



CONTRACT
Between
WEBER COUNTY, UTAH
And
KOFI FILE TECHNOLOGIES, INC.
For
PRESERVATION OF DEED RECORDS

THIS CONTRACT FOR PRESERVATION OF DEED RECORDS (the "Contract"), effective as of Feb 2nd, 2021 (the "Effective Date"), is between WEBER COUNTY, UTAH (hereinafter referred to as the "County"), an entity located at 2380 Wash Blvd #370 Ogden UT 84401, and KOFI FILE TECHNOLOGIES, INC., a Delaware corporation, with a principal location at 6300 Cedar Springs Road, Dallas, TX 75235, and a Western Regional Office located at 1558 Forrest Way, Carson City, NV 89706 (hereinafter referred to as "Contractor").

WHEREAS, the County desires to retain Contractor for the preservation of its records (collectively the "Records") by various preservation and digitization related processes and related services (the "Preservation Services"). Preservation Services may include conservation, deacidification, encapsulation, rebinding, and other related services; and

WHEREAS, Pricing for this project is based upon the Contractor's GSA Group 70 Contract No. GS-35F-275AA, attached hereto as **Exhibit A**;

WHEREAS, Contractor desires to perform the Preservation Services as specified in the quote for the preservation of Deed Records attached hereto as **Exhibit B**.

WHEREAS, Contractor desires to perform the Preservation Services for the Records (volumes and documents) listed in **Exhibit B**. Records upon which Preservation Services have been performed shall be referred to collectively as "Preserved Data."

NOW, THEREFORE, in consideration of the premises, covenants and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties mutually agree as follows:

1. **Scope of and Timing of Services.** Contractor shall use reasonable efforts to adhere to the specifications either set forth in **Exhibit A** or otherwise mutually agreed to by the parties from time to time during the term of this Contract when providing the Preservation Services for the County. Contractor shall arrange for the transport of the Records to and from Contractor's place of business as mutually agreed to by the parties. Upon receiving the Records, or each batch of the Records (as the case may be), at Contractor's place of business, Contractor shall use reasonable efforts to complete the Preservation Services upon the Records and deliver the Preserved Data,

or each batch of Preserved Data (as the case may be), to the County within the time period(s) agreed to by the parties from time to time during the term of this Contract.

2. **Term.** The term the Contract shall be for the period commencing with the Effective Date continuing through December 31st, 2021. Renewals will be dependent upon Contractor performance and funding availability..
3. **Compensation and Invoicing.** The County shall pay Contractor, as compensation for the term provided pursuant to this Contract, a total amount of \$1553,284.07, as specified in the **Exhibit B** as the work is performed on the Records, provided that Preservation Services for all Records are completed during the first twelve months following the Effective Date. The total amount does not include charges for shipping and handling which will be added to the total based upon actual charges incurred. Contractor shall deliver Preserved Data to the County pursuant to instructions of the County.

Records not completed during the initial Term shall be subject to new pricing based on the current pricing and based on normal wear and tear subsequent to the Effective Date. The charge for any Preservation Services to be performed after such Term shall be subsequently negotiated and mutually agreed upon between the County and Contractor, and the aggregate amount set forth in the first sentence above will be appropriately modified.

Contractor shall submit to the County a monthly invoice for payment to Contractor for each batch of Preserved Data completed each month. The invoiced price for the Preservation Services performed on Preserved Data shall be as set forth in the price schedule included in **Exhibit B**. The County shall issue full payment of each such invoice to Contractor within thirty (30) days after the County receives each such invoice. The prices set forth in **Exhibit B** will be charged to the County for all Preservation Services performed by Contractor during the Term. Each invoice will list the specific amounts due Contractor for each batch of Preserved Data covered by such invoice. Each invoice shall be mailed directly to: Weber County Clerk/Auditor, 2380 Washington Blvd., Ste. 320, Ogden, UT 84401.

4. **Indemnification.** Contractor shall ~~defend~~, indemnify, and hold harmless the County and its officers, agents, and employees, from any and all losses, claims, demands, damages, injuries, causes of action, assessments, penalties, costs, expenses, judgments or other liabilities arising out of Contractor's negligent performance of any Preservation Services provided pursuant to this Contract. Contractor's indemnification obligation contained in this Section 4 shall only exist ~~through twelve months after for the expiration Term~~ of this Contract, and such indemnification obligation shall not exceed the amount of ~~five hundred thousand dollars (\$500,000) compensation Contractor has received pursuant to this Contract~~. Nothing in this Contract shall be construed to require Contractor to provide indemnification for losses, claims, demands, damages, injuries, causes of action, assessments, penalties, costs, expenses, judgments, or liabilities **(a)** arising out of or otherwise related to, in whole or in part, the negligence or willful misconduct of the County or **(b)** concerning or otherwise related to the accuracy or inaccuracy, content, or omission of any information in any of the Records.

5. **Insurance.** Contractor shall maintain in full force and effect, for the term of this Contract, the following types of insurance: (a) Commercial General Liability insurance of not less than \$1,000,000.00 each occurrence, and \$2,000,000.00 in the aggregate, (b) Automobile Liability insurance of not less than \$1,000,000.00 combined single limit, (c) Umbrella Liability insurance of not less than \$5,000,000.00, (d) Workers' Compensation insurance meeting or exceeding the statutory requirements, (e) Errors and Omissions insurance of not less than \$1,000,000.00, and (f) Valuable Papers insurance of not less than \$1,000,000.00. A Certificate of Insurance confirming such insurance and limits will be provided to the County. Contractor shall cause insurer to furnish to County future certificate(s) evidencing the insurance described herein at any time upon request. County shall be named as additional insured as to all applicable coverage, and no policy change or cancellation will be made without thirty (30) days prior written notice to County.
6. **Sovereign Immunity.** This Contract is expressly made subject to all applicable state and federal law. The parties expressly agree that no provision of this Contract is in any way intended to constitute a waiver or any immunities from suit or from liability that the County has by operation of law. Nothing in this Contract is intended to benefit any third party beneficiary.
7. **Fiscal Funding.** Notwithstanding any provisions contained herein, the obligations of County under this Contract are expressly contingent upon the availability of funding for each item and obligation contained herein for the term of the Contract and any extensions thereto. Contractor shall have no right of action against County in the event County is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding for any item or obligation from any source utilized to fund this Contract or failure to budget or authorize funding for this Contract during the current or future fiscal years. In the event County is unable to fulfill its obligations under this Contract as a result of lack of sufficient funding, or if funds become unavailable, County, at its sole discretion, may provide funds from a separate source or may terminate this Contract by written notice to Contractor at the earliest possible time prior to the end of its fiscal year. Upon County's termination for lack of sufficient funding, each party shall return all products, documentation, and other information disclosed or otherwise delivered to the other party prior to such termination. County shall pay for all services performed up through and including the date of termination, and any licenses granted hereunder shall terminate.
8. **Independent Contractor.** Contractor, including its agents or employees, is an independent contractor and not an agent, servant, joint enterpriser, joint venture or employee of the County, and is responsible for its own acts, forbearance, negligence and deeds, and for those of its agents or employees in conjunction with the performance of work under this Contract. Nothing herein shall be deemed to establish a partnership, joint venture, association, or employment relationship between the parties.
9. **Taxes.** WEBER COUNTY, as an entity of the State of Utah, is by statute exempt from the payment of state and local sales, excise, and use tax and federal excise tax, and it shall therefore not be liable or responsible to the Contractor for the payment of such taxes under this Contract.

The fees paid to Contractor pursuant to this Contract are inclusive of any applicable sales, use, personal property or other taxes attributable to periods on or after the applicable Effective Date of this Contract based upon or measured by Contractor's cost in acquiring or providing products and/or Preservation Services and related materials and supplies furnished or used by Contractor in performing its obligations hereunder, including all personal property and use taxes, if any, due on equipment owned by Contractor. Contractor accepts full and exclusive liability for the payment of any and all contributions or taxes for Social Security, Workers' Compensation Insurance, Unemployment Insurance, Retirement Benefits, Pensions, or annuities now or hereafter imposed under any state or federal laws which are measured by the wages, salaries, or other remuneration paid to persons employed by Contractor for work performed under the terms of this Contract and agrees to indemnify and save harmless the County from any such contribution or taxes and liability.

10. **Corporate Good Standing.** Contractor represents and warrants that it: (a) is a corporation duly incorporated, validly existing and in good standing; (b) has all requisite corporate power and authority to execute, deliver, and perform its obligations hereunder; and (c) is duly licensed, authorized, or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets of the transaction of business of the character transacted by it.
11. **Warranty of Contractor's Capability.** Contractor warrants that it is financially capable of fulfilling all requirements of this Contract and that Contractor is validly organized entity that has the authority to enter into this Contract. Contractor warrants that it is not prohibited by any loan, contract, financing arrangement, trade covenant, or similar restriction from entering into this Contract.
12. **No Actions, Suits, Proceedings or Debarment.** Contractor warrants that there are no actions, suits, or proceedings, pending or threatened, that will have a material adverse effect on Contractor's ability to fulfill its obligations under this Contract. Contractor further warrants that it will notify County immediately if Contractor becomes aware of any action, suit, or proceeding, pending or threatened, which will have a material adverse effect on Contractor's ability to fulfill its obligations under this Contract.

Contractor certifies that at the time of this Contract, Contractor was not on the federal government's list of suspended, ineligible, or debarred contractors and that Contractor has not been placed on this list at the time of the contract execution. If Contractor is placed on this list during the term of the Contract, Contractor shall notify the County.

13. **Personnel.** Contractor warrants that all personnel it uses in regards to this Contract (the "Contractor Personnel") shall be employees/personnel of Contractor that are fully qualified to perform the tasks assigned to them, and shall be in compliance with all applicable immigration laws. Contractor shall be solely responsible for payment of all wages, benefits, workers compensation insurance, disability benefits, unemployment insurance, as well as for withholding any required taxes for all Contractor Personnel in accordance with applicable federal, state, and local laws. Contractor agrees to provide the County with information regarding individual Contractor Personnel as County may reasonably request. Each party recognizes the importance of cooperation among their respective personnel and each party will use commercially reasonable

efforts to ensure positive working relationships between the parties so as to ensure timely completion of their respective tasks.

- 14. Professional Quality.** Contractor warrants to the County that all Preservation Services will be of professional quality conforming to generally accepted practices, and that all Preservation Services provided under this Contract will be performed in a manner consistent with or greater than that degree of care, qualification and skill ordinarily exercised by members of the same profession currently practicing under similar circumstances. If any work is reasonably determined by County to be less than professional quality, Contractor will correct such work without charge. This warranty extends for ninety (90) business days past termination or expiration of this Contract. This warranty is limited to rework of the unsatisfactory product without change to the original specifications and without regard to the amount of the effort expended on the original work product.
- 15. No Discrimination.** This Contract is subject to applicable federal and state laws and executive orders, relating to equal opportunity, nondiscrimination in employment and fair labor standards. Contractor shall not discriminate in its employment practices against any person by reason of disability, age, race, creed, national origin, color, religion, sex, political affiliation, or veteran status. In addition, Contractor assures that no person will, on the grounds of disability, age, race, creed, national origin, color, religion, sex, political affiliation, or veteran status, be excluded from, be denied the benefit of, or be subjected to discrimination under any program or activity funded in whole or in part under this Contract. Contractor agrees to comply with the provisions of said laws and orders to the extent any such laws and orders are applicable in the performance of this Contract.
- 16. Ownership of County Records.** All of the Records shall remain the property of the County. The Records shall not be used by Contractor other than in connection with providing the Preservation Services pursuant to this Contract, or disclosed, sold, assigned, leased or otherwise provided to third parties by Contractor, or commercially exploited by or on behalf of Contractor, its employees, officers, agents, invitees, or assigns, in any respect. Contractor shall not destroy any Records. At no cost to County, Contractor shall upon request: (a) promptly make a copy of a Record or other record and send it to the County, or (b) promptly return to County, any Records or other documents of County that it may possess or control.
- 17. Notices.** Any notice or certification required or permitted to be delivered under this Contract shall be deemed to have been given when personally delivered, or if mailed, three (3) business days after deposit of the same in the United States Mail, postage prepaid, certified, or registered, return receipt requested, properly addressed to the contact person shown at the respective addresses set forth below, or at such other address as shall be specified by written notice delivered in accordance herewith:

If to the County:

If to Contractor:

Kofile Technologies, Inc.
c/o Michael Strachan, Contracts
6300 Cedar Springs Road
Dallas, TX 75235

- 18. Order of Precedence of Related Documents.** In the event of a conflict or ambiguity within, between or among the provisions of this Contract and/or any of the referenced or incorporated documents, all parties agree that the provisions of this Contract shall take precedence and be supported by any provisions in the referenced or incorporated documents that are favorable to the County's position.
- 19. Incorporated Documents.** All related documents are incorporated herein by reference for all purposes including, without limitation, the following:
- (a) Exhibit A: KOFILE TECHNOLOGIES, INC.'S GSA CONTRACT NO. GS-35F-275AA
 - (b) Exhibit B: PRESERVATION OF DEED RECORDS
- 20. Assignment.** Contractor will not assign, transfer, or convey its interest in this Contract without the prior written consent of the County, which shall not be unreasonably withheld. Contractor understands that in the event that all or sustainably all of Contractor's assets and business are acquired by another entity, Contractor is still obligated to fulfill the terms and conditions of this Contract.
- 21. Amendments and Changes in the Law.** No modification, amendment, notation, renewal, change order, or other alteration of this Contract shall be effective unless mutually agreed upon in writing and executed by the parties hereto. Any alteration, addition, or deletion to the terms of this Contract which are required by changes in federal or State law are automatically incorporated herein without written amendment to this Contract and shall be effective on the date designated by said law.
- 22. Confidentiality.** All information disclosed by County to Contractor for the purpose of the work to be performed under this Contract or information that comes to the attention of the Contractor during the course of performing such work, that is not considered to be in the public domain, is to be kept strictly confidential.
- 23. Governing Law; Forum.** This Contract shall be construed and enforced in accordance with the substantive and procedural laws of the State of Texas, without reference to its principles of conflict of laws.
- 24. Entire Contract.** This Contract constitutes the entire Contract between the parties with respect to the subject matter hereof and supersedes all prior understandings and Contracts between the parties, whether written or oral, relating to the same subject matter. This Contract and all of its provisions shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns.
- 25. Severability.** If any provision of the Contract is constructed to be illegal or invalid, this will not affect the legality of validity of any of the other provisions in this Contract. The illegal or invalid provision will be deemed stricken and deleted, but all other provisions shall continue and be given effect as if the illegal or invalid provisions had never been incorporated.

- 26. Counterparts; Number/Gender; Headings and Electronic Signatures.** This Contract may be executed in multiple counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Words of any gender used in this Contract shall be held and constructed to include any other gender and words in the singular shall include the plural and vice versa, unless the context clearly requires otherwise. Headings herein are for the convenience of reference only and shall not be considered in any interpretation of this Contract. Signatures delivered by email in .pdf format shall be deemed original signatures for purposes of this Contract.
- 27. Assignments and Parties in Interest.** This Contract shall be binding upon and inure to the benefit of the parties and their successors and assigns. Kofile Technologies, Inc. may assign (a) this Agreement or any interest herein pursuant to (i) a merger, consolidation, or sale of the stock or ownership interests in Kofile Technologies, Inc., (ii) the sale of all or substantially all of the Contractor's assets, and (b) this Contract and/or any rights hereunder (i) to its affiliates or (ii) to its sureties or lenders as they may require. Contractor shall have the right, in its sole discretion, to subcontract with any third party, including any Contractor affiliate, at any time for any part of the Services.
- 28. Signatory Warranty and Binding Effect.** The undersigned signatories for the parties hereby represent and warrant that they are officers of their respective organizations for which they have executed this Contract and that they have full and complete authority to enter into this Contract on behalf of their respective organizations and that the executions hereof are the acts of the parties involved and constitute legal, valid, and binding obligations of the respective parties.

—SIGNATURE PAGE FOLLOWS—

IN WITNESS WHEREOF, the parties hereto have caused this Contract to be executed as of the day and year first written above.

KOFI TECHNOLOGIES, INC.



Hubert Auburn
Senior Vice President

WEBER COUNTY, UTAH

Name:
Title:

Name:
Title:

Name:
Title: