

**RESOLUTION NO. 10-16**

**INTRODUCED BY:**

**Councilperson Hamilton-Bruer**

**Councilperson Havercroft**

**A RESOLUTION OF THE CITY COUNCIL OF  
THE CITY OF CASTLE PINES NORTH, COLORADO  
APPROVING A CONTRACT WITH CITEPAYUSA, L.L.C.  
TO PROVIDE ELECTRONIC PAYMENT TRANSACTION SERVICES RELATED  
TO THE OPERATION OF THE MUNICIPAL COURT**

WHEREAS, the City is authorized to enter into contracts and leases for the performance of general municipal governance; and

WHEREAS, the City requires software to operate certain functions associated with the operations of the municipal court; and

WHEREAS, the City desires to contract with CITEPAYUSA, L.L.C. for the collection and processing of payment transactions and transfers.

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH, COLORADO:

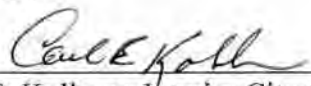
**Section 1.** The City Council hereby approves the attached agreement with CITEPAYUSA, L.L.C.

**Section 2. Effective Date.** This Resolution shall take effect upon its approval by the City Council.

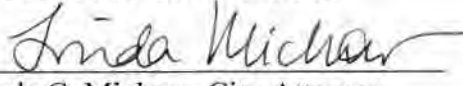
INTRODUCED, READ AND ADOPTED AT A REGULAR MEETING OF THE CITY COUNCIL OF THE CITY OF CASTLE PINES NORTH by a vote of six (6) in favor, none against and one (1) absent this 9th day of February, 2010.

  
Jeffrey T. Huff, Mayor

ATTEST:

  
Carl E. Kollmar, Interim City Clerk

APPROVED AS TO FORM:

  
Linda C. Michow, City Attorney

**EXHIBIT A**  
**CITEPAYUSA SERVICES AGREEMENT**

## CITEPAYUSA SERVICES AGREEMENT

THIS AGREEMENT entered into this 16<sup>th</sup> day of FEBRUARY, 2010, by and between **CitePayUSA, L.L.C.**, a Nevada limited liability company, (the "**Provider**") and the **City of Castle Pines North** (the "**Customer**"), shall be the complete understanding of the parties with respect to provision of the products and services hereinafter described, as well as the compensation to be paid on account thereof.

### THE PARTIES AGREE AS FOLLOWS:

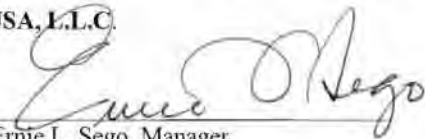
1. **Term of Agreement:** This agreement shall commence on the date herein executed by both parties and continue until terminated as set forth herein.
2. **Services: Provider**, in behalf of the **Customer**, shall perform services for the collection and processing of payments through the use of **Provider's** software and facilities, including the uploading of certain data from the **Customer's** FullCourt Court Case Management System to **Provider** and the downloading of such payment transactions from **Provider** to the FullCourt Court Case Management System of the **Customer**. **Provider**, at no cost to the **Customer**, shall provide the merchant account that will be used for processing these payments. **Provider** will transmit funds due the **Customer** from said account.  
**Customer's Responsibilities:**
  - 2.1. **Customer**, at no cost to **Provider**, shall arrange through Justice Systems, Inc. for the installation and maintenance of a current version of the FullCourt Court Case Management System and software necessary to assure a compatible interface with the CitePayUSA ePayment system. **Customer**, for the purpose of permitting Automated Clearing House Network (ACH) transfers between **Customer** and CitePayUSA, shall maintain a Deposit Account as per the Authorization Agreement for Direct Deposits/Payments attached hereto as Attachment B.
  - 2.2. **Customer** shall: (1) notify in writing **Provider** any time there is a change in the bank or account that may materially affect the ability of **Provider** to make ACH transactions to the **Customer's** account; (2) at its own cost, maintain a persistent connection with the Internet for the purposes of transmittal of data and case information necessary to provide the services herein described and contracted; (3) maintain the FullCourt CMS (i) by continuing in effect the Maintenance and Support Agreement offered by Justice Systems, Inc.; (ii) by installing the then most current release of the CMS as specified by Justice Systems, Inc.; (iii) and by maintaining the hardware, infrastructure and operating environment necessary for proper functioning of the CMS. Support and Maintenance fees associated with the FullCourt Case Management System, and the ePayment module are not made a part of this Agreement; (4) be responsible for the accuracy of all case data and content made available to or transmitted to CitePayUSA; and, shall hold harmless **Provider** of the consequences occasioned by false, misleading or inaccurate content whether or not the same is made available to third parties by the **Provider**; (5) immediately notify **Provider** of any perceived or known irregularities in services provided, including without limitation, the operation of the FullCourt Court Case Management System, the ePayment system, transactions made to the **Customer's** account(s) via the ACH system, and any transactions processed through CitePayUSA.com.
3. **Fees/Costs:**
  - 3.1. Startup/Application Fee - **Waived**.
  - 3.2. Monthly Use Fee - **Waived**.
  - 3.3. Transaction Fees – **Customer** understands, agrees and authorizes **Provider** to charge a **transaction** fee of 5.95% of the fine, fee or other amounts collected in behalf of **Customer**, as compensation for the services and products provided. This fee will be assessed to the credit card, debit card or other account (as applicable) of the person or entity making payment in behalf of the defendant, litigant or individual, howsoever described, obligated to make a payment to the **Customer**, the relevant Court or court authorized agency, and shall be in addition to the amount of the obligation owed the **Customer**.
  - 3.4. Chargeback/Returned Check Fees - In the event that **Provider** is notified of a chargeback/returned check or the same shall be imposed upon or incurred by **Provider** for any reason whatsoever **Provider** shall charge to the **Customer** and **Customer** shall pay to the **Provider** an administrative fee of \$15 in addition to all credit card, debit card and ACH transaction fees. **Customer** shall also reimburse **Provider** all amounts paid/credited to **Customer's** account by reason of the obligation related to the chargeback/returned check. **Provider** shall notify **Customer** of any chargebacks/returned checks and provide documentation of amounts due as a result of a chargeback/returned check. [Note: **Customer** will be responsible for adjusting the balance of the FullCourt case associated with said chargeback/returned check and in accordance with the policies of **Customer** and/or court].
  - 3.5. All costs and fees enumerated are subject to change upon **Provider** giving **Customer** fifteen (15) days notice. In the event that any costs or fees imposed upon **Provider** by the debit/credit card transaction service providers are increased by more than 25% without prior notice, or upon notice insufficient to permit **Provider** the opportunity to provide the fifteen (15) days notification, **Provider**, at its election, may immediately suspend the provision of services hereunder without incurring liability for the consequences of said suspension (in the event that **Provider** makes such an election to suspend services, notification thereof shall be immediately given to **Customer**.)
4. **Payments/Billings/Reports:** **Provider** shall periodically provide to **Customer** financial reports as may be reasonably necessary for management of transactions. **Provider** shall transmit by ACH transfer payments received via the CitePayUSA ePayment system, and on account of obligations due to the **Customer**, within two (2) business days of the deposit of funds representing payment by the obligee, or in behalf of the obligee, to **Provider's** account, conditioned upon: (1) a valid authorization code having been received from the Card Association; (2) acceptance of the payment has been had in accordance with the Terms and Conditions of the CitePayUSA website; and (3) payment has been received and deposited into the **Provider's** Settlement Bank Account. Availability of ACH transferred funds for

use by the **Customer** is subject to the control of the banking institutions. Payments shall be in the net amount received after deduction of all transaction fees.

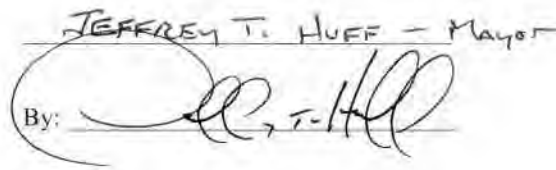
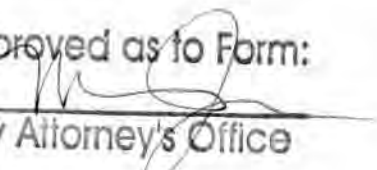
5. **Warranty:** IN NO EVENT SHALL PROVIDER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES OR FOR ANY INTERRUPTION OR LOSS OF USE, DATA, BUSINESS OR PROFITS, WHETHER OR NOT SUCH LOSS OR DAMAGES WERE FORESEEABLE OR OF WHICH PROVIDER WAS ADVISED OF THE POSSIBILITY THEREOF AND REGARDLESS OF WHETHER ANY LIMITED REMEDY HEREIN FAILS OF ITS ESSENTIAL PURPOSE. PROVIDER SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THE INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, PROVIDER DOES NOT GUARANTEE OR WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE.
6. **Acts or Failures to Act:** Neither party shall be responsible for liability incurred as a result of the other party's acts or omissions in connection with this Agreement. Any liability incurred in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act.
7. **Limitation of Liability:** **Provider** will not accept responsibility for errors, acts, failure to act by others, including, but not limited to agents, third party suppliers of software, equipment or services; or banks, communication common carriers, data processors or clearinghouses through which transactions may be passed, originated, and/or authorized. **Provider** will not be responsible for any loss, liability or delay caused by fires, earthquakes, war, civil disturbances, power surges or failures, acts of governments, acts of terrorism, labor disputes, failures in communication networks, legal constraints or other events beyond the control of **Provider**. **Provider** undertakes no duties to **Customer** other than the duties expressly provided for in this Agreement; and, any and all other or additional duties that may be imposed upon **Provider** in law or equity are hereby irrevocably waived and released to the maximum extent permitted by law. In any event **Provider's** cumulative liability to **Customer**, whether arising in contract, tort (including, without limitation, negligence and strict liability) or otherwise, shall not exceed \$10,000.
8. **Severability:** In the event that any provision of this agreement is held by a court of competent jurisdiction to be legally ineffective or unenforceable, the validity of the remaining provisions shall not be affected.
9. **Termination:** This agreement and any supplement shall continue in force for a period of one (1) year from the date of execution, after which it may be terminated as set forth herein. After the expiration of the first year, either party may terminate this agreement upon thirty (30) days prior written notice. **Provider** may immediately terminate this Agreement if **Customer** is in breach of any confidentiality obligations, or in violation of any obligations concerning use or protection of the intellectual property rights of **Provider**. Any portion of this agreement and/or the schedules hereto may be independently terminated in the same manner without prejudice to the remaining portions of this agreement.
10. **Notices:** Any notice required or permitted to be given in this agreement shall be in writing and shall be sent in a manner requiring a signed receipt, or if mailed, by registered or certified mail, return receipt requested. Notice is effective upon receipt. Unless otherwise set forth in writing, **Customer** designates the address set forth in the FullCourt CMS Agreement as the location for delivery of any notifications.
11. **No Waiver:** The failure of either party to exercise any right, or the waiver by either party of any breach, shall not prevent a subsequent exercise of such right nor be deemed a waiver of any subsequent breach of the same or any other term of the agreement.
12. **Force Majeure:** Neither party shall be deemed in default of this agreement to the extent that performance of their obligations or attempts to cure any breach are delayed or prevented by reason of any act of God, fire, natural disaster, accident, shortages of materials or supplies, or any other cause beyond the control of such party. This provision requires that any party claiming relief under this provision give written notice within fifteen (15) days of discovery thereof. In no event shall the time for performance be extended beyond 90 days.
13. **Compliance with Federal, State & Local Law:** The parties shall perform all obligations hereunder in compliance with applicable federal, state and local statutes, laws, regulations and ordinances. This agreement shall be governed by and interpreted, construed, and enforced in accordance with the laws of the State of New Mexico.

CitePayUSA, L.L.C.

By:

  
Ernie L. Segó, Manager

By:

  
JEFFREY T. HUFF - Mayor  
Approved as to Form:  
By:   
City Attorney's Office



## ATTACHMENT A

This Agreement has been reviewed and approved as to form and content by Justice Systems, Inc. Justice Systems, Inc. further consents to access by **Provider** to the FullCourt Case Management System and database maintained by **Customer** for the purposes enumerated by this Agreement.

**Justice Systems, Inc.**

By:   
Ernie L. Sego, President /CEO

## ADDENDUM

**Definitions:** When used in this Agreement the following words or terms, unless otherwise specifically stated, shall have the following meaning:

- a. "ACH" - means the Automated Clearing House Network.
- b. "Authorization" - is the process whereby **Provider** in compliance with the Operating Rules for each Card obtains approval of a Charge from the Card Issuer. An Authorization indicates only the availability of the Cardholder's credit limit at the time the Authorization is requested.
- c. "Business Day" - is Monday through Friday excluding Merchant Bank holidays. Each Business Day ends at the cutoff time specified by the Merchant Bank. Charges submitted for processing on a holiday, weekend, or after the cut-off time are treated as received on the following Business Day.
- d. "Card Association" - refers to any entity formed to administer or promote credit cards or debit cards, including without limitation, MasterCard International, Inc., Visa International, DiscoverCard and Debit Networks.
- e. "Cardholder" - is the person issued a credit card or debit card and a corresponding account by a Card Issuer.
- f. "Card Issuer" - is the institution authorized by a Card Association to issue credit cards and debits cards to Cardholders and that has issued a credit card or debit card presented to **Provider** for a charge or credit voucher.
- g. "Chargeback" - is a return of a charge to **Provider** typically initiated by a Cardholder through a Card Issuer, for transmittal to and payment by Merchant under Operating Rules established by the Card Association.
- h. "credit card" - A plastic card (Visa-branded, MasterCard-branded or DiscoverCard-branded Credit and Business Cards or Debit Cards) bearing an account number assigned to a cardholder with a credit limit that can be used to purchase goods and services and to obtain cash disbursements on credit, for which a cardholder is subsequently billed by an issuer for repayment of the credit extended at once or on an installment basis.
- i. "database" - dependent upon the context of the language in which it is used, "database" will mean the FullCourt database associated with the Customer's court case management system, or the CitePayUSA database owned and maintained by the Provider.
- j. "Debit card" - A plastic card with which an individual court customer may withdraw funds on deposit in the individual court customer's account. A debit card transaction pays the **Customer/Provider** by withdrawing funds already on deposit in the individual court customer's account, as opposed to a credit card transaction in which funds are loaned to the individual court customer by the card issuer.
- k. "Deposit Account" - the **Customer's** business account with a Merchant Bank set up for receipt of payments from the **Provider**.

- l. “DISCOVERCARD<sup>®</sup>” card - A card that bears the DiscoverCard symbol, enabling a DiscoverCard cardholder to obtain goods, services or cash from a DiscoverCard merchant or acquirer.
- m. “individual court customer” – is the litigant, defendant, respondent, party, driver, registrant, or other person or corporation, howsoever denominated in the **Customer’s** FullCourt case management system, or identified as the entity making payment to the **Customer** on account of fines, fees, charges, bonds, restitution, costs or other obligations related to a court case within the FCDB.
- n. “MASTERCARD<sup>®</sup>” card - A card that bears the MasterCard symbol, enabling a MasterCard cardholder to obtain goods, services or cash from a MasterCard merchant or acquirer. MasterCard Incorporated is a membership organization owned by financial institutions that issue its card. MasterCard is also the company's brand of credit cards.
- o. “Merchant Bank” - A financial institution that provides credit card processing accounts for the **Customer** or the **Provider**. Also herein referred to as the “acquiring bank” or “acquirer”, the Merchant Bank receives funds from a cardholder when a credit card transaction is completed, and then deposits the payment amount, less any fees, into the **Customer’s** or **Provider’s** business checking account(s).
- p. “Returned Check” – is an electronic check presented for payment which has been returned (not paid) by the financial institution or payment processor for any reason, including but not limited to, incorrect routing number, incorrect account number, and insufficient funds.
- q. “Settlement Account”– the **Provider’s** business account with the Merchant Bank set up for receipt of payments via credit cards, debit cards and electronic checks.
- r. “VISA<sup>®</sup>” card – A card that bears the VISA symbol, enabling a VISA cardholder to obtain goods, services or cash from a VISA merchant or acquirer. VISA is a brand of credit card and debit card operated by the VISA International Service Association of San Francisco, California, USA, an economic joint venture of financial institutions that issue and market Visa products.

ATTACHMENT B

**AUTHORIZATION AGREEMENT FOR DIRECT DEPOSITS/PAYMENTS  
(ACH CREDITS/DEBITS)**

Court Name: **Castle Pines North Municipal Court** (hereinafter called **Customer**).

**Customer** hereby authorizes **CitePayUSA, L.L.C.** (hereinafter called **Provider**) to initiate credit/debit entries to **Customer's**  Checking Account /  Savings Account (select one) indicated below at the depository financial institution named below hereafter called DEPOSITORY, and to credit/debit the same to such account. **Customer** acknowledges that the origination of ACH transactions to **Customer's** account must comply with the provisions of U.S. law.

Depository Name: \_\_\_\_\_

City: \_\_\_\_\_

State: \_\_\_\_\_

Zip: \_\_\_\_\_

Routing Number: \_\_\_\_\_

Account Number: \_\_\_\_\_

This authorization is to remain in full force and effect until **Provider** has received written notification from **Customer** of its termination in such time and in such manner as to afford **Provider** and DEPOSITORY a reasonable opportunity to act on it.

Name: \_\_\_\_\_  
(Please Print)

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

NOTE: WRITTEN CREDIT/DEBIT AUTHORIZATION MUST PROVIDE THAT THE RECEIVER MAY REVOKE THE AUTHORIZATION ONLY BY NOTIFYING THE ORIGINATOR IN THE MANNER SPECIFIED IN THE AUTHORIZATION.