



# CITY OF CARSON

## Legislation Text

File #: 2020-611, Version: 1

### Report to Mayor and City Council

Tuesday, September 01, 2020

Consent

#### **SUBJECT:**

**CONSIDER APPROVAL OF A CUSTOMER AGREEMENT WITH IRON MOUNTAIN INFORMATION MANAGEMENT, LLC FOR CONTINUED DOCUMENT STORAGE AND RETRIEVAL SERVICES (CITY COUNCIL)**

#### **I. SUMMARY**

This contract was approved by the City Council on August 18, 2020. Staff is bringing this item back for City Council's consideration to ensure the City Council is aware that this contract has not been drafted on a standard City contract. Comments from the City Attorney's office that were inadvertently omitted in the prior staff report are included in the Background section of this staff report as it relates to risks associated with entering into a contract that is not the standard City contract. As stated in the previous staff report, we are experiencing this more often with large companies that insist on using their formed contract.

#### **II. RECOMMENDATION**

**TAKE** the following actions:

1. **APPROVE** the proposed Customer Agreement with Iron Mountain Information Management, LLC, for continued document storage and retrieval services.
2. **AUTHORIZE** the Mayor to execute the agreement.

#### **III. ALTERNATIVES**

**TAKE** any other action that the City Council deems appropriate.

#### **IV. BACKGROUND**

Since the City of Carson's incorporation in 1968, there has been a need for storage of documents in addition to what is provided at City Hall. In 1986, the City retained a document storage provider known as Metro Business Archives ("MBA") to provide this service, as reflected by a partially-executed "Storage and Service Contract" between the City and MBA dated February 14, 1986 (Exhibit No. 1) (the "1986 agreement"). However, the contract on file with the City is executed by the vendor but not the City.

MBA's interest in the 1986 agreement was subsequently acquired by Iron Mountain Information Management, LLC ("IM"), a global leader for storage and information management services. Since then, IM has been providing reliable document storage services to the City. However, the City has no record of assignment of the 1986 agreement to IM, nor of any notice to the City of such assignment. City staff only recently became aware of the lack of a fully-executed agreement, after the Purchase Manager discovered the issue while processing Purchase Orders for services.

Even though IM considers the 1986 agreement a valid contract between IM and the City and the contract is automatically renewed every year, there is a need for a more current, formalized, and properly executed agreement to govern the relationship between the City and IM relative to the City's off-site storage of documents and records. The proposed Agreement will serve this purpose.

Staff recommends that the Council approve the proposed Agreement with IM (Exhibit No. 2) for the foregoing purpose and to allow for continuity of service while the City explores more permanent options for retention of documents. The cost to provide this service is approximately \$16,500 annually.

The City has been doing business with IM for many years and currently has a large volume (1,761 cubic feet) of records in storage with IM that is equivalent to at least 2 trucks or 37 pallets of material.

City staff anticipates that within the next three to five years, as the City reviews its document retention policies and explores its technological options for digital document retention, the need for physical off-site storage of City documents will be reduced, if not eliminated. If any need remains after such time period, the City will issue an RFP to identify any other responsible providers of document and retrieval services and ensure the best value to the City. If a different provider than IM is selected through the RFP process, it is estimated that the cost to move the City's current volume of documents would be \$40,000 to \$45,000, not including transportation and fuel costs.

#### Proposed Agreement

Staff has been in contact with IM regarding use of a City-provided contract form for the new agreement, but IM has declined due to the relatively small size of the City's account with IM. The City's annual expenditures with Iron Mountain are currently approximately \$16,500. IM has a minimum threshold of \$25,000 per year in aggregate business to review a county or city-provided agreement. The minimum threshold standard is intended to offset IM's costs of reviewing such contract forms. According to IM, many of its clients who meet the minimum threshold still use the IM form, as it is more closely directed at the specific services IM provides, rather than using a standard city or county professional services

agreement form and having to tailor it to IM's unique services. City staff has been finding more and more that when the City contracts with large companies that have their own standard forms, it is not possible to negotiate terms such as what are contained in the City's standard forms.

The 1986 agreement contains an automatic annual renewal provision which states that the Agreement shall automatically renew for successive one-year terms until either party cancels it by giving at least 90 days' written notice prior to the expiration of the then-existing term.

In the event IM continues to hold City records after expiration or termination of the Agreement, the terms of the Agreement shall continue to apply until the records are removed, except that IM may adjust its pricing rates upon 30 days' written notice.

#### City Attorney Comments

The City Attorney's office was not permitted to negotiate the Agreement due to IM's policy against review of non-IM contract forms for accounts generating less than \$25,000 annually. City staff has been finding more and more that when the City contracts with large companies that have their own standard forms, it is not possible to negotiate terms completed commensurate with the City's standard terms. The proposed Agreement contains the following provisions meriting the Council's consideration in that regard:

- Limitation of Liability.
  - IM is not liable for any loss, damage or destruction of City's materials in storage with IM (the "Deposits"), including for breach of data security or confidentiality, unless the loss or damage resulted from IM's negligence.
  - If liable, IM's maximum liability for the loss, damage, or destruction of hardcopy records is limited to the value of the Deposits, which is declared to be \$1 per carton, linear foot of open-shelf files, container or other storage unit. City acknowledges that it has declined to declare an excess valuation, for which an excess valuation fee would have been charged. For non-paper media, IM's liability is limited to the cost of replacing the physical media.
  - Deposits are not insured by IM against loss or damage. City may insure Deposits through third party insurers for any amount, but City is required to cause such insurers to waive any right of subrogation against IM.
  - Neither party shall be liable for any consequential, incidental, special or punitive damages, or for loss of profits or data.
- Fees and Charges.
  - The Agreement includes by reference the "Schedule A, Program Pricing Schedule, Records Management" (Exhibit No. 3) which sets forth the pricing rates for services under the Agreement. Rates will remain fixed for the first year, and then may be increased upon 30 days' written notice.

- The total amount of charges incurred depends on the volume of materials and the nature of the services rendered. There is no not-to-exceed contract sum specified in the Agreement. However, as noted above, existing charges to the City have been in the vicinity of \$16,500 per year, and staff anticipates that annual charges under the Agreement will remain roughly consistent, with at most an incremental increase. Therefore, the Agreement does not implicate the competitive bidding requirements of the City's Purchasing Ordinance, which apply only to contracts of an estimated aggregate annual value of \$25,000 or greater (CMC §2610). In the event the City's need increases such that the expenditure reaches \$25,000 annually (which is highly unlikely), an invitation for bids or RFP will be issued.
- Invoices/Late Fees. Payment terms are net 30 days. In the event a payment is not made timely, late charges will apply at the rate of 1% per month of the outstanding balance. At any time during the term of the Agreement, IM may require City to enroll in electronic payment (including auto-pay) if City fails to pay its charges as required or if City's annual account charges meet IM's requirement for electronic payment. Prior to delivery of Deposits upon expiration, termination, or substantial withdrawal, IM may require full payment in advance.
- Nonpayment/Destruction of Deposits. If City fails to pay any undisputed charges within 60 days after the date of an invoice, IM may suspend service. If the delinquency exceeds six months, IM may destroy the Deposits at City's

expense and without liability to City, provided IM shall have given City 90 days' written notice, and a final notice will be sent 10 days prior to destruction.

- Termination. Either party may terminate the Agreement upon written notice in the event that the other party has breached a material obligation under the Agreement and failed to cure the default upon 45 days written notice. City does not have the right to terminate the Agreement for convenience (i.e., at any time and for any reason or no reason), nor does IM. However, the risk to City of not having this right is mitigated by the fact that the Agreement can be non-renewed by City annually upon 30 days' notice to IM.
- Insurance/Indemnification. There are no insurance or indemnification provisions in the Agreement.

## **V. FISCAL IMPACT**

Funds for this service were included in the adopted FY2020/21 budget.

## **VI. EXHIBITS**

1. Partially-executed Metro Business Archives Storage and Service contract, February 14, 1986. (pgs. 6-7)
2. Proposed Iron Mountain Customer Agreement. (pgs. 8-11)
3. Iron Mountain Schedule A, Pricing Schedule, Records Management. (pgs. 12-17)

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