

PROFESSIONAL SERVICES AGREEMENT

AGREEMENT made April 20, 2022

BETWEEN the Client:

City of El Mirage, Arizona
Attn: Tessa Wessel
10000 N. El Mirage Road
El Mirage, Arizona 85335

and the Consultant:

Commonwealth Heritage Group, Inc.
3215 Central Street
Dexter, MI 48130
(517) 788-3550

For the following Project: El- Mirage Multi-Use Trail HUD EA Project

The Client and Consultant agree as follows.

ARTICLE 1

CONSULTANT'S SERVICES AND RESPONSIBILITIES

The Consultant's Basic Services are as described below and in Exhibit A, Consultant's Proposal dated February 1, 2022 which is attached to this Agreement, incorporated herein, and made a part hereof.

1.1 Basic Services

- 1.1.1 The Consultant shall perform all services described in Exhibit A of this Agreement, in a manner consistent with applicable professional practices and standards.
- 1.1.2 Basic Services shall include the specific services of subconsultants, if any, identified and described in Exhibit A of this Agreement.
- 1.1.3 Both Client and Consultant recognize that the Scope of Services to be performed under this Agreement and the proposed methods and techniques are subject to the review and comment of various public agencies which have certain jurisdiction over the Project. As a result of such reviews, the Scope of Services and/or proposed methods and techniques for the Project may be subject to change as the Project progresses. Both Client and Consultant accept that such changes may arise and agree to cooperate in order that negotiation of a change in Scope of Services and/or proposed methods and

techniques, together with commensurate cost and schedule revisions, can be accomplished if required.

1.2 Additional Services

1.2.1 Additional Services consist of any services provided by the Consultant and/or its subconsultants, including direct expenses associated therewith, performed at the Client's request, other than those described above and in Exhibit A.

1.2.2 Additional Services shall be provided if authorized or confirmed in writing by Client and they shall be paid for by Client as provided in this Agreement.

1.3 Time

1.3.1 The Consultant shall perform services as expeditiously as is consistent with professional skill and care and the orderly progress of the Project.

ARTICLE 2

CLIENT'S RESPONSIBILITIES

The following services and responsibilities, and any others stated in ARTICLE 8, "OTHER PROVISIONS AND CONDITIONS," shall be the obligation of the Client.

2.1 Client shall be responsible for coordination, as warranted, with all consultants or work forces hired directly by the Client.

2.2 Client shall be responsible for coordination with all governmental agencies, as applicable to the Project.

2.3 Client shall designate a representative authorized to act on the Client's behalf with respect to the Project. The Client or such authorized representative shall render decisions and reviews pertaining to Consultant's activities and documents provided hereunder in a timely fashion in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services.

2.4 Client shall provide as expeditiously as necessary for the orderly progress of the Consultant's services full information regarding requirements of the Project, including a program which shall set forth the Client's plans, objectives, constraints, criteria, schedule, special requirements, and any other information which may affect Consultant's performance under this Agreement. Consultant shall be entitled to rely upon the accuracy and completeness of any plans, services, information, surveys, and reports furnished by Client and/or any other consultants retained by Client.

2.5 If the Client observes or otherwise becomes aware of any change in the Project, or of any fault or defect in the Project or nonconformance with this Agreement, prompt written notice thereof shall be given by the Client to the Consultant.

ARTICLE 3

GOVERNING LAW

- 3.1 The Client and Consultant agree that this Agreement and any legal actions concerning its validity, interpretation, and performance shall be governed by the laws of the state of Arizona. It is further agreed that any legal action between the Client and Consultant arising out of this Agreement or the performance of the services shall be brought in a court of competent jurisdiction in Arizona.
- 3.3 If either party hereto institutes legal or equitable action of any kind against the other party because of any failure or alleged failure to perform, error, omission, negligence, or breach of contract or warranty, and if such legal action is not successfully prosecuted, or if it is dismissed, or if the decision is rendered for the defending party, the instituting party agrees to pay the other party any and all costs of defense, including attorney's fees, expert witnesses' fees, and court costs and any and all other expenses of defense which may be necessary immediately following dismissal of the case or immediately upon a decision being rendered on behalf of the defending party.
- 3.4 Notwithstanding any provision to the contrary in this Agreement, in the event that any payment to Consultant is not made as and when provided for by this Agreement, Consultant may file a lien, claim, or exercise any other remedies available in law or equity.

ARTICLE 4

TERMINATION OR SUSPENSION

- 4.1 This Agreement may be terminated by either party upon not less than fourteen (14) days' written notice should the other party fail substantially to perform in accordance with the terms and conditions of this Agreement through no fault of the party initiating the termination.
- 4.2 In the event of any termination or suspension not the fault of the Consultant, the Consultant shall be compensated for services performed through the end of the 14-day notification period stipulated in paragraph 4.1 above, together with reimbursable expenses then due, and all expenses associated with or resulting from termination or suspension.
- 4.3 Prompt payment to Consultant is a material consideration of this Agreement. Failure of the Client to pay any invoice when due shall entitle Consultant to suspend or

terminate all work on the Project, at its option, upon seven (7) days' written notice to Client. Unless payment in full is received by the Consultant within seven (7) days of the notice, the suspension or termination shall take effect without further notice. In the event of such suspension or termination, Client waives all rights, claims, etc. which it might otherwise have against Consultant as a direct or indirect result of such suspension or termination, and Consultant shall have no liability to the Client for delays or damages resulting therefrom. The Client shall make no demand for liquidated damages for delays or actual damages for delays, and no liquidated or actual damages may be assessed against Consultant for delays or causes attributed to other consultants or contractors or arising outside of this Agreement.

ARTICLE 5

OWNERSHIP AND USE OF DOCUMENTS

- 5.1 The Client acknowledges that the Consultant's drawings, reports, calculations, estimates, field data, notes, specifications, and other documents or instruments, including those in electronic form, prepared by the Consultant and its subconsultants for the Project are Instruments of Service. Nevertheless, these Instruments of Service shall become the property of Client upon completion of the work, provided that Consultant and its subconsultants have been compensated in full for their services hereunder. The Client agrees to indemnify, hold harmless, protect, and defend the Consultant and its subconsultants from and against any and all damages, claims, and losses, including defense costs, arising or alleged to have arisen out of any reuse of these Instruments of Service for any extension(s) to this Project or any other project(s) without the written authorization of the Consultant.

ARTICLE 6

PAYMENTS TO THE CONSULTANT

- 6.1 Consultant invoices shall be submitted monthly and shall be in proportion to the services performed. Terms shall be net thirty (30) days. Invoices shall be considered correct as rendered if not questioned in writing within ten (10) calendar days of the invoice date. No retainages shall be withheld from the compensation due. Disputation over any portion of an invoice shall not relieve Client from payment of all undisputed amounts in accordance with the payment terms herein. Overdue accounts are subject to carrying charges of 1.5 percent per month on the unpaid balance, calculated from the invoice date(s). This is an annual rate of 18.0 percent. Payments received will be applied first to any accrued carrying charges, with the balance of the payment then applied to any unpaid fees. Prompt payment to Consultant is a material consideration of this Agreement. See Article 4 with regard to suspension or termination of Consultant's services in the event Client fails to make Consultant's payments as provided for herein.

- 6.2 Records of reimbursable expenses, additional services, and services performed on an hourly or not-to-exceed basis, if applicable, shall be kept according to generally accepted accounting principles and shall be available to the Client or Client's authorized representative at mutually convenient times at Consultant's home office. The expense of any additional insurance coverages or limits on Consultant, if requested or required by Client in excess of that normally carried by Consultant and its subconsultants, shall be reimbursed to Consultant by Client, for a mutually agreed upon duration, over and above the cost of Consultant's fee for Basic and Additional Services, as a Reimbursable Expense.

ARTICLE 7

BASIS OF CONSULTANT'S COMPENSATION

The Client shall compensate the Consultant for the Services provided in accordance with ARTICLE 6, "PAYMENTS TO THE CONSULTANT," and the other terms and conditions of this Agreement, as follows.

- 7.1 FOR BASIC SERVICES of Consultant and its subconsultants as described in Paragraph 1.1 and Exhibit A, Basic Compensation shall be five thousand, five hundred and ten dollars and sixty one cents (\$5,510.61).
- 7.2 FOR ADDITIONAL SERVICES of Consultant and/or its subconsultant(s) requested by Client or necessitated by the Project, compensation shall be in addition to the above-stated Fee for Basic Services, as mutually agreed to by the Client and Consultant and incorporated into this Agreement by written amendment.
- 7.3 The Client and Consultant agree in accordance with the terms and conditions of this Agreement that:
- 7.3.1 if the Scope of the Project or of the Consultant's Services is changed materially, the amounts of compensation shall be equitably adjusted.
- 7.3.2 if the services covered by this Agreement have not been completed within ten (10) months of the date hereof, through no fault of the Consultant, the amounts of compensation, rates, and multiples set forth herein shall be equitably adjusted.

ARTICLE 8

OTHER PROVISIONS AND CONDITIONS

- 8.1 If any portion of this Agreement is held to be invalid or unenforceable, then all other remaining terms, conditions, and provisions of this Agreement shall not be affected and shall be given full force and effect without regard to the invalid or unenforceable portion. One or more waivers by either party of any term, condition, provision, or

covenant shall not be construed by the other party as a waiver of subsequent breach of the same by the other party.

- 8.2 The Client and Consultant, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Client nor Consultant shall assign this Agreement without the prior written consent of the other party.
- 8.3 This Agreement shall be executed in two or more counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall, together, constitute and be one and the same instrument. Titles or headings of Articles or paragraphs of this Agreement are inserted solely for convenience of reference and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction, or effect. The singular includes the plural, and the masculine gender includes the feminine and neuter genders.
- 8.4 All notices provided for by this Agreement shall be given in writing either by (1) actual delivery of the notice to the parties thereunto entitled, or (2) by mailing the notice to the last known address of the party entitled thereto, registered mail, return receipt requested. The notice shall be deemed to be received in case (1) on the date of its delivery to the party entitled thereto and in case (2) on the date of its verifiable receipt. Notwithstanding the above, Client's notice(s) to proceed with phase(s) of work may be sent by e-mail transmission and/or by regular mail and shall be deemed delivered on the date first received by the Consultant.
- 8.5 Notwithstanding any provision contained in this Agreement, it is agreed and understood by the Client and Consultant that Consultant's Scope of Services, and those of its subconsultants, specifically exclude any work in connection with toxic or hazardous materials other than sampling for asbestos or lead as stated in the scope of work. Therefore, the Client agrees to indemnify, hold harmless, protect, and defend Consultant and its subconsultants from and against any and all claims, losses, damages, liability and costs, including but not limited to cost of defense, arising out of or in any way connected with the presence, investigation, control, manufacture, handling, removal, disposal, exposure to, discharge, release, or escape of contaminants in any form, as defined by the Environmental Protection Agency, either during or subsequent to Consultant's work hereunder, excepting only claims, losses, damages, liability and/or costs arising solely from Consultant's sampling for asbestos or lead as stated in the scope of work.
- 8.6 If submissions to specific public agencies or authorities having jurisdiction over the Project are included in the Scope of Services, Consultant shall compile and submit such materials as may be required, including those prepared by Consultant's subconsultant(s), if any. If submissions include materials prepared by other consultants retained directly by Client, Consultant shall be reimbursed as an

Additional Service for any resubmission and coordination time attributable to untimely, incorrect, or incomplete work of such consultants.

- 8.7 If the Project Scope requires Consultant to prepare and/or submit National Register nomination(s); applications(s) for Tax Certification, Parts 1, 2, and/or 3; historical/archeological reports or evaluations; or an application for recognition of an area/region as a Heritage Area, to public authorities having jurisdiction over the Project, it is understood and agreed by Client that Consultant does not warrant or guarantee acceptance or approval by such reviewing agency(ies).
- 8.8 Notwithstanding any other provision in this Agreement to the contrary, nothing contained in this Agreement shall be construed as:
- 8.8.1 constituting a guarantee, warranty, or assurance either expressed or implied that Consultant's services will yield or accomplish any certain outcome for the Project; or
 - 8.8.2 obligating Consultant to exercise professional skills or judgment greater than that which can be reasonably expected from other professional services consultants under like circumstances; or
 - 8.8.3 an assumption by Consultant of liability greater than as described in this Agreement or of the liabilities of any other party.
- 8.9 **Based upon a mutually acceptable allocation and understanding of the relative risks, rewards, and benefits of the Project to, and between, the Consultant and Client, the Client agrees that, to the fullest extent permitted by law, Consultant's total liability to Client, and to all contractors, subcontractors, and other consultants on the Project, for any and all injuries, claims, losses, expenses, or damages arising out of this Agreement from any cause(s) including but not limited to Consultant's negligence, errors, and omissions, shall, in the aggregate, not exceed Consultant's total fee for services rendered on the Project.**
- 8.10 Consultant shall not be responsible for the acts or performance of any other consultant, contractor, or third party retained by Client, including, but not limited to, security and safety precautions and programs in connection with such parties' work; nor for plans, specifications, contracts, means, methods, techniques, schedules, sequences, safety, or integrity of any such parties' work; or for the acts, omissions, or negligence of any such parties or their agents or employees. Consultant shall not be responsible for security, or providing any security measures, to protect the Project site(s) from theft, damage, or destruction of property by any third party unless, and to the extent, expressly provided for in the Proposal attached hereto as Exhibit A.
- 8.11 Neither party shall hold the other responsible, and shall waive their insurers' rights, for damages or delays caused by acts of God (including inclement weather), strikes, lockouts, accidents, or other events beyond the other's respective direct control.

- 8.12 Nothing contained in this Agreement shall create a contractual relationship with, or cause of action in favor of, a third party against either the Client or Consultant.
- 8.13 The signatories to this Agreement each warrant and represent that he/she is an authorized officer or representative of his/her respective party to this Agreement; is fully empowered to enter into this Agreement on behalf of that party; and that the party has been represented by counsel, has reviewed, and understands and agrees to all of the terms and conditions of this Agreement.
- 8.14 This Professional Services Agreement document, including the attached Exhibit A, shall, upon execution by both parties, constitute the entire and integrated Agreement between the Client and Consultant, and shall supersede all prior negotiations, representations, or agreements, either written or oral. In case of a conflict or discrepancy between this Professional Services Agreement document and the Proposal attached hereto as Exhibit A, this Professional Services Agreement document shall govern. This Agreement may not be modified except by written amendment, signed by both Consultant and Client.
- 8.15 This Agreement is subject to the cancellation provisions of A.R.S. § 38-511.

IN WITNESS WHEREOF, the parties hereto, intending to be legally bound hereby, have executed and delivered this Agreement as of the day and year first written above.

CITY OF EL MIRAGE

COMMONWEALTH HERITAGE GROUP, INC.

Signature



Signature

Printed Name and Title

Robin Johl, Regional Director of
Environmental Services

Printed Name and Title

Attachment: Exhibit A - Proposal dated February 01, 2022



Archaeological Consulting Services – A Commonwealth Heritage Group, Inc. Company
424 West Broadway Road, Tempe, AZ 85282-1339
(480) 894-5477

December 27, 2021
Revised February 01, 2022
Commonwealth Project No. AZ-0248

Ms. Tessa Wessel, E.I.T
Civil Engineer
10000 N. El Mirage Road
El Mirage, Arizona 85335

Re: El Mirage Multi-Use Trail Project

Dear Ms. Wessel:

The City of El Mirage (City) is seeking assistance from Archaeological Consulting Services, Ltd., now Commonwealth Heritage Group, Inc. (Commonwealth) with completion of a U.S. Department of Housing and Urban Development (HUD) Environmental Assessment (EA) for the proposed El Mirage Multi-Use Trail Project, El Mirage in Arizona. The project will consist of a new 12' wide concrete multi-use trail that will run along the north side of a City owned drainage channel. The channel is located between Cactus Road and Dysart Road and is approximately 1-mile long, with various trail connection entry points. Commonwealth understands that the City will utilize federal HUD funding to undertake the proposed project.

Enclosed is our estimate for completion of an EA undertaken pursuant to 24 Code of Federal Regulations (CFR) 58.36 for the El Mirage Multi-Use Trail Project. The specific tasks to be performed are outlined below.

SCOPE OF SERVICES

1. Record Reviews

Commonwealth will perform the necessary environmental reviews under HUD review guidelines to fully assess, determine and document regulatory compliance, and identify mitigation measures, if required, on the 52 environmental criteria listed in the required HUD EA document. Reviews will involve accessing publically available, online databases, records, and maps, including, but not limited to, the online resources listed below. Copies of source documentation used to prepare the EA will be included in the environmental review record (ERR).

- City of El Mirage website
- Maricopa County Assessor website
- Maricopa County Air Quality Department website
- Arizona Game and Fish Department Online Environmental Review Tool
- Arizona Department of Environmental Quality (ADEQ) GIS eMaps
- Arizona State Museum (ASM) AZSITE online database
- Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRMs)
- U.S. Environmental Protection Agency (EPA) website
- EPA NEPAssist Tool
- EPA Enforcement and Compliance History Online (ECHO) website
- EPA Environmental Justice Screening and Mapping Tool
- HUD Online Noise Assessment Tool
- U.S. Fish and Wildlife Service National Wetlands Inventory Map
- National Resources Conservation Service Web Soil Survey

Commonwealth will also conduct a site visit, including a windshield survey of the project vicinity and an on-site property inspection, to allow for an accurate written and photographic description of the project environs. Site photographs will be taken for inclusion in the EA document. Commonwealth will coordinate with the City of El Mirage staff to schedule the site visit.

Commonwealth will undertake individual email solicitations with the City of El Mirage departments responsible for specific environmental criteria/criterion, such as the Planning & Development Services, Police Department, and Historic Preservation Office. The City of El Mirage will provide contact names, emails, and phone numbers for the City of El Mirage

Commonwealth will submit a scoping letter to the AGFD, if needed, requesting their review of the proposed project and potential impacts to protected species and critical habitat under the Endangered Species Act (ESA) and other applicable regulations (e.g., Migratory Bird Treaty Act). Commonwealth will submit a draft letter to the City for approval before submitting. The letter will be prepared on Commonwealth letterhead and submitted electronically in accordance with AGFD guidelines. Copies of correspondence will be included in the ERR.

Commonwealth will maintain up-to-date and ongoing communication with the City of El Mirage Project Manager regarding inquiries to City of El Mirage staff to provide updates and will request assistance in the event that no responses are received.

2. Documentation

The EA document will be completed using the recommended format set forth in 24 CFR 58.36. The EA document will include the required verifiable source documentation to support the findings and outcome of the assessment. All pertinent source documentation, such as document reference, Internet website reference, telephone summaries, and other studies, will be provided in the appendix of the EA. One electronic draft will be provided initially for review. The EA will be completed through HEROS.

SCHEDULE

Commonwealth will complete the draft EA within 60 calendar days of the formal request, which will be given upon approval of this estimate. Commonwealth will address comments and provide the Final EA within seven calendar days of receiving comments to the draft EA assuming no substantial comments arise during review. We are committed to meeting the schedule and will immediately notify the City of El Mirage should any issues beyond our control arise that would potentially delay completion of the EA.

FEE ESTIMATE

Commonwealth's estimate for completion of the EA is \$5,510.61. As requested, a detailed fee estimated with an itemized list of all required activities, time allocated per activity in half hour increments, and total fee per activity is enclosed. Services will be invoiced on a time-and-materials basis.

ASSUMPTIONS

The scope of work and fee estimate outlined above are based on the following assumptions:

- The City of El Mirage will provide relevant project information, such as detailed project scope, project purpose and need, and funding information, as needed to complete the EA;
- Although Commonwealth has taken every step to identify the required specific environmental criteria reviews necessary to evaluate potential impacts and regulatory compliance, unforeseen additional studies/reports and/or agency consultations may add to the fee estimate and completion timeline;
- Extraneous studies, such as asbestos and lead-based paint sampling, will be estimated on an additional, as-needed basis;
- Commonwealth will prepare a draft EA document and address one round of review comments from the City of El Mirage to prepare the final EA. Additional revisions to the EA document may require a separate fee estimate;
- Commonwealth will not be required to undertake or participate in HUD public advertising requirements, facilitate public outreach, or write HUD advertisements, as part of the environment review process. We will, however, be relied upon for our expertise regarding completion of the EA, as needed;
- The Environmental Assessment will be completed through HEROS.

Commonwealth greatly appreciates the opportunity to provide this estimate to complete the Environmental Assessment for the El Mirage Multi-Use Trail Project. We are prepared to begin work immediately upon receiving written authorization and look forward to working with the City of El Mirage on this project. Should you have any questions, please feel free to contact Amber Szalanski, Environmental Planner, or me at 480.894.5744.

Sincerely,



Robin Johl, ASP

Ms. Tessa Wissel
December 27, 2021
Revision 1 February 01, 2022
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Regional Director of Environmental Services

c: Amber Szalanski

Enclosure – Detailed Fee Estimate

El Mirage Multi-Use Trail Project
Environmental Assessment
DETAILED FEE ESTIMATE

Firm: **ACS - A Commonwealth Company**
424 W. Broadway Road
Tempe, AZ 85282
Phone: **(480) 894-5477**

Project Name:
ACS No.:
COS Contract No.:
Contract Mod:

EI Mirage Multi-use
Trail
AZ-0408

DERIVATION OF COST PROPOSAL - SUMMARY

Direct Labor

Classification	Person-Hours	Average Hourly		Total
		Rate	Labor Costs	
Environmental Planner/Scientist	46.0	\$89.15	\$ 4,100.90	
Office Staff	1.0	\$107.78	\$ 107.78	
Principal Investigator (Cultural Resources)	1.0	\$ 115.70	\$ 115.70	
Regional Director—Environmental	6.0	\$ 176.10	\$ 1,056.60	
Senior GIS Coordinator	0.5	\$ 98.57	\$ 49.29	
Gis Analyst	1.0	\$ 80.34	\$ 80.34	
Total Labor	55.5			\$ 5,510.61

TOTAL TIME & MATERIALS COST \$ 5,510.61



Signature

12/27/2021

Date