

**CITY OF LEADVILLE, COLORADO
RESOLUTION NO. 14
SERIES OF 2023**

**A RESOLUTION APPROVING A SERVICES AGREEMENT BETWEEN THE CITY OF
LEADVILLE AND METCALF ARCHAEOLOGICAL CONSULTANTS, INC.**

WHEREAS, The Historic Preservation Commission would like to hire Metcalf Archaeological Consultant, Inc. to conduct a reconnaissance level cultural resource survey of the west end residential area; and

WHEREAS, Metcalf Archaeological Consultants, Inc. has submitted, and been awarded, a bid as a qualified and experienced consulting firm; and

WHEREAS, The survey will provide a better understanding of the integrity and contributing status of buildings.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Leadville, Colorado, as follows:

The City Council hereby:

- (a) Authorizes the City Administrator, on behalf of the City of Leadville's Historic Preservation Commission, to enter into a contract for professional services with Metcalf Archaeological Consultants, Inc. in the amount of \$29,357.

This Resolution shall be effective upon its adoption.

ADOPTED this 18th day of July, 2023 by a vote of 5 in favor, 0 against,
0 abstaining, and 2 absent.

CITY OF LEADVILLE, COLORADO:



Greg Labbe, Mayor

ATTEST:



Deputy City Clerk

**City of Leadville, Colorado
SERVICES AGREEMENT**

Service: Cultural Resource Survey

THIS SERVICES AGREEMENT (“Agreement”) is made and entered into by and between the City of Leadville, a municipal corporation of the State of Colorado, with offices at 800 Harrison Avenue, Leadville, Colorado 80461 (the “City”), and Metcalf Archaeological Consultants, Inc., an independent contractor with offices at 11495 W 8th Ave, Suite 104, Lakewood, CO 80215 (“Contractor”) (each individually a “Party” and collectively the “Parties”).

For the consideration set forth in this Agreement, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

I. SERVICES

A. **Description.** Contractor will provide a Cultural Resource Survey for the west end residential area of the City (“Services”), which services are more fully described in Contractor’s proposal attached to this Agreement as **Exhibit A**. **Exhibit A** is incorporated into this Agreement by this reference.

B. **Term and Termination.** This Agreement shall be effective on the date of its mutual execution by the Parties and shall continue until contractor completes the Scope of Services to the satisfaction of the City or until terminated as provided in this Agreement. The Parties may mutually agree to extend the term of this Agreement in writing pursuant to the amendment provisions of this Agreement. Either the City or the Contractor may terminate this Agreement by providing the other party with advance written notice of termination. The notice of termination shall state the date on which the Services shall terminate, which shall be no sooner than thirty (30) days following the date of the notice of termination. Within thirty (30) days of the date of termination, Contractor may submit a final invoice for all unpaid Services completed pursuant to this Agreement prior to the date of termination. The City will pay such final invoice within thirty (30) days of the date of the City’s receipt of the final invoice. The City shall not be obligated to pay any invoice submitted by Contractor more than thirty (30) days after the date of termination.

II. COMPENSATION

A. **Payment.** In consideration for performance of the Services by the Contractor, the City shall pay Contractor an amount not to exceed twenty-nine thousand three hundred fifty-seven dollars (\$29,357) (“Contractor Fee”).

B. **Method of Payment.** Contractor may invoice the City no more often than twice a month for Services completed. The City shall pay each invoice within thirty (30) days of the City’s receipt of the invoice unless the Parties agree upon another time period in writing. Notwithstanding the foregoing, upon termination of this Agreement by one or both parties, the City shall pay the final invoice pursuant to Section I of this Agreement. All payments under this Agreement shall be by check made payable to Contractor. The City will mail payments via first class United States Mail to the Contractor’s address listed on the first page of this Agreement.

C. **Other Expenses.** Any fee, cost, charge, or expense incurred by the Contractor not otherwise specifically authorized by this Agreement shall be deemed a non-reimbursable cost that shall be borne by the Contractor and shall not be billed or invoiced to the City and shall not be paid by the City.

III. INSURANCE

Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor's minimum statutory and legal obligations arising under this Agreement. Such insurance shall name the City as a Certificate Holder. Contractor shall provide the City with a certificate of insurance prior to the commencement of the services under this Agreement, and Contractor shall provide the City a copy of such insurance policy or policies upon request by the City. Contractor understands and agrees that the City's insurance does not provide coverage for Contractor. The Contractor's failure to obtain or maintain Contractor's own policies of insurance for the duration of this Agreement and for any travel or other activities related to the Services shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance under this Agreement.

IV. INDEMNIFICATION

Contractor agrees to indemnify, defend, and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including reasonable attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage to the extent caused in whole or in part by, the negligent act, omission, error, professional error, mistake, negligence, or other fault of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor.

V. MISCELLANEOUS

A. **Independent Contractor.** Contractor understands and agrees that Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City. Contractor acknowledges that it is not on City's payroll or social security or tax withholding rolls. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is an employee of City for any purposes. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing services under this Agreement during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney's fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment.

B. **Governing Law and Venue.** This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions of it shall be brought in Lake County, Colorado.

C. **Integration and Modification.** This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications. This Agreement may only be modified or amended upon written agreement signed by the Parties.

D. **Notice.** Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented to a Party or sent via pre-paid, first-class United States Mail, to the Party at the applicable address set forth on the first page of this Agreement.

E. **Severability.** If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.

F. **Assignment.** Neither this Agreement nor any of the rights or obligations of the Parties, shall be assigned by either Party without the written consent of the other.

G. **Rights and Remedies.** Any rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted.

H. **Binding Effect.** The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section V shall not authorize assignment.

I. **No Third-Party Beneficiaries.** Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

J. **Survival.** Any terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the Termination Date of the Agreement shall survive such Termination Date and shall be enforceable in the event of a failure to perform or comply, including but not limited to the following provisions: Sections IV (Indemnification) and V (A) (Independent Contractor), (B) (Governing Law and Venue), (G) (Rights and Remedies) and (K) (Attorneys' Fees).

K. **Attorneys' Fees.** If the Contractor breaches this Agreement, then it shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

L. Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

M. Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

N. Force Majeure. Neither the Contractor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by “force majeure.” As used in this Agreement, “force majeure” means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

O. Protection of Personal Identifying Information. In the event the Services include or require the City to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, *et seq.*, relating to third-party services providers.

P. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Leadville and the Contractor and bind their respective entities.

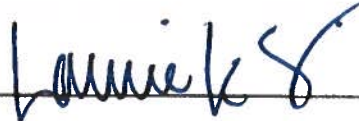
Q. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

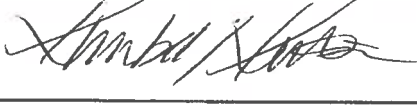
[signature page follows]

THIS AGREEMENT is executed and made effective as provided below.

CITY OF LEADVILLE, COLORADO

METCALF ARCHAEOLOGICAL CONSULTANTS, INC.

By: 

By: 

Printed Name: Laurie Simonson

Printed Name: Kimberly Kintz

Title: Leadville City Administrator

Title: Vice President/Operations Manager

Date of execution: July 19, 2023

Date of execution: 7/27/2023

ATTEST:


Hannah Scheer, Deputy City Clerk

STATE OF _____)
COUNTY OF _____) ss.

The foregoing Services Agreement was acknowledged before me this ____ day of _____, 2023, by _____ as _____ of _____, a _____.

Witness my hand and official seal.

My commission expires: _____.

Notary Public
(Required for all contracts (C.R.S. § 8-40-202(2)(b)(IV)))

EXHIBIT A **SCOPE OF WORK**

Task A—Literature Review and Archival Research

Subtasks -

- Request file search through OAHP
- Review existing historic documentation
- Conduct research at City and County offices
- Conduct research at local institutions and repositories

Literature Review and Research

Prior to beginning fieldwork, Metcalf staff will conduct necessary preliminary research including a review of existing historic documentation in the project area, relevant survey and stabilization reports, and any documentation specific to the City of Leadville. This background research will provide a basic knowledge of the area as well as results of previously conducted work. Metcalf will obtain all available documentation and GIS data from OAHP.

To adequately evaluate the cultural resources within the survey area, staff will consult relevant primary and secondary source materials as well as state developed contexts, web guides, historic photos, and National Register documents. The Leadville Heritage Museum, Colorado Mountain History Collection at the Lake County Public Library, digital Sanborn Fire Insurance maps, and historic newspapers will also be utilized for historic research.

Task B – Fieldwork

Subtasks -

- Reconnaissance level survey of 108 properties

Fieldwork

Metcalf will conduct a survey of 108 identified properties at a reconnaissance level. The inventory will conform to the guidelines contained in *Colorado Cultural Resource Survey Manual: Guidelines for Identification* (OAHP 2007). Work will be conducted by Metcalf Architectural Historian, under the supervision of Principal Investigator, Jennifer Lee. Additional field staff, if utilized, will be directly supervise. Metcalf will record properties using relevant forms available from the Colorado OAHP, as described below. At minimum, on-site documentation will include locational information, written descriptions of each feature, dates of construction, historic associations and/or contexts, and an assessment of each of the seven aspects of integrity. Metcalf will include a preliminary evaluation of eligibility following criteria established in 36 CFR 60 and the guidelines provided in National Register Bulletin 15, *How to Apply the National Register Criteria for Evaluation*. Justification for the eligibility or ineligibility of a location will be discussed in the technical report with reference to the four Criteria for Evaluation (A through D), seven Criteria Considerations (A through G), and seven aspects of integrity.

Each property will be recorded by taking high quality digital images from the public right-of-way. Photographs will clearly show the subject building. If there are secondary structures associated with each site and they are not clearly visible in the image of the main house, additional photographs may be taken. Our Architectural Historian will document physical descriptions, note current property conditions, and make preliminary recommendations regarding the level of historic integrity retained by each property utilizing Metcalf's digital iPad workflow.

Task C—Survey Forms and Report Preparation

Subtasks -

- Complete 108 reconnaissance survey forms
- Write technical report
- Submit draft forms and report to HPC
- Revise drafts and prepare final forms and report
- Submit final forms and report to HPC

Following the survey, Metcalf will complete 108 reconnaissance survey forms using OAHP templates as noted above. Metcalf has confirmed that OAHP no longer requires a separate form for secondary buildings on properties recorded at the reconnaissance level. Primary buildings will therefore be recorded on a Historical and Architectural Reconnaissance Form and ancillary buildings will be included in a table at the end of the form. Each draft form will be submitted to the HPC and OAHP for review. Metcalf will revise and finalize the forms in response to received feedback.

Historical and Architectural Reconnaissance Form (OAHP Form 1417)

Metcalf will record each property on a Colorado Cultural Resources Inventory Historical and Architectural Reconnaissance Form (OAHP Form 1417). This form is intended to provide the basic descriptive record of a single building, structure, or site sufficient to make a preliminary assessment of architectural significance and/or identify potential areas of historical significance only and will not result in a formal evaluation of historical significance in reference to the NRHP Criteria. Data collected for each property will include: legal location, street address and parcel information, UTM reference, property name, resource classification, current property owners, description of basic construction features, historic function and date of construction, potential areas of significance, site photographs, maps, and assessment of integrity.

Technical Report

Following the completion of OAHP Forms, Metcalf will provide a technical report for submission to, and approval by the HPC and OAHP. The report will include a cover page, abstract, table of contents, list of figures, list of tables, introduction, project background, historic context, and site descriptions and evaluations. Completed forms will be included as an appendix to the report, as will a complete set of digital and historical photographs, and maps for each building. Final deliverables will be submitted in an electronic format.

To achieve quality control and assurance at Metcalf, the North and East End Residential Architecture Survey report will go through intensive review by both the project Architectural Historian and the Principal Investigator prior to submittal. Review will ensure the report satisfies the requirements of the OAHP and displays technical competence, is grammatically sound, and is compiled in a manner consistent with the project.

If Metcalf receives any comments from the HPC or OAHP on the draft technical report, we will make the necessary edits and submit a final digital copy.

Cost Proposal and Project Assumptions

Metcalf's cost estimate to complete the City of Leadville's West End Residential Architecture Survey (archival research, fieldwork, survey forms, and reporting) is **\$29,357**.

This proposal is predicated on several assumptions

- The cost and scope of work is based on information provided by the City of Leadville in an email dated November 3, 2022.
- Scope and costs assume on-going coordination and communication with the City of Leadville.
- All fieldwork will be conducted from the public right-of-way and will not require or involve access to private property or structure interiors.
- Metcalf will use its own equipment and resources, including digital cameras and ArcGIS software for in-house GIS processing.
- Mileage cost is based on the current state rate of \$0.56 per mile and is subject to change.
- One (1) round of review addressing the comments of the City of Leadville.
- One (1) round of review addressing the comments of OAHF staff.