

**TCM Contract # 2021-181****PARTICIPATING ADDENDUM TO  
SOURCEWELL CONTRACT #020421-GGI  
BETWEEN****GORDIAN AND THE UNIVERSITY OF NORTH TEXAS SYSTEM**

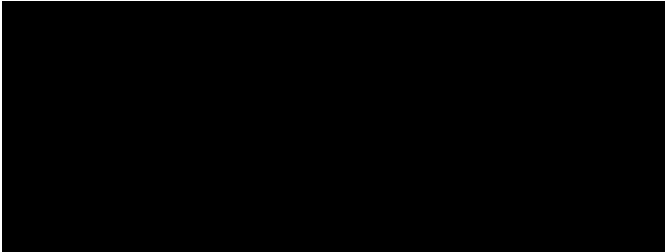
THIS PARTICIPATING ADDENDUM ("Addendum") made on or about June 8, 2021, by and between the **University of North Texas System ("Member")**, located in Corpus Christi, TX and **The Gordian Group, Inc. ("Gordian")** located in Greenville, South Carolina, supplements the terms and conditions of Contract #020421-GGI ("Master Agreement") executed and administered by Sourcewell for facilities planning services to be provided by Gordian for the benefit of and use by Member. This Addendum is entered into in accordance with Section 6B of the Master Agreement and shall, together with the Master Agreement, govern Member's purchase of products and services from Gordian under the Master Agreement.

NOW THEREFORE, Member and Gordian hereby agree that the following terms and conditions supplement the terms of the Master Agreement:

1. **LIMITATION ON SCOPE OF GORDIAN'S ENGAGEMENT.** Member acknowledges and agrees that Gordian's engagement hereunder is limited to the assembly, analysis and comparison of data and information supplied by Member, and Gordian is being engaged to assist Member's development of a strategic direction statement rather than providing definitive recommendations or implementation actions. Therefore, Gordian shall have no liability or obligation to Member or any third party based upon any reliance upon, application or use of any information or data or any reports furnished to Member by Gordian. Member shall be solely responsible for the accuracy and completeness of data furnished by it to Gordian, and Gordian shall have no liability for information based upon inaccurate or incomplete information or data provided by Member.
2. **USE OF THE NAME OF MEMBER.** MEMBER ACKNOWLEDGES THAT, IN ORDER FOR GORDIAN TO PROVIDE SERVICES TO MEMBER, AND PROVIDE SIMILAR SERVICES TO OTHER MEMBERS, IT IS NECESSARY TO IDENTIFY MEMBER AND OTHER MEMBERS. Gordian agrees not to use the name of Member, or the name of any member of Member's staff, in sales promotion work or advertising, or in any form of publicity, without the written permission of Member except that (a) Gordian shall have the right at all times, to use Member's name in connection with any published lists of other institutions furnishing data for comparison purposes, provided that the specific data applicable to Member shall not be identified or identifiable, (b) Gordian may identify Member to other educational institutions as a Member of Gordian for marketing purposes, and (c) Gordian may use Member's name in accordance with the Terms of Use of Gordian's Member Portal (2020 - Sightlines Member Portal EULA), the terms and conditions of which are hereby incorporated herein by reference thereto.
3. **CONFIDENTIALITY.** Gordian recognizes the need of each of Gordian's participating institutions to keep information provided to Gordian confidential. In the performance of Gordian services, (i) confidential or proprietary information that Member provides to Gordian shall remain the exclusive property of Member and (ii) Gordian shall not, without Member's express written consent, disclose, copy or make any use of Member's confidential information except as required in the performance of Gordian services in the operation and maintenance of the Member Portal. Notwithstanding the foregoing, confidential information shall not include information that is generally known to the public (provided that such general knowledge was not obtained by Gordian's or any third party's improper act or omission). Member understands and agrees that, in order for Gordian to obtain comparable information from other institutions, information from Gordian's users shall be aggregated and compared. Although each Member authorizes Gordian to provide comparative reports, inclusive of Member's confidential information, Member understands that such comparative reports will identify participating institutions, without linking such institutions to the confidential information contained in such reports, in order to maintain the confidentiality of Member's (and each other participating institution's) proprietary information. Member shall be notified of any changes to Gordian Privacy Statement.
4. All other provisions and conditions of the Master Agreement shall remain unchanged.

IN WITNESS WHEREOF, the parties have excuted the Addendum as the date of execution by both parties below.

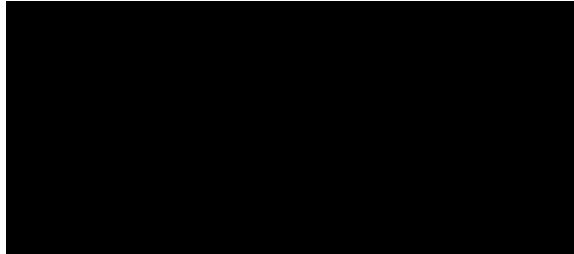
Member



6/18/2021

\_\_\_\_\_  
Date

The Gordian Group, Inc.



6/18/2021

\_\_\_\_\_  
Date



# University of North Texas System

Sightlines Strategic Capital Planning

June 3, 2021

## Service Overview

Gordian has developed a series of tools that will assist your campuses in defining a multi-year investment plan instead of simply picking projects. The **Sightlines Strategic Capital Planning** solution brings the concepts of financial investment and portfolio-based wealth management to the facilities world, treating each building and grounds feature as an investment-worthy asset rather than a financial liability. This strategic focus allows campus decision-makers to target investments that reflect the institution's mission and ensure each dollar is allocated to the highest priority.

Unlike traditional facilities assessments that lead to disjointed project selection, our process builds transparency and constituency on campus by engaging all levels of the organization from the boiler room to the board room. A focus on defined outcomes and total campus engagement builds confidence in the process and the anticipated results.

Gordian's **Sightlines Strategic Capital Planning** solution optimizes your resources by integrating the facilities organization, institutional mission and the finance office. To this end, there is a focus on flexibility in both the process and the tools to ensure the development of an actionable plan:

- **Step 1 — Data Migration and Historic Project Analysis.** The first priority will be to migrate the existing assessment data onto the Gordian Cloud system. This will be followed-up with an analysis of project work completed between the assessment completion and today to create alignment between investments made and needs remaining.
- **Step 2 — Integrate Operational Perspectives.** We harness the latent knowledge that exists on campus, by conducting interviews with facilities managers, institutional leaders and other key stakeholders to validate that cost and life cycle estimations are consistent with operational insight. This step helps us refine data surrounding necessary repairs, priority and timeframe, resulting in a more accurate list of facilities' needs. Additionally, this step creates a sense of ownership with those ultimately responsible for the work and leads to an outcome with buy-in at every level of the institution.
- **Step 3 — Update Strategic Toolkit.** We will use your institution's goals and objectives to strategically segment your buildings into a portfolio of assets with similar functions or priorities. Not all buildings are created equal, and our Building Portfolios process allows us to define areas of emphasis and provides a rationale for facilities funding distribution. This segmentation, combined with updates to additional strategic tools like Project Categories, Investment Criteria, and Project Scoring will result in a fully-prioritized list of facilities needs
- **Step 4 — Develop Multi-year Capital Planning Scenarios.** With portfolios in place, Gordian supports resource allocation discussions and the creation of a capital investment plan. By adding an understanding of historical spending profiles, we can create outcome-based strategies that balance asset preservation with program adaptation in various funding environments.



- **Step 5 — Gordian Cloud Access and Support.** After the assessment data has been migrated, users will be given access to an ever-improving ecosystem where they will have the immediate ability to access key details on projects, run reports and access charts and graphs. Gordian will provide support and training as users become comfortable with the online system.

Capital planning should not be a one-time exercise. Our solution is designed to integrate with your current planning systems: first by maintaining a live database so you can engage senior leadership as campus activity demands, and then by tracking performance to targets, which builds credibility for future appropriations.

## Process

### Step 1: Data Migration and Historic Project Analysis

#### Migration of Legacy Project List

Initially, the migration of the existing dataset will take it from third party codifications into industry-standard Unifomat II codifications. This process will connect the existing data, both lifecycles and costs, to RSMeans data from Gordian, the industry leading construction cost data while maintaining continuity in the pricing and timeframes identified in the analysis. Highly valuable strategy tools such as building portfolios, project scoring and investment criteria will also be migrated online and will be updated in Step 3 outlined below. Lastly, any existing notes and unique modifications will also be migrated to ensure no loss of information.

### Step 2: Integrate Operational Perspectives

To harness the vast amount of latent knowledge held by your supervision and trades staff, Gordian will conduct interviews with facilities managers and other knowledgeable individuals. We find these interviews invaluable to:

- Confirm and adjust assumptions made in the project list
- Confirm building and system alignment with operational objectives and direction.
- Validate life cycle and pricing estimates.
- Build operator confidence in the process, project recommendations and overall findings.

Supervisor interviews are an iterative process requiring equal involvement of the institution and Gordian staff. The time commitment required of institutional staff can vary, ranging from a few hours to a couple days. Because this stage runs through Gordian Cloud, these interviews can happen on-campus or remotely through a web-meeting.

### Step 3: Update Strategic Toolkit

Successful long-term planning requires more than a technical baseline. Gordian uses an array of strategic concepts as tools to tie facilities projects to the mission of the institution and to define a framework for reinvestment funding. The primary strategic and functional prioritization tools are outlined below and will be updated based on the baseline set in the existing project list. Others may be added as necessary to ensure the plan's relevance to the institutional mission and vision.

## Building Portfolios

Organizing buildings into a portfolio of assets provides the means to reflect institutional priorities and aspirations. The Building Portfolio structures are often strategic, functional, programmatic, geographic or a locally appropriate combination of these attributes which best highlight areas of emphasis or funding distribution at the Institution. This structure accelerates focus onto sequencing of future investments. Leadership can then target investments toward one portfolio over another or across portfolios as appropriate to best reflect institutional goals and objectives. Projects can now happen in a transparently predictable fashion.

## Project Category

The classification of a project helps to differentiate between a “want” versus a “need.” Gordian uses “Repair & Maintenance” where replacement is done in-kind and at end of life; an example would be replacing a roof when it begins to leak. “Modernization” is used to describe an improvement or an addition; common examples of modernization work would be the addition of an elevator in a building or the upgrade from a two-pipe heating system to a four-pipe heating and cooling system. “New Construction” needs are also clarified using Project Category to indicate that they too serve a different purpose than Repair & Maintenance or Modernization because they lead to additional square footage on campus.

## Project Package

After codifying each project to a building or architectural system, Gordian assigns each project to a broader project package. Planning at a higher level, project integration (e.g. window replacements and brick pointing together) creates efficiencies among previously isolated projects. Typical packages are Building Envelope, Building System, Infrastructure, Space Renewal and Safety/Code.

## Timeframe

Our experiences have taught us that the sequencing of work is essential to aligning financing to successful project execution. Multi-year investment time frames (immediate investment needs, within three years, 4-7 years, 8-10 years, etc.) establish useful investment horizons based on age, condition and can be clearly communicated to leadership and decision makers without locking-in to individual project years.

## Investment Criteria

Additionally, Gordian uses Investment Criteria to help decision-makers understand the importance or impact of a project. Each project is assigned to one of five Investment Criteria:

- **Reliability:** Issues of imminent failure or compromise to the system that may result in interruption to program or use of space.
- **Asset Preservation:** Projects that preserve or enhance the integrity of building systems, building structure or campus infrastructure.
- **Safety/Code:** Code compliance issues and institutional safety priorities or items that are not in conformance with current codes, even though the system is “grandfathered in” and exempt from current code.
- **Program Improvement:** Projects that improve the functionality of space, primarily driven by academic, student life and athletic programs or departments. These projects also address campus impact and image needs.
- **Economic Opportunity:** Projects that result in a reduction of annual operating costs or capital savings.

## Project Scoring

Gordian will work with the institution to assign a custom scoring methodology to rank projects. Creating an effective array of project scoring factors will increase both the transparency and effectiveness in the project selection process.

Each project receives a score based on the overall need of the building, the importance of investment criteria and timeframe. Scores are customized to fit the specific needs of the institution. For example, at an institution that wishes to stress fire protection and ADA compliance, Safety/Code projects can be given a higher score relative to others. A sample scoring scheme is shown below.

Timeframe  
Score

X

Investment  
Criteria Score

X

Net Asset Value  
Score

Timeframe	Score
Backlog	5
Timeframe A	4
Timeframe B	3
Timeframe C	1
Timeframe X	0

Investment Criteria	Score
Reliability	5
Asset Preservation	3
Program Improvement	2
Safety/Code	4
Economic Opportunity	1

NAV Start	NAV End	Score
<10%	<10%	5
10%	<20%	5
20%	<30%	4
30%	<40%	4
40%	<50%	3
50%	<60%	3
60%	<70%	2
70%	<80%	2
80%	<90%	1
90%	100%	1

**Total Project Score:**  
 Maximum Score = 125 High Urgency  
 Minimum Score = 0 Low Urgency

In this example, projects will be considered more urgent if they address imminent issues within critical systems in high-need buildings. Gordian will work with leadership to help guide toward the most effective and impactful set of project scoring factors. Our process includes tools that breaks ties for mid-range priorities.

## Step 4: Develop a Multi-Year Capital Plan

The goal of the facility planning process is defining a plan that is credible, affordable, and actionable. To accomplish this, Gordian engages campus leadership in an exercise that explores how the backlog came to exist, ties needs to mission and investment drivers, and develops multi-year funding plans based on mission-driven outcomes for specific groups of buildings. Successful facilities plans deliver a capital program that will manage the rate of backlog accumulation, guide future investment decisions and ensure the effective use of gains made by capital infusions.

### Background

As institutional budgets continue to be strained, leaders are faced with difficult decisions. It's not reasonable, or even fiscally responsible, to reduce the institutional backlog to zero, so the key is to define the backlog threshold that effectively manages facility risk. Gordian is not only able to communicate the size of the need, but we will explain how this need came to exist. An analysis of historical annual stewardship, capital investment and maintenance deferral will help outline where the institution has been to assure forward strategy will not repeat previous actions.

### Frame the Outcome

Gordian uses Net Asset Value (NAV) as one important tool to help define outcomes by portfolio. Calculated as the replacement value less the total needs for the building divided by the replacement value, it represents the “percent good” remaining in the building. Equipped with NAV data by portfolio (and by building), Gordian will work with the institution’s senior leadership to establish acceptable condition levels by portfolio.

A variety of methods are utilized to organize decisions made with the tools. One example below brings the Building Portfolio, Timeframe, and Investment Criteria together in a decision-making form to aid in setting investment priorities so leaders can confidently move to project selection.

Portfolio / Investment Criteria	Barclay	U.S. Gov	Mid-Cap	Global	Grand Total	% Invest	Investment \$
<b>Asset/Asset Portfolio</b>	\$ 912,087	\$ 9,617,046	\$ 1,727,000	\$ 9,188,000	\$ 18,955,133		\$ 1,989,813
Reliability	\$ 299,825	\$ 396,483	\$ 73,800	\$ -	\$ 690,108	57%	\$ 605,397
Safety/Care	\$ 90,460	\$ 1,814,600	\$ 536,400	\$ 1,964,200	\$ 2,845,260	23%	\$ 442,405
Asset Preservation	\$ 53,722	\$ 70,000	\$ 30,000	\$ -	\$ 1,476,013	7%	\$ -
Space Improvement	\$ 466,870	\$ 2,138,010	\$ 1,078,800	\$ 1,000,000	\$ 3,395,500	26%	\$ 2,739,680
Economic Opportunities	-	-	-	\$ 21,200	\$ 18,220	0%	\$ -
<b>Fixed Inc. Portfolio</b>	\$ 1,516,470	\$ 6,121,730	\$ 4,961,300	\$ -	\$ 18,600,500		\$ 1,522,721
Reliability	\$ 1,148,740	\$ 1,428,480	\$ 879,000	\$ -	\$ 3,456,200	79%	\$ 2,582,150
Asset Preservation	\$ 179,300	\$ 2,688,600	\$ 2,488,300	\$ 1,673,700	\$ 4,866,600	26%	\$ 80,720
Space Improvement	\$ 79,430	\$ 70,000	\$ 4,660,200	\$ 142,800	\$ 6,691,500	34%	\$ 2,241,000
Safety/Care	\$ 79,380	\$ 714,420	\$ 1,007,700	\$ 3,333,800	\$ 5,137,800	13%	\$ 808,585
Economic Opportunities	-	-	\$ 157,700	\$ 857,000	\$ 1,014,700	5%	\$ -
<b>Equity Portfolio</b>	\$ 3,020,527	\$ 8,966,500	\$ 5,866,200	\$ 15,565,500	\$ 23,418,727		\$ 6,605,788
Reliability	\$ 2,817,520	\$ 3,688,080	\$ 5,806,200	\$ 12,111,800	\$ 24,423,600	52%	\$ 6,296,134
Safety/Care	-	-	-	\$ -	\$ -	0%	\$ -
Asset Preservation	\$ 172,767	\$ 3,281,420	\$ -	\$ 3,454,336	\$ 7,868,523	33%	\$ 1,761,609
Space Improvement	-	-	-	-	\$ -	0%	\$ -
Economic Opportunities	-	-	-	-	\$ -	0%	\$ -
<b>Innovation Portfolio</b>	\$ 4,006,266	\$ 64,048,811	\$ 6,009,630	\$ 8,813,013	\$ 78,877,681		\$ -
Reliability	\$ 3,509,580	\$ 4,059,496	\$ 2,095,815	\$ -	\$ 15,580,799	6%	\$ -
Safety/Care	\$ 385,111	\$ 3,465,124	\$ 384,700	\$ 5,308,311	\$ 7,466,246	9%	\$ -
Asset Preservation	\$ 115,867	\$ 5,906,011	\$ 966,500	\$ 3,154,000	\$ 10,426,378	13%	\$ -
Space Improvement	\$ 295,200	\$ 2,037,340	\$ 396,700	\$ 11,300	\$ 3,830,800	6%	\$ -
Economic Opportunities	-	-	-	\$ 179,100	\$ 299,100	0%	\$ -
<b>Infrastructure Portfolio</b>	\$ 269,120	\$ 1,917,300	\$ 2,051,000	\$ 46,300	\$ 4,283,720		\$ 1,362,613
Reliability	\$ 146,520	\$ -	\$ -	\$ 126,800	\$ 273,320	100%	\$ 325,000
Safety/Care	\$ 36,200	\$ 231,800	\$ 87,800	\$ 13,000	\$ 381,000	34%	\$ 296,800
Asset Preservation	\$ 35,000	\$ 1,043,000	\$ 8,500	\$ -	\$ 1,189,500	17%	\$ 1,105,600
Space Improvement	\$ 1,870	\$ 66,500	\$ 2,066,000	\$ -	\$ 2,146,700	1%	\$ 21,147
Economic Opportunities	-	-	-	-	\$ -	0%	\$ -
<b>International Portfolio</b>	\$ 18,128	\$ 18,830	\$ 1,888,000	\$ 1,066,000	\$ 3,151,058		\$ 666,025
Reliability	-	-	-	-	\$ -	0%	\$ -
Safety/Care	-	-	-	-	\$ -	0%	\$ -
Asset Preservation	\$ 18,130	\$ 251,310	\$ 1,310,000	\$ 1,300,000	\$ 2,871,514	91%	\$ 268,416
Space Improvement	\$ 4,798	\$ 42,822	\$ -	\$ 47,580	\$ 95,200	300%	\$ 87,588
Economic Opportunities	-	-	-	-	\$ -	0%	\$ -
<b>Total</b>	\$ 10,216,809	\$ 81,411,337	\$ 81,028,175	\$ 18,644,331	\$ 83,999,646		\$ 20,220,886
<b>Funding Goal</b>					\$ 25,000,000		\$ 25,000,000
<b>Funding Gap</b>					\$ 2,000,000	20%	\$ 2,000,000

## Step 5: Gordian Cloud Access and Support

After historical data has been migrated and updated, user will be given access to an ever-improving ecosystem where they will have the immediate ability to access key details on projects, run reports, and view live dashboards. New features will periodically become available; users will be given immediate access to use these features as they become available and will receive instruction on how they can use them.

Gordian will provide support and customization during the setup process to ensure each user has easy access to the information that is most valuable to them and is equipped with the knowledge to utilize it. To ensure the value of the service as a communication tool is not lost, Gordian will provide an executive-level deliverable and presentation to provide third-party support and insight into the information.

The Sightlines Strategic Capital Planning service on Gordian Cloud gives UCF the tools to control their own data and strategic toolkit to maximize the impact of the service. Gordian professionals will assist in guiding the on-campus team as they work to turn their data into action.

## Project Deliverables

Gordian deliverables are designed to effectively communicate findings to build broad support in the campus community and integrate with existing campus management systems. The results of the study are segmented between communication and physical deliverables.

### **Communication: Gordian will conduct three (3) on-site or remote presentations for the Sightlines Strategic Capital Planning process:**

- The first presentation will serve to review the updated data and prioritization tools to ensure their accuracy
- The second presentation will serve review planning and funding scenarios.
- The third presentation will be a review of the completed strategic capital plan and can be given to senior institutional leadership (e.g. CFO, President, Cabinet, Board of Trustees) or the appropriate audience at your institution. This presentation will:
  - *Provide context of historical funding levels and detail how the backlog came to exist.*
  - *Give a summary level overview of facilities needs highlighting key strategic issues.*
  - *Summarize Gordian's recommendation for a facilities reinvestment plan that ties to mission and available funding.*

### **Virtual Deliverables:**

- Ongoing web-based access to inventory of projects/assets and all associated information: timeframe, cost, Unifomat code, investment criteria, etc.
- Web-based access to dashboards containing visual summaries of the inventory by building, Unifomat level and portfolio.
- Training for client-team on how to access and use web-based portal as well as ongoing support from the Gordian-team.

### **Physical Deliverables:**

- A ten-year project plan by investment criteria that ties to mission, operations and finance.
- PDF copies of all presentations delivered by team throughout the timeline of the engagement.



## Project Schedule

Given the desire of the University of North Texas (UNT) System to present the assessment findings and strategic capital plan to the Board of Regents in August 2021, Gordian will strive to complete the data migration and strategy development by July 9, 2021. This completion date assumes a project kickoff beginning the week of June 7, 2021.

## Scope of Work Details

The scope of work for the University of North Texas (UNT) System is shown below. This work will be performed for the UNT System buildings and the UNT Dallas buildings previously assessed by VFA (now a Gordian company). The costs associated with the scope of work are shown in the Professional Fees section of this document.

- Migrate the VFA data to the Gordian software platform
- Analyze the data to discover where project gaps may exist
- Conduct interviews with UNT System and UNT Dallas personnel to:
  - Validate life cycle and pricing estimates
  - Discuss / resolve project gaps
  - Confirm building and system alignment with operational objectives and direction
  - Add capital needs to address modernization
  - Add capital needs to address possible infrastructure deficiencies
- Facilitate discussions with leadership to develop strategy and the resulting capital plan
  - Organize buildings into portfolios
  - Determine scoring methodology for all projects
  - Establish investment priorities
- Present the findings and the strategic capital plan to the UNT leadership / Board of Regents

## Appendix A: Professional Fees

### University of North Texas System – Strategic Capital Planning Service

Gordian understands that the Client is committing to a five (5) year agreement. Client agrees to pay the following annual fees to Gordian for all Services for each Contract Year as defined below (in addition to any other fees or reimbursable expenses outstanding at such time):

Year	Scope of Work	Professional Fees
Signature date to June 30, 2022	SOW outlined in Scope of Work Details section	<b>UNT System Bldgs: \$11,842</b> <b>UNT Dallas Bldgs: <u>\$13,842</u></b> <b>TOTAL: \$25,684</b>
July 1, 2022 through June 30, 2023	Gordian Cloud access only	<b>\$5,316</b> <b>(paid through VFA contract)</b>
July 1, 2023 through June 30, 2024	Gordian Cloud access only	<b>\$5,316</b> <b>(paid through VFA contract)</b>
July 1, 2024 through June 30, 2025	Gordian Cloud access only	<b>\$5,316</b> <b>(paid through VFA contract)</b>
July 1, 2025 through June 30, 2026	Gordian Cloud access only	<b>\$5,316</b> <b>(paid through VFA contract)</b>

*\* Reimbursable Expenses: The costs of reasonable expenses are in addition to the Service fees set forth above and shall be reimbursed at cost and in accordance with specified institutional regulations. The expenses will include the costs of travel, business meals, lodging, communication costs, printing and production costs. We do not anticipate that any reimbursable expenses will be required. If onsite visits are desired by UNT, site visits will be charged at approximately \$2,500 /visit.,*

**Gordian's Sourcwell Contract – 020421-GGI**

**Note: Please include the following on the Purchase Order: "Sourcwell Contract #020421-GGI and the Participating Addendum"**

## Appendix B: Building Inventory Included

	GSF
<b>UNT System Bldgs</b>	
1900 Elm Street Lofts	203,500
UNT System Bldg at Dallas	163,000
	<b>366,500</b>

<b>UNT Dallas Bldgs</b>	
Dallas Multipurpose Bldg	77,093
Founders Hall	104,161
Information Booth	150
Student Learning / Student Center	131,061
UNT Dallas Law Center / Dallas Municipal Bldg	106,753
Wisdom Hall	29,000
	<b>448,218</b>

## MEMBER PORTAL END USER LICENSE AGREEMENT

This End User License Agreement for the Sightlines Member Portal (this "**Agreement**") is a binding agreement between Sightlines, LLC and its affiliates (collectively "**Licensor**") and you, as either individual or entity, as the licensee ("**Licensee**").

Licensor provides the Proprietary Information, as defined below, solely on the terms and conditions set forth in this agreement and on the condition that the Licensee accepts and complies with them. **By clicking the "Accept" button you accept this agreement and agree that Licensee is legally bound by its terms. Further, you represent that and warrant that (i) you are of legal age to enter into a binding agreement, and (ii) if Licensee is a corporation, governmental entity, or other legal entity, you have the authority to enter into this agreement on behalf of Licensee. If Licensee does not agree to the terms of this agreement, Licensor does not license the Proprietary Information to Licensee and you must not use the Proprietary Information.**

1. **DEFINITIONS.** For purposes of this Agreement, the following terms have the following meanings:
  - 1.1 **"Authorized Users"** means solely those individuals authorized to use the Proprietary Information pursuant to the license granted under this Agreement.
  - 1.2 **"Client Data"** means facilities data collected and compiled for Sightlines members.
  - 1.3 **"Data"** means any construction cost data or other data available within the Software or otherwise provided by Licensor to Licensee.
  - 1.4 **"Documentation"** means user manuals, technical manuals, and any other materials provided by Licensor, in printed, electronic, or other form, that describe the installation, operation, use, or technical specifications of the Software.
  - 1.5 **"Intellectual Property Rights"** means any and all registered and unregistered rights granted, applied for, or otherwise now or hereafter in existence under or related to any patent, copyright, trademark, trade secret, database protection, or other intellectual property rights laws, and all similar or equivalent rights or forms of protection, in any part of the world.
  - 1.6 **"Licensee"** has the meaning set forth in the preamble.
  - 1.7 **"Membership Fees"** means the fees, including all taxes thereon, paid or required to be paid by Licensee for the license granted under this Agreement.
  - 1.8 **"Licensor"** has the meaning set forth in the preamble.
  - 1.9 **"Person"** means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity.
  - 1.10 **"Proprietary Information"** means collectively the Software, the Documentation, the Data, and other related proprietary materials.
  - 1.11 **"Software"** means the software programs, including any Data incorporated therein, for which Licensee is purchasing a license, as expressly set forth in the Order Form.
  - 1.12 **"Term"** has the meaning set forth in Section 10 (Term and Termination).
  - 1.13 **"Third Party"** means any Person other than Licensee or Licensor.
  - 1.14 **"Update"** has the meaning set forth in Section 7 (Maintenance and Support).

2. **LICENSE GRANT AND SCOPE.** Subject to and conditioned upon Licensee's payment of the Membership Fees and Licensee's strict compliance with all terms and conditions set forth in this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-transferable, non-sublicensable, limited license during the Term to use, solely by and through its Authorized Users, the Proprietary Information, solely as set forth in this Section and subject to all conditions and limitations set forth in Section 4 (Use Restrictions) or elsewhere in this Agreement. This license grants Licensee the right, exercisable solely by and through Licensee's Authorized Users, to:

- 2.1 use and display this Proprietary Information solely in connection with Licensee's internal business processes and management activities.
- 2.2 access Client Data made available through the Software solely for work related to the Sightlines member for whom you are providing services, and whose Client Data you have accessed through the Software; and
- 2.3 download and temporarily store insubstantial portions of the Client Data or Data in a spreadsheet for your employment related use on a single storage device under your exclusive control solely to (i) display internally such Client Data or Data and (ii) to include and distribute the Client Data or Data solely for the limited purpose set forth above.

3. **CLIENT DATA AND THIRD-PARTY MATERIALS.**

- 3.1 The Sightlines member whose Client Data is integrated with and accessed through the Software owns exclusively all right, title and interest in and to its Client Data. You, or the Entity where applicable, grants Licensor a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to aggregate and use any Client Data submitted to the Software, to analyze and report on such data and to use such data for commercial purposes. You may not merge the Client Data available through this Software with any software program or extract such Client Data other than into a spreadsheet for your employment related use on a single computer. You may not use, copy, download, store, publish, modify, translate, transmit, transfer, sell or prepare derivative works of the Client Data, or any portion of the Client Data, in any form or by any means, except (i) as expressly permitted by this Agreement, or (ii) with Sightlines' or the applicable Sightlines' member's express written permission. You shall not sell, license or distribute Client Data (including printouts and Downloaded Data) to third parties, except as expressly permitted by this Agreement, or use the Client Data as a component of or as a basis for any material or product offered for sale, license or distribution. Notwithstanding the foregoing, Licensor shall not use or reveal information that any Sightlines member identifies as confidential provided such information is not already publicly available, and such Client Data may be used to identify such member by name.
- 3.2 The Software may contain links and pointers to other sites on the internet which may be maintained by third parties. Such links do not include an endorsement by Licensor or its affiliates of any third-party site or any material contained therein. Licensor and its affiliates do not control, and are not responsible for, the availability, accuracy, privacy policy, or currency of such third-party sites or any information, content, products or services accessible from such third-party sites.

4. **USE RESTRICTIONS.** Licensee will not, and will require its Authorized Users not to, directly or indirectly:

- 4.1 use (including make any copies of) the Proprietary Information beyond the scope of the license granted under Section 2 (License Grant and Scope);
- 4.2 provide any other Person or Entity, including any subcontractor, independent contractor, affiliate, or service provider of Licensee, with access to or use of the Proprietary Information;
- 4.3 modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Proprietary Information or any part thereof;
- 4.4 combine the Proprietary Information or any part thereof with, or incorporate the Proprietary Information or any part thereof in, any other programs;

- 4.5 merge the Data with any other software program or extract such Data other than into a spreadsheet for your personal and/or employment related use;
- 4.6 copy, download, store, publish, modify, translate, transmit, transfer, sell or prepare derivative works of the Proprietary Information, or any portion of thereof, in any form or by any means, except (i) as expressly permitted by this Agreement, or (ii) with Licensor's express written permission. Proprietary Information may not be stored or used in an archival database or other searchable database except as expressly permitted by this Agreement;
- 4.7 sell, license or distribute the Proprietary Information (including printouts and Downloaded Data) to third parties, except as expressly permitted by this Agreement, or use the Proprietary Information as a component of or as a basis for any material or product offered for sale, license or distribution;
- 4.8 reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Software or any part thereof;
- 4.9 remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices provided on or with the Proprietary Information, including any copy thereof;
- 4.10 except as expressly set forth in Section 2 (License Grant and Scope), copy the Proprietary Information, in whole or in part;
- 4.11 rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Proprietary Information, or any features or functionality of the Software, to any Third Party for any reason, whether or not over a network or on a hosted basis, including in connection with the internet or any web hosting, wide area network (WAN), virtual private network (VPN), virtualization, time-sharing, service bureau, software as a service, cloud, or other technology or service;
- 4.12 use the Proprietary Information in violation of any law, regulation, or rule; or
- 4.13 use the Proprietary Information for purposes of competitive analysis of the Software, the development of a competing software product or service, or any other purpose that is to the Licensor's commercial disadvantage.

5. **RESPONSIBILITY FOR USE OF SOFTWARE.** Licensee is responsible and liable for all uses of the Proprietary Information through access to it provided by Licensee, directly or indirectly. Specifically, and without limiting the generality of the foregoing, Licensee is responsible and liable for all actions and failures to take required actions with respect to the Proprietary Information by its Authorized Users or by any other Person to whom Licensee or an Authorized User may provide access to or use of the Proprietary Information, whether such access or use is permitted by or in violation of this Agreement. Licensee is responsible for ensuring the security and confidentiality of all passwords used in connection with the Software and shall use commercially reasonable efforts to prevent unauthorized access to or use of the Software. Licensee shall promptly notify Licensor of any unauthorized access or use. Licensee shall be solely responsible for the accuracy, quality, integrity and legality of Client Data provided to Licensor and made accessible through the Software.

6. **COMPLIANCE MEASURES.**

- 6.1 The Software may contain technological copy protection or other security features designed to prevent unauthorized use of the Software, including features to protect against any use of the Software that is prohibited under Section 4 (Use Restrictions). Licensee must not, and must not attempt to, remove, disable, circumvent, or otherwise create or implement any workaround to, any such copy protection or security features.

- 6.2 On Licensor's reasonable written request, Licensee will conduct a review of its and its Authorized Users use the Software and certify to Licensor in a written instrument signed by an officer of Licensee that it is in full compliance with this Agreement or, if Licensee discovers any noncompliance:
- (A) Licensee must immediately remedy such noncompliance and provide Licensor with written notice thereof. Licensee must provide Licensor with all access and assistance as Licensor requests to further evaluate and remedy such noncompliance.
  - (B) If Licensee's use of the Software exceeds the number of copies or Authorized Users permitted under the license, Licensor will have the remedies set forth in this Section.
- 6.3 During the Term, Licensor may, in Licensor's sole discretion, audit Licensee's use of the Software to ensure Licensee's compliance with this Agreement, provided that (i) any such audit may be conducted on at least seven days' prior notice to Licensee, and (ii) no more than two audits may be conducted in any twelve month period except for good cause shown. Licensor also may, in its sole discretion, audit Licensee's systems within twelve months after the end of the Term to ensure Licensee has ceased use of the Software and removed the all copies of the Software from such systems as required hereunder. The Licensee must reasonably cooperate with Licensor's personnel conducting such audits and provide all reasonable access requested by the Licensor to records, systems, equipment, information, and personnel, including machine IDs, serial numbers, and related information. Licensor may only examine information directly related to the Licensee's use of the Software. Licensor may conduct audits only during Licensee's normal business hours and in a manner that does not unreasonably interfere with the Licensee's business operations.
- 6.4 If the audit or any of the measures taken or implemented under this Section determines that the Licensee's use of the Software exceeds or exceeded the use permitted by this Agreement then:
- (A) Licensee will, within seven days following the date of Licensor's written notification thereof, pay to Licensor any retroactive fees for such excess use and, unless Licensor terminates this Agreement pursuant to this Section, obtain and pay for a valid license to bring Licensee's use into compliance with this Agreement.
  - (B) If the use exceeds or exceeded the use permitted by this Agreement, Licensee will also pay to Licensor, within seven days following the date of Licensor's written request therefor, Licensor's reasonable costs incurred in conducting the audit.
  - (C) If the use exceeds or exceeded the use permitted by this Agreement, Licensor will also have the right to terminate this Agreement and the license granted hereunder, effective immediately upon written notice to Licensee.
- 6.5 Licensor's remedies set forth in this Section are cumulative and are in addition to, and not instead of, all other remedies the Licensor may have at law or in equity, whether under this Agreement or otherwise.

7. **MAINTENANCE AND SUPPORT.**

- 7.1 Subject to the exclusions set forth in this Section, the license granted hereunder entitles Licensee to the basic software maintenance and support services.
- 7.2 Maintenance and support services will include provision of such updates, upgrades, bug fixes, patches, and other error corrections (collectively, "**Updates**") as Licensor makes generally available free of charge to all licensees of the Software then entitled to maintenance and support services. Licensor may develop and provide Updates in its sole discretion, and Licensee agrees that Licensor has no obligation to develop any Updates at all or for particular issues. Licensee further agrees that all Updates will be deemed Software, and related documentation will be deemed Documentation, all subject to all terms and conditions of this Agreement. Licensee acknowledges that Licensor may provide some or all Updates via download from a website designated by Licensor and that Licensee's receipt thereof will require an internet connection, which connection is Licensee's sole responsibility. Licensor has no obligation to provide Updates via any other



media. Maintenance and support services do not include any new version or new release of the Software that Licensor may issue as a separate or new product, and Licensor may determine whether any issuance qualifies as a new version, new release, or Update in its sole discretion.

7.3 Licensor has no obligation to provide maintenance and support services, including updates if:

- (A) licensee is in breach under this Agreement; or
- (B) for any Software that has been modified other than by or with the authorization of Licensor, or that is being used with any hardware, software, configuration, or operating system not specified in the Documentation or expressly authorized by Licensor in writing.

8. **COLLECTION AND USE OF INFORMATION.**

8.1 Licensee acknowledges that Licensor may collect and store information regarding use of the Software and about equipment on which the Software is accessed and used, through:

- (A) the provision of maintenance and support services; and
- (B) security measures included in the Software as described in Section 6 (Compliance Measures).

8.2 Licensee agrees that the Licensor may use such information for any purpose related to any use of the Software by Licensee or on Licensee's equipment, including but not limited to:

- (A) improving the performance of the Software or developing Updates; and
- (B) verifying Licensee's compliance with the terms of this Agreement and enforcing the Licensor's rights, including all Intellectual Property Rights in and to the Software.

9. **INTELLECTUAL PROPERTY RIGHTS.** Licensee acknowledges and agrees that the Proprietary Information is provided under license, and not sold, to Licensee. Licensee does not acquire any ownership interest in the Proprietary Information, including, without limitation, text, images, software, audio and video clips, databases, or data, or documentation under this Agreement, or any other rights to it, other than to use the same under the license granted and subject to all terms, conditions, and restrictions under this Agreement. Licensor reserves and retains its entire right, title, and interest in and to the Proprietary Information and all Intellectual Property Rights arising out of or relating to the Proprietary Information, except as expressly granted to the Licensee in this Agreement. Licensee must use commercially reasonable efforts to safeguard all Proprietary Information (including all copies thereof) from infringement, misappropriation, theft, misuse, or unauthorized access. Licensee will promptly notify Licensor if Licensee becomes aware of any infringement of the Licensor's Intellectual Property Rights in the Proprietary Information and fully cooperate with Licensor, at Licensor's sole expense, in any legal action taken by Licensor to enforce its Intellectual Property Rights.

10. **PAYMENT.** The License granted to Licensor is subject and in consideration of payment of all applicable the Membership Fees. Any renewal of the license or maintenance and support services hereunder will not be effective until the fees for such renewal have been paid in full.

11. **TERM AND TERMINATION.**

11.1 This Agreement and the license granted hereunder will remain in effect so long as Licensor pays all Members Fees unless otherwise terminated as set forth herein (the "**Term**").

11.2 Licensee may terminate this Agreement by ceasing to use and destroying all copies of the Proprietary Information.

- 11.3 Licensors may terminate this Agreement, effective upon written notice to Licensee, if Licensee, materially breaches this Agreement and such breach: (i) is incapable of cure; or (ii) being capable of cure, remains uncured seven days after Licensors provides written notice thereof.
- 11.4 Licensors may terminate this Agreement, effective immediately, if Licensee files, or has filed against it, a petition for voluntary or involuntary bankruptcy or pursuant to any other insolvency law, makes or seeks to make a general assignment for the benefit of its creditors or applies for, or consents to, the appointment of a trustee, receiver, or custodian for a substantial part of its property.
- 11.5 Upon expiration or earlier termination of this Agreement, the license granted hereunder will also terminate, and Licensee must cease using and destroy all copies of the Proprietary Information. No expiration or termination will affect Licensee's obligation to pay all Membership Fees that may have become due before such expiration or termination, or entitle Licensee to any refund, in each case except as set forth in Section 12 (Limited Warranties, Exclusive Remedy, and Warranty Disclaimer).

12. **LIMITED WARRANTIES, EXCLUSIVE REMEDY, AND WARRANTY DISCLAIMER.**

- 12.1 Solely with respect to Software for which Licensors receives a Membership Fee, Licensors warrants that for 90 from the date of invoice (the "Warranty Period"):
  - (A) any media on which the Software is provided will be free of material damage and defects in materials and workmanship under normal use; and
  - (B) the Software will substantially contain the functionality described in the Documentation, and when properly installed on a computer meeting the specifications set forth in, and operated in accordance with, the Documentation, will substantially perform in accordance therewith.
- 12.2 The warranties set forth in Section 12 (Limited Warranties, Exclusive Remedy, and Warranty Disclaimer) will not apply and will become void if Licensee breaches any provision of this Agreement, or if Licensee, any Authorized User, or any other Person provided access to the Software by Licensee or any Authorized User, whether or not in violation of this Agreement:
  - (A) installs or uses the Software on or in connection with any hardware or software not specified in the Documentation;
  - (B) modifies or damages the Software, or the media on which it is provided, including abnormal physical or electrical stress; or
  - (C) misuses the Software, including any use of the Software other than as specified in the Documentation or expressly authorized by Licensors in writing.
- 12.3 Licensee's sole and exclusive remedy for breach of the above warranty is that Licensors will, if it receives written notice of such breach during the Warranty Period, at its sole option, either (a) correct or cure any reproducible defect in the Software in breach of such warranty within a reasonable time by issuing corrected instructions, a restriction, or a bypass, or (b) refund the price paid by Licensee for the Software. In the event Licensors furnishes a correction or cure pursuant to clause (a), Licensors will warrant such correction or cure for the remainder of the original Warranty Period or 60 days, whichever is longer. Outside the United States, these remedies are not available without proof that Licensee acquired this copy of the Software from an authorized source.
- 12.4 **EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 12 (LIMITED WARRANTIES, EXCLUSIVE REMEDY, AND WARRANTY DISCLAIMER), THE PROPRIETARY INFORMATION ARE PROVIDED TO LICENSEE "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, LICENSORS, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE**

PROPRIETARY INFORMATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, THE LICENSOR PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE LICENSED SOFTWARE WILL MEET THE LICENSEE'S REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. ADDITIONALLY, LICENSOR MAKES NO WARRANTY AS TO THE CORRECTNESS OR SUFFICIENCY OF ANY INFORMATION OR DATA CONTAINED IN THE SOFTWARE AND LICENSORS ASSUMES NO LIABILITY OR RESPONSIBILITY IN CONNECTION WITH THE INFORMATION OR DATA OR THEIR USE OR APPLICATIONS.

**13. LIMITATION OF LIABILITY. TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW:**

**13.1** IN NO EVENT WILL LICENSOR OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, BE LIABLE TO LICENSEE OR ANY THIRD PARTY FOR ANY USE, INTERRUPTION, DELAY, OR INABILITY TO USE THE SOFTWARE; LOST REVENUES OR PROFITS; DELAYS, INTERRUPTION, OR LOSS OF SERVICES, BUSINESS, OR GOODWILL; LOSS OR CORRUPTION OF DATC; LOSS RESULTING FROM INCORRECT OR INACCURTE DATA; LOSS RESULTING FROM SYSTEM OR SYSTEM SERVICE FAILURE, MALFUNCTION, OR SHUTDOWN; FAILURE TO ACCURATELY TRANSFER, READ, OR TRANSMIT INFORMATION; FAILURE TO UPDATE OR PROVIDE CORRECT INFORMATION; SYSTEM INCOMPATIBILITY OR PROVISION OF INCORRECT COMPATIBILITY INFORMATION; OR BREACHES IN SYSTEM SECURITY; OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES, WHETHER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT THE LICENSOR WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**13.2** IN NO EVENT WILL LICENSOR'S AND ITS AFFILIATES', INCLUDING ANY OF ITS OR THEIR RESPECTIVE LICENSORS' AND SERVICE PROVIDERS', COLLECTIVE AGGREGATE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER, UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO THE LICENSOR PURSUANT TO THIS AGREEMENT FOR (i) THE SOFTWARE OR (ii) UP TO TWELVE (12) MONTHS OF THE SPECIFIC SERVICES, THAT ARE THE SUBJECT OF THE CLAIM.

**13.3** THE LIMITATIONS SET FORTH IN THIS SECTION WILL APPLY EVEN IF THE LICENSEE'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

**14. EXPORT REGULATION.** The Proprietary Information may be subject to US export control laws, including the Export Control Reform Act and its associated regulations. The Licensee may not, directly or indirectly, export, re-export, or release the Software or Documentation to, or make the Software or Documentation accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. The Licensee will comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Software or Documentation available outside the US.

**15. US GOVERNMENT RIGHTS.** The Software is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if the Licensee is the US Government or any contractor therefor, Licensee will receive only those rights with respect to the Proprietary Information as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

**16. MISCELLANEOUS.**

**16.1** This Agreement, and any applicable master services agreement, purchase order or other purchasing document executed between Licensor and Licensee, pursuant to which you are provided access to the

Software, constitutes the entire agreement between you and Licensor with respect to the Software Proprietary Information.

- 16.2 All matters arising out of or relating to this Agreement will be governed by and construed under the internal laws of the State of South Carolina without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby must be instituted in the federal courts of the United States of America or the courts of the State of South Carolina in each case located in the City of Greenville and County of Greenville, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such legal suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth in this Agreement will be effective service of process for any suit, action, or other proceeding brought in any such court.
- 16.3 Licensor will not be responsible or liable to Licensee, or deemed in default or breach hereunder because of any failure or delay in the performance of its obligations hereunder where such failure or delay is due to strikes, labor disputes, civil disturbances, riot, rebellion, invasion, epidemic, hostilities, war, terrorist attack, embargo, natural disaster, acts of God, flood, fire, sabotage, fluctuations or non-availability of electrical power, heat, light, air conditioning, or Licensee equipment, loss and destruction of property, or any other circumstances or causes beyond Licensor's reasonable control.
- 16.4 All notices, requests, consents, claims, demands, waivers, and other communications hereunder must be in writing and will be deemed to have been given: (i) when delivered by hand (with written confirmation of receipt); (ii) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (iii) on the date sent by facsimile or email (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (iv) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses set forth on the Order Form (or to such other address as may be designated by a party from time to time under this Section).
- 16.5 This Agreement, together with the Order Form, all other documents that are incorporated by reference herein, constitutes the sole and entire agreement between Licensee and Licensor with respect to the subject matter contained herein. This Agreement supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, with respect to such subject matter. In the event of a conflict in terms and conditions between this Agreement and any other terms and conditions of the Order Form or similar purchasing document issued to Licensee as it relates to the terms set forth herein, this Agreement will take precedence.
- 16.6 Licensee may not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance, under this Agreement, in each case whether voluntarily, involuntarily, by operation of law, or otherwise, without Licensor's prior written consent, which consent Licensor may give or withhold in its sole discretion. No delegation or other transfer will relieve Licensee of any of its obligations or performance under this Agreement. Any purported assignment, delegation, or transfer in violation of this Section is void. Licensor may freely assign or otherwise transfer all or any of its rights, or delegate or otherwise transfer all or any of its obligations or performance, under this Agreement without Licensee's consent. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective permitted successors and assigns.
- 16.7 This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under this Agreement.
- 16.8 Licensor retains the right to modify the terms and conditions of this Agreement at any time. Any modification is effective immediately upon notice to Licensee via electronic mail or posting on any website used to access the Software. Licensee's continued use of the Software following posting or other notice of any modification to this Agreement will be conclusively deemed an acceptance of all such modification(s). Licensee's right

with respect to any dissatisfaction with any modifications made pursuant to this Section is to terminate this Agreement and comply with all applicable termination provisions of this Agreement, including but not limited to return of all Proprietary Information in its possession to Gordian and discontinuing access or use the Software. In the event of such termination, Gordian will not refund any amounts paid or cancel any amounts then payable by Licensee.

- 16.9 No waiver by any party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any right, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof; nor will any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.
- 16.10 If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
- 16.11 For purposes of this Agreement, (a) the words "include," "includes," and "including" will be deemed to be followed by the words "without limitation"; (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (x) to Sections, Schedules, and Exhibits refer to the Sections of, and, Schedules, and Exhibits attached to, this Agreement; (y) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof and (z) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement will be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The Order Form and any Schedules, and Exhibits referred to in this Agreement will be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.
- 16.12 The headings in this Agreement are for reference only and do not affect the interpretation of this Agreement.

*Last updated July 1, 2020. Replaces all prior versions.*

## STANDARD ADDENDUM TO AGREEMENT

Contracts with the University of North Texas System ("UNTS") are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

**Payment.** In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to UNTS; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur. Invoices and any required supporting documents must be presented to: University of North Texas System – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

**Eligibility to Receive Payment.** By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Gov't Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**Tax Exempt.** UNTS is exempt from the payment of taxes and will provide documentation confirming its tax exempt status.

**Breach of Contract Claims Against UNTS.** Chapter 2260 of the Texas Gov't Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Gov't Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by the parties to attempt to resolve any claim for breach of contract against UNTS that cannot be resolved in the ordinary course of business.

**Governing Law and Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. Venue for any suit filed against UNTS shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

**No Excess Obligations.** In the event this Agreement spans multiple fiscal years, UNTS' continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, UNTS shall issue written notice to Vendor that UNTS may terminate the Agreement without further duty or obligation.

**Travel Expenses.** Reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

**Delivery.** Delivery shall be FOB Destination.

**Public Information.** UNTS shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to UNTS in an electronic format. The requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this contract and Vendor agrees that the contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter. Further, Vendor agrees (1) to preserve contracting information for the duration of the contract and according to UNTS records retention requirements; (2) to promptly provide contracting information to UNTS when requested; and (3) upon completion of the contract to provide, at no cost, all contracting information to UNTS or to preserve all contracting information according to UNTS' records retention requirements.

**Required Posting of Contracts on Website.** Vendor acknowledges and agrees that UNTS is required by Section 2261.253 of the Texas Gov't Code to post each contract it enters into for the purchase of goods or services from a private vendor on its Internet website, including any terms and conditions otherwise marked confidential and/or proprietary.

**Insurance.** UNTS, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by UNTS shall, without further requirement, satisfy all insurance obligations of UNTS under the Agreement.

**Israel Non-Boycott Verification.** If the Agreement is subject to Texas Gov't Code Section 2271.002, Vendor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

**Limitations.** UNTS is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on UNTS property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will not be binding on UNTS, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

SIGNATURE PAGE TO FOLLOW

**THE GORDIAN GROUP INC**



Date: 6/18/2021

**UNIVERSITY OF NORTH TEXAS SYSTEM**



Date: 6/18/2021



Gordian

Facility Assessment & Planning

#020421-GGI

Maturity Date: 03/24/2025

Products & Services

- Contract Documents
- Pricing
- Contact Information

Products & Services

Sourcewell contract 020421-GGI gives access to the following types of goods and services:

- Strategic capital planning
- ROPA (return on physical assets)
- IFP (integrated facilities program)
- Space utilization
- Sustainability solutions