

AGREEMENT

This Agreement (“Agreement”), is made between the City of New York (“City”), a municipal corporation acting by and through its Department of Information Technology and Telecommunications (“DoITT”), having its principal office at 255 Greenwich Street, 9th Floor, New York, New York 10007, and Mobile Commons, Inc. (“Mobile Commons” or “Contractor”), a Delaware corporation, having its principal office at 55 Washington Street, Suite 453, Brooklyn, NY 11201.

By signing below, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Background.

- a. The parties shall comply with the Additional New York City Terms and Conditions, which is set forth in Appendix A, and hereby made a part of this Agreement.
- b. The parties acknowledge that this Agreement is funded by a Community Development Block Grant from the U.S. Department of Housing and Urban Development (“HUD”). As such, the parties shall comply with the following:
 - i. Appendix B (regarding the Housing and Community Development Act of 1974), which is annexed hereto and hereby made a part of this Agreement;
 - ii. Appendix C (Hurricane Sandy CDBG-DR), which is annexed hereto and hereby made a part of this Agreement; and
 - iii. Appendix D (HUD Federal Labor Standards Provisions form HUD-4010), which is annexed hereto and hereby made a part of this Agreement.
- c. The City issued a request for proposals, annexed hereto as Appendix E and hereby made a part of this Agreement, for a mobile outreach system for the Mayor’s Office of Housing Recovery Operations (“RFP”).
- d. Mobile Commons submitted the winning proposal, which consisted of its Technical Proposal and Price Proposal (collectively, “Mobile Commons Proposal”). The Mobile Commons Proposal is annexed hereto together as Appendix F and hereby made a part of this Agreement).

2. Term. This Agreement shall be in effect for six (6) months beginning on the date of its registration by the Office of the Comptroller of the City of New York (“Term”).

3. Payment. The total payments under this Agreement shall not exceed twenty-four thousand nine hundred ninety-five dollars and zero cents (\$24,995.00).
 - a. Of the total amount, the City shall pay the money for setup and training as a one-time fee of nine hundred ninety-five dollars (\$995.00).
 - b. The City shall pay the remaining amount on the basis of four thousand dollars (\$4,000.00) each month in response to monthly invoices to be submitted by Contractor to the City. This monthly amount includes the combined maximum amount to be paid for items B (Monthly Software License), C (Monthly Messaging Fees) and D (Additional Services) of Mobile Commons' Price Proposal.
4. Scope. For the entire Term, Mobile Commons shall provide the services set forth in Appendices E and F, including all services, features, etc. described as "additional", "possible", etc., at no additional cost to the City. Mobile Commons shall provide the short codes that the City will use (at no additional cost to the City).
5. Liquidated Damages.
 - a. If the City has been unable to correctly receive or deliver messages, access data, and/or access the web interface (all of which as described in Appendices E and F) for a consecutive period of twenty-four (24) hours or more, Mobile Commons shall pay to the City fifty dollars (\$50) for each day (or part of a day) (including Saturdays, Sundays and holidays) beginning immediately after the first twenty-four-hour period. Such sum, in view of the difficulty of accurately ascertaining the loss which the City will suffer by reasons of the inability to access the services described in this Subsection 5(a), is hereby fixed and agreed as the liquidated damages that the City will suffer by reason of such inability to access..
 - b. Subsection 5(a) above shall not apply where such inability was caused solely by an act of a City employee, where such act was in contravention of this Agreement.
 - c. Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the City's right to indemnification, or Mobile Commons' obligation to indemnify the City pursuant to this Agreement, or to any other remedy provided for in this Agreement or by law, nor are they to be considered a penalty.
 - d. The City may deduct and retain out of the monies which may become due hereunder, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the City, Mobile Commons shall pay the difference within thirty (30) calendar days of receipt of notification from the City of the amount owed by Mobile Commons.

6. Force Majeure.

- a. For purposes of this Agreement, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor (“Force Majeure Event”). Such events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.
- b. In the event the Contractor cannot comply with the terms of the Agreement (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Agreement. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Agreement because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Agreement. Such a termination shall be deemed to be without cause.
- c. If the City terminates the Agreement pursuant to this Section, the following provisions apply. The City shall not incur or pay any further obligation pursuant to this Agreement beyond the termination date. The City shall pay for services provided in accordance with this Agreement prior to the termination date. Any obligation necessarily incurred by the Contractor on account of this Agreement prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Agreement. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.

7. Priority. Except as set forth above, in the event of an inconsistency between the terms of any portions of this Agreement, such inconsistency shall be resolved using the following hierarchy:

- a. Appendix D (HUD Federal Labor Standards Provisions form HUD-4010);
- b. Appendix B (regarding the Housing and Community Development Act of 1974);
- c. Appendix C (Hurricane Sandy CDBG-DR), which is annexed hereto and hereby made a part of this Agreement;
- d. Appendix A (Additional New York City Terms and Conditions);
- e. This first part of the Agreement (entitled “AGREEMENT”);
- f. Appendix E (RFP); and
- g. Appendix F (Mobile Commons Proposal).

8. Fee(s) for the Administration of the VENDEX System. Pursuant to Procurement Policy Board Rule 2-08(f)(2), the Contractor will be charged a fee for the administration of the VENDEX system, including the vendor name check process, if a vendor name check review is required to be conducted by the City’s Department of Investigation. The Contractor shall also be required to pay the applicable required fees for any of its subcontractors for which vendor name check reviews are required. The fee(s) will be deducted from payments made

to the Contractor under this Agreement. For contracts with an estimated value of less than or equal to \$1,000,000, the fee will be \$175. For contracts with an estimated value of greater than \$1,000,000, the fee will be \$350.

9. Notices. All notices and correspondence to the parties must be delivered by hand or sent by registered or certified mail or by Federal Express, Express Mail or other reliable overnight mail service that provides a receipt to the sender. Receipt of a notice by the party to whom the notice is transmitted will be considered to have occurred upon receipt if hand-delivered; five (5) business days from the date of mailing if mailed; or the next business day after transmittal overnight by Federal Express, UPS, U.S.P.S. Express Mail or other reliable overnight delivery service that provides a receipt to the sender. All notices and correspondences shall be delivered to the respective addresses below, or to any other address as a party may notify the other party in writing from time to time:

If to the City of New York:

Rita Chang
Assistant Director, Contracts and Special Projects
NYC Mayor's Office of Housing Recovery Operations
250 Broadway, 24th Floor
New York, NY 10007

with a copy to:

David Berman
Intellectual Property and Contracts Counsel
NYC Department of Information Technology and Telecommunications
255 Greenwich Street, 9th Floor
New York, NY 10007

If to Mobile Commons, Inc.:

Michael Sabat
BP, Business Development
Mobile Commons, Inc.
55 Washington Street, Suite 453
Brooklyn, NY 11201

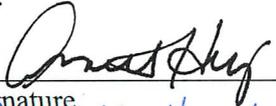
IN WITNESS WHEREOF, the City and Mobile Commons, Inc. have executed this Agreement in duplicate (each of which shall constitute an original) by their respective authorized representatives.

THE CITY OF NEW YORK

MOBILE COMMONS, INC.

By:

By:



Signature
Annette Heintz

Printed Name
Dep Commissioner

Title
3/10/14

Date



Signature
William Fink

Printed Name
VP - Finance

Title
3/5/14

Date

[ACKNOWLEDGMENTS TO FOLLOW ON NEXT PAGE]

ACKNOWLEDGMENTS

STATE OF NEW YORK)

CC

COUNTY OF NEW YORK)

On the _____ day of _____, in the year 2014, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

STATE OF NEW YORK)

CC

COUNTY OF KINGS)

On the 05 day of March, in the year 2014, before me, the undersigned, personally appeared William Fahrback, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her capacity, and that by his/her signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

[APPENDIX A TO FOLLOW ON NEXT PAGE]

