SECTION 3: STANDARD FORM OF CONTRACT FOR ezIQC CONTRACT Fall 2018

This CONTRACT, executed this 9th day of December, 2018, by and between the Capitol Region Council of Governments, hereinafter called "CRCOG" and Diversity Construction Group, LLC of Cheshire, CT, a corporation incorporated under the Laws of the State of Connecticut, its successors and assigns, hereinafter called "CONTRACTOR."

ARTICLE 1 - THE CONTRACT DOCUMENTS

The Contract Documents consist of this Contract, the Invitation to Bid documents, including the Information for Bidders, Scope of Work, General Conditions, Construction Task Catalog dated October 2018, Technical Specifications, Wage Rate Schedule and Requirements, the Contractor's response thereto and any addenda issued prior to execution of this Contract.

ARTICLE 2 – RELATIONSHIP BETWEEN PARTIES

The Contractor is an independent contractor and not an officer, employee or agent of CRCOG. Therefore, it is mutually agreed that this Agreement is a contract for services and not a contract of employment, and that, as such, the Contractor and any and all subcontractors shall not be entitled to any employment benefits of CRCOG such as, but not limited to: vacation, sick leave, insurance, worker's compensation, and pension and retirement benefits.

CRCOG enters into this Contract for and on behalf of the members (current and future) of the Capitol Region Purchasing Council that participate in the ezIQC program (hereinafter, the "Member or Members"). It is understood and agreed that CRCOG's participation in this contract and the ezIQC program is for the administrative convenience of the Members only and that CRCOG will not be party to any purchase order issued by a Member to the Contractor.

A Purchase Order entered into between a Member and the Contractor for a particular project shall be a separate, independent agreement. Neither CRCOG nor the Consultant shall be made or considered a party to such Purchase Order. Neither CRCOG nor the Consultant will have any obligations, duties, or rights with respect to such Purchase Order. Neither the Member nor the Contractor shall have any cause of action, rights, or claims against CRCOG or the Consultant arising out of such Purchase Order.

ARTICLE 3 – GENDER, NUMBER, TITLE

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held and construed to include the plural, unless the Agreement requires otherwise. In the event of any discrepancy or conflict between the name and title of any person referred to in this Agreement, the title shall prevail.

ARTICLE 4 - THE WORK

This is an indefinite quantity contract pursuant to which the CONTRACTOR will develop Proposals and perform a series of individual projects at different locations for various Members.

The CONTRACTOR shall perform all work and services described in the Scope of Work set forth in Attachment A, annexed hereto, and as required by this Contract.

The CONTRACTOR will develop each Proposal in accordance with the procedures for developing all Proposals and Purchase Orders.

All terms and conditions of this Contract will apply to each Purchase Order issued by a Member to the CONTRACTOR.

For each Purchase Order issued by a Member, the CONTRACTOR shall complete the Detailed Scope of Work within the Project Completion Time for the Purchase Order Price.

A Member may, before or after a Purchase Order is issued, change, delete from, or add to the Detailed Scope of Work. Changes, credits, deletions and added work will be contained in a Supplemental Purchase Order prepared in accordance with the procedures for developing all Proposals and Purchase Orders.

It is understood and agreed by the Contractor that CRCOG shall have no liability whatsoever to the Contractor for any work to be performed under a Purchase Order issued by a Member to the Contractor.

ARTICLE 5 – GEOGRAPHIC AREA

The CONTRACTOR shall perform work primarily in the following region, as defined in the Contract Documents: Southeast

Provided, however, that if a contractor assigned to a different region is unable or unwilling to perform work, a Member in that region may request the CONTRACTOR to perform work for such Member. If a member requests a CONTRACTOR to perform work for such member, it will be at the CONTRACTOR's competitively bid Adjustment Factors. The CONTRACTOR, however, may decline work outside its designated region.

ARTICLE 6 – TERM OF THE CONTRACT

The term of this Contract begins on the award date noted above and ends on December 31, 2020. All Purchase Orders issued during the term of this Contract shall be valid and in effect notwithstanding that the Detailed Scope of Work may be performed, payments may be made, Supplemental Purchase Orders may be issued, and the guarantee period may continue, after the term has expired.

ARTICLE 7 - ESTIMATED ANNUAL VALUE

The Estimated Annual Value for this Contract is: $1,000,000.

This is an estimate of the value of Purchase Orders that could be available to the CONTRACTOR each year under this Contract. The CONTRACTOR is not guaranteed to receive Purchase Orders totaling this amount. The CONTRACTOR is not guaranteed to receive any Purchase Orders during the term of the Contract.

ARTICLE 8 – PURCHASE ORDER PRICE

The Purchase Order Price will be calculated in accordance with the procedures for developing all Proposals and Purchase Orders set forth in the Scope of Work- Attachment A, annexed hereto, and using the following Adjustment Factors:

1. Normal Working Hours on Non-Prevailing Wage Rate Projects: 7:00am to 4:00pm Monday to Friday.

1	.	1	2	0	0

(Specify to four decimal places)

2. Other Than Normal Working Hours on Non-Prevailing Wage Rate Projects: 4:00pm to 7:00am Monday to Friday, and any time Saturday, Sunday and Holidays.

1	.	1	3	0	0

(Specify to four decimal places)

3. Normal Working Hours on Prevailing Wage Rate Projects: 7:00am to 4:00pm Monday to Friday.

1	.	1	7	0	0

(Specify to four decimal places)

4. Other Than Normal Working Hours on Prevailing Wage Rate Projects: 4:00pm to 7:00am Monday to Friday, and any time Saturday, Sunday and Holidays.

1	.	1	9	0	0

(Specify to four decimal places)

The term Prevailing Wage Rate Projects only includes projects for which the CONTRACTOR is required by law to pay Prevailing Wage Rates in the following categories as defined by the Connecticut Department of Labor: Building Construction, Highway Construction and Heavy Construction, and projects for which the CONTRACTOR is required to pay Davis-Bacon Wages. Davis-Bacon wage determinations are published on the Wage Determinations On Line (WDOL) website at http://www.wdol.gov/ for contracting agencies to incorporate into covered contracts.

The term Non-Prevailing Wage Rate Projects includes all projects for which the CONTRACTOR is not required by law to pay Prevailing Wage Rates, and projects defined by the Connecticut Department of Labor as Residential Construction for which the CONTRACTOR is required by law to pay Residential Construction Prevailing Wage Rates.

The Adjustment Factors shall be adjusted on each anniversary of the award date of the Contract to account for construction cost escalation or de-escalation according to the following:

A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the 20 City Average published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the award date of the contract.

A Current Year Index shall be calculated by averaging the 12 month CCI for the 20 City Average published in ENR for the 12 months immediately prior to the month of the contract anniversary.

The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.

The original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain the new Adjustment Factors effective for the next 12 months.

Averages shall be obtained by summing the 12 month indices and dividing by 12.

All calculations in this article shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:

The fourth decimal place shall be rounded up when the fifth decimal place is five (5) or greater.

The fourth decimal place shall remain unchanged when the fifth decimal place is less than five (5).

ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation

is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.

ARTICLE 9 - PROGRESS PAYMENTS

Based upon applications for payment submitted to the Member by the CONTRACTOR, the Member will make monthly progress payments to the CONTRACTOR, as provided in the General Conditions of the Contract and in the individual Purchase Order.

The obligation to make progress payments arises solely from the issuance of a Purchase Order by a Member. No obligation to make payments to the Contractor can be implied or inferred from the execution of this Standard Form of Contract or the General Conditions.

ARTICLE 10 – BONDING

CONTRACTOR shall, when required by the Member, provide Payment and Performance Bonds in the amount of the Purchase Order Price. The surety and the form of the bonds must be acceptable to the Member.

CONTRACTOR shall also, when required by the Member, provide a Maintenance Bond following completion of a project in the amount of ten percent (10%) of the Purchase Order Price. Such bond shall be furnished to the Member before the final payment will be made and will act as a warranty for a period of twelve (12) months from date of final payment. The surety and the form of the bonds must be acceptable to the Member.

If the CONTRACTOR is required to submit Payment and Performance Bonds and/or a Maintenance Bond, the Member shall reimburse the Contractor the actual cost of such bonds not to exceed 2% of the Purchase Order Price. The Contractor shall provide such documents as the Member may require evidencing the actual cost of the bonds.

The CONTRACTOR shall comply with the requirements of Conn. Gen. Stat. § 12-430. If the CONTRACTOR is an unverified, non-resident contractor it must file a surety bond for projects over $250,000 with DRS in an amount equal to 5% of the Purchase Order Price using **Form AU-964**, *Surety Bond and Release*. The CONTRACTOR must provide to the Member proof that the surety bond was posted. The CONTRACTOR whether resident, verified, or unverified, doing business with unverified subcontractors on projects over $250,000 must hold back an amount equal to 5% of the payments required to be made to the subcontractor until the subcontractor provides a *Certificate of Compliance* authorizing full or partial release of the amount held back. The CONTRACTOR must provide notice of the requirement to hold back to the unverified subcontractor not later than the time of commencement of work under the contract by the subcontractor. The amount held back from unverified subcontractors is deemed to be held in a special fund in trust for the state.

ARTICLE 11 - FINAL PAYMENTS

Final payment, constituting the entire unpaid balance of the Purchase Order Price, will be paid by the Member to the CONTRACTOR within thirty (30) days after Final Inspection of the Detailed Scope of Work, if the Detailed Scope of Work has been fully performed, and a Final Application for Payment has been submitted, as provided in the General Conditions of the Contract and the individual Purchase Order.

The Member issuing the Purchase Order is solely responsible for paying the CONTRACTOR and the CONTRACTOR shall only seek payment from that Member. CRCOG, the Capitol Region Purchasing Council, and the Consultant have no obligation to make payments to the CONTRACTOR for work performed pursuant to any Purchase Order so issued.

ARTICLE 12 - INSURANCE

The CONTRACTOR shall be required to demonstrate the following insurance coverage prior to the execution of this Contract. Failure to maintain insurance coverage as required and to name the appropriate Member as the Additional Insured will be grounds for termination of the contract.

A. Comprehensive General Liability, including Contractual Liability, Products/Completed Operations Insurance, as applicable, with limits not less than $2,000,000 for all damages because of bodily injury sustained by each person as the result of any occurrence and $1,000,000 bodily injury aggregate per policy year and limits of $1,000,000 for all property damage sustained by each person as a result of any one occurrence and $1,000,000 property damage aggregate per policy year or a combined single limit of $1,000,000. All, if any, deductibles are the sole responsibility of the Contractor to pay and/or indemnify.

B. Automobile Liability Insurance including non-owned and hired vehicles in the same limits as indicated in Section A, above.

C. Workers' Compensation Insurance at the Connecticut statutory limit including Employers' Liability with limits of $100,000 each accident, $500,000 for each disease/policy limit, and $100,000 for disease for each employee.

D. Excess Liability Umbrella Form over sections A, B, and C-Employers' Liability with limits up to $4,000,000.

E. Before a Member will issue a Purchase Order to the Contractor, the Contractor shall deliver certificates of insurance evidencing the required insurance. The Member shall be named as an Additional Insured as its interest may appear on the appropriate coverage in sections A, B, C - Employers' Liability and D in the section reserved for comments on the ACORD Form insurance certificate.

In addition:

(a) The insurance requirements shall apply to all subcontractors and/or Contractors.

(b) All policy forms shall be on the occurrence form. Exceptions must be authorized by CRCOG.

(c) Acceptable evidence of coverage will be on the ACORD form or a form with the same format.

(d) All renewal certificates shall be furnished at least 10 days prior to policy expiration.

(e) Each certificate shall contain a 30 day notice of cancellation.

(f) Insurance shall be issued by an insurance company licensed to conduct business in the State of Connecticut which has at least an "A-"VIII policy holders rating according to Best Publications latest edition Key Rating Guide.

(g) If the Detailed Scope of Work involves abatement, removal, repair, replacement, enclosure, encapsulation and/or disposal of any hazardous material or substance, as defined by applicable State and federal laws and regulations, the Contractor, Subcontractor or party performing such work shall maintain in full force and effect Contractor's Pollution Coverage at $3,000,000 per occurrence project specific limit / $3,000,000 aggregate, dedicated to such work, unless otherwise approved. Policy must specifically include pollution coverage for bodily injury, property damage, cleanup costs, defense costs, contractual liability and completed operations for all work performed (including but not limited to asbestos and lead abatement, drum removal and disposal, demolition, excavation, off-site incineration of soils etc.) and shall continue to provide completed operations coverage for two (2) years after final completion of the work. Exclusions or limitations affecting work performed must be deleted. Policy form must be "pay on behalf of" rather then "indemnity" and insurance company must have the "right and duty" to defend. Any "insured vs. insured" language must be amended to "named insured vs. named insured" or not apply to "additional insureds". The policy shall not contain any provision or definition that would serve to eliminate third party action over claims for employees of the Contractor, Subcontractor, or party performing the work. Policy shall state that insolvency or bankruptcy of the insured or the insured's estate will not relieve the insurance company of its obligations. The cost of such insurance is included in the unit prices for such work and is not a reimburseable cost.

Contractor shall also adhere to Insurance requirements as stated in Article 11 of the General Conditions.

ARTICLE 13 – HOLD HARMLESS AND INDEMNIFICATION

In addition to its obligation to provide insurance as specified above, the CONTRACTOR, its subcontractors, agents and assigns shall defend, indemnify and hold harmless CRCOG, including, but not limited to, its elected officials, and its officers, the Member and/or the Design Professional, as defined in the General Conditions, from any and all claims made against CRCOG, the Member and/or the Design Professional, including but not limited to, damages, awards, costs and reasonable attorney fees, to the extent any such claim directly and proximately results from the negligent acts, errors, or omissions in the performance of services by the CONTRACTOR during the CONTRACTOR'S performance of this Agreement or any other Agreements of the CONTRACTOR entered into by reason thereof. CRCOG, the Member and/or the Design Professional agree to give the CONTRACTOR prompt notice of any such claim and absent a conflict of interest, an opportunity to control the defense thereof.

ARTICLE 14 - MODIFICATIONS

This Contract may be amended or modified only in writing signed by the parties.

ARTICLE 15 – TERMINATION/PERFORMANCE CLAUSE

CRCOG, by written notice, may terminate this Contract, in whole or in part, at any time, if CRCOG determines that such termination is in its best interest. All Purchase Orders issued by Members prior to such termination shall remain in full force and effect unless terminated by the issuing Member.

ARTICLE 16 – GOVERNING LAW AND VENUE

This Agreement shall be governed by and construed in accordance with the laws of the State of Connecticut and the by-laws, policies and procedures of the Capitol Region Council of Governments. The parties agree that the venue for any legal proceeding with respect to this Agreement shall be Connecticut Superior Court, Judicial District of Hartford at Hartford.

ARTICLE 17 – CONFLICT OF INTEREST

CRCOG and the CONTRACTOR hereby covenant and agree that no member of the governing body of CRCOG, or its designees or agents, and no other public official, either paid or unpaid, who exercises any functions or responsibilities with respect to this program during the individual's tenure or for one (1) year thereafter, shall have any personal or financial interest, direct or indirect, in any contract or subcontract, or the proceeds thereof for work and/or services to be performed in connection with the program under this Agreement. The CONTRACTOR shall cause to be incorporated, in all subcontracts a provision prohibiting such interest pursuant to the provisions of this paragraph. The Contractor agrees to comply with any existing ethics ordinance, law or regulation of any Member executing a Purchase Order.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement effective the day and year first above written:

CRCOG

Witness: _____

By: _____

Executive Director

CONTRACTOR

Witness: _____

By: _____

(Title)