



## COMMERCIAL FIXED PRICING AGREEMENT

AGREEMENT made this twenty first day of June, 2012, by and between **R. H. FOSTER ENERGY, LLC**, a Maine limited liability company, whose mailing address is P.O. Box 161, Hampden, Maine 04444 (hereinafter "Seller"), and **State of Maine, Bureau of General Services, Division of Purchases**, whose mailing address is: 9 State House Station, Augusta, Maine 04333-0077 (hereinafter "Buyer").

### TERMS OF THIS AGREEMENT:

1. **Pricing:** #2 Heating Oil price per gallon will be Fixed at **3.1085** for **100,000**, beginning July 1, 2012 and ending September 30, 2013. Additional fuel delivered after the 100,000 gallon fixed amount stated above will be priced per the Downeast Region Contract Award Number MA 18P.
2. **Date of Agreement:** This Agreement shall commence on the date of this Agreement and continue until September 30, 2013. All committed gallons stated above must be lifted prior to end date or Buyer will be subject to liquidated damages described in the Breach Damages Section 9.
3. **Payment Terms:** Due ten (10) days after taking delivery of product or service. Seller reserves the right to change the payment terms upon reasonable notice to Buyer and to require cash on delivery after any failure to make payment when due.
4. **Credit:** All customers must be credit approved. Seller is not obligated to extend credit to any customer. The extension of credit shall only be made in writing. Seller may require updated credit applications as a condition for any extension of credit.
5. **Late Payment Charge:** If payment is not made on or before the due date, a monthly late payment charge in the amount of one and one-half percent (1½ %) (18% annual percentage rate) of the payment due and will be imposed for each month (or any part thereof) which elapses from due date to payment date. The amount of the late charge may be changed from time to time.
6. **Taxes:** Any duty, tax, fee or other charge which Supplier may be required to collect or pay under any municipal, state, federal, or other laws now in effect or hereafter enacted with respect to the production, manufacture, inspection, transportation, storage, sale, delivery, or use of the products covered by this Agreement shall be added to the prices to be paid by Buyer for products supplied by Supplier.
7. **Assignment:** Buyer shall not transfer or assign this Agreement or delegate duties hereunder in whole or in part, directly or indirectly, without the prior written consent of Seller. Seller may assign its right or obligations under this Agreement, in whole or in part.
8. **Compliance With Law:** Buyer agrees that in receiving, storing, handling, or using any product supplied by Seller they will comply with all applicable federal, state and local laws, ordinances, regulations, rules, and orders and will instruct its employees with respect to same. Buyer shall be solely responsible for all losses, claims, causes of action, penalties and liabilities arising out Buyer failure to comply with such requirements.

9. **BREACH DAMAGES:** It shall be a breach of this Agreement if the customer:

- a. fails to accept delivery of any product tendered by R.H. Foster Energy, L.L.C.;
- b. terminates this Agreement prior to the plan's termination date,
- c. fails to pay all amounts owed hereunder when due, or
- d. fails to honor any other term of this Agreement.

Upon a breach, the customer will pay to R. H. Foster its damages arising from said breach, including any and all reasonable attorneys fees incurred in connection with enforcing the terms of this Agreement. If the breach arises from the customer's rejection of any deliveries tendered or any attempted termination of the Agreement, the damages shall be the difference between the contract price and the price at which R.H. Foster is able to sell any unaccepted gallons during the term of this Agreement. In any event, the damages will not be less than \$1.00 per each gallon not delivered. All damages recoverable hereunder shall include interest at a contract rate of 18% percent (1 ½ %) per month.

10. **Force Majeure**

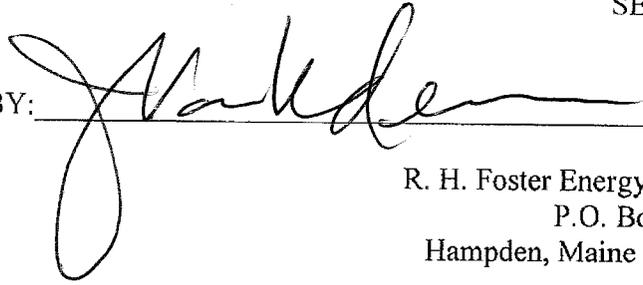
- a. Any delays in or failure of performance by the Seller shall not constitute default under this Agreement or give rise to any claims for damages if and to the extent that such delay or failure is caused by occurrences beyond the control of the Seller affected including, but not limited to, acts of God or the public enemy; expropriation or confiscation of facilities; compliance with any order or request of any governmental authority; acts of war, rebellion, sabotage, or damage resulting therefrom; embargoes or other import or export restrictions; fires, floods, explosions, accidents, or breakdowns; riots, strikes or other concerted acts of workers whether direct or indirect; or any other causes whether or not the same class or kind as those specifically above named which are not within the reasonable control of the party affected. Any party whose performance is affected by any of the causes set forth in the preceding sentence shall give prompt written notice thereof to the other party.
- b. During any period in which, for any reason, Seller's supply of fuel is inadequate to meet Seller's obligations to its customers, the obligation of Seller under this Agreement shall, at Seller's option, be reduced as Seller may determine to allocate fairly among its customers, whether under Agreement or not, the available supply of product. Seller shall give Buyer prompt notice, if and to the extent that Seller is unable to provide fuel to Buyer. During any period that fuel is not available from Seller, Buyer shall have the right to acquire fuel from any other available source, until Seller shall have notified Buyer that fuel is available, and Buyer shall give Seller prompt notice that Buyer is acquiring fuel elsewhere. Any notice under this paragraph shall be given by the fastest means possible, including email, telephone, fax, or personal conversation, and notice by mail shall be acceptable only if such other forms of notice are unavailable.
- c. Nothing in this section shall excuse Buyer from making payment when due for product purchased under this Agreement.

11. **Authority:** The person or persons signing on behalf of Buyer are duly authorized to execute this Agreement, and that no other signatures or approvals are necessary.

The parties have duly executed this agreement on date written above.

SELLER

BY:



R. H. Foster Energy, LLC  
P.O. Box 161  
Hampden, Maine 04444

BUYER

BY:



Name Alan Henry  
Mailing Address 77 SHS 115 Wall St  
City, State, Zip Augusta, ME 04333