



Native Solar

1450 W Hwy 290 # 1794 Dripping Springs, TX 78620

SOLAR PURCHASE AND INSTALLATION AGREEMENT

This Solar Purchase and Installment Agreement ("**Agreement**") is entered into between NATIVE SOLAR LLC, a Texas limited liability corporation, having its offices at 8201 S Congress Austin, Texas 78745 ("**Native Solar**" or "**Contractor**") and City of Farmers Branch, Texas located at 13000 William Dodson Pkwy Farmers Branch, TX 75234 ("**Customer**" or "**Owner**"). NATIVE SOLAR and the Customer may be referred to collectively as the "parties" or singularly as a "party."

1. NATIVE SOLAR agrees to furnish all materials and labor required for performance of the Work as described herein (the "**Work**") in exchange for Customer's agreement to pay in full the amount stated herein (the "**Contract Price**") at the times stated herein (the "**Payment Schedule**").

2. The Work shall be performed at the following locations: "Manske Library": 13613 Webb Chapel Rd Farmers Branch, TX 75234, "Rec Center": 14050 Heartside PL Farmers Branch, TX 75234, and "Fire Station 2": 1333 Alpha Link Farmers Branch, TX 75234 (the "**Project Locations**", also known as the "**Sites**").

3. By signing this Agreement NATIVE SOLAR and Customer acknowledge and agree to the terms and conditions contained, referenced or incorporated herein. This Agreement hereby incorporates the following:

- (i) the Terms and Conditions as attached hereto as **Exhibit 1**;
- (ii) the equipment and facilities listed on **Exhibit 2** (the "**Equipment**"), which may be amended by NATIVE SOLAR from time to time to accommodate system design changes, or revisions in system specifications for the installation of the Equipment;
- (iii) the Project Specific Addendums attached as **Exhibits 3a, 3b, and 3c**;
- (v) any services performed by NATIVE SOLAR with respect to the Equipment or its installation at the Project Locations; and
- (vi) any other documents added to the Agreement by mutual written consent of the parties.

4. This Agreement shall be effective as of the last date either party executes this Agreement in the spaces provided below.



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5. The Payment Schedules shall be:

PAYMENT SCHEDULE	
Customer: City of Farmers Branch	Price
Project: Manske Library: 13613 Webb Chapel Rd Farmers Branch, TX	
Contract Price (Total due to Company)	\$519,400
Payment due upon execution of Agreement	\$103,880
Payment due upon Equipment Order	\$207,760
Payment due upon Solar Modules Installation	\$93,690
Incentive Payment upon Commissioning	\$114,070

PAYMENT SCHEDULE	
Customer: City of Farmers Branch	Price
Project: Rec Center: 14050 Heartside PL Farmers Branch, TX	
Contract Price (Total due to Company)	\$612,282
Payment due upon execution of Agreement	\$122,456
Payment due upon Equipment Order	\$244,913
Payment due upon Solar Modules Installation	\$124,913
Incentive Payment upon Commissioning	\$120,000

PAYMENT SCHEDULE	
Customer: City of Farmers Branch	Price
Project: Fire Station 2: 1333 Alpha Link Farmers Branch, TX	
Contract Price (Total due to Company)	\$154,500
Payment due upon execution of Agreement	\$30,900
Payment due upon Equipment Order	\$61,800
Payment due upon Solar Modules Installation	\$28,605
Incentive Payment upon Commissioning	\$33,195



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BY EXECUTING THIS AGREEMENT, CUSTOMER ACKNOWLEDGES THAT IT HAS RECEIVED A COPY OF THIS AGREEMENT AND THE OTHER DOCUMENTS LISTED IN SECTION 3 ABOVE AND THAT HE OR SHE HAS READ AND UNDERSTOOD THIS AGREEMENT, OR HAD THE OPPORTUNITY TO CONSULT WITH THEIR OWN ATTORNEY REGARDING SUCH PRIOR TO SIGNING, INCLUDING THOSE SECTIONS RELATING TO LIMITATIONS OF NATIVE SOLAR'S LIABILITY AND WARRANTY DISCLAIMER.

Agreed:

NATIVE SOLAR, LLC

CUSTOMER:

Owner: City of Farmers Branch

By:

By: 
Signature

Name: Lloyd Lee

Title: Chief Executive Officer

Date: _____

Printed Name: Charles S Cox

Title: City Manager

Date: 9/22/2020



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Exhibit 1

General Terms & Conditions

1. **The Work:** Native Solar shall perform the services in connection with the Project as set forth in the Scope of Services. Native Solar, if a licensed engineer or registered architect shall perform the services: (i) with the professional skill and care ordinarily provided by competent engineers or architects, as the case may be, practicing in the same or similar locality and under the same or similar circumstances and professional license; and (ii) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer or architect, as the case may be. If Native Solar is not a licensed engineer or registered architect, Native Solar shall perform the services: (i) with the skill and care ordinarily provided by similar consultants practicing in the same or similar locality and under the same circumstances and applicable licenses or certifications; and (ii) as expeditiously as is prudent considering the ordinary skill and care of similar competent professionals. NATIVE SOLAR will supply and perform only that work specifically described herein (the "Work"), notwithstanding anything to the contrary contained in any bid documents presented by the Customer (the "Bid Documents"). It is expressly agreed that the Parties' entire agreement regarding the Work (also known as the "Scope of Work") is defined and limited to the work specifically described herein, and supersedes any and all previous negotiations, including anything to the contrary provided in the Bid Documents, any oral statements, emails, or other agreements or communications. Any work requested beyond the Work described herein shall be at an extra cost to the Customer and shall require a change order be executed.
2. **Access to Project Locations: Customer's Obligations** - Customer shall be responsible for ensuring complete and unhindered access to the Project Location and shall ensure that the Project Location is ready for NATIVE SOLAR's Work, including but not limited to ensuring that there are no existing conditions that would interfere with or prohibit the performance of the Work. Customer represents and warrants that the Project Location is or shall be at the time of the commencement of the Work, accessible during normal working hours (7:00 a.m. to 7:00 p.m., Monday through Friday, excluding legal holidays), and is ready for NATIVE SOLAR's Work.
3. **Storage and Facilities:** Customer shall provide at its sole expense sufficient storage space for NATIVE SOLAR's use while performing the Work. Such storage space shall be sufficient to fully protect NATIVE SOLAR's materials and equipment furnished or used as part of the Work at the Project Location. Customer shall provide at its expense all light, heat, power and water which is required by NATIVE SOLAR for performance of NATIVE SOLAR's Work.
4. **Preparation of Work Areas:** The Customer shall prepare all areas where the Work will be performed so as to be acceptable and ready for NATIVE SOLAR's Work. NATIVE SOLAR shall not



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be called upon to start the Work until the Project Location has been sufficiently prepared so as to ensure that the Work can continue uninterrupted until completion.

a. In the case of ground mount installations, NATIVE SOLAR shall not be responsible for grading, soil compaction, excavation or ground fill, either in preparation for or during the course of NATIVE SOLAR's Work, or during the course of the Project.

b. Customer shall ensure that the ground is reasonably level, clear from obstruction and capable of withstanding the total load to be imposed by the erection of the Equipment.

c. Any debris, material, structure or machinery that may interfere with the installation shall be removed by Customer prior to the commencement of NATIVE SOLAR's Work.

d. Customer represents and warrants that the Property, the Project Location and conditions to be encountered by the Company at the Property and the Project Location shall: (i) be in compliance with all applicable federal, state, and local laws, rules and regulations, (ii) be safe; and (iii) not contain, or expose the Company's representatives to hazardous materials, substances or conditions. In the event of Customer's breach of the foregoing, in addition to all other remedies, NATIVE SOLAR may immediately suspend work until Customer has promptly corrected such condition(s) at Customer's sole expense.

e. In the event Customer cannot or does not correct a condition prohibited §4(d), above, NATIVE SOLAR may, in its sole discretion, terminate this Agreement. A termination by NATIVE SOLAR caused by Customer's failure to correct a prohibited condition or due to NATIVE SOLAR's belief that an unsafe condition exists shall not be deemed a breach of this Agreement, and no liability for such decision will attach, including any liability for consequential damages, reliance damages, or any other form of damages. If such a termination occurs, NATIVE SOLAR shall be entitled to compensation for all work and materials provided through the date of termination (including reasonable overhead and profit).

5. Differing Site Conditions: If NATIVE SOLAR encounters conditions at the Project Location differing materially from those indicated in the Bid Documents, as observed on any pre-bid job walk by NATIVE SOLAR, or that are of an unusual nature differing materially from those ordinarily encountered by NATIVE SOLAR's trade, including but not limited to unknown physical conditions, NATIVE SOLAR shall promptly notify the Customer, stop the Work and await instructions from Customer. If such conditions cause a change in the cost of Work that increases the Contract Price, or the time required for performance of any portion of the Work, an equitable price adjustment shall be made and the Schedule (defined below) modified accordingly to take into account any delays caused thereby.



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6. Installation: NATIVE SOLAR shall install the Equipment at the Project Location in substantial compliance with the manufacturer's specifications in accordance with an approved Schedule as defined in the next section.

7. Schedule: NATIVE SOLAR shall supply and perform the Work in accordance with the schedule (the "Schedule") described in this Agreement (See Exhibit 3, Project Specific Addendum) or otherwise agreed in writing by the Parties. NATIVE SOLAR's Contract Price for the Work is based upon NATIVE SOLAR's crew working without interruption until the Work is completed. NATIVE SOLAR's obligation hereunder is based upon the Schedule, both as to duration and sequence. In the event of any significant change in the Schedule caused by any reason that is beyond the control of NATIVE SOLAR, including but not limited to the Customer or others under its control, the Contract Price and the Schedule shall be equitably adjusted (including providing for normal overhead and profit for NATIVE SOLAR). Further, in the event NATIVE SOLAR is delayed in its Work or is otherwise required to accelerate or re-sequence the Work for reasons caused by the Customer or others under its control, NATIVE SOLAR shall be entitled to additional compensation equal to the cost of acceleration and/or re-sequencing (all labor and materials), including reasonable overhead and profit. In order to install the Equipment at the Property and to make all inspections, tests and repairs of the Equipment, Customer shall provide NATIVE SOLAR access to the Project Location during the hours of 7:00 a.m. to 7:00 p.m, Monday through Friday. NATIVE SOLAR will use its best efforts to complete the Work in accordance with the Schedule, however NATIVE SOLAR shall be excused from performance hereunder for any period of time that it is prevented from performing any aspect of the Work, in whole or in part, as a result of delays caused by Customer, weather, an act of God, any act or event typically categorized as force majeure or other cause beyond NATIVE SOLAR's control and which it could not have prevented by reasonable precautions, including fire, strike, slowdown or labor interruption, civil commotion, acts of terrorism, embargo, delay or failure of suppliers, contractors, or common carriers, breakdown of equipment, explosion, accident, governmental act or regulation.

8. Limited Warranty: NATIVE SOLAR warrants and guarantees that the Work will be performed in compliance with all Federal, State, and Local regulations and, at the time of Customer's acceptance inspection, will meet the specifications in this Agreement and the Contract Documents specifically relating to NATIVE SOLAR's Work for a period of one year. This warranty does not cover any damage resulting from accident, misuse, abuse, negligence, improper maintenance, normal wear and tear, deterioration, vandalism, theft or unauthorized tampering, alteration or improper operation of the Equipment by any party other than NATIVE SOLAR. Any unauthorized alterations to the Equipment void all warranties. This warranty does not cover manufacturer's defects in any of the Equipment and Customer's sole remedy for any such manufacturer's defects in the Equipment shall be a warranty claim under the provided manufacturer's warranty.



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Disclaimer of All Other Warranties: ALL OTHER WARRANTIES, BOTH EXPRESS AND IMPLIED, ARE HEREBY DISCLAIMED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. Third Party Warranties: NATIVE SOLAR hereby assigns to Customer all third party warranties, including manufacturer and subcontractors, with respect to the Equipment and subcontractor services, if any (collectively, the "Third Party Warranties"). Customer acknowledges that NATIVE SOLAR has no liability or responsibility to Customer for honoring any such Third Party Warranties and Customer shall be solely responsible for knowing the terms and conditions of any such Third Party Warranties and enforcing the same. Upon Customer's reasonable request, NATIVE SOLAR shall use commercially reasonable efforts to assist Customer in connection with enforcing all Third Party Warranties.

10. Protection of Work: Risk of loss or damage to the Work transfers to Customer upon Customer's acceptance thereof. NATIVE SOLAR shall not be responsible for protecting the Work, or portions thereof after erection is complete. During the performance of the Work, Customer shall be responsible for ensuring the protection of the Work during all times when NATIVE SOLAR is not on site performing the Work.

11. Alteration or Damage: Customer agrees that there shall be no modification or alteration to the Equipment other than by NATIVE SOLAR. In the event Customer, Owner, other contractors or subcontractors, or any other party modifies or alters the Equipment, in whole or in part, Customer shall indemnify and hold harmless NATIVE SOLAR from and against any and all claims, actions, litigation, costs, damages, liability and expenses including attorney's fees, which may arise out of, directly or indirectly, or be related to any injury to persons (including death) or damage to property, caused by such modification or alteration.

12. Changes in the Work:

a. Customer Changes. If Customer desires to change the Work, Customer shall present NATIVE SOLAR a written Change Order Request specifying in detail the nature and scope for the change in the Work requested. The Change Order Request shall provide sufficient detail to allow NATIVE SOLAR to investigate, prepare and price the work required to implement the change requested. All Change Order Requests shall be within the general scope of the Work consisting of additions, deletions, changes to the Schedule's duration or sequence, or other revisions. Before starting the changed work, NATIVE SOLAR shall submit a detailed Change Order showing the work, cost and effect on the Schedule for the requested changed work. If the Customer approves the proposed Change Order, the Contract Price shall be adjusted accordingly to reflect any increase or reduction in cost of the work covered by an approved Change Order. The Schedule shall be adjusted to reflect any additional time required to perform the work covered by any approved Change Order. NATIVE SOLAR will not commence any such changed Work until receipt of



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Customer's signed written Change Order. If a Change Order request is made and NATIVE SOLAR fails to obtain the Customer's signed written Change Order prior to commencing the changed work, NATIVE SOLAR shall not be entitled to overhead and profit but shall be entitled to be reimbursed for the actual cost of labor and equipment.

b. Notwithstanding the above, the jobsite representative of Customer shall have authority to authorize extra Work, modifications, or additions as outlined above, and to commit Customer to make payment thereof. If NATIVE SOLAR acts in reliance on the directives of the representative of the Customer, NATIVE SOLAR shall be entitled to compensation for the cost of the work.

c. NATIVE SOLAR initiated Changes: If NATIVE SOLAR believes that a change in the Work is necessary or desirable, NATIVE SOLAR shall submit a detailed Change Order to the Customer showing the work, cost and effect on the Schedule for the requested changed work. If the Customer approves the proposed Change Order, the Contract Price shall be adjusted accordingly to reflect any increase or reduction in cost of the work covered by an approved Change Order. The Schedule shall be adjusted to reflect any additional time required to perform the work covered by any approved Change Order.

d. For all change orders, documentation using electronic mail ("e-mail") shall be sufficient if it includes sufficient detail to document the nature, scope, and price of the requested change. Approval of change orders may be by email.

13. Ownership of Equipment: Title to the Equipment transfers to Customer upon full and complete payment of the amounts owed pursuant to this Agreement, including any Change Orders; provided however, that NATIVE SOLAR retains a purchase money security interest in all Equipment described in this Agreement, to secure the payment by the Customer of the amounts due to NATIVE SOLAR as provided herein. Customer grants to NATIVE SOLAR a power of attorney to file any required UCC security interest filings that NATIVE SOLAR deems necessary to perfect its security interest to the Equipment sold hereunder. Customer agrees and warrants to cooperate with NATIVE SOLAR to complete, document and record all such security interest documentation.

14. Customer Supplied Property: If the Work described herein requires Customer to supply materials, equipment or other property, then Customer warrants that such items shall be fit for the use for which they were intended and new unless otherwise disclosed and allowed. If such items do not conform to this Agreement or the needs of the Work, NATIVE SOLAR shall notify Customer within a reasonable time after NATIVE SOLAR's notice of the nonconformity and NATIVE SOLAR may request additional compensation by change order.

15. Force Majeure: NATIVE SOLAR shall not be responsible for delays or defaults where occasioned by any causes of any kind and extent that are beyond its control, including but not limited to: delays caused by the Owner, Customer, other subcontractors, material or equipment



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suppliers, architects, and/or engineers, delays in transportation, shortages of raw materials, civil disorders, acts of the government either in its sovereign or contractual capacity, labor difficulties or shortages, vendor allocations, freight embargoes, fires, floods, epidemics, quarantine restrictions, accidents, unusually severe weather and acts of God. NATIVE SOLAR shall be entitled to an equitable adjustment in the Schedule and Contract Price for such delays as described above.

16. Insurance: (a) During the term of this Agreement, Native Solar shall maintain in full force and effect the following insurance:

(i) Commercial general liability policy of insurance for bodily injury, death and property damage including the property of CUSTOMER, its officers, contractors, agents and employees (collectively referred to as the "CUSTOMER") insuring against all claims, demands or actions relating to the work and services provided by Native Solar pursuant to this Agreement with a minimum combined single limit of not less than \$1,000,000.00 per occurrence for injury to persons (including death), and for property damage and \$2,000,000.00 aggregate including products and completed operations coverage of \$2,000,000.00. This policy shall be primary to any policy or policies carried by or available to CUSTOMER; An Excess / Umbrella policy following form of the underlying policy may be used to satisfy the limits required for Commercial general liability;

(ii) Automobile liability insurance policy covering any vehicles owned, non-owned and hired and/or operated by Native Solar, its officers, agents, and employees, and used in the performance of this Agreement with policy limits of not less than \$1,000,000.00 combined single limit for bodily injury, death and property damage;

(iii) Statutory Worker's Compensation Insurance at the statutory limits and Employers Liability covering all of Native Solar's employees involved in the provision of services under this Agreement with policy limit of not less than \$1,000,000.00; and

(iv) Professional Liability with policy limit of not less than \$1,000,000.00 per claim and \$1,000,000.00 in the aggregate, covering negligent acts, errors and omissions by Native Solar, its contractors, sub-contractors, consultants and employees in the performance of services pursuant to this Agreement.

(b) All insurance shall be endorsed to provide the following provisions:

(i) Except for the Workers Compensation Insurance and Native Solar Liability policy, name CUSTOMER, its officers, and employees as additional insureds as to all applicable coverage;

(ii) Except for the Native Solar Liability policy, provide for a waiver of subrogation against CUSTOMER for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance;



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(iii) A specific endorsement needs to be added to all policies, with a copy of the endorsement provided to CUSTOMER that indicates the insurance company will provide to CUSTOMER at least a thirty (30) day prior written notice for cancellation, non-renewal, and/or material changes of the policy. In the event the companies providing the required insurance are prohibited by law to provide any such specific endorsements, Native Solar shall provide at least thirty (30) days prior written notice to CUSTOMER of any cancellation, non-renewal and/or material changes to any of the policies of insurance.

(c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service. The Commercial General Liability, Automobile and Workmen Compensation policies must be written on a primary basis, non-contributory with any other insurance coverage and/or self-insurance maintained by CUSTOMER.

(d) A certificate of insurance and copies of policy endorsements evidencing the required insurance shall be submitted to CUSTOMER prior to commencement of services. On every date of renewal of the required insurance policies, Native Solar shall cause a certificate of insurance and policy endorsements to be issued evidencing the required insurance herein and delivered to CUSTOMER. In addition, Native Solar shall within ten (10) business days after written request provide CUSTOMER with certificates of insurance and policy endorsements for the insurance required herein. The delivery of the certificates of insurance and policy endorsements to CUSTOMER is a condition precedent to the payment of any amounts due to Native Solar by CUSTOMER. The failure to provide valid certificates of insurance and policy endorsements shall be deemed a default and/or breach of this Agreement.

17. **Taxes:** Customer will pay for any and all taxes which are now or may be imposed on the Work by any Federal, State or Local taxing authority, law, ordinance, rule or regulation, unless otherwise specified herein. All such taxes are specifically excluded from the Work and the Contract Price. NATIVE SOLAR's invoices shall itemize any applicable taxes to be paid by Customer.

18. **Bonds:** Performance and payment bonds are not included in the Contract Price. However, upon the request and at the sole expense of Customer, NATIVE SOLAR shall obtain performance and payment bonds in accordance with Chapter 2253, Texas Government Code, in forms reasonably satisfactory to City. written by a corporate surety, for the benefit of Customer. Native Solar shall provide maintenance bonds (for a period of two (2) years following completion of the Project and acceptance by the Customer. The cost of any such bonds are not included in the Contract Price and shall be paid for by Customer if requested. NATIVE SOLAR shall provide Customer all required information to pay for such bond premium and under no circumstance shall NATIVE SOLAR pay such expenses directly for Customer.

19. **Indemnity:**



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a. **NATIVE SOLAR DOES HEREBY COVENANT AND CONTRACT TO WAIVE ANY AND ALL CLAIMS, RELEASE, DEFEND, INDEMNIFY, AND HOLD HARMLESS CUSTOMER, ITS COUNCIL, OFFICERS, AND EMPLOYEES, FROM AND AGAINST ALL LIABILITY, CAUSES OF ACTION, CITATIONS, CLAIMS, COSTS, DAMAGES, DEMANDS, EXPENSES, FINES, JUDGMENTS, LOSSES, PENALTIES OR SUITS, TO THE EXTENT CAUSED BY THE NEGLIGENCE, INTENTIONAL TORT, INTELLECTUAL PROPERTY INFRINGEMENT, OR FAILURE TO PAY A SUBCONTRACTOR OR SUPPLIER COMMITTED BY NATIVE SOLAR, ITS AGENT, ITS CONSULTANT UNDER CONTRACT, OR ANY OTHER ENTITY OVER WHICH NATIVE SOLAR EXERCISES CONTROL SUBJECT TO THE LIMITATIONS IN TEXAS LOCAL GOVERNMENT CODE § 271.904 AND TEXAS CIVIL PRACTICE AND REMEDIES CODE, § 130.002 (B).**

INDEMNIFIED ITEMS SHALL INCLUDE REASONABLE ATTORNEYS' FEES AND COSTS, COURT COSTS, AND SETTLEMENT COSTS IN PROPORTION TO NATIVE SOLAR'S LIABILITY.

NATIVE SOLAR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT BE LIMITED TO THE LIMITS OF COVERAGE OF INSURANCE MAINTAINED OR REQUIRED TO BE MAINTAINED BY NATIVE SOLAR UNDER THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

20. Payments:

a. Payments shall be made in accordance with the terms of the Agreement to which these Terms & Conditions are attached. All sums not paid to NATIVE SOLAR when due, for whatever reason other than breach of terms of this agreement, shall bear interest at a rate of one and one-half percent (1.5%) per month or the maximum legal rate permitted by law, whichever is less. All costs of collection, including reasonable attorney's fees, shall be paid by Customer.

b. Special payment provision for projects involving incentives. If the Customer intends to pay part of the Contract Price by applying for an incentive from any third party or governmental entity, and this condition is noted in the special provisions of this Agreement, the following shall apply:

(1) If the Customer does not qualify for or receive the anticipated incentive, the Customer shall have the option to terminate this Agreement. If such occurs, NATIVE SOLAR shall be entitled to compensation for all work and materials provided through the date of termination (including reasonable overhead and profit).

(2) NATIVE SOLAR does not guarantee or warrant that Customer will receive any type of incentive. If the Customer receives the anticipated incentive, this contract shall be in full force and effect.



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21. Notices: Any notice or written claim required to be submitted to the Customer on account of charges, extras, delays, acceleration, or otherwise, shall be furnished within a reasonable time period, and in a manner to permit the Customer to satisfy the requirements of the Agreement notwithstanding any shorter time period otherwise provided therein.

22. Liens: Intentionally Omitted .

23. **Waiver of Consequential Damages: Except for the Indemnification provided in Section 19, notwithstanding anything to the contrary contained in this Agreement, neither party shall not be liable for any consequential, special, indirect, incidental, exemplary or punitive damages of any kind or nature whatsoever, or any lost income or profits of any kind, regardless of whether arising from breach of contract or tort, even if advised of the possibility of such loss or damage or if such loss or damage could have been reasonably foreseen. This provision controls over §19(a). This waiver survives termination of this agreement.**

24. Termination and Suspension: If the Customer does not pay NATIVE SOLAR in a timely manner consistent with the Payment Schedule within seven (7) days from the time payment should be made as provided herein (except where such nonpayment is due to defective Work by NATIVE SOLAR or other material breach by NATIVE SOLAR), or fails to perform any of its obligations under this Agreement then NATIVE SOLAR may, without prejudice to any other remedy it may have, upon two (2) additional days' written notice to the Customer, stop its Work until the default has been remedied. In the event NATIVE SOLAR resumes its Work thereafter, the Schedule shall be equitably adjusted, and NATIVE SOLAR shall incur no liability for such termination or delay caused thereby. Further, the Contract Price shall, by appropriate adjustment be increased by the amount of NATIVE SOLAR's reasonable costs of shutdown, delay and startup. In the event Customer fails to remedy the default, NATIVE SOLAR may, in its sole discretion, terminate this Agreement. In the event that NATIVE SOLAR terminates this Agreement, in addition to any other remedies provided by law, NATIVE SOLAR will also be entitled to recover from Customer all amounts then due and NATIVE SOLAR's reasonable collection costs, including attorneys' fees. Further, if NATIVE SOLAR's Work is terminated or suspended for the convenience of the Customer, then NATIVE SOLAR shall be paid for all Work performed to-date, for equipment and materials already ordered, and for NATIVE SOLAR's costs of early termination, or in the case of suspension, NATIVE SOLAR's costs of shutdown, delay and startup. Notwithstanding anything herein to the contrary, NATIVE SOLAR shall not be liable for any loss or damage once the Work or the Project Location once the Work is complete and it has been accepted by the Customer. Customer may upon written notice to Solar Native terminate this Agreement in the event Native Solar breaches any of the terms and conditions of this Agreement and such breach is not cured within thirty (30) days after written notice thereof.



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25. Waiver: NATIVE SOLAR's waiver of any term herein shall not be construed as a waiver of such terms at any subsequent time, and if any provision herein is deemed unenforceable, the remaining provisions shall be in full force and effect.

26. Cooperation and Safety: NATIVE SOLAR's Work shall be performed in accordance with all applicable Federal, State and Local regulations. Customer will cooperate with NATIVE SOLAR in all respects and take all necessary actions to enable NATIVE SOLAR to meet all such requirements with respect to the Work and the other obligations under this Agreement. Customer will cooperate with NATIVE SOLAR to assure that all areas where the Work is being performed are closed to access by unauthorized persons. Customer shall provide adequate security, to prevent unauthorized entry into NATIVE SOLAR's Work areas, and will provide all appropriate safety, direction and warning signs for the Projects. The Customer will ensure that its employees, representatives, agents and tenants will abide by all safety procedures applied by NATIVE SOLAR at the Project Location or Site. All visitors to the Work areas shall be required to check in with NATIVE SOLAR's superintendent prior to entering the Project Location and shall comply with NATIVE SOLAR's safety requirements. Customer agrees that NATIVE SOLAR's insurers' representatives shall have the right to inspect NATIVE SOLAR's Work and Project Location with reasonable notice to Customer. Working scaffold platforms are not to be used for building ingress and egress except as otherwise specifically approved by NATIVE SOLAR.

27. Legal Effect: This Agreement, including these Terms & Conditions, upon which NATIVE SOLAR shall perform the Work described herein, is made without regard to any of the provisions in the Bid Documents not expressly incorporated herein by reference or otherwise agreed to in writing and signed by NATIVE SOLAR. **As stated previously, and reiterated here, this Agreement, including Exhibit 1, 2 and 3, constitutes the parties' entire agreement on this matter, and expressly supersedes all previous negotiations, communications or agreements. NATIVE SOLAR's agreement to enter into this Agreement to perform the Work is expressly limited to the terms stated herein. Neither NATIVE SOLAR nor Customer is relying on any oral representations that differ from the terms stated herein in making the decision to enter into this binding contract.**

28. Permits and Inspections: NATIVE SOLAR agrees to obtain all applicable permits and inspections related to the Equipment or the installation thereof, and may adjust the Contract Price accordingly. Notwithstanding the forgoing, Customer shall obtain all local, city, county and utility approvals of design and construction standards, drawings, plans, or other approvals required to perform the Work that are unrelated to the Equipment itself or the installation of the Equipment.

29. Assignment: Customer may not transfer or assign any of its rights under this Agreement without NATIVE SOLAR's prior written consent.

30. Miscellaneous:



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a. This Agreement sets forth the entire agreement between the parties in connection with the subject matter hereof.

b. This Agreement is not binding on NATIVE SOLAR until NATIVE SOLAR or its authorized agent signs and dates the Agreement.

c. Any handwritten modifications to or on this Agreement (with the exception of blanks that are filled in as part of this Agreement) will not be accepted by NATIVE SOLAR and therefore are considered non-binding to this Agreement.

d. No modification, amendment, supplement to or waiver of any provision of this Agreement shall be binding upon the parties hereto unless made in writing and duly signed by NATIVE SOLAR.

31. **Jurisdiction and Venue:** The laws of the State of Texas shall govern this Agreement without regard to any conflict of law rules; and venue for any action concerning this Agreement shall be in the State District Court of Dallas County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court. All notices will be in writing and will be delivered personally or sent by confirmed facsimile transmission, overnight letter, or United States certified mail, proper postage prepaid to the addresses listed on the first page of this Agreement.

32. **Dispute Resolution: Negotiation, Mediation:** For all controversies, claims or disputes ("disputes") arising out of or relating to this Agreement or breach thereof, the parties shall first attempt to resolve such disputes by informal negotiations. If these informal negotiations do not resolve the disputes, either party may demand mediation of the disputes by giving the other party written demand for mediation. The dispute shall be mediated by a qualified attorney-mediator experienced in Construction Law and who has practiced at least 10 years. The costs of such will be equally divided by the parties. If within 30 days after service of a written demand for mediation, the mediation does not result in settlement of the dispute, then any remaining disputes arising from or relating to this Agreement or breach thereof may be pursued by the parties in court.

33. Intentionally Omitted.



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Exhibit 2

Equipment

The following equipment is included in the Contract Price and the Work:

Native Solar will design, engineer, permit, install, interconnect, and commission a grid-tied, roof-attached solar electric system for each of the project locations. The project scope will include, but not be limited to the following:

- Locations: "Manske Library": 13613 Webb Chapel Rd Farmers Branch, TX 75234, "Rec Center": 14050 Heartside PL Farmers Branch, TX 75234, and "Fire Station 2": 1333 Alpha Link Farmers Branch, TX 75234,
- Furnish and install all PV system components, including tier 1 modules, inverters, DC combiners, racking, and production monitoring.
- Furnish and install all electrical components required for a code-compliant interconnection including DC disconnect(s), AC disconnect(s), aggregation panel(s), wire, and conduit
- Seal and/or flash penetrations in the building envelope
- Arrange and complete inspection of the PV system with the utility company.



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Exhibit 3a

Project Specific Addendum

Project Location/Name: "Manske Library": 13613 Webb Chapel Rd Farmers Branch, TX 75234

The following terms also apply to this Agreement related to the above Project Location/Name:

1. NATIVE SOLAR's Contract Price is based on clarifications stated in the Agreement and this Addendum.
2. NATIVE SOLAR shall not be responsible for damaged work in place arising from or relating to weather or environmental conditions.
3. As used in this Agreement, "costs" shall mean all costs associated with the performance of the Work, including but not limited to supervisory costs, engineering costs, overhead, profit, and all other expenditures reasonable and necessary to complete the Work required under the terms of this Agreement, or any modification thereto.
4. NATIVE SOLAR shall substantially complete the Work at the Project Location on or before: February 28, 2021. ("Date of Substantial Completion")
5. The Date of Substantial Completion shall be revised if there are delays in obtaining access to the Project Location or for the Project Location to be ready to accept the Work.
6. This Agreement to perform the Work is based on a standard 40-hour week. No shift work or premium or overtime time has been included. If an accelerated Schedule or Date of Substantial Completion is required, there will be additional costs.
7. NATIVE SOLAR will provide equipment and other safety precautions for the protection of NATIVE SOLAR's erectors only.
8. Temporary facilities such as light, power, heat, drinking water, and toilets are to be provided at locations convenient to the Work at no cost to NATIVE SOLAR unless otherwise included in Exhibit 2, under "Facilities". Such facilities will be adequate to ensure the proper installation of all of NATIVE SOLAR's Work under all environmental conditions.
9. This proposal is conditioned upon the start of NATIVE SOLAR's Work beginning no later than _____ and to be substantially complete no later than the Date of Substantial Completion, if any, listed above.
10. In the event NATIVE SOLAR is unable to complete the work on or before the Date of Substantial Completion listed herein as a result, in whole or in part, due to the fault of the Customer,



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NATIVE SOLAR shall be entitled to additional time to complete the Work. Native Solar shall not be entitled to delay damages.



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Exhibit 3b

Project Specific Addendum

Project Location/Name: "Rec Center": 14050 Heartside PL Farmers Branch, TX 75234

The following terms also apply to this Agreement related to the above Project Location/Name:

1. NATIVE SOLAR's Contract Price is based on clarifications stated in the Agreement and this Addendum.
2. NATIVE SOLAR shall not be responsible for damaged work in place arising from or relating to weather or environmental conditions.
3. As used in this Agreement, "costs" shall mean all costs associated with the performance of the Work, including but not limited to supervisory costs, engineering costs, overhead, profit, and all other expenditures reasonable and necessary to complete the Work required under the terms of this Agreement, or any modification thereto.
4. NATIVE SOLAR shall substantially complete the Work at the Project Location on or before: December 31, 2020. ("Date of Substantial Completion")
5. The Date of Substantial Completion shall be revised if there are delays in obtaining access to the Project Location or for the Project Location to be ready to accept the Work.
6. This Agreement to perform the Work is based on a standard 40-hour week. No shift work or premium or overtime time has been included. If an accelerated Schedule or Date of Substantial Completion is required, there will be additional costs.
7. NATIVE SOLAR will provide equipment and other safety precautions for the protection of NATIVE SOLAR's erectors only.
8. Temporary facilities such as light, power, heat, drinking water, and toilets are to be provided at locations convenient to the Work at no cost to NATIVE SOLAR unless otherwise included in Exhibit 2, under "Facilities". Such facilities will be adequate to ensure the proper installation of all of NATIVE SOLAR's Work under all environmental conditions.
9. This proposal is conditioned upon the start of NATIVE SOLAR's Work beginning no later than _____ and to be substantially complete no later than the Date of Substantial Completion, if any, listed above.
10. In the event NATIVE SOLAR is unable to complete the work on or before the Date of Substantial Completion listed herein as a result, in whole or in part, due to the fault of the Customer,



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NATIVE SOLAR shall be entitled to additional time to complete the Work. Native Solar shall not be entitled to delay damages.



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Exhibit 3c

Project Specific Addendum

Project Location/Name: "Fire Station 2": 1333 Alpha Link Farmers Branch, TX 75234

The following terms also apply to this Agreement related to the above Project Location/Name:

1. NATIVE SOLAR's Contract Price is based on clarifications stated in the Agreement and this Addendum.
2. NATIVE SOLAR shall not be responsible for damaged work in place arising from or relating to weather or environmental conditions.
3. As used in this Agreement, "costs" shall mean all costs associated with the performance of the Work, including but not limited to supervisory costs, engineering costs, overhead, profit, and all other expenditures reasonable and necessary to complete the Work required under the terms of this Agreement, or any modification thereto.
4. NATIVE SOLAR shall substantially complete the Work at the Project Location on or before: December 31, 2020, ("Date of Substantial Completion")
5. The Date of Substantial Completion shall be revised if there are delays in obtaining access to the Project Location or for the Project Location to be ready to accept the Work.
6. This Agreement to perform the Work is based on a standard 40-hour week. No shift work or premium or overtime time has been included. If an accelerated Schedule or Date of Substantial Completion is required, there will be additional costs.
7. NATIVE SOLAR will provide equipment and other safety precautions for the protection of NATIVE SOLAR's erectors only.
8. Temporary facilities such as light, power, heat, drinking water, and toilets are to be provided at locations convenient to the Work at no cost to NATIVE SOLAR unless otherwise included in Exhibit 2, under "Facilities". Such facilities will be adequate to ensure the proper installation of all of NATIVE SOLAR's Work under all environmental conditions.
9. This proposal is conditioned upon the start of NATIVE SOLAR's Work beginning no later than _____ and to be substantially complete no later than the Date of Substantial Completion, if any, listed above.
10. In the event NATIVE SOLAR is unable to complete the work on or before the Date of Substantial Completion listed herein as a result, in whole or in part, due to the fault of the Customer,



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NATIVE SOLAR shall be entitled to additional time to complete the Work. Native Solar shall not be entitled to delay damages.