

GRANT AMENDMENT REQUEST FORM (GARF)



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|----------------------|------------|--|---|
| Original Agreement # | PIR-15-011 | | 1 |
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|------|---------------|----|--------------|
| ERDD | Rajesh Kapoor | 51 | 916-327-1388 |
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|--|------------|
| Institute of Gas Technology dba Gas Technology Institute | 36-2170137 |
|--|------------|

| | | |
|---|-------------------------|---|
| <input type="checkbox"/> Term Extension | New End Date: 3/31/2020 | Include revised schedule and complete items A, B, C, & F below. |
| <input type="checkbox"/> Budget Augmentation | Amendment Amount: \$ 0 | Include revised budget and complete items A, B, C, D & F below. |
| <input type="checkbox"/> Budget Reallocation | | Include revised budget and complete items A, B, C, & F below. |
| <input type="checkbox"/> Scope of Work Revision | | Include revised scope of work and complete items A, B, C, E & F below. |
| <input type="checkbox"/> Change in Project Location or Demonstration Site | | Include revised scope of work and complete items A, B, C, E & F below. |
| <input type="checkbox"/> Novation/Name Change of Prime Contractor/Recipient | | Include novation documentation and complete items A, B, C, & F below. |
| <input type="checkbox"/> Terms and Conditions Modification | | Include applicable exhibits with bold/underline/ strikeout and complete items A, B, C, & F below. |

Business Meeting approval is not required for the following types of Agreements:

| | | | |
|---|---------------|---|-------------------------------------|
| <input type="checkbox"/> ARFVTP agreements under \$75K delegated to Executive Director. | | | |
| Proposed Business Meeting Date | 12/10/2018 | <input checked="" type="checkbox"/> Consent | <input type="checkbox"/> Discussion |
| Business Meeting Presenter | Rajesh Kapoor | Time Needed: | 5 minutes |

Please select one list serve. NaturalGas (NG Research Program)

Agenda Item Subject and Description

GAS TECHNOLOGY INSTITUTE. Proposed resolution approving Amendment #1 to Agreement PIR-15-011 with Gas Technology Institute (GTI) to mutually terminate the agreement due to GTI's inability to complete tasks and meet agreement requirements. The project was to validate industrial natural gas savings through a field demonstration of a waste heat recovery roof top unit. Contact: Rajesh Kapoor

| Legal Company Name: | Budget |
|--------------------------|------------|
| Davis Energy Group, Inc. | \$ 225,000 |
| Inspire | \$ 3,000 |
| To Be Determined | \$ 37,000 |
| | \$ |
| | \$ |
| | \$ |
| | \$ |
| | \$ |
| | \$ |

| | |
|---------------------|-------|
| Legal Company Name: | Rheem |
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| D) Budget Information | | | |
|-----------------------------------|-------------------------------|----------------------|--------|
| Funding Source | Funding Year of Appropriation | Budget List No. | Amount |
| NG Subaccount, PIERDD | 14-15 | 501.001I | \$0 |
| | | | \$ |
| | | | \$ |
| | | | \$ |
| | | | \$ |
| | | | \$ |
| R&D Program Area: | EERO: IAW | | \$ |
| Explanation for "Other" selection | | | |
| Reimbursement Contract #: | | Federal Agreement #: | |

1. Is Agreement considered a "Project" under CEQA?
 Yes (skip to question 2) No (complete the following (PRC 21065 and 14 CCR 15378)):
 Explain why Agreement is not considered a "Project":
 Agreement will not cause direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment because .

2. If Agreement is considered a "Project" under CEQA:
 a) Agreement **IS** exempt. (Attach draft NOE)
 Statutory Exemption. List PRC and/or CCR section number: _____
 Categorical Exemption. List CCR section number: Cal. Code Regs., tit 14, § 15301
 Common Sense Exemption. 14 CCR 15061 (b) (3)
 Explain reason why Agreement is exempt under the above section:
 The Energy Commission made CEQA findings pertaining to this project, including a fill in name of document filed with OPR, when the project was originally adopted by the Commission on 6/14/2016. The currently-proposed changes are insert current proposed changes; they will result in no impact to the environment beyond that already considered on 6/14/2016 and do not constitute a substantial change or new information of substantial importance under California Code of Regulations, title 14, section 15162.

b) Agreement **IS NOT** exempt. (Consult with the legal office to determine next steps.)
 Check all that apply
 Initial Study Environmental Impact Report
 Negative Declaration Statement of Overriding Considerations
 Mitigated Negative Declaration

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| 1. Exhibit A, Scope of Work | <input checked="" type="checkbox"/> N/A | <input type="checkbox"/> Attached |
| 2. Exhibit B, Budget Detail | <input checked="" type="checkbox"/> N/A | <input type="checkbox"/> Attached |
| 3. CEQA Documentation | <input checked="" type="checkbox"/> N/A | <input type="checkbox"/> Attached |
| 4. Novation Documentation | <input checked="" type="checkbox"/> N/A | <input type="checkbox"/> Attached |
| 5. CEC 105, Questionnaire for Identifying Conflicts | | <input checked="" type="checkbox"/> Attached |

 Agreement Manager Date Office Manager Date Deputy Director Date

MUTUAL TERMINATION AND SETTLEMENT AGREEMENT

The State Energy Resources Conservation and Development Commission (“Energy Commission”) and Gas Technology Institute (GTI) enter into this Mutual Termination and Settlement Agreement (“Agreement”).

1. Definitions

In addition to any terms that might be defined elsewhere in this Agreement, the following terms shall have the following meanings:

- 1.1 “Energy Commission” or “Commission” means the State Energy Resources Conservation and Development Commission, located at 1516 9th Street, Sacramento, California 95814.
- 1.2 “Institute of Gas Technology dba Gas Technology Institute” means GTI, located at 1700 South Mount Prospect Road, Des Plaines, Illinois 60018-1804.
- 1.3 “Agreement” means this Mutual Termination.
- 1.4 “Grant Agreement” means the grant entered into between the Parties (Energy Commission grant number PIR-15-011).
- 1.5 “Effective Date” means the date the Parties execute this Agreement, which is the date the last of the Parties signs it.
- 1.6 “Parties” refers to both the Energy Commission and GTI.
- 1.7 “Party” refers to either the Energy Commission or GTI.

2. Recitals

Parties make this Agreement in reference to the following facts and events, which they mutually acknowledge:

- 2.1 The Parties entered into the Grant Agreement on March 3, 2017, the purpose of which was to demonstrate and document the performance of an Industrial Waste Heat Recovery (WHR) roof top package unit.
- 2.2 GTI determined that the demonstration site was not suitable for the technology for several reasons.

- 2.3 GTI reviewed at least 27 alternative sites, none of which were a good fit for the WHR.
- 2.4 At a May 8, 2018, critical project review meeting, the Parties agreed that the WHR unit requirements were not a good fit for industrial facilities in general due to several technical challenges with the technology.
- 2.5 A stop work order was verbally issued on May 8, 2018, and a written stop work order was mailed to GTI on June 5, 2018.

3. Release

The Parties hereby release and discharge each other, including any and all agents, officers, directors, employees, contractors, attorneys, and their respective predecessors, successors, and assigns, from any and all claims, actions, charges, complaints, demands, grievances, losses, damages, liquidated damages, debts, causes of action, injuries, costs, interest, statutory penalties, attorneys' fees or other claims of any kind and nature, whether known or unknown, relating to or arising from the Grant Agreement.

4. Waiver of Statutory Rights

The Parties acknowledge that they have been advised by their attorneys concerning, and are familiar with, California Civil Code Section 1542, which provides:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

The Parties, being aware of said Code section, hereby expressly waive any rights they may have thereunder for claims relating to or arising from the Grant Agreement.

5. Mutual Termination and Settlement

- 5.1 The Grant is terminated as of this Agreement's Effective Date; GTI is not obligated to perform any further work on the tasks in the Grant's scope of work. Both Parties voluntarily enter into this Agreement in an effort to efficiently end the Grant Agreement.
- 5.2 GTI will repay the Energy Commission the total paid to GTI to date, \$32,157.94, in one lump sum payment by December 31, 2018. The payment shall be paid by check payable to the State Energy Resources Conservation and Development Commission. The check shall have

written or typed on it "Gas Technology Institute PIR-15-011" and shall be mailed to:

California Energy Commission
1516 9th Street, MS 2
Sacramento, CA 95814

If GTI fails to make payment under this Agreement, the Energy Commission, in addition to any other rights and remedies it may have, may stop or terminate any other grant, contract, loan, or other agreement it has with GTI.

- 5.3 The Energy Commission has no obligation to pay anything arising from the Grant Agreement or this Agreement, including no payment for:
- a. The two pending invoices, totaling \$18,259.46.
 - b. The retention, totaling \$3,573.

6. General Provisions

6.1 Governing Law and Venue

This Agreement is entered into, and shall be construed and interpreted, in accordance with the laws of the State of California, without giving effect to California's conflicts of laws principles. If a dispute between the Parties progresses to the point of being filed in court, the Parties agree that such litigation shall be conducted in the Superior Court of California, County of Sacramento.

6.2 Modifications in Writing Only

This Agreement may not be amended or modified in any respect except by a written instrument duly executed by the Parties to this Agreement.

6.3 Severability

Should any one or more of the terms or provisions of this Agreement be determined to be illegal or unenforceable, all other terms and provisions will nevertheless remain effective.

6.4 Counterparts

The Parties hereby agree that electronic or faxed signatures of the Parties to this Agreement shall be as binding and enforceable as original signatures. This Agreement may be executed in any number of counterparts and by different Parties hereto in separate counterparts, with the same effect as if all Parties had signed the same document. All such

counterparts shall be deemed an original, shall be construed together, and shall constitute one and the same instrument.

6.5 Entire Agreement

This Agreement contains the entire agreement between the Parties.

6.6 No Third Party Benefits

This Agreement is made for the sole benefit of the Parties, and no other person or entity shall have any rights or remedies under or by reason of this Agreement, unless otherwise expressly provided for herein.

6.7 No Admission of Liability

It is understood and agreed that this Agreement represents a settlement of disputed claims and that nothing in this Agreement, including but not limited to the Release (Section 3 above) and Mutual Termination and Settlement (Section 5 above), shall be deemed or construed as an admission of liability by the Commission or GTI or by anyone else in any way affiliated with the Parties. The Parties further acknowledge that the Grant Agreement is not being terminated for cause or default.

6.8 Preparation of this Agreement

This Agreement is the product of negotiation and preparation by and among the Parties and their respective attorneys. Therefore, the Parties acknowledge and agree that this Agreement shall not be deemed prepared or drafted by one Party or another and should be construed accordingly.

6.9 Waiver

No waiver of any provision of this Agreement shall be binding unless executed by the Party making the waiver. No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

6.10 Warranty of Authorized Signatures

Each Party to this Agreement represents and warrants that the person who has signed this Agreement on its behalf is duly authorized to enter into this Agreement, and bind that Party to the requirements in this Agreement.

| CALIFORNIA ENERGY COMMISSION | | Gas Technology Institute | |
|---------------------------------------|------|--|------------|
| AUTHORIZED SIGNATURE | DATE | AUTHORIZED SIGNATURE | DATE |
| | |  | 10/19/2018 |
| NAME | | NAME | |
| Drew Bohan | | Quinton Ford | |
| TITLE | | TITLE | |
| Executive Director | | Corporate Secretary | |
| CALIFORNIA ENERGY COMMISSION ADDRESS | | | |
| 1516 9th Street, Sacramento, CA 95814 | | | |

STATE OF CALIFORNIA

STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION

RESOLUTION - RE: GAS TECHNOLOGY INSTITUTE

RESOLVED, that the State Energy Resources Conservation and Development Commission (Energy Commission) adopts the staff CEQA findings contained in the Agreement or Amendment Request Form (as applicable); and

RESOLVED, that the Energy Commission approves Amendment #1 to agreement PIR-15-011 with Gas Technology Institute (GTI) to mutually terminate the agreement due to GTI's inability to complete tasks and meet agreement requirements. The project was to validate industrial natural gas savings through a field demonstration of a waste heat recovery roof top unit; and

FURTHER BE IT RESOLVED, that the Executive Director or his/her designee shall execute the same on behalf of the Energy Commission.

CERTIFICATION

The undersigned Secretariat to the Commission does hereby certify that the foregoing is a full, true, and correct copy of a Resolution duly and regularly adopted at a meeting of the California Energy Commission held on December 10, 2018.

AYE: [List of Commissioners]

NAY: [List of Commissioners]

ABSENT: [List of Commissioners]

ABSTAIN: [List of Commissioners]

Cody Goldthrite,
Secretariat