

The City of Forest Park

Request for Proposals

Short-Term Rental Compliance Services Department of Planning Building, and Zoning

Pre- Proposal Conference: Tuesday, February 21, 2023 at 11:00 a.m. (local time)
City of Forest Park City Hall
745 Forest Parkway, Forest Park, GA 30297

Proposal Statement Deadline: Tuesday, March 28, 2023 at 2:00 p.m.

ADDENDUM #2 Issued March 17, 2023

*Acknowledgment of receipt of this addendum **MUST BE SIGNED AND INCLUDED IN YOUR RESPONSE TO THE RFP.***

REVISION(S):

1. Note a revision was made to Part VI: Form of Service Agreement, Page 57, Article 5.0: Term and Termination, Section 5.2: Termination of Convenience and 5.4: Termination for Breach included in Addendum No. 1 to remove the trial period; however, was not omitted in Section 5.4. The service agreement included with Addendum No. 1 contains errors and should not be referenced. **Please disregard the trial period and the service agreement entirely included in Addendum No. 1. Please see the amended Service Agreement attached to this addendum.**

SIGNATURE

TITLE

COMPANY NAME

DATE

Short Term Rental Compliance Services Agreement

THIS SERVICES AGREEMENT (the "Agreement") is entered into as of _____ (the "Effective Date"), between _____ ("Contractor") and City of Forest Park (the "Customer"). This Agreement sets forth the terms and conditions under which Contractor agrees to provide certain compliance services with respect to the Customer's Short-Term rental ordinance (the "Services") as further described in the attached Exhibit A.

Contract Name:	Contract No. 02092023
Contractor	City of Forest Park
Name:	Using Agency:
Address:	Address: 745 Forest Parkway Forest Park, GA 30297
Phone:	Phone: 404-366-4720
Fax:	Fax:
Authorized Representative:	Authorized Representative:

1.0 Services.

- 1.1 Subscriptions. [CONTRACTOR TO INSERT LICENSING LANGUAGE FOR ANY PROPRIETARY SOFTWARE UTILIZED IN CONNECTION WITH THE SERVICES.]
- 1.2 Provision of Services. Contractor agrees to provide those services set forth on Exhibit A. Customer and Customer's end-users ("End Users") may access and use the Services and any other Services that may be ordered by the Customer from time to time in accordance with the terms of this Agreement.
- 1.3 Facilities and Data Processing. Contractor will use, at a minimum, industry standard technical and organizational security measures to store data provided by Customer, or obtained by Customer through the use of the Services ("Customer Data"). These measures are designed to protect the integrity of Customer Data and guard against unauthorized or unlawful access.
- 1.4 Modifications to the Services. Contractor may update the Services from time to time. If Contractor updates the Services in a manner that materially improves functionality, Contractor will inform the Customer.
- 1.5 All capitalized terms used in this Agreement shall have the meanings ascribed to them in the Contract Documents attached hereto. The Contract Documents include the following:
 - a. This Agreement
 - b. RFP NO. 02092023 and Contractor's entire submission in response

To the extent any of the provisions of this Agreement conflict with Contractor's entire submission in response to the RFP, the terms of this Agreement shall govern.

2.0 Customer Obligations.

- 2.1 Customer Administration of the Services. Contractor' responsibilities do not extend to internal management or administration of the Services. Customer is responsible for: (i) maintaining the confidentiality of passwords and accounts; (ii) managing access to Administrator accounts; and (iii) ensuring that Administrators' use of the Services complies with this Agreement.
- 2.2 Compliance. Customer is responsible for use of the Services and will comply with laws and regulations applicable to customer's use of the Services, if any.
- 2.3 Unauthorized Use & Access. Customer will prevent unauthorized use of the Services and terminate any unauthorized use of or access to the Services. Customer will promptly notify Contractor of any unauthorized use of or access to the Services.
- 2.4 Restricted Uses. Customer will not and will ensure that its End Users do not: (i) sell, resell, or lease the Services; or (ii) reverse engineer or attempt to reverse engineer the Services, nor assist anyone else to do so.
- 2.5 Third Party Requests.
 - 2.5.1 "Third Party Request" means a request from a third party for records relating to Customer's or an End User's use of the Services including information regarding an End User. Third Party Requests may include valid search warrants, court orders, or subpoenas, or any other request for which there is written consent from End Users permitting a disclosure.
 - 2.5.2 Customer is responsible for responding to Third Party Requests via its own access to information policies. Customer will seek to obtain information required to respond to Third Party Requests and will contact Contractor only if it cannot obtain such information despite diligent efforts.
 - 2.5.3 If Contractor receives a Third Party Request, Contractor will make reasonable efforts, to the extent allowed by law and by the terms of the Third Party Request, to: (A) promptly notify Customer of Contractor's receipt of a Third Party Request; (B) comply with Customer's reasonable requests regarding efforts to oppose a Third Party Request; and (C) provide Customer with information or tools required for Customer to respond to the Third Party Request (if Customer is otherwise unable to obtain the information). If Customer fails to promptly respond to any Third-Party Request, then Contractor may, but will not be obligated to do so.

- 2.5.4 If Customer receives a Third Party Request for access to the Services, or descriptions, drawings, images or videos of the Services' user interface, Customer will make reasonable efforts, to the extent allowed by law and by the terms of the Third Party Request, to: (A) promptly notify Contractor of Customer's receipt of such Third Party Request; (B) comply with Contractor's reasonable requests regarding efforts to oppose a Third Party Request; and (C) provide Contractor with information required for Contractor to respond to the Third Party Request. If Contractor fails to promptly respond to any Third-Party Request, then Customer may, but will not be obligated to do so.

3.0 Intellectual Property Rights; Confidentiality

- 3.1 Reservation of Rights. Except as expressly set forth herein, this Agreement does not grant (i) Contractor any intellectual Property Rights in the Customer Data or (ii) Customer any Intellectual Property Rights in the Services, any other products or offerings of Contractor, Contractor trademarks and brand features, or any improvements, modifications, or derivative works of any of the foregoing. "Intellectual Property Rights" means current and future worldwide rights under patents, copyright, trade secret, trademark, moral rights and other similar rights.
- 3.2 Suggestions. Contractor may, at its discretion and for any purpose, use, modify, and incorporate into its products and services, and license and sub-license, any feedback, comments, or suggestions Customer or End Users send Contractor or post in Contractor's online forums without any obligation to Customer.
- 3.3 Confidential Information. Customer understands and agrees that it will not reveal, publish or otherwise disclose to any person, firm or corporation, without written authorization of Contractor, or except as required by law, any Confidential Information of Contractor, including without limitation any trade secrets, confidential knowledge, data or other proprietary information relating to the Services. "Confidential Information" means all information, written or oral, relating to the business, operations, services, facilities, processes, methodology, technologies, intellectual property, research and development, customers, strategy or other confidential or proprietary materials of Contractor. The Parties otherwise understand that the City as a municipality of the State of Georgia must comply with Georgia Open Records Act ("GORA"), and, unless exempted, the City is obligated to provide duly kept public records upon request.

4.0 Fees & Payment.

- 4.1 Fees. Customer will pay Contractor for all applicable fees upfront annually in accordance with the fee schedule set forth on Exhibit C.
- 4.2 Customer will pay any amounts related to the Services as per payment terms detailed on the applicable invoice. Unless otherwise indicated, all dollar amounts referred to in the Agreement are in U.S. funds.

5.0 Term & Termination.

- 5.1 Term. The initial term of this Agreement shall be 3 -year(s) commencing on the Effective Date, which may be renewed at the option of the City a further period of 2 - year(s) upon each expiry of the then current term, upon the City providing written notice of its intention to renew at least 45 days prior to the end of the then current term.
- 5.2 Termination for Convenience. Termination for Convenience. At any time during the Term of this Agreement, City may terminate this Agreement for convenience upon thirty (30) days' written notice of such termination. Upon a termination for convenience, Contractor waives any claims for damages, including loss of anticipated profits. As Contractor's sole remedy and City's sole liability, City will pay charges for the services properly performed prior to the notice of termination.
- 5.3 Effects of Termination for Convenience. If this Agreement is terminated by Customer in accordance with Section 5.2 (Termination for Convenience): (i) the rights granted by Contractor to Customer will cease as of the effective date of termination and Customer will no longer have the right to utilize the data obtained through the use of the Services for systematic or mass outreach activities (including traditional mail, electronic mail, and/or telephone campaigns); and (ii) after a reasonable period of time, Contractor may delete any Customer Data relating to Customer's account. The following sections will survive expiration or termination of this Agreement: 2.5 (Third Party Requests), 3.0 (Intellectual Property Rights; Confidentiality), 4.0 (Fees & Payments), 5.2 (Termination for Convenience), 5.3 (Effects of Termination for Convenience), 6.0 (Indemnification), 7.0 (Exclusion of Warranties; Limitation of Liability), and 8.0 (Miscellaneous).
- 5.4 Termination for Breach: A party may terminate this Agreement for cause upon 45 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period.
- 5.5 Refund or Payment upon Termination for Breach. If this Agreement is terminated by Customer in accordance with Section 5.4 (Termination for Breach), Contractor will refund Customer any prepaid fees covering the remainder of the term of all Subscriptions after the effective date of termination. If this Agreement is terminated by Contractor in accordance with Section 5.4 (Termination for Breach), Customer will pay any unpaid fees covering the remainder of the term of the Agreement. In no event will Customer's termination after the first 6 months relieve Customer of its obligation to pay any fees payable to Contractor for the period prior to the effective date of termination.
- 5.6 Effects of Termination for Breach. If this Agreement is terminated in accordance with Section 5.4 (Termination for Breach): (i) the rights granted by Contractor to Customer will cease immediately (except as set forth in this section); (ii) Contractor may provide Customer access to its account at then-current fees so the Customer may export its Customer Data; and (iii) after a reasonable period of time, Contractor may delete any Customer Data relating to Customer's account. The following sections will survive expiration or termination of this Agreement: 2.5 (Third Party Requests), 3.0 (Intellectual

Property Rights; Confidentiality), 4.0 (Fees & Payments), 5.5 (Refund or Payment upon Termination for Breach), 5.6 (Effects of Termination for Breach), 6.0 (Indemnification), 7.0 (Exclusion of Warranties; Limitation of Liability), and 8.0 (Miscellaneous).

6.0 Indemnification.

Contractor will indemnify, defend and hold harmless Customer from and against all liabilities, damages, and costs (including settlement costs and reasonable attorney's fees) arising out of any claim by a third party against Customer to the extent based on an allegation that Contractor's technology used to provide the Services to the Customer infringes or misappropriates any copyright, trade secret, patent or trademark right of the third party. In no event will Contractor have any obligations or liability under this section arising from: (i) use of any Services in a modified form or in combination with materials not furnished by Contractor and (ii) any content, information, or data provided by Customers, End Users, or other third parties.

7.0 Exclusion of Warranties; Limitation of Liability.

7.1 Exclusion of Warranties. Except as explicitly set forth in this Agreement, Contractor makes no other representation, warranty or condition, express or implied, and expressly excludes all implied or statutory warranties or conditions of merchantability, merchantable quality, durability or fitness for a particular purpose, and those arising by statute or otherwise in law or from a course of dealing or usage of trade with respect to the Services. Contractor does not make any representations or warranties of any kind to client with respect to any third-party software forming part of the Services.

7.2 Limitation on Indirect Liability. To the fullest extent permitted by law, except for Contractor's indemnification obligations hereunder, neither Customer nor Contractor and its affiliates, suppliers, and distributors will be liable under this Agreement for (i) indirect, special, incidental, consequential, exemplary, or punitive damages, or (ii) loss of use, data, business, revenue, or profits (in each case whether direct or indirect), even if the party knew or should have known that such damages were possible and even if a remedy fails of its essential purpose.

8.0 Miscellaneous.

8.1 Terms Modification. Contractor may wish to revise this Agreement from time to time. If a revision, in Contractor's sole discretion, is material, Contractor will notify Customer and possibly request that an Amendment to this Agreement be agreed upon and signed. If Customer does not agree to the revised Agreement terms, Customer may terminate the Services within 30 days of receiving notice of the change.

8.2 Entire Agreement. The Agreement including the invoice and order form provided by Contractor, constitutes the entire agreement between Customer and Contractor with respect to the subject matter of this Agreement and supersedes and replaces any prior or contemporaneous understandings and agreements, whether written or oral, with respect to the subject matter of this Agreement. If there is a conflict between the documents that make

up this Agreement, the documents will control in the following order: this Agreement, then the invoice, then the order form.

- 8.3 Governing Law. This Agreement will in all respects be governed exclusively by and construed in accordance with the laws of the State of Georgia.
- 8.4 Severability. Unenforceable provisions will be modified to reflect the parties' intention and only to the extent necessary to make them enforceable, and the remaining provisions of the Agreement will remain in full effect.
- 8.5 Waiver or Delay. Any express waiver or failure to exercise promptly any right under the Agreement will not create a continuing waiver or any expectation of non-enforcement.
- 8.6 Assignment. Customer may not assign or transfer this Agreement or any rights or obligations under this Agreement without the written consent of Contractor. Contractor may not assign this Agreement without providing notice to Customer, except Contractor may assign this Agreement or any rights or obligations under this Agreement to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without providing notice. Any other attempt to transfer or assign is void.
- 8.7 Force Majeure. Except for payment obligations, neither Contractor nor Customer will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action and Internet disturbance).

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF Contractor and the Customer have executed this Agreement as of the Effective Date. This Contract is executed under seal.

CITY OF FOREST PARK, GEORGIA

[CONTRACTOR]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Finance Director

Corporate Secretary/Assistant
Secretary

Public Works Director

ATTEST:

[Corporate Seal]

City Clerk

APPROVED AS TO FORM:

City Attorney

[City Seal]