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# CONTRACT FOR GOODS AND SERVICES

## BY AND BETWEEN

## METROPOLITAN AREA PLANNING COUNCIL

## AND

## Ace Endico Co. Inc.

This AGREEMENT, is the result of an emergency procurement conducted by Metropolitan Area Planning Council ["MAPC"], is made and entered into by and between the MAPC, a public body politic and corporate, established by Chapter 40B, Sections 24 through 29 of the Massachusetts General Laws, with its principal office at 60 Temple Place, Boston, Massachusetts 02111, and Ace Endico Co. Inc. ["Vendor"], with its principal office at 80 International Boulevard, Brewster, NY 10509. MAPC hereby acts as the collective purchasing agent for the Cities, Towns and School Districts ["Buyers"] of: Acton-Boxborough Regional Schools, Andover Public Schools, Arlington Public Schools, Ashland Public Schools, Assabet Valley Regional Technical High School, Auburn Public Schools, Ayer-Shirley RSD, Bellingham Public Schools, Belmont Schools, Berlin-Boylston, Billerica Public Schools, Blackstone-Millville RSD, Braintree Public Schools, Brookline Public Schools, Danvers Public Schools, Dartmouth Public Schools, Dedham Public Schools, Dracut Public Schools, East Longmeadow, Franklin County Technical School, Franklin Public Schools, Gateway Regional School District, Gloucester Public Schools, Greater Lawrence Technical School, Greenfield Public Schools, Hadley Public Schools, Hampshire Regional School District, Harvard Public Schools, Hingham Schools, Ipswich Public Schools, Keefe Regional Technical School, Littleton Public Schools, Ludlow Public Schools, Methuen Public Schools, Milford Public Schools, Milton Public Schools, Nashoba Regional, Needham Schools, North Attleboro Public Schools, Orange Elementary School District, Pioneer Valley Regional School District, Pittsfield Public Schools, Ralph C. Mahar Regional School District, Reading Public Schools, Silver Lake Regional & Kingston Public & Halifax, Smith Vocational and Agricultural High School, Somerville Public Schools, Southern Berkshire Regional School District, South Hadley, South Shore Regional Vo-Tech, Wachusett Regional School District, Wakefield Schools, Waltham Public Schools, Watertown Public Schools, Westfield Public Schools, Whitman-Hanson RSD, and any other school districts within the Commonwealth of Massachusetts.

Witnesseth that the parties AGREE as follows:

### Article I
### Background and Bid Coordinator

1. This AGREEMENT is the result of an emergency procurement conducted in accordance with M.G.L. c. 30B, Section 8 (Memorandum attached as Exhibit A). MAPC has entered into this two (2) month Agreement so as to ensure that Massachusetts K – 12 public schools will have sufficient groceries with which to provide children access to food in time for school openings in September 2023.
2. The Buyers receive the support of the Bid Coordinator, Tim Goossens of Food for Schools, tgoossens@food4schools.com, to determine the products they seek to purchase through this AGREEMENT. The Vendor is required to work with the Bid Coordinator in managing product information.
3. No bid item shall be deleted or discontinued by the Vendor unless previously approved by the Bid Coordinator.
4. Items no longer available for the duration of the contract may be replaced by a similar product at the same price as the original item with approval from the Bid Coordinator.

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5. MAPC is strictly the procurement agent for this Bid and is not responsible for the activities of the Bid Coordinator used by the participating Districts.

Article II
Services of the Vendor

6. The Vendor shall report, and be responsible, to MAPC or its designee as set forth on Exhibit B.
7. The Vendor will provide the goods and/or services as described in Exhibit C.
8. There shall be no amendment to this AGREEMENT without the written approval of MAPC. MAPC shall be under no obligation to pay for any goods provided or services performed by the Vendor.
9. The Vendor represents and warrants to MAPC as follows:

   i. That it and all its personnel (whether employees, agents or independent Vendors) are qualified and duly licensed as required by law and/or local municipal code to provide services and/or goods required by this AGREEMENT.

   ii. That it further agrees to perform services in a professional manner adhering to a reasonable standard of care and in accordance with all applicable State or Federal laws, rules and regulations.

   iii. That it will obtain any and all permits, bonds, insurance and other items required for the proper and legal performance of the work.

   iv. That it is not a party to any AGREEMENT, contract or understanding, which would in any way restrict or prohibit it from undertaking or performing its obligations hereunder in accordance with the terms and conditions of this AGREEMENT.

Article III
Performance of the Vendor

10. In the performance of service under this AGREEMENT, the Vendor acts at all times as an independent contractor. There is no relationship of employment or agency between MAPC, on the one hand, and the Vendor on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions aside from such control or directions as provided in this AGREEMENT which the parties view as consistent with their independent Vendor relationship.

11. The Vendor agrees to be responsible for and warrantee the work of any subcontractors it hires and that are listed in Exhibit D and will ensure their compliance with all legal, quality and performance The Vendor may not use subcontractors not named in Exhibit D without the prior written consent of MAPC, which will not unreasonably be withheld.

Article IV
Time of Performance

12. Time shall be of the essence in relation to the Vendor's performance under this AGREEMENT. Vendor shall complete performance as promised in its quote that accompanies the Buyer's purchase order or other document confirming its authorization to the Vendor to proceed. Reasonable extensions shall be granted by the Buyer at the written request of the Vendor, provided the justifying circumstances are documented by and are beyond the reasonable control of Vendor

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and without fault of Vendor. In the event of such an extension, all other terms and conditions of this AGREEMENT, except the dates of commencement and completion of performance, shall remain in full force and effect between the parties unless modified in writing.

**13.** In the absence of such an extension, liquidated damages shall be due to the Buyer in the amount of 0.payment (one-tenth of one percent) of the face value of the Vendor's quoted or modified purchase price for each day performance exceeds the promised date(s). Such liquidated damages may be acknowledged in Vendor's final invoice or taken by Buyer as a deduction to such final invoice.

**14.** Any dispute in the amount of liquidated damages shall be submitted to arbitration by either Buyer or Vendor through the American Arbitration Association within 10 (ten) business days of written notice given by the party declaring impasse. Vendor and Buyer agree to fully comply with the arbitrator's decision within a reasonable time.

## Article V
## Revisions in the Work to Be Performed

**15.** If during the Vendor's Time of Performance, Buyer requires revisions or other changes to be made in the scope or character of the work to be performed, Buyer will promptly notify Vendor in writing. For any changes to the scope of work, Vendor shall provide Buyer with a written quote of change in price and/or change in time of performance and shall proceed with such changes only upon written consent of Buyer, which shall be construed as a modification to Buyer's original purchase order.

**16.** The Buyer will neither unreasonably request revisions nor unreasonably withhold final acceptance of delivered products.

## Article VI
## Term of Agreement

**17.** The term of this AGREEMENT shall commence on date of execution, and will continue for two (2) Months until September 29, 2023.

**18.** The Vendor agrees to perform promptly upon execution of this AGREEMENT and will diligently and faithfully perform in accordance with the provisions hereof.

## Article VII
## Buy American Procedure

**19.** Compliance with and enforcement of the Buy American Provision in the National School Lunch Program, requires school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodity or products. There are limited exceptions to the Buy American Provision which allow for the purchase of products not meeting the "domestic" standard as described above ("non-domestic") in circumstances when use of domestic products is truly not practicable. These exceptions should be used as a last resort:

- The product is not produced or manufactured in the U.S. in sufficient and reasonable available quantities of a satisfactory quality; and/or
- Competitive bids reveal the costs of a U.S. product are significantly higher than the non-domestic product. For this AGREEMENT, significant is defined as 10% or more expensive than a like non-domestic item.

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20. The participating school districts will accept non-domestic items only if they meet one of the two criteria above.

21. The vendor certifies with the submission of the Buy American Attestation (Exhibit D) that all items included in this proposal comply with the above definition of "domestic".

## Article VIII
## Assignment

22. Neither party shall assign, transfer or otherwise dispose of this AGREEMENT or any of its rights hereunder or otherwise delegate any of its duties hereunder without the prior written consent of the other party. Any such attempted assignment or other disposition without such consent shall be null and void and of no force and effect.

## Article IX
## Indemnification

23. The Vendor agrees to indemnify and save MAPC and the Buyers harmless from any and all manner of suits, claims, or demands arising out of any errors, omissions or negligence by the Vendor (including all its employees or agents) in performing under this AGREEMENT, or any breach of the terms of this AGREEMENT, which constitute an obligation of the Vendor. The Vendor shall reimburse MAPC and the Buyers for any and all costs, damages, and expenses including reasonable attorney's fees which MAPC and the Buyers pay or become obligated to pay, by reason of such activities or breach. The provisions of this Section shall be in addition to and shall not be construed as a limitation on any other legal rights of MAPC and with respect to this AGREEMENT.

## Article X
## Insurance

24. The selected vendor shall at all times during the term of the contract maintain insurance in full force and effect acceptable to MAPC and the participating school districts. The selected vendor agrees to furnish MAPC with certificates of insurance or other evidence satisfactory to MAPC if requested.

| | |
|---|---|
| **WORKER'S COMPENSATION** | |
| Workers Compensation & Employers Liability | Per M.G.L. c. 149, s. 34 and c. 152 as amended. |
| **COMMERCIAL GENERAL LIABILITY** | |
| Personal Injury | $500,000 each occurrence<br>$1,000,000 aggregate |
| Property Damage | $500,000 each occurrence<br>$1,000,000 aggregate |
| **VEHICLE LIABILITY** | |
| Personal Injury | $500,000 each person<br>$1,000,000 aggregate |
| Property Damage | $300,000 |

25. The Vendor shall give MAPC 20 days (twenty) written notice and copies of documentation in the event of any change or cancellation of coverage.

DocuSign Envelope ID: 21E0CFF7-6C12-4F78-AAC7-01E55A1FE020

Article XI
Termination of
Agreement

**26.** Either MAPC or the Vendor may terminate this AGREEMENT for cause upon written notice given by the non-defaulting party. For the purposes of this provision, "cause" shall include the failure of a party to fulfill its material duties hereunder in a timely and satisfactory manner.

**27.** MAPC shall have the right to terminate this AGREEMENT for its convenience upon four (4) weeks' written notice.

**28.** Following termination of this AGREEMENT, the parties shall be relieved of all further obligations hereunder except that:

**29.** MAPC shall not be liable for payments for the services and/or expenses or lost profits of the Vendor in the event of termination.

**30.** The Vendor shall remain liable for any damages, expenses or liabilities arising under this AGREEMENT (including its indemnity obligations) with respect to work performed pursuant to the AGREEMENT.

Article XII
Entirety of Agreement

**31.** This AGREEMENT, together with its Exhibits, constitute the entire AGREEMENT between MAPC and the Vendor with respect to the matters set forth therein and may not be changed (amended, modified or terms waived) except by a writing signed by both parties. Any notices required or allowed shall be sent by receipt-verified mail, e-mail, fax or courier to the persons designated in Exhibit B.

Article XIII
Severability

**32.** In the event any provision of this AGREEMENT is found by a court of appropriate jurisdiction to be unlawful or invalid, the remainder of the AGREEMENT shall remain and continue in full force and effect.

Article IV
Governing
Law and
Jurisdiction

**33.** This AGREEMENT shall be governed by, construed and enforced in accordance with the laws of the Commonwealth of Massachusetts. MAPC, Vendors, and Buyers agree to submit their respective jurisdiction and venue to the state and federal courts in the Commonwealth of Massachusetts to resolve any disputes or disagreements that may arise under any provision of this AGREEMENT.

Article XV
Notice

**34.** Except as otherwise expressly provided in this AGREEMENT, any decision or action by MAPC relating to this AGREEMENT, its operation, or termination, shall be made only by MAPC or its designated representative identified in Exhibit B.

DocuSign Envelope ID: 21E0CFF7-6C12-4F78-AAC7-01E55A1FE020

Article XVI
Vendor Certifications/Forms

**35.** Execution of this AGREEMENT is dependent upon the Vendor completing all required certifications/forms as provided in Exhibit D and F.

Article XVII
Subcontractors

**36.** The use of subcontractors is acceptable. If the Vendor intends to perform any or all work related to this contract through subcontractor(s), said subcontractor(s) names, business affiliations, and addresses must be attached with this AGREEMENT and referenced to the appropriate work to be performed. The Vendor agrees to be responsible to ensure the legal and contractual compliance of named subcontractor(s). Use of subcontractor(s) not named in this AGREEMENT is prohibited.

Article XVIII
Warranty

**37.** The Vendor warrants that: (1) that the goods they sell are merchantable, (2) that they are fit for the purpose for which they are being purchased, (3) that they are absent any latent defects, and (4) that they are in conformity with any sample that may have been presented to the Buyer.

Article XIX
Method of Acquisition

**38.** At the discretion of each Buyer, commercial credit cards (e.g. American Express, MasterCard, etc.) may be used to make purchases. All contract pricing will remain in effect, as will the buyers' tax-exempt status.

Article XX
Ordering and Delivery of Goods

**39.** Delivery dates and times will be agreed upon by the Buyers and will normally take place Monday-Friday between 6:00 a.m. and 1:00 p.m. Deliveries arriving outside times agreed upon may result in refusal of delivery or billing of distributor for excess labor charges.

Article XXI
Returns

**40.** The Vendor guarantees that upon inspection, any defective or inferior supplies shall be replaced without additional costs to the Buyers. The Vendor will assume any additional cost accrued by the Buyers.

Article XXII
Product Recall

**41.** The Vendor must, upon receipt of a recall notice from the manufacturer or government, notify MAPC and the bid coordinator immediately by e-mail (Tim Goossens at: tgoossens@food4schools.com). Appropriate credit must be given for all recalled products.

DocuSign Envelope ID: 21E0CFF7-6C12-4F78-AAC7-01E55A1FE020

Article XXIII
Invoicing/Delivery Slips

**42.** A delivery slip must be left at each school upon delivery, complete with the unit price, extensions and totals. Delivery slips must be signed by the Food Service manager or designee before responsibility will be accepted for payment of bills for these schools. If a delivery slip is not signed and the product delivered is in excess of what has been ordered, the Buyers will be required to only pay for the amount ordered.

Article XXIV
Payment by Buyers

**43.** MAPC is not an eligible Buyer under this AGREEMENT. Neither is it a party to any resulting transactions, nor can it be held liable for false representations or non-payment by eligible parties which include Buyers.

**44.** Buyers are not obligated to make payment to the Vendor other than in a manner consistent with their normal payment schedules and as bound by normal commerce. Payments shall be made in U.S. dollars. The Vendor may not require cash payment nor accept cash for any transaction associated with this AGREEMENT.

**45.** Payment terms may vary by Buyers' policies and they will be agreed upon by the Vendor and individual Buyers.

**46.** Purchases made by the Buyers are exempt from payment of federal excise taxes and any such taxes must not be included. Federal excise tax exemption certificates, if required, will be furnished by the Buyers on request. The Buyers are further exempt from payment of Federal Transportation tax and the Commonwealth of Massachusetts sales tax.

Article XXV
Rebate and Coupon Information

**47.** The Vendor assumes responsibility to pass on all rebate and coupon information to all Buyers.

Article XXVI
Auditing

**48.** MAPC and the Buyers retain the right to audit the Vendor's invoices for any and all purchased items. The audit may take place at any location suitable to the Buyers, including at the Vendor's office. The Vendor will be given no less than 2 weeks' notice to assemble all relevant documents for review.

Article XXVII
Responsibilities of the Buyers

**49.** As per 7 CFR 210.21 Subpart E, Buyers in their role as school food authorities are the party that must comply with the requirements of 7 CFR Part 3016 and 7 CFR Part 3019 as applicable, which implement the applicable Office of Management and Budget Circulars, concerning the procurement of all goods and services with school food service account funds. While the contract for purchases made through this AGREEMENT will be held by MAPC with the Vendor, the Buyers use of this contract by does not relieve them from their obligations under federal law and regulation. School food authorities remain responsible for settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in connection with the federal school lunch program. MAPC will support Buyers in whatever way it can to satisfy such issues.

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IN WITNESS WHEREOF, the parties have caused this AGREEMENT to be executed by their duly authorized officers on the date written below.

For MAPC by or on behalf of the Cities, Towns and School Districts identified as Buyers in this AGREEMENT.

DocuSigned by:
x Marc Draisen
6D73E3E389D948C...

Signature

8/12/2023

Date

Marc Draisen

Name

Executive Director

Title

For the VENDOR:

x

Signature

8/9/23

Date

Vice President Arc Enjoy New Eng

* Title

Jason C. Magnell

* Name

* Affix Corporate Seal

(or mark "*n/a*")

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# METROPOLITAN AREA PLANNING COUNCIL
# FEDERAL FUNDS
# CONTRACT RIDER

## Recitals

**WHEREAS,** the Contract to which this Rider is attached is funded, either in whole or in part, by federal funds;

**WHEREAS,** such federal funds may include Coronavirus State and Local Fiscal Recovery Funds ["SLFRF"] made available through the American Rescue Plan, or funds from other federal sources;

**WHEREAS,** the use of federal funds requires the parties, including but not limited to, recipients, subrecipients, and contractors, to comply with various applicable statutes and regulations including 2 C.F.R. §§ 200.318-327;

**WHEREAS,** 2 C.F.R. § 200.327 requires the inclusion of applicable provisions in certain contracts funded in whole or in part by federal funds.

Witnesseth that the parties have AGREED as follows

## Article I
## Introduction

**1.1** The following contract provisions, if applicable, are incorporated into the Contract to which this Rider is attached. In the event of any conflict between the Contract and this Rider, the provisions in this Rider shall control.

**1.2** If the following contract provisions are rescinded or revised, the parties agree to revise this Rider accordingly and make any other changes necessitated by such revisions.

## Article II
## Contract Provisions Applicable to All Types of Federally Funded Contracts

**2.1 Rights to Inventions Made Under a Contract or Agreement**

(a). In the event that this Contract is funded by a federal award meeting the definition of "funding agreement" under 37 C.F.R. § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 C.F.R. Part 401, "Right to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

**2.2 Debarment and Suspension**

(a). This provision applies in the event that a contract or subcontract has a value that exceeds $25,000, or requires the consent of an official of a federal agency, or is a contract for federally required audit services. The subrecipient or contractor certifies that neither the subrecipient, contractor, or subcontractor is a party listed on the government wide exclusions in the System for Award Management ["SAM"], in

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accordance with the OMB guidelines at 2 C.F.R. § 180 that implements Executive Orders 12549 (3 C.F.R. Part 1986 Comp., p. 189) and 12689 (3 C.F.R. Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

**2.3 Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment**

(a). Pursuant to 2 C.F.R. § 200.216, subrecipient or contractor certifies that it or its subcontractors shall not procure or obtain, extend or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, Section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i). For the purpose of public safety, security of government facilities, physical security, surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

(ii). Telecommunications or video surveillance equipment or services provided by such entities or using such equipment;

(iii). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b). Subrecipient or contractor shall insert the above clause in all subcontracts and other contractual instruments.

**2.4 Clean Air Act and Federal Water Pollution Control Act**

**(a). Clean Air Act**

(i). If the Contract value exceeds $150,000, the subrecipient or contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, 42 U.S.C. § 7401 et seq.

The subrecipient or contractor agrees to report each violation to the federal awarding agency and understands and agreed that the federal awarding agency will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency Regional Office.

The subrecipient or contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance.

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(b). **Federal Water Pollution Control Act**

(i). The subrecipient or contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the federal Water Pollution Control Act, as amended, 33 U.S.C. § 1241 et seq.

The subrecipient or contractor agrees to report each violation to the federal awarding agency and understands and agrees that the federal awarding agency will, in turn, report each violation as required to assure notifications to the federal awarding agency and the appropriate Environmental Protection Agency Regional Office.

The subrecipient or contractor agrees to include these requirements in each subcontract exceeding $150,000 financed in whole or in part with federal assistance.

2.5 **Byrd Anti-Lobbying Clause and Certification**

(a). **Byrd Anti-Lobbying Amendment**

(i). Subrecipients or contractors who apply or bid for an award of more than $100,000 shall file the required certification. Each tier certifies to the tier above that it will not and has not used federally appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. §1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the federal awarding agency.

(b). **Required Certification for Awards Exceeding $100,000**

(i). If applicable, subrecipients and contractors must sign and submit the following certification to the awarding authority with each bid or offer exceeding $100,000.

Appendix A, 44 C.F.R. Part 18 – Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of their knowledge and belief, that:

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of

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Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all contractors shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. § 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Bidder certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the bidding party understands and agrees that the provisions of 31 U.S.C. Ch. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

## Article III
## Contract Provisions Applicable to Federally Funded Construction Contracts

**3.1 Equal Employment Opportunity Clause**

(a). During the performance of this Contract, the Contractor agrees as follows:

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of

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such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.

(4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

*Provided*, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, that if the applicant so participating is a state or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

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The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contracts and subcontracts by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

**3.2 Davis-Bacon Act**

(a). If this Contract is a prime construction contract employing laborers or mechanics with a value that exceeds $2000, the Davis-Bacon Act, 40 U.S.C. §§ 3141-3144 and 3146-3148 and its related regulations found at 29 C.F.R. Part 5 apply.

(b). The subrecipient or contractor acknowledges that the decision to award this contract is conditioned upon the subrecipient or contractor's acceptance of the wage determination, and upon continuing compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). Pursuant to the Davis-Bacon Act, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in the Secretary of Labor's wage determinations, incorporated into this Contract. Subrecipient or contractor further acknowledges and understands that subrecipient or contractor shall be required to pay wages not less than once a week.

(c). Davis-Bacon Prevailing Wage Certification

Subrecipient or contractor certifies that it and all subcontractors shall provide certified payroll affidavits verifying compliance with G.L. c.149 §§ 26-27H, the federal Davis-Bacon Act, and other related acts.

(d). 29 C.F.R. § 5 (a)(1) – (10) are hereby incorporated by reference into this Contract. All subcontracts must include the text of 29 C.F.R. §§ 5(a)(1) – (10) in full.

**3.3 Compliance with the Copeland "Anti-Kickback" Act**

(a). If this Contract is subject to the Davis-Bacon Act, the Copeland "Anti-Kickback" Act also applies.

(b). Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Contract.

(c). Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the federal program may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor

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shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(d). Breach. A breach of the Contract clauses above may be grounds for termination of the Contract and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 512.

**3.4 Contract Work Hours and Safety Standards Act**

(a). If this Contract has a value exceeding $100,000 and involves the employment of mechanics or laborers, the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3702 and 3704, as supplemented by the Department of Labor Regulations 29 C.F.R. Part 5 applies.

(b). If applicable, the Contractor shall comply with the Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations 29 CFR Part 5. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(c). Pursuant to 40 U.S.C. § 3702 of the Contract Work Hours and Safety Standards Act, the Contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of forty (40) hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of forty (40) hours in the work week. The requirements of 40 U.S.C. § 3704 shall apply to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to health and safety.

(d). Compliance with the Contract Work Hours and Safety Standards Act

Contracts are required to contain the text of 29 C.F.R. § 5.5(b)(1) – (4) as follows:

(b) Contract Work Hours and Safety Standards Act. The Agency Head shall cause or require the contracting officer to insert the following clauses set forth in paragraphs (b)(1), (2), (3), and (4) of this section in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by §§ 5.5(a) or 4.6 of part 4 of this title. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

> (1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
>
> (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (b)(1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic,

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including watchmen and guards, employed in violation of the clause set forth in paragraph (b)(1) of this section, in the sum of $29 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (b)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The (write in the name of the Federal agency or the loan or grant recipient) shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (b)(2) of this section.

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

(e). Further Compliance with the Contract Work Hours and Safety Standards Act

(i) The contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid.

(ii). Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## Article IV
## Contract Provisions Applicable to Federally Funded Contracts Involving Procurement

**4.1 Procurement of Recovered Materials**

(a). If this Contract involves a procurement with a value exceeding $10,000 performed by a state agency or an agency of a political subdivision of a state and its contractors, Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962, applies.

(b). Contractor acknowledges and understands that, in performing the work specified under this Contract, Contractor shall be required to comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency ("EPA") at 40

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C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

**4.2 Domestic Preferences for Procurements**

(a). Pursuant to 2 C.F.R. § 200.322, As appropriate and to the extent consistent with law, the non-federal entity should, to the greatest extent practicable under a federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

For purposes of this section:

1. "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
2. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

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**EXHIBIT A**

**Memorandum In Support of an Emergency Procurement**

| | |
|---|---|
| MEMO TO: | The School Food/Groceries Procurement File |
| FROM: | Marjorie Weinberger, General Counsel, Chief Procurement Officer, MAPC |
| Date: | August 8, 2023 |
| Re: | Procurement Emergency |

On August 1, 2023, MAPC received a letter from the Massachusetts Office of the Inspector General ("IG") that determined that variable pricing options are invalid in an MAPC procurement. The MAPC bid and contract for Groceries for Schools included a variable pricing option for vendors. As such. MAPC immediately terminated its contract for groceries with Ace Endico, which had previously been awarded a contract for groceries sold to Massachusetts Schools. 400+ schools were impacted by this contract termination. MAPC has since been advised by the school food membership program, Food4schools, that it had been contacted by many different schools with concern that without a contract currently in place, they might not be able to provide adequate school food in time for school openings in September.

Based upon this information and in consideration of the recently approved legislative budget that requires free breakfasts and lunches for all k-12 public school children in Massachusetts, MAPC has determined that a two-month emergency contract with Ace Endico is essential to preserve the health and welfare of children returning to school. There is simply no time for schools to replace their grocery options with Ace Endico, which has access to extensive and necessary grocery supplies and the ability to transport them to each school in time for its opening.

As such, MAPC has implemented the requirements set forth in M.G.L. c. 30B, §8 for emergency procurements. Intended to protect against "endanger[ing] the health or safety of the people or property", this section of the law allows public purchasers to, for a limited period, waive compliance with procurement procedures. To assure that children returning to schools in September have sufficient food, MAPC has issued the contract and grocery items list attached hereto with the vendor's agreed pricing. MAPC will begin immediately drafting an Invitation for Bids for issuance and award prior to the expiration of the two-month emergency contract to enable seamless access to school food.

As Chief Procurement Officer, I will as soon as practicable establish a record of the emergency procurement, which will be published in the Goods and Services Bulletin published by the Massachusetts Secretary of State.

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# Exhibit B
## Notice Addressees

| For MAPC: | For the VENDOR: |
|---|---|
| Marc Draisen | Jason C. Magnell |
| Name | * Name |
| Executive Director | Vice President Ace Endico New England |
| Title | * Title |
| MAPC | Ace Endico |
| Organization | * Organization |
| 60 Temple Place | 80 International Blvd |
| Street Address | * Street Address |
| Boston, MA 02111 | Brewster, NY 10509 |
| City, State, ZIP | * Street Address |
| 617.451.2770 | 914-347-3131 |
| Phone | * Phone |
| mdraisen@mapc.org | jmagnell@aceendico.com |
| E-mail :_____ | * E-mail :_____ |

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**Exhibit C**

**Groceries - Product and Price List**

**EXCEL**

**Separate and Attached Document**

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## EXHIBIT D

## BUY AMERICAN CERTIFICATION

Section 104(d) of the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Public Law 105-336) added a provision, Section 12(n) to the NSLA (42 USC 1760(n)), requiring school food authorities (SFAs) to purchase, to the maximum extent practicable, domestic commodity or product. Section 12(n) of the NSLA defines "domestic commodity or product" as an agricultural commodity that is produced in the United States and a food product that is processed in the United States using substantial agricultural commodities that are produced in the United States. "Substantial" means that over 51 percent of the final processed product consists of agricultural commodities that were grown domestically. Products from Guam, American Samoa, Virgin Islands, Puerto Rico, and the Northern Mariana Islands are allowed under this provision as territories of the United States. The Buy American provision (7 CFR Part 210.21(d)) is one of the procurement standards SFAs must comply with when purchasing commercial food products served in the school meals programs.

I hereby certify that each item included in this submission meets the criteria for a domestic commodity or product as defined above. Documentation for specific items shall be provided upon request of the group.

ACE ENDICO

Company Name

Jason C. Magnell

Authorized Representative Name (Printed)

Authorized Signature

8/9/23

Date

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**EXHIBIT E**

**Subcontractors**

1.

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## Exhibit F
## Required Forms

1. Conflict of Interest
2. Certificate of Compliance with M.G.L. c.151B
3. Certificate of Non Debarrment
4. Lobbying Activities
5. Equal Opportunity Requirements
6. HUB Certification
7. Right to Know Law

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# 1. Conflict of Interest Certification

The Vendor hereby certifies that:

1. The Vendor has not given, offered, or agreed to give any gift, contribution, or offer of employment as an inducement for, or in connection with, the award of a Contract pursuant to this AGREEMENT.
2. contribution, or offer of employment to the Vendor, or to any other person, corporation, or entity as an inducement for, or in connection with, the award to the consultant or subcontractor of a Contract by the Vendor.
3. No person, corporation, or other entity, other than a bona fide full time employee of the Vendor has been retained or hired to solicit for or in any way assist the Vendor in obtaining a Contract pursuant to this AGREEMENT upon an agreement or understanding that such person, corporation or entity be paid a fee or other compensation contingent upon the award of a Contract to the Vendor.
4. Vendor understands that the Massachusetts Conflict of Interest Law, M.G.L. c. 268A, applies to the Vendor and its officers, employees, agents, subcontractors, and affiliated entities.
5. Vendor understands that the Vendor and its officers, employees, agents, subcontractors, and affiliated entities, shall not participate in any activity which constitutes a violation of the Massachusetts Conflict of Interest Law or which creates an appearance of a violation of the Massachusetts Conflict of Interest Law.

Authorized Agent of the Vendor:

| | |
|---|---|
| Signature (blue ink please) | Name (as used for tax filing) |
| Jason C. Magnell | 13-3116470 |
| Printed Name | SS# or Federal ID# |
| Vice President Ace Endico Nat'l Gr | 8/9/23 |
| Title | Date |

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## 2. Certificate of Compliance with M.G.L. c. 151B

The Vendor hereby certifies that it is in compliance with and shall remain in compliance with Massachusetts General Laws (M.G.L.) c. 151B and shall not discriminate on any prohibited basis outlined therein. The Vendor also hereby certifies that it shall comply with any and all applicable Commonwealth of Massachusetts Supplier Diversity Office (SDO) thresholds that have been established in conjunction with this AGREEMENT.

Authorized Agent of the Vendor:

Signature (blue ink please)

Jason C. Magnan

Printed Name

Vice President of Ace Endico New England

Title

ACE ENDICO CORP

Name (as used for tax filing)

13-3116470

SS# or Federal ID#

8/9/21

Date

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## 3. Certificate of Non-Debarment

The Vendor hereby certifies that it is presently not debarred, suspended, or otherwise prohibited from practice by any federal, state, or local agency, and that, should any proceeding arise in which it is debarred, suspended, or otherwise prohibited from practice by any federal, state, or local agency, the Vendor shall inform the MAPC and involved municipalities within one (1) business day of such debarment, suspension, or prohibition from practice.

Authorized Agent of the Vendor:

| | |
|---|---|
| Signature (blue ink please) | Name (as used for tax filing) |
| Jason C. Mugnoli | 13-3116470 |
| Printed Name | SS# or Federal ID# |
| Vice President Ace Endico New England | 8/9/23 |
| Title | Date |

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## 4. Lobbying Activities

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-contracts, sub-grants and contracts under grants, loans and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31 U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

ACE ENDICO

Company Name

Jason C. Mayne11

Authorized Representative Name (Printed)

Authorized Signature

8/9/23

Date

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## 5. Equal Opportunity Requirements

I certify that all information, statements, and pricing made in this AGREEMENT are true, accurate, and binding representations of the Vendor's intentions and commitment in responding to this AGREEMENT. Any such representations that exceed the minimum requirements of the AGREEMENT constitute legal obligations on the part of the Vendor to perform as stated and that failure to so perform may be used by MAPC as grounds to terminate this AGREEMENT.
I certify that pursuant to 28 CFR Part 42.204 (d) my employment practices comply with Equal Opportunity Requirements and comply with 28 CFR Part 42.202.; that my organization complies with the Americans with Disabilities Act.

Authorized Agent of the Vendor:

| | |
|---|---|
| [signature] | ACE ENDICO Corp |
| Signature (blue ink please) | Name (as used for tax filing) |
| Jason C Maynell | 13-3116470 |
| Printed Name | SS# or Federal ID# |
| Vice President Ace Endico Mfg Co | 8/9/23 |
| Title | Date |