



PROFESSIONAL SERVICES AGREEMENT

Client Name (referred to herein as “Client”): Rapid Creek Recreational Corridor

Client Address:

P.O. Box 9482

Rapid City, SD 57709

Date of Agreement: April 15, 2026

PREFACE

The Professional Services Agreement between Calibre Engineering, Inc. (“Calibre”) and Client signing below (“Client”) contains the following Attachments that are incorporated into and made part of this Agreement:

Exhibit A – Service Authorization

Exhibit B – Schedule of Rates

Exhibit C – Contractual Conditions

Exhibit D – Schedule of Insurance

PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement (“Agreement”) is made as of date above, between Client listed above (hereafter referred to as “Client”), whose address is listed above, and Calibre Engineering, Inc., a Colorado Corporation (hereinafter referred to as “Calibre”), whose address is 8822 S. Ridgeline Blvd., Suite 310, Highlands Ranch, CO 80129, and jointly referred to as the “Parties”. The Parties agree as follows:

SCOPE OF SERVICES

The Scope of Services under the Agreement are defined in the Service Authorization, Exhibit A, and any and all subsequent or additional fully executed Service Authorizations.

COMPENSATION

Compensation for the services provided under the Agreement is defined in the Service Authorization, Exhibit A. Calibre's Schedule of Rates is included herein as Exhibit B.

LIMITATIONS OF PROFESSIONAL SERVICES

Services not specifically identified in any Service Authorization are excluded from the Agreement. However, deviation from the Scope of Service, whether client-driven or by other factors, will be justification for amendment of the Service Authorization.

INSURANCE

Calibre is insured pursuant to the Schedule of Insurance attached hereto as Exhibit D.

[Signature page follows]



Calibre Engineering, Inc.

Client: Rapid Creek Recreational Corridor

By: _____

By: _____

Print: Brian Stephens-Hotopp

Print: Justin Herreman

Title: Vice President of Engineering
Services

Title: Project Manager

Date: _____

Date: _____

EXHIBIT A

SERVICE AUTHORIZATION

Project Name: Rapid Creek Whitewater Park
Calibre Project Name: Rapid Creek Whitewater Park
Prime Agreement Date: Agreement Date

This Service Authorization identifies the Scope of Services, and related Compensation and Schedule, to be provided by Calibre Engineering, Inc. (Calibre) for the project named above. This Service Authorization, once executed by the Client and Calibre (the “Parties”), becomes a part of the Professional Services Agreement between the Parties, listed as Prime Agreement date. All terms and conditions of the Professional Services Agreement are incorporated herein by reference.

Scope of Services

This Scope of Services was prepared for Rapid Creek Recreational Corridor by Calibre Engineering in order to provide Final Design Services for the Rapid City Whitewater Park in Rapid City, South Dakota. Line item pricing has been provided for each phase to allow the Client to move the project forward in stages as funding becomes available. Calibre has provided an estimated total cost in this document. The proposal assumes that the Client will provide survey, geotech, and a permitting consultant.

Background:

In 2024, Calibre completed conceptual designs for a number of whitewater parks in northern Rapid City as a part of a Feasibility and Conceptual Design Study (FICD) completed for a local stakeholder group. In that study, several sites were evaluated and some were proposed for improvement. Of the recommended sites, Site 1 was selected by the Client for improvement. The Site 1 design proposed to replace an existing low-head dam with whitewater features and develop a river-based recreation amenity. The intent of the project aims to remove an existing in-stream hazard and barrier to fish passage as well as to drive tourism, enhance safety, improve river navigability, restore fish passage and habitat, and strengthen the connection between the local community and the river. The costs contained herein can be applied to either Site 1 or Site 2, as these are similar projects.

Project:

This document proposes services provided by Calibre Engineering and its subcontractors to create and model a design for a whitewater park In Rapid City. This Scope of Services includes services that

advance the design from the current Conceptual Level to the Construction Documents level, including the production of construction documents for “Site 1” as defined in the FICD. This proposal assumes that Calibre will function as the design lead, will utilize survey information from a licensed surveyor in Rapid City, will similarly utilize information from a Geotechnical specialists, and will coordinate with a local permitting expert to assist us to deliver the project¹. In this effort, Calibre will coordinate the design effort and will provide engineering services to design the whitewater park. If a public process is required, Calibre will coordinate with Rapid Creek Recreational Corridor for this process (subject to the terms and assumptions of this proposal) but will assume that RCRC will coordinate the public process effort and will provide meeting spaces, online spaces, etc. in order to engage in the public process.

Design for a simple parking lot and simple trail system will be included in our design effort. This is the so-called “Land-Side” design and is limited in this scope to include a gravel parking lot and access paths to the river. Parking lot design will meet ADA criteria as required by local agencies. It is assumed that the local permitting specialist will be responsible for site construction permitting and that no drainage permitting, new draining infrastructure or site lighting will be required. This proposal assumes that no other land side engineering will be required. This includes the assumption that no traffic engineering, park design, endangered species surveys, CLOMR/LOMR processes, or other tasks will be included in Calibre’s scope. If these tasks are necessary, Calibre can provide them through an addendum to this proposal.

In order to deliver the completed design documents, Calibre proposes to complete the following tasks:

Phase 1: Preliminary Design and Design Development (60% Design Level): Preliminary Design will include the following tasks:

- Kick-off Meeting and Project Management - Calibre will host a virtual kick-off meeting with the Client to confirm project objectives, obtain stakeholder input from the Concept Design and Feasibility Investigation Report, and discuss next steps and required background information from the Client. This task includes attending regular progress meetings on a biweekly basis to update the client and ensure project work meets Client expectations.
- Survey: – Calibre will be provided a survey from a licensed surveyor per our specifications.
- Geotechnical Engineering: Calibre will receive a geotechnical analysis of the soils adjacent to the project site.
- Information gathering and Review: The Client will supply, if available through City resources, any as-built drawings, existing hydraulic models, and will identify the nearest stream gauge for historical flow data. Additionally, the Client will specify desired design flow for the project.

¹ As noted, the Client may choose to provide these services directly.

- GIS and As-Built Information: The Client will also provide a base map or source for GIS data, utilities, drainage features, property and ROW boundaries, aerial imagery, and other design-relevant information.
- Pre-Permitting Meetings: Calibre will conduct a pre-permit meeting with regulatory agencies to confirm permitting needs and fish passage criteria.
- Hydraulic Modeling - Calibre will develop an Existing Conditions surface and base map in CAD utilizing the topographic survey and relevant project data obtained in the task above. From this surface, Calibre will develop a 1-dimensional hydraulic model in HEC-RAS to begin floodplain modeling and a no-rise analysis. This will help define hydraulic conditions in the project reach and guide design development and permitting decisions with the Client. A Preliminary Design level hydraulic model of proposed conditions will be developed and evaluated. Modeling outputs will be provided to the permitting specialist for permitting.
- Design Documentation, in-stream - Calibre will provide 30% Level Design Drawings. The preliminary design drawing package will include plan view(s), basic whitewater structure geometry, basic site layout, and approximate elevations and grading.
- Design Documentation, Land-Side - Calibre will develop and provide 30% Level Design Drawings. The design will also include planometrics for the proposed trails and parking area. This assumes that no utility design or stormwater permitting will be required. Due diligence will be required to identify any conflicts with existing conditions.
- Cost Estimate - a 30% Level Opinion of Probable Cost at the end of this task for review and comment by the Client and stakeholders. Modeling outputs will be provided to RCRA/local engineer as necessary for permitting.

Design Development (60%):

- Kick-off Meeting, Design Update, and Project Management - Calibre will start this task by reviewing 30% design comments with the Client and updating the project to meet client expectations. This task includes attending ongoing biweekly progress meetings via video/phone.
- Design Modeling and Refinement - A refined project design will be modeled and the design advanced utilizing HEC-RAS to ensure the project meets design, fish passage, and floodplain criteria.
- Fish Passage Design - 20 hours of design consultation with a fisheries ecologist is included in the proposed fee to assist in environmental/habitat design and permitting.
- 60% Design Documentation - The 60% design drawing package will include site and grading plans, profile, cross-sections, details, and typical details as necessary for permitting.
- Design Documentation, Land Side - Drawings and the design drawing package will include site and grading plans, profile section and cross-sections, erosion control, typical details, and drainage design as necessary for permitting and construction.
- Permitting - This proposal assumes that all local, state, and federal permitting tasks will be provided by a Local permitting specialist with assistance, as defined below, by Calibre. These

permits include the USACE 401/404, all state and federal permits including USACE, stormwater permitting, construction BMP permitting and any local building permits. In this scope it is assumed that Calibre will provide modeling data and design information including final modeling outputs and a hydraulic analysis included in the Basis of Design Report to the Permitting specialist for use in the permitting process. Additionally, Calibre will provide 20 hours of permitting support to the Permitting Specialist to assist with consultations and applications.

Phase 2: 100% Design Development and Construction Documentation

- 3D (CFD) Modeling – For proper function of whitewater features to be installed at the proposed project sites, Calibre will use the 90% level design CAD surface to create a Computational Fluid Dynamics (CFD) model. CFD modeling is the gold standard of computer models for whitewater applications. Varying flow rates will be modeled. This model will not be used for floodplain modeling.
- 90% Design Development: Calculations will be completed to address scour, piping, overturning forces, shear stresses, and other stability calculations using 1D and/or 2D modeling results. Additional 2D modeling will be performed at flows agreed upon to analyze design outcomes and to assess fish passage with permitting agencies if desired.
- 90% Design Review - The project will be presented to the Client and Client's representatives for review and comment at the 90% design level.
- 100% Design Development: Final design will be completed to the 100% DD level.

Construction Documents:

- Design Documentation - Calibre will incorporate comments from the 90% design review and (if applicable) physical modeling revisions into final 100% Level Design Drawings. The final drawing set will include the overall layout, site plans, grading plans, cross-sections, profiles, typical details, site erosion control, and suggested dewatering and BMP systems. Material types and sizes will be indicated in typical details. Calibre will also produce technical specifications for the materials and systems described in the design drawings. The final design package (drawings and specifications) will be stamped by a Professional Engineer licensed in the State of South Dakota and issued for construction via submission to the Client.
- Design Report - Calibre will produce a final design report that documents the design process.

Bidding Support

- Engineer's Estimate of Cost – Calibre will provide a Bid Tab with estimated quantities and a 100% Level Engineer's Opinion of Probably Cost.
- Bid Support – Calibre will provide review and comment for the Client's bid process in order to assist in selecting and contracting a qualified contractor for the project. Calibre will assist with a technical bid review and recommendations for Contractor selection.

Assumptions and Clarifications

The following assumptions and clarifications are provided relative to the Scope of Services, Compensation, and Schedule herein:

1. This proposal assumes that the client will engage the services of a surveyor, and that the client will hire a local permitting specialist.
2. This proposal assumes that Calibre will be responsible for in-stream design and site/civil design. This includes the whitewater park, associated trails and paths, and a parking area. Other components of the land design, including possible park improvements, vertical structures, or other improvements are not included unless specifically noted in this proposal.
3. This proposal assumes that two (2) site visits are included in the preliminary design phase and three (3) site visits are included in the detailed design phase to the project site. Additional site visits can be completed at the Client's request for an additional fee.
4. The proposed scope assumes bi-weekly progress meetings, 1 hour each via Teams.
5. This proposal assumes that the permitting specialist will coordinate with regulatory agencies and submit all environmental permitting required to build the project.
6. This proposal assumes that the surveyor will provide any required wetland delineation(s). If any other environmental studies are required including, but not limited to, an EIS, endangered species survey, level 1 or level 2 environmentals, or additional habitat studies as part of the permitting process are required that these will be additional services that Calibre will provide through a change order to this contract.
7. This proposal assumes that no dam safety, FERC or other dam permits or consultations will be required.
8. This proposal assumes that drainage design/analysis including storm sewers and SWPPP/SWMP permitting will not be required based on a project of this size.
9. The site will be required to meet the South Dakota ADA requirements for trails and parking. This is assumed to require approximately 2 handicap parking spots with asphalt paving.
10. This proposal assumes that 60% DD drawings are sufficient to apply for permits.
11. This proposal assumes that the client manages the bid process with Calibre's technical assistance in answering inquiries as well as in aiding in the selection of the contractor.

Specific Exclusions

This Service Authorization specifically excludes the following items, and all items not listed in the Scope of Services presented herein:

1. It is assumed that this project can be completed through a "no-rise" flood development permit and that a Conditional Letter of Map Revision (CLOMR)/Letter of Map Revision (LOMR) process will not be required. If necessary, the contract can be amended for Calibre to assist in the CLOMR/LOMR process.

2. Construction Phase Services are not included in this proposal. A separate proposal will be submitted once permits are obtained, and the design is nearing completion. This ensures the level of oversight quoted is appropriate based on the final design.
3. This proposal assumes that a physical model will not be utilized/required for this project.
4. This proposal assumes that site lighting will not be required as a part of the landside design.
5. It is assumed that the parking lot will have gravel paving and will not have an utility conflicts that require relocation of existing utilities.

Client Responsibilities

The following items will be provided by Client:

1. All available and necessary site information, including but not limited to existing conditions survey including in and surrounding the proposed parking site, geotechnical investigation report, as-built drawings for existing structures in the project reach, property and utility GIS data, and effective FEMA hydraulic model.

Compensation

The Scope of Services presented herein will be provided on a Fixed Fee (FF) basis and invoiced on a percent complete basis as the project and services progress.

[Fee page follows]

<u>Rapid City Whitewater Park Design Fee</u>			<u>Total Fee</u>
Task	Description		
1	PHASE 1: PRELIMINARY DESIGN and DESIGN DEVELOPMENT (60%)		\$ 70,263.70
2	DESIGN DEVELOPMENT (60%)		\$ 87,503.70
3	PHASE 2: DESIGN DEVELOPMENT (100%) AND CONSTRUCTION DOCUMENTATION		\$ 30,836.00
3	Construction Documents		\$ 52,060.00
4	Bidding Support		\$ 5,955.00
Total:			\$ 215,782.40

These fees does not contain the following assumptions for costs-to the client-for subcontractor services. These are additional costs that will likely need to be paid by the Client:

Survey	\$28,750.00
Geotech	\$36,800.00
Permitting Consultant	\$75,000.00

If the client chooses to directly contract these services, Calibre will remove these estimates from the proposal.

Invoicing

Calibre invoices on a Fixed Fee (FF) basis and the following terms apply to invoicing:

- FF-scope items are invoiced on a percent complete basis, while T&M items, if applicable, are invoiced pursuant to the Schedule of Rates in effect at the time services are rendered and expenses incurred.
- A copy of the current Schedule of Rates is attached herein as Exhibit B.
- Changes to the Scope of Services and compensation shall be identified in a Service Authorization, submitted in writing to Client, and commenced only upon being fully executed.
- Reimbursable expenses shall be charged and invoiced at 1.15 times the direct out-of-pocket expense. These reimbursable expenses include, but are not limited to, application, processing, review, recording and permit fees, reasonable travel costs including Business Class for flights scheduled for four (4) hours or greater, communication costs, equipment and meeting room rentals, sub-consultant fees, reproduction costs, and delivery and shipping fees. In the event the Client should use a foreign bank as its payment bank, the Client shall wire the funds in U.S. Dollars, net of any transaction fees, to Calibre's local bank. Bank information will be provided upon request by the client. Payment must be accompanied by **Project Name and invoice number(s) to be credited**. Invoicing is performed monthly with payment due within 30 days of the invoice date. Amounts unpaid thirty (30) days after the invoice date shall include a service charge of 1.5% per month.
- Collection charges, including attorney and legal fees, are payable by Client in the event of late payment. Final payment is required prior to the release of any signed and stamped drawings and reports, or the delivery of any final Instruments of Service.
- A retainer of 20% of the design fees may be requested prior to commencing work on this project. This retainer will be applied to the final invoice. Progress billings will be made monthly and/or at the submission of progress sets of drawings or other scheduled deliverables.

It should be noted that the Scope of Services, Compensation, and Schedule presented herein are based upon our understanding of the Project at the time this Service Authorization is prepared. Unforeseen conditions or necessary revisions may require Calibre to modify the Scope of Services, Compensation, and/or Schedule, and obtain approval from Client, proceeding only upon receiving a fully executed, amended Service Authorization. Calibre's Schedule of Rates is subject to change at any time.

Schedule

The proposed project schedule is shown below. It is Calibre's policy to complete its services promptly and within established schedules, however, there is no expressed or implied guarantee as to when plans will be approved by the applicable governing agencies. Calibre will progress its work in an expeditious and professional manner at all times.

[Signature page follows]

Calibre is hereby authorized by Client to proceed with the Scope of Services as set forth herein.

Calibre Engineering, Inc.

Client: Rapid Creek Recreational Corridor

By: _____

By: _____

Print: Brian Stephens Hotopp

Print: Justin Herreman

Title: President

Title: Project Manager

Date: _____

Date: _____

EXHIBIT B

SCHEDULE OF RATES

2026 Billing Rates

Billing Rate Description	Billing Rate/hr
Administrator 1	\$98
Administrator 2	\$140
Administrator 3	\$183
Administrator 4	\$193
Administrator 5	\$212
CAD Designer 1	\$140
CAD Designer 2	\$155
CAD Designer 3	\$183
CAD Manager	\$215
Construction Engineer	\$210
Construction Manager	\$280
Construction Inspector 1	\$183
Construction Inspector 2	\$196
Construction Inspector 3	\$210
Engineer 1	\$168
Engineer 2	\$183
Engineer 3	\$196
Engineering Aide	\$126
Expert Witness	\$571
GIS Manager	\$196
GIS Specialist	\$168
Principal	\$291
Project Engineer 1	\$196
Project Engineer 2	\$207
Project Engineer 3	\$210
Assistant Project Manager	\$210
Project Manager 1	\$225
Project Manager 2	\$249
Project Manager 3	\$285
Senior Principal	\$363

EXHIBIT C

CONTRACTUAL CONDITIONS

The following contractual conditions are integral to the Service Authorization incorporated herein, or in subsequent Service Authorizations, and provide for the timely and orderly manner of performance under this Agreement, and within the rates set forth in the Compensation section within Exhibit A and the Schedule of Rates (Exhibit B).

1. Standard of Care

- 1.1. Services provided by Calibre under this Agreement will be performed in a manner consistent with that degree of skill and care ordinarily exercised by members of the same profession practicing under the same or similar circumstances.
- 1.2. If, due to Calibre's negligence, a required item or component of the Project is omitted from Calibre's designs, drawings, reports, calculations, specifications, electronic data and similar services and deliverables, in either electronic or hard copy form (Instruments of Service), Calibre shall not be responsible for paying the cost required to pay for the construction of such item or component to the extent that such item or component would have been required and included in the original Instruments of Service.
- 1.3. In no event shall Calibre be responsible for any cost or expense that provides betterment or upgrades or enhances the value of the Project.

2. Subcontractors

Calibre shall not subcontract any part of its services under this Agreement without first providing notice to Client. Client consents to any subcontractor or subconsultant listed in the Scope of Services within Exhibit A. Calibre shall obligate any subcontractor to agree to compliance with all applicable provisions of this Agreement. Nothing contained in any subcontract shall create a contractual relationship between Client and any such subcontractor.

3. Reuse of Documents

- 3.1. The Client acknowledges Calibre's Instruments of Service, prepared by Calibre and its subconsultants, are for use solely on the Project. Calibre and its subconsultants as authors and owner of their respective Instruments of Services, retain all common law, statutory, and other reserved rights, including copyrights. Distribution of Instruments of Service for regulatory or other Project purposes is not a publication in derogation of the reserved rights.

3.2. Upon execution of this Agreement and so long as Client is not in default of its obligations to Calibre, Calibre grants Client a nonexclusive license to reproduce all finished Instruments of Service solely for use on the Project (the “License”), subject to the following:

3.2.1. if Client is in default of this Agreement, including instances where Calibre terminates the Agreement for nonpayment, the License is terminated without the necessity of further action on the part of the Parties;

3.2.2. if Client terminates this Agreement for Calibre’s default (or for Client’s convenience and Client is not in default of its obligations to Calibre), the License is terminated without the necessity of further action on the part of the Parties and is replaced by a nonexclusive license, permitting Client, subject to the other provisions of this Agreement, to authorize properly credentialed design professionals to reproduce and, where permitted by law, to make changes, corrections, or additions to the Instruments of Service solely for purpose of completing and maintaining the Project.

3.2.3. Calibre shall be awarded damages for Client’s use of the Instruments of Service if it is later determined by an authority with competent jurisdiction that Calibre was not in default. Calibre retains the right to use, sell, and/or modify any databases developed and/or modified in performing its services.

3.3. The licenses granted are not assignable without Calibre’s prior written consent, and no license or right is granted or implied under this Agreement, except as provided above. Use of Instruments of Service after termination of the Agreement or upon suspension or completion of the Project are at Client’s risk and without liability to Calibre, and Client agrees to indemnify, defend and hold Calibre harmless from any and all claims, damages, losses, liabilities, and expenses, including attorney fees and expert and consulting fees, arising out of or resulting from such use.

4. Excluded Services

Services not expressly identified in writing in a fully executed Service Authorization applicable to this agreement are excluded from the scope of Calibre’s services. Client expressly agrees that Calibre has no responsibility to perform such services.

Hazardous Materials. Client acknowledges that consultant's scope of services for this project does not include any services related in any way to asbestos and/or hazardous or toxic materials. Should consultant or any other party encounter such materials on the job site, or should it in any other way become known that such materials are present or may be present on the job site or any adjacent or nearby areas which may affect consultant's services, consultant may, at its option, terminate work on the project until such time as client retains a specialist contractor to abate and/or remove the asbestos and/or hazardous or toxic materials and warrant that the job site is free from any hazard which may result from the existence of such materials.

5. Additional Services

The Client and Calibre agree that there may be circumstances beyond their control, which are unforeseen and that may arise during the project. These circumstances may require changes to the Scope of Services and Compensation. Said changes to the Scope of Services and Compensation shall be addressed in an amended Service Authorization, and services not commenced until the Service Authorization is fully executed. The additional services shall be invoiced per the terms of this Agreement.

6. Construction Phase Services

The following terms apply to Construction Phase Services:

If the Client retains Calibre to provide construction services for all or for portions of the Project's construction phase, Calibre would provide its professional opinions and report its observations to the Client.

Periodic observations of construction provided to obtain general knowledge of the construction work would keep the Client informed about the observable work, and represent whether the work is in general conformance with the contract documents.

Representations by Calibre would not warrant the construction work is without defect. Periodic observations by Calibre shall not be construed as exhaustive or continuous observations.

Calibre shall not be responsible for contractor's means, methods, techniques, sequences, procedures, or safety programs since these are the exclusive responsibility of the contractor, and because Calibre is neither qualified nor licensed to be a contractor.

Nothing herein shall relieve the contractor of responsibility for the quality of its work or impose liability upon Calibre for the quality or timeliness of that work.

7. Insurance

Calibre shall maintain during the term of this Agreement insurance as set forth in Exhibit D, Schedule of Insurance.

8. Risk Allocations

8.1. Calibre agrees to indemnify and save Client harmless from any loss, cost, or expense claimed by third parties for property damage or bodily injury, including death, to the extent caused by the negligence of Calibre in connection with Calibre's professional services. Client agrees to indemnify and save Calibre harmless from any loss, cost, or expense, including attorney fees, claimed by third parties for property damage or bodily injury, including death, caused by the negligence of Client in connection with the Project. If the negligence of Calibre and Client is the cause of such damage or injury, the loss, cost, or expense shall be shared between Calibre

and Client in proportion to their relative degrees of negligence and the right of indemnity shall apply per such proportion.

- 8.2. It is intended that the performance of Calibre's services shall not subject the personnel of the Parties, including employees, officers, directors, members, managers, and shareholders (collectively, "Personnel"), to any personal legal exposure for any risk associated with the Project. The Parties agree that any claim, demand, or suit shall be made only against a party and not against any of its Personnel.
- 8.3. Client and Calibre agree that notwithstanding any other provision in this Agreement to the contrary (including any other provision with the same or similar limiting language), to the fullest extent permitted by law: (a) the total liability in the aggregate, of Calibre and its personnel and independent professional associates, and any of them, to Client and anyone claiming by, through, or under Client, for any and all injuries, claims, losses, expenses, or damages whatsoever (including, without limitation; indemnity obligations, contract damages, attorney's fees and expert witness fees) arising out of or in any way related to Calibre's services, the Project, or this Agreement, from any cause or causes whatsoever and regardless of the legal theory asserted (including, without limitation, negligence, errors, omissions, strict liability, misrepresentation, breach of contract or warranty of Calibre or its personnel of independent professional associates, or any of them), shall not exceed the total compensation received by Calibre under this Agreement, and if separate tasks are issued by Service Authorizations, then the total compensation received by Calibre for a specific service on a specific project at a specific location, or \$35,000, whichever is greater; (b) the Parties waive claims against each other: (i) for incidental, special, indirect, punitive or consequential damages arising out of or relating to this Agreement, and Calibre shall not be liable for any cost or expense that provides betterment, upgrade or enhancement of the Project; and (ii) against the subcontractors, subconsultants and employees of the other for damages to the extent that the damages sustained by either Calibre or Client are covered by property insurance.
- 8.4. The mutual waiver of consequential damages under the subsection (b) above shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action including negligence, strict liability breach of contract, and breach of strict or implied warranty. The Parties shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this Project.
- 8.5. The provisions of this Section 8 shall survive expiration or termination of this Agreement and shall apply to all services provided to Client by Calibre, whether within or not within the

Scope of Services of this Agreement, except as the Parties may otherwise provide in a signed writing making specific reference to this section 8.

9. Waiver of Subrogation

The Owner and the Consultant agree, to the fullest extent permitted by law, to waive any and all rights against each other and any of their contractors, subcontractors, consultants, subconsultants, construction managers, owner's representatives, employees, directors, officers, agents and assigns for any and all damages, including without limitation bodily injury, death, damage to real and personal property, and all consequential damages including delay and lost profits (collectively "Damages") covered by any insurance applicable to the Project or the site upon which the Project is located.

10. Unauthorized Changes

- 10.1. In the event the Client, the Client's contractors or subcontractors, or anyone for whom the Client is legally liable makes or permits to be made any changes to any Instruments of Service prepared by Calibre without obtaining Calibre's prior written consent, the Client shall assume full responsibility for the results of such changes. Therefore, the Client agrees to waive any claim against Calibre and to release Calibre from any liability arising directly or indirectly from such changes to any Instruments of Service.
- 10.2. The Client fully agrees permitted by law, to defend, indemnify and hold harmless Calibre from any damages, liabilities, or costs, including reasonable attorney's fees and costs of defense, arising from such changes.
- 10.3. In addition, the Client agrees to include in any contracts for construction appropriate language that prohibits the contractor or any subcontractors of any tier from making any changes or modifications to Calibre's Instruments of Service without the prior written approval of Calibre, and that further requires the Contractor to indemnify both Calibre and Client from any liability or cost arising from such changes made without such proper authorization.

11. Changes to Scope of Services, Suspension

- 11.1. Additional Service Authorizations must be fully executed prior to commencing any and all additional services. Additional service requests from Client must include a comment period, commencement date, expected completion date, and any special conditions.
- 11.2. If changes or additions cause an increase or decrease in the services provided under this Agreement, Calibre and Client shall memorialize such changes or additions to the services provided by completing and fully executing a Service Authorization, Exhibit A.

- 11.3. Client may, upon written notice to Calibre, suspend further performance of Calibre's services. In such case, Calibre will promptly suspend its performance upon receiving said notice. During such period of suspension, Calibre shall care for and protect its services in progress for a period not to exceed 90 days, consecutively or in the aggregate. Client shall pay for any additional costs and fees incurred by Calibre as a result of the suspension of services. If Client chooses to withdraw a suspension as to all or part of suspended services, it must do so with written notice to Calibre, specifying the effective date of such withdrawal. If Calibre elects to proceed, Calibre may resume the performance of the services for which the suspension was withdrawn within a reasonable amount of time of such notice of withdrawal.
- 11.4. Appropriate adjustments shall be made to Calibre's compensation and to any scheduling or deliverable dates justified by the suspension or withdrawal of suspension, and this Agreement shall be modified in writing accordingly.

12. Client Responsibilities

- 12.1. The Client shall cooperate with Calibre in good faith, as necessary to allow Calibre to perform the services defined in this Agreement.
- 12.2. Client shall provide Calibre with information and criteria of Client's requirements for the Project that Calibre is entitled to rely upon.
- 12.3. Client shall provide access to the project site as necessary for Calibre's performance of the Scope of Services.
- 12.4. Client shall examine and respond promptly to Calibre's submissions to Client.
- 12.5. Client shall consult with Calibre on a regular basis concerning the timeliness, cost, and adequacy of services as the service progress, and promptly furnish to Calibre written notice of any noncompliance with the terms of this Agreement.
- 12.6. Client shall immediately notify Calibre of errors and omissions of which Client becomes aware.
- 12.7. Calibre reserves the right to rely on the accuracy of information in our design work provided by the Client. The Client shall not hold Calibre liable for any problems arising from inaccuracies in the information provided to Calibre for design or analysis.

13. Governing Law

- 13.1. All questions as to the interpretation or enforceability of this Agreement shall be interpreted in accordance with the laws of the State of Colorado. In the event of any litigation involving this Agreement of the performance by the Parties thereto, such actions shall be brought in a court of competent jurisdiction in the State of Colorado.

13.2. All legal causes of action between the Parties of this Agreement shall accrue, and any applicable statutes of repose or limitation shall begin to run, no later than the date of Substantial Completion. In no event shall any statute of repose or limitation begin to run any later than the date Calibre's services are completed or terminated.

14. Entire Agreement

This Agreement constitutes the entire agreement between the Parties with respect to the Service Authorization(s), and supersedes all prior negotiations, representations, or agreements relating thereto, written or oral. Unless otherwise provided for herein, no amendments, changes, alterations, or modifications of this Agreement shall be effective unless in writing, fully executed by Calibre and Client.

15. Third-Party Beneficiaries

Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Client or Calibre. Calibre's services under this Agreement are being performed solely for the Client's benefit, and no other party or entity shall have any claim against Calibre because of this Agreement or the performance or nonperformance of services hereunder. The Parties agree to require a similar provision in all contracts with contractors, subcontractors, subconsultants, vendors and other entities involved in this Project to carry out the intent of this provision.

16. Severability and Waiver

If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible, the remainder of this Agreement shall be deemed valid and operative, and effect shall be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other party any term or provision of this Agreement shall be deemed not to be a waiver of such party's right to enforce against the other party the same or any other such term or provision.

17. Termination

17.1. In the event of termination of this Agreement by either party, the Client shall within fifteen (15) calendar days of termination pay Calibre for all services rendered and all reimbursable costs incurred by Calibre and its subconsultants up to the date of termination, in accordance with the payment provisions of this Agreement.

17.2. Either party may terminate this Agreement for cause upon giving the other party not less than seven (7) calendar days' written notice for any of the following reasons;

17.2.1. Substantial failure by the other party to perform in accordance with the terms of this Agreement and through no fault of the terminating party;

- 17.2.2. Assignment of this Agreement or transfer of the Project by either party to any other entity without the prior written consent of the other party;
 - 17.2.3. Suspension of the Project or Calibre's services by Client for more than ninety (90) calendar days, consecutive or in the aggregate;
 - 17.2.4. Material changes in the conditions under which this Agreement was entered into, the Service Authorization or the nature of the Project, and the failure of the parties to reach agreement on the compensation and schedule adjustments necessitated by such changes.
- 17.3. In the event of any termination that is not the fault of Calibre, Client shall pay Calibre, in addition to payment for services rendered and reimbursable costs incurred, all expenses reasonably incurred by Calibre in connection with the orderly termination of this Agreement, including but not limited to demobilization, reassignment of personnel, associated overhead costs and all other expense directly resulting from the termination.

18. Mediation

- 18.1. In an effort to resolve any conflicts that arise during the design and construction of the Project or following the completion of the Project, the Parties agree that all disputes between them arising out of or relating to the Agreement, or the Project shall be submitted to nonbinding mediation with the Parties sharing the cost equally.
- 18.2. The Parties further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and to require all independent contractors and consultants also to include a similar mediation provision in all agreements with their subcontractors, subconsultants, suppliers and fabricators, thereby providing for mediation as the primary method for dispute resolution among the parties to all those agreements.

19. Assignment

Client shall not assign this Agreement or any part hereof without the prior written consent of Calibre, nor shall Client assign any moneys due or to become due to it hereunder without the written consent of Calibre. Any such assignment or subcontract shall be null and void.

20. Force Majeure

Except for the payment of money for Services already completed, each party shall not be liable to the other for failure to perform its obligations hereunder if and to the extent that such failure to perform is caused by or results from causes beyond its control, without limitation, strikes, lockouts, or other industrial disturbances, civil disturbances, fires, acts of God, acts of a public

enemy, compliance with any regulations, orders of requirements of any governmental body or agency, or inability to obtain transportation or necessary materials in the open market.

21. Notices

All notices required or permitted hereunder shall be in writing and shall be served on the Parties at the following addresses:

Client:	<u>Rapid Creek Recreational Corridor</u>	Calibre Engineering, Inc.
Attention:	Garry Black	Attention: Brian Stephens-Hotopp
Email:	GarryB@stonegrouparch.com	Email: bash@calibre.us.com
Address:	703 Main St #201, Rapid City, SD 57701	Address: 8822 S. Ridgeline Boulevard Suite 310 Highlands Ranch, CO 80129
Phone:	605-431-9832	Phone: 303.730.0434

Any such notices shall be either: (i) sent by certified mail, return receipt requested, in which case notice shall be deemed delivered three business days after deposit, postage prepaid in the U.S. Mail; (ii) sent by overnight delivery using a nationally recognized overnight courier, in which case it shall be deemed delivered one business day after deposit with such courier; (iii) sent by personal delivery; or (iv) sent by email with read/receipt required and shall be deemed delivered upon receipt to the sending party of the acknowledged read/receipt. The above addresses may be changed by written notice to the other Party, provided that no notice of a change of address shall be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice shall not be deemed a failure to give notice.

22. Counterparts

This Agreement may be signed in counterparts and by electronic signature, which when taken together shall constitute one document.

EXHIBIT D

SCHEDULE OF INSURANCE

Calibre shall maintain during the term of this Agreement insurance of the kinds and with the limits indicated below:

Workers Compensation Insurance as required by statute, including Employers Liability, with limits of \$1,000,000 each accident; \$1,000,000 disease – policy limit; \$1,000,000 disease – each employee.

Commercial General Liability Insurance with limits of \$2,000,000 per occurrence and \$2,000,000 general aggregate.

Business Automobile Liability Insurance with limits of \$1,000,000 per occurrence, combined single limits (owned, hired & non-owned).

Umbrella/Excess Liability Insurance with limits of \$2,000,000 each occurrence and aggregate.

Professional Liability Practice Policy with limits of \$2,000,000 per claim and \$2,000,000 annual aggregate.

Certificate of insurance evidencing these coverages shall be submitted to Client at Client's request. The coverages are subject to the terms, exclusions, and conditions of the policies with the insurer's liability equivalent to Calibre's under this Agreement. Irrespective of the policy limits, Calibre will provide Client a 30-day advanced written notice of cancellation. Failure to submit certificates or endorsements, or failure of Client to insist upon submission of same, shall not relieve Calibre of its duty to maintain the required insurance.

Unless otherwise provided, Client shall maintain insurance upon the entire work at the site to the full insurable value thereof. This insurance shall include the interests of Client, the owner, Calibre, and any other beneficially interested person or entity, and shall insure against the perils of fire and extended coverage and shall include insurance for loss or damage. If Calibre is damaged by failure of Client to maintain such insurance and to so notify Calibre, then Client shall bear all costs properly attributable thereto. Client shall require that all contractors of any tier on this project obtain and maintain insurance with appropriate limits to cover the perils of their undertakings and the allocation of risk on the Project.