



WASHINGTON EXEMPT FUELS AGREEMENT

This Exempt Fuels Agreement (“*Agreement*”) is effective as of January 1, 2023 (the “*Effective Date*”) by and between _____ (“*Buyer*”) and Byrnes Oil Company, Inc. (“*Seller*”). Buyer and Seller are each referred to herein as a “*Party*” and collectively as the “*Parties*.”

Recitals

A. In 2021, the Washington State Legislature passed the Washington State Climate Commitment Act, RCW 70A.65.060 et seq. (“*CCA*”) and the Washington Clean Fuels Program, RCW 70A.535.005 et seq. (“*CFP*” also known as the “Clean Fuel Standard”) with the intent of reducing greenhouse gases (“*GHG*”) emissions in the state of Washington, including GHG emissions from transportation fuels.

B. GHG emissions from certain transportation fuels are expressly exempt from the CCA (“*CCA Exempt Fuels*”) and the CFP (“*CFP Exempt Fuels*”), collectively “*Exempt Fuels*.” For purposes of this Agreement, and as set forth in the CCA and the CCA Program Rule, WAC 173-446 (“*CCA Program Rule*”), CCA Exempt Fuels include but are not limited to (1) fuels exported outside the state of Washington; (2) fuels used in watercraft where such fuels are combusted outside of Washington jurisdiction waters; and (3) fuels used in agricultural operations. For purposes of this Agreement, and as set forth in the CFP and the CFP Rule, WAC 173-424 (“*CFP Program Rule*”), CFP Exempt Fuels include (1) fuels exported outside the state of Washington; (2) fuels used in vessels, railroad locomotive applications, and military tactical vehicles and tactical support equipment; (3) special fuel used in off-road vehicles used primarily to transport logs; dyed special fuels that are used primarily for construction work including mining and timber harvest operations; and dyed special fuel used for agricultural purposes. CFP Exempt Fuels in category (3) are only exempt until January 1, 2028.

C. Mandatory reporting requirements for certain GHG emissions are set forth in the Reporting of Emissions of Greenhouse Gases Rule, WAC 173-441 (“*GHG Reporting Rule*”) and together with CCA Program Rule and CFP Program Rule, which the Washington Department of Ecology (“*Ecology*”) has elaborated on in certain guidance, the “*Regulations*.”

D. Seller desires to sell to Buyer certain Exempt Fuels and Buyer desires to purchase from Seller such Exempt Fuels.

Agreements

In consideration of the foregoing recitals, the covenants and conditions contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Exempt Fuels and Accounting. Buyer acknowledges and agrees that:

a) Only Exempt Fuels purchased under specific loading account codes (“ship to”) maintained by Seller (the “*Loading Account Codes*”) are exempt from the CCA.

b) Purchased Exempt Fuel may not be resold by Buyer for use in a manner subject to the CCA or CFP unless Buyer purchases non-Exempt Fuel to balance Buyer’s accounting of Exempt Fuel and non-Exempt Fuel.

2. Covenants of Buyer.

a) If Buyer directly uses Exempt Fuel purchased from Seller, Buyer shall only use Exempt Fuel for exempt purposes as specified under the Regulations.

b) In the event that Buyer resells Exempt Fuel purchased from Seller to end-user customers, Buyer shall track all Exempt Fuel to ensure calendar year-end inventory of Exempt Fuel purchased from Seller matches Buyer’s resale of Exempt Fuel for exempt purposes. If Buyer resells Exempt Fuel for non-exempt purposes, by calendar year-end it must purchase the equivalent volume of non-Exempt Fuel from Seller and sell such fuel for exempt purposes to ensure accurate year-end accounting of Exempt Fuel purchases from Seller and resales to end-user customers.

d) On an annual basis, or more frequently as may be reasonably required by Seller, Buyer shall execute the following documentation verifying Exempt Fuel volumes purchased (on a gross or net basis, as invoiced by Buyer): (i) any applicable Ecology certification form, and (ii) Seller’s annual certification form, an example of which is attached hereto as Exhibit A.

e) As of the Effective Date and for a period of twelve (12) years after each delivery of fuel product that includes Exempt Fuel from Seller to Buyer, Buyer shall maintain all relevant documentation verifying the exempt use of Exempt Fuel purchased, including but not limited to bills of lading from the terminal, bills of lading or product delivery tickets to the end user, and supplier invoices and invoices provided to third parties (the “*Records*”). Buyer acknowledges and agrees that the Records may be subject to inspection by Seller’s on-staff verifier under the Regulations, and by Seller on a redacted basis as reasonably necessary to verify exempt status of the Exempt Fuel. Within seven (7) business days of a request for Records by Seller, Buyer shall provide such requested Records to Seller. If Buyer resells Exempt Fuel for agricultural purposes, Buyer shall collect from each end-user customer and provide to Seller upon request within seven (7) business days Washington Department of Revenue Forms 27 0032 or Forms 27 0036, as applicable.

f) Buyer shall reasonably cooperate and assist Seller, Seller’s on-staff verifier and Ecology with Seller’s preparation of any forms, documents, or communication necessary to validate the purchased Exempt Fuel under the CCA and CFP, as applicable.

g) Buyer's invoices provided to end-user customers that purchase Exempt Fuel shall consistently include either gross or net volume of Exempt Fuel (or both), category of use of Exempt Fuel (for example, agricultural transport or marine, export), address and contact information of the end user, and other reasonable information requested by Seller and reasonably necessary under the Regulations.

c) Indemnification. Buyer shall indemnify, protect, defend and hold Seller harmless from and against any and all claims, actions, losses, costs and expenses (including without limitation CCA and CFP compliance costs and expenses, reasonable attorneys' fees or costs of investigation and accounting), fines or penalties (including CCA and CFP non-compliance penalties) arising directly or indirectly from Buyer's failure to adhere to its obligations under this Agreement and any and all laws and regulations applicable to the Exempt Fuel and Buyer's failure to ensure that fuel users that purchase the Exempt Fuel from Buyer also comply with such obligations, laws and regulations.

3. Miscellaneous.

a) This Agreement will remain in effect unless and until terminated by the mutual written consent of the Parties.

b) This Agreement may not be altered or amended, nor any rights hereunder waived, except by a written document signed by the Party to be charged with such amendment or waiver.

c) This Agreement will be binding upon and will inure to the benefit of the Parties and their respective successors and assigns.

d) At least fifteen (15) days prior to an assignment of this Agreement or the closing of a merger, spin off, sale or exchange of stock or other equity interests that would result in a change in control of Buyer, and/or a transaction that includes a sale of all or a substantial portion of Buyer's assets subject to this Agreement, Buyer shall give written notice to Seller of such assignment or transaction.

e) This Agreement will be governed and construed in accordance with the laws of the State of Washington, without regard to any conflicts of laws principles that would cause the application of law from another jurisdiction.

f) Any dispute between the Parties concerning any matter whose arbitration is not prohibited by law at the time such dispute arises shall be submitted to arbitration in accordance with the Arbitration Rules of the American Arbitration Association then in effect and the award rendered by the arbitrators shall be binding as between the Parties and judgment on such award may be entered in any court having jurisdiction thereof. Three neutral arbitrators shall be appointed by the American Arbitration Association and all of which shall be an attorney-at-law and all decisions and awards shall be made by a majority of them except for decisions relating to discovery and disclosures as set forth herein. Notice of a demand for arbitration of any dispute subject to arbitration by one Party shall be filed in writing with the other Party and with the American Arbitration Association. The Parties agree that after any such notice has been filed, they shall, before the hearing thereof,

make discovery and disclosure of all matters relevant to such dispute, to the extent and in the manner provided by the Federal Rules of Civil Procedure. All questions that may arise with respect to the obligation of discovery and disclosure and the protection of the disclosed and discovered material shall be referred to a single arbitrator who shall be an attorney-at-law and one of the three neutral arbitrators appointed for determination, and his determination shall be final and conclusive. Discovery and disclosure shall be completed no later than ninety (90) days after filing of such notice of arbitration unless extended by such single arbitrator upon a showing of good cause by either Party to the arbitration. The arbitrators may consider any material which is relevant to the subject matter of such dispute even if such material might also be relevant to an issue or issues not subject to arbitration hereunder. A stenographic record shall be made of any arbitration hearing. Notwithstanding the foregoing, either Party may institute formal proceedings to obtain injunctive relief in order to: (i) avoid the expiration of any applicable limitations period; (ii) preserve a superior position with respect to other creditors; or (iii) protect proprietary or confidential information. This section shall survive the termination of this Agreement.

g) Any term or provision of this Agreement that is invalid or unenforceable shall be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement. If any provision of this Agreement is so broad as to be unenforceable, the provision shall be interpreted to be only so broad as is enforceable. In all such cases, the Parties shall use their reasonable best efforts to substitute a valid, legal and enforceable provision that, insofar as practicable, implements the original purposes and intents of this Agreement.

h) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

Exemptions—Diesel, biodiesel, and aircraft fuel for farm fuel users.

(1) The tax levied by RCW [82.08.020](#) does not apply to sales of diesel fuel, biodiesel fuel, or aircraft fuel, to a farm fuel user for agricultural purposes. This exemption applies to a fuel blend if all of the component fuels of the blend would otherwise be exempt under this subsection if the component fuels were sold as separate products. This exemption is available only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.

(2) The definitions in RCW [82.04.213](#) and this subsection apply to this section.

(a)(i) "Agricultural purposes" means the performance of activities directly related to the growing, raising, or producing of agricultural products.

[Signature page follows.]

In witness whereof, the Parties have executed this Agreement on the date(s) set forth below, but effective for all purposes as of the Effective Date.

Buyer: _____

Seller: Byrnes Oil Company, Inc.

Signature:

Signature:

Print Name:

Print Name:

Title:

Title:

Date:

Date:
