



**FIXED PRICE AGREEMENT  
STATE OF MAINE**

Date: 12/1/2016

Account No: [4101601](#)

Dead River Company ("DRC") agrees to sell, and State of Maine, Department of Administrative and Financial Services ("Customer") agrees to purchase 1,940,352 gallons of #2 fuel oil ("Committed Gallons") for the period of December 1, 2016 through April 30, 2018 ("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 \$1.8030 per gallon (including all taxes except sales, use, or new taxes) for a total amount of \$3,498,454.03.

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 and 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 in excess of 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:** DRC will deliver to the address(es) listed above 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 of 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:

<u>Region</u>	<u>OPIS Rack Location</u>	<u>Total Fixed Margin</u>	<u>Total Delivered</u>
Bangor	BANGOR	<b>0.1278</b>	<i>(OPIS Rack Price + fixed Margin)</i>
Capitol	PORTLAND	<b>0.2098</b>	<i>(OPIS Rack Price + fixed Margin)</i>
Downeast	BANGOR	<b>0.2466</b>	<i>(OPIS Rack Price + fixed Margin)</i>
Midcoast	PORTLAND	<b>0.1301</b>	<i>(OPIS Rack Price + fixed Margin)</i>
Northern	BANGOR	<b>0.2478</b>	<i>(OPIS Rack Price + fixed Margin)</i>

**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:



Name:

David Luce

Title:

Commercial Acct.  
Manager

Date: December 1, 2016

STATE OF MAINE

By:



Name: Kevin Scheirer

Title: Director

Date: December 1, 2016