



# State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES  
OFFICE OF THE COMMISSIONER  
25 Capitol Street – Room 120  
Concord, New Hampshire 03301

VICKI V. QUIRAM  
Commissioner  
(603) 271-3201

JOSEPH B. BOUCHARD  
Assistant Commissioner  
(603) 271-3204

February 23, 2017

His Excellency, Governor Christopher T. Sununu  
and the Honorable Council  
State House  
Concord, New Hampshire 03301

## **REQUESTED ACTION**

Authorize the Department of Administrative Services to amend a contract with W.B. Mason Co., (VC 174526) of 59 Centre Street, Brockton MA 02303 for Janitorial Supplies – Food Service Products. This amendment is required to increase the contract price limitation by \$253,000, from \$117,000 to \$370,000, to reflect the correct sales volume of the contract. There will be no change to the contract completion date of January 31, 2018, and the amendment will be effective upon Governor and Council approval. The original contract was approved by Governor and Council on December 16, 2015, item #110.

Funding is provided through individual agency expenditures; none of which shall be permitted unless there are sufficient appropriated funds to cover the requested expenditure.

## **EXPLANATION**

The original janitorial supplies contract ran for five years from October 1, 2009 through September 30, 2014. DAS financial system reports show that the average annual spend, calculated using historical usage from the previous contract, was approximately \$1.65M.

When it was time to rebid this contract, the new contract was similarly bid as a single contract for three years with a provision for an additional 2-year extension. However, in an attempt to attract more bidders and competition, it was requested that DAS break up the janitorial supplies contract into seven (7) individual categories and rebid the new contract. The seven categories are can liners, paper products, food service products, gloves, miscellaneous, hand soap and chemicals.

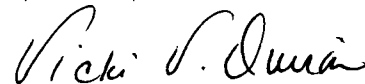
DAS now realizes that a mistake was made in determining the contract limits when the separate contracts were issued. This error was realized during the first year of the contract when the limits were almost reached. To correct this error, the price limitation on each of the contracts needs to be changed. Because we now have actual data from the first three quarterly reports on all six contracts, we are able to better allocate the limits, as calculated below.

Janitorial Supplies Contract – WB Mason						
Contract Name	Can Liners	Paper Products	Food Service	Gloves	Miscellaneous	Hand Soap
Contract Number	8001950	8001951	8001952	8001953	8001954	8001955
Quarter 1	\$28,329	\$75,506	\$35,562	\$9,294	\$15,413	\$18,891
Quarter 2	\$45,112	\$92,987	\$32,596	\$9,503	\$33,551	\$35,085
Quarter 3	\$48,688	\$142,886	\$54,005	\$12,639	\$41,513	\$37,968
Totals	\$122,129	\$311,379	\$122,163	\$31,436	\$90,477	\$91,944
Averages	\$40,710	\$103,793	\$40,721	\$10,479	\$30,159	\$30,648
Not to Exceed	\$366,390	\$934,137	\$366,489	\$94,311	\$271,431	\$275,832
Rounded Up	\$370,000	\$935,000	\$370,000	\$95,000	\$275,000	\$280,000

DAS took the average quarterly amount, multiplied it by eight (8) quarters and added one quarter as a buffer to estimate the price limitation for each respective contract. Adding each of the separate limits results in a total 2-year price limitation of the six (6) contracts of \$2.32M. The annual spend history of the previous contract, which included all six (6) categories plus chemicals, was \$1.65 million (2 year cost approximately \$3.3M).

Based on the foregoing, I am respectfully recommending approval of the amendment to the contract with W.B. Mason Co. for Janitorial Supplies – Food Service Products.

Respectfully submitted,



Vicki V. Quiram  
Commissioner

**FIRST AMENDMENT TO THE CONTRACT  
BY AND BETWEEN THE STATE OF NEW HAMPSHIRE  
THROUGH THE DEPARTMENT OF ADMINISTRATIVE SERVICES  
AND  
W.B. MASON CO. INC  
CONTRACT #8001952**

This First Amendment (hereafter called the "Amendment") dated this 12 day of December, 2016 by and between the State of New Hampshire acting through the Department of Administrative Services (hereinafter referred to as the "State") and W.B. Mason Co. Inc. (hereinafter referred to as the "contractor");

WHEREAS, pursuant to an agreement (hereinafter called the "Agreement") which was approved by NH Governor and Executive Council on December 16, 2015, item #110, and set to expire January 31, 2018, W.B. Mason Co. Inc. agreed to provide janitorial supplies – food service products to the State of New Hampshire upon the terms and conditions specified in the Agreement; and

WHEREAS, pursuant to Section 18 of the Agreement, the Agreement may be amended only by a written instrument executed by the parties thereto and only after approval of such amendment by the Governor and Executive Council; and

WHEREAS, the Contractor and the State wish to amend the Agreement to increase the price limitation on the Agreement; and

NOW THEREFORE, in consideration of the foregoing, and the covenants and conditions contained in the Agreement and set forth herein, the parties hereto do hereby agree as follows:

1. Delete in its entirety Form Number P-37, item 1.8 Price Limitation and substitute the following:

1.8 Price Limitation; \$370,000.00

2. Except as specifically amended herein, all other provisions of the Agreement, approved by Governor and Executive Council on December 16, 2015, Item #110, shall remain in full force and effect.

W.B. Mason Co. Inc.

By: \_\_\_\_\_

Jeff DePaul  
(Print Name)

Title: \_\_\_\_\_

Regional VP

Date: \_\_\_\_\_

12.12.14

NOTARY PUBLIC/JUSTICE OF THE PEACE

On the 12 day of December, 2014,

There appeared before me, the state and county foresaid a person who satisfactorily identified himself as

Jeff DePaul

And acknowledge that he executed this document indicated above.

In witness thereof, I hereunto set my hand and official seal.

[Signature]

(Notary Public/Justice of the Peace)

My commission expires:

9.7.2021

(Date)

STATE OF NEW HAMPSHIRE

By: \_\_\_\_\_

Vicki V. Quiram

Vicki V. Quiram  
(Print Name)

Title: Commissioner

Department of Administrative Services

Date: \_\_\_\_\_

2/23/17

OFFICE OF THE ATTORNEY GENERAL

By: \_\_\_\_\_

[Signature]

John J. Conforti  
(Print Name)

Title: \_\_\_\_\_

Asst. Atty Genl

Date: \_\_\_\_\_

2/27/17

The foregoing contract amendment was approved by the Governor and Executive Council of New Hampshire on

Signed: \_\_\_\_\_

(Print Name)

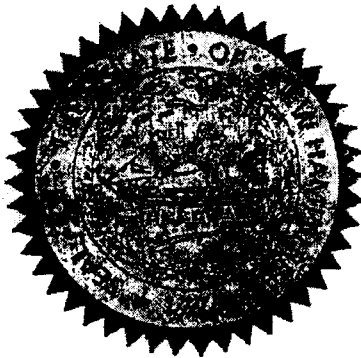
Title: \_\_\_\_\_



State of New Hampshire  
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that W. B. Mason Co., Inc. a(n) Massachusetts corporation, is authorized to transact business in New Hampshire and qualified on December 5, 2002. I further certify that all fees and annual reports required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, I hereto  
set my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 7<sup>th</sup> day of July, A.D. 2016

A handwritten signature in cursive script, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State



December 12, 2016

RE: CERTIFICATE OF AUTHORITY

I, Chris Mooney, Chief Financial Officer of W.B. Mason Co. Inc., hereby certify that the following W.B. Mason Co., Inc. officer has full signing authority on behalf of W.B. Mason Co. Inc. for all contracts, agreements and other legally binding documents:

Jeff DePaul

Regional Vice-President

Very truly yours

*Christopher J. Mooney*

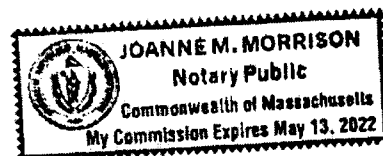
Christopher J Mooney

Chief Financial Officer

W.B. Mason Co., Inc.

Corporate Seal

*Joanne M. Morrison*





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
09/20/2016

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER  
Aon Risk Services Northeast, Inc.  
Boston MA Office  
One Federal Street  
Boston MA 02110 USA

CONTACT  
NAME:  
PHONE (AC, Ho, Ext): (866) 283-7122 FAX (AC, Ho): (800) 383-0105

E-MAIL  
ADDRESS:

INSURED  
W.B. MASON CO., INC.  
59 Centre Street  
Brockton MA 02403 USA

INSURER(S) AFFORDING COVERAGE		NAC#
INSURER A:	Hartford Fire Insurance Co.	19682
INSURER B:	National Fire Ins. Co. of Hartford	20478
INSURER C:	Trumbull Insurance Company	27120
INSURER D:	National Fire & Marine Ins Co	20079
INSURER E:	Navigators Insurance Co	42307
INSURER F:		

## COVERAGES

CERTIFICATE NUMBER: 57006385686

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. Limits shown are as requested.

TYPE OF INSURANCE	ADDN INSD (INS, WVD)	POLICY NUMBER	POLICY EFF DATE (MM/DD/YYYY)	POLICY EXP DATE (MM/DD/YYYY)	LIMITS
<b>B</b> X COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER X POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <input type="checkbox"/> OTHER		501446885	09/30/2016	09/30/2017	EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Per occurrence) \$1,000,000 MED EXP (Any one person) \$25,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMPOF AGO \$2,000,000
<b>A</b> AUTOMOBILE LIABILITY  X ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY		08 CSE 535802	09/30/2016	09/30/2017	COMBINED SINGLE LIMIT (Per accident) \$1,000,000 BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident) Uninsured Motorist \$300,000
<b>E</b> X UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION		8016UMR84728RIV SIR applies per policy terms & conditions	09/30/2016	09/30/2017	EACH OCCURRENCE \$10,000,000 AGGREGATE \$10,000,000
<b>C</b> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/OWNER EXCLUDED? (Mandatory in MA) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/H N N/A	08WN539800	09/30/2016	09/30/2017	X PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$1,000,000 E.L. DISEASE-EA EMPLOYEE \$1,000,000 E.L. DISEASE-POLICY LIMIT \$1,000,000
<b>D</b> Excess Auto Lia		42-XSF-100062-04	09/30/2016	09/30/2017	Each Occurrence \$3,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
Certificate Holder is included as Additional Insured in accordance with the policy provisions of the General Liability Coverage policy.

## CERTIFICATE HOLDER

## CANCELLATION

State of New Hampshire, Administrative Services, Purchasing Agent, Matt Johnson or his/her successor, Bureau of Purchase and Property  
25 Capital Street, Rm 102  
Concord NH 03301 USA

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

*Aon Risk Services Northeast Inc.*

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ACORD 25 (2016/03)

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Holder Identifier :

Certificate No : 57006385686

JANITORIAL SUPPLY CONTRACTS - WB MASON									
Contract Name	Can Liners	Paper Products	Food Service	Gloves	Miscellaneous	Hand Soap			
Contract Number	8001950	8001951	8001952	8001953	8001954	8001955			
Q1	\$28,329.45	\$75,505.89	\$35,561.88	\$9,293.68	\$15,413.02	\$18,891.32			
Q2	\$45,112.43	\$92,987.09	\$32,596.44	\$9,502.73	\$33,551.23	\$35,085.32			
Q3	\$48,688.95	\$142,886.42	\$54,004.65	\$12,638.98	\$41,513.41	\$37,967.68			
TOTAL	\$122,130.83	\$311,379.40	\$122,162.97	\$31,435.39	\$90,477.66	\$91,944.32	\$769,530.57	8 qtr + 1 qtr buffer	\$2,308,591.71
Averages	\$40,710.28	\$103,793.13	\$40,720.99	\$10,478.46	\$30,159.22	\$30,648.11	\$256,510.19		
Not to Exceed	\$366,392.49	\$934,138.20	\$366,488.91	\$94,306.17	\$271,432.98	\$275,832.96	\$2,308,591.71		

Rounded Up      \$370,000.00      \$935,000.00      \$370,000.00      \$95,000.00      \$275,000.00      \$280,000.00      \$2,325,000.00

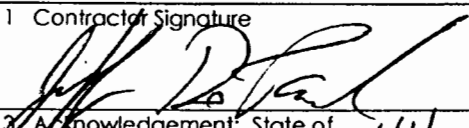
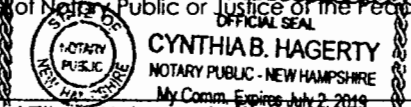


**Notice:** This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

**AGREEMENT**

The State of New Hampshire and the Contractor hereby mutually agree as follows:

**GENERAL PROVISIONS****1. IDENTIFICATION.**

1.1 State Agency Name State of New Hampshire Administrative Services		1.2 State Agency Address State House Annex, Room 102 25 Capital Street Concord, NH 03301	
1.3 Contractor Name W.B. Mason Co., Inc.		1.4 Contractor Address 59 Centre St Brockton, MA 02303	
1.5 Contractor Phone Number (603) 851-1712	1.6 Account Number	1.7 Completion Date January 31, 2018	1.8 Price Limitation \$117,000.00
1.9 Contracting Officer for State Agency Katie Daley, Purchasing Agent		1.10 State Agency Telephone Number (603) 271-3135	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory Regional V.P.	
1.13 Acknowledgement: State of <u>NH</u> , County of <u>Merrimack</u> On <u>11/18/15</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  <u>Cynthia Hagerty</u>			
1.13.2 Name and Title of Notary Public or Justice of the Peace <u>Cynthia Hagerty</u>			
1.14 State Agency Signature <u>Vicki V. Quiram</u> Date: <u>11-25-15</u>		1.15 Name and Title of State Agency Signatory Vicki V. Quiram, Commissioner	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) (if applicable) By: <u>Jill Fenechun</u> On: <u>11/25/15</u>			
1.18 Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

**2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

**3. EFFECTIVE DATE/COMPLETION OF SERVICES.**

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

**4. CONDITIONAL NATURE OF AGREEMENT.**

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

**5. CONTRACT PRICE/PRICE LIMITATION/ PAYMENT.**

5.1 The contract price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

**6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and shall take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

**7. PERSONNEL.**

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or

performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

#### **8. EVENT OF DEFAULT/REMEDIES.**

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default"):

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

#### **9. DATA/ACCESS/CONFIDENTIALITY/ PRESERVATION.**

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda, papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

**10. TERMINATION.** In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

**11. CONTRACTOR'S RELATION TO THE STATE.** In the performance of this Agreement the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

**12. ASSIGNMENT/DELEGATION/SUBCONTRACTS.** The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

**13. INDEMNIFICATION.** The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims, liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

#### **14. INSURANCE.**

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

#### 15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. **WAIVER OF BREACH.** No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. **NOTICE.** Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. **AMENDMENT.** This Agreement may be amended, waived or discharged only by an instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

19. **CONSTRUCTION OF AGREEMENT AND TERMS.** This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.


20. **THIRD PARTIES.** The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. **HEADINGS.** The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. **SPECIAL PROVISIONS.** Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. **SEVERABILITY.** In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement shall remain in full force and effect.

24. **ENTIRE AGREEMENT.** This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

  
11/18/15

**EXHIBIT A  
SCOPE OF SERVICES**

**1. INTRODUCTION**

W.B. Mason Co., Inc. (hereinafter referred to as the "Contractor") hereby agrees to provide the State of New Hampshire (hereinafter referred to as the "State"), with Janitorial Supplies – Food Service Products in accordance with the bid submission in response to State Request for Bid #1795-16 and as described herein.

**2. CONTRACT DOCUMENTS**

This Contract consists of the following documents ("Contract Documents") in order of precedence:

- a. State of New Hampshire Terms and Conditions, General Provisions Form P-37
- b. EXHIBIT A            Scope of Services
- c. EXHIBIT B            Payment Terms
- d. EXHIBIT C            Special Provisions
- e. EXHIBIT D            RFB 1795-16

**2. TERM OF CONTRACT**

This Contract shall commence on February 1, 2016, with the approval of Governor and Executive Council, and shall terminate on January 31, 2018, a period of approximately two (2) years, unless extended for additional terms.

The Contract may be extended for up to three (3) one-year terms thereafter under the same terms, conditions and pricing structure upon the mutual agreement between the Contractor and State, and the with the approval of the Governor and Executive Council.

The maximum term of the Contract (including all extensions) shall not exceed five (5) years.

**3. SCOPE OF WORK**

**a) MINIMUM ORDERS:**

There shall be no minimum order whether in item quantity or dollar value associated with this Contract.

**b) EQUIPMENT:**

The Contractor shall be responsible for replacing and servicing any and all equipment needed for its product line(s), if applicable (e.g., soap dispensers, toilet paper dispensers, paper towel dispensers, etc.), at no additional cost.

**c) CUSTOMER SUPPORT SERVICES:**

The Contractor shall provide sales support for the items and equipment specified in the contract. The Contractor shall have a central contact point, available during State business hours, for resolving customer support problems.

- o Pre-Sales Support shall include, but is not limited to:

Contractor Initials WB  
Date 11/18/15

- Product Quotes
  - Product Research
  - Product Recommendation
  - Product Specifications
  - Assistance to State Agencies in finding products that best meet their needs.
- o Post-Sales Support shall, include but is not limited to:
- Delivery Information
  - Product Return
  - Invoice/Billing Issues
  - Training on equipment and products when requested
  - Facilitate Resolution of Product Problems

**d) USAGE REPORTING:**

The successful Contractor shall be required to submit a quarterly and annual usage report for analysis to determine contract compliance. At a minimum, the Report shall include:

- Contract Number
- Utilizing Agency and Eligible Participant
- All Products Purchased (showing the manufacturer, item, part number, list price and the final cost after discount.)
- Total Cost of all Products Purchased

**e) WEBSITE & ONLINE ORDERING:**

The successful Contractor must maintain a website and the capability to accept on-line orders from any State of New Hampshire agency. Website shall show all items included in the contract and State of New Hampshire pricing. It shall also be the responsibility of the Contractor to provide the most current catalog(s), price list(s) and/or other update(s) to state agencies, sub-divisions, and eligible participants if requested. The ordering website must also be capable of accepting the State's Procurement Card (P-Card), which is a VISA credit card.

**f) DELIVERY TIME:**

- The Contractor shall be required to accomplish delivery of any item ordered under the contract within five (5) business days.
- Orders must be delivered between the hours of 7:30 AM - 2:30 PM (EST). Any deviation in work hours shall be pre-approved by the Contracting Officer.
- No premium charges shall be paid for any off-hour work.
- The Contractor shall deliver any emergency requested item ordered under the contract within 24 hours from the placement of the order. The State shall clearly define the item(s) as an emergency when placing the order.
- The use of a private carrier to make delivery does not relieve the Contractor from the responsibility of meeting the delivery requirement.

**g) RETURNED GOODS:**

- The Contractor must resolve all order and invoice discrepancies within five (5) business days from notification.
- Products returned due to quality issues, duplicate shipments, over-shipments, etc. must be picked up by the Contractor within ten (10) business days of notification with no restocking or freight charges, and must be replaced with specified products or the agency shall be refunded/credited for the full purchase price.

*[Signature]*  
11/18/15

- Unauthorized substitutions for any products are not allowed.
- Standard stock products ordered in error by the State of New Hampshire must be returned for full credit within fifteen (15) business days of receipt. Products must be in re-saleable condition (original container, unused) and there shall be no restocking fee charged for these products. The using agency shall be responsible for any freight charges to return these items to the Contractor.

**h) ESTABLISHMENT OF ACCOUNTS:**

- Each State of New Hampshire agency must have its own individual customer account number. There shall be instances where sub-sections of an agency shall need their own individual customer account numbers, as well. Should any State of New Hampshire agency place an order under the contract, the Contractor agrees to establish an account within three business days from the date the order is placed. However, there must be no delay in any shipment; the agency must receive the items ordered in accordance with the delivery time required under the "Delivery Time" section of this contract, as if an account already exists for them.
- Accounts shall be set up for the use of P-Cards. Cards shall not be charged until the products have been shipped.
- The Contractor shall not commence work until a conference is held with each agency, at which representatives of the Contractor and the State are present. The conference shall be arranged by the requesting agency (State).

**i) OTHER REQUIREMENTS:**

- a) The State shall require correction of defective work or damages to any part of a building or its appurtenances when caused by the Contractor's employees, equipment or supplies. The Contractor shall replace in satisfactory condition all defective work and damages rendered thereby or any other damages incurred. Upon failure of the Contractor to proceed promptly with the necessary corrections, the State may withhold any amount necessary to correct all defective work or damages from payments to the Contractor.
- b) The work staff shall consist of qualified persons completely familiar with the products and equipment they shall use. The Contracting Officer may require the Contractor to dismiss from the work such employees as deems incompetent, careless, insubordinate, or otherwise objectionable, or whose continued employment on the work is deemed to be contrary to the public interest or inconsistent with the best interest of security and the State.
- c) The Contractor or its personnel shall not represent themselves as employees or agents of the State.
- d) While on State property, employees shall be subject to the control of the State, but under no circumstances shall such persons be deemed to be employees of the State.
- e) All personnel shall observe all regulations or special restrictions in effect at the State Agency.
- f) The Contractor's personnel shall be allowed only in areas where services are being performed. The use of State telephones is prohibited.

*JP*  
*11/15/15*

- g) If sub-contractors are to be utilized, please include information regarding the proposed sub-contractors including the name of the company, their address, contact person and three references for clients they are currently servicing.

#### **4. TERMINATION**

The State of New Hampshire has the right to terminate the Contract at any time by giving the Contractor thirty (30) days' written notice.

#### **5. OBLIGATIONS AND LIABILITY OF THE CONTRACTOR**

The Contractor shall furnish all supplies strictly pursuant to, and in conformity with, the specifications described in State RFB #1795-16, as described herein, and under the terms of this Contract(s).

The Contractor agrees to hold the State of NH harmless from any and all liability arising out of injuries or damage caused by the performance of the Contract. The Contractor shall agree that any damage to building(s), materials, equipment or other property during the performance of the service shall be repaired at its own expense, to the State's satisfaction.

#### **6. DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION LOWER TIER COVERED TRANSACTIONS**

The Contractor certifies, by signature of this Contract, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal Department or Agency.

#### **7. INSURANCE**

Certificate of insurance amounts must be met and maintained throughout the term of the contract and any extensions as per the P-37, section 14 and cannot be cancelled or modified until the State receives a 10 day prior written notice.

*JP*  
*11/18/15*



**EXHIBIT B**  
**PAYMENT TERMS**

**CONTRACT PRICE**

The Contractor hereby agrees to provide Janitorial Supplies – Food Service Products in complete compliance with the terms and conditions specified in Exhibit A for an amount up to and not to exceed a price of \$117,000.00 for the term of the Contract; this figure shall not be considered a guaranteed or minimum figure; however it shall be considered a maximum figure from the effective date through the expiration date set as January 31, 2018.

**INVOICE**

Itemized invoices shall be submitted to the individual agency remit account after products have been delivered. Invoices shall clearly indicate the quantity, description, packaging, date delivered, and contract price. Invoices shall also clearly indicate that payment has been made via P-Card.

**PAYMENT**

Payments shall be made via P-Card. Cards shall not be charged until the products have shipped or been delivered.

	PRODUCT	DESCRIPTION	CASE PRICE
1	DART/DCC8J8	White Insulated Foam Cup, 8 oz, Height 3 1/2, top diameter 3 1/5", 40/25, 1000 per case	\$ 12.73
2	CSW/WB25016MFB	Medium weight, plastic spoon, poly, 1000 per case	\$ 3.80
3	SAALFELD/SLD4665100	Plate foam 8 7/8" white non-laminated 500 per case	\$ 9.25
4	CYRSTALWARE/MWPPFF	Fork, plastic, medium, white cutlery, 1000 per case	\$ 3.80
5	GOGO/PHC82050	Hot paper cup, 8oz, 1000 per case	\$ 19.75
6	CASCADES/CSD2699	Napkin, Dinner, 2-ply, 1/8 Fold, 15" x 15", White, 100 napkins per package, 30 packages per case	\$ 22.31
7	PACTIV/PCTYTD18803	Hinged lid container, foam, 3 compartments, 8"x8"x3", 150 per case	\$ 8.25
8	DINEX/BZL31110143	Plastic Disposable MUG lid, polystyrene, translucent, drink through, (for 8 oz cup), 1500 per case	\$ 18.00
9	DINEX/BZL31110130	Plastic Disposable BOWL lid, polystyrene, translucent, (for 9 oz bowl), 1000 per case	\$ 19.00
10	BOARDWALK/ BWKTRANSCUP9CT	Cold Cup, 9 oz, translucent, ribbed 25 packs of 100 cups per case	\$ 29.53
11	CYRSTALWARE/MWPPFK	Knife, plastic, medium weight, White cutlery, 1000 per case	\$ 3.80

**BALANCE OF PRODUCT LINE:**

For the term of the contract, the State may purchase other paper products from the Contractors Balance of Product Line. The discounted percentage off the manufacturer list price is 54.1 percent.

*AP*  
*11/18/15*

## EXHIBIT C

### SPECIAL PROVISIONS

There are no other special provisions of this contract.

*PP*  
*11/18/15*

**EXHIBIT D**

RFB #1795-16 is incorporated here within.

Contractor Initials DP  
Date 11/18/15

# State of New Hampshire

## Department of State

### CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that W. B. Mason Co., Inc. a(n) Massachusetts corporation, is authorized to transact business in New Hampshire and qualified on December 5, 2002. I further certify that all fees and annual reports required by the Secretary of State's office have been received.

In TESTIMONY WHEREOF, I hereto  
at my hand and cause to be affixed  
the Seal of the State of New Hampshire,  
this 2<sup>nd</sup> day of November, A.D. 2015



A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner  
Secretary of State

November 18, 2015



RE: CERTIFICATE OF AUTHORITY

I, Chris Mooney, Chief Financial Officer of W.B Mason Co. Inc., hereby certify that the following W.B. Mason Co., Inc., officer has full signing authority on behalf of W.B Mason Co. Inc. for all contracts, agreements and other legally binding documents:

Jeff DePaul

Regional Vice-President

Very truly yours,

  
Christopher J Mooney  
Chief Financial Officer

CORPORATE SEAL