

CONTRACT #5

RFS # N/A

FA # N/A

University of Tennessee

VENDOR:

**University of Tennessee
Research Foundation (UTRF)**

(West Tennessee Solar Farm)



February 19, 2010

Mr. Jim White
Executive Director
Fiscal Review Committee
320 Sixth Avenue, North - 8th Floor
Nashville, TN 37243-0057

RECEIVED

FEB 19 2010 2:50 p.m.

FISCAL REVIEW

Dear Mr. White:

The University of Tennessee is submitting for the committee's review a non-competitively bid contract with the University of Tennessee Research Foundation (UTRF) to assist the university in conducting activities associated with the West Tennessee Solar Farm project. The West Tennessee Solar Farm will be located in Haywood County, Tennessee. Funds under this program will be primarily used for the installation of a five-megawatt solar array, but the site will also serve as a site for demonstration and educational activities for the public and students to learn about the benefits of renewable energy. The site will be a showcase for a range of commercially available solar techniques and technologies.

Under this contract, UTRF will provide administrative and programmatic support for the implementation of initiatives detailed in the U.S. Department of Energy's (DOE) State Energy Program American Recovery and Reinvestment Act (SEP-ARRA) grant awarded to the Department of Economic and Community Development (ECD). Specifically, UTRF will manage the design/install portion of the project and operate the solar array during the term of this agreement. ECD has been working with DOE to finalize the program's implementation regulations and has just received from DOE the information needed to move this project forward. Given that all funds must be expended by April 30, 2012 and that time is a critical factor, we regrettably acknowledge that this contract is being submitted in a untimely manner for your review but believe it is important to request the committee's understanding in this unusual situation so we can proceed with implementation as soon as possible.

If you have any questions or need additional information, please don't hesitate to contact me.

Respectfully,

Stacey S. Patterson, Ph.D.
Director of Research Partnerships

Attachment

c: Jan Simek
David Millhorn
Butch Peccolo
Gary Rogers
Randy Gentry
Anthony Haynes
Mary McDonald

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Stacey Patterson	*Contact Phone:	865-974-3140
*Original Contract Number:		*Original RFS Number:	
Edison Contract Number: <i>(if applicable)</i>	N/A	Edison RFS Number: <i>(if applicable)</i>	N/A
*Original Contract Begin Date:	February 1, 2010	*Current End Date:	April 30, 2012
Current Request Amendment Number: <i>(if applicable)</i>	N/A		
Proposed Amendment Effective Date: <i>(if applicable)</i>	N/A		
*Department Submitting:	University of Tennessee		
*Division:	University-wide Administration		
*Date Submitted:	February 22, 2010		
*Submitted Within Sixty (60) days:	No		
<i>If not, explain:</i>	Federal ARRA funded contract with defined time period for expenditure of grant award. Just received authority to proceed with award and desire to begin program implementation as soon as possible.		
*Contract Vendor Name:	UT Research Foundation		
*Current Maximum Liability:	\$31,000,000		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2010	FY: 2011	FY: 2012	FY: FY
\$TBD	\$TBD	\$TBD	\$ \$
*Current Total Expenditures by Fiscal Year of Contract: <i>(attach backup documentation from STARS or FDAS report)</i>			
FY:	FY:	FY:	FY: FY
\$	\$	\$	\$ \$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:	N/A -- new initiative		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:	N/A -- new initiative		

Supplemental Documentation Required for
Fiscal Review Committee

IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:		N/A – new initiative		
*Contract Funding Source/Amount:	State:		Federal:	\$31,000,000
Interdepartmental:			Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
N/A		N/A		
Method of Original Award: <i>(if applicable)</i>				
*What were the projected costs of the service for the entire term of the contract prior to contract award?		\$ 31,000,000		

The maximum contract liability is based on the delivery of services defined in the grant to ECD approved by the Department of Energy.

Supplemental Documentation Required for
Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 2010	FY: 2011	FY: 2012	FY:	FY:
See Attached	Schedule 1	Schedule 1	Schedule 1		

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable.

Deliverable description:	FY: 2010	FY: 2011	FY: 2012	FY:	FY:
	N/A				

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables.

Proposed Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
N/A*					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
N/A*					
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:
N/A*					

Supplemental Documentation Required for Fiscal Review Committee

Explanation for Use of UT Research Foundation

The University of Tennessee established the UT Research Foundation to support the University of Tennessee in fulfilling its research, commercialization, and economic development functions, all which are core functions of the Tennessee Solar Institute. Utilizing UTRF's services enables the University in fulfilling the requirements set forth in the state of Tennessee's DOE SEP-ARRA plan in a coordinated effort to ensure successful implementation and accountability of these funds on behalf of the State of Tennessee.

**ATTACHMENT C
WEST TENNESSEE SOLAR FARM BUDGET**

Budget Item	Budget Period 1			Budget Period 2			Budget Period 3			Total Budget		
	UT	UTRF	Total	UT	UTRF	Total	UT	UTRF	Total	UT	UTRF	Total
Personnel	12,500	236,563	249,063	30,000	567,750	597,750	25,000	75,624	100,624	67,500	879,937	947,437
Fringe	4,000	12,100	16,100	9,600	29,040	38,640	8,000	24,200	32,200	21,600	65,340	86,940
Total Personal	16,500	248,663	265,163	39,600	596,790	636,390	33,000	99,824	132,824	89,100	945,277	1,034,377
Travel		16,619	16,619		21,908	21,908		19,332	19,332	0	57,859	57,859
Equipment	0			0			0			0		
3 Laptops		6,000	6,000			0			0	0	6,000	6,000
1 Desktop		1,850	1,850			0			0	0	1,850	1,850
1 Color Printer		1,850	1,850			0			0	0	1,850	1,850
2 Desks/Cubicles		9,100	9,100			0			0	0	9,100	9,100
Subtotal Equip	0	18,800	18,800	0	0	0	0	0	0	0	18,800	18,800
Supplies												
General Office Supplies		10,000	10,000		25,000	25,000		15,000	15,000	0	50,000	50,000
Subtotal	0	10,000	10,000	0	25,000	25,000	0	15,000	15,000	0	50,000	50,000
Contractual												
To Be Determined**		TBD	TBD		TBD	TBD		TBD	TBD		TBD	TBD
Subtotal	0	0	0	0	0	0	0	0	0	0	0	0
Other Direct												
Taxes and Insurance		250,000	250,000		250,000	250,000		100,000	100,000	0	600,000	600,000
General Operating		171,200	171,200		175,000	175,000		10,000	10,000	0	356,200	356,200
Operation & Maintenance of the Farm			0		150,000	150,000			0	0	150,000	150,000
Subtotal		421,200	421,200	0	575,000	575,000	0	110,000	110,000	0	1,106,200	1,106,200
Total Other	0	466,619	466,619	0	621,908	621,908	0	144,332	144,332	0	1,232,859	1,232,859
TOTAL	16,500	715,282	731,782	39,600	1,218,698	1,258,298	33,000	244,156	277,156	89,100	2,178,136	2,267,236
Positions	0.50	4.75	5.25	0.50	4.75	5.25	0.50	1.75	2.25	1.50	11.25	13.75

** The maximum liability of this contract is \$31,000,000. The projected contractual costs for the Array design, development, installation and operation conducted on site will be determined based upon completion of the RFP process. This Attachment C will be amended to include contractual amounts following the completion of the RFP process and selection of the Design/Build Firm or Team as described in Attachment B and as contemplated in Section 6.15.7 of the the Contract. Furthermore, as described in the contract, ECD anticipates SEP ARRA funds will be used to cover costs associated with educational activities at the Site as described in Section 11.4 of this Contract.

The West Tennessee Solar Farm was approved by the U.S. Department of Energy as an energy initiative utilizing funds from the American Recovery and Reinvestment Act. To be located in Haywood County, Tennessee, the five-megawatt solar array will serve as a demonstration site for educational purposes for the public and students to learn about the benefits of renewable energy. It also will be a showcase for a range of commercially available solar techniques and technologies. Due to the Contractor's reputation in commercialization and economic development and its collaborative partnerships, it is an excellent partner in this new initiative.

The maximum liability of this contract is \$31,000,000. The yearly projected costs for the project design, development, installation and operation will be determined based upon completion of the RFP process as described in the Contract.

DRAFT FOR DISCUSSION PURPOSES ONLY

CONTRACT

for

DESIGN, DEVELOPMENT, OPERATION AND MANAGEMENT

between

THE UNIVERSITY OF TENNESSEE

and

UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION

CONTRACT ("Contract") entered into as of February _____, 2010 ("Effective Date") by and between The University of Tennessee ("UT"), and University of Tennessee Research Foundation ("UTRF").

RECITALS

WHEREAS, Division A, Title IV of the American Recovery and Reinvestment Act, Pub. L. 111-5 ("ARRA") provides increased funding to the states for energy-related activities through the U.S. Department of Energy's ("DOE") State Energy Program ("SEP"); and

WHEREAS, as a result the State of Tennessee (the "State") has received approximately \$62.5 million in SEP-ARRA funding to be administered by the energy division of the Department of Economic and Community Development, a Department of the State of Tennessee ("ECD"); and

WHEREAS, Governor Phil Bredesen proposed, and the General Assembly approved, plans to invest the entirety of the State's SEP-ARRA funding to help establish the Volunteer State Solar Initiative, an innovative program designed to support and encourage additional growth in Tennessee's solar industry; and

WHEREAS, the Volunteer State Solar Initiative consists of two aspects: (1) the Tennessee Solar Institute at UT and Oak Ridge National Laboratory; and (2) the West Tennessee Solar Farm in Haywood County; and

WHEREAS, the West Tennessee Solar Farm in Haywood County ("Farm") is envisioned as a renewable energy education and demonstration site to be owned and operated by UT, which is the State's primary research university; and

WHEREAS, the State, through the energy division of ECD, and as previously approved by the State Building Commission, will provide funds to UT to underwrite and consummate the purchase of approximately 200 acres in Haywood County ("Site") that will serve as the site of the Farm; and

WHEREAS, the centerpiece of the Farm will be a utility-scale solar array ("Array") with an initial energy production capacity of not less than five megawatts that will be maintained, operated, and expanded over time through the reinvestment of net revenue from the sale of electricity produced by the Array; and

WHEREAS, the Array is intended to be financially self-perpetuating and expanded over time; and

WHEREAS, ECD and UT agree that the overall establishment of the Array and the Farm ("Project") will provide significant educational benefits to UT and the general public, and significant economic development benefits to ECD, UT and private sector parties involved in solar power technologies and marketing; and

WHEREAS, DOE has approved the use of SEP-ARRA funding to develop the Array, subject to an environmental assessment to be conducted under the National Environmental Policy Act ("NEPA"), and to conduct public education activities in support of renewable energy; and

WHEREAS, ECD and UT are entering into a contract (the "ECD Contract") for UT to perform work on the Project and, with ECD's approval, UT desires to subcontract work as specified in this Contract to UTRF; and

WHEREAS, UTRF, through certain subcontractors ("UTRF Subcontractors") desires to perform certain work on the Project, including, but not limited to, design, permitting, site preparation, equipment installation, operation, data collection and other activities, including arranging for the sale and transmission of electricity produced by the Array; and

WHEREAS, UT and UTRF agree to cooperate with each other in all matters regarding this Contract and any subcontracts concerning the Array and the Farm. Any disagreements or disputes between UT and UTRF will be resolved, if necessary, in accordance with Section 20.0 of this Contract.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions and undertakings herein set forth, UT and UTRF (hereinafter referred to jointly as "Parties" and individually as "Party"), hereby agree as follows:

1.0 THE PROJECT

1.1. Scope of Work to be Performed. The scope of the work under this Contract will encompass all work performed by UTRF, including through UTRF Subcontractors, to design, install, permit, operate, evaluate, expand, and manage the Array and to arrange for the sale and transmission of electric power produced by the Array, as described in the Work Plan and Schedule attached as Attachment B and more fully described in Section 2.2. In doing so, UTRF may contract with third parties to fulfill these responsibilities, subject to the terms of Section 4 and Section 6.5.

1.1.1. Ongoing Array Management. UTRF shall oversee the ongoing operation and maintenance of the Array. UTRF shall be paid a management fee not to exceed 10% of the annual gross revenue from the sale of power from the Array.

1.2. Array Location. The location of the Array will be Haywood County, Tennessee, on one or more portions of the approximately 200 acres that have been purchased by UT for that purpose, as described in Attachment A ("Site Plan").

1.2.1. The Parties recognize that a portion of the Site may be developed as described in Section 11.0 by the Tennessee Department of Transportation ("TDOT") and possibly other State entities and that certain work on the Array may need to be coordinated with activities by TDOT and other entities. UTRF will be responsible for such coordination.

2.0 PROJECT RESPONSIBILITIES

2.1. Permitting

2.1.1. UTRF directly or through UTRF Subcontractors, shall have primary responsibility for obtaining all required permits for development of the Array at the Site. It is anticipated that the following permits may be necessary prerequisites to commence development at the Site:

2.1.1.1. [Reserved]

2.1.1.2. Relevant permits and approvals from State and local entities and agencies; provided that UT shall be responsible for obtaining all required approvals of the State Building Commission.

2.1.1.3. The Parties recognize that no work may begin on the Array until DOE communicates NEPA approval to ECD.

2.1.1.4. Any required State or Federal permits and authorizations for the sale and transmission of electric power produced by the Array.

2.1.2. Subject to all applicable laws, the Parties will assist each other by providing data, Site information, reports and other documentation within that Party's possession and control concerning the Array for purposes of obtaining required permits and approvals.

2.1.3. The Parties acknowledge and agree that neither UT nor UTRF will be in breach of this Contract if one or more permits or approvals are not issued for reasons beyond the control of either Party; and the Parties further acknowledge and agree that if performance of this Contract is impossible without such permit(s) or approval(s), the failure of the permit(s) or approval(s) to issue shall be treated as a force majeure under Section 6.20.

2.2. Work Plan and Schedule, and Budget. The Parties have developed a detailed work plan and schedule (“Work Plan and Schedule”), and budget (“Budget”). The Work Plan and Schedule, attached and incorporated in to this Contract as Attachment B, identifies each of the discrete activities to be performed by each Party, and the planned sequence and expected time for performance. The Budget is attached and incorporated into this Contract as Attachment C. There shall be no change in the Work Plan and Schedule or Budget without the prior written consent of the Parties.

2.3. Work Responsibilities

2.3.1. Site Access. UTRF, through UTRF Subcontractors, will be responsible for the development of any roads necessary for access to the Site, not including those that may be developed by TDOJ as described in Section 11.0.

2.3.3. Array Design, Installation and Operation. UTRF, through UTRF Subcontractors, shall be responsible for the design and installation of the Array including, but not limited to, switching facilities, transformers, inverters, and regulating, measuring, and telemetering facilities. Furthermore, UTRF, either directly or through a UTRF Subcontractor, shall be responsible for maintaining, operating, protecting and expanding the Array as well as the sale and transmission of electric power generated by the Array to designated distributors and purchasers of that power. The Array design and installation documents shall be developed by UTRF with input and approval of UT and ECD and

approval of the State Building Commission if required under State Building Commission rules and/or regulations.

2.3.4. Approval of Final Design Plan. UT and ECD shall have final approval on all design plans developed by UTRF before they are presented to the State Building Commission.

2.3.5. Power Purchase Agreement. UTRF, in cooperation with ECD and UT, will lead the effort to negotiate, finalize and obtain all requisite governmental approvals and agreements for the sale of electric power generated by the Array, including all power purchase agreements. The power from the Array shall be sold to the Tennessee Valley Authority ("TVA") according to the terms of the TVA Proposal Outline ("Proposal Outline") attached as Attachment D. The power purchase agreement shall be subject to the prior written approval of ECD and UT.

2.3.6. Interconnection Agreement. UTRF shall obtain interconnection agreements with Chickasaw Electric Cooperative or other entities as may be required to move electric power generated by the Array to any entity that purchases and/or distributes such power.

3.0 RESPONSIBILITY FOR COSTS

3.1. Costs and Expenses. UT agrees to pay UTRF for the scope of work as set out in Attachment B provided hereunder in accordance with costs and expenses set forth in Attachment C.

3.2 Subcontractor Costs and Expenses. It is agreed that costs and expenses set forth in Attachment C shall constitute Array costs and expenses; provided, however, that Attachment C is subject to periodic review and amendment in accordance with the review and amendment of Project milestones set forth in the Work Plan and Schedule attached as Attachment B. UT shall not be responsible for costs and expenses except as set forth in Attachment C, subject to periodic review and amendment of Attachment C in accordance with the review and amendment of Project milestones set forth in the Work Plan and Schedule attached as Attachment B. In no event shall the maximum liability of UT under this Contract exceed thirty-one million dollars (\$31,000,000).

4.0 UT CONTRIBUTIONS

4.1. UT Oversight

4.1.1. UT shall provide overall supervision of UTRF's performance of its activities under this Contract and shall provide UTRF with the agreed upon funding for the Array. UTRF shall in turn subcontract with UTRF Subcontractors to carry out the necessary activities under this Contract. All such subcontracts entered into by UTRF shall be simultaneously submitted prior to execution in draft form by UTRF: to UT for UT approval; and to ECD for ECD's approval. All contracts between UTRF and UTRF Subcontractors require the prior written approval of both UT and ECD. Any and all matters regarding design and installation contracts must be approved by the State Building Commission if required under State Building Commission rules and/or regulations.

4.1.2. At the request of UT, UTRF shall provide UT and ECD with access to all documents and information related to the Array and available to or in UTRF's possession. UTRF shall ensure that all contracts between itself and any other entity provide UT and ECD with full and timely access to all documents and information of those other entities related to the Project. The Parties anticipate that UTRF may hold in confidence certain third-party non-public, confidential, proprietary information involving technology or other business sensitive matters as part of an evaluation, demonstration or other activity pertaining to solar applications or innovations with regard to the Project. For avoidance of doubt, the Parties recognize that the public inspection or confidentiality of records or information made or received in connection with the Project is subject to Tennessee law.

4.1.3. UT agrees that it will complete and return any required approvals within seven (7) business days of receipt of any contracts or subcontracts. If such approval is not completed and communicated to UTRF within seven (7) business days, UTRF may assume that UT has approved the contract or subcontract. If such approval is denied, UT shall provide a basis under applicable state or federal laws, rules, or regulations.

4.1.3.1. The Parties recognize that due to the critical nature of the Schedule for the installation of solar panels at the Site, UTRF may in its discretion from time-to-time reduce the required approval time for a particular contract or subcontract from seven (7) business days to not less than five (5) business days, by informing UT and ECD of that reduction when the contract or subcontract is submitted to UT and ECD for required approval.

4.1.3.2. UTRF shall not be held responsible for Schedule delays caused by UT's or ECD's untimely approval of any item timely submitted to UT or ECD for approval by UTRF.

4.1.4. UT shall designate one person to receive all matters that must be approved by UT. Within five (5) days of UTRF's execution of this Contract, UT shall provide UTRF notice of the name, address, and telephone number of the person to whom UTRF shall submit all matters that must be approved by UT. Until UT designates another person, Stacey Patterson shall be UT's designee.

4.2. Government Funding to be Received by UT and UTRF. The Parties acknowledge and agree that the funding for the Array will be from the federal government pursuant to the SEP-ARRA program as administered by DOE. As a consequence, ECD, UT, UTRF and UTRF Subcontractors will be subject to certain provisions and requirements of both federal and state law. All subcontracts shall require subcontractors to acknowledge and comply with such state and federal requirements. UT and UTRF may also receive additional funding or contributions from other sources, including TVA as contemplated in Attachment D.

5.0 CONTRACT TERM

5.1. Period of Performance. This Contract will commence on the Effective Date and will continue until April 30, 2012, or such other date specified in the Work Plan and Schedule, unless terminated pursuant to the provisions of Section 6.3 or 6.4 of this Contract. UT reserves the right to extend the term beyond the initial term with the prior written consent of UTRF. UT shall have no obligation for services rendered by UTRF or UTRF Subcontractors which are not performed within the specified period in the Work Plan and Schedule.

5.2. Schedule. The Parties acknowledge that it is necessary that the Array be operational as soon as practical and it is essential that the Array be fully operational within the time frame established in the funding agreement between ECD and DOE and the ECD Contract with UT. To that end, the Work Plan and Schedule attached as Attachment B is the progress and completion schedule for the Array. UTRF, through UTRF Subcontractors, shall perform all required work in connection with the Array at least as expeditiously as needed to meet each and all of the

milestones shown in Attachment B. Time is of the essence of this Contract, and this requirement shall be inserted by UTRF in all subcontracts.

6.0 STANDARD TERMS AND CONDITIONS

6.1. Required Approvals. UT is not bound by this Contract until it is approved by the appropriate UT officials in accordance with UT bylaws and policy. UTRF is not bound by this Contract until it is approved by appropriate UTRF officers.

6.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by both Parties hereto and approved by the appropriate UT officials in accordance with UT bylaws and policy and by appropriate UTRF officials in accordance with UTRF bylaws and policy.

6.2.1. It is understood and accepted by the Parties that the scientific, innovation, demonstration, education and economic development objectives and/or methodologies employed to achieve the objectives of the Array are subject to a large number of variables and uncertainties. The Parties will work cooperatively to modify the specific protocols involved in the Array as the needs of the Array or scientific inquiry or other needs of the Farm may reasonably merit. Such changes shall be incorporated by a written, mutually agreed upon statement, approved in writing by UT and UTRF.

6.3. Termination for Convenience. UT may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of this Contract by UTRF. UT shall give UTRF at least ninety (90) days' written notice before the effective termination date. UTRF shall be entitled to receive compensation for satisfactory, authorized services completed as of the termination date, but in no event shall UT be liable to UTRF or UTRF Subcontractors for compensation for any service which has not been rendered on or before the termination date. Upon such termination, UTRF and UTRF Subcontractors shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount. UTRF shall so provide in its contracts with UTRF Subcontractors.

6.4. Termination for Cause. If UT or UTRF or UTRF Subcontractors fail to properly perform obligations under this Contract in a timely or proper manner, or if UT or UTRF or UTRF Subcontractors violate any terms of this Contract, the other Party shall give the failing Party notice and thirty (30) days to remedy such failure. Acknowledging that UTRF's purpose is to support UT's mission and that they shall cooperate in all matters regarding this Contract and any subcontracts for the Array, each Party will terminate this Contract only as a last resort. If UT terminates this Contract under this Section 6.4, UT shall have the right to withhold payments in excess of fair compensation for completed services. Claims between the Parties will be resolved in accordance with Section 20.0 of this Contract.

6.5. Assignment and Subcontractors. This Contract may not be voluntarily assigned in whole or in part without the prior written consent of the other Party, except as set forth herein. UTRF shall not enter into a subcontract for any of the work performed under this Contract

without obtaining the prior written approval of both UT and ECD. All such subcontracts, whether entered into by a UTRF Subcontractor or other subcontractors at other tiers shall contain, at a minimum, sections of this Contract below pertaining to "Affirmative Action and Non-discrimination Requirements, Recordkeeping and Audit Provisions, Prevailing Wage, Licenses, and Certificates, Option to Complete, Conflicts of Interest, Certification Regarding Lobbying, Public Accountability, Monitoring, and Procurement of American and Tennessee Goods and Services" (as identified by section headings), as well as provisions otherwise required by this Contract or applicable law. Notwithstanding any use of approved subcontractors, UT shall be the prime contractor and shall be responsible for all work performed; provided, however, that UT's liability for damages for any work performed shall be subject to the terms, conditions and limitations of the Tennessee Claims Commission Act.

6.6. Monitoring. UTRF and UTRF Subcontractors' activities and records pursuant to this Contract shall be subject to monitoring and evaluation by UT, ECD, the Comptroller of the Treasury or their duly appointed representatives, provided, however, the Parties agree that information held in confidence by UTRF as described in Section 4.1.2 shall not be deemed to fall within the scope of this section.

6.7. Progress Reports. UTRF shall submit brief, monthly progress reports to ECD and UT regarding progress and expectations as related to the Work Plan and Schedule, and Budget.

6.8. Bonds. UTRF shall provide UT with a performance and payment bond in the amount of 100% of the Contract amount. UTRF shall require all UTRF Subcontractors to

include a performance and payment bond in the amount of 100% of the subcontract amount. These bonds shall be executed by an insurance company licensed to do business in Tennessee.

6.9. Option to Complete. If ECD terminates the ECD Contract with UT under Sections 6.3 or 6.4 of that ECD Contract, UTRF shall, upon written notice by ECD, assign to ECD UTRF's obligation to prosecute and complete the work set forth in the Work Plan and Schedule and documents incorporated by reference therein. UTRF shall also assign to ECD all rights and obligations in any subcontract necessary or desirable to complete the work; provided, however, that this Contract shall only be assigned to ECD with the mutual agreement of ECD, UT and UTRF. The decision as to whether to exercise this option will be in ECD's sole discretion.

6.9.1. A provision evidencing the consent of any subcontractor to this option in favor of ECD shall be included in all subcontracts to effectuate the purpose of the option.

6.10. Conflicts of Interest. UTRF and UTRF Subcontractors shall conduct their activities under this Contract and any subcontracts in a manner to avoid conflicts of interest pursuant to all relevant laws, statutes, and other applicable state and federal requirements.

6.11. Strict Performance. Failure by any Party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.

6.12. Independent Subcontractors. The Parties agree that UT and UTRF are independent contractors and that Contract is not an employment agreement. UTRF shall assure that all subcontracts contain appropriate provisions to ensure that all subcontractors are independent contractors and not employees of UT.

6.13. Parties' Liability. UT shall have no liability except as specifically provided in this Contract. UTRF shall have no liability except as specifically provided in this Contract.

6.14. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

6.15. Payment Terms and Conditions. UTRF shall be compensated in accordance with the provisions of the Budget (Attachment C).

6.15.1. UTRF shall compensate UTRF Subcontractors in accordance with the provisions of its subcontracts with the respective UTRF Subcontractor.

6.15.2. Under no circumstances shall UT be responsible to compensate UTRF in any amount in excess of the amounts specified in Attachment C.

6.15.3. Under no circumstance shall UT be responsible for any payments to UTRF Subcontractors.

6.15.4. UT's total financial responsibility to all entities shall not exceed the amount of funds referred to in Attachment C or any amendment to Attachment C as described in Section 3.2. UTRF shall not be obligated to undertake any work or incur any cost that is not allowable under Attachment C or any amendment to Attachment C as described in Section 3.2.

6.15.5. Performance Based Fee Arrangements. UTRF may, subject to the approval of ECD and UT, establish, as UTRF deems appropriate, performance-based fee arrangements in the contracts with UTRF Subcontractors.

6.15.6. Limitations on Array Funding. Funding to be received by UTRF for the Array is subject to a federal agreement, is intended exclusively for the purposes set forth in DOE Award No. DE-EE0000160, and is subject to change by Congress of the United States or DOE at any time. (With respect to any work performed by UTRF and UTRF Subcontractors, it is the sense of the Congress of the United States that only American-made equipment and products should be purchased with financial assistance provided under such federal agreement).

6.15.7. Payment Methodology. UT will pay UTRF for its allowable costs and expenses incurred in carrying out the work under this Contract, as specified in Attachment C, upon receipt of UTRF's invoices for allowable costs and ECD's approval to release funds to pay invoices; provided that payment for allowable costs and expenses shall be paid within seven (7) business days of UT's receipt of invoices. UTRF may

submit its invoices as frequently as weekly, or on such other more or less frequent schedule as the Parties may agree.

6.15.7.1. UTRF shall select, as soon as practicable, a Design/Build Firm or Team as described in Attachment B to assist in the development of the Array. Upon selection of the successful Firm or Team, UTRF shall provide written notification to ECD and UT of the selection and UTRF also shall provide detailed cost projections for development of the Array. Such selection and cost projections are subject to approval of the State Building Commission.

6.15.7.2. [Reserved]

6.15.7.3 [Reserved]

6.15.8. Expenditures and Accounting. UT and UTRF will develop and adopt joint financial accounting procedures and controls for this Project, subject to review and approval of ECD, to ensure compliance with generally accepted accounting principles and UT Fiscal Policies and the requirements of ECD, and DOE Award No. DE-EE0000160.

6.16. Coordination. The Parties will participate in planning sessions necessary to the coordination of the work, and shall cooperate in the execution of those documents necessary to

fulfilling the objectives of the Project in a prompt manner, so long as such documentation does not enlarge or otherwise modify the contractual obligations assumed under this Contract.

6.16.1 Communication. Unless the representatives of ECD, UT and UTRF agree to a more or less frequent schedule, UTRF's and ECD's representatives with responsibility and authority for the Work Plan and Schedule and Budget, shall meet by teleconference weekly, on the call of UTRF, to coordinate the Array development. In addition to status and updates, the representatives shall note pending and upcoming State approvals required under the ECD Contract and expected schedules for such approvals, items that ECD might disapprove, and consideration of mutually satisfactory arrangements to achieve ECD Contract objectives. The Parties are expected to use the weekly communication meetings to surface and resolve items that might impede achievements.

6.17. Entire Agreement. This Contract is complete and contains the entire understanding between the Parties relating to the subject matter contained herein, including all the terms and conditions of the Parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the Parties relating hereto, whether written or oral.

6.18. Authorizations. The persons executing this Contract warrant that they have each received proper authorization from the entity that they purport to represent to execute this

document, and that each has full authority to bind the entity on whose behalf this Contract is executed.

6.19. Illegal Aliens. In compliance with the requirements of Chapter 878, Public Acts of 2006 of the State of Tennessee, for any contract for goods or services purchased by UT, UTRF hereby attests that UTRF shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of this Contract.

6.20. Force Majeure. Neither UT nor UTRF will be considered to be in default of this Contract for any delay in or failure of performance due to an event of force majeure, the effect of which, by the exercise of reasonable diligence, the nonperforming Party could not avoid. The term "force majeure" will mean any event which results in the prevention or delay of performance by any Party of its obligation under this Contract and which is beyond the control of the nonperforming Party. It includes, but is not limited to, any order, regulation, or direction of the government of the United States or the State of Tennessee, whether promulgated in the form of a law, order rule or regulation, or any Act of God, fire, flood, earthquake, storm, epidemic, war, riot, civil disturbance, strikes or other labor disturbance, sabotage, judicial restraint, the inability to procure permits, licenses, or authorizations from any state, local, federal or other governmental agency, or the inability to procure any of the supplies, materials, accesses or services required for the performance of the obligations under this Contract. Contracts between UTRF and UTRF Subcontractors shall so provide.

6.22. Governing Law. This Contract shall be interpreted and construed in accordance with the laws of the State of Tennessee, without application of any principles of choice of laws.

6.23. Non-waiver. A waiver by either Party of any breach of this Contract will not be binding upon the waiving Party unless such waiver is in writing. In the event of a written waiver, such a waiver will not affect the waiving Party's rights with respect to any other or further breach.

6.24. Execution by Counterpart. This Contract may be executed separately or independently in any number of counterparts, each and all of which together will be deemed to have been executed simultaneously and for all purposes to be one Contract.

6.25. Severance. Should any provisions of this Contract, at any time, be in conflict with any law, rule or regulation, or be unenforceable for any reason, then such provision shall continue in effect only to the extent that it remains valid. In the event any provision of this Contract becomes less than operative, the remaining provisions of this Contract will remain in full force and effect.

7.0 SPECIAL TERMS AND CONDITIONS

7.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions in Section 7.0 shall control.

7.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective Party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such other party or address, as may be hereafter specified by written notice.

UT
The University of Tennessee:

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(865) 974-1843

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7.2.1. All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required. Notwithstanding anything to the contrary in this section, legal notices shall be provided in accordance with the provisions of Section 22.0 below.

7.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated, are appropriated at less than the full amount specified in DOE Award No. DE-EE0000160, or are otherwise unavailable, UT reserves the right to terminate the Contract upon written notice to UTRF. Said termination shall not be deemed a breach of Contract by UT. Upon receipt of the written notice, UTRF shall cease all work associated with the Contract. Should such an event occur, UTRF shall be entitled to compensation for all satisfactory and authorized services

completed as of the termination date. UTRF shall provide similar provisions in its contracts with UTRF Subcontractors.

7.4. Voluntary Buyout Program. UTRF acknowledges and understands that, for a period of two years beginning August 16, 2008, restrictions are imposed on former state employees who received a State of Tennessee Voluntary Buyout Program ("VBP") severance payment with regard to contracts with state agencies that participated in the VBP.

7.4.1. UTRF will not contract with either a former state employee who received a VBP severance payment or an entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest. UTRF will require that UTRF Subcontractors not contract with either a former state employee who received a VBP severance payment or any entity in which a former state employee who received a VBP severance payment or the spouse of such an individual holds a controlling financial interest.

7.4.2. Subject to applicable Tennessee law, UT reserves the right to contract with an entity with which a former state employee who received a VBP severance payment is an employee or an independent contractor. Notwithstanding the foregoing, UTRF understands and agrees that there may be unique business circumstances under which a return to work by a former state employee who received a VBP severance payment as an employee or an independent contractor of a UT contractor would not be appropriate, and

in such cases UT may refuse said personnel. Inasmuch, it shall be the responsibility of UT to review UTRF personnel to identify any such issues.

7.4.3. Notwithstanding the provisions of subsections 7.4.1 and 7.4.2 above, UTRF may submit a written request to UT for a waiver of the VBP restrictions regarding a former state employee and a contract with a state agency that participated in the VBP. Any such request must be submitted to UT in the form of the *VBP Contracting Restriction Waiver Request* format available from UT and the Internet at: www.state.tn.us/finance/rds/ocr/waiver.html. The determination on such a request shall be at the sole discretion of UT.

7.4.4. Contracts between UTRF and UTRF Subcontractors shall require UTRF Subcontractors to comply with all applicable VBP restrictions. Costs incurred by UTRF and UTRF Subcontractors outside the scope of the Project or not permitted by this Contract or DOE Award No. DE-EE0000160 or applicable state or federal law shall be the responsibility of UTRF or UTRF Subcontractors.

7.5. Public Accountability. The Parties acknowledge the provisions of *Tennessee Code Annotated*, Title 8, Chapter 4, Part 4. To the extent this Contract involves the provision of services to citizens by UTRF or UTRF Subcontractors on behalf of UT, UTRF agrees to establish and require UTRF Subcontractors to establish a system through which recipients of services may present grievances about the operation of the service program, and to display in a prominent place, located near the passageway through which the public enters in order to receive

services pursuant to this Contract, a sign at least 12 inches (12") in height and 18 inches (18") in width stating:

NOTICE: THIS AGENCY IS A RECIPIENT OF TAXPAYER FUNDING. IF YOU OBSERVE AN AGENCY DIRECTOR OR EMPLOYEE ENGAGING IN ANY ACTIVITY WHICH YOU CONSIDER TO BE ILLEGAL, IMPROPER, OR WASTEFUL, PLEASE CALL THE STATE COMPTROLLER'S TOLL-FREE HOTLINE: 1-800-232-5454

7.6. Environmental Tobacco Smoke. Pursuant to the provisions of the federal "Pro-Children Act of 1994" and the Tennessee "Children's Act for Clean Indoor Air of 1995," UTRF shall prohibit smoking of tobacco products within any indoor premises in which services are provided pursuant to this Contract to individuals under the age of eighteen (18) years. UTRF shall post "no smoking" signs in appropriate, permanent sites within such premises. This prohibition shall be applicable during all hours, not just the hours in which children are present. Violators of the prohibition may be subject to civil penalties and fines. This prohibition shall apply to and be made part of any subcontract related to this Contract. UTRF shall require UTRF Subcontractors to comply with the provisions of said law.

7.7. Debarment and Suspension. UTRF certifies, to the best of its knowledge and belief, that UTRF and its principals:

7.7.1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;

7.7.2. Have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

7.7.3. Are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in Section 7.7.2 above; and

7.7.4. Have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

7.7.5. UTRF shall provide immediate written notice to UT if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals are excluded or disqualified.

7.8. Regardless of any other language or provision of this Contract, as an agency and/or instrumentality of the State of Tennessee, UT shall be liable only for the acts of its employees acting within the course and scope of their employment (Tenn. Code Ann. §§ 9-8-301 et seq).

8.0 STANDARDS OF PERFORMANCE

8.1. Performance. UTRF shall perform its work, and require UTRF Subcontractors to perform their work, in a professional manner, exercising the degree of skill and care required and customarily accepted for good professional practices and procedures for the type of work being performed.

8.2. Prevailing Wage, Licenses, and Certificates. All contracts for installation, erection, or demolition or the installation of goods or materials that involve the expenditure of any funds derived from UT require compliance with the prevailing wage laws as provided in *Tennessee Code Annotated*, Section 12-4-401 *et seq.* All contractors performing such work must have a Tennessee contractor's license, and must demonstrate the proper licensing classification for the work performed. No such on-Site work may take place until the insurance required under Section 25.0 has been secured and appropriate and current certificates of insurance in accordance with this Contract issued. UTRF shall maintain copies of all certificates of insurance for UTRF Subcontractors and assure that such insurance remains current during the course of this Contract.

8.3. Compliance with Federal, State, and Local Requirements. At all times, the Parties to this Contract shall comply with all applicable federal, state and local governmental entity laws, statutes, regulations, permitting and environmental requirements, codes and ordinances. UTRF shall require all UTRF Subcontractors to comply with all applicable federal, state and local government entity laws, statutes, regulations, codes and ordinances.

9.0 ARRAY OWNERSHIP

9.1. Transfer of Ownership. It is the intent of ECD to retain ownership of the Array and its assets until the completion of installation, connectivity and other work described in Section 7 of Attachment B of the ECD Contract. Thereafter, consistent with all applicable state and federal laws and requirements, ECD intends to transfer or consign ownership of the Array to UT, which in turn may determine to transfer such ownership to UTRF. Transfer of such ownership to UTRF is subject to approval of the State Building Commission. During the course of the performance of this Contract, neither UTRF nor UTRF Subcontractors shall take any action that would have the effect of or prevent such a transfer or consignment without the express prior written consent of ECD.

10.0 EXPANSION AND USE OF REVENUE

10.1. Net Revenue. All revenue from the sale of power from the Array, net of necessary overhead and other operating expenses approved by ECD, shall be placed in a UT restricted account for expansion purposes ("Expansion Account") and not commingled with funds from any other source. It is agreed by both Parties that overhead expenses, including but not limited to staffing, shall not exceed 10% of the annual gross revenue from the sale of power from the Array. It is further agreed by both Parties that Net Revenue does not include costs associated with public education activities or staffing at the Interstate Education and Welcome Center as described in Section 11.0.

10.1.1. Net Revenue in the Expansion Account shall be used for the expansion of the Array and its solar generating capacity at the Site until such time as further expansion of the Array at the Site is no longer feasible at the Site. Net Revenue also may be used for retrofitting solar technology equipment, and Array infrastructure on the Site, as needed, provided that such retrofitting is limited to commercially available technology and equipment.

10.1.2. At such point as the generating capacity of the Array cannot be expanded, the Net Revenue in the Expansion Account may thereafter be used, in the discretion of UT and subject to approval of ECD, for scholarships for UT students pursuing clean energy fields of study and/or to fund public education activities at the Site.

10.1.3. **Use of Funds.** The use of Net Revenue is subject to the requirements of 10 C.F.R. § 600.124.

10.1.4. The Expansion Account shall be maintained by UT as a separate restricted account and used only pursuant to the ECD Contract.

11.0 ADDITIONAL SITE ACTIVITIES

11.1. **Interstate Education and Welcome Center.** The State is evaluating and considering the development of an interstate education and welcome center ("Center") to be built by TDOT within the Site where visitors will have the opportunity to learn about solar energy and

other clean energy subjects. In such event, UT intends to transfer to TDOT any land necessary or appropriate for the timely development of the Center, including land necessary for access to the Center from Interstate 40. In such event, UTRF also shall participate in cooperative planning efforts with TDOT to ensure the design of the Array and the Center are complementary from the standpoints of functionality, aesthetics, programs and other agreed upon activities. It is the State's intent to develop the Array and the Center as an integrated attraction whereby visitors may learn about and interact with solar technologies in the Array through opportunities including but not limited to tours, walking paths, outdoor exhibits and other enhancements that provide a hands-on understanding of solar technologies.

11.2 [Reserved]

11.3 [Reserved]

11.4 Public Education Activities: UT shall be responsible under the ECD Contract for conducting public education activities and programs at the Site. In the event that the State approves the development of the Center, then UT also shall be responsible under the ECD Contract for conducting public education activities and programs within the Center, to the extent permitted by federal laws and regulations and the requirements of the federal highway administrator. UTRF agrees to cooperate with UT as requested to facilitate and accommodate such Site and Center educational activities and programs with the design, installation, maintenance and operation of the Array.

12.0 HEALTH AND SAFETY

12.1. Health, Safety, and Environmental Plan. Prior to the commencement of operations at the Site, UTRF, through UTRF Subcontractors, will develop, subject to approval by ECD, a health, safety and environmental plan for all work.

12.1.1. UTRF shall comply with and shall require that all UTRF Subcontractors comply with the approved health, safety and environmental plan.

12.1.2. Notwithstanding any other term of this Contract, UTRF and UTRF Subcontractors shall have all power and authority necessary to enforce the health, safety and environmental plan for the Array.

12.2. HIPAA Compliance. UT and UTRF shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.

12.2.1. UTRF warrants to UT that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.

12.2.2. UTRF warrants that it will cooperate with UT, including cooperation and coordination with UT privacy officials and other compliance officers required by HIPAA

and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.

12.2.3. UT and UTRF will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep UT and UTRF in compliance with HIPAA. This provision shall not apply if information received by UT under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits UT to receive such information without entering into a business associate agreement or signing another such document.

12.2.4. UTRF, in its subcontracts, shall require all UTRF Subcontractors to comply with HIPAA.

13.0 PRINTING AUTHORIZATION

13.1. Publication Requirements. The Parties agree that no publication coming within the jurisdiction of *Tennessee Code Annotated*, Section 12-7-101, *et. seq.*, shall be printed unless a printing authorization number has been obtained and fixed as required by *Tennessee Code Annotated*, Section 12-7-103(d) or 12-7-106(d). UTRF shall require UTRF Subcontractors to comply with the provisions of this code section.

**14.0 REQUIREMENTS UNDER THE AMERICAN RECOVERY AND
REINVESTMENT ACT OF 2009**

14.1. ARRA Requirements. This Contract requires UTRF and UTRF Subcontractors to provide products and/or services that are funded in whole or in part under the ARRA. UTRF and UTRF Subcontractors are responsible for ensuring that all applicable requirements of the ARRA, including but not limited to those set forth herein, are met and that UTRF and UTRF Subcontractors provide information to ECD and UTRF as and when required. UTRF and UTRF Subcontractors shall comply with the following:

14.1.1. DOE Award No. DE-EE0000160, as applicable.

14.1.2. Executive Office of the President, Office of Management and Budget (OMB) Guidelines as posted at www.whitehouse.gov/omb/recovery_default/, as well as OMB Circulars, including but not limited to A-102 and A-133 as posted at www.whitehouse.gov/omb/financial_offm_circulars/.

14.1.3. Office of Tennessee Recovery Act Management Directives (posted on the Internet at www.tnrecovery.gov).

14.1.4. The ARRA, including but not limited to the following sections of that Act:

14.1.4.1. Section 1604 – Disallowable Use. No funds pursuant to this Contract may be used for any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool.

14.1.4.2. Section 1512 – Reporting and Registration Requirements. UTRF acknowledges that ECD, UT and UTRF must report on use of Recovery Act funds provided through this Contract. Information from these reports will be made available to the public. UTRF shall so advise and require all UTRF Subcontractors to provide UT and ECD with such information as they may require to provide appropriate reports on the use of such Recovery Act funds.

14.1.4.3. Section 1553 – Recovery Act Whistleblower Protections. An employee of any non-Federal employer receiving covered funds under the Recovery Act may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grand jury, the head of a Federal agency, or their representatives, information that the employee believes is evidence of one or more of the following related to the implementation or use of covered funds:

- i. gross mismanagement,
- ii. gross waste,
- iii. substantial and specific danger to public health or safety,
- iv. abuse of authority, or
- v. violation of law, rule, or regulation (including those pertaining to the competition for or negotiation of a contract).

14.1.4.4. Non-enforceability of Certain Provisions Waiving Rights and Remedies or Requiring Arbitration. Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any pre-dispute arbitration agreement. No pre-dispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

14.1.4.5. Requirement to Post Notice of Rights and Remedies. UTRF and UTRF Subcontractors shall post notice of the rights and remedies as required under Section 1553. (Refer to Section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 located at www.recovery.gov, for specific requirements of this section and prescribed language for the notices.)

14.1.4.6. Section 902 – Access of Government Accountability Office:

UTRF shall provide that the Comptroller General and his representatives are authorized:

- i. to examine any records of UTRF or UTRF Subcontractors, that directly pertain to, and involve transactions relating to, this Contract or a subcontract; and
- ii. to interview any officer or employee of UTRF or UTRF Subcontractors regarding such transactions.

14.1.4.7. Section 1514 – Inspector General Reviews. Any inspector general of a federal department or executive agency has the authority to review, as appropriate, any concerns raised by the public about specific investments using such funds made available in the Recovery Act. In addition, the findings of such reviews, along with any audits conducted by any inspector general of funds made available in the Recovery Act, shall be posted on the inspector general's website and linked to the website established by Recovery Act Section 1526, except that portions of reports may be redacted to the extent the portions would disclose information that is protected from public disclosure under Sections 552 and 552a of title 5, United States Code.

14.1.4.8. Section 1515 – Access of Offices of Inspector General to Certain Records and Employers. With respect to this Contract, any

representative of an appropriate inspector general appointed under Sections 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized:

- i. to examine any records, of UTRF or UTRF Subcontractors, that pertain to and involve transactions relating or pursuant to this Contract; and
- ii. to interview any officer or employee of UTRF or any UTRF Subcontractors regarding such transactions.

14.1.4.9. Section 1606 – Federal Wage Rate Requirements. All laborers and mechanics employed by UTRF and UTRF Subcontractors pursuant to this Contract shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference. All contracts will comply with the wage rates set forth in this Section 14.1.4.9 and in Section 8.2, whichever rates are higher. For purposes of this Contract, laborer or mechanic includes at least those workers whose duties are manual or physical in nature (including those workers who use tools or who are performing the work of a trade), as distinguished from mental or managerial. The term laborer or mechanic includes apprentices, trainees, helpers, and, in the case of contracts subject to the Contract Work Hours and Safety Standards Act, watchmen or guards. Nothing in

this Section shall be construed as requiring UTRF to directly employ such laborers and mechanics.

14.1.4.10. Section 1605 – Buy American Requirements for Installation Material – Buy American, Use of American Iron, Steel, and Manufactured Goods: None of the funds provided by this Contract may be used for the installation, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the Project are produced in the United States. For avoidance of doubt, installation of solar panels and other equipment for the Array are subject to the terms of this provision.

14.1.4.11. UTRF agrees, and shall require UTRF Subcontractors to agree, to comply with any modifications or additional requirements that may be imposed by law and future guidance and clarifications of Recovery Act requirements.

14.1.4.12. If UTRF enters into one or more subcontracts for any of the services performed under this Contract, each subcontract shall contain provisions specifically imposing on the UTRF Subcontractor all requirements set forth in this Section.

14.1.5. UTRF, as may be required by the Single Audit Act Amendments of 1996 and OMB Circular A-133, agrees to specifically identify Recovery Act expenditures separately for Federal awards under the Recovery Act on the Schedule of Expenditures of

Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. UTRF shall require UTRF Subcontractors to also agree to such as appropriate.

15.0 PROCUREMENT OF AMERICAN AND TENNESSEE GOODS AND SERVICES

15.1. Federal Procurement Requirements. In the procurement of material for the Array, either directly by UTRF or indirectly through UTRF Subcontractors, UTRF and UTRF Subcontractors shall comply with all applicable federal procurement requirements contained in ARRA for the purchase of American developed, made and manufactured steel, products and components, as delineated in Section 14.1.4.10 of this Contract.

15.2. Tennessee Procurement Requirements. In addition, UTRF and UTRF Subcontractors shall comply with the provisions of Tennessee Code Annotated § 12-4-121, regarding the preference for Tennessee products and services in purchasing goods and procuring services.

15.3. Competitive Procurements. Procurements shall be made on a competitive basis, where practical. UTRF and UTRF Subcontractors shall maintain documentation for the basis of each procurement for which payment is made pursuant to this Contract. In each instance where it is determined that use of a competitive procurement method is not practical, said documentation shall include a written justification for such decision and non-competitive procurement. UTRF

shall require that all subcontracts include similar, appropriate competitive procurement provisions.

15.4. Subcontractor Requirements. UTRF shall require that all subcontracts expressly provide for compliance with the provisions of Section 15.1, 15.2 and 15.3 above.

16.0 REQUIREMENTS OF THE DEPARTMENT OF ENERGY

16.1. DOE Requirements. The Contract requires UTRF and UTRF Subcontractors to provide products and/or services that are funded in whole or in part under the DOE SEP, authorized pursuant to the ARRA. UTRF and UTRF Subcontractors are responsible for ensuring that all applicable requirements of the SEP, including but not limited to those set forth herein, are met and that UTRF and UTRF Subcontractors provide information to UT as and when required. UTRF and UTRF Subcontractors shall comply with the following:

16.1.1. Resolution of Conflicting Conditions. Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in the DOE Award No. DE-EE0000160 must be referred by UTRF to UT for transmittal to ECD and the DOE Award Administrator for guidance.

16.1.2. Statement of Federal Stewardship. DOE will exercise normal Federal stewardship in overseeing the activities performed under this award. Stewardship activities include, but are not limited to, conducting Site visits; reviewing performance

and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to correct deficiencies which develop during the Project; assuring compliance with terms and conditions; and reviewing technical performance after the completion of the Array to ensure that the DOE award objectives have been accomplished.

16.1.3. Site Visits. DOE's authorized representatives have the right to make Site visits at reasonable times to review Project accomplishments and management control systems and to provide technical assistance, if required. UTRF and UTRF Subcontractors shall provide reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the performance of their duties. All Site visits and evaluations by DOE authorized representatives must be performed in a manner that does not unduly interfere with or delay the work.

16.1.4. Reporting Requirements. The reporting requirements for DOE Award No. DE-EE0000160 are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies. UTRF and UTRF Subcontractors shall not cause any form of noncompliance and shall conduct

themselves in a way to facilitate compliance with these reporting requirements including providing accurate and timely information for UT to properly comply with these reporting requirements on behalf of ECD.

16.1.4.1. Dissemination of scientific/technical reports.

Scientific/technical reports submitted under ECD's DOE SEP-ARRA award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data, or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database (www.osti.gov/energy/citations).

16.1.4.2. Restrictions: Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

16.1.5. Publications. Consistent with U.S. and Tennessee law and the terms of this Contract, UTRF and UTRF Subcontractors are encouraged to publish or otherwise make publicly available the results of the work conducted under the Contract.

16.1.5.1. An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this Project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number DEEE0000160."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

16.1.6. Federal, State, and Municipal Requirements. UTRF and UTRF Subcontractors must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

16.1.7. Intellectual Property Provisions. The intellectual property provisions applicable to this Contract may be found at http://www.gc.doe.gov/financial_assistance_awards.htm UTRF and UTRF Subcontractors shall comply with these provisions.

16.1.8. Lobbying Restrictions. UTRF and UTRF Subcontractors agree that none of the funds obligated by this Contract shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

16.1.9. Notice Regarding the Purchase of American-Made Equipment and Products -- Sense of Congress. UTRF and UTRF Subcontractors acknowledge that it is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

16.1.10. Decontamination and/or Decommissioning (D&D) Costs.

Notwithstanding any other provisions of this Contract, the Government shall not be responsible for or have any obligation to UTRF and UTRF Subcontractors for (i) Decontamination and/or Decommissioning (D&D) of any of the Parties' facilities, or (ii) any costs which may be incurred by the Parties in connection with the D&D of any of their facilities due to the performance of the work under this Contract, whether said work was performed prior to or subsequent to the effective date of this Contract. Nothing in this Contract obligates UTRF to undertake the decontamination and/or decommissioning of any part of the Array, unless otherwise provided in the Work Plan and Schedule with State funds provided to cover the Budget for such work.

16.1.11. Historic Preservation. Prior to the expenditure of Federal funds to alter any structure or site, UTRF and UTRF Subcontractors are required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, UTRF and UTRF Subcontractors must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. (SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.) Section 110(k) of the NHPA applies to DOE funded

activities. UTRF and UTRF Subcontractors shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

16.1.12. UTRF and UTRF Subcontractors acknowledge that the DOE Contracting Officer will consider UTRF and UTRF Subcontractors in compliance with Section 106 of the NHPA only after UTRF and UTRF Subcontractors have submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to UTRF and UTRF Subcontractors that it does not object to UTRF and UTRF Subcontractors' Section 106 finding or determination. UTRF and UTRF Subcontractors shall provide a copy of this concurrence to UT for transmittal to ECD and the DOE Contracting Officer.

17.0 PROJECT INFORMATION

17.1. Project Information. It is understood that information that may be developed or come into the possession of UT will be subject to the Public Records Act and shall be subject to public disclosure pursuant to that Act, unless exempted under Tennessee law. Such information shall not be made public or disclosed pursuant to a public records request without consultation with the UT General Counsel's Office.

17.2. UT Approval. During the development of the Array, UTRF and UTRF Subcontractors shall coordinate any public statements with UT. Any such statements shall comply with the publication requirements of the ARRA, set forth in Section 16.1.5.

17.3. Confidentiality of Records. For records that may be held in confidence under the Public Records Act by ECD or UT, strict standards of confidentiality of records shall be maintained in accordance with the law. The subcontracts between UTRF and UTRF Subcontractors shall provide that all such confidential material and information, regardless of form, medium or method of communication, provided to UTRF and UTRF Subcontractors by UT or acquired by the subcontractors on behalf of UTRF or UT shall be regarded as confidential information in accordance with the provisions of State law and shall not be disclosed, and all necessary steps shall be taken by UTRF and UTRF Subcontractors to safeguard the confidentiality of such material or information in conformance with State law. UTRF subcontracts with UTRF Subcontractors shall provide as follows:

17.3.1. UTRF will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of ECD's or UT's information as UTRF exercises to protect its own confidential information so long as such standard of care does not violate the applicable provisions of the first paragraph of this section.

17.3.2. UTRF's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by UTRF of this Contract; previously possessed by UTRF without written obligations to UT or ECD to protect it; acquired by UTRF without written restrictions against disclosure from a third party which, to UTRF's knowledge, is free to disclose the information; independently

developed by the subcontractor without the use of UT's or ECD's information; or, disclosed by UT or ECD to others without restrictions against disclosure.

17.4. Survival of Obligations. It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.

17.5. UTRF shall, in its subcontracts with UTRF Subcontractors, require compliance with the applicable provisions of this section.

18.0 RIGHTS IN DATA AND INTELLECTUAL PROPERTY

18.1. Generated Information. The Parties acknowledge that during the course of performance of work for the Project, information, data and inventions may be generated, (hereinafter referred to as "Generated Information"). DOE has the right to assert copyright and other rights in accordance with ECD's funding agreement and relevant federal statutes with the DOE, including potential Generated Information. UTRF shall require UTRF Subcontractors to comply with these requirements. Consistent with any such DOE rights, UTRF or UTRF Subcontractors may assert rights to Generated Information as UTRF deems appropriate.

18.2. Trade Secrets Act. The Parties acknowledge that DOE employees who are subject to the statutory provisions against disclosure of confidential information set forth in the Trade Secrets Act (18 U.S.C. 1905), may have a right to access to confidential data and intellectual property generated during the course of this Project.

18.3. Descriptions of Work. UTRF will provide UT and ECD, monthly, with non-proprietary descriptions of work performed under this Contract, and monthly and quarterly status reports that ECD may provide to DOE pursuant to the reporting requirements of the ARRA. The monthly reports provided by UTRF to ECD shall include specific information reflecting the then current status of the Array as compared to the Schedule, detailed expenditure and cost information, as well as any information UTRF may have indicating any possible variance in the future from the Schedule and all actions steps contemplated by UTRF to prevent potential negative deviations from the Schedule.

18.4. Limitation of Damages. In no event will UT or UTRF be liable for any special, incidental, or consequential damages based on breach of warranty, breach of contract, negligence, strict liability in tort, or any other legal theory for the disclosure of confidential information to DOE or ECD even if UT or UTRF has been advised of the possibility of such damage. Damages that UT and UTRF will not be responsible for include, but are not limited to: loss of profit, loss of savings or revenue, loss of goodwill, loss of use of the product or any associated equipment, cost of capital, cost of any substitute equipment, facilities, or services, downtime, the claims of third parties, including customers, and injury to property.

18.5. UTRF Publication after DOE Disclosure. After any document submitted to DOE has been made public by the DOE, ECD or UT, or has otherwise become a part of the public records of ECD or UT, UTRF may, at its own expense, publish or utilize the same, but shall comply with the provisions of Section 16.1.5.

18.5.1. UTRF is responsible for maintaining any UTRF right to publish results of this work.

18.6. Federal Endorsement. The Parties to this Contract and all subcontractors may not claim a federal endorsement of this Project, or any inventions, reports or other similar items resulting from this Project.

18.7. Ownership of Work Products. To the extent not inconsistent with the provisions of ARRA and other federal laws, UT shall own and hold any right, title, and interest, including ownership of copyright, in all work products, including computer source code, that are created, designed, developed, derived, documented, installed, or delivered under this Contract. The Parties agree that UT may assign all right, title and interest in intellectual property it may hold from time to time to UTRF pursuant to then existing UT policy and operating arrangements with UTRF. Unless otherwise provided in UT policy or operating arrangements, or otherwise agreed with UTRF, UT shall have royalty-free and unlimited rights and license to use, disclose, reproduce, publish, distribute, modify, maintain, or create derivative works from, for any purpose whatsoever, all said work product.

18.7.1. Unless otherwise agreed, to the extent that a UTRF Subcontractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Materials"), the UTRF Subcontractor shall retain all right, title and interest

in and to such Contractor Materials, and UT shall acquire no right, title or interest in or to such Contractor Materials.

18.7.2. UTRF shall furnish to UT such information and data as UT may request, including but not limited to computer code, that is applicable, essential, fundamental, or intrinsic to any work product and Contractor Materials reasonably associated with any work product, in accordance with this Contract and applicable State law.

18.7.3. Nothing in UTRF's Subcontracts with UTRF Subcontractors shall prohibit a UTRF Subcontractor's use for its own purposes of general knowledge, skills, experience, ideas, concepts, no-how, and techniques attained in use during the course of providing work under this Contract.

18.7.4. Unless otherwise agreed in the subcontract, nothing in UTRF subcontracts shall prohibit a UTRF Subcontractor from developing for itself, or for others, materials which are similar to and/or competitive with those that are produced under this Contract.

18.7.5. UTRF shall, in its subcontracts with UTRF Subcontractors, require compliance with the applicable provisions of this section.

18.8. Intellectual Property. Notwithstanding any provision in this Contract to the contrary, intellectual property for any invention (hereinafter referred to as "Subject Invention"), including Contractor Material, developed through the work of this Project or Generated

Information, whether patented or unpatented ("Patent Rights"), will be assigned by UT to UTRF to commercialize, subject to DOE obtaining a no-cost, nonexclusive, nontransferable, irrevocable, perpetual, royalty-free, worldwide license to use or have practiced such rights for or on behalf of the U.S. government for governmental purposes. All Subcontracts between UTRF and UTRF Subcontractors shall so provide. Previously documented inventions (whether patented or unpatented under the patent laws of the United States of America or any foreign country) are exempt from this provision.

19.0 GENERAL COMPLIANCE

19.1. Flow Down Requirements. Each Party to this Contract shall inform each of its employees, independent contractors, consultants, or agents who are involved in the performance of this Contract of the restrictions contained herein, and shall direct compliance with such restrictions.

20.0 DISPUTE RESOLUTION

20.1. Procedures. In the event of a dispute or grievance arising from or relating to this Contract, the following procedures shall be followed: To resolve any dispute or grievance, UT and UTRF will agree to first use nonbinding mediation pursuant to the mediation rules used by the American Arbitration Association or such other mediation process that both parties agree in writing to use. If mediation does not resolve the dispute or grievance, (i) any and all claims against UT or its employees, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407; and (ii) any and all claims against UTRF will be brought in the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under the subcontracts.

21.0 STOP WORK ORDERS

21.1. Stop Work Orders. UT may, at any time, by written notice to UTRF, require UTRF to stop all or any part of the work for the Array. Work orders may be issued for reasons such as unsafe acts or emergencies involving immediate or imminent danger to life, health, safety, environment and/or imminent catastrophe.

21.1.1. Upon receipt of any stop work order, UTRF and UTRF Subcontractors shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.

21.1.2. As soon as the condition which precipitated the stop work order has been eliminated and it is determined by UT that it is safe to continue the work, UTRF shall resume stopped work upon receipt of written instructions from UT indicating that it is safe to resume the Work and canceling the stop work order.

21.1.3. Nothing in this Section shall be construed to limit or prevent UTRF or UTRF Subcontractors from issuing stop work orders for the Array as necessary for the proper execution of this Contract.

22.0. LEGAL NOTICES

22.1. Methods of Notice. Legal notice as required by this Contract may be given using the following delivery methods: certified mail, courier service, fax, or personal delivery providing evidence of receipt, to the Parties described in Attachment E. Delivery by email is not considered notice for the purpose of this Contract. Legal notice shall be effective when received, unless a legal holiday for the State of Tennessee commences on the date of the attempted delivery, in which case the effective date shall be postponed 24 hours, or whenever the next business day occurs.

23.0 RECORDKEEPING AND AUDIT PROVISIONS

23.1. Recordkeeping. UTRF and UTRF Subcontractors shall maintain books, records, documents, and other evidence, in accordance with generally accepted accounting principles, and sufficient to reflect properly all costs claimed to have been incurred in performing this Contract for a period of five (5) years following the completion or termination of this Contract.

23.2. Segregation of Funds. All costs and funds for this Project shall be separately identified and segregated from all non-project costs and funds.

23.3. Preservation of Records. If any litigation, claim, or audit is started before the expiration of the 5-year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

23.4. Right of Access. In order to make audit, examination, excerpts, and copies, DOE, the Comptroller General of the United States, UT, and any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of UTRF, and, subject to the terms of any applicable confidentiality, non-disclosure or non-use agreement with third-parties, to the books, documents, or other records of UTRF and all other UTRF Subcontractors under this Contract.

23.5. Subcontracts. UTRF, in its subcontracts with UTRF Subcontractors, shall expressly require compliance with the provisions of this section.

24.0 INDEMNIFICATION

24.1. No Right to Indemnity. UT shall not indemnify UTRF or any UTRF Subcontractor, their employees, agents, or assigns in the performance of any work for this Project. UTRF shall not indemnify any Party, their employees, agents, or assigns in the performance of any work for this Project. UTRF's subcontracts with UTRF Subcontractors shall so provide.

25.0 INSURANCE AND SURETY

25.1. Insurance Requirements. UTRF agrees to maintain and shall require UTRF Subcontractors to maintain insurance as provided below in this section.

25.1.1. All insurance and self-insurance schemes of UTRF and UTRF Subcontractors retained to perform work for this Project shall provide that insurers and self-insured waive any rights of recourse, including in particular subrogation rights against ECD or UT, and recognize ECD and UT as additional insureds to the extent of the liabilities assumed by UT under this Contract. UTRF's insurance or self-insurance schemes shall be primary to the extent of the liabilities assumed by UTRF under the ECD Contract.

25.1.2. Without limitation of its obligations and responsibilities under this Contract and at law, UTRF and UTRF Subcontractors shall maintain insurance or self-insurance schemes for:

1. Statutory Workers Compensation benefits; provided, however, UTRF shall only be required to carry such coverage if UTRF has any common law employees;
2. Employers' Liability for at least \$1,000,000 per occurrence; provided, however, UTRF shall only be required to carry such coverage if UTRF has any common law employees;
3. Automobile liability for owned, non-owned and hired vehicles for at least \$5,000,000 per occurrence to include bodily injury and property damage, and
4. Third Party Liability coverage for personal injury and property damage protection, to include sudden and accidental pollution, professional liability, and for at least \$10,000,000 per occurrence.

25.1.2.1 UTRF shall agree on and implement a comprehensive insurance arrangement satisfactory to ECD and UT. UTRF shall provide certificates evidencing ECD and UT as an additional insured.

25.1.3. Whenever requested, UTRF Subcontractors retained for work for this Project shall furnish evidence satisfactory to ECD and UT that such insurance and self-insurance schemes are in effect. All subcontracts between UTRF and UTRF Subcontractors shall so require.

26.0 AFFIRMATIVE ACTION/NON-DISCRIMINATION

26.1. Affirmative Action and Non-discrimination Requirements. The Parties agree that the non-discrimination and affirmative action clauses contained in Federal Executive Order 11246, as amended, relative to equal employment opportunity for all persons without regard to race, color, religion, sex or national origin, and the implementing rules and regulations contained in Title 41, part 60 of the Code of Federal Regulations, as amended; the non-discrimination and affirmative action clause contained in Section 503 of the Rehabilitation Act of 1973, as amended, relative to the employment and advancement in employment of qualified individual(s) with a disability without discrimination, and the implementing rules and regulations in Title 41, part 60-741 of the Code of Federal Regulations; the non-discrimination and affirmative action clause of the Vietnam Era Veterans Readjustment Assistance Act of 1974 relative to the employment and advancement in employment of qualified special disabled veterans, recently separated veterans, Vietnam era veterans, and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized, without discrimination, and the implementing rules and regulations in Title 41, part 60-250 of the Code of Federal Regulations; and the non-discrimination provisions required by all applicable law of the State of Tennessee apply to this Contract and work performed by subcontracts between UTRF and UTRF

Subcontractors for this Project UTRF shall so provide in all such contracts with UTRF Subcontractors. UTRF or UTRF Subcontractors shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

27.0 CERTIFICATION REGARDING LOBBYING

27.1. Federal Lobbying Certification. Each Party certifies, upon execution of this Contract, that it is in compliance with the requirements of Section 1352, Title 31, United States Code, which limits the use of appropriated funds to influence certain Federal contracting and financial transactions. All subcontracts for this Project between UTRF and UTRF Subcontractors shall so require.

27.2. State of Tennessee Lobbying Certification. UTRF hereby certifies to the best of its knowledge and belief, and shall require each UTRF Subcontractor to certify, to the best of their knowledge and belief, that:

27.2.1. No federally appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal,

amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

27.2.2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, grant, loan, or cooperative agreement, UTRF shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

27.2.3. UTRF and UTRF Subcontractors shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all UTRF Subcontractors shall certify and disclose accordingly.

27.2.4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into and is a prerequisite for making or entering into this transaction imposed by Section 1352, title 31, *U.S. Code*.

28.0 PROPERTY RIGHTS

28.1. Right to Transfer. Consistent with the provisions and requirement of federal law and the provisions of DOE Award No. DE-EE0000160, UT reserves the right to transfer all or a part of the facilities and other tangible assets of the Array to UTRF.

29.0 TAX CREDITS AND RENEWABLE ENERGY CREDITS

29.1. Tax Credits. If UT, UTRF, or any UTRF Subcontractor are now or in subsequent years entitled to receive any federal tax credit associated with the receipt or expenditure of funds in developing the Array ("Tax Credit"), then UT, UTRF or UTRF Subcontractors shall transfer or assign any such Tax Credit or the value of any such Tax Credit to ECD to the full extent permitted by federal law. To the extent federal law prohibits UTRF Subcontractors from transferring a Tax Credit, then the Tax Credit shall be the property of UTRF Subcontractors but must be used to reduce the cost of goods and services they provide in developing the Array or to increase the amount of goods and services they convey to ECD, UT or UTRF in developing the Array. UTRF shall require the terms of this subsection to be included in all subcontracts with UTRF Subcontractors in connection with developing the Array.

29.2. Renewable Energy Credits. All Renewable Energy Credits or carbon credits and offsets of any type, as they may exist during the term of this Contract and thereafter, that directly or indirectly flow from the Array are the property of ECD and shall not be transferred to any other entity without the prior written permission of ECD. However, it is understood by both

Parties that the credits or offsets are subject to being transferred to TVA under the terms of the power purchase agreement to be negotiated as described in Section 2.3.5, and according to terms of the Proposal Outline attached as Attachment D.

Approved and agreed to by the Parties executing this document below.

THE UNIVERSITY OF TENNESSEE

By: _____

David E. Millhorn, Executive Vice President

Dated: _____

UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION

By: _____

Randall W. Gentry, President

Dated: _____

LIST OF ATTACHMENTS

Attachment A	Site Plan
Attachment B	Work Plan and Schedule
Attachment C	Budget
Attachment D	TVA Proposal Outline
Attachment E	TDOT Letter of Intent

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Exhibit A
Legal Description

Site 40

Land in Haywood County, Tennessee, BEGINNING at a stake in the west margin of the right-of-way of Interstate 40, said stake being South 87 degrees West 680 feet ± from the northeast corner of a tract of land in the name of Beake, said stake also being one of the north boundary lines of a tract of land in the name of C. T. Newman; runs thence North 48 degrees 23 minutes East being the west margin of Interstate 40, 2810 feet ± to a stake (limits of a controlled access fence); thence northerly with the arc of a 4 degree curve 60 feet ± to a stake; thence North 4 degrees 37 minutes West 620 feet ± to a stake; thence North 85 degrees 23 minutes East 80 feet to a stake; thence South 4 degrees 37 minutes East 620 feet ± to a stake (limits of a controlled access fence); thence North 48 degrees 23 minutes East with a line (along the west margin of Interstate 40), the same being northwest of, parallel to and 150 feet from survey center line 2560 feet to a stake in the south boundary line of Tucker; runs thence with the south boundary line of Tucker property in a westerly direction passing at 2080 feet a county gravel road continuing on West for a total of 4680 feet to a stake in the east boundary line of a tract of land known as the Tucker Estate property, said corner being the original northwest corner of a tract of land which was conveyed by H. M. Stone to Dr. J. S. Rawlins by deed of record in Dead Book 26, page 160; Register's Office, Haywood County, Tennessee; runs thence South 3390 feet to a stake, the original southwest corner of the Stone to Rawlins property above mentioned; runs thence East 450 feet to the point of beginning.

Being part of the same property conveyed to LOUIS P. STUART, TRUSTEE FOR THE STUART FAMILY TRUST, by deed from LOUIS P. STUART, EXECUTOR OF SANDRA P. STUART ESTATE, of record in Record Book 19, page 109, dated February 16, 2006, said Register's Office, the said Louis P. Stuart having since died. The Last Will and Testament of Sandra W. Stuart granted a power of appointment which could be exercised under the Last Will and Testament of Louis P. Stuart filed with the Haywood County Chancery Court Office in Will Book R, page 82 devised the subject property to Brian Stuart, Phillip Stuart, Stephen Stuart and Susan S. Evans, Co-Trustees of the Stuart Land Trust. Being part of the same property described in deed from Phillip Stuart, Executor of the Estate of Louis P. Stuart to Brian Stuart, Phillip Stuart, Stephen Stuart and Susan S. Evans, Co-Trustees of the Stuart Land Trust of record in Record Book 66, page 482, Register's Office for Haywood County, Tennessee.

Attachment B

Work Plan and Schedule

1.	<ul style="list-style-type: none"> • Support NEPA Environmental Assessment as requested by ECD • Develop and issue Request for Qualifications (RFQ) for qualified Design/Build Firm or Team and Evaluate Responses to RFQ • Issue Request for Proposals (RFP) for Design/Build Firm or Team 	0-2 mos.
2.	<ul style="list-style-type: none"> • Submit Project management plan to ECD for approval • Submit detailed Project definition with design and installation work plan and initial budget to ECD for approval • Submit A-level Project Design and Installation Schedule to ECD for approval • Support NEPA environmental assessment as requested by ECD • Identify permitting requirements and schedules and submit to ECD for approval 	1-3 mos.
3.	<ul style="list-style-type: none"> • Complete RFP process and, subject to ECD approval, recommend Design/Build Firm or Team • After ECD approval, submit Design/Build Firm or Team to State Building Commission for approval • Submit for ECD approval Detailed Work Plan for Design and Installation with Supporting Schedule and Budget • Obtain ECD input and approval for completion of Preliminary Design of Solar Array, Connectivity and Site Layout • In coordination with ECD, initiate negotiation of Interconnection Agreement with Local Utility • Collaborate with ECD for Negotiation of Power Purchase Agreement such agreement being subject to ECD prior approval • Coordinate support to TDOT design and construction activities • Obtain required Permits and Approvals • Complete Tax Credit Analysis on Preliminary Solar Array Design Plans 	2-5 mos.
4.	<ul style="list-style-type: none"> • Obtain State input and approval for completion of Detailed design and engineering • Provide oversight of Design/Build Contractor on Design and Contracting Activities to Ensure Compliance with Project Scope and ARRA Requirements • Obtain required Permits and Approvals • Coordinate support to TDOT design and construction activities • Negotiate equipment and material contracts • Support NEPA environmental assessment • Upon issuance of DOE NEPA Finding of No Significant Impact, initiate Site Preparation 	3-7 mos.

	<ul style="list-style-type: none"> • Upon issuance of DOE NEPA Finding of No Significant Impact, order array equipment and materials 	
6.	<ul style="list-style-type: none"> • Provide oversight of Design/Build Contractor on Design and Contracting Activities to Ensure Compliance with Project Scope and ARRA Requirements • Obtain required Permits and Approvals • Coordinate support to TDOT design and construction activities • Receive solar equipment • Begin array equipment installation and connectivity installation 	6-9 mos.
7.	<ul style="list-style-type: none"> • Complete installation of array and connectivity • Install, commission equipment, and commence commercial operation of the solar farm • Coordinate support to TDOT design and construction activities 	10-13 mos.
8.	<ul style="list-style-type: none"> • Operate and maintain solar farm • Integrate testing and modifications for approved Institute Projects • Develop detailed work plan, schedule, and budget for continued operations beyond ARRA project period 	10- 26mos.

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**ATTACHMENT C
WEST TENNESSEE SOLAR FARM BUDGET**

Budget Item	Budget Period 1			Budget Period 2			Budget Period 3			Total Budget		
	UT	UTRF	Total	UT	UTRF	Total	UT	UTRF	Total	UT	UTRF	Total
Personnel	12,500	236,563	249,063	30,000	567,750	597,750	25,000	75,624	100,624	67,500	879,937	947,437
Fringe	4,000	12,100	16,100	9,600	29,040	38,640	8,000	24,200	32,200	21,600	65,340	86,940
Total Personal	16,500	248,663	265,163	39,600	596,790	636,390	33,000	99,824	132,824	89,100	945,277	1,034,377
Travel		16,619	16,619		21,908	21,908		19,332	19,332	0	57,859	57,859
Equipment	0			0			0			0		
3 Laptops		6,000	6,000			0			0	0	6,000	6,000
1 Desktop		1,850	1,850			0			0	0	1,850	1,850
1 Color Printer		1,850	1,850			0			0	0	1,850	1,850
2 Desks/Cubicles		9,100	9,100			0			0	0	9,100	9,100
Subtotal Equip	0	18,800	18,800	0	0	0	0	0	0	0	18,800	18,800
Supplies												
General Office Supplies		10,000	10,000		25,000	25,000		15,000	15,000	0	50,000	50,000
Subtotal	0	10,000	10,000	0	25,000	25,000	0	15,000	15,000	0	50,000	50,000
Contractual												
To Be Determined**		TBD	TBD		TBD	TBD		TBD	TBD		TBD	TBD
Subtotal	0	0	0	0	0	0	0	0	0	0	0	0
Other Direct												
Taxes and Insurance		250,000	250,000		250,000	250,000		100,000	100,000	0	600,000	600,000
General Operating		171,200	171,200		175,000	175,000		10,000	10,000	0	356,200	356,200
Operation & Maintenance of the Farm			0		150,000	150,000			0	0	150,000	150,000
Subtotal	0	421,200	421,200	0	575,000	575,000	0	110,000	110,000	0	1,106,200	1,106,200
Total Other	0	466,619	466,619	0	621,908	621,908	0	144,332	144,332	0	1,232,859	1,232,859
TOTAL	16,500	715,282	731,782	39,600	1,218,698	1,258,298	33,000	244,156	277,156	89,100	2,178,136	2,267,236
Positions	0.50	4.75	5.25	0.50	4.75	5.25	0.50	1.75	2.25	1.50	11.25	13.75

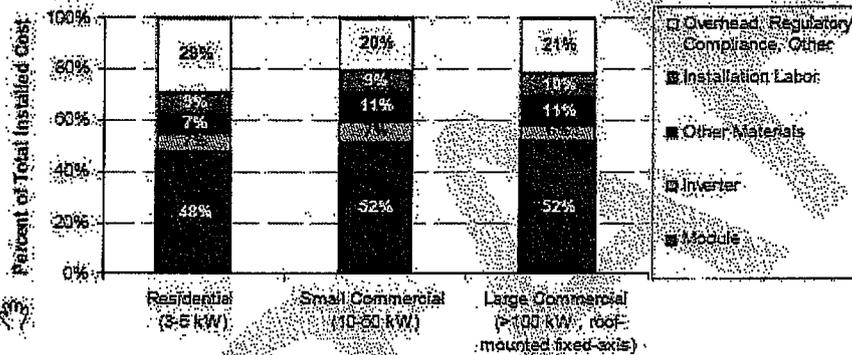
** The maximum liability of this contract is \$31,000,000. The projected contractual costs for the Array design, development, installation and operation conducted on site will be determined based upon completion of the RFP process. This Attachment C will be amended to include contractual amounts following the completion of the RFP process and selection of the Design/Build Firm or Team as described in Attachment B and as contemplated in Section 6.15.7 of the the Contract. Furthermore, as described in the contract, ECD anticipates SEP ARRA funds will be used to cover costs associated with educational activities at the Site as described in Section 11.4 of this Contract.

**West Tennessee Solar Farm – Haywood County
Proposal Outline
January 8, 2010**

Background

State of Tennessee

Governor Bredesen has made the recruitment and development of green energy a centerpiece of his energy and economic development strategies. The solar farm concept is an opportunity to build a green energy source and use it for education and research purposes and as an economic development tool. From a financial perspective, the concept is for the solar farm to be self-perpetuating and self-expanding over time. The facility would begin with approximately 5 MW of generating capacity, potentially growing with additional investment. The project cost is currently estimated at \$35 million, based upon an estimated cost of \$7,000/kW. The State of Tennessee will provide the project funding commensurate with the following graph:



Sample size: six installers provided survey responses for residential and large commercial systems, and five installers provided survey responses for small commercial systems.

Figure 15. Results from Berkeley Lab Survey of PV Installers on Component Costs

Tennessee Valley Authority (TVA)

TVA is actively seeking to expand its green power portfolio, and in December 2008 issued a Request for Proposals (RFP) seeking to purchase up to 2,000 MW of green power. TVA has entered into several power purchase agreements as a result of the RFP. TVA also recently announced enhancements to its Generation Partners program targeting potential generation sources of less than 1 MW.

Other Strategic Partners

The solar farm could provide significant educational, research, marketing, and economic benefits for the University of Tennessee, Oak Ridge National Laboratory (ORNL), UT-Battelle, and potential private sector partners or suppliers. This will provide the strategic partners the opportunity to collaborate on utility-scale solar research.

Project Specifications and Technical Information

Site Specifications

- The solar farm site consists of 200 acres adjacent to Interstate 40 that were purchased in December 2009 by the University of Tennessee.
- Assuming a solar generation footprint ratio of 100,000 sq. ft. for every megawatt of generation capacity, a 5 MW plant would require 500,000 sq. ft. (12 acres) of land. This footprint plus additional acreage for growth can easily be accommodated without negatively impacting further development of the site.
- Based on capital cost estimates for solar generation, 5 MW of generation will cost \$35 Million.

Electrical Infrastructure (TVA and Local Power Distributor)

- Telemetry will be necessary at the site to measure generation output.
- The switching, transformation, inverter, and telemetry facilities, as well as the cost to get power to the grid, will be part of the State of Tennessee's generation project cost rather than the distribution facilities.
- Additional coordination with the local power distributor will be necessary to finalize costs and arrangements based on the final location of the solar farm.

TVA Participation

- TVA will invest \$400,000 in support of the educational mission of the solar farm. Eligible uses for these funds include, but are not limited to, the design of educational programs, marketing materials, interpretive displays, and other resources that will be used to inform the public regarding the benefits of solar power.
- TVA will purchase the generation output from this facility for 15 cents per kWh as a floor price with an upside of TVA's maximum market purchase price in any corresponding hour, to be trued up quarterly. A final agreement will be subject to TVA Board approval.
- All renewable energy credits generated as a result of the operation of the proposed project shall be assigned and transferred to TVA during the term of the agreement.
- Any future modifications to applicable programs of similar design that increase the floor per kWh value for solar supply will be honored in this initiative.
- TVA will collaborate in the project's development.

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