



March 8, 2016

Fountain Hills Municipal Court
16705 E. Ave of the Fountains
Fountain Hills, Arizona 85268
Attn: Grady Miller, Town Manager

Dear Grady:

As requested, this letter agreement (“Agreement”) with Fountain Hills Municipal Court (hereinafter referred to as the “Agency”), sets forth our mutual understanding of the terms and conditions pertaining to nCourt LLC providing Fountain Hills Municipal Court with an electronic payment processing program.

For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

1. nCourt LLC (“nCourt”) is a government services technology company that, among other things, provides software that permits government agencies to collect citations, parking, utility, tax, etc. via our live bilingual call center, online and at the counter with a credit or debit card (the “Program”).
2. nCourt has entered into an agreement with the Arizona Supreme Court Administrative Office of the Courts (“AOC”) for the provision of certain services including e-Court services, on-line payment processing and payments made at the Court. The terms and conditions, including pricing for those services has been agreed with the AOC and will be extended to the Fountain Hills Municipal Court.
3. Agency will make resources available to assist nCourt in the timely launch of the payment processing program. The expected “go live” date for the services contemplated in this Agreement is 45 days from the execution of this Agreement.
4. In addition to the services provided under the AOC contract, nCourt will provide the Fountain Hills Municipal Court with live, bi-lingual call center payment processing services according to the terms of this Agreement.
5. nCourt shall build, host and maintain a city-specific website(s) for the Fountain Hills Municipal Court with the URL, [www.\[TBD\].com](http://www.[TBD].com).
6. All costs for development, hosting, application, processing, customer service and merchant fees related to the Program are underwritten by user fees for services provided under the AOC agreement as follows:

a.	On-line payment processing for citations, fees & fines, bonds, probation and restitution; including chargeback protection; nCourt fees billed to the citizen utilizing the service	5%
b.	Payment processing payments made at the Court for citations, fees & fines, bonds, probation and restitution; including chargeback protection; nCourt fees billed to the citizen utilizing the service	5%

7. nCourt will also provide bilingual call center services and outbound calling services to the Fountain Hills Municipal Court as follows:



a.	Bilingual call center services for payment processing for citations, fees & fines, bonds, probation and restitution; including chargeback protection; nCourt fees billed to the citizen utilizing the service	5%
b.	Outbound calling services to aid in the notification of upcoming and past due payments prior to the Court engaging collection agency services; citizen phone numbers provided by the Court; fees billed to the citizen utilizing the service	5%

8. There is no cost to the Agency for the implementation and operation of the Program.
9. nCourt will provide a secure website that will allow payers to enter their pertinent information, e.g., citation number and fine amount, and then proceed to pay with a credit or debit card.
10. Upon completion of the solution, nCourt will provide the Agency with 3 Ingenico iPP320 or VeriFone vx805 PCI compliant, EMV ready credit card reader for taking payments at the counter. Upon receipt, this hardware becomes the sole and exclusive property of the Agency. nCourt will facilitate processing of any warranty claims on the EMV ready credit card reader during the manufacturers' warranty period. Following the expiration of the manufacturers' warranty, nCourt will subsidize the replacement of any defective or damaged EMV credit card reading device according to the following schedule:

<u>Replacement period</u>	<u>nCourt will pay x% of the replacement cost</u>
1 st year following warranty expiration	25%
2 nd year following warranty expiration	50%
3 rd year following warranty expiration	75%
4 th year following warranty expiration and beyond	100%

11. When a payment is authorized, nCourt will provide e-mail notification to the Agency and will update the Agency's Dashboard with the payment details. Agency employees will accept or reject the payment in the Dashboard and, if accepted, update their databases with payment information.
12. At this time, nCourt's payment processing system is not integrated with the Arizona Statewide case management system. If authorized by the AOC, nCourt will, at no cost to the Fountain Hills Municipal Court, develop an integration to the statewide CMS system to facilitate the necessary data exchanges to ensure nCourt's database is updated, on a near real-time basis via web services, with data on all open and payable citations from the Court's server. Upon exchange of the data, the information may be accessed and payment may be made by the party/court user. Citations will be searchable by citation number and the first and last name or similar identifying characteristic of the named traffic defendant or other designated party identifier.
13. When a payment is authorized, nCourt will provide notification to the Court by email to a designated secured e-mail address.
14. The payer will be simultaneously advised that the transaction has been completed and will receive further notification when the Agency processes the payment in the Dashboard.
15. Payments are deposited daily into a government fees custodial account and transferred by ACH electronic transfer to Fountain Hills Municipal Court on a daily basis. The payment will be accompanied by a reconciliation detailing the payments included. Any money transfer fees will be absorbed by nCourt.



- 16 nCourt guarantees to the Fountain Hills Municipal Court all fees collected, regardless of any chargeback issues. In the case of suspected fraud, nCourt may, from time to time, reach out to the Agency for assistance in pursuing resolution to suspected fraudulent chargebacks. In such instances, the Agency agrees to provide reasonable assistance to nCourt in these efforts. Such support may include providing documentation, call records, and/or in cases of documented fraud, reinstatement of the underlying citation.
- 17 Upon notification of an over- or under-payment of any fine amount, nCourt will refund an overpayment or notify the payer via automated email of their under-payment and remaining amount due.
- 18 If there are designated payments which are ineligible for online payment, the Agency will be able to reject the payment through the Dashboard. Payers will be notified by automated email.
- 19 nCourt shall hold harmless, indemnify and defend the Agency, and all of its officers, employees and/or officials from any and all liability, actions, claims, losses, damages or other costs of whatsoever nature that may be asserted by any person or entity arising from or in connection with the collection of payments by credit or debit card or through internet transactions pursuant to the terms of this Agreement.
- 20 nCourt shall provide a toll-free telephonic customer service function to ensure that members of the public utilizing the Program have a satisfactory experience that does not require the technological assistance of Agency personnel.
- 21 In order to ensure high utilization of the Program and thereby further streamline payment processing, the website address shall be printed on all invoices and a payment link to the nCourt payment system will be established on the Agency's website. Links from other government websites will also be explored. Additionally, Agency administrative staff should routinely advise telephone callers of the Agency's website(s) which should create greater utilization and reduce telephone inquiries to the Agency. The expected processing volume in the Program is estimated at 20000 (\$ value or # transactions (please indicate) per month.
- 22 The disclaimer language to appear on the website is contained in Appendix A, attached hereto.
- 23 The term of this agreement will be governed by the terms agreed between nCourt and the Arizona Supreme Court, Administrative Office of the Courts Article III. Term of Agreement and Termination, attached here as Appendix B.
- 24 This Agreement represents the final agreement of the parties. No amendment or modification of this Agreement shall be valid or binding upon either party unless made in writing and signed by the party against whom it is to be enforced.
- 25 This Agreement has been executed and delivered in the State of Arizona, and all questions with respect to the construction of this Agreement and the rights and liabilities of the parties hereto shall be determined in accordance with the applicable provisions of the laws of the State of Arizona without giving credence to the conflicts of law provisions thereof.
- 26 The parties acknowledge that they have executed this Agreement as of the date and year noted below.



Sincerely,

Agreed and accepted:

By: Grady Miller
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Title: Town Manager

Date: 4/4/2016

nCourt LLC Signed by:

By: Kathleen M. Miller
C617C18A7FFB458...

Title: Chief Financial officer

Date: 3/9/2016



APPENDIX A

To continue to pay your fee, fine, citation or other payment, you must accept the following TERMS OF USE. Please read and fully understand the following terms and press the “ACCEPT TERMS” button to acknowledge that you have read and accept these terms. Acceptance of these terms is required to continue to payment. If you do not accept these terms, press “DECLINE TERMS” button to return to the Citation Search screen.

The systems in place for automated processing of information have been tested thoroughly and are subject to multiple levels of backup, confirmation and security. By using this automated payment system, USER acknowledges and understands that errors may occur just as errors can occur with human processing of information. By using this service, you agree that this is voluntary and that you (the “USER”) understand that the convenience (or service) fee added to the payment(s) being made are charged by the Provider to pay merchant processing fees, web hosting fees, administration and other costs and expenses associated with providing this service. No part of the convenience (or service) fee benefits the Fountain Hills Municipal Court or any of its employees.

Other than in connection with processing the payment being made, to the fullest extent possible, identifying private information will not be distributed in any way. No data records or other information will be used, released or sold to any third party. No information will be released to any other party unless such party requires the information for purposes of processing or providing another service essential to completing the transaction related to the payment(s) being made.

nCourt, LLC (the “Company”) agrees to use all reasonable efforts to provide accurate processing of information provided from court files and to diligently distribute information provided by the USER to the Fountain Hills Municipal Court. nCourt, LLC cannot and does not guarantee the accuracy or timeliness of any provided information and expressly disclaims any warranty including merchantability and fitness for a particular use under the Uniform Commercial Code of Georgia beyond the extent of the convenience (or service) fees paid by the user of the service.

nCourt, LLC has in place a comprehensive security plan and internal control plan which is designed to ensure the anonymity of program user information. Further, access to such information is controlled and restricted to authorized personnel only. The payment submission process uses Secure Sockets Layer (SSL) encryption to virtually eliminate the possibility of unauthorized access to your private information while it is being transferred across the internet. Your personal financial data is NOT stored on computers administered by the Company.

By submitting this information electronically, you agree to release the Fountain Hills Municipal Court and its employees, and nCourt, LLC, its principals, officers, directors, employees, agents affiliated companies, successors and assignees (collectively the ‘Providers’) from any direct, indirect, punitive, incidental, special or consequential damages arising out of or in any way connected to the use of the Program or with the delay or inability to use it, or for any information, software, products and services obtained through this program, or otherwise arising out of the use of this program, the internet generally, or on any other basis (whether based on contract, tort, strict liability or otherwise.) The Providers will not be responsible for any security breaches or non-compliance with Federal or State law or terms of this agreement which results in any act or omission of the USER or a third party unrelated to the negligence of the Provider.

The operation of this online payment program is based in Kennesaw, Georgia and any action of any nature against the company must be brought in Cobb County, Georgia. You agree not to challenge the use of any electronic payment additionally agree that any action brought by the Provider(s) against you to enforce any electronic payment for which any benefit has been provided to you in any way shall entitle the Provider(s) to per se probable cause for criminal action for theft of services or for civil recovery of all fees paid, process fees, costs, attorney’s fees, plus any incidental or associated damages proven by the Provider(s). Any such civil actions shall be brought in the courts of Cobb County, Georgia, without regard to choice of law, and all parties consent to jurisdiction and venue therein. Nothing herein is to be construed as legal counsel or advice. Users should consult with their own legal counsel with respect to the implications of making the payment through this system.

Any purchases made by a USER from nCourt, LLC via the nCourt web services sites is NON-REFUNDABLE, in whole or in part, once the payment has been submitted, confirmed and accepted by the Fountain Hills Municipal Court. If the submission is rejected by the Fountain Hills Municipal Court, refunds will be processed via credit card, ACH or paper check. Any process fees associated with the transaction are NON-REFUNDABLE.

To continue to pay your fee, fine, citation or other payment, you must accept the following TERMS OF USE. Please read and fully understand the following terms and press the “ACCEPT TERMS” button to acknowledge that you have read and accept these terms. Acceptance of these terms is required to continue to payment. If you do not accept these terms, press “DECLINE TERMS” button to return to the Citation Search screen.

Please indicate your consent to these terms by pressing the ‘Accept Terms’ button.



APPENDIX B- TERM AND TERMINATION

Statewide Arizona Courts Electronic Payment Processing System

This Agreement is made and entered into by and between the Arizona Supreme Court, Administrative Office of the Courts (“AOC”), and nCourt, LLC, 955A Cobb Place Boulevard, Kennesaw, GA 30144 (“CONTRACTOR”).

The parties agree as follows:

ARTICLE III. TERM OF AGREEMENT AND TERMINATION

3.1 EFFECTIVE DATE OF AGREEMENT. This Agreement shall become effective upon signing and shall continue in effect for an initial period of three (3) years, unless terminated earlier as set forth herein.

3.2 OPTION TO EXTEND.

A. This Agreement does not bind nor purport to bind the AOC for any contractual commitment in excess of the original contract period. The AOC shall have the right, at its sole option, to renew the Agreement one or more times for up to an additional seven years, or a portion thereof, by unilateral amendment. The AOC shall notify Contractor in writing of its intention to extend the Agreement to provide these services at least ninety (90) days prior to expiration.

B. If the AOC exercises its right to renew the Agreement, all terms, conditions, and provisions of the original Agreement shall remain the same and apply during the renewal period, except that Contractor reserves the right to propose an increase or decrease in the pricing set forth in Service Schedule 2, based on the increase or decrease in Contractor’s costs. Contractor further agrees any proposed increase will not exceed the percentage increase charged to Contractor’s general customer base. Contractor shall notify AOC of any proposed change in pricing within fourteen (14) days of receipt of the notice provided by AOC under 3.2(A) above.

3.3 SURVIVAL OF CERTAIN PROVISIONS. Any provisions that are by their nature or expressly intended to survive the expiration or termination of this Agreement shall not require specific extension of their terms and shall remain in effect after termination or expiration of this Agreement.

3.4 PRE-TERMINATION NOTICE OPTION. AOC may issue a written notice of concern based on Contractor’s failure to carry out any material obligation, term, or condition of the Agreement. Upon receipt of the written notice of deficiency, Contractor shall have ten (10) days to provide a satisfactory response. During the ten day period, the parties will have an opportunity to address the deficiency. If the response is unsatisfactory, AOC will so indicate and Contractor and AOC will continue discussions toward resolving the deficiency. This process will continue for an additional ten (10) day period until the concern is adequately addressed. Failure on the part of Contractor to satisfactorily resolve all issues by the end of the sixty (60) day period may result in AOC resorting to any single or combination of the following remedies:

- (A) Cancel the Agreement and, receive from Contractor, if cancellation is prior to acceptance, a refund of the software license fee and a pro-rated refund of any annual maintenance fee paid;
- (B) Reserve all rights or claims to damage for breach of any covenants of the Agreement;
- (C) Perform with any needed cooperation by Contractor any test or analysis on materials for compliance with the specifications of the Agreement. If the results of any test or analysis confirm a material noncompliance with the specifications, any reasonable expense of testing shall be borne by Contractor.

3.5 TERMINATION.



- A. Both parties reserve the right to terminate the whole or any part of this Agreement due to failure by the other party to carry out any material obligation, term or condition of the Agreement. AOC will issue written notice of deficiency to Contractor regarding any of the following:
 - (1) The Contractor provides material that does not meet the specifications of the Agreement;
 - (2) The Contractor fails to adequately perform the services set forth in the specifications of the AGREEMENT;
 - (3) The Contractor fails to complete the work required or to furnish the materials required within the time stipulated in the Agreement; or
 - (4) The Contractor fails to acquire and maintain all required insurance policies, bonds, licenses, and permits.

- B. In the case of Contractor's default, AOC reserves the right to purchase materials, or to complete the required work in accordance with the AOC Judicial Branch Procurement Rules. AOC may recover any reasonable actual excess costs incurred by AOC in procuring equipment or services that are the subject matter of, or directly related to, the cause of action, from Contractor by:
 - (1) Deduction from an unpaid balance,
 - (2) Collection against any bid or performance bond, or
 - (3) Any other remedies as provided by law.

- C. Gratuities. AOC may, by written notice to the Contractor, also terminate this Agreement if it is found that gratuities in the form of entertainment, gifts, payment, loan, subscription, advance, deposit of money, services, anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received or otherwise were offered or given by the Contractor or any agent or representative of the Contractor, to any officer or employee of the AOC for the purpose of influencing the outcome of the procurement or securing a contract or an amendment to the contract, or favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performance of such contract. If the Agreement is terminated under this section, the AOC shall be entitled, in addition to any other rights and remedies, to recover or withhold from Contractor the amount of the gratuity. Paying the expense of normal business meals which are generally made available to all eligible customers shall not be prohibited by this paragraph. The AOC, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the gratuity offered by the Contractor.

- D. Conflicts of Interest. AOC may cancel this Agreement without penalty or further obligation pursuant to A.R.S. § 38-511, if any person significantly involved in initiating, negotiating, securing, drafting, or creating this Agreement on behalf of the AOC is or becomes at any time, while this Agreement or any extension of this Agreement is in effect, an employee of or a consultant to any other party to this Agreement with respect to the subject matter of this Agreement. Cancellation shall be effective when written notice from the AOC is received by Contractor, unless the notice specifies a later time.

- E. Termination for Cessation of Business or Insolvency. AOC may terminate this Agreement effective immediately by giving written notice to Contractor, if Contractor or if Contractor ceases to function as a going concern or operate in the ordinary course or becomes insolvent, admits a general inability to pay its debts as they come due, or makes an assignment for the benefit of creditors, or a petition under any bankruptcy act is filed by Contractor, or such a petition is filed by any third party, or an application for a receiver of the Contractor is made by anyone and such petition or application is not dismissed within sixty (60) days.

3.6 TRANSITION SERVICES In the event the Term of this Agreement ends, or in the event the Agreement is terminated with cause, Contractor shall assist AOC in the transition of services to other Contractors or the AOC. Contractor will administer such services for no more than six (6) months after notification. Contractor shall maintain all contracted services and shall continue normal payment remittance schedules during the transition period. AOC will provide Contractor with notice of the need for transition services not less than two (2) months prior to the end of the contract term. Contractor's payment processing services shall be provided at the existing contract rates. For no additional charge, Contractor will provide a mutually-agreed notice to court customers of the impending transition and continuing access by AOC to any electronic files and other records as may be necessary to assure the smoothest possible transition and continuity of services. Contractor shall also forward to AOC or its designee all customer communications and payments related to disputed transactions for a period of forty-five (45) days after the end of the transition period.



nCourt LLC partners with Vantiv, LLC and Fifth Third Bank. Please sign the bottom of this form and return it to us immediately as confirmation of understanding the terms and conditions of our service.

Fountain Hills Municipal Court understands that nCourt LLC will continue to provide customer support and billing associated technology services. Fountain Hills Municipal Court hereby authorizes Vantiv, LLC. to fund a bank account designated by nCourt LLC for your benefit and to make direct deposit of Visa, MasterCard, and Discover funds into this account. Vantiv, LLC will debit an account owned and designated by nCourt LLC: (1) for the discount fees, and other charges incurred in connection with Fountain Hills Municipal Court card processing; (2) for all chargebacks and adjustments; (3) for arbitration fees, fines, penalties, etc. charged by the associations incurred as a result of Fountain Hills Municipal Court card processing; and (4) for any other amounts described in the Sub-Merchant Agreement Terms and Conditions. Fountain Hills Municipal Court has read, understands and agrees to be bound by the terms and conditions of the Merchant Service Agreement attached hereto, which is hereby incorporated by reference and may be modified or amended from time to time.

DocuSigned by:
By: Grady Miller
Signature ID: 98E347E403...

Title: Town Manager
Date: 4/4/2016