

Date: 11/29/2011

THE COMMISSIONERS COURT SESSION OF BRAZORIA COUNTY, TEXAS

ORDER NO. VIII.A.1.a.

RE: Authorization contract with Kofile Preservation

Authorize the County Clerk to enter into the attached contract with Kofile Preservation. Said contract has been reviewed and approval by the District Attorney – Civil Division.

Further, that the County Clerk is authorized to execute the Agreement.

KOFILE PRESERVATION

Microfilm/Data Storage Service Agreement

THIS AGREEMENT, made as of the 15th day of **November**, **2011** by and between KOFIL Preservation, Inc., a corporation duly organized under the laws of Texas, and having its principal place of business at: 6300 Cedar Springs Road, Dallas, Texas, 75235, (hereinafter "KOFIL") and Brazoria County, (hereinafter "Customer").

WHEREAS, KOFIL offers certain microfilm/data storage services;

WHEREAS, Customer has the need for such Storage Services (hereinafter defined);

NOW, THEREFORE, in consideration of the mutual premises and covenants hereinafter set forth, the parties to this Agreement agree as follows;

1. Services Provided

KOFIL Preservation, Inc. "KOFIL" agrees to provide storage services for microfilm and/or microfiche and any other types of data that KOFIL agrees to store from time to time within KOFIL's temperature and humidity controlled vault. Whereas KOFIL shall inventory the Customer's data deposits and communicate with the Customer the actual numbers or amounts of data stored, and randomly spot test the data for certain contagious contaminations, such as Vinegar Syndrome, Mole/Mildew and Redox on microfilm. Whereas KOFIL shall separate Customer's Acetate Base Film from their Polyester Base Film and store the film in separate storage boxes as recommended by Eastman Kodak to help eliminate film contamination. Within a reasonable time after Customer's written request, KOFIL shall retrieve any or part of the microfilm/data and electronically or otherwise transmit such requested microfilm/data to Customer. Customer owns all of the stored microfilm/data and KOFIL will not sell or in any way distribute the microfilm/data without written consent from the Customer.

2. Term of Agreement

The initial term of this Agreement shall commence on the date of Customer's signature or, if later, the date set forth above, and shall continue for one (1) year from the date of commencement. This agreement shall automatically renew for additional successive one (1) year terms unless either party hereto gives the other party written notice of its decision to terminate this agreement at the end of the then current term not less than thirty (30) days prior to the expiration of each one (1) year term.

3. Payment

Charges for Services provided by KOFILE are listed on Attachment "A" of this Agreement. Customer agrees to pay KOFILE's invoices in full within 30 days of the date of invoice. Customer agrees to pay for the first years storage and any other initial services needed within 30 days after the microfilm/data has been accepted, counted, inventoried and random inspections and tests performed by KOFILE. Any and all charges may be adjusted by KOFILE after the initial term of this agreement upon ninety (90) days prior written notice to Customer. The storage charges are calculated on the maximum number of rolls of microfilm or the amount of data which is being stored at the beginning of each one (1) year term under this Agreement.

4. Limitation of Liability

KOFILE's liability, if any, to the Customer for any loss or damage to the stored microfilm or data, regardless of the cause thereof, is expressly and solely limited to the actual cost of a new blank replacement item of the same type and quality as the lost or damaged item. KOFILE will not be liable for incidental, special, consequential or any other type of damages, even if advised of the possibility of such damages. The limitation of KOFILE's liability will apply regardless of the form of action whether in law or in equity, or whether in contract or in tort, including negligence. KOFILE shall not be liable for any damages due to causes beyond the control of KOFILE including, but not limited to acts of God.

5. Lien in favor of KOFILE

KOFILE shall be entitled to all of the rights, benefits and privileges by and under Section 7.209 of the Uniform Commercial Code of the State of Texas. KOFILE shall not be required to release and or return to Customer any microfilm and or data in KOFILE's possession until all amounts due KOFILE by Customer have been paid in full.

6. Notices

Any notices or communications required or permitted to be delivered hereunder must be in writing and shall be deemed to be delivered (i) upon receipt if delivered personally or (ii) upon deposit in the United States Mail, certified, return receipt requested, postage prepaid, addressed to KOFILE or Customer, as the case may be, or (iii) upon receipt of a facsimile transmission, at the following addresses and/or facsimile numbers:

KOFILE Preservation, Inc.
6300 Cedar Springs Road
Dallas, Texas 75235
Phone: 214-351-4800
Fax: 214-442-6669

Customer: Joyce Hudman
Brazoria County Clerk
111 E. Locust, Suite 200
Angleton, Texas 77515
Phone: (979) 864-1370
Fax: (979) 864-1358

7. Termination for Convenience

Customer may terminate storage services being performed by KOFILE under this Agreement, in whole or in part, for convenience, by delivering to KOFILE written notice of termination at least thirty (30) days in advance of the end of the then current term under the Agreement, specifying the extent of termination of storage services and the effective date. In such event, Customer's liability for payment to KOFILE shall be limited to the contract price for all services delivered to and accepted by Customer prior to the effective date of termination of such services.

8. Entire Agreement

This Agreement embodies the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes any prior agreements or understandings between the parties relating to the subject matter hereof.

9. Governing Law and Venue

This Agreement and the obligations and understandings of the parties hereunder will be deemed to be performable in Dallas, Dallas County, Texas. This Agreement shall be governed by, enforced under and construed in accordance with the laws of the State of Texas without regard to any conflict-of-laws principles. Any court action brought under this Agreement must be brought in Dallas County, Texas.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the date shown above.

KOFILE Preservation, Inc.:

By: Billy Gerwick
Printed: Billy Gerwick
Title: BDM
Date: 12-29-11

Customer:

By: Joyce Hudman
Printed: Joyce Hudman
Title: County Clerk
Date: 12-1-11

MICROFILM/DATA SOTRAGE

PRICING

ATTACHMENT "A"

1. Sample Testing of Microfilm: \$ No Cost per roll
Prior to Placing in Vault

2. Separating Acetate Microfilm from Polyester Microfilm:

Prior to placing in Vault:

16mm: (90 rolls per box) \$ No Costs per box

35mm: (45 rolls per box) \$ No Costs per box

3. Retrieval of Requested Documents:

Per Pull: \$ No Costs per request

Per Page: \$ No Costs per request

4. Annual Storage Cost per roll:

In Vault:

16 mm: \$ No Costs per roll

35 mm: \$ No Costs per roll