

MA 18P 1904190000000000156
MODIFICATION

State of Maine

9/21/2020



Master Agreement

Effective Date: 08/17/2020

Expiration Date: 05/31/21

Master Agreement Description: Bulk Diesel Vehicle Fuel for Various State Agencies

Buyer Information

Michelle Fournier 207-624-8868 ext. Michelle.Fournier@maine.gov

Issuer Information

Michelle Fournier 207-624-8868 ext. Michelle.Fournier@maine.gov

Requestor Information

Michelle Fournier 207-624-8868 ext. Michelle.Fournier@maine.gov

Agreement Reporting Categories

Reason For Modification: Extension
authorized under RFQ
19031900000000000273

Authorized Departments

ALL

Vendor Information

Vendor Line #: 1

Vendor Name
DEAD RIVER CO

Alias/DBA

VC1000022542

Vendor Address Information PO

BOX 467

SCARBOROUGH, ME 04070-0467

US

Vendor Contact Information

CLAUDETTE TOWNSEND, DIST MGR
800-287-9993 ext.

Commodity Information

Vendor Line #: 1

Vendor Name: DEAD RIVER CO

Commodity Line #: 1

Commodity Code: 40509

Commodity Description: As per the specifications attached & made part of this agreement, the fixed price is \$1.8400 per gallon for Bulk Diesel Vehicle Fuel for Maine DOT. See contract for margin pricing if reserved gallons have been exhausted.

Commodity Specifications: Bulk Diesel Vehicle Fuel for Maine DOT

Commodity Extended Description: See contract for margin pricing if reserved gallons have been exhausted.

Bulk Diesel Vehicle Fuel for Maine DOT

Quantity
0.00000

UOM

Unit Price
0.000000

Free On Board

Delivery Days

0

Service End
Date 05/31/21

Service Start Date
08/17/20

Contract Amount
0.00

Discount
0.0000 %

Catalog Name

Discount End Date

Discount Start Date

Vendor Line #: 1

Vendor Name: DEAD RIVER CO

Commodity Line #: 2

Commodity Information

Commodity Code: 40509

Commodity Description: Bulk Diesel Vehicle Fuel for Department of Environmental Protection

Commodity Specifications: As per the specifications attached & made part of this agreement, the fixed price is \$1.8400 per gallon for Bulk Diesel Vehicle Fuel for Department of Environmental Protection. See contract for margin pricing if reserved gallons have been exhausted.

Commodity Extended Description: Bulk Diesel Vehicle Fuel for Department of Environmental Protection.

Quantity
0.00000

UOM

Unit Price
0.000000

Free On Board

Delivery Days

0

Contract Amount 0.00	Service Start Date 08/17/20	Service End Date 05/31/21
Catalog Name	Discount 0.0000 %	
	Discount Start Date	Discount End Date

Commodity Information

Vendor Line #: 1
Vendor Name: DEAD RIVER CO
Commodity Line #: 3
Commodity Code: 40509
Commodity Description: Bulk Diesel Vehicle Fuel Maine State Prison - Department of Corrections
Commodity Specifications: As per the specifications attached & made part of this agreement, the fixed price is \$1.8400 per gallon for Bulk Diesel Vehicle Fuel for Department of Corrections. See contract for margin pricing if reserved gallons have been exhausted.
Commodity Extended Description: Bulk Diesel for Department of Corrections, Maine State Prison

Quantity 0.00000	UOM	Unit Price 0.000000
Delivery Days 0	Free On Board	
Contract Amount 0.00	Service Start Date 08/17/20	Service End Date 05/31/21
Catalog Name	Discount 0.0000 %	
	Discount Start Date	Discount End Date

Commodity Information

Vendor Line #: 1
Vendor Name: DEAD RIVER CO
Commodity Line #: 4
Commodity Code: 40509
Commodity Description: Bulk Diesel Vehicle Fuel for Maine Veterans Cemetery
Commodity Specifications: As per the specifications attached & made part of this agreement, the fixed price is \$1.8400 per gallon for Bulk Diesel Vehicle Fuel for Maine Veterans Cemetery See contract for margin pricing if reserved gallons have been exhausted.
Commodity Extended Description: Bulk Diesel Vehicle Fuel for Maine Veterans Cemetery

Quantity 0.00000	UOM	Unit Price 0.000000
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Delivery Days

0

Free On Board

Contract Amount

0.00

Service Start Date

08/17/20

Service End Date

05/31/21

Catalog Name

Discount

0.0000 %

Discount Start Date

Discount End Date

Please see authorized signatures displayed on the next page

Each signatory below represents that the person has the requisite authority to enter into this Contract. The parties sign and cause this Contract to be executed.

State of Maine - Department of Administrative and Financial Services

DocuSigned by:
Jaime C. Schorr 9/22/2020
Signature _____ Date

Jaime C. Schorr, Chief Procurement Officer

Vendor

DocuSigned by:
David Luce 9/22/2020
Signature _____ Date

David Luce, Commercial Account Representative

Bureau of Business Management – Division of Procurement Services
State of Maine – Department of Administrative and Financial Services
9 State House Station
Augusta, Maine 04333-0009

Contract Number
MA 18P 19041900000000000156

Tel. (207) 624-7340
Fax. (207) 287-6578

EXTENSION OF MASTER AGREEMENT CONTRACT

Commodity Item: Bulk Diesel Vehicle Fuel for Various State Agencies

Contractor: DEAD RIVER CO

Mater Agreement Competitive Bid RFQ: 19031900000000000273

Contract Period Extended To: 08/17/2020 to 05/31/2021

Extended Contract Pricing: The fixed price is \$1.8400 per gallon for Bulk Diesel Vehicle Fuel for Maine Veterans Cemetery See contract for margin pricing for 1,006,800 gallons. If reserved gallons have been exhausted see contract for rates for statewide location.

Scope Change: No Scope Change

Extension Clause: State is exercising 3rd optional renewal period on resulting from competitive bid.

Agreement to Extend Contract:

In accordance with the above referenced Extension Clause, the undersigned agrees to continue in effect said Contract MA 18P 19041900000000000156 through May 31, 2021 with all terms, conditions remaining as shown in the original contract.

Dollar value the vendor has recorded that State of Maine has spent on this contract from 05/08/19 to present:
\$3,744,326.62


Agreement to extend Master Agreement MA 18P 19041900000000000156 authorized by:

State of Maine – Department of Administrative and Financial Services

DocuSigned by:

6D6427754DD0459...
Jaime C. Schorr, Chief Procurement Officer 9/22/2020
Date

And

Dead River CO
DocuSigned by:

CA7366C3CB7E4D3...
David Luce, Commercial Account Representative 9/22/2020
Date

RIDERS

<input checked="" type="checkbox"/>	The following riders are hereby incorporated into this Contract and made part of it by reference: (check all that apply)
<input checked="" type="checkbox"/>	Rider A – Scope of Work and/or Specifications
<input checked="" type="checkbox"/>	Rider B – Terms and Conditions
<input type="checkbox"/>	Rider C – Exceptions
<input checked="" type="checkbox"/>	Debarment Form
<input checked="" type="checkbox"/>	Municipality Political Subdivision and School District Participation Certification – Appendix D from RFQ
<input checked="" type="checkbox"/>	Dead River Fixed Price Extension
	Other – Safety Data Sheet

RIDER A
Scope of Work and/or Specifications
MA 18P 19041900000000000156

Commodity: Bulk Diesel Vehicle Fuel for Various State Agencies

Contract Period: 8/17/20 to 5/31/21

Vendor Contact Person: The vendor contact person will help consumers place orders, inquire about orders that have not been delivered, all shipping issues, quality issues and any issues pertaining to the Master Agreement (MA) contract. All orders not submitted through a Delivery Order will be sent through the vendor contact person. The vendor contact person for this MA is: Name: David Luce Tel: (207) 358-5787 Email: david.luce@deadriver.com

Prices: Prices are with shipping terms of “Free on Board (FOB) – Destination”. The State intends for this to mean that all goods shall be priced to include shipping charges, if any, to the State’s desired location. The “FOB – Destination” shipping term is also intended to mean that the State shall not bear any responsibility for the goods in question until the State takes possession of them at the destination point of delivery.

Quantities: It is understood and agreed that the MA will cover the actual quantities required by the State over the length of the contract.

Ordering Procedures: The Department shall order fuel as needed and the vendor will issue invoices promptly after fuel is delivered. The Department will issue confirming Delivery Orders (DO) upon receipt of correct invoice. The Department will pay invoices net 30 days.

Using Departments: The primary using departments of this Master Agreement are: ALL

Shipping Points: The items covered by this MA may be requested for and expect to be shipped statewide.

Delivery: The vendor is responsible for the delivery of material in first class condition at the point of delivery, and in accordance with good commercial practice.

Specifications

As per the specifications defined in RFQ19031900000000000273, the Vendor will provide bulk Diesel fuel to various state agencies. Upon request, fuel shall be delivered to locations statewide.

Fuel Types: The vendor shall provide diesel fuel to state agencies upon request. This amendment incorporates extends the end date to May 31, 2021.

Rate: Agencies will utilize any remaining gallons of locked in diesel at the rate previously purchased. Once locked in gallons have been used, pricing will revert the Fixed Margin Price of \$0.2580 per gallon over OPIS Rack Daily Price for the remaining contract period.

In accordance with the above referenced RFQ and extension clause, the undersigned agrees to continue in effect said Contract No MA 18P 1904190000000000156 through May 31, 2021, with all terms, conditions remaining as shown in the original contract.

RIDER B
TERMS AND CONDITIONS

- 1. DEFINITIONS:** The following definitions are applicable to these standard terms and conditions:
 - a. The term “Buyer” or “State” shall refer to the Government of the State of Maine or a person representing the Government of the State of Maine.
 - b. The term “Department” or “DAFS” shall refer to the State of Maine Department of Administrative and Financial Services.
 - c. The term “Bureau” or “BGS” shall refer to the State of Maine Bureau of General Services.
 - d. The term “Division” shall refer to the State of Maine Division of Purchases.
 - e. The term “Contractor”, “Vendor”, or “Provider” shall refer to the organization that is providing goods and/or services through the contract to which these standard terms and conditions have been attached and incorporated.
 - f. The term “Contract” or “Agreement” shall refer to the contract document to which these standard terms and conditions apply, taking the format of a Buyer Purchase Order (BPO) or Master Agreement (MA) or other contractual document that is mutually agreed upon between the State and the Contractor.

- 2. WARRANTY:** The Contractor warrants the following:
 - a. That all goods and services to be supplied by it under this Contract are fit and sufficient for the purpose intended, and
 - b. That all goods and services covered by this Contract will conform to the specifications, drawing samples, symbols or other description specified by the Division, and
 - c. That such articles are merchantable, good quality, and free from defects whether patent or latent in material and workmanship, and
 - d. That all workmanship, materials, and articles to be provided are of the best grade and quality, and
 - e. That it has good and clear title to all articles to be supplied by it and the same are free and clear from all liens, encumbrances and security interest.

Neither the final certificate of payment nor any provision herein, nor partial nor entire use of the articles provided shall constitute an acceptance of work not done in accordance with this agreement or relieve the Contractor liability in respect of any warranties or responsibility for faulty material or workmanship. The Contractor shall remedy any defects in the work and pay any damage to other work resulting therefrom, which shall appear within one year from the date of final acceptance of the work provided hereunder. The Division of Purchases shall give written notice of observed defects with reasonable promptness.

3. TAXES: Contractor agrees that, unless otherwise indicated in the order, the prices herein do not include federal, state, or local sales or use tax from which an exemption is available for purposes of this order. Contractor agrees to accept and use tax exemption certificates when supplied by the Division as applicable. In case it shall ever be determined that any tax included in the prices herein was not required to be paid by Contractor, Contractor agrees to notify the Division and to make prompt application for the refund thereof, to take all proper steps to procure the same and when received to pay the same to the Division.

4. PACKING AND SHIPMENT: Deliveries shall be made as specified without charge for boxing, carting, or storage, unless otherwise specified. Articles shall be suitably packed to secure lowest transportation cost and to conform to the requirements of common carriers and any

applicable specifications. Order numbers and symbols must be plainly marked on all invoices, packages, bills of lading, and shipping orders. Bill of lading should accompany each invoice. Count or weight shall be final and conclusive on shipments not accompanied by packing lists.

5. DELIVERY: Delivery should be strictly in accordance with delivery schedule. If Contractor's deliveries fail to meet such schedule, the Division, without limiting its other remedies, may direct expedited routing and the difference between the expedited routing and the order routing costs shall be paid by the Contractor. Articles fabricated beyond the Division's releases are at Contractor's risk. Contractor shall not make material commitments or production arrangements in excess of the amount or in advance of the time necessary to meet delivery schedule, and, unless otherwise specified herein, no deliveries shall be made in advance of the Division's delivery schedule. Neither party shall be liable for excess costs of deliveries or defaults due to the causes beyond its control and without its fault or negligence, provided, however, that when the Contractor has reason to believe that the deliveries will not be made as scheduled, written notice setting forth the cause of the anticipated delay will be given immediately to the Division. If the Contractor's delay or default is caused by the delay or default of a subcontractor, such delay or default shall be excusable only if it arose out of causes beyond the control of both Contractor and subcontractor and without fault of negligence or either of them and the articles or services to be furnished were not obtainable from other sources in sufficient time to permit Contractor to meet the required delivery schedule.

6. FORCE MAJEURE: The State may, at its discretion, excuse the performance of an obligation by a party under this Agreement in the event that performance of that obligation by that party is prevented by an act of God, act of war, riot, fire, explosion, flood or other catastrophe, sabotage, severe shortage of fuel, power or raw materials, change in law, court order, national defense requirement, or strike or labor dispute, provided that any such event and the delay caused thereby is beyond the control of, and could not reasonably be avoided by, that party. The State may, at its discretion, extend the time period for performance of the obligation excused under this section by the period of the excused delay together with a reasonable period to reinstate compliance with the terms of this Agreement.

7. INSPECTION: All articles and work will be subject to final inspection and approval after delivery, notwithstanding prior payment, it being expressly agreed that payment will not constitute final acceptance. The Division of Purchases, at its option, may either reject any article or work not in conformity with the requirements and terms of this order, or re-work the same at Contractor's expense. The Division may reject the entire shipment where it consists of a quantity of similar articles and sample inspection discloses that ten (10%) percent of the articles inspected are defective, unless Contractor agrees to reimburse the Division for the cost of a complete inspection of the articles included in such shipment. Rejected material may be returned at Contractor's risk and expense at the full invoice price plus applicable incoming transportation charges, if any. No replacement of defective articles of work shall be made unless specified by the Division.

8. INVOICE: The original and duplicate invoices covering each and every shipment made against this order showing Contract number, Vendor number, and other essential particulars, must be forwarded promptly to the ordering agency concerned by the Vendor to whom the order is issued. Delays in receiving invoice and also errors and omissions on statements will be considered just cause for withholding settlement without losing discount privileges. All accounts are to be carried in the name of the agency or institution receiving the goods, and not in the name of the Division of Purchases.

9. ALTERATIONS: The Division reserves the right to increase or decrease all or any portion of the work and the articles required by the bidding documents or this agreement, or to eliminate all or any portion of such work or articles or to change delivery date hereon without invalidating this Agreement. All such alterations shall be in writing. If any such alterations are made, the contract amount or amounts shall be adjusted accordingly. In no event shall Contractor fail or refuse to continue the performance of the work in providing of articles under this Agreement because of the inability of the parties to agree on an adjustment or adjustments.

10. TERMINATION: The Division may terminate the whole or any part of this Agreement in any one of the following circumstances:

- a. The Contractor fails to make delivery of articles, or to perform services within the time or times specified herein, or
- b. If Contractor fails to deliver specified materials or services, or
- c. If Contractor fails to perform any of the provisions of this Agreement, or
- d. If Contractor so fails to make progress as to endanger the performance of this Agreement in accordance with its terms, or
- e. If Contractor is adjudged bankrupt, or if it makes a general assignment for the benefit of its creditors or if a receiver is appointed because of its insolvency, or
- f. Whenever for any reason the State shall determine that such termination is in the best interest of the State to do so.

In the event that the Division terminates this Agreement in whole or in part, pursuant to this paragraph with the exception of 8(f), the Division may procure (articles and services similar to those so terminated) upon such terms and in such manner as the Division deems appropriate, and Contractor shall be liable to the Division for any excess cost of such similar articles or services.

11. NON-APPROPRIATION: Notwithstanding any other provision of this Agreement, if the State does not receive sufficient funds to fund this Agreement and other obligations of the State, if funds are de-appropriated, or if the State does not receive legal authority to expend funds from the Maine State Legislature or Maine courts, then the State is not obligated to make payment under this Agreement.

12. COMPLIANCE WITH APPLICABLE LAWS: Contractor agrees that, in the performance hereof, it will comply with applicable laws, including, but not limited to statutes, rules, regulations or orders of the United States Government or of any state or political subdivision(s) thereof, and the same shall be deemed incorporated herein by reference. Awarding agency requirements and regulations pertaining to copyrights and rights in data. Access by the grantee, the subgrantee, the Federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives to any books, documents, papers and records of the Contractor which are directly pertinent to that specific contract for the purpose of making audit, examination, excerpts, and transcriptions. Retention of all required records for three years after grantees or subgrantees make final payments and all other pending matters are closed. Compliance with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act, (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). (Contracts, subcontracts, and subgrants of amounts in excess of \$100,000). Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).

13. INTERPRETATION: This Agreement shall be governed by the laws of the State of Maine as to interpretation and performance.

14. DISPUTES: The Division will decide any and all questions which may arise as to the quality and acceptability of articles provided and installation of such articles, and as to the manner of performance and rate of progress under this Contract. The Division will decide all questions, which may arise as to the interpretation of the terms of this Agreement and the fulfillment of this Agreement on the part of the Contractor.

15. ASSIGNMENT: None of the sums due or to become due nor any of the work to be performed under this order shall be assigned nor shall Contractor subcontract for completed or substantially completed articles called for by this order without the Division's prior written consent. No subcontract or transfer of agreement shall in any case release the Contractor of its obligations and liabilities under this Agreement.

16. STATE HELD HARMLESS: The Contractor agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, material men, laborers and other persons, firm or corporation furnishing or supplying work, services, articles, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by the Contractor in the performance of this Agreement.

17. SOLICITATION: The Contractor warrants that it has not employed or written any company or person, other than a bona fide employee working solely for the Contractor to solicit or secure this Agreement, and it has not paid, or agreed to pay any company, or person, other than a bona fide employee working solely for the Contractor any fee, commission, percentage, brokerage fee, gifts, or any other consideration, contingent upon, or resulting from the award for making this Agreement. For breach or violation of this warranty, the Division shall have the absolute right to annul this agreement or, in its discretion, to deduct from the Agreement price or consideration, or otherwise recover the full amount of such fee, commission, percentage, brokerage fee, gifts, or contingent fee.

18. WAIVER: The failure of the Division to insist, in any one or more instances, upon the performance of any of the terms, covenants, or conditions of this order or to exercise any right hereunder, shall not be construed as a waiver or relinquishment of the future performance of any such term, covenant, or condition or the future exercise of such right, but the obligation of Contractor with respect to such future performance shall continue in full force and effect.

19. MATERIAL SAFETY: All manufacturers, importers, suppliers, or distributors of hazardous chemicals doing business in this State must provide a copy of the current Material Safety Data Sheet (MSDS) for any hazardous chemical to their direct purchasers of that chemical.

20. COMPETITION: By accepting this Contract, Contractor agrees that no collusion or other restraint of free competitive bidding, either directly or indirectly, has occurred in connection with this award by the Division of Purchases.

21. INTEGRATION: All terms of this Contract are to be interpreted in such a way as to be consistent at all times with this Standard Terms and Conditions document, and this document shall take precedence over any other terms, conditions, or provisions incorporated into the Contract.

RIDER C
EXCEPTIONS

N/A

Vendor Name: Dead River MA #: MA 18P 1904190000000000156 Date:9-21-20

Certification Regarding
Debarment, Suspension and Other Responsibility Matters
Primary covered Transactions

This Certification is required by the Regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' Responsibilities. The Regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

(BEFORE SIGNING THIS CERTIFICATION, PLEASE READ THE ATTACHED INSTRUCTIONS WHICH ARE AN INTEGRAL PART OF THE CERTIFICATION)

1. The prospective primary participant certifies to the best of its knowledge and belief that it and its principals:
 - a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - b. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction, violation of Federal or State anti-trust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - c. Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1.b of this Certification; and
 - d. Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

David Luce , Commercial Account Representative

DocuSigned by:

David Luce

9/22/2020

CA7356C3CB7E4D3...

Signature

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the Certification set out below.
2. The inability of a person to provide the Certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the Certification set out below. The Certification or explanation will be considered in connection with the Maine Department of Transportation determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a Certification or an explanation shall disqualify such person from participation in this transaction.
3. The Certification in this clause is material representation of fact upon which reliance was placed when the Maine Department of Transportation determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous Certification, in addition to other remedies available to the Federal Government, the Maine Department of Transportation may terminate this transaction for cause of default.
4. The prospective primary participant shall provide immediate written notice to the Maine Department of Transportation if at any time the prospective primary participant learns its Certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “person”, “primary covered transaction”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the Maine Department of Transportation for assistance in obtaining a copy of these regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Maine Department of Transportation.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions” provided by the Maine Department of Transportation, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Lists of Parties Excluded from Procurement or Nonprocurement Programs.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Maine Department of Transportation may terminate this transaction for cause or default.

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**2020-2021 ULSD FIXED PRICE AGREEMENT
STATE OF MAINE**

Date: August 14th, 2020

Account No: TBD

Dead River Company ("DRC") agrees to sell, and State of Maine, Department of Administrative and Financial Services ("Customer") agrees to purchase 1,006,800 gallons of Ultra-Low Sulfur Diesel ("Committed Gallons") for the period of August 17th, 2020 through May 31th, 2021 ("Contract Period") to be delivered at various locations (See attached for both current DRC and proposed locations).

The fixed price per gallon ("Contract Price") is \$1.8400 per gallon (including all taxes except sales, use, excise, or new taxes) for a total amount of \$1,852,512.00.

This Contract ("Contract") provides that Dead River Company ("DRC") will sell, and the above-named customer ("You") will buy exclusively from DRC, the gallons of product shown above ("Committed Gallons") for the period shown above ("Contract Period") at the fixed price shown above, including all taxes except sales, excise and/or use tax ("Contract Price"), to be delivered at the following address(es) shown above under the following conditions:

1. All gallons delivered will be temperature compensated.
2. **Requirements and Purchase Obligation:** You agree to purchase from DRC ALL requirements of the fuel type indicated for the Contract Period and shall not purchase from any other source during such period. The price of any fuel purchased more than the Committed Gallons will be reflected in the pricing addendum.
3. **Payment Terms Service and Equipment:** Charges to your account beyond the fuel charges described above (for example, for service or equipment purchases) shall be paid in full within 30 days of an approved invoice.
4. **Automatic Delivery:** Unless otherwise directed by Customer, DRC will deliver to the addresses attached automatically, based upon projections calculated from historical consumption and weather. You should notify DRC of any changes in consumption expectations. Automatic delivery will continue after the term of the Contract Period. Also, please keep the path to the fill location clear for DRC's driver.
5. **Limitation of Liability:** DRC shall not be liable for any indirect or consequential damages whatsoever. Furthermore, DRC shall not be liable for damages incurred as a result of failure or delay in delivery of fuel as a result of circumstances beyond DRC's control, including but not limited to, force majeure,

supplier interruptions, government mandated allocation, Your failure to notify DRC of consumption changes, or Your failure to keep the fill location clear.

6. New Taxes: The Contract Price set forth above may be increased by an amount equal to the increment of new taxes imposed on fuel sales not in effect at the time this Agreement was made.

7. Termination by DRC: DRC may terminate this Agreement and pursue legal remedies if You breach this Agreement in any way, including failing to pay for goods and services and/or the Committed Gallons covered by this Agreement, and/or by notifying DRC that you do not intend to fulfill the purchase requirements in paragraph 2, DRC may elect to cease deliveries and pursue damages and/or Liquidated Damages as set forth below.

8. Damages, and Liquidated Damages: See addendum

9. NOTICE OF PRICE RISK TO CONSUMER: The fixed price in this Agreement is based upon market conditions prevailing at the time of signing. You understand and agree that the price is fixed for the season regardless of whether market price goes up or down. You are agreeing to all the Committed Gallons regardless of weather conditions reducing Your fuel requirements.

10. Downside Protection Option: If a Downside Protection fee is indicated in the Program Terms, you will pay the lower of DRC's standard daily retail price or the Fixed Rate Per Gallon for the Covered Gallons. If there is no downside protection fee indicated above, you have declined to purchase downside protection and will be charged the Fixed Rate Per Gallon for the Covered Gallons. Please initial indicating Your acceptance of the downside protection program: (shall initial)

11. Fixed Price Contract Compliance: DRC's performance is secured by fixed price contracts and inventory in compliance with ME - 10 M.R.S.A. 1110(2), NH - R.S.A. §339:79, and VT - 9 V.S.A. §2461(e).

12. Gallons in Excess of Contract: For gallons in excess of contract, please see schedule below:

Region	Total Fixed Margin
Bangor	.2580
Capitol	.2580
Downeast	.2580
Midcoast	.2580
Northern	.2580
Southern	.2580
Western	.2580

13. THIS IS A LEGALLY BINDING CONTRACT. PLEASE READ CAREFULLY BEFORE SIGNING BELOW. THIS AGREEMENT IS NOT BINDING UNLESS A SIGNED COPY IS RECEIVED BY DRC BY THE DEADLINE SPECIFIED ABOVE.

DEAD RIVER COMPANY

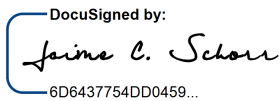
By: *David R. Luce-CAM*

Name: David Luce

Title: Commercial Account Manager

Date: 9/22/2020

STATE OF MAINE

By:  DocuSigned by:
Jaime C. Schorr
6D6437754DD0459...

Name: Jaime C. Schorr

Title: .Chief Procurement officer

Date: 9/22/2020

**Dead River Company “Program Terms” and “Terms and Conditions” Document
(hereinafter “Agreement”)
between Dead River Company and the State of Maine**

- 1) If by April 8th, 2021, the State of Maine appears to not be in a position to utilize the ultra-low sulfur diesel gallons covered in the above named Agreement, the Parties agree to discuss alternative resolutions to any Damages set forth in the above named Agreement, or as set forth below.
- 2) In the event that a volume shortfall results in actual financial damages to Dead River Company, the State of Maine agrees to compensate Dead River Company for the amount of said financial damage to be calculated in a reasonable manner and not as a penalty. Prior to the calculation of actual financial damages, Dead River Company must demonstrate to the State of Maine that it has made all commercially reasonable efforts to resell the State of Maine’s volume shortfall gallons.
- 3) Per Paragraph 2 above, in the event that Dead River Company is able to resell the State of Maine’s volume shortfall gallons at a price higher than its initial purchase price, and therefore not experience any actual financial damages, then Dead River Company shall provide the State of Maine with an account credit in an amount matching the monetary benefit received from the sale of Maine’s unused gallon commitment.
- 4) It is hereby recognized by both parties that the above named Agreement and this amendment are a result of State of Maine request for quotes.

DEAD RIVER COMPANY

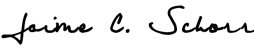
By: 
CA7356C3CB7E4D3...

Name: David Luce

Title: Commercial Account Manager

Date: 9/22/2020

STATE OF MAINE

By: 
6D6437754DD0459...

Name: Jaime C. Schorr

Title: Chief Procurement Officer

Date: 9/22/2020