



Town of Deerfield  
PO Box 159  
Deerfield, NH 03037

May 9, 2022

Thank you for the opportunity to quote on your fuel requirements. Listed below is the fixed and variable pricing that Irving Energy is able to offer to the Town of Deerfield commencing June 1, 2022 through to May 31, 2023 for variable and September 1, 2023 to May 31, 2023 for fixed. Please reach out to me if you have any questions on this quote.

**Variable Diesel price On May 9<sup>th</sup>: \$5.4013/gal**

**Fixed Diesel price - \$3.939 /gal (September 1, 2022 to May 31, 2023)**

Please note the following criteria and details around our submittal:

- 1) The fixed rate diesel is valid until May 9, 2022 at 11:59pm. If the quote is accepted the attached contract would need to be signed and returned before 11:59pm. If no contract is sent back signed, then the fixed price is no longer valid but can be refreshed at any time upon request.
- 2) The fixed rate offered is only for 6,000g of diesel (**gallons were adjusted to reflect September to May timeframe**). If the gallons are consumed before the end of the contract pricing would revert to a variable rate that will fluctuate daily with the market.
- 3) Our liquidated damages for fixed pricing are as follows: If Customer takes delivery of less than 95% of the Total Product Volume obligation during the Pricing Term or refuses to purchase Product from Irving as required under this Agreement (each an "Underlift"), then Customer shall pay to Irving a fee as liquidated damages (the "Fee"). The Fee shall be based on the Underlift gallons and shall be an amount equal to the number of the Underlift gallons multiplied by the difference (in no event less than zero) between: (a) the Contract Price plus \$0.30, and (b) the average Irving Commercial Portsmouth, New Hampshire Rack price from the start date to end of the Pricing Term or the date of termination if sooner. The parties agree that the Fee is a reasonable estimate of Irving's damages and is not intended to be a penalty. Irving shall also be entitled to recover any Collection Expenses (defined below) associated with collecting the Fee, but Irving shall not be entitled to recover and other monetary damages by reason of Customer's failure to purchase the Total Product Volume beyond the Fee. The variable rate quoted is \$0.195 over the Irving Commercial fuel rack. The rack will fluctuate daily but the markup over rack will not change during the duration of the contract.

**IRVING ENERGY**

190 Commerce Way • Portsmouth, NH 03801 • [irvingoil.com](http://irvingoil.com)



- 4) The variable rate quoted is \$0.195 over the Irving Commercial fuel rack. The rack will fluctuate daily but the markup over rack will not change during the duration of the contract.
- 5) Irving would also offer the employees of the Town of Deerfield discounted pricing for their homes. The discount would be \$0.10 off the residential posted price for #2 fuel and \$0.15 off the residential posted price for propane. We require that the accounts be on automatic delivery and have credit terms for this offer.
- 6) Please note the following fee is not included in the above pricing and are billed separately on all invoices. This fee can change anytime throughout the contract if the state advises.
  - i. Environmental Fee - \$0.01625/gal
  - ii. LUST Fee - \$0.001
- 7) All locations must be up to code for delivery and are the responsibility of the customer. Before delivery commences site surveys would be completed to ensure compliance and that deliveries can be made safely.
- 8) Payment is due within 30 days of invoice or subject to finance charges at our corporate rate.

Sincerely,

Tara Frost  
Government Accounts Manager  
603-559-8834

**IRVING ENERGY**

190 Commerce Way • Portsmouth, NH 03801 • [irvingoil.com](http://irvingoil.com)

**Irving Energy  
Commercial Fixed Price Supply Agreement**

**SELLER - Irving Energy ("Irving")**  
190 Commerce Way  
Portsmouth, NH 03801

Contact: Tara Frost  
Phone: 1-603-559-8834

Email: cpp@irvingoil.com  
Fax: 1-888-235-1444

**PURCHASER - Town of Deerfield ("Customer")**  
PO BOX 159 Acct #: 1927019  
Deerfield, NH  
Delivery Location: all  
Contact: John Harrington  
Email: bos@townofdeerfieldnh.com  
Phone: 603-463-8811 Fax:

**CONTRACT PRICE EFFECTIVE DATE:** September 1, 2022

In consideration of the mutual covenants and agreements hereinafter set forth, Highlands Fuel Delivery, LLC (dba Irving Energy) ("Irving") and Customer, intending to be legally bound, agree as follows (the "Agreement"). Irving agrees to sell and deliver to Customer and Customer agrees to purchase and accept delivery from Irving at Customer's delivery location(s) stated below (the "Delivery Location(s)"), the volumes (collectively the "Total Product Volume") of petroleum products stated below (the "Product"). The price applicable to the Total Product Volume shall be the Contract Price per gallon (the "Contract Price") stated below. The Contract Price is exclusive of Taxes and Fees (as designed in Section 1 of the attached General Terms and Conditions, which Taxes and Fees shall be paid by the Customer).

<b>PRODUCT:</b>	Clear Diesel
<b>TOTAL PRODUCT VOLUME (GAL.):</b>	6,000
<b>CONTRACT PRICE (PER GAL.):***</b>	\$3.939
<b>PAYMENT TERMS:</b>	Net 30 (payment due 30 days from invoice date)

**\*\*\*This price is only guaranteed if the Customer accepts this Agreement (as detailed below) by 11:59 P.M. EST on May 9, 2022**  
If Irving receives Customer's accepted Agreement after that time, Irving may (but shall not be required to) accept this Agreement.

Account Name	Account #	Gallons by Account	Product Code	Delivery Location
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0

Account Name	Account #	Gallons by Account	Product Code	Delivery Location
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0
0	0	0		0

Additional Customer Accounts (if any) shall be noted by an incorporated written Attachment B to this Agreement. The following table represents Customer's good faith estimate as to its monthly Product lifting schedule:


Total Gallons	Sep-22	Oct-22	Nov-22	Dec-22	Jan-23	Feb-23	Mar-23	Apr-23	May-23	Jun-23	Jul-23	Aug-23
6,000	667	667	667	667	667	667	667	667	667	0	0	0

This agreement shall be deemed finalized and binding only after this Agreement has been accepted by Customer and Irving (either electronically or physically, as provided below) and customer successfully completes Irving's credit approval process. This Contract Price will be effective as of the Contract Price Effective Date above and shall expire on May 31, 2023, or when the Total Product Volume has been delivered, whichever comes first ("the Pricing Term"). This Agreement expressly includes by reference the General Terms and Conditions attached hereto as Attachment A and (if applicable) Attachment B. **If this Agreement was provided by Irving to Customer by fax**, Customer may accept this Agreement by physically signing below and returning it to Irving by fax, and Irving's acceptance shall be shown by Irving physically signing below and transmitting the fully signed agreement to Customer at the Customer's fax or e-mail address noted above. **If this Agreement has been provided to Customer by e-mail from Irving**, it may be accepted by Customer electronically in accordance with directions set forth in Irving's e-mail, with no physical signature required, and may be accepted by Irving in a subsequent e-mail to Customer.

**Irving Energy**

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**Town of Deerfield**

By (Required):   
(Signature)  
Printed Name (Required): Frederick J. McGarry  
Title: Chair, Board of Selectmen  
Date (Required): 10 May 2022

For Internal Use Only	TC1: 0	Plan Code: UC22 36394	SI	Purchase: P	Contr #: GB01927019-30
-----------------------	--------	-----------------------	----	-------------	------------------------

## ATTACHMENT A - GENERAL TERMS AND CONDITIONS

### 1. PRICE; VOLUME MEASUREMENT; TAXES AND FEES; TITLE; PAYMENT; CREDIT

The Contract Price shall apply to the Total Product Volume (as identified on first page of this Agreement) only, and shall only be valid during the Pricing Term. The price for any Product in excess of the Total Product Volume, and/or delivered after the expiration of the Pricing Term, shall be equal to the applicable variable price as reflected by Irving's records on the day of delivery. Total Product Volume shall be measured by truck meter at time of delivery, converted to a 60° Fahrenheit temperature corrected measurement (except where prohibited by law). In addition to the Contract Price, Customer is responsible for and agrees to pay any government taxes, duties and fees now existing or hereafter arising, relating to the storage, production, sale, transportation, delivery, or use of the Product (collectively, the "Taxes and Fees"), **except that Vermont Customers with aggregate tank capacity of 2,000 gallons or less shall not pay government fees.** Title to and risk of loss of all Product(s) delivered hereunder shall pass to the Customer upon leaving the permanent hose connection of Irving's delivery truck. Customer shall pay invoices for Product when due and any invoices not paid when due shall be subject to service and late payment charges of

one and one half (1.5%) per month (18% per annum) from the date due. Customer may choose to pay by preauthorized electronic debit. Nothing in this Agreement shall be construed as obligating Irving to extend credit to Customer. Irving's credit terms and election to extend credit to Customer may be modified or revoked at any time by Irving, in Irving's absolute discretion.

### 2. PERIODIC DELIVERY

Product will be delivered on an Automatic Delivery or Will Call Delivery basis as requested by Customer. For accounts existing prior to the date this Agreement is finalized, delivery will continue according to the existing method applicable to each account until Customer requests a change in delivery method. **NOTE: accounts operating on an Automatic Delivery basis when the end of the Pricing Term and the exhaustion of the Total Product Volume have occurred will continue to receive deliveries of Product on an Automatic Delivery basis, and Customer will pay for all deliveries, unless and until Customer instructs Irving to discontinue Automatic Delivery and Irving has a reasonable opportunity to implement the change.** "Automatic Delivery" means Irving will schedule Product delivery based on consumption data calculated by Irving. "Will Call Delivery" means Customer will call Irving to schedule delivery based on an as-needed basis. Irving shall have a reasonable time to respond to a Will Call delivery request and to any requested change in delivery method. Regardless of delivery method, Irving cannot guarantee that Customer will not run out of Product. Irving shall not be obligated to supply Customer with Product (and may allocate Product to Customer and Irving's other customers in its sole discretion) if any condition beyond the control of Irving (including, without limitation labor disturbances, shortage of equipment, labor, materials or Product) affects Irving's ability to perform any of its obligations under the Agreement.

### 3. LIQUIDATED DAMAGES FOR UNDERLIFTING

If Customer takes delivery of less than 95% of the Total Product Volume during the Pricing Term or refuses to purchase Product from Irving as required under this Agreement (each an "Underlift"), then Customer shall pay to Irving a fee as liquidated damages (the "Fee"). The Fee shall be based on the Underlift gallons and shall be an amount equal to the number of the Underlift gallons multiplied by the difference (in no event less than zero) between: (a) the Contract Price plus \$0.30, and (b) the average Irving Commercial Portsmouth, New Hampshire Rack price from the Contract Price Effective Date to (a) the date of termination of this Agreement by Irving, or (b) the expiration date of said Pricing Term, if earlier, or (c) said Contract Price Effective Date, if later (for the avoidance of doubt, in case (c) said average price is a single price: the price on the Contract Price Effective Date). The parties agree that the Fee is a reasonable estimate of Irving's damages and is not intended to be a penalty. Irving shall also be entitled to recover any Collection Expenses (defined below) associated with collecting the Fee, but Irving shall not be entitled to recover and other monetary damages by reason of Customer's failure to purchase the Total Product Volume beyond the Fee.

### 4. COMPLIANCE WITH LAWS

The Customer shall comply with all applicable laws relating to the Product and shall maintain the Delivery Location such that delivery does not pose an unreasonable risk of harm to persons, property or the environment. Irving shall have the right, but not the obligation, to inspect any tank into which Customer proposes Irving deliver Product. Any such inspection shall be for Irving's sole benefit and Customer shall not be entitled to rely on any such inspection for any purpose.

### 5. SPECIFICATIONS; WARRANTIES; LIABILITY LIMITATION

Irving warrants that the Product sold hereunder shall meet Irving's specifications in effect at the time and place of delivery. No other warranties, whether expressed or implied, whether of merchantability, fitness for a particular purpose or otherwise (except as to title) shall apply to Product sold hereunder. Under no circumstances shall: (1) Irving be responsible for any consequential, incidental, special, or punitive damages to Customer arising from or relating to Irving's performance or non-performance of this Agreement; or (2) Irving's liability arising from this Agreement exceed the amount actually paid to Irving by Customer during the Pricing Term of this Agreement. Customer warrants that Customer has all requisite power and authority to enter into and perform Customer's obligations under this Agreement, and that there are no contracts (including, but not limited to contracts with any other supplier of Product) orders, or other matters which would prevent Customer from fulfilling its obligations under this Agreement.

### 6. INDEMNITY

The Customer shall release, indemnify, and hold harmless Irving and its affiliates, all their directors, officers, shareholders, employees, and agents from and against any and all claims, losses, damages, and expenses (including attorney and other legal fees and expenses), however arising out of (1) Customer's acts, negligence, or willful misconduct, or (2) Customer's breach of this Agreement.

### 7. SUSPEND OR TERMINATE

Customer may not terminate this Agreement until the end of the Pricing Term, and may not use another supplier of Product until the Total Product Volume has been delivered. Irving may, in its sole discretion, without prejudice to any other additional rights, remedies, or claims that it may have under this Agreement or otherwise, suspend or terminate this Agreement if: (1) Customer breaches any of its obligations under the Agreement; (2) if Irving has a reasonable belief that Customer is anticipatorily rejecting any part or all of Customer's obligation to purchase and accept the Total Product Volume under the terms of this Agreement; or (3) Customer becomes insolvent or files for bankruptcy or is, in Irving's reasonable opinion, expected to be unable or unwilling to pay its debts generally as the same become due. In the event of termination for any of the foregoing reasons, the Customer shall pay the Fee (as described in Section 3 above). Customer agrees to reimburse Irving for all collection expenses, including attorney and other legal fees or costs, arising from this Agreement (including those arising in any bankruptcy proceeding) (collectively the "Collection Expenses").

### 8. NOTICE BY CUSTOMER OF ALLEGED BREACH

Customer shall give Irving immediate notice and a detailed description of any alleged breach or error by Irving arising from this Agreement to the following address: Irving Energy, Attn: Contract Administration, 10 King Square South, Saint John NB E2L 0G3.

### 9. ASSIGNMENT/WAIVER/OTHER IMPORTANT TERMS

Any assignment of this Agreement without Irving's written consent shall be void; Irving may withhold such consent in its sole discretion. Customer shall pay Irving for all amounts due under this Fuel Agreement, regardless of whether such Fuel Agreement contemplates Product delivery to, or use by, other parties. There are no third party beneficiaries to this Fuel Agreement. Irving's rights under this Agreement shall not be affected by any previous waiver or course of dealing. Any litigation arising from the subject matter of this Fuel Agreement may only be brought in a state or federal court located in the state of the Delivery Location, and shall be governed by and interpreted in accordance with the laws of the state of the Delivery Location, exclusively, without giving effect to its principles of conflict of laws. This written Agreement constitutes the entire agreement between the parties on the subject of this Agreement. No amendment to this Agreement shall be effective unless in a writing signed and delivered by Irving. Irving and Customer each warrant that they have caused this Agreement to be accepted by their duly authorized representatives. This Agreement is entered into exclusively for business purposes and for no personal, family or household purposes. Capitalized terms in these General Terms and Conditions not otherwise defined herein shall have the meaning set forth on the first page of this Agreement.

