

MEMORANDUM OF AGREEMENT FOR ARCHAEOLOGICAL SERVICES

University of South Alabama

THIS AGREEMENT is made and entered into on this ____ day of _____, _____, by and between the University of South Alabama, hereinafter called "University," and _____, hereinafter called "Client," for the purpose of providing archaeological services.

WHEREAS, University, through its Center for Archaeological Studies ("Center"), has certain expertise with regard to the provision of archaeological services for companies, corporations, and governmental entities in the area,

WHEREAS, Client wishes to utilize such archaeological services,

WITNESSETH:

1. RATIONALE FOR SERVICES: University agrees to provide professional personnel and facilities, as deemed appropriate by University, to accomplish requested services as defined in the Scope of Work attached hereto as Appendix A and made a part of this Agreement as if incorporated into this Agreement.

Client is (check all that apply)

A For-Profit Company _____

Other (Please Describe) _____

Domestic Entity _____ Foreign Entity _____

2. PAYMENT: Client agrees to pay the University for such completion of Scope of Work the sum of \$_____. Payments shall be made by Client according to the following schedule: _____.

3. ACCESS TO LAND: To the extent that performance of services by the University requires University personnel to access real property owned by a third party (the "Site"), Client certifies that University has permission from the landowner to enter the Site, which is located at _____, and perform the services requested in the Scope of Work. Client will make proof of permission available upon request.

4. HAZARD DISCLOSURES: Client agrees and acknowledges that it has advised the University of any and all known hazards, risks, or unusual circumstances relating to the Site or the Scope of Work, including, but not limited to, any unusual or hidden dangers or areas of hazard on the Site.

5. INDEPENDENT CONTRACTORS: It is mutually agreed and understood by

University and Client that the services of University are retained on an independent contractor basis, and that all agents or employees of the University who may participate in the performance of this Scope of Work are employed by the University and are not agents or employees of Client. Also, it is agreed by the University and Client that agents, employees, or servants of Client who have any involvement will not be deemed or considered to be in any way agents or employees of the University.

6. CLIENT INSURANCE: Client agrees that it has in effect appropriate comprehensive general liability insurance with minimum policy limits of \$1 million per individual and \$3 million per occurrence, that would cover all claims, actions, and injuries arising out of or resulting from actions that may be asserted against it or its officers, employees, or agents thereof, pursuant to this agreement. Further, Client agrees that it does provide appropriate workers compensation or similar insurance for its employees, pursuant to applicable state law, that would cover any injury to employees on the job and that may pertain to the activities carried on under this agreement.

8. UNIVERSITY INSURANCE: University agrees that it will provide appropriate general liability insurance for itself and its employees.

9. TERM: The period of this agreement will commence with the signature of the last party to sign this agreement and end on _____, _____.

10. TERMINATION: The Agreement may be terminated for the following reasons:

- a) Prior to the commencement of any work by University, this Agreement may be terminated by either Party upon providing at least sixty (60) days' advance written notice to the other Party. In the event that the Client wishes to terminate the Agreement following commencement of the work by University, the University may agree to such termination based upon a payment by Client of costs to the University for services up to the date of notification. However, the University is not required under this Agreement to agree to the termination of the same once the Scope of Work has been commenced.
- b) If either party is in default of performance of any material obligation under this Agreement, the party that is not in default may give written notice of the default to the other party, and if the party so notified fails to correct the default within thirty (30) days to the other party's reasonable satisfaction, the party giving notice may terminate this Agreement upon expiration of the thirty (30) day period.
- c) University may terminate this Agreement immediately in the event of the filing by or against Client of a petition for relief in bankruptcy or for receivership, or in the event that Client becomes insolvent. University may also terminate this Agreement immediately for any violation of Section 10 of this Agreement, Export Control Compliance.
- d) Upon termination under (a), (b), or (c) of this section, Client will reimburse the University for all costs and non-cancelable commitments incurred in the performance of the services and not yet paid for. Such reimbursements, together with other payments, shall not exceed the total estimated project cost specified in Section 2.
- e) The termination of this Agreement will not affect any right or remedy that has accrued to

either party at the time of termination.

11. STRUCTURES: Are there standing structures on the Site?

YES

NO

12. GOVERNING LAW: This Agreement is governed by the laws of the State of Alabama.

13. REMEDIES: The Parties agree that the Client's sole remedy under this Agreement is filing a claim with the Alabama Board of Adjustment. Neither the execution of the Agreement by University nor any other conduct, action, or inaction of any representative of the University relating to the Agreement constitutes or is intended to constitute a waiver of University's or the State's sovereign immunity to suit. The University has not waived its right to seek redress in the courts.

14. INDEMNITY: Client agrees to defend, indemnify, and hold harmless the University and its employees, trustees, officers, and students (all such parties are hereinafter referred to collectively as the "Indemnified Parties") from and against any and all liability, claims, lawsuits, losses, demands, damages, costs, and expenses (including reasonable attorney's fees and court costs), arising out of, connected with, or related to, directly or indirectly, this Agreement or the services performed pursuant to the Scope of Work including, but not limited to (i) the negligence, wantonness, or intentional misconduct of the Client or Client's personnel, (ii) any claim of personal injury due to defects in the Site, (iii) claims for trespass and/or nuisance, (iv) any claims for destruction or damage to property or business interests, including claims related to the increase or decrease of surface or ground water, claims for damage or destruction of easements, claims of encroachment, and claims for loss of lateral or subjacent support, (v) any claims for professional liability, and (vi) any losses, damages, fines, or claims brought against University or any of its employees for violations of the Native American Graves Protection and Repatriation Act (NAGPRA), the Archaeological Resources Protection Act (ARPA), the Antiquities Act, the Archaeological and Historical Preservation Act (AHPA), and/or any other law or act of Congress that governs archaeological excavation and investigation.

15. MODIFICATION AND NON-WAIVER: This Agreement shall not be amended, modified, or extended, nor shall any waiver of any right hereunder be effective, unless set forth in a document executed by duly authorized representatives of both Parties, specifically referencing the provision of this Agreement to be amended, modified, extended, or waived. The failure of either Party to insist upon performance of any provision of this Agreement, or to exercise any right, remedy, or option provided herein, shall not be construed or deemed as a waiver of the right to assert any of the same in any other instance.

16. PUBLICITY: Neither party shall use the name of Client, University, or any member of University's staff in connection with any products, promotion, publicity, or advertising without the prior written approval of the other party.

17. DISCLAIMER: Except as expressly provided in this Agreement, University provides all goods, equipment, materials, services, personnel, facilities, and other items to Client under this Agreement "as is", without warranties, guarantees, certifications, or representations of any kind. Notwithstanding any other provision of this Agreement:

- a) University expressly and specifically disclaims any warranties of title, merchantability, or fitness for a particular purpose, as well as all implied warranties, including any implied warranties arising from a course of dealing or performance or usage of trade;
- b) University's maximum aggregate liability under this Agreement shall not exceed the amounts paid by Client to University during the immediately preceding contiguous twelve (12) month period during the Term of this Agreement;
- c) University shall not be responsible or liable to Client or to any person or entity claiming through Client for special, incidental, indirect, or consequential damages, including without limitation lost or anticipated profits, revenues, or savings, even if University has been advised of the possibility of such damages; and
- d) University and Client have agreed on processes and procedures that will be used to perform the work described in the Scope of Work. University makes no warranty as to the results that will be achieved, and Client understands and agrees that even when prescribed processes and procedures are employed, unexpected and unintended results may occur.

18. ASSIGNMENT: Neither party shall assign this Agreement to another without the prior written consent of the other party; however, Client may assign this Agreement to a successor in ownership of all or substantially all its business assets, provided that such successor shall expressly assume in writing the obligation to perform in accordance with the terms and conditions of this Agreement. Any other purported assignment shall be void.

19. LOSS OF FUNDING: Performance by University under this Agreement may be dependent upon the appropriation and allotment of available funds.

20. CONFLICTS OF INTEREST: University requires submission of Federal Interest Disclosures to assure compliance with federal regulations and University policy. In order to satisfy University requirements, several questions regarding Client's Conflicts of Interest must be completed, as required in Appendix B.

21. MULTIPLE COUNTERPARTS: This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same instrument. The signatures of the parties hereto may be transmitted by facsimile or other electronic delivery, and each such facsimile signature or other electronic delivery signature (including a PDF signature) will, for all purposes, be deemed to be the original signature of the party whose signature it reproduces and be binding upon such party.

22. BURIALS: If any sacred objects, human remains, animal remains, burial sites, religious items or sites, structures, ancient communities, or any other related items of archaeological value are located at the Site, whether protected under law or regulation or not, Client will assume the costs and other burdens of pausing the services provided by University pursuant to the Scope of Work, extracting the sacred objects or other items, storing and transporting the items, testing the items, and any other costs incurred directly related to the subject sacred objects.

The terms and conditions of the Memorandum of Agreement become effective by signature of both parties.

CLIENT

UNIVERSITY OF SOUTH ALABAMA

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Appendix A: Scope of Work

Appendix B: Conflict of Interest

If Client has any current or prior relationship with UNIVERSITY, it acknowledges that all appropriate Conflict of Interest documentation has been submitted to UNIVERSITY. Specifically, if Client's technology was discovered/developed at UNIVERSITY or by UNIVERSITY faculty, that relationship must be disclosed to UNIVERSITY.

Note: If Client has previously signed Conflict of Interest documentation with UNIVERSITY, and no changes have occurred since its approval, provide the Service Agreement Number and date it was approved.

Service Agreement Number: _____ Date Approved: _____

1. Do you or any of your officers/employees have a prior relationship with UNIVERSITY or UNIVERSITY entities? (e.g., Sponsored Service Agreements, Incubators, Service Agreements, Collaboration Agreements, Consulting Agreements, etc.)

_____ Yes _____ No

If yes, please list each relationship and provide any pertinent details.

Relationship	Details

2. Are you or your laboratory part of any other UNIVERSITY contract, Sponsored Service Agreement, or consulting agreement as it relates to this project?

_____ Yes _____ No

If yes, please list each contract or agreement title and indicate for each whether there is any Conflict of Interest (COI) management statement in place.

Title	COI Y/N

3. If any future relationships are established with UNIVERSITY or UNIVERSITY entities, your company is obligated to inform UNIVERSITY within fifteen (15) business days.

4. Are any UNIVERSITY faculty, students, personnel, or their immediate families involved with your company?

_____ Yes _____ No

If yes, please explain.

Relationship	Details

CLIENT

By:

Name:

Title:

Date: