTOR SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND THE CITY OF CORPUS CHRISTI AND ITS OFFICERS, EMPLOYEES AND AGENTS (“INDEMNITEES”) FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, CLAIMS, DEMANDS, SUITS AND CAUSES OF ACTION OF ANY NATURE ON ACCOUNT OF DEATH, PERSONAL INJURIES, PROPERTY LOSS OR DAMAGE OR ANY OTHER KIND OF DAMAGE, INCLUDING ALL EXPENSES OF LITIGATION, COURT COSTS, ATTORNEYS’ FEES AND EXPERT WITNESS FEES WHICH ARISE OR ARE CLAIMED TO ARISE OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE PERFORMANCE OF THIS AGREEMENT, REGARDLESS OF WHETHER THE INJURIES, DEATH OR DAMAGES ARE CAUSED OR ARE CLAIMED TO BE CAUSED BY THE CONCURRENT OR CONTRIBUTING NEGLIGENCE OF INDEMNITEES, BUT NOT BY THE SOLE NEGLIGENCE OF INDEMNITEES UNMIXED WITH THE FAULT OF ANY OTHER PERSON OR GROUP. CONTRACTOR MUST, AT ITS OWN EXPENSE, INVESTIGATE ALL CLAIMS AND DEMANDS, ATTEND TO THEIR SETTLEMENT OR OTHER DISPOSITION, DEFEND ALL ACTIONS BASED THEREON WITH COUNSEL REASONABLY SATISFACTORY TO INDEMNITEES AND PAY ALL CHARGES OF ATTORNEYS AND ALL OTHER COSTS AND EXPENSES OF ANY KIND ARISING FROM ANY OF SAID**

LIABILITY, DAMAGE, LOSS, CLAIMS, DEMANDS OR ACTIONS. THE INDEMNIFICATION OBLIGATIONS OF CONTRACTOR UNDER THIS SECTION SHALL SURVIVE THE EXPIRATION OR SOONER TERMINATION OF THIS AGREEMENT.

SIGNED this 2nd day of July, 2014.

Contractor Kofile Preservation, Inc.



John Woolf
Title: CFO

CITY OF CORPUS CHRISTI ("CITY")

Ronald L. Olson
City Manager

Date

ATTEST THIS _____ DAY OF _____, 20____

REBECCA HUERTA
CITY SECRETARY

Incorporated by Reference for All Purposes:

Exhibit A: Kofile Preservation, Inc.'s TXMAS Contract Number 13-36010 Quote, Dated June 10, 2014

Exhibit B: Insurance Requirements

EXHIBIT A
AVAILABLE UPON REQUEST

EXHIBIT B

INSURANCE REQUIREMENTS

I. CONTRACTOR’S LIABILITY INSURANCE

- A. Contractor shall not commence work under this agreement until all insurance required herein has been obtained and approved by the City's Risk Manager or designee. Contractor must not allow any subcontractor to commence work until all similar insurance required of the subcontractor has been so obtained.
- B. Contractor shall furnish to the Risk Manager or designee two (2) copies of Certificates of Insurance, with applicable policy endorsements showing the following minimum coverage by an insurance company(s) acceptable to the Risk Manager or designee. **The City must be listed as an additional insured for the General Liability policy, and a waiver of subrogation is required on all applicable policies.**

TYPE OF INSURANCE	MINIMUM INSURANCE COVERAGE
30-Day Notice of Cancellation required on all certificates or by policy endorsement(s)	Bodily injury and Property Damage Per Occurrence / Aggregate
Commercial General Liability including: 1. Broad Form 2. Premises – Operations 3. Products/Completed Operations Hazard 4. Contractual Liability 5. Broad Form Property Damage 6. Independent Contractors 7. Underground Hazard (if applicable)	\$1,000,000 Per Occurrence
BUSINESS AUTOMOBILE LIABILITY 1. Owned 2. Hired & Non-owned 3. Leased and Rented	\$1,000,000 Combined Single Limit Commercial Policy
ALL RISK CARGO INSURANCE	\$750,000 Per Occurrence
PROFESSIONAL LIABILITY	\$1,000,000 Per Claim
BAILEE’S CUSTOMERS’ GOODS COVERAGE/ INLAND MARINE VALUABLE PAPERS	While Documents are in Contractor’s Care, Custody and Control.

- C. In the event of accidents of any kind related to this project, Contractor shall furnish the Risk Manager with copies of all reports of such accidents within ten (10) days of the accident.

II. ADDITIONAL REQUIREMENTS

- A. Contractor must obtain workers’ compensation coverage through a licensed insurance company in accordance with Texas law. The contract for coverage must be written on a policy and endorsements approved by the Texas Department of Insurance. The coverage provided must be in amounts sufficient to assure that all workers’ compensation obligations incurred will be promptly met. If workers’ compensation coverage is not written in Texas, Contractor will provide an “All Other States Endorsement” for workers’ compensation coverage.

- B. Contractor shall obtain and maintain in full force and effect for the duration of this Contract, and any extension hereof, at Contractor's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and with an A.M. Best's rating of no less than A- VII.
- C. Contractor shall submit a copy of the replacement certificate of insurance to City at the address provided below within 10 days of the requested change. Contractor shall pay any costs incurred resulting from said changes. All notices under this Article shall be given to City at the following address:

City of Corpus Christi
Attn: Risk Management
P.O. Box 9277
Corpus Christi, TX 78469-9277
Fax: (361) 826-4555

- D. **Contractor agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following required provisions:**
- Name the City and its officers, officials, employees, volunteers, and elected representatives as additional insured by endorsement, as respects operations and activities of, or on behalf of, the named insured performed under contract with the City, with the exception of the workers' compensation policy
 - Provide for an endorsement that the "other insurance" clause shall not apply to the City of Corpus Christi where the City is an additional insured shown on the policy;
 - Workers' compensation and employers' liability policies will provide a waiver of subrogation in favor of the City; and
 - Provide thirty (30) calendar days advance written notice directly to City of any suspension, cancellation, non-renewal or material change in coverage, and not less than ten (10) calendar days advance written notice for nonpayment of premium.
- E. Within five (5) calendar days of a suspension, cancellation, or non-renewal of coverage, Successful Bidder shall provide a replacement Certificate of Insurance and applicable endorsements to City. City shall have the option to suspend Contractor's performance should there be a lapse in coverage at any time during this contract. Failure to provide and to maintain the required insurance shall constitute a material breach of this contract.
- F. In addition to any other remedies the City may have upon Contractor's failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the City shall have the right to order Contractor to stop work hereunder, and/or withhold any payment(s) which become due to Contractor hereunder until Contractor demonstrates compliance with the requirements hereof.
- G. Nothing herein contained shall be construed as limiting in any way the extent to which Contractor may be held responsible for payments of damages to persons or property resulting from Contractor's or its subcontractor's performance of the work covered under this agreement.

- H. It is agreed that Contractor's insurance shall be deemed primary and non-contributory with respect to any insurance or self insurance carried by the City of Corpus Christi for liability arising out of operations under this agreement.

- I. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this agreement.

2014 insurance requirements
City Secretary's Office
Preservation of Historical Documents
6/27/2014 ds Risk Management