



STATE OF CALIFORNIA

GRANT AMENDMENT REQUEST FORM (GARF)

CEC-277 (Revised 12/2019)

CALIFORNIA ENERGY COMMISSION

Original Agreement # EPC-15-097 Amendment #

Division	Agreement Manager:	MS-	Phone
ERDD	Adel Suleiman	51	916-327-3313

Recipient's Legal Name	Federal ID #
Franklin Energy Services, LLC	20-0939449

Revisions: (check all that apply)	Additional Requirements
<input type="checkbox"/> Term Extension New End Date:	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 checked="" type="checkbox"/> Novation/Name Change of Prime 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.

A) Business Meeting Information**Business Meeting approval is not required for the following types of Agreements:**☐ Minor amendments delegated to Executive Director per December 2013 ResolutionProposed Business Meeting Date 4/8/2020 ☒ Consent ☐ Discussion

Business Meeting Presenter Adel Suleiman Time Needed: minutes

Please select one list serve. EPIC (Electric Program Investment Charge)

Agenda Item Subject and Description:

Proposed resolution approving a novation substituting Franklin Energy Services, LLC for Build It Green under Agreement EPC-15-097 and adopting staff's determination that this action is exempt from CEQA. Build It Green recently sold the portion of its business performing EPC-15-097 to Franklin Energy Services, LLC. All aspects of the grant project including the project team, scope of work, project schedule, deliverables, budget, and terms and conditions will remain the same. (EPIC funding) Contact: Adel Suleiman.



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B) List all subcontractors (major and minor) and equipment vendors: (attach additional sheets as necessary)

Legal Company Name:	Budget
Association for Energy Affordability, Inc.	\$ 541,390
Redwood Energy	\$ 351,140
Stone Energy Associates	\$ 182,777
Lawrence Berkeley National Laboratory	\$ 50,000
Propulsion	\$ 31,000
Abraxas Energy Consulting, LLC	\$ 3,000
Resources for Community Development	\$ 0
Corporation for Better Housing	\$ 0
PG&E	\$ 0
	\$

C) List all key partners: (attach additional sheets as necessary)

Legal Company Name:
Franklin Energy Services, LLC

D) Budget Information (only include amendment amount information)

Funding Source	Funding Year of Appropriation	Budget List Number	Amount
			\$
			\$
			\$

R&D Program Area: EERO: Buildings

TOTAL: \$ 0

Explanation for "Other" selection

Federal Agreement #:

E) California Environmental Quality Act (CEQA) Compliance

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":

2. If Agreement is considered a "Project" under CEQA:

a) ☐ Agreement **IS** exempt.☐ Statutory Exemption. List PRC and/or CCR section number:☒ Categorical Exemption. List CCR section number: Cal. Code Regs., tit. 14, § 15306☐ Common Sense Exemption. 14 CCR 15061 (b) (3) ☐

Explain reason why project is exempt under the above section:

**GRANT AMENDMENT REQUEST FORM (GARF)**

The Energy Commission made CEQA findings pertaining to this project, including finding that it was categorically exempt under 14 CCR section 15306 when the project was originally approved by the Commission at its June 2016 business meeting. The currently proposed change is a change to the recipient of the grant award. This change will not alter any aspect of the project. The same project team will do the same project work that was previously approved by the Commission. This change will therefore not result in any environmental impacts beyond those already considered and approved by the Commission in June 2016 and do not change the applicability of the categorical exemption under 14 CCR 15306.

Check all that apply

- ☐ Initial Study
- ☐ Negative Declaration
- ☐ Mitigated Negative Declaration
- ☐ Environmental Impact Report
- ☐ Statement of Overriding Considerations

F) The following items should be attached to this GARF (as applicable)

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

Agreement Manager

Date

Office Manager

Date

Deputy Director

Date

ASSIGNMENT, ASSUMPTION, AMENDMENT, AND CONSENT AGREEMENT

This Assignment, Assumption, Amendment, and Consent Agreement (“Assumption and Amendment”) is entered into by and between State Energy Resources Conservation and Development Commission (“Energy Commission”), a California state agency located at 1516 9th Street, Sacramento, California 95814, Build It Green (“Assignor”), a California public benefit corporation located at 300 Frank H. Ogawa Plaza Suite 620, Oakland, CA 94612, and Franklin Energy Services, LLC, a Delaware limited liability company located at 102 N. Franklin Street, Port Washington, WI 53074 (“Assignee”)(collectively “the Parties”).

RECITALS

A. Whereas, on or about September 14, 2016, the Energy Commission and Assignor entered into Grant Agreement Number EPC-15-097, as amended from title to time (“Grant Agreement”), under which Assignor was to perform the project entitled EPIC Multifamily ZNE Research Grant.

B. Whereas, in connection with the Grant Agreement, Assignor is seeking to obtain the Energy Commission’s written consent before assigning the Grant Agreement to Assignee.

C. Whereas, Assignor desires to assign and delegate to Assignee all of its rights, responsibilities, duties, title, and interest in and to the Grant Agreement, Assignee desires to accept such assignment and delegation, and Energy Commission is willing to consent to such assignment and delegation and agrees that such assignment and delegation is being made in satisfaction of any related terms in the Grant Agreement and in accordance with the terms and subject to the conditions set forth in this Assumption and Amendment.

D. Whereas, a portion of Build It Green’s offices, operations and employees including those who perform the work pursuant to the subject Grant Agreement, became and will remain part of the Assignee effective September 4, 2019.

AGREEMENT

NOW, THEREFORE, in consideration for the mutual promises contained in this Assumption and Amendment, the Parties agree as follows:

1. True Recitals.

The foregoing Recitals are true and correct and included as part of this Assumption and Amendment.

2. Effective Date.

The Effective Date of this Assumption and Amendment is the date the Energy Commission signs it (“Effective Date”). The Energy Commission shall be the last of the Parties to sign.

3. Assumption of Grant Agreement Obligations.

Assignee assumes and agrees to perform and fulfill all the terms, covenants, conditions, and obligations required to be performed and fulfilled by Assignor under the Grant Agreement arising from and after the Effective Date and any reference to Assignor in the Grant Agreement will be deemed a reference to Assignee. Assignee also assumes all obligations and liabilities of, and all claims against, Assignor under the Grant Agreement as if it was the original party to the Grant Agreement.

4. Assignee Representation and Warranty.

- a. Authority of Persons Executing Documents. This Assumption and Amendment and all documents or instruments which have or will be executed and delivered pursuant thereto, have or will be executed and delivered by persons who are duly authorized on behalf of the Assignee to do so. All actions required under Assignee's organizational documents and applicable law for the authorization, execution, delivery and performance of this Assumption and Amendment, and all documents or instruments which have or will be executed and delivered pursuant thereto have been duly taken.
- b. Valid Binding Agreements. This Assumption and Amendment and all documents or instruments which have or will be executed and delivered pursuant thereto constitute, or will constitute, legal, valid and binding obligations of Assignee enforceable against Assignee in accordance with their respective terms.
- c. Assignee's Authority. Assignee asserts and warrants it has sole legal authority over Assignor's rights in the Grant Agreement. It also asserts and warrants its officers and other employees have no knowledge of any other potential or existing claims to Assignor's rights in the Grant Agreement.

5. Energy Commission's Consent.

The Energy Commission consents to Assignee's assumption of the Grant Agreement.

6. Amendment.

The Parties agree to amend the Grant Agreement to reflect the change in recipient from Build It Green to Franklin Energy Services, LLC. This Assumption and Amendment may not be amended except in a writing signed by the Parties.

7. Future Assignment Requirements.

This Assumption and Amendment extends only to the assumption and amendment of the Grant Agreement by Assignee and the Energy Commission. It is not, and shall not be construed to be, a consent or approval by the Energy Commission of any future assignment of the Grant Agreement by Assignee to any other entity. Any future assignments by Assignee shall be subject to the Energy Commission's prior review and approval.

8. Assignee Cooperation.

Assignee agrees to execute such documents and instruments as may be necessary to effectuate the intent of this Assumption and Amendment.

9. Successors and Assigns.

This Assumption and Amendment shall be binding on and inure to the benefit of the Parties to it, their heirs, executors, administrators, successors in interest, and assigns.

10. Waiver

Notwithstanding anything to the contrary in the Grant Agreement, Energy Commission's consent under this Assignment satisfies any provision of the Grant Agreement requiring notification to Energy Commission or the Energy Commission's consent to the assignment, delegation, and assumption of the Grant Agreement, and will operate as a waiver of any right of termination Energy Commission may have as a result of such assignment, delegation, and assumption of the Grant Agreement. Energy Commission's consent will become effective on the date hereof.

11. Governing Law.

This Assumption and Amendment shall be governed by and construed in accordance with California law.

12. Multiple Counterparts.

This Assumption and Amendment may be executed in multiple counterparts, all of which together shall constitute a single instrument.

13. Indemnity.

Assignee agrees to indemnify, defend, and hold harmless the state of California (including the Energy Commission) and state officers, agents, and employees from any and all claims and losses in connection with this Assumption and Amendment, as further provided in the indemnification provision in the Grant Agreement.

14. As of the date hereof, all notices, requests, claims, demands, or other communications from Energy Commission to Assignee with respect to the Grant Agreement, will be made in accordance with the notice provision of the Grant Agreement and addressed to Assignee as follows:

Assignee: Franklin Energy Services, LLC
Attn: Paul T. Schueller
102 N. Franklin Street
Port Washington, WI 53074

15. As of the date hereof, if Energy Commission makes payment by check, such payment will be made in accordance with the payment provisions of the Grant Agreement to the following address:

March 2020

Agreement Number EPC-15-097
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Franklin Energy Services, LLC
Attn: Accounts Payable
102 N. Franklin Street
Port Washington, WI 53074

16. As a term of this Assumption and Amendment, Energy Commission agrees to reimburse Assignee Franklin Energy Services, LLC for actual allowable project expenditures incurred by Assignee between September 4, 2019 and the Effective Date of this Assumption and Amendment, provided those expenditures were made in accordance with the Grant Agreement.

17. Severability.

If any provision of this Assumption and Amendment is unenforceable or held to be unenforceable, all other provisions will remain in full force and effect.

18. This Assumption and Amendment contains the entire agreement of the Parties and supersedes all previous communications, representations, understandings and agreements, either oral or written, between the Parties with respect to said subject matter.

19. Except as expressly provided herein, nothing contained in this Assumption and Amendment is intended to limit any of the rights or remedies which the Energy Commission may have under the Grant Agreement.

FRANKLIN ENERGY SERVICES, LLC:

BUILD IT GREEN

Franklin Energy, Inc.

Build It Green

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

CALIFORNIA ENERGY COMMISSION:

California Energy Commission

Name: _____

Title: _____

Date: _____

March 2020

Agreement Number EPC-15-097
Assumption and Assignment

RESOLUTION NO:

STATE OF CALIFORNIA

**STATE ENERGY RESOURCES
CONSERVATION AND DEVELOPMENT COMMISSION**

RESOLUTION - RE: FRANKLIN ENERGY SERVICES/BUILD IT GREEN

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

RESOLVED, that the CEC approves a novation substituting Franklin Energy Services, LLC for Build It Green under Agreement EPC-15-097, as set forth in the attached Assignment, Assumption, Amendment and Consent Agreement. All aspects of the grant project including the project team, scope of work, project schedule, deliverables, budget, and terms and conditions will remain the same; and

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

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 CEC held on April 8, 2020.

AYE:

NAY:

ABSENT:

ABSTAIN:

Cody Goldthrite
Secretariat