

**RESOLUTION NO. 4297**

**A RESOLUTION APPROVING AN AFFILIATE/MULTI-LOCATION AGREEMENT WITH IRON MOUNTAIN INFORMATION MANAGEMENT, LLC FOR SHREDDING SERVICES.**

**WHEREAS**, the City of Miles City desires to enter into an affiliate agreement to the Montana Secretary of State's Office's contract with Iron Mountain Information Management, LLC for shredding services.

**AND WHEREAS**, to effectuate such agreement, an "Affiliate/Multi-Location Agreement" with Iron Mountain Management, LLC must be entered into;

**NOW THEREFORE, IT IS RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA AS FOLLOWS:**

1. The "Affiliate/Multi Location Agreement" between the City and Iron Mountain Information Management, LLC, for shredding services as an affiliate to the State of Montana's Secretary of State office, as set forth in Exhibit "A", attached hereto and made a part hereof, is hereby approved and adopted by this Council.

2. The Mayor of the City of Miles City is hereby empowered and authorized to execute said Agreement on behalf of the City of Miles City, and bind the City of Miles City thereto.

**SAID RESOLUTION FINALLY PASSED AND ADOPTED BY A DULY CONSTITUTED QUORUM OF THE CITY COUNCIL OF THE CITY OF MILES CITY, MONTANA, AT A REGULAR MEETING THIS 26<sup>TH</sup> day of NOVEMBER, 2019.**

  
John Hollowell, Mayor

ATTEST:

  
Lorrie Pearce, City Clerk

# STATE OF MONTANA TERM CONTRACT

Department of Administration  
State Procurement Bureau  
165 Mitchell Building  
PO Box 200135  
Helena, MT 59620-0135  
Phone: (406) 444-2575 Fax: (406) 444-2529  
TTY Users-Dial 711  
<http://sfsd.mt.gov/>

**T.C. #: SPB14-2333J-2**  
**Title: SHREDDING SERVICES - STATEWIDE**  
**This is a non-exclusive contract.**

<b>CONTRACT TERM</b>	FROM	April 29, 2016	<b>CONTRACT STATUS</b>	NEW ()
	TO	April 28, 2017		RENEW (XX) 2 <sup>nd</sup> Renewal 3 <sup>rd</sup> Year
<b>VENDOR ADDRESS</b>	Iron Mountain Secure Shredding Inc. One Federal Street Boston MA 02110		<b>ORDER ADDRESS</b>	Same as Vendor Address
<b>ATTN:</b>	Jennifer DiDomenico		<b>ATTN:</b>	
<b>PHONE:</b>	(610) 495-3585/cell		<b>PHONE:</b>	
<b>FAX:</b>			<b>FAX:</b>	
<b>E-MAIL:</b>	Jennifer.Didomenico@ironmountain.com		<b>E-MAIL:</b>	

**PRICES:** Per contract – Attachment B: Pricing

**DELIVERY:** NA

**F.O.B.:** NA

**TERMS:** Per contract

**REMARKS:** Amendment #3 (Novation Agreement)

IFB/RFP No.:  
SPB14-2333J

CARRIE SCHELL, CONTRACTS OFFICER

DATE: 11/20/2016

**AUTHORIZED SIGNATURE**

## **SHREDDING SERVICES - STATEWIDE**

### **SPB14-2333J-2**

THIS CONTRACT is entered into by and between the State of Montana, Department of Administration, State Procurement Bureau, (State), whose address and phone number are PO Box 200135 Helena, MT 59620-0135, (406) 444-2575 and Recall Secure Destruction Services, Inc., (Contractor), whose address and phone number are 180 Technology Parkway Norcross, GA 30092, (770) 776-1000.

#### **1. EFFECTIVE DATE, DURATION, AND RENEWAL**

**1.1 Contract Term.** The contract's initial term is upon contract execution through 12 months thereafter, unless terminated earlier as provided in this contract. In no event is this contract binding on the State unless the State's authorized representative has signed it. The legal counsel signature approving legal content of the contract and the procurement officer signature approving the form of the contract do not constitute an authorized signature.

**1.2 Contract Renewal.** The State may renew this contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of seven years.

#### **2. COST ADJUSTMENTS**

**Cost Adjustments Negotiated Based on Changes in Contractor's Costs.** *After the contract's initial term and if the State agrees to a renewal*, the parties may negotiate cost adjustments at the time of contract renewal. Any cost increases must be based on demonstrated industrywide or regional increases in Contractor's costs. The State is not obligated to agree upon a renewal or a cost increase.

#### **3. SERVICES AND/OR SUPPLIES**

**3.1 Scope.** Contractor agrees to provide on-site shredding services for the collection and shredding of paper from various state agencies located throughout the state of Montana. Contractor shall furnish all materials, containers, labor, secured vehicles, equipment, and supervision necessary to perform the minimum specifications stated in this contract.

Agencies are responsible for evaluating the types of materials (such as confidential documents or records) designated for destruction and placed into contractor- and agency-provided containers.

##### **3.2 Specifications.**

**3.2.1 Confidentiality of Shredded Material.** Confidentiality of all information is required. Contractor and all personnel shall not inspect, view, peruse, copy, or examine any confidential material or documents designated for shredding. In addition, Contractor and all personnel will not otherwise disclose, release or communicate any confidential information to any third person, individual, organization or entity not employed by the state agency. Should any violation or breach of this provision occur, such will constitute cause for immediate termination of the contract.

Contractor shall maintain confidentiality, at all times, in accordance with best industry standards and in compliance with federal and state laws.

**3.2.2 Statements of Confidentiality.** Contractor personnel designated to work under this contract shall be required to sign a statement of confidentiality guaranteeing non-disclosure of information prior to performing any work. The confidentiality statement shall be designed, implemented, and maintained by the contractor and shall be submitted to the State. Montana Department of Revenue has a specific confidentiality statement that must also be completed by the Contractor (Attachment A) and submitted to the State.

**3.2.3 Service Locations.** For purposes of this contract, the State has been divided into the following seven geographic service locations. Shredding services will be provided for state agencies in these locations.

SERVICE LOCATIONS	CITIES INCLUDED
Glacier (Northwest)	Kalispell, Libby, Missoula
Gold West (Southwest)	Butte, Dillon
Russell (North Central)	Great Falls, Havre, Lewistown
Yellowstone (South Central)	Bozeman, Livingston
Missouri River (North East)	Glasgow, Sidney, Wolf Point
Custer (South East)	Billings, Glendive, Miles City
Capital City	Helena

The State reserves the right to add other locations to the term contract throughout the contract term when doing so is in the State's best interest.

**3.3 Contractor Duties.** Failure to abide by the duties listed in this section may result in contract termination.

**3.3.1 Containers.** Contractor shall supply containers, locking or non-locking, in both 32- and 64-gallon sizes to accommodate paper/records collection at each agency location at no charge to the agency. Contractor shall not limit the number of containers at any particular site.

Quantity, size, and type of containers at each location shall be at individual agency's request. Contractor shall place containers in the locations requested by the agency, provided the placement is in accordance with applicable fire codes. Contractor must be aware of these regulations and supply the agency with the appropriate containers. All containers provided by the Contractor must be clearly marked for their intended use.

Contractor shall retain ownership of its containers. Contractor agrees the State shall not be responsible for any liability incurred by the Contractor or Contractor's personnel arising out of the possession, use, maintenance, delivery, return, and/or collection from the containers provided by the Contractor.

Containers must be designed to prevent theft of materials by reaching in and have a tamper evident locking system. Containers must be made of fire resistant materials. Contractor will supply the agency representative with a key for all locking containers provided. If a key is lost, Contractor will supply a new key at no additional charge to the agency. Any keys replaced after the first initial loss will be subject to a charge by the Contractor.

Contractor shall not be required to provide containers if the shredding service is needed on a "one-time only" basis. Contractor must be willing to accept shredding material in agency-provided containers. Contractor is not responsible for any material intended for shredding left exposed in agency-provided containers or outside of contractor-provided containers prior to Contractor performing shredding services.

**3.3.2 Shredding Equipment.** Contractor shall only use premium, industrial-grade shredders that use cross cut (particle cut) or Hammermill Process or a similar process that meets or exceeds the shredding requirements for on-site shredding of all records, confidential or otherwise. Strip shredding is not acceptable.

All materials must be shredded in such a manner as to make reconstruction as close to impossible as can be accomplished. Using agencies may request the Contractor provide a description of their shredding techniques along with a sample shredded result prior to requesting the Contractor's service.

Contractor must be able to shred or disintegrate any type of paper items, regardless of color, finish (e.g., color photocopies, magazine-weight papers), or size of page. Agencies should not have to remove items such as staples, tape, post-it notes, label tape, rubber bands, most types of paper clips, etc.

**3.3.3 Contractor Personnel.** Contractor shall be responsible for the following requirements regarding all personnel working under this term contract:

- Personnel must, at all times, be wearing an identifying uniform or shirt with Contractor's name on it and have a photo identification badge prominently displayed;
- Contractor shall have available at all times sufficient dependable, trained personnel to provide service to the service locations as described herein;
- If specifically requested by an agency, Contractor shall not use any employee with whom the agency is not satisfied to provide the services specified; and
- Contractor personnel shall be required to sign a statement of confidentiality guaranteeing non-disclosure of information prior to performing any work. (section 3.2.2)

**3.3.4 Invoicing/Payments/Accounts.** Contractor shall establish accounts for each individual agency user. State agencies shall pay within 30 days of receipt of a properly executed invoice. Contractor shall bill each individual user agency directly for services provided.

In addition to billing information, all invoices must also contain, at a minimum, the following information:

- term contract number (SPB14-2333J-2);
- complete agency name to include the agency program, division, bureau etc., name;
- mailing and physical addresses;
- any agency contact name/phone number;
- any other cost centers or other department reference numbers; and
- copy of each signed Certificate of Destruction.

Contractor will not bill agencies for any additional charges such as container fees, administrative fees, surcharges, etc. unless otherwise approved by the State.

**3.3.5 Frequency of Service.** Contractor shall provide secure and confidential on-site shredding services either on a regularly, scheduled basis or a "one-time only" basis.

**3.3.6 Contractor "No Show".** Contractor shall notify using agencies immediately when they will not be able to provide shredding services previously scheduled.

**3.3.7 Customer Service Center.** Contractor shall provide a "customer service center" dedicated to servicing this term contract. This customer service center must be reached via a toll-free telephone number and be staffed by qualified service representatives able to address all questions or issues regarding billing, setup of new accounts, scheduling of shredding services, etc. This customer service center will be answered by service representatives during normal hours of business, 8:00 a.m. – 5:00 p.m., local time, Monday through Friday with the exception of state and federal holidays.

**3.3.8 NAID Certification.** NAID certification is not a requirement of this term contract. However, it is the responsibility of the Contractor that all materials handled and processed will be kept confidential and that disposal of all materials will be conducted in a manner that ensures the strictest security and confidentiality of all materials.

### 3.4 Agency Duties.

- a. Each using agency shall designate an agency representative who will assist the Contractor in determining the number and location of containers in addition to serving as agency contact person. The agency representative will also be responsible for all keys issued for locking containers.
- b. Using agencies may wish to establish shredding services either on a regularly scheduled or "one-time only" basis. Date and time for on-site services or for the pickup of containers will be arranged between the using agency and Contractor. Contractor shall not be required to provide containers if the shredding service is needed on a "one-time only" basis. Contractor must be willing to accept shredding material in agency-provided containers.
- c. Agencies must ascertain that all documents/records designated for destruction, BEFORE being destroyed, have complied with all applicable retention schedules.
- d. In order to assist with invoicing, the agency representative shall provide Contractor with the complete bill to address which will include the agency program, division, bureau, etc. name, mailing and physical addresses, agency contact name and phone number, and any other cost centers or other department reference numbers needed to appear on the invoice.
- e. Agencies are responsible for providing at least 24 hours' notice to Contractor if scheduled services are not needed for whatever reason.

**3.5 Shredding Services.** Contractor shall provide on-site shredding services during the hours of 8:00 a.m. – 4:30 p.m., Monday through Friday, excluding state and federal holidays. Dates and times for on-site services will be arranged between the using agency and Contractor.

Contractor shall understand and agree that the State requires flexibility in the arrangements and methods for the collection of materials designated for destruction on an agency-by-agency basis. Contractor shall coordinate and work in good faith with each agency in seeking and obtaining the most appropriate service arrangements and methods of collection. Contractor shall provide on-site shredding services on a regularly scheduled basis and a "one-time only" basis.

#### 3.5.1 On-Site Shredding.

- a. All mobile on-site shredding services shall be completed in a totally secured, self-contained vehicle to handle the agency's most secure and confidential material.
- b. Contractor shall charge by either a 32- or 64-gallon container.
- c. Materials designated for destruction shall be collected and stored by the agency in the containers provided by the Contractor. EXCEPTION: Contractor shall not be required to provide containers for using agencies if the shredding service is needed on a "one-time only" basis. If requested, any agency-provided containers shall be returned to the agency after destruction of the contents at no additional charge.
- d. Contractor shall perform all on-site shredding services as close to each using agency's office as possible. Contractor shall transport the materials on carts or other method from each container location to the Contractor's vehicle on-site without assistance from any state agency personnel.
- e. Once Contractor's personnel take possession of materials designated for destruction, the materials shall be securely contained during transfer from agency location to Contractor's vehicle in such a way as to insure no documents/records are lost or mislaid. All materials designated for destruction shall remain secured while in the immediate custody of Contractor's personnel until the shredding process has destroyed them.
- f. At the completion of the on-site shredding process, Contractor shall present a "Certificate of Destruction" to the using agency representative for signature. In addition to providing invoicing information, the Certificate guarantees the using agency that the confidentiality of all materials were maintained from the time of collection until being destroyed and that none of the materials were read or copied by the Contractor or Contractor's personnel prior to destruction. A copy of the Certificate will be retained by the agency. Contractor shall also submit copies of the Certificates with invoices for shredding services provided.



The Certificate of Destruction must contain, at a minimum:

- location and name of the agency for whom the services were provided;
  - date of shredding,
  - number and size of bins emptied;
  - term contract number (SPB14-2333J-2);
  - signature and title of Contractor's employee providing services; and
  - signature of agency representative.
- g. If requested by the agency, Contractor shall allow an agency representative to witness the shredding process.
- h. Contractor shall be responsible for cleanup of the immediate shredding area and ensuring that all loose particles are collected and removed each time shredding services are performed.

#### 4. WARRANTIES

**Warranty of Services.** Contractor warrants that the services provided conform to the contract requirements, including all descriptions, specifications and attachments made a part of this contract. The State's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this contract, at law, or in equity, the State may, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this contract in the manner and to the same extent as services originally furnished.

#### 5. CONSIDERATION/PAYMENT

**5.1 Payment Schedule.** In consideration of the on-site shredding services to be provided, the State shall pay Contractor according to the following schedule:

Contractor will charge for shredding per container, whether full or not, in either 32-gallon or 64-gallon sizes per the pricing listed in Attachment B.

**5.2 Withholding of Payment.** In addition to its other remedies under this contract, at law, or in equity, the State may withhold payments to Contractor if Contractor has breached this contract. Such withholding may not be greater than the total value of the subject statement of work or applicable contract.

**5.3 Payment Terms.** Unless otherwise noted in the solicitation document, the State has 30 days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of contract execution in order to facilitate the State's electronic funds transfer payments.

**5.4 Reference to Contract.** The contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract. If the number is not provided, the State is not obligated to pay the invoice.

**5.5 Fuel Surcharge.** If, during the contract period, the price of fuel increases 20% over the price of fuel in effect at the time Contractor submitted its bid, Contractor may add a fuel surcharge to the billing invoice. The fuel surcharge will be calculated based on the U.S. Energy Information Administration's (EIA) index for fuel prices in the Rocky Mountain area. This information may be found at <http://www.eia.gov/petroleum/gasdiesel/>. The fuel surcharge adjustment will be factored on a Base Price of 3.991. The surcharge is for actual miles driven. Vehicle mileage allowance is five miles per gallon of fuel. The formula for determining the surcharge is:

$$\frac{\text{Number of Miles} \times (\text{Weekly Price} - \text{Base Price})}{\text{Five miles per gallon}}$$

The State may in its sole discretion audit invoices, and Contractor shall promptly provide information as requested to verify mileage. If the price of fuel returns to or below the price as set in Contractor's original bid, the surcharge shall be eliminated.

## **6. COOPERATIVE PURCHASING**

Under Montana law, public procurement units, as defined in 18-4-401, MCA, have the option of cooperatively purchasing with the State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to the State Procurement Bureau prior to the award of this contract, the prices, terms, and conditions of this contract will be offered to these public procurement units. However, the State Procurement Bureau makes no guarantee of any public procurement unit participation in this contract.

## **7. NON-EXCLUSIVE CONTRACT**

The intent of this contract is to provide state agencies with an expedited means of procuring on-site shredding services. This contract is for the convenience of state agencies and is considered by the State Procurement Bureau to be a "Nonexclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. The State Procurement Bureau does not guarantee any usage.

## **8. ACCESS AND RETENTION OF RECORDS**

**8.1 Access to Records.** Contractor shall provide the State, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. The State may terminate this contract under section 16, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA)

**8.2 Retention Period.** Contractor shall create and retain all records supporting the shredding services for a period of eight years after either the completion date of this contract or termination of the contract.

## **9. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

Contractor may not assign, transfer, or subcontract any portion of this contract without the State's prior written consent. (18-4-141, MCA)

Contractor is responsible to the State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and the State under this contract.

## **10. HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this contract.

## **11. REQUIRED INSURANCE**

**11.1 General Requirements.** Contractor shall maintain for the duration of this contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.



**11.2 Primary Insurance.** Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

**11.3 Specific Requirements for Commercial General Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

**11.4 Deductibles and Self-Insured Retentions.** Any deductible or self-insured retention must be declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

**11.5 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

## **12. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA.

Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

## **13. COMPLIANCE WITH LAWS**

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with 49-3-207, MCA, Contractor agrees that the hiring of persons to perform this contract will be made on the basis of merit and qualifications and there will be no discrimination based upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

## **14. DISABILITY ACCOMMODATIONS**

The State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

## **15. REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

## **16. CONTRACT TERMINATION**

**16.1 Termination for Cause.** The State may, by written notice to Contractor, immediately terminate this contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms or conditions contained in this contract.

**16.2 Termination for Convenience.** The State may, by written notice to Contractor, terminate this contract without cause and without incurring liability to Contractor. The State shall give notice of termination to Contractor at least 30 days before the effective date of termination. The State shall pay Contractor only that amount, or prorated portion thereof, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

**16.3 Termination for Cause with Notice to Cure Requirement.** Contractor may terminate this contract for the State's failure to perform any of its duties under this contract after giving the State written notice of the failure.

The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

**16.4 Reduction of Funding.** The State must by law terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

## **17. EVENT OF BREACH – REMEDIES**

**17.1 Event of Breach by Contractor.** Any one or more of the following Contractor acts or omissions constitute an event of material breach under this contract:

- products or services furnished fail to conform to any requirement;
- failure to submit any report required by this contract;

- failure to perform any of the other terms and conditions of this contract, including but not limited to beginning work under this contract without prior State approval or breaching section 22 obligations; or
- voluntary or involuntary bankruptcy or receivership.

**17.2 Event of Breach by State.** The State's failure to perform any material terms or conditions of this contract constitutes an event of breach.

**17.3 Actions in Event of Breach.** Upon the Contractor's material breach, the State may:

- terminate this contract under section 16 and pursue any of its remedies under this contract, at law, or in equity.
- treat this contract as materially breached and, except as the remedy is limited in this contract, pursue any of its remedies under this contract, at law, or in equity.

Upon the State's material breach, the Contractor may:

- terminate this contract after giving the State written notice of the stated failure as provided in section 16; or
- treat this contract as materially breached and, except as the remedy is limited in this contract, pursue any of its remedies under this contract, at law, or in equity.

## **18. FORCE MAJEURE**

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this contract, unless the parties mutually agree that the obligation is excused because of the condition.

## **19. WAIVER OF BREACH**

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

## **20. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

## **21. LIAISONS AND SERVICE OF NOTICES**

**21.1 Contract Liaisons.** All project management and coordination on the State's behalf must be through a single point of contact designated as the State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this contract must be coordinated between the State's liaison and Contractor's liaison.

Bonny Belling is the State's liaison.  
State Procurement Bureau  
PO Box 200135  
Helena, MT 59620-0135  
Phone: (406) 444-2575  
Fax: (406) 444-2529  
Email: [bbelling@mt.gov](mailto:bbelling@mt.gov)

Monte Joyce, Account Manager is Contractor's liaison.  
Recall Secure Destruction Services, Inc.  
2365 South G Street  
Tacoma WA 98405  
Cell/Direct: (253) 426-2956  
Fax: (253) 272-4954  
Email: [monte.joyce@recall.com](mailto:monte.joyce@recall.com)

**21.2 Notifications.** The State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

## **22. MEETINGS**

**Technical or Contractual Problems.** Contractor shall meet with the State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the contract term or to discuss the progress made by Contractor and the State in the performance of their respective obligations, at no additional cost to the State. The State may request the meetings as problems arise and will be coordinated by the State. The State shall provide Contractor a minimum of three full working days notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted.

Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the contract.

## **23. TRANSITION ASSISTANCE**

If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees.

The parties agree that such transition assistance is governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to such transition assistance. The State shall pay Contractor for any resources utilized in performing such transition assistance at the most contract current rates. If the State terminates a project or this contract for cause, then the State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the State may have sustained as a result of Contractor's breach.

## **24. CHOICE OF LAW AND VENUE**

Montana law governs this contract. The parties agree that any litigation concerning this bid, proposal, or this contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (18-1-401, MCA)

## **25. TAX EXEMPTION**

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).



26. AUTHORITY

This contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

27. SEVERABILITY

A declaration by any court or any other binding legal source that any provision of the contract is illegal and void shall not affect the legality and enforceability of any other provision of the contract, unless the provisions are mutually and materially dependent.

28. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

**28.1 Contract.** This contract consists of 11 numbered pages, Attachments A and B as required, Solicitation SPB14-2333J, as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**28.2 Entire Agreement.** These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

29. WAIVER

The State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

30. EXECUTION

The parties through their authorized agents have executed this contract on the dates set out below.

STATE OF MONTANA  
DEPARTMENT OF ADMINISTRATION  
State Procurement Bureau  
PO Box 200135  
Helena, MT 59620-0135

RECALL SECURE DESTRUCTION SERVICES, INC.  
180 Technology Parkway  
Norcross, GA 30092  
FEDERAL ID # 36-4410289

BY: STEVE DIAMONTE D.A.  
(Name/Title)  
SP  
(Signature)

BY: BENJAMIN NICHOLSON, CFO  
(Name/Title)  
Ba  
(Signature)

DATE: 29 APRIL 2014

DATE: 4/28/14

Approved as to Legal Content:

Mike Marion 4-22-14  
Legal Counsel (Date)

Approved as to Form:

Bonny Belling 4-22-14  
Procurement Officer (Date)  
State Procurement Bureau



## **ATTACHMENT A: CONTRACTOR FORM FOR CONFIDENTIALITY AND DISCLOSURE OF INFORMATION**

### **I. PERFORMANCE**

Information received, processed and maintained by the Montana Department of Revenue (DOR) comes from a variety of sources. DOR and the State of Montana have a responsibility to the public to maintain a high degree of confidence that the information furnished to DOR, and/or the state, is protected against unauthorized use, inspection or disclosure. As a contractor or other person to whom returns or return information is or may be disclosed as authorized by DOR in connection with the processing, storage, transmission and reproduction of tax returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and/or providing of other services for purposes of tax administration, you have a responsibility to abide by the confidentiality and disclosure laws to assure that confidential taxpayer information is kept secure.

DOR administers several tax laws that stipulate taxpayer confidentiality requirements and disclosure limitations. Before 2007, federal and Montana laws were similar and, in general, provided that knowingly disclosing taxpayer information was unlawful. Both required, in addition, that users take appropriate measures to prevent inadvertent disclosure or unauthorized use of taxpayer information. The 2007 Montana Legislature made unauthorized disclosure of Montana individual income and corporation license tax information a strict liability crime.

You are to access only the data required to accomplish the specific purposes for which you are provided access and only to the extent authorized. You cannot access your own or, unless required to accomplish your specific purpose, another's tax return or personally identifiable tax information. You must not share or discuss the information you access or are provided with to any others except for work-related reasons and, then, only with those in your company or within the DOR who are authorized to access this information. All questions regarding disclosure of taxpayer information should be directed to the Department of Revenue's disclosure officer.

There are various penalties for making an unauthorized disclosure of confidential tax information under Montana law. A person convicted of making an unauthorized disclosure is subject to a fine up to \$500 and disbarment from public office or employment for one year after conviction.

Federal law requires, and DOR has entered into agreements with federal agencies that require, DOR to give certain notices to each contractor or other person to whom returns or return information is or may be disclosed as authorized by DOR in connection with the processing, storage, transmission and reproduction of tax returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and providing of other services for purpose of tax administration. Federal law also requires these persons to give further written notice to their officers and employees.

In performance of this Contract, the Contractor agrees to comply with and assume responsibility for compliance by its' employees with the following requirements:

1. All work will be done under the supervision of the contractor or the contractor's employees.
2. Any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Contract. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.

3. All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. All returns and return information disclosed to each officer or employee can be used only for a purpose and to the extent authorized by DOR in connection with the processing, storage, transmission and reproduction of tax returns and return information, the programming, maintenance, repair, testing, and procurement of equipment, and providing of other services for purposes of tax administration. In addition, all related output will be given the same level of protection as required for the source material.
4. The contractor certifies that the data processed or used during the performance of this Contract will be completely purged from all data storage components of its' computer facility, and no output will be retained by the contractor at the time the work is completed. If immediate purging of all data storage components is not possible, the contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
5. Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or its' designee. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or its' designee with a statement containing the date of destruction, description of material destroyed, and the method used.
6. All computer systems processing, storing, or transmitting Federal tax information must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal tax information.
7. No work involving Federal tax information furnished under this Contract will be subcontracted without prior written approval of the IRS.
8. The contractor will maintain a list of employees authorized access. Upon request, such list will be provided to the agency and, upon request, to the IRS reviewing office.
9. The agency will have the right to void the Contract if the contractor fails to provide the safeguards described above.

## **II. CRIMINAL/CIVIL SANCTIONS**

1. Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine or as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRC sections 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.
2. Each officer or employee of any person to whom returns or return is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this Contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the Contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer

or employee in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed in IRC section 7213A and 7431.

3. Additionally, it is incumbent upon the Contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individual identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.

### **III. INSPECTION**

The IRS and the agency shall have the right to send its officers and employees into the offices and plants of the contractor for inspection of the facilities and operations provided for the performance of any work under this Contract. On the basis of such inspection, specific measures may be required in cases where the contractor is found to be noncompliant with the contract safeguards.

As a condition for obtaining access to tax returns, tax return information, and confidential and proprietary information, I represent that I have read and understand the foregoing confidentiality statement and Contract and agree to abide by the laws related to their protection and disclosure.

\_\_\_\_\_  
**Contractor Printed Name**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Contractor Signature**

\_\_\_\_\_  
**Phone**

\_\_\_\_\_  
**Company**

\_\_\_\_\_  
**Position**

## ATTACHMENT B: PRICING

Contractor will charge for shredding per container, whether full or not, in either 32-gallon or 64-gallon sizes.

	Cities Included	Container size	Quantity	Price per each container
Glacier (Northwest)	Kallispell, Libby, Missoula			
		32 gallon	1-5	\$7.00
		32 gallon	6 or >	\$7.00
		64 gallon	1-5	\$11.00
		64 gallon	6 or >	\$11.00
Gold West (Southwest)	Butte, Dillon			
		32 gallon	1-5	\$7.00
		32 gallon	6 or >	\$7.00
		64 gallon	1-5	\$11.00
		64 gallon	6 or >	\$11.00
Russell (North Central)	Great Falls, Havre, Lewistown			
		32 gallon	1-5	\$7.00
		32 gallon	6 or >	\$7.00
		64 gallon	1-5	\$11.00
		64 gallon	6 or >	\$11.00
\$				
Yellowstone (South Central)	Bozeman, Livingston			
		32 gallon	1-5	\$7.00
		32 gallon	6 or >	\$7.00
		64 gallon	1-5	\$11.00
		64 gallon	6 or >	\$11.00
Missouri River (North East)	Glasgow, Sidney, Wolf Point			
		32 gallon	1-5	\$7.00
		32 gallon	6 or >	\$7.00
		64 gallon	1-5	\$11.00
		64 gallon	6 or >	\$11.00
Custer (South East)	Billings, Glendive, Miles City			
		32 gallon	1-5	\$7.00
		32 gallon	6 or >	\$7.00
		64 gallon	1-5	\$11.00
		64 gallon	6 or >	\$11.00

	Cities Included	Container size	Quantity	Price per each container
Capitol City	Helena			
		32 gallon	1-5	\$7.00
		32 gallon	6 or >	\$7.00
		64 gallon	1-5	\$11.00
		64 gallon	6 or >	\$11.00





## Service Directory – Secure Destruction Services

### Recall Customer CARE

Contact: 866-Recall-6 (866-732-2556)

[Sds.care.na@recall.com](mailto:Sds.care.na@recall.com)

Contact for the following:

- Scheduling extra pick ups
- Requesting additional bins
- Frequency Inquiries
- Changes to an existing account: contact info

### Recall Accounts Receivable:

Contact: 866-Recall-6 (866-732-2556) Option 1

Contact for the following:

- Invoice Inquiries
- AR changes

### \*\*Account Manager, Monte Joyce

Contact: 253-426-2956

[monte.joyce@recall.com](mailto:monte.joyce@recall.com)

Contact for the following:

- Setting up new locations
- Issues requiring escalation
- Contract Inquiries

### Regional Sales Manager, Hussein Nagli

Contact: 208-683-8937

[hussain.nagli@recall.com](mailto:hussain.nagli@recall.com)

Contact for the following:

- Escalation beyond Account Management

### Operations Manager, Doug McFarlane

Washington, Oregon and MT service area

Contact: 253-437-5101

[doug.mcfarlane@recall.com](mailto:doug.mcfarlane@recall.com)

Contact for the following

- Operational questions

**\*\*Initial Point of Contact for this contract.**

## Affiliate /Multi-Location Agreement

The site/location identified below agrees to accept the same terms and conditions as outlined in the existing Agreement between Iron Mountain Information Management, LLC ("Iron Mountain") and State of MT Sec of State Office (the "Customer"), which was made effective on April 29, 2014  
(Reference existing customer ID RSW68 currently governed by this Agreement)

### **Pricing** (Select one of the following options)



Storage and/or services will be performed by Iron Mountain in accordance with the rates established for the above referenced Customer Agreement. Reference existing Fee Schedule or Rate Table ID: RSW68

**\* For Records Management accounts only:**

The **Program Startup / Initial Move Rate** (if different from master account) is: not applicable/ no IM.  
per [click here]



Storage and/or services will be performed by Iron Mountain in accordance with the rates listed in the attached Pricing Schedule (Schedule A), which is dated: \_\_\_\_\_

### **New Site/Location or Renegotiating Account Information**



Data Protection




Records Management

Designated Location / Company Name	Applicable Account ID's Attach an additional form if there are too many ID's to list in this section	
City of Miles City	<b>DP/Secure Base</b> <i>include complete 5.6 Oracle/Branch #</i>	<b>RM/SKP</b>
Service Address Line 1: <u>17 S. 8th St.</u>		
Line 2: <u>Miles City, MT 59301</u>		
Customer Contact: <u>Lorrie Pearce</u>		
Contact Phone #: <u>406-874-8602</u>		
Contact Email: <u>cityclerk@milescity-mt.org</u>		
Service Branch: <u>Spokane 44148</u>		
Mileage (one way) from IM Service facility: _____ miles		



Check here if more pages will be attached to identify additional sites/locations

Except as expressly amended above, all other terms and conditions of the Agreement shall remain in full force and effect.

Customer Company Name	City of Miles City	Iron Mountain Information Management, LLC	
Individual Signing: (type or print first & last name)	<u>Lorrie Pearce</u>	Individual Signing:	
Signature:		Signature:	
Title:	<u>City Clerk</u>	Title:	
Date:	<u>12/27/2019</u>	Date:	

## Affiliate /Multi-Location Agreement

The site/location identified below agrees to accept the same terms and conditions as outlined in the existing Agreement between Iron Mountain Information Management, LLC ("Iron Mountain") and State of MT Sec of State Office (the "Customer"), which was made effective on April 29, 2014 (Reference existing customer ID RSW68 currently governed by this Agreement)

### Pricing (Select one of the following options)



Storage and/or services will be performed by Iron Mountain in accordance with the rates established for the above referenced Customer Agreement. Reference existing Fee Schedule or Rate Table ID: RSW68

\* For Records Management accounts only:

The Program Startup / Initial Move Rate (if different from master account) is: not applicable/ no IM.  
per [click here]



Storage and/or services will be performed by Iron Mountain in accordance with the rates listed in the attached Pricing Schedule (Schedule A), which is dated:

### New Site/Location or Renegotiating Account Information



Data Protection




Records Management

<b>Designated Location / Company Name</b> City of Miles City  Service Address Line 1: 17 S. 8th St.  Line 2: Miles City, MT 59301  Customer Contact: Lorrie Pearce  Contact Phone #: 406-874-8602  Contact Email: <a href="mailto:cityclerk@milescity-mt.org">cityclerk@milescity-mt.org</a>  Service Branch: Spokane 44148  Mileage (one way) from IM Service facility:                      miles	<b>Applicable Account ID's</b> Attach an additional form if there are too many ID's to list in this section	
	<b>DP/Secure Base</b> Include complete 5.6 Oracle/Branch #	<b>RM/SKP</b>



Check here if more pages will be attached to identify additional sites/locations

Except as expressly amended above, all other terms and conditions of the Agreement shall remain in full force and effect.

<b>Customer Company Name</b>	City of Miles City	<b>Iron Mountain Information Management, LLC</b>	
Individual Signing: (type or print first & last name)	Lorrie Pearce	Individual Signing:	DAVE HUNT
Signature:		Signature:	
Title:	City Clerk	Title:	MANAGER
Date:	12/27/2019	Date:	1-3-2020