

REPAYMENT, WAIVER, and RELEASE AGREEMENT

THIS Repayment, Waiver, and Release Agreement ("Agreement") is made and entered into by and between the STATE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT COMMISSION ("Energy Commission"), an agency of the State of California with its primary location at 1516 9th Street, in Sacramento, Sacramento County, California, and GREENKRAFT INC., ("Greenkraft") a California corporation primarily located at 2530 S. Birch Street, Santa Ana, Orange County, California. The Energy Commission and Greenkraft are collectively referred to herein as the "Parties."

I. RECITALS

1. The Energy Commission administers the Alternative and Renewable Fuel and Vehicle Technology Program ("Program"), which provides financial incentives, among other types of financial assistance, to develop and deploy alternative and renewable fuels and advanced transportation technologies pursuant to Health and Safety Code section 44270 et seq.
2. Under the Program the Energy Commission issued Program Opportunity Notice Alternative and Renewable Fuel and Vehicle Technology Program PON-11-603 for Buy-Down Incentives for Natural Gas and Propane Vehicles dated January 31, 2011 ("PON-11-603").
3. Greenkraft applied for and received two incentive reservations under PON-11-603, Reservation BDIR-12-23 ("BDIR-12-23") and Reservation BDIR-12-25 ("BDIR-12-25"), for which Greenkraft received two payments from the Energy Commission of \$400,000 and \$1,284,000 respectively, for a total of \$1,684,000 in incentive funds.
4. Of the \$1,684,000 in incentive funds received by Greenkraft, Greenkraft has only complied with requirements relative to \$400,000 of this amount and owes the Energy Commission \$1,284,000.
5. Regarding funds owed under BDIR-12-23:
 - a. Pursuant to PON-11-603 Greenkraft submitted an ARF-1 Buy-Down Incentive Reservation Form dated March 11, 2013 with a total request of \$400,000 in incentive funds (for 40 propane vehicles of 14,001 to 26,000 pounds gross vehicle weight at \$10,000 in incentives per vehicle), which included a declaration by Greenkraft that it agreed to comply with all Program requirements and terms and conditions as provided in PON-11-603.
 - b. The Energy Commission approved BDIR-12-23 at an Energy Commission Business Meeting for the full reservation amount of \$400,000 on April 10, 2013 by resolution number 13-0410-13.

- c. The Energy Commission then issued an ARF-2 Buy Down Incentive Reservation Confirmation Form dated April 29, 2013 for the full reservation amount of \$400,000 to Greenkraft for all 40 propane vehicles under BDIR-12-23.
 - d. Greenkraft thereafter submitted ARF-3 Buy-Down Incentive Payment Claim Forms (Applicant) with supporting documentation for each vehicle, which were subsequently approved by the Energy Commission on or about May 6, 2013.
 - e. The State of California on behalf of the Energy Commission issued warrant number 08915202 dated May 15, 2013 for payment to Greenkraft in the amount of \$400,000.
 - f. Despite the Energy Commission providing multiple extensions of time, Greenkraft has failed to submit ARF-4 Buy-Down Incentive Payment Claim Form(s) with supporting documentation as required under PON-11-603 and thereby complete the incentive reservation and payment process for all 40 vehicles for which \$400,000 in incentive funds were reserved and received by Greenkraft under BDIR-12-23.
 - g. The Energy Commission alleges that Greenkraft has not complied with BDIR-12-23, the Program, or PON-11-603 due to its failure to timely submit ARF-4 Buy-Down Incentive Payment Claim Form(s) and accompanying documentation regarding the sale and delivery of all 40 vehicles for which incentive payments were received by Greenkraft and is currently in breach of its obligations under BDIR-12-23, the Program, and PON-11-603.
 - h. The Energy Commission alleges that Greenkraft owes the Energy Commission \$400,000 (the entire incentive reservation amount) for its breach of its obligations under BDIR-12-23 as stated above.
6. Regarding funds owed under BDIR-12-25:
- a. Pursuant to PON-11-603 Greenkraft submitted an ARF-1 Buy-Down Incentive Reservation Form dated May 3, 2013 for a total request of \$1,284,000 in incentive funds (for 54 natural gas vehicles comprising: (a) 20 natural gas vehicles of 14,001 to 26,000 pounds gross vehicle weight at \$20,000 in incentives per vehicle; and (b) 34 natural gas vehicles 26,001 pounds gross vehicle weight or greater (with a fuel tank capacity less than 190 liquefied natural gas or 90 diesel gallon equivalent) at \$26,000 in incentives per vehicle), which included a declaration by Greenkraft that it agreed to comply with all Program requirements and terms and conditions as provided in PON-11-603.
 - b. The Energy Commission approved BDIR-12-25 at an Energy Commission Business Meeting for the full reservation amount of \$1,284,000 on June 12, 2013 by resolution number 13-0612-21a.

- c. The Energy Commission issued an ARF-2 Buy Down Incentive Reservation Confirmation Form pursuant to PON-11-603 dated June 12, 2013 for the full reservation amount of \$1,284,000 to Greenkraft for all 54 vehicles under BDIR-12-25.
- d. Greenkraft submitted an ARF-3 Buy-Down Incentive Payment Claim Form (Applicant), which was approved by the Energy Commission, for all 54 vehicles under BDIR-12-25 as follows:
 - i. Greenkraft submitted ARF-3 Buy-Down Incentive Payment Claim Forms (Applicant) with supporting documentation for each of the 20 natural gas vehicles of 14,001 to 26,000 pounds gross vehicle weight, which were subsequently approved by the Energy Commission on or about December 16, 2013.
 - ii. Greenkraft submitted ARF-3 Buy-Down Incentive Payment Claim Forms (Applicant) with supporting documentation for each of the 34 natural gas vehicles of 26,001 pounds gross vehicle weight or greater (with a fuel tank capacity less than 190 liquefied natural gas or 90 diesel gallon equivalent), which were subsequently approved by the Energy Commission on or about December 16, 2013.
- e. The State of California on behalf of the Energy Commission issued warrant number 04514954 dated December 24, 2013 for payment to Greenkraft in the amount of \$1,284,000.
- f. Greenkraft submitted ARF-4 Buy-Down Incentive Payment Claim Forms with supporting documentation for each of the 20 natural gas vehicles of 14,001 to 26,000 pounds gross vehicle weight, for which \$400,000 in incentive funds were reserved and received by Greenkraft under BDIR-12-25.
- g. Despite the Energy Commission providing multiple extensions of time, Greenkraft has failed to submit required ARF-4 Buy-Down Incentive Payment Claim Forms with supporting documentation as required under PON-11-603 and thereby complete the incentive reservation and payment process for the 34 natural vehicles (26,001 pounds gross vehicle weight or greater (with a fuel tank capacity less than 190 liquefied natural gas or 90 diesel gallon equivalent)) for which \$884,000 in incentive funds were reserved and received by Greenkraft under BDIR-12-25.
- h. The Energy Commission alleges that Greenkraft has not complied with BDIR-12-25, Program requirements, or PON-11-603 due to its failure to timely submit ARF-4 Buy-Down Incentive Payment Claim Forms and accompanying documentation regarding the sale and delivery of 34 natural vehicles (26,001 pounds gross vehicle weight or greater (with a fuel tank capacity less than 190 liquefied natural gas or 90 diesel gallon equivalent)) for which \$884,000 in

incentive payments were reserved and received by Greenkraft and is currently in breach of its obligations under BDIR-12-25, the Program, and PON-11-603.

- i. The Energy Commission alleges that Greenkraft owes the Energy Commission \$884,000 for its breach of its obligations under BDIR-12-25 as stated above.
7. Based on the above Recitals, the Energy Commission, through adjudication, could seek remedies against Greenkraft including damages.
8. The Parties have elected to enter into this Agreement because they wish to postpone or avoid the inconvenience, expense, and uncertainty or possible litigation initiated by the Energy Commission, while fully preserving any rights of the parties that exist as of this date of this Agreement to commence legal action at a future date, which, but for this Agreement, might otherwise be or become time-barred by any applicable statute of limitations, laches, or other possible time bars and defenses.

II. TERMS

In consideration of the Recitals set forth above which are incorporated into this section by reference and the mutual agreements set forth below, and mutual covenants and agreements as set forth herein, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. REPAYMENT:

- a. Greenkraft shall submit to the Energy Commission monthly payments in the amount of \$20,000 starting on August 1, 2017 continuing for 64 months with an additional final monthly payment in the amount of \$4,000 for the 65th month for a total repayment amount of \$1,284,000.
- b. Payments shall be by check made payable to the California Energy Commission and sent to the following address:

Attn: Rachel Rectenwald
California Energy Commission
Accounting Office, MS-2
1516 Ninth Street
Sacramento, CA 95814-5512
- c. Payments shall be made by the 1st day of each month in the amounts stated above and shall be considered late if not received by the Energy Commission by the 5th day of each month. Late payments will accrue interest on the unpaid monthly payment amount at a rate of 5% per annum. Any monthly payment made after the 5th of each month shall be paid together with accrued interest. Payments received by the Energy Commission shall be applied first to the payment of any accrued

interest, then to any unpaid monthly payment amounts, then to the reduction of the balance owed.

- d. If any payment or interest due under this Agreement is not paid when due and remains unpaid after the fifth (5th) day of the month due, the Energy Commission, at its option, may declare the entire amount then outstanding, including accrued interest thereon, immediately due and payable upon the expiration of not less than ten (10) calendar days effective notice (pursuant to Paragraph 13) to Greenkraft of the Energy Commission's decision to accelerate and Greenkraft's failure to cure within the ten (10) day acceleration notice period. Additionally, if Greenkraft breaches any other term or condition under this Agreement, separate and apart from a breach of its payment obligations as stated above, the Energy Commission, at its option, may declare the entire amount then outstanding, including accrued interest thereon, immediately due and payable upon the expiration of not less than seven (7) calendar days effective notice of the breach (pursuant to Paragraph 13) to Greenkraft of the Energy Commission's decision to accelerate and Greenkraft's failure to cure within the seven (7) day acceleration notice period. All such amounts due after acceleration shall bear interest at the rate of ten percent (10%) per annum.
- e. The Energy Commission may exercise the option to accelerate as specified in II. 1. d. during any breach by Greenkraft of this Agreement regardless of any prior extension or forbearance. In the event of a breach of this Agreement, the Energy Commission may, at its option, exercise all of its rights and remedies enumerated herein, which rights are in addition to and not in limitation of any other rights the Energy Commission may have under applicable law based on the facts set forth above in the Recitals.

2. ENFORCEMENT OF AGREEMENT:

- a. Should any party to this Agreement breach any term or condition herein, the non-breaching party shall retain all rights and remedies available under this Agreement and under the law.
- b. In addition to any failure by Greenkraft to make any payment when due, the following events shall constitute a breach of this Agreement:
 - i. Greenkraft becoming insolvent or bankrupt, being unable or admitting in writing its inability to pay its debts or payments as they are due, or making a general assignment with creditors;
 - ii. Institution by or against Greenkraft of proceedings for the appointment of a receiver, trustee, or liquidator of all or a substantial part of the assets of Greenkraft, which proceedings are not dismissed within sixty (60) calendar days of institution;

- iii. Institution by or against Greenkraft of proceedings under any bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction, which proceedings are not dismissed within sixty (60) calendar days of institution; or
- iv. Dissolution of the corporate or partnership structure of Greenkraft.
- v. Any failure by Greenkraft to comply with Paragraph 4(b) of this Agreement.

3. EFFECTIVE DATE OF AGREEMENT:

Notwithstanding anything contained herein to the contrary, this Agreement shall not be deemed effective or binding upon any of the Parties until actual execution by all Parties.

4. STATUTE OF LIMITATIONS:

- a. With respect to any and all, rights, claims, demands, or causes of action that could be made by the Energy Commission, known or unknown, whether statutory, contractual, or otherwise, and whether at law, in equity, or otherwise (including the doctrines of waiver, laches, acquiescence or estoppel), in any jurisdiction, relating to, arising out of, or in connection with BDIR-12-23 and BDIR-12-25, apart from those arising solely out of this Agreement, and including but not limited to breach of contract and any tort-based claims (collectively, the "Energy Commission BDIR Claims"), Greenkraft hereby waives its statutory defense that the Energy Commission BDIR Claims are barred by any statutes of limitation under the California Code of Civil Procedure and hereby consents to the Energy Commission bringing an action based on the Energy Commission BDIR Claims against Greenkraft regardless of the effect of any statutes of limitation under the California Code of Civil Procedure.
- b. If the Energy Commission determines it is necessary for Greenkraft to enter into a subsequent or additional waiver agreement regarding any statutes of limitation as to the Energy Commission BDIR Claims, Greenkraft hereby agrees to enter into such waiver agreement in a time and manner as directed by the Energy Commission.

5. RELEASE OF CLAIMS:

- a. Upon Greenkraft paying a total of \$1,284,000 as provided under this Agreement and any applicable interest due to the Energy Commission, the Energy Commission shall release Greenkraft, and its officers, directors, shareholders, partners, subsidiaries, affiliates, successors, transferees, assignees, employees, agents, representatives and attorneys from any and all liability, claims (including attorneys' fees and/or costs), demands, damages, punitive damages, disputes, suits claims for relief and causes of action, whether known or unknown suspected or unsuspected, foreseen or unforeseen, which directly or indirectly relate to any

claims, facts or circumstances arising out of BDIR-12-23 and BDIR-12-25 except any possible claims arising out of warranties provided to purchasers of incentivized vehicles under the aforementioned reservations.

- b. Greenkraft releases the state of California, the Energy Commission and its officers, directors, shareholders, partners, subsidiaries, affiliates, successors, transferees, assignees, employees, agents, representatives and attorneys from any and all past, present, or future liability, claims (including attorneys' fees and/or costs), demands, damages, punitive damages, disputes, suits claims for relief and causes of action, whether known or unknown suspected or unsuspected, foreseen or unforeseen, which directly or indirectly relate to or arise out of BDIR-12-23 and BDIR-12-25, apart from those arising solely out of this Agreement. In so doing Greenkraft also waives the provisions of 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." Greenkraft understands and acknowledges the significance and consequence of such specific waiver of California Civil Code section 1542, and hereby assumes full responsibility for any injuries, damages or losses that it may later incur from the alleged incident giving rise to this dispute.

6. REPRESENTATIONS:

All Parties to this Agreement represent and warrant that they have been afforded adequate opportunity to, and have in fact, reviewed the contents of this Agreement independently, have had the opportunity to consult counsel of their own choosing, are fully informed of the terms and conditions of this Agreement, accept these terms and conditions, and have not relied in any way upon the advice or representations of any other party to this Agreement. Any representations made prior to the entering into of this Agreement that are not incorporated into the express written provisions of this Agreement are non-binding and void.

7. SEVERABILITY:

The invalidity, either in whole or in part, or the unenforceability of any clauses or portions of this Agreement shall not detract from the validity or enforceability of the remaining clauses or portions of this Agreement which shall survive in all respects as if the invalid or unenforceable portions were not a part thereof.

8. WRITTEN WAIVER

A breach of this Agreement may be waived only by a written waiver signed by the party granting the waiver. The waiver of any breach shall neither operate nor be construed as a waiver of any other breach of this Agreement or as a continuing waiver.

9. INTERPRETATION

All Parties acknowledge and agree that this Agreement shall be interpreted, construed, governed and enforced under and pursuant to the laws of the State of California, which apply in all respects. The terms of this Agreement are the product of negotiations between the Parties. No provision of this Agreement will be construed against the drafter of this Agreement. Any titles or headings of the paragraphs or subparagraphs of this Agreement are solely for the convenience of the Parties and may not be used for the interpretation of or determination of the validity of this Agreement or any provision of this Agreement.

10. VENUE

Any litigation relating to or arising out of this Agreement shall be brought and litigated exclusively in a state or federal court located in the County of Sacramento, State of California.

11. ATTORNEYS' FEES

Each Party to this Agreement shall bear its own costs and attorneys' fees incurred in connection with the negotiation of this Agreement and the matters released by this Agreement, except that should either party be required to enforce any part of this Agreement, the prevailing party shall be entitled to costs including reasonable attorneys' fees expended in such enforcement proceeding.

12. INTEGRATION

This Agreement, constitutes the entire agreement of the Parties pertaining to the \$1,284,000 in incentive funds received by Greenkraft under BDIR-12-23 and BDIR-12-25 for which Greenkraft has failed to complete the incentive reservation and payment process and supersedes all prior or contemporaneous understandings, representations, warranties and agreements made by the Parties hereto or their representatives pertaining to the subject matter hereof, whether written or oral. This Agreement constitutes the entire agreement and understanding between the Parties pertaining to the subject matter hereof, and may not be modified or amended except by an instrument in writing signed by all Parties. The Parties are not relying and have not relied upon any representation, promise or statement made by anyone which is not recited, contained or embodied in this Agreement.

13. NOTICES

Notices to the Parties concerning this Agreement, any of its terms, or the Parties' performance or obligations under this Agreement, shall be given as follows:

If to Energy Commission:

Attn: Rachel L. Grant Kiley
California Energy Commission
Contracts, Grants, and Loans Office, MS-1
1516 Ninth Street
Sacramento, CA 95814-5512
rachel.grant-kiley@energy.ca.gov

If to Greenkraft:

Attn: Sosi Bardakjian, Manager
Greenkraft, Inc.
2530 South Birth Street
Santa Ana, CA 92707
sosi@greenkraftinc.com

The Parties shall promptly notify each other in writing of any changes to their contact information listed above.

Except for any notice required under applicable law to be given in another manner, any notices, demands or communications between the Parties hereto shall be sufficiently given if, and shall not be deemed given unless, dispatched by certified mail, postage prepaid, return receipt requested or delivered by overnight mail with delivery receipt, to the address of the respective party as indicated above, or to such other address as the respective party may have designated by written notice given to the other party in the manner provided herein. Such written notices, demands and communications shall be effective on the date shown on the delivery receipt as the date delivered, the date on which delivery was refused, or the date on which delivery was attempted.

14. BINDING ON BENEFICIARIES AND SUCCESSORS-IN-INTEREST

This Agreement is binding upon and inures to the benefit of the Parties and their respective heirs, executors, administrators, trustors, trustees, beneficiaries, predecessors, successors, assigns, transferees, partners, partnerships, parent companies, subsidiaries, affiliated and related entities, officers, directors, principals, agents, servants, insurers, sureties, attorneys, employees, representatives, and all persons, firms, plaintiffs, and/or persons or entities connected with each of them.

15. AUTHORIZATION

Each person signing this Agreement represents and warrants to the Parties that he or she is fully authorized to sign this Agreement on behalf of the party for whom/which he or she is signing, and thereby to bind such party to each and all of the terms of this Agreement.

16. EXECUTION IN COUNTERPARTS

The Parties hereto, in order to more expeditiously implement the compromise and settlement terms set forth herein, agree that this Agreement may be executed in two or more counterparts as if all Parties signed one document and each executed counterpart shall be regarded as if it is an original document.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement, consisting of 10 pages, including signature pages, to be executed:

GREENKRAFT, INC.

Signature: 
Name: Sasi Bardakjian
Title: QFO
Date: 6-28-17

CALIFORNIA ENERGY COMMISSION

Signature: _____
Name: _____
Title: _____
Date: _____