

CONTRACT #2

RFS # NA

FA # NA

Edison # NA

University of Tennessee

VENDOR:

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

OFFICE OF THE EXECUTIVE VICE PRESIDENT

October 31, 2013

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

Dear Mr. Geise:

The University of Tennessee is submitting for the Committee's review a proposed non-competitive contract with the University of Tennessee Research Foundation (UTRF). Under this proposed contract, UTRF will provide administrative, operational, and programmatic support for the West Tennessee Solar Farm located in Haywood County. The West Tennessee Solar Farm is a unique asset for the State of Tennessee and serves as a utility-scale, renewable energy demonstration and educational resource. UTRF has been assisting the University in a similar capacity since the project began in 2010 under a US Department of Energy grant made to the State of Tennessee as part of the State Energy Program (SEP). The University wishes to continue the management and operation services for the array and Haywood County property under this proposed new contract. The array is designed to be financially self-perpetuating and therefore, the payment of this contract and all West Tennessee Solar Farm activities will be made from revenue generated through power sales from the array.

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

Respectfully,



Stacey S. Patterson, Ph.D.
Assitant Vice President for Research
& Director of Research Partnerships

Attachment

c: David Millhorn
Mark Paganelli
Blake Reagan

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Dr. Stacey S. Patterson	*Contact Phone:	(865)974-3140		
*Original Contract Number:	8500036442	*Original RFS Number:			
Edison Contract Number: <i>(if applicable)</i>		Edison RFS Number: <i>(if applicable)</i>			
*Original Contract Begin Date:	January 1, 2014	*Current End Date:	January 1, 2016		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:	The University of Tennessee				
*Division:	Executive Vice President				
*Date Submitted:	October 31, 2013				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	University of Tennessee Research Foundation (UTRF)				
*Current Maximum Liability:	\$1,200,000				
*Current Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY:14	FY:15	FY:16	FY:	FY	FY
\$300,000	\$600,000	\$300,000	\$	\$	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from STARS or FDAS report)					
FY:	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:					
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:					
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:					
*Contract	State:		Federal:		

Supplemental Documentation Required for
Fiscal Review Committee

Funding Source/Amount:				
Interdepartmental:			<i>Other:</i>	\$1,200,000
If "other" please define:			Revenue from solar array power sales	
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>		
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?				

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:14	FY:15	FY:16	FY:	FY:
Operation & Maintenance of the West TN Solar Farm	\$225,000.00	\$500,000.00	\$225,000.00		
Educational Program Expenses	\$75,000.00	\$100,000.00	\$75,000.00		

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:	FY:	FY:	FY:	FY:

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:
Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

Supplemental Documentation Required for
Fiscal Review Committee

Other Vendor Cost: (name of vendor)	FY:	FY:	FY:	FY:	FY:

THE UNIVERSITY OF TENNESSEE
REQUEST: NON-COMPETITIVE JUSTIFICATION FORMS
CONTRACT

1) NCJ Number:	9000014399	Fund Number:	E170145040
2) Campus/Institute Name:	University-Wide Administration	Treasurer	
3) Short Description:	West Tennessee Solar Farm Operation and Management		
4) Proposed Vendor:	Name: UNIVERSITY OF TENNESSEE		
	Vendor Number: 1076134		
	Vendor ID:		
5) Contract Start Date:	01/01/2014		
6) Contract End Date IF <u>all</u> Options to Extend the Contract are Exercised:	01/01/2016		
7) Total Maximum Cost IF <u>all</u> Options to Extend the Contract are Exercised:	\$ 1,200,000.00		
8) Approval Criteria:	Non-Competitive Negotiation is in University's Best Interest		
9) Detailed Description of Service to be Acquired:			
<p>The responsible fund E170145040 is used in Diane McNeil's absence (for workflow routing). The correct responsible fund is E170117.</p> <p>UT is contracting UTRF to provide the overall management, maintenance, and operation of the West Tennessee Solar Farm in Haywood County. This includes maintaining the array, the interconnection to the TVA substation, and the solar farm property.</p>			
10) Explanation of the Need for or Requirement Placed on the Procuring Agency to Acquire the Service:			
<p>The University of Tennessee owns the West Tennessee Solar Farm in Haywood County. The solar farm is a resource for education and demonstration site for utility scale renewable energy projects. The University is required to maintain, operate, and potentially expand the array over time. The University requires this contract to help with these services. UTRF is already performing work on the property and the University wishes to continue using the services of UTRF for this effort.</p>			
11) Explanation of Whether the Procuring Agency Bought the Service in the Past, and if so, What Procurement Method It Used:			
<p>The University selected to use UTRF to manage the design and installation of the West Tennessee Solar Farm array. This work began in 2010 and the continued operation and maintenance of the farm is required. The initial contract with UTRF was awarded non-competitively, but all sub-contracts have been bid by UTRF and were approved by the University before execution and by the State Building Commission as appropriate.</p>			
12) Name & Address of the Proposed Vendor/Contractor(s): (not required if proposed contractor is a state education institution)			
UNIVERSITY OF TENNESSEE			
600 HENLEY ST, STE 211			
KNOXVILLE		TN	37996-4122
US	USA		
13) Evidence of the Proposed Vendor/Contractor's Experience and Length of Experience Providing the Service:			
<p>UTRF was formed in 1935 (as UTRC) and reformed in 2003 as the UT Research Foundation to support research and economic development mission of the University of Tennessee. The West Tennessee Solar Farm project is an economic development project of the University. UTRF has been providing the services included in this contract since the project began in</p>			

2010.

14) Documentation of Office for Information Resources Endorsement: N/A
(required only if the subject service involves information technology)

15) Documentation of Department of Personnel Endorsement: N/A
(required only if the subject service involves training for state employees)

16) Documentation of State Architect Endorsement: N/A
(required only if the subject service involves construction or real property related services)

17) Description of Procuring Agency Efforts to Identify Reasonable, Competitive, Procurement Alternatives :

Because of UTRF's role in the DOE State Energy Program grant that allowed the solar array to be built, UTRF is familiar with the design, installation, and operational needs of the West Tennessee Solar Farm. The University vetted alternative sources for managing this project in 2010, and UTRF was determined to be the most cost effective option.

18) Justification of Why the University Should Use Non-Competitive Negotiation Rather Than a Competitive Process:

(Being the "only known" or "best" service provider to perform the service as desired will not be deemed adequate justification.)

UTRF has been performing the management and operations of the West Tennessee Solar Farm project since it began. This partnership has been very beneficial to the University as it has allowed the farm to perform its intended function as a demonstration and education site very effectively. The installation of the array was completed in 2012 and UTRF has been managing the site on behalf of the University since that time. This contract will prevent the University from hiring additional staff and training them on the operational needs of the solar farm.

C O N T R A C T S U M M A R Y S H E E T

UT Tracking #	Contract #
8500036442	N/A
State Agency	UT Campus/Institute
The University of Tennessee	
Contractor Name	Contractor ID # (FEIN or SSN)
UT Research Foundation	<input checked="" type="checkbox"/> C- or <input type="checkbox"/> V- 62-6047697

Service Description
 UT is contracting UTRF to provide the overall management, maintenance, and operation of the West Tennessee Solar Farm in Haywood County. This includes maintaining the array, the interconnection to the TVA substation, and the solar farm property.

Contract BEGIN Date	Contract END Date	Sub-recipient or Vendor?	CFDA #
01/01/2014	01/01/2016	Vendor	N/A

Mark Each TRUE Statement

N/A Contractor is on STARS Contractor's Form W-9 is on file in Accounts

Allotment Code	Cost Center	Object Code	Fund	Funding Grant Code	Funding Subgrant Code
332.	N/A	N/A	N/A	N/A	N/A
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount
2014	0 . 0 00	. 0 00	. 0 03	0 0 0 0 0 0 . 0 0	\$ 3 0 0 , 0 0 0 . 0 0
2015	0 . 0 00	. 0 00	. 0 06	0 0 0 0 0 0 . 0 0	\$ 6 0 0 , 0 0 0 . 0 0
2016	0 . 0 00	. 0 00	. 0 03	0 0 0 0 0 0 . 0 0	\$ 3 0 0 , 0 0 0 . 0 0
	0 . 0 00	. 0 00	. 0 00	. 0 0	\$ 0 . 0 0
	0 . 0 00	. 0 00	. 0 00	. 0 0	\$ 0 . 0 0
	0 . 0 00	. 0 00	. 0 00	. 0 0	\$ 0 . 0 0
TOTAL:	\$ 0.00	\$ 0.00	\$ 0.00	\$1,200,000.00	\$1,200,000.00

— COMPLETE FOR AMENDMENTS ONLY —			Campus/Unit CBO Contact	
FY	Base Contract & Prior Amendments	THIS Amendment ONLY	Name: Butch Peccolo	Phone: 974-2302
	0.00	0.00	Chief Financial Officer and Treasurer	
	0.00	0.00		
	0.00	0.00		
	0.00	0.00	Funding Certification (certification, required by T.C.A., § 9-4-5113, that there is a balance in the appropriation from which the obligated expenditure is required to be paid that is not otherwise encumbered to pay obligations previously incurred)	
	0.00	0.00		
TOTAL:	\$ 0.00	\$ 0.00		
End Date:				

Contractor Ownership (complete only for base contracts with contract # prefix: FA or GR)

African American
 Person w/ Disability
 Hispanic
 Small Business
 NOT minority/disadvantaged
 Asian
 Female
 Native American
 OTHER minority/disadvantaged—

Contractor Selection Method (complete for ALL base contracts— N/A to amendments or delegated authorities)

RFP
 Competitive Negotiation
 Alternative Competitive Method
 Non-Competitive Negotiation
 Negotiation w/ Government (e.g., ID, GG, GU)
 Other

Procurement Process Summary (complete for selection by Alternative Method, Competitive Negotiation, Non-Competitive Negotiation, OR Other)

Non-Competitive Negotiation

CONTRACT

for

OPERATION AND MANAGEMENT

between

THE UNIVERSITY OF TENNESSEE

and

UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION

CONTRACT ("Contract") entered into as of January 1, 2014 ("Effective Date") by and between The University of Tennessee ("UT"), and University of Tennessee Research Foundation ("UTRF").

RECITALS:

WHEREAS, pursuant to a transfer of ownership from the Department of Economic & Community Development, an agency of the State of Tennessee ("ECD"), on April 3, 2012, the University of Tennessee owns the West Tennessee Solar Farm in Haywood County, Tennessee ("Farm"), a renewable energy education and demonstration site; and

WHEREAS, the centerpiece of the Farm is a utility-scale solar array ("Array") with a production capacity of 5.2 megawatts that is to be maintained, operated, and potentially 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

WHEREAS, pursuant to the Contract for Design, Development, Operation and

Management between UT and UTRF dated as of February 1, 2010, UTRF has been managing and operating the Array, which agreement terminates December 31, 2013, and UT desires to contract with UTRF to continue maintenance and operation of the Farm and the Array; and

WHEREAS, UTRF, through certain subcontractors ("UTRF Subcontractors") desires to continue certain work on the Farm, including, but not limited to, operation and maintenance, and data collection from the Array.

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 FARM

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 manage and operate the Array, as described in Sections 2.1 and 2.2. In doing so, UTRF may contract with third parties to fulfill these responsibilities, subject to the terms of Section 3.1 and Section 5.5. UTRF shall oversee the ongoing operation and maintenance of the Array. UTRF shall be reimbursed for actual expenses of approved sub-contracts and paid a management fee not to exceed 10% of the annual gross revenue from the sale of power by UT from the Array. All actual expenses that exceed \$10,000 must be approved in writing by UT before incurred by UTRF.

1.2 TDOT Project. The Parties recognize that a portion of the Site is being developed as described in Section 8.1 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 UTRF RESPONSIBILITIES

2.1 Management of Array. UTRF, either directly or through a UTRF Subcontractor, shall be responsible for maintaining, operating, protecting and potentially expanding the Array.

2.2 Interconnection Agreement. UTRF shall maintain 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 UT CONTRIBUTIONS

3.1 UT Oversight. UT shall provide overall supervision of UTRF's performance of its activities under this Contract. 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 submitted prior to execution in draft form by UTRF to UT for UT approval. All contracts between UTRF and UTRF Subcontractors require the prior written approval of UT.

3.2 Access to Information. At the request of UT, UTRF shall provide UT 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 with full and timely access to all documents and information of those other entities related to the Array. 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 Array. For avoidance of doubt, the Parties recognize that the public inspection or confidentiality of records or information made or received in connection with the Array is subject to Tennessee law.

3.3 Required Approvals. UT agrees that it will complete and return any required approvals within ten (10) business days of receipt of any contracts or subcontracts. If such approval is not completed and communicated to UTRF within ten (10) business days, UTRF may assume that UT has approved the contract or subcontract. Such approval will not be unreasonably withheld.

3.4 UT Designee. Stacey Patterson is to receive all matters that must be approved by UT.

4.0 CONTRACT TERM

4.1 Period of Performance. This Contract will commence on the Effective Date and will continue until January 1, 2016, 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.

5.0 STANDARD TERMS AND CONDITIONS

5.1 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.

5.2 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.

5.3 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.

5.4 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 5.4, 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 11.0 of this

Contract.

5.5 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.

5.6 Monitoring. UTRF and UTRF Subcontractors' activities and records pursuant to this Contract shall be subject to monitoring and evaluation by UT or its duly appointed representatives; provided, however, the Parties agree that information held in confidence by UTRF as described in Section 3 shall not be deemed to fall within the scope of this section.

5.7 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.

5.8 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.

5.9 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.

5.10 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.

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

5.12 Payment Terms and Conditions. UTRF shall be compensated in accordance with the provisions of Section 1.1.

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

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

5.12.3 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.

5.13 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.

5.14 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.

5.15 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.

5.16 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.

5.17 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.

5.18 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.

5.19 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.

5.20 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.

5.21 Maximum Financial Liability. UT's maximum financial liability to UTRF pursuant to this Contract shall be \$600,000 per year.

6.0 SPECIAL TERMS AND CONDITIONS

6.1 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 6.0 shall control.

6.2 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:
Dr. David E. Millhorn
813 Andy Holt Tower
Knoxville, TN 37996
millhorn@tennessee.edu
865.974.4048
655.974.8240

UTRF:
Mr. David Washburn
UT Conference Center
600 Henley Street, Suite 211
Knoxville, TN 37996
davewash@tennessee.edu
(865) 974-1843
(865) 974-1838

6.2.1 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 13.1 below.

6.3 Public Accountability. 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).

7.0 STANDARDS OF PERFORMANCE

7.1 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.

7.2 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.

8.0 ADDITIONAL SITE ACTIVITIES

8.1 Interstate Education and Welcome Center. The State is constructing an interstate education and welcome center ("Center") being built by TDOT within the Site where visitors will have the opportunity to learn about solar energy. UTRF shall cooperate with TDOT regarding the construction.

9.0 PROJECT INFORMATION

9.1 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.

9.2 Confidentiality of Records. For records that may be held in confidence

under the Public Records Act by 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:

9.2.1 UTRF will be deemed to have satisfied its obligations under this section by exercising the same level of care to preserve the confidentiality of 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.

9.2.2 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 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 information; or, disclosed by UT to others without restrictions against disclosure.

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

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

10.0 GENERAL COMPLIANCE

10.1 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.

11.0 DISPUTE RESOLUTION

11.1 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.

12.0 STOP WORK ORDERS

12.1 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.

12.1.1 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.

12.1.2 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.

12.1.3 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.

13.0 LEGAL NOTICES

13.1 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 Section 6.2. 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.

14.0 RECORDKEEPING AND AUDIT PROVISIONS

14.1 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. UTRF and UTRF Subcontractors shall maintain documentation for all charges under this contract. The books, records and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.

14.2 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.

14.3 Right of Access. In order to make audit, examination, excerpts, and copies, UT, and any of its 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.

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

15.0 INDEMNIFICATION

15.1 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's subcontracts with UTRF Subcontractors shall so provide.

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.

16.0 INSURANCE AND SURETY

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

16.1.1 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 UT, and recognize 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.

16.1.2 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 \$300,000 per claimant and \$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 \$300,000 per claimant and \$1,000,000 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 \$300,000 per claimant and \$1,000,000 per occurrence.

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

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

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

THE UNIVERSITY OF TENNESSEE

David E. Millhorn, Executive Vice President

UNIVERSITY OF TENNESSEE RESEARCH FOUNDATION
Dave Washburn, President

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