



MEETING DATE: January 10, 2024

FROM: Jon Kennedy

RE: MGE Engineering, Inc. scope of work and professional services agreement

BACKGROUND:

CalTrans recent inspection of the bridge revealed a need to perform additional inspections on the scour condition of the bridge. Staff reached out to MGE Engineering, Inc. as experts in this field. MGE Engineering, Inc. did an onsite visit in order to provide the City with a scope of work.

The scope of work and a professional services agreement are attached.

A budget amendment in the amount of \$58,986 is requested by staff at this time.

RECOMMENDATION:

To direct the City Manager to execute the professional services agreement and to approve a budget amendment.

FISCAL IMPACT:

General Fund fiscal impact of \$58,986

ATTACHMENTS:

- A. AGREEMENT FOR PROFESSIONAL SERVICES FORM - 01-02-2024 (01135943) (003)-MWM - SCG (01136459-2)
- B. FEATHERRIVER BRIDGEPROPOSAL SCOPEANDFEE 05JAN2024-1

**AGREEMENT FOR PROFESSIONAL SERVICES
CITY OF PORTOLA
P.O. Box1225
35 Third Avenue
Portola, California 96122
Telephone (530) 832-6800**

Date:

Project Name:

City of Portola Project No.:

CONSULTANT:

MGE Engineering, Inc.
7415 Greenhaven Drive, STE 100
Sacramento, CA 95831

The terms of this Agreement are contained in the body of the agreement and in Attachments A through D. Each attachment is incorporated herein by reference and becomes an integral part of this Agreement between the parties when the Agreement is signed. IN THE EVENT THAT THERE IS ANY INCONSISTENCY BETWEEN TERMS AND PROVISIONS IN THE BODY OF THIS AGREEMENT AND TERMS AND CONDITIONS IN THE ATTACHMENTS, THE TERMS AND PROVISIONS IN THE BODY OF THIS AGREEMENT CONTROL OVER ANY INCONSISTENT TERM OR PROVISION IN THE ATTACHMENTS.

For your protection, make sure that you read and understand all provisions before signing.

Instructions: Sign and return original. Upon acceptance by the City of Portola (“CITY”), a copy will be signed by the CITY’s authorized representative and returned to you. Insert the name/s of your authorized representative(s) in the place provided.

1.0 TERM OF THE AGREEMENT

1.1 This AGREEMENT shall be effective on the date that it is executed by the CITY.

1.2 The CONSULTANT shall commence the performance of the DESCRIBED SERVICES immediately after the fee and schedule are agreed upon and a written Notice To Proceed is issued. Time is of the essence in the performance of this AGREEMENT. Failure to meet the schedule contained in this AGREEMENT shall constitute a default by the CONSULTANT.

2.0 CONSULTANT'S OBLIGATIONS AND SCOPE OF WORK ATTACHMENT A

2.1 CONSULTANT shall provide the professional services which are described in ATTACHMENT A, hereinafter referred to as “DESCRIBED SERVICES.”

2.2 CONSULTANT shall perform all the tasks required to accomplish the DESCRIBED SERVICES in conformity with the applicable requirements of Federal, State and local laws in effect at the time that the scope of work is substantially completed by the CONSULTANT. The CONSULTANT shall comply with applicable standards of professional care in the performance of the DESCRIBED SERVICES. Where any circumstance exists for which the CONSULTANT must make a judgment that could result in a materially

different change in condition, the CONSULTANT shall advise the CONTRACT OFFICER in advance and request specific direction.

2.3 The CONSULTANT shall, without additional compensation, correct or revise any DESCRIBED SERVICES that do not meet the Standard of Care.

2.4 The CITY's review, approval or acceptance of, or payment for, the services required under this AGREEMENT shall not be construed to operate as a release or waiver of any rights of the CITY under this AGREEMENT or of any cause of action arising out of CONSULTANT's negligence, recklessness or willful misconduct in the performance of this AGREEMENT, and CONSULTANT is responsible to the CITY for all damages to the CITY caused by the CONSULTANT's negligence, recklessness or willful misconduct in the performance of any of the services under this AGREEMENT.

2.5 CONSULTANT shall maintain all of its records related to the project for a minimum of five (5) years from the date of final payment. CONSULTANT shall permit representatives of the CITY to review all project related records.

2.6 CONSULTANT shall not be responsible for means, methods, techniques, sequences or procedures of construction selected by construction contractor for the project or the health or safety precautions and programs incident to the work of such contractor, and shall not be responsible for construction contractor's failure to carry out work in accordance with the contract documents. Construction contractor is solely and completely responsible for jobsite conditions including the safety of all persons and property.

3.0 PAYMENT AND SCHEDULE OF SERVICES (ATTACHMENTS B and C)

3.1 The amount of payment to CONSULTANT for providing the DESCRIBED SERVICES is set forth in ATTACHMENT B. No payment shall be allowed for unless specifically described in ATTACHMENT B.

3.2 CONSULTANT shall not be entitled to any additional fees for work incidental to the design, for any design clarifications, or for changes resulting from errors or omissions by the CONSULTANT or any SUB-CONSULTANT.

3.3 A Project Schedule showing all milestones has been developed by the CONSULTANT and is attached as ATTACHMENT B.

4.0 CITY'S OBLIGATIONS

4.1 CITY shall furnish the required information and services and shall render approvals and decisions expeditiously to allow the orderly progress of the CONSULTANT's services as shown on ATTACHMENT B.

4.2 The CITY'S City Manager **or a designated CITY Representative** shall serve as the CITY'S "CONTRACT OFFICER" for this AGREEMENT and has the authority to execute this AGREEMENT, direct the CONSULTANT, approve actions, request changes, and approve additional services. Any obligation of the CITY shall be the responsibility of the CONTRACT OFFICER. Excepting the provisions pertaining to dispute resolution, no other party shall have any authority under this AGREEMENT unless specifically delegated in writing.

5.0 SUBCONTRACTING (ATTACHMENT C)

5.1 The name and location of the place of business of each SUB-CONSULTANT that CONSULTANT will use to perform work or render service to the CONSULTANT in performing this AGREEMENT is contained in ATTACHMENT C. No change to any SUB-CONSULTANT shall be made without the written approval of the CONTRACT OFFICER.

5.2 If CONSULTANT subcontracts for any of the work to be performed under this AGREEMENT, CONSULTANT shall be as fully responsible to the CITY for the acts and omissions of CONSULTANT's SUB-CONSULTANTS and for the persons either directly or indirectly employed by the SUB-CONSULTANTS, as CONSULTANT is for the acts and omissions of CONSULTANT and persons directly employed by CONSULTANT. Nothing contained in the AGREEMENT shall create any contractual relationship between any SUB-CONSULTANT of CONSULTANT and the CITY. CONSULTANT shall bind every SUB-CONSULTANT to the terms of the AGREEMENT applicable to CONSULTANT's work unless specifically noted to the contrary in the subcontract in question and approved in writing by the CONTRACT OFFICER.

5.3 The CITY may unilaterally reduce the scope of work to be performed by the CONSULTANT. Upon doing so, CITY and CONSULTANT agree to meet and confer in good faith to negotiate a deductive change order.

6.0 CHANGES TO THE SCOPE OF WORK

The CONSULTANT shall not perform work in excess of the DESCRIBED SERVICES without the prior written approval of the CONTRACT OFFICER. All requests for extra work shall be by written Change Order submitted to the CONTRACT OFFICER and signed prior to the commencement of such work. Fees for additional work will be negotiated on a fixed fee basis.

7.0 VERBAL AGREEMENT OR CONVERSATION

No verbal agreement or conversation with any officer, agent or employee of the CITY, either before, during or after the execution of this AGREEMENT, shall affect or modify any of the terms or obligations herein contained nor shall such verbal agreement or conversation entitle CONSULTANT to any additional payment whatsoever unless approved by the CONTRACT OFFICER.

8.0 TERMINATION OF AGREEMENT

8.1 In the event of CONSULTANT's failure to prosecute, deliver, or perform the DESCRIBED SERVICES, or where the CONSULTANT fails to perform the work in accordance with the project schedule (ATTACHMENT C), the CITY may terminate this AGREEMENT for cause by notifying CONSULTANT by certified mail of said termination. Thereupon, CONSULTANT shall cease work and within five (5) working days, assemble all documents owned by the CITY and in CONSULTANT's possession, and deliver said documents to the CITY, and ensure that all work in progress is placed in a safe and protected condition. The CONTRACT OFFICER shall make a determination of the percentage of work that CONSULTANT has performed that is usable and of worth to the CITY. Based upon that finding, the CONTRACT OFFICER shall determine any final payment due to CONSULTANT.

8.2 This AGREEMENT may be terminated by the CITY, without cause, upon the giving of fifteen (15) days written notice by certified mail to the CONSULTANT. Prior to the fifteenth (15th) day following the giving of the notice, the CONSULTANT shall cease work, assemble all documents owned by the CITY and in CONSULTANT'S possession and deliver said documents to the CITY, and ensure that all work in progress is placed in a safe and protected condition. The CONTRACT OFFICER shall make a determination of the percentage of work that CONSULTANT has performed that is usable and of worth to the CITY. Based upon that finding, the CONTRACT OFFICER shall determine any final payment due to CONSULTANT.

9.0 **PROFESSIONAL RELATIONSHIP.** CONSULTANT shall serve as the CITY'S professional representative.

10.0 **PARTIES TO ACT IN GOOD FAITH.** CITY and CONSULTANT agree to cooperate with each other in order to fulfill their responsibilities and obligations under this Agreement. Both CITY and CONSULTANT shall endeavor to maintain good working relationships among members of the project team.

- 11.0 **LIMITATION ON DIRECTIVES TO CONSULTANT.** CONSULTANT shall not accept direction or orders from any person other than the CONTRACT OFFICER or the person(s) whose name(s) is (are) inserted on Page 9 as “other authorized representative(s).”
- 12.0 **PERFORMANCE OF WORK BY THIRD PARTIES.** CITY acknowledges that CONSULTANT is not responsible for the performance of work by third parties including, but not limited to, the construction contractor and its sub-contractors.
- 13.0 **CHANGES IN SCOPE OF WORK--EXTRA SERVICES.** CITY agrees that if CITY requests services not specified in the scope of services described in this Agreement, CITY will pay for all such additional services as extra services, in accordance with CONSULTANT’s billing rates utilized for this agreement. Any change in the scope of the professional services to be done, method of performance, nature of materials or price thereof, or to any other matter materially affecting the performance or nature of the professional services will not be paid for or accepted unless such change, addition or deletion is approved in advance, in writing by a supplemental agreement executed by the CITY’s “authorized representative(s)”. CONSULTANT’s “authorized representative(s)” has (have) the authority to execute such written change for CONSULTANT.
- 14.0 **PERMITS.** Permits required by governmental authorities will be obtained at Owners expense, and CONSULTANT will comply with applicable local, state, and federal regulations and statutes including Cal/OSHA requirements.
- 15.0 **TERMS OF PAYMENT.** Payment, unless otherwise specified in Attachment C, is to be thirty (30) days after acceptance by the CITY. For basic service performed by the CONSULTANT, the CITY shall pay the CONSULTANT in accordance with monthly statements submitted by the CONSULTANT based upon the percentage of work completed during the preceding month. Payment for extra services shall be based on monthly statements submitted by the CONSULTANT for the extra services performed by the CONSULTANT during the proceeding month. The CONSULTANT shall be paid interest on payments due from the CITY which are not received within thirty (30) days of the date of billing. The interest rate shall be one percent (1%) per month on the unpaid balance or the maximum legal rate that the CITY can pay, whichever is less.
- 16.0 **INDEMNIFICATION.** CONSULTANT shall defend, indemnify and hold the CITY, its elected and appointed officials, officers, employees, and authorized volunteers harmless from losses, liabilities, expenses, including reasonable attorney’s fees, damages and costs arising out of personal injury, death, or property damage, but only to the extent such losses, liabilities, expenses, damages and costs arise out of, pertain to or relate to the negligence, recklessness or willful misconduct of Consultant under this Agreement. CONSULTANT shall also defend **itself** against any and all liabilities, claims, losses, damages, and costs arising out of or alleged to arise out of CONSULTANT’S performance or non-performance of the work hereunder, and CONSULTANT shall not tender such claims to CITY nor to its elected or appointed officials, officers, employees, or authorized volunteers, for defense or indemnity. Further, as respects CONSULTANT’S operations (as opposed to CONSULTANT’S professional services), CONSULTANT shall also provide the CITY a defense, and indemnify and hold the CITY harmless from losses, liabilities, expenses, including reasonable attorney’s fees, damages and costs through and as an additional insured to CONSULTANT’S commercial general liability policy. In no event shall the cost to defend charged to the design professionals exceed the design professional’s proportionate percentage of fault.
- 17.0 **WORKERS’ COMPENSATION INSURANCE.** By his/her signature hereunder, CONSULTANT certifies that he/she is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and that CONSULTANT will comply with such provisions before commencing the performance of the professional services under this Agreement. CONSULTANT

and SUB-CONSULTANTS will keep workers' compensation insurance for their employees in effect during all work covered by this agreement.

- 18.0 **PROFESSIONAL LIABILITY INSURANCE.** CONSULTANT will file with the CITY, before beginning professional services, a certificate of insurance satisfactory to the CITY evidencing professional liability coverage of not less than \$1,000,000 per claim and annual aggregate, requiring thirty (30) days notice of cancellation (10 days for non-payment of premium) to the CITY. Any insurance, self-insurance or other coverage maintained by the CITY, its elected and appointed officials, officers, employees, or authorized volunteers shall not contribute to it. Coverage is to be placed with a carrier with an A.M. Best rating of no less than A-:VII, or equivalent, or as otherwise approved by the CITY. The retroactive date (if any) is to be no later than the effective date of this Agreement. In the event that the CONSULTANT employs other CONSULTANTS (SUB-CONSULTANTS) as part of the work covered by this agreement, it shall be the CONSULTANT's responsibility to require and confirm that each SUB-CONSULTANT meets the minimum insurance requirements specified above.
- 19.0 **GENERAL LIABILITY INSURANCE.** CONSULTANT will file with the CITY, before beginning professional services, certificates of insurance satisfactory to the CITY evidencing general liability coverage of not less than \$1,000,000 per occurrence (\$2,000,000 general and products-completed operations aggregate (if used)) for bodily injury, personal injury and property damage; auto liability of at least \$1,000,000 for bodily injury and property damage each accident limit; workers' compensation (statutory limits) and employer's liability (\$1,000,000) (if applicable); requiring thirty (30) days (ten (10) days for non-payment of premium) notice of cancellation to the CITY. Any insurance, self-insurance or other coverage maintained by the CITY, its elected and appointed officials, officers, employees, or authorized volunteers shall not contribute to it. The general liability coverage shall give the CITY, its elected and appointed, officers, employees, and authorized volunteers insured status using ISO endorsement CG2010, CG2033, or equivalent. Coverage is to be placed with a carrier with an A.M. Best rating of no less than A- :VII, or equivalent, or as otherwise approved by the CITY. In the event that the CONSULTANT employs other CONSULTANTS (SUB-CONSULTANTS) as part of the work covered by this agreement, it shall be the CONSULTANT's responsibility to require and confirm that each SUB-CONSULTANT meets the minimum insurance requirements specified above.
- 20.0 **CONTINUATION OF INSURANCE COVERAGE.** If any of the required coverages expire during the term of this Agreement, the CONSULTANT shall deliver the renewal certificate(s) including the general liability additional insured endorsement to the CITY at least ten (10) days prior to the expiration date.
- 21.0 **CONFLICT OF INTEREST.** CONSULTANT agrees that it will not undertake work for any other principal or client which could pose a conflict of interest or provide for the utilization of the experience, knowledge and work product produced as a result of this Agreement for the benefit of a party whose interests may be adverse to those of the CITY. CONSULTANT agrees that it will not undertake work in which a conflict of interest may arise for a period of ten (10) years after the date of execution of this Agreement without first exploring the nature of the work and the potential for conflict of interest with the interest of the CITY or potential disadvantageous results of the undertaking or the utilization of the CITY's work products. If the CITY reasonably determines that there could be a conflict of interest or will be a conflict of interest, CONSULTANT agrees not to undertake such work or to offer to perform such work until the issue has been resolved by arbitration if CONSULTANT shall disagree. The arbitration shall be conducted in an expeditious fashion so that CONSULTANT shall not be barred or prevented by time lapses from making offers of proposals or being considered in regard to the performance of that work.
- 22.0 **WORK PRODUCT.** CONSULTANT agrees that if any work product involves the development of methodologies, computer programs, or statistical or data gathering methodology, that work product methodology, computer program, coding system, or similar method for gathering, compiling or appraising data shall be a portion of the work product of CONSULTANT which is owned by and shall be provided to CITY upon its request. CONSULTANT agrees that CITY, upon payment in full for services rendered and expenses incurred, shall be entitled to all photographs, notes, maps, calculations, observations, computer programs, runs or compilations, statistics, preliminary design, final design, work drawings, shop drawings or calculations, or any and all other "work product" of CONSULTANT, and upon early termination or

termination in due course or thereafter, may request that such materials may be copied and the copies retained by CONSULTANT and the originals provided to CITY. Any use, re-use or modification of CONSULTANT'S instruments of service without CONSULTANT'S participation shall be at CITY'S sole risk, and CITY agrees to indemnify, defend and hold CONSULTANT harmless from any claims, liabilities, damages or expenses, including reasonable attorney's fees, to the extent arising out of such use, re-use or modification. CITY shall also receive any and all documentation on computer diskette compatible with CITY word processing or other computer programs, including input data as well as output data. The reasonable costs of copying shall be a Project Cost payable by CITY. Files in electronic media format or text, data, graphic or other types that are furnished by CONSULTANT to the CITY are only for convenience of the CITY. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. When transferring documents in electronic media format, Consultant makes no representations as to long-term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems or computer hardware differing from those in use by consultant at the beginning of this assignment.

23.0 **DISCLOSURE OF USE OF WORK PRODUCT OR CONSULTANT.** CITY and CONSULTANT agree that in performing the work, CONSULTANT will gain information, experience and methodologies which may be usable in other work of CONSULTANT, so long as that other work does not cause a conflict of interest or work to the disadvantage of CITY. The CITY will have no claims for the monetary value of the experience, methodology, or use of the work methods for other work undertaken by CONSULTANT. However, CONSULTANT agrees that it will not publish any articles, provide any interview, make public comments, or supply copies of any work product of CONSULTANT done for CITY except in accordance with valid legal process served upon it or pursuant to the written direction of CONSULTANT. In those circumstances in which CITY notifies CONSULTANT in writing that a matter shall be treated as subject to this provision until further order of the CITY, CONSULTANT will not provide any of this work product to any third party. CITY is a governmental entity and may be subject to the Public Records Act, Freedom of Information Act, or other terms and provisions of the law, depending upon the circumstances. CONSULTANT agrees that the determination of that applicability shall be solely within the authority of CITY, and CONSULTANT shall not make work product or other materials available to third parties or other governmental agencies unless directed to do so by CITY. The purpose of this provision is to establish a method to provide persons or agencies public information that they are entitled to receive while keeping uniform records about the availability of such materials, the dates that such information is provided to persons entitled to receive it, and to ensure that complete response is made to valid legal requests for information, whether pursuant to administrative, legal or Public Records Act requests. Nothing in this Agreement shall render the records, documents or materials of CONSULTANT as a public record available for inspection or review, except to the extent required by law.

24.0 **DISPUTE RESOLUTION**

24.1 THE PARTIES AGREE THAT IF ANY DISPUTE SHOULD ARISE UNDER THE TERMS AND PROVISIONS OF THIS AGREEMENT, THE PARTIES AGREE FIRST TO TRY, IN GOOD FAITH, TO SETTLE THE DISPUTE BY MEDIATION, BEFORE RESORTING TO ARBITRATION. THE COSTS OF MEDIATION SHALL BE BORNE EQUALLY BY THE PARTIES. NEITHER PARTY SHALL FILE LEGAL ACTION WITHOUT FIRST MEETING IN MEDIATION AND MAKING A GOOD FAITH ATTEMPT TO REACH A MEDIATED RESOLUTION. THE MEDIATION SHALL BE CONDUCTED IN TRUCKEE, CALIFORNIA, UNLESS THE PARTIES AGREE TO CONDUCT IT IN A DIFFERENT LOCATION. IF, FOR ANY DISPUTE OR CLAIM TO WHICH THIS PARAGRAPH APPLIES, ANY PARTY COMMENCES ARBITRATION OR COURT ACTION WITHOUT FIRST ATTEMPTING TO RESOLVE THE MATTER THROUGH MEDIATION OR REFUSES TO MEDIATE AFTER A WRITTEN REQUEST HAS BEEN MADE, THEN THAT PARTY SHALL NOT BE ENTITLED TO RECOVER ATTORNEY FEES, EVEN IF THEY WOULD OTHERWISE BE AVAILABLE TO THAT PARTY IN ANY SUCH ACTION. IF THE DISPUTE IS NOT SETTLED BY MEDIATION, THE DISPUTE SHALL BE RESOLVED BY ARBITRATION.

- 24.2 THE DETERMINATION OF THE ARBITRATOR WILL BE FINAL AND BINDING UPON EACH PARTY AND EACH PARTY SPECIFICALLY WAIVES ANY RIGHT TO CLAIM THAT THE ARBITRATOR HAS EXCEEDED THE SCOPE OF THE ARBITRATION, HAS DISREGARDED EVIDENCE OR PRINCIPLES OF LAW, AND FURTHER WAIVES ANY RIGHT TO DISCLAIM THE QUALIFICATIONS OR FUNCTION OF THE ARBITRATOR IN ANY MANNER WHATSOEVER. THE MEDIATION SHALL BE CONDUCTED IN TRUCKEE, CALIFORNIA, UNLESS THE PARTIES AGREE TO CONDUCT IT IN A DIFFERENT LOCATION.
- 24.3 APPOINTMENT OF THE ARBITRATOR SHALL BE MADE BY MUTUAL AGREEMENT OF THE PARTIES. IF THE PARTIES CANNOT AGREE UPON THE IDENTIFICATION OF THE ARBITRATOR WITHIN THIRTY (30) DAYS FROM THE MAILING OF THE OBJECTION, A PETITION FOR APPOINTMENT OF ARBITRATOR SHALL BE FILED WITH THE SUPERIOR COURT OF THE COUNTY OF NEVADA.
- 24.4 THE ARBITRATOR'S FEES AND FEES AND COSTS OF PETITIONING FOR THE APPOINTMENT OF THE ARBITRATOR SHALL BE PAID BY ONE OR BOTH PARTIES TO THE ARBITRATION IN ACCORDANCE WITH THE DETERMINATION OF THE ARBITRATOR AS TO THE FAIR APPORTIONMENT OF SUCH FEES AND COSTS. THE ARBITRATOR UPON RENDERING ITS AWARD SHALL DETERMINE THE PARTY THAT PREVAILED BASED UPON WRITTEN STATEMENTS MADE BY EACH PARTY AT THE COMMENCEMENT OF THE ARBITRATION AS TO THE POSITION OF THE PARTIES AND THEIR ALTERNATIVES FOR SETTLING THE MATTER. A STATEMENT OF A PROPOSED SETTLEMENT SHALL NOT BE BINDING UPON ANY PARTY AND SHALL NOT BE CONSIDERED AS EVIDENCE BY THE ARBITRATOR EXCEPT TO THE EXTENT THAT THE ARBITRATOR UPON MAKING ITS SOLE AND INDEPENDENT DETERMINATION SHALL DETERMINE THE PARTY WHICH PREVAILED BASED UPON THE PROPOSALS FOR SETTLEMENT OF THE MATTER MADE BY EACH PARTY AND SHALL DETERMINE THAT THE NON-PREVAILING PARTY SHALL PAY SOME OR ALL OF THE COSTS OF ARBITRATION INCLUDING ANY COSTS INCURRED BY THE ARBITRATOR AND IN EMPLOYING EXPERTS TO ADVISE THE ARBITRATOR IN REGARD TO SPECIFIC SUBJECTS OR QUESTIONS. THE ARBITRATOR MAY FURTHER AWARD THE COST OF ATTORNEYS' FEES OR EXPERT WITNESSES CONSULTED OR EMPLOYED IN THE PREPARATION OR PRESENTATION OF EVIDENCE TO THE ARBITRATOR BY THE PREVAILING PARTY IF, IN THE ARBITRATOR'S DETERMINATION, THE POSITION OF THE NON-PREVAILING PARTY WAS NOT REASONABLY TAKEN OR MAINTAINED OR WAS BASED UPON A FAILURE TO PROPERLY EXCHANGE OR COMMUNICATE INFORMATION WITH THE PREVAILING PARTY IN REGARD TO THE SUBJECT SUBMITTED TO ARBITRATION.
- 24.5 THE ARBITRATOR'S DETERMINATION MAY FURTHER PROVIDE FOR PROSPECTIVE ENFORCEMENT AND DIRECTIONS FOR THE PARTIES TO COMPLY WITH. UNDER SUCH CIRCUMSTANCES, THE ARBITRATOR'S AWARD SHALL BE BINDING UPON THE PARTIES AND SHALL BE UNDERTAKEN AND PERFORMED BY EACH OF THE PARTIES UNTIL SUCH TIME AS THE ARBITRATOR'S DIRECTIONS TO THE PARTIES SHALL LAPSE BY THEIR TERMS, OR THE ARBITRATOR SHALL NOTIFY THE PARTIES THAT THOSE TERMS ARE NO LONGER IN FORCE OR EFFECT, OR SHALL MODIFY THOSE TERMS.
- 25.0 **FORCE MAJEURE.** If either party hereto shall be delayed or prevented from the performance of any act required hereunder by reason of acts of God, labor troubles, inability to procure materials, restrictive governmental laws or regulations of the United States or any state or political subdivision thereof or other cause without fault and beyond the control of the party obligated, specifically excepting any asserted financial difficulty including fluctuations of local and national economics, and fluctuations in the price of precious metals, performance of such act shall be excused for the period equivalent to the period of such delay, specifically provided that the total period(s) of delay permitted under this paragraph will not exceed five (5) years.

- 26.0 **SEVERABILITY.** If any term, condition or covenant of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this agreement shall be valid and binding on CITY and CONSULTANT.
- 27.0 **CHOICE OF LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of California.
- 28.0 **NO ASSIGNMENT.** CONSULTANT shall not assign this Agreement without the prior written consent of the CONTRACT OFFICER.
- 29.0 **WHOLE AND ENTIRE AGREEMENT.** This Agreement contains the entire agreement between CITY and CONSULTANT relating to the project and the provision of services for the project. Any prior agreements, promises, negotiations or representations not expressly set forth in this agreement are of no force or effect. Subsequent modifications to this Agreement shall be in writing and signed by both CITY and CONSULTANT.
- 30.0 **NO WAIVER OR DISCLAIMER.** CITY's or CONSULTANT's waiver of any term, condition or covenant shall not constitute the waiver of any other term, condition or covenant. CITY's or CONSULTANT's waiver of any breach of this Agreement shall not constitute the waiver of any other breach of the Agreement.
- 31.0 **BINDING UPON HEIRS, SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of CITY and CONSULTANT.
- 32.0 **STATUS OF CONSULTANT.** CONSULTANT shall perform the services provided for herein in a manner of CONSULTANT's own choice, as an independent contractor and in pursuit of CONSULTANT's independent calling, and not as an employee of the CITY. CONSULTANT shall be under control of the CITY only as to the result to be accomplished and the personnel assigned to the project. CONSULTANT shall confer with the CITY at a mutually agreed frequency and inform the CITY of incremental work/progress as well as receive direction from the CITY.
- 33.0 **ASSIGNMENT OF CONTRACT AND NAMED INDIVIDUALS.** CONSULTANT agrees that the individuals named below shall be personally assigned to the PROJECT to provide supervision and have responsibility for the work during the entire term of this AGREEMENT. No substitutions to these named individuals shall be made without prior approval of the Contract Officer:
- 34.0 **COVENANT AGAINST CONTINGENT FEES.** CONSULTANT warrants that it has not employed or retained any company or person, other than a bona fide employee working for CONSULTANT, to solicit or secure this AGREEMENT, and that CONSULTANT has not paid or agreed to pay any company or person, other than a bona fide employee, any fee, commission, percentage, brokerage fee, gift, or any other consideration contingent upon, or resulting from, the award or making of this AGREEMENT. For breach or violation of this warranty, the CITY shall have the right to terminate this AGREEMENT without liability, or, at the CITY's discretion to deduct from the AGREEMENT price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gift or contingent fee.
- 35.0 **ACCOUNTING RECORDS.** CONSULTANT shall keep records of the direct reimbursable expenses pertaining to the DESCRIBED SERVICES and the records of all accounts between the CONSULTANT and SUB-CONSULTANT. CONSULTANT shall keep such records on a generally recognized accounting basis. These records shall be made available to the Contract Officer, or the Contract Officer's authorized representative, at mutually convenient times, for a period of five (5) years from the completion of the work.
- 36.0 **NOTICES**

Any notices to be given under this AGREEMENT, or otherwise, shall be served by First Class mail.

The address of the CITY, and the proper person to receive any notice on the CITY's behalf, is:

City of Portola
P.O. Box 1225
35 Third Avenue
Portola, California 96122
ATTN: Jon Kennedy, Interim City Manager
TEL. NO. (530) 832-6800

The address of the CONSULTANT, and the proper person to receive any notice on the CONSULTANT's behalf, is:

ATTN:	
Tel. No.	
Fax No.	

37.0 PERIODIC REPORTING REQUIREMENTS

The CONSULTANT shall provide a written status report of the progress of the work on a monthly basis that shall accompany the CONSULTANT's payment invoice. The status report shall, as a minimum, report the work accomplished to date, describe any milestones accomplished, show and discuss the results on any testing or exploratory work, provide a schedule update, and if not in accordance with the original schedule, describe how the CONSULTANT intends to get back on the original schedule. The status report shall also describe any problems or recommendations to increase the scope of the work, and provide any other information which may be requested by the CITY.

ACCEPTED:

CITY OF PORTOLA		CONSULTANT	
Signature		Signature	
By:		By:	
Title:	City Manager	Title:	
Co:	City of Portola	Co:	
Other authorized representative(s):		Other authorized representative(s):	

January 5, 2024

Mr. Todd Roberts
City of Portola
35 Third Ave
Portola, CA 96122

Subject: **Gulling Street over Middle Fork Feather River Bridge**
Bridge No. 09C-0130
City of Portola, Plumas County, California

Dear Mr. Roberts:

As requested, MGE is submitting this proposal to provide an assessment of the existing bridge conditions related to scour at bridge piers. The City of Portola received email correspondence from Caltrans on December 22, 2023, indicating a record of critical finding for the subject bridge. The email states that a Caltrans underwater inspection on September 26, 2023 indicates that the Pier 3 spread footing is undermined, and further Caltrans evaluation indicates the bridge cannot sustain unrestricted live loading in the current condition.

Caltrans recommended posting the bridge for a maximum 6 tons gross traffic load for each direction and updating the 2006 Bridge Plan of Action (POA) to reflect the current conditions.

The following provides our scope of services and fee estimate.

Approach

MGE proposes to use a phased approach to the engineering services. The first phase will include a desktop review of existing information including Caltrans BIRIS, reports prepared for the 2006 POA, any additional Caltrans documentation, as-built plans, and Log of Test Borings. During this phase MGE and Avila will identify any existing data gaps and observe the existing conditions for the bridge. Evaluations will include geotechnical, structural, and hydraulic assessments based on our desktop review and site observations. This evaluation will provide a basis for recommending potential scour countermeasures and for next steps to be taken in phase two services to support implementation of the recommended countermeasures.

Phase 2 services would include filling any data gaps and performing preliminary engineering evaluations such as hydraulic, structural, and geotechnical, as necessary, to support revisions to the 2006 POA and to evaluate feasibility of countermeasure implementation. Hydraulic engineering services would include performing a HEC-RAS analysis for countermeasure design. Structural engineering evaluations would include a settlement sensitivity analyses for the existing pier supports to determine structure monitoring criteria during flooding and for bridge deflection thresholds that initiate closures. Geotechnical assessments may include geotechnical borings at pier locations where data is missing. Borings would be drilled into rock to determine depth to rock and rock quality in case foundation retrofit is required. Phase two would provide preliminary assessments and data to determine a preferred countermeasure alternative for implementation.

Scope of Services

Phase 1

MGE will travel to the site and will make observations of the bridge elements including the steel, concrete, and spread footings conditions (if the footings are observable).

After completing the bridge observations, MGE will prepare a report with our professional opinion about the existing structure condition and will provide a photo log of the existing bridge conditions as an appendix. The engineering report will also include a summary of our observations. Additionally, the report will include:

- Site observations
- Bridge condition assessment narrative
- Discussion of bridge condition and comparison of our assessment to Caltrans BIRIS reports
- Discussion about potential scour countermeasures

Phase 2 Services – OPTIONAL

MGE will develop a bridge model to evaluate settlement at the bridge supports. The data from the model and settlement sensitivity analyses will be used to develop monitoring and bridge closure criteria to be included in the revised POA. Hydraulic and geotechnical input will also be included as part of the POA and scour countermeasure evaluation. Avila prepared optional services in their proposal for a second phase of services. Avila's proposal is enclosed with this proposal. MGE will have evaluated the need for additional geotechnical data in Phase 1 and will perform geotechnical borings to supplement existing data, as needed, and to confirm geotechnical materials at the channel supports. MGE and Avila would develop a revised POA as part of the Phase 2 services. The Phase 2 services scope and fee will be negotiated after the completion of Phase 1.

If drilling is required to fill data gaps, drilling permits will include a California Department of Fish and Wildlife (CAFW) Streambed Alteration Permit and a Plumas County Geotechnical Drilling permit. Fees for the CAFW permit are included. There is no fee for the Plumas County permit. MGE assumes that the boring is completed from the bridge deck and MGE assumes that the City of Portola can provide a lane closure and traffic control for these geotechnical drilling services. Generally, CAFW permits allow drilling between June 1 and October 15. If drilling from the channel is required, drill rig access to the pier may require placing a gravel pad depending on the flow levels in the channel.

MGE will not evaluate hazardous materials at the site such as bridge paint or hazardous building materials on the bridge.

Schedule

MGE can mobilize to perform our Phase 1 observations the first week of January 2024. The field review should take one day. Preparation of the engineering report will require two to three weeks that includes QA/QC review, backcheck and responses to comments.

Mr. Todd Roberts
City of Portola
January 5, 2024
Page 3



Fee

Our fee estimate for these services is included in the attached spreadsheet. Optional fees are included for Phase 2 services. Avila & Associates Fees are included in the spreadsheet and in their enclosed proposal.

Please review the scope of services and provide any comments or changes prior to issuing a contract so that we may re-evaluate our scope and fee for this project. We look forward to this opportunity to work with you on this project.

Sincerely,
MGE Engineering

A handwritten signature in blue ink, appearing to read "Martin W. McLROY". The signature is fluid and cursive, written over a light blue circular stamp.

Martin W. McLROY
Vice President
California Professional Licenses
PE 78846, CEG 2322, PG 7435

Enclosures: Avila & Associates Proposal

COST PROPOSAL

CLIENT: **City of Portola** Work Scope: **Phase 1 Services** 1/2/2024

Subtask Number #	Task Description	Classification	Principal Engineer	Project Manager	Senior Engineer (Geotechnical)	Senior Engineer (Structures)	Junior Engineer	Admin Assistant	Total Task Hours (MGE)	Subconsultant Costs (Avila)	MGE Costs	Total Task Cost
1.0	Project Management											\$ -
1.1	Project Management	Hrs		10			4		14	\$ 2,021.00	\$ 3,398.00	\$ 5,419.00
1.2	Participate in project progress meetings (assume 3)	Hrs		10			4		14	\$ 2,266.00	\$ 3,398.00	\$ 5,664.00
2.0	Obtain, Review and Summarize Existing Information	Hrs										
2.1	Obtain, Review Summarize Bridge Maintenance Reports	Hrs					4		4	\$ 5,086.00	\$ 528.00	\$ 5,614.00
2.2	Obtain, Review and Summarize FEMA information	Hrs					4		4	\$ 3,043.00	\$ 528.00	\$ 3,571.00
2.3	Field Review the bridge reach	Hrs		14		14	14		42	\$ 3,785.00	\$ 9,338.00	\$ 13,123.00
3.0	Outline Potential Countermeasure Options	Hrs										
3.1	Scour Countermeasure Considerations	Hrs		6		6	8		20	\$ 5,064.00	\$ 4,266.00	\$ 9,330.00
4.0	Engineering Assessment Technical Memorandum	Hrs										
4.1	Draft Engineering Assessment Technical Memorandum	Hrs		4		4	30	8	46	\$ 3,688.00	\$ 7,116.00	\$ 10,804.00
4.2	Respond to Comments and finalize Technical Memorandum	Hrs		4		4	4	8	20	\$ 1,777.00	\$ 3,684.00	\$ 5,461.00
Total Hours by Employee				0	48	0	28	72	16			
Loaded Hourly Rate (Base Period Rates)				331.00	287.00	265.00	248.00	132.00	127.00			
Total Labor Cost (Subconsultants & MGE)										\$26,730.00	\$32,256.00	\$58,986.00

Travel				Other Direct Costs				Total Cost	
Type	Rate	Units	Cost	Description	Unit Cost	Unit	Cost		
Mileage	\$0.655		\$0.00	Special Deliveries			\$0.00	MGE Fee	
Lodging	\$250.00		\$0.00	Reproduction			\$0.00	Travel	
M&IE	\$214.00		\$0.00					Other Direct Costs	
								Subconsultants (AVILA)	
								Total Cost	
Total Travel			\$0.00	Total Other Direct Costs			\$0.00	\$58,986.00	

COST PROPOSAL

CLIENT: **City of Portola** Work Scope: **OPTIONAL - Phase 2 Engineering Services** **1/2/2024**

# Subtask Number	Task Description	Classification	Principal Engineer	Project Manager	Senior Engineer (Geotechnical)	Senior Engineer (Structures)	Associate Engineer (Structures)	Junior Engineer	Admin Assistant	Total Task Hours (MGE)	Subconsultant Costs (Avila)	MGE Costs	Total Task Cost
		Function											
1.0	STRUCTURAL MODEL	Hrs								0			
1.1	CSI Bridge Model	Hrs	4	2		20	60			86		\$ 18,738.00	\$18,738.00
2.0	GEOTECHNICAL	Hrs								0			
2.1	Field Exploration	Hrs		1				40		41		\$ 5,567.00	\$5,567.00
2.2	Lab Analyses	Hrs		1				2		3		\$ 551.00	\$551.00
2.3	Engineering Evaluation	Hrs		2				8		10		\$ 1,630.00	\$1,630.00
3.0	HYDRAULICS	Hrs								0			
3.1	Hydraulic Analysis	Hrs								0	\$ 32,725.00	\$ -	\$32,725.00
4.0	Engineering Assessment Report	Hrs								0			
4.1	Assess and recommend potential scour countermeasures	Hrs	2	8		20		60		90		\$ 15,838.00	\$15,838.00
Total Hours by Employee			6	14	0	40	60	110	0	230			
Loaded Hourly Rate (Base Period Rates)			331.00	287.00	265.00	248.00	198.00	132.00	127.00				
Total Labor Cost (Subconsultants & MGE)											\$32,725.00	\$42,324.00	\$ 75,049.00

Travel			
Type	Rate	Units	Cost
Mileage	\$0.655	600	\$393.00
Lodging	\$200.00	3	\$600.00
M&IE	\$80.00	3	\$240.00
			\$0.00
Total Travel			\$1,233.00

Other Direct Costs			
Description	Unit Cost	Unit	Cost
Drill Permits (CA Fish & Wildlife)	\$1,500.00	1	\$1,500.00
Soil Boring Permit (NO FEE)			\$0.00
Drilling	\$25,000.00	1	\$25,000.00
Lab	\$1,000.00	1	\$1,000.00
Total Other Direct Costs			\$27,500.00

Total Cost	
MGE Fee	\$42,324.00
Travel	\$1,233.00
Other Direct Costs	\$27,500.00
Subconsultants (AVILA)	\$32,725.00
Total Cost	\$103,782.00



EXHIBIT A. SCOPE OF WORK

Emergency Scour Scoping Gulling Street over Middle Fork Feather River in City of Portola, CA

SCOPE OF WORK

This scope of work was prepared by Avila and Associates Consulting Engineers, Inc. (Avila) for MGE Engineering. The purpose of this analysis is to complete the emergency scour mitigation for the existing Gulling Street bridge over Middle Fork Feather River in the City of Portola, CA (Br #09C0130).

Task 1: Project Management:

Task 1.1 – Project Management: The Project Manager will conduct project oversight and review of work products prior to submittal for quality assurance Progress summaries as part of the monthly invoicing process will be prepared by the Project Manager.

Task 1.2 – Progress Meetings: Participate in project progress meetings (assume 3-2 hour calls)

Assumptions: Conference call meetings up to the budget limits.

Deliverables: Monthly invoices and progress summaries, as appropriate.

Task 2: Obtain, Review and Summarize Existing Information

Task 2.1– Obtain, Review Summarize Bridge Maintenance Reports: Avila will obtain, review and summarize the available bridge maintenance reports from BIRIS including routine maintenance reports, underwater inspections and special hydraulic analysis.

Task 2.2– Obtain and Review FEMA information: Avila will update the available information from FEMA by submitting a request to the FEMA library through the City of Potola, review the effective and preliminary Flood Information Study and hydrology information available from FEMA.

Task 2.3 –Field Investigation: Avila will meet with the City of Potola and field review the bridge reach with the project team.

Assumptions:

1. No hydraulic analysis is assumed for this phase of the scope of work.
2. No potential scour countermeasure or scour monitoring will be provided for this scope of work.

Deliverables: Summarized BIRIS reports and FEMA Information. Field review notes.

Task 3– Hydraulic Modeling and Potential Scour Countermeasure Scoping:

Task 3.1 – Provide potential scour countermeasure options: Provide potential scour countermeasure options for City consideration.

Task 4 – Hydraulic Analysis Memorandum (HAM):

Task 4.1 – Draft HAM: Complete a draft HAM documenting the existing conditions and potential scour countermeasure alternatives.

Task 4.2 – Final HAM: Incorporate comments in a Final HAM documenting the information gathering and potential scour countermeasure alternatives.

Assumptions:

The Draft and Final HAM will be provided in electronic format assuming one round of comments on the Draft HAM

Deliverables: Documentation of the scour analysis will be provided in a Final HAM via electronic mail.

Optional Services:

Task 5– Hydraulic Modeling and Potential Scour Countermeasure Scoping:

Task 5.1 – Set up an existing conditions HEC-RAS model based on Point Precipitation Hydrology:

Set up an existing conditions HEC-RAS hydraulic model based on a hydrograph developed from a Point Precipitation Model.

Task 5.2 – Set up a proposed conditions HEC-RAS model based on plans provided by project team:

Update existing conditions HEC-RAS model based on plans provided by the project team.

Task 5.3– Estimate Local Scour at the existing bridge: Avila will estimate local pier, contraction, abutment, and pressure flow scour for the existing bridge using the methods described in the Federal Highway Administration (FHWA) Publication HEC-18, *Evaluating Scour at Bridges*.

Task 5.4– Estimate Short Term Degradation: Avila will provide a survey request for a thalweg profile survey and estimate future short-term degradation based upon the results of the thalweg profile survey information.

Task 5.5 – Estimate Scour for up to 3 proposed alternative scour countermeasure strategies

Task 5.6 – Assist with developing a bridge scour monitoring plan: Assist with putting a monitoring plan together including adding monitoring devices at the bridge site. These might include monitoring movement of the bridge itself (with very sensitive tilt-meters) or monitoring channel elevations with active devices attached to the bridge.

Task 5.7 – Assist with installation of a bridge scour monitoring plan: Assist with installing a monitoring plan together including adding monitoring devices at the bridge site.

Assumptions: TBD

Deliverables: TBD.

We estimate that the effort would take a total of \$26,729 for Base Services as outlined in the attached fee exhibit.

Should you have any questions regarding this proposal, please feel free to contact me at (925) 673-0549 or e-mail at cavila@avilaassociates.com.

Very truly yours,

Avila and Associates Consulting Engineers, Inc.



Catherine M.C. Avila, P. E.
Principal

Attachment: Exhibit A: Fee Estimate

Exhibit A: Fee Estimate Base Services:

MFK Feather River for the City of Portola		Proj Mgr (eng)	Senior Engineer	Assistant Civil Engineer	Assistant Civil Engineer	Avila Staff Labor	Other Direct Costs	Total
		C Avila	Remington	Gwynn	Ferraro	Subtotal	(ODCs)	
	Rate (\$/hr)	\$255.36	\$189.50	\$122.30	\$127.68			
1	Project Management							
1.1	Project Management	6		4		\$2,021		\$2,021
1.2	Participate in project progress meetings (assume 3)	6		6		\$2,266		\$2,266
	Subtotal (Task 1)	12	0	10	0	\$4,287	\$0	\$4,287
2	Obtain, Review and Summarize Existing Information							
2.1	Obtain, Review Summarize Bridge Maintenance Reports:	16		4	4	\$5,086		\$5,086
2.2	Obtain, Review and Summarize FEMA information:	10		4		\$3,043		\$3,043
2.3	Field Review the bridge reach	14				\$3,575	\$210	\$3,785
	Subtotal (Task 2)	40	0	8	4	\$11,704	\$210	\$11,913
3	Outline Potential Countermeasure Options							
3.1	Provide potential hydraulic and/or monitoring scour countermeasures for consideration	16		8		\$5,064		\$5,064
	Subtotal (Task 3)	16	0	8	0	\$5,064		\$5,064
4	Hydraulic Assessment Memorandum							
4.1	Draft Hydraulic Assessment Memorandum documenting scour and alternatives analysis	12	2	2		\$3,688		\$3,688
4.2	Respond to comments and finalize Hydraulic Assessment Memorandum	6		2		\$1,777		\$1,777
	Subtotal (Task 4)	18	2	4	0	\$5,465		\$5,465
	Grand Total:	86	2	30	4	\$26,520	\$210	\$26,729

Optional Services:

Optional Services (or follow on work)		Proj Mgr (eng)	Senior Engineer	Assistant Civil Engineer	Assistant Civil Engineer	Avila Staff Labor	Other Direct Costs	Total
		C Avila	Remington	Gwynn	Ferraro	Subtotal	(ODCs)	
		\$255.36	\$189.50	\$122.30	\$127.68			
5	Optional Services							
5.1	Set up an existing conditions HEC-RAS model based on Point Precipitation Hydrology	6	36	8		\$9,333		\$9,333
5.2	Set up a proposed conditions HEC-RAS model based on plans provided by project team	4	8	4		\$3,027		\$3,027
5.3	Estimate local pier, contraction, abutment scour at the existing bridge	12		4		\$3,554		\$3,554
5.4	Estimate anticipated short term degradation from thalweg profile survey	8		4		\$2,532		\$2,532
5.5	Estimate scour for up to 3 proposed alternative countermeasure strategies	12		4		\$3,554		\$3,554
5.6	Coordinate monitoring plan design with ETI	24			8	\$7,150		\$7,150
5.7	Coordinate installation of monitoring devices with ETI	8			12	\$3,575		\$3,575