



394-A Umbarger Rd  
San Jose, CA 95111  
Phone 408.224.9890  
Fax 408.224.9891  
www.Artika3.com

May 3, 2018

Mr. Joe Flatley  
Director, Facilities Modernization  
Milpitas Unified School District  
1331 E. Calaveras Blvd.,  
Milpitas, CA 95035

**Project Name:** Milpitas High School Solar Pool Heating  
Feasibility Study  
**Project Number:** 1813/C1

Dear Mr. Flatley:

I am pleased to submit this agreement for limited architectural services incorporating the following terms and conditions:

#### **Scope of the Project**

MUSD (Client) wishes to study the feasibility of installing a solar thermal water heating system to heat the existing swimming pool(s) at Milpitas High School under a Prop.39 Grant. As part of this project MUSD would like to create a shaded area using shade structures on which the solar thermal water heating system will be mounted.

The purpose of the study is to come up with a recommendation for the type of system, type of panel, quantity and angle of panels, location of panels, tie-in locations to the pool heating system and any other recommendations for the integration of the solar thermal heating system to the existing system. Additionally, Artik will help MUSD identify the most viable shade structure for mounting the solar thermal water heating panels.

#### **Scope of Professional Services – Basic Services**

Artik Art & Architecture will be responsible for the mechanical engineering consultant. Any other required consultants, including, but not limited to, civil engineering, structural engineering or electrical engineering, shall be provided by Client or by Artik Art & Architecture as a Reimbursable Expense.

Artik Art & Architecture proposes the following services to accomplish this task:

- Meet with Client to review project goals, objectives, and constraints.
- Review existing documentation provided by Client for the existing pool and locker room area.



Principal	\$180.00	Senior Drafter	\$120.00
Associate	\$165.00	Intermediate Drafter	\$110.00
Senior Project Manager	\$150.00	Junior Drafter	\$100.00
Senior Tech Lead	\$150.00	Admin	\$80.00
Project Manager	\$140.00	Intern	\$80.00
Job Captain	\$130.00		

### **Reimbursable Expenses**

Reimbursable expenses, as required and approved are in addition to compensation for Basic and Additional Services and include: project consultants not provided as part of Basic Services; transportation expenses, couriers, shipping, Title 24 calculations, photography, reproductions, models, renderings, or other expenses incurred in the interest of the project. These expenses shall be billed to the Owner at cost plus 10% of the expenses incurred by the Architect or Architect's Consultants.

### **Invoicing**

Artik Art & Architecture shall invoice monthly and payment is due upon receipt. Amounts unpaid thirty (30) days after the receipt of the invoice will be subject to a service charge of twelve percent (12%) per annum. Should the Client fail to pay current invoices for more than sixty (60) days, Artik Art & Architecture may stop work on the Project until payment is received or terminate this Agreement. Artik Art & Architecture shall not be held liable for any damages or losses that may result from such suspension or termination of services according to the provisions set forth in this Agreement.

### **Legal Costs**

In the event that legal proceedings between the parties are necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of its litigation costs and expenses, including reasonable attorney's fees.

### **Project Timing**

If the Client for more than thirty (30) consecutive days suspends the project, Artik Art & Architecture shall be compensated for services performed prior to notice of such suspension.

whom the Client is legally liable, and arising from the Project that is the subject of this Agreement.

Artik Art & Architecture is not obligated to indemnify the Client in any manner whatsoever for the Client's own negligence or willful misconduct.

### **Mediation**

In an effort to resolve any conflicts that arise during the design or construction of the Project or following the completion of the Project, the Client and Artik Art & Architecture agree that all disputes between them arising out of or relating to this Agreement shall be submitted to non-binding mediation unless the parties mutually agree otherwise.

The Client and Artik Art & Architecture further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the Project and require all independent contractors and consultants also to include a similar mediation provision in all agreements with subcontractors, sub-consultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

### **Hazardous Materials**

Both parties acknowledge that Artik Art & Architectures' scope of services does not include any services related to asbestos or hazardous or toxic materials. In the event Artik Art & Architecture or any other party encounters asbestos or hazardous or toxic materials at the job site, or should it become known in any way that such materials may be present at the job site or any adjacent areas that may affect the performance of Artik Art & Architectures' services, Artik Art & Architecture may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until the Client retains appropriate specialist consultant(s) or contractor(s) to identify, abate, and/or remove the asbestos or hazardous or toxic materials, and warrant the job site is in full compliance with the applicable laws and regulations.

### **Americans with Disabilities Act (ADA) Barrier Removal**

The Americans with Disabilities Act (ADA) provides that it is a violation to design and construct a facility for its first occupancy later than January 26, 1993, that does not meet the accessibility and usability requirements of the ADA except where an entity can demonstrate that it is structurally impractical to meet such requirements. In addition, the

April 23, 2018

Artik Arts & Architecture  
394-A Umbarger Rd  
San Jose, CA 95111

**Attention:** Gayatri Medury-Yadavalli, AIA, Senior Project Manager

**Subject:** Proposal for MHS Pool Solar Thermal Heating Study

**SOBE Project No.:** 180616

Dear Gayatri,

We are pleased to submit our proposal to provide mechanical engineering services for Milpitas High School swimming pool solar thermal heating study.

**Project Intent:** The intent is to come up with the type of system, type of panel, quantity of panels, angle of panels, location of panels, tie-in locations to the pool heating system, and any other recommendations for the integration of the solar thermal heating system to the existing heating system.

**Scope of Work Includes:**

- Perform thermal load calculations and panel performance calculations for both pools. Review gas meter data and compare results with EEM calculations by KW Engineering.
- Identify options and pros/cons for several solar thermal systems.
- Assist in evaluating locations/size of covered walk-ways for the solar thermal system.
- Identify rack-mounted collector arrangements and angles of panels.
- Coordinate with Prop 39 consultant incentive requirements.
- Provide cost estimates and economic analysis of the feasible options.
- Attend meeting to review initial findings and a final meeting to review recommendation.

**Submittals to Include:**

- Initial findings report
- Final report

**Exclusions and Clarifications:**

- Exclude architectural and structural engineering.

**Compensation:**

The overall fee shall be contracted on a Fixed Fee (FF), the amount of **\$9,940** per the scope of work listed above. Reimbursable expenses are included in the fee above. This fee is based on the anticipated level of effort and the scope as we understand it. Fees for any changes in scope, beyond what is noted above, will be in addition to the above and shall not be charged without client authorization. The term of this agreement shall be from **4/30/18** to **6/29/18**.

If you are in agreement, kindly sign this proposal where indicated and email *Attention Contracts* to [contracts-calops@salasobrien.com](mailto:contracts-calops@salasobrien.com). By signing this proposal, Client authorizes the work to commence and agrees to Salas



## EXHIBIT A – SALAS O'BRIEN STANDARD TERMS AND CONDITIONS

- 1. Billing.** Salas O'Brien Engineers, Inc. ("Engineer") shall bill "Client" on or about the 1st of the month. Billing to be based on percentage of completion.
- 2. Payment.** All invoices are due and payable within thirty (30) days of invoice date. Interest may be charged at 1.5% monthly on all invoices over thirty days. In the event if any payment is unpaid on any invoice in excess of sixty (60) days, Client shall be deemed to be in substantial breach of the Agreement and Engineer may, in its sole discretion, elect to suspend its services hereunder without prejudice. Client shall reimburse Engineer for all costs of collections, including reasonable attorneys' fees.
- 3. Pricing.** Hourly rates provided for projects performed on a Time and Materials basis are subject to change annually on January 1.
- 4. Extra Services.** Services in addition to those set forth in the Agreement shall be charged at the Engineer's then prevailing rates and shall be in addition to the above agreed upon fees. No additional services shall be performed without written authorization from the Client.
- 5. Dispute Resolution.** The parties shall, as soon as reasonably practicable after one party gives written notice of a dispute to the other party, meet and confer in good faith regarding such dispute at such time and place as mutually agreed. All discussion pursuant to this Section 4 shall be considered settlement negotiations for the purpose of laws protecting statements, disclosures or conduct in such context, and all offers or other statements or conduct shall be protected under such laws. If no resolution is reached, the parties shall, within forty-five (45) days of the first meeting referred to above, attempt to settle the dispute by formal mediation in San Jose, California. If the parties cannot agree upon a mediator within such forty-five (45) day period, the American Arbitration Association in San Jose, California shall administer the mediation. Such mediation shall occur no later than ninety (90) days after the dispute arises. All findings of fact and results of such mediation shall be in written form prepared by such mediator and provided to each party to such mediation. In the event that the parties are unable to resolve the dispute through formal mediation pursuant to this Section 4, the parties shall be entitled to seek any and all available legal remedies.
- 6. Indemnification.** The Engineer agrees to indemnify and hold the Client harmless from any damage, liability or cost to the extent caused by the Engineer's grossly negligent acts, errors or omissions in the performance of professional services under this Agreement (except to the extent caused by the Client's or other parties' negligent or intentional acts or omissions). Notwithstanding the foregoing agreement to indemnify and hold harmless, the parties expressly agree that the Engineer has no duty to defend the Client from and against any claims, causes of action, or proceedings of any kind. The Client agrees to indemnify and hold the Engineer harmless from any damage, liability or cost (including reasonable attorneys' fees) to the extent caused by a material breach of this Agreement by the Client or the negligent acts, errors or omissions of the Client or contractors, subcontractors, consultants or others for whom the Client is legally liable, and arising from the project that is the subject of this Agreement.
- 7. Insurance.** During the term of this Agreement, each party agrees to provide evidence of insurance coverage to the other party. In addition, the Engineer agrees to use commercially reasonable efforts to maintain continuous professional liability coverage for the period of design and construction of this project, and for a period of ten years following substantial completion, if such coverage is reasonably available at commercially affordable premiums. For the purposes of this Agreement, "reasonably available" and "commercially affordable" shall mean that more than half the design professional's practicing in the State of California as engineers for similar services are able to obtain such coverage.
- 8. Owner's Consultants.** It is understood and agreed that the Client may contract directly with other design professionals for design services: Engineer shall have no responsibility for any portion of the project designed by the Client's other consultants. The Engineer shall not be required to check or verify other consultants' construction documents and shall be entitled to rely on the accuracy and completeness thereof, as well as the compliance of such documents with applicable laws, codes, statutes, ordinances and regulations. The Client agrees, to the fullest extent permitted by law, to indemnify and hold the Engineer harmless from any damage, liability or cost, including reasonable attorneys' fees and defense costs, arising in any way from the services performed by any other consultants to the Client. The Client further agrees to require all other consultants under separate contract to coordinate their construction documents with those of the Engineer, to promptly report any conflicts or inconsistencies to the Engineer and to cooperate fully in the resolution of those conflicts or inconsistencies.
- 9. 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 the Engineer. The Engineer's services under this Agreement are being performed solely for the Client's benefit, and no other entity shall have any claim against the Engineer because of this Agreement or the performance or nonperformance of services hereunder. The Client agrees to include a provision in all agreements with third parties, Home Owner's Associations and other entities involved in this project to carry out the intent of this Section 9.
- 10. Liability.** The Engineer is not responsible for job safety in, on, or around the project site (or sites). Any reviews the Engineer may make are not, and are not intended to be, reviews of safety practices. Client understands and agrees that the Engineer is not responsible for means, methods, or sequences of construction or job site safety or for the Contractor's errors. IN RECOGNITION OF THE RELATIVE RISKS AND BENEFITS OF THE PROJECT TO BOTH THE CLIENT AND THE ENGINEER, THE RISKS HAVE BEEN ALLOCATED SUCH THAT THE CLIENT AGREES, TO THE FULLEST EXTENT PERMITTED BY LAW, TO LIMIT THE LIABILITY OF THE ENGINEER AND ITS SUBCONSULTANTS TO THE CLIENT AND TO ALL CONSTRUCTION CONTRACTORS AND SUBCONTRACTORS ON THE PROJECT FOR ANY AND ALL CLAIMS, LOSSES, COSTS, DAMAGES OF ANY NATURE WHATSOEVER OR CLAIMS EXPENSES FROM ANY CAUSE OR CAUSES, SO THAT THE TOTAL AGGREGATE LIABILITY OF THE ENGINEER AND ITS SUBCONSULTANTS SHALL NOT EXCEED \$150,000.00, OR THE ENGINEER'S TOTAL FEE FOR SERVICES RENDERED ON THIS PROJECT, WHICHEVER IS GREATER. SUCH CLAIMS AND CAUSES INCLUDE, BUT ARE NOT LIMITED TO NEGLIGENCE, PROFESSIONAL ERRORS OR OMISSIONS, STRICT LIABILITY, BREACH OF CONTRACT OR WARRANTY. ADDITIONALLY, IN NO EVENT SHALL THE ENGINEER, TO THE FULLEST EXTENT PERMITTED BY LAW, BE LIABLE FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES, EVEN IF SUCH DAMAGES WERE FORESEEABLE
- 11. Opinion of Probable Cost.** In providing opinions of probable cost or construction cost, Client understands and agrees that the Engineering has no control over the costs or the price of labor, equipment or materials, or over the Client's method of pricing, and that the opinions of probable construction costs provided herein are to be made on the basis of the Engineer's qualifications and experience. The Engineer makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.
- 12. Force Majeure.** The failure of the Engineer to perform its obligations shall not be a breach of this Agreement or give rise to any right of termination or reversion if such failure is caused by restrictions of governmental agencies, labor disputes, inability to obtain necessary materials or any other reason beyond the Engineer's control; in the event of delay from any such cause, the obligation to perform shall be postponed for a period of time reasonably related to such cause.
- 13. Additional Items.** If project is suspended or abandoned prior to the completion of professional services, fees will become payable only for the services completed at the time of such suspension or abandonment. This Agreement may be terminated by either party at the conclusion of any phase by 10 days' written notice.
- 14. Successors and Assigns.** Neither party shall assign any rights or obligations under the Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld. Any assignment of rights shall not work as a novation of obligations thereunder without written agreement. Any attempt to assign any rights, duties, or obligations under the Agreement without the other party's written consent will be void; provided that either party may assign this Agreement to a surviving entity in connection with any merger, acquisition or consolidation.
- 15. Entire Agreement.** This Agreement and its attachments set forth the entire agreement between the parties and supersedes any and all prior or contemporaneous agreements of the parties with respect to the subject matter contained herein. Engineer shall not be bound by, and specifically objects to, any term, condition, or other provision inconsistent with or in addition to any provision of this Agreement that is submitted by Client in any correspondence or any other document, unless Engineer specifically agrees to such provision in writing by an authorized representative. No change, amendment, or modification of any provision of this Agreement shall be valid unless set forth in a written instrument signed by both parties.
- 16. Governing Law.** This Agreement shall be governed by the laws of the State of California.
- 17. Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall constitute only one agreement. Signatures sent by facsimile transmission or in PDF format shall be deemed to be originals for all purposes of this Agreement.