

Board of County Commissioners Agenda Request

Date of Meeting: August 21, 2007
Date Submitted: August 8, 2007
To: Honorable Chairman and Members of the Board
From: Marlon Brown, County Manager
Davin Suggs, Director, OMB-IT
Subject: Approval of Iron Cove Solutions Contract

Statement of Issue:

This agenda item seeks Board post approval for monthly services for an existing contract for spam and email virus filtering/prevention services with Iron Cove Solutions.

Background:

In today's technological environment there are many dangers that users face. The primary cause of data loss and decreased productivity is spam, spyware and viruses. The previous Information Technology (IT) infrastructure did not include email filters which would have reduced the amount of spam employees of the County received. Iron Cove Solutions will help reduce the amount of spam and email related viruses. Iron Cove Solutions has proven they can provide the level of support needed during the County's transitional stage of implementing an email system, as previously stated in the approved strategic plan.

Analysis:

The IT staff researched solutions that would reduce the amount of spam mail received by County employees. Iron Cove Solutions meet and fulfill all of the necessary requirements. This contract is being brought before the Board, as instructed by the Clerk's Office for Board signatures.

Fiscal Impact:

The quarterly cost for this project is \$485.10 and is scheduled to end on September 30, 2007.

Options:

1. Approve filtering services and authorize the Chairman to execute the related contract.
2. Provide Board direction.

Recommendation:

Option 1.

Attachments:

1. Iron Cove Solutions Contract.



CUSTOMER ORDER FORM

CONTACT INFO	Today's Date: <input type="text" value="12-15-2006"/> <input type="text" value="Gadsen County Board of County Commissioners"/> Company Name <input type="text" value="9-8 Jefferson Street"/> Address <input type="text" value="Quincy, FL 32351"/> City/State/Zip <input type="text" value="(850) 694-4089"/> Phone	P	<input type="text"/>	<input type="text" value="75"/>
	<input type="text" value="Gadsen County Board of County Commissioners"/> Company Name <input type="text" value="9-8 Jefferson Street"/> Address <input type="text" value="Quincy, FL 32351"/> City/State/Zip <input type="text" value="(850) 694-4089"/> Phone		# Email Address	# Users
BILLING	<input type="text"/> Address <input checked="" type="checkbox"/> If Same as above <input type="text"/> City/State/Zip <input type="text" value="59-6000616"/> Tax ID	S	<input checked="" type="checkbox"/> Perimeter Manager (Spam and Virus)	<input type="text" value="\$2.10"/>
	<input type="text"/> Address <input checked="" type="checkbox"/> If Same as above <input type="text"/> City/State/Zip <input type="text" value="59-6000616"/> Tax ID		<input type="checkbox"/> Instant Message	<input type="text"/>
CONTACT TECHNICAL	<input type="text" value="Kembrew Jackson"/> Main /Technical <input type="text" value="(850) 694-4089"/> <input type="text"/> Telephone Cell <input type="text"/> Email	E	<input type="checkbox"/> Archive Manager	<input type="text"/>
	<input type="text" value="Kembrew Jackson"/> Main /Technical <input type="text" value="(850) 694-4089"/> <input type="text"/> Telephone Cell <input type="text"/> Email		<input type="checkbox"/> Encryption	<input type="text"/>
BILLING INFORMATION	<input type="text"/> Billing Contact <input type="checkbox"/> (Accepts Emailed Invoices) <input type="text"/> Email <input type="text"/> Telephone	R	<input checked="" type="checkbox"/> Set Up	<input type="text" value="\$55.00"/>
	<input type="text"/> Billing Contact <input type="checkbox"/> (Accepts Emailed Invoices) <input type="text"/> Email <input type="text"/> Telephone		<input type="checkbox"/> Training	<input type="text"/>
SET UP	<input type="text" value="gadsdengov.net"/> Domain(s) <input type="text"/> Incoming Mail Server IP	S	<input type="checkbox"/> Support / Maintenance	<input type="text"/>
	<input type="text" value="gadsdengov.net"/> Domain(s) <input type="text"/> Incoming Mail Server IP		Cost Per Month	
		N	<input type="text"/>	<input type="text"/>
			Server (MSFT, Lotus, etc)	Version
		E	<input type="text"/>	<input type="text"/>
			Firewall (Manufacture)	Virus Protection (Web)
		R	Billing Cycle	
			<input type="checkbox"/> 12 Month Annually <input type="checkbox"/> <input type="checkbox"/> 24 Month Quarterly <input type="checkbox"/> <input type="checkbox"/> 36 Month PO # <input type="text"/> <input type="checkbox"/> 48 Month <input checked="" type="checkbox"/> Other	<input type="text" value="9 month contract term with 30-day trial."/>
		M	Start Date	End Date
			<input type="text" value="12-18-06"/>	<input type="text" value="9-30-07"/>

THE SIGNATURE BELOW INDICATES THAT THE CUSTOMER UNDERSTANDS AND AGREES TO THE TERM OF THE SERVICES STATED ABOVE AND THE CUSTOMER'S REPRESENTATIVE BELOW HAS THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THE CUSTOMER.

TITLE
 PRINTED NAME SIGNATURES

4500 Via Marina, Suite 317
 Marina del Rey, CA 90292
 310-574-9182 Phone
 310-827-1540 Fax

General Terms and Conditions

1. **Services.** Reseller will provide to Customer the services (the "Services") specified in the Reseller Services Schedule (the "Services"). Within three (3) business days of the date on which this Contract is signed by both parties, Customer will receive an email that will specify the process for activating Customer's account and access to the Services through an activation key ("Provisioning").
2. **Charges and Billing.** The "Billing Start Date" is the first day that Postini commences delivery of Services agreed to be provided to Subscriber hereunder, which date shall be the earlier of (i) fifteen (15) days from the day the Agreement has been signed by both parties, or (ii) the day that messages addressed to Subscriber or that originate from the Subscriber's email server first pass through the Postini Network. Should Subscriber not initiate Services within fifteen (15) days from the date the Agreement is executed, Subscriber will be charged the Minimum Monthly Commitment (stated on page one of this Agreement) in lieu of the Service Fees until Services are initiated. Following the initiation of Services, Subscriber will be charged the greater of the actual fees for the Services or the Minimum Monthly Commitment.
 - 2.1. Beginning on the Billing Start Date, Subscriber shall pay for the Services on a monthly basis, pro-rated for any partial calendar month, within thirty (30) days of receipt of Reseller's invoice. Any invoice(s) not paid within thirty (30) days of receipt of Reseller's invoice shall accrue interest at 10% annually until paid in full. **Initial** All amounts payable by Subscriber to Reseller are exclusive of any sales, use, excise, property or any other similar taxes or fees. Subscriber is responsible for payment of any and all such taxes or fees.
3. **Term.** The initial term of this Contract shall be (12) months. At the end of the initial term, this Contract shall be renewed automatically for consecutive renewal terms of twelve (12) months, unless terminated by the either party by providing the other party written notice fifteen (30) days prior to the end of the applicable term delivered in accordance with Section 18, "Notices". Reseller may revise its rates (including, but not limited to, the fee per Mailbox/Unit) with thirty (30) days prior written notice to Customer, effective for the following term.
4. **Termination.** Either party may terminate this Contract for cause upon written notice if the other party fails to cure any material breach of this Contract within thirty (30) days after receiving written notice of such breach; provided however that the period to cure a breach with respect to payment shall be ten (10) days. If Customer terminates this Contract for cause in accordance with this Section, Reseller shall refund to Customer any prepaid amounts applicable to the period following the effective date of termination. Other than as may be provided elsewhere in this Contract, such termination shall be customer's sole and exclusive remedy in case of a material breach of this Contract by Reseller. At the end of the Term, this Agreement shall continue on a month-to-month basis until cancelled by either party by providing the other party with thirty (30) days prior written notice.
5. **Customer Obligations.** During the term of this Contract, Customer shall have the following obligations, in addition to those set forth elsewhere in this Contract.
 - 5.1. Customer is and will remain solely responsible for complying with all laws, rules and regulations regarding the management and administration of its email system, including but not limited to, obtaining any consent and/or acknowledgement from its employees and service providers (if applicable) in managing its email system. Customer acknowledges and agrees that Reseller's and Postini's responsibilities and liability do not extend to the internal management of Customer's email system and that Postini is merely a data-processor and does not control and is not responsible for the management or administration of Customer's email and/or its data.

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- 5.2 Customer agrees that it shall not resell the Services or create or offer derivative versions of the Services either directly or through a third party.
- 5.3 For each mailbox for which Customer will be routing email through the Services, Customer shall establish an email account in the Postini Message Center. Customer shall not allow more than five (5) alternative addresses/aliases for each email account established in the Postini Message Center.
- 5.4 IF CUSTOMER FAILS TO COMPLY WITH THE OBLIGATIONS SET FORTH IN SECTION 5.2 AND/OR SECTION 5.3, RESELLER SHALL INFORM CUSTOMER THEREOF AND RESERVES THE RIGHT TO SUSPEND THE SERVICES UNTIL SUCH FAILURE IS REMEDIED. NOTWITHSTANDING THE FOREGOING, THE FAILURE OF CUSTOMER TO COMPLY WITH THE OBLIGATIONS SET FORTH IN THIS SECTION 5 MAY BE DEEMED A MATERIAL BREACH OF THIS AGREEMENT.

6. **Warranties.**

- 6.1. Reseller warrants that the Services will meet the requirements set forth in the Service Level Agreement attached hereto as Exhibit A. In the event of a breach of the foregoing warranty, as Customer's sole and exclusive remedy, Reseller will provide the remedy set forth in the SLA.
- 6.2. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, RESELLER MAKES NO WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, ANY EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR NON-INFRINGEMENT.
- 6.3. Customer understands and acknowledges that there is no guarantee that all spam and all viruses will be eliminated and that legitimate email will not be occasionally quarantined as spam, and that the above warranty does not include any

such promises. Further, Disaster Recovery services are provided only up to the spooling level selected by the Customer, and if such spooling level is exceeded, messages may bounce back to the sender.

7. **Ownership.** The Services and all intellectual property rights relating to the Services are and shall remain the exclusive property of Postini.
8. **Confidentiality.** Reseller and Customer both acknowledge that in the course of this Contract, each party may have access to the other's Confidential Information. "Confidential Information," as used in this Contract, means information not generally known to the public, in written, oral or any other form, that a party designates as being confidential or that, under the circumstances surrounding disclosure, should be clear that it is confidential. For clarity, Customer's Confidential Information shall also include Customer's emails that are subject to the Services. The obligations of this Section 8 shall not apply to Confidential Information that (i) was in the possession of, or was rightfully known by a receiving party, without an obligation to maintain its confidentiality, prior to the time of disclosure; (ii) is or becomes generally known to the public without violation of this Contract; or (iii) is obtained by a receiving party in good faith from a third party having the right to disclose it without an obligation of confidentiality.
9. Each party hereby agrees that during the term of this Contract and for a period of two (2) years after the expiration of this Contract, it will not make any such Confidential Information available to any third party and will not use the other's Confidential Information for any purposes other than to exercise its rights and perform its obligations under this Contract. Each party shall take all reasonable steps to ensure that the other's Confidential Information is not disclosed or distributed by its employees or agents in violation of the terms of this Contract, and in any event each party shall exercise the same prudent practice in preserving this information as it does to preserve its own Confidential Information. The foregoing obligations will not restrict either party from

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disclosing the other party's Confidential Information or the terms and conditions of this Contract pursuant to the order or requirement of a court or other governmental body, provided that the party required to make such disclosure gives prompt notice to the other party to enable it to contest such order or requirement.

10. **Indemnity.** Reseller, at its expense, shall indemnify, defend and hold harmless Customer against any losses, costs and damages arising from a claim by a third party against Customer that the Services, or any part thereof, infringe any U.S. intellectual property or proprietary rights of such third party or misappropriates any protected trade secret of such third party. Reseller's obligations under this Section 9 are subject to Customer providing Reseller with (i) prompt written notice of the claim, (ii) sole control over the defense or settlement (subject, in the case of settlement, to Customer's consent, which consent shall not be unreasonably withheld or delayed), and (iii) reasonable support and cooperation with regard to the defense. In the event that Reseller's right to provide the Services is enjoined or in Reseller's reasonable opinion is likely to be enjoined, Reseller may, at its expense, obtain the right to continue providing the Services, replace or modify the Services so that they become non-infringing but remain functionally equivalent, or if such remedies are not reasonably available, terminate this Contract without liability to Customer.
11. **Limitation of Liability.** EXCEPT REGARDING THE CONFIDENTIALITY OBLIGATIONS UNDER SECTION 8, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR LOSS OF GOODWILL), ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT OR THE PERFORMANCE OR OPERATION OF THE SERVICES, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE),

PRODUCT LIABILITY OR OTHERWISE, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Except regarding the indemnity obligations under Section 9, "Indemnity," in no event shall either party's liability for any damages hereunder exceed the amounts paid by Customer to Reseller during the twelve (12) month period preceding the causation of the damages.

12. **Assignment.** Either party may assign this Contract in its entirety, but not in parts, to its parent company, affiliate or subsidiary, or in connection with a merger, consolidation, or sale or other disposition of all or substantially all of its assets. Any other assignment shall be null and void, except with the other party's prior written consent. This Contract and all obligations shall be binding upon and inure to the benefit of the parties' successors and lawful assignees.
13. **Governing Law and Dispute Resolution.** This Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to its conflict of law rules. Subscriber agrees that Reseller shall have the right to bring suit against Subscriber for any unpaid bills in the state and Federal courts in and for Los Angeles County, California.
14. **Severability.** If for any reason a court of competent jurisdiction finds any provision of this Contract invalid or unenforceable, that provision of the Contract will be enforced to the maximum extent permissible and the other provisions of this Contract will remain in full force and effect.
15. **Survival.** The rights and obligations of Reseller and Customer contained in this Section and in Section 7, "Confidentiality," Section 8, "Indemnity," and Section 9, "Limitation of Liability," shall survive any expiration or termination of this Contract.
16. **Waiver.** The waiver by either party of any default or breach of this Contract shall not constitute a waiver of any other or subsequent default or breach.

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- 17. **Amendments.** Modifications and amendments to this Contract shall be invalid, unless made in writing that is signed by duly authorized officers of each party hereto.
- 18. **Force Majeure.** Reseller shall not be liable for any failure or delay in its performance under this Contract due to causes beyond its reasonable control including, without limitation, Domain Name Server ("DNS") issues outside the direct control of Reseller, labor strikes or shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes and material shortages.
- 19. **Notices.** All notices required to be sent under this Contract must be in writing and shall be delivered in person or shall be sent to Customer at the address specified on the Reseller Service Schedule and to Reseller at the address below.

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- 19.1. Notices shall be deemed to have been given upon (i) the date actually delivered in person, (ii) the date transmitted via fax with confirmation of receipt thereof (iii) the day after the date sent by overnight courier or (iv) three (3) days following the date such notice was mailed by first class mail. Notices may be confirmed by email or fax.
- 20. **Counterparts.** This Contract may be executed in one or more counterparts including facsimile copies, which when and taken together upon proper delivery shall constitute a single instrument.

This Subscriber Agreement consists of the Agreement Summary and the General Terms and Conditions. The Signatures below indicate that the customer and reseller understand and agree to the terms and conditions of this agreement and that the customer's representative has the authority to enter into this agreement on behalf of the customer.

Printed Name:

Title:

Signature: _____ Date:

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EXHIBIT A – SERVICE LEVEL AGREEMENT

1. **Service Availability Commitment.** The Services shall be operational at least 99.999% of the time in any given month during the term of the Contract, meaning that the Outage Percentage (as defined below) in such given month shall be not more than 0.001%. An outage (“Outage”) means that Postini fails to apply filtering in accordance with Customer’s configuration selection. Outage does not include service suspension (i) for reasons outside of Postini’s sphere of control (as described in Section 4 of this SLA) or (ii) during times of scheduled maintenance (as described in Section 5 of this SLA). If a dispute arises about whether or not an Outage occurred, Postini shall make a determination in good faith based on its system logs, monitoring reports and configuration records, which Postini shall make available for auditing by Customer at Customer’s request. If one or more Outages occur in a given month, the total duration of such Outages during such month, expressed as a percentage of the total time during such month, shall be the outage percentage (the “Outage Percentage”).
2. **Outage Reporting Process.** Customer must inform Reseller’s Customer Support Department in writing or by email within fourteen (14) days of the time it first notices an Outage or first believes that there has been an Outage. Failure to comply with this requirement will forfeit Customer’s right to receive a remedy for the Outage as described in Section 3 of this SLA.
3. **Remedy.** If an Outage occurs, and if Customer has fulfilled all of its obligations under the Contract and none of the exceptions in Section 4 of this SLA applies, Customer shall have the following sole and exclusive remedy: Reseller will provide Customer with a pro-rata credit on Customer’s fee for the month in which the Outage occurred. The pro-rata credit shall be calculated by multiplying the Outage Percentage with Customer’s total monthly fee in the month during which the Outage occurred. Furthermore, if Customer experiences one (1) or more Outage in each of three (3) consecutive calendar months and/or three (3) or more Outages in any period of thirty (30) consecutive days, Customer can terminate the Contract for cause upon thirty (30) days prior written notice.
4. **Exceptions.** Customer shall not have any remedies under the Contract, including this SLA, in connection with any circumstance addressed in Section 17, “Force Majeure” of the Services Contract.
5. **Scheduled Maintenance.** From time to time, Postini performs scheduled maintenance, including maintenance at the third party data centers at which the Services are hosted and maintenance on Postini’s servers and software. Postini’s architecture is designed to enable Postini to provide scheduled maintenance in a manner designed not to interrupt Customer’s receipt of the Services. In all cases where maintenance will be performed, Customer will be informed at least 48 hours in advance. Postini will make all reasonable attempts to ensure that scheduled maintenance that affect the availability of the Services for more than thirty (30) minutes is performed between 12:00 a.m. and 5:00 a.m. Pacific Time, Monday through Friday (excluding U.S. holidays), or between 12:00 p.m. and 5 a.m. Pacific Time on Saturday, Sunday and U.S. holidays.